

**[UNOFFICIAL TRANSLATION  
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CANADA

PROVINCE OF QUÉBEC  
DISTRICT OF MONTRÉAL

SUPERIOR COURT

---

NO. 500-17-072363-123

THE ATTORNEY GENERAL OF QUÉBEC, having an office at 1 rue Notre-Dame Est, Suite 8.00, Montréal, Québec H2Y 1B6, District of Montréal

Plaintiff

v.

IMPERIAL TOBACCO CANADA LIMITED, a legal person having its head office at 3711 rue Saint-Antoine Ouest, Montréal, Québec H4C 3P6, District of Montréal

and

B.A.T INDUSTRIES P.L.C., a legal person having its head office at Globe House, 4 Temple Place, London WC2R 2PG, United Kingdom

and

BRITISH AMERICAN TOBACCO (INVESTMENTS) LIMITED, a legal person having its head office at Globe House, 1 Water Street, London WC2R 3LA, United Kingdom

and

CARRERAS ROTHMANS LIMITED, a legal person having its head office at Globe House, 1 Water Street, London WC2R 3LA, United Kingdom

and  
ROTHMANS, BENSON & HEDGES  
INC., a legal person having a place  
of business at 185 autoroute  
Laurentienne, Québec, Québec  
G1K 8C4, District of Québec

and  
PHILIP MORRIS USA INC., a legal  
person having its head office at  
6601 West Broad Street, Richmond,  
Virginia 23230, United States

and  
PHILIP MORRIS INTERNATIONAL  
INC., a legal person having its head  
office at 120 Park Avenue, New  
York, New York 10017, United  
States

and  
JTI-MACDONALD CORP., a legal  
person having a place of business  
at 2455 rue Ontario Est, Montréal,  
Québec H2K 1W3, District of  
Montréal

and  
R.J. REYNOLDS TOBACCO  
COMPANY, a legal person having  
its head office at 401 North Main  
Street, Winston-Salem, North  
Carolina 27101, United States

and  
R.J. REYNOLDS TOBACCO  
INTERNATIONAL, INC., a legal  
person having its head office at 401  
North Main Street, Winston-Salem,  
North Carolina 27101 United States

and  
CANADIAN TOBACCO  
MANUFACTURERS' COUNCIL, a  
legal person having its head office  
at 6 rue d'Angers, Gatineau,  
Québec J8T 4K1, District of Hull,

Defendants

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## MOTION INTRODUCTIVE OF SUIT

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IN SUPPORT OF ITS ACTION, THE PLAINTIFF RESPECTFULLY SUBMITS:

### I. INTRODUCTION

#### A. PLAINTIFF AND NATURE OF THE ACTION

1. The Government of Québec, represented by the Attorney General of Québec, claims from the Defendants the tobacco-related health care costs it has been assuming since 1970, the year of the coming into force of the universal health insurance plan.
2. The Defendants are solidarily liable for those costs, which result from the wrongs they have committed, individually or in common, in respect of the persons in Québec, those wrongs including numerous failures in their duty to inform the public of the risks and dangers posed by tobacco products.
3. The Plaintiff seeks to recover the cost of tobacco-related health care, namely, the sum of the present value of
  - (a) the total expenditure incurred by the Government or a government body in relation to tobacco-related health care, including the cost of medical services, hospital services, and other health and social services including pharmaceutical services and drugs; and
  - (b) the estimated expenditure the Government or a government body can reasonably be expected to incur in that regard until 2030.

4. The cost of tobacco-related health care also includes the cost of programs and services established or insured by the Government or a government body in relation to disease or general deterioration of health associated with tobacco, including programs or services intended to educate the public about the risks and dangers posed by tobacco products or to fight tobacco addiction.
5. The cost of tobacco-related health care is a heavy burden on the public finances of Québec.
6. The *Tobacco-related Damages and Health Care Costs Recovery Act*, R.S.Q., c. R-2.2.0.0.1 (the “**Act**”) was passed for the purpose, among other things, of providing a framework and special rules for this action.
7. The Plaintiff intends to rely on all the presumptions and special rules under the Act.

## B. HARMFUL NATURE OF TOBACCO PRODUCTS

8. Tobacco is composed of more than 3,800 constituents.
9. Combustion produces numerous toxic substances that are contained only in the smoke.
10. Cigarette smoke contains from 4,800 to 5,300 constituents, including:
  - (a) more than 70 carcinogens, notably:
    - (i) polycyclic aromatic hydrocarbons (PaHs), such as benzo(a)pyrene;

- (ii) nitrosamines such as N-nitrosornicotine (NNN) and 4-(N-methylnitrosoamino)-1-(3-pyridyl)-1-butanone (NNK);
- (iii) 2-naphtylamine;
- (iv) 4-aminobiphenyl;
- (v) formaldehyde;
- (vi) 1,3-butadiene
- (vii) benzene;
- (viii) vinyl chloride;
- (ix) ethylene oxide;
- (x) acetaldehyde;
- (xi) naphthalene;
- (xii) toluidine;
- (xiii) urethane;
- (xiv) nickel;
- (xv) chromium;
- (xvi) cadmium;
- (xvii) polonium-210; and
- (xviii) beryllium;

(b) respiratory system irritants, notably:

- (i) acrolein;
- (ii) phenols;
- (iii) aldehydes;
- (iv) quinones; and
- (v) acetone;

(c) toxic products, notably:

- (i) carbon monoxide;
- (ii) hydrogen cyanide;
- (iii) nitrogen oxides; and
- (iv) ammonia:

- R.R. Baker et al., *Smoke Chemistry and the Risks of Smoking*, Project Report No. P.145, British American Tobacco, December 6, 2000, **Exhibit PG-1**;
- R.R. Baker, "Smoke Generation Inside a Burning Cigarette: Modifying Combustion to Develop Cigarettes that May Be Less Hazardous to Health", (2006) 32 *Progress in Energy and Combustion Science* 373, **Exhibit PG-2**.

11. Smoking causes or contributes to

- (a) cancer of the lung;
- (a) cancer of the bronchial tubes;
- (b) cancer of the trachea;
- (c) cancer of the larynx;
- (d) cancer of the pharynx;
- (e) cancer of the esophagus;
- (f) oral cancer;
- (g) cancer of the pancreas;
- (h) cancer of the kidneys;
- (i) cancer of the bladder;
- (j) cancer of the stomach;

- (k) cancer of the colon;
- (l) cancer of the rectum;
- (m) cancer of the liver;
- (n) cancer of the nose;
- (o) cancer of the uterine lining; and
- (p) leukemia:

➤ World Health Organization, International Agency for Research on Cancer, *IARC Monographs on the Evaluation of Carcinogenic Risks to Humans, Volume 100, A Review of Human Carcinogens, Part E: Personal Habits and Indoor Combustions*, Lyon, France, October 2009, pages 1 to 214, **Exhibit PG-3**.

12. The irritant substances of tobacco smoke attack the respiratory mucosa, affect respiratory capacity and, in combination with tar, promote bronchial inflammation and coughing.
13. Smoking causes or contributes to
  - (a) chronic obstructive pulmonary disease, including emphysema and chronic bronchitis; and
  - (b) chronic cough.
14. Carbon monoxide produced during tobacco combustion
  - (a) causes a decrease in the oxygen rate of the red blood cells and thickens the blood;
  - (b) increases the heart rate and blood pressure; and
  - (c) induces shrinking and thickening of the arteries.

15. Smoking also results in a decrease in “good” cholesterol (HDL), which plays an important role in protecting the arteries.
  16. The nicotine in tobacco also affects the heart, blood pressure and arteries by inducing
    - (a) an increase in the heart rate;
    - (b) an increase in the total blood platelets forming clots; and
    - (c) an increase in blood pressure.
  17. Those effects cause or contribute to
    - (a) arteriosclerosis;
    - (b) heart disease;
    - (c) vascular disease; and
    - (d) strokes.
  18. LaForest J. of the Supreme Court of Canada recognized the health hazards of smoking in 1995:
    31. [...] Overwhelming evidence was introduced at trial that tobacco use is a principal cause of deadly cancers, heart disease and lung disease. In our day and age this conclusion has become almost a truism.  
  
[...]
    32. It appears, then, that the detrimental health effects of tobacco consumption are both dramatic and substantial. Put bluntly, tobacco kills. [...]
- *RJR-MacDonald Inc. v. Canada (Attorney General)*, [1995] 3 S.C.R. 199.

19. The Court reiterated those hazards in 2007:

9. [...] We now know that half of smokers will die of tobacco-related diseases and that the costs to the public health system are enormous. [...]

[...]

13. Some 45,000 Canadians die from tobacco-related illnesses every year. By this measure, smoking is the leading public health problem in Canada.

➤ *Canada (Attorney General) v. JTI-Macdonald Corp.*, [2007] 2 S.C.R. 610.

20. Smoking also has harmful effects on pregnancy and the health of the foetus, notably by increasing the risk of

- (a) miscarriage;
- (b) placental abruption;
- (c) premature birth;
- (d) intrauterine growth restriction;
- (e) stillbirth; and
- (f) neonatal mortality.

21. The Defendants themselves now also recognize that smoking is harmful to health and, in particular, causes lung cancer, emphysema, chronic bronchitis, heart disease and other illnesses:

- Website of British American Tobacco, **Exhibit PG-4**;
- Website of Imperial Tobacco Canada, **Exhibit PG-5**;
- Website of Phillip Morris International Canada, **Exhibit PG-6**;

- Website of Philip Morris International, **Exhibit PG-7**;
- Website of Philip Morris USA, **Exhibit PG-8**;
- Website of R.J. Reynolds Tobacco Company, **Exhibit PG-9**;
- Website of JTI, **Exhibit PG-10** (English) and **Exhibit PG-11** (French).

22. In addition to being harmful to health, nicotine is a drug with reinforcing properties causing smokers to crave it despite its harmful effects.

23. Nicotine stimulates the central nervous system and causes chemical and biological changes in the brain.

24. Nicotine is so powerfully addictive that a large percentage of smokers are unable to quit, as the Supreme Court of Canada acknowledged in 2007:

9. [...] On the findings of the trial judge in the present case, tobacco is now irrefutably accepted as highly addictive and as imposing huge personal and social costs. [...] We also know that tobacco addiction is one of the hardest addictions to conquer and that many addicts try to quit time and time again, only to relapse.

[...]

15. Tobacco contains nicotine, a highly addictive drug. Some 80 percent of smokers wish they could quit but cannot. [...]

- *Canada (Attorney General) v. JTI-Macdonald Corp.*, [2007] 2 S.C.R. 610.

25. On their websites (Exhibits PG-4 to PG-11), the Defendants also now recognize that smoking is addictive and that some smokers find it very difficult to quit.



## C. BACKGROUND

26. In the early 1950s, various American and British science journals published epidemiological studies establishing a statistical association between smoking and lung cancer, notably:
  - E.L. Wynder, E. A. Graham, "Tobacco Smoking as a Possible Etiologic Factor in Bronchiogenic Carcinoma: A Study of Six Hundred and Eighty-Four Proved Cases", (1950), 143, *JAMA*, 329, **Exhibit PG-12**;
  - R. Doll, A.B. Hill, "Smoking and Carcinoma of the Lung", (1950) *British Medical Journal*, 739, **Exhibit PG-13**.
27. In 1953, another study concluded that when cigarette smoke condensate was applied to the skin of mice, 44% of the mice developed malignant tumours:
  - E.L. Wynder et al., "Experimental Production of Carcinoma with Cigarette Tar", (1953) *Cancer Research*, 855, **Exhibit PG-14**.
28. At around the same time, *Sélection du Reader's Digest* published an article linking cancer with tobacco and discussing Wynder's study (Exhibit PG-12):
  - R. Norr, "*Le cancer et le tabac*", *Sélection du Reader's Digest*, January 1953, pages 72-73, **Exhibit PG-15**. [Translator's Note: This article appeared under the title *Cancer by the Carton*, Reader's Digest, December 1952, pages 7-8].
29. In December 1953, the American tobacco manufacturers joined together to establish the Tobacco Industry Research Committee, which was renamed the Council for Tobacco Research in 1964 (the "**CTR**").
30. On January 4, 1954, the American manufacturers issued in the United States, under the name of the Tobacco Industry Research Committee, an advertisement entitled *A Frank Statement to Cigarette Smokers*, **Exhibit PG-16**, to reassure smokers and emphasize that there was no proof

cigarettes caused disease and to announce their pledge to fund research on "all phases of tobacco use and health".

31. They then used the CTR to present and defend the American tobacco industry's position that the link between smoking and cancer had not been proven.
32. The CTR's self-imposed mission was to fund research in an attempt to resolve the scientific controversy it claimed existed on the subject of a link.
33. In June 1956, the British tobacco manufacturers established the Tobacco Manufacturers Standing Committee, which was renamed the Tobacco Research Council (the "**TRC (UK)**") in 1963.
34. The purpose of the TRC (UK) was to fund research on smoking and health issues either by granting subsidies to external researchers or by conducting its own research at the Harrogate laboratory, which opened in 1962 in the United Kingdom.
35. In 1958, the American manufacturers created the Tobacco Institute, a non-profit organization entrusted with advancing industry interests.
36. The Tobacco Institute played a key role in developing and sustaining a scientific controversy by disseminating a variety of publications.
37. In 1962, the Royal College of Physicians of the United Kingdom concluded that smoking was a cause of lung cancer and that it probably contributed to coronary disease:
  - *Smoking and Health, A Report of The Royal College of Physicians on Smoking in Relation to Cancer of the Lung and other Diseases*, London, 1962, **Exhibit PG-17**.

38. In November 1963, at the initiative of Canada's Minister of Health, Judy LaMarsh, the National Conference on Tobacco and Health (“**1963 Conference**”) was held in Ottawa.
39. On that occasion, the four Canadian manufacturers of tobacco products – Imperial Tobacco Company of Canada, Limited, Macdonald Tobacco Inc., Rothmans of Pall Mall Canada Limited, and Benson & Hedges (Canada) Limited – joined together to form the Ad Hoc Committee of the Canadian Tobacco Industry, which later became the Canadian Tobacco Manufacturers' Council (the “**CTMC**”).
40. In 1964, the highest public health authority in the United States, the Surgeon General, also concluded that cigarette smoking caused lung cancer; that it was the chief cause of chronic bronchitis; that it increased the risk of dying from emphysema; and that it was directly related to heart disease:
  - *Smoking and Health, Report of the Advisory Committee to the Surgeon General of the Public Health Service*, U.S. Department of Health, Education, and Welfare, Public Health Service, 1964, **Exhibit PG-18**.
41. On June 16, 1964, the CTMC adopted its first voluntary advertising code:
  - *Cigarette Advertising Code of Canadian Tobacco Manufacturers*, June 16, 1964, **Exhibit PG-19**.
42. Also in 1964, the Information Service at the Department of National Health and Welfare of Canada published *Tabac et Santé* [Tobacco and Health], a reference manual assembling the knowledge derived from research carried out in Canada and abroad, including the reports of the Royal College of Physicians and the Surgeon General:

- *Tabac et Santé, Manuel de référence (Canada)*, Information Service, Department of National Health and Welfare, Canada, 1964, **Exhibit PG-20**.
43. In 1969, the Surgeon General reported that women who smoked during pregnancy had a greater risk of giving birth prematurely and presented a greater risk for spontaneous abortion, stillbirth and neonatal mortality:
- *The Health Consequences of Smoking*, 1969 Supplement to the 1967 Public Health Service Review, U.S. Department of Health, Education and Welfare, Public Health Service, **Exhibit PG-21**.
44. On June 5, 1969, the CTMC filed a brief and its representatives testified before the House of Commons Standing Committee on Health, Welfare and Social Affairs on the Use of Tobacco and Cigarette Smoking (the "**Isabelle Committee**"):
- Standing Committee on Health, Welfare and Social Affairs, *Minutes of Proceedings and Evidence*, June 5, 1969, **Exhibit PG-22**;
  - Ad Hoc Committee of the Canadian Tobacco Industry, *Une proposition de l'industrie canadienne du tabac concernant la santé et l'usage du tabac au Comité parlementaire de la santé, du bien-être social et des affaires sociales*, June 1969, **Exhibit PG-23**.
45. In its report tabled in December 1969, the Isabelle Committee concluded "that cigarette smoking is an important health hazard" because it would appear to be the greatest factor in the onset of lung cancer, chronic bronchitis and emphysema, and "an important risk factor in the development of coronary heart disease":
- Canada, Chambre des communes, *Rapport du Comité permanent de la santé, du bien-être social et des affaires sociales sur l'usage du tabac et de la cigarette*, 1969, pages 13 et 19 [Canada, House of Commons, *Report of the House of Commons Standing Committee on Health, Welfare and Social Affairs on the Use of Tobacco and Cigarette Smoking*, 1969, pages 13 and 19], **Exhibit PG-24**.

46. The Isabelle Committee recommended

- (a) progressive elimination of the promotion of cigarette sales (advertising, coupon and premium schemes, free distribution of cigarettes);
- (b) increasing educational efforts to discourage cigarette consumption;
- (c) requiring adequate health warnings on cigarette packaging and in advertising;
- (d) regulating maximum levels of tar and nicotine;
- (e) encouraging smokers to smoke only low tar and nicotine brands;
- (f) requiring that tar and nicotine levels be printed on cigarette cartons and packages;
- (g) publishing tables showing the tar and nicotine levels of cigarettes;
- (h) stating the constituents of cigarette smoke;
- (i) developing less hazardous products;
- (j) conducting research into less hazardous substances and ways of smoking; and
- (k) lowering the hazards of cigarette consumption by using low tar and nicotine cigarettes, reducing smoking and avoiding inhaling.

47. In 1971 and 1973, the Surgeon General reported that birth weight was lower among infants of mothers who smoked, that smoking during pregnancy slowed foetal growth, and that the perinatal mortality rate was higher among mothers who smoked:

- *The Health Consequences of Smoking, A Report of the Surgeon General: 1971*, page 413, **Exhibit PG-25**;
- *The Health Consequences of Smoking*, January 1973, Public Health Service, U.S. Department of Health, Education, and Welfare, pages 122 and 134, **Exhibit PG-26**.

48. On January 1, 1972, the Canadian manufacturers amended their voluntary advertising code to set the maximum tar content at 22 mg and nicotine content at 1.6 mg per cigarette.

49. The code also required the tobacco manufacturers to display on the side of cigarette packages the first health warning, which read as follows:

*Avis: Fumer à l'excès peut nuire à votre santé.  
Warning: Excessive smoking may be hazardous to your health.*

- CTMC press release, September 21, 1971, **Exhibit PG-27**.

50. The warning was revised as follows in May 1972:

*Avis: Santé et Bien-être social Canada considère  
que le danger croît avec l'usage.*

*Warning: Health and Welfare Canada advises that danger  
to health increases with amount smoked.*

- Letter from Imperial Tobacco Group Ltd., Bristol to A.D. McCormick, British American Tobacco Co. Ltd., December 17, 1971, **Exhibit PG-28**.

51. Beginning in 1974, the Canadian manufacturers

- (a) displayed the tar and nicotine content on cigarette packages; and
- (b) launched the first light versions of their leading cigarette brands.

52. They also, on their own initiative, revised the health warnings appearing on the side of cigarette packages to read as follows:

*Avis: Santé et Bien-être social Canada considère que le danger croît avec l'usage – éviter d'inhaler*

*Warning: Health and Welfare Canada advises that danger to health increases with amount smoked - avoid inhaling.*

53. Beginning in 1976, the European and North American tobacco manufacturers created international organizations to defend their interests, namely:
- (a) the International Committee on Smoking Issues ("**ICOSI**"), from 1977 to 1981;
  - (b) the International Tobacco Information Centre ("**INFOTAB**"), from 1981 to 1991; and
  - (c) the Tobacco Documentation Centre ("**TDC**"), from 1992 to at least the end of the 1990s.
54. In 1979, the Surgeon General again confirmed the deleterious effects of smoking on the health of the foetus:
- *Smoking and Health, a Report of the Surgeon General, 1979, **Exhibit PG-29.***
55. In 1987 and again in 1988, the presidents of the Canadian manufacturers testified before the House of Commons Legislative Committee studying two bills:
- (a) *Bill C-204, An Act to regulate smoking in the federal workplace and on common carriers and to amend the Hazardous Products Act in relation to cigarette advertising; and*

(b) Bill C-51, *An Act to prohibit the advertising and promotion and respecting the labelling and monitoring of tobacco products* (short title: *Tobacco Products Control Act*):

- House of Commons, *Minutes of Proceedings and Evidence of the Legislative Committee*, November 24, 1987, **Exhibit PG-30**;
- House of Commons, *Minutes of Proceedings and Evidence of the Legislative Committee*, January 20, 1988, **Exhibit PG-31**.

56. In 1988, the Surgeon General determined that nicotine produces dependence and that the pharmacological and behavioural processes that determine tobacco addiction were similar to those underlying heroin and cocaine addiction:

- *The Health Consequences of Smoking: Nicotine Addiction: A Report of the Surgeon General*, 1988, U.S. Department of Health and Human Services, Public Health Service, **Exhibit PG-32**.

57. The *Tobacco Products Control Act*, S.C. 1988, c. 20, was passed on June 28, 1988, and came into force on January 1, 1989.

58. The *Tobacco Products Control Act* provided for the authority to ban all tobacco advertising; restrict and gradually phase out promotional activities and sponsorships; and require more explicit warnings on tobacco product packaging in terms of the four health dangers (lung cancer, heart disease, reduced life expectancy, and harm to the foetus during pregnancy) that was to cover 20% of the surface display area of the packaging.

59. The Canadian tobacco manufacturers initiated a court challenge to the constitutional validity of the *Tobacco Products Control Act*.



60. In 1989, the Royal Society of Canada issued a report entitled *Tobacco, Nicotine and Addiction (Exhibit PG-33)* in which it concluded that nicotine is addictive.
61. Between 1994 and 1998, fifty American states brought proceedings against the leading American and British tobacco manufacturers seeking to recover health care costs.
62. In September 1995, the Supreme Court of Canada, in *RJR-MacDonald Inc. v. Canada (Attorney General)*, [1995] 3 S.C.R. 199, declared the *Tobacco Products Control Act* unconstitutional on the ground that the ban on advertising was contrary to section 2(b) of the *Canadian Charter of Rights and Freedoms*.
63. In 1997, in response to that Supreme Court decision, the federal government passed the *Tobacco Act* (Bill C-71), S.C. 1997, c. 13, restricting advertising and providing for a complete ban on sponsorship promotion from October 1, 2003.
64. The Canadian tobacco manufacturers once again challenged the constitutional validity of the *Tobacco Act*.
65. In 1997 and 1998, the fifty American lawsuits were the subject of five out-of-court settlements, most notably the Master Settlement Agreement between 46 states and the tobacco manufacturers:
  - *Master Settlement Agreement*, 1998, **Exhibit PG-34**.
66. In June 2000, Canada made the *Tobacco Products Information Regulations* (SOR/2000-272) under the *Tobacco Act*, requiring the display of new health warnings with coloured images covering at least 50% of the principal display

surface of cigarette packages and the insertion of health information messages in each package.

67. In August 2006, American Judge Gladys Kessler delivered a judgment (*Amended Final Opinion*) in a lawsuit filed in 1999 by the United States federal government under the *Racketeer Influenced and Corrupt Organizations Act*, finding that the American and British tobacco manufacturers had known since 1964 that smoking was harmful to health but acted in concert and conspired to conceal their knowledge from the public, lie to consumers, and sustain smokers' addiction:

➤ *United States v. Philip Morris USA Inc. et al.*, 449 F. Supp. 2d 1, 940-44 (D.D.C. 2006), confirmed in part by 566 F. 3d 1095 (D.C. Cir. 2009), leave to appeal denied, 130 S. Ct. 3501 (2010), **Exhibit PG-35**.

68. In November 2006, in the course of an inquiry conducted by the Competition Bureau of Canada following the filing of a complaint about fraudulent use of the descriptors "light" and "mild", the Canadian manufacturers agreed to discontinue the use of those terms on cigarette packaging.

69. In 2007, in *Canada (Attorney General) v. JTI-Macdonald Corp.*, [2007] 2 S.C.R. 610, the Supreme Court of Canada ruled that while the challenged provisions of the *Tobacco Act* did violate section 2(b) of the *Canadian Charter of Rights and Freedoms*, the breach was justified under section 1 of the *Charter*.

70. On June 19, 2009, the Act authorizing this action came into force.

#### D. SOURCE OF DOCUMENTARY EVIDENCE

71. One of the numerous lawsuits initiated in the United States, that of the Attorney General of Minnesota, resulted in various orders against the tobacco manufacturers relating to the production of documents:

- *Minnesota v. Philip Morris*, 10.4 TPLR 2.104 (Minnesota District Court, C1-94-8565, June 16, 1995, Protective Order of Kenneth J. Fitzpatrick), **Exhibit PG-36**;
  - *Minnesota v. Philip Morris*, 10.5 TPLR 2.158 (Minnesota District Court, C1-94-8565, July 17, 1995, Order of Kenneth J. Fitzpatrick), **Exhibit PG-37**;
  - *Minnesota v. Philip Morris*, 10.5 TPLR 2.161 (Minnesota District Court, C1-94-8565, August 18, 1995, Stipulated Order of Kenneth J. Fitzpatrick), **Exhibit PG-38**.
72. In execution of those orders, two depositories were established to allow the parties access to the documents relevant to the lawsuits: one was set up in Minnesota by the American companies; and the other, in Guildford, a suburb of London, by B.A.T. Industries p.l.c.
73. The Master Settlement Agreement (Exhibit PG-34) provided among other things that the manufacturers were to make the documents in the depositories available to the public, in particular through websites, for a specified time.
74. In August 2006, in the matter of the lawsuit under the *Racketeer Influenced and Corrupt Organizations Act*, Judge Gladys Kessler in her final judgment ordered the manufacturers to maintain the depositories and websites until September 2016:
- ORDER #1015, Final Judgment and Remedial Order (*United States v. Philip Morris USA, Inc. et al.*, 449 F. Supp. 2d 1, 940-44) **Exhibit PG-39**.
75. On December 14, 2011, at the request of the parties, Judge Kessler amended her order to allow the American manufacturers to use the services of the University of California, San Francisco, for document coding operations, in return for a consideration the University could use to improve the research capacity of the Legacy Tobacco Documents Library website

("Legacy") created in 2002 to post the documents produced in the various trials against the tobacco manufacturers:

- ORDER #27 – Remand: Consent Order Between The United States, The Public Health Intervenors, Philip Morris USA Inc., Altria Group, Inc., and R.J. Reynolds Tobacco Company Concerning Document Disclosure Obligations Under Order #1015, **Exhibit PG-40**.

76. For the purposes of this action, the documentary evidence the Plaintiff intends to produce against the Defendants originates for the most part from the sources created in the wake of the American court decisions, namely:

(a) Philip Morris USA Inc. website: <http://www.pmdocs.com>, **Exhibit PG-41**;

(b) R.J. Reynolds Tobacco Company website: <http://www.rjrtdocs.com>, including the Brown & Williamson Tobacco Corporation compendium of documents, **Exhibit PG-42**;

(c) the Guildford depository, **Exhibit PG-43**; and

(d) the University of California, San Francisco, website: <http://legacy.library.ucsf.edu>, **Exhibit PG-44**.

77. The copies of the documents from the Guildford depository were provided by the governments of Canada and British Columbia, who had requested them directly from BAT; they are imprinted with a BAT stamp on each page, for example: "Bat Industries document for Legal Services: Health Canada 28 February 2001".

78. Each document from the Legacy website contains a unique identifier (tid number) that allows a technological document to be retrieved automatically.

79. The copies of certain other documents originate from the court files of the Superior Court for the District of Montréal in *RJR-Macdonald Inc. v. Attorney General of Canada*, C.S.M. 500-05-009755-883, and *J.T.I. Macdonald Corp. c. La Procureure générale du Canada et La Société canadienne du cancer*, C.S.M. 500-05-031299-975.
80. The Defendants are hereby given notice to produce the originals of the exhibits that relate to them presented in support of this motion, failing which secondary evidence will be given.

## II. DEFENDANTS AND THE GROUPS OF WHICH THEY ARE MEMBERS

81. The Canadian tobacco manufacturing industry has been historically associated with four large multinational groups: the British American Tobacco Group (“**BAT Group**”); the Rothmans Group; the Philip Morris Group (“**PM Group**”); and the R.J. Reynolds Group (“**RJR Group**”).

### A. BAT GROUP

82. The parents of the BAT Group have been, successively,
- (a) from 1902 to 1976: British American Tobacco Company Limited, known since 1998 as British American Tobacco (Investments) Limited (“**BAT Co.**”);
  - (b) from 1976 to 1998: B.A.T. Industries p.l.c., also known as Tobacco Securities Trust Company Limited (1928-1976) and B.A.T. Industries Limited (1976-1981) (“**BAT Industries**”); and
  - (c) since 1998: British American Tobacco p.l.c. (“**BAT plc**”).

83. The BAT Group carries on its activities in Canada through the Canadian corporation now known as Imperial Tobacco Canada Limited ("**Imperial**").
84. The BAT Group has comprised a number of manufacturers throughout the world, including the Brown & Williamson Tobacco Corporation (1927-2004) ("**Brown & Williamson**") in the United States.
85. The BAT Group Defendants are: Imperial; BAT Co.; and BAT Industries.

## 1. Imperial

86. The Defendant Imperial is a legal person constituted under the *Canada Business Corporations Act*, S.C. 1985, c. C-44 ("**CBCA**").
87. As a result of various amalgamations and transactions, Imperial has succeeded, among others,
  - (a) Imasco Limited (1970-2000), also known as Imperial Tobacco Co. of Canada (1908-1912), Imperial Tobacco Company of Canada, Limited (1912-1966) and Imperial Tobacco of Canada Limited (1966-1970) ("**Imasco**"); and
  - (b) Imperial Tobacco Limited (1974-2000), also known as Imperial Tobacco Sales Company of Canada Limited (1931-1966) and Imperial Tobacco Products Limited (1966-1974) ("**ITL**").
88. Prior to 1970, the majority of the shares of Imperial Tobacco Co. of Canada, and later Imperial Tobacco Company of Canada, Limited, had been held by BAT Group members.

89. From 1970 to 2000, the shares of ITL were held by Imasco, a member of the BAT Group.
90. Since 1908, Imperial and its predecessors have been involved in the manufacture, marketing and promotion of tobacco products in Québec.
91. At all times relevant to this action, Imperial has engaged in the manufacture and distribution in Québec of various brand names, including *Player's*, *Du Maurier*, *Matinée* and *Peter Jackson*.
92. At the date of this action, Imperial is indirectly held and wholly owned by BAT plc.

## **2. BAT Co.**

93. The Defendant BAT Co. is a legal person constituted in 1902 in the United Kingdom.
94. Until 1976, BAT Co. was the parent of the BAT Group, indirectly holding a majority of the shares of Imasco.
95. Like Imperial, at the date of this action, BAT Co. is indirectly held and wholly owned by BAT plc.

## **3. BAT Industries**

96. The Defendant BAT Industries is a legal person constituted in 1928 in the United Kingdom.

97. From 1976 to 1998, BAT Industries was the parent of the BAT Group, having succeeded BAT Co. in that respect, and held,
- (a) from 1976 to 1980, the majority of the shares of Imasco; and
  - (b) from 1980 to 1998, not less than 40% of the shares of Imasco.
98. Like Imperial and BAT Co., at the date of this action, BAT Industries is indirectly held and wholly owned by BAT plc.
99. Imperial, BAT Co. and BAT Industries are manufacturers within the meaning of the Act in that
- (a) they are related;
  - (b) they derive or derived, directly or indirectly, at least 10% of their total revenues, calculated on a consolidated basis, from the manufacture, marketing or promotion of tobacco products; and
  - (c) they engage or engaged in research on tobacco products or in the marketing or promotion of tobacco products.
100. The documents assembled in the "BAT Group" binder, **Exhibit PG-45**, show the evolution of the structures and relationships between the members in the Group and the continuity of their activities.

## B. ROTHMANS GROUP

101. The parents of the Rothmans Group have been, successively,



- (a) from 1903 to 1993: Rysekks p.l.c., also known as Carreras Limited (1903-1972), Rothmans International Limited (1972-1981) and Rothmans International p.l.c. (1981-1993);
- (b) from 1993 to 1995: Ryservs (1995) Limited, also known as Rothmans International p.l.c. (1993-1995) and Rothmans UK Holdings Limited (1995-2006);
- (c) from 1993 to 1995: Rothmans International N.V.; and
- (d) from 1995 to 1999: Rothmans International B.V.

102. The Rothmans Group has carried on its activities in Canada through the following companies or under the following names:

- (a) The Rock City Tobacco Company (since 1899), today merely a company name;
- (b) Rothmans Inc. (1985-2000), also known as Rothmans of Pall Mall Canada Limited (1956-1985); and
- (c) Rothmans, Benson & Hedges Inc. (1986-2000) ("**RBH**").

103. Certain subsidiaries of the Rothmans Group directed the other companies in the Group on health issues related to smoking, namely:

- (a) Rothmans of Pall Mall Limited, a British company;
- (b) Carreras Rothmans Limited ("**Carreras Rothmans**"); and
- (c) Rothmans International Services Limited, also known as Rothmans International Tobacco Limited (1991-1993) ("**Rothmans Services**").

104. A major change took place in the tobacco industry in 1999 when the multinational Rothmans International B.V., the parent of the Rothmans Group, was integrated into the BAT Group.
105. As a result of that transaction, the BAT Group disposed of its interests in Rothmans Inc. and RBH, the Canadian subsidiaries of Rothmans International B.V.
106. From that time on, RBH was associated exclusively with the PM Group, which already held 40% of its shares.
107. The Defendant in the Rothmans Group is Carreras Rothmans.
108. The Defendant Carreras Rothmans is a legal person constituted in 1905 in the United Kingdom.
109. Carreras Rothmans directed the Rothmans Group members on smoking-related health issues from 1978 to 1986.
110. Like the BAT Group Defendants, at the date of this action, Carreras Rothmans is indirectly held and wholly owned by BAT plc.
111. Carreras Rothmans is a manufacturer within the meaning of the Act in that
- (a) it is related to Imperial and was related to Rothmans of Pall Mall Canada Limited from 1978 to 1985; and
  - (b) it engages or engaged in research on tobacco products or in the marketing or promotion of tobacco products.

112. The documents assembled in the "Rothmans Group" binder, **Exhibit PG-46**, show the evolution of the structures and relationships between the members in the Group and the continuity of their activities.

### C. PM GROUP

113. The parents of the PM Group have been, successively,

- (a) from 1919 to 1985: Philip Morris USA Inc., also known as Philip Morris & Co. Limited (1919-1955) and Philip Morris Inc. (1955-2003) ("**PM Inc.**"); and
- (b) since 1985: Altria Group, Inc. ("**Altria**"), also known as Philip Morris Companies Inc. (1985-2002).

114. The PM Group has carried on its activities in Canada through

- (a) Benson & Hedges (Canada) Inc. (1958-1986), also known as Benson & Hedges (Canada) Limited, wholly owned by PM Inc. ("**Benson & Hedges**");
- (b) RBH (1986 to 2008), successively 50% held (1987-1989), 40% held (1989-2008) and 100% held in 2008 by various members of the Group; and
- (c) Rothmans, Benson & Hedges Inc., wholly owned by Philip Morris International Inc. ("**PMI**") since 2009.

115. The Defendants in the PM Group are: Rothmans, Benson & Hedges Inc.; PM Inc.; and PMI.

## **1. Rothmans, Benson & Hedges Inc.**

116. The Defendant Rothmans, Benson & Hedges Inc. is a legal person constituted under the CBCA.

117. Rothmans, Benson & Hedges Inc. was formed as the result of at least two major amalgamations:

- (a) the amalgamation in 1986 of Rothmans of Pall Mall Limited and Benson & Hedges, which resulted in the amalgamated RBH being jointly held by the Rothmans Group and the PM Group; and
- (b) the amalgamation in 2009 of RBH and Rothmans Inc., which resulted in the amalgamated corporation taking the name Rothmans, Benson & Hedges Inc. and becoming exclusively held by PMI.

118. As a result of those amalgamations and other transactions, Rothmans, Benson & Hedges Inc. succeeded, among others,

- (a) Benson & Hedges (1934-1986);
- (b) Rothmans Inc. (1956-2009), also known as Rothmans of Pall Mall Canada Limited (1956-1985);
- (c) The Rock City Tobacco Company (since 1899), today merely a company name; and
- (d) RBH (1986-2009).

119. Since the beginning of the twentieth century, Rothmans, Benson & Hedges Inc. and its predecessors have been involved in the manufacture, promotion and marketing of tobacco products in Québec.

120. At all times relevant to this action, Rothmans, Benson & Hedges Inc. has engaged in the manufacture and distribution in Québec of various brand names, including *Rothmans*, *Craven "A"*, *Benson & Hedges*, *Mark Ten*, and *Belvedere*.

## **2. PM Inc.**

121. The Defendant PM Inc. is a legal person constituted in 1919 in the State of Virginia in the United States.

122. Since the beginning of the twentieth century, PM Inc. has been involved in the manufacture, marketing and promotion of tobacco products, including cigarettes under the brand names *Virginia Slims*, *Eve*, *Plus*, *Plus 120 MM*, *Lark*, *Merit*, *Parliament*, and *Silk Cut*, which have been offered for sale in Québec.

123. PM Inc. held all the shares of Benson & Hedges from 1958 to 1986, the year in which the latter became RBH.

## **3. PMI**

124. From 1960 to 1986, PMI carried on its activities as a division of PM Inc.

125. From 1987 to 2007, PMI was constituted as a legal person in the State of Delaware and was wholly owned by Altria.

126. In 2007, PMI again was constituted as a legal person in the State of Virginia in the United States.

127. PMI was a shareholder of RBH (1987 to 2009), and has been a shareholder of Rothmans, Benson & Hedges Inc. since 2009.

128. Rothmans, Benson & Hedges Inc., PM Inc. and PMI are manufacturers within the meaning of the Act in that

- (a) they are or have been related;
- (b) they derive or have derived, directly or indirectly, at least 10% of their total revenues, calculated on a consolidated basis, from the manufacture, marketing or promotion of tobacco products; and
- (c) they engage or have engaged in research on tobacco products or in the marketing or promotion of tobacco products.

129. The documents assembled in the "PM Group" binder, **Exhibit PG-47**, show the evolution of the structures and relationships between the members in the PM Group and the continuity of their activities.

#### D. RJR GROUP

130. The parents of the RJR Group have been, successively,

- (a) from 1906 to 1970: R.J. Reynolds Tobacco Company ("**RJRT**");
- (b) from 1970 to 2004: R.J. Reynolds Holdings, Inc., also known as R.J. Reynolds Industries, Inc. (1970-1985), and RJR-Nabisco, Inc. (1985-1999) ("**RJR Industries**"); and
- (c) since 2004: Reynolds American Inc., in which BAT plc owns 42% of the shares.

131. The Defendants in the RJR Group are: JTI-Macdonald Corp.; R.J. Reynolds Tobacco Company; and R.J. Reynolds Tobacco International, Inc. ("RJRTI").

#### 1. JTI-Macdonald Corp.

132. The Defendant JTI-Macdonald Corp. is a legal person constituted in Nova Scotia under the *Companies Act*, R.S., c. 81.

133. As a result of various amalgamations and transactions, JTI-Macdonald Corp. succeeded, among others,

(a) RJR-Macdonald Corp. (1999), also known as RJR-Macdonald Inc. (1978-1999); and

(b) Macdonald Tobacco Inc. (1858-1978), also known as W.C. Macdonald Incorporated (1930-1957);

both hereinafter designated as "**Macdonald**".

134. Since its creation in 1858 and until 1974, Macdonald was a privately held Canadian company.

135. From 1974 to 1999, Macdonald was wholly owned by the RJR Group.

136. In 1999, the RJR Group's interest in Macdonald was sold to Japan Tobacco Inc.

137. Since 1858, JTI-Macdonald Corp. and its predecessors have been involved in the manufacture, marketing and promotion of tobacco products in Québec.

138. At all times relevant to this action, JTI-Macdonald Corp. has engaged in the manufacture and distribution in Québec of the brand name *Export "A"*.

## **2. R.J. Reynolds Tobacco Company**

139. The Defendant R.J. Reynolds Tobacco Company is a legal person constituted in 2004 in the State of North Carolina in the United States.

140. It results from the amalgamation in 2004 of RJRT and Brown & Williamson, a member of the BAT Group.

141. As a consequence, it is a successor to RJRT and Brown & Williamson and assumed their obligations.

142. RJRT is a legal person constituted in 1906 in the State of New Jersey in the United States.

143. RJRT acquired Macdonald in 1974.

144. Since the beginning of the twentieth century, R.J. Reynolds Tobacco Company and its predecessors have been involved in the manufacture, marketing and promotion of tobacco products, including cigarettes under the brand names *Camel*, *Winston*, *Salem*, *More*, and *Kool*, which have been offered for sale in Québec.



145. R.J. Reynolds Tobacco Company has been wholly owned by Reynolds American Inc. since 2004.

### 3. RJRTI

146. The Defendant RJRTI is a legal person constituted in 1976 in the State of Delaware in the United States.

147. Like RJRT, RJRTI is wholly owned by Reynolds American Inc.

148. From 1976 to 1999, RJRTI and Macdonald were both members of the RJR Group.

149. Macdonald, RJRT and RJRTI are manufacturers within the meaning of the Act in that

- (a) they have been related;
- (b) they derive or have derived, directly or indirectly, at least 10% of their total revenues, calculated on a consolidated basis, from the manufacture, marketing or promotion of tobacco products; and
- (c) they engage or have engaged in research on tobacco products or in the marketing or promotion of tobacco products.

150. The documents assembled in the "RJR Group" binder, **Exhibit PG-48**, show the evolution of the structures and relationships between the members in the RJR Group and the continuity of their activities.

## E. CANADIAN TOBACCO MANUFACTURERS' COUNCIL

151. The CTMC is a legal person constituted as a non-profit corporation in 1982 under Part II of the *Canada Corporations Act*, R.S.C. (1970), c. C-32.
152. The CTMC is the continuation of the Ad Hoc Committee of the Canadian Tobacco Industry (1963-1971) and the association that had been acting under the same name (Canadian Tobacco Manufacturers' Council) from 1971 to 1982.
153. Since its creation, the CTMC has been representing the members of the Canadian tobacco industry on issues of common interest, including issues relating to tobacco and health.
154. The CTMC is therefore a trade association within the meaning of the Act.
155. The documents assembled in the binder, **Exhibit PG-49**, show the evolution of the structures and relationships between the CTMC and its predecessors and the continuity of their activities.

## F. MARKET SHARES

156. The respective market shares of the Canadian Defendants are those described in the following exhibits:
- *Notes for a Presentation by Norman A. Dann, Vice-President, Public Relations Imasco Limited (Canada) to the Conference on Smoking and Health Issues, Chelwood, England, November 6, 1979, Exhibit PG-182;*
  - The Canadian Tobacco Market at a Glance, ITL, 1992, **Exhibit PG-49 A;**

- *Parts du marché canadien détenues par les compagnies canadiennes de tabac, 1980-2001, Santé Canada, Exhibit PG-49 B.*

### III. SUMMARY

157. The Plaintiff intends to prove that at all times relevant to this action, the Defendants, knowingly and acting in concert, misrepresented the dangers and addictiveness of tobacco products, failed to inform consumers, including children and adolescents, of the true properties of their products and misled them in that regard, thereby committing wrongs against persons in Québec.

158. The Plaintiff's evidence spans some 50 years and includes a vast amount of documents that originate essentially from the Defendants.

159. This section briefly sets out what is alleged in more detail in the ensuing sections.

#### A. THE HARMFUL NATURE OF TOBACCO PRODUCTS

160. In the early 1950s, the Defendants came to view the recent publication of studies and scientific reports that linked smoking to a host of diseases and made it the most likely cause of lung cancer as a threat to their industry.

161. The Defendants initiated a number of research programs to study the components of tobacco smoke, identify those that were tumorigenic, and reduce the concentration so as to render their products less harmful.

162. By the end of the 1950s, all the Defendants knew that tobacco smoke contains many carcinogenic compounds.

163. Only the Rothmans Group admitted, at the end of the 1950s, that there was a link between smoking and lung cancer; however, the admission was made in the context of promoting its new filters.
164. The Rothmans Group soon reversed its stand and aligned itself with the industry's position in early 1964, and criticized the findings of the Surgeon General's report.
165. From 1965 to 1978, a broad spectrum of BAT Group studies and research concluded that tobacco smoke caused benign and malignant tumours, respiratory tract irritation and pulmonary disease.
166. The BAT Group also knew that carbon monoxide has a harmful effect on the respiratory system and that nicotine affects the vascular system and increases the risk of heart attack and heart disease.
167. In 1969, the BAT Group privately admitted it was impossible to refute the fact that smoking increases the risk of lung cancer.
168. More specifically in 1964, 1975 and 1986, the BAT Group acknowledged internally that the health problems linked to smoking would never be resolved and that it was impossible to produce a cigarette having no health risks.
169. As early as 1963 the PM Group attempted, through research it initiated or funded, to reduce the concentration of carcinogenic compounds; eliminate the irritating compounds that could lead to chronic bronchitis or emphysema; and reduce the level of nicotine, which it suspected of being a risk factor for heart disease.

170. By 1966, the PM Group knew from the results of the inhalation tests it had conducted to measure the carcinogenic effects of cigarette smoke that there was a probable link between smoking, pulmonary pathologies and heart disease.
171. In 1967, the experiments conducted by the PM Group confirmed that filters do not reduce the tumorigenicity of cigarette smoke.
172. The PM Group also encouraged research that could demonstrate that diseases associated with smoking may have other causes, and at the same time objected to any acknowledgement by the industry of a causal link between smoking and disease.
173. The RJR Group for its part has been well aware of the health hazards of smoking since the beginning of the 1960s.
174. The RJR Group also studied the components of cigarette smoke in an effort to identify the harmful constituents and eliminate those that were potentially carcinogenic.
175. At the end of the 1960s, the RJR Group tested filters in an attempt to reduce the number of harmful particles in cigarette smoke.
176. By 1979, the RJR Group was well aware of the effects of cigarettes on cardiovascular disease.
177. The RJR Group did not hesitate to discredit its own research as a defence against prospective lawsuits or to prevent publication of potentially adverse research reports.

178. Despite their extensive knowledge of the hazards of their products for the health of smokers, the BAT, PM, Rothmans and RJR groups publicly denied that cigarettes were harmful to health.

179. To support their position, they implemented a strategy and policies whose main focus remained the same until 2000 and which consisted in

- (a) discrediting studies that raised doubts about the safety of tobacco products or concluded they were harmful;
- (b) ignoring and suppressing studies they conducted on tobacco products that established smoking's potential or proven risks to the health of smokers;
- (c) lying to the public and reassuring smokers by denying the deleterious health effects of smoking on health;
- (d) creating doubt about the harmful effects of smoking by falsely claiming there was medical controversy over the issue; and
- (e) relying on smokers' ignorance and addiction to persuade them of the soundness of their position.

180. Those policies were sustained through misleading public statements made by all the Defendants.

## B. ADDICTIVENESS OF TOBACCO PRODUCTS

181. The Defendants in the BAT, PM, Rothmans and RJR groups have also known since at least the 1960s that tobacco products are addictive.

182. After studying nicotine, an alkaloid found in tobacco that acts on the brain and the organism as a whole, they quickly realized that cigarettes are merely devices for the delivery of nicotine.
183. The Defendants consistently acknowledged in their internal documents that nicotine is indispensable and that, without it, smokers would quit.
184. The Defendants conducted abundant research over several years that enabled them to understand the effects and action of nicotine.
185. They developed various processes to reduce the nicotine content in their products, but at the same time avoided acting to reduce its effects.
186. The Defendants also knew that, although the level of addiction varies from one individual to another, many smokers find it very difficult to give up their consumption of tobacco products.
187. Despite their knowledge of the harmful effects of nicotine, the Defendants failed to warn the public.
188. On the contrary, for many years they worked at developing their public position of denying that nicotine causes addiction and in so doing misled the public.

### C. "LIGHT" AND "MILD" CIGARETTES

189. In the wake of studies linking tobacco to serious disease, public authorities in the 1950s and early 1960s recommended that if smokers were unable to quit, they should choose cigarettes with the lowest tar and nicotine content.

190. With the intent of reassuring consumers regarding the harmful effects of tobacco and maintaining their client base, the manufacturers in the 1960s and 1970s developed and commercialized low tar and nicotine cigarettes and then “light” and “mild” versions of their products.
191. The Defendants, however, knew from their studies that reducing tar and nicotine content does not eliminate or result in any significant reduction in the harmful effects of tobacco on health.
192. In fact, the Defendants had identified the phenomenon of compensation, which caused smokers of light cigarettes to inhale as much toxic matter as they would by smoking regular cigarettes, or at the very least, more than the mechanically measured quantity of toxic matter indicated on the cigarette package or otherwise made public.
193. The Defendants chose to conceal that information from the public.
194. The Defendants therefore misled consumers by having them believe that light cigarettes were healthier and by claiming that they were being marketed simply in response to a demand for milder products, when in fact their true objective was to reassure concerned smokers.

#### D. PROMOTION AIMED AT YOUTH

195. The Defendants’ misrepresentations and omissions are that more serious because they were directed at the children and adolescents of Québec.
196. The Defendants repeatedly argued that their advertising was designed only to increase their respective market shares among adult smokers.



197. They also maintained that it was not their desire or intention to see children and adolescents take up smoking and that their advertising did not target them.
198. Contrary to their assertions, the Defendants devised their cigarette marketing strategy in such a manner as to attract the child and adolescent market with a view to increasing or maintaining sales levels.
199. The Defendants regularly compiled data on tobacco consumption among children and adolescents whom they knew full well constituted the main source of replacement smokers.
200. The Defendants conducted or commissioned studies to improve their knowledge of that market segment and devised more effective marketing schemes to attract it.
201. The Defendants failed to inform children and adolescents of the harmful effects of tobacco, the addictive properties of nicotine, the equally harmful effects of light cigarettes, and the real meaning of the tar and nicotine levels printed on cigarette packages.
202. On the contrary, the Defendants acted to conceal or downplay the adverse effects of smoking, portraying cigarette consumption to youth and adolescents, both groups being particularly receptive to advertising, as attractive and positive.

## E. CONSPIRACY

203. The Defendants' misrepresentations and omissions constitute common failures within the meaning of the Act since all the Defendants participated in them in a concerted manner.
204. The American and British Defendants participated, through national and international organizations dedicated to the defence of their interests, in the failures committed by the Canadian industry in respect of persons in Québec.
205. During the 1950s and 1960s, the American industry established organizations that were engaged in public relations campaigns aimed at denying or downplaying the harmful nature of tobacco and sustaining a false scientific controversy.
206. The effects of that concerted action or conspiracy reached Canada and as a result that same message was also disseminated in Québec through the Canadian industry.
207. Beginning in 1976 and until the 1990s, the conspiracy was organized at an international level, notably with the creation of ICOSI and INFOTAB, organizations whose main objectives were: to sustain and fuel the alleged scientific controversy over the link between smoking and various diseases; to resist legislation requiring health warnings; and to discredit the efforts of anti-tobacco groups.
208. The Defendant members of ICOSI and INFOTAB and the Canadian Defendants, including the CTMC, endorsed and disseminated the policies and positions developed collectively within those bodies.

209. The CTMC played a significant role in the implementation of the conspiracy in Québec, particularly by disseminating the industry's message to the people of Québec and objecting to the placing of effective health warnings on cigarette packages.
210. The wrongful acts committed through the CTMC must be ascribed in particular to the three Canadian Defendants who are CTMC members, defined its mission and endorsed its public statements on the lack of harmful effects of their products.
211. The tobacco industry's international conspiracy was also executed in Québec through concerted action within the Groups, or through the control of Canadian manufacturers by foreign manufacturers.
212. BAT Co. and BAT Industries are liable in respect of the people of Québec for the wrongful acts committed in concert with the predecessors of Imperial and for the wrongful acts committed by those predecessors under their control.
213. Carreras Rothmans is liable in respect of the people of Québec for the wrongful acts committed in concert with the predecessors of Rothmans, Benson & Hedges Inc.
214. PM Inc. and PMI are also liable in respect of the people of Québec for the wrongful acts committed in concert with the predecessors of Rothmans, Benson & Hedges Inc. and for the wrongful acts committed by those predecessors under their control.
215. R.J. Reynolds Tobacco Company is liable in respect of the people of Québec for the wrongful acts committed by its predecessors in concert with

the predecessors of JTI-Macdonald Corp. and for the wrongful acts committed by the latter predecessors under their control.

216. RJRTI is liable in respect of the people of Québec for the wrongful acts committed in concert with the predecessors of JTI-Macdonald Corp. and for the wrongful acts committed by those predecessors under its control.

