

Court File No. CV-19-615862-00CL  
Court File No. CV-19-616077-00CL  
Court File No. CV-19-616779-00CL

**ONTARIO**  
**SUPERIOR COURT OF JUSTICE**  
**COMMERICAL LIST**

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

AND IN THE MATTER OF A PLAN OF COMPROMISE OR ARRANGEMENT OF

**JTI-MACDONALD CORP.**

**IMPERIAL TOBACCO CANADA LIMITED**  
**AND IMPERIAL TOBACCO COMPANY LIMITED**

**ROTHMANS, BENSON & HEDGES INC.**

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**EXHIBITS TO AFFIDAVITS FILED BY THE QUEBEC CLASS ACTION PLAINTIFFS**  
**FOR THE COMEBACK HEARINGS**  
**(Combined Volume of Exhibits)**

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<i>Exhibit</i>	<i>Description</i>
<b>Exhibits to the Johnston JTIM Affidavit sworn on March 27, 2019:</b>	
Exhibit 1	Document prepared by counsel for the Quebec Class Action Plaintiffs reproducing extracts from the judgments of the Quebec Courts
Exhibit 2	Press Release by JTIM dated March 8, 2019
Exhibit 3	A copy of the Security Withdrawal Motion dated March 1, 2019
Exhibit 4	Press Release by JTIM dated March 1, 2019

<b><i>Exhibit</i></b>	<b><i>Description</i></b>
Exhibit 5	Letters from ITCAN and RBH dated March 1, 2019 and the ITCAN/RBH Stay Motions
Exhibit 6	Email dated March 1, 2019 from Ms. Julie Devroede, coordinator for the Quebec CA
Exhibit 7	Email from Mr. Fallon dated March 2, 2019
Exhibit 8	Email from Mr. Kugler dated March 3, 2019
Exhibit 9	Minutes of the hearing on March 4, 2019 before Justice Healy, J.A.
Exhibit 10	Chain of emails on March 4, 2019 exchanged between Mr. Kugler, Mr. Plante, Mr. Pratte and the clerk of the Quebec CA
Exhibit 11	Minutes of a hearing held on March 25, 2019 before Justice Stephane Sansfaçon, J.A.
Exhibit 12	Letter from counsel for JTIM dated March 12, 2019
Exhibit 13	Extract of Dr. Siemiatycki's expertise report on the Diseases, pages 75 and 76 of Exhibit 1426.1
Exhibit 14	Extract of the English Translation of Dr. Desjardins' expertise report, page 67 of Exhibit 1382.2
Exhibit 15	Extract of Dr. Guertin's expertise report, page 8 of Exhibit 1387
Exhibit 16	Report produced by Health Canada
Exhibit 17	Report produced by Physicians for a Smoke-Free Canada, January 2019
Exhibit 18	Extracts from JTI's 2017 annual reports
Exhibit 19	Extracts from JTI's 2018 annual reports
Exhibit 20	Statement of Claim of the AGC against JTIM and related entities dated August 13, 2003
Exhibit 21	Extracts from the Joint Schedule of Exhibits that was provided to the Quebec CA, including the Exhibit described as: "1750-R-CONF: Deloitte and Touche memo dated January 30, 2002 [CONFIDENTIAL]"

<b><i>Exhibit</i></b>	<b><i>Description</i></b>
Exhibit 22	Cover page and Auditors' Report dated February 16, 2015 for the 2014 consolidated financial statements of Imperial
Exhibit 23	" <i>Case Study (2016)</i> " from the website of Deloitte Switzerland
Exhibit 24	Document extracted from the website " <i>TobaccoTactics</i> "
<b>Exhibits to the Johnston ITCAN Affidavit sworn on March 27, 2019:</b>	
Exhibit 1	Document prepared by counsel for the Quebec Class Action Plaintiffs reproducing extracts from the judgments of the Quebec Courts
Exhibit 25	Press Releases by Imperial and British American Tobacco dated March 12, 2019
Exhibit 26	Press Releases by Imperial and British American Tobacco dated March 1, 2019
Exhibit 27	A copy of the publication posted by CTV on July 31, 2008 entitled " <i>Big tobacco to pay record fines after guilty plea</i> "
Exhibit 28	A copy of the an article entitled " <i>The Biggest Big Tobacco Companies</i> " dated January 18, 2017
Exhibit 29	Extracts from the Transcript of Mr. Eric Thauvette's testimony on June 30, 2015
Exhibit 30	Extracts from BAT's 2018 annual report and a News Release dated February 28, 2019
<b>Exhibits to the Johnston RBH Affidavit sworn on March 27, 2019:</b>	
Exhibit 1	Document prepared by counsel for the Quebec Class Action Plaintiffs reproducing extracts from the judgments of the Quebec Courts
Exhibit 31	Press Releases by RBH and Phillip Morris International Inc. dated March 22, 2019
Exhibit 32	Press Release by RBH dated March 1, 2019
Exhibit 33	Extracts from Phillip Morris International Inc. 2018 Annual Report
Exhibit 34	Press Release by Phillip Morris International Inc. dated March 4, 2019

<i>Exhibit</i>	<i>Description</i>
Exhibit 35	Extracts from the Transcript of Mr. William Giff's testimony on June 30, 2015
<b>Exhibits to Silverstein Affidavit sworn on March 27, 2019:</b>	
Exhibit 36	Agreement entered into between the Quebec Class Action Plaintiffs and Northumberland General Insurance Company dated February 16, 2017 <b>(NOT INCLUDED – UNDER SEAL)</b>
Exhibit 37	Agreement entered into between the Quebec Class Action Plaintiffs and Kansa General International Insurance Company Ltd. dated July 4, 2017 <b>(NOT INCLUDED – UNDER SEAL)</b>

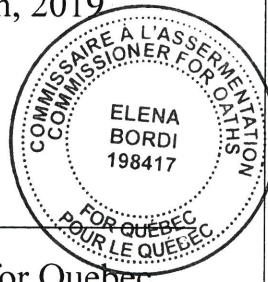


**EXHIBIT « 1 »**

ALREADY INCLUDED WITH EACH INDIVIDUAL MOTION RECORD

This is **Exhibit « 2 »**, referred to in the  
**Affidavit of Bruce Johnston**, sworn before me  
this 27th day of March, 2019

*Elena Bordi*



Commissioner of Oaths for Quebec

# JTI-Macdonald Corp. Granted Court Protection

Français



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NEWS PROVIDED BY  
**JTI-Macdonald Corp.** →  
Mar 08, 2019, 17:47 ET

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MISSISSAUGA, ON, March 8, 2019 /CNW/ - JTI-Macdonald Corp. was granted protection under the Companies' Creditors Arrangement Act (CCAA) to continue its business activities following the Quebec Court of Appeal's judgment, making the company liable for up to \$1.77 billion of the total and shared industry liability of \$13.5 billion.

This extraordinary judgment forced JTI-Macdonald Corp. to seek protection under the CCAA to protect 500 Canadian jobs and carry on its business operations with minimal disruption. We fundamentally disagree with the court decision and are taking all necessary and appropriate measures to defend our lawful business.

Since the 1950s, Canadians have had a very high awareness of the health risks of smoking. That awareness has been reinforced by the health warnings printed on every legal cigarette package for 47 years.

The government has closely regulated every facet of the tobacco business for decades. JTI-Macdonald Corp. complies with all Canadian and Quebec laws and regulations and follows a strict Code of Conduct in the way it does business.

## **About JTI-Macdonald Corp.**

Founded in 1858, JTI-Macdonald Corp. employs approximately 500 people. The company has manufacturing facilities in Montreal, administrative offices in Mississauga and sales offices across the country.

SOURCE JTI-Macdonald Corp.

For further information: JTI-Macdonald Corp. Press Office, T: 905-804-7469, E: [presscanada@jti.com](mailto:presscanada@jti.com)

This is **Exhibit « 3 »**, referred to in the  
**Affidavit of Bruce Johnston**, sworn before me  
this 27th day of March, 2019

*Elena Bordi*



Commissioner of Oaths for Québec

CANADA

PROVINCE DE QUÉBEC

CAM: 500-09-025386-150  
(CSM: 500-06-000076-980)  
(CSM: 500-06-000070-983)

COUR D'APPEL

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**ROTHMANS, BENSON & HEDGES  
INC.**

APPELLANTE / Défenderesse

c.

**CONSEIL QUÉBÉCOIS SUR LE  
TABAC ET LA SANTÉ**

-et-

**JEAN-YVES BLAIS**

-et-

**CÉCILIA LÉTOURNEAU**

INTIMÉS / Demandeurs

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CAM: 500-09-025385-154  
(CSM: 500-06-000076-980)  
(CSM: 500-06-000070-983)

**IMPERIAL TOBACCO CANADA LTD.**

APPELLANTE / Défenderesse

c.

**CONSEIL QUÉBÉCOIS SUR LE  
TABAC ET LA SANTÉ**

-et-

**JEAN-YVES BLAIS**

-et-

**CÉCILIA LÉTOURNEAU**

INTIMÉS / Demandeurs

**DEMANDE DE RETRAIT DE CAUTIONNEMENTS**

(Articles 25, 49 and 364 C.p.c.)

**A UN JUGE DE LA COUR D'APPEL SIÉGEANT DANS ET POUR LE DISTRICT DE  
MONTRÉAL, LES INTIMÉS SOUMETTENT RESPECTUEUSEMENT CE QUI SUIT :**

1. Par jugement du 27 mai 2015 (le «jugement Riordan»), le juge Brian Riordan de la Cour supérieure du Québec a condamné les appelants, Imperial Tobacco Canada Ltd. («ITL»), Rothmans, Benson & Hedges Inc. («RBH») et JTI-MacDonald Corp. à payer aux demandeurs solidairement des dommages-

intérêts d'un montant pouvant aller jusqu'à 15,5 milliards de dollars avec les intérêts et l'indemnité additionnelle;

2. Le 26 juin 2015, les trois appelants ont appelé du jugement Riordan;
3. Par jugement du 27 octobre 2015 (le «jugement Schrager»), le juge Mark Schrager j.c.a. a ordonné que les appels interjetés par les appelants ITL et RBH soient assujettis à la fourniture d'un cautionnement pour garantir en partie le paiement du jugement Riordan. Une copie du jugement Schrager est produite comme pièce **R-1**;
4. Le jugement Schrager a ainsi ordonné à ITL de fournir un cautionnement en vertu de l'article 497 de l'ancien *Code de procédure civile* au montant de 758 millions \$, montant qu'il a arrondi à 757,995,000 \$ en établissant un calendrier de sept versements trimestriels de 108,285,000 \$;
5. ITL a effectué les sept versements, de sorte qu'elle a versé un total de 757,995,000 \$, tel qu'il appert du dossier 500-09-025385-154 (« dossier ITL ») et des certificats de dépôt judiciaire suivants, dont chacun constate la consignation de la somme de 108,285,000 \$:
  - a. Certificat 396415 daté du 30 décembre 2015, pièce **R-2a**;
  - b. Certificat 396443 daté du 30 mars 2016, pièce **R-2b**;
  - c. Certificat 396450 daté du 29 juin 2016, pièce **R-2c**;
  - d. Certificat 396458 daté du 29 septembre 2016, pièce **R-2d**;
  - e. Certificat 396567 daté du 29 décembre 2016, pièce **R-2e**;
  - f. Certificat 0408716 daté du 31 mars 2017, pièce **R-2f**;
  - g. Certificat 0408868 daté du 28 juin 2017, pièce **R-2g**;
6. Le jugement Schrager a de plus ordonné à RBH de verser un cautionnement au montant de 226 millions \$, montant qu'il a arrondi à 225,996,000 \$ en établissant un calendrier de six paiements trimestriels de 37,666,000 \$;
7. RBH a effectué les six versements de sorte qu'elle a versé un total de 225,996,000 \$ tel qu'il appert du dossier 500-09-025387-150 (« dossier RBH ») et des certificats de dépôt judiciaire suivants, dont chacun constate la consignation de la somme de 37,666,000 \$ :
  - a. Certificat 396417 daté du 30 décembre 2015, pièce **R-3a**;
  - b. Certificat 396441 daté du 29 mars 2016, pièce **R-3b**;
  - c. Certificat 396449 daté du 29 juin 2016, pièce **R-3c**;
  - d. Certificat 396559 daté du 30 septembre 2016, pièce **R-3d**;
  - e. Certificat 396189 daté du 28 décembre 2016, pièce **R-3e**;
  - f. Certificat 0408861 daté du 30 mars 2017, pièce **R-3f**;
8. Les cautionnements sont payables aux demandeurs de plein droit sur jugement final de cette Cour qui maintient, en tout ou en partie, le jugement de première instance, jusqu'à concurrence du montant de la condamnation. Le jugement Schrager note d'ailleurs au paragraphe 66 que : "*The security becomes*

*payable upon final judgment of this Court maintaining in whole or in part the judgment of first instance“;*

9. Dans un arrêt daté du 1<sup>er</sup> mars 2019, cette Cour a condamné ITL et RBH à payer un montant qui excède le montant des cautionnements qu'ils ont versés en vertu du jugement Schragger, tant individuellement que dans l'agrégat, tel qu'il appert de l'arrêt;
10. Les cautionnements sont donc payables aux intimés/demandeurs immédiatement et sans nécessité d'une ordonnance de la Cour;
11. Le 1<sup>er</sup> mars 2019, les intimés/demandeurs ont présenté une demande de retrait de dépôt judiciaire au greffier de la Cour dans chacun des dossiers RBH et ITL. Copies des demandes sont produites en liasse comme pièce R-4;
12. Le greffier de cette Cour a avisé les procureurs des intimés/demandeurs qu'il préférerait que les intimés/demandeurs procèdent par voie de requête;
13. Les intimés/demandeurs demandent donc que cette Cour ordonne au greffier de verser aux intimés/demandeurs les cautionnements qu'ITL et RBH ont versé en vertu du jugement Schragger, en conformité avec les demandes de retrait de dépôts judiciaires, pièce R-4.;

**POUR CES MOTIFS, PLAISE À CETTE COUR :**


**ORDONNER** au greffier de la Cour d'appel du Québec de verser aux intimés/demandeurs la somme de 757,995,000 \$ dans le cas d'ITL et de 225,996,000 \$ dans le cas de RBH;

**LE TOUT** sans frais, sauf en cas de contestation.

Montréal, le 1<sup>er</sup> mars 2019

  
**TRUDEL JOHNSTON & L'ESPÉRANCE**  
Avocats des intimés

Montréal, le 1<sup>er</sup> mars 2019

  
**KUGLER KANDESTIN**  
Avocats des intimés

Montréal, le 1<sup>er</sup> mars 2019

  
**DE GRANDPRÉ CHAIT**  
Avocats des intimés

**AVIS DE PRÉSENTATION**

**À : Me François Grondin  
Me Guy Pratte  
Me Patrick Plante  
Me Kevin Lee LaRoche  
BORDEN LADNER GERVAIS  
Bureau 900  
1000, De La Gauchetière Ouest  
Montréal (Québec) H3B 5H4  
Téléphone : 514 879-1212  
Télécopieur : 514 954-1905**

**Co-procureurs de JTI-Macdonald Corp.**

**Me Deborah Glendinning  
Me Thomas Craig Lockwood  
Me Mahmud Jamal  
Me Alexandre Fallon  
OSLER, HOSKIN & HARCOURT  
Bureau 2100  
1000, rue De La Gauchetière Ouest  
Montréal (Québec)  
H3B 4W5  
Tél. : 514 904-8100  
Télec. : 514 904-8101  
Procureurs d'Imperial Tobacco Canada  
Ltd.**

**PRENEZ AVIS** que la présente *Demande de retrait de cautionnements* sera présentée devant un juge de la Cour d'appel du Québec dans le district de Montréal, situé au 100, rue Notre-Dame Est Montréal (Québec) H2Y 4B6, le 7 mars 2019 à 9h30, salle RC-18.

**VEUILLEZ AGIR EN CONSÉQUENCE.**

Montréal, le 1er mars 2019

  
**TRUDEL JOHNSTON & LESPÉRANCE**  
Avocats des intimés

Montréal, le 1er mars 2019

  
**DE GRANDPRÉ CHAIT**  
Avocats des intimés

**M<sup>e</sup> Catherine Elizabeth McKenzie  
IRVING MITCHELL KALICHMAN  
Place Alexis Nihon  
Tour 2, bureau 1400  
3500, boul. De Maisonneuve Ouest  
Montréal (Québec) H3Z 3C1  
Tél. : 514 934-7727 (Me McKenzie)  
Télec. : 514 935-2999**

**Co-procureurs de JTI-Macdonald Corp.**

**M<sup>e</sup> Simon V. Potter  
McCARTHY TÉTRAULT  
Bureau 2500  
1000, rue De La Gauchetière Ouest  
Montréal (Québec)  
H3B 0A2  
Tél. : 514 397-4100  
Télec. : 514 875-6246  
Procureurs de Rothmans, Benson &  
Hedges Inc.**

Montréal, le 1er mars 2019

  
**KUGLÉR KANDESTIN**  
Avocats des intimés



C.A. Nos. : 500-09-025387-150;

500-09-025385-154;

500-09-025386-152

C.S.M. Nos.: 500-06-000070-983;

500-06-000076-980

COUR D'APPEL

DISTRICT DE MONTRÉAL

IMPERIAL TOBACCO CANADA LIMITÉE

-ET-

ROTHMANS, BENSON & HEDGES INC.

-ET-

JTI MACDONALD CORP.

APPELANTES (DÉFENDERESSES)

C.

CÉCILIA LÉTOURNEAU

INTIMÉE (DEMANDERESSE)

IMPERIAL TOBACCO CANADA LIMITÉE

-ET-

ROTHMANS, BENSON & HEDGES INC.

-ET-

JTI MACDONALD CORP.

APPELANTES (DÉFENDERESSES)

C.

CONSEIL QUÉBÉCOIS SUR LE TABAC ET LA SANTÉ

-ET-

JEAN-YVES BLAIS

INTIMÉS (DEMANDEURS)

Notre dossier:1000-02

BT-1415

DEMANDE DE RETRAIT DE CAUTIONNEMENTS

ORIGINAL

Nom des avocats:

Me Philippe H. Trudel

Me Bruce W. Johnston

Me André Lespérance

TRUDEL JOHNSTON & LESPÉRANCE, S.E.N.C.

750, Côte de la Place d'Armes, bureau 90

Montréal (Québec) H2Y 2X8

Tél : 514 871-8385, Fax : 514 871-8800

This is **Exhibit « 4 »**, referred to in the  
**Affidavit of Bruce Johnston**, sworn before me  
this 27th day of March, 2019

*Elena Bordi*

Commissioner of Oaths for Quebec



# JTI-Macdonald Corp. Response to Quebec Court of Appeal Decision

Français



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NEWS PROVIDED BY  
**JTI-Macdonald Corp.** →  
Mar 01, 2019, 17:46 ET

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MISSISSAUGA, ON, March 1, 2019 /CNW/ - JTI-Macdonald Corp. fundamentally disagrees with the Quebec Court of Appeal's judgment and is assessing the potential implications of this decision.

The company will take all necessary and appropriate measures to defend its lawful business. We will thoroughly review the decision and consider all options, including asking for permission to appeal the decision to the Supreme Court of Canada.

Since the 1950s, Canadians have had a very high awareness of the health risks of smoking. That awareness has been reinforced by the health warnings printed on every legal cigarette package for 47 years.

The government has closely regulated every facet of the tobacco business for decades. JTI-Macdonald Corp. complies with all Canadian and Quebec laws and regulations and follows a strict Code of Conduct in the way it does business.

## **About JTI-Macdonald Corp.**

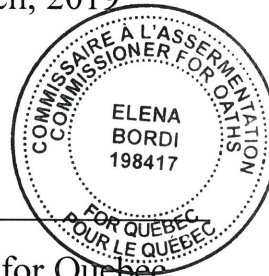
Founded in 1858, JTI-Macdonald Corp. employs approximately 500 people. The company has manufacturing facilities in Montreal, administrative offices in Mississauga and sales offices across the country.

SOURCE JTI-Macdonald Corp.

For further information: JTI-Macdonald Corp. Press Office, T: 905-804-7469, E: [presscanada@jti.com](mailto:presscanada@jti.com)

This is **Exhibit « 5 »**, referred to in the  
**Affidavit of Bruce Johnston**, sworn before me  
this 27th day of March, 2019

*Elena Bordi*



Commissioner of Oaths for Quebec

Montréal

March 1, 2019

Alexandre Fallon  
Direct Dial: 514.904.5809  
afallon@osler.com  
Our Matter Number: 1106250

Toronto

Calgary

Ottawa

Vancouver

New York

Québec Court of Appeal  
100 Notre-Dame Street East  
Montréal (Québec) H2Y 4B6

Attention: The honourable appellate judge sitting in chambers in Montreal (Room RC.18) on March 4, 2019

Your honour:

**500-09-025385-154 : Imperial Tobacco Canada Ltd. v Conseil Québécois sur le tabac et la santé et als.**

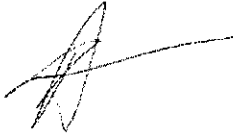
We write further to the release by the Court of its judgment in the above-mentioned appeal. You will find attached hereto an *Application for an interim suspension of the execution of a judgment of the Court of Appeal* brought by Imperial Tobacco Canada Ltd. (“Imperial”) pursuant to article 390 of the *Code of Civil Procedure* and section 65.1 of the *Supreme Court Act*.

We hereby request that your honour exercise the jurisdiction afforded to you by article 84 *CCP* to shorten the time limit for the presentation of this application, and to consequently allow the application to be presented before you at the earliest opportunity on March 4, 2019.

The urgency that justifies this request is set out in the application itself. In sum, the decision of the Court orders the appellants to significant damages, in respect of which Imperial intends to seek leave to appeal to the Supreme Court of Canada. Should the respondents exercise their right to enforce execution of the judgment prior to the adjudication of Imperial’s application seeking a stay pending determination of its leave application to the Supreme Court, this will have a severe and detrimental impact on Imperial, and will hinder its ability to pursue its appeal rights in respect of the judgment.

Imperial has been unable to obtain an undertaking from the Respondents agreeing to refrain from enforcement of the judgment pending determination the stay application. Accordingly, in the interest of preserving the *status quo* pending the exercise of Imperial’s appeal rights, and in light of the already significant sums which have been paid into court as security in this matter, we respectfully request the urgent hearing of the application before you on March 4, 2019.

Yours very truly,



Alexandre Fallon

- c: Mtres Deborah Glendinning & Craig Lockwood, *Osler, Hoskin & Harcourt*  
Mtres Guy Pratte, François Grondin, Kevin LaRoche & Patrick Plante, *Borden  
Ladner Gervais*  
Mtre Simon V. Potter, *McCarthy Tétrault*  
Mtres André Lespérance, Philippe H. Trudel, Bruce Johnston & Gabrielle Gagné,  
*Trudel, Johnston & Lespérance*  
Mtre Gordon Kugler & Pierre Boivin, *Kugler Kandestin*  
Mtre Marc Beauchemin, *DeGrandpré Chait*  
Mtre Catherine Elizabeth McKenzie, *Irving Mitchell Kalichman*

CANADA

PROVINCE OF QUÉBEC  
DISTRICT OF MONTRÉAL

COURT OF APPEAL

No : 500-09-025385-154

Nos : 500-06-000070-983 / 500-  
06-000076-980

IMPERIAL TOBACCO CANADA LTD.

APPELLANT / INCIDENTAL RESPONDENT  
(defendant)

v.

CONSEIL QUÉBÉCOIS SUR LE TABAC ET LA  
SANTÉ

and

JEAN-YVES BLAIS

and

CÉCILIA LÉTOURNEAU

RESPONDENTS / INCIDENTAL APPELLANTS  
(plaintiffs)

and

JTI-MACDONALD CORP.

and

ROTHMANS, BENSON & HEDGES INC.

MIS EN CAUSE (defendants)

APPLICATION OF THE APPELLANT FOR AN INTERIM STAY OF THE EXECUTION  
OF A JUDGMENT OF THE COURT OF APPEAL  
(Articles 84 and 390 CCP and Section 65.1 *Supreme Court Act*)

TO ONE OF THE HONOURABLE JUDGES OF THE COURT OF APPEAL, THE  
APPELLANT RESPECTFULLY SUBMITS THE FOLLOWING:

1. On May 27, 2015, the Honourable Brian Riordan of the Superior Court, District of Montreal, rendered a judgment (corrected on June 9, 2015) in respect of two companion class actions: the first sought relief on behalf of a disparate class of individuals who had smoked cigarettes during the class period and who suffered from certain diseases (the "Blais Action"), whereas the second sought relief on

behalf of smokers and former smokers who were “addicted” and who similarly smoked cigarettes during the class period (the “**Létourneau Action**”).

2. On March 1, 2019, this Court dismissed the Appellant’s appeal of the trial judgment, at least in part, as appears from the judgment attached to this application as **Schedule I** (the “**Appeal Judgment**”). The Appeal Judgment, *inter alia*, condemns the Appellant to pay a substantial amount in damages.
3. Pursuant to article 390 of the *Code of Civil Procedure*, the Appeal Judgment is enforceable immediately, except as otherwise expressly provided therein, unless and until the Court of Appeal or one of its judges orders a stay of its execution.
4. In view of the matters of public importance raised by the Appeal Judgment, the Appellant intends, as soon as possible but in any event within the prescribed delay of 60 days, to bring an application for leave to appeal all or part of the Appeal Judgment to the Supreme Court of Canada.
5. The Appellant further intends to file an application before this Court to stay the enforcement of the Appeal Judgment in order to preserve the *status quo* pending determination of its leave application to the Supreme Court.
6. However, given the exceptional circumstances of the present matter, the complexity of the underlying class actions and the length of the Appeal Judgment, the Appellant requires reasonable time to prepare its application to stay the execution of the Appeal Judgment, as well as the evidence and relevant documents in support thereof.
7. Pursuant to the judgment rendered by the Honourable Mark Schrager, JA on October 27, 2015, attached to this application as **Schedule II** (the “**Security Judgment**”), both Imperial Tobacco Canada Ltd. and Rothmans Benson & Hedges Inc. were ordered to furnish security in the aggregate amount of \$984 million.



8. These amounts were deposited with the registry of the Superior Court on a quarterly basis from December 2015 to June 2017, and remain with the Superior Court.
9. The Appellant has sought an undertaking from the Respondents to the effect that they would not take any enforcement steps – including as against the sums deposited with the Superior Court registry pursuant to the Security Judgment – until such time as the Appellant's stay application could be heard. To date, the Respondents have not agreed to the requested undertaking.
10. Accordingly, in the absence of the relief requested herein, the Appellant faces the prospect that the Respondents will seek to enforce the Appeal Judgment prior to the Appellant exercising the full extent of its rights under Article 390 of the *Code of Civil Procedure* and section 65.1 of the *Supreme Court Act*.
11. Given the extent of the award rendered against the Appellant by the Appeal Judgment, the Appellant would suffer irreparable harm if the Respondents were allowed to undertake immediate measures of execution before the Court of Appeal has had the opportunity to hear and rule on the merits of the stay application.
12. The Appellant therefore seeks a temporary stay of the execution of the Appeal Judgment pending the full adjudication by the Court of Appeal of the Appellant's application to stay the execution of the Appeal Judgment, to ensure that the stay application is not rendered moot by the Respondents' immediate measures of execution.
13. The Appellant undertakes to file its application to stay the enforcement of the Appeal Judgment, including any supporting materials, on or before March 13, 2019.
14. The requested order in this Application merely seeks to temporarily preserve the *status quo* between the parties until the Court of Appeal renders a decision on the Appellant's forthcoming application to stay the execution of the Appeal Judgment,

with a view to allowing for the full and fair assessment of the Appellant's stay application.

15. The present Application for a temporary stay of the execution of the Appeal Judgment is well-founded in fact and in law.
16. Given its limited duration and considering the overall context, the requested temporary stay would not cause any prejudice to the class members. Indeed, the Respondents benefit from an unprecedented amount on deposit as security with the Superior Court registry pursuant to the Security Judgment.
17. Conversely, the administration of justice would not be properly served by requiring the Appellant to rush the filing of its application under the prevailing circumstances.
18. Refusing to temporarily stay the Appeal Judgment could deprive the Appellant of their rights to exercise the remedies provided for by article 390 (2) of the *Code of Civil Procedure* and section 65.1 of the *Supreme Court Act (inter alia)*, such that the substance of the stay application – and indeed the substance of any subsequent appeal to the Supreme Court – may be frustrated.

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

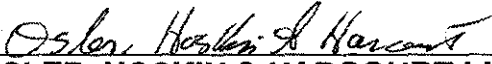
**SHORTEN** the delay relating to the service, filing and presentation of the present Application;

**GRANT** the present Application by the Appellant for an order to temporarily stay the execution of the Court of Appeal's Judgment;

**STAY** the execution of the Court of Appeal's Judgment rendered on March 1, 2019, until adjudication by the Court of Appeal or one of its judges of the Appellant's application to stay the execution of the Court of Appeal's Judgment;

**THE WHOLE** without costs, unless contested.

Montréal, this 1<sup>st</sup> day of March, 2019

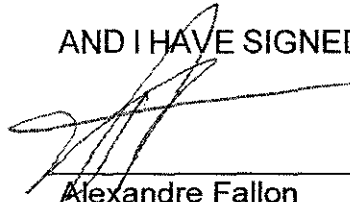
  
\_\_\_\_\_  
**OSLER, HOSKIN & HARCOURT LLP**  
Attorneys for Appellant  
Imperial Tobacco Canada Limited

**SWORN DECLARATION**

I, the undersigned, Alexandre Fallon, attorney, practicing my profession at 1000 De La Gauchetière West, Suite 2100, Montréal, Québec H3B 4W5 certify the following :

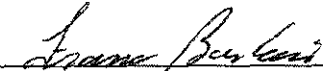
1. I am one of the attorneys for the Appellant in this matter;
2. All the alleged facts in the Application of the appellant for an interim stay of the execution of a judgment of the Court of Appeal are true.

AND I HAVE SIGNED

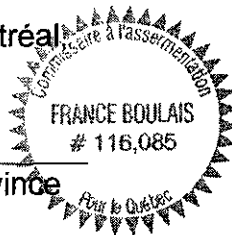


Alexandre Fallon  
Attorney for the Appellant

Solemnly affirmed before me in Montréal,  
Québec, on March 1<sup>st</sup>, 2019



Commissioner for Oaths for the Province  
of Québec



**NOTICE OF PRESENTATION**

M<sup>e</sup> Philippe H. Trudel  
M<sup>e</sup> Bruce W. Johnston  
M<sup>e</sup> André Lespérance  
**Trudel Johnston & Lespérance**  
750 Côte de la Place d'Armes  
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*Attorneys for Respondents Cécilia  
Létourneau, Conseil québécois sur le  
tabac et la santé and  
Respondent/designated member Jean-  
Yves Blais*

M<sup>e</sup> Marc Beauchemin  
**de Grandpré Chait**  
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*Attorneys for Respondent Conseil  
québécois sur le tabac et la santé and  
Respondent/Designated member Jean-  
Yves Blais*

M<sup>e</sup> Guy Pratte  
M<sup>e</sup> François Grondin  
**Borden Ladner Gervais**  
1000 de la Gauchetière Ouest, Bureau  
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M<sup>e</sup> Gordon Kugler  
M<sup>e</sup> Pierre Boivin  
**Kugler Kandestin**  
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Bureau 2101  
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*Attorneys for Respondent  
Cécilia Létourneau*

M<sup>e</sup> Doug Mitchell  
M<sup>e</sup> Catherine McKenzie  
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*Attorneys for Mis en cause JTI-  
Macdonald Corp.*

M<sup>e</sup> Simon Potter  
M<sup>e</sup> Michael Feder  
**McCarthy Tétrault**  
1000 de la Gauchetière Ouest  
Suite 2500  
Montréal (Québec) H3B 0A2

*Attorneys for Mis en cause Rothmans,  
Benson & Hedges Inc.*

**NOTICE IS HEREBY GIVEN** that the *Application for an interim stay of the execution of a judgment of the Court of Appeal* will be presented before a judge of the Court of Appeal, sitting in Montréal, Édifice Ernest-Cormier, located at 100 Notre-Dame Street East, in Montreal, Québec, on Monday, March 4, 2019, at 9:30 AM in Courtroom RC-18.

PLEASE ACT ACCORDINGLY.

Montréal, this 1<sup>st</sup> day of March, 2019

*Osler, Hoskin & Harcourt*

---

**OSLER, HOSKIN & HARCOURT LLP**

Attorneys for Appellant

Imperial Tobacco Canada Limited

CANADA

PROVINCE OF QUÉBEC  
DISTRICT OF MONTRÉAL

COURT OF APPEAL

No : 500-09-025385-154  
Nos : 500-06-000070-983 / 500-  
06-000076-980

IMPERIAL TOBACCO CANADA LTD.

APPELLANT / INCIDENTAL RESPONDENT  
(defendant)

v.

CONSEIL QUÉBÉCOIS SUR LE TABAC ET LA  
SANTÉ

and

JEAN-YVES BLAIS

and

CÉCILIA LÉTOURNEAU

RESPONDENTS / INCIDENTAL APPELLANTS  
(plaintiffs)

and

JTI-MACDONALD CORP.

and

ROTHMANS, BENSON & HEDGES INC.

MIS EN CAUSE (defendants)

**LIST OF SCHEDULES**

Schedule I: Judgment dated March 1, 2019;

Schedule II: Judgment rendered by the Honourable Mark Schragar, JA dated  
October 27, 2015

Montréal, this 1<sup>st</sup> day of March, 2019

  
OSLER, HOSKIN & HARCOURT LLP  
Attorneys for Appellant  
Imperial Tobacco Canada Limited

No: 500-09-025385-154

---

**COURT OF APPEAL  
PROVINCE OF QUÉBEC  
DISTRICT OF MONTRÉAL**

---

**IMPERIAL TOBACCO CANADA LIMITED**

APPELLANT / INCIDENTAL RESPONDENT  
(defendant)

v.

**CONSEIL QUÉBÉCOIS SUR LE TABAC ET LA SANTÉ**

and

**JEAN-YVES BLAIS**

and

**CÉCILIA LÉTOURNEAU**

RESPONDENTS / INCIDENTAL APPELLANTS  
(plaintiffs)

and

**JTI-MACDONALD CORP.**

and

**ROTHMANS, BENSON & HEDGES INC.**

MIS EN CAUSE  
(defendants)

---

**APPLICATION OF THE APPELLANT FOR AN INTERIM  
STAY OF THE EXECUTION OF A JUDGMENT OF THE  
COURT OF APPEAL (Articles 84 and 390 CCP and  
Section 65.1 Supreme Court Act), SWORN  
DECLARATION, NOTICE OF PRESENTATION, LIST OF  
SCHEDULES AND SCHEDULES I and II**

---

ORIGINAL

---

BO 0323

O/F: 1106250

Mes Mahmud Jamal and Alexandre Fallon

**Osler, Hoskin & Harcourt LLP**

1000 De La Gauchetière St. West, Suite 2100

Montréal (Québec) Canada H3B 4W5

Tél. : 514.904.8100

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[mjamal@osler.com](mailto:mjamal@osler.com) / [afallon@osler.com](mailto:afallon@osler.com)





McCarthy Tétrault LLP  
Suite 2500  
1000 De La Gauchetière Street West  
Montréal (Québec) H3B 0A2  
Canada  
Tel: 514-397-4100  
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**Simon V. Potter Ad. E.**  
Counsel  
Direct Line: (514) 397-4268  
Direct Fax: (514) 875-6246  
Email: [spotter@mccarthy.ca](mailto:spotter@mccarthy.ca)

Assistant: Meunier, Geneviève  
Direct Line: (514) 875-1701  
Email: [gmeunier@mccarthy.ca](mailto:gmeunier@mccarthy.ca)

March 1, 2019

**Via Bailiff**

**Attention: The Honourable Judge sitting in  
Chambers in Montreal (Room RC.18) on  
March 4, 2019**

Québec Court of Appeal  
100 Notre-Dame Street East  
Montréal (Québec) H2Y 4B6

Your Honour,

**500-09-025387-150 : *Rothmans, Benson & Hedges c. CQTS et als.***

**500-09-025385-154 : *Imperial Tobacco Canada Itée c. CQTS et als.***

**500-09-025386-152 : *JTI-MacDonald c. CQTS et als.***

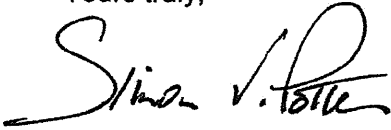
We write further to the release by the Court of its judgment in these appeals. You will find attached hereto an *Application for an interim suspension of execution of a judgment of the Court of Appeal* brought by Rothmans, Benson & Hedges pursuant to article 390 of the *Code of Civil Procedure* and section 65.1 of the *Supreme Court Act*.

We hereby request that your Honour exercise the jurisdiction afforded by article 84 of the *Code of Civil Procedure* to shorten the time limit for the service and presentation of this application, and to allow the application to be presented before you at the earliest opportunity on March 4, 2019.

The urgency that justifies this request is set out in the application itself. The Court's judgment orders the appellants to pay a significant amount in damages. The judgment of over 400 pages bears on several issues of great legal significance. RBH intends to apply to the Supreme Court of Canada for leave to appeal and to this Court for a stay of execution pending the Supreme Court's decision.

In the interest of preserving the status quo until RBH's main stay application can be decided, and in light of the already significant protections in place as concerns the respondents' rights, we respectfully request the urgent hearing of the interim application before you on March 4, 2019.

Yours truly,

A handwritten signature in black ink, appearing to read "Simon V. Potter". The signature is fluid and cursive, with a large initial "S" and a distinct "P" at the end.

Simon V. Potter Ad. E.

cc: Mtres Guy Pratte, François Grondin, Kevin LaRoche & Patrick Plante, *Borden  
Ladner Gervais*  
Mtre Deborah Glendinning and Alexandre Fallon, *Osler, Hoskin and Harcourt*  
Mtre Doug Mitchell and Catherine Elizabeth McKenzie, *Irving Mitchell Kalichman*  
Mtres André Lespérance, Philippe H. Trudel, Bruce Johnston & Gabrielle Gagné,  
*Trudel, Johnston & Lespérance*  
Mtre Gordon Kugler & Pierre Boivin, *Kugler Kandestin*  
Mtre Marc Beauchemin, *DeGrandpré Chait*

**CANADA**

**PROVINCE OF QUÉBEC  
DISTRICT OF MONTRÉAL**

**C.A.: 500-09-025387-150  
S.C. Mtl: 500-06-000076-980  
and 500-06-000070-983**

**COURT OF APPEAL**

**ROTHMANS, BENSON & HEDGES INC.  
APPELLANT/INCIDENTAL  
RESPONDENT (Defendant)**

**v.  
CONSEIL QUÉBÉCOIS SUR LE TABAC ET LA  
SANTÉ  
and  
JEAN-YVES BLAIS  
and  
CÉCILIA LÉTOURNEAU  
RESPONDENTS/INCIDENTAL  
APPELANTS (Plaintiffs)**

**and  
IMPERIAL TOBACCO CANADA LTD.  
and  
JTI-MACDONALD COPR.  
MIS EN CAUSE (Defendants)**

---

**C.A. : 500-09-025385-154  
S.C. Mtl: 500-06-000070-983  
and 500-06-000070-983**

**IMPERIAL TOBACCO CANADA LTD.  
APPELLANT/INCIDENTAL  
RESPONDENT (Defendant)**

**v.  
CONSEIL QUÉBÉCOIS SUR LE TABAC ET LA  
SANTÉ  
and  
JEAN-YVES BLAIS  
and  
CÉCILIA LÉTOURNEAU  
RESPONDENTS/INCIDENTAL  
APPELANTS (Plaintiffs)**

**and  
ROTHMANS, BENSON & HEDGES INC.  
  
and  
JTI-MACDONALD COPR.  
MIS EN CAUSE (Defendants)**

**C.A.: 500-09-025386-152**  
**S.C. Mtl: 500-06-000076-980**  
**and 500-06-000070-983**

**JTI-MACDONALD CORP.**

**APPELLANT/INCIDENTAL  
RESPONDENT (Defendant)**

**v.**

**CONSEIL QUÉBÉCOIS SUR LE TABAC ET LA  
SANTÉ**

**and**

**JEAN-YVES BLAIS**

**and**

**CÉCILIA LÉTOURNEAU**

**RESPONDENTS/INCIDENTAL  
APPELLANTS (Plaintiffs)**

**and**

**ROTHMANS, BENSON & HEDGES INC.**

**and**

**IMPERIAL TOBACCO CANADA LTD.**

**MIS EN CAUSE (Defendants)**

**APPLICATION FOR AN INTERIM SUSPENSION OF EXECUTION OF A  
JUDGMENT OF THE COURT OF APPEAL  
(Articles 84 and 390 CCP and Section 65.1 Supreme Court Act)**

**TO ONE OF THE HONOURABLE JUDGES OF THE COURT OF APPEAL,  
APPELLANT ROTHMANS, BENSON & HEDGES INC. ("RBH")  
RESPECTFULLY SUBMITS:**

1. On March 1, 2019, this Court rendered its decision on the appeal of the trial judgment of the Honourable Brian Riordan of the Superior Court of Quebec, District of Montreal, rendered on May 27, 2015 (rectified on June 9, 2015) ("Appeal Judgment").
2. The Appeal Judgment upheld a significant award of damages.
3. RBH intends to file an application for leave to appeal to the Supreme Court of Canada. The Appeal Judgment raises issues of critical importance, as will RBH's leave application.
4. RBH also intends to file an application in this Court, pursuant to Article 390 CCP and Section 65.1 of the Supreme Court Act, to suspend the enforcement of the Appeal Judgment so as to preserve the *status quo* pending determination of its leave application (the "Stay Application").

5. However, given the length and complexity of the Appeal Judgment, RBH and its counsel require a short period of time to prepare the Stay Application.
6. In the absence of the requested relief, RBH faces the prospect that Respondents will seek to enforce the Appeal Judgment before the Stay Application is decided and before RBH is able to exercise its rights under Article 390 CCP and Section 65.1 of the Supreme Court Act.
7. RBH undertakes to file its Stay Application expeditiously, by March 13, 2019. The requested relief will allow for the full and fair assessment of the Stay Application.
8. Respondents will not be prejudiced by a brief delay and benefit from an unprecedented amount (\$984 million) on deposit as security pursuant to the judgment rendered by the Honourable Mark Schrager of this Court on October 27, 2015 ("Security Judgment"), which has been complied with in full.
9. Conversely, if the requested relief is not granted and Respondents are allowed to take enforcement measures before the Stay Application can be decided the Stay Application will become moot.
10. Considering the above and the urgency of the situation, RBH asks this Court to shorten the delay of service and presentation of this Application.