217. By reason of those failures, which are common, the Defendants are solidarily liable for the health care costs claimed by the Government of Québec.

#### **IV. DEFENDANTS' FAULTS**

##### **A. DEFENDANTS CONCEALED, DENIED AND MISREPRESENTED THE DANGERS POSED BY THEIR PRODUCTS**

218. At all times relevant to this action, the Defendants developed, organized and funded massive research programs.

219. The Defendants furnished their laboratories with the most advanced equipment and used state-of-the-art technologies.

220. The Defendants developed protocols and used the most technologically advanced methods of analysis.

221. The Defendants funded a large number of outside researchers in universities or hospitals, directly or through the CMTC, the CTR and the TRC (UK), organizations they formed to defend their interests.

222. The magnitude of the resources mobilized to conduct the research projects provided the Defendants with the most extensive knowledge available about their product and its deleterious effects.

## 1. The BAT Group Was Aware of the Harmful Nature of its Product

### (a) Abundant research on the dangers

223. For the purposes of this section, “BAT” refers to any British company that is a member of the BAT Group.

224. “Imperial” refers to Imperial Tobacco Company, Limited, ITL, and Imasco.

225. From 1960 to 2000, BAT and Imperial conducted a number of research programs aimed at developing cigarettes that were less carcinogenic (or at least perceived as such by consumers) by removing specific constituents, using additives, generally reducing all constituents with the help of filters, adding tobacco substitutes, or modifying the cigarette's design (paper, ventilation, length, diameter):

- *Ce que vous devriez savoir: Document de référence sur Imperial Tobacco*, ITL, August 14, 2000, **Exhibit PG-50**.

226. In June 1962, Sir Charles Ellis, BAT's scientific adviser, stated that the epidemiological evidence associating cigarettes with lung cancer was well known and coherent, and that the industry should investigate the various possible causes of lung cancer and the effects of cigarette smoke as a possible very important factor:

- *Research Conference Southampton, Smoking and Health – Policy on research*, June 1962, BAT Co., **Exhibit PG-51**.

227. He went on to announce that BAT and British cigarette makers would be undertaking a long-term program, first, to research the origin of lung cancer and the effects of cigarette smoke and, second, to study the composition of cigarette smoke and the possibility of modifying it.

228. The large-scale research program, which was to be conducted at the Harrogate laboratory, built and operated by TRC (UK), would include the following experiments and studies:

- (a) biological dosing on 6,000 mice to study the effect of applying smoke condensate to their skin (mouse skin painting);
- (b) two irritation tests given that irritation may cause chronic bronchitis, carcinogenesis or act as a co-carcinogen:
  - (i) a test to detect hyperplasia of the bronchial epithelium;  
and
  - (ii) a test on the goblet cells, which increase in number in cases of bronchitis;
- (c) research into the causes of lung cancer and the role of cigarette smoke; and
- (d) study of the effect of nicotine on the cardiovascular system and the central nervous system:

➤ Exhibit PG-51.

229. Also in 1962, BAT initiated Project Ariel with the objective of developing a device that could replace cigarettes.

230. BAT was able to produce a smoking device that was less harmful to health but it was not commercialized since it did not meet smokers' taste expectations:

- Memorandum from S.J. Green to D.S.F. Hobson, BAT Co., March 2, 1967, **Exhibit PG-52**;
- Exhibit PG-50.

231. Then, from 1965 to 1978, at Battelle Memorial Laboratory ("**Battelle**") in Germany, BAT conducted Project Janus with the objective of conducting long-term experiments consisting in applying smoke condensate to the skin of mice for the purpose of developing cigarettes with low biological activity, examining the toxic effects of certain smoke constituents, and measuring the biological activity of modifications to the tobacco or cigarettes.

232. In 1966, Project Conqueror examined the role of cigarette smoke in respiratory system irritation and chronic bronchitis.

233. In 1981, in cooperation with Imperial, BAT initiated Project Rio with the objective of manufacturing cigarettes with low biological activity based on the Ames test, which was a test to determine the mutagenicity of tobacco and cigarette smoke.

234. Under that project,

- (a) the biological activity of several cigarette brands was compared and the impact of various physical or chemical alterations to the activity was evaluated for the purpose of reducing the carcinogenicity of cigarettes; and
- (b) a counter-comparison of the Ames test was carried out in the BAT Group's laboratories in England, Germany and Montreal:

➤ Exhibit PG-50.

235. In 1985 and 1986, Imperial created Project EMN (Eliminate, Modify, Neutralize) with the objective of producing a safer cigarette by identifying, then modifying or eliminating the smoke constituents that are harmful to health:

➤ Exhibit PG-50;

➤ E.D. Massey and C.C. Greig, *Project EMN – Presentation by C. Warren and P.J. Dunn*, BAT (U.K. & E) R&D, April 22, 1986, **Exhibit PG-53**;

➤ Memorandum from R.E. Thornton to A.L. Heard, *Project EMN*, BAT Co., June 20, 1986, **Exhibit PG-54**.

236. In 1987, BAT initiated Project Day with the objective of designing a cigarette with normal nicotine and tar content but from which certain toxic constituents have been removed.

237. BAT hoped the project would reassure smokers, delay the moment they will quit smoking and maintain its market:

➤ Memorandum from A.L. Heard to E.A.A. Bruell, *Project Greendot / Project Day*, BAT Co., December 16, 1988, **Exhibit PG-55**.

238. Project Greendot began in 1988 with the objective of designing a cigarette with low biological activity and reduced tar content but with normal nicotine content:

➤ Exhibit PG-55.

239. All this research enabled BAT and Imperial at a very early stage to confirm and explore the dangers of their products to the health of smokers.



240. The primary objective of the research programs was, however, always to ensure the survival of the industry and the BAT Group's profitability:

1) The improvement of current brands should be continued by removing from the smoke, any substances judged to be harmful or alleged to be harmful, provided consumer acceptance is not adversely affected.

- Minutes of the BAT R&D Conference held in Montréal on October 24 to 27, 1967, BAT Co., November 6, 1967, **Exhibit PG-56**.

**(i) Smoking and cancer**

241. Beginning in 1956, Imperial Tobacco Co. Ltd (UK) measured the levels of benzo(a)pyrene in tobacco smoke and tested substances in an attempt to reduce the content of this "powerful carcinogen", an "appreciable quantity" of which was generated by the combustion of tobacco:

- H.R.B., *Control of Benzopyrene in Burning Cigarettes: Recent Work in the Research Department*, Imperial Tobacco Co., Ltd., December 10, 1956, **Exhibit PG-57**;
- E.R. Bentley, *Polynuclear Hydrocarbons in Tobacco and Tobacco Smoke, Part 1A, Method of Estimation of 3:4 Benzopyrene in Tobacco and Tobacco Smoke*, Imperial Tobacco Co., Ltd., March 24, 1958, **Exhibit PG-58**;
- J.G. Burgan, *Polynuclear Hydrocarbons in Tobacco and Tobacco Smoke, Part 2, The Origin of Benzopyrene found in Tobacco and Tobacco Smoke*, Imperial Tobacco Co., Ltd., March 24, 1958, **Exhibit PG-59**;
- J.G. Burgan, *Polynuclear Hydrocarbons in Tobacco and Tobacco Smoke, Part 3, The Inhibition of the Formation of 3:4 Benzopyrene in Cigarette*, Imperial Tobacco Co. Ltd. UK, April 30, 1958, **Exhibit PG-60**.

242. Imperial Tobacco Co. Ltd. (UK) was a shareholder of BAT Co. and these two companies were shareholders of Imperial, either directly or through Tobacco Securities Trust Ltd. (now BAT Industries).

243. In 1957, BAT was inquiring into the possibility of a causal relationship between cigarette smoke and “Zephyr”, a code name for cancer, and proposed a research program to study polycyclic aromatic hydrocarbons, a class of carcinogenic compounds BAT was attempting to remove from cigarette smoke and which included benzo(a)pyrene:

- D.G. Felton, *Report No. RD-14-R Smoke Group – Programme for Coming 12-16 Week Period*, BAT Co., March 1, 1957, **Exhibit PG-61**;
- I.W. Hughes, *Report No. RD -0-34, Platinum as an Additive to Tobacco*, BAT Co., December 6, 1957, **Exhibit PG-62**.

244. In 1958, both BAT and Imperial believed that cigarette smoke contains a number of carcinogenic agents and both knew how to reduce its tar content:

- Letter from C. Ellis, BAT Co., to L.C. Laporte, Imperial Tobacco Co. of Canada Ltd., March 7, 1958, **Exhibit PG-63**;
- Letter from L. C. Laporte, Imperial Tobacco Co. of Canada, Ltd., to C. Ellis, BAT Co., March 12, 1958, **Exhibit PG-64**.

245. On June 11, 1958, in a report on their visit to the United States and Canada, representatives of Imperial Tobacco Ltd. (UK), and BAT and its Australian subsidiary, W.D. & H.O. Willis, stated that

- (a) a majority of the scientists they met did not doubt that there is a cause and effect relationship between smoking and lung cancer;
- (b) it was generally accepted that cigarette smoke contains a sufficient quantity of carcinogens to cause lung cancer in the long term in susceptible individuals;
- (c) a majority was of the opinion that it would be surprising if cigarette smoke were not carcinogenic given its chemical composition; and

(d) American scientists did not seriously doubt that the statistical correlation suggests a cause and effect relationship:

- H.R. Bentley, D.G.I. Felton et al., *Report on Visit to U.S.A. and Canada*, 17th April – 12th May 1958, BAT Group, June 11, 1958, **Exhibit PG-65**.

246. Beginning in 1959, BAT and Imperial attempted to reduce the benzo(a)pyrene content of cigarette smoke, which to their knowledge was four times higher in the second half of cigarettes:

- D.G. Felton and I.W. Hughes, *3:4 Benzpyrene in Mainstream Cigarette Smoke*, Report No. RD.85-R, BAT Co., April 23, 1959, **Exhibit PG-66**;
- Letter from L. C. Laporte, Imperial Tobacco Co. of Canada Ltd., to H.D Anderson, BAT Co., February 2, 1960, **Exhibit PG-67**;
- M. Scherbak and J.E. de Souza, *The Whole Tar, Nicotine & 3-4-Benzpyrene Smoke Mainstream Content of Cigarettes Containing Different Levels of Glycerol*, Imperial Tobacco Co. of Canada, Ltd., April 22, 1963, **Exhibit PG-68**;
- C.I. Ayres, *Factors Controlling Benzo(a)pyrene Production: Effect of Changing the Porosity of the Cigarette Paper*, Report No. RD.246-R, BAT Co., June 27, 1963, **Exhibit PG-69**;
- R.E. Thornton, *The Filtration of Benzo(a)pyrene by Synthetic Filter Plugs*, Report No. L.224-R, BAT Co., February 15, 1967, **Exhibit PG-70**;
- R.E Thornton, *A Rapid Method for the Determination of Benzo(a)pyrene in Smoke*, Laboratory Report No. L.253-R, BAT Co., August 9, 1967, **Exhibit PG-71**;
- R.E. Thornton, *Further Studies on the Filtration of Benzo(a)pyrene*, Report No. RD.513-R, BAT Co., November 8, 1967, **Exhibit PG-72**.

247. In 1960, BAT knew that the tar in cigarettes is co-carcinogenic:

- J.P.W. Gilman, *Report on Co-carcinogenic Activity of Tar 199A & 278 B (Woodlyn Experiments)*, report drafted for Imperial, June 14, 1960, **Exhibit PG-73**.

248. In 1962, BAT learned that that in addition to benzo(a)pyrene, cigarette smoke contains nitrosamines, which are other carcinogenic compounds:

- G.F. Todd, *Nitrosamines*, TRC (U.K.), December 16, 1962, **Exhibit PG-74**.

249. Since that discovery was confirmed by subsequent studies, and there is no safe level for nitrosamines, BAT tried to remove them through various processes and to identify the factors that influenced the content:

- R.E. Thornton, *Nitrosamines, Report No. RD.348-R*, BAT Co., September 8, 1965, **Exhibit PG-75**;
- J.E. Kennedy, *Trip Report (Conference on Biological Effects of Alkylating Agents)*, Brown & Williamson, September 26, 1968, **Exhibit PG-76**;
- S.R. Massey, *Analysis of N'-Nitrosoornicotine in Cigarette Smoke – Progress Report, Report No. RD.1265 Restricted*, BAT Co., October 13, 1975, **Exhibit PG-77**;
- S.R. Massey, *Filtration of N'-Nitrosoornicotine from Cigarette Smoke. Laboratory Report No. L. 541 Restricted*, BAT Co., December 20, 1976, **Exhibit PG-78**;
- S.R. Massey, *Analysis of N'-Nitrosoornicotine in Tobacco and Other Smoking Materials, Report No. RD.1494 Restricted*, BAT Co., May 23, 1977, and cover letter from D.G. Felton to P. Sheehy, BAT Co., May 30, 1977, **Exhibit PG-79**;
- Letter from S.R. Evelyn to S.J. Green, *Nitrosamines*, BAT Co., July 20, 1978, **Exhibit PG-80**;
- J.D. Green, *N'-Nitrosoornicotine in Tobacco, Report No. RD.1683 Restricted*, BAT Co., May 22, 1979, **Exhibit PG-81**;
- D.G. Felton, *Visit to Canada & U.S.A.*, October, 1979, Summary Report, BAT Co., October 1979, **Exhibit PG-82**.

250. The nitrosamines were compounds of such serious concern that BAT discussed them with PMI, Carreras Rothmans, RJRT, and RJR Industries:

- Minutes of the *Fourth Meeting of the Board of Governors, International Committee on Smoking Issues (ICOSI)*, September 11 to 13, 1978, **Exhibit PG-83**.

251. The list of compounds that had been suspected as early as 1962 of being dangerous to health remained unchanged until 1977:

- S.J. Green, *Notes on Group Research and Development Conference, Rio de Janeiro 1977*, BAT Co., April 18, 1977, **Exhibit PG-84**.

252. In 1964, in a report to its parent company, BAT's Australian subsidiary concluded that it was impossible to produce a cigarette that was not a risk to health and that they could only hope to develop a less dangerous cigarette:

- W.W. Reid, *Some Aspects of the Chemistry and Biology of Tobacco Smoke, Report on a colloquium given to members of the staff of Central Laboratories, W.D. & H.O. Wills (Australia) Limited, on Friday, 7th February, 1964*, **Exhibit PG-85**.

253. On June 20, 1967, the President of TRC (UK), of which BAT was a member, wrote to Brown & Williamson, BAT's American subsidiary, that the TRC (UK) scientists accepted the causal link between smoking and lung cancer:

The only real difficulties that we encountered arose out of the unavoidable paradox at the centre of our operations - namely that, on the one hand the manufacturers control TRC's operations and do not accept that smoking has been proved to cause lung cancer while, on the other hand, TRC's research programme is based on the working hypothesis that this has been sufficiently proved for research purposes. In addition, the Council's senior scientists accept the causation theory and work for the Council because they are interested in trying to solve what they consider to be an urgent human health problem. We have not yet found the best way of handling this paradox.

- Letter from G.F. Todd, TRC (U.K.), to A. Yeaman, Brown & Williamson, *Private Letter No. 15*, June 20, 1967, **Exhibit PG-86**.

254. From 1965 to 1978, a number of skin painting studies (application of tar to the skin of mice) were conducted by BAT as part of Project Janus.

255. All the studies concluded that tobacco smoke is tumorigenic and carcinogenic since benign and malignant tumours appeared on the application site or outside the painted surface.

256. In addition, some of those studies showed that

- (a) all types of tobacco and all tobacco substitutes were carcinogenic;
  - (b) there was a relationship between the dosing and the effect;
  - (c) tumours formed in other organs (e.g., leukemia, lung tumours);
  - (d) some skin lesions developed into epidermoid carcinomas with lung metastases;
  - (e) the mortality rate was higher among the exposed mice than among the control mice; and
  - (f) the use of various filters or tobacco substitutes increased the tumorigenic activity of cigarette smoke condensate:
- C.I. Ayres, *Biological Testing; Short-Term Hyperplasia Test, Report No. B-1*, BAT Co., June 24, 1966, **Exhibit PG-87**;
  - C.I. Ayres, *Long-Term Skin Painting Experiments – Progress Report: July 1967*, BAT Co., August 2, 1967, **Exhibit PG-88**;
  - C.I. Ayres, *Hyperplasia Test: Part IV – Progress Report October 1968*, BAT Co., November 7, **Exhibit PG-89**;
  - B. Chakraborty, *The Effect of Additives on the Concentration of Aromatic Polycyclic Hydrocarbon in Smoke: Part. III, Laboratory Report No. L.355-R*, BAT Co., November 23, 1970, **Exhibit PG-90**;
  - *The Promotion Activity of Tobacco Smoke Condensate to Mouse Skin: B9-1 and B9-6 Cigarettes*, Report for British-American Tobacco Company Ltd., Battelle, September 15, 1971, **Exhibit PG-91**;

- *Carcinogenicity of Smoke Condensate to Mouse Skin, Experiment B0*, Report for British-American Tobacco Company Ltd., Battelle, May 1972, **Exhibit PG-92**;
- *The Promotion Activity of Tobacco Smoke Condensate to Mouse Skin: Cigarettes B9-2, B9-3, B9-4 and B9-5*, Report for British-American Tobacco Company Ltd., Battelle, November 1972, **Exhibit PG-93**;
- *Carcinogenicity of Smoke Condensate to Mouse Skin, Experiment B1*, Report for British-American Tobacco Company Ltd., Battelle, March 1973, **Exhibit PG-94**;
- *Carcinogenicity of Smoke Condensate to Mouse Skin, Experiment B2*, Report for British-American Tobacco Company Ltd., Battelle, September 1973, **Exhibit PG-95**;
- *Carcinogenicity of Smoke Condensate to Mouse Skin, Experiment B4*, Report for British-American Tobacco Company Ltd., Battelle, September 1974, **Exhibit PG-96**;
- *Carcinogenicity of Smoke Condensate to Mouse Skin, Experiment B6 and B7*, Battelle, January 1976, **Exhibit PG-97**;
- *The Promotion Activity of Tobacco Smoke Condensate to Mouse Skin: Cigarettes B11/1, B11/2 and B11/3*, Report for British-American Tobacco Company Ltd., Battelle, March 1976, **Exhibit PG-98**;
- E.B. Wilkes, *A Statistical Analysis of the Incidence of Tumour-Bearing Animals in Janus Experiment B9*, Report No. RD.1352. Restricted, BAT Co., April 22, 1976, **Exhibit PG-99**;
- *Carcinogenicity of Smoke Condensate to Mouse Skin, Experiment B8*, Report for British-American Tobacco Company Ltd., Battelle, March 1977, **Exhibit PG-100**.

257. In 1969, the American tobacco manufacturers, including PMI, RJRT, and Brown & Williamson, commissioned a study to examine whether the addition of a product called "Chemosol" would reduce the benzo(a)pyrene content and consequently the carcinogenicity of tobacco.

258. The results of the mouse skin painting experiments, sent on February 14, 1973, were damning and confirmed unequivocally that cigarettes are carcinogenic, which BAT already knew because of Project Janus:

- *Cigarette Smoke Condensate Preparation and Dermal Application to Mice*, submitted to Brown & Williamson, Philip Morris, RJR et al., Hazelton Laboratories, February 14, 1973, **Exhibit PG-101**.

259. Between 1974 and 1978, Battelle continued its experiments with inhalation studies carried out on animals: rats were made to inhale smoke in smoking chambers and the effect of that exposure on respiratory system organs (larynx, windpipe, bronchial tubes, lungs) was examined under microscope.

260. Those studies established that cigarette smoke caused laryngeal lesions and precancerous histological changes in the respiratory tract:

- *Experimental Tumorigenesis in the Hamster Larynx – The Promoting Activity of Inhaled Smoke from Cigarette B0*, Report for British-American Tobacco Company Ltd., Battelle, March 1974, **Exhibit PG-102**;
- *Experimental Tumorigenesis in the Hamster Larynx, The Activity of Inhaled Smoke from Cigarettes B12/1 and B12/2*, Report for British-American Tobacco Company Ltd., Battelle, June 1976, **Exhibit PG-103**;
- *Experimental Tumorigenesis in the Hamster Larynx. The Effect of Inhaled Smoke from Cigarette B0 on Vitamin-A Deficient Animals*, Report for British-American Tobacco Company Ltd., Battelle, November 1976, **Exhibit PG-104**;
- G. Smith, *Pilot Long-Term Inhalation Toxicity Study (Interim Report)*. Report No. RD.1633. Restricted, BAT Co., November 14, 1978, **Exhibit PG-105**.

261. Those results were confirmed in experiments conducted in the United States in which 40% of the hamsters exposed to cigarette smoke developed laryngitis tumours:

- R. Binns, *Report on visit to U.S.A. and Canada*, BAT Co., April 4, 1974, **Exhibit PG-106**.



262. Beginning in 1974, BAT became concerned about the tumorigenicity of nicotine.

263. The research conducted by BAT to evaluate it concluded that the higher the nicotine content of tobacco, the greater its tumorigenicity and co-carcinogenicity:

- *Biological Research Meeting - Minutes of the Meeting held in Southampton on 22nd May, 1974*, BAT Group, **Exhibit PG-107**;
- *Experiment B14, Position at Week 100*, BAT Co., January 11, 1979, **Exhibit PG-108**;
- M.L. Reynolds, *Notes from Group R&D Conference, Part I, February 5-9, 1979*, Brown & Williamson, February 1979, **Exhibit PG-109**;
- Exhibit PG-82;
- T.G. Mitchell, *Prospects for Augmenting Nicotine Content of Tobacco Products*, BAT Co., and cover letter dated May 2, 1980, **Exhibit PG-110**.

264. In 1975, Imperial was of the opinion that the health problems associated with smoking would never be solved:

I do not know what the Guideline "Research into and development of new products is the key strategy to solving the smoking and health problem" is supposed to mean. I do not think it will ever be "solved" [...].

- Letter from R.M. Gibb, ITL, to S.J. Green, BAT Co., February 13, 1975, **Exhibit PG-111**.

265. Because of the co-carcinogenic effect of nicotine, a BAT scientist suggested caution:

[...] However, its role as a co-carcinogen is of most current concern from results both of pure chemical studies (Bock, U.S.A.) and in cigarette smoke (JANUS B14).

In tobacco nicotine is a precursor of the carcinogen N-nitroso-nornicotine and its role in the development of pancreatic carcinoma is being investigated. [...]

[...]

In view of the evidence of adverse biological activity, particularly cocarcinogenicity, associated with nicotine, caution is required in answering the demands for higher nicotine content in low delivery products.

- T.G. Mitchell, *Research Conference 1980, Sea Island, Ga., Position Paper on Nicotine*, BAT Co., August 1980, **Exhibit PG-112**.

266. BAT rejected its scientist's recommendation out of hand, claiming that the experiments might not be valid and that nicotine's biological activity, if it indeed did exist, must be lower than that of tar:

- L.C.F. Blackman, *Research Conference 15th-18th September 1980, Sea Island, Georgia*, BAT Co., October 2, 1980, **Exhibit PG-113**.

267. From 1975 to 1986, BAT and Imperial also conducted in vitro studies on bacteria to examine the mutagenicity of tobacco smoke.

268. All the studies established that tobacco smoke is mutagenic; two of the studies established that light cigarettes are as mutagenic as regular cigarettes; and one study showed that cigarette smoke is 10,000 times more mutagenic than benzo(a)pyrene, the extremely carcinogenic compound present in tobacco smoke:

- M.H. Bilimoria, *The Detection of Mutagenic Activity of Chemicals and Tobacco Smoke in a Bacterial System Research Laboratory. Report No. 150*, ITL, December 23, 1975, **Exhibit PG-114**;
- M.H. Bilimoria and R.S. Wade, *Summary of Ames Tests for Mutagenicity of Smoke Condensates Conducted by ITL, Montreal, Research Laboratory Report No. 164*, ITL, July 2, 1981, **Exhibit PG-115**;
- E.D. Massey, *Reduction of Tobacco Smoke Mutagenicity: the Influence of Nitrogenous Compounds*, BAT Co., July 5, 1982, **Exhibit PG-116**;
- E.D. Massey, *Mutagenic Safety Evaluation at GR&DC Using the Ames Salmonella/Mammalian-Microsome Mutagenicity Test, Report No. RD.1874-C Restricted*, BAT Co., August 16, 1982, **Exhibit PG-117**;

- E.D. Massey, *Ames Mutagenic Activity of Mainstream Condensate of Six Commercial Cigarettes for Imperial Tobacco Ltd. (Canada) – Project Rio. Report No. T-153-C Restricted*, BAT Co., October 24, 1984, **Exhibit PG-118**.

269. In 1976, S.J. Green, BAT's head of research, stated that it was irresponsible to attempt to increase the number of smokers in view of the toxicity of cigarettes and the association of smoking with disease, and that the simplest explanation for that association was one of cause and effect:

- Memorandum from S.J. Green to P. Sheehy and P.L. Short, *The Effect of Restrictions on Current Marketing and Marketing in the Future*, BAT Co., May 17, 1976, **Exhibit PG-119**.

270. In 1984, studies conducted under Project Rio revealed that the cigarettes manufactured by BAT were more carcinogenic than those of its competitors:

- *Biological Conference, Southampton, 9th-11th April, 1984*, BAT Group, **Exhibit PG-120**.

271. The document entitled *A Review of the Biological Activity of Smoke, Report No. RD.2177, BAT (U.K. & Resort) Ltd.*, **Exhibit PG-121**, contains a summary of various studies conducted since 1960 on the biological activity of smoke.

272. In July 1986, BAT Co.'s scientific adviser studied Project EMN, which had been proposed by Imperial to develop a safer cigarette.

273. The adviser concluded that it would be impossible to design a carcinogen-free and irritant-free cigarette:

In the case of carcinogens, smoke contains not just one carcinogen but a galaxy of them. Furthermore it is, at present, inconceivable that carcinogens would not be produced during the pyrolysis of any organic material. Elimination of carcinogens does not therefore appear to be

feasible. The same is seemingly true for the irritants (especially oxides of nitrogen) responsible for non-neoplastic lung-disease (emphysema and chronic bronchitis).

- F.J.C. Roe, *Confidential - Comments on Project EMN*, BAT Group, July 21, 1986, **Exhibit PG-122**.

274. Imperial was then severely called to task by BAT, who pointed out that

- (a) its proposal to develop a safe cigarette was unacceptable because it implied that the current product was unsafe;
  - (b) in addition, the likelihood of success was too low to expend the required resources; and
  - (c) it was therefore necessary to look for co-variables (genetic or psychological predisposition), prove the beneficial effects of smoking, and to criticize the epidemiological studies in order to make smoking acceptable to governments and to the public:
- Letter from P. Sheehy, BAT Industries, to P. Crawford, Imasco, December 29, 1986, **Exhibit PG-123**.

275. In 1989, a BAT scientist recommended designing products that critics of the industry would perceive as improved, and to that end suggested

- (a) developing an alternative to traditional cigarettes that would contain neither tar nor biological activity, which current technology made possible; and
- (b) in the interim, reducing the tar content, improving the quality of the tar (i.e. reduce biological activity) and reducing the other harmful compounds, second-hand smoke and carbon monoxide:

- A.L. Heard, *Strategies for Product Innovation (Paper for the Research Policy Group Meeting, Canada 1989)*, BAT Co., September 12, 1989, **Exhibit PG-124**;
- *Research Policy Group Meeting, 18-22 September 1989, Pan Pacific Hotel, Vancouver, Canada*, BAT Group, December 12, 1989, **Exhibit PG-125**;
- A.L. Heard, *Minutes of the Research Policy Group Meeting, 18-22 September 1989, Pan Pacific Hotel, Vancouver, Canada*, BAT Co., September 28, 1989, **Exhibit PG-126**.

276. Brown & Williamson forcefully objected to BAT's proposed strategy to develop a new product with less biological activity for the following reasons:

- (a) it submitted that since it had not been scientifically proven that smoking was a cause of disease, no cigarette could be considered safer than another;
  - (b) it was concerned that the new proposed product, marketed or perceived as safer, would cause the public to conclude that traditional cigarettes were dangerous to health;
  - (c) if the industry reduced the tar and nicotine content, it was not in response to health concerns but to offer consumers more choice; and
  - (d) if a product were marketed as safer to health, the industry might not be able take refuge behind the warnings on cigarette packages to avoid lawsuits for misrepresentation:
- Memorandum from J. Kendrick Wells III to R.J. Pritchard, Brown & Williamson, *Re: Objections to Product Innovation Strategy*, October 31, 1989, **Exhibit PG-127**.

277. BAT ended its research aimed at developing a new type of cigarette that would be less hazardous and concentrated its efforts on improving existing products in order to maintain its market share:

- A.L. Heard, *Tobacco Strategy Review Team Meeting, 30th November, 1990, Proposed 1991 Fundamental Research Programme*, BAT Co., November 21, 1990, **Exhibit PG-128**;
- Minutes of the Meeting of the *Tobacco Strategy Review Team* held on November 30th, 1990, BAT Co., December 12, 1990, **Exhibit PG-129**.

278. Despite their certainty about the impossibility of producing a cigarette that would be harmless to health, both BAT and Imperial continued to publicly deny that smoking caused disease and to mislead smokers.

279. BAT finally admitted in 1998 that smoking causes lung cancer:

[...] We believe it is reasonable to conclude, from an epidemiological perspective, that smoking is a major cause of lung cancer. [...]

- Letter from R.R. Baker, BAT Co., to R. Peto, Oxford University, September 4, 1998, **Exhibit PG-130**.

**(ii) Smoking and chronic obstructive pulmonary disease**

280. The various studies BAT conducted on irritation and chronic bronchitis (emphysema) provided BAT very early on with the knowledge that cigarette smoke causes chronic obstructive pulmonary disease (COPD).

281. In 1962, BAT's scientific adviser, Sir Charles Ellis, recognized that cigarette smoke was an irritant, that smoker's cough is real, and that this could not be good for health:

- Exhibit PG-51.

282. BAT then conducted numerous research projects aimed at measuring the effects of tobacco smoke on the respiratory system.

283. BAT notably developed tests to measure the toxic effects of tobacco smoke and tested various filters for the purpose of eliminating toxic substances from cigarette smoke, or at least reducing their concentration.

284. Those studies establish that by 1965 BAT was aware of the toxic products in tobacco smoke that cause irritation in smokers and that toxicity increases with the amount inhaled:

- R.J. Smith et al., *Carbon Filters, The Effect of Vermiculite & Bonding Agents on the Chemical, Biological & Organoleptic Properties of Cigarette Smoke*, British Tobacco Co. (Aust) Ltd., June 1965, **Exhibit PG-131**;
- M. Scherbak and J.E. de Souza, *Research Laboratory Report No. 90, Project No. C-1333, Determination of Acrolein in Cigarette Smoke*, Imperial Tobacco Company of Canada Ltd., August 1, 1966, **Exhibit PG-132**;
- C.W. Ayers, *The Formaldehyde Content of Smoke from Various Different Types of Tobacco, Laboratory Report No. L.251-R*, BAT Co., August 8, 1967, **Exhibit PG-133**;
- C.I. Ayres, *Ciliastasis Tests: Part III, Progress Report July 1967 Report No. B-9*, BAT Co., August 29, 1967, **Exhibit PG-134**.

285. From 1965 to 1978, the results of the calciform (or goblet) cell tests, the tests measuring ciliastatic activity using Paramecium, and the smoke inhalation tests on animals, allowed BAT

- (a) to know that its cigarettes caused irritation conducive to bronchitis (emphysema);
- (b) to observe that in rats, mice, hamsters and rabbits exposed to cigarette smoke, there was an increase in the number of goblet

cells, a phenomenon related to excessive production of mucus characteristic of bronchitis;

- (c) to conclude that cigarette smoke is toxic after identifying the substances that cause stasis of the tracheal cilia, associated with bronchitis (emphysema);
  - (d) to study the mechanisms of pulmonary alveoli destruction in animals following smoke inhalation (emphysema);
  - (e) to establish that systemic changes (weight loss, loss of appetite, increase in mortality in proportion to the inhaled dose of smoke) and the changes caused to the respiratory tract (squamous metaplasia, goblet cell hyperplasia, an increase in alveolar macrophages) are frequently reversible after exposure to smoke has ceased;
  - (f) to observe that the particulate matter of smoke is deposited mostly in the lungs, but also throughout the entire respiratory system; and
  - (g) to predict pulmonary toxicity in smokers and in passive smokers:
- C.I. Ayres, *Project Conqueror: Goblet Cell Test, Report No. RD.396-R*, BAT Co., April 18, 1966, **Exhibit PG-135**;
  - R. Comber, *A Method for Ciliastasis Using Paramecium, Laboratory Report No. L157-R*, BAT Co., August 17, 1965, **Exhibit PG-136**;
  - D. Creighton, *The Effect of Cigarette Smoke on the pH of Mucus, Laboratory Report No. L.269-R*, BAT Co., January 5, 1968, **Exhibit PG-137**;
  - Letter from A. Hofmann, Battelle, to C.I. Ayres, BAT Co., *Present State of the Art and Next Stages in the Development of the Goblet Cell Test*, March 18, 1968, **Exhibit PG-138**;



- A. Hoffman, *Project Janus: Goblet Cells, Further Results of Work Aimed at the Development of a Goblet Cell Test*, Report for British-American Tobacco Company Ltd., Battelle, January 6, 1969, **Exhibit PG-139**;
- T.I. Wilson, *Development of a Thiolated Filter Medium, Report No. T-31*, British Tobacco Company (Australia) Limited, December 1970. **Exhibit PG-140**;
- R. Binns et al., *Development of Techniques in Inhalation Toxicology (First Report)*, Report No. RD.1114-R, BAT Co., May 28, 1974, **Exhibit PG-141**;
- R. Binns et al., *A Comparative Inhalation Toxicity Study on Smoke from Cigarettes Containing Flue-Cured Tobacco and "Batflake" in Varying Proportions (First Report)*, BAT Co., July 2, 1975, **Exhibit PG-142**;
- P.S. Stewart and P.F. Evans, *Studies on Alveolar Macrophages (First Report)*, Report No. RD.1376 Restricted, BAT Co., May 20, 1976, **Exhibit PG-143**;
- L.V. Wilton et al., *3-Month Inhalation Toxicity Study on Rats Exposed to Smoke from a Flue-Cured Cigarette. Report No. RD.1477 Restricted*, BAT Co., March 23, 1977, **Exhibit PG-144**;
- G. Smith et al., *Changes in the Respiratory Tract of Rats Exposed to Smoke for 5 or 7 Days per Week for 6 Weeks, Report No. RD.1519 Restricted*, BAT Co., August 31, 1977, **Exhibit PG-145**;
- G. Smith, *Response of the Rat Larynx and Trachea to Smoke during Smoke Acclimation Period, Report No. RD.1553 Restricted*, BAT Co., December 28, 1977, **Exhibit PG-146**;
- G.A. Read, *Studies of Mucus Production (First Report) Report No. RD.1589 Restricted*, BAT Co., May 8, 1978, **Exhibit PG-147**.

286. In 1969, despite its knowledge of their damaging effects on the health of smokers, BAT's position was to not eliminate the irritant compounds that cause bronchitis if it would have a negative effect on the taste of cigarettes:

- R.P. Dobson, *Smoking and Health*, BAT Co., March 25, 1969, **Exhibit PG-148**;
- D.E. Creighton, *Dr. M.A.H Russell's "Safer Cigarette" Study – Report No. RD.1652 Restricted*, BAT Co., March 1, 1979, **Exhibit PG-149**.

287. Internally, however, BAT was of the opinion that the industry should accept the possibility that smoking causes lung cancer, emphysema and bronchitis:

- Minutes of the *R&D Conference Held at Kronberg – 2nd – 6th June 1969*, BAT Co., June 23, 1969, **Exhibit PG-150**.

288. In 1972, BAT knew that tobacco smoke contains cadmium, a pneumotoxic metal that causes pulmonary emphysema and chronic bronchitis and that accumulates in the lungs, kidneys and liver of smokers:

- C.W. Ayers, *The Cadmium Content of Tobacco and Smoke, Laboratory Report L.334-AR*, BAT Co., October 10, 1972, **Exhibit PG-151**.

289. Subsequently, the mouse skin painting tests (application of smoke condensate to the skin of mice) conducted by Battelle from 1972 to 1976 established that mice died from pulmonary congestion, that the incidence of mortality from that lesion depended on the administered dose, and that respiratory disease among the mice was quite common:

- Exhibit PG-93;
- Exhibit PG-95;
- Exhibit PG-96;
- Exhibit PG-97;
- Exhibit PG-94.

290. In addition, inhalation studies conducted by Battelle on animals between 1974 and 1978 revealed changes similar to those described among human smokers with COPD:

- Exhibit PG-102;
- Exhibit PG-103;

- Exhibit PG-104;
- Exhibit PG-105;
- Exhibit PG-120.

291. In 1980, BAT observed that eliminating irritants from the smoke with the help of filters caused the smoker to inhale more deeply, resulting in larger deposits of particulate matters in the smoker's respiratory system:

- *A Comparative Inhalation Study on Smoke from Cigarettes with Different Filters (Report No. RD.1729-C)*, BAT Co., March 21, 1980, **Exhibit PG-152**;
- Memorandum from L.C.F. Blackman to P. Sheehy and C.H. Stewart Lockhart, *Report No. RD.1729-C - A Comparative Inhalation Study on Smoke from Cigarettes with Different Filters*, BAT Co., June 10, 1980, **Exhibit PG-153**;
- *Selective Vapour Phase Filtration – Second Comparative Inhalation Study (Report No. RD.1770-C Restricted)*, BAT Co., December 3, 1980, **Exhibit PG-154**;
- Memorandum from C.I. Ayres to L.C.F. Blackman, *Report No. RD.1770-C Restricted, "Selective Vapour Phase Filtration – Second Comparative inhalation Study"*, BAT Co., November 26, 1980, **Exhibit PG-155**;
- Letter from C.I. Ayres to R.A. Sanford et al., *Report No. RD.1770-C Restricted, "Selective Vapour Phase Filtration – Second Comparative Inhalation Study"*, December 16, 1980, **Exhibit PG-156**.

292. In 1984, BAT noted there was a clear association between smoking and COPD:

- Exhibit PG-120.

293. In 1986, BAT acknowledged it could not eliminate the smoke irritants that caused bronchitis:

- Exhibit PG-122.

**(iii) Smoking and coronary and vascular disease**

294. As early as 1962, BAT became concerned about the association between nicotine and cardiovascular disease and decided to initiate a research program to investigate the link:

- Exhibit PG-51.

295. In August 1980, a BAT scientist recommended caution in the light of the significant role nicotine played in the increased risk of heart attack and heart disease:

- Exhibit PG-112.

See also:

- Exhibit PG-110.

296. BAT, however, dismissed the recommendation of its scientist, asserting the possibility that nicotine had beneficial effects on the circulatory system that could offset its damaging effects:

- Exhibit PG-113.

297. In September 1980, Imperial, together with representatives of Carreras Rothmans, Rothmans of Pall Mall Canada Limited and Benson & Hedges, met with a researcher funded by the CTMC.

298. The researcher stated he was convinced that nicotine increases platelet aggregation, which produces a risk of thrombosis:

- T.A. Smith, *Meeting with Professor Serge Renaud (CTMC Grantee)*, ITL, September 12, 1980, **Exhibit PG-157**.

299. By 1970, BAT was aware that the carbon monoxide in cigarette smoke has an injurious effect on the circulatory system and, since filters proved to be

ineffective in reducing its content, it tested various other processes including the use of additives:

- Exhibit PG-150;
- H.F. Dymond, *Factors Affecting the Concentration of Carbon Monoxide in Cigarette Smoke – Progress Report Part II – The Effect of Additives*, Report No. RD.686-R, BAT Co., January 15, 1970, **Exhibit PG-158**;
- *Summary & Conclusions. B.A.T. Group Research Conference, November 9th-13th 1970, St. Adèle, Quebec*, BAT Group, November 1970, **Exhibit PG-159**;
- Memorandum from S.J. Green to S. Lockart, BAT Co., October 7, 1975, **Exhibit PG-160**;
- *Minutes of the BAT Co. Chairman's Advisory Conference Held in Austria in May 1981*, BAT Group, May 1981, **Exhibit PG-161**;
- L.C.F. Blackman, *Research Conference, Pichlam, Austria, 24-28 August 1981*, BAT Co., September 9, 1981, **Exhibit PG-162**.

300. Those experiments, however, demonstrated

(a) that while some additives might substantially reduce the carbon monoxide content, they increased the tumorigenicity of the smoke; and

(b) that, conversely, certain methods developed to reduce benzo(a)pyrene, a carcinogen, increased the production of carbon monoxide:

- S.J. Green, *Notes on the Group Research & Development Conference at Duck Key, Florida, 12th -18th January 1974*, BAT Co., January 1974, **Exhibit PG-163**;
- Exhibit PG-160.

301. BAT also knew that nicotine has an effect on the peripheral vascular system and on cerebrovascular disease:

➤ Exhibit PG-120.

302. Lastly, in 1984, BAT accepted a researcher's conclusion that Freon 11, used in the preparation of tobacco, has serious effects on the respiratory system and the heart:

➤ S.R. Evelyn, *Review of Freon 11 in Tobacco Processing*, BAT Co., March 15, 1984, **Exhibit PG-164**.

(b) Development and implementation of a misleading public position

303. The scientific studies published in the 1950s associating smoking with cancer and other disease threatened the tobacco industry.

304. As early as 1953 when an individual named Rand claimed to have invented paper that prevented lung cancer, Brown & Williamson warned Imperial of the danger for the industry to accept that assertion, even implicitly, and advised it "to go slow on this":

➤ Letter from E.C. Wood, Imperial Tobacco Company of Canada Limited, to T.V. Hartnett, Brown & Williamson, January 27, 1953, **Exhibit PG-165**;

➤ Letter from T.V. Harnett, Brown & Williamson, to E.C. Wood, Imperial Tobacco Company of Canada Limited, February 2, 1953, **Exhibit PG-166**.

305. As well, the research conducted by American and British manufacturers very early on confirmed the presence of carcinogenic, tumorigenic, mutagenic, toxic and irritant substances in cigarette smoke.

306. BAT reacted quickly and organized a coherent and unified public relations strategy for its Group that would evolve over the years and adapt to political and social changes.

307. The objectives of that strategy were many:

- (a) ensure the continuation and profitability of the industry and gain time;
- (b) to do that, deny the causal connection between smoking and disease;
- (c) when that position became no longer tenable and adversely affected the industry's credibility, claim that there is scientific controversy and that a statistical association does not denote a cause and effect relationship;
- (d) avoid liability lawsuits, especially in the United States where the Brown & Williamson subsidiary was at greater risk, to such an extent that it would eventually impose the substance of the public position on the whole Group;
- (e) refrain from saying that lower tar and nicotine cigarettes were better for health for fear that it be construed as an implicit admission that regular cigarettes are harmful;
- (f) refrain, however, from contradicting smokers who believe that light cigarettes are better for their health since that idea is reassuring and supports their continued smoking;
- (g) resist all attempts by governments to regulate the sale, promotion and advertising of tobacco products;

- (h) oppose any requirement to place health warnings on cigarette packages;
- (i) oppose any requirement to indicate tar and nicotine content on packages, which could imply that some cigarettes are less harmful than others, whereas the BAT Group and the industry contended that no cigarette is harmful to health; and
- (j) when governments are prepared to legislate, adopt voluntary measures to avoid the imposition of more restrictive measures.

***(i) Refusal to place health warnings***

308. It was the policy of the BAT Group and of the industry to oppose health warnings and to delay any legislation requiring health warnings on cigarette packages.

309. When legislation appeared inevitable, the strategy aimed at attempting to avoid it by voluntarily printing warnings drafted in vague and general terms (e.g., "Smoking may be dangerous to health"), ascribed to public authorities and not to the industry, lest the public perceive the warning as an admission by manufacturers that tobacco was dangerous.

310. In 1969, Imperial and the CTMC adopted that strategy before the Isabelle Committee and claimed that the scientific knowledge did not justify the warnings:

➤ Exhibit PG-22.



311. The BAT Group nonetheless knew that those general and constantly repeated warnings were totally ineffective and did not reduce cigarette consumption:

- Letter from D.G. Felton, BAT Co., to W.B. Fordyce, BAT Co. (Australia) Ltd., January 15, 1969, **Exhibit PG-167**;
- G.C. Hargrove, *Smoking and Health*, BAT Co., April 17, 1973, **Exhibit PG-168**;
- *T.D.P. Planning Meeting, 25th June, 1976, Supplementary Paper No. 1A – Assumptions and Strategies for Marketing over the Next 10 Years*, BAT Co., June 3, 1976, **Exhibit PG-169**;
- Kwechansky Marketing Research Inc., *Report for: Imperial Tobacco Limited, Subject: "Project 16"*, October 18, 1977, **Exhibit PG-170**.

312. In June 1971, the federal government introduced Bill C-248 to ban the advertising of tobacco products.

313. In September 1971, the CTMC announced it was amending its voluntary advertising code to place the following warning on packages starting January 1972: "Warning: Excessive smoking may be hazardous to your health":

- Exhibit PG-27.

314. Bill C-248 was not debated.

315. The warning was modified in May 1972 to attribute it to Health and Social Welfare Canada (Exhibit PG-28) and thereby reflect in every respect the BAT Group's policy.

316. In 1976, BAT and Imperial scientists justified the refusal by the BAT Group to print clear and precise warnings on cigarette packages with the following reasoning:

- (a) the epidemiological studies set out a causal association for an entire population but they cannot be of use to prove a causal link with respect to any specific individual; and
- (b) consequently, it is perfectly consistent to refuse to send to an individual smoker the message that smoking causes lung cancer:

- S.J. Green, *Cigarette Smoking and Causal Relationships*, BAT Co., October 27, 1976, **Exhibit PG-171**;
- R.M. Gibb, *Another Position on Smoking*, ITL, November 29, 1976, **Exhibit PG-172**;
- Letter from R.M. Gibb, ITL, to S.J. Green, BAT Co., March 7, 1977, **Exhibit PG-173**.

317. Imperial rallied and applied the BAT Group's policy, despite knowing that smokers are generally less educated and less affluent, and thus more receptive to the industry's public pronouncements:

- R.M. Gibb, *Smoking Issues*, ITL, November 15, 1979, **Exhibit PG-174**.

318. Through the CTMC, Imperial and all the Canadian Defendants acted in a manner to prevent, delay, or minimize the effectiveness of health warnings:

- Letter from A.B. Morrison, Department of National Health and Welfare, to P. Paré, CTMC, January 3, 1973, **Exhibit PG-175**;
- Letter from A. B. Morrison, Department of National Health and Welfare to P. Paré, CTMC, January 3, 1973, and cover letter from January 6, 1975, **Exhibit PG-176**;
- Letter from M. Lalonde, Department of National Health and Welfare, to P. Paré, CTMC, March 3, 1975, **Exhibit PG-177**;
- *CTMC Advertising and Promotion Code*, January 1, 1976, **Exhibit PG-178**;

- Letter from M. Lalonde, Department of National Health and Welfare, to P. Paré, CTMC, March 16, 1976, **Exhibit PG-179**;
- D.A. Crawford, *Notes of the Meeting Held on 8th September, 11th Floor, 1155 Sherbrooke Street W., of the Ad Hoc Committee on Smoking and Health*, October 1, 1976, **Exhibit PG-180**;
- Letter from P. Paré, CTMC to M. Lalonde, Department of National Health and Welfare, November 1, 1976, **Exhibit PG-181**;
- *Notes for a Presentation by Normand A. Dann, Vice President, Public Relations, Imasco Limited (Canada) to the Conference on Smoking and Health Issues, Chelwood, England, November 6, 1979*, **Exhibit PG-182**;
- Letter from J. Epp, Department of National Health and Welfare, to N.J. McDonald, CTMC, October 9, 1986, **Exhibit PG-183**;
- Telex from J. Epp, Department of National Health and Welfare, to N.J. McDonald, CTMC, November 2, 1986, **Exhibit PG-184**;
- *Government to Ban Tobacco Advertising, Department of National Health and Welfare*, press release, April 22, 1987, **Exhibit PG-185**;
- CTMC press release, April 23, 1987, **Exhibit PG-186**.

**(ii) Denial of the deleterious effects of smoking**

319. In 1962, BAT sent its department heads a memorandum entitled "Smoking and Health", which provided arguments to counter the conclusion of a recent report by the Royal College of Physicians that smoking causes disease:

- A.D. McCormick, *Smoking and Health*, BAT Co., July 26, 1962, **Exhibit PG-187**.

320. The memorandum suggested it be argued that

- (a) the increase in the incidence of lung cancer could be due to improved diagnostics, longer life expectancy, or the greater

susceptibility of individuals with a history of pneumonia or tuberculosis;

- (b) the incidence of lung cancer is not necessarily higher in countries with the highest tobacco consumption;
- (c) conversely, some countries with low tobacco consumption have a high incidence of lung cancer;
- (d) most smokers do not die of lung cancer while some non-smokers do;
- (e) other factors may be responsible, such as the environment, pollution, social class (the poor are the most likely to develop lung cancer) and viruses;
- (f) while there is a statistical association between smoking and lung cancer, it has not been proven in a laboratory;
- (g) the application of smoke condensate to the skin of mice causes tumours in some cases but it does not prove that tobacco causes lung cancer;
- (h) the quantity of benzo(a)pyrène is insufficient to be harmful;
- (i) the effect of filters on the health of smokers is unknown;
- (j) given the current state of knowledge, it can neither be denied nor proven that smoking causes lung cancer; and
- (k) more research is needed to understand the etiology of cancer, and not only that of lung cancer.

321. The above reiterates in substance the position expressed in 1954 by the Tobacco Industry Research Committee in *A Scientific Perspective on Cigarette Smoking*, **Exhibit PG-188**.
322. The memorandum was the precursor of BAT's public stance on tobacco and health and served as the basis for the development and consolidation of the public position of the entire BAT Group, including in Québec.
323. BAT's public position (Exhibit PG-187) was echoed by the CTMC at the 1963 Conference:
- Conférence sur l'usage du tabac et la santé du ministère de la Santé nationale et du Bien-être social, Ottawa, 25 et 26 novembre 1963, *Quelques perspectives scientifiques pour l'examen des questions relatives au tabac et à la santé*, exposé du Comité ad hoc de l'industrie canadienne du tabac, **Exhibit PG-189**;
  - A.D. McCormick, *Smoking and Health*, BAT, November 28, 1963, **Exhibit PG-190**.
324. In 1969, BAT sent an amended version of its position on tobacco-related health issues to the heads of all of its subsidiaries:
- Exhibit PG-148.
325. BAT took up once again the arguments developed in the 1962 version and added the following:
- (a) the industry does not admit there is evidence of a cause and effect association between smoking and lung cancer;
  - (b) there is a minority more susceptible to developing lung cancer (respiratory and cardiac patients);

- (c) the components of smoke responsible for inhibition of ciliastatic activity can be eliminated by filters, but only at the cost of an unacceptable reduction in taste;
- (d) it would be better if less tar were inhaled;
- (e) the industry reduced the tar and nicotine content in response to the demand of consumers who may believe it is less dangerous to health but, carried too far, the reduction does not satisfy most consumers; and
- (f) publishing the tar and nicotine content could be useful to the industry since it would offer concerned smokers the prospect of continuing to smoke because they may opt for products they believe to be less dangerous to health.

326. In 1970, since a more conciliatory stance appeared necessary to avoid hostility, BAT proposed asserting that in the absence of clinical proof, the issue of causal association remained unsolved:

- G.C. Hargrove, *Smoking and Health*, BAT Co., June 12, 1970, **Exhibit PG-191**.

327. In 1972, S.J. Green, BAT's head of research, questioned that public position:

... it will not be possible indefinitely to maintain the rather hollow "we are not doctors" stance [...]

[...]

- the association of cigarette smoking and some diseases is factual.

[...]

- [...] Is it still right to say that we will not make or imply health claims? [...] can we completely abdicate from

making judgments on our products in this context and confine ourselves to presenting choices to the consumer?

- S.J. Green, *The Association of Smoking and Health*, BAT Co., July 26, 1972, **Exhibit PG-192**.

328. In 1973, unwilling to lose credibility among physicians it was attempting to win over, BAT softened its Group's stance and advised arguing in future that in the absence of clinical evidence, the existence of a causal link remained controversial.

329. The Group's public stance was dictated by the constant apprehension of litigation, since Brown & Williamson and Imperial were concerned that any softening of their public stance could be considered to be an admission of the deleterious effects of cigarettes, which would be disastrous for the industry:

- Exhibit PG-168.