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

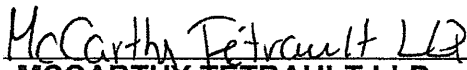
**SHORTEN** the delay of presentation and service of this Application;

**GRANT** this Application;

**SUSPEND** the execution of the judgment rendered on March 1, 2019, in file numbers 500-09-025385-154 and 500-09-025387-150, pending the hearing of RBH's full application to suspend enforcement pending determination of the application for leave to appeal to the Supreme Court of Canada.

**THE WHOLE**, with costs.

Montréal, this 1<sup>st</sup> day of March 2019

  
MCCARTHY TÉTRAULT LLP  
Attorneys for Appellant  
Rothmans, Benson & Hedges Inc.

**NOTICE OF PRESENTATION**

M<sup>e</sup> Deborah Glendinning  
M<sup>e</sup> Craig Lockwood  
M<sup>e</sup> Éric Préfontaine  
**Osler, Hoskin & Harcourt LLP**  
1000 de la Gauchetière Ouest  
Bureau 2100  
Montréal (Québec) H3B 4W5

*Attorneys for Petitioner/Appellant  
Imperial Tobacco Canada Limited*

M<sup>e</sup> Marc Beauchemin  
**de Grandpré Chait**  
1000, rue de La Gauchetière Ouest  
Bureau 2900  
Montréal (Québec) H3B 4W5

*Attorneys for Respondent Conseil  
québécois sur le tabac et la santé and  
Respondent/Designated member Jean-  
Yves Blais*

M<sup>e</sup> Philippe H. Trudel  
M<sup>e</sup> Bruce W. Johnston  
M<sup>e</sup> André Lespérance  
**Trudel Johnston & Lespérance**  
750 Côte de la Place d'Armes  
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*Attorneys for Respondents Cécilia  
Létourneau, Conseil québécois sur le  
tabac et la santé and  
Respondent/designated member Jean-  
Yves Blais*

M<sup>e</sup> Gordon Kugler  
M<sup>e</sup> Pierre Boivin  
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*Attorneys for Respondent  
Cécilia Létourneau*

M<sup>e</sup> Doug Mitchell  
M<sup>e</sup> Catherine McKenzie  
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Macdonald Corp.*

M<sup>e</sup> Guy Pratte  
M<sup>e</sup> François Grondin  
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1000 de la Gauchetière Ouest,  
Bureau 900  
Montréal (Québec) H3B 5H4

*Attorneys for Co-Appellant JTI-  
Macdonald Corp.*

**NOTICE IS HEREBY GIVEN** that the Application to temporarily suspend the execution of a judgment of the Court of Appeal will be presented before a judge of the Court of Appeal, sitting Édifice Ernest-Cormier, located at 100 Notre-Dame Street East, in Montreal, Québec, on **March 4, 2019**, at 9:30 AM in Courtroom RC-18.

**PLEASE ACT ACCORDINGLY.**

Montréal, this 1st day of March 2019

*McCarthy Tétrault LLP*

---

**MCCARTHY TETRAULT LLP**

Attorneys for Appellant

Rothmans, Benson & Hedges Inc.

500-09-025387-150 / 500-09-025385-154 /  
500-09-025386-152  
S.C. MTL: 500-06-000076-980  
AND 500-06-000070-983  
COUR D'APPEL  
PROVINCE DE QUÉBEC  
DISTRICT DE MONTRÉAL

**ROTHMANS, BENSON & HEDGES INC.**  
APPELLANT/INCIDENTAL RESPONDENT  
(Defendant)

v.  
**CONSEIL QUÉBÉCOIS SUR LE TABAC ET LA  
SANTÉ**  
and  
**JEAN-YVES BLAIS**  
and  
**CÉCILIA LÉTOURNEAU**  
RESPONDENTS/INCIDENTAL APPELLANTS  
(Plaintiffs)

and  
**IMPERIAL TOBACCO CANADA LTD.**  
and  
**JTI-MACDONALD COPR.**  
MIS EN CAUSE (Defendants)

**APPLICATION FOR AN INTERIM  
SUSPENSION OF EXECUTION OF A  
JUDGMENT OF THE COURT OF APPEAL  
(Articles 84 and 390 CCP and Section 65.1  
Supreme Court Act) and NOTICE OF  
PRESENTATION**

**COPY**

**Me André Lespérance, Me Philippe H. Trudel,  
Me Bruce W. Johnston et Me Gabrielle Gagné**  
Trudel, Johnson & Lespérance  
Suite 90  
750 Place-d'Armes Hill  
Montréal, Québec, H2Y 2X8

Me Geneviève St-Cyr Larkin / vd / 198301-432969

BC0847

**McCarthy Tétrault S.E.N.C.R.L., s.r.l.**  
Avocats • Agents de brevets et marques de commerce  
Barristers & Solicitors • Patent & Trade-mark Agents

Bureau 2500  
1000, rue De La Gauchetière Ouest  
Montréal (Québec) H3B 0A2  
Tél. : 514 397-4100  
Télééc. : 514 875-6246

Entre  
Huissier de Justice  
à signer



50.91  
16.05  
1-63-16-05



This is **Exhibit « 6 »**, referred to in the  
**Affidavit of Bruce Johnston**, sworn before me  
this 27th day of March, 2019

*Elena Bordi*



Commissioner of Oaths for Québec

---

**Fwd: C.A. Imperial Tobacco et als. c. CQTS et als. (500-09-025385-154, 500-09-025386-152, 500-09-025387-150)**

---

**From:** Julie Devroede <[julie.devroede@judex.qc.ca](mailto:julie.devroede@judex.qc.ca)>  
**Date:** March 1, 2019 at 5:42:37 PM GMT-5  
**To:** <[fgrondin@blg.com](mailto:fgrondin@blg.com)>, "PPlante@blg.com" <[PPlante@blg.com](mailto:PPlante@blg.com)>, "mbeauchemin@dgclex.com" <[mbeauchemin@dgclex.com](mailto:mbeauchemin@dgclex.com)>, "cmckenzie@imk.ca" <[cmckenzie@imk.ca](mailto:cmckenzie@imk.ca)>, <[gkugler@kklex.com](mailto:gkugler@kklex.com)>, <[pboivin@kklex.com](mailto:pboivin@kklex.com)>, Ayse Dalli <[adalli@MCCARTHY.CA](mailto:adalli@MCCARTHY.CA)>, <[dtempler@MCCARTHY.CA](mailto:dtempler@MCCARTHY.CA)>, <[gstcyrlarkin@MCCARTHY.CA](mailto:gstcyrlarkin@MCCARTHY.CA)>, Michael Feder <[mfeder@MCCARTHY.CA](mailto:mfeder@MCCARTHY.CA)>, "SPOTTER@MCCARTHY.CA" <[SPOTTER@MCCARTHY.CA](mailto:SPOTTER@MCCARTHY.CA)>, "afallon@osler.com" <[afallon@osler.com](mailto:afallon@osler.com)>, <[clockwood@osler.com](mailto:clockwood@osler.com)>, Deborah Glendinning <[DGlendinning@osler.com](mailto:DGlendinning@osler.com)>, Grand-Pierre <[NGrandpierre@osler.com](mailto:NGrandpierre@osler.com)>, <[andre@tjl.quebec](mailto:andre@tjl.quebec)>, "Bruce W. Johnston" <[bruce@tjl.quebec](mailto:bruce@tjl.quebec)>, Gabrielle Gagné <[gabrielle@tjl.quebec](mailto:gabrielle@tjl.quebec)>, Philippe H.Trudel <[philippe@tjl.quebec](mailto:philippe@tjl.quebec)>  
**Subject:** C.A. Imperial Tobacco et als. c. CQTS et als. (500-09-025385-154, 500-09-025386-152, 500-09-025387-150)

Maîtres,

Quant aux dossiers en objet, on me demande de vous confirmer que les requêtes suivantes sont ajoutées au rôle pour audition le lundi 4 mars 2019, en salle RC.18:

- *Application for an Interim Suspension of Execution of a Judgment of the Court of Appeal (Articles 84 and 390 CCP and Section 65.1 Supreme Court Act*
- *Application of the Appellant for an Interim Stay of the Execution of a Judgment of the Court of Appeal*

L'appel du rôle débute à 9h30.

Cordialement,

**Julie Devroede, avocate**  
**LL.B., LL.M., D.E.S.S.cl.**  
Coordonnatrice juridique adjointe  
Cour d'appel du Québec  
[100 rue Notre-Dame Est](#), bureau RC.28  
Montréal (Québec) H2Y 4B6  
T.: (514) 393-2022 p.51259  
Télécopieur: (514) 864-4662  
[julie.devroede@judex.qc.ca](mailto:julie.devroede@judex.qc.ca)

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---

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---

\*\*\*\*\*

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\*\*\*\*\*

---

This is **Exhibit « 7 »**, referred to in the  
**Affidavit of Bruce Johnston**, sworn before me  
this 27th day of March, 2019

*Elena Bordi*



Commissioner of Oaths for Québec

---

**Fwd: C.A. Imperial Tobacco et als. c. CQTS et als. (500-09-025385-154, 500-09-025386-152, 500-09-025387-150)**

1 message

---

**From:** "Fallon, Alexandre" <AFallon@osler.com>  
**Date:** March 2, 2019 at 3:04:19 PM EST  
**To:** Julie Devroede <julie.devroede@judex.qc.ca>, "fgrondin@blg.com" <fgrondin@blg.com>, "PPlante@blg.com" <PPlante@blg.com>, "mbeauchemin@dgcllex.com" <mbeauchemin@dgcllex.com>, "cmckenzie@imk.ca" <cmckenzie@imk.ca>, "gkugler@kklex.com" <gkugler@kklex.com>, "pboivin@kklex.com" <pboivin@kklex.com>, Ayse Dalli <adalli@MCCARTHY.CA>, "dtempler@MCCARTHY.CA" <dtempler@MCCARTHY.CA>, "gstcyrlarkin@MCCARTHY.CA" <gstcyrlarkin@MCCARTHY.CA>, Michael Feder <mfeder@MCCARTHY.CA>, "SPOTTER@MCCARTHY.CA" <SPOTTER@MCCARTHY.CA>, "Lockwood, Craig" <CLockwood@osler.com>, "Glendinning, Deborah" <DGlendinning@osler.com>, "Grand'Pierre, Nathalie" <NGrandpierre@osler.com>, "andre@tjl.quebec" <andre@tjl.quebec>, "Bruce W. Johnston" <bruce@tjl.quebec>, Gabrielle Gagné <gabrielle@tjl.quebec>, "Philippe H.Trudel" <philippe@tjl.quebec>  
**Cc:** "courdappelmtl@judex.qc.ca" <courdappelmtl@judex.qc.ca>  
**Subject:** RE: C.A. Imperial Tobacco et als. c. CQTS et als. (500-09-025385-154, 500-09-025386-152, 500-09-025387-150)

Dear Mtre Devroede,

Further to your correspondence of Friday evening confirming that the applications of Imperial and RBH for an interim stay of execution have been placed on the role for hearing on Monday at 9:30 a.m., we have since had the opportunity to further review the Judgment of the Court of Appeal in this matter. Given that the Judgment does not contemplate that any steps can be undertaken until such time as the prescribed deposits are owing (*i.e.*, payment of the specified amounts into Imperial's and RBH's attorneys' trust accounts within 60 days of March 1, 2019), there is no need for an urgent stay in the interim and accordingly we do not need to be heard by the Court on Monday.

However, we are also in receipt of the respondents' application regarding the withdrawal of the surety currently held by the courts (which has a requested presentation date of Thursday, March 7). As the respondents' application seeks to effect immediate enforcement measures as against the surety, we would ask that our clients' pending applications be adjourned to whatever date is assigned to the respondents' application with a view to having them heard concurrently or consecutively.

We trust that to the extent that attorneys for the respondents (copied) hold a different view, they will advise all parties and the Court so that we can co-ordinate with the Court with respect to scheduling.

Best regards,

**OSLER**

**Alexandre Fallon**

Associé

514.904.5809 | [AFallon@osler.com](mailto:AFallon@osler.com)

Osler, Hoskin & Harcourt S.E.N.C.R.L./s.r.l | [osler.com](http://osler.com)

---

**De :** Julie Devroede <[julie.devroede@judex.qc.ca](mailto:julie.devroede@judex.qc.ca)>

**Envoyé :** 1 mars 2019 17:43

**À :** [fgrondin@blg.com](mailto:fgrondin@blg.com); [PPlante@blg.com](mailto:PPlante@blg.com); [mbeauchemin@dgcllex.com](mailto:mbeauchemin@dgcllex.com); [cmckenzie@imk.ca](mailto:cmckenzie@imk.ca); [gkugler@kklex.com](mailto:gkugler@kklex.com); [pboivin@kklex.com](mailto:pboivin@kklex.com); Ayse Dalli <[adalli@MCCARTHY.CA](mailto:adalli@MCCARTHY.CA)>; [dtempler@MCCARTHY.CA](mailto:dtempler@MCCARTHY.CA); [gstcyrlarkin@MCCARTHY.CA](mailto:gstcyrlarkin@MCCARTHY.CA); Michael Feder <[mfeder@MCCARTHY.CA](mailto:mfeder@MCCARTHY.CA)>; [SPOTTER@MCCARTHY.CA](mailto:SPOTTER@MCCARTHY.CA); Fallon, Alexandre <[AFallon@osler.com](mailto:AFallon@osler.com)>; Lockwood, Craig <[CLockwood@osler.com](mailto:CLockwood@osler.com)>; Glendinning, Deborah <[DGlendinning@osler.com](mailto:DGlendinning@osler.com)>; Grand'Pierre, Nathalie <[NGrandpierre@osler.com](mailto:NGrandpierre@osler.com)>; [andre@tjl.quebec](mailto:andre@tjl.quebec); Bruce W. Johnston <[bruce@tjl.quebec](mailto:bruce@tjl.quebec)>; Gabrielle Gagné <[gabrielle@tjl.quebec](mailto:gabrielle@tjl.quebec)>; Philippe H.Trudel <[philippe@tjl.quebec](mailto:philippe@tjl.quebec)>

**Objet :** C.A. Imperial Tobacco et als. c. CQTS et als. (500-09-025385-154, 500-09-025386-152, 500-09-025387-150)

Maîtres,

Quant aux dossiers en objet, on me demande de vous confirmer que les requêtes suivantes sont ajoutées au rôle pour audition le lundi 4 mars 2019, en salle RC.18:

- *Application for an Interim Suspension of Execution of a Judgment of the Court of Appeal (Articles 84 and 390 CCP and Section 65.1 Supreme Court Act*
- *Application of the Appellant for an Interim Stay of the Execution of a Judgment of the Court of Appeal*

L'appel du rôle débute à 9h30.

Cordialement,

**Julie Devroede, avocate**

**LL.B., LL.M., D.E.S.S.cl.**

Coordonnatrice juridique adjointe

Cour d'appel du Québec

100 rue Notre-Dame Est, bureau RC.28

Montréal (Québec) H2Y 4B6

T.: (514) 393-2022 p.51259

Télécopieur: (514) 864-4662

[julie.devroede@judex.qc.ca](mailto:julie.devroede@judex.qc.ca)

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\*\*\*\*\*

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\*\*\*\*\*

This is **Exhibit « 8 »**, referred to in the  
**Affidavit of Bruce Johnston**, sworn before me  
this 27th day of March, 2019

*Elena Bordi*



Commissioner of Oaths for Quebec



**From:** Gordon Kugler <[Gkugler@kklex.com](mailto:Gkugler@kklex.com)>  
**Sent:** Sunday, March 03, 2019 1:52 PM

**To:** Fallon, Alexandre <[AFallon@osler.com](mailto:AFallon@osler.com)>  
**Cc:** Julie Devroede <[julie.devroede@judex.qc.ca](mailto:julie.devroede@judex.qc.ca)>; [fgrondin@blg.com](mailto:fgrondin@blg.com); [PPlante@blg.com](mailto:PPlante@blg.com);  
[mbeauchemin@dgclex.com](mailto:mbeauchemin@dgclex.com); [cmckenzie@imk.ca](mailto:cmckenzie@imk.ca); Pierre Boivin <[Pboivin@kklex.com](mailto:Pboivin@kklex.com)>; Ayse Dalli  
<[adalli@mccarthy.ca](mailto:adalli@mccarthy.ca)>; [dtempler@MCCARTHY.CA](mailto:dtempler@MCCARTHY.CA); [gstcyrlarkin@MCCARTHY.CA](mailto:gstcyrlarkin@MCCARTHY.CA); Michael Feder  
<[mfeder@mccarthy.ca](mailto:mfeder@mccarthy.ca)>; [SPOTTER@MCCARTHY.CA](mailto:SPOTTER@MCCARTHY.CA); Lockwood, Craig <[CLockwood@osler.com](mailto:CLockwood@osler.com)>;  
Glendinning, Deborah <[DGlendinning@osler.com](mailto:DGlendinning@osler.com)>; Grand'Pierre, Nathalie <[NGrandpierre@osler.com](mailto:NGrandpierre@osler.com)>;  
[andre@tjl.quebec](mailto:andre@tjl.quebec); Bruce W. Johnston <[bruce@tjl.quebec](mailto:bruce@tjl.quebec)>; Gabrielle Gagné <[gabrielle@tjl.quebec](mailto:gabrielle@tjl.quebec)>;  
Philippe H.Trudel <[philippe@tjl.quebec](mailto:philippe@tjl.quebec)>; [courdappelmtl@judex.qc.ca](mailto:courdappelmtl@judex.qc.ca)  
**Subject:** Re: C.A. Imperial Tobacco et als. c. CQTS et als. (500-09-025385-154, 500-09-025386-152, 500-09-025387-150)

Dear colleague,

The Respondents do not agree with your " interpretation" and we intend to make representations to the Judge in the Court of Appeal tomorrow morning.

Yours truly,

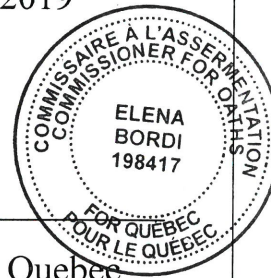
Sent from my iPhone

[Quoted text hidden]

This is **Exhibit «9»**, referred to in the  
**Affidavit of Bruce Johnston**, sworn before me  
this 27th day of March, 2019

*Elena Bordi*

Commissioner of Oaths for Quebec



# COURT OF APPEAL

CANADA  
PROVINCE OF QUEBEC  
REGISTRY OF MONTREAL

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## MINUTES OF THE HEARING

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DATE: On March 4, 2019

THE HONOURABLE PATRICK HEALY, J.A.

No: 500-09-025385-154  
(500-06-000070-983, 500-06-000076-980)

APPELLANT / CROSS-RESPONDENT	COUNSEL
<b>IMPERIAL TOBACCO CANADA LTÉE</b>	Mtre ALEXANDRE FALLON <i>(Osler, Hoskin &amp; Harcourt, S.E.N.C.R.L./s.r.l.)</i>
RESPONDENTS / CROSS-APPELLANTS	COUNSEL
<b>CÉCILIA LÉTOURNEAU</b>	Mtre GORDON KUGLER <i>(Kugler, Kandestin s.e.n.c.r.l., L.L.P.)</i>
<b>CONSEIL QUÉBÉCOIS SUR LE TABAC ET LA SANTÉ JEAN-YVES BLAIS</b>	Mtre ANDRÉ LESPÉRANCE <i>(Trudel Johnston &amp; Lespérance)</i>
IMPLEADED PARTIES	COUNSEL
<b>JTI-MACDONALD CORP.</b>	Mtre PATRICK PLANTE <i>(Borden Ladner Gervais s.e.n.c.r.l., s.r.l.)</i>

<b>ROTHMANS, BENSON &amp; HEDGES INC.</b>	Mtre SIMON V. POTTER, <i>Ad. E.</i> Mtre AYSEM DALLI Mtre MICHAEL FEDER ( <i>McCarthy Tétrault s.e.n.c.r.l., s.r.l.</i> )
---	--

No: 500-09-025386-152  
(500-06-000070-983, 500-06-000076-980)

APPELLANT / CROSS-RESPONDENT	COUNSEL
<b>JTI-MACDONALD CORP.</b>	Mtre PATRICK PLANTE ( <i>Borden Ladner Gervais s.e.n.c.r.l., s.r.l.</i> )
RESPONDENTS / CROSS-APPELLANTS	COUNSEL
<b>CÉCILIA LÉTOURNEAU</b>	Mtre GORDON KUGLER ( <i>Kugler, Kandestin s.e.n.c.r.l., L.L.P.</i> )
<b>CONSEIL QUÉBÉCOIS SUR LE TABAC ET LA SANTÉ JEAN-YVES BLAIS</b>	Mtre ANDRÉ LESPÉRANCE ( <i>Trudel Johnston &amp; Lespérance</i> )
IMPLEADED PARTIES	COUNSEL
<b>IMPERIAL TOBACCO CANADA LTÉE</b>	Mtre ALEXANDRE FALLON ( <i>Osler, Hoskin &amp; Harcourt, S.E.N.C.R.L./s.r.l.</i> )
<b>ROTHMANS, BENSON &amp; HEDGES INC.</b>	Mtre SIMON V. POTTER, <i>Ad. E.</i> Mtre AYSEM DALLI Mtre MICHAEL FEDER ( <i>McCarthy Tétrault s.e.n.c.r.l., s.r.l.</i> )

No: 500-09-025387-150  
 (500-06-000070-983, 500-06-000076-980)

APPELLANT / CROSS-RESPONDENT	COUNSEL
<b>ROTHMANS, BENSON &amp; HEDGES INC.</b>	Mtre SIMON V. POTTER, <i>Ad. E.</i> Mtre AYSEM DALLI Mtre MICHAEL FEDER ( <i>McCarthy Tétrault s.e.n.c.r.l., s.r.l.</i> )
RESPONDENTS / CROSS-APPELLANTS	COUNSEL
<b>CÉCILIA LÉTOURNEAU</b>	Mtre GORDON KUGLER ( <i>Kugler, Kandestin s.e.n.c.r.l., L.L.P.</i> )
<b>CONSEIL QUÉBÉCOIS SUR LE TABAC ET LA SANTÉ JEAN-YVES BLAIS</b>	Mtre ANDRÉ LESPÉRANCE ( <i>Trudel Johnston &amp; Lespérance</i> )
IMPLEADED PARTIES	COUNSEL
<b>JTI-MACDONALD CORP.</b>	Mtre PATRICK PLANTE ( <i>Borden Ladner Gervais s.e.n.c.r.l., s.r.l.</i> )
<b>IMPERIAL TOBACCO CANADA LTÉE</b>	Mtre ALEXANDRE FALLON ( <i>Osler, Hoskin &amp; Harcourt, S.E.N.C.R.L./s.r.l.</i> )

DESCRIPTION: **Applications of the Appellants/Cross-Respondents for suspension of the execution of the Appeal judgment filed on March 1, 2019.**  
 (Art. 84, 390 *C.C.P.*, Section 65.2 *Supreme Court Act*)

Clerk: Mihary Andrianaivo	Courtroom: RC.18
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HEARING

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9:30 Commencement of the hearing.

The Parties move the Court to postpone today's hearing for the Appellants to fine tune and amend their respective motions.

Exchanges between the Judge and the Parties.

The Parties agree that the amended motions be filed no later than March 15, 2019 to be heard at a date where the Court may find it suitable.

Furthermore, the Parties agree that the other motions due for hearing before the judge in chambers, this coming Thursday be also postponed and heard altogether with the amended ones, indicated above.

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9:34 Recess.

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9:39 Resumption of the hearing.

The Judge takes note of the Parties' agreement, grants the request and postpones the hearing to March 25, 2019, at 9:30 AM, Courtroom RC.18.

End of the hearing.

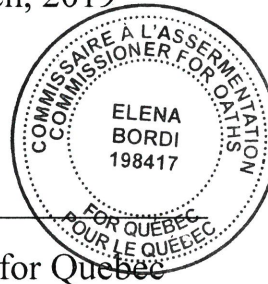
---

Mihary Andrianaivo  
Clerk



This is **Exhibit « 10 »**, referred to in the  
**Affidavit of Bruce Johnston**, sworn before me  
this 27th day of March, 2019

*Elena Bordi*



Commissioner of Oaths for Quebec

---

**Fwd: Rép. : RE: (2) (2.1) (2.2) du 4 mars 2019: IMPERIAL TOBACCO CANADA LTÉE et al. c. LÉTOURNEAU et al. [500-09-025386-152, 500-09-025386-152, 500-09-025387-150 ]**

1 message

---

**From:** "Plante, Patrick" <PPlante@blg.com>  
**Date:** March 4, 2019 at 4:37:10 PM GMT-5  
**To:** Mihary Andrianaivo <mihary.andrianaivo@judex.qc.ca>  
**Cc:** Gordon Kugler <Gkugler@kklex.com>, "adalli@mccarthy.ca" <adalli@mccarthy.ca>, "mfeder@mccarthy.ca" <mfeder@mccarthy.ca>, "spotter@mccarthy.ca" <spotter@mccarthy.ca>, "afallon@osler.com" <afallon@osler.com>, "andre@tjl.quebec" <andre@tjl.quebec>, "Pratte, Guy J." <gpratte@blg.com>  
**Subject:** Re: Rép. : RE: (2) (2.1) (2.2) du 4 mars 2019: IMPERIAL TOBACCO CANADA LTÉE et al. c. LÉTOURNEAU et al. [500-09-025386-152, 500-09-025386-152, 500-09-025387-150 ]

Dear Mr Andrianaivo:

I acknowledge receipt of your recent email (addressed to me but sent to Me Plante) and confirm that JTIM will abide by the Court's directive.

Kind regards,

Guy Pratte

Patrick Plante  
Partner / Associé  
Borden Ladner Gervais LLP  
Tél. 514.954.2571 | Téléc. 514.954.1905 | PPlante@blg.com<mailto:PPlante@blg.com>  
1000, rue De La Gauchetière Ouest, Bureau 900, Montréal, QC, Canada H3B 5H4

On Mar 4, 2019, at 3:48 PM, Mihary Andrianaivo <mihary.andrianaivo@judex.qc.ca> wrote:

Mtre Pratte,

Through this email, kindly be advised that if JTI-MACDONALD CORP. wishes to file a Motion to Suspend the Execution of the Appeal Judgment filed on March 1, 2019, it must do so within the deadline also agreed for the filing of the amended motions by other Appellants i.e. by March 15, 2019.

Kind regards,

Mihary Andrianaivo (Monsieur)  
Greffier - audencier  
Cour d'appel du Québec  
Grefe de Montréal  
[100, rue Notre-Dame Est](#)



Montréal, H2Y 4B6  
téléphone: (514) 393-2022 poste 51212  
[mihary.andrianaivo@judex.qc.ca](mailto:mihary.andrianaivo@judex.qc.ca)

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Gordon Kugler <[Gkugler@kklex.com](mailto:Gkugler@kklex.com)> 2019-03-04 14:23 >>>

Thank you for the Minutes of today's hearing. You may recall that it was also agreed that if JTI intends to file a Motion to Suspend execution of the Judgment, it must do so on or before March 15, 2019. Kindly rectify the Minutes to reflect the foregoing.  
Yours truly,

Gordon Kugler  
Associé / Partner  
514-878-2861 ext. 106  
[gkugler@kklex.com](mailto:gkugler@kklex.com)

---

Kugler Kandestin S.E.N.C.R.L. / LLP  
Avocats • Lawyers  
1, [Place Ville-Marie](#), Suite 1170  
Montréal, QC H3B 2A7  
Canada  
Tél. : 514-878-2861  
Fax : 514-875-8424  
[www.kklex.com](http://www.kklex.com)

-----Original Message-----

From: Mihary Andrianaivo [<mailto:mihary.andrianaivo@judex.qc.ca>]  
Sent: March-04-19 12:43 PM  
To: [pplante@blg.com](mailto:pplante@blg.com); Gordon Kugler <[Gkugler@kklex.com](mailto:Gkugler@kklex.com)>;  
[adalli@mccarthy.ca](mailto:adalli@mccarthy.ca); [mfeder@mccarthy.ca](mailto:mfeder@mccarthy.ca); [spotter@mccarthy.ca](mailto:spotter@mccarthy.ca);  
[afallon@osler.com](mailto:afallon@osler.com); [andre@tjl.quebec](mailto:andre@tjl.quebec)  
Subject: (2) (2.1) (2.2) du 4 mars 2019: IMPERIAL TOBACCO CANADA LTÉE  
et al. c. LÉTOURNEAU et al. [500-09-025386-152, 500-09-025386-152,  
500-09-025387-150 ]

Me Fallon,  
Me Kugler,  
Me Plante,  
Me Potter,  
Me Dalli,  
Me Feder,  
Me Lespérance,

Veuillez trouver ci-joint le procès-verbal d'aujourd'hui dans les dossiers en titre.

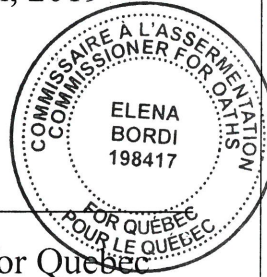
Bonne réception,

Mihary Andrianaivo (Monsieur)  
Greffier - audencier  
Cour d'appel du Québec  
Grefe de Montréal  
100, rue Notre-Dame Est  
Montréal, H2Y 4B6  
téléphone: (514) 393-2022 poste 51212  
[mihary.andrianaivo@judex.qc.ca](mailto:mihary.andrianaivo@judex.qc.ca)

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This is **Exhibit « 11 »**, referred to in the  
**Affidavit of Bruce Johnston**, sworn before me  
this 27th day of March, 2019

*Elena Bordi*



Commissioner of Oaths for Quebec

# COUR D'APPEL

CANADA  
PROVINCE DE QUÉBEC  
GREFFE DE MONTRÉAL

N<sup>os</sup> : 500-09-025385-154, 500-09-025386-152, 500-09-025387-150  
(500-06-000070-983 et 500-06-000076-980)

---

## PROCÈS-VERBAL D'AUDIENCE

---

DATE : Le 25 mars 2019

L'HONORABLE STÉPHANE SANSAÇON, J.C.A.

N<sup>o</sup> : 500-09-025385-154

APPELANTE / INTIMÉE INCIDENTE	AVOCAT
<b>IMPERIAL TOBACCO CANADA LTÉE</b>	Me ALEXANDRE FALLON <i>(Osler, Hoskin &amp; Harcourt, S.E.N.C.R.L./s.r.l.)</i>
INTIMÉS / APPELANTS INCIDENTS	AVOCATS
500-06-000076-980 <b>CONSEIL QUÉBÉCOIS SUR LE TABAC ET LA SANTÉ</b>  <b>JEAN-YVES BLAIS</b>	Me GORDON KUGLER <i>(Kugler, Kandestin s.e.n.c.r.l., L.L.P.)</i>  Me PHILIPPE HUBERT TRUDEL Me BRUCE JOHNSTON <i>(Trudel, Johnston &amp; Lespérance)</i>  Me MARC BEAUCHEMIN <i>(De Grandpré Chait s.e.n.c.r.l.)</i> <b>ABSENT</b>

<p>500-06-000070-983 <b>CÉCILIA LÉTOURNEAU</b></p>	<p>Me GORDON KUGLER <i>(Kugler, Kandestin s.e.n.c.r.l., L.L.P.)</i></p> <p>Me PHILIPPE HUBERT TRUDEL Me BRUCE JOHNSTON <i>(Trudel, Johnston &amp; Lespérance)</i></p> <p>Me MARC BEAUCHEMIN <i>(De Grandpré Chait s.e.n.c.r.l.)</i> <b>ABSENT</b></p>
<p>MISES EN CAUSE</p>	<p>AVOCATS</p>
<p><b>JTI-MACDONALD CORP.</b></p>	<p>Me FRANÇOIS GRONDIN Me GUY PRATTE <i>(Borden Ladner Gervais, s.e.n.c.r.l., s.r.l.)</i></p> <p><b>ABSENTS</b></p>
<p><b>ROTHMANS, BENSON &amp; HEDGES INC</b></p>	<p>Me JEAN LORTIE Me MICHAEL FEDER <i>(McCarthy Tétraut s.e.n.c.r.l., s.r.l.)</i></p>

N°: 500-09-025386-152

<p>APPELANTE / INTIMÉE INCIDENTE</p>	<p>AVOCATS</p>
<p><b>JTI-MACDONALD CORP.</b></p>	<p>Me FRANÇOIS GRONDIN Me GUY PRATTE <i>(Borden Ladner Gervais, s.e.n.c.r.l., s.r.l.)</i></p> <p><b>ABSENTS</b></p>

INTIMÉS / APPELANTS INCIDENTS	AVOCATS
<p>(500-06-000076-980)  <b>CONSEIL QUÉBÉCOIS SUR LE TABAC  ET LA SANTÉ</b></p> <p><b>JEAN-YVES BLAIS</b></p>	<p>Me GORDON KUGLER  <i>(Kugler, Kandestin s.e.n.c.r.l., L.L.P.)</i></p> <p>Me PHILIPPE HUBERT TRUDEL  Me BRUCE JOHNSTON  <i>(Trudel, Johnston &amp; Lespérance)</i></p> <p>Me MARC BEAUCHEMIN  <i>(De Grandpré Chait s.e.n.c.r.l.)</i>  <b>ABSENT</b></p>
<p>(500-06-000070-983)  <b>CÉCILIA LÉTOURNEAU</b></p>	<p>Me GORDON KUGLER  <i>(Kugler, Kandestin s.e.n.c.r.l., L.L.P.)</i></p> <p>Me PHILIPPE HUBERT TRUDEL  Me BRUCE JOHNSTON  <i>(Trudel, Johnston &amp; Lespérance)</i></p> <p>Me MARC BEAUCHEMIN  <i>(De Grandpré Chait s.e.n.c.r.l.)</i>  <b>ABSENT</b></p>
MISES EN CAUSE	AVOCATS
<p><b>IMPERIAL TOBACCO CANADA LTÉE</b></p>	<p>Me ALEXANDRE FALLON  <i>(Osler, Hoskin &amp; Harcourt,  S.E.N.C.R.L./s.r.l.)</i></p>
<p><b>ROTHMANS, BENSON &amp; HEDGES INC</b></p>	<p>Me JEAN LORTIE  Me MICHAEL FEDER  <i>(McCarthy Tétrault s.e.n.c.r.l., s.r.l.)</i></p>

N°: 500-09-025387-150

APPELANTE / INTIMÉE INCIDENTE	AVOCATS
<b>ROTHMANS, BENSON &amp; HEDGES INC</b>	Me JEAN LORTIE Me MICHAEL FEDER <i>(McCarthy Tétrault s.e.n.c.r.l., s.r.l.)</i>
INTIMÉS / APPELANTS INCIDENTS	AVOCATS
(500-06-000076-980) <b>CONSEIL QUÉBÉCOIS SUR LE TABAC ET LA SANTÉ</b>  <b>JEAN-YVES BLAIS</b>	Me GORDON KUGLER <i>(Kugler, Kandestin s.e.n.c.r.l., L.L.P.)</i>  Me PHILIPPE HUBERT TRUDEL Me BRUCE JOHNSTON <i>(Trudel, Johnston &amp; Lespérance)</i>  Me MARC BEAUCHEMIN <i>(De Grandpré Chait s.e.n.c.r.l.)</i> <b>ABSENT</b>
(500-06-000070-983) <b>CÉCILIA LÉTOURNEAU</b>	Me GORDON KUGLER <i>(Kugler, Kandestin s.e.n.c.r.l., L.L.P.)</i>  Me PHILIPPE HUBERT TRUDEL Me BRUCE JOHNSTON <i>(Trudel, Johnston &amp; Lespérance)</i>  Me MARC BEAUCHEMIN <i>(De Grandpré Chait s.e.n.c.r.l.)</i> <b>ABSENT</b>
MISES EN CAUSE	AVOCATS
<b>JTI-MACDONALD CORP.</b>	Me FRANÇOIS GRONDIN Me GUY PRATTE <i>(Borden Ladner Gervais, s.e.n.c.r.l., s.r.l.)</i> <b>ABSENTS</b>
<b>IMPERIAL TOBACCO CANADA LTÉE</b>	Me ALEXANDRE FALLON <i>(Osler, Hoskin &amp; Harcourt, S.E.N.C.R.L./s.r.l.)</i>

DESCRIPTION : **Requêtes en sursis d'exécution du jugement de la Cour d'appel**  
(art. 84, 390 C.p.c., art. 65.1 *Loi sur la Cour suprême* )

**Demande de retrait de cautionnements** (art. 25, 49 et 364 C.p.c.)

---

Greffier d'audience : Alya Elisio

Salle : RC.18

---



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AUDITION

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9 h 35 Début de l'audition. Identification des procureurs.

Échanges entre le juge et Me Philippe Hubert Trudel sur les ordonnances émises par la Cour supérieure de justice de l'Ontario.

---

9 h 40 Commentaires de Me Jean Lortie.

PAR LE JUGE : Jugement – voir page 7.

Fin de l'audience.

---

Alya Elisio

Greffière d'audience

A handwritten signature in cursive script that reads "Alya Elisio". The signature is written in dark ink and is positioned to the right of the typed name "Alya Elisio".

**PAR LE JUGE**

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JUGEMENT

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[1] Étant donné les ordonnances rendues par les juges McEwen et Pattillo de la Cour supérieure de justice de l'Ontario en application de la *Loi sur les arrangements avec les créanciers des compagnies*, ordonnant la suspension de toute procédure incluant la requête pour retrait de cautionnement, les représentations de Me Trudel quant aux démarches entreprises par les intimés auprès du tribunal ontarien afin d'y faire valoir leurs droits et leur volonté annoncée d'ultérieurement présenter à nouveau ladite requête en retrait de cautionnement; et

[2] Vu l'absence de contestation quant à la remise de toutes les requêtes au rôle à une date indéterminée, mais postérieure aux prochaines dates de présentation des parties auprès de la Cour supérieure de justice de l'Ontario (fixée aux 4 et 5 avril prochain).

[3] **POUR CES MOTIFS, le soussigné :**

[4] **REMET** les requêtes *sine die*, sujet à l'envoi d'un nouvel avis de présentation, le cas échéant.

  
STÉPHANE SANSFAÇON, J.C.A.

This is **Exhibit « 12 »**, referred to in the  
**Affidavit of Bruce Johnston**, sworn before me  
this 27th day of March, 2019

*Elena Bordi*



Commissioner of Oaths for Quebec



Thornton Grout Finnigan LLP  
RESTRUCTURING + LITIGATION

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

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

March 12, 2019

**VIA EMAIL TO THE SERVICE LIST**

Dear Sirs/Madams:

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

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

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

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

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

Yours truly,

**Thornton Grout Finnigan LLP**

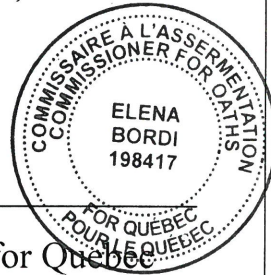
Robert I. Thornton

RIT

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

This is **Exhibit « 13 »**, referred to in the  
**Affidavit of Bruce Johnston**, sworn before me  
this 27th day of March, 2019

*Elena Bordi*



Commissioner of Oaths for Quebec

Estimating the Numbers of Cases of Disease  
Attributable to Cigarette Smoking in Quebec  
for Each of Four Diseases  
in Each Year from 1995 to 2006

Jack Siemiatycki

17 June 2009

---

**Table B1. Numbers of incident cases in Quebec of each disease in each year from 1995 to 2006**

Year	Lung cancer		Larynx cancer		Throat cancer		Emphysema	
	Males	Females	Males	Females	Males	Females	Males	Females
1995	3626	1791	382	87	128	29	1800	2050
1996	3551	1910	341	97	136	40	1800	2050
1997	3576	1974	315	77	130	37	1800	2050
1998	3751	2047	341	75	136	43	1800	2050
1999	3698	2163	389	85	143	57	1800	2050
2000	3853	2394	328	80	150	44	1800	2050
2001	4039	2472	350	87	166	42	1800	2050
2002	3979	2642	337	84	163	49	1800	2050
2003	3966	2775	321	80	180	45	1800	2050
2004	4124	2827	312	69	159	53	1800	2050
2005	3960	2848	299	73	177	61	1800	2050
2006	3901	2932	305	58	173	46	1800	2050



**Table B2. Numbers of deaths in Quebec of each disease in each year from 1995 to 2006**

Year	Lung cancer		Larynx cancer		Throat cancer		Emphysema	
	Males	Females	Males	Females	Males	Females	Males	Females
1995	3047	1411	161	37	43	10	1657	1010
1996	3193	1570	163	26	43	10	1553	1019
1997	3203	1592	157	37	40	12	1729	1168
1998	3298	1717	130	25	53	18	1781	1205
1999	3272	1701	154	29	39	13	1759	1262
2000	3007	1718	135	33	41	16	1552	1129
2001	3124	1844	149	29	47	13	1528	1225
2002	3364	1996	133	39	52	10	1571	1227
2003	3283	2046	136	31	58	18	1527	1224
2004	3292	2162	116	27	44	17	1581	1347
2005	3234	2135	113	28	43	14	1562	1414
2006	3194	2280	112	32	10	6	1362	1221

This is **Exhibit « 14 »**, referred to in the  
**Affidavit of Bruce Johnston**, sworn before me  
this 27th day of March, 2019

*Elena Bordi*



Commissioner of Oaths for Quebec

**Expert's Report:**  
**Relation between tobacco and  
chronic obstructive pulmonary disease (COPD)  
and lung cancer**

**Alain Desjardins, MD, FRCPC, Pneumologist**

**November 2006**

### 3.4. Clinical manifestations

Clinical manifestations of lung cancer are varied. Patients are most often asymptomatic in the early stages of the disease. This can be explained by a low concentration of fibres causing pain in the lungs and equally by significant respiratory reserve.

The absence of symptoms is particularly true for cancers originating at the periphery of the lung, such as adenocarcinoma. Unfortunately, on average only 5% of lung cancer cases are asymptomatic at the time of clinical presentation and are only discovered randomly during lung radiographies carried out at the time of assessment of an unrelated medical problem during preoperative testing.

Symptoms which incite patients to consult are coughing (17%), haemoptysis (17%), thoracic pain (15%), shortness of breath during exertion (12%), systemic symptoms such as fatigue or loss of weight (10%), respiratory infection symptoms (8%) and symptoms related to remote metastasis (9%).

Warning symptoms differ according to histological type of lung cancer. Thus, an absence of symptoms was recorded in 20.6% of adenocarcinomas compared to 8% of epidermoids and 10% of small cells. Throat pain (thoracic pain) was detected among 19.4% of small cell cancers as compared with 10.5% of epidermoids and 12 to 14% of adenocarcinomas. The symptoms of local or remote dissemination were present among 14% of small cell cancers as compared with 9% of adenocarcinomas and 6% of epidermoids.

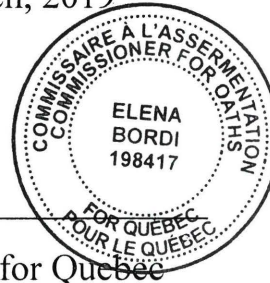
During a systemic general questionnaire, patients reported cough (50%), systemic symptoms (49%), shortness of breath (34%), throat pain (31.5%), haemoptysis (30%), throat pain (25%), symptoms of local or remote dissemination (23%) and respiratory infection symptoms (20%).

The delay prior to reference to a specialist physician was less than two months in presence of symptoms of respiratory infection and haemoptysis, from two to three months to assess coughs, dyspnoea or throat pain and just under three months for testing systemic symptoms.

The average survival rate was strongly influenced by the type of warning symptoms. The absence of symptoms (random discovery) was associated with average survival of 66 months. On the other hand, the occurrence of respiratory symptoms initially was associated with a survival of 50 months, haemoptysis with a survival of 46 months, cough with a survival of 39 months, dyspnoea and throat pain with a survival of 27 and 28 months. Symptoms of local/regional dissemination were associated with a survival of 24 months.

This is **Exhibit « 15 »**, referred to in the  
**Affidavit of Bruce Johnston**, sworn before me  
this 27th day of March, 2019

*Elena Bordi*



Commissioner of Oaths for Quebec

**Translation of the Expert Report of**

**Dr. Louis Guertin**

**in**

**Quebec Council on Tobacco and Health**

**and**

**Jean-Yves Blais**

**v.**

**JTI-McDonald Corp., et al**

**EXPERT REPORT  
ON CANCER OF THE LARYNX AND  
THE UPPER AERODIGESTIVE TRACT**

**Doctor Louis Guertin  
October 2006**

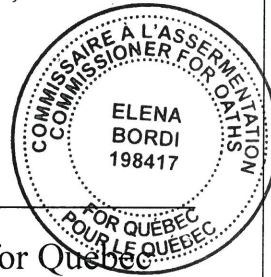
In summary, irrespective of the sequence of the treatment used, the patient will suffer in terms of increased difficulty swallowing, speaking, breathing and/or use of the shoulders. In addition to these effects are serious esthetic after-effects. For many patients who will be cured of their cancer, these after-effects will result in a deterioration of their physical image, a depressed mood and a relative social withdrawal that hinders a patient from returning to his or her normal functional status in society and reclaiming their total autonomy.

Despite the recent progress that has been made in reconstructive surgery with free-tissue, in the best radiotherapy techniques and in the new simultaneous chemoradiotherapy protocols, the survival of patients affected by EC of the UAT has not improved over the past 25 years. In fact, the advancements in the control of cancer within the primary site and cervical lymph nodes have been spoiled by a significant increase in the number of second primaries (second cancer). The rate of second primaries has been reported to reach 40% for the long-term survivors. Survival of five years for EC of UAT of any site and stage is around 50%. The survival rate remains around 60 to 80% for early stages (I and II) and 30 to 40% for advanced stages (III and IV)(3). Thus, in spite of an aggressive treatment with serious after-effects, a large number of patients end up dying of their cancer. Patients who will die from recurring local-regional cancer of their primary will encounter an atrocious, painful death, unable to even swallow their saliva or breathe, as described above.



This is **Exhibit « 16 »**, referred to in the  
**Affidavit of Bruce Johnston**, sworn before me  
this 27th day of March, 2019

*Elena Bordi*



Commissioner of Oaths for Quebec



# WHOLESALE CIGARETTE PRICES IN CANADA: INDUSTRY REVENUE VS. EXCISE TAX, 2001-2016

Robert Nugent and Gabrielle Tremblay

Office of Research and Surveillance, Tobacco Control Directorate, Health Canada

## INTRODUCTION

- A key aspect of tobacco industry lobbying in Canada is strong opposition to all increases in tobacco taxes. At the core of this lobbying is the argument that taxation hikes increase contraband activity. Some organisations, such as the Fraser Institute, call for the elimination of tobacco taxes to fight contraband.<sup>1</sup>
- Excise taxes, of course, are an important component of tobacco prices and have been a very effective tool for reducing tobacco consumption in Canada.<sup>2</sup> A much less examined component of tobacco prices in Canada has been the revenue companies receive for their products and how those revenues are driven by cigarette price increases initiated by the companies themselves.

## OBJECTIVES

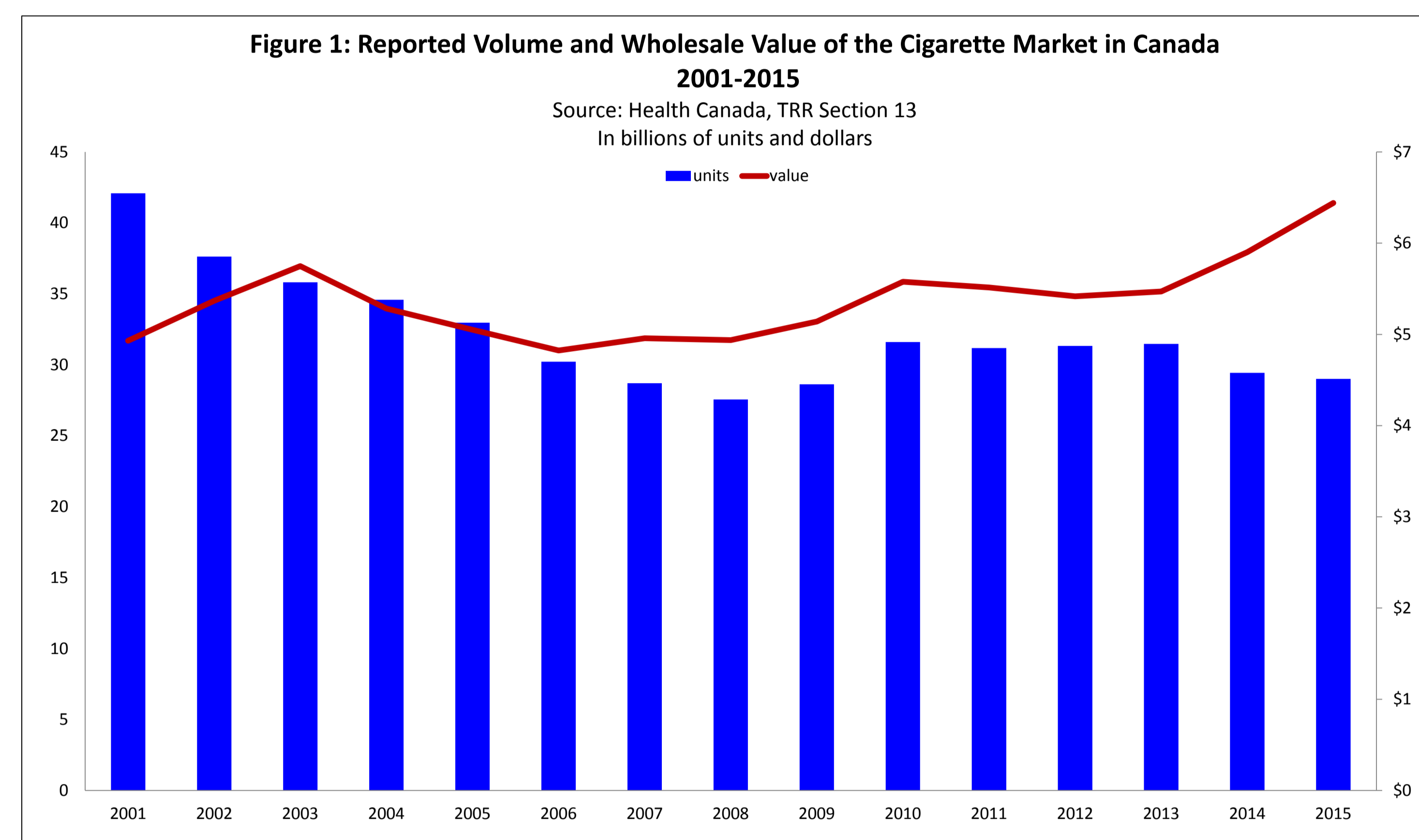
- This presentation examines key trends in reported wholesale cigarette prices in Canada since 2001, with a specific emphasis on how price increases have been driven both by federal excise tax and tobacco industry revenue.

## METHODOLOGY

- Canada's *Tobacco Reporting Regulations* (TRR) require tobacco manufacturers and importers to report information on their products, including sales volume and wholesale value for each brand of cigarettes.
- The reported wholesale value for cigarettes under the TRR consists of two components: tobacco company revenue and the federal excise tax. The excise duty rate is fixed on a per unit basis. It was raised three times since 2001 (2006, 2008 and 2014). The excise rate increased from \$0.057 per cigarette in 2001 to \$0.105 per cigarette in 2016.<sup>3</sup>
- Knowing both the average per-unit wholesale price of cigarettes and the excise tax rates since 2001, we asked the following question: **To what extent have tobacco company price increases contributed to increases in the reported wholesale price under the TRR?**

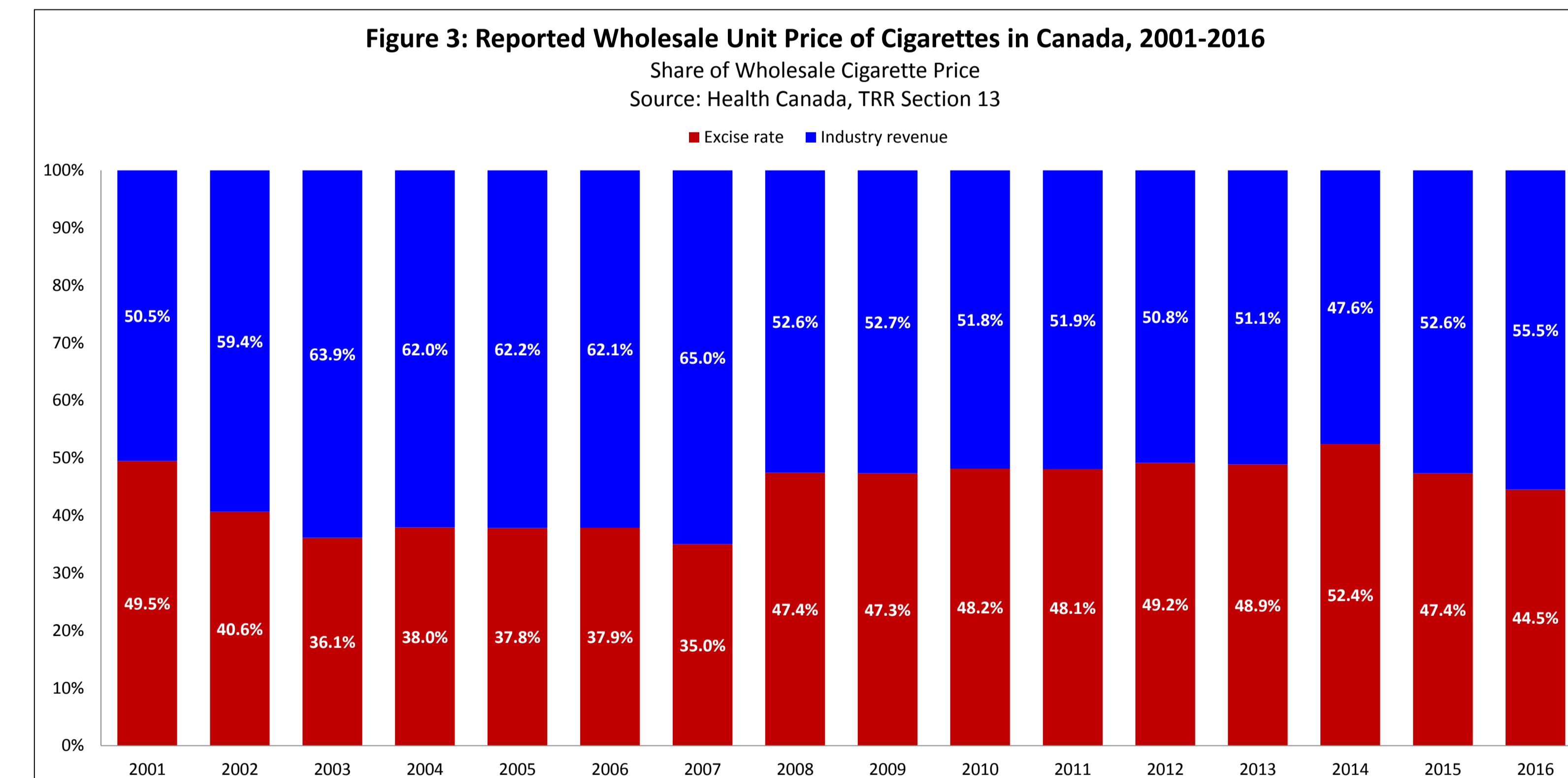
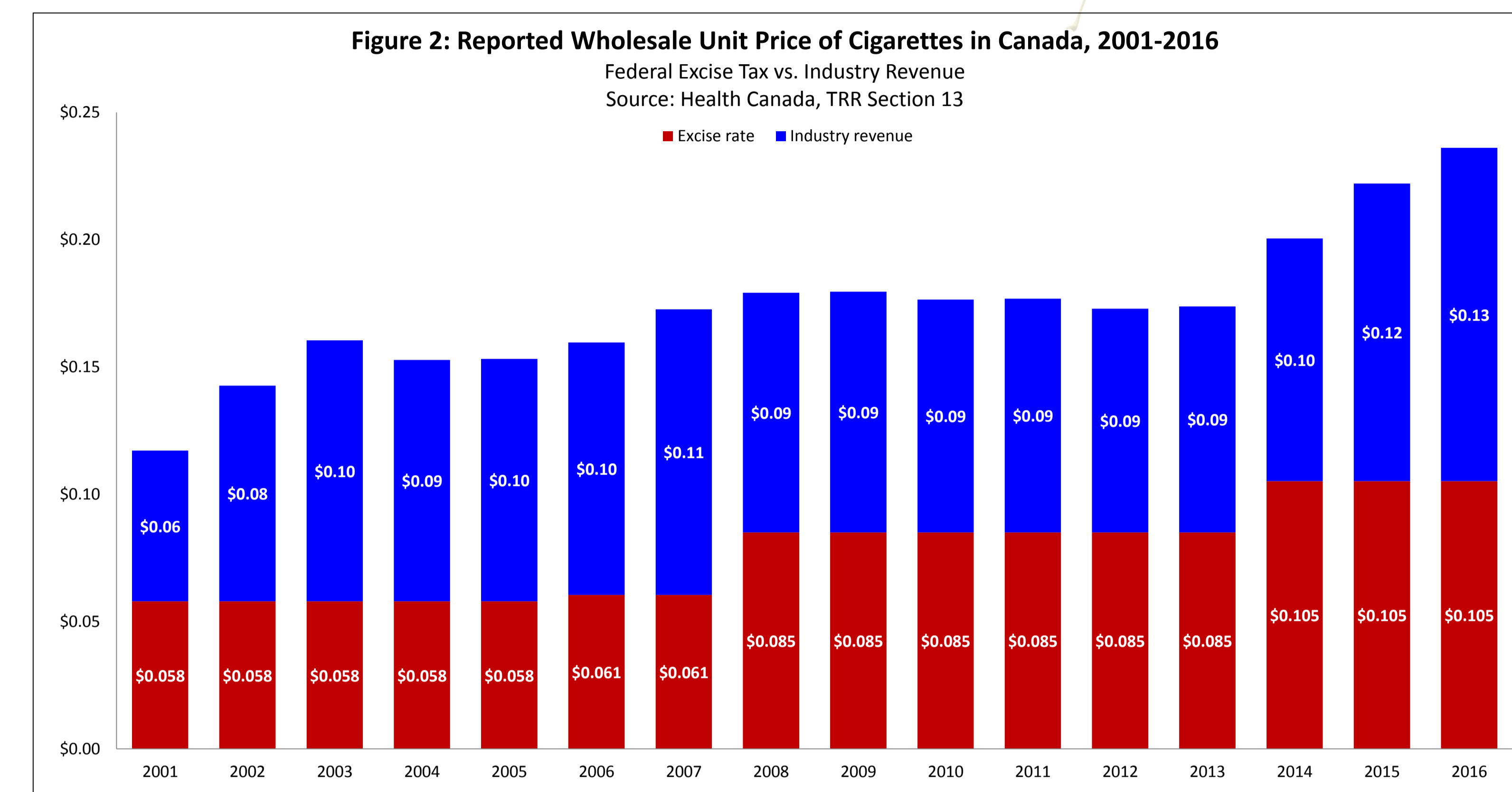
## RESULTS

- Between 2001 and 2015, the Canadian cigarette market saw sales volume of cigarettes decline by more than 30%. In contrast, the reported wholesale value of cigarettes increased to a high of \$6.4 billion, an increase of over 30% from 2001 (Figure 1).



- The average unit wholesale price of cigarettes increased by 100% between 2001 and 2016.<sup>4</sup> The federal excise tax has been responsible for 40% of this increase, while tobacco industry cigarette price increases have been responsible for 60%. (Figure 2)
- As the federal excise tax on cigarettes increased, tobacco companies implemented price increases that maintained their share of the reported wholesale price of cigarettes between 48% and 65%. (Figure 3)
- In 2015 and 2016, there were significant increases in the average wholesale cigarette price. During these years, in which there were no increases in the federal excise tax, the average wholesale cigarette price increased by 18% and tobacco industry wholesale revenue per cigarette increased by 37% (Figure 2). In a market of 29 billion cigarettes, these price increases will result in a revenue increase of approximately \$1 billion annually to the industry.
- Tobacco industry price increases have stayed ahead not only of the federal excise tax, but also well ahead of inflation. Tobacco industry per unit cigarette revenue has increased by 120% since 2001 (Figure 2), more than 3 times the rate of inflation.<sup>5</sup>

## RESULTS (CONTINUED)



## CONCLUSION

- Despite tobacco industry opposition to increases in the federal excise tax on cigarettes, industry reported data under the TRR indicates that the wholesale value of the cigarette market in Canada is highly dependent on industry-led price increases.
- Since 2001, tobacco industry price increases have increased the reported wholesale price of cigarettes to a significantly greater extent than have increases in the federal excise tax.
- Since 2014 this trend has accelerated, as tobacco companies have increased cigarette prices faster than at any time since 2002, resulting in a dramatic increase in tobacco industry revenue from cigarettes in Canada.

1. Gabler, Nachum. *Combating the Contraband Tobacco Trade in Canada*. Fraser Institute, 2011. <http://www.thecre.com/ccsf/wp-content/uploads/2011/12/combating-contraband-tobacco-trade-in-canada.pdf> Evaluation of the Federal Tobacco Control Strategy, 2001-2010, Health Canada.

2. Evaluation of the Federal Tobacco Control Strategy, 2001-2011, Health Canada.

3. "1.5.1 Rates of Excise Duty," *Canada Revenue Agency*. [http://www.cra-arc.gc.ca/E/pub/em/edm1-5-1/edm1-5-1-e.html#\\_Toc396464382](http://www.cra-arc.gc.ca/E/pub/em/edm1-5-1/edm1-5-1-e.html#_Toc396464382)

4. Data for 2016 is half-year data (January-June 2016)

5. "Consumer Price Index, 2000 to Present," *Bank of Canada*. <http://www.bankofcanada.ca/rates/price-indexes/cpi/>



This is **Exhibit « 17 »**, referred to in the  
**Affidavit of Bruce Johnston**, sworn before me  
this 27th day of March, 2019

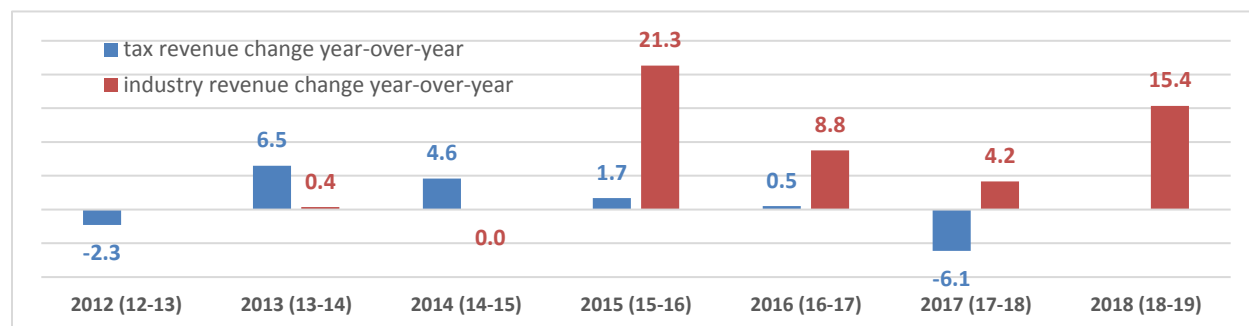
*Elena Bordi*



Commissioner of Oaths for Quebec

## Tobacco Tax and Manufacturers' sales revenue on cigarettes.

Figure 1: Annual percentage change: Governmental tobacco tax revenue (blue) and manufacturers' revenue on the sale of cigarettes.



### Provincial tobacco tax revenues (including fine-cut)

	2012-2013	2013-2014	2014-2015	2015-2016	2016-2017	2017-2018
Newfoundland	146,000,000	148,017,000	157,078,000	158,032,000	161,599,000	160,397,000
Prince Edward Island	40,152,000	32,000,000	30,172,100	32,393,700	32,662,000	31,622,000
Nova Scotia	206,287,000	217,229,000	206,255,000	217,009,000	222,234,000	210,710,000
New Brunswick	142,400,000	152,900,000	143,400,000	148,700,000	157,900,000	152,700,000
Quebec	907,000,000	1,010,000,000	1,069,000,000	1,083,000,000	1,072,000,000	993,000,000
Ontario	1,142,000,000	1,110,000,000	1,168,000,000	1,226,000,000	1,230,000,000	1,244,000,000
Manitoba	252,100,000	272,100,000	256,000,000	256,100,000	243,300,000	228,000,000
Saskatchewan	253,353,000	276,234,000	260,696,000	263,686,000	259,706,000	260,300,000
Alberta	912,000,000	922,000,000	896,000,000	980,000,000	953,000,000	908,000,000
British Columbia	614,000,000	724,000,000	752,000,000	734,000,000	737,000,000	727,000,000
Federal government	2,750,486,181	2,983,048,184	3,273,046,368	3,248,701,468	3,320,949,320	3,155,975,973
<b>Total provincial</b>	<b>4,615,292,000</b>	<b>4,863,735,000</b>	<b>4,933,688,000</b>	<b>5,098,920,700</b>	<b>5,054,732,405</b>	<b>4,915,729,000</b>
<b>Total Federal &amp; Provincial</b>	<b>7,365,778,181</b>	<b>7,846,783,184</b>	<b>8,206,734,368</b>	<b>8,347,622,168</b>	<b>8,390,350,320</b>	<b>7,879,685,973</b>
<i>Change over previous year (%)</i>	-2.3	6.5	4.6	1.7	0.5	-6.1

### Estimated Manufacturers' revenue on sale of cigarettes<sup>1</sup>

	2012	2013	2014	2015	2016	2017	2018
Millions of cigarettes sold	31,347	31,468	29,468	29,033	28,642	27,111	27,000(est.)
Revenue per cigarette	0.88	\$0.089	\$0.095	\$0.117	\$0.129	\$0.142	\$0.1645
Estimated revenue (\$billion)	\$2.789	\$2.801	\$2.799	\$3.396	\$3.640	\$3.849	\$4.441
Change over previous year (%)		.38%	-0.04%	21.34%	8.77%	4.19%	15.37%

<sup>1</sup> Revenue for fine-cut tobacco has not been released by Health Canada

## Tax and wholesale price increases, selected brands (Ontario), 2016-2019.

Per carton of 200 cigarettes	2016	2017	2018	2019	Total Increase
	January – July	January – July	January -July	January	Nov 2015- Jan 2019
<b>TAX INCREASES</b>					
• Federal		\$0.53	\$2.29		\$2.82
• Ontario	\$3.00	\$2.00	\$4.00		\$9.00
• Quebec					\$0
<b>PRICE INCREASES (ONTARIO WHOLESAL)</b>					
<b>Premium brands</b>					
• Du Maurier (ITL)	\$2.60	\$3.15	\$4.76	\$2.00	\$12.51
• Vogue (ITL)	\$3.40	\$5.65	\$5.26	\$2.00	\$16.31
• Benson & Hedges (RBH)	\$3.92	\$3.80	\$3.26	*	\$10.98
• Export A (JTIM)	\$3.60	\$3.15	\$4.00	\$2.00	\$12.75
<b>Mid -tier brands</b>					
• Peter Jackson (ITL)	\$1.60	\$3.65	\$5.26	\$2.00	\$12.51
• Matinée (ITL)	\$3.60	\$5.65	\$5.26	\$2.00	\$16.51
• Canadian Classics (RBH)	\$2.92	\$3.65	\$5.26	*	\$11.83
• Number 7 (RBH)	\$2.42	\$2.40	\$6.26	*	\$11.08
• Macdonald Select (JTIM)	\$4.10	\$3.15	\$3.50	\$2.00	\$12.75
<b>Budget brands</b>					
• Pall Mall (ITL)	\$2.10	\$3.90	\$2.68	\$2.00	\$10.68
• John Player Special (ITL)	\$3.40	\$3.85	\$5.26	\$2.00	\$14.51
• NEXT (RBH)	\$2.74	\$3.65	\$3.53	*	\$9.92
• Philip Morris (RBH)	\$2.10	\$4.15	\$5.26	*	\$11.51
• LD (JTIM)	\$3.60	\$4.15	\$4.00	\$2.00	\$13.75

\* *unknown at this time*

### Sources:

- Physicians for a Smoke-Free Canada. [Tax Revenues from Tobacco Sales. 2018](#)
- Health Canada. [National and provincial/territorial tobacco sales data. 2017](#)
- Health Canada. [Wholesale Unit Price of Cigarettes in Canada. 2003-June. 2018](#)

This is **Exhibit « 18 »**, referred to in the  
**Affidavit of Bruce Johnston**, sworn before me  
this 27th day of March, 2019

*Elena Bordi*



Commissioner of Oaths for Quebec





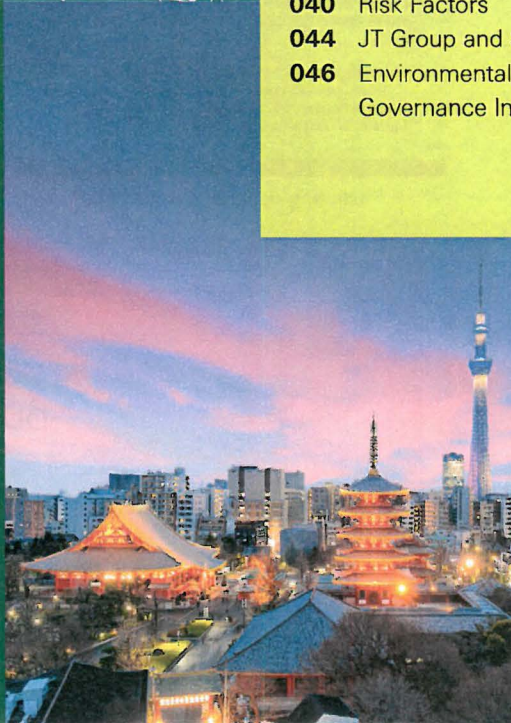
Japan Tobacco Inc.  
Annual Report FY2017  
Year ended December 31, 2017

Investment  
leading  
to sustainable  
growth.



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## At a Glance

### Our Businesses

FY2017: Results for the fiscal year ended December 31, 2017

The JT Group is a leading international tobacco company with operations in over 70 countries.

### International Tobacco Business

The international tobacco business is the JT Group's growth engine, generating over 60% of the Group's consolidated adjusted operating profit. Looking ahead, we expect it will continue its strong contribution, strengthening competitiveness of the JT Group to drive sustainable growth in the mid- to long-term.

Our international brands portfolio is competitive and well-balanced, with strong equity brands across all relevant product categories and price segments. The portfolio includes leading international brands in cigarettes and fine cut, such as Winston, Mevius, Camel and LD, as well as in Reduced-Risk Products (RRP)\*, such as Ploom TECH and Logic.

#### Results for FY2017:

Robust profit growth at constant exchange rates underpinned by resilient volume performance, positive Global Flagship Brands (GFB) momentum and planned initiatives to optimize the manufacturing footprint and overall cost base.

#### Key Drivers:

- Positive GFB momentum driven by share gains
- Stronger business base from acquisitions
- Global supply chain optimization
- Focused investments behind
  - Global Flagship Brands,
  - Emerging Markets, and
  - Reduced-Risk Products (RRP)\*
- Over 39,000 dedicated and talented employees

#### Global Flagship Brands



\* Reduced-Risk Products (RRP): Products with the potential to reduce the risks associated with smoking.

### Japanese Domestic Tobacco Business

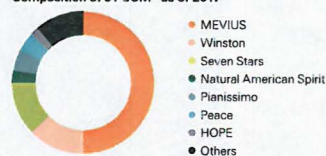
We are the market leader in Japan, which is one of the largest markets in the world, generating about 40% of our consolidated adjusted operating profit. We continue to be a significant profit contributor to the JT Group.

During 2017, our SOM\*\* reached 61.3%, thanks to the solid performance of our core brands, such as MEVIUS and Natural American Spirit. Thus, we further solidified our No. 1 position in cigarettes. In addition, we launched Ploom shops and expanded the sales of Ploom TECH in Tokyo.

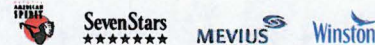
#### Results for FY2017:

Adjusted operating profit decreased due to lower cigarette sales volume partially offset by the optimization of investments.

#### Composition of JT SOM\*\* as of 2017



#### Key Brands

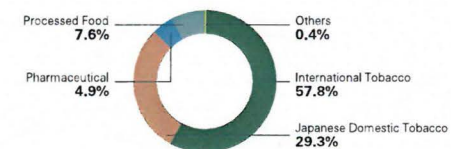


\*\* SOM: Share of market.

Our products are sold in over 130 countries and our internationally recognized brands include Winston, Camel, MEVIUS and LD.

We are also active in pharmaceutical and processed food businesses and we expect them to establish a foundation for continuous profit contribution, as we strive for sustainable growth.

#### Revenue breakdown by business segment



### Pharmaceutical Business

JT Group's pharmaceutical business focuses on the research and development, production and sale of prescription pharmaceutical products. Its mission is to build world-class, unique research and development capabilities and reinforce its market presence through innovative drugs. JT concentrates on research and development activities mainly on the fields of metabolic diseases; viral infection; and autoimmune/inflammatory diseases, while Torii Pharmaceutical Co., Ltd. is in charge of manufacturing as well as sales and promotion in the domestic market.

#### Results for FY2017:

Earnings increased and achieved a record high profit.

### Processed Food Business

With Group company TableMark Co., Ltd. taking a central role, the processed food business is primarily engaged in business concerning frozen and ambient processed food, mainly staple food products such as frozen noodles, frozen rice, packed cooked rice and frozen baked bread, and seasoning including yeast extracts and oyster sauce.

We have solidified its No. 3 position in the frozen food industry with several top-selling products within respective categories, such as frozen Udon noodles and frozen Okonomiyaki.

#### Results for FY2017:

Achieved profit growth for the fifth consecutive year.

#### Japan Tobacco around the World (Tobacco Business)



Note: Locations of manufacturing factories to be closed by the end of 2018: Belgium and Malaysia



## Message from the Chairman and CEO



Yasutake Tango  
Chairman of the Board

*Y. Tango*

Masamichi Terabatake  
Representative Director and President,  
Chief Executive Officer

*M. Terabatake*

Under the 4S model, we strive to fulfill our responsibilities to our valued consumers, shareholders, employees and the wider society.

### Delivered Solid Profitability Under a Challenging Environment

In 2017, the operating environment surrounding us continued to be difficult due to a lack of clarity over the global economy, changes in the international political climate and the increases in geopolitical risks as well as industry contractions in various markets, tighter regulations, excise tax hikes and price competition. However, under such a rapidly-changing environment, we have been managing various risks and delivered solid profitability while actively investing in business for the future growth.

“We believe that pursuing 4S model is the best approach to achieve sustainable profit growth over the mid- to long-term and thus increase the Group’s enterprise value. It means that this conveys benefits to the four stakeholder groups.”

### Toward Future Growth

We expect that the operating environment will change at an unprecedented speed and scale. To survive and succeed in these circumstances, we have to further enhance our organizational capabilities, based on which the JT Group continuously aim to achieve sustainable profit growth through business investments over the mid- to long-term. Under the Business Plan 2018, a three-year plan through 2020, we will turn the tables on competition in the Reduced-Risk Products category in the Japanese market during 2018. In order to ensure the turnaround as well as create an earnings growth momentum from the ensuing year, we will accelerate investments in this category to strengthen our business foundations. This initiative will lead to a challenging year for 2018 from a short-term viewpoint in terms of profit; however, we envision our adjusted operating profit growth at constant currency to return to mid- to high single-digit rate in and beyond 2019. This will be achieved as traditional tobacco products in established markets will continue to generate solid profit through brand equity investments, and on top of that, we expect the increasing returns from emerging markets, the success of Reduced-Risk Products and the continuing contributions by the pharmaceutical and processed food businesses to the Group profit growth.

### Shareholders Return

We allocate resources by considering the balance between business investments for sustainable profit growth and shareholder returns. Regarding our shareholders return policy, we strive to improve it based on the mid- to long-term profit growth outlook while maintaining a solid balance sheet which enables us to respond to various changes in our operating environment. Specifically, we intend to grow dividend per share in a stable and sustainable manner. Under this approach, the annual dividend for 2017 was 140 yen as we initially committed. As for 2018, we plan to pay an annual dividend of 150 yen per share, which represents an increase of 7.1% year-on-year, considering the Group’s mid- to long-term profit growth outlook.

### 4S Model

Our management principle is the 4S model. Under the 4S model, we strive to fulfill our responsibilities to our valued consumers, shareholders, employees and the wider society, carefully considering the respective interests of these four key stakeholder groups, and exceeding their expectations wherever we can. We believe that pursuing 4S model is the best approach to achieve sustainable profit growth over the mid- to long-term and thus increase the Group’s enterprise value. It means that this conveys benefits to the four stakeholder groups.

As part of our pursuit of the 4S model, we continue to carry out a variety of sustainability initiatives. In 2017, we made a solid progress on this front as well. Throughout the year, we continued to extend our support to supply chain with a particular emphasis on tobacco leaf sourcing, promoted human rights initiatives, remained committed to fighting illegal trade of tobacco products and addressed to reduce environmental impact. Our efforts towards sustainability were well recognized by external bodies that monitor such activities and we were selected by Dow Jones Sustainability Index for Asia Pacific for the fourth consecutive years since 2014. We continuously aim to make contribution to realize a sustainable society.



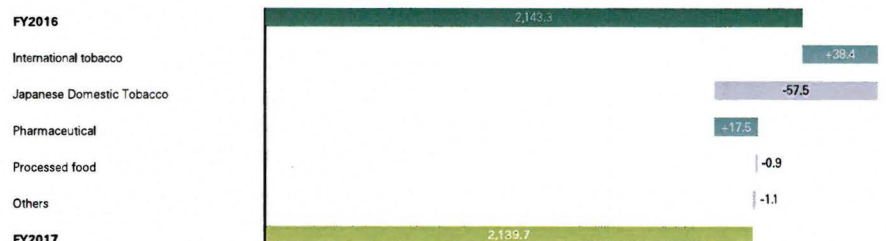
Message from the CFO on p.71

## Financial Review

### Analysis of the Results

FY2017: Results for the fiscal year ended December 31, 2017

#### Revenue<sup>1</sup>



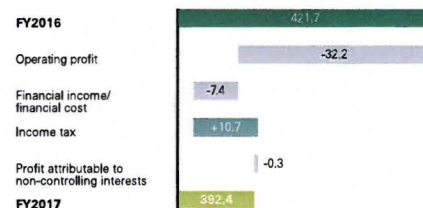
- Revenue decreased ¥3.6 billion or -0.2% year-on-year to ¥2,139.7 billion.
- This was mainly due to the Japanese Domestic Tobacco business cigarette sales volume decline, despite the pricing effect in MEVIUS, Ploom TECH sales increase in Tokyo expansion and positive impact of Yen effect in international tobacco business.
- In addition, the revenue of pharmaceutical business increased mainly driven by the increase of royalty revenue from out-licensed compounds.

#### Adjusted Operating Profit<sup>2</sup>/Operating Profit



- Adjusted operating profit decreased ¥1.5 billion or -0.3% year-on-year to ¥585.3 billion.
- Despite international tobacco business impacted by a loss related to a UK distributor going into administration, adjusted operating profit at constant FX grew mainly driven by cost reduction through planned manufacturing footprint optimization and adjusted operating profit also increased due to the positive impact of foreign currency movements.
- In Japanese Domestic Tobacco business, despite the pricing effect in MEVIUS, Ploom TECH sales increased in Tokyo expansion and optimization of investment in the cigarette category, adjusted operating profit significantly decreased mainly due to the cigarette sales volume decline.
- In pharmaceutical business, adjusted operating profit improved significantly. This was mainly driven by the increased royalty revenue from out-licensed compounds.
- Adjusted operating profit at constant foreign currency decreased 0.6% year-on-year.
- Operating profit decreased 5.4% year-on-year to ¥561.1 billion.
- Mainly because other income of proceeds from the sales of investment properties decreased.

#### Profit<sup>3</sup>



Profit decreased ¥29.3 billion or -6.9% year-on-year to ¥392.4 billion.

- Financial costs increased (decreased as in the graph) mainly due to the increase in bonds and borrowings.
- Income tax expenses decreased (increased as in the graph) due to the decrease in profit before income tax.

#### Revenue by business segment

	(Billions of yen)	
	FY2016	FY2017
<b>Revenue</b>	<b>2,143.3</b>	<b>2,139.7</b>
International tobacco	1,199.2	1,237.6
Core revenue <sup>4</sup>	1,138.8	1,177.0
Japanese Domestic Tobacco	684.2	626.8
Core revenue <sup>5</sup>	649.7	590.6
Pharmaceutical	87.2	104.7
Processed food	164.1	163.1
Other/Elimination	8.6	7.5

#### Average Exchange Rate

	FY2016	FY2017
YEN/US\$	108.78	112.16
RUB/US\$	67.07	58.35
GBP/US\$	0.74	0.78
EUR/US\$	0.90	0.89

#### Adjusted Operating Profit and Operating profit by business segment

	(Billions of yen)	
	FY2016	FY2017
Operating profit	593.3	561.1
Adjustment total <sup>6</sup>	(6.6)	24.2
Adjusted operating profit	586.8	585.3
International tobacco: Operating profit	301.8	325.6
Adjustment total <sup>6</sup>	34.4	25.7
Adjusted operating profit	336.2	351.3
Japanese Domestic Tobacco: Operating profit	244.1	215.8
Adjustment total <sup>6</sup>	16.1	16.4
Adjusted operating profit	260.2	232.3
Pharmaceutical: Operating profit	9.7	24.1
Adjustment total <sup>6</sup>	-	-
Adjusted operating profit	9.7	24.1
Processed Food: Operating profit	5.0	5.4
Adjustment total <sup>6</sup>	0.0	0.0
Adjusted operating profit	5.0	5.4
Others/Elimination: Operating profit	32.7	(9.8)
Adjustment total <sup>6</sup>	(57.1)	(18.0)
Adjusted operating profit	(24.4)	(27.8)

1. Excludes tobacco excise taxes and agency transactions.

2. Adjusted operating profit = operating profit + amortization cost of acquired intangibles arising from business acquisitions + adjusted items (income and costs)\*.

3. Profit attributable to owners of the parent.

4. Includes revenue from waterpipe tobacco and Reduced-Risk Products, but excludes revenues from distribution, contract manufacturing and other peripheral business.

5. Includes revenue from domestic duty free, the China business and Reduced-Risk Products such as Ploom TECH devices and capsules but excludes revenue from distribution of imported tobacco in the Japanese Domestic Tobacco business, among others.

6. Depreciation and amortization ± adjustment items (income and costs)\*\*.

\* Adjusted items (income and costs) = impairment losses on goodwill ± restructuring income and costs ± others.

\*\* Adjustment items income and costs = impairment losses on goodwill ± restructuring income and costs ± others.



This is **Exhibit « 19 »**, referred to in the  
**Affidavit of Bruce Johnston**, sworn before me  
this 27th day of March, 2019

*Elena Bordi*



Commissioner of Oaths for Quebec

[This is an English translation prepared for reference purpose only. Should there be any inconsistency between the translation and the original Japanese text, the latter shall prevail.]



February 7, 2019

## Consolidated Financial Results for the Fiscal Year Ended December 31, 2018 <under IFRS>

Name of the Listed Company: **JAPAN TOBACCO INC.** (Stock Code: 2914)  
 Listed Stock Exchange: Tokyo Stock Exchange  
 URL: <https://www.jti.co.jp/>  
 Representative: Masamichi Terabatake, Representative Director and President,  
 Chief Executive Officer  
 Contact: Kei Nakano, Senior Vice President, Communications  
 Telephone: +81-3-3582-3111  
 Scheduled date of Annual General Meeting of Shareholders: March 20, 2019  
 Scheduled date to file Securities Report: March 20, 2019  
 Scheduled starting date of the dividend payments: March 22, 2019  
 Drawing up supplementary documents on financial results: Yes  
 Holding investors' meeting: Yes (for analysts and institutional investors)

(Yen amounts are rounded to the nearest million, unless otherwise noted.)

### 1. Consolidated financial results for the fiscal year ended December 31, 2018 (from January 1, 2018 to December 31, 2018)

#### (1) Consolidated operating results (Percentages indicate year-on-year changes.)

Year ended	Revenue		Operating profit		Profit before income taxes		Profit for the year	
	Millions of yen	%	Millions of yen	%	Millions of yen	%	Millions of yen	%
December 31, 2018	2,215,962	3.6	564,984	0.7	531,486	(1.3)	387,431	(2.3)
December 31, 2017	2,139,653	(0.2)	561,101	(5.4)	538,532	(6.9)	396,749	(6.8)

Year ended	Profit attributable to owners of the parent company		Comprehensive income for the year		Basic earnings per share	Diluted earnings per share
	Millions of yen	%	Millions of yen	%	Yen	Yen
December 31, 2018	385,677	(1.7)	129,302	(76.7)	215.31	215.20
December 31, 2017	392,409	(6.9)	554,198	135.6	219.10	218.97

Year ended	Ratio of profit to equity attributable to owners of the parent company	Ratio of profit before income taxes to total assets	Ratio of operating profit to revenue
	%	%	%
December 31, 2018	14.3	10.0	25.5
December 31, 2017	15.0	10.8	26.2

Reference: Share of profit (loss) in investments accounted for using the equity method:

Fiscal year ended December 31, 2018: ¥3,931 million; Fiscal year ended December 31, 2017: ¥6,194 million

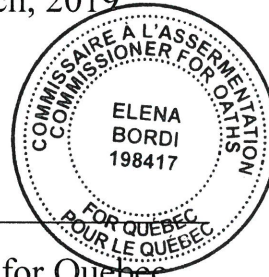
Year ended December 31, 2018

(Millions of yen)

	Reportable Segments					Other (Note 2)	Elimination	Consolidated
	Domestic Tobacco	International Tobacco	Pharma- ceuticals	Processed Food	Total			
<b>Revenue</b>								
External revenue (Note 3)	621,426	1,312,342	113,992	161,387	2,209,147	6,815	—	2,215,962
Intersegment revenue	7,976	27,637	—	1	35,615	5,737	(41,353)	—
<b>Total revenue</b>	<b>629,403</b>	<b>1,339,979</b>	<b>113,992</b>	<b>161,388</b>	<b>2,244,762</b>	<b>12,553</b>	<b>(41,353)</b>	<b>2,215,962</b>
<b>Segment profit (loss)</b>								
Adjusted operating profit (Note 1)	208,977	384,524	28,438	4,123	626,062	(30,440)	(159)	595,463
<b>Other items</b>								
Depreciation and amortization	55,044	89,887	5,071	6,708	156,710	2,193	(233)	158,671
Impairment losses on other than financial assets	—	5,336	2,141	146	7,623	831	—	8,454
Reversal of impairment losses on other than financial assets	—	692	—	—	692	—	—	692
Share of profit (loss) in investments accounted for using the equity method	35	3,849	—	11	3,895	36	—	3,931
Capital expenditures	55,444	75,727	11,333	12,749	155,253	4,844	(289)	159,808

This is **Exhibit « 20 »**, referred to in the  
**Affidavit of Bruce Johnston**, sworn before me  
this 27th day of March, 2019

*Elena Bordi*



Commissioner of Oaths for Quebec

03-cv-253858 eM1  
Court File No.