330. The BAT Group's public position resting on the multiple causes theory and the existence of scientific controversy was maintained in substance until 2000:

- Letter from David R. Hardy, Shook, Hardy & Bacon, to T.E. Davies, BAT Co., June 10, 1975 et letter from G.C. Hargrove, BAT, June 20, 1975, **Exhibit PG-193**;
- *BAT Board Strategies, Smoking and Health, Questions & Answers*, BAT Group, November 25, 1977, **Exhibit PG-194**;
- L.C.F. Blackman, *Stance on Smoking and Health, Note for Information and Discussion*, BAT Co., December 18, 1980, **Exhibit PG-195**;
- Memorandum by R.L.O Ely, *Appreciation*, BAT Co., May 16, 1980, **Exhibit PG-196**;
- Memorandum by H.A. Morini for R.L.O. Ely, *Appreciation*, BAT Co., May 23, 1980, **Exhibit PG-197**;

- Memorandum by J.K. Wells, *New Strategy on Smoking & Health*, Brown & Williamson, June 1980, **Exhibit PG-198**;
- M.J. Leach, *Change on Stance on Smoking and Health*, BAT Co., June 20, 1979, **Exhibit PG-199**;
- P. Sheehy, *Smoking and Health Issues Conference*, Chelwood, November 5-8, 1979, BAT, **Exhibit PG-200**;
- L.C.F. Blackman, *Smoking and Health, A BAT Co. Booklet for Staff*, BAT Co., February 25, 1981, **Exhibit PG-201**;
- *Smoking Issues, A British-American Tobacco Company publication for staff*, November 26, 1981, **Exhibit PG-202**;
- Letter from M. Descôteaux to R.M. Gibb, *Millbank Public Affairs Smoking and Health Handbook to employees*, ITL, February 26, 1981, **Exhibit PG-203**;
- Letter from R.M. Gibb, ITL, to L.C.F. Blackman, BAT Co., February 27, 1981, **Exhibit PG-204**;
- *1982 B.A.T. Board Guidelines, Public Affairs*, BAT Group, March 1982, **Exhibit PG-205**;
- L.C.F. Blackman, *Discussions between Dr L.C.F. Blackman and Mr Kendrick Wells, New York, Tuesday 14 September 1982*, BAT Co., September 21, 1982, **Exhibit PG-206**;
- Letter from K. Wells, Brown & Williamson, to L.C.F. Blackman, BAT Co., February 4, 1983, **Exhibit PG-207**;
- *B.A.T. Board Guidelines, Smoking Issues*, BAT Group, March 1983, **Exhibit PG-208**;
- Letter from P.J. Ricketts, *Legal Considerations in Smoking and Health Issues*, BAT Industries, March 26, 1984, **Exhibit PG-209**;
- *Smoking, the Scientific Controversy*, BAT Group, circa 1990, **Exhibit PG-210**;
- Memorandum by S. Boyse, *Smoking and Health - the Unresolved Debate*, BAT Co., July 3, 1989, **Exhibit PG-211**;
- *Smoking & Health, The Unresolved Debate*, BAT Co., 1989, **Exhibit PG-212**;



- Letter from J.L. Metzger, Lovell White Durant, to P.L. Clarke, BAT Co., January 17, 1992, and analysis by J.L. Metzger, **Exhibit PG-213**;
- Memorandum from D. Bacon to the Executive Officers, *RE: Health Warnings*, BAT Co., February 7, 1992, **Exhibit PG-214**;
- *Smoking: The Scientific Controversy*, BAT Co., June 26, 1992, **Exhibit PG-215**;
- *Smoking, Risks and Risk Priorities*, BAT Co., 1992, and cover letter from S. Boyse to all Executive Officers, January 15, 1993, **Exhibit PG-216**;
- *Smoking Issues Department, BAT Co., Materials from the Smoking Issues Department*, July 1, 1994, **Exhibit PG-217**;
- *Smoking Issues Department, Information*, BAT Co., July 1, 1994, **Exhibit PG-218**.

**(iii) False public statements**

331. Throughout the period at issue, BAT and Imperial made numerous misleading public statements by denying the dangers posed by their products despite all their studies concluding that smoking is harmful to the health of smokers.

332. In March 1962, the president of Imperial stated:

The major question raised by this report on smoking is this: Do the authors offer any new scientific findings to support their position? The answer is: They do not.

The report relies almost entirely on old statistical data containing a number of discrepancies that are still in dispute and under continuing study. The question remains unsettled.

- "Cancer 'Cause', British Cigaret Report", *The Gazette*, March 8, 1962, **Exhibit PG-219**.

333. On June 5, 1969, Paul Paré, chair of the CTMC speaking in the name of all Canadian manufacturers, testified as follows before the Isabelle Committee, Exhibit PG-22:

[...] is there sound scientific validity to the charges that smoking is a major cause of illness and death; validity that justifies the nature and extent of the anti-smoking proposals?

Our answer is—no. [...]

[...]

[...]Our view is that there has never been any evidence so far demonstrated that the smoke of cigarettes has produced any diseases. It would tend, therefore, to be misleading to suggest that if a product was lower in tar and nicotine that it may be a safer cigarette.

[...]

[...]I do not believe anybody knows in the tobacco industry what items or what particular compounds— what is the word for them—elements may be looked upon as being suspect. [...]

334. Some parts of the testimony were reprinted in newspapers:

- "*Devant le comité parlementaire de la santé, L'industrie du tabac défend sa cause*", *Le Devoir*, June 6, 1969, **Exhibit PG-220**;
- "*L'industrie du tabac soutient que la guerre qu'on lui livre s'appuie sur des préjugés*", *La Presse*, June 6, 1969, **Exhibit PG-221**;
- "*Le plaidoyer de l'industrie du tabac devant le comité parlementaire*", *Le Devoir*, June 7, 1969, **Exhibit PG-222**.

335. In 1971, the chair of the CTMC and president of Imperial stated:

[...] we are confronted with an indictment which is based essentially on statistics and accepted as fact by virtue of many years of repetition. The issue continues to be a subject of controversy among scientific experts. [...] tobacco industry will continue to pursue scientific research, which is the only way the controversy can be logically resolved.

- Statement by Paul Paré, CTMC and ITL, June 1971, **Exhibit PG-223**;
- Statement from CTMC, *Cigarette Advertising Code of Canadian Tobacco Manufacturers*, September 16, 1971, **Exhibit PG-224**.

336. In November 1987, the president of Imperial and chair of the CTMC again asserted the following before the House of Commons Legislative Committee studying Bill C-204 and Bill C-51:

It is not the position of the industry that tobacco causes any disease. Our position is that epidemiological studies are essentially statistical comparisons. All they can demonstrate is an association. They cannot and will not demonstrate a cause and effect relationship.

[...]

[...] Our views are that, in the context of the current scientific knowledge, these diseases are most likely caused by the interaction of many factors. The role, if any, that tobacco or smoking plays in the initiation and the development of these diseases is still very uncertain. The issue is still unresolved.

[...]

*Ms McDonald:* [...] do you believe that any Canadians die of smoking-related diseases?

*Mr Mercier:* No, I do not. [...]

- Exhibit PG-30.

337. In 1990, BAT asserted in *Smoking: the Scientific Controversy* (Exhibit PG-210), a publication aimed at a broad public audience:

Although a number of epidemiological studies have claimed that smoking is statistically associated with a number of diseases [...]

We cannot be sure whether or not it means that smoking causes those diseases. [...]

[...]

Many of the diseases that have been claimed to be associated with smoking are related to working conditions, and that smoking has been used to divert attention away from these hazards.

338. On July 7, 1994, R. R. Parker, chair of the CTMC, declared in a report broadcasted by the CBC entitled *Tobacco and Youth* that a causal link had not been established:

Do cigarettes cause cancer?

'It is an impossible question for me to answer, I am not a scientist. I can certainly tell you that the industry's view is that there is a statistical link between tobacco consumption and a long list of health-ill effects cause cancer (*sic*) That is a scientific question that I am not qualified to answer it, but I don't believe there is an established causal link, the risk is clear.'

- Transcript "*Tobacco and Youth*", July 7, 1994, Canadian Broadcasting Company, **Exhibit PG-225**.

339. The November/December 1994 issue of *Le Feuillet*, a publication intended for Imperial employees, **Exhibit PG-226**, reiterates BAT's position as set out on May 12, 1994, in *Revised Smoking Issues: Claims & Responses*, **Exhibit PG-227**:

[Translation]

The fact is that we still do not really know what triggers diseases such as cancer and heart disease, nor what factors affect their development. We do not know whether tobacco consumption might cause those diseases since we do not understand the mechanisms of the diseases.

[...]

[...] In fact, more than two hundred factors have been associated with heart disease, such as diet, high cholesterol levels, salt, high blood pressure, alcohol, obesity and stress.

[...] Although tobacco use has been statistically associated with lung cancer and heart disease, it is only one of many risk factors.

340. In the November/December 1995 issue of *Le Feuillet*, **Exhibit PG-228**, Imperial reproduced what BAT had written in *Smoking: Risks and Risk Priorities* (Exhibit PG-216), published in 1992:

[Translation]

[...] these studies demonstrate only a statistical association; they do not prove scientifically that smoking causes cancer.

[...]

[Translator's Note : The following paragraph was taken directly from a quoted section in *Smoking : Risks and Risk Priorities*]

All living species have a biological life span: plants, fishes, animals and humans. While the upper limit of the human life span may be as much as 116 years, the median, or most usual biological life span, is probably about 85. Some of us may be programmed to die before our seventieth birthday and a few of us are programmed to become centenarians. This programme is coded in our genes and is unalterable, at least for the time being. [...]

341. Imperial also adopted the substance of BAT's position stated in other editions of *Le Feuillet* between 1992 and 1994:

- "*L'usage du tabac - une mise au point par B.A.T.*", *Le Feuillet*, Volume 30, No. 5, September/October 1994, ITL, **Exhibit PG-229**;
- "*L'usage du tabac - une mise au point par B.A.T.*", *Le Feuillet*, Volume 31, No. 2, March/April 1995, **Exhibit PG-230**;
- "*L'usage du tabac - une mise au point par B.A.T.*", *Le Feuillet*, Volume 31, No. 4, July/August 1995, **Exhibit PG-231**.

342. On October 30, 1996, BAT's president made the following statement in a press release:

[...] We have no internal research which proves that smoking causes lung cancer or other diseases or, indeed, that smoking is addictive.

Thirdly, there is still a lack of understanding of the mechanisms of diseases attributed to smoking.

- *B.A.T. Industries Chief Executive, Martin Broughton's opening remarks to analysts, investigators and journalists at the nine months results briefing held at Windsor House on Wednesday, 30th October 1996, press release, **Exhibit PG-232.***

343. The BAT Group thus lied to the public throughout all of the period from 1962 to 2000, as further demonstrated in the following statements:

- *"Affirmation du Collège Royal des médecins de GDE-Bretagne, Selon Impérial Tobacco, Aucune preuve nouvelle pour appuyer cette affirmation!", *Le Devoir*, March 8, 1962, **Exhibit PG-233;***
- *"UK Tobacco shares drop following medical report", *Montreal Gazette*, March 24, 1962, **Exhibit PG-234;***
- *E.C. Wood, *Revue de l'industrie canadienne du tabac en 1962*, Imperial Tobacco Co. of Canada, Ltd., **Exhibit PG-235;***
- *"Cancer Epidemic", *The Gazette, Canadian Weekly*, May 11-17, 1963, **Exhibit PG-236;***
- *"CMA Considers Lung Cancer – Tobacco Question at Toronto Council Session", *Montreal Gazette*, June 12, 1963, **Exhibit PG-237;***
- *Exhibit PG-189;*
- *CTMC press release, November 25, 1963, **Exhibit PG-238;***
- *"Conférence fédérale-provinciale sur le tabac: Ottawa et huit provinces sont d'avis que la cigarette cause le cancer. Mais l'industrie du tabac trouve les accusations non scientifiques", *La Presse*, November 26, 1963, **Exhibit PG-239;***
- *R. Rice, "Conference Majority Hits Smoking", *The Gazette*, November 26, 1963, **Exhibit PG-240;***
- *"Déclaration du président de l'Imperial Tobacco", *Le Soleil*, April 10, 1964, **Exhibit PG-241;***

- Press release of L.C Laporte, Imperial Tobacco Company of Canada Ltd., June 7, 1968, **Exhibit PG-242**;
- "A new filtered generation won't smoke anything else", *The Gazette*, June 12 1968, **Exhibit PG-243**;
- Presentation of P. Paré in front of the National Association of Tobacco and Confectionery Distributors Convention, *The Future of Tobacco in the Face of Smoking and Health Controversy*, CTMC, October 8, 1969, **Exhibit PG-244**;
- Statement of P. Paré, CTMC, December 18, 1969, **Exhibit PG-245**;
- "Report on smoking: Tobacco industry blasts Ottawa", *Montreal Star*, December 19, 1969, **Exhibit PG-246**;
- D. Giroux, "*La lutte contre la cigarette – Les efforts déployés par Ottawa affectent peu Imperial Tobacco*", *Le Devoir*, November 23, 1970, **Exhibit PG-247**;
- Exhibit PG-223;
- J.-P. Bonhomme, "*Toute publicité sera interdite*", *Le Devoir*, June 11, 1971, **Exhibit PG-248**;
- "*L'industrie du tabac renonce à la publicité sur les ondes*", *La Presse*, September 22, 1971, **Exhibit PG-249**;
- J. Kalbfleisch, "New president: 'We follow market', Cigarettes still No.1 for Imperial", *Montreal Gazette*, March 8, 1972, **Exhibit PG-250**;
- "*P. Paré fait le point sur l'industrie*", *La Revue du Tabac*, September 1978, **Exhibit PG-251**;
- "*Ça manque de sérieux*", *La Revue du Tabac*, March 1979, **Exhibit PG-252**;
- "*Le dernier rapport du directeur américain de la Santé est contesté*", *La Revue du Tabac*, July 1979, **Exhibit PG-253**;
- "*Les fumeurs savent être courtois sans loi (les fabricants de tabac)*", *Le Devoir*, October 6, 1979, **Exhibit PG-254**;
- "*Les compagnies de tabac n'aiment pas que la loi remplace la courtoisie*", *La Presse*, October 6, 1979, **Exhibit PG-255**;

- "Imasco officials refuse to cough up warning about cigaret hazards", *The Globe and Mail*, June 26, 1987; **Exhibit PG-256**;
- Exhibit PG-31;
- *Canada, Chambre des communes, Procès-verbaux et témoignages, Comité permanent de la Santé, 1<sup>ère</sup> sess., 35<sup>e</sup> légis., fascicule no 10, 12 mai 1994, «Étude sur la banalisation des produits du tabac», Exhibit PG-257*;
- A. Pratte, «Aucun doute possible, la cigarette tue», *La Presse*, March 7, 1997, **Exhibit PG-258**;
- *Délibérations du comité permanent des Affaires sociales, 1<sup>ère</sup> sess., 36<sup>e</sup> légis., fascicule no 11, 12 mai 1998, «Projet de loi S-13, Loi constituant la Fondation canadienne de responsabilité sociale de l'industrie du tabac et instituant un prélèvement sur cette industrie, Exhibit PG-259*;
- *Canada, Chambre des communes, Témoignages, Comité permanent de la Santé, 1<sup>ère</sup> sess., 36<sup>e</sup> légis., fascicule no 052, 29 octobre 1998, «Projet de loi C-42, Loi modifiant la Loi sur la tabac, Exhibit PG-260*;
- ITL, "Notre position, Position d'Imperial Tobacco sur le dossier du tabac", November 1998, **Exhibit PG-261**;
- Speech of J.-P. Blais, to the Chambre de commerce et d'industrie Thérèse-De-Blainville [sic], "Le tabac, bilan et perspectives d'une entreprise située dans son contexte", ITL, January 26, 2000, **Exhibit PG-262**;
- *Délibérations du comité permanent de l'Énergie, de l'environnement et des ressources naturelles, 2<sup>e</sup> sess., 36<sup>e</sup> légis., fascicule no 14, 8 juin 2000, «Projet de loi S-20, Loi visant à donner à l'industrie canadienne du tabac le moyen de réaliser son objectif de prévention de la consommation des produits du tabac chez les jeunes au Canada, [Proceedings of the Standing Senate Committee on Energy, the Environment and Natural Resources, 2nd Session, 36th Parliament, Issue No. 14, June 8, 2000, Bill S-20, An Act to enable and assist the Canadian tobacco industry in attaining its objective of preventing the use of tobacco products by young persons in Canada], Exhibit PG-263*;
- "À la défense des 'légères' et des 'douces'", *Le Devoir*, June 1, 2001, **Exhibit PG-264**;



344. The BAT Group Defendants wilfully failed to inform the people of Québec about the harmful effects of their products.

345. With the intention to deceive, the BAT Group Defendants deliberately concealed, downplayed or trivialized the dangers posed by their products for the purpose of inducing persons to start smoking or continue to smoke.

346. In so doing, the BAT Group Defendants failed in the duty to abide by the rules of conduct to which they were bound in respect of the persons in Québec who were or may have been exposed to tobacco products.

## **2. The PM Group Was Aware of the Harmful Nature of its Product**

### **(a) Abundant research on the dangers**

347. The PM Group already knew by the end of the 1950s that cigarettes were a contributing factor in lung cancer.

348. In July 1958, the PM Group acknowledged as follows:

Inasmuch as the evidence (See bulletin of Cancer Progress, March-April 1958, Vol. 8, No. 2) is building up that heavy cigarette smoking contributes to lung cancer either alone or in association with physical and physiological factors such as air pollution, pre-disposition, nervous tension, rate of living etc., I believe we should increase the departmental effort, both in terms of short range and long range objectives, towards the development of a low delivery cigarette having good flavour.

- Memorandum from C.V. Mace to Dr. R.N. Dupuis, PM Inc., July 24, 1958, **Exhibit PG-265**.

349. Despite the known link between lung cancer and smoking, the PM Group was confident about the industry's future:

The complexity of the problem is such that even if further evidence for a relation between cigarette smoking and lung cancer is uncovered, the answer will be neither conclusive nor simple. Add to this possibility the normal reluctance of the average human to change his habits. The conclusion is then quite apparent that the cigarette business will continue for a long, long time.

- Memorandum from Dr. H. Wakeham to R. Roper, *An Opinion on Cigarette Smoking and Cancer*, PM Inc., September 22, 1959, **Exhibit PG-266**.

350. The Group therefore worked on developing a permanent filter that would reduce the toxic substances in cigarettes.

351. The PM Group had by that time identified a number of constituents in cigarette smoke and knew the quantity and carcinogenic effects of those constituents:

#### EVIDENCE LINKING CANCER AND TOBACCO

Based on two Main points

Statistical evidence that certain diseases are more prevalent among smokers than non-smokers

Lung cancer

Bladder cancer

Cardiovascular diseases

These associations suggest that smoking may be a causative factor.

- Dr. H. Wakeham, *Tobacco and Health – R&D Approach*, PM Inc., November 15, 1961, **Exhibit PG-267**.

352. The author of the report (Exhibit PG-267) urged the PM Group to direct its research efforts towards attempting to reduce the carcinogenicity of cigarette smoke constituents even though he realized that there could be no complete solution to the problem.

353. To counter potential criticism, the PM Group attempted to reduce the concentration of carcinogenic components, eliminate the components causing irritation that could lead to chronic bronchitis or emphysema, and reduce the nicotine content since it was suspected of being a risk factor for heart disease:

- Memorandum from Dr. H. Wakeham to H. Cullman, *Technical Forecast*, PM Inc., October 24, 1963, **Exhibit PG-268**.

354. In 1964, PM Inc.'s vice-president for research and development acknowledged that the conclusions of the U.S. Surgeon General's report were sound, valid, and could not be refuted:

- Dr. H. Wakeham, *Smoking and Health Significance of the Report of the Surgeon General's Committee to Philip Morris Incorporated*, February 18, 1964, **Exhibit PG-269**.

355. The PM Group also knew about the co-carcinogenic effect of the components of tobacco:

- Memorandum from W.R. Johnson to Dr. A. Bavley, *Visit to Tennessee Eastman*, PM Inc., October 8, 1964, **Exhibit PG-270**.

356. In 1966, as part of Project 6900, the PM Group conducted inhalation tests to measure the carcinogenic effects of cigarette smoke.

357. On October 25, 1966, the project head acknowledged the probability of a causal link between lung pathologies, heart disease and smoking:

Inasmuch as the probability exists that these diseases will gain increasing public recognition and since cigarettes will most likely be implicated as one of the causative agents in these diseases, it is felt that emphasis should be put on research in this area.

- P.C. Luchsinger, *Project 6900 Physiological Studies Semi-Annual Report*, PM Inc., October 25, 1966, **Exhibit PG-271**.

358. In May 1967, experiments conducted under Project 6900 confirmed that filters did not reduce the tumorigenicity of cigarette smoke:

- R.D. Carpenter, *Project 6900 Physiological Studies Semi-Annual Report*, PM Inc., May 9, 1967, **Exhibit PG-272**.

359. Dissemination of the reports (Exhibits PG-271 and PG-272) was restricted and they could not be removed from the room in which they were stored.

360. In addition to its own research, the PM Group sought out scientists who could assist it in promoting the scientific controversy.

361. It encouraged any research that could establish other possible causes for the diseases associated with smoking.

362. In that context, the PM Group became interested in the research of Dr. Selye, of Université de Montréal, that focused on stress as a risk factor for certain diseases, despite realizing that Dr. Selye believed there was a link between bronchitis and smoking:

- Memorandum from W. Shinn to D. Hardy, *Ad Hoc (Dr. Hans Selye)*, Shook, Hardy & Bacon, December 29, 1966, **Exhibit PG-273**.

363. In September 1969, PM Inc.'s vice-president of research and development reviewed the scientific literature confirming the existence of a dose-response relationship between mouse skin painting with cigarette smoke condensate and the appearance of tumours, and suggested that products should be tested:

- Memorandum from Dr. H. Wakeham to C.H. Goldsmith, PM Inc., September 9, 1969, **Exhibit PG-274**.

364. The PM Group was also kept informed of the results of the research conducted by its competitors.

365. On December 15, 1969, it received the results of research conducted by the RJR Group confirming that mice exposed to cigarette smoke developed emphysema:

- Memorandum from L. Weissbecker to R.D. Carpenter, *R.J. Reynolds Biological Research Program*, PM Inc., December 15, 1969, **Exhibit PG-275**.

366. A vigorous debate then ensued within the industry on whether or not to admit a causal link between certain diseases and smoking.

367. On August 12, 1977, after a meeting with researchers in the BAT and RJR Groups, a representative of the PM Group's European subsidiary summarized the situation as follows:

At the beginning of the meeting we almost came to a deadlock. In discussing causality a complete division of opinion occurred: Drs. Bentley, Field and Felton on the one side and Dr. Colby and myself on the other with Dr. Meloch and Mr. Matchett remaining indifferent. The reason was that the three representatives of the British companies accepted that smoking was the direct cause of a number of diseases. They shared the opinion held by the British medical establishment that a consistent statistical association between one risk factor and a disease was sufficient to be able to assume causality.

- Letter from H. Gaisch to Drs. H. Wakeham and R. Fagan, Philip Morris Europe, Middle East, Africa, August 12, 1977, **Exhibit PG-276**.

368. The PM Group was opposed at that time to any acknowledgement of a causal link between smoking and disease and even considered terminating its association with the CTR because some of its employees accepted the link:

- Memorandum from T.S. Osdene to Dr. R.B. Seligman, *Some Comments about the CTR Program*, PM Inc., November 29, 1977, **Exhibit PG-277**.

369. The PM Group preferred to direct scientific research towards means of perpetuating the controversy on the subject of a link between certain diseases and smoking:

- Memorandum from J.L. Charles to Dr. T.S. Osdene, *Comments on "Future Strategies for the Changing Cigarette" National Conference on Smoking and Health*, PM Inc., February 23, 1982, **Exhibit PG-278**.

370. The Group tried to influence internal scientific research and was concerned about admissions that could be made in the course of research it was funding:

An admission by the industry that excessive cigarette smoking is bad for you is tantamount to an admission of guilt with regard to the lung cancer problem.

- Memorandum from T.S. Osdene to Dr. R.B. Seligman, *Roper Study Proposal to Tobacco Institute*, PM Inc., February 16, 1978, **Exhibit PG-279**.

371. Internally, however, the PM Group was well aware that its position was untenable:

This company is in trouble. The cigarette industry is in trouble. If we are to survive as a viable commercial enterprise we must act now to develop responses to smoking and health allegations from both the private and the government sectors.

[...]

Let's face the facts: 1. Cigarette smoke is biologically active. A. Nicotine is a potent pharmacological agent. Every toxicologist, physiologist, medical doctor and most chemists know that. It is not a secret. B. Cigarette smoke condensate applied to the backs of mice causes tumours.

- Exhibit PG-278.

372. In its 1984 five-year plan, PM Inc. acknowledged that to be able to sustain the controversy, a defining importance had to be given not only to science, but also to public relations and legal stances taken in lawsuits:

- *Philip Morris Incorporated Five Year Plan 1984-1988*, March 1984, **Exhibit PG-280**.

373. The global strategy for countering anti-tobacco efforts on an international scale and changing the public's perception of the product formed part of discussions held by PMI senior management:

- *The Perspective of PM International on Smoking and Health (Text of the Discussion Document Used at the Meeting of Top Management)*, March 29, 1985, **Exhibit PG-281**.

374. The defence strategy to be used in various lawsuits was also subject to change.

375. Indeed, it became increasingly difficult for the PM Group to defend itself against lawsuits simply by arguing the lack of a causal link between disease and smoking since evolving knowledge on the link was weakening that contention.

376. The only option remaining to the PM Group was to rely on the plaintiffs' assumption of risk:

The great virtue of putting all the eggs into the assumption of risk basket (with the three compartments, risk/utility, objective and subjective) is that our defense is congruent with the accepted view on causation. It is very hard [*sic*] to argue that she assumed the risk of injury at the same time we insist that the general causation of cancer by cigarettes is still an issue of scientific dispute.

In sum my view of the case runs as follow: we use the medical evidence is used [*sic*] to show that probability, not certainty, is in issue. That in turn helps make the risk utility analysis more coherent.

- Letter from R.A. Epstein, University of Chicago, to M. Spaeth, Arnold & Porter, June 12, 1985, **Exhibit PG-282**.

377. On August 25, 1969, PM Inc.'s vice-president of research and development insisted on the need for the company to know its products better than anyone else in order to avoid being taken by surprise by information that might be published by its competitors or tobacco opponents:

- Memorandum from Dr. H. Wakeham to C.H. Goldsmith, *Proposal for Biological Research Program / Updated from July 1, 1969*, PM Inc., August 25, 1969, **Exhibit PG-283**.

378. The PM Inc. vice-president also recommended initiating in-house research into the biological effects of cigarettes.

379. On February 24, 1970, the PM Group examined the advisability of conducting research outside the United States, notably at the INBIFO laboratory:

The possibility of getting answers to certain problems on a contractual basis in Europe appeals to me and I feel presents an opportunity that is relatively lacking in risk and unattractive repercussions in this country.

- Memorandum from J.F. Cullman 3rd to H. Wakeham, PM Inc., February 24, 1970, **Exhibit PG-284**.

380. INBIFO was a biological research laboratory located in Cologne, Germany, that did business with the PM Group.

381. The possibility of acquiring a foreign laboratory such as INBIFO was attractive for the PM Group:

Since we have a major program at INBIFO, and since this is a locale where we might do some of the things which we are reluctant to do in this country, I recommend that we acquire INBIFO either in toto or to the extent of controlling interest.



- Memorandum from Dr. H. Wakeham to C.H. Goldsmith, *Acquisition of INBIFO*, PM Inc., April 15, 1970, **Exhibit PG-285**.

382. However, to ensure that the research conducted at INBIFO could not be attributed to the PM Group, the laboratory was officially owned by a Swiss enterprise, *Fabriques de Tabac Réunies*, controlled by the PM Group.

383. INBIFO's services were used to keep confidential any research whose results PM Inc. feared would be adverse:

- Memorandum from R.B. Seligman to Dr. T.S. Osdene, *Enriched Flavor*, PM Inc., April 22, 1976, **Exhibit PG-286**.

384. That desire to distance the PM Group from the research conducted at INBIFO continued over the years:

- Memorandum from Bob Pages to Dr. W. Reininghaus, *Tentative Agenda for Visit of Ragnar*, 1.Sep.89, PM Inc., August 29, 1989, **Exhibit PG-287**.

385. Despite those arrangements, the secret research conducted by INBIFO soon developed into another potential problem because of the possibility that the documents associated with the research could become accessible to plaintiffs suing the PM Group:

- Memorandum from W.J. Crampton, Shook, Hardy & Bacon to A. Holtzman, PM Inc., *Discovery of Research Documents in Foreign Laboratories by American Litigants*, October 27, 1990, **Exhibit PG-288**.

386. All the documents on the research carried out at INBIFO were subsequently destroyed.

(b) Development and implementation of a misleading public position

387. After publication of the *Frank Statement to Cigarette Smokers* in 1954 (Exhibit PG-16) the PM Group took a public position aimed at reassuring smokers.

388. That public position contradicted its internal knowledge about the harmful nature of its products.

389. In a speech on March 30, 1954, the vice-president of Philip Morris & Co. Ltd. (today PM Inc.) asserted that his company would stop selling its products if it had any knowledge they were harmful:

- G. Weissman, *Public Relations and Cigarette Marketing*, Philip Morris & Co. Ltd., March 30, 1954, **Exhibit PG-289**.

390. The president of Benson & Hedges, the Canadian subsidiary of PM Inc., was quoted in the following terms in an article in the *Montreal Gazette* edition of June 3, 1961:

There's no laboratory proof whatsoever that cigaret smoking causes cancer. It's just a matter of statistical guessing.

- *Montreal Gazette*, "Cigar Firm's Boss Likes Canada Already, Not Cigars", June 3, 1961, **Exhibit PG-290**.

391. That assertion was false, given the extent of the PM Group's internal knowledge.

392. In 1964, despite recognizing the soundness of the findings of the Surgeon General's report and how difficult it would be to refute them, the PM Group did not alter its public position and continued to deny that tobacco causes disease.

393. In its 1963 annual report, PM Inc. commented on the Surgeon General's report as follows:

In January of 1964, the report of the Surgeon General's Advisory Committee on smoking and health was released. Although the committee concluded that cigarettes constitute a significant health hazard, many other responsible scientists have seriously questioned whether the available scientific evidence supports many of the committee's conclusions. The Advisory Committee recognized that more research was clearly called for and acknowledged that there are benefits to be derived from smoking.

- *Philip Morris Incorporated Annual Report 1963*, March 4, 1964, **Exhibit PG-291**.

394. The PM Group also encouraged others to feed the controversy and wrote to various persons including a member of the House of Commons, congratulating him on asking questions in support of the industry's position before parliamentary committees:

- Letter from H. Cullman to the Honourable H. Stafford, PM Inc., October 24, 1969, **Exhibit PG-292**.

395. Likewise, PM Inc. and PMI were directly involved in publishing, in Canada, an article in which one of their employees falsely stated that the scientists at the PM Group had found no harmful constituents in cigarette smoke:

- Memorandum from H. Wakeham to H. Cullman, PM Inc., May 13, 1968, **Exhibit PG-293**;
- Canadian Research Development, *Chemistry of extra puffs*, December 1968, **Exhibit PG-294**.

396. In a speech given on April 21, 1970, the president of PMI continued to deny the link between lung cancer, emphysema, heart disease and smoking:

- *Remarks of Hugh Cullman, President, Philip Morris International before the Naval Academy Association of New York, Inc., April 21, 1970, Exhibit PG-295.*

397. He also denied that the CTR influenced scientific studies.

398. In a memorandum dated December 8, 1970, however, PM Inc.'s vice-president for research and development asserted with respect to the CTR:

What is truth to one is false to another. CTR and the Industry have publicly and frequently denied what others find as "truth". Let's face it. We are interested in evidence which we believe denies the allegation that cigaret smoking causes disease.

- Memorandum from H. Wakeham to J.F. Cullman, *Best Program for C.T.R.*, PM Inc., December 8, 1970, **Exhibit PG-296.**

See also:

- Memorandum from H. Wakeham to R.R. Millhiser, *Comments on the letter from Irving Zeldman, M.D., to Mr. David R. Hardy*, PM Inc., October 14, 1969, **Exhibit PG-297.**

399. In its 1974 annual report, PM Inc. sustained the controversy in these terms:

There continues to be debate in scientific circles about the interpretation of the statistical evidence which has been the principal basis for the assertion that cigarette smoking is a major cause of cancer and other human diseases.

- *Philip Morris Incorporated Annual Report 1974, Exhibit PG-298.*

400. Around 1977, in a manual designed to counter attacks against smoking, the PM Group continued to assert that it did not know whether tobacco caused certain diseases:

- *Tobacco Action Program Manual*, PM Inc., circa 1977, **Exhibit PG-299.**

401. In a speech given on June 16, 1978, the president of PMI and chair of the board of directors of Benson & Hedges insisted there was no causal link between certain diseases and smoking:

- *Speech for Mr. Hugh Cullman, Halifax Director's Dinner, June 26, 1978, Exhibit PG-300.*

402. Benson and Hedges propagated the public position taken by the PM Group and refuted both the existence of scientific proof associating smoking with health problems and the harmful effects of second-hand smoke:

- *The Facts about Tobacco, the Industry, Smoking and You, Benson and Hedges Canada Ltd, 1979, Exhibit PG-301.*

403. At the turn of the 1980s, the PM Group endeavoured to fuel the controversy by insisting on a variety of possible causes for the diseases usually linked to smoking.

404. Accordingly, PM Inc. stated in its 1981 annual report:

Although the smoking and health controversy continued unabated in 1981, scientific evidence continues to indicate that many factors - such as occupational environments, emotional health, diet, exercise and heredity - play major roles in development of chronic diseases often attributed to tobacco. This has not lessened attacks on tobacco, but it has at least brought some perspective to the controversy.

- *Philip Morris Incorporated Annual Report 1981, Exhibit PG-302.*

See also:

- *Philip Morris Incorporated Annual Report 1982, Exhibit PG-303;*
- *Philip Morris Incorporated Annual Report 1984, Exhibit PG-304;*
- *Philip Morris Incorporated Annual Report 1985, Exhibit PG-305.*

405. In Canada, the president of RBH restated that position of denial on November 24, 1987, before the House of Commons Legislative Committee examining Bill C-204:

- Excerpt from Issue 13, House of Commons, Legislative Committee, 2nd Session, 33rd Parliament, 1986-1987, **Exhibit PG-306**.

406. In 1991, the PM Group acknowledged to other industry members that cigarettes were a risk factor for lung cancer:

A fair statement of the current state of scientific knowledge is that cigarette smoking is a risk factor for some kinds of human lung cancer.

- Letter and document from Charles R. Wall to P. Casingena et al., *Risk Factor*, Philip Morris Companies Inc., June 4, 1991, **Exhibit PG-307**.

407. In a speech on November 21, 1994, however, the president of RBH, the Canadian subsidiary of the PM Group, asserted that the scientific validity of the research was doubtful and fraudulent:

- *39th Annual N.A.T.C.D. Convention Address by Joe Heffernan, President and C.E.O. Rothmans, Benson & Hedges Inc.*, November 21, 1994, **Exhibit PG-308**.

408. On June 8, 2000, the CEO of RBH admitted the risks associated with smoking before the Standing Senate Committee on Energy, the Environment and Natural Resources, but continued to deny any causal link between certain diseases and smoking:

Mr. Poirier: We believe that anyone who decides to smoke will incur incidental or incremental risks to their health on a number of illnesses, yes.

Senator Banks: "Risk" as opposed to "cause."

Mr. Poirier: I am not a scientist. What I can see is there is a number of different combinations of effect that will cause cancer. Smoking is one of those risks in combination, from what I

understand, to other things. Definitely, you are increasing your risk.

➤ Exhibit PG-263.

409. The PM Group Defendants wilfully failed to inform the people of Québec of the harmful nature of their products.

410. With the intention to mislead, PM Group Defendants deliberately concealed, downplayed or trivialized the harmful nature of their products with the object of inducing persons to start or continue to smoke.

411. In so doing, the PM Group Defendants failed in the duty to abide by the rules of conduct to which they were bound in respect of the persons in Québec who have been or might become exposed to tobacco products.

### **3. The Rothmans Group Was Aware of the Harmful Nature of its Product and Implemented a Misleading Public Position**

412. The Rothmans Group downplayed the health dangers for Québec smokers and denied that smoking causes disease.

413. In 1958, to promote its new cigarette filters, the Rothmans Group placed advertorials through its research department:

➤ *La Presse*, "Une Importante communication: L'Association Médicale Canadienne et l'usage de la cigarette", June 27, 1958, **Exhibit PG-309**.

414. In a second advertisement that ran on July 15, 1958, it asserted:

[Translation]

Therefore, Rothmans' filter today offers the best scientifically recognized balance between filtration and smoking satisfaction.

[...]

Unlike earlier trial and error methods, Rothmans research guarantees purity and consistent quality.

- *La Presse*, "L'usage de la cigarette et la santé", July 15, 1958, **Exhibit PG-310**.

415. Rothmans thus used the aura of science in its advertising to reassure smokers regarding the harmful effects of its products and persuade them to continue smoking.

416. That approach was criticized by the BAT Group which had harsh words for P. O'Neil-Dunne, the technical services director at Rothmans of Pall Mall (UK):

I agree that the photocopy of the Rothmans' advertisement from a Canadian paper, which you sent me in your letter of 30th June, is quite shocking, but I must say that its appearance does not come as a complete surprise to me. It is, as you say incomprehensible how O'Neil-Dunne can think that he is not going to hit hard the interests of all tobacco manufacturers, but I would like to suggest to you that this is just the type of thing which an egocentric moron such as I believe O'Neil-Dunne to be, would see as a correct line of action.

- Letter from Hoel to F.S. Geldart, BAT Co., July 9, 1958, **Exhibit PG-311**.

417. In that same month, *La Presse* published an article quoting the criticized director:

[Translation]

The abundant statistics on the association between lung cancer and heavy smoking can no longer be disputed.

- *La Presse*, "Un expert anglais admet le danger de la cigarette pour le cancer du poumon", July 31, 1958, **Exhibit PG-312**.



418. An advertorial placed by Rothmans' international research department in the August 30, 1958, edition of *La Presse* acknowledged, to a lesser extent, the statistical link between lung cancer and immoderate use of tobacco:

- *La Presse, Publireportage, "Le Congrès International sur le cancer et l'usage de la cigarette"*, August 30, 1958, **Exhibit PG-313**.

419. Following the release of the Surgeon General's report in 1964, however, the Rothmans Group aligned its public position with that of the international industry.

420. In harmony with the BAT Group, the PM Group and the RJR Group, the Rothmans Group from then on denied any link between smoking and lung cancer, heart disease and COPD.

421. In 1964, Rothmans of Pall Mall Canada Limited discredited the Surgeon General's report released in January in the following terms:

[Translation]

According to Wilmat Tennyson, vice-president of marketing services for Rothmans of Pall Mall Canada, the American government's recent report on tobacco and statements of the Minister of Health of Canada, Judith LaMarsh, contain only vague assertions, insinuations and hasty conclusions.

- *La Presse, "Selon un dirigeant de Rothmans – l'offensive contre la cigarette: insinuations et conclusions hâtives"*, March 16, 1964, **Exhibit PG-314**.

422. It did the same in its annual report:

This report has created a further storm of controversy, since many eminent doctors, scientists and statisticians have questioned the conclusions reached in this report on the basis of the available scientific evidence.

- *Rothmans of Pall Mall Canada Limited Annual Report 1964*, **Exhibit PG-315**.

423. The Rothmans Group management maintained that position throughout the period at issue:

- *NATCD Convention Special*, "Tennyson of Rothmans lashes out at smoking critics", May 21, 1964, **Exhibit PG-316**;
- *Montreal Star*, "Extra-longs Pinch Tobacco Profits", June 13, 1967, **Exhibit PG-317**;
- *The Globe and Mail*, "Why do (cough, cough) people smoke?", July 29, 1977, **Exhibit PG-318**;
- *Toronto Star*, "Rothmans shuns buyer 'fever', rewards shareholders, Smoking activists see payout of different kind – in court", July 16, 1987, **Exhibit PG-319**.

424. Rothmans of Pall Mall Canada Limited was a member of the CTMC, which speaks on the industry's behalf.

425. It relied on the expertise of Carreras Rothmans with regard to issues related to smoking and health:

- Letter from N. Cohen, Rothmans of Pall Mall Canada Limited, to C. Seymour, CTMC, July 26, 1982, **Exhibit PG-320**.

426. In an April 1993 document intended for its employees, Rothmans International Tobacco Limited (today Rothmans Services) reiterated its public position on the lack of evidence regarding the harmful nature of its products:

Most of the people who suffer from a disease statistically associated with smoking will have been exposed to many of the other risk factors with which the disease is associated.

[...]

Despite more than 40 years of intensive research, no-one has yet been able to demonstrate a basic causal mechanism for lung cancer or for heart disease.

- *Tobacco Issues - the Company's View*, Rothmans Services, April 1993, **Exhibit PG-321**.

427. That same year it actively supported RBH in an initiative seeking to oppose the implementation in Canada of regulations that would increase the size of health warnings:

- Fax from J.F. Clutterbuck to Neimeyer, Rothmans International Tobacco Limited, April 8, 1993, **Exhibit PG-322**;
- Letter from J.F. Clutterbuck to B. Stuckey-Clarke, Rothmans International Tobacco Limited, July 27, 1993, **Exhibit PG-323**.

428. The Rothmans Group Defendant wilfully failed to inform the people of Québec of the harmful nature of its products.

429. With the intention to mislead, the Rothmans Group Defendant deliberately concealed, downplayed or trivialized the harmful nature of its products with the object of inducing persons to start or continue to smoke.

430. In so doing, the Rothmans Group Defendant failed in the duty to abide by the rules of conduct to which it was bound in respect of the persons in Québec who have been or might become exposed to tobacco products.

#### **4. The RJR Group Was Aware of the Harmful Nature of its Product**

##### **(a) Abundant research on the dangers**

431. In a report dated February 2, 1953, an RJRT researcher made a survey of the current scientific knowledge on the link between lung cancer and smoking:

- C.E. Teague, Jr., *Survey of Cancer Research with Emphasis upon Possible Carcinogens from Tobacco*, RJRT, February 2, 1953, **Exhibit PG-324**.

432. In that survey (Exhibit PG-324) the RJR Group acknowledged that cigarette smoke was a cause of disease in mice and concluded:

The closely parallel increase in cigarette smoking has led to the suspicion that tobacco smoking is an important and etiologic factor in the induction of primary cancer of the lung. Studies of clinical data tend to confirm the relationship between heavy and prolonged tobacco smoking and incidence of cancer of the lung.

433. Scientific research was therefore encouraged, given the probable link between lung cancer and smoking.

434. The RJR Group investigated the components of cigarette smoke with the objective of isolating the harmful substances and removing those that could be carcinogenic:

- A. Rodgman, *The Analysis of Cigarette Smoke Condensate I. The Isolation and/or Identification of Polycyclic Aromatic Hydrocarbons in Camel Cigarette Smoke Condensate*, RJRT, September 28, 1956, **Exhibit PG-325**.

See also:

- A. Rodgman, *Monthly Research Report #30 – The Analysis of Cigarette Smoke Condensate*, RJRT, December 14, 1956, **Exhibit PG-326**.

435. The report of a lead researcher for RJRT described the direction of the research:

Having confirmed and extended the early published findings on polycyclic hydrocarbons in cigarette smoke, we initiated a lengthy research program to develop methods to lessen the amounts of these potentially dangerous compounds in cigarette smoke.

- A. Rodgman, *The Optimum Composition of Tobacco and its Smoke*, RJRT, November 2, 1959, **Exhibit PG-327**.

436. Research continued and in 1962 the truth became evident:

Obviously the amount of evidence accumulated to indict cigarette smoke as a health hazard is overwhelming. The evidence challenging such an indictment is scant.

- A. Rodgman, *The Smoking and Health Problem – A Critical and Objective Appraisal*, RJRT, 1962, **Exhibit PG-328**.

437. In view of the studies confirming the presence of constituents harmful to health in cigarette smoke, that report recommended investing in research programs to improve understanding of the effects of the components of tobacco, attempt to make cigarettes less harmful, and thus counter the association between health problems and smoking.

438. At the beginning of the 1960s, therefore, the RJR Group was well aware of the health hazards of smoking.

439. In February 1964, a research report reviewing the scientific studies stated:

The statistical data consist of the following: The results of some 29 retrospective statistical studies based on clinical findings have indicated that the risk of developing lung cancer, especially epidermoid or squamous cell carcinoma increases with the amount of tobacco smoked as cigarettes.

[...]

Although the results from these thirty-odd retrospective and prospective statistical studies cannot prove a cause-and-effect relationship between cigarette smoking and specific diseases and although these results are not considered to be extrapolatable to the smoking population as a whole, the statistical evidence itself, without contradictory data is irrefutable. At least four of these studies have shown that inhalation of the cigarette smoke increased the risk of developing lung cancer.

- A. Rodgman, *The Analysis of Cigarette Smoke Condensate, XXXV, A Summary of an Eight-Year Study*, RJRT, February 12, 1964, **Exhibit PG-329**.

440. In August 1964, the RJR Group was informed that cigarette smoke could contain nitrosamine, a carcinogenic substance:

- Memorandum from A. Rodgman to C.B. Wade, Jr., *Nitrosamine in Cigarette Smoke*, RJRT, August 31, 1964, **Exhibit PG-330**.

See also:

- Exhibit PG-76.

441. At the end of the 1960s, the RJR Group tested filters in an attempt to reduce the level of harmful particles in cigarette smoke:

- C.C. Whisnant and S.L. Stevenson, *Smoke Inhalation Studies IV: The Deposition of Particulate Matter in Human Smokers – A Comparison of the Winston and Multijet Filters*, RJRT, June 24, 1969, **Exhibit PG-331**;
- Memorandum from J.D. Woods to Dr. M. Senkus, *Comparison of Human Smoking to Machine Smoking of Cigarettes with Air Dilution Filters, a Fiber Filter, and Multijet Filters*, RJRT, November 17, 1969, **Exhibit PG-332**;
- File note by R.H. Cundiff, *Multijet Filter Cigarette*, RJRT, April 5, 1971, **Exhibit PG-333**.

442. In a confidential report dated August 10, 1967, the RJR Group, recognizing that the public associated smoking with lung cancer, developed a strategy emphasizing public relations efforts to counter that perception:

Despite the fact that the industry has very little, if any, positive evidence upon which to base the aggressive campaign necessary at this late date to materially change public opinion, public attitudes can be changed.

[...]

But unless there is some dramatic scientific breakthrough, any significant change in public opinion will require even more public relations efforts for many years to come.

- Memorandum from J.S. Dowdell to C.B. Wade, Jr., *Public Opinion – Smoking and Health*, RJRT, August 10, 1967, **Exhibit PG-334**.

443. Fearing liability lawsuits, the RJR Group did not hesitate to discredit its own unfavourable research.

444. As a result, in December 1969, RJRT's research director suggested that some adverse research could be invalidated or destroyed as needed, alleging misinterpretation of the data; doing so enabled the public position on the presumed existence of a scientific controversy to be maintained:

- Memorandum from M. Senkus to M. Crohn, *Invalidation of Some Reports in the Research Department*, RJRT, December 18, 1969, **Exhibit PG-335**.

445. On June 1, 1978, RJRT's director of scientific information stated his intent to convince the industry's scientists that a genuine controversy did exist over the health dangers of smoking:

In my judgement it would be very unfortunate to dissolve the MBRG because it is important to maintain contacts on a scientist to scientist level, to know what is going on in the various ICOSI member countries. I also see in the MBRG a vehicle to attempt to change the views of the tobacco industry scientists and trying to convince them that there is indeed a smoking and health controversy.

- Memorandum by Dr. Colby, *Telephone Conversation between Dr. Bentley and Dr. Colby*, June 1, 1978, RJRT, **Exhibit PG-336**.

446. The Medical and Behavioural Research Group (MBRG) was an ICOSI working group of scientists from various manufacturers:

- *ICOSI Working Party on Medical Research*, ICOSI, June 1978, **Exhibit PG-337**.

447. RJRT controlled the release of in-house research documents as a means of filtering out potentially damaging reports, as shown in a memorandum dated November 14, 1974:

- Memorandum from A. Rodgman to Dr. A.H. Laurene, *Publication – Pros and Cons*, RJRT, November 14, 1974, **Exhibit PG-338**.

448. By 1979, the RJR Group was well aware of the effects of cigarettes on cardiovascular disease:

Although we will not be able to share with you until mid-January our final results, it appears at this time that nicotine, but not carbon-monoxide, in tobacco smoke may affect adversely rates of atherogenesis. Studies in man, on the other hand, suggest that there are components other than nicotine in tobacco smoke, or responses to the act of smoking itself, that have a cardiac inotropic or chronotropic effect.

- Letter from Dr. G. Huber, Harvard Medical School, to K. Wold, RJR Industries, December 21, 1979, **Exhibit PG-339**.

449. The RJR Group did not, however, inform the public about those damaging effects to health and instead maintained publicly that controversy on the subject persisted.

450. In a memorandum dated July 10, 1980, emphasis was placed on strategies to be implemented by the RJR Group to counter the information being published about the harmful effects of tobacco:

2. Improve understanding of the smoking and health controversy among key publics (employees, growers, suppliers, tradesmen and consumers). Most of the information on smoking issues is generated by the media, which presents only one side of the smoking and health controversy. We need to provide our key publics with facts that they have not received in the past so that they can make their own informed decisions regarding the controversy.



- Memorandum from R.J. Marcotullio to E.G. Vimond, Jr. et al., *Smoking Issues Action Plan*, RJRI, July 10, 1980, **Exhibit PG-340**.

451. The RJR Group also refused to say whether it was conducting research on less toxic and less mutagenic cigarettes, since that could be construed as an implicit admission of the harmful effects of existing products.

452. In December 1982, an RJR employee alerted his director about an RJR scientist who intended to do research to develop a less harmful product:

I explained our legal concerns about the admission, implicit in the words "less mutagenic" or "safer", that our existing products are "mutagenic" or "unsafe". He seemed to understand our concern but refused to accept it as a rationale for not doing what he felt we had an obligation to do (as a responsible manufacturer).

- Memorandum from W. Juchartz to S.B. Witt III, RJRT, December 13, 1982, **Exhibit PG-341**.

453. In another memorandum dated April 14, 1983, that employee recounted a discussion with a researcher and the concern he had about the testimony that could ultimately be given by the researcher:

I told him that I had recently become involved in discussions concerning his beliefs, that outside counsel had expressed serious concerns as to the litigation [*sic*] consequences in the event that our head of R & D did, in fact, believe that smoking caused cancer and was cross-examined in a smoking and health case.

- Memorandum from W. Juchartz to S.B. Witt III, RJRT, April 14, 1983, **Exhibit PG-342**.

See also:

- Note by S.B. Witt III, RJRT, April 19, 1983, **Exhibit PG-343**.

454. In August 1985, new strategies against potential lawsuits were suggested to the RJR Group:

Instead of presenting a full dress medical defense to prove the "open question" proposition – an option that is becoming less available to the industry due to the lack of witnesses willing to express this position – it may be preferable to set a more modest goal: showing the jury the unexplained and admitted anomalies in the causation thesis, and using this as the primary basis for the "open question" stance.

- Note by Jones, Day, Reavis & Pogue, *Smoking and Health Litigation Tactical Proposal*, August 10, 1985, **Exhibit PG-344**.

455. It indeed became increasingly difficult to argue that epidemiological studies did not prove a causal link between smoking and disease:

If we continue to focus exclusively on our attempt to undermine global epidemiology data, we will continue to be accused of ignoring a large body of data which run contrary to our view and also of debating about marginal issues. This is not a totally workable strategy within the contemporary 1986 climate.

- Letter from A.V. Colucci to J.E. Young of Jones, Day, Reavis & Pogue, RJRT, July 30, 1986, **Exhibit PG-345**.

456. Furthermore, the marketing of new products created problems for the RJR Group which sought to avoid at all costs any implicit or explicit insinuation that cigarettes were harmful to health:

Mr. Hutt stated that RJR had no intention at this time to promote or label its new "smokeless" cigarette as safer than conventional cigarettes. He commented that such a claim would be an indictment of the tobacco industry and its long standing position that conventional cigarettes are not unsafe. Mr. Hutt stated that RJR had no intention of placing itself in a position of defending claims that the "smokeless" cigarette is safer, nor did RJR have any intention of jeopardizing the industry's long standing position. He asserted that the new product would merely be marketed as "an alternative cigarette" in the way that reduced tar cigarettes and filtered cigarettes have been marketed.

- Memorandum from K.M. Budich, Department of Health and Human Services, October 23, 1987, **Exhibit PG-346**.