**ONTARIO  
SUPERIOR COURT OF JUSTICE**

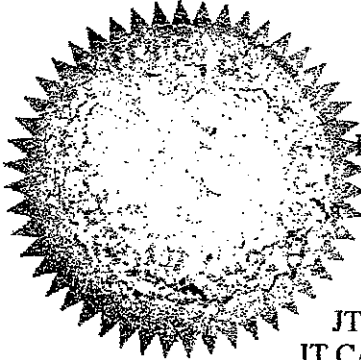
**BETWEEN:**

*(Court Seal)*

**THE ATTORNEY GENERAL OF CANADA  
on his own behalf and on behalf of all the creditors of JTI-Macdonald Corp.**

**Plaintiff**

**and**



**R.J. REYNOLDS TOBACCO HOLDINGS, INC.,  
R.J. REYNOLDS TOBACCO COMPANY,  
R.J. REYNOLDS TOBACCO INTERNATIONAL, INC.,  
JTI-MACDONALD CORP.,  
R.J. REYNOLDS TOBACCO CO.,  
NORTHERN BRANDS INTERNATIONAL, INC.,  
JAPAN TOBACCO INC., JT INTERNATIONAL SA,  
JTI-MACDONALD TM CORP., JT CANADA LLC II INC.,  
JT CANADA LLC INC., JT INTERNATIONAL HOLDING B.V.,  
JT INTERNATIONAL B.V. and  
JT INTERNATIONAL (BVI) CANADA INC.**

**Defendants**

**STATEMENT OF CLAIM**

**TO THE DEFENDANT(S)**

**A LEGAL PROCEEDING HAS BEEN COMMENCED AGAINST YOU by the plaintiff. The claim made against you is set out in the following pages.**

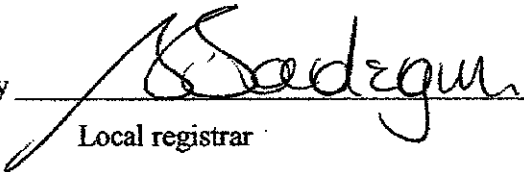
**IF YOU WISH TO DEFEND THIS PROCEEDING, you or an Ontario lawyer acting for you must prepare a statement of defence in Form 18A prescribed by the Rules of Civil Procedure, serve it on the plaintiff's lawyer or, where the plaintiff does not have a lawyer, serve it on the plaintiff, and file it, with proof of service, in this court office, WITHIN TWENTY DAYS after this statement of claim is served on you, if you are served in Ontario.**

If you are served in another province or territory of Canada or in the United States of America, the period for serving and filing your statement of defence is forty days. If you are served outside Canada and the United States of America, the period is sixty days.

Instead of serving and filing a statement of defence, you may serve and file a notice of intent to defend in Form 18B prescribed by the Rules of Civil Procedure. This will entitle you to ten more days within which to serve and file your statement of defence.

IF YOU FAIL TO DEFEND THIS PROCEEDING, JUDGMENT MAY BE GIVEN AGAINST YOU IN YOUR ABSENCE AND WITHOUT FURTHER NOTICE TO YOU. If you wish to defend this proceeding but are unable to pay legal fees, legal aid may be available to you by contacting a local legal aid office.

Date Aug 13, 2003

Issued by   
Local registrar

Address of court office:

393 University Avenue  
10th Floor  
Toronto, Ontario  
M5G 1E6

**TO: R.J. REYNOLDS TOBACCO HOLDINGS, INC.**  
1301 Avenue of the Americas  
New York, New York  
10019

**AND TO: R.J. REYNOLDS TOBACCO COMPANY**  
401 N. Main Street  
Winston-Salem, North Carolina  
27102

**AND TO: R.J. REYNOLDS TOBACCO INTERNATIONAL, INC.**  
2711 Centerville Road  
Suite 400  
Wilmington, Delaware  
19808

**AND TO: JTI-MACDONALD CORP.**  
1 First Canadian Place  
60<sup>th</sup> Floor P.O. Box 111  
Suite #6000  
Toronto, ON M5X 1A4



- AND TO: R.J. REYNOLDS TOBACCO CO.**  
1013 Centre Road  
Wilmington, Delaware  
19805
- AND TO: NORTHERN BRANDS INTERNATIONAL, INC.**  
P.O. Box 2959  
Winston-Salem  
North Carolina  
27102
- AND TO: JAPAN TOBACCO INC.**  
7-3-6 Minamiaoyama Minato-Ku  
Tokyo, 1070062  
Japan
- AND TO: JT INTERNATIONAL SA**  
14 chemin Rieu, 1211 Geneva 17,  
Switzerland
- AND TO: JTI-MACDONALD TM CORP.**  
1600-5151 George Street,  
Halifax, NS B3J 1M5
- AND TO: JT CANADA LLC II INC.**  
1600-5151 George Street,  
Halifax, NS B3J 1M5
- AND TO: JT CANADA LLC INC.**  
1600-5151 George Street,  
Halifax, NS B3J 1M5
- AND TO: JT INTERNATIONAL HOLDING B.V.**  
Vreelandsweg 46  
1216 CH Hilversum,  
Netherlands
- AND TO: JT INTERNATIONAL B.V.**  
Vreelandsweg 46  
1216 CH Hilversum,  
Netherlands

**AND TO: JT INTERNATIONAL (BVI) CANADA INC.**  
Craigmuir Chambers  
P.O. Box 71  
Road Town, Tortola,  
British Virgin Islands

## CLAIM

(Index to Claim follows page 66)

1. The plaintiff, the Attorney General of Canada, on behalf of Her Majesty in right of Canada, claims:

- A. damages from the RJR Group for fraud, deceit, fraudulent misrepresentation, spoliation and civil conspiracy in the amount of \$1.5 billion;
- B. in the alternative to the relief in paragraph A above, an accounting and disgorgement of monies from the RJR Group by which the RJR Group was unjustly enriched and the plaintiff was unjustly deprived;
- C. from all defendants, the costs of investigating the unlawful activities described in this claim in an amount to be particularized prior to trial;
- D. from RJR-Macdonald, payment of:
  - (i) an amount equal to the aggregate of any and all duties of excise and licence fees together with full costs of suit payable pursuant to s. 111 of the *Excise Act*, R.S.C. 1985, c. E-14; and
  - (ii) an amount equal to all taxes, penalties, interest and/or other sums payable pursuant to s. 82 of the *Excise Tax Act*, R.S.C. 1985, c. E-15;
- E. punitive damages from the RJR Group, in the amount of \$50 million;
- F. a declaration that the transfer of the business, undertaking, assets and property of RJR-Macdonald to JTI-Macdonald TM Corp., JT Canada LLC II Inc., JT Canada

LLC Inc., JT International B.V., JT International (BVI) Canada Inc., JT International SA and JT International Holding B.V. (and other related entities) were conveyances intended to defeat, hinder, delay or defraud the creditors or others (including the plaintiff) of RJR-Macdonald of their just and lawful actions, suits, debts, accounts, damages, penalties or forfeitures and is void as against such persons and their assigns;

G. damages for conspiracy from Japan Tobacco Inc., JT International B.V., JT International Holding B.V., JT Canada LLC Inc., JT Canada LLC II Inc., JT International (BVI) Canada Inc., JT International SA and JTI-Macdonald TM Corp. in the amount by which any judgment in this action exceeds the value of the assets of RJR-Macdonald;

H. an order tracing all of the business, undertakings, assets and property and proceeds of disposition of any of those conveyed by RJR-Macdonald to JT International B.V., JT International Holding B.V., JT Canada LLC Inc., JT Canada LLC II Inc., JT International (BVI) Canada Inc., JT International SA and JTI-Macdonald TM Corp. or others;

I. from all defendants:

(i) prejudgment and postjudgment interest pursuant to the *Courts of Justice Act*, R.S.O. 1990, c. C.43 as amended;

(ii) costs of this action on the substantial indemnity scale increased to a solicitor and his own client basis; and

(iii) such further and other relief as to this Honourable Court may seem just.

### The Parties

2. The Attorney General of Canada on behalf of Her Majesty in right of Canada brings this action. The plaintiff is a member of a class of creditors or others to whom the *Fraudulent Conveyances Act*, R.S.O. 1990, c. F.29 gives a right of action against JT International B.V., JT International Holding B.V., JT Canada LLC Inc., JT Canada LLC II Inc., JT International (BVI) Canada Inc., JT International SA and JTI-Macdonald TM Corp.

3. The defendant, R.J. Reynolds Tobacco Holdings, Inc. ("RJR Tobacco") is a Delaware corporation. Its head office is at 1301 Avenue of the Americas, New York, New York, 10019 U.S.A. Prior to a major divestment and reorganization within the RJR Group in June 1999, it was known as RJR Nabisco Holdings Corp. RJR Tobacco is the parent company in the RJR Group and carried on business at all material times as a global manufacturer, distributor and vendor of tobacco products.

4. The defendant, R.J. Reynolds Tobacco Company ("RJR U.S.") is a New Jersey corporation. Its head office and principal place of business is at 401 N. Main Street, Winston-Salem, North Carolina, 27102, U.S.A. It is a wholly owned subsidiary of RJR Tobacco. RJR U.S. was at all material times the principal U.S. operating entity of the RJR tobacco business.

5. The defendant, R.J. Reynolds Tobacco International, Inc. is a Delaware corporation. Its registered office address is at 2711 Centreville Road, Suite 400, Wilmington, Delaware, 19808, U.S.A. It was a wholly owned subsidiary of RJR Tobacco and the parent company of RJR-Macdonald. It coordinated RJR Tobacco's global tobacco operations outside of the U.S.A.,

including those of RJR-Macdonald and RJR Puerto Rico. It and its successors, apparently including R.J. Reynolds International B.V., JT International B.V., JT International Holding B.V. and JT International SA, are referred to collectively in this claim as RJR International.

6. The defendant, JTI-Macdonald Corp. is incorporated pursuant to the laws of the Province of Nova Scotia. Its head office is at Suite 1600, 5151 George Street, Halifax, Nova Scotia, B3J 1M5. Its principal place of business is at Suite 6000, First Canadian Place, Toronto, Ontario, M5X 1A4. At the material time, it was a subsidiary of RJR International, and later, of R.J. Reynolds International B.V. It was at all material times the Canadian operating arm of the RJR Group's tobacco business. Before its purchase by Japan Tobacco Inc. on or about May 11, 1999, it was named RJR-Macdonald Inc. and then RJR-Macdonald Corp. JTI-Macdonald Corp. is referred to in this claim as RJR-Macdonald.

7. The defendant, R.J. Reynolds Tobacco Co. ("RJR Puerto Rico") is a Delaware corporation. Its registered office address is at 1013 Centre Road, Wilmington, Delaware, 19805, U.S.A. It was at all material times a wholly owned subsidiary of RJR U.S.

8. The defendant, Northern Brands International, Inc. ("NBI") is a Delaware corporation. Its principal place of business is at 401 N. Main Street, Winston-Salem, North Carolina, 27101, U.S.A. It is a wholly owned subsidiary of RJR Tobacco.

9. NBI was at all material times the alter ego of RJR-Macdonald and RJR International. NBI was incorporated and maintained as a sham through which the RJR Group carried on its unlawful smuggling activities. NBI existed to conceal the smuggling activities of RJR Group companies. NBI operated to protect the defendants and the employees, officers and directors of

RJR Group companies from detection and exposure to civil liability. NBI was in business to insulate the assets of the RJR Group from judgment and execution.

10. An organizational chart of the RJR Group at the material time is attached to this claim as Appendix "A". These entities are referred to collectively in this claim as "RJR", the "RJR Group" or the defendants.

11. Pursuant to a transaction which closed on or about May 11, 1999, RJR Tobacco and RJR US sold their international tobacco interests, including RJR International and RJR-Macdonald, to Japan Tobacco Inc. ("Japan Tobacco"). Japan Tobacco now owns and controls RJR International and RJR-Macdonald, and the other entities formerly comprising RJR Tobacco's international tobacco business. In the course of due diligence for this transaction, RJR Tobacco and RJR US disclosed to Japan Tobacco both the material facts pleaded in this claim and that the RJR Group would be civilly liable as a result of their unlawful conduct.

12. Following the JTI transaction, Japan Tobacco took steps to creditor-proof RJR-Macdonald's assets from execution by creditors, by creating a complex structure of affiliated companies and transferring the assets of RJR-Macdonald to and among various companies believed to be as follows:

- (a) the defendant, JTI-Macdonald TM Corp., is a Nova Scotia corporation. It is a wholly owned subsidiary of RJR-Macdonald. Its head office is at 1600-5151 George Street, Halifax, Nova Scotia, B3J 1M5. In 1999, before the purchase by Japan Tobacco, RJR-Macdonald transferred its trademarks to JTI-Macdonald TM Corp. for what it admitted to be "creditor-proofing" purposes;

- (b) the defendant, JT Canada LLC II Inc., is a Nova Scotia corporation. Its head office is at 1600-5151 George Street, Halifax, Nova Scotia, B3J 1M5. It owns all of the outstanding shares of RJR-Macdonald. RJR-Macdonald fraudulently conveyed assets to this defendant to avoid its obligations to its creditors, including the plaintiff;
- (c) the defendant, JT Canada LLC Inc., is a Nova Scotia corporation. Its head office is at 1600-5151 George Street, Halifax, Nova Scotia, B3J 1M5. It owns all of the outstanding shares of JT Canada LLC II Inc. RJR-Macdonald fraudulently conveyed assets to this defendant to avoid its obligations to its creditors, including the plaintiff;
- (d) the defendant, JT International B.V., is a Netherlands corporation. Its head office is at Vreelandseweg 46, 1216 CH Hilversum, Netherlands. It is a wholly owned subsidiary of Japan Tobacco Inc. RJR-Macdonald fraudulently conveyed assets to this defendant to avoid its obligations to its creditors, including the plaintiff;
- (e) the defendant, JT International Holding B.V., is a Netherlands corporation. Its head office is at Vreelandseweg 46, 1216 CH Hilversum, Netherlands. It owns all of the outstanding shares of JT Canada LLC Inc. RJR-Macdonald fraudulently conveyed assets to this defendant to avoid its obligations to its creditors, including the plaintiff;
- (f) the defendant, JT International SA is a Swiss corporation. Its principal place of business is at 14 chemin Rieu, 1211 Geneva 17, Switzerland. It is a wholly owned subsidiary of Japan Tobacco Inc. RJR Macdonald fraudulently conveyed



assets to this defendant to avoid its obligations to its creditors, including the plaintiff; and

- (g) the defendant, JT International (BVI) Canada Inc. is a Virgin Islands corporation. Its registered office is Craigmuir Chambers, P.O. Box 71, Road Town, Tortola, British Virgin Islands. It is a wholly owned subsidiary of JT Canada LLC Inc. RJR-Macdonald fraudulently conveyed assets to this defendant to avoid its obligations to creditors, including the plaintiff.

13. The Canadian Tobacco Manufacturers' Council ("CTMC") was at all material times the trade association of the three major Canadian tobacco manufacturers. The CTMC was the agent of RJR-Macdonald. The CTMC spoke for RJR-Macdonald and other RJR Group companies, as more particularly described in this claim. Its representations to Canada and its public statements were made on behalf of RJR-Macdonald and bind the RJR Group.

**In a Nutshell**

14. The Government of Canada imposes excise duties, federal taxes and customs tariffs on cigarettes, cigars and tobacco manufactured or imported for sale and consumption in Canada. Canadian tobacco products intended for export and not for consumption in Canada attract no such duties and taxes (although they did so during a brief period in 1992 and in 1994 and after, as described below).

15. The RJR Group devised, implemented and then carried out a conspiracy by which it:

- (a) exported cigarettes and tobacco products manufactured in Canada, excise taxes and duties not paid, but intended by them to be sold and consumed in Canada;

- (b) acted in concert with others and aided and abetted them to smuggle and import cigarettes and tobacco into Canada for sale and consumption without payment of applicable import duties and taxes, in order to defraud the plaintiff; and
- (c) covered up and concealed their actions, and made and caused fraudulent representations to be made upon which the plaintiff relied, including: that the cigarettes and tobacco were intended for sale and consumption outside Canada; that taxes were not payable upon them; and that the defendants were not involved in smuggling.

16. RJR's black market sales were significant, and at their peak doubled the market share for RJR-Macdonald in Canada.

#### **Canadian Tobacco Taxes and Duties**

17. The regime by which Canadian federal taxes, duties and tariffs on tobacco products are levied and imposed is governed principally by four statutes: the *Excise Tax Act*, the *Excise Act*, the *Customs Tariff* and the *Customs Act*. (Since July 1, 2003, the *Excise Act, 2001*, S.C. 2002, c. 22 applies to tobacco products in place of the *Excise Act*. References in this claim are made to the prior *Excise Act* which applied at the material time.)

18. The *Excise Tax Act*, R.S.C. 1985, c. E-15, as amended (Part III, ss. 23(1)) imposes an excise tax on tobacco destined for consumption in Canada. The tax is levied and payable at the point of sale from a Canadian manufacturer or an importer to a purchaser (usually a wholesaler). Specifically, excise tax is payable on:

- (a) tobacco products manufactured or produced and delivered to a purchaser in Canada; and
- (b) tobacco products imported into Canada from other jurisdictions.

19. This excise tax is paid:

- (a) in respect of tobacco products manufactured and delivered to a purchaser in Canada, by the manufacturer at the time of delivery of the goods to the purchaser; and
- (b) in respect of tobacco products imported into Canada, by the importer, owner or other person liable to pay customs duties.

20. The *Excise Act*, R.S.C. 1985, c. E-14, as amended (s. 200(1)) imposes excise duties on the manufacture of tobacco products or the initial processing of raw leaf tobacco. Specifically, excise duties are payable on:

- (a) tobacco and cigars manufactured in Canada, by the manufacturer, at the time the tobacco or cigars are completely manufactured; and
- (b) Canadian raw leaf tobacco, by the tobacco packer, at the time the leaf tobacco is tied or otherwise packaged for consumption.

21. The *Excise Tax Act* and the *Excise Act* permit the lawful export and shipping of tobacco products from Canada, without payment of taxes and duties. Tobacco products, as with other goods, can be moved "in-bond" or transferred and delivered without any taxes or duties being paid if they are destined for an export market and are not intended for consumption in Canada.

Tobacco products for export are kept segregated in an excise bonding warehouse. Entry and exit from an excise bonding warehouse requires export documentation in which the manufacturer/shipper formally represents to the plaintiff both the quantity of product being shipped and that the export is being made in compliance with the law.

22. Federal Goods and Services Tax ("GST") is imposed on the sale of all tobacco products, at each step in the distribution chain. Distributors, wholesalers and retailers are entitled to claim input tax credits equal to the GST already paid on the products they resell with the result that the net GST payable by them is a function only of net value added by them.

23. Provincial product taxes are payable by the wholesaler or the importer on cigarettes and tobacco. (In Ontario, for example, this tax is payable pursuant to the *Tobacco Tax Act*, R.S.O. 1990, c. T.10, as amended.)

24. Cigarettes and tobacco imported into Canada and intended for consumption here were at the material time subject to customs duties (pursuant to the *Customs Tariff*, R.S.C. 1985, c. C-41, as amended) which mirrored the excise duties applicable to tobacco products manufactured here, excise tax (pursuant to the *Excise Tax Act*), GST and any applicable provincial tobacco tax. This was to level the playing field between imports and domestic cigarettes. Within prescribed limits, cigarettes and tobacco manufactured in Canada or imported through duty free stores were not taxed.

#### **RJR's Business in the Ordinary Course**

25. Before 1991, RJR-Macdonald manufactured and distributed both Canadian cigarettes and fine cut tobacco (roll-your-own) (collectively referred to in this claim as tobacco products). The

market was essentially limited to Canada. RJR-Macdonald exported a very small proportion of its total production to the United States for consumption by Canadians there and for purchase by Canadian shoppers visiting duty free or retail stores close to the border.

26. Canadian tobacco is made from Virginia leaf tobacco which has a different flavour than the burley leaf tobacco made in the United States. Accordingly, the market in the United States and in the Caribbean for Canadian style tobacco products is negligible.

27. RJR-Macdonald's share of the Canadian tobacco market was historically approximately 16 percent, but was declining.

#### **RJR First Engages in Smuggling**

28. Before the tax increases particularized below, RJR-Macdonald and RJR International had conducted smuggling operations, albeit on a much smaller scale than the massive conspiracy described in this claim.

29. In 1987, RJR International established a Special Markets Division. It operated from the RJR International offices in Winston-Salem, North Carolina from which the large scale smuggling operations described below would also later be managed. The employees responsible for Special Markets were Thomas Brock ("Brock") and Franco Gabriele ("Gabriele").

30. From 1987 onwards, RJR-Macdonald exported Canadian tobacco products directly to the Special Markets Division or at its direction to other entities outside Canada. RJR-Macdonald intended these cigarettes to be consumed in Canada (as they ultimately were). The Special Markets Division then supplied agents and intermediaries who, with the knowledge and

assistance of RJR-Macdonald, smuggled tobacco products back into Canada, taxes and duties not paid, for sale in the black market.

### **Tobacco Tax Increases**

31. In 1991, the Canadian government increased taxes and duties by three cents per cigarette (\$6.00 per carton). Applicable taxes and duties on other tobacco products were also increased. The provincial governments matched the federal tax increases with another \$6.00 per carton increase. The end result was that applicable taxes and duties on cigarettes and tobacco increased by approximately 100 percent. In two years, the average price of a carton of cigarettes skyrocketed from \$26.00 to \$48.00, or higher.

32. These federal tax increases were imposed to implement a National Strategy to Reduce Tobacco Use and particularly to discourage young people from smoking, essentially by putting the price of cigarettes beyond their reach.

33. Even before these significant tax increases, Canadian taxes and duties payable on tobacco products were materially higher than comparable taxes levied in the United States. The price of Canadian cigarettes sold in the U.S. was less than 50 percent of the comparable price in Canada.

### **Edward Lang Demands Increased Sales and Pressures Staff**

34. Edward Lang ("Lang") was Chairman and Chief Executive Officer of RJR-Macdonald and Vice President of RJR International from 1986 to 1994. He was the senior corporate officer of the RJR operating companies who had ultimate responsibility for the smuggling activities and conspiracy described in this claim. He was intimately involved in the fraudulent acts and conspiracy described in this claim. Lang sat on the Board of the CTMC in 1992 and 1993.

35. In 1991, RJR-Macdonald's market share was falling, in a market that was shrinking overall as the plaintiff's National Strategy to Reduce Tobacco Use began to take effect.

36. In addition to shrinking sales in Canada, RJR-Macdonald's cross-border market sales had peaked and were declining. Canada introduced tighter controls on cross-border shoppers and their personal exemptions, and exchange rate fluctuations meant there was no longer an economic incentive for Canadians to cross the border to purchase tobacco products. Cross-border consumer demand shrivelled.

37. The RJR Group was also still reeling from the crippling financial impact of a leveraged buy-out by RJR Nabisco. RJR-Macdonald came under extreme pressure from Lang to increase tobacco sales. The RJR Group had earlier tasted illicit profits from smuggling, and now turned voraciously to these illegal ventures.

38. The members of RJR-Macdonald's Operating Committee included Lang, Paul Neumann, ("Neumann"), who was a senior finance executive, Stan Smith, ("Smith") who was a senior sales executive, and other senior management. At a meeting of this Committee, Nigel Holmes ("Holmes"), RJR-Macdonald's Regional Sales Director, who had prepared a report, proposed a scheme to respond to Lang's demands, to increase sales and to ensure the survival of RJR-Macdonald, whose continued existence was then in issue.

### **The Plan**

39. RJR-Macdonald knew that Native Americans are generally exempt from applicable U.S. taxes and are able to purchase tobacco products in Canada and the United States tax free.

40. It also knew that the United States government had declared certain defined areas within the United States as Foreign Trade Zones ("FTZs") into which goods could be imported (and where some limited value added activities could occur), but where no U.S. taxes were payable unless and until the goods were released into the stream of commerce within the United States.

41. Holmes proposed to create a distribution channel that RJR-Macdonald would use to supply and support smugglers with its tobacco products manufactured in Canada. Cigarettes and tobacco would be shipped from Canada, tax not paid. The tobacco products would then be transferred through FTZs and into the St. Regis/Akwesasne Indian Reservation or to other agents and intermediaries to be smuggled back into Canada, tax not paid, for illegal sale.

42. The purpose and intent of the scheme was to increase sales and market share by organizing, supplying, aiding and abetting smugglers and supporting distribution channels designed to smuggle tobacco products into Canada, tax not paid, for sale on the black market. The further purpose and intent of the plan was to force the roll-back of tobacco taxes.

#### Akwesasne

43. The St. Regis Mohawk/Akwesasne Indian Reservation ("Akwesasne") is unique in a number of respects material to the scheme:

- (a) it comprises territory spanning the Canada/U.S. border, in the state of New York and the provinces of Ontario and Quebec;
- (b) the international border runs through Akwesasne along the St. Lawrence River. At this location the river is particularly narrow and not difficult to cross;



- (c) Natives moved freely and regularly within Akwesasne, and because of its geography, also moved easily between Canada and the United States; and
- (d) enforcement of Canadian and American laws including taxation statutes on Akwesasne was exceedingly difficult and complicated.

44. The defendants knew all this and in furtherance of the conspiracy found ways to use Akwesasne as a funnel for the smuggling of RJR-Macdonald's tobacco products.

45. At a date unknown to the plaintiff, the defendants or some of them destroyed or caused to be destroyed Holmes' report to the Operating Committee. The defendants destroyed this document, and others described below in this claim, to conceal the conspiracy and to defeat the plaintiff's claim.

#### **The Conspiracy is Organized**

46. In 1992, RJR-Macdonald and RJR International agreed to implement the plan. Lang directed RJR-Macdonald personnel to meet with individuals who Lang knew were smugglers. The purpose was to organize RJR channels of distribution through which to sell RJR-Macdonald tobacco products in Canada through smuggling in order to unlawfully evade applicable excise duties and taxes as the products were unlawfully exported out of Canada and also import duties as they were smuggled back in.

47. The conspirators (RJR-Macdonald and RJR International) agreed and conspired together to implement an unlawful scheme, the purpose of which was to injure the plaintiff, deprive the plaintiff of excise and import tax revenues and force the roll-back of Canadian excise taxes and duties.

48. The conspiracy required that other RJR employees including Smith and Leslie Thompson ("Thompson"), a manager with senior responsibility for sales reporting to Smith, be drawn in. Lang personally made the first contact, by telephone to Robert Tavano. Lang then instructed Smith to arrange for Thompson and other RJR Group employees to meet in Niagara Falls, New York with the principals of LBL Importing Inc. ("LBL") (including Larry Miller, and Robert and Lewis Tavano) to create and organize the RJR channels of distribution for smuggling.

49. The conspirators knew that LBL and its principals were smugglers and that they could provide the black market distribution channels they needed. LBL had existing channels and relationships through which it purchased Canadian tobacco products outside Canada, and using FTZs, Native intermediaries and other means, smuggled cigarettes back into Canada.

50. In this and other meetings, the conspirators agreed with LBL and later with other smugglers to establish RJR channels of distribution for smuggling RJR-Macdonald's tobacco products. The common purpose was to increase sales of the defendants' cigarettes and tobacco in Canada and gain an increased share of the smuggling trade in tobacco products. The agreement also advanced the conspirators' goal of forcing the roll-back of excise taxes.

51. Although LBL received millions of cigarettes shipped from Canada ostensibly for sale in the U.S. market, RJR-Macdonald directed LBL which agreed, as later did all of the smugglers (including Pine Partnership), that it could make no sales in RJR-Macdonald's existing and legitimate U.S. market, and that all LBL sales had to feed the smuggling network into Canada.

52. LBL had never before dealt with RJR-Macdonald and, if it had been a legitimate wholesaler or distributor, LBL would have been subject to a rigorous and lengthy customer approvals process, including detailed credit analysis. LBL however was exempted from this

review in order to assume its role in the conspiracy immediately, to open smuggling channels for RJR-Macdonald tobacco products.

53. LBL was incorporated into the conspiracy to insulate the RJR Group companies and the individuals from exposure, and to leverage LBL's existing distribution network, accelerate the conspiracy and hasten the entry of RJR Group cigarettes into the black market in Canada.

54. Lang, Neumann, Holmes, Smith, Thompson, the other members of the Operating Committee, and the employees who acted on or by reason of Lang's direction were at all times acting in the usual and ordinary course of their employment with RJR-Macdonald. Lang was also acting in the usual and ordinary course of his employment with RJR International, as Vice President and the CEO of its Americas division. Lang was at all material times the directing mind of RJR-Macdonald and RJR International.

#### **Implementing the Conspiracy**

55. There were many meetings with LBL. They involved senior RJR Group executives, including Gabriele from RJR International's Special Markets Division. At one meeting attended by Neumann and Gabriele, LBL was specifically appointed a distributor of Export "A" brand Canadian cigarettes.

56. RJR-Macdonald and RJR International personnel visited FTZs in New York to further smuggling operations. They visited Akwesasne to direct and ensure the success of the conspiracy. For instance, at the express direction of senior management, RJR-Macdonald's employee, Christopher Fragomeni ("Fragomeni"), repeatedly visited Akwesasne to assist and monitor the smuggling. Fragomeni provided detailed reports of his visits, sometimes in writing.

to the RJR-Macdonald Operating Committee. At least one report included particulars on inventories, market penetration, and photographs.

57. RJR Group executives were instructed to associate and socialize with smugglers in order to improve business relations and ensure the success of the scheme. RJR Group executives regularly entertained smugglers at the Sonora Lodge in British Columbia. They invited smugglers on fishing and golfing trips, and spent lavishly on entertainment. The RJR Group even took the smugglers to Puerto Rico to tour its production facilities there.

58. The president of RJR-Macdonald, Pierre Brunelle, proudly gave a tour of the company's Montreal production facilities to LBL representatives. The conspirators carefully cultivated their relations with the smugglers, and treated them as prized partners and customers. Their purpose was to increase RJR-Macdonald's share of the market among smugglers, to aid and abet the smuggling and increase tobacco sales in Canada, and to pressure Canada into lowering its tobacco taxes.

#### **Doing Business with Smugglers**

59. The conspiracy produced startling financial transactions in the rush to capitalize on the fraud.

60. For example, in late 1992, at the express direction of senior management of RJR-Macdonald, Thompson arranged for LBL to purchase significant quantities of tobacco that had not yet even been produced. LBL paid RJR-Macdonald U.S. \$5 million by a single cheque, hand delivered by courier to Thompson. There was neither supply nor demand for this product. LBL

had sufficient inventory and did not require additional shipments at that time. RJR-Macdonald could not have shipped the non-existent product in any event.

61. However, RJR-Macdonald had forecast to RJR International increasing sales and profits in a stunning amount from projected yearly sales to LBL, and was ordered to find the money. Five million dollars was needed in short order to meet the target. RJR-Macdonald arranged for a standby letter of credit in LBL's favour to backstop LBL's purchase. The transaction was a sham, simply an accommodation between co-conspirators in a common venture to smuggle cigarettes into Canada.

62. Proceeds from the sale of smuggled cigarettes and fine cut tobacco produced by the conspiracy flowed back to RJR-Macdonald in bizarre fashion, inconsistent with normal commercial conduct and reflecting their illicit source. Manually prepared cheques were hand delivered to RJR-Macdonald personnel. On a number of occasions, Thompson himself would meet Miller or one of the other principals of LBL at a truck stop on Highway 401 in Ontario to receive payment. Cheques were flown on small privately owned aircraft to Toronto Island airport where the aircraft were met by Thompson's secretary, or Fragomeni, or other RJR personnel.

63. The quantities of tobacco products shipped were remarkable. For example, in 1992 alone, RJR-Macdonald exported to LBL at least 495,000,000 cigarettes and 149,000 kilograms of fine cut tobacco.

64. RJR-Macdonald counted as sold billions of cigarettes and cases of fine cut sitting in FTZs awaiting smuggling back into Canada, even though they had not yet been sold. It was assumed that the future shipments to its co-conspirators would occur, on schedule and fully paid.

65. LBL, on RJR's behalf, also utilized more traditional means of smuggling tobacco products into Canada, including truck transport and container forwarding.

**Fraudulent Representations**

66. The cigarettes and tobacco smuggled into Canada for illegal sale through FTZs and Akwesasne were manufactured in Canada. To advance the conspiracy, and to evade excise duties and taxes applicable on tobacco products manufactured in Canada for consumption in Canada, RJR-Macdonald fraudulently misrepresented to the plaintiff that the tobacco was for export only.

67. The false and misleading statements made by RJR-Macdonald on behalf of the RJR Group, that the tobacco was for export only and not for consumption in Canada, included the following:

- (a) cigarette packages, cartons and boxes contained the representations "Only for Sale Outside Canada" and "Not for Sale in Canada";
- (b) cigarette packages were exported wrapped with a coloured band representing that excise duties and taxes had not been paid and thus the cigarettes were for export only;
- (c) excise forms completed, submitted and filed with the plaintiff and which accompanied shipments of cigarettes or tobacco ostensibly for export included the express signed representation: "I certify that the transaction described herein is correct and authorized under the provisions of the *Excise Act* and Regulations";  
and

- (d) RJR-Macdonald was similarly required to file domestic consumption reports detailing tobacco products manufactured and intended for consumption in Canada. In representing the quantum of tobacco products manufactured for domestic consumption, RJR-Macdonald did not include its shipments to its co-conspirators, and expressly understated and misrepresented such amounts.

68. These were fraudulent representations. They were made with the intent to initiate and form the conspiracy to smuggle tobacco products into Canada, tax not paid, and to defraud the plaintiff. The plaintiff relied upon RJR's fraudulent misrepresentations and permitted the sham export of cigarettes and tobacco, tax free. The plaintiff did not take its usual steps to collect taxes and duties upon these tobacco products intended for consumption in Canada.

69. The result of the conspiracy was that massive quantities of cigarettes and tobacco were smuggled into Canada, after sham export, tax not paid, from Canada to FTZs in the United States, shipment to Akwesasne and other points of entry and importation across the border back into Canada, leading to the direct and indirect distribution of the tobacco products, tax not paid, throughout Canada on the black market.

70. Accordingly, the smuggling also deprived the plaintiff of applicable import duties and taxes.

#### **Conspiracy Expands to Puerto Rico**

71. In January 1992, the Government of Canada imposed significant export taxes on cigarettes, specifically to combat suspected smuggling of exported cigarettes back into Canada.

At the time (and ever after), RJR consistently falsely represented to the plaintiff that it was not involved in the smuggling but that smuggling was the work of organized crime.

72. The RJR Group set about to avoid this export tax and feed the conspiracy to evade applicable import duties and GST by literally transporting and then reassembling Canadian cigarette production lines in Puerto Rico to manufacture Canadian cigarettes there, intentionally manufactured for distribution and consumption within Canada and in fact ultimately distributed and consumed within Canada.

73. There was not and never had been a market for RJR's Canadian style cigarettes in Puerto Rico or the Caribbean. RJR-Macdonald's purpose in transferring production to Puerto Rico was to establish an even lower cost (by avoiding the new export tax) for Canadian cigarettes to be smuggled back into Canada, import tax not paid, through its established illegal distribution channels and through additional smuggling co-conspirators.

74. RJR-Macdonald did not have legal or operational control of RJR Puerto Rico. The parent of RJR Puerto Rico, RJR U.S., was active in expanding the conspiracy to include a Puerto Rican smuggling operation. The conspiracy now also encompassed the following agreements and concerted action by the conspirators (now RJR-Macdonald, RJR International, RJR Puerto Rico and RJR U.S.):

- (a) RJR-Macdonald, which held the licence for its Export "A" brand cigarettes, licensed its related entity, RJR U.S., to manufacture the Export "A" brand;



- (b) RJR U.S. in concert with RJR International, directed their related entity, RJR Puerto Rico, to manufacture Canadian cigarettes using Virginia leaf tobacco exported from RJR-Macdonald plants in Ontario;
- (c) RJR International and RJR-Macdonald placed orders for the Canadian cigarettes manufactured in Puerto Rico through RJR International's offices in Winston-Salem. The shipments were routed through various channels and co-conspirators, who rarely took physical possession of the cigarettes, to FTZs, to Akwesasne, and to other points of illegal entry. From there, the cigarettes were smuggled without the payment of import taxes into Canada and then sold on the black market; and
- (d) RJR International, RJR-Macdonald and RJR Puerto Rico employed circuitous routes and numerous entities to smuggle the cigarettes into Canada, to conceal the conspiracy. Destinations included the Caribbean islands of Aruba, Antigua and St. Maarten, and intermediaries and agents such as IDF in Aruba (defined below).

75. Although RJR Puerto Rico invoiced its Caribbean agents so that they would appear to be bona fide purchasers, it was agreed they were not liable to pay. Rather, an intermediary simply re-invoiced those next in the chain to whom the products were actually shipped. The proceeds from sale took a circuitous route in reverse. Initially, customers remitted payments directly to RJR Puerto Rico. Later, the funds were laundered through an intermediary who passed on the monies it received to RJR Puerto Rico and/or other RJR Group entities, making the funds more difficult to trace.

76. For instance, Bryan Harms ("Harms") operated International Duty Free Trading N.V. ("IDF"), an import/export company on the Caribbean island of Aruba. Harms was known to the

RJR Group, and had dealt for many years with RJR International and its Special Markets Division. His contacts were Brock and Gabriele. He had facilitated the shipment of RJR Group cigarettes into other jurisdictions.

77. Gabriele, Brock and RJR International now leveraged this relationship again to act in concert with Harms to further expand illegal channels of distribution for RJR-Macdonald's tobacco products.

78. In 1992, Gabriele on behalf of RJR International's Special Markets Division, approached Harms. They agreed to the following scheme. An RJR International employee, Harold Hinson ("Hinson"), located in the company's headquarters at Winston-Salem, called IDF on a regular basis and advised that RJR Puerto Rico would be making a shipment of tobacco products to IDF. Hinson provided IDF with onward shipping and billing instructions. RJR Puerto Rico faxed invoices (for which IDF was not liable) and bills of lading ahead of the shipments. Often, however, RJR Puerto Rico did not even bother with this formality. Aruba port authorities would just advise IDF that its containers had arrived at the port, providing IDF its first notice of another shipment from the RJR Group.

79. Harms then forwarded the shipments into the illegal channels of distribution, initially according to instructions received from RJR International and later from Roland Kostantos of RJR-Macdonald and Peter MacGregor on behalf of NBI. IDF made major shipments to LBL and J.R. Attea Wholesale ("Attea"), among others.

80. In 1992 and 1993 alone, in furtherance of the conspiracy described in this claim, RJR manufactured approximately 2 billion Export "A" cigarettes at its Puerto Rican manufacturing facilities, all to be smuggled into Canada, tax not paid. This arm of the conspiracy continued in

business until at least 1998, even though the 1992 export tax was rolled back in April 1992, two months after it was imposed.

81. RJR-Macdonald ensured that Puerto Rican packaging mirrored Canadian packaging, in a further effort to facilitate smuggling and sales in Canada. It included text in the French language, as required for cigarettes manufactured in Canada for consumption in the Canadian market.

82. RJR did not transfer Canadian tobacco and manufacturing facilities to Puerto Rico for a lawful, commercial purpose. The tobacco was intended for return and consumption from where it came, as Canadian cigarettes sold to Canadians in Canada, without payment of taxes. This scheme was simply one element of an ongoing conspiracy to evade taxes and smuggle cigarettes into Canada, import tax not paid, and was also to conceal the involvement of RJR Group companies, and insulate their assets from exposure and liability.

83. RJR-Macdonald also entered into an agreement with Standard Commercial of Wilson, North Carolina to package RJR-Macdonald's fine cut tobacco. Again, RJR-Macdonald used packaging that was indistinguishable to the average consumer from domestic Canadian packaging. Since there was virtually no U.S. market for this product, almost all of it was, as intended, smuggled back into Canada.

**The Conspiracy Expands Again: RJR Creates its own Smuggling Company**

84. The volume of cigarettes being smuggled grew to such significance that the conspirators became increasingly nervous about potential exposure of their illegal conduct.

85. The conspirators therefore set about to further insulate the principal operating companies and individuals involved and to protect the assets of the RJR Group from judgment and execution.

86. RJR Tobacco, the senior holding company in the RJR Group, now became directly involved in the scheme as a conspirator. It agreed to incorporate, as its own wholly-owned subsidiary, the defendant Northern Brands International, Inc. for the purpose of constructing an illegal business.

87. In 1993, RJR Tobacco with RJR International, RJR-Macdonald, and the senior executives of each, established the new entity, NBI. The RJR Group's purpose for creating NBI was to further the conspiracy, to ensure its concealment and to insulate their assets.

88. In March 1993, Peter MacGregor ("MacGregor"), a senior finance executive at RJR-Macdonald reporting through Neumann to Lang, made a presentation at RJR Group headquarters in Winston-Salem, during RJR International's annual financial conference. Present were senior corporate officers of various RJR Group companies, including RJR U.S., RJR Tobacco and RJR International. For example, RJR International's Chief Financial Officer, Jaap Uittenbogaard, was in attendance. MacGregor had prepared a presentation, and at the meeting detailed the reasons to incorporate and operate NBI to insulate the RJR Group from its intentional failure to comply with Canadian laws.

89. NBI was inserted into the conspiracy and operated seamlessly as a vehicle to shelter and protect the RJR Group from ultimate detection and liability. NBI operated as a clearing house for smuggling and for distributing the proceeds from smuggling.