457. The RJR Group also conducted a considerable amount of research using the Ames test to analyze the mutagenicity of constituents of tobacco smoke condensate:

- C.K. Lee and E.A. Reed, *Ames Test on Smoke Condensates – A Summary*, RJRT, May 9, 1983, **Exhibit PG-347**;
- G.D. Byrd, K.W. Fowler, R.D. Hicks and M.E. Lovette, *Determination of Acrylonitrile, Benzene, Toluene and Styrene in Mainstream Vapor Phase Smoke of Alpha and Reference Cigarettes*, RJRT, August 23, 1988, **Exhibit PG-348**;
- G.D. Byrd and J.E. Bodnar, *Determination of Benzene in Sidestream Smoke from Alpha Cigarettes and Reference Cigarettes*, RJRT, August 29, 1988, **Exhibit PG-349**;
- Memorandum from E.L. White to B.T. Hodge, *GC/MS Analysis of 4-aminobiphenyl adducts at RJRT-R&D*, RJRT, June 29, 1992, **Exhibit PG-350**;
- M.S. Uhrig, *Quantitation of 2-Aminonaphthalene and 4-Aminobiphenyl in Mainstream Cigarette Smoke for GTC 7-026*, RJRT, May 25, 1997, **Exhibit PG-351**.

458. After being acquired by the RJR Group in 1974, Macdonald was kept informed of the internal research conducted by its parent corporation and was involved in the RJR Group's international strategy on health and smoking:

- Memorandum and attachment from J.T. Wilson to H.J.M. Haerri et al., *Smoking and Health Coordination*, RJRTI, July 7, 1977, **Exhibit PG-352**.

459. In that memorandum (Exhibit PG-352) Guy-Paul Massicotte of Macdonald was designated to keep the RJR Group abreast of the evolution of the political, social and economic situation of the tobacco industry in Canada

and of any developments in negotiations between the industry and the Canadian government.

460. The RJR Group also controlled what Macdonald would say about the harmful effects of its products.

461. That is why, when BAT Co. complained about Macdonald's advertising of its new *Vantage* cigarette in 1975, it did so directly to the parent corporation RJR Industries:

- Letter from R. Dobson, BAT Co., to W.S. Smith, RJR Industries, October 9, 1975, **Exhibit PG-353** and reply from W.S. Smith to R. Dobson, October 10, 1975, **Exhibit PG-354**.

462. In a memorandum dated July 6, 1977, Macdonald reported on a meeting between the Canadian tobacco manufacturers and representatives of the Department of National Health and Welfare:

One had to leave this meeting with a sense of frustration – so much time spent and so little achieved. On the other hand it leaves one with a degree of optimism for the future as far as the industry is concerned. They are in a state of chaos and are uncertain where to turn next from a scientific point of view. They want to be seen to be doing the right thing, and to keep their Dept. in the forefront of the Smoking and Health issue. However, it appears they simply do not have the funds to tackle the problem in a proper scientific manner. Our continuing dialogue can continue for a long time, as they feel meetings such as these are beneficial.

[...]

I am far more optimistic in answering the Morrison technical questions in the way we have, as a result of this meeting. They have not presented any scientific evidence which need cause us concern [...].

- Memorandum from D.A. Crawford to R.C. Shropshire, *Meeting at Guelph towards less hazardous cigarettes*, Macdonald, July 6, 1977, **Exhibit PG-355**.

463. Not only did Macdonald refrain from sharing its knowledge about the dangers of its products, it also rejoiced over the government's lack of evidence and funds.

464. Additionally, Macdonald took the stance of resisting any request to publish the carbon monoxide levels in cigarette smoke:

- Memorandum from F.A. Leclerc to L.W. Pullen, *Dr. Morrison's Letter on CO*, Macdonald, February 5, 1981, **Exhibit PG-356**.

465. In light of the above, it is clear that the RJR Group was aware, more than anyone else, of the dangers of its product.

(b) Development and implementation of a misleading public position

466. The RJR Group's public position completely contradicted the scientific knowledge developed by its researchers.

467. Instead of informing the public, the RJR Group chose to conceal the results of its research, lie to smokers about the dangers of smoking, and manipulate public opinion by falsely sustaining a controversy.

468. Even before joining the RJR Group, Macdonald denied the hazards of smoking:

- *La Presse*, "La cigarette et le cancer", June 13, 1963, **Exhibit PG-357**.

469. On June 25, 1964, shortly after the release of the Surgeon General's report, the chair of RJRT's board of directors denied the harmful effects of tobacco, and objected to any form of regulation, especially the printing of health warnings on cigarette packages:

- *Statement of Bowman Gray before the House Committee in Interstate and Foreign Commerce, RJRT, Exhibit PG-358.*

470. RJRT objected to any form of regulation because it considered the proposed warnings were not representative of scientific knowledge.

471. In fact, the RJR Group denied that science could establish a causal link between certain diseases and smoking.

472. In the 1970s, the RJR Group continued to claim falsely the existence of a scientific controversy over the link between smoking and certain diseases.

473. Perpetuating that controversy was part of the RJR Group's public relations strategy, as evidenced in a letter dated April 7, 1972, in response to concerns expressed by a school principal:

Despite all the research going on, medical science has not found any conclusive evidence that an element in tobacco or tobacco smoke causes any human disease. The answers to the many unanswered smoking and health questions—and the true causes of human diseases – can, we believe, be determined by scientific research. Our company intends, therefore, to continue to support such research until the truth is known.

- Letter from T.K. Cahill, RJRT, to K. Bersinger, April 7, 1972, **Exhibit PG-359.**

474. The RJR Group also promoted the health issues controversy among its sales representatives:

- Publication, *Merchandiser*, "Facts Tobacco Men Should Know", RJRT, January 1978, **Exhibit PG-360.**

475. The RJR Group sustained the controversy in its public statements.

476. In 1976 and 1977, addressing marketing and research staff, RJRT's research director stated the following on the subject of cardiovascular disease:

However, the consensus among reputable scientists is that levels of carbon monoxide, nitric oxide and other gases encountered in all smoking situations are well within completely safe levels.

- Speech by M. Senkus, *Some Effects of Smoking*, RJRT, 1976, **Exhibit PG-361**.

477. The fact remains that at that time, the RJR Group was aware of the link between smoking and cardiovascular disease.

478. During the 1980s, the RJR Group continued its strategy of denying in its public statements any link between smoking and health problems.

479. In 1984, in two advertisements intended for the general public, RJRT stated its position to the effect that there was no link between smoking and disease:

- Advertisement, *Can we have an open debate about smoking?*, RJR Group, 1984, **Exhibit PG-362**;
- Advertisement, *Smoking and health: Some facts you've never heard about.*, RJR Group, 1984, **Exhibit PG-363**.

480. The RJR Group also challenged anti-tobacco campaigns:

- *Le Devoir*, "Reynolds riposte aux campagnes des non-fumeurs", February 4, 1984, **Exhibit PG-364**.

481. On November 28, 1987, the RJR Group sent a letter to the U.S. Department of Health and Human Services in which it continued to deny that smoking caused health problems:

- Letter from P.B. Hutt, Covington & Burling, to R.M. Davis, Department of Health and Human Services, November 28, 1987, **Exhibit PG-365**.

482. On or about November 24, 1987, in the same vein as the submissions made in the United States, the president of Macdonald restated the non-link position before the Legislative Committee examining Bill C-204:

All the research that has been carried out clinically has not in one single instance demonstrated that smoke and tobacco cause any disease.

- Exhibit PG-306.

483. The RJR Group continued to publicly deny the harmful effects of cigarettes on health until the end of the 1990s:

Despite all the research going on, the simple and unfortunate fact is that scientists do not know the cause or causes of the chronic diseases reported to be associated with smoking.

- Letter from J.F. Spach, RJRT, to A. Christina, August 18, 1988, **Exhibit PG-366**.

See also:

- Letter from J.F. Spach, RJRT, to Willow Ridge School principal, January 11, 1990, **Exhibit PG-367**.

484. Not until 2000 did Macdonald mitigate its position when its CEO stated before the Standing Senate Committee on Energy, the Environment and Natural Resources:

The company does not have a position. The position is to go along with the competent medical authorities, which in this case are Health Canada, who gather and analyse the data.

- Exhibit PG-263.



485. The RJR Group Defendants wilfully failed to inform the people of Québec of the harmful effects of their products.

486. With the intention to mislead, the RJR Group Defendants deliberately concealed, downplayed or trivialized the harmful nature of their products with the object of inducing persons to start or continue to smoke.

487. In so doing, the RJR Group Defendants failed in the duty to abide by the rules of conduct to which they were bound in respect of the persons in Québec who have been or might become exposed to tobacco products.

**B. THE DEFENDANTS FAILED TO INFORM THE PERSONS IN QUÉBEC ABOUT THE ADDICTIVE PROPERTIES OF THEIR PRODUCTS**

488. For the purposes of this Motion, “dependence” and “addiction” are used synonymously. [Translator's Note: This paragraph applies in particular to the original French version.]

489. Nicotine is an alkaloid found in tobacco that acts in the brain and throughout the body.

490. Nicotine, through its physiological effects, causes addiction.

491. Tobacco products are the most widespread and most efficient nicotine delivery devices.

492. Consumers addicted to tobacco products are no longer free to choose to quit or to continue their use of the products.

## 1. Knowledge and Misleading Position of the BAT Group

### (a) Abundant research on nicotine

493. Beginning in 1959, the BAT Group conducted or funded a number of research projects on nicotine, some of which were conducted on laboratory mice:

(a) in 1959, Project Mad Hatter I reviewed the literature and conducted a preliminary study of the factors influencing demanding habits:

➤ C. Ellis, *The Effects of Smoking: Proposal for Further Research Contracts with Battelle*, BAT Co., February 13, 1962, **Exhibit PG-368**;

(b) in 1959 and 1960, Project Mad Hatter II investigated the nicotine balance in moderate and heavy smokers and studied the social and physiological factors of smoking:

➤ Exhibit PG-368;

(c) from 1960 to 1962, Project Mad Hatter III investigated “the fate of nicotine in the body”:

➤ Exhibit PG-368;

➤ Letter from C. Ellis, BAT Co., to W.S. Cutchins, Brown & Williamson, *The Fate of Nicotine in the Body*, and acknowledgement of receipt by E.P. Finch, Brown & Williamson, July 31, 1963, **Exhibit PG-369**;

➤ H. Geissbuhler and C. Haselbach, *The Fate of Nicotine in the Body, for the British American Tobacco Co. Ltd.*, Battelle Memorial Institute, **Exhibit PG-370**;

(d) from 1960 to 1962, Project Hippo I and Project Hippo II aimed at identifying and studying the various physiological effects of nicotine on the body, including its antidiuretic effect, its potential

interference with the stress mechanism, its inhibiting effect on the regulation of body weight, and its influence on the thyroid gland and sexual glands:

- Exhibit PG-368;
- J. Hersch et al., *Final Report on Project HIPPO I, for the British American Tobacco Co. Ltd.*, Battelle Memorial Institute, January 1962, **Exhibit PG-371**;
- C.H. Haselbach and O. Libert, *Final Report on Project HIPPO II, for the British American Tobacco Co. Ltd.*, Battelle Memorial Institute, March 1963, **Exhibit PG-372**.

494. The BAT Group thus understood its product and closely investigated both the role of nicotine and the behaviour of smokers.

495. The BAT Group had in fact more extensive knowledge of the effects of nicotine than that contained in the public scientific literature:

- Exhibit PG-368.

496. The BAT Group also frequently organized conferences on those subjects, which brought together researchers and senior management, including those of Imperial Tobacco Company of Canada, Limited.

497. As early as 1962 and in 1963, a BAT Co. scientific adviser stated that

- (a) nicotine causes addiction, because of both its physiological and psychological activity:

- Exhibit PG-368;

- (b) the habit of smoking is “a habit of addiction that is pleasurable”, and nicotine is “a very remarkable beneficent drug [... and] a very fine drug”:

- Exhibit PG-51.

See also:

- Letter from C. Ellis, BAT Co., to W.S. Cutchins, Brown & Williamson, June 4, 1963, **Exhibit PG-373**;
- Letter from C. Ellis, BAT Co., to G.F. Todd, TRC (UK), May 29, 1963, **Exhibit PG-374**.

498. That knowledge was shared among all BAT Group members who agreed that nicotine was the most important ingredient in tobacco and the very reason people smoke:

Moreover, nicotine is addictive.

We are, then, in the business of selling nicotine, an addictive drug effective in the release of stress mechanisms. [...]

- Memorandum by A. Yeaman, *Implications of Battelle Hippo I & II and the Griffith Filter*, Brown & Williamson, July 17, 1963, **Exhibit PG-375**.

See also:

- Letter from R.B. Griffith, Brown & Williamson, to J. Kirwan, BAT Co., September 18, 1963, **Exhibit PG-376**;
- Memorandum by C. Ellis, *The Health Problem and Objectives in Research on Cigarette Design*, BAT Co., May 28, 1962, **Exhibit PG-377**;
- Minutes of the *Research Conference Held at Hilton Head Island, S.C. 24th – 30th September*, BAT Co., 1968, **Exhibit PG-378**;
- *Secondary Source Digest*, Brown & Williamson, circa 1970, **Exhibit PG-379**;
- J.E. Kennedy, *Trip Report, Conference on Human Smoking Habits Imperial Tobacco Company, Montreal, Quebec, Canada/007*, Brown & Williamson, November 27, 1972, **Exhibit PG-380**;
- *Conference on Smoking Behaviour, Group Research & Development Centre Southampton, 11th and 12th October 1976*, BAT Group, **Exhibit PG-381**;

- D.E. Creighton, *Compensation for Changed Delivery*, BAT Co., June 27, 1978, **Exhibit PG-382**;
- L.C.F. Blackman, *Research Conference Montebello, Canada 30th August – 3rd September 1982*, BAT Co., September 10, 1982, **Exhibit PG-383**;
- W.W. Templeton, *Receptors for Nicotine in the Central Nervous System: I Radioligand Binding Studies, Report No. RD.1960 Restricted*, BAT Co., March 22, 1984, **Exhibit PG-384**;
- Program of the *Chemosensory Meeting, BATUKE R&D Centre, Southampton, 9th-13th June, 1986*, B.A.T. (U.K. and Export) Limited, June 6, 1986, **Exhibit PG-385**;
- R. Baker, *Summary of Presentation by Gio Gori: "The Scientific Implications for the Future of Cigarette Demand"*, B.A.T. (U.K. and Export) Limited, June 13, 1986, **Exhibit PG-386**;
- Memorandum from P. Sheehy, BAT Co., to P. Crawford, Imasco, December 18, 1986, **Exhibit PG-387**.

499. During the 1960s and 1970s, the BAT Group developed and marketed low tar and nicotine products to reassure smokers who were concerned about their health.

500. Beginning in 1960, the BAT Group worked on the transfer of nicotine to tobacco smoke and hoped to develop a low tar cigarette that would retain all the effects of nicotine:

- Letter to L.C. Laporte, BAT Group, October 6, 1960, **Exhibit PG-388**;
- Letter from I.W. Hughes, BAT Co., to R.S. Wade, Imperial Tobacco Company of Canada Ltd., December 11, 1961, **Exhibit PG-389**;
- Exhibit PG-376;
- Exhibit PG-56;

- R.L. Rice, *Laboratory Report No. 104L, Considerations Related to the Feasibility of Modifying the Tar and Nicotine Yields from PCL*, Project Code T-6535, ITL, January 20, 1972, **Exhibit PG-390**;
- T.A. Smith, *Research Department Research Programme*, ITL, July 20, 1971, **Exhibit PG-391**;
- T.A. Smith, *Progress Report Research Department, July-December 1971*, ITL, April 24, 1972, **Exhibit PG-392**;
- *Notes on Group Research and Development Conference*, BAT Co., April 18, 1977, and cover letter by S.J. Green, April 19, 1977, **Exhibit PG-393**.

501. By 1967, the BAT Group knew that tobacco products had to deliver a minimum amount of nicotine to prevent smokers from quitting:

- Exhibit PG-56;
- Draft minutes of the *B.A.T.: R. & D. Conference – Montreal*, BAT Co., 1967, **Exhibit PG-394**;
- Exhibit PG-159;
- Summary report by R.M. Gibb, *Meeting of Technical Representatives, May 17, 1971*, CTMC, **Exhibit PG-395**;
- Exhibit PG-377;
- *Structured Creativity Conference Delegate Presentations, Montagu Arm's Hotel, Beaulieu, Hampshire UK, 25th-28th June, 1984*, BAT Group, 1984, **Exhibit PG-396**.

502. The BAT Group's awareness of the importance of nicotine was such that it feared the loss of its market share if it reduced the content in its products too drastically:

- C.I. Ayres, *The Product in the Early 1980s*, BAT Co., March 1976 and cover letter from F. Haslam to S.J. Green, March 26, 1976, **Exhibit PG-397**;
- Minutes of the meeting of the BAT Co. Tobacco Strategy Review Team, November 14, 1989, **Exhibit PG-398**;

- *Note for Tobacco Strategy Review Team, 2nd December 1991, De-nicotined Brands and the Implications for Group R&D*, BAT Co., November 11, 1991, **Exhibit PG-399**;
- Memorandum from M. Norsworthy to A.L. Heard, Tobacco Strategy Review Team, BAT Co., November 4, 1991, **Exhibit PG-400**;
- Memorandum from M. Norsworthy to I.A. Ross, Tobacco Strategy Review Team, BAT, November 5, 1991, **Exhibit PG-401**;
- Memorandum from R. Salter to P. Sheehy et al., Tobacco Strategy Review Team, BAT Co., November 8, 1991, **Exhibit PG-402**.

503. The BAT Group was also aware of the phenomenon of compensation whereby smokers changed the way they smoked in order to obtain their required amount of nicotine, for example by increasing the number of puffs or inhaling more deeply:

- E.R. Freiesleben and P.J. Dunn, *The Use of the Freiri Slave Smoker to Investigate Changes in Smoking Behaviour Part I, Project: T-8077*, ITL, March 3, 1975, **Exhibit PG-403**;
- D.E. Creighton, *Compensation for Changed Delivery*, BAT Co., June 17, 1975, **Exhibit PG-404**;
- Exhibit PG-382;
- Exhibit PG-384.

504. The BAT Group therefore developed various processes to increase the effect of nicotine and the speed of nicotine delivery so that smokers could obtain the minimum level of nicotine required, even with a lower tar content product:

- (a) as early as 1959, the BAT Group knew that nicotine was present in two forms: bound nicotine and free nicotine, the latter reaching the brain more rapidly and thus having a more powerful effect:

- Letter from L.C. Laporte, Imperial Tobacco Company of Canada Limited, to H.D. Anderson, BAT Co., December 30, 1959, **Exhibit PG-405**;
- Memorandum from H.D. Anderson to R.P. Dobson, *Potassium Carbonate*, BAT Co., August 7, 1964, **Exhibit PG-406**;
- S.R. Evelyn, *The Release During Smoking of Nicotine Added as Various "Salts" to Extracted Tobacco Cigarettes*, Report No. RD. 286-R, BAT Co., May 1, 1964, **Exhibit PG-407**;
- D.E. Creighton, *Product Development Review*, BAT Co., June 1988, **Exhibit PG-408**;

(b) the BAT Group also knew that the quantity of free-base nicotine could be increased by varying the pH value of the tobacco:

- Exhibit PG-407;
- *Quartely Report July – September 1964*, BAT Co., October 14, 1964, **Exhibit PG-409**;
- S.R. Evelyn, *The Effect of Additives on Smoke Chemistry: Action of Gaseous Ammonia on Fire-Cured Tobacco*, Report No. RD. 334-R, BAT Co., June 1, 1965, **Exhibit PG-410**;
- J.D. Backhurst, *Further Work on "Extractable" Nicotine*, Report No. RD. 437-R, BAT Co., September 30, 1966, **Exhibit PG-411**;
- I.W. Hughes and S.R. Evelyn, *Addition of Nicotine to Synthetic Smoking Materials*, BAT Co., June 9, 1967, **Exhibit PG-412**;
- Exhibit PG-391;
- Exhibit PG-408;
- Exhibit PG-398;
- T.G. Mitchell, *Research Conference 1980, Sea Island, Ga. Position Paper*, BAT Co., August 1980, **Exhibit PG-413**;

(c) the BAT Group carried out research to develop varieties of tobacco and reconstituted tobacco leaves, again with the aim of increasing the effects of nicotine:



- Exhibit PG-412;
- Exhibit PG-56;
- Exhibit PG-159;
- Exhibit PG-392;
- Exhibit PG-413;
- T.G. Mitchell, *Prospects for Augmenting Nicotine Content of Tobacco Products*, BAT Co., and cover letter from W.B. Fordyce to C.H. Stewart Lockhart et al., May 2, 1980, **Exhibit PG-414**;
- Exhibit PG-398;

(d) the BAT Group also knew that by perforating cigarette paper or filters, or by manipulating the composition of filters, it could increase the impact of its products:

- R.B. Griffith, *Report No. 63-9-R, The Control of Smoke Composition*, Brown & Williamson, September 20, 1963, **Exhibit PG-415**;
- Exhibit PG-391;
- Exhibit PG-408;
- Exhibit PG-405.

505. During the 1970s, the BAT Group refined its knowledge of nicotine and had an extensive understanding of its effects on the brain of smokers:

- Exhibit PG-381;
- *Topics in Smoking and Health Bible*, BAT Co., circa 1978-1981, **Exhibit PG-416**;
- Exhibit PG-384.

506. In 1979, when increasing independent research clearly demonstrated that nicotine is addictive, the BAT Group noted that certain American

Defendants were reluctant to continue their own research for fear that it would confirm the addictive properties of nicotine:

- D.G. Felton, *Visit to Canada & USA, October 1979, Detailed Reports of Visits*, BAT Co., **Exhibit PG-417**.

507. In June 1984, ITL stated it was fortunate for the industry that very few smokers are able to quit smoking:

- Exhibit PG-396.

508. Furthermore, the BAT Group understood the stimulating effects of nicotine so well that it was not concerned about the marketing of transdermal nicotine patches, whose pharmacological effects were not as powerful as those of cigarettes:

- E. Kausch, *Transdermal Nicotine*, B.A.T. Cigarettenfabriken GmbH, and cover letter from R. Salter, BAT Co., to B.D. Bramley et al., BAT Group, April 3, 1992, **Exhibit PG-418**.

509. The BAT Group even compared nicotine to harder drugs, such as marijuana, LSD and amphetamines:

A cigarette as a "drug" administration system for public use has very very significant advantages:

i) Speed

Within 10 seconds of starting to smoke, nicotine is available in the brain. Before this, impact is available giving an instantaneous catch or hit, signifying to the user that the cigarette is "active". Flavour, also, is immediately perceivable to add to the sensation.

Other "drugs" such as marijuanha, amphetamines, et alcohol are slower and may be mood dependant.

- Exhibit PG-396.

510. The BAT Group, therefore, has long known that the nicotine in its products causes addiction.

(b) Development and implementation of a misleading position

511. Rather than inform the public that tobacco products are addictive, as demonstrated in its own research, the BAT Group developed its public position in a manner to mislead the public on the subject.

512. On July 26, 1962, following publication of the report of the Royal College of Physicians, BAT Co. sent to all the companies in its Group a guide providing answers to questions from the public or the media relating to tobacco and health issues:

➤ Exhibit PG-187.

513. In that guide, BAT Co. cited the Royal College of Physicians report that described smoking as a habit; however, it omitted to mention that smoking is addictive, as its own research had revealed.

514. In 1963, BAT Co.'s scientific adviser required authorization from the board of directors before sending to the TRC (UK) research reports establishing that nicotine is a dependence-producing drug, and he asked the recipients of the reports to keep them confidential:

➤ Exhibit PG-374.

515. At around that time, the U.S. Surgeon General asked the Tobacco Institute to provide him with the findings of the internal studies conducted by the tobacco products manufacturers:

- Letter from J.M. Hundley, Surgeon General, to G.V. Allen, Tobacco Institute, March 12, 1963, **Exhibit PG-420**.

516. In its reply to the Surgeon General, Brown & Williamson wilfully omitted to mention the research conducted at Battelle:

- Letter from J. Johnston, White & Case, to D. Bryant, Brown & Williamson, May 6, 1963, **Exhibit PG-421**;
- Letter from W.S. Cutchins, Brown & Williamson, to J.M. Hundley, Surgeon General, May 14, 1963, **Exhibit PG-422**.

517. Brown & Williamson would never send the Surgeon General three Battelle research reports, received a few weeks later, establishing that nicotine causes addiction:

- Exhibit PG-373.
- *Note for Mr. Cutchins*, June 19, 1963, **Exhibit PG-423**;
- Report of a telephone conversation entitled *T.I.R.C. New York, Telephone Conversation with Mr. Hoyt, 26th June 1963, Battelle Reports on Project "Hippo"*, June 28, 1963, **Exhibit PG-424**;
- Letter from W.S. Cutchins, Brown & Williamson, to A.D. McCormick, BAT Co., June 28, 1963, **Exhibit PG-425**;
- Fax from A. Yeaman, Brown & Williamson, to A.D. McCormick, BAT Co., July 3, 1963, **Exhibit PG-426**.

518. In January 1964, on the basis of incomplete information, the Surgeon General's report concluded that smoking was a habit and not an addiction:

- Exhibit PG-18.

519. The BAT Group and the other Groups extensively cited that report in support of their public position that smoking is a habit and not an addiction.

520. The BAT Group's position on nicotine set out in 1962 (Exhibit PG-187) remained substantially unchanged until the mid-1970s, i.e. that smoking was a habit (with no mention of addiction) and that tobacco produced beneficial effects:

- *Smoking and Health*, BAT Co., November 28, 1963, and cover letter by A.D. McCormick, **Exhibit PG-427**;
- Exhibit PG-148;
- Exhibit PG-191;
- *Smoking and Health*, BAT Co., and cover letter from G.C. Hargrove, April 17, 1973, **Exhibit PG-428**;
- *Smoking and Health, Assumptions, Policies, Guidelines*, BAT Co., *Smoking and Health – Questions and Answers*, BAT Co., and cover letter from G.C. Hargrove, June 26, 1974, **Exhibit PG-429**;
- *B.A.T. Board Plan, Smoking and Health, Strategies and Constraints*, BAT Group, December 1976, **Exhibit PG-430**;
- Exhibit PG-150.

521. The BAT Group positions were translated into policies that were reviewed in cooperation with ITL and sent “to all No. 1s overseas”:

- Exhibit PG-148;
- Exhibit PG-191;
- Letter from G.C. Hargrove, BAT Co., to J. Edens, Brown & Williamson, *Montreal Smoking and Health Conference*, February 22, 1973, and conference agenda, **Exhibit PG-431**;
- Exhibit PG-428;
- Exhibit PG-429;
- Letter and attachment from R.M. Gibb, ITL, to S.J. Green BAT Co., February 13, 1975, **Exhibit PG-432**.

522. In 1977, the BAT Group foresaw that government authorities would acknowledge the addictive properties of nicotine and that manufacturers would be urged to reduce its content:

- *B.A.T. Board Strategies, Smoking and Health, Basic Assumptions*, BAT Group, November 25, 1977, **Exhibit PG-433**;
- *B.A.T. Board Strategies, Smoking and Health, Strategies and Constraints*, BAT Group., November 25, 1977, **Exhibit PG-434**;
- *B.A.T. Board Strategies, Smoking and Health, Questions and Answers*, BAT Group., November 25, 1977, **Exhibit PG-435**;
- Minutes of a meeting, *Tobacco Division Board of Management, Wednesday 29th June 1977*, BAT Co., meeting agenda and note dated July 20, 1977, **Exhibit PG-436**.

523. Internally, the BAT Group knew that few people were aware of the effects of nicotine, i.e. that it causes addiction and that it is a poison:

- Note from H.D. Steele to M.J. McCue, Brown & Williamson, August 24, 1978, **Exhibit PG-437**.

524. The BAT Group therefore revised its position, which it would maintain until the 1990s, to convince the public that nicotine does not cause addiction because, among other reasons, smoking does not meet the definition of addiction:

- Exhibit PG-433;
- Exhibit PG-434;
- Exhibit PG-435;
- Exhibit PG-436;
- Exhibit PG-416;
- *1981 B.A.T. Board Strategies, Smoking Issues*, BAT Group, March 1981, **Exhibit PG-438**;

- Exhibit PG-205;
- Exhibit PG-208;
- *Developing Country Issues QS and AS*, BAT Co., December 3, 1990, **Exhibit PG-439**;
- *Smoking Issues*, BAT Group, circa 1990, **Exhibit PG-440**;
- *British American Tobacco Bulletin Board*, BAT Co., January 4, 1997, **Exhibit PG-441**;
- *Smoking Issues, A British-American Tobacco Company Publication for Staff*, circa 1980, **Exhibit PG-442**;
- *Smoking: habit or addiction*, BAT Group, February 1990, **Exhibit PG-443**;
- Memorandum by S. Boyse for the Tobacco Strategy Review Team, BAT Co., January 24, 1990, **Exhibit PG-444**;
- Minutes of the meeting of the Tobacco Strategy Review Team, BAT Co., February 21, 1990, **Exhibit PG-445**;
- *Consumer Helplines, How to handle questions on smoking and health and product issues*, BAT Co., circa 1994, and cover letter dated March 18, 1994, **Exhibit PG-446**.

See also:

- Exhibit PG-386;
- Exhibit PG-387;
- Exhibit PG-398.

525. The members of the BAT Group adhered to that public position in all respects:

[...] When asked what BAT's current position on nicotine was, he replied that "cigarette smoking" was habit-forming but not addictive, and on cancer, that although there were risks, there was no causal link.

- Letter from C. Proctor to the directors general and corporate affairs managers of BAT Co., June 20, 1994, and attached newspaper articles, **Exhibit PG-447**.

See also:

- "*Imperial Tobacco n'aura pas à payer les timbres à la nicotine d'une ex-fumeuse*", *La Presse*, March 25, 1998, **Exhibit PG-448**.

526. Starting in 1999, the BAT Group finally acknowledged that it could be difficult for some people to stop smoking, but it continued to downplay the addictive properties of nicotine:

- (a) in 1999, a spokesperson for ITL refused to admit that tobacco products are addictive, acknowledging only that some people may find it difficult to stop smoking:

- "*Le 23 novembre 1999 – CKAC MA 730, Montréal, Réseau Radiomédia, Bonjour Montréal – 08:05 – 9 min – 66423-4*", Transcriptions VERBATIM inc., November 23, 1999, **Exhibit PG-449**;

- (b) in 2000, ITL continued to assert that although tobacco addiction in the broadest sense does exist, in Canada a majority of smokers had already stopped smoking, in most cases without any help:

- Exhibit PG-262;

- Exhibit PG-50;

- (c) in 2000, ITL also asserted that, compared to other substances that could lead to addiction, tobacco was not intoxicating and that withdrawal symptoms in some smokers were minor and in many others nonexistent:

- Exhibit PG-50.

527. In addition to misrepresenting that smoking is not addictive, the BAT Group also publicly denied having conducted research on the subject:



- Exhibit PG-232.

528. Consequently, the BAT Group lied to the persons in Québec and misled them as it had known since at least the 1960s that tobacco products are addictive.

## 2. Knowledge and Misleading Position of the PM Group

### (a) Abundant research on nicotine

529. As early as 1959, the research and development director at PM Inc. knew that the nicotine in tobacco produces physiological effects and is the reason people smoke:

- Letter from H. Wakeham to R.P. Roper, *An Opinion on Cigarette Smoking and Cancer*, PM Inc., September 22, 1959, **Exhibit PG-450**.

530. As early as 1960, the PM Group knew that nicotine causes addiction, and thoroughly understood its effects and manner of action:

- F.E. Resnick, *Project Review – Project 0100 Chemistry of Burning Tobacco*, PM Inc., April 5, 1960, **Exhibit PG-451**;
- Exhibit PG-267;
- W.L. Dunn, *Task Group Surrogate*, PM Inc., March 5, 1964, **Exhibit PG-452**;
- Presentation by H. Wakeham, *Smoker Psychology Research*, PM Inc., November 26, 1969, **Exhibit PG-453**;
- Letter from W.L. Dunn to H. Wakeham, *Jet's Money Offer*, PM Inc., February 19, 1969, **Exhibit PG-454**;
- *Some Methods Notes on the Past Research on Cigarette Smoker Motivation*, PM Group, February 16, 1970, **Exhibit PG-455**;

- Letter from T.S. Osdene to H. Wakeham et al., PM Inc., December 7, 1971, and documents attached, **Exhibit PG-456**;
- W.L. Dunn, *Motives and Incentives in Cigarette Smoking*, PM Inc., 1972, **Exhibit PG-457**;
- *Dosage Controls*, PM Group, August 5, 1974, **Exhibit PG-458**;
- C. Jeanneret, *Smoke Impact Part I: Cigarette Smoking and Heart-Rate (Preliminary Experiments)*, PME, October 1975, **Exhibit PG-459**;
- Monthly report, *Charge Number: 1600, Project Title: Smoker Psychology, Period Covered: October 1-31, Project Leader: W.L. Dunn, Date of Report: November 11, 1977*, PM Inc., **Exhibit PG-460**;
- Memorandum by J.L. Charles and R.B. Seligman, PM Inc., March 18, 1980, **Exhibit PG-461**;
- Memorandum from W.L. Dunn to R.B. Seligman, PM Inc., March 21, 1980, **Exhibit PG-462**;
- Memorandum by W.L. Dunn and T.S. Osdene, PM Inc., November 5, 1981, **Exhibit PG-463**;
- Report of the Behavioral Pharmacology Staff, PM Inc., 1981, **Exhibit PG-464**;
- V.J. DeNoble and P.C. Mele, *Behavioral Pharmacology Annual Report – 1983*, PM Inc., June 1, 1983, **Exhibit PG-465**;
- *The Nicotine Program* and cover letter from T.S. Osdene to R.S. Selligman, PM Inc., December 1, 1978, **Exhibit PG-466**;
- Memorandum from F.P. Gullotta et al. to R.A. Carchman, PM Inc., May 22, 1990, **Exhibit PG-467**;
- Memorandum from F.P. Gullotta et al. to C.K. Ellis, PM Inc., November 8, 1990, **Exhibit PG-468**.

531. The PM Group, therefore, knew that nicotine causes addiction, that consumers smoke to deliver nicotine to their bodies, and that nicotine is essential to their market.

532. During the 1960s and 1970s, aware of nicotine's importance to the tobacco industry, the PM Group concluded that marketing a nicotine-free cigarette would be doomed to failure:

- M.E. Johnston, *Special Report No. 248, Market Potential of a Health Cigarette*, PM Inc., June 1966, and cover letter by H. Wakeham, June 30, 1966, **Exhibit PG-469**;
- Letter from W.L. Dunn to J. Hind and G. Gellatly, *Nicotine and Inhalation Impact*, PM Inc., February 1, 1973, **Exhibit PG-470**;
- Exhibit PG-457;
- Memorandum from W.L. Dunn to R.B. Selligman, PM Inc., May 14, 1975, **Exhibit PG-471**;
- Note by T.S. Osdene, PM Inc., January 10, 1978, **Exhibit PG-472**;
- Memorandum from T.S. Osdene to R.B. Seligman and to directors, PM Inc., August 12, 1980, **Exhibit PG-473**.

533. The PM Group was aware, as was the BAT Group, of the phenomenon of compensation:

- Letter from W. Dunn to G. Berman, *TPN Intake by Smokers*, PM Inc., May 7, 1968, **Exhibit PG-474**;
- T.R. Schori, *Tar, Nicotine, and Smoking Behavior*, PM Inc., November 1971, **Exhibit PG-475**;
- T.R. Schori and W.L. Dunn, *Tar, Cigarette, and Cigarette Consumption*, PM Inc., circa 1972, **Exhibit PG-476**;
- W. Dunn et al., *Smoking Behavior: Real World Observations*, PM Inc., March 1973, **Exhibit PG-477**;
- Exhibit PG-458;
- Letter from W.L. Dunn, PM Inc., to S. Schachter, Columbia University, September 8, 1975, **Exhibit PG-478**;
- Exhibit PG-459.

534. As a result, the PM Group conducted abundant research and experimented with a variety of processes aimed at developing a low tar and nicotine cigarette without reducing the effects of nicotine, the *raison d'être* of their industry:

- Exhibit PG-451;
- Exhibit PG-454;
- Exhibit PG-475;
- Memorandum from W. Dunn et al., to P.A. Eichorn, PM Inc., September 8, 1971, **Exhibit PG-479**;
- Memorandum from A. Udow to C. Bolton, PM Inc., May 24, 1972, **Exhibit PG-480**;
- *Research and Development Five Year Plan 1974-1978*, PM Inc., May 1973, **Exhibit PG-481**;
- B. Jones et al., *Low Delivery Cigarettes and Increased Nicotine/Tar Ratios, a Replication (R2-3537)*, PM Inc., October 1975, **Exhibit PG-482**;
- *R & D Strategy Outline*, PM Inc., 1973, **Exhibit PG-483**;
- United States patent No. 4,607,646, *Process for Modifying the Smoke Flavor Characteristics of Tobacco*, August 26, 1986, **Exhibit PG-484**;
- Memorandum from A.S. Roberts to T.A. Newman, PM Inc., August 25, 1978, **Exhibit PG-485**;
- Memorandum from F.P. Gullotta et al. to R.D. Kinser, PM Inc., December 14, 1990, **Exhibit PG-486**.

535. In that context, in 1972, PM Inc. acknowledged internally: “The cigarette should be conceived not as a product but as a package. The product is nicotine. [...]”:

- Exhibit PG-457.

536. Nicotine was of such importance that the PM Group was concerned over the fact that authorities could seek to regulate tobacco products:

It is my impression that at some time in the future, nicotine will be listed as a dependency drug (or smoking will be listed as a dependence process). [...]

- Memorandum from R.B. Seligman to A. Holtzman, PM Inc., June 27, 1978, and report by W.L. Dunn, June 22, 1978, **Exhibit PG-487**.

See also:

- Exhibit PG-454;
- Exhibit PG-452;
- Exhibit PG-462.

537. That did not prevent the PM Group from publicly comparing smoking to coffee drinking, even after observing that the effects of caffeine were more similar to those of a placebo than to those of nicotine:

- T.R. Schori and B. Jones, *Smoking and Caffeine: A Comparison of Physiological Arousal Effects*, PM Inc., May 1972, and cover letter dated May 17, 1972, **Exhibit PG-488**.

538. In 1969, the PM Group investigated the consequences of smoking cessation, which included weight gain, constipation problems, mouth blisters, and emotional instability:

- Letter from W.L. Dunn to H. Wakeham, PM Inc., July 29, 1969, **Exhibit PG-489**.

539. In 1971, one of the PM Group scientists observed that people find it hard to quit smoking and that quitting leads to a number of problems:

This is not the happy picture painted by the Cancer Society's anti-smoking commercial which shows an exuberant couple leaping in the air and kicking their heels with joy because they've kicked the habit. A more appropriate commercial would show a restless, nervous,

constipated husband bickering viciously with his bitchy wife, who is nagging him about his slothful behavior and growing waistline.

- F.J. Ryan, *Bird-I A Study of the Quit-Smoking Campaign in Greenfield, Iowa, in Conjunction with the Movie, Cold Turkey*, PM Inc., March 1971, **Exhibit PG-490**.

540. The PM Group, however, chose not to conduct research that would establish that smoking produces dependence, as shown in the approach of one of its scientists:

I have given Carolyn approval to proceed with this study. If she is able to demonstrate, as she anticipates, no withdrawal effects of nicotine, we will want to pursue this avenue with some vigor. If, however, the results with nicotine are similar to those gotten with morphine and caffeine, we will want to bury it. Accordingly, there are only two copies of this memo, the one attached and the original which I have.

- Letter from W.L. Dunn to T.S. Osdene, PM Inc., November 3, 1977, **Exhibit PG-491**.

541. The PM Group was concerned, therefore, when a CTR employee expressed the opinion that nicotine and opiates could act in the same manner and that nicotine causes addiction:

- Exhibit PG-277.

542. In the light of its knowledge, in 1978 the PM Group questioned the desirability of commercializing low nicotine cigarettes since they could make it easier to quit smoking:

- F.J. Ryan, *Exit-Brand Cigarettes: A Study of Ex-Smokers*, PM Inc., March 1978, **Exhibit PG-493**.

543. All that knowledge circulated within the PM Group:

- H. Wakeham, *Flip Charts for B&H (Canada) Board Presentation, Recent Developments on the Smoking and Health Front*, September 10, 1976, **Exhibit PG-494**;
- Letter from J.G. Pritchard, Benson & Hedges, to F.E. Resnick, PM Inc., January 23, 1969, **Exhibit PG-495**;
- Letter from R.S. Wade, Imperial Tobacco Company of Canada Limited, to J.G. Pritchard, Benson & Hedges, January 21, 1969, **Exhibit PG-496**;
- *Procedure for the Measurement of Particulate Matter, Nicotine and Water in Cigarette Smoke*, 1969, **Exhibit PG-497**.

544. In 1992, the PM Group observed that nicotine was an organic chemical compound similar to cocaine and morphine, which reached the brain in seconds, becoming a neurotransmitter and a stimulant:

- B. Reuter, *Comparative Analysis*, PM Inc., circa 1992, **Exhibit PG-498**;
- Memorandum from C. Levy to W.I. Campbell, PM Inc., February 10, 1992, **Exhibit PG-499**.

545. Consequently, there is no doubt that the PM Group has long known that the nicotine in its products causes addiction.

(b) Development and implementation of a misleading public position

546. The PM Group was careful to conceal from the public its knowledge about the addictive properties of tobacco products.

547. It developed its position in such a manner as to mislead the public on the subject.

548. For example, on July 18, 1973, the vice-president of PM Inc. declared over the airwaves of CBS in the United States that smoking was not addictive:

- *Mike Wallace Interview of James C. Bowling – July 18, 1973 for CBS Television Program "60 Minutes"*, transcript of the interview, PM Inc., July 18, 1973, **Exhibit PG-500**.

549. In 1979, to counter the anti-tobacco movement, Benson & Hedges adopted the Tobacco Action Program, modelled on PM Inc.'s program:

- *Tobacco Action Program*, PM Inc., **Exhibit PG-501**;
- Exhibit PG-301.

550. In applying that program, Benson & Hedges

- (a) asked its employees and their families to adopt the position of the tobacco products manufacturers;
- (b) produced a document to assist its corporate executives in responding to the criticisms of their products by employees and people outside the company; and
- (c) provided its officers with a question and answer guide to assist them in adhering to the industry's position and provided arguments for denying that nicotine creates a dependency.

551. In so doing, Benson & Hedges wilfully misled the public with public statements that contradicted its own knowledge.

552. The other companies in the PM Group also asked their employees to adhere to the same position and deny that nicotine causes addiction:

- *Smoking & Health Quick Reference Guide*, Philip Morris Europe Middle East Africa, **Exhibit PG-502**.

553. That public position obviously required that any PM Group research contradicting that position be kept secret:



- Exhibit PG-462;
- Memorandum from J.L. Charles to T.S. Osdene, PM Inc., March 16, 1983, and criticism by V.J. DeNoble, **Exhibit PG-503**;
- U.S. Department of Health and Human Services Public Health Service, *Why People Smoke Cigarettes*, July 18, 1983, **Exhibit PG-504**.

554. The PM Group produced reference guides to implement its public position that were designed to deny, downplay and trivialize the addictive properties of nicotine.

555. In or around 1985, PMI produced a brochure in which it suggested using as a response that the term “addicted” could refer to hard drugs, and also to television, candy, or the reading of crime novels:

- *Tobacco Issue Briefs*, PMI, circa 1985, **Exhibit PG-505**.

556. In 1992, the PM Group adopted a policy that substantially defended the same position and continued to deny that nicotine causes addiction:

- *Tobacco Issues and Answers*, PM Inc., 1992, **Exhibit PG-506**.

557. In 1994, PM Inc. published a press release in *The New York Times*, *The Wall Street Journal* and *The Washington Post* consistent with that position, and in which it declared that it did not believe that smoking leads to addiction:

- *Facts You Should Know*, press release, PM Inc., April 15, 1994, **Exhibit PG-507**.

558. In May 1994, the research director at PM Inc. reiterated that the pharmacological evidence did not support the conclusion that smoking is addictive:

- Letter from C. Ellis, PM Inc., to the Honourable H.A. Waxman, United States Senate, May 9, 1994, **Exhibit PG-508**.

559. In May 1997, in the context of litigation brought in Florida, the president of PM Inc. asserted that smoking was no more addictive than Gummy Bears candy; that testimony was reported in a number of American newspapers:

- Extract from testimony of J. Morgan, PM Inc., May 10, 1997, **Exhibit PG-509**;
- "Executive: Tobacco no more addictive than candy", *Tribune Newspaper*, May 3, 1997, **Exhibit PG-510**;
- Michael Siegel, "What Sort of Tobacco Settlement? PM President Loves Those Gummy Bears", *The Washington Post*, May 4, 1997, **Exhibit PG-511**;
- Morris Head, "Smoking no more addictive than Gummy Bears", *The Tampa Tribune*, May 2, 1997, **Exhibit PG-512**;
- "Philip Morris Tobacco Officer Resigns", *The New York Times*, September 18, 1997, **Exhibit PG-513**.

560. On June 26, 1997, in a letter to the Health Minister of British Columbia, the president of RBH asserted that in the absence of an accepted definition of the term that establishes a distinction between "addiction" and "habit", there could be no productive discussion of addiction:

- Letter from J. Heffernan, RBH, to J.K. MacPhail, British Columbia Minister of Health and Minister Responsible for Seniors, June 26, 1997, **Exhibit PG-514**.

561. Those statements were in all respects consistent with the PM Group's policy, confirmed in October 1997 with the adoption of a new position statement rejecting the definition of "addiction" in the 1988 U.S. Surgeon General's report:

- PM Inc., *Philip Morris' Statement of Position*, October 2, 1997, **Exhibit PG-515**.

562. All those statements contradicted the PM Group's internal knowledge.

563. Consequently, the PM Group lied to the persons in Québec and misled them since it has known since at least the 1960s that tobacco products are addictive.

### 3. Knowledge and Misleading Position of the Rothmans Group

564. The Rothmans Group has known for many years that tobacco products are addictive.

565. Internally, however, the Rothmans Group insisted that tobacco should not be classified as a product that is addictive:

- *Major Points Arising from a Visit to the United States of America and Canada, August 1984, Report by Mr. P.W. Brown – Rothmans International, Exhibit PG-516.*

566. In June 1984, twenty-five residents of the Province of Ontario filed a complaint against Rothmans of Pall Mall Canada Limited alleging a breach of the *Business Practices Act*, R.S.O. 1980, c. 55:

- Complaint against Rothmans of Pall Mall Canada Limited, June 11, 1984, and cover letter from D. Mitchell, Ontario Ministry of Consumer and Commercial Relations, to Rothmans of Pall Mall, June 18, 1984, **Exhibit PG-517.**

567. In response to the complaint, the vice-president of Rothmans of Pall Mall Canada Limited aligned itself with the Rothmans Group's position and asserted that

- (a) placing warnings on cigarette packages about the addictive properties of their products was not necessary;

- (b) other products such as coffee, tea and alcoholic beverages or chocolate would also require warnings of addictiveness;
- (c) there was a lack of scientific consensus on an acceptable definition of the term “addiction”; and
- (d) the use of a broad definition would create ambiguity for consumers and a risk of interpretive error:

➤ Letter from J.K. Strickland, Rothmans of Pall Mall Canada Limited, to R. Simpson, Ontario Ministry of Consumers and Commercial Relations, August 7, 1984, **Exhibit PG-518**.

568. In 1993, the Rothmans Group produced a brochure for its employees in which it asserted that tobacco and nicotine were not addictive; that nicotine could not be compared to heroin or cocaine; that such a comparison was irresponsible and scientifically insupportable; and that the broad definition of “addiction” adopted by the Surgeon General in 1988 could be attributed to other habits, such as eating chocolate, drinking coffee, or playing video games:

➤ Exhibit PG-321.

569. Through those statements, the Rothmans Group, which included Rothmans of Pall Mall Canada Limited, failed to inform the persons in Québec that nicotine causes addiction, thereby misleading them since it had long known that tobacco products are addictive.

#### 4. Knowledge and Misleading Position of the RJR Group

##### (a) Abundant research on nicotine

570. As early as 1957, the RJR Group associated the term “addicted” with nicotine:

[...] The situation is also unique in that the majority of our people are involved in a lethal habit which they find agreeable and to which, to some extent, they have become addicted. [...]

- A. Rodgman, *Cigarette smoking termed lethal habit with some addiction involved*, RJRT, **Exhibit PG-519**.

571. Research conducted in the 1960s confirmed that nicotine “is considered to be a sine qua non in smoking satisfaction [...]”:

- C.E. Teague, *Proposal of a New, Consumer-Oriented Business Strategy for RJR Tobacco Company Based Upon An Analysis of the Effects of the Smoking-Health Controversy and the "Safer" Cigarette Strategy On Consumer Behavior*, RJRT, September 19, 1969, **Exhibit PG-520**.

See also:

- Memorandum from E.D. Nielson to R.E. Farrar, RJRT, November 16, 1967, **Exhibit PG-521**;
- K. Imamoto and H. Mitsui, application for patent No. 649467, *Denicotinization Agents and Products Containing Same*, June 28, 1967, and cover letter from M.R. Haxton to R.E. Farrar, RJR Group, October 26, 1967, **Exhibit PG-522**.

572. During the 1970s and 1980s, the RJR Group conducted or funded research on nicotine that enabled the Group to

(a) confirm that nicotine is the most important ingredient in tobacco, that it is the reason people smoke, and in the absence of nicotine they would quit smoking:

- C.E. Teague, *Research Planning Memorandum on the Nature of the Tobacco Business and the Crucial Role of Nicotine Therein*, RJRT, April 14, 1972, **Exhibit PG-523**;
- C.E. Teague, *Research Planning Memorandum on a New Type of Cigarette Delivering a Satisfying Amount of Nicotine with a Reduced "Tar"-to-Nicotine Ratio*, RJRT, March 28, 1972, **Exhibit PG-524**;
- *Talk delivered to RJR Tobacco Company Management June 23, 1974 and RJR Tobacco International Management August 4, 1976 – by Murray Senkus, Smoking Satisfaction*, RJR Group, August 4, 1976, **Exhibit PG-525**;
- Presentation by Murray Senkus to the staff of the marketing and marketing research division of RJR Tobacco, *Some Effects of Smoking*, 1976 and 1977, **Exhibit PG-526**;
- C.W. Fitzgerald et al., *New Product/Merchandising Directions - A Three Year Action Plan*, RJR Group, August 19, 1976, **Exhibit PG-527**;
- Memorandum from J.L. McKenzie to A.P. Ritchy, RJR Group, September 21, 1976, **Exhibit PG-528**;
- Memorandum from J.P. Dickerson and C.L. Neumann to D.H. Peihl, RJR Group, February 7, 1978, **Exhibit PG-529**;
- D.H. Piehl, *Smoking Behavior – A Review*, RJR Group, September 1979, **Exhibit PG-530**;
- Memorandum from C.E. Teague to G.R. Di Marco, RJR Group, December 1, 1982, **Exhibit PG-531**;

(b) understand how addiction develops in youth who start smoking:

- C.E. Teague, *Research Planning Memorandum on Some Thoughts About New Brands of Cigarettes for the Youth Market*, RJRT, February 2, 1973, **Exhibit PG-532**;

(c) know that as soon as nicotine is eliminated in the smoker's system, the smoker experiences a craving that is satisfied on lighting another cigarette:

➤ Exhibit PG-526;

➤ Exhibit PG-527;

(d) recognize that it is easy to start smoking, but difficult to stop; that stress increases the need to smoke; and that some smokers continue to smoke to avoid withdrawal symptoms:

➤ Memorandum from D.H. Piehl to A. Rodgman, RJR Group, February 15, 1979, **Exhibit PG-533**;

(e) understand the effects and action of nicotine:

➤ Memorandum from A.H. Laurene to M. Senkus, RJR Group, May 24, 1971, **Exhibit PG-534**;

➤ Exhibit PG-525;

➤ Exhibit PG-526;

➤ Exhibit PG-528;

➤ Memorandum from W.M. Henley to D.H. Piehl, RJRT, November 9, 1976, **Exhibit PG-535**;

➤ Exhibit PG-529;

➤ Memorandum from D.L. Roberts to the flavour and behaviour divisions, RJR Group, October 13, 1983, **Exhibit PG-536**;

➤ D.G. Gilbert et al., *The Role of Nicotine, Smoker/Non-Smoker Status and Personality in Determining Psychophysiological and Self-Report Responses to Stress*, RJR Group, April 25, 1984, **Exhibit PG-537**;

➤ P.M. Lippiello et al., *An Integrated Research Program for the Study of Nicotine and its Analogs*, RJR Group, October 7, 1988, **Exhibit PG-538**;

(f) confirm that nicotine provides a "kick":

- C.E. Teague, *Implications and Activities Arising from Correlation of Smoke pH with Nicotine Impact, Other Smoke Quality, and Cigarette Sales*, RJR, circa 1973, **Exhibit PG-539**;
- Memorandum from F.G Colby to R.A. Blevins, RJR Group, December 4, 1973, **Exhibit PG-540**.

573. During the 1960s and 1970s, the RJR Group developed and marketed low tar and nicotine products for the purpose of reassuring consumers who had concerns about their health.

574. To maintain its market share, however, the RJR Group knew that its products had to deliver a minimum amount of nicotine:

- Exhibit PG-524;
- Exhibit PG-532.

575. The RJR Group also was aware of the phenomenon of compensation:

- Exhibit PG-524;
- D.H. Piehl, *"Tar"/Nicotine Control and Smoking Satisfaction*, RJR Group, May 9, 1978, **Exhibit PG-541**;
- Exhibit PG-533;
- Memorandum from J.H. Robinson and J.H. Reynolds to D. Werner, RJR Group, April 5, 1982, **Exhibit PG-542**;
- *Smoker Compensation Review*, RJRT, April 15, 1983, **Exhibit PG-543**.

576. The RJR Group, therefore, conducted research on the transfer of nicotine to tobacco smoke and sought to develop a low tar cigarette that would maintain the maximum effect of nicotine:

- Exhibit PG-524;
- Exhibit PG-527;



- Memorandum from J.P. Dickerson to D.H. Piehl, RJR Group, September 13, 1977, **Exhibit PG-544**.

577. The RJR Group discovered that nicotine is present in two forms and that the free-base form reaches the brain faster and can be increased by varying the tobacco's pH value:

- Exhibit PG-539;
- Exhibit PG-540;
- Exhibit PG-528;
- Exhibit PG-544;
- Report and Memorandum from C.L. Neuman and M.D. Wallace to D.H. Piehl, RJR Group, October 12, 1979, **Exhibit PG-545**.

578. In the 1990s, the RJR Group acknowledged that it was in the business of selling nicotine:

- REST Program Review, RJR Group, May 3, 1991, **Exhibit PG-546**.

(b) Development and implementation of a misleading public position

579. In 1983, ignoring its internal knowledge, RJRT echoed the industry's public position that quitting smoking is entirely a matter of willpower:

Most of us would surely agree that dependence on opiates like heroin is an addiction. But we've also heard people say they are "addicted" to things like ice cream, chocolate or watching football on TV.

[...]

The fact is, millions of people have stopped smoking voluntarily, and Government statistics report that 95% of them quit on their own, with no medical help.

It is also a fact that, for lots of reasons, smokers genuinely *enjoy* smoking.

[...]

It's not because they can't stop; it's because they don't want to.

➤ Press release, *Is Smoking an Addiction?*, RJRT, **Exhibit PG-547**.

580. In 1985, RJRT developed its public position based on the following strategies:

- (a) use an approach based on the common meaning of “addiction”, emphasizing the differences between smokers and people addicted to substances traditionally perceived as addictive;
- (b) assert that pro-addiction experts do not use the term “addiction” in its classical medical sense, but in a manner so broad as to render it meaningless;
- (c) argue that the responses and behaviour on smoking cessation are different from those universally observed in people who stop using heroin, morphine, opiates, amphetamines, alcohol or any other demonstrably addictive substance;
- (d) claim that smokers do not acquire a tolerance or a need to gradually increase their cigarette dosage, as opposed to people traditionally recognized as being addicted to a substance;
- (e) draw attention to the fact that generally many experts do not always agree on all new scientific classifications;
- (f) assert that smoking is a complex habit, that many factors unrelated to nicotine explain why people smoke;

- (g) argue that since 1964, there has been no change in the U.S. Surgeon General's classification of smoking as a habit and not an addiction;
- (h) emphasize that even pro-addiction people recognize that science has not established that smoking creates physical dependence; and
- (i) claim that smokers can quit if they really want to, as evidenced by the millions of people who have quit smoking since 1964:

➤ *Report on Medical and Scientific Issues. Addiction*, RJRT, June 3, 1985, **Exhibit PG-548**.

581. Following publication of the Surgeon General's report in 1988, which concluded that smoking causes addiction, a public relations firm recommended the RJR Group adopt the following position:

- (a) millions of people have quit smoking since 1964;
- (b) in American litigation, smokers claim that smoking causes addiction solely as an excuse for not having been able to quit;
- (c) authorities such as the National Institute on Drug Abuse, the American Psychiatric Association and the World Health Organization recently reworded and broadened the definition of "addiction" to include smoking, but the new definition could also include addiction to alcohol or heroin and habits such as watching television, jogging, drinking coffee, and eating chocolate; and
- (d) the 1964 Surgeon General's report, which defined smoking as a habit, remains one of the most complete studies while the 1988 report is based on no new scientific evidence or study:

- James A. Fyock & Associates, document prepared for the RJR Group, 1988, **Exhibit PG-549**.

582. During the 1990s, the RJR Group continued to lie publicly by denying that nicotine or smoking causes addiction, relying on the strategies and reference guides produced to standardize its public position:

- Letter from J.F. Spach, RJR Group, to Elaine Moss, consumer, May 8, 1990, **Exhibit PG-550**;
- J.H. Robinson and W.S. Pritchard, "The role of nicotine in tobacco use", *Psychopharmacology*, January 14, 1992, **Exhibit PG-551**;
- J.H. Robinson and W.S. Pritchard, "The meaning of addiction: reply to West", *Psychopharmacology*, March 25, 1992, **Exhibit PG-552**;
- Marlene Opdecam, "Positive aspects of nicotine use", *The Canadian Tobacco Grower*, June 1995, **Exhibit PG-553**.

583. In *Caravan*, a magazine for its employees, the RJR Group

(a) suggested that tobacco was no more addictive than everyday food that also contains nicotine, such as potatoes, tomatoes, green peppers, and eggplant:

- "Nicotine: Food for thought", *Caravan*, Vol. 27, No. 1, 1993, **Exhibit PG-554**;

(b) claimed that the definition of "addiction" had been rewritten to include smoking and expressed disagreement with the fact that the term was used to describe smoking:

- J. Robinson, "Scientific research highlights evidence in smoking's favour", *Caravan*, Vol. 29, No. 6, August 1995, **Exhibit PG-555**.

584. In April 1994, the president of RJRT denied and trivialized the addictive properties of nicotine before the United States Senate:

During the past several years, there have been a wide variety of attempts to convince the American public that cigarettes are "addictive," and some public officials have gone so far as to put cigarettes in the same class as heroin and cocaine. You don't need to be a trained scientist to see this isn't true. All you need to do is ask, and honestly answer, two simple questions:

First – "Would you rather board a plane with a pilot who just smoked a cigarette – or one with a pilot who just had a couple of beers, snorted cocaine, shot heroin or popped some pills?"

Second – "If cigarettes were truly addictive, could almost 43 million Americans have quit smoking – almost all of them on their own, without any help?"  
The answers are obvious [...]

- *Oral Statement of James W. Johnston, Chairman and Chief Executive Officer R.J. Reynolds Tobacco Company, RJRT, April 14, 1994, **Exhibit PG-556.***

585. That position was reiterated in an RJR Group guide prepared to assist its representatives in responding to the media:

- RJR Group Guide, 1994, **Exhibit PG-557.**

586. Again in 1994, *The New York Times* reported the testimony before the United States Senate of an RJRT representative who maintained that nicotine should not be defined as an addictive substance:

- P.J. Hilts, "Is Nicotine Addictive? It Depends on Whose Criteria You Use", *New York Times*, August 2, 1994, **Exhibit PG-558.**

587. In July 1994, at a conference on nicotine held in Sainte-Adèle, that RJRT representative maintained that science and common sense support the view that nicotine is not addictive:

- Presentation by J.H. Robinson and W.S. Pritchard, *Science and Common Sense Support the View That Nicotine is Not Addictive*, RJRT, 1994, **Exhibit PG-559;**

- Program of the International Symposium on Nicotine, *The Effects of Nicotine on Biological System II*, 1994, **Exhibit PG-560**;
- Memorandum by N.M. Sinclair, RBH, July 26, 1994, **Exhibit PG-561**.

588. In 2002, RJRT set out guiding principles in which it finally admitted that quitting smoking could be difficult, but added that it disagreed with classifying tobacco among addictive substances such as heroin, cocaine, and other similar substances, and repeated that millions of people had quit smoking:

- *Guiding Principles*, RJRT, May 2002, **Exhibit PG-562**.

589. Through its statements, the RJR Group lied to the persons in Québec and misled them since it had known since at least the 1960s that tobacco products are addictive.

## 5. Misleading Position of the CTMC and other Organizations

590. In addition to their own misrepresentations, the Defendants joined together in organizations they controlled, such as the CTMC, the Tobacco Institute and INFOTAB, to mislead the public regarding the addictive properties of nicotine.

591. The CTMC filed a brief with the Isabelle Committee in which it wilfully omitted to mention that tobacco is addictive:

In contrasting tobacco against addictive drugs, the 1964 U.S. Surgeon General's Report asserts that the regular use of tobacco should be called "habituation to distinguish it clearly from addiction..." The Report says, "even the most energetic and emotional campaigner against smoking and nicotine could find little support for the view that all those who use tobacco, coffee, tea, and cocoa are in need of mental care..."

- Exhibit PG-23.

592. In fact, one of the Defendants' strategies was to divert public attention by funding research that could be favourable to them.

593. While recognizing the addictive properties of their products, the Defendants authorized the CTMC to fund the research of Professor Hans Selye of Université de Montréal, for whom the issue was not about smoking or not smoking, but how to relieve stress:

- Exhibit PG-273;
- Exhibit PG-22;
- Memorandum from H. Wakeham, *Visit with Dr. Hans Selye, University of Montreal School of Medicine*, PM Inc., July 30, 1969, **Exhibit PG-563**;
- D.G. Felton, *Visit to Prof. Hans Selye, Université de Montréal. Wednesday, 4th November 1970*, BAT Co., November 16, 1970, **Exhibit PG-564**;
- Letter from W.L. Dunn, PM Inc., to H. Selye, Université de Montréal, April 26, 1972, **Exhibit PG-565**.

594. In 1980, the Tobacco Institute knew that an attorney general's most powerful weapon was proving that tobacco was addictive since addiction denies a smoker freedom of choice:

- Memorandum from P.C. Knopick, *Tobacco Observer*, to W. Kloefer, Tobacco Institute, September 9, 1980, **Exhibit PG-566**.

595. In or around 1986, to earn credibility and add to the confusion, the CMTC funded the Smokers' Freedom Society, which echoed the industry's position and publicly denied that tobacco is addictive:

- L. Lachance, "*Les fumeurs perdent patience*", *Le Soleil*, September 3, 1986, **Exhibit PG-567**;

- L. Picard, "*Nouveau débat suscité par l'arrivée de la Société pour la liberté des fumeurs*", *Le Soleil*, September 17, 1986, **Exhibit PG-568**;
- Memorandum from A. Whist to the Board of Directors, PMI, December 17, 1986, Exhibit **PG-569**;
- Memorandum from D.K. Hoel, Shook, Hardy & Bacon, to F.S. Newman, PM Inc., July 27, 1988, and memorandum dated July 15, 1988, **Exhibit PG-570**;
- Canada, Chambre des communes, Comité législatif sur le projet de loi C-204, Procès-verbaux et témoignages, 2<sup>e</sup> sess., 33<sup>e</sup> légis., fascicule no 14, 26 novembre 1987, **Exhibit PG-571**;
- P.E.I. Montegue, "Tobacco board is cautious on backing smoker's rights", *The Gazette*, September 6, 1986, **Exhibit PG-572**;
- C. Landry, "*Défense de fumer: une évolution de plus de vingt ans*", *Le Droit*, September 30, 1986, **Exhibit PG-573**;
- "*Le mouvement pro-tabac manque de souffle*", *Le Devoir*, April 6, 1987, **Exhibit PG-574**.

596. The Defendants also used the CTMC and INFOTAB to develop their public position of denying and trivializing the addictive properties of nicotine:

- (a) in 1987, the CTMC adopted a position statement urging representatives of the industry in Canada to publicly deny that their products were addictive;
- *Advertising in General*, CTMC, 1987, **Exhibit PG-575**;
- (b) on October 5, 1987, INFOTAB provided various tobacco product manufacturers with a guide containing arguments and strategies to be used by their representatives to deny and trivialize publicly the addictive properties of nicotine;
- *Spokespersons' Guides*, INFOTAB, 1987, and cover letter dated October 5, 1987, **Exhibit PG-576**;



(c) in April 1990, INFOTAB distributed a guide to assist industry representatives in responding to the media and to criticisms of tobacco at an event organized by the World Health Organization, with denials that cigarettes are addictive:

- *Children and Smoking: The Balanced View*, INFOTAB, April 1990 and cover letter dated April 27, 1990, **Exhibit PG-577**.

597. In 1988, the CTMC and the Smokers' Freedom Society publicly criticized the Surgeon General's report findings that the nicotine in tobacco is a drug that causes addiction:

[Translation]

#### **Exaggeration**

Jean Clavel, spokesperson for the Canadian Tobacco Manufacturers' Council, asserted that "comparing cigarettes to hard drugs like cocaine and heroin was a little exaggerated."

"To get rid of the addiction", drug addicts must undergo "detoxification treatments" whereas "millions of smokers worldwide stop smoking every year, without any medical assistance," according to Mr. Clavel.

[...]

#### **Insult**

In addition, the president of the Smokers' Freedom Society, Michel Bédard, stated that Dr. Everett Koop's report "was an insult to the public's intelligence and unreasonably stigmatized millions of honourable people by reducing them to the status of 'junkies'.

- J. Lenneville, "*Le rapport liant l'habitude du tabac à celle de l'héroïne ranime les anti-fumeurs*", *La Presse*, May 18, 1988, **Exhibit PG-578**.

598. The Tobacco Institute reacted similarly in the United States with the issue of a press release, which was also circulated in Canada:

- *Claims that Cigarettes are Addictive Contradict Common Sense*, Tobacco Institute, press release, May 16, 1988, **Exhibit PG-579**;

- A. Steacy, "A new nicotine warning", *Maclean's Magazine*, 1988, **Exhibit PG-580**.

599. In 1989, at the time the Royal Society of Canada was planning to publish a report on nicotine and addiction, the CTMC was already preparing its response:

- Memorandum from W.H. Neville to R.J. Fennell et al., *Addiction Study*, CTMC, June 28, 1989, **Exhibit PG-581**.

600. Following the release in 1989 of the Royal Society of Canada's report *Tobacco, Nicotine, and Addiction* (Exhibit PG-33), which concluded that nicotine is addictive, the CTMC wrote to the Minister of Health of Canada and claimed that

- (a) the document was not scientific but more in the nature of a political statement;
  - (b) although the Surgeon General and others had been making the issue of addiction and smoking political, the CTMC did not acknowledge any valid scientific proof that tobacco was addictive; and
  - (c) the definition of "addiction" proposed by the Royal Society of Canada was neither coherent nor rational, in addition to being arbitrary:
- Letter from W.H. Neville, CTMC, to P. Beatty, federal Health and Social Welfare Minister, December 20, 1989, and acknowledgement of receipt, **Exhibit PG-582**.

See also:

- Letter from J.R. McDonald, RBH, to O. Morgan, Rothmans of Pall Mall (New Zealand) Ltd., October 25, 1990, **Exhibit PG-583**;

- D.M. Warburton, *Commentary on Tobacco, Nicotine and Addiction*, University of Reading, **Exhibit PG-584**;
- Memorandum from J. McDonald, RBH, to J.J. Heffernan, RBH, December 5, 1989, and version of the *Commentary on Tobacco, Nicotine and Addiction* by D.M. Warburton, **Exhibit PG-585**.

601. The CTMC's position, which trivialized and denied the addictive properties of tobacco, was reported in *The Globe and Mail*:

- G. Fraser, "Ottawa pamphlets call tobacco addictive", *The Globe and Mail*, June 29, 1989, **Exhibit PG-586**.

602. The Smokers' Freedom Society also asserted that the Royal Society of Canada report was one-sided, reductionist and biased:

- D. Cormier, *Critical Analysis of the Report by a Committee of the Royal Society of Canada: "Tobacco, Nicotine, and Addiction"*, Université de Montréal, October 30, 1989, **Exhibit PG-587**.

603. In 1990, the CTMC also stated its position in *Tabacum*, a publication intended for the tobacco industry:

- "*Plus de questions que de réponses...*", *Tabacum*, CTMC, Winter 1990, **Exhibit PG-588**.

604. The CTMC's position was forwarded to the Tobacco Institute:

- Memorandum by F. Panzer, Tobacco Institute, December 27, 1989, **Exhibit PG-589**.

605. In 1990, the CTMC put forward the same position in its opposition to the federal government's proposed amendments to the *Tobacco Products Regulations*, SOR/89-21 (Can. Gaz. II), which would require the placing of addiction warnings on cigarette packages:

- Letter from W.H Neville to the Government of Canada, CTMC, April 6, 1990, **Exhibit PG-590**.

606. On April 14, 1994, the presidents of seven American manufacturers, including PM Inc., RJRT and Brown & Williamson, solemnly swore before the United States Congress that they did not believe that nicotine was addictive.

607. Those statements were reported in *The Globe and Mail* in Canada:

Cigarettes are not an addiction but merely a pleasurable habit, much like a morning cup of coffee or a dessert, the top U.S. tobacco executives told Congress yesterday.

- “Smoking a habit, not an addiction, tobacco chiefs say”, *The Globe and Mail*, April 15, 1994, **Exhibit PG-591**.

608. In May 1994, the president of the CTMC stated before the House of Commons Standing Committee on Health that

- (a) he was not qualified to say whether he believed cigarettes are addictive;
- (b) many Canadians had quit smoking without any help;
- (c) some experts disagree on the definition of “addiction”; and
- (d) those experts disagree on whether the term applies to smoking:

- Exhibit PG-257.

609. On April 1, 1997, before the Senate Standing Committee on Legal and Constitutional Affairs, the president of the CTMC continued to refuse to admit that the term “addiction” could apply to smoking:

[Translation]

Whether it is addictive or not, defined the way it is, is an opinion and not a matter of fact. That is the position. I hope that is clear.

- Canada, Sénat, Délibérations du comité sénatorial permanent des Affaires juridiques et constitutionnelles, Témoignages, 2<sup>e</sup> sess., 35<sup>e</sup> légis., fascicule no 52, 1<sup>er</sup> avril 1997, «Projet de loi C-71, Loi réglementant la fabrication, la vente, l'étiquetage et la promotion des produits du tabac, modifiant une autre loi en conséquence et abrogeant certaines lois» [Canada, Senate, Proceedings of the Senate Standing Committee on Legal and Constitutional Affairs, Transcript (Evidence) of Proceedings, 2nd Sess., 35th Parl., Issue No. 52, April 1, 1997, *Bill C-71 An Act to regulate the manufacture, sale, labelling and promotion of tobacco products, to make consequential amendments to another Act and to repeal certain Acts*], **Exhibit PG-592**.

610. That evidence was reported the next day in an article in *The Gazette* newspaper:

- “Senator gives industry rough ride on bill: Lawyers offer case against C-71”, *The Gazette*, April 2, 1997, **Exhibit PG-593**.

611. On June 8, 2000, the presidents of ITL, JTI-Macdonald Corp., and RBH testified before the Senate Standing Committee on Energy, the Environment and Natural Resources examining Bill S-20:

- (a) the president of RBH stated that he was not qualified to say whether he believed that tobacco was addictive, but that he did believe that some people consider tobacco products addictive; that many people find it difficult to quit but, according to Statistics Canada, there were more former smokers than current smokers; that many also think that they should lose weight and exercise more; and that if people put their minds to do something, they can achieve their goals with or without outside help;
- (b) the president of JTI-Macdonald Corp. asserted that there were as many ex-smokers as smokers; that it all depends on how “addiction” is defined; that tobacco is not as addictive as heroin or cocaine; and that some people talk about needing a chocolate fix; and

(c) the president of ITL stated that according to the definition currently used, cigarettes are addictive, but that definition and the standards on which it was based have changed over time:

➤ Exhibit PG-263.

612. All the Defendants have known for decades that tobacco products are addictive.

613. The Defendants also know that, although the level of addiction varies from one consumer to another, many of them find it very difficult to stop their consumption of tobacco products.

614. The Defendants nevertheless failed to warn the public about it and, ignoring their internal knowledge and their obligations to consumers, they publicly denied it for many years.

615. The Defendants, therefore, failed in the duty to abide by the rules of conduct to which they were bound according to the circumstances, usage and the law in respect of the persons in Québec who were exposed or might become exposed to tobacco products.

C. THE DEFENDANTS MISLED PERSONS IN QUÉBEC BY LEADING THEM TO BELIEVE THAT SOME OF THEIR PRODUCTS WERE LESS HARMFUL

616. For the purposes of this section, "BAT" refers to any of the British member companies of the BAT Group.

617. "Imperial" refers to Imperial Tobacco Company, Limited, ITL and Imasco.

## 1. Better or Less Harmful New Products

(a) The manufacturers misled the public by claiming that filter-tip cigarettes were better for health

618. Before the 1950s, criticism of cigarettes focused on their cosmetic effects or apparent effects on health, such as throat irritation, cough, bad breath, stained teeth and shortness of breath:

- Memorandum from F.E. Latimer to B.L. Broecker, *Cigarette Advertising History*, Brown & Williamson, November 29, 1976, **Exhibit PG-594**.

619. After the publication in the early 1950s of scientific studies and articles linking smoking with lung cancer, the manufacturers reacted by introducing filter cigarettes and by lowering tar and nicotine levels:

- *History and Key Trends in the U.S. Cigarette Market*, Brown & Williamson, 1979, **Exhibit PG-595**;
- Post, Keyes, Gardner Inc., *A Brief Look at the Dynamics of the Cigarette Industry*, Brown & Williamson, 1977, **Exhibit PG-596**;
- J. John and H. Wakeham, *Breakthrough of the High Taste, Low Tar Cigarette – A Case History of Innovation*, PM Group, 1979, **Exhibit PG-597**;
- *Statement of Philip Morris, U.S.A. to the Subcommittee on Transportation, Tourism and Hazardous Materials of the Committee on Energy and Commerce*, PM Inc., 1988, **Exhibit PG-598**;
- Exhibit PG-111;
- *Employee Handbook on Smoking and Health*, BAT Group, January 19, 1981, **Exhibit PG-599**;
- Exhibit PG-203.

620. During the ensuing period, in what became known as the "Tar Derby", manufacturers claimed in their advertising in both the United States and

Canada that the filters reduced or even eliminated the adverse effects of smoking and that certain health benefits were associated with them:

- Advertisements for *Viceroy* cigarettes appearing in 1953 in *Time Magazine*, **Exhibit PG-600**;
- *A Review of Health References in Cigarette Advertising (1927-1964)*, Brown & Williamson, 1964, **Exhibit PG-601**;
- Advertisements for *Belvedere* cigarettes appearing in 1957 and 1960, **Exhibit PG-602**;
- Advertisements for *Matinee* cigarettes appearing in 1956, 1958 and 1960, **Exhibit PG-603**;
- Advertisements for *Rothmans* cigarettes appearing between 1962 and 1964, **Exhibit PG-604**;
- Advertisements appearing in April 1962 for *Craven "A"* cigarettes in *Le Petit Journal*, **Exhibit PG-605**;
- Advertisements appearing in September 1962 for *Matinee* in *Châtelaine* and *Macleans*'s magazines, **Exhibit PG-606**.

621. In 1962, Canadian manufacturers undertook to refrain in their advertising from referring to data relating to tar, nicotine or any other cigarette smoke constituent because such references could create an impression that tobacco was harmful to health:

- *Policy Statement by Canadian Tobacco Manufacturers on the Question of Tar, Nicotine and Other Smoke Constituents that May Have Similar Connotations*, 1962, **Exhibit PG-607**;
- Exhibit PG-353.

622. Despite that undertaking, Canadian manufacturers continued their campaign to convince the public that filters could reduce or eliminate the harmful effects of cigarettes.



623. For example, an advertisement that ran in the magazine *Actualité* in 1964 and 1965 stated that *du Maurier* cigarettes made by Imperial "had truly exceptional qualities" such as "the most efficient filter-tip ever designed" [Translation]:

- Advertisements for *du Maurier* cigarettes appearing in the magazine *Actualité* in 1964 and 1965 and in *Maclean's Magazine* in 1967, **Exhibit PG-608**.

624. In 1968, Benson & Hedges and Imperial Company of Canada each launched a filter that "removes tar droplets from cigarette smoke" or "filters out more tar from cigarette smoke" or "filters out more tar and nicotine than any other cigarette in Canada" [Translation]:

- *Le Devoir*, "La guerre des cigarettes à nouveau filtre", May 2, 1968, **Exhibit PG-609**.

625. Not long after, Imperial issued a press release touting its new Strickman filter:

1) [it] removes more nicotine and more of the total particulate matter from the smoke stream than today's conventional acetate filters tested at the same pressure drop (draw).

[it] is more efficient in reducing delivery of phenols and volatile acids present in the gas phase of smoke. [...].

- Exhibit PG-242.

626. In that manner the manufacturers led consumers to believe that filter cigarettes were less harmful to health.

627. Testifying on behalf of Canadian manufacturers before the Isabelle Committee, the CTMC insisted that low tar and nicotine cigarettes could not be said to be less dangerous to health, because regular cigarettes themselves were not harmful:

➤ Exhibit PG-23.

628. In its report released in 1969, the Isabelle Committee concluded that the harmful effects of tobacco on health had been sufficiently substantiated and it therefore recommended, since tobacco consumption could not be eliminated, promoting the reduction of the tar and nicotine content of cigarettes:

➤ Exhibit PG-24.

(b) The manufacturers falsely suggested that low tar and nicotine and light or mild cigarettes are less harmful to health

629. Canadian manufacturers began displaying tar and nicotine levels on cigarette packages in 1974 and in advertisements in the written media in 1975.

630. In 1976, they began to market "light" and "mild" versions of their regular brands:

➤ Exhibit PG-182.

631. The strategy behind the marketing of low tar and nicotine cigarettes and so-called "light" cigarettes was to offer products to worried smokers that appeared to be less harmful to health, and as a consequence keep them from quitting:

➤ *Conference on Marketing Low Delivery Products*, BAT Group, January 1982, **Exhibit PG-610**;

➤ Exhibit PG-396;

➤ *Marketing Plan 1989*, ITL, **Exhibit PG-611**.

632. At that same time, the manufacturers were conducting or commissioning studies into the market potential of light cigarettes.

633. Those studies revealed that smokers believed that a "light" or "mild" cigarette, or one with low tar and nicotine content, was indeed a safer choice from a health standpoint.

634. One study prepared for PM Inc. in 1976 explained as follows:

Even among those who have not switched to a low tar brand, there is fairly high disposition among smokers to consider switching to one. This is probably attributable to the continuing concern over smoking and health, and this study shows that the smoking public is convinced that to the extent any brands are better for health, it is the low tar brands that are.

- The Roper Organization Inc., *A Study of Smokers' Habits and Attitudes with Special Emphasis on Low Tar Cigarettes*, PM, May 1976, **Exhibit PG-612**.

See also:

- Exhibit PG-469;
- *Smoking and Smokers - A Summary of What We Know and Believe*, PM Inc., May 1972, **Exhibit PG-613**;
- The Roper Organisation Inc., *A Study of Smokers' Habits and Attitudes with Special Emphasis on Low Tar and Menthol Cigarettes*, PM Group, 1979, **Exhibit PG-614**;
- Johnston & Ass., *Segmentation – Phase 1 Focus Group Research*, RBH, 1991, **Exhibit PG-615**.

635. The RJR Group also knew that smokers of light or low tar cigarettes thought they were smoking a safer product:

Currently RJR divides the total cigarette market into three basic categories: Full Flavor; Medium Flavor; High Filtration (See Exhibit H). However, the recent rapid growth of the High Filtration segment, may be a signal that the

consumer is beginning to be more health conscious than ever before, and will be even more so as time goes on. If this is the case, we believe that consumers will ultimately divide the market into three categories which in their minds would be categorized as:

"Least Safe Brands"  
 "Safer Brands"  
 "Safest Brands".

- Rosenfeld, Sirowitz & Larson Inc., *An Evaluation of the 120 mm Market and its Potential for RJR*, November 17, 1975, **Exhibit PG-616**.

See also:

- *Yankelovich – 1974*, RJR Group, 1974, **Exhibit PG-617**;
- The Beaumont Organization Ltd., *Product Attribute Image Study Exploratory Research*, RJR Group, August 1981, **Exhibit PG-618**;
- Social Research Inc., *Vantage Personalities*, RJR Group, August 1981, **Exhibit PG-619**;
- Social Research Inc., *Vantage and Merit Smokers*, RJR Group, April 1982, **Exhibit PG-620**;
- Social Research Inc., *The NOW Brand Image*, RJR Group, March 1983, **Exhibit PG-621**.

636. Imperial and the BAT Group had similar reports in their possession:

[...] However, in 1977 with heightened health consciousness aligning closely with product mildness, it is apparent that the 1977 French Canadian market desires a less strong and possible safer product than is perceived to exist in a number of the current brand offerings. However, unlike the English Canadian market case, the French health conscious segment perceives the low tar and nicotine brands to have the appropriate degree of mildness and safety.

- Market Facts of Canada Limited, *1977 Segmentation of the French and English Speaking Canadian Cigarette Markets*, ITL, June 1977, **Exhibit PG-622**.

See also:

- *Research Policy Committee McKennell's Segmentation of Smokers Based on Needs Satisfied by Smoking*, BAT Group, December 30, 1974, **Exhibit PG-623**;
- M. Oldman, *Cigarette Smoking, Health, and Dissonance (Project Libra)*, BAT Co., April 23, 1979, **Exhibit PG-624**;
- Hawkins, McCain & Blumenthal Inc., *Low "Tar" Satisfaction – Step 1 – Identification of Perceived and Unperceived Consumer Needs*, Brown & Williamson, July 25, 1977, **Exhibit PG-625**;
- Marketing Strategy & Planning, *Projects Stereo / Phoenix – Final Report*, ITL, February 1985 (excerpts), **Exhibit PG-626**;
- Johnston & Associates, *Project Linebacker – Qualitative Research Calgary – Vancouver*, RBH, July 1994, **Exhibit PG-627**.

637. The goal pursued by the manufacturers was to make available to consumers who had grown worried about the dangers of tobacco an alternative capable of satisfactorily addressing their health concerns and thereby keep them as customers:

Some smokers have been strongly alarmed by the extensive publicity concerning alleged health hazards of smoking, to the extent that they seek not merely to moderate their smoking but to eliminate entirely the "danger" that it may present.

Such a smoker has two options. Firstly, he may simply cease smoking altogether. However, in some cases, the smoker does not wish totally to eliminate the benefits of smoking. His second option is to seek a cigarette which he perceives to reduce the alleged health risks to an acceptable – minimal – level.

Within this second option, the smoker essentially seeks a brand that will protect him from the dangers that are alleged to attend smoking. He is often prepared to sacrifice most of the benefits he previously derived from smoking to achieve this. Such a brand provides the consoling sense that the smoker has eliminated the risks of smoking by "quitting", while continuing to engage in ritualized behaviors associated with cigarettes.

An increasing number of brands addressed this benefit, including Now, Carlton, Cambridge and, perhaps, Barclay.

The symbolism of such "Ultra Low Tar" brands is discussed in detail in "Product Attribute Image Study – Exploratory Research", Beaumont, August, 1981.

- The Beaumont Organization Ltd., *The Benefit of Cigarettes Exploratory Research*, RJR Group, August 1981, **Exhibit PG-628**.

See also:

- Depth Research Laboratories Inc. for Wells, Rich, Greene Inc., *Reactions to a Proposed New 85 mm Benson & Hedges Among Current Benson & Hedges Smokers in Dallas*, PM Group, August 28, 1978, **Exhibit PG-629**;
- Exhibit PG-493;
- Goldstein/Krall Marketing Resources Inc., *Smokers' Reactions to an Ultralight Brand Extension for Marlboro, A Qualitative Study*, PM Group, June 1979, **Exhibit PG-631**;
- Guiles & Associates, *Benson & Hedges Qualitative Research Exploring Out-Switching*, PM Group, November 1994, **Exhibit PG-632**;
- Memorandum from M.D. Shannon to W.M. Henly and R.A. Lloyd, *Project HR*, RJR, August 5, 1980, **Exhibit PG-633**;
- Exhibit PG-621;
- Memorandum from M. Oldman to L.C.F. Blackman, *Low Delivery Cigarettes and Quitting*, BAT Group, April 28, 1981, **Exhibit PG-635**;
- M.J. Weaver, *Cigarette Smoking, Health and Dissonance (Project LIBRA): iv. Further Analysis, Conclusions and Recommendations*, BAT Group, August 25, 1981, **Exhibit PG-636**;
- Memorandum from E.F. Litzinger to E.T. Parrack, *Social Smoking Studies*, Brown & Williamson, January 19, 1978, **Exhibit PG-637**;
- The Creative Research Group, *Project Viking Volume III: Product Issues*, Imperial, February-March 1986, **Exhibit PG-638**;
- The Roper Organization Inc., *A Study of Public Attitudes Toward Cigarette Smoking and the Tobacco Industry in 1978*, The Tobacco Institute, May 1978, **Exhibit PG-639**.

638. That misperception by consumers persisted for several years, as shown in a 1997 BAT report:

Comprehension by those who are aware

Generally, the specific meaning of Tar and Nic is not understood by consumers. However, they perceive a strong association between the numbers with "perceived health effects". Basic understanding is that "the higher the numbers, the stronger the negative health effects".

- N. Simamane, *Business Review*, BAT Group, September 1997, **Exhibit PG-640**.

639. Since the manufacturers were well aware of those misperceptions, to reassure and induce consumers to start or continue to smoke, they simply had to state on cigarette packages or in their advertising that the product was "light" or "mild":

- Package illustrations and examples of advertisements, **Exhibit PG-641**.

640. At the same time, however, manufacturers knew that light or mild cigarettes were not less harmful and that using such qualifiers would likely mislead consumers.

## **2. Equally or More Dangerous Product**

- (a) The manufacturers knew that smokers of light or mild cigarettes could inhale more harmful substances

641. During the 1960s, manufacturers observed that smokers of light or mild cigarettes could inhale as much, if not more, harmful substances than smokers of regular cigarettes, because of the phenomenon of compensation.

642. Smokers can adapt or modify their smoking behaviour in order to obtain their required dose of nicotine, by inhaling more deeply or longer, by blocking the filter ventilation holes, or by increasing their daily cigarette consumption.

643. A March 24, 1972, letter sent to BAT by the head of the Research and Development Division at Imperial revealed the extent of the knowledge both companies had of the phenomenon of compensation:

Considerable evidence is accumulating to the effect that when the nicotine content of cigarette smoke is reduced, smokers appear to compensate for this change by adjusting their smoking behaviour to satisfy their nicotine requirements, and in doing so they are likely to increase their tar intake. Studies in the Research Department using a slave smoker have supported this, and we believe that further work here in this vein will contribute substantially in guiding product development.

[...]

In the light of the accumulating evidence, it seems questionable for the Department of National Health & Welfare to continue to push for the lowering of both tar and nicotine deliveries of cigarettes. Compensation for lower nicotine can be expected to maintain higher tar intakes.

- Letter from R.S. Wade to D.G. Felton and attachment entitled *Compensation by Smokers for Changes in Cigarette Composition*, Imperial, March 24, 1972, **Exhibit PG-642**.

See also:

- D.E. Creighton, *Compensation for Changed Delivery*, Report No. RD 1300 Restricted, BAT Co., January 30, 1976, **Exhibit PG-643**.

644. As for PM Inc., it concluded as follows:

Underlying all of our work in this area is the conviction that what the smoker gets in the way of smoke is independent of smoke concentration levels as delivered within the range of commercially available cigarettes. He has a variety of regulatory maneuvers at his disposal for accommodating



supply to a fairly constant need. To monitor all of these maneuvers simultaneously is a major objective of our Behavioral Research program.

- Exhibit PG-471.

645. In 1976, the research director at RJRT came to the same conclusion:

However, the amount of nicotine that one can get in the lungs from low tar cigarettes is much less. So the smoker then resorts to other means to get the nicotine he needs in the blood from low tar cigarettes, by longer puffs, by larger puffs, by more frequent puffs, and also by smoking more cigarettes each day.

- M. Senkus, *Some Effects of Smoking*, RJR Group, 1976-1977, **Exhibit PG-644**.

See also:

- Memorandum from H. Wakeham to H. Cullman *Trends of Tar and Nicotine Deliveries Over the Last 5 Years*, PM Group, 1961, **Exhibit PG-645**;
- Memorandum from W.L. Dunn, Jr., to R.B. Seligman, *A Study of the Effect of Lip Occlusion of Air Holes on Main Stream Delivery in Air Diluted Cigarettes*, PM Group, 1967, **Exhibit PG-646**;
- W.L. Dunn, *Project 1600: Consumer Psychology*, PM Group, 1967, **Exhibit PG-647**;
- Memorandum from G. R. Berman to P.A. Zochorn, *TPM Intake by Smokers*, PM Group, April 30, 1968, **Exhibit PG-648**;
- Exhibit PG-474;
- H. Wakeham, *Presentation to the Board of Directors: Smoker Psychology Research*, PM Group, November 26, 1969, **Exhibit PG-649**;
- Letter from H. Wakeham to Max Hansermann, PM Group, November 26, 1974, **Exhibit PG-650**;
- B. Gustafson and H. Gaisch, *PME Research, 1972-1974*, PME, **Exhibit PG-651**;
- Exhibit PG-478;

- B.L. Goodman, *Summary of Human Smoker Simulator Program*, PM Inc., August 1977, **Exhibit PG-653**;
- Goldstein / Krall Marketing Resources, Inc., *A Qualitative Exploration of Smoker Potential for a New Entry in the Ultra Low Tar Market Category*, PM Group, January 1979, **Exhibit PG-654**;
- F.P. Gulotta and J.A. Jones, *Behavioral Research Laboratory Annual Report – Part II; Section A – The Electroencephalography Program; Section B – The Inhalation Monitoring Program*, PM Inc., July 20, 1981, **Exhibit PG-655**;
- Memorandum from J. Jones to W.L. Dunn, Jr., *Nicotine Retention Research Proposal*, PM Inc., October 16, 1981, **Exhibit PG-656**;
- K. Gunst, *The Effect of Cigarette Nicotine Content on Smoker Puff Parameters and Deliveries*, PM Inc., November 29, 1982, **Exhibit PG-657**;
- Memorandum from C.E. Teague to E.A. Vassalo and M. Senkus, *A Gap in Present Cigarette Product Lines and an Opportunity to Market a New Type of Product*, RJR Group, March 28, 1972, **Exhibit PG-658**;
- M. Senkus, *Smoking Satisfaction*, RJRTI, 1974, **Exhibit PG-659**;
- Memorandum from D.H. Piehl to A. Rodgman, *Significant Smoking Behaviour Publication*, RJR Group, February 15, 1979, **Exhibit PG-660**;
- Memorandum from J.H. Robinson to A. Rodgman, *Critique of "Smokers of Low-yield Cigarettes do not Consume Less Nicotine"*, RJR Group, July 25, 1983, **Exhibit PG-661**;
- Memorandum from A.B. Norman to S.B. Witt, *Smoker Compensation Review*, RJR Group, April 15, 1983, **Exhibit PG-662**;
- T.J. Wilson, *Effect of Cigarette Smoke Concentration on Human Smoking Characteristics*, British Tobacco Company (Australia) Limited, October 1967, **Exhibit PG-663**;
- Exhibit PG-150;
- A.I. Kalhok and P.L. Short, *The Effect of Restrictions on Current Marketing and Marketing in the Future*, BAT Group, 1976, **Exhibit PG-664**;

- D.E. Creighton, *Smoking Behaviour (Low Delivery Cigarettes), Report No. RD 1440 Restricted*, BAT Co., January 10, 1977, **Exhibit PG-665**;
- D.E. Creighton and P.H. Lewis, *The Effects of Changing Brands on Smoking Behaviour*, BAT Co., 1977, **Exhibit PG-666**;
- *Nicotine Conference, Southampton 6-8 June, 1984, Summary*, BAT Group, 1984, **Exhibit PG-667**;
- Note by H.F. Dymond, *Notes on Meeting with Dr. Eicher*, BAT Group, December 21, 1987, **Exhibit PG-668**;
- Memorandum from J. Parker to M. Marr, *Project VERSO*, BAT (U.K. and Export) Limited, August 20, 1990, **Exhibit PG-669**;
- Letter from D.G. Felton to H.R. Bentley, *Compensation by Smokers*, BAT Group, March 27, 1972, **Exhibit PG-670**.

(b) The manufacturers knew that the tar and nicotine levels indicated on the packages were misleading

646. In addition, the manufacturers knew that if smokers of low tar and nicotine cigarettes modified their smoking behaviour, they could inhale more than the machine-measured quantities:

In the smoking machine the puff volume is constant so that with dilution the quantity of "equivalent undiluted smoke" delivered to the Cambridge filter is reduced. Not so with the human smoker who appears to adjust to the diluted smoke by taking a larger puff so that he still gets about the same amount of equivalent undiluted smoke.

[...]

The smoker is, thus, apparently defeating the purpose of dilution to give him less "smoke" per puff. He is certainly not performing like the standard smoking machine; and to this extent the smoking machine does appear to be erroneous and misleading. It has probably always been so for diluted smoke cigarets, whether dilution is obtained by porous paper or holes in the filter.

- Memorandum from H. Wakeham to P.D. Smith, *Plastic Dilution Tipped Parliament*, PM Group, August 11, 1967, **Exhibit PG-671**.

647. The manufacturers all came to that conclusion:

- D. Creighton and L.M. McGillivray, *The Effect of Changed Deliveries at Constant Pressure Drop on Human Smoking Pattern*, BAT Co., November 3, 1971, **Exhibit PG-672**;
- *Some Unexpected Observations on Tar and Nicotine and Smoker Behavior*, PM Group, March 1, 1974, **Exhibit PG-673**;
- Memorandum from B. Goodman to L. F. Meyer, *Marlboro – Marlboro Lights Study Delivery Data*, PM Inc., September 17, 1975, **Exhibit PG-674**;
- Memorandum from the law firm Davis Polk and Wardwell to M. Berling, *Memorandum re: Philip Morris Website*, PM Group, September 10, 1999, **Exhibit PG-675**;
- Memorandum from J.H. Robinson and J.H. Reynolds to D. Werner, *Comparative Study of German Full Flavour Brands: Camel vs Marlboro*, RJR Group, April 5, 1982, **Exhibit PG-676**;
- *B.A.T: Approach to Smoking and Health*, BAT Group, July 13, 1973, **Exhibit PG-677**;
- S.J. Green, *Ranking Cigarette Brands on Smoke Deliveries*, BAT Group, 1978, **Exhibit PG-678**;
- D.E. Creighton, *A Comparison of Smoking Surveys Separated by Four Years*, BAT Co., June 29, 1979, **Exhibit PG-679**;
- Exhibit PG-162;
- Exhibit PG-416;
- Letter from E. Pepples, Brown & Williamson, to H. Liebengood, Tobacco Institute, *FTC Tar 1 Nicotine Test Method*, Brown & Williamson, March 19, 1984, **Exhibit PG-680**;
- *Proceedings of the Smoking Behaviour-Marketing Conference, July 9th – 12th, Session III*, BAT Group, 1984, **Exhibit PG-681**;
- Letter from C.H. Keith to M.L. Reynolds, Brown & Williamson, January 24, 1985, **Exhibit PG-682**;

- Memorandum from M.L. Reynolds to H.F. Dymond and H. Ibig, *Easily Achieved Tar Deliveries from Low Tar Cigarettes*, Brown & Williamson, October 12, 1987, **Exhibit PG-683**;
- Exhibit PG-403;
- *Notes of a Meeting of the Tobacco Company Research Directors*, Imperial (U.K.), Rothmans Group, PM Group and BAT Group, February 16, 1983, **Exhibit PG-684**.

648. Knowing that smokers could be misled by the machine-measured tar and nicotine levels indicated, some individuals within the industry wondered whether an advantage should be derived from that misperception:

In a league table position should we take advantage of a system of measurement or reporting in a way which could lead to misinforming our consumers? Should we aim to develop cigarettes which give, say low TPM under machine smoking conditions but which will give high TPM to the average human smoker?

- Exhibit PG-192.

649. BAT restated that same quandary in 1977:

4. Should we market cigarettes intended to re-assure the smoker that they are safer without assuring ourselves that indeed they are so or are not less safe? For example should we 'cheat' smokers by 'cheating' League Tables? If we are prepared to accept that government has created league tables to encourage lower delivery cigarette smoking and further if we make league table claims as implied health claims – or allow health claims to be so implied – should we use our superior knowledge of our products to design them so that they give low league table positions but higher deliveries on human smoking?

Are smokers entitled to expect that cigarettes shown as lower delivery in league tables will in fact deliver less to their lungs than cigarettes shown higher?

- S.J. Green, *Suggested Questions for CAV III (Chairman's Advisory Conferences)*, BAT Group, August 26, 1977, **Exhibit PG-685**.

See also:

- Memorandum from R. Fagan to H. Wakeham, *Biological Significance of "Tar"*, PM Inc., September 2, 1970, **Exhibit PG-686**.

650. The situation was even more preoccupying because manufacturers wondered if low tar and nicotine cigarettes were not in fact more hazardous to health than regular cigarettes:

- F.J.C. Roe, *Integrated League Tables*, BAT Group, February 6, 1978, **Exhibit PG-687**;
- S. Shachter, *Pharmalogical and Psychological Determinants of Smoking*, February 1977, PM Group, **Exhibit PG-688**.

651. The tobacco industry chose not to inform the public about compensation or about the true significance of machine-measured tar and nicotine levels.

652. Rather, the manufacturers decided to continue to benefit from the false perception by smokers and to develop and commercialize products of acceptable flavour that appeared to be safer for health:

This means that a cigarette constructed with low paper porosity but with filter tip ventilation would more readily allow a smoker to take a higher delivery of smoke by increasing the velocity of puffing. Such a cigarette construction would provide a marketing opportunity to offer a LOW to LOW TO MIDDLE delivery product when smoked by machine, which could be a LOW TO MIDDLE to MIDDLE delivery product when smoked by the smoker. Such a cigarette design might be found to be more acceptable to smokers who do not find a low delivery design satisfactory.

- D.E. Creighton, *Measurement of the Degree of Ventilation of Cigarettes at Various Flow Rates, Report No. RD. 1576 Restricted*, BAT Co., April 14, 1978, **Exhibit PG-689**.

See also:

- Exhibit PG-482;
- Rosenfeld, Sirowitz & Lawson, Inc., *An Evaluation of the 120mm Market and its Potential for RJR*, November 17, 1975, **Exhibit PG-690**;

- Memorandum from E.J. Gray to H. Cullman, J. Guthrie and W. O'Connor, *High-Filtration Advertising Concept*, PM Group, December 1975, **Exhibit PG-691**;
- *Remarks by Second Speaker-Merit Team*, PM Group, 1976, **Exhibit PG-692**;
- Exhibit PG-654;
- *Philip Morris Management Corp./Worldwide Regulatory Affairs Department – 1996 Core Issues Plans*, PM Group, 1996, **Exhibit PG-693**;
- Exhibit PG-520;
- Consumer Diagnostics Inc. for William Esty Company Inc., *Qualitative Consumer Evaluation – 4 Winston Lights Positionings*, RJR Group, April 1974, **Exhibit PG-694**;
- Letter from H. L. Scutt to E.M. Blackmer, *DORAL – Positioning*, RJR Group, July 27, 1976, **Exhibit PG-695**;
- Memorandum from K.C. Smith to J.T. Winebrenner, *Project NM*, RJR Group, April 19, 1978, **Exhibit PG-696**;
- Exhibit PG-378;
- *A New Product*, BAT Group, October 1971, **Exhibit PG-697**;
- A.D. McCormick, note to participants at the British American Tobacco Conference, May 3, 1974, **Exhibit PG-698**;
- Exhibit PG-169;
- Exhibit PG-397;
- *Smoking & Health / Item 7: The Effect on Marketing*, BAT Group, April 1977, **Exhibit PG-699**;
- Memorandum by T. C. Hanby, BAT Group, March 22, 1979, **Exhibit PG-700**;
- *B.A.T Board Strategies – Product Innovation*, BAT Group, January 1980, **Exhibit PG-701**;
- Exhibit PG-396;

- D. Creighton, *Compensatable Filters*, Structured Creativity Conference, BAT Group, 1984, **Exhibit PG-702**;
- E. Pepples, *Industry Response to Cigarette / Health Controversy*, Brown & Williamson, February 4, 1976, **Exhibit PG-703**;
- *Purite Filter*, Brown & Williamson, 1978, **Exhibit PG-704**;
- Lisher & Company Inc., *Low Delivery Cigarette Project for B&W*, November 14, 1978, **Exhibit PG-705**;
- Memorandum from J. K. Wells to R. J. Pritchard, Brown & Williamson, October 31, 1989, **Exhibit PG-706**;
- Analytical Research (Canada) Ltd. and Analytical Research Institute – Peekskill, N.Y., *Contemporary Consumer Attitudes Toward Cigarettes, Smoking and Health, A Motivation Research Study of Developing Trends in Receptivity and Resistance*, Imperial Tobacco Company of Canada Ltd., August 1969, **Exhibit PG-707**;
- *Tobacco Division Chairman's Advisory Conference – Vancouver / Chairman's Address*, BAT Group, April 1979, **Exhibit PG-708**;
- C. Brohman, C. McBride, H. Roubyek, *Project VISA*, ITL, May 9, 1988, **Exhibit PG-709**;
- A. Chan, A. Porter and T. Smith, *Project DAY*, ITL, June 21, 1988, **Exhibit PG-710**;
- *Marketing Strategic and Developments Plans*, ITL, February 1989, **Exhibit PG-711**.

653. Imperial was of the opinion that the manufacturers' decision to take advantage of the false perception held by consumers that low tar and nicotine cigarettes are less harmful was beneficial to the industry:

Pre-lights, these concerned consumers had a limited range of options open to them – essentially quit or cut down.

[...]

Fortunately for the tobacco industry, neither of these two approaches proved very successful for smokers. In 1976, although 41% had tried to quit and 26% were ready to give it another go, the actual rate of quitting "within the past 6



months" was fairly stable at a little less than 2%. Fewer than this made it to a year.

[...]

In 1974, manufacturers agreed to put tar and nicotine numbers on the sides of packages. Smokers who wished to do so could now rate brands on a scale of "danger". Lightness, instead of being an absolute, became a relative thing. Close on the heels of this key piece of information and the even more important foundation of relative mildness that it created, manufacturers began to introduce lighter brands instead of products. "lighter" was successfully defined in language smokers could understand as "All the experience of Player's in a lighter cigarette – Player's Light".

➤ Exhibit PG-396.

654. Up until the end of the 1990s, the manufacturers maintained that

- (a) they did not claim that light cigarettes were less harmful than regular cigarettes;
- (b) it was a well known fact that tar and nicotine yields measured by machine tests did not reflect the quantity of substances actually inhaled;
- (c) compensation as a phenomenon had not been sufficiently documented to warrant the public being informed of it;
- (d) they were aware of no information concerning any misperception by the public regarding light cigarettes and the less harmful effect they may have; and
- (e) consumers may opt for light cigarettes for a variety of reasons other than health concerns, and that manufacturers had not intended to lead the public to believe those products were safer:

- *Comments before the Federal Trade Commission of Philip Morris Incorporated, R. J. Reynolds Tobacco Company, Brown & Williamson Tobacco Corporation and Lorillard Tobacco Company on the Proposal Entitled FTC Cigarette Testing Methodology*, February 1998, **Exhibit PG-712**.

See also:

- Imperial website, 1999, **Exhibit PG-713**.

655. Towards the end of the 1990s and into the early 2000s, there was an outburst of criticism of low tar and nicotine cigarettes:

- M. Jarvis, *Why Low Tar Cigarettes Don't Work and How the Tobacco Industry Has Fooled the Smoking Public*, 1999, **Exhibit PG-714**;
- World Health Organization, *World No-Tobacco Day*, 1999, **Exhibit PG-715**;
- "Tar", *Nicotine, and Carbon Monoxide of the Smoke of 1294 Varieties of Domestic Cigarettes for the Year 1998*, Federal Trade Commission, 2000, **Exhibit PG-716**;
- Thun and Burns, *Health impact of "reduced yield" cigarettes: a critical assessment of the epidemiological evidence*, 2001, **Exhibit PG-717**;
- *Monograph 13 – Risks associated with smoking cigarettes with low-machine measured yields of tar and nicotine*, US Department of Health and Human Services, 2001, **Exhibit PG-718**;
- *Putting an End to Deception: Proceedings of the Internal Expert Panel on Cigarette Descriptors – A Report to the Canadian Minister of Health*, Ministerial Advisory Council on Tobacco Control, 2002, **Exhibit 719**.