90. RJR-Macdonald nominally transferred Thompson and MacGregor to NBI and they relocated to Winston-Salem. Their responsibility for the Canadian market, however, remained unchanged.

91. NBI, although structured to give the appearance of independence from RJR-Macdonald, was in fact a sham in that:

- (a) while it was a wholly-owned subsidiary of RJR Tobacco and had no traceable corporate relationship with RJR-Macdonald, it was designed to sell exclusively cigarettes and tobacco intended only for the Canadian market;
- (b) in reality, the daily business of NBI was carried on by two Canadians: Thompson and MacGregor (with their assistant);
- (c) its offices were physically located within the offices of RJR International;
- (d) Thompson and MacGregor, while physically located at RJR International, continued to report directly to RJR-Macdonald;
- (e) Lang directed the operations of NBI and its employees;
- (f) RJR-Macdonald set tobacco prices for NBI;
- (g) NBI's profits were consolidated with those of RJR-Macdonald;
- (h) NBI's operating costs were charged back to RJR-Macdonald; and
- (i) RJR Tobacco had existing U.S. operations (RJR U.S.), Canadian operations (RJR-Macdonald) and International operations (RJR International) all of which were

already selling RJR-Macdonald's Export "A" cigarettes in their respective legitimate markets.

92. The framework of each transaction followed one of two typical patterns, depending on the source of the tobacco products.

93. Where sourced from Canada:

- (a) RJR-Macdonald manufactured Canadian cigarettes and other tobacco at its Canadian manufacturing facilities in Montreal;
- (b) RJR-Macdonald falsely represented to the plaintiff that the tobacco products were for export and were not intended for consumption in Canada;
- (c) the tobacco products were shipped to FTZs in New York state where title to the product was transferred to NBI;
- (d) representatives of, for example, LBL (most often Robert Tavano) telephoned Thompson at NBI's offices in Winston-Salem to order the tobacco, already physically located at the FTZs. Thompson gave Tavano the purchase price;
- (e) LBL paid NBI for the tobacco by wire transfer from LBL's bank in Massena, New York to NBI's bank account;
- (f) NBI then paid RJR-Macdonald for the tobacco products by two monthly payments. The first was wired to RJR-Macdonald's bank in Toronto and styled as a "royalty cheque". At times, royalty cheques equalled one million dollars per month. The second was significantly larger and represented most of the proceeds

received for the tobacco. While the proportions and payees varied from transaction to transaction, this larger amount was wired to the accounts of various RJR entities: RJR-Macdonald, RJR Puerto Rico and RJR International; and

- (g) after receiving the payments, RJR-Macdonald notified the FTZ to transfer title to LBL which then shipped the tobacco to suppliers on the Akwesasne Reservation for smuggling into Canada.

94. Where the cigarettes were sourced from Puerto Rico, the pattern was as described in correspondence dated September 29, 1993 from MacGregor on behalf of NBI to Harms. This correspondence confirmed how RJR orchestrated every step of the transaction through to ultimate delivery to the consumer. The correspondence confirmed that NBI:

- (a) prepared sales memoranda describing price, sales data, any special terms, shipment details and other particulars;
- (b) reviewed the financial terms of the transaction through its finance group to ensure compliance with company sales policy and customer profiles;
- (c) prepared order forms for the Caribbean intermediaries;
- (d) confirmed directly to RJR Puerto Rico the approved sales orders and authorized the filling of the orders by RJR Puerto Rico;
- (e) sent pro forma sales invoices and outbound bills of lading together with certificates of origin and title transfer forms to IDF (Harms' company) and

warehouse release authorization forms. NBI dictated that IDF and the Aruba Port would not release product until this documentation was received;

- (f) arranged for the daily notification by IDF and Aruba to NBI Finance of all title transfers;
- (g) monitored the specific due dates for receivables and communicated with customers before the due date to arrange for the wire transfer to the appropriate RJR Puerto Rico bank accounts; and
- (h) authorized (and provided pro forma authorization letters) to release the product in North America to the notional wholesalers, in many instances, J.R. Attea Wholesale ("Attea").

95. Tins of fine cut tobacco smuggled into Canada contained the fraudulent misrepresentation "Manufactured by Northern Brands International, Inc. Winston-Salem, North Carolina, 27102, under licence from RJR-Macdonald Inc." NBI did not manufacture anything. The defendants intended to disguise the fact that NBI was merely a shell, and mislead the reader into believing that it was a U.S. entity of substance, with its own manufacturing facilities and responsibilities.

96. The conspirators (now all the defendant corporations of the RJR Group) further expanded the conspiracy and entered into fraudulent and unlawful agreements with other co-conspirators, including:

- (a) J.R. Attea Wholesale ("Attea") – which operated from a principal place of business at 294 Ed Harris Road, Ashland City, Tennessee 37015 and 1010



Niagara Street, Buffalo, New York. Attea is and was affiliated with EHA International and, from time to time, purchased tobacco in the name of its customs broker which it controlled, A.N. Derringer. Attea also had a relationship with Harms and IDF. Attea purchased Export "A" cigarettes from the Special Markets Division of RJR International and from NBI sourced from RJR-Macdonald and from RJR Puerto Rico. Attea sold tobacco to customers on the Akwesasne Reservation.

- (b) Bensen International Tobacco ("Bensen") – Bensen's principal place of business was 3301 El Camino Riel, Suite 200, Atherton, California 94027. It wire transferred money from California to RJR-Macdonald's offices in Toronto, Canada and to Winston-Salem, (to NBI and/or RJR International – Special Markets), all for the purchase of Canadian manufactured tobacco "exported" out of Canada for smuggling back in. Bensen purchased from both RJR-Macdonald and NBI and transferred products to Akwesasne for smuggling back into Canada;
- (c) Springbok Trading Company ("Springbok") – Springbok is located in Hamilton, Bermuda. It purchased fine cut tobacco from RJR-Macdonald and cigarettes from RJR Puerto Rico for transfer through Akwesasne and smuggling back into Canada;
- (d) Pine Partnership Inc. ("Pine") – a company operated by Robert and Lewis Tavano from 2025 Pine Avenue, Niagara Falls, New York and 643 19<sup>th</sup> Street, Niagara Falls, New York. As described earlier in this claim Pine Partnership smuggled

Export "A" cigarettes manufactured by RJR-Macdonald in Montreal, Canada and RJR Puerto Rico in Puerto Rico;

- (e) BOL Import/Export Limited ("BOL") – located in the Caribbean island of Saint Maarten. It obtained tobacco for Pine Partnership from RJR Puerto Rico;
- (f) J.B.M.L. International Import / Export ("JBML") – JBML has a head office at P.O. Box 814, Buffalo, New York 14213 and directed the transfer of tobacco from RJR-Macdonald's production facilities in Montreal, Canada "in-bond" to the United States for sale through Akwesasne and smuggling back into Canada. It purchased from RJR-Macdonald, RJR International – Special Markets and NBI;
- (g) SMT Inc. ("SMT") – SMT is located at 10556 NW 26<sup>th</sup> Street, Suite 101, Miami, Florida 33172. It sourced cigarettes from Montreal, Canada and Puerto Rico, and purchased product from RJR International – Special Markets and NBI for transfer through customers on Akwesasne and smuggling back into Canada;
- (h) S.V. Int'l Trading ("SV") – SV was based in Montreal, Canada. It purchased cigarettes from RJR-Macdonald's Montreal production facilities and from NBI. It had the cigarettes shipped "in-bond" to Air Industrial Park 6, Plattsburgh, New York for transfer to customers on Akwesasne and smuggling back into Canada;
- (i) Wade Supply & Service Inc./ Wade Group / Cardora ("Wade") – Wade is located at 696 Rue William, Montreal, Canada. Wade Group and its principal, Gideon Loran, purchased cigarettes from RJR-Macdonald in Montreal and NBI for transfer through Akwesasne and smuggling back into Canada; and

- (j) VTN – One of the principals of LBL, Larry Miller, established a new company called VTN (named after his daughter Victoria, son-in-law Tim, and son Nick) to continue and further expand the conspiracy. VTN in turn established a company in Antigua through which it purchased and smuggled tobacco into Canada from RJR Puerto Rico.

97. For all these entities, and others within the defendants' knowledge, the conspirators actively sought out and supplied these smugglers, facilitated their purchases, and acted in concert with them to import cigarettes into Canada through their illegal channels of distribution for sale, tax not paid, on the black market.

98. RJR-Macdonald and NBI provided marketing data to their co-conspirators and directed distribution of the smuggled tobacco products to those markets in Canada where demand for them was highest. RJR-Macdonald, and Lang personally, directed company personnel to explore with their co-conspirators possible additional smuggling points of entry into Canada to further advance the conspiracy. RJR-Macdonald, NBI and RJR International personnel flew to Alaska along with smugglers to scout opportunities there.

#### **The Illegal Profits**

99. By late 1993, RJR-Macdonald's Operating Committee was routinely discussing the smuggling scheme during its weekly meetings. Lang also reported to senior officials from each of RJR International, RJR U.S. and RJR Tobacco (including the CEO of RJR Tobacco, James Johnston) that NBI had net profits for the third quarter of 1993 alone of U.S. \$58 million.

100. The Minutes of the Operating Committee meetings were subsequently destroyed to prevent detection of the conspirators' involvement in NBI's illegal activities.

101. Although 1993 was NBI's first year and it operated for only a partial fiscal year, NBI accounted for fully 60 percent of the U.S. \$100 million profit earned by RJR-Macdonald in 1993. Lang bragged that NBI was more profitable than the Ford Motor Company of Canada.

102. Of eight billion cigarettes sold by RJR-Macdonald in 1993, fully five billion were sold by this newly created entity, exclusively in furtherance of its fraudulent business.

103. Lang directed senior staff to conceal RJR's smuggling business. He cautioned employees against putting anything in writing that could be damaging. He hired investigators to search for tracing or bugging equipment on computers and telephones at RJR-Macdonald. The defendants were successful for years in avoiding detection of their conspiracy.

104. Lang directed that a separate sham office be set up across the street from RJR-Macdonald's corporate offices in downtown Toronto, Ontario. Lang instructed senior management (including Smith) to use that office when they made calls or otherwise transacted smuggling business. Lang issued phony business cards to Smith, representing that Smith worked for a "trading company" (of which Smith had never heard). Telephones at the sham office were to be answered in the name of this phony company. All of this was carried out in an effort to distance the defendants from what they knew to be illegal conduct and tax evasion.

105. RJR Tobacco, the direct parent of NBI, knew of these activities, benefited from the proceeds of the conspiracy and actively encouraged the other conspirators at the RJR Group to

continue the smuggling scheme, make fraudulent representations to the plaintiff, and cover up and conceal.

**Defendants' Sophisticated Smuggling Operations Force Roll-back of Canadian Taxes**

106. The defendants' unlawful activities were extraordinarily successful.

107. Smuggled cigarettes flooded the Canadian market. As the defendants had intended, Canada's National Strategy to Reduce Tobacco Use, particularly for teenagers and young adults, was thwarted and circumvented. Cigarette consumption was not reduced.

108. The Government of Canada was eventually forced to act, in direct response to the concealed conspiracy and fraud of the defendants, to reduce the motivation for smuggling. In 1994 the plaintiff dramatically decreased applicable taxes to reduce the retail price of cigarettes in Canada.

109. The plaintiff, as it had for a few months in 1992, imposed an export tax on Canadian tobacco products, to reduce the economic incentive for the illegal importation to the Canadian market by organized crime, which the defendants continued to represent to the plaintiff was responsible for the smuggling.

110. LBL and other co-conspirators complained to the defendants about the effects of the new tax roll-backs on their smuggling markets. There were meetings and communications among the defendants about the detrimental effect of these lower taxes on NBI and the profits it was generating.

111. In April 1994, NBI reacted to the roll-back of Canadian taxes. MacGregor wrote to Derrick Wallace ("Wallace"), another executive at RJR-Macdonald, requesting an inventory

credit for NBI. MacGregor stated that the tax roll-back was having a severe impact on NBI's business and in order for NBI's smuggling customers to remain competitive, the price would have to be reduced.

112. Lang became involved. He instructed Wallace to obtain approval from RJR International to write-down the value of massive inventories of Canadian tobacco at FTZs in the United States. This write down permitted NBI to sell cigarettes at lower prices thus maintaining the differential on the black market in Canada between the price of smuggled cigarettes and the now lower priced cigarettes being sold legitimately.

113. Following the imposition of the export tax in 1994, the conspiracy to smuggle continued apace, including with tobacco sourced from Puerto Rico and North Carolina, as did the fraudulent misrepresentations, denials of involvement and the defendants' efforts directed at the continuing fraudulent concealment.

#### **Defendants' Continued Fraudulent Misrepresentations and Fraudulent Concealment**

114. The defendants had anticipated that Canada would attempt to combat smuggling and stem the tide of illegal cigarettes coming into Canada. The defendants had planned to defeat these efforts.

115. An essential component of the defendants' scheme was a sophisticated campaign of misinformation and deception designed and implemented to further the conspiracy and its objectives. The defendants acknowledged that smuggling was occurring, but feigned ignorance about the identity of those orchestrating and implementing the scheme. They emphatically denied they had any involvement in smuggling. The defendants went beyond mere denials of

involvement and made repeated and vehement misrepresentations about those whom they alleged were in fact responsible for the smuggling.

116. These denials and assertions were made fraudulently. Their purpose and the message the defendants and the CTMC on their behalf delivered was that little could be done to stop the smuggling, that RJR was dealing only with legitimate wholesalers and did not know the identity of the criminals, and that the only means to combat smuggling was to roll back tobacco taxes and duties.

117. These fraudulent misrepresentations and denials were made publicly, to the media and also privately to senior officials of the Canadian government with the twin purposes of bringing public pressure to bear on the plaintiff to roll back cigarette taxes while continuing in the meantime to throw Canada off the scent, so that the conspiracy and the stunning profits it generated could continue unabated.

118. The truth was that they had agreed with these "legitimate wholesalers" that no tobacco products could be sold in the U.S., and that all must be sold illegally in Canada. They also knew that they were insulated from detection because they were distanced from those actually transporting the products into Canada and were even further removed from those distributing the illegal tobacco products in Canada.

119. RJR-Macdonald executives and spokespeople (in-house and CTMC) made repeated, continuing and express denials and positive assertions that it was not involved or complicit in smuggling. These statements were made to the most senior levels of the Canadian government responsible for the administration and enforcement of Canada's tax and customs laws.

120. The CTMC on behalf of RJR-Macdonald instigated many of these meetings. The plaintiff reasonably relied upon representations for and on behalf of RJR-Macdonald at these meetings that it was not involved with smuggling, wished it to end and would take all reasonable steps to cooperate with government in combating the problem.

121. The RJR Group tailored its statements, meetings, press releases and reports to produce maximum impact on a specific target audience. The RJR Group used a combination of statements from RJR-Macdonald executives, from the CTMC on its behalf and from executives within other RJR Group companies, including from the Chairman and CEO of RJR Tobacco in the United States, to accomplish its objective.

122. The plaintiff received and relied in good faith upon these adamant and indignant denials, accepted the sincerity of the defendants' fraudulent offers of assistance and believed the "Big Lies" and misleading statements of RJR.

**Particulars of the False Denials of Involvement and Dishonest Offers of Assistance**

123. The RJR Group, directly and through its agent the CTMC, made statements throughout the duration of the conspiracy on a consistent basis with the intention that Canada would continue to rely upon them, which it did. For instance:

- (a) in an interview with the Globe & Mail on September 22, 1992 about RJR-Macdonald's manufacturing of Canadian brand cigarettes in Puerto Rico, Robert Parker ("Parker"), President of the CTMC, was quoted as saying that there were "perfectly legitimate outlets for Canadian cigarettes outside the country, such as 'snowbirds in Florida'";



- (b) in identical letters dated October 2, 1992 from Parker to the Deputy Minister of National Revenue and the Deputy Solicitor General of Canada, Parker made reference to the "not infrequent" accusation that the industry was in direct collusion with smugglers, and stated that "this is not true, and is levelled without an iota of evidence." In the same letter, Parker expressly blamed "organized crime" for smuggling and stated that the "greatest concern" of CTMC's three members including RJR-Macdonald was "a rise in tolerance on the part of the public for blatantly illegal activities";
- (c) the Solicitor General responded to Parker's letter, thanking Parker for communicating the CTMC's concerns in relation to tobacco smuggling, acknowledging the efforts that the industry was making to help, including the industry's co-operation with government and law enforcement agencies, and encouraging the CTMC and its members to continue to work with government to get the message across that contraband tobacco represents a loss to all Canadians;
- (d) on October 16, 1992, Parker wrote to the then Deputy Minister of National Revenue, purportedly expressing concern over the growing problem of smuggled tobacco. Parker stated that: "The Canadian tobacco industry continues to oppose smuggling and to work with authorities on effective means for ending it." The Deputy Minister responded to Parker by letter dated October 22, 1992, and expressed the department's appreciation for the cooperation shown by the industry "in our joint efforts to combat tobacco smuggling";

- (e) on November 13, 1992, Parker wrote to the then Deputy Solicitor General of Canada, to advise formally that the CTMC would "be undertaking an information campaign aimed at increasing public awareness of smuggled and stolen tobacco products, how to identify them, and the fact that sale, purchase and possession of such products is illegal";
  
- (f) on December 17, 1993, the Director of Taxation & Compliance Control of RJR-Macdonald wrote to Revenue Canada Customs & Excise to seek leniency in respect of the seizure of product, noting the company's "clean record" and the policy of the company to follow all Customs "rules" to the letter at all times.
  
- (g) on January 13, 1994, Canada's CTV Network broadcast an interview with Parker, by CTV's Keith Morrison. On air, Morrison made reference to the accusation that tobacco companies were alleged or rumoured to be selling directly to smugglers. Parker responded: "if you have...one instance of any one of the Canadian manufacturers selling directly to anybody who is involved in smuggling I think you should present the information to the authorities...it's flatly not true. Not once, not anywhere";
  
- (h) on October 23, 1996, Roland Kostantos, Vice President of Finance and Administration of RJR-Macdonald, wrote to the Department of Finance to discuss RJR-Macdonald's position that the tobacco manufacturer's surtax had to be removed. He stated: "The smuggling problem [is] now behind us". He also stated: "So far there has been only limited production of RJR's Canadian brand cigarettes in foreign plants, and such production has been restricted to meeting the

needs of consumers outside of Canada. RJR's flagship brand, Export "A" is already produced and consumed outside of Canada...".

- (i) on December 16, 1996, MSNBC broadcast a report on tobacco smuggling in Canada. During the broadcast, a CTMC spokesperson denied that the tobacco industry played a direct role in the smuggling crisis: "It's not like the industry was sitting in a boardroom trying to think of ways to increase the smuggling";
- (j) on November 19, 1997, Bradley Price, the Director of Taxation and Treasury at RJR-Macdonald, wrote to Revenue Canada concerning a number of administrative issues involving application of the *Excise Tax Act* to RJR-Macdonald's tobacco products. Price stated that RJR-Macdonald manufactured tobacco products were "sold to customers located in Canada for consumption within Canada and sold to customers located in foreign jurisdictions for consumption outside of Canada."
- (k) on January 24, 1998, Parker was interviewed on CBC Radio by Jason Moscovitz, and again denied RJR's involvement in smuggling: "...And every time I've heard it – ever since I was retained by the industry, six or seven years ago – I have said, 'if you have the slightest evidence of improper or illegal behaviour by any of these companies – selling to people who weren't licensed, helping anybody evade the payment of taxes, etc. – talk to the authorities.' And from the outset to today, there hasn't been a single charge laid – there hasn't been a single piece of factual evidence brought forward and when you consider the rabid hatred that anti-tobacco people have for the manufacturers, I think the absence of charges, after

all [laughing] these years is eloquent evidence that there is nothing to these charges." Parker responded to the allegation that the Canadian tobacco manufacturers participated in smuggling to influence Canada to change its policy on the taxation of cigarettes by: "utter bloody nonsense! I mean, bring forth a piece of evidence; don't just make that accusation";

- (l) on June 7, 1998, in an article in the *Syracuse Herald American* headlined "Tobacco Executives had a hand in Smuggling", an R.J. Reynolds spokesman, John Singleton, denied the company encouraged or aided smugglers in any way. "Clearly, we certainly don't condone smuggling...We did as much as we could to make sure the Canadian government understood what was going on so that they could apply any law enforcement remedies they thought were appropriate"; and
- (m) on January 4, 1999, Steven Heard, counsel and spokesman for RJR-Macdonald and other RJR Group companies, was quoted in the *Globe and Mail* and denied that RJR Puerto Rico was set up as an off-shore production line to serve smugglers, asserting that it was "not intended to feed the contraband market. It sold into the Caribbean Basin".

124. When in 1998 and 1999, both Thompson and NBI pleaded guilty to criminal charges, the RJR Group lamely attempted to distance itself from the activities it had orchestrated and from which it had benefited. The defendants deserted Thompson and called him a "rogue employee", notwithstanding that he had acted in conducting the activities described in this claim not only with the full knowledge of his superiors, RJR-Macdonald, RJR International and RJR Tobacco,

but with their agreement, direction and active involvement. He had been personally feted and financially rewarded by RJR-Macdonald for what he had accomplished.

125. RJR's senior U.S. counsel, after pleading NBI guilty in United States District Court in December, 1998, stated, as quoted in the *Globe and Mail* that: "Northern Brands' actions are inconsistent with the way Reynolds does business. The company is confident that enhanced internal controls, monitoring and compliance programs it is putting in place will substantially improve its ability to monitor distribution of its products in the future". In fact, as described in this claim, NBI had been created and operated at the very highest levels of RJR's management, specifically to protect the other RJR Group companies and its senior executives from exposure and the consequences of their conspiracy.

126. Not only did the RJR Group make consistent false denials of involvement, but it pretended to assist Canada in its efforts to combat smuggling, and fraudulently portrayed itself as a good corporate citizen. This was done to enhance the plaintiff's reliance upon its dishonest statements and misrepresentations, and to cause the plaintiff to misdirect its investigative efforts.

127. In a letter dated June 6, 1991, to the Special Assistant to the Minister of Revenue, Customs & Excise, the CTMC forwarded "Background Notes re Cross-Border Cigarette Trade". These materials, provided to the plaintiff with the intention (and effect) that they would be relied upon, included a section entitled "Industry Responses". They stated: "the CTMC and its member companies have consistently emphasized their willingness to co-operate in any effective program to deal with this problem. Large scale smuggling is not in the interests of our industry and we want to see it brought under control."

128. In 1992, RJR-Macdonald executives, including Neumann, made various representations to the plaintiff that they would make all reasonable efforts to cut off sales to smugglers or black market distributors. RJR-Macdonald executives, including Neumann, instigated and attended at numerous high level meetings with government officials to discuss the smuggling problem, reiterated RJR-Macdonald's purported desire to assist the government in combating smuggling, and put forward proposals to end the problem. RJR-Macdonald's principal proposal was always the same: the only way to ultimately stop smuggling was to roll back taxes and duties to a level on par with the United States.

129. In a mockery of the plaintiff's efforts to stop smuggling and enforce its tax laws, the RJR Group dispatched the Senior Director, Corporate Security of RJR U.S., to travel to Ottawa in September 1992, purportedly to discuss the ways in which RJR could assist Canada with the smuggling problem. RJR's true purpose was to learn what Canada knew, so that steps could be taken to avoid detection.

130. The defendants went to extraordinary lengths in an attempt to legitimize their false denials and misstatements. Their agent, the CTMC, commissioned purported in-depth investigative reports from forensic accounting firms in an attempt to clothe their statements with objectivity and credibility. These reports, provided to the plaintiff, consistently omitted any reference to RJR's role in starting, supplying, supporting and directing the smuggling of tobacco products, tax not paid, into Canada. The plaintiff relied upon these and other fraudulent misrepresentations. The plaintiff was misled by the defendants' fraudulent concealment.

131. The campaign of misrepresentation, deceit and denial was carried on from the CTMC to RJR-Macdonald and through to the highest executive levels within the RJR Group. On April 24,

1998, Steven Goldstone ("Goldstone"), then Chairman and CEO of RJR Tobacco, responded to a proposal of the United States government to act, as Canada had done, to deter children from smoking by raising taxes. Goldstone expressly warned that the "unintended consequence of such a policy would be to create a black market that would potentially destroy any effort to control the availability of tobacco to children". He analogized his point to the situation in Canada. His statement was misleading – the black market was not the unintended consequence of policy. Rather, it was the consequence, and the intended one, of the RJR Group which itself had established, supplied and supported RJR channels of distribution so it could directly benefit from this illegal scheme in Canada.

#### **Criminal Proceedings in the United States**

132. On June 20, 1997, the U.S. Attorney in the Northern District of New York indicted 21 individuals, alleging a conspiracy to defraud the United States and Canada by aiding and abetting smuggling of tobacco and other products. Many of the accused later emerged as co-conspirators with the defendants in the smuggling distribution chain.

133. Nineteen of the 21 indicted individuals in due course pleaded guilty. The guilty included the principals of LBL, its successor company, VTN, and those who operated the Pine Partnership.

134. In November 1998, Larry Miller, Lewis Tavano and Robert Tavano pleaded guilty in United States District Court to engaging in a smuggling scheme to defraud Canada of taxes. The Tavanos admitted that the scheme continued from 1991 through 1998.

135. On December 22, 1998, the U.S. Attorney in the Northern District of New York filed an Information charging NBI with aiding and abetting in the importation into the U.S. of merchandise by false and fraudulent practices, being Canadian Export "A" cigarettes intended for the Canadian market. NBI waived prosecution by indictment and pleaded guilty that day to facts that revealed its involvement in the smuggling distribution chain described in this claim.

136. On February 28, 1999 the U.S. Attorney in the Northern District of New York filed an Indictment charging Leslie Thompson, the RJR-Macdonald employee who had been sent to NBI to become its Director of Sales, with conspiring to conduct financial transactions affecting interstate commerce with the proceeds of "specified unlawful activity", being a wire fraud scheme to defraud Canada of tax revenue, which financial transactions were intended to promote this underlying criminal activity. The indictment described the smuggling scheme of the defendants. On March 25, 1999, Thompson pleaded guilty.

#### **Criminal Proceedings in Canada**

137. In 1999, Thompson was charged in Canada.

138. On February 2, 2000, Thompson pleaded guilty in the Ontario Court of Justice. Specifically, Thompson admitted to entering into a criminal conspiracy to commit fraud by agreeing to deal in cigarettes and fine cut tobacco in a manner which fraudulently deprived the plaintiff, Ontario and Quebec of revenue of a value exceeding \$5,000.00.

139. The agreed statement of facts filed with the court upon Thompson's guilty plea confirms his admission to the following facts:

- (a) the smuggling was concentrated around Akwesasne;



- (b) an increase in exports of cigarettes and fine cut tobacco by RJR-Macdonald's competitors to the United States and a direct corresponding increase in their "real" market share of Canadian domestic consumption, threatened RJR-Macdonald. As a result it actively pursued this market;
- (c) at the time, senior executives of RJR-Macdonald knew that this U.S. market was simply the first step in a chain which resulted in cigarettes and fine cut tobacco being smuggled back into Canada and sold tax free on a black market in Ontario, Quebec and elsewhere in Canada;
- (d) initially, Thompson had responsibility for sales of Canadian tobacco products to legitimate U.S. customers such as duty free stores. He loaded up these U.S. accounts knowing that these enhanced sales were just the first step in the chain which resulted in the products being smuggled back into Canada. Other executives at RJR-Macdonald were involved, knew of these events and encouraged, participated in and approved this type of business;
- (e) LBL was accepted as a direct customer of RJR-Macdonald in March 1992 and, to the knowledge of Thompson and other RJR-Macdonald senior executives, its customers were also smugglers physically transporting the tobacco products across the Canada/United States border or wholesalers who provided the product to smugglers. After transferring the cigarettes and tobacco products through FTZs in Akwesasne and into Canada, they were transported within Canada to urban centres and distributed to a large network of contraband retailers who sold the

products out of the back of trucks and cars and "under the counter" in convenience stores, all taxes unpaid; and

- (f) in an attempt to distance themselves from conduct which represented acts in furtherance of the conspiracy, the RJR Group incorporated NBI.

140. On December 31, 1999, Robert Tavano, one of the principals of both LBL and Pine Partnership, was charged with and pleaded guilty to entering into a criminal conspiracy to commit fraud depriving the plaintiff and Her Majesty the Queen in right of Ontario of revenue of a value exceeding \$5,000.00. Tavano's guilty plea and agreed statement of facts contain the same material admissions as those found in Thompson's plea and agreed statement of facts. Specifically, Tavano admitted that he was keenly aware that senior executives at RJR-Macdonald knew of the smuggling, and provided LBL with cigarettes and fine cut tobacco in furtherance of a criminal agreement with LBL and Tavano to commit fraud.

141. Robert Tavano admitted that he, LBL and/or Pine Partnership purchased enormous quantities of cigarettes and fine cut tobacco from RJR-Macdonald and/or its affiliates all of which products were smuggled back into Canada.

**RJR Transfers Key Personnel Offshore and Destroys Evidence**

142. In a further attempt to insulate assets and conceal the illegal activities of the RJR Group, directly following upon the criminal charges, many senior executives of RJR Group companies, including Neumann, were transferred to Geneva, Switzerland, to shelter behind a favourable juridical climate there. These transfers were part of the defendants' efforts intended to create

further obstacles for the plaintiff in obtaining information and evidence in support of this claim. These transfers formed part of the fraudulent concealment of the defendants' unlawful activities.

143. RJR entered into agreements with its executives and employees who had participated in the conspiracy, to pay them extraordinary amounts and award them other benefits in order to ensure their silence and co-operation and further conceal and cover up the unlawful conduct in which the conspirators had been engaged.

### Spoliation

144. The defendants continued their efforts at concealment. A massive destruction of documents took place at the offices of RJR-Macdonald in Toronto during the summer of 1998.

145. In addition, NBI had a standing policy, dictated by Lang personally, that to the greatest extent possible business was to be conducted orally, without written documentation, including without electronic messages. Moreover, Lang directed that the policy at NBI was that non-critical documents were to be destroyed as soon as possible. In fact, such a large proportion of ordinary course business documents (which evidenced the conspiracy) was being destroyed on a weekly basis, that Thompson complained he could not complete his weekly sales reports.

146. As earlier detailed in this claim, the Minutes of RJR-Macdonald's Operating Committee and the Holmes presentation of the smuggling plan were intentionally destroyed by or on behalf of the defendants.

147. The defendants destroyed documents to defeat the plaintiff's claim, to avoid detection and to escape liability, judgment and execution. The defendants committed the tort of spoliation.

The destruction of documents was part and parcel of the defendants' conspiracy and the continued fraudulent concealment of their activities.

**Summary of Conspiracy**

148. The defendants actively conspired to maintain and increase RJR's sales of Canadian tobacco products, including in the smuggling market, and to force the roll-back of taxes. They did this by RJR-Macdonald evading export taxes and duties and by conspiring to evade, and aiding and abetting the evasion of, import duties and taxes on those products. They used unlawful means, including but not limited to fraud and deceit, the fraudulent concealment of their conspiracy and their other tortious conduct, fraudulent misrepresentations made to the plaintiff, and spoliation.

149. Further particulars of the unlawful means employed by the defendants and their co-conspirators in concert include:

- (a) the offence of smuggling under s. 159 of the *Customs Act*, providing that it is an offence to smuggle into Canada any goods subject to duties, or any goods the importation of which is prohibited, controlled or regulated;
- (b) defrauding the plaintiff and the public of property and money (specifically, of taxes and duties payable) by deceit and falsehood, contrary to s. 380 of the *Criminal Code*, as described in this claim, and including:
  - (i) the campaign of deception and misinformation described in this claim;
  - (ii) fraudulent mislabelling of cigarette and tobacco packages, cartons, and boxes;

- (iii) fraudulent domestic consumption reports; and
  - (iv) fraudulent excise forms, which contained misrepresentations that the products were intended for genuine export;
- (c) procuring, counselling and soliciting the commission of illegal smuggling, contrary to s. 22 of the *Criminal Code*. The defendants set out to ensure that illegal smuggling was committed and took the appropriate and necessary steps to produce the commission of this offence, thereby procuring illegal smuggling by their own endeavour. They solicited the commission of illegal smuggling by agreeing to seek out known smugglers, supplying their products to them, and encouraging and advising them to funnel those products into the black market. They counselled the criminal act of smuggling by encouraging the smugglers to carry on with their illegal activities, providing advice as to the appropriate areas in Canada in to which to smuggle the goods, and by the other means described in this claim;
- (d) aiding in the commission of the offence of smuggling, as defined in s. 21(1)(b) of the *Criminal Code*, by:
- (i) deliberately supplying smugglers with the means of committing their crimes, with the purpose and immediate intention of aiding them to do so and with the substantial certainty that all the cigarettes supplied to them would be unlawfully smuggled into Canada;

- (ii) appointing known smugglers as distributors of RJR-Macdonald tobacco products in the United States, without subjecting them to the ordinary rigorous and lengthy customer approvals process, with the express purpose and intent of assisting them in their criminal endeavour to smuggle cigarettes into Canada;
- (iii) arranging their affairs with the express purpose of concealing the identities of known smugglers from the Governments of Canada, the United States and Puerto Rico, with the express purpose of aiding those smugglers in their illegal endeavours;
- (iv) providing their co-conspirators with demographic, marketing and sales data relating to the consumption of tobacco products in Canada, with the purpose and intent of ensuring that, through the conspiracy, cigarettes and tobacco were routed to key markets within Canada and were received by the customers for whom they were targeted;
- (v) improving cash flows and profits of their co-conspirators by writing down or writing off tobacco inventories, providing discounts and rebates and assisting with capital improvements such as warehousing and refrigeration units in which the tobacco products were stored; and
- (vi) providing RJR personnel and logistical and accounting support to facilitate the transfer of smuggled tobacco products;

- (e) abetting the offence of smuggling, as defined in s. 21(1)(c) of the *Criminal Code*,  
by:
- (i) meeting with smugglers and encouraging them in their criminal endeavour;
  - (ii) ongoing visits by RJR Group executives, including Thompson, Holmes and Fragomeni, to the Akwesasne reserve, to observe and report on the illegal smuggling as it was being committed, and to encourage the smugglers to continue their illegal endeavour;
  - (iii) treating smugglers as prized customers, by fraternizing with them, spending lavishly on entertainment, and providing them with gifts and privileges; and
  - (iv) encouraging known smugglers to purchase massive quantities of RJR-Macdonald cigarettes, even before those cigarettes were manufactured, as described above;
- (f) aiding and abetting a conspiracy within the meaning of s. 21(1)(b) and (c) of the *Criminal Code*.
- (g) being in possession of property and proceeds knowing that those proceeds were derived from the commission of the illegal acts described in this claim, within the meaning of s. 462.3 of the *Criminal Code* and contrary to s. 163.1 of the *Customs Act* and s. 126.1 of the *Excise Act*;

- (h) money laundering, contrary to s. 462.31 of the *Criminal Code*, by transferring and disposing of the proceeds of crime with an intent to conceal and convert those proceeds. The RJR Group funnelled its illegal profits through various Caribbean intermediaries, RJR International, NBI and other RJR affiliates to make the proceeds appear upon receipt by RJR-Macdonald as ordinary course payments received from a legitimate source. Moreover, the defendants concealed and converted the proceeds from NBI's smuggling operation by converting the profits from United States currency into Canadian currency, and vice versa, in furtherance of the scheme;
- (i) the creation and operation of NBI, a sham corporation, the purpose for which was to facilitate the conspiracy and insulate the defendants and the assets of the operating companies from detection and liability;
- (j) the sham exports of Canadian tobacco products from Canada with the purpose and intent to smuggle these products back into Canada, tax not paid, when the defendants knew there was no market for Canadian cigarettes outside Canada and when they intended the tobacco to be consumed in Canada;
- (k) the fraudulent misrepresentations on packaging, in documents and orally as described in this claim, that the cigarettes and tobacco products were destined for consumption outside Canada, that tax was not payable and that the defendants were not involved in smuggling activities; and
- (l) spoliation.



150. The defendants knew that injury to the plaintiff would likely ensue from their conduct, in the form of unpaid taxes and duties, lost taxes and duties and the costs of investigating their unlawful activities. Their actions were directed towards the plaintiff. In addition their predominant purpose was to injure the plaintiff by causing the roll-back of taxes and by depriving the plaintiff of taxes and duties, and they succeeded in doing so.

**Unjust Enrichment**

151. The RJR Group was unjustly enriched by the unlawful conduct described in this claim including:

- (a) fraudulent conduct and deceit;
- (b) conspiracy;
- (c) breach of statutory obligations to remit lawful duties and taxes;
- (d) fraudulent misrepresentations and concealment; and
- (e) spoliation.

152. The RJR Group was enriched to the extent of the profits and benefits they earned as a result of their unlawful activities. There was no lawful or juristic reason for this enrichment.

153. The plaintiff suffered a corresponding deprivation, and is entitled to a disgorgement of the profits and benefits which the defendants enjoyed, and to the amount of taxes and duties of which it was deprived.

**Right of Action Pursuant to Statute**

154. Pursuant to s. 111(1) and (2) of the *Excise Act*, all duties of excise or license fees payable thereunder are recoverable at any time, with full costs of suit, as a debt due to Her Majesty.

155. Similarly, section 82 of the *Excise Tax Act* provides that all taxes, penalties, interest or other sums payable thereunder are debts due to Her Majesty in Right of Canada and recoverable as such.

156. The tobacco products which RJR-Macdonald purported to export to the United States were never intended by RJR for genuine export. It was never intended that they enter into the commerce of the United States, and they did not. RJR always intended that the tobacco products would return to their country of origin, and they did. RJR-Macdonald shipped tobacco products from Canada knowing and intending that they would be smuggled back into Canada. RJR-Macdonald is liable for taxes and duties under the *Excise Act* and the *Excise Tax Act*, for all tobacco products manufactured in Canada and purportedly exported to the United States, in furtherance of the illegal conspiracy described in this claim.

157. The plaintiff pleads and relies upon these statutory provisions and each of them and brings this action against RJR-Macdonald in reliance upon these sections. This defendant is liable to the plaintiff under these statutory provisions.

**Vicarious Liability**

158. The RJR Group is vicariously liable for the conduct of its directors, officers and employees. The other employees, officers and directors of RJR Group companies referred to by name in this claim are co-conspirators of the defendants. The RJR Group is vicariously liable for

their conduct and for the conduct of the other employees, officers and directors whose names and illegal activities are solely within the knowledge of the defendants, and who participated in the unlawful acts described in this claim.

159. The acts and statements of Lang and the other RJR Group employees, officers and directors referred to by name in this claim, and of those who are within the knowledge of the defendants, were carried out and were made acting within the scope of their employment and their duties as employees, officers and/or directors of the RJR Group and for whom the RJR Group is in law responsible.

#### **Fraudulent Conveyance**

160. A series of corporate reorganizations and inter-company transactions undertaken between 1999 and 2001 relating to the assets and business of RJR-Macdonald were conveyances intended to defeat, hinder, delay or defraud the creditors or others of RJR-Macdonald (including the plaintiff) of their just and lawful actions, suits, debts, accounts, damages, penalties or forfeitures and were and are void against such persons and their assigns.

161. RJR-Macdonald and Japan Tobacco (together with its related entities named in this claim in paragraph 12) (collectively the "Fraudulent Conveyance Defendants") orchestrated a complex series of corporate reorganizations, the particulars of which are within the knowledge of the Fraudulent Conveyance Defendants but not the plaintiff.

162. RJR-Macdonald was a federally incorporated company until 1999. Subsequently:

- (a) it was continued as a Nova Scotia corporation;

- (b) it was amalgamated with a new entity incorporated following the JTI transaction described above and known as JT Nova Scotia Corporation;
- (c) the shares of RJR-Macdonald were transferred to an entity called JT Canada LLC II Inc. ("LLC II") which was a wholly owned subsidiary of another new entity, JT Canada LLC Inc. ("JT LLC");
- (d) JT LLC was wholly owned by JT International Holding B.V., a Netherlands corporation;
- (e) the trademarks owned by RJR-Macdonald, which were assets of value, were transferred to another new entity known as JTI-Macdonald TM Corp., newly incorporated in 1999 ("TM Holdco");
- (f) JT LLC then loaned \$1.2 billion to TM Holdco, taking as security the trademarks pledged in return. The trademarks were assigned a value of \$1.2 billion;
- (g) TM Holdco then loaned the funds to a predecessor corporation of JTI-Macdonald Corp; and
- (h) in 2000, JT LLC lent \$410 million to JTI-Macdonald Corp. and received corporate debentures in return. The debentures were then transferred to TM Holdco in exchange for notes payable to JT LLC, in the aggregate amount of \$410 million.

163. By correspondence dated January 30, 2002, RJR-Macdonald's auditors, Deloitte & Touche, expressly admitted to the plaintiff that the 1999 asset transfers (including of the

trademarks) from a predecessor entity to the defendant JTI-Macdonald Corp. was carried out "for creditor proofing purposes". That admission is binding on the Fraudulent Conveyance Defendants.

164. In conjunction with the transactions described above, Japan Tobacco effected a further complicated series of inter-corporate loans and transactions among its affiliates, designed to defeat and hinder the enforcement of any judgment in this action.

165. The particulars of these transactions are within the knowledge of the Fraudulent Conveyance Defendants. Their effect was to create a circular arrangement pursuant to which each of the entities was encumbered by secured debt in favour of a related party. JT LLC was indebted to RJR-Macdonald. RJR-Macdonald was indebted to TM Holdco. TM Holdco was indebted to JT LLC. All loans were secured. This arrangement was a further attempt to insulate the assets of Japan Tobacco and was designed to effect a circular security arrangement.

166. The plaintiff is entitled to a declaration that this and other conveyances stripping RJR-Macdonald of its assets and/or submerging them under related party debt were intended to defeat and hinder the enforcement of a judgment in this action. All transactions should be unwound and any necessary tracing orders granted.

167. The plaintiff pleads and relies upon the *Fraudulent Conveyances Act*, R.S.O. 1990, c. F.29.

168. Japan Tobacco caused and directed the above transactions, knowing that the RJR Group, and in particular RJR-Macdonald, were liable to the plaintiff for the wrongful conduct described

in this claim, and with the purpose of defeating the plaintiff's ability to recover on any judgment subsequently obtained by the plaintiff.

169. Japan Tobacco conspired and agreed with its subsidiaries and affiliates, JT International B.V., JT International Holding B.V., JT Canada LLC Inc., JT Canada LLC II Inc., JT International (BVI) Canada Inc., JT International SA and JTI-Macdonald TM Corp. that the assets of RJR-Macdonald would be conveyed to and among these affiliates, to hinder and defeat the plaintiff and other creditors.

170. RJR-Macdonald's assets were conveyed to the affiliates and subsidiaries of Japan Tobacco as described above and through other means known to the Fraudulent Conveyance Defendants but unknown to the plaintiff, at the direction of Japan Tobacco, and with the agreement of those affiliates and subsidiaries.