656. In response, the manufacturers altered their public position and acknowledged that light cigarettes were not less harmful to health:

A smoker should not assume that brand descriptors such as "light" or "ultra light" indicate with precision either the actual amount of tar and nicotine inhaled from any particular cigarette, or the relative amount as compared to competing cigarette brands. Some researchers report that smokers of "light" cigarettes inhale as much tar and nicotine as from full-flavor brands. The amount of tar and

nicotine inhaled will be higher if, for example, a smoker blocks ventilation holes, inhales more deeply, takes more puffs or smokes more cigarettes.

Philip Morris USA does not imply in its marketing, and smokers should not assume, that lower-yielding brands are "safe" or "safer" than full-flavor brands. Health warnings are required on all of our brands, irrespective of their tar and nicotine yields. The Federal Trade Commission (FTC) has stated that "smoking 'low tar' or 'light' cigarettes does not eliminate the health risks of smoking. If you're concerned about the health risks of smoking, stop smoking... There's no such thing as a safe smoke.

[Read the National Cancer Institute Monograph 13 Press Release](#), which includes a link to the full study: "Risks Associated with Smoking Cigarettes with Low Machine-Measured Yields of Tar and Nicotine."

- Philip Morris website, 2003, **Exhibit PG-720**.

See also:

- Imperial Tobacco Limited website, 1999, **Exhibit PG-721**;
- R.J. Reynolds website, 2004, **Exhibit PG-722**;
- Brown & Williamson website, 2004, **Exhibit PG-723**.

657. Thus, for more than 30 years, the Defendants

- (a) knew that a reduction in the tar and nicotine yield of cigarettes did not produce the hoped-for benefits to health;
- (b) concealed from consumers information in their possession relating to compensation and the true significance of machine-measured tar and nicotine levels;
- (c) took advantage instead of the false perception held by smokers, particularly by using the qualifiers "light" or "mild" to reassure them about the effects of smoking on health; and

- (d) misled consumers with the objective of preserving the profitability of their business to the detriment of the health of their customers.

658. The Defendants, therefore, failed in the duty to abide by the rules of conduct to which they were bound according to the circumstances, usage and the law in respect of persons in Québec.

D. THE DEFENDANTS SPECIFICALLY FAILED TO INFORM THE CHILDREN AND ADOLESCENTS OF QUÉBEC OF THE HARMFUL NATURE OF TOBACCO PRODUCTS

**1. The Defendants' Dual Position**

- (a) The Defendants falsely claimed for some 40 years that their marketing was not targeted at children and adolescents

659. As early as 1964, Canadian manufacturers adopted an advertising code (Exhibit PG-19) that prohibited advertising to persons under 18 years of age.

660. Those restrictions were maintained in later amendments to the code:

- *Cigarette Advertising Code of Canadian Tobacco Manufacturers*, Imperial Tobacco Company of Canada, Macdonald Tobacco Inc., Rothmans of Pall Mall Canada Limited, Benson & Hedges (Canada) Limited, January 1, 1972, **Exhibit PG-724**;
- Exhibit PG-178;
- *Code de publicité et de promotion du Conseil canadien des fabricants des produits du tabac relativement à la cigarette et au tabac à cigarette*, Benson & Hedges (Canada) Limited, Imperial Tobacco Company of Canada Limited, Macdonald Tobacco Inc., Rothmans of Pall Mall Canada Limited, January 1, 1984, **Exhibit PG-725**;
- *Tobacco Industry Voluntary Packaging and Advertising Code*, CTMC, December 19, 1995, **Exhibit PG-726**.

661. At all times relevant to this action, the manufacturers publicly claimed that their product advertising and promotional activities were aimed solely at increasing their respective market shares among adult smokers and did not target children or adolescents.

662. The Canadian tobacco industry reiterated its position in 1985:

Our marketing approach is directed to adults. We never target our advertising to minors because we know that it does not prompt people to engage to start. We simply do not develop marketing plans for young people, have not made, and do not intend to make efforts to bring them into our market.

We firmly believe that smoking is an adult choice and custom. We do not even do advertising research on people below 18.

- *Advertising in General – Position Statement*, CTMC, 1985, **Exhibit PG-727**.

See also:

- Why the Proposed Government Legislation Banning Tobacco Advertising Deserves a Sensible Second Look, Even by People Who Don't Smoke, CTMC et al., *The Gazette*, July 9, 1987, **Exhibit PG-728**;
- *Imperial Tobacco Responds to Comments in Media Concerning 1200 Documents Released by Health Canada*, Press release, ITL, November 22, 1999, **Exhibit PG-729**;
- *Statement by George V. Allen, President of the Tobacco Institute*, press release, The Tobacco Institute, July 9, 1963, **Exhibit PG-730**;
- The Tobacco Institute press release, May 13, 1981, **Exhibit PG-731**;
- Brochure, *Smoking and Young People -- Where the Tobacco Industry Stands*, The Tobacco Institute, 1989, **Exhibit PG-732**;
- *Statement of Business Conduct*, BAT Industries, December 21, 1993, **Exhibit PG-733**;
- Website excerpt, *Marketing Principles and Practice*, Brown & Williamson, November 1999, **Exhibit PG-734**;

- Memorandum by The Creative Research Group Ltd., *Project Viking*, BAT Group, December 18, 1991, **Exhibit PG-735**;
- Exhibit PG-50;
- *Questions and Answers*, RJR Group, January 17, 1984, **Exhibit PG-736**;
- *Third Family – Public Relations Plan*, RJR-Macdonald, October 1985, **Exhibit PG-737**;
- *Industry Initiatives Backup*, PM Group, September 1996, **Exhibit PG-738**;
- Letter from a PM representative to a school principal, PM Inc., February 24, 1995, **Exhibit PG-739**.

(b) The Defendants compiled abundant data to plan their marketing strategy for children and adolescents

663. Contrary to those affirmations, the manufacturers planned and organized their marketing in such a manner as to directly or indirectly induce children and adolescents to choose their respective products.

664. The manufacturers knew from the outset that a majority of new smokers start smoking during their adolescent years, and that very few people start smoking after the age of 19, a fact the CTMC was well aware of:

1. Statistics

[...]

By age 12, one half of Canadian school children have at least tried smoking;

Regular smoking is established in the early teens by many Canadian students;

School aged boys experiment with cigarettes earlier than girls, but girls begin regular smoking earlier than boys.

From the early teens, a higher proportion of girls than boys smoke daily;

By age 14, 15% of boys and 20% of girls are daily smokers and by age 17 these figures have increased to 27% of boys and 30% of girls. No significant change occurs in the proportion of students who report daily smoking beyond this age.

These figures are remarkably similar to the studies reviewed by Russell (1971) in which it was found that of those children who smoked more than one or two casual cigarettes before the age of 19, 80% went on to become regular smokers as adults. It is only the teenager who never attempts, or who has attempted no more than once and decided that he dislikes it and will not take it up, who has much chance of being a non-smoking adult. The matter is largely settled by the age of 19; if a person still is a non-smoker at this age he is unlikely to take it up.

- V.J. Knott, *Identifying Psychophysiological Predictors of Tobacco Use in Children: A Five-Year Prospective Longitudinal Study*, CTMC, November 1981, **Exhibit PG-740**.

See also:

- Kwechansky Marketing Research Inc., *Project Plus / Minus*, ITL, May 7, 1982, **Exhibit PG-741**;
- Letter from D.S. Burrows to P.E. Galyan, *Estimated Change in Industry Trend Following Federal Excise Tax Increase*, RJR Group, September 20, 1982, **Exhibit PG-742**;
- Children's Research Units, *An Examination of the Factors Influencing Juvenile Smoking Initiation in Canada*, CTMC, December 1987, **Exhibit PG-743**;
- Eastman Chemical Products Inc., *Survey of Cigarette Smoking Behavior and Attitudes, V. 1*, Brown & Williamson, 1969, **Exhibit PG-744**;
- Memorandum from D.W. Tredennick to F.H. Christopher, *What Causes Smokers to Select Their First Brand of Cigarette*, RJR Group, July 3, 1974, **Exhibit PG-745**;
- *A Guide to the USA Marketing Plan*, PM Group, May 1975, **Exhibit PG-746**;
- *Marlboro*, PM Inc., March 29, 1979, **Exhibit PG-747**;

- Memorandum from M. Johnston to J. Zoler, *The Ages which People Start Smoking*, PM Inc., January 19, 1983, **Exhibit PG-748**;
- Memorandum from M. Johnston to J. Zoler, *Trends in Smoking Among High School Seniors*, PM Inc., August 15, 1985, **Exhibit PG-749**;
- Johnston & Ass., *Segmentation – Phase 1 Focus Group Research*, RBH, 1991, **Exhibit PG-750**.

665. Knowing that smoking starts at a young age, the manufacturers took a special interest in that segment of the population and regularly compiled data on the consumption of tobacco products among children, adolescents and young adults.

666. Imperial archives contain various statistics on the Canadian market and consumption by smokers aged 19 and younger:

- *I.T.L. Cigarette Market Share – Objectives 1982-1987*, ITL, June 11, 1981, **Exhibit PG-751**;
- Memorandum from F. Y. Caya to L. Grazely, ITL, July 16, 1991, **Exhibit PG-752**;
- *Imperial Tobacco Limited –Neil Granitz*, ITL, 1991, **Exhibit PG-753**;
- Market Research Group and Market Analysis Group, *Annual Tobacco Industry Review – 1989*, ITL, April 1990, **Exhibit PG-754**.

667. Imperial's sister company in the BAT Group, Brown & Williamson, also compiled data on young smokers, particularly for *Kool* cigarettes which were aimed at that market:

- Memorandum from R.L. Johnson to R.A. Pittman, *List of Conclusions Based on Wave XIII*, Brown & Williamson, February 21, 1973, **Exhibit PG-755**;
- C.S. Muije, *Report of Conference*, Brown & Williamson, September 26, 1974, **Exhibit PG-756**;



- *Cigarette Brand Switching Studies*, Brown & Williamson, circa 1976, **Exhibit PG-757**;
- *Kool Switching History*, Brown & Williamson, 1980, **Exhibit PG-758**;
- Market Facts Inc., *Additional Analyses / The National Brand Switching Studies*, Brown & Williamson, January 1984, **Exhibit PG-759**.

668. The PM Group was equally interested in adolescent smokers:

- E. Roper, *A Study of People's Cigarette Smoking Habits and Attitudes*, PM Group, August 1953, **Exhibit PG-760**;
- Memorandum from G. Weissman to R.M. Dupuis, PM Group, October 7, 1953, **Exhibit PG-761**;
- Memorandum from M.E. Johnston to R.B. Seligman, *Marlboro Market Penetration by Age and Sex*, PM Group, May 23, 1969, **Exhibit PG-762**;
- Memorandum from S. Wilkins and R. Roper to S. Fontaine, *Suggestions for Research to Answer Questions Raised on Philip Morris Benchmark Study*, PM Group, June 12, 1970, **Exhibit PG-763**;
- Marketing Research Department, *Incidence of Smoking Cigarettes*, PM Inc., May 18, 1973, **Exhibit PG-764**;
- *Tobacco Marketing – Five Year Plan*, PM Inc., June 1973, **Exhibit PG-765**;
- Report by M.E. Johnston, *Economic Forecast / 1975-1980*, PM Group, March 3, 1975, **Exhibit PG-766**;
- M. Johnston to R.B. Seligman, *The Decline in the Rate of Growth of Marlboro Red*, PM Inc., May 21, 1975, **Exhibit PG-767**;
- Memorandum from F. Ryan and M. Johnston to W.L. Dunn, *Teenage Smoking*, PM Inc., April 8, 1976, **Exhibit PG-768**;
- Memorandum from M. Johnston to A. Udow, *Still More on Trends in Cigarette Smoking Prevalence*, PM Inc., February 18, 1983, **Exhibit PG-769**.

669. The evolution of the adolescent market was also followed closely by the RJR Group:

Marlboro's traditional source of strength – younger smokers, though still sizable, is eroding at a rapid rate. Between April, 1974, and April, 1975, Marlboro King showed a five share point loss in the 14-17 year old age group and since 1973, Marlboro King's share of market has declined by eight share points in this segment.

[...]

From a corporate standpoint, RJR and Philip Morris exhibited general growth in most age groups. (Philip Morris did have a decline in the 14-17 group, while RJR showed a gain.) The other four companies either showed no change or declines in the age groups.

- Memorandum from J.M. Wallace to T.L. Ogburn, *Share of Smokers by Age Group*, RJR Group, October 30, 1975, **Exhibit PG-770**.

See also:

- William Esty Company, *Cigarette Smoking Study Among High School and College Students*, RJRT, December 9, 1959, **Exhibit PG-771**;
- William Esty Company, *National Studies of Trends in Cigarette Smoking and Brand Preference – Base Period Study – January 1964*, RJR Group, February 1964, **Exhibit PG-772**;
- Memorandum from W.A. Sugg to W.S. Smith, RJR Group, March 12, 1964, **Exhibit PG-773**;
- *Summary of Decisions Made in MRD-Esty Meeting on April 7, 1971 Concerning Spring 1971 NFO Tobacco Products Survey*, RJR Group, April 1971, **Exhibit PG-774**;
- Memorandum from J.H. Sherrill to W.S. Smith, *Share of Smokers: By Age – Top Ten Brand Items*, RJR Group, September 26, 1972, **Exhibit PG-775**;
- Letter from J. F. Stuart, RJR, to S. H. Odesky, NFO, *April Screening*, RJR Group, March 15, 1974, **Exhibit PG-776**;
- *Marketing Department Key Issue Position Paper*, RJRT, October 8, 1976, **Exhibit PG-777**;
- Memorandum from T. Key to T.L. Ogburn, *Share of Smokers by Age Group*, RJR Group, August 12, 1976, **Exhibit PG-778**;

- Memorandum from J.F. Durgee to T.L. Ogburn, *Share of Smokers by Age Group*, RJR Group, October 31, 1977, **Exhibit PG-779**;
- Memorandum from S.R. Perry to U. Frydman, *Teenage Smokers (14-17) and New Adult Smokers and Quitters*, RJR Group, February 1, 1980, **Exhibit PG-780**;
- Letter from G.H. Long to E.A. Morigan, *MDD Report on Teenage Smokers (14-17)*, RJRT, July 22, 1980, **Exhibit PG-781**;
- *R.J. Reynolds Cigarette Industry Volume Forecasting System*, RJR Group, 1981, **Exhibit PG-782**;
- Memorandum from D. Burrows to D. Weed, *Dollar Value of YAS Over Time*, RJR Group, October 12, 1989, **Exhibit PG-783**;
- Letter from T. Griscom to P. Kirk with document entitled *Percentage of Camel Volume Underage*, RJRT, March 16, 1992, **Exhibit PG-784**.

670. Adolescents and young adults represent the principal, if not the only, source of new tobacco industry customers.

671. Aware of that reality, the manufacturers conducted or commissioned studies on the motivations that induce young people to start smoking.

672. In that perspective, Imperial in 1977 commissioned a study under the name *Project 16*, and described its object as follows: " ... [to] learn everything there was to learn about how smoking beings [*sic*], how high school students feel about being smokers, and how they forsee [*sic*] their use of tobacco in the future":

- Exhibit PG-170.

673. That interest continued through the 1980s:

There is some information relating to quitters but an inadequate data base on starting. Since our future business depends on the size of this starter population set, it was considered important that we know why people start

to smoke and this may be more important than why they continue to smoke.

- Exhibit PG-681.

674. Around 1985, Imperial commissioned an extensive study called *Project Viking*, as part of a promotion program aimed at maintaining the size of the overall market, reassuring current smokers, and making its products more attractive to young people and non-smokers alike:

- The Creative Research Group, *Project Viking: A Behavioural Model of Smoking*, ITL, (Volume I of III), February – March 1986, **Exhibit PG-785**.

675. Another study in 1991 confirmed Imperial's keen interest in adolescents:

3N 1991 is the fifth of a series of research studies into the lifestyle and value systems of 13 to 24 year old Canadians. The first wave was conducted in 1987 among 15 to 24 year olds. In 1988, the sample was expanded to include 13 and 14 year olds. It has been repeated annually since then.

- The Creative Research Group, *3N 1991 / Consumer Research Library*, ITL, 1991, **Exhibit PG-786**.

See also:

- *Smoking by Children and Adolescents – Memorandum on Further Research to the Tobacco Manufacturers' Standing Committee Suggested by Market Investigations Limited*, BAT Group, August 1962, **Exhibit PG-787**;
- Kenyon & Eckhardt Inc., *New Ventures Project*, Brown & Williamson, September 1974, **Exhibit PG-788**;
- R.L. Johnson, *Scenarios for Long Range Plan*, Brown & Williamson, September 1974, **Exhibit PG-789**;
- A.K. Comer, *Dependence on Cigarette Smoking – A Review – Report No. RD1532 Restricted*, BAT Co., December 15, 1977, **Exhibit PG-790**;
- The Creative Research Group, *Project Viking, An Attitudinal Model of Smoking*, ITL, Volume II of III, February–March 1986, **Exhibit PG-791**;

- The Creative Research Group, *Project Viking / "Wave 2"*, ITL, July–August 1988, **Exhibit PG-792**;
- The Creative Research Group, *Tracking Study: 1988*, ITL, 1988, **Exhibit PG-793**;
- *Product Development Specialists Meeting Book III – Innovation*, ITL, 1989, **Exhibit PG-794**;
- Market Research Group and Market Analysis Group, *Annual Tobacco Industry Review 1989*, ITL, April 1990, **Exhibit PG-795**;
- Canadian Facts, *Project Image '91 – Methodology*, ITL, March 1991, **Exhibit PG-796**;
- Market Analysis Group, *Switching Analysis*, BAT Group, August 1991, **Exhibit PG-797**;
- Hugh Bain Research, *The Psychology of Significant Moments and Peak Experiences in Cigarette Smoking*, BAT Co., November 1993, **Exhibit PG-798**;
- C. Porteous, *Planning Forecast Document*, ITL, June 11, 1996, **Exhibit PG-799**.

676. The factors explaining why adolescents start to smoke also were of interest to the PM Group:

First, we have to break the question into its two parts: 1) Why does one begin to smoke? And 2) Why does one continue to smoke?

There is general agreement on the answer to the first part. The 16 to 20-year old begins smoking for psychosocial reasons. The act of smoking is symbolic; it signifies adulthood, he smokes to enhance his image in the eyes of his peers. But the psychosocial motive is not enough to explain continued smoking. Some other motive force takes over to make smoking rewarding in its own right. Long after adolescent preoccupation with self-image has subsided, the cigarette will even pre-empt food in times of scarcity on the smoker's priority list.

- H. Wakeham, *Smoker Psychology Research*, PM Group, November 26, 1969, **Exhibit PG-800**.

677. A 1981 study conducted by PM Inc. on young smokers summarized the situation as follows:

Summary

It is important to know as much as possible about teenage smoking patterns and attitudes. Today's teenager is tomorrow's potential regular customer, and the overwhelming majority of smokers first begin to smoke while still in their teens. In addition, the ten years following the teenage years is the period during which average daily consumption per smoker increases to the average adult level.

- M. Johnston, *Young Smokers – Prevalence, Trends Implications and Related Demographic Trends*, PM Inc., March 31, 1981, **Exhibit PG-801**.

See also:

- Memorandum from H. Wakeham to R. Millhiser, *Proposed FTC Requirement Regarding Tar and Nicotine Numbers*, PM Inc., August 26, 1970, **Exhibit PG-802**;
- Memorandum from W.L. Dunn to H. Wakeham, *Considerations Pertinent to the Proposed FTC Requirement of Published Numbers*, PM Inc., August 17, 1970, **Exhibit PG-803**;
- *The New Competition for Marlboro's Franchise*, PM Inc., July 1974, **Exhibit PG-804**;
- Memorandum from A. Udow to J.J. Morgan, *Why People Start to Smoke*, PM Inc., June 2, 1976, **Exhibit PG-805**;
- J.E. Tindall, *Cigarette Market History and Interpretation*, PM Inc., December 12, 1984, **Exhibit PG-806**;
- Memorandum from C. Levy to D. Dangoor, *Critical Consumer Research Issues*, PM Inc., September 28, 1987, **Exhibit PG-807**;
- Memorandum from C. Levy to D. Dangoor, *Critical Consumer Research Issues*, PM Inc., September 26, 1988, **Exhibit PG-808**;
- Bruce Eckman Inc., *The Viability of the Marlboro Man Among the 18-24 Segment*, PM Group, March 1992, **Exhibit PG-809**;

- *David Dangoor – Marketing Presentation Board of Directors*, PM Group, April 23, 1992, **Exhibit PG-810**;
- Letter from E. Franklin, Leo Burnett U.S.A., to S. Norris, PM Inc., *Insight*, February 1, 1995, **Exhibit PG-811**;
- Memorandum from M. Wood to N. Lund, *Female Marlboro Focus Groups*, PM Inc., June 23, 1995, **Exhibit PG-812**;
- *CPC New Products Speech*, PM Group, May 22, 1996, **Exhibit PG- 813**;
- *Marlboro Worldwide Creative Brief*, PM Group, November 1998, **Exhibit PG-814**;
- M. Cassidy, *YAM Scan II – Final Presentation Summary*, PM Inc., April 14, 2000, **Exhibit PG-815**.

678. The RJR Group was also aware of the importance the youth market played in the industry's survival:

The present large number of people in the 18 to 35 year old age group represents the greatest opportunity for long-term cigarette sales growth. Young people will continue to become smokers at or above the present rates during the projection period. The brands which these beginning smokers accept and use will become the dominant brands in future years. Evidence is now available to indicate that the 14 to 18 year old group is an increasing segment of the smoking population. RJR-T must soon establish a successful new brand in this market if our position in the Industry is to be maintained over the long term.

- *Planning Assumptions and Forecast for the Period 1977-1986*, RJRT, March 15, 1976, **Exhibit PG-816**.

See also:

- Burrows, *Younger Adult Smokers: Strategies and Opportunities*, RJRT, February 29, 1984, **Exhibit PG-817**.

679. In 1987, Macdonald also commissioned a study focusing on Canadian youth:

YOUTH TARGET 1987 is the first of a planned series of research studies into the lifestyles and value systems of

young men and women in the 15 – 24 age range. As such, it represents the benchmark against which changes or trends will be identified.

The purpose of the research is to provide marketers and policymakers with an enriched understanding of the mores and motives of this important emerging adult segment which can be applied to better decision making in regard to products and programs directed at youth.

[...]

#### Incidence of Smoking Factory-made Cigarettes

Slightly fewer than four in ten 15 – 24 year olds smoke factory-made cigarettes at this time. Certainly smoking increases with age, among both sexes, but younger women are taking over from younger men in entry into the market.

By region, Atlantic Canada and Ontario show less smoking than other areas. French Canadians in particular are likely to number many youthful smokers. There is some indication that larger cities contain proportionately more 15 – 24 year old smokers.

- The Creative Research Group, *Youth 1987*, RJR-Macdonald, 1987, **Exhibit PG-818**.

See also:

- Exhibit PG-523;
- Exhibit PG-532;
- *1975 Marketing Plans Presentation / Hilton Head*, RJR Group, September 30, 1974, **Exhibit PG-819**;
- Memorandum from L.W. Hall to G.H. Long, *Younger Adult Smoker Opportunity Analysis – New Brands*, RJR Group, September 29, 1980, **Exhibit PG-820**;
- *Export Family Strategy Document*, RJR-Macdonald, March 22, 1982, **Exhibit PG-821**;
- Memorandum from R.C. Nordine to E.J. Fockelman, *Strategies and Segments*, RJR Group, April 13, 1984, **Exhibit PG-822**;



- Trendfacts Marketing Research, *Proposed Development and Evaluation of Young Adult Smoker Panel in One Test Market/City for On-Going Consumer Marketing/Advertising Research Utilization*, RJRT, August 1985, **Exhibit PG-823**;
- The Creative Research Group, *Young Adult Study*, RJR-MacDonald, July 1987, **Exhibit PG-824**;
- *Operating in a Restricted Environment / Executive Summary*, RJR Group, 1991, **Exhibit PG-825**;
- Roper Starch, *Advertising Character and Slogan Survey*, RJRT, November 1993, **Exhibit PG-826**;
- Qualitative Science Inc., *An Investigation of factors contributing to the growth of du Maurier*, RJR-Macdonald, August 1994, **Exhibit PG-827**;
- Qualitative Science Inc., *An Evaluation of Alternative Advertising Campaigns for Export "A"*, RJR-Macdonald, April 1996, **Exhibit PG-828**.

680. Those studies by the various manufacturers revealed that the factors motivating children and adolescents to start smoking were pressure from peers, their parents and other members of their immediate environment; the need to affirm themselves and their independence; and the attraction of the forbidden.

681. The BAT Group studies also confirmed that children and adolescents generally chose to ignore warnings about the harmful effects of tobacco and believed they would never become addicted to cigarettes:

#### STUDY HIGHLIGHTS

[...]

Starters no longer disbelieve the dangers of smoking, but they almost universally assume these risks will not apply to themselves because they will not become addicted.

[...]

One certainly cannot say that the social environment of the 80's lacks for warnings about smoking. Public service

commercials, posters, anti-smoking groups, smoking restrictions, stop-smoking organizations and programs, media articles, school lectures (which are treated with a particular disdain), even packs and ads, all say loud and clear that smoking is a serious health hazard, They no longer equivocate and say "might be " as was once the case. They say "is". Why, then, would anyone wish to start smoking, in the face of such loud, consistent and clear warnings?

Oddly enough, such hazards are literally ignored by starters. It's not that they don't believe them, but that the threat is so diffuse and long-term that it need not be worried about.

[...]

Thus we have a pattern that shows how and why the health hazards do not really enter into the decision to start. It's no longer because they are sincerely disbelieved (shows of rebellious bravado aside), but because they are assumed as not applicable to the person who won't become addicted. But addicted they do indeed become...What then?

They know they would have a tough job quitting. Also, many like smoking and hence don't truly wish to quit. Yet, it becomes impossible to accept one's status as an addicted smoker without somehow coming to grips with the health issue, and making peace with it. This ends up done by rationalizations, which take several forms.

There's the one that says smoking can cause illness, but so can many things, and one cannot live as a hermit. Another one is the "truck syndrome"; why worry about smoking when you can get hit by a truck tomorrow? And there's the one that says that the hazards won't apply because the smoker will have quit long before then.

- Exhibit PG-741.

See also:

- Kenyon & Eckhardt Inc. *New Ventures Project*, Brown & Williamson, September 1974, **Exhibit PG-829**;
- Kenyon & Eckhardt, *Young Adult Smoker Life Styles and Attitudes*, Brown & Williamson, 1974, **Exhibit PG-830**;

➤ Exhibit PG-170.

## 2. Marketing Targeted at Children and Adolescents

(a) The Defendants designed products intended for children and adolescents to whom the sale of tobacco products was prohibited

682. The vast data compilations enabled the manufacturers to understand the needs, tastes, attitudes and aspirations of young people so the manufacturers could develop the best methods of attracting and retaining them as customers.

683. On the basis of their studies, the manufacturers were able to develop products, marketing plans, advertising, and promotional activities targeted at that specific market.

684. Imperial used its *Player's* brand to reach out to young persons, particularly beginning smokers, by favouring lifestyle advertising in media popular with the 12 to 24 age group:

### POSITIONAL STATEMENT (Dec. 1976)

To position Players' Filter as the brand with greatest relevant appeal to younger, modern smokers, by being part of a desirable natural lifestyle.

[...]

By younger modern smokers, we mean those people ranging from starters of the smoking habit up to and through the seeking and setting of their independent adult lifestyle. Relevant lifestyle is the key to the brand's positioning, and the youthful emphasis is a psychological not a chronological one.

[...]

A combination of TV guides, Sports/Youth Publications, Posters and Beetleboards will be utilized to support Player's Filter in 1977/78. It is judged that these vehicles offer a more youthful approach to reach the younger smokers of Export "A" and Player's Filter.

- Spitzer, Wills & Bates, *The Player's Family - A Working Paper*, ITL, March 25, 1977, **Exhibit PG-831**.

See also:

- *Fiscal '80 Media Plans / Phase I*, ITL, 1979, **Exhibit PG-832**;
- *Player's Trademark*, ITL, 1980, **Exhibit PG-833**;
- *Fiscal '81 National Media Plans*, ITL, 1980, **Exhibit PG-834**;
- *Player's Sports Advertising*, ITL, November 21, 1980, **Exhibit PG-835**;
- *Player's Family Advertising Fiscal 1984*, ITL, 1983, **Exhibit PG-836**;
- Exhibit PG-626;
- *ITL's Marketing Planning and Activities*, ITL, 1988, **Exhibit PG-837**;
- *The Industry*, ITL, 1988, **Exhibit PG-838**;
- Marketing and Research Counselors Inc. for Ted Bates Advertising, *What Have We Learned From People?*, Brown & Williamson, May 26, 1975, **Exhibit PG-839**;
- Marketing Innovations Inc., *Youth Cigarette – New Concepts*, Brown & Williamson, September 1972, **Exhibit PG-840**;
- *Marketing Planning Projects Specifications Sampling*, Brown & Williamson, December 11, 1974, **Exhibit PG-841**;
- *Viceroy Agency Orientation Outline*, Brown & Williamson, 1976, **Exhibit PG-842**;
- Zimmer-McClaskey-Lewis, *Brand Promotion Plan – 1977*, Brown & Williamson, August 4, 1976, **Exhibit PG-843**;
- Memorandum from R.G. Yiyar to F.E. McKeown, *Pontiac KOOL Jazz Festival*, Brown & Williamson, August 10, 1976, **Exhibit PG-844**;
- *Situation Analysis*, Brown & Williamson, circa 1977, **Exhibit PG-845**;

- *KOOL Family Utopian Objectives / 1979 – 1985*, Brown & Williamson, August 1978, **Exhibit PG-846**;
- *Belair Target Audience Rev Weights*, Brown & Williamson, September 14, 1983, **Exhibit PG-847**;
- *KOOL 1985 / 1986 Issues*, Brown & Williamson, March 6, 1985, **Exhibit PG-848**;
- Memorandum from D.V. Cantrell to I.D. Macdonald, *KOOL Isn't Getting the Starters/236*, Brown & Williamson, February 17, 1987, **Exhibit PG-849**.

685. For its part, the PM Group was also aware of the importance of the youth market and of the promotional efforts that had to be made to retain it:

- *R & D Strategic Plan / 1971-1975*, PM Inc., July 15, 1970, **Exhibit PG-850**.

See also:

- *Strategic Plan 1997 / 98 Sales & Marketing*, RBH, 1997, **Exhibit PG-851**;
- Metacorp Inc., *1984 Marlboro Spring Resort Field Marketing Opportunities*, PM Group, 1984, **Exhibit PG-852**;
- Prism Communications Ltd., *Presentation to: Benson & Hedges (Canada) Inc. / Re: Project Magic*, August 19, 1985, **Exhibit PG-853**;
- Memorandum from N.E. Brennan to D. Dangoor, *Key Marlboro Issues*, PM Inc., August 19, 1987, **Exhibit PG-854**;
- *Executive Summary / Total Parliament Lights*, PM Group, 1988, **Exhibit PG-855**;
- Gibbons, Voyer & Associates, *New Brand Opportunities in the Cigarette Industry*, PM Group, August 7, 1990, **Exhibit PG-856**;
- *Chesterfield*, PM Group, March 24, 1994, **Exhibit PG-857**.

686. To compete for the youth market against Imperial and its *Player's* brand, the RJR Group repositioned its *Export "A"* brand:

- *Macdonald Tobacco Inc. – Major Brands Review*, April 21, 1975, **Exhibit PG-858**.

(b) Lifestyle advertising

687. To compete effectively, Macdonald also resorted to lifestyle advertising:

4. Respondents believed certain executions were more likely than others to appeal to the younger set, i.e. those under the age of 19. Generally speaking, ads that identified with "adventure or sex" were said to more likely appeal to the teen and even pre-teen segment. Specific executions mentioned were: Exciting, Extra-curricular, Explicit and Ex-rated.

- Camelford Graham, *Project Print Ads – Topline Report*, RJR-MacDonald, May 21, 1996, **Exhibit PG-859**.

See also:

- Letter from J.H. McCain, William Esty Company, to J.O. Watson, RJRT, *NFO Preference Share Data "Youth" Market*, March 8, 1973, **Exhibit PG-860**;
- William Esty Company, *Winston Box Marketing Plan*, RJRT, November 1973, **Exhibit PG-861**;
- Memorandum from F.G. Colby to R.A. Blevins, *Cigarette Concept to Assure RJR a Larger Segment of the Youth Market*, RJR Group, December 4, 1973, **Exhibit PG-862**;
- *Domestic Operating Goals*, RJRT, 1974, **Exhibit PG-863**;
- Memorandum from D. Blackmar to R. McReynolds, *French Camel Filter Ad*, RJR Group, July 2, 1974, **Exhibit PG-864**;
- Exhibit PG-821;
- Memorandum from P.S. Cohen to M.E. Sheehan, *Project XG Qualitative Exploratory III MDD Topline Perspective*, RJRT, June 14, 1984, **Exhibit PG-865**;

- Memorandum from C.A. Martin to J.T. Windebrenner, *Younger Adult Smoker Perceptions of Camel*, RJR Group, October 18, 1984, **Exhibit PG-866**;
- Memorandum from A.N. Mitchell to R.T. Caufield, *Camel Younger Adult Smoker Focus Groups*, RJRT, February 1, 1985, **Exhibit PG-867**;
- Memorandum from J.S. Carpenter to J.T. Winebrenner, *"Funny" French Camel Design*, RJRT, March 5, 1985, **Exhibit PG-868**;
- Memorandum from J.H. Miller to E.C. Etzel, *Project LF Potential Year 1 Marketing Strategy*, RJR Group, October 15, 1987, **Exhibit PG-869**;
- *Younger Adult Opportunity*, RJR Group, 1988, **Exhibit PG-870**;
- C.S. Hunter, *Soundwaves Program Awareness and Perception Study*, RJR Group, February 2, 1989, **Exhibit PG-871**;
- *Permanent Younger Adult OOH Plan*, RJR Group, 1990, **Exhibit PG-872**;
- J.P. McMahon, *Young Adult Market*, RJR Sales Company, January 10, 1990, **Exhibit PG-873**;
- Harrod & Merlin, *Export "A" – 1997 Communications Plan*, RJR-MacDonald Inc., September 9, 1996, **Exhibit PG-874**.

688. In order to increase or maintain its market among the young, the industry's advertising and promotional activities used images that portrayed smoking as attractive and exciting and minimized the effectiveness of health warnings:

- Various cigarette advertisements, 1970s, 1980s and 1990s, **Exhibit PG-875**;
- *Player's* advertisements, 1988 to 1997, Imperial, **Exhibit PG-876**;
- Advertisements for various brands, 1997 to 2000-2001, **Exhibit PG-877**;
- Binder of compiled advertisements, 1950 to 2001, **Exhibit PG-878**;
- *Belvedere – An Eye on the Past – History of the Cigarette Trade-mark 1957 to 1996*, RBH, January 1997, **Exhibit PG-879**;

- *RBH – Matinee Trademark 1957 – 1997*, RBH, April 16, 1996, **Exhibit PG-880**;
- *Rothmans Trade-mark 1957-1997*, RBH, February 1997, **Exhibit PG-881**;
- *Du Maurier Advertising / 1988-1997*, ITL, **Exhibit PG-882**.

689. In a decision delivered on December 13, 2002, in which the *Tobacco Act* was held to be valid (*J.T.I Macdonald Corporation c. La Procureure générale du Canada*, [2003] R.J.Q. 181), the Québec Superior Court, after examining the evidence and following the teachings of the Supreme Court of Canada, made the following findings of fact:

- (a) The manufacturers were aware they needed to attract young smokers to maintain the tobacco products market at its current size;
- (b) Cigarette advertising targeted both new smokers and brand switchers alike;
- (c) The manufacturers' advertising was not aimed only at smokers over 19 years of age. All the advertising campaigns contained seductive elements that appealed to adolescents, who form the basis of the industry's future; and
- (d) The industry knew that smokers start to smoke between the ages of 12 and 18, and it systematically targeted that vulnerable segment of the public in its advertising and marketing strategies.

690. In 2007, Supreme Court of Canada upheld the trial decision and noted the following findings of fact of the trial judge (*Canada (Attorney General) v. J.T.I.-Macdonald Corp.*, [2007] 2 S.C.R. 610):

12. The trial judge's findings of fact are worth examining in detail; the key points are as follows.



[...]

14. Most smokers begin as teenagers, between the ages of 13 and 16. Tobacco advertising serves to recruit new smokers, especially adolescents. It is completely unrealistic to claim that tobacco advertising does not target people under 19 years of age. Recent tobacco advertising has three objectives: reaching out to young people, reassuring smokers (to discourage quitting), and reaching out to women.

691. The Supreme Court also set out its own findings of fact:

61. [...] The creative ability of the manufacturers to send positive messages about a product widely known to be noxious is impressive. In recent years, for example, manufacturers have used labels such as “additive free” and “100% Canadian tobacco” to convey the impression that their product is wholesome and healthful. Technically, the labels may be true. But their intent and effect is to falsely lull consumers into believing, as they ask for the package behind the counter, that the product they will consume will not harm them, or at any rate will harm them less than would other tobacco products, despite evidence demonstrating that products bearing these labels are in fact no safer than other tobacco products.

[...]

114. [...] The record is replete with examples of lifestyle advertisements promoting tobacco products. It amply establishes the power of such advertisements to induce non-smokers to begin to smoke and to increase tobacco consumption among addicted smokers.

692. The manufacturers committed a wrong in respect of the children and adolescents of Québec, in particular a failure in their duty to inform them of the risks and dangers posed by tobacco products.

693. The Defendants, therefore, failed in the duty to abide by the rules of conduct to which they were bound according to the circumstances, usage and the law in respect of the children and adolescents in Québec who were exposed or might become exposed to tobacco products.

E. DEFENDANTS ACTED IN CONCERT AND CONSPIRED TO DENY THE HARMFUL NATURE AND ADDICTIVE PROPERTIES OF THEIR PRODUCTS

694. The Defendants participated collectively in the commission of the failures in respect of the people of Québec; the failures are therefore common to all the Defendants.

695. Those common failures were committed through national and international organizations whose purpose was to present to the public and public authorities the industry's misleading public position on tobacco-related health issues.

696. Those common failures were also a consequence of concerted action by the companies within each Group, or of the control exercised by the foreign companies over the Canadian manufacturers.

**1. North American Concerted Action or Conspiracy**

697. From the beginning of the 1950s, American manufacturers acted in concert and conspired to develop a common industry position on issues related to tobacco and health.

(a) Emergence and organization in the United States

698. In December 1953, following publication in the *Reader's Digest* of an article by E. Wynder linking smoking with lung cancer (Exhibit PG-12), the American manufacturers, including PM Inc., RJRT and Brown & Williamson (at the time a BAT Group member), together decided to develop an industry response:

- Telegram from Paul Hahn, December 10, 1953, **Exhibit PG-883**;
- Minutes of a meeting of American manufacturers, December 14, 1953, **Exhibit PG-884**.

699. The manufacturers then retained the services of the public relations firm Hill & Knowlton.

700. As alleged above, on January 4, 1954, the American Defendants placed a full-page advertisement in over 400 publications in the United States entitled *A Frank Statement To Cigarette Smokers* (Exhibit PG-16), which they signed under the name *Tobacco Industry Research Committee*.

701. The statement summarized, in itself, what would remain the strategy of all the Defendants for the next 50 years, namely: that their products were not injurious to health; that a link between cancer and smoking had not been proven; and that there was a controversy within the scientific community over the possible causes of cancer, even though the Defendants knew that quite the opposite was true.

702. The American Defendants also formally established the Tobacco Industry Research Committee, claiming a desire to contribute, through funding, to “objective” research on “all phases of tobacco use and health”, but the Defendants themselves would quickly recognize that the research actually conducted was biased:

- Letter from W.S. Cutchins, Brown & Williamson, to Bowman Gray, RJRT, October 16, 1962, **Exhibit PG-885**;
- Memorandum from W. Kloefer, Jr., to E.C. Clements, Tobacco Institute, with a true copy to, among others, the presidents of the American Defendants, April 15, 1968, **Exhibit PG-886**;
- Exhibit PG-296;

- Exhibit PG-297;
- Letter from A. Yeaman, Brown & Williamson, to H. Ramm, RJRT, June 1, 1970, **Exhibit PG-887**;
- Memorandum from H. Wakeham to J.F. Cullman, III, PM Inc., July 8, 1970, and attachment, **Exhibit PG-888**.

703. The American manufacturers' Statement did not go unnoticed in Québec where various articles reporting the substance of the American message were published:

- *La Presse*, "Explication aux fumeurs", January 4, 1954, **Exhibit PG-889**;
- *Montreal Star*, "U.S. Tobacco firms study cancer theory", January 4, 1954 **Exhibit PG-890**.

704. The Tobacco Industry Research Committee's organizational by-law reiterated that the organization was formed to support research on health and tobacco, while at the same time endorsing a statement by its president that a causal link between smoking and cancer had not been proven and that there was controversy on the matter:

- By-Laws of the Tobacco Industry Research Committee, January 1, 1954, **Exhibit PG-891**.

705. In 1964, the Tobacco Industry Research Committee became the CTR and in 1971 it was incorporated under the name *The Council for Tobacco Research – U.S.A., Inc.*

706. In this section, "CTR" refers to either or both the Tobacco Industry Research Council and the CTR.

707. In January 1958, the American Defendants also incorporated a not-for-profit entity, the Tobacco Institute, to promote the industry's interests, essentially

by collecting and disseminating scientific and medical publications dealing with smoking:

- Certificate of Incorporation of The Tobacco Institute, Inc., January 28, 1958, **Exhibit PG-892**.

708. The objectives of the Tobacco Institute, as those of the CTR, were premised on the lack of proof of a link between smoking and lung cancer and the existence of a scientific controversy:

- Hill & Knowlton, Public Relations Proposals for the Tobacco Institute, Inc., March 18, 1958, **Exhibit PG-893**.

709. Both the CTR and the Tobacco Institute played a primary role in engineering and artificially sustaining scientific controversy until the end of the 1990s, not only in the United States but also in Canada and Europe.

710. The presidents of the American manufacturers headed the boards of directors of the CTR and the Tobacco Institute and their active or retired representatives took care of day-to-day business such that both bodies were merely an extension of their members, a situation that would last until their dissolution at the end of the 1990s:

- Plan of Corporate Dissolution and Distribution of Assets of The Council for Tobacco Research – U.S.A., Inc., October 19, 1998, **Exhibit PG-894**;
- Certificate of Dissolution of the Tobacco Institute, Inc., September 7, 2000, **Exhibit PG-895**;
- Exhibit PG-39.

711. From the time they were formed, and despite the American manufacturers' knowledge of the dangers posed by tobacco, the CTR and the Tobacco Institute undertook a vast public relations campaign targeting the media, the public and governments for the purpose of denying the causal link between

smoking and cancer and other disease and sustaining controversy on the subject.

712. On December 12, 1958, the CTR published a message entitled *Another Frank Statement to Smokers*, **Exhibit PG-896**, in which it asserted it was firmly convinced that a causal relationship between smoking and disease had not been proven and that the cause of cancer remained “a mystery” that must be solved by research.

713. The American Defendants’ message of denial was reported in Québec newspapers:

- *La Presse*, "Aucune preuve de cancer du poumon par le tabac", April 14, 1954, **Exhibit PG-897**;
- *Le Soleil*, "Études plus approfondies requises pour juger des risques du fumeur", June 23, 1954, **Exhibit PG-898**;
- *La Presse*, "Preuves que l'abus de la cigarette provoque le cancer du poumon", July 12, 1957, **Exhibit PG-899**;
- *Le Soleil*, "Le Tobacco Institute proteste", February 17, 1959, **Exhibit PG-900**;
- *Le Soleil*, "Les Américains ont fumé 455 milliards de cigarettes", December 23, 1959, **Exhibit PG-901**.

714. The activity reports and budgets of the CTR and the Tobacco Institute show the magnitude of the campaign, the importance given to issues related to smoking and health, and the intent to act jointly to create and sustain scientific controversy by whatever means:

- Memorandum from C. Thompson, Hill & Knowlton, to T.V. Hartnett, CTR, August 17, 1954, and attached Report on Activities, **Exhibit PG-902**;
- Hill & Knowlton, Public Relations Programme and Budget Proposal for 1963, November 1, 1962, **Exhibit PG-903**.

715. Beginning in 1963, the CTR and the Tobacco Institute closely monitored the deliberations and reports of the Surgeon General and other scientific institutions, contesting unfavourable findings despite knowing they were valid:

- Eleven press releases from the CTR or the Tobacco Institute, Exhibit PG-579 and **Exhibit PG-904**;
- Speech delivered by T. Frankovic, Tobacco Institute, January 25, 1979, **Exhibit PG-905**.

716. Despite the state of their scientific knowledge, the American Defendants, the CTR and the Tobacco Institute distributed a number of documents each arguing the lack of a causal link between smoking and various diseases and the existence of a controversy that ultimately must be resolved by further scientific research:

- Exhibit PG-188;
- *Tobacco and Health*, eight issues, **Exhibit PG-906**;
- *Current Knowledge of Tobacco and Health*, **Exhibit PG-907**;
- *On Matters Concerning Tobacco and Health*, **Exhibit PG-908**;
- *The cigarette controversy - eight questions and answers*, **Exhibit PG-909**;
- *Fact or Fancy?*, **Exhibit PG-910**, and the distribution report, **Exhibit PG-911**;
- *Smoking and Health 1964-1979 - The Continuing Controversy*, **Exhibit PG-912**;
- *Cigarette Smoking and Cancer: A Scientific Perspective*, **Exhibit PG-913**;
- *Cigarette Smoking and Chronic Obstructive Lung Diseases: The Major Gaps in Knowledge*, **Exhibit PG-914**.

717. The American Defendants agreed to those publications.

718. The articles chosen for inclusion in *Tobacco and Health* published by the Tobacco Institute (Exhibit PG-906) were selected with the intent of feeding the scientific controversy:

Headlines: These should be very carefully written on the premises that doctors and scientists, like other readers, often grab information from the headlines and nothing more. Thus, the headline should strongly call out the point – Controversy! Contradiction! Other factors! Unknowns.

- Memorandum from Hill & Knowlton to W. Kloepfer, Jr., Tobacco Institute, October 18, 1968, **Exhibit PG-915**.

719. The Tobacco Institute's publication *Fact or Fancy?* (Exhibit PG-910), whose first edition in 1978 was distributed to 4,500 targeted persons, was aimed at women and contained the same falsely reassuring message that there was no proven link between smoking and the twelve women's health issues it addressed, including pregnancy:

Causality has not been proved in any of the diseases and conditions linked statistically with cigarette smoking – in women or men. The controversy must be resolved by scientific research.

720. And yet the Surgeon General had been issuing reports on the deleterious effects of smoking on the foetus since 1969, and the 1979 report concluded that there was a link between a mother's smoking, premature birth and intrauterine growth problems:

- Exhibit PG-29.

721. From 1954 to the early 1990s, the industry's misleading public position was also reinforced by a number of press releases issued by the CTR and the Tobacco Institute that denied a causal link between smoking and cancer and cardiovascular disease, the addictive effect of nicotine and the harmful effects of second-hand tobacco smoke:



- Thirteen CTR press releases, **Exhibit PG-916**;
- Eighteen Tobacco Institute press releases, Exhibit PG-731 and **Exhibit PG-917**.

722. Many of those misleading publications and statements came to the attention of the people of Québec:

- Articles in Québec newspapers published in 1954, 1955, 1957 and 1959, Exhibits PG-897 to PG-901 and **Exhibits PG-918, PG-919 and PG-920**.

(b) Coordination of North American positions

723. Beginning in 1962 and 1963, the Canadian manufacturers took up the reins and issued public statements patterned on those of the American manufacturers:

- Articles published in *La Presse*, *Le Devoir*, the *Montreal Gazette* and the *Canadian Industry Review*, Exhibits PG-219, PG-233, PG-235, PG-236, PG-237, PG-239 and **Exhibit PG-921**.

724. The Canadian Defendants, or their predecessor companies, formed the CMTC at the time of the 1963 Conference "to give themselves an efficient and united voice to respond to the ever increasing number of anti-tobacco groups" and to be represented "in [their] exchanges with governments on tobacco and health issues":

- Exhibit PG-50.

725. The members of the CMTC were represented at the Conference by their senior officers who alone had voting rights at meetings:

- Speech delivered by John Keith at the 1963 Conference, CTMC, November 25, 1963, **Exhibit PG-922**;
- CTMC press release, February 16, 1971, **Exhibit PG-923**;

- Letter from P. Paré, Imasco, to R.C. Shropshire, Macdonald, March 31, 1978, **Exhibit PG-924**;
- CTMC, Constituting By-Laws No. 2, March 2, 1982, **Exhibit PG-925**.

See also:

- Exhibit PG-22;
- Exhibit PG-224;
- Letter from G.C. Hargrove, BAT Co., to H. Widdup, February 22, 1973, together with the document entitled *Canada – Progress and Status of Tobacco Industry-Government Relations to 1973*, **Exhibit PG-926**;
- Memorandum by L.W. Pullen, Macdonald, September 26, 1980, **Exhibit PG-927**;
- Industry Canada, Form 3, Annual Summary to March 31, 2011, CTMC, **Exhibit PG-928**.

726. Its objects included

- (a) the promotion and cooperation of members on subjects of common interest to the industry, in particular research and development;
  - (b) assembling and disseminating information on tobacco and tobacco products;
  - (c) member representation in relation to legislation affecting the industry; and
  - (d) promotion of research into tobacco and its use and the setting up of conferences, meetings and exhibitions on the subject:
- *Application for Incorporation*, CTMC, February 26, 1982, **Exhibit PG-929**.

727. In that manner, the CMTC took on the responsibility of managing smoking related issues for the Canadian Defendants:

- Memorandum from F.G. Colby to E.A. Vassallo, RJRT, March 26, 1973, **Exhibit PG-930**;
- Exhibit PG-251;
- Exhibit PG-924.

728. As alleged above, beginning in 1963, the CMTC on behalf of its members made a number of public statements mirroring the American position that denied the existence of a causal link between smoking and various diseases.

729. Its submissions to the 1963 Conference were mere restatements of the information at the very least misleading, if not false, contained in CTR or Tobacco Institute publications:

- Exhibit PG-50;
- Exhibit PG-926;
- Memorandum from A.J. Bass, Jr., to M.J. Cramer, P. Lorillard & Co., 1963, **Exhibit PG-931**.

730. At the time, the Canadian Defendants were in direct contact with the CTR, the Tobacco Institute and Hill & Knowlton and relied on their “expertise” to develop the Canadian industry’s position centred on the denial of any link between smoking and disease.

731. The CMTC, similarly to the American industry, challenged the Surgeon General’s 1964 report’s conclusions, even though the CMTC knew them to be accurate:

- Exhibit PG-314.

732. In preparing its brief to the Isabelle Committee in 1969 (Exhibit PG-23), the CMTC relied on Hill & Knowlton, on Shook, Hardy & Bacon (the American industry's legal counsel) and on A. Holtzman (the in-house counsel for PM Inc.) for all matters of content as well as strategy:

- Letter from C. Thompson, Hill & Knowlton, to L.C. Laporte, Imperial Tobacco Company of Canada, July 5, 1968, and attachments, **Exhibit PG-932**;
- Letter from C. Thompson, Hill & Knowlton, to A. Holtzman, PM Inc., February 20, 1969 and attachments, **Exhibit PG-933**;
- Memorandum from C. C. Batten, Public & Industrial Relations Limited, to the CMTC, April 22, 1969, **Exhibit PG-934**;
- CMTC statement, June 5, 1969, **Exhibit PG-935**;
- Letter from P. D. Smith, PM Inc., to P. Paré, Imperial Tobacco Company of Canada, June 9, 1969, **Exhibit PG-936**;
- Letter from P. Paré, Imperial Tobacco Company of Canada, to J. E. Bennett, Lorillard Corporation, June 19, 1969, **Exhibit PG-937**;
- Letter from A. H. Duffin, Tobacco Institute, to A. Holtzman, PM Inc., December 9, 1969, **Exhibit PG-938**;
- Letter from A. Holtzman, PM Inc., to A. H. Duffin, Tobacco Institute, December 12, 1969, **Exhibit PG-939**.

733. The CMTC also retained the services of Public & Industrial Relations Limited, a public relations firm associated with Hill & Knowlton:

- Hill & Knowlton, *Script of presentation of T.I.R.C. and T.I. for "Inside H&K"*, February 26, 1962, **Exhibit PG-940**.