171. The purpose of this agreement was to harm the plaintiff, by making it impossible for the plaintiff to enforce and recover under any judgment against RJR-Macdonald.

#### **Punitive Damages**

172. The defendants should pay punitive damages to the plaintiff. The defendants are law-breakers. They deliberately and with impunity conspired to break Canada's laws and they acted unlawfully for illicit gain. The RJR Group made fantastic profits from its actions. They conspired to conceal their conduct. They set about to defeat government policy designed to discourage the spread of smoking, which they knew to be harmful, including to Canada's youth. They succeeded in their efforts, and deprived Canada of more than a billion dollars in taxes and duties.

**Service Outside Ontario**

173. This claim may be served outside Ontario pursuant to Rules 17.02 (g), (h), (o), (p) and (r) of the *Rules of Civil Procedure*.

The plaintiff proposes that this action be tried at the City of Toronto, Province of Ontario.

August 13, 2003

**LENCZNER SLAGHT ROYCE  
SMITH GRIFFIN**

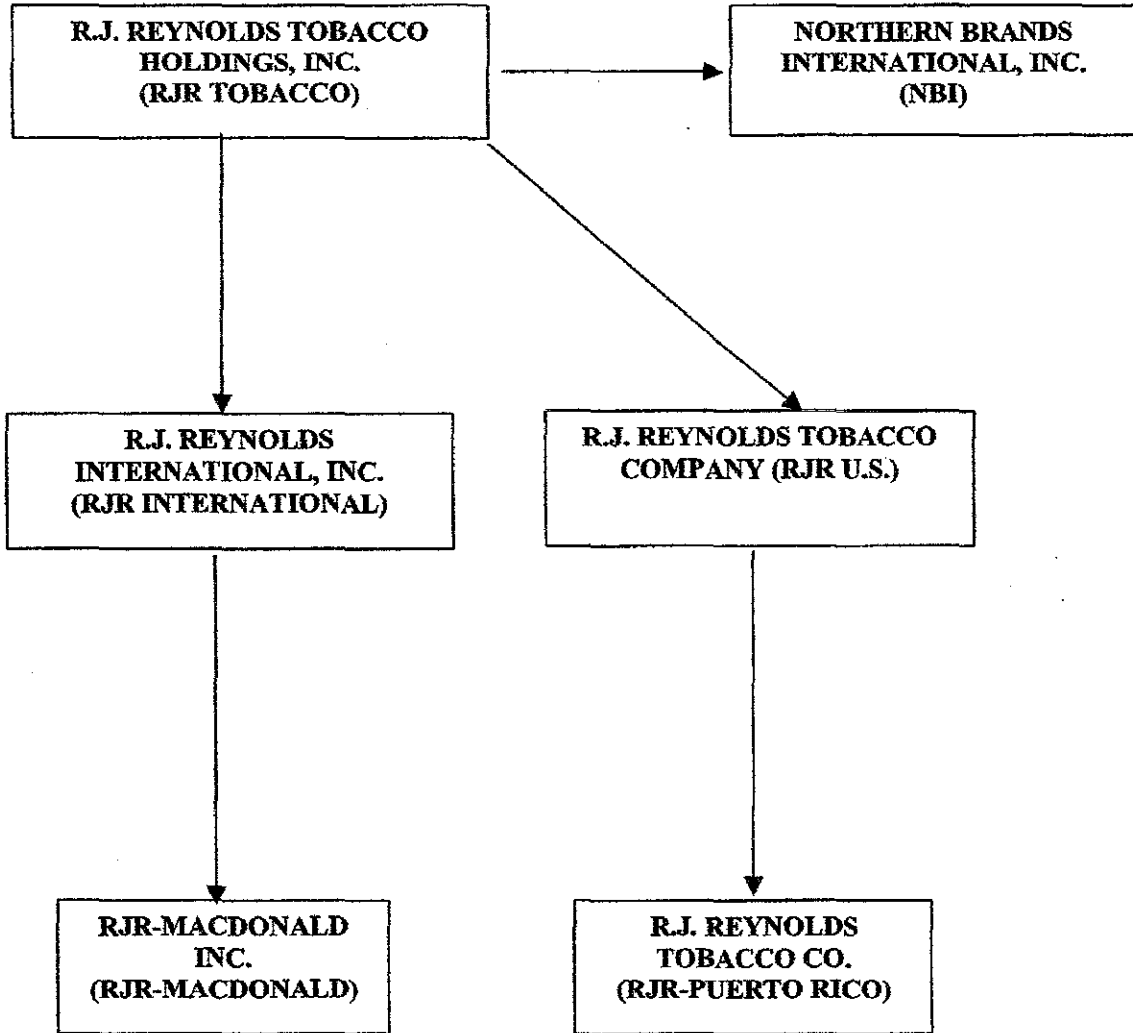
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**APPENDIX "A" TO THE STATEMENT OF CLAIM**





This is **Exhibit « 21 »**, referred to in the  
**Affidavit of Bruce Johnston**, sworn before me  
this 27th day of March, 2019

*Elena Bordi*



Commissioner of Oaths for Québec

**500-09-025385-154 – 500-09-025386-152  
500-09-025387-150**

**COURT OF APPEAL OF QUÉBEC**

(Montréal)

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On appeal from a judgment of the Superior Court, District of Montréal,  
rendered on May 27, 2015 and rectified on June 9, 2015 by the Honourable  
Justice Brian Riordan.

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**No. 500-09-025385-154 C.A.M.**  
Nos. 500-06-000076-980 S.C.M.  
500-06-000070-983 S.C.M.

**IMPERIAL TOBACCO CANADA LTD.**

**APPELLANT /  
INCIDENTAL RESPONDENT**  
(Defendant)

v.

**CONSEIL QUÉBÉCOIS SUR LE TABAC ET LA SANTÉ  
JEAN-YVES BLAIS  
CÉCILIA LÉTOURNEAU**

**RESPONDENTS /  
INCIDENTAL APPELLANTS**  
(Plaintiffs)

- and -

**JTI-MACDONALD CORP.  
ROTHMANS, BENSON & HEDGES INC.**

**MIS EN CAUSE**  
(Defendants)

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500-06-000070-983 S.C.M.

**JTI-MACDONALD CORP.**

**APPELLANT /  
INCIDENTAL RESPONDENT**  
(Defendant)

v.

**CONSEIL QUÉBÉCOIS SUR LE TABAC ET LA SANTÉ**

**JEAN-YVES BLAIS**

**CÉCILIA LÉTOURNEAU**

**RESPONDENTS /  
INCIDENTAL APPELLANTS**  
(Plaintiffs)

- and -

**IMPERIAL TOBACCO CANADA LTD.**

**ROTHMANS, BENSON & HEDGES INC.**

**MIS EN CAUSE**  
(Defendants)

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**No. 500-09-025387-150 C.A.M.**

Nos. 500-06-000076-980 S.C.M.

500-06-000070-983 S.C.M.

**ROTHMANS, BENSON & HEDGES INC.**

**APPELLANT /  
INCIDENTAL RESPONDENT**  
(Defendant)

v.

**CONSEIL QUÉBÉCOIS SUR LE TABAC ET LA SANTÉ**

**JEAN-YVES BLAIS**

**CÉCILIA LÉTOURNEAU**

**RESPONDENTS /  
INCIDENTAL APPELLANTS**  
(Plaintiffs)

- and -

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**JTI-MACDONALD CORP.**

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1748.1-R	Affidavit of Robert McMaster dated September 16, 2013 (redacted)	2013-09-16	130847.1
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1748.1.4-R-CONF	Financial statements of the company for the years 2000, 2004, 2005, 2006 and 2012 <b>[CONFIDENTIAL]</b> , filed in <b>JTI.S.C, Vol 2, pp. 387-456.</b>	-----	-----
1748.1.5-R-CONF	Table entitled JTI-Macdonald Corps / Impact of 1999 Restructuring - 2000 to 2004 Taxation Years <b>[CONFIDENTIAL]</b> , filed in <b>JTI.S.C, Vol 2, p. 457.</b>	-----	-----
1748.1.6-R-CONF	Two worksheets showing the components of the prejudice to JTIM and its subsidiary JTI-TM, as well as the Canadian parent LLC over the period 2013 to 2018 <b>[CONFIDENTIAL]</b> , filed in <b>JTI.S.C, Vol 2, pp. 458-459.</b>	-----	-----
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1748.3-R	Monitor's Fourth Report (exhibit R-9 of Motion for safeguard order)	2005-02-16	130847.173
1748.4-R-CONF	Table 1 - JTI-Macdonatd Corp. Interest and Royalty Expense Accruals and Payments (All Payments between JTI-Macdonald Corp. and JTI-Macdonald TM Corp.) <b>[CONFIDENTIAL]</b> , filed in <b>JTI.S.C, Vol 2, p. 485.</b>	-----	-----
1748.5-R	Monitor's Third Report (exhibit R-10 of Motion for safeguard order)	2004-11-19	130847.245
1748.6-R	Monitor's Twenty-First Report (exhibit R-5 of Motion for safeguard order)	2010-04-13	130847.301
1749	Registre des entreprises provinciales et fédérales en date du 16 mai 2014 pour JTI MacDonald Corp.	2014-05-16	130848
1749.1	Registre des entreprises du Québec en date du 16 mai 2014 pour JTI MacDonald TM Corp.	2014-05-16	130856
1750-R-CONF	Deloitte & Touche memo dated January 30, 2002 (exhibit R-1 of Motion for safeguard order) <b>[CONFIDENTIAL]</b> , filed in <b>JTI.S.C, Vol 2, pp. 486-488.</b>	2002-01-30	-----

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1751.1-R-CONF	Affidavit of Mary Carol Holbert dated September 12, 2013 <b>[CONFIDENTIAL]</b> , filed in <b>JTI.S.C, Vol 2, pp. 489-500.</b>	2013-09-12	-----
1751.1-R	Affidavit of Mary Carol Holbert dated September 12, 2013 (redacted)	2013-09-12	130860.1
1751.1.1-R-CONF	Copy of relevant extracts of the Power Point pertaining to the Canada proposals presented at a tax planning meeting held in Geneva on April 16, 1999 (exhibit MCH-1 of the Affidavit of Mary Carol Holbert) <b>[CONFIDENTIAL]</b> , filed in <b>JTI.S.C, Vol 2, pp. 501-507.</b>	1999-04-16	-----
1751.1.2-R-CONF	Copy of relevant extracts of the document entitled Project Infinity/Post Acquisition Implementation Meetings, the April 28 invitation to the meetings, and the Canada-related Power Point, en liasse (exhibit MCH-2 of the Affidavit of Mary Carol Holbert) <b>[CONFIDENTIAL]</b> , filed in <b>JTI.S.C, Vol 2, pp. 508-544.</b>	-----	-----
1751.1.3-R-CONF	Copy of Ernst & Young's letter to the Canada Customs and Revenue Agency dated May 31, 1999 (exhibit MCH-3 of the Affidavit of Mary Carol Holbert) <b>[CONFIDENTIAL]</b> , filed in <b>JTI.S.C, Vol 2, pp. 545-552.</b>	1999-05-31	-----
1751.1.4-R-CONF	Copy of a letter dated August 11, 1999 from CCRA to Ernst & Young (exhibit MCH-4 of the Affidavit of Mary Carol Holbert) <b>[CONFIDENTIAL]</b> , filed in <b>JTI.S.C, Vol 2, pp. 553-561.</b>	1999-08-11	-----

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1751.1.5-R-CONF	Copy of relevant extracts of the Power Point presentation used for the June 2, 1999 meeting (exhibit MCH-5 of the Affidavit of Mary Carol Holbert) <b>[CONFIDENTIAL], filed in JTI.S.C, Vol 2, pp. 562-579.</b>	1999-06-02	-----
1751.1.6-R-CONF	Copy of the relevant extracts of the Power Point Presentation prepared and used for the Tokyo meeting (exhibit MCH-6 of the Affidavit of Mary Carol Holbert) <b>[CONFIDENTIAL], filed in JTI.S.C, Vol 2, pp. 580-589.</b>	-----	-----
1751.1.7-R-CONF	Copy of an Authorization Request Form prepared on June 17, 1999 (exhibit MCH-7 of the Affidavit of Mary Carol Holbert) <b>[CONFIDENTIAL], filed in JTI.S.C, Vol 2, pp. 590-597.</b>	1999-06-17	-----
1751.1.8-R-CONF	Copy of the July 2, 1999 note to Mr. Mark Hawley accompanied by two Power Point slides to complete the Authorization Request Form (exhibit MCH-8 of the Affidavit of Mary Carol Holbert) <b>[CONFIDENTIAL], filed in JTI.S.C, Vol 2, pp. 598-600.</b>	1999-07-02	-----
1751.1.9-R-CONF	Copy of an email from Mr. Roland Konstantos dated August 9, 1999 containing the JT confirmation email of August 5 (exhibit MCH-9 of the Affidavit of Mary Carol Holbert) <b>[CONFIDENTIAL], filed in JTI.S.C, Vol 2, p. 601.</b>	1999-08-09	-----

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1751.1.10-R-CONF	Copy of the complete authorisation request documents for Canada, as signed by the RJRI representatives and the members of the JTIH board (exhibit MCH-10 of the Affidavit of Mary Carol Holbert) <b>[CONFIDENTIAL]</b> , filed in <b>JTI.S.C, Vol 2, pp. 602-611.</b>	-----	-----
1751.2-R-CONF	Copy of the July 2, 1999 note to Mr. Mark Hawley accompanied by two Power Point slides to complete the Authorization Request Form (exhibit MCH-8 of the Affidavit of Mary Carol Holbert) <b>[CONFIDENTIAL]</b> , filed in <b>JTI.S.C, Vol 2, pp. 612-614.</b>	1999-07-02	-----
1752-R	Copy of the 2013 Debenture Amendment Agreement (exhibit RM-8 of the Affidavit of Robert McMaster)	2012-12-18	130860.11
1753-RBH-CONF	Affidavit of William Giff (CFO-RBH) dated May 29, 2014 <b>[CONFIDENTIAL]</b> , filed in <b>RBH.C.S, Vol. 1, pp. 3-12.</b>	2014-05-29	-----
1753.1-RBH-CONF	Excel Spreadsheet "RBH Insurance Policies – Confidential Financial Information (RBH): Subjet to the undertaking" <b>[CONFIDENTIAL]</b> , filed in <b>RBH.C.S, Vol. 1, pp. 13-21.</b>	-----	-----
1753.2-RBH-CONF	RBH Insurance Policies – Confidential Financial Information (RBH): Subjet to the undertaking <b>[CONFIDENTIAL]</b> , filed in <b>RBH.C.S, Vol. 1, pp. 22-25.</b>	-----	-----

This is **Exhibit « 22 »**, referred to in the  
**Affidavit of Bruce Johnston**, sworn before me  
this 27th day of March, 2019

*Elena Borda*



Commissioner of Oaths for Quebec



## **IMPERIAL TOBACCO CANADA**

### **Consolidated Financial Statements based on IFRS**

For the year ended December 31, 2014

#### **CONFIDENTIALITY CLAUSE**

Imperial Tobacco Canada Limited ("ITCAN") is a privately held company that does not publicly release its financial statements. This document contains proprietary and confidential information, including but not limited to financial, commercial and/or other business information relating to ITCAN. This information is provided for internal use only. In no circumstances should it be disclosed to a third party without prior authorization of ITCAN. ITCAN reserves all of its rights pursuant to the *Access to Information Act* in order to keep this document, the attached report or any information contained herein or therein from being disclosed to any third party.

## INDEPENDENT AUDITOR'S REPORT

To the Shareholder of Imperial Tobacco Canada Limited

We have audited the accompanying consolidated financial statements of Imperial Tobacco Canada Limited, which comprise the consolidated statement of financial position as at December 31, 2014, the consolidated statement of earnings, consolidated statement of comprehensive income, consolidated statement of changes in equity and consolidated statement of cash flows for the year then ended, and a summary of significant accounting policies and other explanatory information.

### *Management's Responsibility for the Consolidated Financial Statements*

Management is responsible for the preparation and fair presentation of these consolidated financial statements in accordance with International Financial Reporting Standards, and for such internal controls as management determines is necessary to enable the preparation of consolidated financial statements that are free from material misstatement, whether due to fraud or error.

### *Auditor's Responsibility*

Our responsibility is to express an opinion on these consolidated financial statements based on our audit. We conducted our audit in accordance with Canadian generally accepted auditing standards. Those standards require that we comply with ethical requirements and plan and perform the audit to obtain reasonable assurance about whether the consolidated financial statements are free from material misstatement.

An audit involves performing procedures to obtain audit evidence about the amounts and disclosures in the consolidated financial statements. The procedures selected depend on the auditor's judgment, including the assessment of the risks of material misstatement of the consolidated financial statements, whether due to fraud or error. In making those risk assessments, the auditor considers internal control relevant to the entity's preparation and fair presentation of the consolidated financial statements in order to design audit procedures that are appropriate in the circumstances, but not for the purpose of expressing an opinion on the effectiveness of the entity's internal control. An audit also includes evaluating the appropriateness of accounting policies used and the reasonableness of accounting estimates made by management, as well as evaluating the overall presentation of the consolidated financial statements.

We believe that the audit evidence we have obtained is sufficient and appropriate to provide a basis for our audit opinion.

### *Opinion*

In our opinion, the consolidated financial statements present fairly, in all material respects, the financial position of Imperial Tobacco Canada Limited as at December 31, 2014, and its financial performance and its cash flows for the year then ended in accordance with International Financial Reporting Standards.

**Deloitte LLP<sup>1</sup>**

Montréal, Canada

February 16, 2015

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<sup>1</sup> CPA auditor, CA, public accountancy permit No. A110972

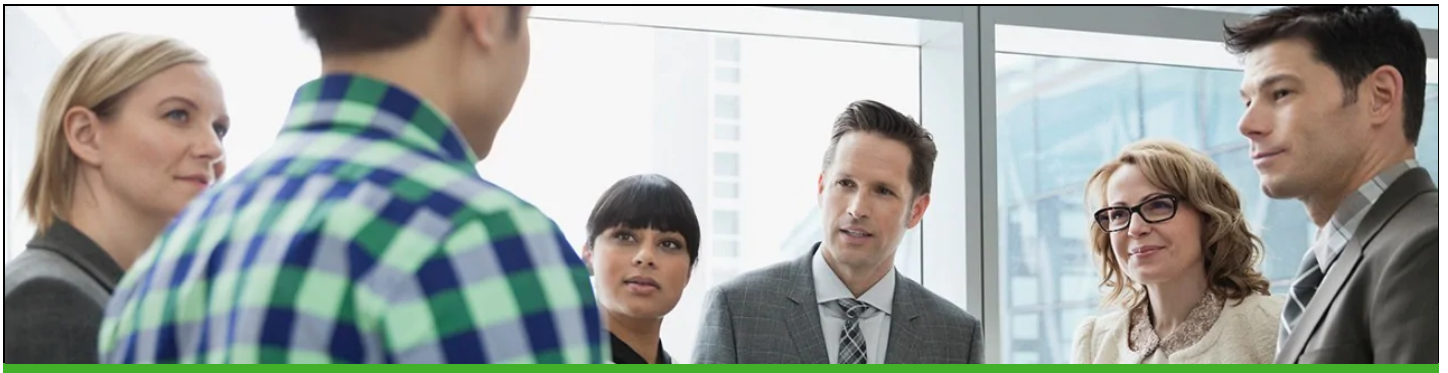
This is **Exhibit « 23 »**, referred to in the  
**Affidavit of Bruce Johnston**, sworn before me  
this 27th day of March, 2019.

*Elena Bordi*



Commissioner of Oaths for Quebec





## Case studies

### Philip Morris International (PMI) Embarking on an innovation learning journey

PMI is the world's leading international tobacco company, with six of the world's top 15 international brands and products sold in more than 180 markets. PMI is also engaged in the development and commercialisation of Reduced-Risk Products (products with the potential to reduce individual risk and population harm in comparison to smoking cigarettes). To help strengthen their organisational capabilities, PMI chose Deloitte to guide them on their innovation 'learning journey'.

In mid-2015, our Swiss-based global account team started a broad ranging discussion with PMI's most senior executives, engaging Deloitte Centre for the Edge and Singularity University to cover topics such as consumer behaviour and experience, scalability, regulated markets, and ecosystems. Based on a series of executive interviews, we conducted a scoping workshop with the CEO and CFO, selecting twelve candidate companies to visit as part of an innovation 'learning journey', specifically start-ups in social media, wearables and personalisation, companies in transition to corporates, and more traditional blue-chip innovators. During the two-day visit to Silicon Valley in December, we introduced seven members of the PMI executive team to people and thinking that could inform their approach to technology-enabled business model innovation.

A subsequent workshop, led by Deloitte in January 2016, allowed the entire PMI executive team to explore five innovation imperatives derived from the Silicon Valley trip, thus helping them determine how to approach innovation across their business

“

*Deloitte listened carefully to our needs and proactively deployed their best global specialists and eminent experts to bring relevant insights and perspectives that helped us in thinking through our innovation approach. They impressed us with their confidence to address innovation as a topic, with the quality of the expertise that they were able to contribute, and with the boldness of the programme that they led us through. Deloitte's selection of*

”

companies to visit, hands-on facilitation, and quality discussion helped us to cover all critical aspects of our innovation journey.

— Jacek Olczak, Chief Financial Officer, Philip Morris International

This client story is from the Deloitte Switzerland Annual Review 2016

## Contact



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Reto is the Deputy CEO for Deloitte Switzerland and the Managing Partner for Clients & Markets. Reto is a Swiss international corporate tax specialist with more than 15 years of experience in the area... More

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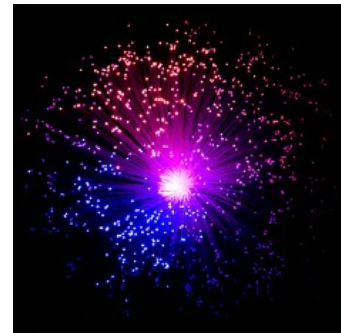
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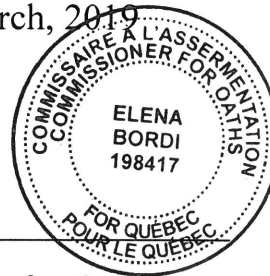
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*Elena Bordi*



Commissioner of Oaths for Quebec

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  - 2.2 Cancer Council Victoria Critique of Reports
  - 2.3 Industry Funded Reports cited by BAT, Imperial Tobacco, JTI and PMI in their 2012 Consultation Submissions
- 3 TobaccoTactics Resources
- 4 Relevant Links
- 5 TCRG Research
- 6 Notes

## Background

Deloitte Touche Thmatsu Limited, most commonly known as Deloitte, is a global accountancy firm, one of the so-called ‘Big Four’, along with KPMG, PriceWaterhouseCoopers (PwC) and Ernst and Young. Deloitte employs over 244,400 people in over 150 countries and territories and its revenues for fiscal year 2016 were US\$36.8 billion.<sup>[1]</sup> According to its website, Deloitte provides “audit, consulting, financial advisory, risk management, and tax services to selected clients”.<sup>[2]</sup>

## Relationship with the Tobacco Industry

Deloitte has a longstanding relationship with the tobacco industry and the following list is not exhaustive: Deloitte & Touche LLP - a subsidiary of Deloitte,<sup>[3]</sup> were auditors for R.J. Reynolds Tobacco Company from 1989-2000,<sup>[4][5]</sup> and for Lorillard Tobacco Company until its purchase by Reynolds American in 2015.<sup>[6] [7] [8][9]</sup> Deloitte have also worked as auditors for BAT, dating back to the 1960s, 70s, 80,s & 90s.<sup>[10][11][12][13][14]</sup> Deloitte have also audited for multiple Indian tobacco companies in recent years, including Godfrey Phillips India<sup>[15]</sup> and the Vazir Sultan Tobacco Company.<sup>[16]</sup>

Deloitte’s Swiss-based global account team started an “innovation learning journey” with Philip Morris (PMI) in 2015. This involved “broad ranging discussion with PMI’s most senior executives”, seven members of PMI’s executive team attending a two-day visit to Silicon Valley in December 2015, and a subsequent workshop, led by Deloitte in January 2016, which was open to the “entire PMI executive team”.<sup>[17]</sup> The Malaysian division of Japan Tobacco International (JTI Malaysia) has also used Deloitte & Touche LLP as an auditor.<sup>[18]</sup>

## Tobacco Industry Funded Reports on Effects of Plain Packaging on Illicit Trade

In 2011, the Tobacco Plain Packaging Bill, which considered the introduction of plain packaging for tobacco products, was put forward to the Parliament of Australia.<sup>[19]</sup> Tobacco companies vehemently opposed plain packaging in Australia, arguing, amongst other things, that the policy would negatively impact the illicit tobacco trade in the country.

- See Countering Industry Arguments Against Plain Packaging: It will Lead to Increased Smuggling.

Deloitte produced multiple industry-commissioned reports on both the illicit trade and plain packaging in Australia during the plain packaging debate.

In 2011, Deloitte produced a report for BAT titled ‘Tobacco packaging regulation: An international assessment of the intended and unintended consequences’.<sup>[20]</sup> It discussed the potential impact of plain packaging on Australia’s illicit trade and featured multiple industry commentaries on the topic (Image 1).

Drivers of illicit tobacco	Consequence
Price and price differential	The price of licit tobacco and the price differential between licit and illicit tobacco**
Attractiveness	Changes in the relative attractiveness of various forms of licit tobacco vis-à-vis illicit tobacco
Availability and ease of purchase	Stimulation of illicit consumption through freely available and easily acquirable illicit products
Ease of manufacture	Impact of PP on the ease with which illicit tobacco products can be manufactured
Close resemblance to original	The extent to which PP makes it harder to distinguish between licit and counterfeit illicit tobacco

Image 1: A chart from Deloitte’s 2011 ‘Tobacco packaging regulation: An international assessment of the intended and unintended consequences’.

The tobacco industry front group, 'the Alliance of Australian Retailers' (AAR) commissioned Deloitte to produce two reports on plain packaging in 2011 titled 'Potential impact on retailers from the introduction of plain tobacco packaging' and 'Plain packaging and channel shift'.<sup>[21][22][23]</sup> Simon Chapman, a Professor of Public Health at the University of Sydney, described Deloitte's work for the AAR as "nonsense".<sup>[24]</sup>

Chapman argued that Deloitte's report on "channel shift" (customers switching to larger outlets, such as supermarkets over small retailers) had set out to verify a "foregone conclusion". He suggested that "push polling" may have occurred, whereby interview participant's opinions are potentially manipulated by the questions that they are presented with.<sup>[24]</sup>

Another 2011 report, titled 'Illicit Trade of Tobacco in Australia' was commissioned by BAT Australia, PMI, and Imperial Tobacco Australia, and it suggested that, in Australia, all of the 15.9% of smokers who had bought illicit tobacco in the last year were using approximately 25 illicit cigarettes for 365 days of the year.<sup>[25]</sup> The report also claimed that:

"the increase in the trade of illicit tobacco has occurred concurrently with some material changes to the regulatory and taxation regime including [...]The federal government intends to legislate for the introduction of plain packaging of all tobacco products during the course of 2011".<sup>[25]</sup>

Just days later, BAT issued the following press release:

"British American Tobacco Australia today congratulated Customs and Border Protection on their hard work for seizing 2.5 million illegally imported counterfeit cigarettes in Brisbane. Unfortunately 2.5 million counterfeit cigarettes (equal to 2500 kg) is less than 1% of the total amount of illegal tobacco making its way into Australia each year".<sup>[26]</sup>

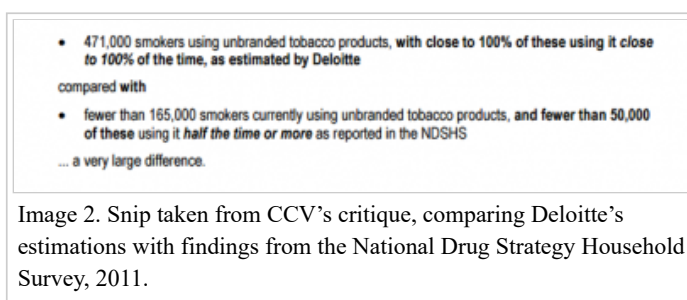
The companies' campaigning websites also claimed that plain packaging would increase smuggling and illicit trade by making cigarettes easier and cheaper to counterfeit. Australia's Home Affairs Minister, Brendan O'Connor, who was responsible for customs issues, responded by accusing the powerful tobacco lobby of scaremongering to protect its commercial interests. "It is baseless to claim that one in six smokers [is] consuming illegally imported tobacco. Big tobacco regularly quotes from reports that it commissions itself - rather than the independent research - because independent research does not back its claims," he said.<sup>[27]</sup>

Officials from the Australian Customs and Border Protection Service also outlined their concerns regarding the accuracy of the claims made in the report. They noted that the size and methodology of the survey that Deloitte used to estimate the size of Australia's illicit tobacco market were not revealed and that it was "potentially misleading" to identify organised crime gangs as the fourth largest tobacco 'player' in Australia.<sup>[28]</sup> In 2012, Deloitte released an updated version of the 'Illicit trade of tobacco in Australia' report which, along with the 2011 edition, was critiqued by Cancer Council Victoria (see below). Findings from Deloitte's reports on illicit tobacco in Australia have been included in similar reports by other firms, such as KPMG's report on Australia's illicit tobacco trade in 2015.<sup>[29]</sup>

## Cancer Council Victoria Critique of Reports

The non-profit cancer charity organisation, Cancer Council Victoria (CCV) published critiques of Deloitte's 2011 and 2012 reports on the illicit tobacco trade in Australia. In its critique of the 2011 report, CCV outlined how Deloitte's findings had been used by the industry to oppose plain packaging:

"Deloitte claimed that the size of the illicit tobacco market in Australia is 15.9%, a figure widely quoted by tobacco companies and since included in A4+ sized newspaper advertisements aiming to discourage members of the Australian Parliament from supporting legislation to mandate plain packaging"<sup>[30]</sup>



The critique discussed multiple methodological problems with the survey data that the report is based on and outlined how some of its findings were misinterpreted by Deloitte.<sup>[30]</sup> CCV compared Deloitte's findings to a Government survey which found that only 1.2% of smokers used illicit tobacco products half the time or more.<sup>[31]</sup>

CCV's critique of the 2012 Deloitte report identified "much (of) the same problems" regarding the quality of the data reported on, identifying high respondent drop-out rates and a lack of methodological transparency. It also outlined problems related to how the report quantifies counterfeit and contraband cigarettes, due to it adding the two categories together rather than accounting for the significant level of overlap.

Adding the figures for counterfeit and contraband together creates a higher estimate of overall illicit tobacco use as it does not account for the fact that most survey respondents would have been referring to the "same product and set of purchases".<sup>[32]</sup>

CCV referred to the definition of contraband cigarettes that Deloitte used in its 2012 report:



“According to the definition included in the (Deloitte) report on page 2, contraband cigarettes can include counterfeit as well as genuine cigarettes that are imported without payment of taxes.”<sup>[32]</sup>

CCV noted that this definition allowed for an overlap, whereby most, but not all contraband (smuggled cigarettes where domestic duty is not paid), are counterfeit (cigarettes that have been manufactured without the authorisation of the brand owners). Despite this, Deloitte added the two categories together as if they were completely independent, thus inflating the findings (Image 3).

## Industry Funded Reports cited by BAT, Imperial Tobacco, JTI and PMI in their 2012 Consultation Submissions

The UK government’s first public consultation on the plain packaging of tobacco products took place between 16 April 2012 and 10 August 2012 and saw significant industry opposition to plain packaging. See Plain Packaging Opposition in the UK: 2012 Consultation. BAT, Imperial Tobacco, JTI, & PMI all submitted responses to the consultation, with each referring to at least one of Deloitte’s industry commissioned reports. BAT’s submission cited ‘Tobacco packaging regulation: An international assessment of the intended and unintended impacts’, JTI’s Submission referred to the two AAR-commissioned reports in order to portray retailer opposition to standardised packaging, and Philip Morris’ Submission

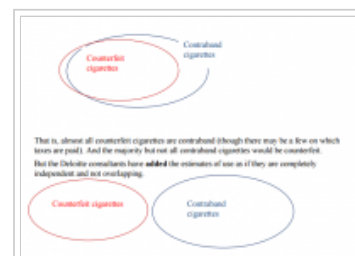


Image 3. An explanation of the errors in Deloitte’s quantification of use of contraband/counterfeit cigarettes, taken from CCV’s 2012 critique.<sup>[32]</sup>

sales.”<sup>43</sup> Plain packaging will only exacerbate this by further increasing demand for illicit products and reducing visits to legitimate stores, by increasing in store transaction times and frustrating customers, and by encouraging consumers to shop at larger retailers as opposed to small shops.<sup>44</sup>

<sup>43</sup> See, for example, Deloitte, Alliance of Australian Retailers, Plain packaging and channel shift, June 2011, available at [https://www.australianretailers.com.au/downloads/pdf/deloitte/Potential\\_impact\\_of\\_channel\\_shift.pdf](https://www.australianretailers.com.au/downloads/pdf/deloitte/Potential_impact_of_channel_shift.pdf); Deloitte, Alliance of Australian Retailers, Potential impacts on retailers from the introduction of plain tobacco packaging, February 2011, available at [https://www.australianretailers.com.au/downloads/pdf/deloitte/2011\\_01\\_31\\_AAR\\_Plain\\_Packaging2.pdf](https://www.australianretailers.com.au/downloads/pdf/deloitte/2011_01_31_AAR_Plain_Packaging2.pdf).

Image 4. Snip of PMI citing Deloitte’s AAR reports in its consultation submission.

([http://www.pmi.com/eng/tobacco\\_regulation/submissions/documents/Submission%20and%20All%20Annexes%20\(combined\).pdf](http://www.pmi.com/eng/tobacco_regulation/submissions/documents/Submission%20and%20All%20Annexes%20(combined).pdf)) also referred to Deloitte’s work for the AAR to highlight extensive retailer opposition to standardised packaging (Image 4).

Out of the four responses, Imperial Tobacco’s Submission to the 2012 UK Consultation on plain packaging cited Deloitte’s industry commissioned research the most. Imperial Tobacco referred to the report on ‘intended and unintended impacts’ as well as to the two AAR-commissioned reports. The company’s submission also attempted to defend Deloitte’s estimates, arguing that a study which “is widely referred to by anti-tobacco lobbyists in response to the Deloitte reports”, “misrepresents” Deloitte’s view.

## TobaccoTactics Resources

- Australia: Campaigning Websites
- Countering Industry Arguments Against Plain Packaging: It will Lead to Increased Smuggling
- Hiring Independent Experts
- KPMG
- Tobacco Smuggling
- Tobacco Smuggling in the UK
- Imperial And Gallaher Involvement in Tobacco Smuggling
- New Gallaher Documents Reveal Extent of Smuggling Activities
- BAT Involvement in Tobacco Smuggling
- Tobacco Industry Arguments Against Taxation

## Relevant Links

- Cancer Council Victoria critiques of Deloitte reports (<https://www.cancervic.org.au/plainfacts/browse.asp?ContainerID=illicittobacco>)

## TCRG Research

- ‘It will harm business and increase illicit trade’: an evaluation of the relevance, quality and transparency of evidence submitted by transnational tobacco companies to the UK consultation on standardised packaging 2012 (<http://tobaccocontrol.bmj.com/content/24/e2/e168>), K. Evans-Reeves, J. Hatchard, A. Gilmore, 2015, *Tobacco Control*, 24(e2), e168-e177, doi:10.1136/tobaccocontrol-2014-051930
- Towards a greater understanding of the illicit tobacco trade in Europe: a review of the PMI funded ‘Project Star’ report (<http://tobaccocontrol.bmj.com/content/early/2013/12/11/tobaccocontrol-2013-051240.full>), A. Gilmore, A. Rowell, S.

Visit Tobacco Control Research Group: Peer-Reviewed Research for a full list of our journal articles of tobacco industry influence on health policy.

## Notes

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3. Google Finance, Deloitte & Touche LLP (<https://www.google.co.uk/finance?cid=4298904&ei=dyZIWLGFtFKUcqbAM>), 2016, accessed December 2016
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5. RJ Reynolds, RJ Reynolds Form 8-K (<http://files.shareholder.com/downloads/RAI/0x0xS950144-00-1569/83612/filing.pdf>), 2000, accessed December 2016
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Categories: Plain Packaging | Third Party Techniques | Hiring Independent Experts

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- This page was last modified on 10 January 2017, at 16:27.

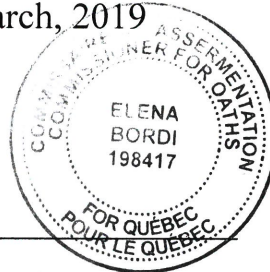
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However, you must give appropriate credit to the University of Bath and acknowledge us as the copyright holder by stating: "This material is reproduced from [www.TobaccoTactics.org](http://www.TobaccoTactics.org). Copyright University of Bath and used under permission of the University of Bath. All rights reserved."

This is **Exhibit « 25 »**, referred to in the  
**Affidavit of Bruce Johnston**, sworn before me  
this 27th day of March, 2019

*Elena Bordi*



Commissioner of Oaths for Quebec



**PRESS RELEASE**  
**FOR IMMEDIATE DISTRIBUTION**

## **Imperial Tobacco Canada Obtains Creditor Protection** **Business as Usual for Employees, Customers, Consumers and Other Stakeholders**

**MONTREAL, March 12, 2019** – Imperial Tobacco Canada, Canada’s leading legal tobacco company, and its affiliates (collectively “Imperial Tobacco Canada” or “the Company”) have obtained an Initial Order from the Ontario Superior Court of Justice granting the Company protection under the *Companies’ Creditors Arrangement Act* (“CCAA”).

This protection will enable the Company to continue to operate in the normal course, thereby generating the cash flow necessary to pay its employees, suppliers and various levels of government — which in 2018 received taxes of approximately \$3.8 billion from the Company.

The Company’s decision to file for protection under the CCAA follows the Quebec Court of Appeal judgment holding the industry liable for a maximum of \$13.6 billion, and the recent decision by one of the other Canadian tobacco companies, JTI-Macdonald, to seek, and subsequently obtain, CCAA protection. If Imperial Tobacco Canada had not also obtained court protection, it could have been required to pay for all or part of JTI-Macdonald’s share of the Quebec judgment, in addition to its own.

Across Canada, tobacco plaintiffs and provincial governments are collectively seeking hundreds of billions of dollars in damages. In seeking protection under the CCAA, the Company will also look to resolve all tobacco litigation in Canada under an efficient and court supervised process.

It will remain business as usual for Imperial Tobacco Canada, its employees, customers and suppliers. In addition, the Company’s products, both cigarettes and potentially reduced risk products, will remain available across the country for adult consumers.

### **Quebec Class Actions**

On March 1, 2019 the Quebec Court of Appeal upheld a 2015 Quebec Superior Court judgment under which Imperial Tobacco Canada and two other Canadian tobacco companies are jointly and severally liable to pay a maximum of \$13.6 billion in damages to Quebec class action plaintiffs. Imperial Tobacco Canada’s share of the judgment is a maximum of approximately \$9.2 billion. Following the first instance judgment, the Company made an initial deposit of \$758 million in escrow. This amount, as directed by the first instance judge and affirmed by the Court of Appeal, should satisfy any order to pay the claimants.

Imperial Tobacco Canada continues to disagree with the judgments by the Quebec Court of Appeal and the Quebec Superior Court. Canadian consumers and governments have been aware of the health risks associated with smoking for decades, and the Company has always operated and sold its legal products within a regulatory framework dictated by governments.

### **Companies' Creditors Arrangement Act**

Under the terms of the Initial Order, FTI Consulting Canada Inc. will serve as the Court-appointed Monitor of Imperial Tobacco Canada. Additional information regarding Imperial Tobacco Canada's CCAA proceedings will be available on the Monitor's website at <http://cfcanada.fticonsulting.com>

Source: Imperial Tobacco Canada: <http://www.imperialtobaccocanada.com/>

-30-

### **For more information or interview requests, please contact:**

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## British American Tobacco: Imperial Tobacco Canada Ltd. Files for CCAA

### An opportunity to settle all outstanding Canadian tobacco litigation

March 12, 2019 07:30 PM Eastern Daylight Time

LONDON--(BUSINESS WIRE)--British American Tobacco p.l.c. has today been informed by its Canadian subsidiary, Imperial Tobacco Canada Ltd (ITCAN), that ITCAN has obtained an Initial Order from the Ontario Superior Court of Justice granting it protection under the *Companies' Creditors Arrangement Act* ("CCAA"). This has the effect of staying all current tobacco litigation in Canada against ITCAN and other Group companies.

ITCAN's decision to file for protection under the CCAA follows the Quebec Court of Appeal judgment holding the industry jointly and severally liable for a maximum of CAD\$13.6 billion, and the recent decision by one of the other Canadian tobacco companies, JTI-Macdonald, to seek, and subsequently obtain, CCAA protection. If ITCAN had not also obtained court protection, it could have been required to pay for all or part of JTI-Macdonald's share of the Quebec judgment, in addition to its own.

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

It will remain business as usual for ITCAN, its employees, customers and suppliers and during the CCAA process, ITCAN's management will continue to focus on growing its current cigarette and potentially reduced risk products business.

The Group will continue to consolidate the results of ITCAN, in line with IFRS 10 "*Consolidated Financial Statements*", and ITCAN's CCAA filing will not negatively affect the Group's adjusted net debt to adjusted EBITDA ratio.

The £2.3 billion of goodwill relating to ITCAN on the Group's balance sheet at 31 December 2018 will continue to be reviewed on a regular basis. Any future impairment charge would result in a non-cash charge to the income statement that will be treated as an adjusting item.

Since 2014 the Group has received no dividends from ITCAN and expects that this situation will continue whilst ITCAN remains under CCAA protection. Notwithstanding this, there will be no impact on the BAT Group's dividend payments or policy.

A British American Tobacco spokesperson said:

*"Imperial Tobacco Canada has informed us that it disagrees with the Court's judgment. However, we understand that CCAA protection will provide Imperial Tobacco Canada an opportunity to settle all of its outstanding tobacco litigation under an efficient and court supervised process whilst continuing to run its business in the normal course."*

#### Quebec Class Action Update

Following the upholding of the Quebec Superior Court's judgment on 1 March 2019, ITCAN's share of the judgment is a maximum of approximately CAD\$9.2 billion. Following the first instance judgment, ITCAN made an initial deposit of CAD\$758 million into escrow. As announced on 5 March 2019, an amount of approximately £436 million (CAD\$758 million) will be charged to the Group's consolidated income statement in 2019 in respect of this sum and treated as an adjusting item.

ITCAN continues to disagree with the judgments of the Quebec Court of Appeal and the Quebec Superior Court. Canadian consumers and governments have been aware of the health risks associated with smoking for decades, and ITCAN has always operated and sold its legal products within a regulatory framework prescribed by successive governments.