734. In 1969, the CMTC drafted a number of position papers that were not only based on the documents provided by the American manufacturers, but faithfully reproduced the main themes of the strategy of denial:

- (a) there is no evidence that tobacco causes disease;
- (b) other factors have not been sufficiently studied;
- (c) a statistical association does not demonstrate cause and effect;  
and
- (d) smoking has a recognized significant beneficial effect:

- CMTC, *Position Papers*, **Exhibit PG-941**;
- Letter from A. Yeaman, Brown & Williamson, to P. Paré, Imperial Tobacco Company of Canada, Limited, January 21, 1969, **Exhibit PG-942**;
- Letter from A. Yeaman, Brown & Williamson, to P. Paré, Imperial Tobacco Company of Canada, Limited, January 24, 1969, **Exhibit PG-943**.

735. The CMTC was furthermore considered by its members to be the policy setting body for the Canadian industry, or a formal vehicle for taking action based on industry consensus, in particular in smoking-related health matters:

- Memorandum by G.C. Hargrove, BAT Co., August 28, 1969, **Exhibit PG-944**;
- Exhibit PG-926.

736. To sustain the false scientific controversy in Canada, as the Americans had been doing in the United States, the CMTC also resorted to conferences and press releases and at various times targeted a specific community with bulletins, newsletters and other communication tools such as the *Tobacco Review* and the *Tobacco File*, which echoed the American position of denial.

737. The American manufacturers' in-house and outside counsel also worked on occasion for the Canadian Defendants.
738. Those lawyers were ubiquitous in the CTR and the Tobacco Institute affairs in their attendance at meetings and constant involvement in smoking-related health files.
739. Their objective was to ensure that no communication would adversely affect the growing number of lawsuits against American tobacco product manufacturers whose defence rested on the insistent denial of a link between smoking and disease.
740. Furthermore, at the end of the 1960s, as advised by the legal counsel for the American manufacturers, the CTR funded an increasing number of research projects commissioned by the industry (called *Special Projects*), disregarding its commitment in the *Frank Statement to Cigarette Smokers* (Exhibit PG-16) to fund so-called "objective" research.
741. The industry-commissioned research also provided the opportunity to launch a *Witness Development Program* with the purpose of identifying scientists favourable to its cause:
- Three (3) letters from Shook, Hardy & Bacon respectively dated October 13, 1966, February 9, 1978, and May 31, 1983, **Exhibit PG-945**;
  - Minutes of the Meeting of Company Counsel and Ad Hoc Committee Members, September 10, 1981, **Exhibit PG-946**.
742. Indeed, all the witnesses called by the CMTC at the Isabelle Committee hearings in 1969 to support the existence of a scientific controversy had a connection with the CTR.

743. During the 1970s, 1980s and 1990s, there was continuous communication between the CMTC and the Tobacco Institute on questions of policy and strategy, especially in relation to matters of publicity and second-hand smoke, aimed at coordinating the American and Canadian positions since, as W. Neville of the CMTC stated in a letter to the president of the Tobacco Institute dated July 6, 1990, “it has become current truth that a fire that starts in one country quickly spreads to the other”, **Exhibit PG-947**.

See also:

- Letter from L. C. Laporte, CMTC, to A. Barr, Tobacco Institute, January 3, 1973, **Exhibit PG-948**;
- Memorandum and attachment from W. Kloepfer, Jr., in particular to H.R. Kornegay, Tobacco Institute, October 25, 1974, **Exhibit PG-949**;
- Letter from L. Zimmerman, Shook, Hardy & Bacon, to J. LaRiviere, CMTC, June 3, 1980, **Exhibit PG-950**;
- Memorandum from M.H. Crohn, RJR Group, to W.W. Shinn, E.J. Jacob, H.R. Kornegay and S.L. Temko (Committee of Counsel) and attachment, March 9, 1981, **Exhibit PG-951**;
- In-house note from W. Kloepfer, Jr., to B. Lewis et al., Tobacco Institute, September 5, 1985, **Exhibit PG-952**;
- Memorandum from S.D. Chilcote, Jr., Tobacco Institute, to members of the Executive Committee and attachment, May 1, 1986, **Exhibit PG-953**;
- Letter from N.J. McDonald, CMTC, to S.D. Chilcote, Jr., Tobacco Institute, February 27, 1987, **Exhibit PG-954**;
- Memorandum from S. Stuntz to P. Sparber, Tobacco Institute, and attachment, April 3, 1987, **Exhibit PG-955**;
- Letter from N.J. McDonald, CMTC, to S.D. Chilcote, Jr., Tobacco Institute, May 4, 1987, **Exhibit PG-956**;
- Letter from S.D. Chilcote, Jr., Tobacco Institute, to N.J. McDonald, CMTC, May 12, 1987, **Exhibit PG-957**;

- Memorandum from S. Stuntz to Tobacco Institute staff and attachment, September 8, 1988, **Exhibit PG-958**;
- Letter from J. LaRivière, CMTC, to C.H. Powers, Tobacco Institute, June 7, 1990, **Exhibit PG-959**;
- Meeting with Canadian Tobacco Manufacturer's President, Draft Agenda, June 27, 1990, **Exhibit PG-960**;
- Memorandum from W. Neville, CMTC, to C. Power, Tobacco Institute, July 10, 1990, and Letter from W. Neville, CMTC, to S. D. Chilcote, Jr., Tobacco Institute, July 10, 1990, **Exhibit PG-961**;
- Letter from J. LaRivière, CMTC, to C.H. Powers, Tobacco Institute, August 23, 1990, **Exhibit PG-962**;
- Letter from S.M. Stuntz, Tobacco Institute, to W. Neville, CMTC, July 29, 1991, **Exhibit PG-963**;
- Letter from W.H. Neville, CMTC, to S.D. Chilcote, Jr., Tobacco Institute, April 8, 1992, **Exhibit PG-964**;
- Fax from P. Gordon, CMTC, to K. (X) and attachment, PM Group, March 24, 1994, **Exhibit PG-965**;
- Fax from P. Gordon, CMTC, to C. Yoe, Tobacco Institute, and attachment, March 24, 1994, **Exhibit PG-966**.
- Fax from M.-J. Lapointe, CMTC, to D. Thomas, Tobacco Institute, August 4, 1994, **Exhibit PG-967**.

744. It appears clear from the above that the American and Canadian manufacturers, directly and through organizations they controlled, acted in concert or conspired to publicly deny the harmful effects of smoking and to protect their financial interests, to the detriment of persons in Québec.

## **2. International Concerted Action or Conspiracy**

745. In tandem with the concerted actions developed by the American and Canadian manufacturers, the multinational companies came to consider the



need to create an international alliance to counter the attacks of anti-tobacco groups and slow down government intervention based on a link between smoking and disease.

(a) Operation Berkshire and international coordination

746. The international strategy originated in December 1976 when the president of Imperial Tobacco Ltd. (UK) proposed that the European and American industries adopt a common strategy so that measures taken against tobacco manufacturers in one country would not produce a domino effect in others:

- Letter from R. A. Garrett, Imperial Tobacco Ltd. (UK) to H. Cullman, III, PMI, December 3, 1976, **Exhibit PG-968**;
- Letter from R. A. Garrett, Imperial Tobacco Ltd. (U.K.), to A. Holtzman, PM Inc., March 7, 1977, **Exhibit PG-969**;
- Letter from R. A. Garrett, Imperial Tobacco Ltd. (U.K.), to W.D. Hobbs, RJRT, March 24, 1977, **Exhibit PG-970**.

747. The initiative, called *Operation Berkshire*, led to a secret meeting in June 1977 of several tobacco manufacturers, including senior officers of the parent companies of the BAT, PM, RJR and Rothmans groups.

748. Participants at the meeting, speaking on behalf of the industry, adopted a statement of principle based, predictably, on

- (a) the existence of a (false) controversy on the issue of the link between smoking and various diseases; and
- (b) the need to forcefully resist health warnings “with all means at their disposal”:

- *Position Paper*, reproduced in the Minutes of the second meeting of members of the ICOSI, November 11 and 12, 1977, and cover letter from R. W. Murray, PMI, to R. A. Garrett, Imperial Tobacco Ltd. (UK), November 28, 1977, **Exhibit PG-971**.

749. From 1976 to at least 1992, tobacco product manufacturers, including Defendants BAT Co., PM Inc. and RJRT (the “**Defendant members of INFOTAB**”), as well as Rothmans International Limited, established international organizations having substantially the same by-laws but changing names over the years: ICOSI (1977-1981); INFOTAB (1981-1992); and TDC (from 1992):

- ICOSI, By-laws, **Exhibit PG-972**;
- Press release: *International Body for Tobacco Industry*, October 25, 1978, **Exhibit PG-973**;
- Minutes of the third meeting of the International Committee on Smoking Issues, March 9 and 10, 1978, **Exhibit PG-974**;
- Exhibit PG-83;
- Requisition in the Geneva Commercial Register, May 3, 1979, **Exhibit PG-975**;
- Proceedings of the ICOSI special general assembly, and attendee list, December 8, 1980, **Exhibit PG-976**;
- INFOTAB, Association Charter (As amended effective September 2, 1981), **Exhibit PG-977**;
- Letter from T. Wood, Rothmans International Tobacco Limited, to D. Bacon, BAT Group, November 8, 1991 and copy of a resolution of the INFOTAB board of directors, **Exhibit PG-978**;
- TDC, Draft Revised Association Charter, November 28, 1991, **Exhibit PG-979**;
- TDC, *Information Pack*, undated, **Exhibit PG-980**.

750. The main objectives of those international organizations, which were funded by the founding members, were to sustain false scientific controversy over

the link between smoking and various diseases, including the effects of second-hand smoke; to resist health warning legislation for as long as possible; and to neutralize or discredit the work of anti-tobacco groups and that of the World Health Organization.

751. The boards of directors and the meetings of all those organizations were headed by high-level representatives of each member.

752. The very purpose of those organizations was to coordinate international concerted action, which was seen as the only way to protect the industry's economic interests in the face of growing anti-smoking sentiment, as explained in the words of J. Hartog of the PM Group, in a presentation to ICOSI's board of directors on May 28, 1980, **Exhibit PG-981**:

If we are to stay in the game against what we know to be the plans and future of our opponents through the next decade we – as an industry – must really develop a worldwide strategy with related actions. We must stop talking to ourselves and government bodies only (slowing down legislative actions is the only major item on the credit side in the ledger of concerted industry activity). We should start finding solutions to the problem how to reach the public in a credible manner with credible messages.

753. Beginning in June 1977, BAT Group members were informed of the creation of ICOSI and its position on various subjects relating to health issues, and were instructed to refer to it “as a working paper from which strategies and action plans can be developed relevant to local situations.”:

- Copy of a letter from R. Haddon to the officers of companies within the Group, June 13, 1977, **Exhibit PG-982**.

754. In July 1977, RJRT also sent the position paper to its Canadian subsidiary Macdonald, stating that it was not only ICOSI's position, but the position of the RJR Group as well:

➤ Exhibit PG-352.

755. The position paper (Exhibit PG-971) recognized the paramount role of national associations of manufacturers in sustaining the controversy and countering the adoption of legislative measures that would, among other things, impose health warnings:

Moreover, we believe it is better to speak as an industry with one voice on such matters and that this can often best be accomplished by national associations of manufacturers. In this connection we believe it important that the industry assure that all appropriate members are kept advised of pertinent scientific, political, social and other developments.

[...]

We believe that the Industry's activities in the smoking and health field should be carried out by or through the Associations, whenever this is appropriate.

756. At a meeting of ICOSI members in March 1978, the RJR Group was tasked with informing the CTMC of ICOSI's objectives, which was carried out in April 1978:

➤ Exhibit PG-974;

➤ Memorandum from J.T. Wilson, RJRT, sent to, among others, R. Shropshire, Macdonald, April 6, 1978, **Exhibit PG-983**.

(b) Coordination of international and Canadian positions

757. As early as 1978, the CMTCC had established the Canadian industry's position, which substantially, almost word for word, restated ICOSI's position paper (Exhibit PG-971) on the existence of a scientific controversy, the lack of evidence of a link between smoking and disease, and the right to choose to smoke in a free society:

- Memorandum from N.J. Macdonald, CMTC, to P. Paré, W.H. Webb, E. Ricard, R. Shropshire and R.H. Hawkes, June 13, 1978, **Exhibit PG-984**.

758. In 1982, the CMTC, in its capacity as a national association of manufacturers, became an associate member of INFOTAB, without voting rights:

- Minutes of the meeting of the board of directors, INFOTAB, November 1 and 2, 1982, **Exhibit PG-985**.

759. From 1982 to 1989, the CMTC was a full participant in the activities of INFOTAB: representatives of the Canadian Defendants, on behalf of the CMTC, held conferences and acted as moderators or participants at the annual seminars organized by INFOTAB for the national associations of manufacturers.

760. Background briefing papers artificially giving impetus to the controversy over the link between tobacco and various diseases were distributed at the ICOSI and INFOTAB annual seminars organized for the national associations beginning in 1979.

761. INFOTAB also published several briefing papers substantially repeating the misleading message the tobacco industry has been conveying for almost 30 years, i.e. that there exists a scientific controversy over the link between smoking and lung cancer, heart disease and COPD:

- *Smoking and Health – A perspective*, May 1, 1980, **Exhibit PG-986**;
- *Lung Cancer*, dated May 1, 1980, **Exhibit PG-987**;
- *Heart Diseases*, dated May 1, 1980, **Exhibit PG-988**;
- *Chronic Obstructive Pulmonary Diseases*, dated May 1, 1980, **Exhibit PG-989**.

762. The use that was to be made of those briefing papers was described in these terms: "ICOSI position papers are intended to provide a foundation for both associations and companies in presenting and arguing the case for the industry.":

- Notes for a presentation by C. H. Stewart-Lockhart, BAT Group, before the European national associations at Copenhagen, October 13, 1978, **Exhibit PG-990**.

763. Another ICOSI and INFOTAB goal was to delay for as long as possible the imposition of coercive measures regarding warnings and advertising:

- Exhibit PG-971.

764. In that perspective, the briefing paper entitled *Effects of Warning Labels on Cigarette Use Is Questionable*, **Exhibit PG-991**, was described as a guide to counter the arguments of those seeking further danger warnings.

765. The CMTC adopted a course of action identical in all respects to that of ICOSI and INFOTAB in that it also objected to publishing health warnings likely to accurately inform persons in Québec about the associations between smoking and various diseases.

766. Beginning in 1984, briefing papers (including Exhibits PG-986 to PG-989 and PG-991), were indexed in an *Issues Binder* prepared for INFOTAB members intended as "[...] a reference guide to assist in the development of argumentation to counter allegations about smoking and endeavours to restrict the industry's marketing freedom.":

- A. Corti, "Introduction of 'Issues Binders'", in *Aswering the Critics*, INFOTAB, October 8, 9 and 10, 1984, **Exhibit PG-992**.

767. The binder covered nine subjects: *Addiction, Advertising & Sponsorship, Developing Countries, Environmental Tobacco Smoke, Legislation,*

*Smoking and Health, Social Costs, and Taxation and Warning & Constituents Labelling*, and explained how to respond to the arguments of anti-tobacco groups.

768. The binder became the *Spokespersons' Guide* in 1987 and was distributed to INFOTAB members, which included the CMTC, until at least the beginning of the 1990s:

➤ Exhibit PG-576.

769. The position it expressed remained constant: there is a controversy and the industry must do everything it can to keep it alive.

770. In October 1988, at an international seminar attended by CMTC representatives, RJRTI's head of public relations pointed out that it was the duty of INFOTAB company members to first determine the industry's global strategy, which must then be implemented by the national associations in their individual programs:

➤ Presentation by R. Marcotullio, RJRTI, October 18, 1988, **Exhibit PG-993**.

771. In October 1989, INFOTAB produced and distributed a document entitled *World Action - A Guide for Dealing with Anti-Tobacco Pressure Groups*, **Exhibit PG-994**, aimed at helping its members, which included the Defendant members of INFOTAB and the CMTC, anticipate the actions of anti-tobacco groups and respond to them effectively.

772. At an international seminar held in Paris in October 1990, W.H. Neville, speaking on behalf of the CMTC, trivialized the dangers posed by tobacco as he reiterated the position that "[the] so-called scientific proof [is], in fact, driven by personal prejudice.":

- Presentation by W.H. Neville, **Exhibit PG-995**.

773. Beginning in 1990, representatives of the Defendant members of INFOTAB, Shook, Hardy & Bacon, and the Tobacco Institute developed the *Global Argumentation Project*, in response to anti-tobacco groups:

- Summary of the project and minutes of a meeting held on January 30, 1990, **Exhibit PG-996**.

774. All documents produced by INFOTAB and intended for the national associations, which included the CMTC, were revised or drafted by the law firm Shook, Hardy & Bacon:

- Memorandum from D. Hoel, Shook, Hardy & Bacon, to T. Sollis, PM Group, June 28, 1988, **Exhibit PG-997**.

775. The documents were updated and used on a case-by-case basis to respond to specific events, such as the release of the Surgeon General's Report, the activity of an anti-tobacco group, or the introduction of legislation.

776. From 1979 until at least the mid-1990s, a group consisting of ICOSI and INFOTAB representatives monitored World Health Organization international conferences in order to neutralize their public impact or discredit participating organizations and persons:

- Exhibit PG-577.

777. The CMTC played a crucial role in that respect at the World Health Organization conference held in Winnipeg in 1983:

- *First Meeting of Winnipeg Project Team*, November 23, 1982, **Exhibit PG-998**;
- Memorandum from H. Verkerk, INFOTAB, to J. LaRivière, CTMC, December 20, 1982 and attachment, **Exhibit PG-999**;



- Letter from H. Verkerk, INFOTAB, to J. LaRivière, CTMC, January 19, 1983, **Exhibit PG-1000**;
- Minutes of the meeting of the *Winnipeg Project Team*, February 16 and 17, 1983, **Exhibit PG-1001**;
- Minutes of the meeting of the *Winnipeg Project Team*, June 2, 1983, **Exhibit PG-1002**;
- Memorandum from M. Descôteaux to J.-L. Mercier, ITL, July 19, 1983, **Exhibit PG-1003**;
- Letter from H. Verkerk, INFOTAB, August 9, 1983, and attachment, **Exhibit PG-1004**;
- Memorandum by M. Cain, CTMC, August 12, 1983, and attachment, **Exhibit PG-1005**.

778. Throughout the entire period relevant to this action, the Defendant members of ICOSI and INFOTAB and the CMTC acted in concert or conspired to convey the policies and positions established by ICOSI and INFOTAB and to continue to deny the link between smoking and various diseases.

779. In so doing, they failed in the duty to abide by the rules of conduct to which they were bound according to the circumstances, usage and the law in respect of the persons in Québec who were exposed or might become exposed to tobacco products.

### **3. Concert or Conspiracy within the BAT Group**

780. BAT Co. and BAT Industries are liable to the people of Québec for the wrongful acts committed in concert with Imperial and for those committed by Imperial under their control.

781. For the purposes of this section, Imperial refers to the Imperial Tobacco Company, Limited, ITL and Imasco.

(a) Ownership, direction and control of Imperial

782. Prior to 1970, the majority of the shares of Imperial Tobacco Co. of Canada, and later Imperial Tobacco Company of Canada, Limited, were held by the companies in the BAT Group.

783. From 1970 to 2000, the shares of ITL were held by Imasco, a member company of the BAT Group.

784. From 1970 to 1980, BAT Co. and BAT Industries held successively, directly or indirectly, the majority of the shares of Imasco.

785. From 1981 to 1999, BAT Industries held between 40% and 49% of the shares of Imasco.

786. Since 2000, BAT plc has held all the shares of Imperial.

787. The parent companies of the BAT Group directed and successively controlled their Canadian subsidiary.

788. As a consequence, as concerns BAT Co.,

(a) it exercised its majority shareholder rights by issuing powers of attorney to members of the board of directors of Imperial:

- Letter from A.D. McCormick, BAT Co., to H.E. Jackson, Imperial Tobacco Company of Canada, Limited, February 27, 1953, **Exhibit PG-1006**;
- Letter from A.D. McCormick, BAT Co., to H.E. Jackson, Imperial Tobacco Company of Canada, Limited, March 13, 1953, **Exhibit PG-1007**;

- Letter from H.E. Jackson, Imperial Tobacco Company of Canada, Limited, to A.D. McCormick, BAT Co., March 18, 1953, **Exhibit PG-1008**;

(b) it approved the remuneration, bonuses and retirement arrangements of Imperial officers:

- Minutes of the Chairman's Meeting of BAT Co., March 29, 1951, **Exhibit PG-1009**;
- Minutes of the meeting of the Chairman's Committee of BAT Co., December 11, 1956, **Exhibit PG-1010**;
- Letter from P. Paré, Imasco, to P. Macadam, BAT Co., February 7, 1972, **Exhibit PG-1011**;

(c) it required Imperial to send it the minutes of all board meetings:

- Letter from A.D. McCormick, BAT Co., to the secretary of Imperial Tobacco Company of Canada, Limited, June 11, 1952, **Exhibit PG-1012**;
- Letter from H.E. Jackson, Imperial Tobacco Company of Canada, Limited, to A.D. McCormick, BAT, June 18, 1952, **Exhibit PG-1013**;

(d) it required Imperial to send it its financial reports and those of the Canadian subsidiaries in the Group:

- Letter from J.A. Calder, Imperial Tobacco Company of Canada, Limited, to A.D. McCormick, BAT Co., March 16, 1962, **Exhibit PG-1014**;

(e) it approved the dividend payment schedule:

- Letter from H.E. Jackson, Imperial Tobacco Company of Canada, Limited, to E.G. Langford, BAT Co., August 11, 1955, **Exhibit PG-1015**;
- Letter from E.G. Langford, BAT Co., to the secretary of Imperial Tobacco Company of Canada, Limited, August 17, 1955, **Exhibit PG-1016**.

789. In addition, Imperial was accountable to a senior officer of BAT Co. who came to Canada to carry out his functions:

- Minutes of the meeting of the Committee of Directors of BAT Co., December 5, 1961, **Exhibit PG-1017**;
- Letter from R.P. Dobson, BAT Co., to E.C. Wood, Imperial Tobacco Company of Canada, Limited, June 4, 1962, **Exhibit PG-1018**;
- Minutes of the meeting of the Chairman's Meeting of BAT Co., August 9, 1962, **Exhibit PG-1019**.

790. From the mid-1970s on, the Group's Canadian subsidiary, then Imasco, was under the responsibility of P. Sheehy, president of BAT Co. and a member, then chair, of the board of directors of BAT Industries, and also of T.J. Walker, territorial head for Canada and the United States:

- Series of flow charts of BAT Co., **Exhibit PG-1020**;
- *The Expanding Group*, published around 1974, BAT Co., **Exhibit PG-1021**;
- Letter from I.G. Hacking to N.A. Oppenheim, Brown & Williamson, September 6, 1979, **Exhibit PG-1022**.
- BAT Industries flow chart, current to May 3, 1991, **Exhibit PG-1023**.

791. One of the goals of the restructuring was to harmonize the various activities of the enterprise with the Group's global policies:

- Exhibit PG-1021.

792. BAT Co. was also responsible for smoking-related health issues for the Group as a whole.

793. In that capacity, it developed, coordinated and standardized the Group's public position, both at the time it was the parent company of the Group (until 1976) and subsequently after BAT Industries delegated those functions to it (from 1976 to 1998).

794. The instructions to the BAT Group to deny publicly the existence of any proof of a causal link between smoking and disease was issued by the most senior authorities of BAT Co., and was sent to Imperial to be followed to the letter:

Policies are, in the main, constraints on freedom of action (they also include specific directions, which by implication preclude other courses of action).

➤ Exhibit PG-429.

See also:

➤ Exhibit PG-187;

➤ Letter by A.D. McCormick, BAT Co., November 28, 1963, **Exhibit PG-1024**;

➤ Exhibit PG-148;

➤ Exhibit PG-1025;

➤ Exhibit PG-191;

➤ Exhibit PG-168;

➤ Agenda of the meeting of the Tobacco Division Board of Management of BAT Co., June 25, 1974, and working papers, **Exhibit PG-1026**;

➤ Minutes of the meeting of the Tobacco Division Board of Management of BAT Co., June 25, 1974, **Exhibit PG-1027**;

➤ Exhibit PG-430;

➤ Exhibit PG-194;

➤ Exhibit PG-416;

➤ Exhibit PG-205;

➤ Exhibit PG-208.

795. In 1976, BAT Industries became the Group's parent company.

796. The Group's activities in the tobacco sector subsequently were overseen by the Tobacco Division Board of Management at BAT Industries, of which the directors of BAT Co. including its president, P. Sheehy, were members:

- BAT Co., *Annual Reports and Accounts*, 1977, **Exhibit PG-1028**;
- BAT Industries, *Annual Reports and Accounts*, 1977, **Exhibit PG-1029**.

797. The Tobacco Division Board of Management approved the Group's public relations policy on smoking-related health issues and was responsible for its dissemination within the Group:

- Exhibit PG-205;
- Minutes of the meeting of the Tobacco Division Board of Management of BAT Industries, October 27 and 28, 1977, **Exhibit PG-1030**;
- Memorandum by P. Macadam, BAT Industries, September 12, 1977, **Exhibit PG-1031**;
- Memorandum by R.L.O. Ely, BAT Co., March 31, 1982, **Exhibit PG-1032**;
- Exhibit PG-209.

798. Beginning in 1993, BAT Industries developed, for all its personnel and in particular the officers of the Group companies, a Statement of Business Conduct, which set out clearly that there was no proof of the existence of causal link between smoking and disease:

- Exhibit PG-733.

799. From 1987 to 1993, BAT Industries sent guidelines to Imasco directing it to support the Canadian industry lobby on smoking issues, and to actively challenge the anti-tobacco lobby:

- *Guidelines*, BAT Industries, July 23, 1987, **Exhibit PG-1033**;

- *Guidelines for Imasco*, BAT Industries, October 10, 1989, **Exhibit PG-1034**;
- *Guidelines for Imasco*, BAT Industries, June 30, 1993, **Exhibit PG-1035**.

800. Following the 1998 restructuring, BAT plc took up the role traditionally played by BAT Co. and BAT Industries and devised policies and strategies for the Group:

- *Listing Particulars*, BAT plc, May 18, 1998, **Exhibit PG-1036**.

(b) Participation by Imperial in developing the Group's policies and strategies

801. The discussions that took place at a conference held in Montréal attended by board members of BAT Co. and the presidents of Imasco and ITL were an occasion to revise the Group's policy on health issues and smoking:

- Exhibit PG-431;
- Minutes of the meeting of the Committee of Directors of BAT Co., March 27, 1973, Exhibit PG-1037;
- Exhibit PG-168

802. Furthermore, as of 1976, Imasco was a participant in the Chairman's Advisory Conference of BAT Industries and as such collaborated in the development of the Group's policies, including those on smoking-related health issues:

- *Smoking & Health Items for Hot Springs*, BAT Group, April 12, 1976, **Exhibit PG-1038**;
- *Chairman's Advisory Conference Hot Springs, Topic A, Smoking and Health*, BAT Group, June 10, 1976, **Exhibit PG-1039**;

- G.C. Hargrove, *Chairman's Advisory Conference Hot Springs, Action Points from the Smoking and Health Minutes*, BAT Co., June 15, 1976, **Exhibit PG-1040**;
- R. Haddon, *Hot Spring Papers on the Social Unacceptability Issue*, BAT Group, September 8, 1976, **Exhibit PG-1041**;
- Minutes of the 1978 Leeds Castle Conference 1978, BAT Group, **Exhibit PG-1042**;
- Minutes of the 1979 Guaruja Conference, BAT Group, **Exhibit PG-1043**;
- Minutes of the 1980 Victoria Conference, BAT Group, **Exhibit PG-1044**;
- Minutes of the 1981 Leeds Castle Conference, BAT Group, **Exhibit PG-1045**;
- Minutes of the 1982 Hayman Island Conference, BAT Group, **Exhibit PG-1046**;
- Minutes of the 1983 Friedrichsruhe Conference, BAT Group, **Exhibit PG-1047**;
- Minutes of the 1985 Phoenix Conference 1985, BAT Group, **Exhibit PG-1048**.

803. The Chairman's Advisory Conferences were true decision-making gatherings:

- Memorandum from P. Macadam, BAT Industries, to P. Paré, Imasco, September 5, 1977, **Exhibit PG-1049**.

804. The Tobacco Strategy Review Team created in December 1984 was assigned the mission of ensuring strategic coherence within the BAT Group and maintaining a unified approach to smoking-related issues; in performing that mission it published documents describing the Group's position on the association between smoking and health:

- H. C. Barton, *Tobacco Strategy Group: Terms of Reference*, BAT Group, August 31, 1994, **Exhibit PG-1050**;
- *Guidelines for BAT Co*, BAT Industries, July 21, 1989, **Exhibit PG-1051**.



805. From 1989 on, Imasco and ITL were part of the Tobacco Strategy Review Team which approved the dissemination of documents seeking to show the existence of a scientific controversy surrounding the harmful effects of tobacco and its addictiveness:

- Exhibit PG-1050;
- Minutes of the meeting of the Tobacco Strategy Review Team, BAT Group, March 20, 1989, **Exhibit PG-1052**;
- Memorandum by S. Boyse, BAT Co., November 2, 1989, **Exhibit PG-1053**;
- Minutes of the meeting of the Tobacco Strategy Review Team, BAT Group, November 10, 1989, **Exhibit PG-1054**;
- Exhibit PG-443;
- Exhibit PG-210;
- Exhibit PG-444;
- Memorandum by S. Boyse, BAT Co., April 17, 1990, **Exhibit PG-1055**;
- Memorandum by R. Thornton, BAT Co., February 14, 1991, **Exhibit PG-1056**;
- Memorandum by R. Thornton, BAT Co., May 3, 1991, **Exhibit PG-1057**;
- Memorandum by A. Heard, BAT Co., November 11, 1991, **Exhibit PG-1058**;
- Exhibit PG-215.

(c) Sharing and concealment of knowledge

806. The members of the BAT Group, including Imperial, acted in concert to conceal their scientific knowledge of the harmful effects and addictive properties of tobacco products.

807. Scientific research within the BAT Group was carried out in a spirit of cooperation and sharing of data:

- S. Semenk, "*Une université des sciences du tabac chez BAT*", *Le Feuillet*, November/December 1981, page 7, **Exhibit PG-1059**;
- Exhibit PG-50.

808. Accordingly, since 1956, BAT Co. and Imperial had been sharing research reports dealing with a broad range of topics such as the harmful effects and carcinogenic nature of the constituents of tobacco smoke, techniques to increase nicotine delivery, compensation, and the dangers of second-hand smoke:

- *Tar and Nicotine Contents of Smoke from Cigarettes Made with Different Types of Myria Filter Tips*, Imperial Tobacco Company of Canada, Limited, August 12, 1958, **Exhibit PG-1060**;
- C.I Ayres, *Filtration efficiency of cellulose acetate 5/100,000 Filter Plugs: Effect of Changing the Tobacco Used as the Source of Smoke (Laboratory Report No. L.71-F.)*, BAT Co., November 7, 1962, **Exhibit PG-1061**;
- Exhibit PG-410;
- Exhibit PG-672;
- *Progress Report: July – December, 1976*, ITL, March 14, 1977, **Exhibit PG-1062**;
- Exhibit PG-79;
- Letter from R.S. Wade, ITL, to D.G. Felton, BAT Co., January 16, 1979, **Exhibit PG-1063**;
- Letter from R.S. Wade, ITL, to C.I. Ayres, BAT Co., October 14, 1981, **Exhibit PG-1064**;
- Letter from R.S. Wade, ITL, to R.E. Thornton, BAT Co., March 9, 1982, **Exhibit PG-1065**;

- Letter from R.E. Thornton, BAT Co., to P.J. Dunn, ITL, November 24, 1982, **Exhibit PG-1066**;
- Letter from M.H. Bilimoria, ITL, to E.D. Massey, BAT Co., February 16, 1983, **Exhibit PG-1067**;
- Letter from S.R. Massey, ITL, to R.E. Thornton, BAT Co., March 23, 1983, **Exhibit PG-1068**;
- M.H. Bilimoria, *Ames Mutagenicity of Mainstream and Sidestream Smoke Condensates. Project No. T-7708*, ITL, May 13, 1981, **Exhibit PG-1069**.

809. The results of the research were made available to the most senior officers of Imperial, BAT Co. and BAT Industries, notably through the following documents:

- (a) *Smoking and Health*, a monthly bulletin produced by Imperial Tobacco (UK), then a shareholder of BAT Co., to keep the officers in the Group informed of studies in progress and of the most current results;
  - (b) the Quarterly *Reports on Smoking and Health*;
  - (c) reviews of scientific articles, by D.G. Felton, scientific advisor at BAT Co.:
- Minutes of the meeting of the Chairman's Committee of BAT Co., May 15, 1956, **Exhibit PG-1070**;
  - Minutes of the *Smoking and Health Conference* at Chewton Glen, BAT Group, June 5, 1975, **Exhibit PG-1071**;
  - Memorandum from D.G. Felton to P. Sheehy, BAT Co., May 30, 1977, **Exhibit PG-1072**;
  - Letter from L.C.F. Blackman, BAT Co., to R.M. Gibb, ITL, April 20, 1979, **Exhibit PG-1073**;
  - D.G. Felton, *Research Conference 1980, Sea Island, Ga., Project Status report*, BAT Co., August 1980, **Exhibit PG-1074**;

- Letter from R.S. Wade, ITL, to L.C.F. Blackman, BAT Co., December 20, 1982, **Exhibit PG-1075**.

810. As well, the data held by the BAT Group on the association between smoking and health was centralized in a data bank referred to as *Interbat*, to which Imperial was a contributor:

- Memorandum by F.S. Marsh, BAT Co., March 28, 1983, **Exhibit PG-1076**.

811. Lastly, from 1954 to 1989, Imperial participated in the conferences attended by the Group's scientists as well as those specifically dealing with tobacco-related health issues:

- Minutes of the 1954 Bristol Conference, BAT Group, **Exhibit PG-1077**;
- Exhibit PG-51;
- Exhibit PG-56;
- Exhibit PG-378;
- Exhibit PG-150;
- Exhibit PG-159;
- Minutes of the 1972 Chelwood Conference, BAT Group, **Exhibit PG-1078**;
- Exhibit PG-431;
- Minutes of the 1974 Rottach-Egern Conference, **Exhibit PG-1079**;
- Minutes of the 1975 Chewton Glen Conference, BAT Group, **Exhibit PG-1080**;
- Minutes of the 1976 Montréal Conference, BAT Group, **Exhibit PG-1081**;
- Minutes of the 1978 Sydney Conference, BAT Group, **Exhibit PG-1082**;
- Exhibit PG-200;

- Exhibit PG-113;
- Proceedings of the 1982 Conference "*Marketing Low Delivery Products*", BAT Group, **Exhibit PG-1084**;
- Exhibit PG-383;
- Minutes of the 1983 Rio Conference, BAT Group, **Exhibit PG-1085**;
- Exhibit PG-667;
- Exhibit PG-681;
- Minutes of the 1984 Marlow Conference, BAT Group, **Exhibit PG-1086**;
- Exhibit PG-126.

812. Each of the BAT Group companies thus had extensive knowledge of the harmful effects of tobacco and its addictive properties.

813. Nevertheless, acting in concert, the Group companies concealed the knowledge from the public and government authorities.

814. At the outset of 1968, senior management at BAT Co. realized there were risks involved in exchanging written information on smoking-related health issues and accordingly resorted to in-person meetings:

- Letter from E.P. Finch, Brown & Williamson, to R.P. Dobson, BAT Co., December 11, 1968, **Exhibit PG-1087**.

815. The directive to deny publicly the validity of the evidence against smoking was based on the fear of lawsuits:

Nothing can be said publicly and nothing can be held in company files which could be construed in any way, as an admission that smoking is a primary or contributory cause of disease.

- Text of a speech by D.G. Felton, BAT Co., at the 1979 Chelwood *Smoking and Health Issues Conference*, **Exhibit PG-1088**.

- Exhibit PG-429;
- Memorandum from H.A. Morini to L.C.F. Blackman, BAT Co., June 15, 1982, **Exhibit PG-1089**;
- Memorandum by J.K. Wells, Brown & Williamson, June 12, 1984, **Exhibit PG-1090**.

816. At the time some BAT Co. and Imperial scientists were suggesting the Group develop a private record that would "*tell the truth as we see it*", Imperial was informed by the research director, a member of the board of directors of BAT Co., that it would be "*better not to know*", and especially, never to put what it knew in writing:

- Letter from S.J. Green, BAT, to R.M. Gibb, Imperial, March 10, 1977, **Exhibit PG-1091**.

See also:

- Exhibit PG-1078;
- Exhibit PG-192;
- Exhibit PG-171;
- Exhibit PG-172;
- Exhibit PG-173;
- Exhibit PG-174.

817. It was also agreed at the Montebello Conference that the results of studies on the effects of second-hand smoke on animals should remain within the Group:

- Exhibit PG-383.

818. Then, in 1985, the Group's research centre ceased virtually all biological research and weighed the possibility of having the research done outside the Group:

- Minutes of the meeting of the Chairman's Advisory Conference, BAT Group, March 7 and 8, 1985, **Exhibit PG-1092**.

819. The scientists at Imperial were dissuaded from making the results of certain of their studies public:

- Letter from S.R. Massey, ITL, to A.L. Heard, BAT Co., May 29, 1985, **Exhibit PG-1093**;
- Telex from A.L. Heard, BAT Co., to S.R. Massey, ITL, June 5, 1985, **Exhibit PG-1094**.

820. Towards the end of the 1980s, information control measures were tightened within the BAT Group.

821. Accordingly, fewer research reports were sent by BAT Co. to the companies in the Group, correspondence from BAT Co. to Imperial was scrutinized, and an educational program was set up to prevent scientists from using "poor" formulations that could be turned against the industry in lawsuits initiated in the United States:

- Memorandum from N.B. Cannar, BAT Co., to S.P. Chalfen, BAT Industries, January 4, 1990, **Exhibit PG-1095**.

822. On October 16, 1989, R.S. Ackman, legal counsel for Imperial, sent S. Chalfen, his counterpart at BAT Industries, the decision by Justice Jean-Jude Chabot dismissing an application by the Attorney General of Canada to obtain various documents held by Imperial in connection with a constitutional challenge to the *Tobacco Products Control Act*.

- Fax from R.S. Ackman, ITL, to S. Chalfen, BAT Industries, October 16, 1989, **Exhibit PG-1096**.

823. In the months that followed, BAT Industries, BAT Co. and Brown & Williamson pushed Imperial to adopt a document "retention" policy providing

for, among other things, the destruction of a large number of research reports:

- Letter from R.S. Ackman, ITL, to N.B. Cannar, BAT Co., January 4, 1990, **Exhibit PG-1097**;
- Memorandum from S.P. Chalfen to P. Sheehy, BAT Industries, February 19, 1990, **Exhibit PG-1098**;
- Memorandum from A.L. Heard, *Co-ordination of Group R&D: Visit to Imperial Canada, 21st-22nd June, 1990*, BAT Co., **Exhibit PG-1099**;
- Memorandum from N.B. Cannar, BAT Co., to S.P. Chalfen, BAT Industries, August 2, 1990, **Exhibit PG-1100**;
- Fax from S.P. Chalfen, BAT Industries, to J.L. Mercier, ITL, August 23, 1990, **Exhibit PG-1101**;
- Memorandum from A.L. Heard to P. Sheehy, BAT Industries, 20 August 1991, **Exhibit PG-1102**;
- *Document Retention Policy*, ITL, **Exhibit PG-1103**;
- Memorandum by P. Dunn, January 19, 1994, **Exhibit PG-1104**.

824. During the summer of 1992, several research documents were consequently destroyed as Imperial set out to comply with the document retention policy:

- Fax from S.V. Potter, outside legal counsel for ITL, to S.P. Chalfen, BAT Industries, June 5, 1992, **Exhibit PG-1105**;
- Fax from J. Meltzer to S.P. Chalfen, BAT Industries, June 5, 1992, **Exhibit PG-1106**;
- Fax from S.V. Potter, outside legal counsel for ITL, to S.P. Chalfen, BAT Industries, July 30, 1992, **Exhibit PG-1107**;
- Fax from S.V. Potter, outside legal counsel for ITL, to S.P. Chalfen, BAT Industries, August 7, 1992, **Exhibit PG-1108**.



825. BAT Industries maintained its position of denial given the size of the amounts at stake in the American lawsuits:

The Tobacco industry does not accept that the scientific case is proven which purports to link cigarette smoking with causality of various diseases. The potential size of litigation settlements particularly in the US is such that it is economically justified to fight every case to the final appeal.

- Tobacco Strategy Group, *B.A.T. Industries Tobacco Strategy*, May 12, 1993, **Exhibit PG-1109**;
- Exhibit PG-1050.

(d) Influence of BAT Co. on CTMC activities

826. BAT Co. influenced Imperial's vote in the selection of research programs to be funded by the CTMC.

827. BAT Co. scientists would comment on the research projects submitted by Canadian researchers and make their recommendations to Imperial:

- Letter from L.C. Laporte, ITL, to D.G. Felton, BAT Co., December 14, 1970, **Exhibit PG-1110**;
- Letter from D.G. Felton, BAT Co., to L.C. Laporte, CTMC, February 23, 1971, **Exhibit PG-1111**;
- Letter from D.G. Felton, BAT Co., to L.C. Laporte, CTMC, May 8, 1972, **Exhibit PG-1112**;
- Letter from D.G. Felton, BAT Co., to L.C. Laporte, CTMC, November 23, 1973, **Exhibit PG-1113**;
- Letter from R.E. Thornton, BAT Co., to R.S. Wade, ITL, September 2, 1982, **Exhibit PG-1114**;
- Letter from R.S. Wade, ITL, to R.E. Thornton, BAT Co., April 27, 1983, **Exhibit PG-1115**;

- Memorandum by R.E. Thornton, BAT Co., May 6, 1983, **Exhibit PG-1116**;
- Letter from D.G. Felton, BAT Co., to R.S. Wade, ITL, June 28, 1983, **Exhibit PG-1117**.

828. They also met with the researchers funded by the CTMC to learn of their research objectives, methodology and position regarding smoking:

- D.G. Felton, *Visit to Canada 23rd October to 18th November 1970*, BAT Co., November 13, 1970, **Exhibit PG-1118**;
- D.G. Felton, *Visit to the Royal Victoria Hospital, McGill University*, BAT Co., November 13, 1970, **Exhibit PG-1119**;
- Letter from J.C. Hogg, Pathology Institute, to D.G. Felton, BAT Co., January 20, 1971, **Exhibit PG-1120**;
- *Visit to B-A.T. Group R. & D Centre by Dr. J.C. Hogg, Associate Professor of Pathology, McGill University, 7th May 1973*, BAT Co., May 15, 1973, **Exhibit PG-1121**;
- Exhibit PG-82;
- D.G. Felton, *Meeting with Professor J C Hogg (University of British Columbia, Vancouver, Canada)*, BAT Co., June 4, 1982, **Exhibit PG-1122**;
- *Visit to Canada, June 12-18th, 1983*, BAT Co., June 1983, **Exhibit PG-1123**;
- R.E. Thornton, Note to A.L. Heard, Esq., Visit to Imperial, Canada, BAT Co., February 20, 1987, **Exhibit PG-1124**.

829. In light of the above, it is clear that Imperial acted in concert with or under the control of BAT Co. and BAT Industries.

830. The wrongful acts committed by the three companies thus constitute common failures that render them solidarily liable for tobacco-related health care costs.

#### 4. Concert or Conspiracy within the Rothmans Group

831. Carreras Rothmans is liable to the people of Québec for the wrongful acts committed in concert with Rothmans of Pall Mall Canada Limited.

(a) Ownership, direction and control of the Canadian subsidiary

832. From 1950 to 1985, Rothmans of Pall Mall Canada Limited was fifty percent or more owned by Rothmans Group companies.

833. As a result of the 1986 amalgamation that created RBH, the successive parent companies of the Rothmans Group held a majority of the shares of the Canadian subsidiary Rothmans Inc., which in turn owned a majority of the shares of RBH.

834. Representatives of Rothmans Group companies sat on the board of directors of the Canadian subsidiaries or held senior management positions within them:

- N. Bouchard and R. Lemoine, *L'usine de Rothmans, Benson & Hedges : depuis cent ans au coeur du Québec* [The Rothmans, Benson & Hedges Factory: At the Heart of Québec for One Hundred Years], 1999, **Exhibit PG-1125**;
- Rothmans of Pall Mall Canada Limited, *Annual Report 1962*, **Exhibit PG-1126**;
- Rothmans of Pall Mall Canada Limited, *Annual Report 1967*, **Exhibit PG-1127**;
- Rothmans of Pall Mall Canada Limited, *Annual Report 1968*, **Exhibit PG-1128**;
- Rothmans of Pall Mall Canada Limited, *Annual Report 1977*, **Exhibit PG-1129**;

- Rothmans of Pall Mall Canada Limited, *Annual Report 1978*, **Exhibit PG-1130**;
- Rothmans of Pall Mall Canada Limited, *Annual Report 1979*, **Exhibit PG-1131**;
- Rothmans of Pall Mall Canada Limited, *Annual Report 1981*, **Exhibit PG-1132**;
- Rothmans of Pall Mall Canada Limited, *Annual Report 1982*, **Exhibit PG-1133**;
- Rothmans of Pall Mall Canada Limited, *Annual Report 1984*, **Exhibit PG-1134**;
- Rothmans International, *Annual Report and Accounts 1977*, **Exhibit PG-1135**;
- Rothmans International, *Annual Report and Accounts 1978*, **Exhibit PG-1136**;
- Rothmans Inc., *Annual Report 1987*, **Exhibit PG-1137**;
- Rothmans Inc., *Annual Report 1993*, **Exhibit PG-1138**;
- Rothmans Inc., *Annual Report 1999*, **Exhibit PG-1139**.

835. Beginning in 1987, Rothmans Inc. managed the day-to-day operations of the new entity:

Day to day management of the merged company will rest with Rothmans, but PM will have 40 per cent of the Board seats, first refusal rights on the majority interest, and a veto right over certain major actions.

- Memorandum from R.W. Murray, PMI, to J.A. Murphy, Altria, September 23, 1986, **Exhibit PG-1140**.

836. Rothmans Group senior management participated quarterly in the development of RBH business plans:

- Memorandum from J. Heffernan, RBH, September 8, 1992, **Exhibit PG-1141** and Document attached to that memorandum, Briefing Note for RBH Shareholders, August 27, 1992, **Exhibit PG-1142**.

837. The Group's parent company was also involved in the development of an incentive program for RBH senior management:

- Memorandum from E.R. Dangoor, PMI, to L. Pollak, PM Group, June 9, 1993, **Exhibit PG-1143**.

838. RBH had to obtain the authorization of the Group's parent company before building a new factory in the United States:

- Fax from J. Heffernan, RBH, to B. Ryan, Rothmans International, April 14, 1992, **Exhibit PG-1144**.

839. The Group's parent company required RBH to report to it directly:

- *RBH President's Report, mid January for December 1991*, **Exhibit PG-1145**;
- *RBH President's Report*, February 1993, **Exhibit PG-1146**;
- *RBH President's Report for February 1994*, **Exhibit PG-1147**.

840. That accountability extended to legislative and regulatory issues relating to the control and advertising of tobacco products in Canada:

- Fax from J. McDonald, RBH, to T. Wood, Rothmans International, January 24, 1990, **Exhibit PG-1148**;
- Fax from J. Heffernan, RBH, to W. Ryan, Rothmans International, April 1, 1992, **Exhibit PG-1149**;
- Fax from J. Heffernan, RBH, to W. Ryan, Rothmans International, December 19, 1995, **Exhibit PG-1150** and the Document attached to that fax Selected Media Commentary on Tobacco Control Proposals, **Exhibit PG-1151**;
- Fax from J. Heffernan, RBH, to W. Ryan, Rothmans International, December 20, 1995, **Exhibit PG-1152**;
- Fax from J. Heffernan, RBH, to W. Ryan, Rothmans International, March 29, 1996, **Exhibit PG-1153**;

- Fax from J. Heffernan, RBH, to W. Ryan, Rothmans International, November 15, 1996, **Exhibit PG-1154**;
- Fax from J. Heffernan, RBH, to W. Ryan, Rothmans International, November 21, 1996, **Exhibit PG-1155**;
- Fax from J. Heffernan, RBH, to W. Ryan, Rothmans International, and J. du Plessis, Rothmans International, March 14, 1997, **Exhibit PG-1156**;
- Fax from J. McDonald, RBH, to J. Smithson, Rothmans International, January 18, 1999, **Exhibit PG-1157**.

841. Lastly, the financial statements of Rothmans of Pall Mall Canada Limited and RBH were consolidated into the financial statements of the Group's parent company:

- Rothmans International, *Annual Report and Accounts 1979*, **Exhibit PG-1158**;
- Rothmans International, *Annual Report and Accounts 1980*, **Exhibit PG-1159**;
- Rothmans International, *Annual Report and Accounts 1987*, **Exhibit PG-1160**;
- Rothmans Inc., *Annual Report 1988*, **Exhibit PG-1161**;
- *Compagnie Financière Richemont AG, Rapport annuel 1990*, **Exhibit PG-1162**.

(b) Concerted action among Rothmans of Pall Mall Canada Limited, Carreras Rothmans and the other Group companies

842. The companies in the Rothmans Group acted in concert with respect to tobacco-related health issues.

843. The officers of Rothmans of Pall Mall Canada Limited sat on the board of directors of Ryeseckks p.l.c., then Rothmans International Limited, which was the central body coordinating and establishing the Group's policies:

We are thus assured of the direct influence of the heads of the principal operating companies on central policy-making and supervision, as well as group co-ordination of the group's affairs on the basis of mutual interest, collaboration and joint responsibility.

- Rothmans International, *Annual Report 1976*, **Exhibit PG-1163**;
- Exhibit PG-1131.

844. From 1987 to 1993, the president of Rothmans Inc. sat on the International Advisory Board, which was created by Ryesecks p.l.c., then Rothmans International p.l.c., whose purpose was the “concerted development” of policies and strategies for the benefit of the Group:

- Rothmans International, *Annual Report and Accounts for 1985*, **Exhibit PG-1164**;
- Exhibit PG-1160;
- Rothmans International, *Annual Report and Accounts for 1993*, **Exhibit PG-1165**.

845. Within the Rothmans Group, scientists worked collaboratively, exchanged research results, and advised senior management through committees:

- Rothmans of Pall Mall Canada Limited, *Annual report for 1961*, **Exhibit PG-1166**;
- Exhibit PG-1126;
- Rothmans of Pall Mall Canada Limited, *Annual Report for 1965*, **Exhibit PG-1167**;
- Carreras Group, *Annual Report and Accounts for 1968*, **Exhibit PG-1168**;
- Exhibit PG-1163.

846. From 1978 to 1986, Carreras Rothmans and its research division were designated to assume responsibility for questions relating to tobacco-related health issues and for coordinating the Group's research strategy:

- Letter from R.W.J. Williams, Carreras Rothmans, to A. Rodgman, RJRT, August 15, 1978, **Exhibit PG-1169**;
- Visit by R.W.J. Williams of Carreras Rothmans to Southampton on September 7 and 8, 1981, BAT Co., **Exhibit PG-1170**.

847. As a consequence, the Group's Canadian subsidiary relied on the expertise developed by Carreras Rothmans:

- Letter from N. Cohen, Rothmans of Pall Mall Canada Limited, to C. Seymour, CTMC, July 26, 1982, **Exhibit PG-1171**;
- Fax from W.D. Rowland, Carreras Rothmans, to R.W. Allan, Rothmans of Pall Mall Canada Limited, November 5, 1984, **Exhibit PG-1172**.

848. In addition, Carreras Rothmans had significant influence on the selection of the research to be funded by the CTMC and monitored the work of the researchers receiving the grants:

- Memorandum from D.A. Crawford to G.P. Massicotte, Macdonald, December 6, 1979, **Exhibit PG-1173**;
- Internal memorandum from T.A. Smith, ITL, September 12, 1980, **Exhibit PG-1174**;
- Summary of a meeting of the Technical Sub-Committee of the CTMC, December 2, 1980, **Exhibit PG-1175**;
- Letter from P.W. Brown, Carreras Rothmans, to S. Renaud, January 20, 1982, **Exhibit PG-1176**;
- Letter from D.A. Crawford, Macdonald, to F.C. Colby, RJRT, May 31, 1982, **Exhibit PG-1177**;
- Exhibit PG-1171;



- Letter from R.S. Wade, ITL, to D.G. Felton, BAT Co., July 30, 1982, **Exhibit PG-1178**;
- Letter from D.J. Ecobichon and M.H. Bilimoria, ITL, to C. Seymour, CTMC, September 15, 1982, **Exhibit PG-1179**;
- Exhibit PG-1123.

849. Seeking scientific support for its denial that nicotine is addictive, Carreras Rothmans met with North American researchers:

- Exhibit PG-516.

850. In light of the above, it is clear that Rothmans of Pall Mall Canada Limited acted in concert with Carreras Rothmans and the other companies in the Rothmans Group.

851. The wrongful acts committed by those companies thus constitute common failures that render them solidarily liable for tobacco-related health care costs.

## **5. Concert or Conspiracy within the PM Group**

852. PM Inc. and PMI are liable to the people of Québec for the wrongful acts committed in concert with Benson & Hedges, and later RBH, and for the wrongful acts committed by Benson & Hedges, and later RBH, under their control.

### (a) Ownership, direction and control of the Canadian subsidiary

853. From 1958 to 1986, Benson & Hedges was a wholly owned subsidiary of PM Inc.

854. RBH was created in 1986 from the amalgamation of Benson & Hedges and Rothmans of Pall Mall Limited, a member of the Rothmans Group, and assumed the obligations of those two companies.

855. From 1987 to 2007, Altria, the parent company of the PM Group, owned, through its wholly owned subsidiary PMI, between 40% and 51% of the fair market value of RBH.

856. In 2008, PMI became a public company and acquired all the shares of Rothmans, Benson & Hedges Inc. the following year.

857. PM Inc., PMI and Altria jointly direct and control the Canadian subsidiary.

*(i) Direction and control of Benson & Hedges (1958 to 1986)*

858. As of 1958, the officers of Benson & Hedges were appointed by PM Inc. and some among them sat on the board of directors of the PMI Division:

- Minutes of a meeting of the Board of Directors of PM Inc., June 25, 1958, **Exhibit PG-1180**;
- Annual Report of PM Inc. for the year 1961, **Exhibit PG-1181**;
- Annual Report of PM Inc. for the year 1965, **Exhibit PG-1182**;
- Annual Report of PM Inc. for the year 1967, **Exhibit PG-1183**;
- Memorandum from G. Weissman to J.F. Cullman III, PM Inc., July 23, 1971, **Exhibit PG-1184**;
- Memorandum from H. Maxwell to Hugh Cullman, PM Group, November 26, 1975, **Exhibit PG-1185**;
- Press release dated February 2, 1976, PM Group, **Exhibit PG-1186**.

859. Benson & Hedges reported to PMI, whose president sat on the board of directors of PM Inc.:

- Organizational chart dated September 29, 1976, PM Group, **Exhibit PG-1187**;
- Organizational chart dated March 20, 1984, PM Group, **Exhibit PG-1188**.

860. The PMI officer responsible for Benson & Hedges sat on that company's board of directors:

- Minutes of a meeting of the Board of Directors of Benson & Hedges, October 10, 1984, **Exhibit PG-1189**.

861. The decisions concerning the Canadian subsidiary were often made by the board of directors of PM Inc., based on recommendations made to the board by PMI:

- Minutes of a meeting of the Board of Directors of PM Inc., April 25, 1967, **Exhibit PG-1190**.

862. Expenditures made by the Canadian subsidiary for building renovations or equipment, or to acquire another company, required authorization by PM Inc.:

- Minutes of a meeting of the Board of Directors of PM Inc., October 26, 1960, **Exhibit PG-1191**;
- Minutes of a meeting of the Board of Directors of PM Inc., October 27, 1965, **Exhibit PG-1192**;
- Minutes of a meeting of the Board of Directors of PM Inc., March 25, 1970, **Exhibit PG-1193**;
- Minutes of a meeting of the Board of Directors of PM Inc., September 23, 1970, **Exhibit PG-1194**;
- Memorandum from G. Weissman to J. F. Cullman III, PM Inc., January 20, 1971, **Exhibit PG-1195**.

863. The Canadian subsidiary was included in PM Inc.'s financial planning and its growth objectives were determined by the parent company:

- PM Inc., Five Year Plan 1971-1976, Summary Book, September 1, 1971, **Exhibit PG-1196**;
- Exhibit PG-280.

864. The Canadian subsidiary's financial results were consolidated into PM Inc.'s financial statements:

- Annual Report of P.M. Inc. for 1960, **Exhibit PG-1197**;
- Letter from F.H. Poole, PM Group, to J. Herrmann, Lehman Brothers, August 11, 1964, **Exhibit PG-1198**.

***(ii) Direction and control of RBH (1986 to 2009)***

865. PM Inc. and Altria jointly decided the 1986 amalgamation:

- *Discussion Paper – Zurich, Sept. 30 – Oct. 1 '84*, PM Group, 1984, **Exhibit PG-1199**;
- Exhibit PG-1140;
- Memorandum from J.A. Murphy to H. Maxwell, PM Group, September 23, 1986, **Exhibit PG-1200**;
- Minutes of a meeting of the Board of Directors of Altria, September 24, 1986, **Exhibit PG-1201**.

866. As a result of the amalgamation, PM Inc. had a veto right over certain major decisions:

- Exhibit PG-1140;
- Exhibit PG-1144.

867. RBH was managed in the interests of its two shareholders, one of which was PMI, and its senior management sought the consensus of the board of directors:

- Exhibit PG-1141;
- Exhibit PG-1142.

868. PMI senior management participated quarterly in the development of the Canadian subsidiary's business plans:

- Exhibit PG-1142.

869. The PM Group companies continued to appoint directors and officers of RBH, approved their remuneration, and developed an incentive program for them:

- Amalgamation Agreement dated as of the 18th Day of December, 1986 between Benson & Hedges Canada Inc. and Rothmans of Pall Mall Limited, **Exhibit PG-1202**;
- Philip Morris Employees who are Serving as Directors or Officers of Affiliated Companies, PM Group, February 27, 1987, **Exhibit PG-1203**;
- Exhibit PG-1143.

870. RBH was accountable to the parent companies, which, among other things, closely monitored Canadian legislative and regulatory developments in the tobacco sector:

- Exhibits PG-1145 to PG-1157.

871. Altria was also involved in the affairs of the Canadian subsidiary, notably through its Corporate Products Committee, whose members included the most senior officers of Altria, PM Inc. and PMI:

- Minutes of a meeting of the Corporate Products Committee, April 22, 1986, PM Group, **Exhibit PG-1204**.

872. The officers of PMI responsible for overseeing RBH ultimately reported to a vice-president of Altria:

- Organisation Announcement dated January 12, 1990, PM Group, **Exhibit PG-1205**.

(b) Concerted action among the companies in the Group

873. RBH, PMI and PM Inc. jointly adhered to the public position of denying the existence of evidence of a causal link between smoking and disease, and acted in concert to conceal from the public the scientific knowledge establishing the link, while sharing that knowledge among themselves.

(i) ***Development of the public position***

874. The PM Group companies participated in the development of their Canadian company's public position and its public relations campaigns.

875. A few weeks before the 1963 Conference, the president of Benson & Hedges ensured with the vice-president of PMI that the CTMC's brief was consistent with the Group's public relations policy:

- Letter from R.J. Leahy, Benson & Hedges, to G. Weissman, PMI, October 1, 1963, **Exhibit PG-1206**.

876. In 1969, PM Inc.'s legal counsel participated in the drafting of the CTMC brief to the Isabelle Committee and provided expert witnesses:

- Exhibit PG-943;

- Letter from A. Holtzman, PM Inc., to L. Laporte, CTMC, January 19, 1971, **Exhibit PG-1207**;
- Letter from A. Holtzman, PM Inc., to E.J. Jacob, Lauterstein & Lauterstein, February 2, 1971, **Exhibit PG-1208**.

877. Benson & Hedges was represented at the Committee hearings by its president, who was also a vice-president of PMI:

- Exhibit PG-23;
- Annual Report of PM Inc. for 1968, **Exhibit PG-1209**.

878. During the 1970s, PMI coordinated public relations for the Group companies outside the United States in matters relating to tobacco-related health issues:

- PMI, Five Year Management Plan 1971-1975, April 1971, **Exhibit PG-1210**.

879. PMI's strategy in Canada was to develop new promotional techniques to counter negative publicity and anti-tobacco groups:

- PMI, Five Year Management Plan 1972-1976, July 1972, **Exhibit PG-1211**.

880. The senior management and legal counsel of both PMI and PM Inc. were involved in the industry's negotiations with the federal government, in particular with regard to the adoption and amendment of the voluntary advertising code:

- CTMC, Smoking and Health Research Proposals, July 1973, **Exhibit PG-1212**;
- Memorandum from A. Holtzman to H. Cullman, PM Group, July 24, 1973, **Exhibit PG-1213**;
- Letter from R.W. Murray, Benson & Hedges, to A. Holtzman, PM Inc., March 10, 1975, **Exhibit PG-1214**;

- Exhibit PG-607;
- Cigarette Advertising and Promotion Code of the Canadian Tobacco Manufacturers Council, 1975, annotated version transmitted to A. Holtzman, PMI, **Exhibit PG-1215**;
- Memorandum from J.E. Broen, Benson & Hedges, to A. Holtzman, PM inc., August 22, 1977, **Exhibit PG-1216**;
- Memorandum from F.E. Resnik to H. Maxwell, PM Inc., July 21, 1978, **Exhibit PG-1217**;
- Memorandum from W.H. Webb, Benson & Hedges, to A. Whist, PMI, February 27, 1981, **Exhibit PG-1218**.

881. Benson & Hedges sought PMI's approval of the Canadian industry's planned response to the federal Minister of Health:

Should you have any views on any of the points raised, I would appreciate hearing from you. The final Industry response will be sent to yourself for review before approval by Benson & Hedges, the C.T.M.C. and submission to the Government.

- Letter from J.E. Broen, Benson & Hedges, to H. Maxwell, PMI, April 22, 1977, **Exhibit PG-1219**.

882. During that period, PMI participated directly in the development of the public relations strategy of Benson & Hedges and the CTMC:

- Memorandum from S. Ward to N. Janelle, Benson & Hedges, April 2, 1975, **Exhibit PG-1220**;
- Memorandum from W.H. Webb, Benson & Hedges, to H. Maxwell, PMI, June 21, 1978, **Exhibit PG-1221**;
- Letter from D. Leckie, Benson & Hedges, to M. Covington, PM Group, July 6, 1978, **Exhibit PG-1222**;
- A.A. Napier, Communications Policy for Canada, an Alternative Approach, PM Group, November 8, 1979, **Exhibit PG-1223**.



883. Between 1976 and 1980, Benson & Hedges took part in a number of PM Group conferences and meetings addressing the association between smoking and health:

- Memorandum from H. Maxwell to R.W. Murray, PM Group, February 23, 1976, **Exhibit PG-1224**;
- Letter from A. Holtzman, PM Inc., to W.I. Campbell, Benson & Hedges, May 27, 1976, **Exhibit PG-1225**;
- Memorandum from M.W. Covington to H. Cullman, PM Group, May 9, 1978, **Exhibit PG-1226**;
- Sir James Wilson's Visit to Philip Morris, New York - June 30, 1978, PM Group, **Exhibit PG-1227**;
- Minutes of the Corporate Marketing Conference, PM Group, May 29 to June 1, 1979, **Exhibit PG-1228**;
- Philip Morris International Public Affairs Conference Agenda, PM Group, November 18 and 19, 1980, **Exhibit PG-1229**.

884. During the 1980s, Benson & Hedges was encouraged to adhere to the Group's policy and to undertake public relations campaigns aimed at preventing or delaying regulation to restrict the advertising, sale or consumption of tobacco:

- PMI, Corporate Affairs Status Report, 1981, **Exhibit PG-1230**;
- Memorandum from C. Heide, Benson & Hedges, to A. Whist, PMI, October 22, 1981, **Exhibit PG-1231**;
- Memorandum from H. Imam, Benson & Hedges, to L. Greher, PMI, April 12 1983, **Exhibit PG-1232**;
- Corporate Affairs Status Report, PM Group, 1983, **Exhibit PG-1233**.
- Memorandum from A. Whist, PMI, February 9, 1984, **Exhibit PG-1234**.

885. After the 1986 amalgamation, the concerted action between the PM Group companies and RBH continued, particularly in regard to public relations.

886. The RBH vice-president for corporate affairs, C. von Maerestetten, was in fact an employee of the PM Group:

- Exhibit PG-1203.

887. The PM Group also provided RBH with legal documents and public relations material to oppose the adoption of new health warnings on cigarette packages and other public health regulations:

- Marketing, Management and Technical Services Agreement between Philip Morris Incorporated and Rothmans, Benson & Hedges Inc., January 1st, 1987, **Exhibit PG-1235**;
- PMI, Spokesperson's Guide, April 1990, **Exhibit PG-1236**;
- Memorandum from C.R. Wall, PM Inc., October 28, 1991, **Exhibit PG-1237**;
- Memorandum from L. Pollak to M.H. Bring, PMI, March 14, 1994, **Exhibit PG-1238**;
- Presentation by P. Oliver, president of the Ontario Restaurant Association, June 20, 1996, **Exhibit PG-1239**;
- Letter from A. Okoniewski, PM Group, to R. Wood, public relations director of the Ontario Restaurant Association, August 21, 1996, **Exhibit PG-1240**.
- Memorandum from L. Pollak to S. Parrish, PMI, February 25, 1997, **Exhibit PG-1241**.

888. PMI and PM Inc. were aware of and approved RBH's public position:

- Public address by J. Heffernan, RBH, January 3, 1995, **Exhibit PG-1242**.

***(ii) Sharing of knowledge about the dangers posed by tobacco products***

889. There was on-going cooperation among the scientists within the PM Group, as well as sharing of information about the harmful effects of tobacco products, but that internal knowledge was, in a concerted manner, concealed from the Québec people and public authorities.

890. From the 1960s, PM Group scientists collaborated with each other, shared scientific information, and PM Inc.'s research centre offered technical support to subsidiaries:

- Letter from S. Bach, Benson & Hedges, to L.S. Harrow, PM Inc., February 15, 1960, **Exhibit PG-1243**;
- Letter from J.Y. Mason, PM Inc., to E. Sholte Ubing and R.J. Leahy, Benson & Hedges, March 20, 1964, **Exhibit PG-1244**;
- Letter from E. Sholte Ubing, Benson & Hedges, to J.Y. Mason, PM Inc., November 22, 1965, **Exhibit PG-1245**;
- Philip Morris Research Center, PM Group, 1972, **Exhibit PG-1246**;
- Memorandum from F.E. Resnik to H. Wakeham, PM Inc., March 3, 1975, **Exhibit PG-1247**;
- Memorandum from T.S. Osdene, PM Inc., to C. von Maerestetten, Benson & Hedges, July 12, 1984, **Exhibit PG-1248**.

891. PM Inc. and PMI collaborated in the development and promotion of low tar and nicotine cigarettes, despite knowing since at least the 1970s that type of cigarette was an enticement for consumers:

- Letter from P.B. Gurvich, Benson & Hedges, to H. Maxwell, PMI, November 22, 1965, **Exhibit PG-1249**;
- Letter from H. Wakeham, PM Group, to P.B. Gurvich, Benson & Hedges, to H. Maxwell, PMI, December 10, 1965, **Exhibit PG-1250**;
- Letter from H. Wakeham, PM Group, to P.B. Gurvich, Benson & Hedges, to H. Maxwell, PMI, December 16, 1965, **Exhibit PG-1251**;

- Letter from E. Sholte Ubing, Benson & Hedges, to R. Seligman, PM Inc., October 30, 1987, **Exhibit PG-1252**;
- Memorandum from R.B. Seligman, PM Inc., October 31, 1967, **Exhibit PG-1253**;
- Letter from R. Seligman, PM Inc., to E. Sholte Ubing, Benson & Hedges, November 17, 1967, **Exhibit PG-1254**;
- Memorandum from A.C. Britton, PM Group, November 17, 1967, **Exhibit PG-1255**;
- Letter from W.G. Lloyd, PM Inc., to J. Pritchard, Benson & Hedges, March 21, 1968, **Exhibit PG-1256**;
- W.L. Dunn, Project 1600, *Consumer Psychology*, PM Group, May 27, 1968, **Exhibit PG-1257**;
- Memorandum from W.L. Dunn to P.A. Eichorn, PM Group, July 2, 1968, **Exhibit PG-1258**;
- Memorandum from R.N. Thomson to J.S. Osmalov, April 9, 1968, **Exhibit PG-1259**;
- Exhibit PG-691.

892. Benson & Hedges also had the benefit of the opinion of the scientists within the PM Group:

- Letter from H. Maxwell to R.W. Murray, PM Group, January 30, 1975, **Exhibit PG-1260**.

893. In 1976, the Science and Technology vice-president at PM Inc. presented the latest scientific developments in the area of diseases associated with smoking to the board of directors of Benson & Hedges:

- Exhibit PG-494.

894. During the 1980s, Benson & Hedges scientists and scientists from other Group companies attended meetings of the Tobacco Technology Group, which was involved in the design of the Canadian subsidiary's cigarettes:

- Final Prospectus, Philip Morris World Leaf Technology Conference, October 18 to 22, 1981, **Exhibit PG-1261**;
- Minutes of a meeting of the Tobacco Technology Group, PM Group, June 10, 1982, **Exhibit PG-1262**;
- Minutes of a meeting of the Tobacco Technology Group, PM Group, June 22, 1982, **Exhibit PG-1263**;
- Memorandum from L.W. Cooper to U. Westphal, PM Inc., January 31, 1984, **Exhibit PG-1264**;
- Minutes of a meeting of the Tobacco Technology Group, PM Group, April 10, 1986, **Exhibit PG-1265**.

895. In 1984, the Tobacco Technology Group made the following recommendations to the Canadian subsidiary:

(a) design a new cigarette that would be described as a light cigarette but would nevertheless have an appreciable tar content since Canadian consumers were not mindful of the tar levels printed on cigarette packages and preferred light cigarettes they found the most satisfying; and

(b) target youth aged between 10 and 35 years in the promotion of "king size" cigarettes:

- Memorandum from L. Suwarna to U.R. Westphal, Benson & Hedges, August 30, 1984, **Exhibit PG-1266**;
- Memorandum from G. Black to L. Suwarna, Benson & Hedges, August 30, 1984, **Exhibit PG-1267**;
- Memorandum from J.G. Pritchard to U. Westphal, PM inc., September 11, 1984, **Exhibit PG-1268**.

896. The collaboration among scientists continued after the 1986 amalgamation as PM Inc. provided RBH with

(a) technical services, namely technology, information and knowledge relating to the manufacture of cigarettes;

(b) processes, including the selection of tobacco to obtain the desired nicotine and tar content levels; soil analysis to increase the content levels; analysis of plants and their nicotine content; and analysis of the chemical components of cigarette smoke; and

(c) advisers:

- Exhibit PG-1235;
- Exhibit PG-1241;
- Exhibit PG-1242;
- Letter from A. McClughan, RBH, to L. Cooper, PM Inc., March 29, 1990, **Exhibit PG-1269**;
- Memorandum from T. Sanders to K. Houghton, PM Inc., May 9, 1990, **Exhibit PG-1270**;
- Memorandum from C.L. Irving to D.B. Knudson, PM Inc., April 21, 1993, **Exhibit PG-1271**;
- Letter from L. Bowen, RBH, to S. Roberts, PM Inc., October 6, 1995, **Exhibit PG-1272**;
- Letter from L. Bowen, RBH, to R. Snow, PM inc., October 12, 1995, **Exhibit PG-1273**;
- Memorandum from C. Goodwin to L. Peuckert, PM Group, November 28, 1995, **Exhibit PG-1274**.

(c) Direct intervention by PM Inc. in Canada

897. PM Inc. produced cigarettes sold in Canada:

- Address by Joseph F. Cullman III, PM Inc., April 10, 1962, **Exhibit PG-1275**;
- Letter from L. Suwarna, Benson & Hedges, to L. Cooper, PM Inc., March 1st, 1983, **Exhibit PG-1276**;
- Letter from J. Heffernan, RBH, to M. Goldberg, PMI, August 25, 1989, **Exhibit PG-1277**;
- M. Strauss, "Philip Morris to Withdraw Seven Cigarette Brands", *The Globe and Mail*, April 4, 1989, **Exhibit PG-1278**;
- Memorandum from M.Z. DeBardeleben to E.B. Sanders, PM Inc., August 10, 1990, **Exhibit PG-1279**;
- Memorandum from D. Assante to R.H. Cox, September 15, 1998, **Exhibit PG-1280**.

898. In addition, PM Inc. funded Canadian scientists whose work appeared favourable to the industry, met with a number of them, and advised its subsidiary on the choice of research to be funded by the CTMC:

- Exhibit PG-273;
- Memorandum from T.S. Osdene to H. Wakeham, PM, November 7, 1967, **Exhibit PG-1281**;
- Exhibit PG-563;
- Exhibit PG-565;
- Exhibit PG-1175.

899. In light of the above, it is clear that Benson & Hedges and RBH acted in concert with or under the control of PM Inc. and PMI.

900. The wrongful acts committed by the three companies thus constitute common failures that render them solidarily liable for tobacco-related health care costs.

## 6. Concert or Conspiracy within the RJR Group

901. R.J. Reynolds Tobacco Company is liable to the people of Québec for the wrongful acts committed by its predecessors in concert with the predecessors of JTI-Macdonald Corp. and for those committed by the latter under their control.

902. RJRTI is liable to the people of Québec for the wrongful acts committed in concert with the predecessors of JTI-Macdonald Corp. and for those committed by those predecessors under its control.

### (a) Ownership, direction and control of the Canadian subsidiary

903. From 1858 to 1973, Macdonald was a private Canadian company unrelated to any multinational tobacco company.

904. Macdonald was a member of the RJR Group from 1974 to 1999.

905. Macdonald was sold to Japan Tobacco Inc. in 1999.

906. Beginning in 1974, some officers of Macdonald were appointed by RJRT from among the senior management at RJRT, RJRTI or RJR Industries, which was then the parent company of the RJR Group:

- “Reynolds Adds Macdonald of Canada”, *RJR World*, March-April edition, 1974, RJR Industries, **Exhibit PG-1282**;
- *RJR News*, January 5, 1982 edition, RJR Group, **Exhibit PG-1283**;
- “RJR at Home”, *Tobacco International*, March 5, 1982 edition, **Exhibit PG-1284**;



- Minutes of a meeting of the Board of Directors of Macdonald, October 18, 1983, sent by G.S. Kishner, Macdonald, to E.A. Horrigan, RJRT, November 7, 1983, **Exhibit PG-1285**.

907. Although RJRT was the sole shareholder of Macdonald, Macdonald's operations were in fact directed by RJRTI, to whom the Canadian subsidiary's chief executive officer reported:

- R.J. Reynolds Industries, *Annual Report for 1976*, **Exhibit PG-1286**;
- R.J. Reynolds Tobacco Company, R.J. Reynolds Tobacco International, Inc.: Subsidiaries of R.J. Reynolds Industries, Inc., published circa 1982, **Exhibit PG-1287**;
- RJR Nabisco, United States Securities and Exchange Commission Form 10-K for the year ending December 31, 1987, **Exhibit PG-1288**;
- RJR-Nabisco, *Annual Report for 1993*, **Exhibit PG-1289**.

908. RJRTI developed financial and strategic plans for Macdonald:

Management of RJR-MI's mission depends upon a close working partnership with RJRTI who will provide global strategic leadership.

- RJR-Macdonald Inc. 1984 Operating Plan, September 21, 1983, **Exhibit PG-1290**;
- Job description of R.E. Harrison, RJRTI financial planning analyst, **Exhibit PG-1291**;
- R.J. Reynolds International, *The Americas Region - Strategic Plan (1997-2000)*, April 14, 1997, **Exhibit PG-1292**;
- Letter from H. Dancey, Macdonald, to C. Gatti, RJRTI, April 15, 1997, **Exhibit PG-1293**.

909. Lastly, Macdonald's results were consolidated into the financial statements of RJR Industries:

- R.J. Reynolds Industries, *Annual Report for 1973*, **Exhibit PG-1294**;

- R.J. Reynolds Industries, United States Securities and Exchange Commission Form 10-K for the year ending December 31, 1974, **Exhibit PG-1295**;
- RJR-Nabisco, *Annual Report for 1986*, **Exhibit PG-1296**.

(b) Concerted action among the companies in the RJR Group

910. Macdonald, RJRT, and RJRTI acted in concert to deny publicly the existence of evidence of a causal link between smoking and disease.

911. They also agreed to conceal from the public the scientific knowledge they shared among themselves that proved their products were dangerous.

(i) ***Development of the public position***

912. On acquiring Macdonald as a subsidiary, RJRT became concerned about the situation in Canada regarding tobacco-related health issues:

- Letter from G.D. Smith, Macdonald, to W.S. Smith, RJRT, July 30, 1974, **Exhibit PG-1297**;
- Letter from W.S. Smith, RJRT, to G.D. Smith, Macdonald, August 2, 1974, **Exhibit PG-1298**;
- Exhibit PG-354.

913. Beginning in 1976, RJRTI took charge of coordinating the RJR Group's strategy on tobacco and health issues at the international level outside the United States.

914. In 1977, the president and chief executive officer of RJRTI and vice-president of RJR Industries made it clear that RJRTI was to be consulted by

its subsidiaries in the drafting of the voluntary advertising code, in developing research programs, and in negotiations with government authorities relating to advertising restrictions and health warnings:

- Exhibit PG-352.

915. The president and chief executive officer of RJRTI and vice-president of RJR Industries attached to his memorandum an ICOSI position paper (Exhibit PG-352), which he stated represented RJRTI's own policy.

916. During that time, RJRT created the Science Information Division, which was responsible for communicating smoking and health information to all RJR Group employees, including public relations staff:

- *The Functions and Functioning of the Science Information Division, RJRT, Exhibit PG-1299.*

917. Designated employees in each region were to monitor upcoming publications so that the Group could respond to them in a timely manner:

- F.G. Colby, Functions of Smoking and Health Designees, RJRT, **Exhibit PG-1300.**

918. The collaboration between the Science Information Division and the designees at Macdonald gave rise to copious correspondence:

- Exhibit PG-1299;
- Letter from F. Colby, RJRT, to D. Crawford, Macdonald, December 3, 1976, **Exhibit PG-1301;**
- Letter from D. Crawford, Macdonald, to F. Colby, RJRT, March 31, 1977, **Exhibit PG-1302;**
- Memorandum from F. Colby to D.H. Piehl, RJRT, September 15, 1977, **Exhibit PG-1303;**

- Letter from D. Crawford, Macdonald, to F. Colby, RJRT, June 8, 1978, **Exhibit PG-1304**;
- Letter from D. Crawford, Macdonald, to R. Johnson, July 12, 1978, **Exhibit PG-1305**;
- Letter from D. Crawford, Macdonald, to F. Colby, RJRT, November 22, 1978, **Exhibit PG-1306**;
- Note by S.B. Witt, RJRT, November 28, 1978, **Exhibit PG-1307**;
- Letter from D. Crawford, Macdonald, to F. Colby, RJRT, July 4, 1979, **Exhibit PG-1308**;
- Letter from F. Colby, RJRT, to D. Crawford, Macdonald, December 10, 1979, **Exhibit PG-1309**.

919. In the face of increasing pressure from anti-tobacco groups and government authorities, RJRTI developed a public relations program with the following objectives:

- (a) delay government-imposed restrictions on the commercialization of tobacco;
  - (b) disseminate information about the scientific controversy to a targeted public; and
  - (c) counter anti-tobacco activities against the social acceptability of smoking.
- Exhibit PG-340.

920. That memorandum, Exhibit PG-340, confirmed RJRTI's intention to assume a leadership role within ICOSI and national associations of tobacco manufacturers, including the CTMC, to ensure that the policies of the national associations were consistent with its own objectives.

921. The memorandum also described the results of a campaign in Québec:

In Quebec, proposals were defeated that would have imposed a province-wide ban on public smoking, apply a differential tax based on tar levels, drastically reduce T&N content and increase taxation to finance anti-smoking education campaigns.

922. Collaboration between RJRTI and Macdonald continued in accordance with that program during the 1980s:

- Memorandum from F.A. Leclerc, Macdonald, to R.J. Marcotullio, RJRTI, January 7, 1981, **Exhibit PG-1310**;
- Memorandum from F.A. Leclerc, Macdonald, to F. Colby, RJRT, February 9, 1981, **Exhibit PG-1311**;
- Memorandum from F. Colby to S.B. Witt, RJRT, January 21, 1981, **Exhibit PG-1312**;
- Memorandum from F. Colby to G.R. Di Marco, RJRT, December 22, 1982, **Exhibit PG-1313**;
- Memorandum by R.J. Marcotullio, RJRTI, May 16, 1985, **Exhibit PG-1314**.

923. The RJR Group's legal counsel were also involved in Macdonald's public relations, as well as in CTMC affairs, especially as to the positions taken by the industry:

- Fax from G.P. Massicotte, Macdonald, to S.B. Witt, RJRT, June 29, 1978, **Exhibit PG-1315**;
- Memorandum from R.J. Marcotullio to S.B. Witt, RJRT, July 25, 1980, **Exhibit PG-1316**;
- Exhibit PG-356;
- Memorandum from R.J. Marcotullio to S.B. Witt, RJRT, February 5, 1981, **Exhibit PG-1317**;
- Letter from D.A. Crawford, Macdonald, to C.M. Seymor, CTMC, October 18, 1983, **Exhibit PG-1318**.

924. An educational and information program on smoking and health issues, developed by RJRTI and intended for the Group's employees, was also implemented at Macdonald:

- Letter from R.J. Marcotullio, RJRTI, to L.W. Pullen, Macdonald, June 17, 1981, **Exhibit PG-1319**.

925. In 1987 when the federal government introduced Bill C-51 to ban the advertising of tobacco products, RJRTI and RJRT resources were brought into play to prevent or delay passage of the bill:

- Memorandum from T.G. Grivakes to P.J. Hoult, Macdonald, Preliminary Outline of Action Plan, April 27, 1987, **Exhibit PG-1320**;
- *An Action Programme to Combat the Proposed Canadian Anti-Smoking Legislation*, Macdonald, April 27, 1987, **Exhibit PG-1321**;
- Summary of notes taken by S.B. Witt at a meeting on May 19 and 20, 1987, RJRT, **Exhibit PG-1322**;
- Memorandum from R.J. Marcotullio to P.C. Bergson and L.W. Pullen, RJRTI, June 26, 1987, **Exhibit PG-1323**.

926. On November 30, 1987, despite the absence of Macdonald representatives, legislative developments in Canada were on the agenda of an RJRTI meeting:

- Handwritten notes taken at the meeting on November 30, 1987, RJR Group, **Exhibit PG-1324**.

927. On August 22, 1995, RJRTI prepared a response to the upcoming publication in Canada of a Labstat report on the components of tobacco and cigarette smoke:

- E-mail from J.F. Smith, RJRTI, August 11, 1995, **Exhibit PG-1325**;
- Memorandum from J.A. Seckar to R.L. Suber, RJRT, August 21, 1996, **Exhibit PG-1326**.

**(ii) Sharing of knowledge about the dangers of tobacco products**

928. Beginning in 1974, RJRT and Macdonald scientists collaborated and shared scientific knowledge.

929. In March 1974, Macdonald's research head visited RJRT employees and facilities and was given information about the services RJRT could provide to him:

- Report of G.I. Clover, RJRT, April 1, 1974, **Exhibit PG-1327**.

930. RJRT took an active part in the development and design of Macdonald cigarettes.

931. RJRT provided Macdonald with the tobacco or additives (*top dressings*) going into the manufacture of American cigarettes to be sold in the Canadian market, which included *Winston*, *Camel*, *Salem*, and *Vantage* cigarettes:

- Monthly Report of the Tobacco Products Development Division, RJRT, February 1974, **Exhibit PG-1328**.

See also:

- Monthly Report Blends Development, RJRT, June 30, 1970, **Exhibit PG-1329**;
- Memorandum from R.H. Cundiff to S.O. Jones, RJRT, March 27, 1974, **Exhibit PG-1330**;
- Letter from L.W. Hall, RJRT, to J. Affrick, Macdonald, April 17, 1974, **Exhibit PG-1331**;
- Memorandum from R.H. Cundiff to S.O. Jones, RJRT, May 29, 1974, **Exhibit PG-1332**;

- Memorandum from T.H. Eskew to R.H. Cundiff, RJRT, June 19, 1974, **Exhibit PG-1333**;
- *Minutes of a meeting of the Tobacco Development Status Meeting*, RJRT, August 20, 1974, **Exhibit PG-1334**;
- Memorandum from S.O. Jones to C.G. Tompson, RJRT, August 28, 1975, **Exhibit PG-1335**;
- Memorandum from T.H. Eskew to R.H. Cundiff, RJRT, November 21, 1975, **Exhibit PG-1336**;
- Memorandum from T.H. Eskew to R.H. Cundiff, RJRT, December 23, 1975, **Exhibit PG-1337**.

932. RJRT also analyzed the additives and components in the tobacco smoke of cigarettes produced by Macdonald and recommended flavours that could be used in the development of light cigarettes:

- Appendix – MBO Report – June, 1974, RJRT, **Exhibit PG-1338**;
- Letter from R.E. Gardiner to M. Mitchell, RJRT, March 18, 1975, **Exhibit PG-1339**;
- Letter from K.W. Swicegood, RJRT, to D. Crawford, Macdonald, March 11, 1976, **Exhibit PG-1340**;
- Performance Measurement through Management by Objectives for 1978, D.P. Johnson, Manager, Tobacco Products Development Division, **Exhibit PG-1341**;
- Memorandum from D.L. Roberts to D.H. Piehl, RJRT, February 12, 1981, **Exhibit PG-1342**;
- Memorandum by D.L. Roberts, RJRT, April 2, 1981, **Exhibit PG-1343**.

933. RJRT also instructed Macdonald on various technical processes to increase nicotine delivery:

- Performance Measurement through Management by Objectives for 1978, D.H. Piehl, Manager, Chemical Research Division, **Exhibit PG-1344**;



- D.E. Townsend, The Effects of Cigarette Paper Burn Additives on Smoke Deliveries, RJRT, August 7, 1980, **Exhibit PG-1345**.

934. Scientific information relating to the link between smoking and lung cancer was also shared:

- Memorandum by F. Colby, RJRT, June 22, 1978, **Exhibit PG-1346**.

935. RJRT's scientific knowledge was also brought into play in the process of assessing and selecting research to be sponsored by the CTMC to ensure that the research would not be damaging to the industry:

- Letter from D.A. Crawford, Macdonald, to M. Senkus, RJRT, January 6, 1976, **Exhibit PG-1347**;
- Memorandum from F. Colby to A. Rodgman, RJRT, November 30, 1978, **Exhibit PG-1348**;
- Letter from D.A. Crawford, Macdonald, to F. Colby, RJRT, December 21, 1978, **Exhibit PG-1349**;
- Memorandum from F. Colby to A. Rodgman, RJRT, December 21, 1978, **Exhibit PG-1350**;
- Letter from D.A. Crawford, Macdonald, to F. Colby, RJRT, April 6, 1979, **Exhibit PG-1351**;
- Letter from D.A. Crawford, Macdonald, to F. Colby, RJRT, October 23, 1979, **Exhibit PG-1352**;
- Letter from F. Colby, RJRT, to D.A. Crawford, Macdonald, November 16, 1979, **Exhibit PG-1353**;
- Memorandum from F. Colby to A. Rodgman, RJRT, January 11, 1979, **Exhibit PG-1354**;
- Letter from F. Colby, RJRT, to E.J. Jacob, January 25, 1979, **Exhibit PG-1355**;
- Exhibit PG-1173;
- Exhibit PG-1309;

- Memorandum from F. Colby, RJRT, to D.A. Crawford, Macdonald, February 12, 1980, **Exhibit PG-1356**;
- Letter from D.A. Crawford, Macdonald, to F. Colby, RJRT, January 9, 1980, **Exhibit PG-1357**;
- Letter from D.A. Crawford, Macdonald, to F. Colby, RJRT, March 26, 1980, **Exhibit PG-1358**;
- Memorandum from F. Colby to S.B Witt, RJRT, September 29, 1980, **Exhibit PG-1359**;
- Letter from F. Colby, RJRT, to D.A. Crawford, Macdonald, October 14, 1980, **Exhibit PG-1360**;
- Letter from D.A. Crawford, Macdonald, to F. Colby, RJRT, November 3, 1980, **Exhibit PG-1361**;
- Memorandum from F. Colby to J.A. Giles, RJRT, November 26, 1980, **Exhibit PG-1362**;
- Memorandum from F. Colby, RJRT, to S.B. Witt, RJRT, January 21, 1981, **Exhibit PG-1363**;
- Letter from D.A. Crawford, Macdonald, to F. Colby, RJRT, November 27, 1981, **Exhibit PG-1364**;
- Letter from D.A. Crawford, Macdonald, to F. Colby, RJRT, February 8, 1982, **Exhibit PG-1365**;
- Exhibit PG-1177;
- Memorandum from F. Colby to J.A. Giles, RJRT, June 30, 1982, **Exhibit PG-1366**;
- Letter from F. Colby, RJRT, to D.A. Crawford, Macdonald, August 4, 1982, **Exhibit PG-1367**;
- Letter from D.A. Crawford, Macdonald, to F. Colby, RJRT, November 19, 1982, **Exhibit PG-1368**.

936. RJRT insisted that each member of the CTMC retain a veto right over the selection of the research grants to be awarded:

- Letter from R.J. Marcotullio, RJRTI, to D.A. Crawford, Macdonald, March 31, 1983, **Exhibit PG-1369**.

937. During the 1980s, RJRT performed analyses for Macdonald on the mutagenicity of the additives it used and the smoke produced by its cigarettes:

- Exhibit PG-1343;
- Memorandum from A. Rodgman to G.R. Di Marco, RJRT, January 12, 1983, **Exhibit PG-1370**;
- Memorandum from G.R. Di Marco to G.H. Long, RJRT, January 14, 1983, **Exhibit PG-1371**;
- Memorandum from A.W. Hayes to G.R. Di Marco, RJRT, August 7, 1984, **Exhibit PG-1372**;
- Memorandum from A.W. Hayes to G.R. Di Marco, RJRT, April 24, 1985, **Exhibit PG-1373**.

938. In 1983, two of the additives tested proved to be mutagenic:

- Exhibit PG-1370;
- Exhibit PG-1371;
- Letter from F.N. Lane to D.L. Roberts, RJRT, March 7, 1983, **Exhibit PG-1374**;
- Report of the Flavor Technology Division of RJRT for the second quarter of 1984, **Exhibit PG-1375**.

939. RJRT also sent Macdonald information on the harmful effects of certain constituents, such as formaldehyde, a carcinogenic:

- Memorandum from A.W. Hayes to G.R. Di Marco, RJRT, May 3, 1985, **Exhibit PG-1376**.

940. Macdonald also had access to the studies and research conducted by RJRT scientists:

- Letter from C. Goslin, Macdonald, to D. Wilcox, RJRT, April 18, 1984, **Exhibit PG-1377**.

(c) Direct intervention by companies in the RJR Group in Canada

941. Cigarettes produced by RJRT are sold in Canada:

- RJR Industries, *Annual Report for 1970*, **Exhibit PG-1378**;
- Exhibit PG-1287;
- Strategic Business Unit RJR-Macdonald Inc., Canada, 1985 Operating Plan, September 19, 1984, **Exhibit PG-1379**;
- RJR-Macdonald Inc. 1989-1991 Strategic Plan, March 25, 1988, **Exhibit PG-1380**;
- Testimony of P. Hault, then vice-president of Macdonald, in the Superior Court of Québec, September 25, 1989, **Exhibit PG-1381**;
- RJR-Macdonald Inc., *Company Profile and Philosophies*, circa 1997, **Exhibit PG-1382**.

See also:

- Minutes of a meeting of the board of directors of RJRT, October 14, 1970, **Exhibit PG-1383**;
- Competitive MKTG Activities Monthly Report 1970, RJRT, **Exhibit PG-1384**;
- Exhibit PG-1294;
- Exhibit PG-1278;
- A. Harman, "Canadian Market: Sweeping New Regulations", *Tobacco Reporter*, May 1989, **Exhibit PG-1385**.

942. Cigarettes produced by Brown & Williamson are sold in Canada:

- *A Historical Survey of Levels of Selected Pesticides in Canadian Cigarette Tobaccos, Final Report*, Labstat, October 1995, **Exhibit PG-1386**.

943. American advertising of RJRT products crossed the border and reached the Canadian public:

There is a very significant exposure of U.S. Vantage advertising in newspapers and magazines that spills over the Canadian border; therefore, many consumers are presently subjected to the Vantage campaign.

- Exhibit PG-354;
- Exhibit PG-1286;
- Memorandum from T.H. Eskew to R.H. Cundiff, RJRT, August 27, 1976, **Exhibit PG-1387**;
- Canada, R.J. Reynolds International 1978 Annual Business Plans, Vantage, RJRTI, **Exhibit PG-1388**.

944. In light of the above, it is clear that Macdonald acted in concert with or under the control of RJRT and RJRTI.

945. The wrongful acts committed by RJRT, RJRTI and Macdonald thus constitute common failures that render them solidarily liable for tobacco-related health care costs.

## **V. RECOVERY OF HEALTH CARE COSTS**

946. As stated above, the Act provides that health care costs are the sum of the present value of the total past and future tobacco-related expenditures by the Government or a government body for medical services, hospital services and other health and social services, including pharmaceutical services and drugs.

947. The health care costs also include the cost of any type of program and service established or insured by the Government or a government body to deal with disease or general deterioration of health associated with tobacco, including educational programs and services to address the risks and dangers posed by tobacco products or to fight tobacco addiction.

948. The Government has taken fiscal year 1970-1971, the year in which the universal health insurance plan was established, to be the starting point for the calculation of past expenditures.

949. The Government has taken fiscal year 2029-2030 as the end point for the calculation of future expenditures and considered persons who started smoking before January 1, 2000, taking attrition of that population into account.

## A. HEALTH CARE COSTS EXCLUDING PROGRAMS

### 1. Source of Health Care Expenditures

#### (a) Costs assumed by the health and social services network

950. Under the *Act respecting the Ministère de la Santé et des Services sociaux* (R.S.Q., c. M-19.2), the Minister of Health and Social Services (the “**Minister**”) has charge of the direction and administration of the Ministère de la Santé et des Services sociaux (the “**MSSS**”) and has charge of the application of the Acts and regulations respecting health and social services.

951. In discharging his duties, the Minister shares his responsibilities with the regional authorities created under the *Act respecting health services and social services* (R.S.Q., c. S-4.2) and the *Act respecting health services and social services for Cree Native persons* (R.S.Q., c. S-5).
952. The *Hospital Insurance Act* (R.S.Q., c. A-28) has guaranteed free hospital services, as defined by regulation, to the residents of Québec since January 1, 1961.
953. The *Hospital Insurance Act* also requires the Minister to assign the amounts needed to finance the cost of those services in accordance with the *Act respecting health services and social services* and the *Act respecting health services and social services for Cree Native persons*.
954. There are five major institutions in the health and social services network providing health services and social services to the people of Québec, classified according to their mission:
- (a) local community service centres (“**CLSCs**”);
  - (b) hospital centres (“**CHs**”);
  - (c) residential and long-term care centres (“**CHSLDs**”);
  - (d) rehabilitation centres (“**CRs**”); and
  - (e) child and youth protection centres (“**CPEJs**”).
955. For the purposes of this Motion, only the expenditures of CLSCs and CHs have been considered in the calculation of health care costs within the meaning of the Act.

956. The primary mission of CLSCs is to provide front-line routine health services and social services and, to the people within the territory it serves, preventive and curative health services and social services.
957. The primary mission of CHs is to provide diagnostic services and general and specialized medical care.
958. With a view to improving services, health and social services centres (“**CSSSs**”), resulting from the amalgamation of CLSCs, CHSLDs, and, in most cases, a CH, have been established and are aimed at, among other goals, ensuring accessibility, continuity and quality in the services provided to the people within their territory.
959. For CSSSs, only expenditures associated with the missions of CLSCs and CHs have been considered in the calculation of health care costs within the meaning of the Act.
960. The expenditures for institutions considered for the purposes of this Motion (CLSCs and CHs) include the cost of hospital stays, day surgeries, emergency visits, care provided by external clinics (ambulatory services), certain laboratory services, and the cost of services provided by CLSCs, excluding medical services rendered by health professionals.
961. The management and operating expenditures of the MSSS, regional authorities and institutions considered have been taken into account in the calculation of health care costs within the meaning of the Act.
962. The largest portion, and in some cases almost all, of the expenditures are paid out of the funding allocations taken from the sums at the disposal of the various ministers through appropriation Acts passed by the National



Assembly, which break down the appropriations available according to department and program.

(b) Costs assumed under the *Health Insurance Act*

963. The function of the body known as the *Régie de l'assurance maladie du Québec* (the "RAMQ") is to administer and implement the programs of the health insurance plan established under the *Health Insurance Act* (R.S.Q., c. A-29) and any other program entrusted to it by law or by the Government.

964. Any person who is a resident or a temporary resident of Québec and who is duly registered with the RAMQ is an insured person within the meaning of the *Health Insurance Act*.

965. Subject to exceptions, the RAMQ assumes the cost of all services rendered by physicians who participate in the public plan and that are required by the state of health of an insured person.

966. The RAMQ also assumes the cost of dental and optometric services for specific insured persons on certain conditions, and the cost of certain devices, equipment and aids that, among other things, compensate for a physical deficiency.

967. Prior to the establishment of the basic prescription drug insurance plan under the *Act respecting prescription drug insurance* (R.S.Q., c. A-29.01), the RAMQ also assumed the cost of prescription drugs for specific insured persons.

968. Lastly, under the *Health Insurance Act*, the RAMQ, on certain conditions, reimburses the cost of insured services provided outside Québec.

969. For the purposes of this Motion, all the expenditures assumed by the RAMQ, for insured services or for the management and operation of the health insurance plan, have been taken into account in the calculation of health care costs within the meaning of the Act.

970. All the expenditures are paid out of funding allocations derived from public financing.

(c) Costs assumed under the *Act respecting prescription drug insurance*

971. The *Act respecting prescription drug insurance* established a basic prescription drug plan on January 1, 1997, with coverage provided mainly by the RAMQ.

972. The law determines who is eligible for the coverage provided by the RAMQ: persons over 65 years; persons or families eligible for a last-resort financial assistance program; persons holding a claim booklet issued by the Minister of Employment and Social Solidarity; and all other persons who are not required to be covered by a group insurance plan.

973. The *Act respecting prescription drug insurance* provides that eligible persons must pay a deductible amount and a portion of the costs as determined by regulation.

974. The RAMQ's share has been taken into account in the establishment of tobacco-related health care costs.

975. All expenditures assumed by the RAMQ under the prescription drug insurance plan, whether relating to prescription drugs as such or to the

management and operation of the prescription drug insurance plan, are paid out of funding allocations derived from public financing.

## **2. Calculation of Health Care Costs Excluding the Cost of Programs**

976. There are two components to the Government's claim:

- (a) health care costs incurred by the Government for smokers; and
- (b) health care costs incurred by the Government for newborns exposed to the mother's smoking during pregnancy.

### (a) Calculation of health care costs for smokers

977. The approach as concerns former or current smokers consists in establishing the tobacco-related health care costs on the basis of the difference between the costs for smokers and the costs the Government would have incurred had they never smoked.

978. For that purpose, a file was created combining data from population surveys containing questions on lifestyle, including smoking habits, and data from MSSS and RAMQ administrative databases containing information on insured persons and their use of health services and social services.

979. Other information was added relating to emergency visits, day surgeries, external clinic services (ambulatory services), certain laboratory services, and other services provided by CLSCs.

980. The following are the population surveys that were used:

<b>Survey</b>	<b>Acronym</b>	<b>Lead Agency</b>	<b>Description</b>
National Population Health Survey	NPHS	Statistics Canada	Longitudinal Canadian survey whose Quebec cohort was selected in 1994 and followed up every two years until 2008 (8 survey cycles all referring to the 1994 population).
Canadian Community Health Survey	CCHS	Statistics Canada	Cross-sectional Canadian survey whose first cycle was conducted in 2000-2001. Collection occurs every two years but on an ongoing basis since the 2007-2008 cycle. There are 5 survey cycles, each cycle giving a portrait of the population of Québec for the year or years covered by the cycle.
<i>Enquête sociale et de santé</i>	ESS	Institut de la statistique du Québec	Cross-sectional survey in two editions (1992-1993 and 1998), each being a portrait of the population of Québec for those two periods.

981. The following are the MSSS and RAMQ administrative databases that were used:

<b>Databases</b>	<b>Acronym</b>	<b>Lead Agency</b>	<b>Description</b>
Maintenance and processing of data for study of hospital users	MED-ÉCHO	MSSS	Contains clinical and administrative personal information relating to care and services provided to individuals admitted to or registered for day surgery in a hospital centre in Québec.

All Patients Refined Diagnosis Related Groups	APR-DRG	MSSS	Contains clinical and administrative personal information relating to care and services provided to individuals admitted to or registered for day surgery in a hospital centre in Québec (extracts from MED-ÉCHO) to which other information relating to groups assigned by the APR-DRG software has been added to measure the level of resources used (NIRRU) and other management indicators.
Registry of demographic events/ Registry of deaths	RED	MSSS	Contains personal socio-health information on deaths among the population of Québec.
Information system concerning users of CSSS services – CLSC mission	I-CLSC	MSSS	Contains personal information and provides data on requests for services, users, and interventions regarding services provided by CSSSs (CLSC mission).
Financial relief program for home assistance services	PEFSAD	MSSS	Contains information relating to financial assistance granted to persons eligible for certain home services (e.g. housekeeping and clothing care).
Services remunerated per act (medical, optometric and dental)	S-MOD	RAMQ	Contains RAMQ clinical and administrative data on services paid per act provided by physicians, optometrists, dentists and oral surgeons under the basic health insurance plan.

Pharmaceutical services	S-MED	RAMQ	Contains RAMQ clinical and administrative data on pharmaceutical services provided and on prescription drugs provided under the basic prescription drug insurance plan to seniors, last resort financial assistance recipients and other participants. Also contains costs for the universal drug reimbursement program (STDs and infectious diseases).
Outside Québec services – professionals and hospital stays	SHQ SAHI	RAMQ	Contains clinical and administrative data on the interprovincial hospital insurance system and on requests for services provided outside Québec (services provided outside Québec and invoiced by provincial bodies, institutions, health professionals, the insured person, or insurance companies). Does not include services per act provided outside Québec by physicians participating in the Québec health insurance plan.

Technical assistive devices	AT	RAMQ	Contains clinical and administrative data relating to technical assistive devices and financial assistance programs (devices that compensate for a physical deficiency, hearing aids, devices provided to permanent ostomates, external mammary prostheses, visual aids, and ocular aids).
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982. In addition to those data, other relevant information, in particular of a financial or statistical nature, has been considered for the purpose of calculating health care costs.

983. On the basis of the available data, the tobacco-related health care costs were first calculated for the period from 1992-1993 to 2008-2009; then, using the result, the costs were estimated for the period from 1970-1971 to 1991-1991, and for the period from 2009-2010 to 2029-2030.

984. After analyzing all the relevant data, the present value of the Government's claim for the recovery of tobacco-related health care costs for smokers amounts to **\$60,321,145,391**, broken down as follows:

- (a) For the period from 1970-1971 to 1991-1992: **\$20,710,839,049**;
- (b) For the period from 1992-1993 to 2008-2009: **\$25,045,248,274**;
- (c) For the period from 2009-2010 to 2029-2030: **\$14,565,058,068**.

(b) **Calculation of health care costs for newborns**

985. The approach as concerns health care costs for newborns consists in attributing to smoking a percentage of the supplementary cost for care provided to premature infants and to infants presenting intrauterine growth retardation with respect to gestational age.

986. To that end, data from the MED-ÉCHO and APR-DRG administrative databases have been used with other statistical and epidemiological information.

987. The amount claimed covers only the hospitalization costs at birth.

988. This claim does not take into account any other costs associated with tobacco-related health problems that those infants experienced or will experience during their lifetime, such as respiratory infections, development of asthma, and an increase in attacks and symptoms in asthmatic children.

989. The present value of the government's claim for recovery of health care costs for those newborns for the period from 1992-1993 to 2010-2011 amounts to **\$100,343,082**.

**B. COSTS FOR MSSS PROGRAMS**

990. The costs incurred by the MSSS for those programs are related to the operation of its anti-smoking service, *Service de Lutte contre le tabagisme*, advertising campaigns, coordination at the regional authorities level, and subsidies to bodies fighting tobacco use.



991. For the period from fiscal year 1994-1995, the inaugural year of the anti-smoking program, *Programme de lutte contre le tabagisme*, to March 31, 2012, the present value of the cost of the programs amounts to **\$211,145,500**.

992. The MSSS foresees expenditures in the order of 24.7 million dollars for the fiscal years 2012-2013 and 2013-2014, representing a present value of **\$24,758,300**.

993. The present value of the total amount claimed from the solidary Defendants for that aspect amounts to **\$235,903,800**.

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

ORDER the Defendants solidarily to pay to the Plaintiff the sum of **\$60,657,392,273**, with interest at the legal rate, together with the additional indemnity, from the date of service;

THE WHOLE WITH COSTS.

Montréal, June 8, 2012

[*signed*] Bernard Roy

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**BERNARD ROY (Justice-Québec)**  
Counsel for the Plaintiff,  
Attorney General of Québec