## **Notes to Editors**

CCAA is the Companies' Creditors Arrangement Act, and it refers to the Canadian Federal Act that allows corporations the opportunity to restructure their affairs. An organisation that files for court protection under CCAA continues to operate and maintain business that is "in the ordinary course" or business as usual.

## **About British American Tobacco**

British American Tobacco (BAT) is one of the world's leading, multi-category consumer goods companies, providing tobacco and nicotine products to millions of consumers around the world. It employs over 55,000 people, with market leadership in over 55 countries and factories in 48. Its Strategic Portfolio is made up of its global cigarette brands and a growing range of potentially reduced-risk products. These include vapour, tobacco heating products, and modern oral products as well as traditional oral products such as snus and moist snuff. In 2018, the Group generated revenue of £24.5 billion and profit from operations of £9.3 billion.

## **Forward looking statements**

This announcement contains certain forward-looking statements, including "forward-looking" statements made within the meaning of Section 21E of the United States Securities Exchange Act of 1934. These statements are often, but not always, made through the use of words or phrases such as "believe," "anticipate," "could," "may," "would," "should," "intend," "plan," "potential," "predict," "will," "expect," "estimate," "project," "positioned," "strategy," "outlook," "target" and similar expressions. These include statements regarding our intentions, beliefs or current expectations concerning, amongst other things, our results of operations, financial condition, liquidity, prospects, growth, strategies and the economic and business circumstances occurring from time to time in the countries and markets in which the Group operates.

All such forward-looking statements involve estimates and assumptions that are subject to risks, uncertainties and other factors that could cause actual future financial condition, performance and results to differ materially from the plans, goals, expectations and results expressed in the forward-looking statements and other financial and/or statistical data within this announcement. Among the key factors that could cause actual results to differ materially from those projected in the forward-looking statements are uncertainties related to the following: the impact of competition from illicit trade; the impact of adverse domestic or international legislation and regulation; changes in domestic or international tax laws and rates; adverse litigation and dispute outcomes and the effect of such outcomes on the Group's financial condition; changes or differences in domestic or international economic or political conditions; adverse decisions by domestic or international regulatory bodies; the impact of market size reduction and consumer down-trading; translational and transactional foreign exchange rate exposure; the impact of serious injury, illness or death in the workplace; the ability to maintain credit ratings and to fund the business under the current capital structure; the inability to develop, commercialise and roll-out Potentially Reduced-Risk Products; and changes in the market position, businesses, financial condition, results of operations or prospects of the Group.

It is believed that the expectations reflected in this announcement are reasonable but they may be affected by a wide range of variables that could cause actual results to differ materially from those currently anticipated. Past performance is no guide to future performance and persons needing advice should consult an independent financial adviser. The forward-looking statements reflect knowledge and information available at the date of preparation of this announcement and the Group undertakes no obligation to update or revise these forward-looking statements, whether as a result of new information, future events or otherwise. Readers are cautioned not to place undue reliance on such forward-looking statements.

No statement in this communication is intended to be a profit forecast and no statement in this communication should be interpreted to mean that earnings per share of BAT for the current or future financial years would necessarily match or exceed the historical published earnings per share of BAT.

Additional information concerning these and other factors can be found in the Company's filings with the U.S. Securities and Exchange Commission ("SEC"), including the Annual Report on Form 20-F filed on 15 March 2018 and Current Reports on Form 6-K, which may be obtained free of charge at the SEC's website, <http://www.sec.gov>, and the Company's Annual Reports, which may be obtained free of charge from the British American Tobacco website [www.bat.com](http://www.bat.com).

## **Contacts**

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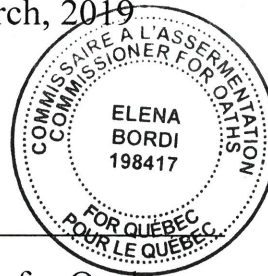
**Investor Relations**

Mike Nightingale / Rachael Brierley

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This is **Exhibit « 26 »**, referred to in the  
**Affidavit of Bruce Johnston**, sworn before me  
this 27th day of March, 2019

*Elena Bordi*



Commissioner of Oaths for Quebec





### **Statement from Imperial Tobacco Canada in reaction to the Quebec Court of Appeal judgment**

MONTREAL, March 1, 2019 /CNW Telbec/ - "Imperial Tobacco Canada is disappointed that the Court of Appeal did not overturn the first instance judgment. We are still of the view that this decision is wrong – ignoring the reality that both adult consumers and government have known about the risk associated with smoking for decades. As a result, we believe it should be overturned.

Following release of the judgment from the Quebec Court of Appeal, the plaintiffs requested immediate release of the funds on deposit, which was refused. They then filed a formal motion to release the funds.

Imperial Tobacco Canada filed a motion to prevent the release of the funds in question.

We will take the time to carefully review the judgment before commenting on next steps. Our priority remains to conduct a prosperous and sustainable business in Canada. Given the significance of the judgment, we fully intend to appeal the decision to the Supreme Court of Canada."

To schedule an interview with an Imperial Tobacco Canada's spokesperson:

Travon Smith, Torchia Communications, W: (416) 341-9929 ext. 222, C: (647) 5152903, [travon@torchiacom.com](mailto:travon@torchiacom.com);  
Paul Vaillancourt III, Torchia Communications, C: 514-996-6224, [paulv@torchiacom.com](mailto:paulv@torchiacom.com)

## Media

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# News Release

## Quebec tobacco class action Court of Appeal judgment issued

01 March 2019

The judgment in the two Quebec Class Action lawsuits against our subsidiary, Imperial Tobacco Canada Ltd., and two other Canadian tobacco companies was publicly issued by the Quebec Court of Appeal in Montreal on 1st March 2019.

The Court of Appeal has upheld the Superior Court's decision of May 2015.

A British American Tobacco spokesperson said:

*"We are extremely disappointed that the Quebec Court of Appeal did not overturn the trial court's judgment against our Canadian subsidiary, Imperial Tobacco Canada Ltd. We are still of the view that this decision is wrong – ignoring the reality that both adult consumers and government have known about the risk associated with smoking for decades. As a result, we believe it should be overturned.*

*"Imperial Tobacco Canada Ltd. needs to review the court's decision in more detail and will decide on next steps over the coming days and weeks. Given the significance of the judgment, they have said that they fully intend to appeal the decision to the Supreme Court of Canada."*

Following the release of the judgment from the Quebec Court of Appeal, the plaintiffs requested immediate release of the funds on deposit, which was refused. They then filed a formal motion to release the funds. Imperial Tobacco Canada Ltd. filed a motion to prevent the release of the funds in question.

British American Tobacco was not a party to the proceeding and is not a party to the judgment, only its Canadian subsidiary, Imperial Tobacco Canada Ltd.

### Notes to Editors

The judgment follows an almost 20-year legal challenge against British American Tobacco's Canadian subsidiary, Imperial Tobacco Canada Ltd. as well as Philip Morris International's and Japan Tobacco International's Canadian subsidiaries.

The cases were brought against the three Canadian tobacco manufacturers on behalf of two groups of Plaintiffs: smokers, who smoked a minimum of 12 pack-years and who were diagnosed with lung, throat and laryngeal cancer or emphysema prior to 12th March 2012; and smokers who were addicted to nicotine at the time the proceedings were commenced (September 1998) and remained addicted until at least 21st February 2005.

## Enquiries

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## Latest tweets



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Thank you! We are committed to setting emissions reduction targets in line with [#science](#)

[@sciencetargets](#)

[twitter.com/WMBtweets/stat...](#)

12 Mar

## Current UK share price

3079.50p

+81.00p

15 Mar 2019 17:04

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T: [+44 \(0\) 20 7845 1000](#)



This is **Exhibit « 27 »**, referred to in the  
**Affidavit of Bruce Johnston**, sworn before me  
this 27th day of March, 2019

*Elena Bordi*



Commissioner of Oaths for Quebec

# Big tobacco to pay record fines after guilty plea

CTV.ca News Staff

Published Thursday, July 31, 2008 8:55PM EDT

Two of Canada's biggest tobacco companies will pay record-setting fines after pleading guilty to tax charges laid in connection with contraband cigarettes.

Imperial Tobacco Canada Limited and Rothmans Benson and Hedges pleaded guilty to "aiding persons to sell and be in possession of tobacco manufactured in Canada that was not packed and was not stamped in conformity with the Excise Act."

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[Teens have hard time giving up cigarettes, study says](#)

[Officials unclear on extent of gun smuggling](#)

## PHOTOS



Gordon O'Connor, minister of National Revenue makes a point during a press conference in Levis, Que. on Thursday July 31, 2008. (Clement Allard / THE CANADIAN PRESS)



RCMP Assistant Commissioner Mike Cabana answers reporters questions regarding long standing excise-act investigations involving two major tobacco companies at RCMP headquarters in Ottawa, Thursday, July

Imperial Tobacco will pay \$200 million in fines and Benson and Hedges was fined \$100 million.

"Based on our estimates, by (the companies) paying these fines, they will not be making any profits out of the (illicit) activities they had in the past," Revenue Minister Gordon O'Connor said at a press conference held in Ottawa on Thursday.

The companies have also committed to help combat contraband tobacco activities in Canada.

"The result we've seen today brings to a close a significant chapter in contraband tobacco history," RCMP Assistant Commissioner Mike Cabana said in a press release.

"The message sent today is that no company is above the law."

Imperial Tobacco said they understood the implication of their guilty plea.

"We realize we are going to take a hit to our reputation because of this," Catherine Doyle of Imperial Tobacco Canada said. "We acknowledge we violated this section of the excise act."

The RCMP said Thursday's guilty pleas were the culmination of an eight-year investigation by RCMP Customs and Excise officers in Ontario and Quebec.

The charges were laid in connection with illegal tobacco shipments to locations in the U.S. between 1989 and 1994. The contraband cigarettes were distributed by smugglers or black market distributors in Canada and the U.S.

O'Connor said that in addition to the criminal fines, the two companies will also pay hundreds of millions of dollars in civil fines.

"Imperial is paying \$600 million and Benson and Hedges is paying \$550 million -- when you add up the criminal and civil fines," he said.

No company official was charged in connection with the investigation.

But an anti-smoking group says Thursday's fines have not fully served justice because no tobacco company executive will see jail time.

31, 2008. (Tom Hanson / THE  
CANADIAN PRESS)

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"There's no winners in this because the industry has addicted a whole bunch of young people who then became lifetime annuitants for these companies," said Garfield Mahood, a spokesperson for the Non-Smokers Rights Association.

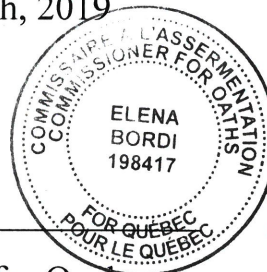
"Over time the companies will financially benefit. And literally thousands of people will die in the future as a result of this crime."

O'Connor said Thursday's plea deal had the approval of Canada's premiers. Money from the fines will go into both provincial and federal coffers.

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This is **Exhibit « 28 »**, referred to in the  
**Affidavit of Bruce Johnston**, sworn before me  
this 27th day of March, 2019

*Elena Bordi*



Commissioner of Oaths for Quebec

# The Biggest Big Tobacco Companies

Jayson Derrick , Benzinga Staff Writer | FOLLOW  
January 18, 2017 10:42am | [Comments](#)



The global [tobacco](#) industry saw a major shift in the competitive landscape this week after **British American Tobacco p.l.c.** ▼ **BTI 0.48%** [reached an agreement](#) to acquire the remaining 57.8 percent stake of **Reynolds American Inc.** NYSE:RAI it didn't already own.

British American stated that the combination of the two companies will create a "stronger, truly global tobacco and Next Generation Products company, delivering sustained long-term profit growth and returns."

"Through this transaction, we form an industry leader that will focus on innovation and brand building," said Susan M. Cameron, executive chairman of Reynolds American's board of directors. "This combination will create a truly global tobacco company with multiple iconic tobacco brands, and a world-class pipeline of next-generation vapor and tobacco-heating products."

## How Does The New Company Stack Up To The Competition?

According to [Statista](#), British American is the third-largest player in the global tobacco market with an enterprise value of \$129 billion and Reynolds is the fourth-largest with an enterprise value of \$89 billion.

The combined entity at face value will be valued at \$218 billion, which makes it the clear No. 1 player in the global market.

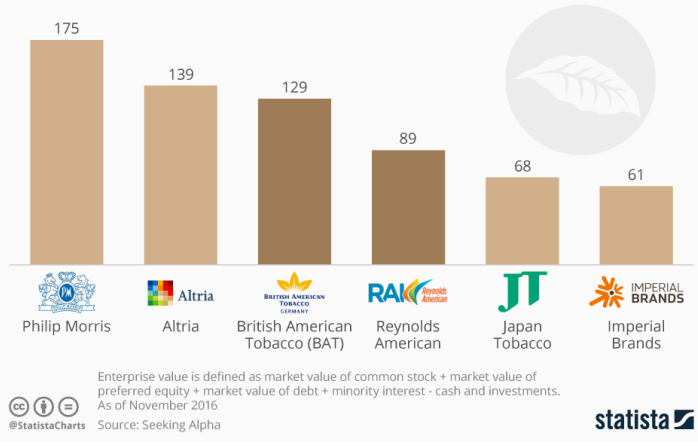
Here is a summary of the six largest tobacco companies ranked by enterprise value, prior to the combination of British American Tobacco and Reynolds.

- **1. Philip Morris International Inc.** ▼ **PM 2.91%** - \$175 billion.
- **2. Altria Group Inc** ▲ **MO 1.04%** - \$139 billion.
- **3. British American Tobacco** - \$129 billion.
- **4. Reynolds American** - \$89 billion.
- **5. Tokyo-listed Japan Tobacco Inc** (TYO: 2914) - \$68 billion.
- **6. London-listed Imperial Brands PLC** (LON: IMB) - \$61 billion.



### Big Tobacco: BAT Bags Camel

Listed tobacco companies worldwide in 2016, based on enterprise value (in billion U.S. dollars)



Posted-In: [British American Tobacco Reynolds Merger](#) [Susan Cameron](#) [tobacco](#) [Tobacco Industry](#) [Education](#) [M&A](#) [General](#) [Best of Benzinga](#)

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**Affidavit of Bruce Johnston**, sworn before me  
this 27th day of March, 2019

*Elena Bordi*



Commissioner of Oaths for Quebec

**C A N A D A**

**C O U R D ' A P P E L**

PROVINCE DE QUÉBEC  
DISTRICT DE MONTRÉAL  
C.S. 500-06-000070-983

IMPERIAL TOBACCO CANADA LTD.,  
-et-  
JTI-MACDONALD CORP.,  
-et-  
ROTHMANS, BENSON & HEDGES INC.,

Appelantes/défenderesses

c.

CÉCILIA LÉTOURNEAU,

Intimée/demanderesse

---

C.S. 500-06-000076-980

IMPERIAL TOBACCO CANADA LTD.,  
-et-  
JTI-MACDONALD CORP.,  
-et-  
ROTHMANS, BENSON & HEDGES INC.,

Appelantes/défenderesses

c.

CONSEIL QUÉBÉCOIS SUR LE TABAC ET  
LA SANTÉ,

Intimé/demandeur

-et-  
JEAN-YVES BLAIS,

Intimé/membre désigné

---

INTERROGATOIRE SUR AFFIDAVIT DE M. ÉRIC THAUVETTE

(Interrogé par Me Bruce W. Johnston)

Le 30 juin 2015 à Montréal

**ROSA FANIZZI**  
**STÉNOGRAPHE OFFICIELLE**

1 Q. **[20]** En fait, la requête initiale a commencé... a  
2 été signifiée dans les deux dossiers, à l'automne  
3 mil neuf cent quatre-vingt-dix-huit (1998).

4 R. Oui. Oui, j'étais avec Imperial Tobacco.

5 Q. **[21]** À votre connaissance, Imperial Tobacco n'a  
6 jamais provisionné un sou pour satisfaire à un  
7 éventuel jugement dans ces dossiers, n'est-ce pas?

8 R. C'est exact.

9 Q. **[22]** Au paragraphe 34 de votre affidavit, vous  
10 produisez les états financiers consolidés  
11 d'Imperial Tobacco pour l'année se terminant le  
12 trente et un (31) décembre deux mille quatorze  
13 (2014).

14 R. Hum, hum.

15 Q. **[23]** Annexe A.

16 R. Oui.

17 Q. **[24]** Je vais maintenant vous poser des questions  
18 sur ces états financiers.

19 R. D'accord.

20 Me ÉRIC PRÉFONTAINE :

21 Juste pour que ça soit clair que ça apparaît de  
22 l'enregistrement que ces états financiers-là ont  
23 été produits sous réserve essentiellement d'un  
24 engagement de confidentialité qui a été pris, donc  
25 juste que ça soit clair des transcriptions

1           quand je lis quelque chose en anglais.

2           R. Non, non.

3           Q. **[29]** Très bien. Et je vais vous demander aussi  
4           d'attendre que j'aie fini de poser la question,  
5           comme ça, ça va être plus facile pour madame la  
6           sténographe d'enregistrer la réponse.

7           R. Pas de problème.

8           Q. **[30]** En bas de la page *Contingencies*, on lit :

9                               *The Corporation is a defendant in several*  
10                              *litigations (collectively the*  
11                              *"Litigation"). Provision for these*  
12                              *litigations would be made only if an*  
13                              *unfavorable outcome becomes probable and*  
14                              *the amount could be reasonably estimated.*

15           Donc, je comprends qu'il n'y a pas eu de provision  
16           qui a été prise, jamais. On a déjà établi ça,  
17           n'est-ce pas?

18           R. Oui.

19           Q. **[31]** Est-ce que vous considérez qu'un *unfavorable*  
20           *outcome* est probable maintenant?

21           R. Non, pas encore.

22           Q. **[32]** Très bien. Et je vais vous référer à la page 5  
23           des états consolidés... des états financiers de  
24           deux mille quatorze (2014). Le premier item sous  
25           *Assets*, on voit *Goodwill* qui est évalué à trois

1 3, je comprends qu'Imperial Tobacco, en deux mille  
2 quatorze (2014), a fait des bénéfices  
3 d'exploitation qui sont listés ici sous *Profits*  
4 *from operations* de cinq cent trente-cinq millions  
5 de dollars (535 M\$). C'est exact?

6 R. C'est exact.

7 Q. [52] Ça, c'était sur des ventes nettes des droits  
8 gouvernementaux de un milliard cent un millions  
9 (1,101 G)... euh, un milliard cent un millions  
10 (1,101 G). C'est exact?

11 R. Oui.

12 Q. [53] Si vous prenez la page 6 des états financiers,  
13 on voit qu'en deux mille quatorze (2014), Imperial  
14 Tobacco a payé des dividendes de trois cent trente-  
15 quatre millions de dollars (334 M\$), c'est exact?

16 R. Oui.

17 Q. [54] Ça a été payé à British American Tobacco?

18 R. Oui.

19 Q. [55] ... qui est cent pour cent (100 %)  
20 actionnaire.

21 R. Oui.

22 Q. [56] Est-ce que les dividendes sont payés  
23 trimestriellement ou annuellement?

24 R. C'est payé de façon trimestrielle.

25 Q. [57] Je vous ramène à la page 3. On voit qu'en bas,

1           sous la rubrique *Taxation*, Imperial Tobacco a payé  
2           cent quatre-vingt-quatre millions de dollars  
3           (184 M\$) en taxes, c'est exact?

4           R. Ce n'est pas nécessairement le montant du paiement,  
5           c'est l'estimé de la charge d'impôt.

6           Q. **[58]** O.K. Donc, il a payé combien?

7           R. On pourrait le voir, en fait, dans nos *cash flows*.  
8           Je pense que vous avez un... une ligne...

9           Q. **[59]** Page 5?

10          R. ... *Taxes paid*, qui est cent dix-neuf millions  
11          (119 M), à la page 7, effectivement.

12          Me ÉRIC PRÉFONTAINE :

13          Avec *Consolidated statement of cash flows*.

14          Me BRUCE W. JOHNSTON :

15          Hum, hum.

16          R. Au milieu de la page, oui.

17          Q. **[60]** ... si vous ajoutez *withholding tax paid*, ça  
18          fait cent trente-neuf (139), c'est exact?

19          R. Oui. Ça, c'est... oui, effectivement.

20          Q. **[61]** O.K. Mais en deux mille quatorze (2014), aux  
21          états financiers, on voit une perte de trois cent  
22          cinquante et un millions (351 M), c'est exact?

23          R. Oui.

24          Q. **[62]** Et cette perte est en grande partie  
25          attribuable à un règlement d'un litige avec une

1 compagnie qui s'appelle Flintkote, c'est exact?

2 R. Oui, c'est exact.

3 Q. [63] Vous êtes familier avec ce règlement-là?

4 R. Oui, je suis familier.

5 Q. [64] En fait, vous l'avez signé, le règlement,  
6 n'est-ce pas?

7 R. Oui, oui.

8 Q. [65] Si vous regardez à la page 23, note 15, dans  
9 la rubrique *Loans from a company under common*  
10 *control*, on voit que le règlement avec Flintkote a  
11 été financé par une facilité de crédit de cinq  
12 cents millions de dollars (500 M\$) par BATIF,  
13 n'est-ce pas?

14 R. Oui.

15 Q. [66] Donc, si je comprends bien, Imperial Tobacco,  
16 dans la même année a payé trois cent trente-quatre  
17 millions de dollars (334 M\$) en dividendes à BAT et  
18 a emprunté cinq cents millions de dollars (500 M\$)  
19 à une filière de BAT, c'est exact?

20 R. C'est exact.

21 Q. [67] Et la facilité de crédit en question, elle est  
22 payable à raison de cent millions de dollars  
23 (100 M\$) par trimestre, c'est exact?

24 R. Oui, c'est exact.

25 Q. [68] Si vous regardez la note 15, page 22, on voit



1 R. Oui.

2 Q. **[78]** O.K. Est-ce que la facilité de crédit a été  
3 mise en place spécifiquement pour pouvoir conclure  
4 le règlement?

5 R. La facilité de crédit a été mise en place pour  
6 qu'on puisse faire le paiement de Flintkote, parce  
7 qu'on n'avait pas les liquidités à l'interne pour  
8 faire ça, là, c'est comme...

9 Q. **[79]** Très bien. Si vous regardez, encore, à la note  
10 15, page 23, on voit les trois dernières lignes du  
11 grand paragraphe, vous voyez, après la parenthèse,  
12 ça commence *The Term Credit*, est-ce que vous voyez  
13 ça?

14 R. Oui.

15 Q. **[80]** The Term...

16 Me ÉRIC PRÉFONTAINE :

17 Laissez le témoin lire le...

18 Me BRUCE W. JOHNSTON :

19 Q. **[81]** Je vais le lire pour les fins du dossier.

20 *The Term Credit Facility maturing on*  
21 *December 23, 2015 and repayable in quasi-*  
22 *quarterly tranches of \$100 million is also*  
23 *secured by a hypothec on trademarks owned*  
24 *by the du Maurier Company Inc. The*  
25 *reference rate [...]*

This is **Exhibit « 30 »**, referred to in the  
**Affidavit of Bruce Johnston**, sworn before me  
this 27th day of March, 2019

*Elena Bordi*



Commissioner of Oaths for Quebec



28 February 2019

**BRITISH AMERICAN TOBACCO p.l.c.**  
**PRELIMINARY ANNOUNCEMENT - YEAR ENDED 31 DECEMBER 2018**

**A STRONG BUSINESS PERFORMANCE ACROSS ALL CATEGORIES**

KEY FINANCIALS	2018		Change vs 2017	
	Current rates	Constant rates	Current Rates	Constant rates
Revenue	£24,492m		+25.2%	
Profit from operations	£9,313m		+45.2%	
Basic earnings per share (EPS)	264.0p		-85.6%	
Diluted EPS	263.2p		-85.6%	
Net cash generated from operating activities	£10,295m		+92.5%	
Borrowings	£47,509m		-3.9%	
Dividend per share	203.0p		+4.0%	
<b>Non-GAAP:</b>				
Adjusted revenue on a representative basis*	£24,312m	£25,760m	-2.3%	+3.5%
Adjusted profit from operations on a representative basis*	£10,347m	£10,924m	-1.5%	+4.0%
Adjusted diluted EPS	296.7p	315.5p	+5.2%	+11.8%
Adjusted cash generated from operations	£8,071m	£8,476m	+146%	+158%
Adjusted net debt	£43,407m		-2.7%	

The use of non-GAAP measures, including adjusting items and constant currencies, are further discussed on pages 45 to 46, with reconciliations from the most comparable IFRS measure provided.  
\* Representative basis – see page 3 for explanation of this metric. All variances above are against equivalent 2017 information for the year ended 31 December 2017, revised for the impact of IFRS 15.

**Nicandro Durante, Chief Executive said:**

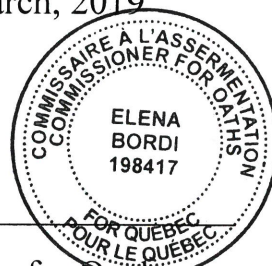
“BAT performed well in 2018, exceeding our target of high single figure adjusted constant currency EPS growth, whilst continuing to invest in long-term sustainable returns. The full year effect of the RAI acquisition and a translational foreign exchange headwind of approximately 6% (on revenue and profit from operations) and 7% (on EPS) distorted the Group’s results. On an adjusted, constant currency, representative basis, this was a strong performance across the business, with:

- 11.8% growth in adjusted, diluted, constant currency EPS;
- Group adjusted revenue growing 3.5% driven by total price/mix of +7%, adjusted profit from operations up 4.0% and adjusted operating margins higher by 40bps, at current rates, with substantial investment in Potentially Reduced-Risk Products (PRRPs);
- Outperformance in combustibles, with market share<sup>1</sup> up 40 bps and strategic cigarette brand volume up 4.8%;
- Excellent progress in Tobacco Heating Products (THP) and vapour, with adjusted revenue up 95% to £901 million, benefiting from the growth of vapour in the US, increasing 20%, and growth in glo, notably in Japan. With an excellent product pipeline, the Group continues to expect strong New Category growth, leading to New Category revenue of £5 billion by 2023/2024;
- Improved financial performance across all regions, notably the US, where revenue was up 2.5% (excluding £94 million of revenue related to the sale of the international brand rights of Natural American Spirit in 2017), driven by pricing and value share, up 25bps, in combustibles; and
- Strong operating cash flow conversion of 113% driving ex-foreign exchange deleveraging of 0.4x and supporting an increase in the dividend of 4%. At current rates, adjusted net debt to adjusted EBITDA was 4.0x.

We recognise that the proposed potential regulatory changes in the US have created some investor uncertainty. We have a long experience of managing regulatory developments, a track record of delivering strong growth while investing for the future and an established multi-category approach. I am confident that my successor, Jack Bowles, will continue to deliver a similar level of sustainable long-term returns as we accelerate our Transforming Tobacco agenda. Looking into 2019 we are confident of another year of high single figure adjusted constant currency earnings growth and this confidence is reflected in our Board’s proposal to increase the dividend by 4%”.

This is **Exhibit « 31 »**, referred to in the  
**Affidavit of Bruce Johnston**, sworn before me  
this 27th day of March, 2019

*Elena Bordi*



Commissioner of Oaths for Quebec

# Rothmans, Benson & Hedges Inc. Granted Protection Under the Companies' Creditors Arrangement Act, Including a Stay of Litigation



Rothmans, Benson & Hedges Inc.  
a subsidiary of Philip Morris Inc.

Français

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NEWS PROVIDED BY

**Rothmans, Benson & Hedges Inc.** →

Mar 22, 2019, 17:58 ET

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TORONTO, March 22, 2019 /CNW/ - Acting on an application by Rothmans, Benson & Hedges Inc. (RBH), the Ontario Superior Court of Justice today granted the company protection under the *Companies' Creditors Arrangement Act* (CCAA). The Court's initial order imposes a comprehensive stay of litigation proceedings against RBH while allowing the company to carry on its business in the ordinary course.

CCAA protection is a court-supervised proceeding designed to bring creditors and potential creditors together to resolve claims while the business continues to operate with minimal disruption. Consistent with this objective, the initial CCAA order authorizes RBH to pay all expenses incurred in carrying on its business in the ordinary course, including obligations to employees, vendors, and suppliers.

"The CCAA forum provides RBH with a promising opportunity to resolve all the pending litigation we have faced for decades in Canada," said Peter Luongo, Managing Director of RBH.

RBH sought the Court's order following an adverse appellate decision in two Class Action lawsuits in Québec against RBH, Imperial Tobacco Canada Limited, and JTI-Macdonald Corp.

As part of RBH's filing for creditor protection, the Ontario Superior Court of Justice made an initial order staying proceedings in the Québec class action proceedings and the other pending litigation, including the litigation brought by all ten provinces related to the recovery of health care costs.

## **Creditor Protection Offers an Opportunity to Resolve All Pending Canadian Litigation while RBH Continues Normal Business Operations**

"While RBH disputes liability in the Canadian litigation given the widespread awareness of the health risks of smoking, we are optimistic about reaching an arrangement that could resolve all pending litigation and allow RBH to focus on the future," said Luongo.

"RBH and its predecessors have been in business for over 100 years. The company is operationally sound thanks to the hard work and commitment of its more than 800 employees across Canada. Furthermore, we are determined to replace cigarettes with innovative, smoke-free technologies that are a better choice for the millions of adults in Canada who would otherwise keep smoking," added Luongo.

### **Québec Class Actions Judgment and Filing for Creditor Protection**

In 2015, the Québec trial court ruled in favor of the plaintiffs and found that the estimated class members' damages totaled approximately CAD 15.6 billion including interest. On March 1, 2019, the Court of Appeal largely affirmed the total amount of compensatory and punitive damages, but reduced the total class member damages due to an error in the interest calculation to approximately CAD 13.6 billion including interest.

While the trial court found that the ultimate damages disposition would depend on an individual claims process, the three defendants in the cases—RBH, JTI-Macdonald Corp., and Imperial Tobacco Canada Limited—are jointly and severally liable for the compensatory damages to be distributed to eligible class members. JTI-Macdonald Corp. and Imperial Tobacco Canada Limited were granted creditor protection under the CCAA in connection with the class actions, on March 8 and 12, 2019, respectively. Without creditor protection, RBH could have been required to pay, in addition to its allocated portion, the portions of the class actions judgment allocated to JTI-Macdonald Corp. and Imperial Tobacco Canada Limited.

RBH has not paid dividends since the trial court judgment in May 2015 and does not anticipate doing so while under creditor protection.

The Ontario Superior Court of Justice has scheduled the next hearing on RBH's CCAA filing for April 4-5, 2019 at which time the Court will consider requests, if any, from interested parties to vary the terms of the initial order for creditor protection.

Pursuant to the initial order, Ernst & Young Canada Inc. has been appointed as RBH's Monitor in the CCAA proceeding. Information regarding RBH's CCAA proceedings, including court orders and the Monitor's reports, will be available on the Monitor's website at: <http://www.ey.com/ca/rbh>.

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

Rothmans, Benson & Hedges Inc., an affiliate of Philip Morris International Inc., is one of Canada's leading tobacco companies and employs over 800 people across the country with its headquarters in Toronto and a factory in Québec City.

SOURCE Rothmans, Benson & Hedges Inc.

For further information: Media inquiries, Sarah Tratt, T: (416) 442-3545 or (437) 828 1090, E: [sarah.tratt@rbhinc.ca](mailto:sarah.tratt@rbhinc.ca) or [media@rbhinc.ca](mailto:media@rbhinc.ca)

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PHILIP MORRIS INTERNATIONAL

**PHILIP MORRIS INTERNATIONAL INC.'S CANADIAN SUBSIDIARY,  
ROTHMANS, BENSON & HEDGES INC., GRANTED CCAA PROTECTION;  
REPRESENTS OPPORTUNITY TO RESOLVE ALL OUTSTANDING CANADIAN TOBACCO LITIGATION;  
PMI REVISES FULL-YEAR 2019 REPORTED DILUTED EPS FORECAST, REFLECTING  
DECONSOLIDATION OF RBH WHILE UNDER CCAA; FORECAST CONTINUES TO REPRESENT  
CURRENCY-NEUTRAL, LIKE-FOR-LIKE ADJUSTED DILUTED EPS GROWTH OF AT LEAST 8%**

NEW YORK, March 22, 2019 – Today, Philip Morris International Inc. (PMI) was informed by its Canadian subsidiary, Rothmans, Benson & Hedges Inc. (RBH) that RBH had obtained an initial order from the Ontario Superior Court of Justice granting it protection under the *Companies' Creditors Arrangement Act* (CCAA). RBH announced that obtaining creditor protection became necessary following recent developments in two Class Action proceedings in Québec against RBH, Imperial Tobacco Canada Limited, and JTI-Macdonald Corp. (see "The Class Actions & Other Pending Litigation" below for details).

### **Key Elements and Impact of RBH's Decision to File for Creditor Protection**

- The initial order includes a comprehensive stay of all tobacco-related litigation pending in Canada against RBH and PMI, thus providing an efficient forum for RBH to seek resolution of all such litigation.
- The CCAA process allows RBH to carry on its business in the ordinary course with minimal disruption to its customers, suppliers and employees.
- As a result of the filing, and under U.S. GAAP, PMI will deconsolidate RBH from its financial statements, resulting in an estimated one-time non-cash charge of approximately \$0.10 per share, as described below.
- While it remains under creditor protection, RBH does not anticipate paying dividends. As RBH has not paid dividends since the trial court's judgment in May 2015, the deconsolidation will not have an impact on PMI's current annualized dividend rate.

### **2019 PMI Full-Year Forecast & Assumptions and 2019-2021 Targets**

As a result of the deconsolidation of RBH, PMI today revises its full-year 2019 reported diluted earnings per share forecast to be at least \$4.90 at prevailing exchange rates. This full-year guidance reflects:

- The current estimated one-time net impact of the deconsolidation of RBH under U.S. GAAP of approximately \$0.10 per share, to be recorded in the first quarter of 2019, which is a non-cash item, plus the tobacco litigation-related charge of approximately \$0.09 per share announced on March 4, 2019; and

- The exclusion of RBH's previously anticipated earnings from PMI's consolidated financial statements from the date of deconsolidation to December 31, 2019, of approximately \$0.28 per share.

Excluding the above deconsolidation-related items and the unfavorable impact of currency, at prevailing exchange rates, of approximately \$0.14 per share, this forecast represents a projected increase of at least 8.0% versus a pro forma adjusted diluted earnings per share of \$4.84 in 2018. The 2018 pro forma adjusted diluted EPS of \$4.84 is calculated as reported diluted EPS of \$5.08, plus tax items of \$0.02 per share primarily related to the implementation of the Tax Cuts and Jobs Act, less approximately \$0.26 of estimated net earnings attributable to RBH from March 22 through December 31, 2018, in order to present a like-for-like comparison.

Assumptions underlying this forecast, and PMI's 2019-2021 targets, as communicated by PMI in its earnings release of February 7, 2019, and reiterated at the CAGNY Conference of February 20, 2019, remain unchanged on a like-for-like basis, except for 2019 operating cash flow, which, due to the impact of the deconsolidation, is now estimated to be approximately \$9.5 billion, subject to year-end working capital requirements.

This forecast excludes the impact of: any future acquisitions; unanticipated asset impairment and exit cost charges; future changes in currency exchange rates; further developments related to the Tax Cuts and Jobs Act; further developments pertaining to the two Québec Class Action lawsuits and the CCAA protection granted to RBH; and any unusual events. Factors described in the Forward-Looking and Cautionary Statements section of this release represent continuing risks to these projections.

#### **Matters Relating to the CCAA Initial Order and PMI's Deconsolidation of RBH**

- The *Companies' Creditors Arrangement Act* (CCAA) is a Canadian federal law that permits Canadian businesses to restructure their affairs while maintaining business as usual.
- The initial CCAA order authorizes RBH to pay all expenses incurred in carrying on its business in the ordinary course after the CCAA filing, including obligations to employees, vendors, and suppliers.
- While it remains under creditor protection, RBH does not anticipate paying dividends. As RBH has not paid dividends since the trial court's judgment in May 2015, the deconsolidation will not have an impact on PMI's current annualized dividend rate; as always, future dividend increases remain subject to the discretion of PMI's Board of Directors.
- Beginning with the first quarter of 2019, PMI's adjusted diluted EPS and other impacted results will reflect the deconsolidation of RBH. PMI believes that the adjusted measures will provide useful insight into underlying business trends and results, and will provide a more meaningful performance comparison for the period during which RBH remains under CCAA protection.



## **The Class Actions & Other Pending Litigation**

On March 1, 2019, the Court of Appeal of Québec in Montreal issued its judgment in two class action lawsuits against RBH, as well as Imperial Tobacco Canada Limited, and JTI-Macdonald Corp. PMI is not a party to the cases.

In 2015, the trial court ruled in favor of plaintiffs and found that the estimated class members' damages totaled approximately CAD 15.6 billion including interest. In its decision, the Court of Appeal largely affirmed the total amount of compensatory and punitive damages, but reduced the total class member damages due to an error in the interest calculation to approximately CAD 13.6 billion including interest. The trial court's order, as upheld by the Court of Appeal, required the defendants to deposit a portion of the damages, approximately CAD 1.1 billion, into trust accounts within 60 days. RBH's share of the deposit is approximately CAD 257 million. RBH had already deposited CAD 226 million as security with the Court of Appeal. See PMI's Form 10-K for the year ended December 31, 2018 for more information about these legal proceedings.

On March 4, 2019, as a result of this decision against RBH, PMI announced that it will incur in its consolidated results a pre-tax charge of approximately \$194 million, representing approximately \$142 million net of tax, in the first quarter of 2019, recorded as tobacco litigation-related expenses. The charge reflects PMI's assessment of the portion of the judgment that it believes is probable and estimable at this time and corresponds to the trust account deposit required by the court. PMI will continue to monitor developments in the CCAA proceedings as there is a significant lack of clarity with respect to several factors, including the likelihood of resolving in the CCAA process the underlying litigation to which RBH is a party, the financial and other parameters of any resolution of the underlying litigation, and the length of the CCAA process.

While the trial court found that the ultimate damages disposition would depend on an individual claims process, the three defendants in the cases -- RBH, JTI-Macdonald Corp., and Imperial Tobacco Canada Limited -- are jointly and severally liable for the compensatory damages to be distributed to eligible class members. JTI-Macdonald Corp. and Imperial Tobacco Canada Limited were granted creditor protection under the CCAA in connection with the class actions, on March 8 and 12, 2019, respectively. Without creditor protection, RBH could have been required to pay, in addition to its allocated portion, the portions of the class actions judgment allocated to JTI-Macdonald Corp. and Imperial Tobacco Canada Limited.

RBH is also a defendant in litigation brought by the Canadian Provinces related to the recovery of health care costs. As part of RBH's filing for creditor protection, the Ontario Superior Court of Justice made an initial order staying proceedings, including the Québec Class Action proceedings and all other tobacco-related litigation

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

The Ontario Superior Court of Justice has scheduled the next hearing (known as the “comeback hearing”) on RBH’s filing for creditor protection for April 4-5 at which time the Court will consider any requests from interested parties, if any, to vary the terms of the initial order for creditor protection.

Pursuant to the initial order, Ernst & Young Canada Inc. has been appointed as Monitor in the CCAA proceedings. Information regarding RBH’s CCAA proceedings, including copies of all court orders made and the Monitor’s reports, will be available on the Monitor’s website at: <http://www.ey.com/ca/rbh>. The information on this website is not, and shall not be deemed to be, part of this press release or incorporated into any filings we make with the SEC.

### **2018 Key Market Facts: Canada**

The total market in Canada, defined as cigarette and heated tobacco unit volume, was 23.4 billion units, down by 5.1% from 24.6 billion units in 2017. PMI’s total shipments volume, defined as the combined total of cigarette shipment volume and heated tobacco unit shipment volume, was 8.9 billion units, down by 4.0% from 9.3 billion units in 2017. PMI’s total market share, based on in-market sales, was 38.1%, up by 0.8 percentage points from 37.3% in 2017. Brands sold by RBH include: in the premium segment, *Belmont*; in the mid-price segment, *Canadian Classics*; and, in the low-price segment, *Next*. RBH also sells the heated tobacco device, *IQOS*, and its heated tobacco consumable *HEETS*.

### **Forward-Looking and Cautionary Statements**

This press release contains projections of future results and other forward-looking statements. Achievement of future results is subject to risks, uncertainties and inaccurate assumptions. In the event that risks or uncertainties materialize, or underlying assumptions prove inaccurate, actual results could vary materially from those contained in such forward-looking statements. Pursuant to the “safe harbor” provisions of the Private Securities Litigation Reform Act of 1995, PMI is identifying important factors that, individually or in the aggregate, could cause actual results and outcomes to differ materially from those contained in any forward-looking statements made by PMI.

PMI’s business risks include: excise tax increases and discriminatory tax structures; increasing marketing and regulatory restrictions that could reduce our competitiveness, eliminate our ability to communicate with adult consumers, or ban certain of our products; health concerns relating to the use of tobacco products and exposure to environmental tobacco smoke; litigation related to tobacco use; intense competition; the effects of global and individual country economic, regulatory and political developments, natural disasters and conflicts; changes in adult smoker behavior; lost revenues as a result of counterfeiting, contraband and cross-border

purchases; governmental investigations; unfavorable currency exchange rates and currency devaluations, and limitations on the ability to repatriate funds; adverse changes in applicable corporate tax laws; adverse changes in the cost and quality of tobacco and other agricultural products and raw materials; and the integrity of its information systems and effectiveness of its data privacy policies. PMI's future profitability may also be adversely affected should it be unsuccessful in its attempts to produce and commercialize reduced-risk products or if regulation or taxation do not differentiate between such products and cigarettes; if it is unable to successfully introduce new products, promote brand equity, enter new markets or improve its margins through increased prices and productivity gains; if it is unable to expand its brand portfolio internally or through acquisitions and the development of strategic business relationships; or if it is unable to attract and retain the best global talent. Future results are also subject to the lower predictability of our reduced-risk product category's performance.

PMI is further subject to other risks detailed from time to time in its publicly filed documents, including those described under Item 1A. "Risk Factors" in PMI's annual report on Form 10-K for the year ended December 31, 2018. PMI cautions that the foregoing list of important factors is not a complete discussion of all potential risks and uncertainties. PMI does not undertake to update any forward-looking statement that it may make from time to time, except in the normal course of its public disclosure obligations.

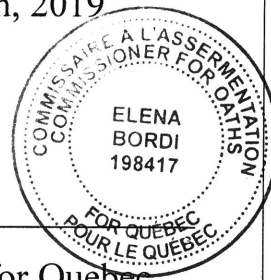
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#### **Philip Morris International: Building a Smoke-Free Future**

Philip Morris International (PMI) is leading a transformation in the tobacco industry to create a smoke-free future and ultimately replace cigarettes with smoke-free products to the benefit of adults who would otherwise continue to smoke, society, the company and its shareholders. PMI is a leading international tobacco company engaged in the manufacture and sale of cigarettes, smoke-free products and associated electronic devices and accessories, and other nicotine-containing products in markets outside the U.S. PMI is building a future on a new category of smoke-free products that, while not risk-free, are a much better choice than continuing to smoke. Through multidisciplinary capabilities in product development, state-of-the-art facilities and scientific substantiation, PMI aims to ensure that its smoke-free products meet adult consumer preferences and rigorous regulatory requirements. PMI's smoke-free IQOS product portfolio includes heated tobacco and nicotine-containing vapor products. As of December 31, 2018, PMI estimates that approximately 6.6 million adult smokers around the world have already stopped smoking and switched to PMI's heated tobacco product, which is currently available for sale in 44 markets in key cities or nationwide under the IQOS brand. For more information, please visit [www.pmi.com](http://www.pmi.com) and [www.pmiscience.com](http://www.pmiscience.com).

This is **Exhibit « 32 »**, referred to in the  
**Affidavit of Bruce Johnston**, sworn before me  
this 27th day of March, 2019

*Elena Bordi*



Commissioner of Oaths for Quebec

# Rothmans, Benson & Hedges to Seek Leave for Supreme Court Review of Québec Class Action Tobacco Suits

Français



Rothmans, Benson & Hedges Inc.  
a subsidiary of Philip Morris International Inc.

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NEWS PROVIDED BY

**Rothmans, Benson & Hedges Inc.** →

Mar 01, 2019, 19:02 ET

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## Plaintiffs' failure of proof requires reversal of the judgment

MONTREAL, March 1, 2019 /CNW/ - Rothmans, Benson & Hedges Inc. (RBH) will seek leave to appeal to the Supreme Court of Canada today's Court of Appeal decision that found in favour of plaintiffs in two class actions. In 2015, the trial court ruled in favour of plaintiffs and found that the class members' damages totaled approximately 15.6 billion CAD including interest.

In today's decision, the Court of Appeal has largely affirmed the total amount of compensatory and punitive damages and the trial court's order for the defendants to deposit a portion of the damages, approximately 1.1 billion CAD, into trust accounts within 60 days. RBH's share of the deposit is approximately 250 million CAD. RBH previously deposited 226 million CAD as security with the Court of Appeal.

RBH's parent company, Philip Morris International Inc., is not a party to the cases.

Plaintiffs filed the two class actions against RBH, Imperial Tobacco Canada Limited, and JTI-Macdonald Corp. in 1998—one seeking damages for addiction and one for smoking-related diseases.

It has long been settled law across Canada that in a class action, plaintiffs must not only prove that the defendants engaged in wrongdoing but also that this wrongdoing caused every member of the class injury. "Yet, during almost three years of trial, plaintiffs chose not to call a single smoker to testify, and otherwise produced no evidence that RBH misled anyone—much less all of the Québec smokers represented by these classes," said Peter Luongo, RBH Managing Director.

"Today's decision by the Court of Appeal changes a fundamental principle of class action law and allows class-wide recovery of damages without proof from even a single class member. We believe this unprecedented change in the law warrants review and reversal by the Supreme Court of Canada," said Luongo.

"The evidence at trial, including the Canadian government's own polling and statements, demonstrated that the Canadian public has been aware of the risks of smoking for well over half a century," added Luongo. "RBH should not be held liable to those who chose to smoke in light of these well-known risks."

Class actions are not designed for personal injury cases like these, where each class member's experience is unique. Individuals begin smoking for different reasons, at different points in time, and have different experiences with smoking. "For precisely these reasons, courts in Canada and around the world have consistently rejected these types of class actions," said Luongo.

For decades, RBH has operated under one of the most comprehensive sets of regulations in the world. Federal and provincial governments have long recognized the serious health risks of smoking and have strictly regulated the manufacture, sale, and marketing of the product. The evidence presented at trial demonstrated that RBH marketed a legal product that complied with these strict laws and regulations.

The trial court previously calculated the total amount of compensatory damages based on the assumption that all of the individuals estimated to be part of the disease class as defined will ultimately file a valid claim, while recognizing that in most large class actions only a small portion of eligible class members make a claim. The ultimate damages disposition will depend on further proceedings at the trial court level and an individual claims process for eligible class members.

The cases are *Létourneau v. Imperial Tobacco Limitée, et al.* (the addiction class), and *Conseil Québécois sur le Tabac et la Santé (CQTS) et Blais v. JTI-Macdonald Corp., et al.* (the disease class) before the Court of Appeal of Québec.

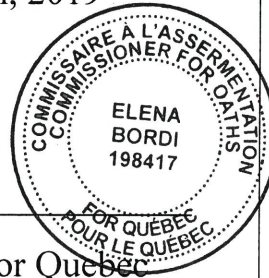
*Rothmans, Benson & Hedges Inc., an affiliate of Philip Morris International Inc., is one of Canada's leading tobacco companies and employs nearly 800 people across the country with its headquarters in Toronto and a factory in Québec City. Philip Morris International Inc. is not a party to these cases. To receive more information on this case go to [www.tobaccolitigation.ca](http://www.tobaccolitigation.ca).*

SOURCE Rothmans, Benson & Hedges Inc.

For further information: Media inquiries, RBH media office, T: 416-442-3545, E: [media@rbhinc.ca](mailto:media@rbhinc.ca)

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**Affidavit of Bruce Johnston**, sworn before me  
this 27th day of March, 2019

*Elena Bordi*



Commissioner of Oaths for Quebec





Philip Morris International  
2018 Annual Report





# Dear Shareholder,

In 2018, we achieved robust results from our combustible tobacco portfolio and nearly doubled our heated tobacco unit (HTU) in-market sales volume, driven by growth in all IQOS markets. We fell short of our full-year net revenue growth target provided in February 2018, which was almost entirely attributable to lower-than-anticipated IQOS consumer acquisition in Japan and related distributor HTU inventory adjustments. This was a disappointment in an otherwise robust financial and strategic performance across the business.

The net revenue growth shortfall contributed to an overall decline in our share price, which was otherwise pressured by broad market concerns surrounding the industry and the consumer staples sector. While we recognize that the market is the ultimate judge, we find it difficult to understand the share price impact of certain developments in the industry last year, particularly those that were very U.S.-centered and, arguably, less relevant to our international business.

Entering 2019, we believe that PMI has laid the foundation for stronger performance, thanks to significant investments in product portfolio development and organizational capabilities, including a state-of-the-art digital infrastructure to fuel our expansion. The underlying strength of our combustible product portfolio remains intact, and our smoke-free products are catalysts for accelerating substantial overall business growth.

## 2018 vs. 2017 Results

Total cigarette and heated tobacco unit shipment volume of 781.7 billion units decreased by 2.1%, primarily reflecting the net impact of estimated distributor inventory movements, principally related to HTUs in Japan. Excluding these inventory movements, total shipment volume was flat, comparing favorably to the 1.6% decline for the total industry, excluding China and the U.S. This represented our best annual volume performance since 2012.

We grew total cigarette and HTU market share by 0.5 percentage points, reaching 28.4% of the international market, excluding China and the U.S., driven primarily by the strong growth of our heated tobacco brands. Underlining the strength of our combined portfolio, share grew in all six of our Regions.

Importantly, our 27.4% share of the international cigarette category was flat, demonstrating our success in maintaining cigarette market leadership while transitioning our portfolio to a smoke-free future.



André Calantzopoulos  
Chief Executive Officer



Louis C. Camilleri  
Chairman of the Board

Despite over-indexed out-switching to IQOS and the sizable volume contraction in Saudi Arabia during the first half of the year, *Marlboro's* share of the international cigarette category was also flat at 9.7%.<sup>(1)</sup>

Net revenues of \$29.6 billion increased by 3.1%, or by 3.4% excluding currency, reflecting RRP volume growth, mainly driven by IQOS in our European Union and Eastern Europe Regions, as well as our duty-free business, coupled with higher pricing for our combustible tobacco portfolio across all Regions. The inventory adjustment in Japan adversely impacted total ex-currency net revenue growth by approximately 1.2 points. The move to highly inflationary accounting in Argentina negatively impacted our currency-neutral net revenue growth by a further 0.6 points.

Operating income of \$11.4 billion was down by 1.8%, or up by 0.1% excluding currency. Operating income margin decreased by 1.3 points, excluding currency, primarily reflecting net incremental investment in IQOS of approximately \$600 million.

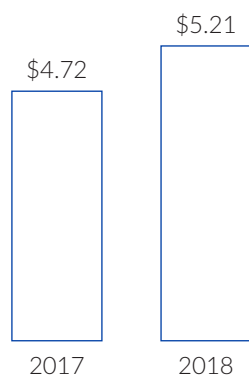
Adjusted diluted EPS of \$5.10 increased by 8.1%, mainly reflecting a lower effective tax rate and net interest expense stemming from U.S. corporate tax reform, partly offset by currency. Excluding currency, adjusted diluted EPS increased by 10.4%.

Operating cash flow of \$9.5 billion increased by \$0.6 billion or by 6.4%, principally driven by higher net earnings, partly offset by currency. Excluding currency, operating cash flow increased by 8.9%. Capital expenditures of \$1.4 billion primarily reflected further investment behind heated tobacco unit production capacity expansion.

## Robust EPS Growth

**+10.4%**

in 2018 vs. 2017,  
Adjusted Diluted,  
Excluding Currency

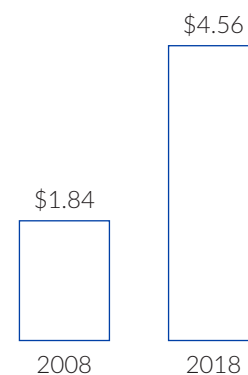


Since Becoming a  
Public Company in  
2008,<sup>(2)</sup> PMI Has  
Increased Its Regular  
Quarterly Dividend by

**147.8%**

Representing a  
Compound Annual  
Growth Rate of

**9.5%**



<sup>(1)</sup> For a definition of total international market share and total international cigarette market share see page 25 of the Form 10-K.

<sup>(2)</sup> Dividends for 2008 and 2018 are annualized rates. The 2008 annualized rate is based on a quarterly dividend of \$0.46 per common share, declared June 18, 2008. The 2018 annualized rate is based on a quarterly dividend of \$1.14 per common share, declared June 8, 2018.

## Growth Targets: 2019-2021 CAGR ex-Currency

Net Revenues <b>≥5%</b>	Adjusted Diluted EPS <b>≥8%</b>
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## Targets by 2021

Over <b>\$1 Billion</b> in Annualized Cost Efficiencies	<b>90-100 Billion</b> Heated Tobacco Units
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In June, the Board of Directors approved a 6.5% increase in the quarterly dividend to an annualized rate of \$4.56 per share, reflecting its confidence in the growth outlook of the business, underpinned by the potential of our smoke-free products. The increase underscored the Board's commitment to generously reward shareholders over time.

Financing costs continued to decrease in 2018, primarily reflecting ongoing efforts to optimize our capital structure following the U.S. tax reform. Overall net interest expense was down by over 27% vs. 2017, with a 2.5% weighted-average-all-in-financing cost of total debt.

### Fiscal and Regulatory Environment

Our exceptional combustible tobacco pricing variance of 7.6% in 2018 exceeded our annual average of approximately 6.4% for the period 2008 to 2017. The increase primarily reflected a largely rational cigarette excise tax environment and particularly strong pricing in Canada, Germany, Indonesia, the Philippines and Russia. Importantly, HTUs continue to be subject to excise tax classifications and structures that preserve a favorable differentiation to combustible tobacco products.

We continued to advocate for comprehensive risk-proportionate regulation for smoke-free products, believing that public health objectives regarding smoking can be met more rapidly and sustainably by fully incorporating such products into existing tobacco control policies. While widespread political endorsement has yet to emerge, a number of countries have joined the U.S. and the U.K. in recognizing better alternatives to cigarettes as important elements of policy.

### Combustible Tobacco Portfolio

Our combustible tobacco portfolio has provided the resources for investing in our vision of a smoke-free future and the ultimate transformation of our business. Until we achieve our vision, we remain committed to maintaining a leading share in the international cigarette category and are managing our portfolio accordingly.

In this regard, we are focusing our combustible product innovation strategy on fewer, more impactful initiatives that can be deployed globally and swiftly. This strategy resulted in a 44% success rate for new products in 2018. Furthermore, we continued portfolio consolidation and simplification through portfolio morphing and the reduction of low-volume brands. Thanks to these efforts, our top-six international cigarette brands represented approximately 73% of total cigarette volume in 2018, up from approximately 62% in 2013.

### Reduced-Risk Product Commercialization

The year 2018 marked another meaningful step forward in our journey to replace cigarettes with smoke-free alternatives. With IQOS available in 44 markets as of year-end, our heated tobacco portfolio is now the twelfth-largest international tobacco brand, excluding China and the U.S. The number of legal age smokers worldwide who stopped smoking and switched to IQOS<sup>(1)</sup> increased by 1.9 million to reach an estimated 6.6 million, with total IQOS users<sup>(2)</sup> reaching 9.6 million. In fact, IQOS grew its user base in all launch markets, including significant growth in our EU Region and Russia. This growth in the IQOS user base drove a near-doubling of our global HTU in-market sales volume, which reached approximately 44 billion units, versus 23 billion in 2017.

The most important product milestone in 2018 was our successful global launch of the IQOS 3 and IQOS 3 MULTI devices beginning in Japan, Korea and Russia. IQOS 3 features consumer-centric enhancements, and IQOS 3 MULTI addresses the need of many consumers for consecutive use of consumables.

A key focus in 2018 was speed and effectiveness in identifying and addressing pain points along the IQOS consumer journey. This was particularly important in Japan, where the slowdown in share growth, compared to prior years, reflected lower penetration beyond the innovator and early adopter consumer segments, as well as natural experimentation by some IQOS consumers with new competitive offerings - all factors that led to a reduction in daily HTU consumption.

“We’ve built the world’s most successful cigarette company, with the world’s most popular and iconic brands. But, we will be far more than a leading cigarette company. We’re building PMI’s future on smoke-free products that are a much better choice than cigarette smoking.”

<sup>(1)</sup> “Legal age smokers who stopped smoking and switched to IQOS” is defined as, for markets where IQOS is the only heated tobacco product, daily individual consumption of PMI HTUs representing the totality of their daily tobacco consumption in the past seven days. For markets where IQOS is one among other heated tobacco products, daily individual consumption of HTUs represents the totality of their daily tobacco consumption in the past seven days, of which at least 70% are PMI HTUs.

<sup>(2)</sup> “Total IQOS users” is defined as the estimated number of Legal Age (minimum 18 years) IQOS users who used PMI HTUs for at least 5% of their daily tobacco consumption over the past seven days.

# PART I

## Item 1. *Business.*

### *General Development of Business*

#### **General**

Philip Morris International Inc. is a Virginia holding company incorporated in 1987. We are a leading international tobacco company engaged in the manufacture and sale of cigarettes, smoke-free products and associated electronic devices and accessories, and other nicotine-containing products in markets outside the United States of America.

We are leading a transformation in the tobacco industry to create a smoke-free future, based on a new category of reduced-risk products that, while not risk-free, are a much better choice than continuing to smoke. Our goal is to ultimately replace cigarettes with smoke-free products to the benefit of adults who would otherwise continue to smoke, society, the company and its shareholders.

Reduced-risk products ("RRPs") is the term we use to refer to products that present, are likely to present, or have the potential to present less risk of harm to smokers who switch to these products versus continued smoking. We have a range of RRP in various stages of development, scientific assessment and commercialization. Because our RRP do not burn tobacco, they produce an aerosol that contains far lower quantities of harmful and potentially harmful constituents than found in cigarette smoke. Through multidisciplinary capabilities in product development, state-of-the-art facilities and scientific substantiation, we aim to ensure that our RRP meet adult consumer preferences and rigorous regulatory requirements.

Our *IQOS* smoke-free product brand portfolio includes heated tobacco and nicotine-containing vapor products. Our leading smoke-free platform is a precisely controlled device into which a specially designed heated tobacco unit is inserted and heated to generate an aerosol. We market our heated tobacco units under the brand names *HEETS*, *HEETS Marlboro* and *HEETS FROM MARLBORO*, defined collectively as *HEETS*, as well as *Marlboro HeatSticks* and *Parliament HeatSticks*. *IQOS* was first introduced in Nagoya, Japan in 2014. To date, *IQOS* is available for sale in 44 markets in key cities or nationwide.

Our cigarettes are sold in more than 180 markets, and in many of these markets they hold the number one or number two market share position. We have a wide range of premium, mid-price and low-price brands. Our portfolio comprises both international and local brands and is led by *Marlboro*, the world's best-selling international cigarette, which accounted for approximately 36% of our total 2018 cigarette shipment volume. *Marlboro* is complemented in the premium-price category by *Parliament*. Our other leading international cigarette brands are *Bond Street*, *Chesterfield*, *L&M*, *Lark* and *Philip Morris*. These seven international cigarette brands contributed approximately 76% of our cigarette shipment volume in 2018. We also own a number of important local cigarette brands, such as *Dji Sam Soe*, *Sampoerna A* and *Sampoerna U* in Indonesia; *Fortune* and *Jackpot* in the Philippines; and *Belmont* and *Canadian Classics* in Canada.

#### **Source of Funds — Dividends**

We are a legal entity separate and distinct from our direct and indirect subsidiaries. Accordingly, our right, and thus the right of our creditors and stockholders, to participate in any distribution of the assets or earnings of any subsidiary is subject to the prior rights of creditors of such subsidiary, except to the extent that claims of our company itself as a creditor may be recognized. As a holding company, our principal sources of funds, including funds to make payment on our debt securities, are from the receipt of dividends and repayment of debt from our subsidiaries. Our principal wholly owned and majority-owned subsidiaries currently are not limited by long-term debt or other agreements in their ability to pay cash dividends or to make other distributions with respect to their common stock that are otherwise compliant with law.

### *Description of Business*

To provide a greater focus on both parts of our business — combustible and reduced-risk products — and to support our transformation toward a smoke-free future, effective January 1, 2018, we began managing our business in six reportable segments as follows:

- The European Union Region ("EU") is headquartered in Lausanne, Switzerland, and covers all the European Union countries and also Switzerland, Norway and Iceland, which are linked to the European Union through trade agreements;
- The Eastern Europe Region ("EE") is also headquartered in Lausanne and includes Southeast Europe, Central Asia, Ukraine, Israel and Russia;

Our financial results could be significantly affected by regulatory initiatives resulting in a significant decrease in demand for our brands, in particular requirements that lead to a commoditization of tobacco products or impede adult consumers' ability to convert to our RRP, as well as any significant increase in the cost of complying with new regulatory requirements.

- **Litigation related to tobacco use and exposure to environmental tobacco smoke could substantially reduce our profitability and could severely impair our liquidity.**

There is litigation related to tobacco products pending in certain jurisdictions. Damages claimed in some tobacco-related litigation are significant and, in certain cases in Brazil, Canada, Israel and Nigeria, range into the billions of U.S. dollars. We anticipate that new cases will continue to be filed. The FTC encourages litigation against tobacco product manufacturers. It is possible that our consolidated results of operations, cash flows or financial position could be materially affected in a particular fiscal quarter or fiscal year by an unfavorable outcome or settlement of certain pending litigation. See Item 8, Note 18. *Contingencies* to our condensed consolidated financial statements for a discussion of pending litigation and Item 7, *Business Environment—Reduced-Risk Products (RRPs)—Legal Challenges to RRP*s.

- **We face intense competition, and our failure to compete effectively could have a material adverse effect on our profitability and results of operations.**

We compete primarily on the basis of product quality, brand recognition, brand loyalty, taste, R&D, innovation, packaging, customer service, marketing, advertising and retail price and, increasingly, adult smoker willingness to convert to our RRP. We are subject to highly competitive conditions in all aspects of our business. The competitive environment and our competitive position can be significantly influenced by weak economic conditions, erosion of consumer confidence, competitors' introduction of lower-price products or innovative products, higher tobacco product taxes, higher absolute prices and larger gaps between retail price categories, and product regulation that diminishes the ability to differentiate tobacco products and restricts adult consumer access to truthful and non-misleading information about our RRP. Competitors include three large international tobacco companies, new market entrants, particularly with respect to innovative products, several regional and local tobacco companies and, in some instances, state-owned tobacco enterprises, principally in Algeria, Egypt, the PRC, Taiwan, Thailand and Vietnam. Industry consolidation and privatizations of state-owned enterprises have led to an overall increase in competitive pressures. Some competitors have different profit and volume objectives, and some international competitors are susceptible to changes in different currency exchange rates. Certain new market entrants may alienate consumers from innovative products through inappropriate marketing campaigns and messaging and inferior product satisfaction, while not relying on scientific substantiation based on appropriate R&D protocols and standards. The growing use of digital media could increase the speed and extent of the dissemination of inaccurate and misleading information about our RRP.

- **Because we have operations in numerous countries, our results may be influenced by economic, regulatory and political developments, natural disasters, pandemics or conflicts.**

Some of the countries in which we operate face the threat of civil unrest and can be subject to regime changes. In others, nationalization, terrorism, conflict and the threat of war may have a significant impact on the business environment. Natural disasters, pandemics, economic, political, regulatory or other developments could disrupt our supply chain, manufacturing capabilities or distribution capabilities. In addition, such developments could lead to loss of property or equipment that are critical to our business in certain markets and difficulty in staffing and managing our operations, which could reduce our volumes, revenues and net earnings.

In certain markets, we are dependent on governmental approvals of various actions such as price changes, and failure to obtain such approvals could impair growth of our profitability.

In addition, despite our high ethical standards and rigorous control and compliance procedures aimed at preventing and detecting unlawful conduct, given the breadth and scope of our international operations, we may not be able to detect all potential improper or unlawful conduct by our employees and partners.

## Item 6. Selected Financial Data

(in millions of dollars, except per share data)

	2018	2017	2016	2015	2014
<b>Summary of Operations:</b>					
Revenues including excise taxes	\$ 79,823	\$ 78,098	\$ 74,953	\$ 73,908	\$ 80,106
Excise taxes on products	50,198	49,350	48,268	47,114	50,339
Net revenues <sup>(1)</sup>	29,625	28,748	26,685	26,794	29,767
Operating income <sup>(1)</sup>	11,377	11,581	10,903	10,745	11,787
Net earnings attributable to PMI	7,911	6,035	6,967	6,873	7,493
Basic earnings per share	5.08	3.88	4.48	4.42	4.76
Diluted earnings per share	5.08	3.88	4.48	4.42	4.76
Dividends declared per share	4.49	4.22	4.12	4.04	3.88
Total assets	39,801	42,968	36,851	33,956	35,187
Long-term debt <sup>(2)</sup>	26,975	31,334	25,851	25,250	26,929
Total debt	31,759	34,339	29,067	28,480	29,455

<sup>(1)</sup> Certain prior years' amounts in the table above have been reclassified to conform with the current year's presentation, due primarily to new accounting guidance related to revenue recognition and pension costs. For further details, see Item 8, Note 2. *Summary of Significant Accounting Policies - Revenue Recognition*, Item 8, Note 13. *Benefit Plans* and Item 8, Note 21. *New Accounting Standards*.

<sup>(2)</sup> Excluding current portion of long-term debt.

This Selected Financial Data should be read in conjunction with Item 7 and Item 8.

## Consolidated Operating Results

Our net revenues and operating income by segment were as follows:

(in millions)	2018	2017	2016
<b>Net Revenues</b>			
European Union	\$ 9,298	\$ 8,318	\$ 8,162
Eastern Europe	2,921	2,711	2,484
Middle East & Africa	4,114	3,988	4,516
South & Southeast Asia	4,656	4,417	4,396
East Asia & Australia	5,580	6,373	4,285
Latin America & Canada	3,056	2,941	2,842
Net revenues	\$ 29,625	\$ 28,748	\$ 26,685
<b>Operating Income</b>			
European Union	\$ 4,105	\$ 3,691	\$ 3,920
Eastern Europe	902	887	890
Middle East & Africa	1,627	1,884	1,990
South & Southeast Asia	1,747	1,514	1,474
East Asia & Australia	1,851	2,608	1,691
Latin America & Canada	1,145	997	938
Operating income	\$ 11,377	\$ 11,581	\$ 10,903

As discussed in Item 8, Note 12. *Segment Reporting* to our consolidated financial statements, effective January 1, 2018, we began using operating income to evaluate segment performance and allocate resources, replacing operating companies income used previously.

Our net revenues by product category were as follows:

### PMI Net Revenues by Product Category

(in millions)	2018	2017	2016
<b>Combustible Products</b>			
European Union	\$ 8,433	\$ 8,048	\$ 8,105
Eastern Europe	2,597	2,657	2,478
Middle East & Africa	3,732	3,893	4,513
South & Southeast Asia	4,656	4,417	4,396
East Asia & Australia	3,074	3,156	3,619
Latin America & Canada	3,037	2,937	2,841
<b>Total Combustible Products</b>	\$ 25,529	\$ 25,107	\$ 25,952
<b>Reduced-Risk Products</b>			
European Union	\$ 865	\$ 269	\$ 57
Eastern Europe	324	55	6
Middle East & Africa	382	94	4
South & Southeast Asia	—	—	—
East Asia & Australia	2,506	3,218	666
Latin America & Canada	19	4	1
<b>Total Reduced-Risk Products</b>	\$ 4,096	\$ 3,640	\$ 733
<b>Total PMI Net Revenues</b>	\$ 29,625	\$ 28,748	\$ 26,685

Note: Sum of product categories or Regions might not foot to total PMI due to rounding.

Our total shipment volume in Japan was down by 21.0%. Excluding the net impact of estimated distributor inventory movements of approximately 15.6 billion units, our total shipment volume in Japan was up by 3.1%, reflecting an increase of heated tobacco unit volume of 40.3%, partly offset by a decline of cigarette volume of 15.8%.

### Latin America & Canada:

<u>Financial Summary -</u> <u>Years Ended December 31,</u>			<u>Change</u> <u>Fav./((Unfav.))</u>		<u>Variance</u> <u>Fav./((Unfav.))</u>				
	<u>(in millions)</u>	<u>2018</u>	<u>2017</u>	<u>Total</u>	<u>Excl.</u> <u>Curr.</u>	<u>Total</u>	<u>Cur-</u> <u>rency</u>	<u>Price</u>	<u>Vol/</u> <u>Mix</u>
Net Revenues	\$ 3,056	\$ 2,941	3.9%	7.3%	\$ 115	\$ (99)	\$ 332	\$ (118)	\$ —
Operating Income	\$ 1,145	\$ 997	14.8%	18.1%	\$ 148	\$ (32)	\$ 332	\$ (111)	\$ (41)

“Cost/Other” in the above table reflects the currency-neutral variances of: cost of sales (excluding the volume/mix cost component); marketing, administration and research costs; asset impairment and exit costs; and amortization of intangibles.

Net revenues, excluding unfavorable currency, increased by 7.3%, reflecting a favorable pricing variance across the Region, notably in Argentina, Canada and Mexico, partly offset by unfavorable volume/mix, mainly due to Argentina and Canada.

The net revenues of the Latin America & Canada segment include \$19 million in 2018 and \$4 million in 2017 related to the sale of RRP.

Operating income, excluding unfavorable currency, increased by 18.1%, largely reflecting a favorable pricing variance, partly offset by: unfavorable volume/mix, mainly in Argentina and Canada, as well as higher marketing, administration and research costs, primarily related to increased investment behind reduced-risk products in the Region, coupled with an unfavorable comparison to 2017 related to the sale of assets, primarily in the Dominican Republic.

### *Latin America & Canada - Total Market, PMI Shipment Volume and Market Share Commentaries*

The estimated total market in Latin America & Canada decreased by 4.8% to 202.7 billion units, primarily due to the impact of cumulative price increases in Argentina, down by 3.2%, Brazil, down by 6.2%, Canada, down by 5.1% and Colombia, down by 12.1%, where excise tax reform drove an approximate 25% increase in retail prices in January 2018.

Our Regional market share increased by 0.4 points to 40.0%.

<u>PMI Shipment Volume (million units)</u>	<u>Full-Year</u>		
	<u>2018</u>	<u>2017</u>	<u>Change</u>
Cigarettes	80,738	84,223	(4.1)%
Heated Tobacco Units	147	27	+100.0%
<b>Total Latin America &amp; Canada</b>	<b>80,885</b>	<b>84,250</b>	<b>(4.0)%</b>

Our total shipment volume decreased by 4.0% to 80.9 billion units, notably due to:

- Argentina, down by 4.6%, reflecting the lower total market and lower market share; and
- Colombia, down by 11.0%, reflecting the lower total market.

Net cash provided by operating activities of \$8.9 billion for the year ended December 31, 2017, increased by \$0.8 billion from the comparable 2016 period. While the impacts of the Tax Cuts and Jobs Act reduced net earnings by \$1.6 billion, there was no net impact on operating cash flows for the year, as the changes in deferred taxes and income taxes payable offset the net earnings impact. Excluding the impact of the Tax Cuts and Jobs Act as well as favorable currency movements of \$0.4 billion, the increase in cash flows provided by operating activities can be attributed to higher net earnings offset by working capital and other movements.

At December 31, 2017, PMI recorded an income tax payable of \$1.7 billion representing the transition tax of \$2.2 billion, partially offset by foreign tax credits related to foreign withholding taxes previously paid of \$0.5 billion. The income tax payable is due over an 8-year period beginning in 2018. For further details, see Item 8, Note 11. *Income Taxes* to our consolidated financial statements.

- **Net Cash Used in Investing Activities**

Net cash used in investing activities of \$1.0 billion for the year ended December 31, 2018, decreased by \$2.1 billion from the comparable 2017 period. This decrease was due principally to lower cash collateral posted to secure derivatives designated as net investment hedges of Euro assets principally related to changes in exchange rates between the Euro and the U.S. dollar, and lower capital expenditures. For further details on our derivatives designated as net investment hedges, see Item 8, Note 15. *Financial Instruments*.

Net cash used in investing activities of \$3.1 billion for the year ended December 31, 2017, increased by \$2.2 billion from the comparable 2016 period. This increase in net cash used of \$2.2 billion was due principally to cash collateral posted to secure derivatives designated as net investment hedges of Euro assets following the strengthening of the Euro versus the U.S. dollar, and higher capital expenditures. For further details on our derivatives designated as net investment hedges, see Item 8, Note 15. *Financial Instruments*.

Our capital expenditures were \$1.4 billion in 2018, \$1.5 billion in 2017 and \$1.2 billion in 2016. The 2018 expenditures were primarily related to our ongoing investments in RRP's to support capacity expansion (notably for heated tobacco units). We expect total capital expenditures in 2019 of approximately \$1.1 billion (including capital expenditures related to our ongoing investment in RRP's), to be funded by operating cash flows.

- **Net Cash Used in Financing Activities**

During 2018, net cash used in financing activities was \$9.7 billion, compared with net cash used in financing activities of \$2.8 billion during 2017 and \$5.4 billion in 2016.

The 2018 change was due primarily to lower proceeds from long-term debt issuances (primarily the \$6.9 billion proceeds in 2017 from our U.S. dollar and Euro debt issuances), and the purchase of the remaining 49% interest in our Costa Rican affiliates in 2018. For further details on the purchase of the remaining 49% interest in our Costa Rican affiliates, see Item 8, Note 6. *Acquisitions*.

The 2017 change was due primarily to higher proceeds from long-term debt issuances (primarily the \$6.9 billion proceeds in 2017 from our U.S. dollar and Euro debt issuances versus the \$3.5 billion proceeds in 2016 from our U.S. dollar and Euro debt issuances).

Dividends paid in 2018, 2017 and 2016 were \$6.9 billion, \$6.5 billion and \$6.4 billion, respectively.

- **Debt and Liquidity**

We define cash and cash equivalents as short-term, highly liquid investments, readily convertible to known amounts of cash that mature within a maximum of three months and have an insignificant risk of change in value due to interest rate or credit risk changes. As a policy, we do not hold any investments in structured or equity-linked products. Our cash and cash equivalents are predominantly held in demand deposits with institutions that have investment-grade long-term credit rating. As part of our cash management strategy and in order to manage counterparty exposure, we also enter into reverse repurchase agreements. Such agreements are collateralized with government or corporate securities held by a custodial bank and, at maturity, cash is paid back to PMI, and the collateral is returned to the bank. While we entered into these agreements during the periods and had an average balance during 2018 and 2017 of \$0.3 billion and \$0.9 billion, respectively, we had a zero balance both at December 31, 2018, and December 31, 2017.

We utilize long-term and short-term debt financing, including a commercial paper program that is regularly used to finance ongoing liquidity requirements, as part of our overall cash management strategy. Our ability to access the capital and credit markets as well as overall dynamics of these markets may impact borrowing costs. We expect that the combination of our long-term and short-term debt financing, the commercial paper program and the committed credit facilities, coupled with our operating cash flows, will enable us to meet our liquidity requirements.



**Item 8. Financial Statements and Supplementary Data.**

**Consolidated Statements of Earnings**

(in millions of dollars, except per share data)

for the years ended December 31,	2018	2017	2016
Revenues including excise taxes	\$ 79,823	\$ 78,098	\$ 74,953
Excise taxes on products	50,198	49,350	48,268
Net revenues (Notes 2 & 21)	29,625	28,748	26,685
Cost of sales	10,758	10,432	9,391
Gross profit	18,867	18,316	17,294
Marketing, administration and research costs	7,408	6,647	6,317
Amortization of intangibles	82	88	74
Operating income	11,377	11,581	10,903
Interest expense, net (Note 14)	665	914	891
Pension and other employee benefit costs (Note 13)	41	78	88
Earnings before income taxes	10,671	10,589	9,924
Provision for income taxes (Note 11)	2,445	4,307	2,768
Equity investments and securities (income)/loss, net	(60)	(59)	(94)
Net earnings	8,286	6,341	7,250
Net earnings attributable to noncontrolling interests	375	306	283
Net earnings attributable to PMI	\$ 7,911	\$ 6,035	\$ 6,967
Per share data (Note 10):			
Basic earnings per share	\$ 5.08	\$ 3.88	\$ 4.48
Diluted earnings per share	\$ 5.08	\$ 3.88	\$ 4.48

See notes to consolidated financial statements.

## Note 18.

### Contingencies:

#### Tobacco-Related Litigation

Legal proceedings covering a wide range of matters are pending or threatened against us, and/or our subsidiaries, and/or our indemnitees in various jurisdictions. Our indemnitees include distributors, licensees, and others that have been named as parties in certain cases and that we have agreed to defend, as well as to pay costs and some or all of judgments, if any, that may be entered against them. Pursuant to the terms of the Distribution Agreement between Altria Group, Inc. ("Altria") and PMI, PMI will indemnify Altria and Philip Morris USA Inc. ("PM USA"), a U.S. tobacco subsidiary of Altria, for tobacco product claims based in substantial part on products manufactured by PMI or contract manufactured for PMI by PM USA, and PM USA will indemnify PMI for tobacco product claims based in substantial part on products manufactured by PM USA, excluding tobacco products contract manufactured for PMI.

It is possible that there could be adverse developments in pending cases against us and our subsidiaries. An unfavorable outcome or settlement of pending tobacco-related litigation could encourage the commencement of additional litigation.

Damages claimed in some of the tobacco-related litigation are significant and, in certain cases in Brazil, Canada, Israel and Nigeria, range into the billions of U.S. dollars. The variability in pleadings in multiple jurisdictions, together with the actual experience of management in litigating claims, demonstrate that the monetary relief that may be specified in a lawsuit bears little relevance to the ultimate outcome. Much of the tobacco-related litigation is in its early stages, and litigation is subject to uncertainty. However, as discussed below, we have to date been largely successful in defending tobacco-related litigation.

We and our subsidiaries record provisions in the consolidated financial statements for pending litigation when we determine that an unfavorable outcome is probable and the amount of the loss can be reasonably estimated. At the present time, while it is reasonably possible that an unfavorable outcome in a case may occur, after assessing the information available to it (i) management has not concluded that it is probable that a loss has been incurred in any of the pending tobacco-related cases; (ii) management is unable to estimate the possible loss or range of loss for any of the pending tobacco-related cases; and (iii) accordingly, no estimated loss has been accrued in the consolidated financial statements for unfavorable outcomes in these cases, if any. Legal defense costs are expensed as incurred.

It is possible that our consolidated results of operations, cash flows or financial position could be materially affected in a particular fiscal quarter or fiscal year by an unfavorable outcome or settlement of certain pending litigation. Nevertheless, although litigation is subject to uncertainty, we and each of our subsidiaries named as a defendant believe, and each has been so advised by counsel handling the respective cases, that we have valid defenses to the litigation pending against us, as well as valid bases for appeal of adverse verdicts. All such cases are, and will continue to be, vigorously defended. However, we and our subsidiaries may enter into settlement discussions in particular cases if we believe it is in our best interests to do so.

To date, no tobacco-related case has been finally resolved in favor of a plaintiff against us, our subsidiaries or indemnitees.

The table below lists the number of tobacco-related cases pertaining to combustible products pending against us and/or our subsidiaries or indemnitees as of February 4, 2019, February 9, 2018 and December 31, 2016:

<u>Type of Case</u>	<u>Number of Cases Pending as of February 4, 2019</u>	<u>Number of Cases Pending as of February 9, 2018</u>	<u>Number of Cases Pending as of December 31, 2016</u>
Individual Smoking and Health Cases	55	57	64
Smoking and Health Class Actions	10	11	11
Health Care Cost Recovery Actions	16	16	16
Label-Related Class Actions	1	1	—
Individual Label-Related Cases	7	1	3
Public Civil Actions	2	2	2

Since 1995, when the first tobacco-related litigation was filed against a PMI entity, 491 Smoking and Health, Label-Related, Health Care Cost Recovery, and Public Civil Actions in which we and/or one of our subsidiaries and/or indemnitees were a defendant have been terminated in our favor. Thirteen cases have had decisions in favor of plaintiffs. Nine of these cases have subsequently reached final resolution in our favor and four remain on appeal.

Pending claims related to tobacco products generally fall within the following categories:

**Smoking and Health Litigation:** These cases primarily allege personal injury and are brought by individual plaintiffs or on behalf of a class or purported class of individual plaintiffs. Plaintiffs' allegations of liability in these cases are based on various theories of recovery, including negligence, gross negligence, strict liability, fraud, misrepresentation, design defect, failure to warn, breach of express and implied warranties, violations of deceptive trade practice laws and consumer protection statutes. Plaintiffs in these cases seek various forms of relief, including compensatory and other damages, and injunctive and equitable relief. Defenses raised in these cases include licit activity, failure to state a claim, lack of defect, lack of proximate cause, assumption of the risk, contributory negligence, and statute of limitations.

As of February 4, 2019, there were a number of smoking and health cases pending against us, our subsidiaries or indemnitees, as follows:

- 55 cases brought by individual plaintiffs in Argentina (32), Brazil (8), Canada (2), Chile (4), Costa Rica (1), Italy (3), the Philippines (1), Poland (2), Turkey (1) and Scotland (1), compared with 57 such cases on February 9, 2018, and 64 cases on December 31, 2016; and
- 10 cases brought on behalf of classes of individual plaintiffs in Brazil (1) and Canada (9), compared with 11 such cases on February 9, 2018, and 11 such cases on December 31, 2016.

In the class action pending in Brazil, *The Smoker Health Defense Association (ADESF) v. Souza Cruz, S.A. and Philip Morris Marketing, S.A., Nineteenth Lower Civil Court of the Central Courts of the Judiciary District of São Paulo, Brazil*, filed July 25, 1995, our subsidiary and another member of the industry are defendants. The plaintiff, a consumer organization, is seeking damages for all addicted smokers and former smokers, and injunctive relief. In 2004, the trial court found defendants liable without hearing evidence and awarded “moral damages” of R\$1,000 (approximately \$273) per smoker per full year of smoking plus interest at the rate of 1% per month, as of the date of the ruling. The court did not award actual damages, which were to be assessed in the second phase of the case. The size of the class was not estimated. Defendants appealed to the São Paulo Court of Appeals, which annulled the ruling in November 2008, finding that the trial court had inappropriately ruled without hearing evidence and returned the case to the trial court for further proceedings. In May 2011, the trial court dismissed the claim. In February 2015, the appellate court unanimously dismissed plaintiff's appeal. In September 2015, plaintiff appealed to the Superior Court of Justice. In February 2017, the Chief Justice of the Superior Court of Justice denied plaintiff's appeal. In March 2017, plaintiff filed an *en banc* appeal to the Superior Court of Justice. In addition, the defendants filed a constitutional appeal to the Federal Supreme Tribunal on the basis that plaintiff did not have standing to bring the lawsuit. Both appeals are still pending.

In the first class action pending in Canada, *Cecilia Létourneau v. Imperial Tobacco Ltd., Rothmans, Benson & Hedges Inc. and JTI Macdonald Corp., Quebec Superior Court, Canada*, filed in September 1998, our subsidiary and other Canadian manufacturers (Imperial Tobacco Canada Ltd. and JTI-MacDonald Corp.) are defendants. The plaintiff, an individual smoker, sought compensatory and punitive damages for each member of the class who is deemed addicted to smoking. The class was certified in 2005. Trial began in March 2012 and concluded in December 2014. The trial court issued its judgment on May 27, 2015. The trial court found our subsidiary and two other Canadian manufacturers liable and awarded a total of CAD 131 million (approximately \$100 million) in punitive damages, allocating CAD 46 million (approximately \$35 million) to our subsidiary. The trial court found that defendants violated the Civil Code of Quebec, the Quebec Charter of Human Rights and Freedoms, and the Quebec Consumer Protection Act by failing to warn adequately of the dangers of smoking. The trial court also found that defendants conspired to prevent consumers from learning the dangers of smoking. The trial court further held that these civil faults were a cause of the class members' addiction. The trial court rejected other grounds of fault advanced by the class, holding that: (i) the evidence was insufficient to show that defendants marketed to youth, (ii) defendants' advertising did not convey false information about the characteristics of cigarettes, and (iii) defendants did not commit a fault by using the descriptors light or mild for cigarettes with a lower tar delivery. The trial court estimated the size of the addiction class at 918,000 members but declined to award compensatory damages to the addiction class because the evidence did not establish the claims with sufficient accuracy. The trial court ordered defendants to pay the full punitive damage award into a trust within 60 days and found that a claims process to allocate the awarded damages to individual class members would be too expensive and difficult to administer. The trial court ordered a briefing on the proposed process for the distribution of sums remaining from the punitive damage award after payment of attorneys' fees and legal costs. In June 2015, our subsidiary commenced the appellate process by filing its inscription of appeal of the trial court's judgment with the Court of Appeal of Quebec. Our subsidiary also filed a motion to cancel the trial court's order for payment into a trust within 60 days notwithstanding appeal. In July 2015, the Court of Appeal granted the motion to cancel and overturned the trial court's ruling that our subsidiary make the payment into a trust within 60 days. In August 2015, plaintiffs filed a motion with the Court of Appeal seeking security in both the *Létourneau* case and the *Blais* case described below. In October 2015, the Court of Appeal granted the motion and ordered our subsidiary to furnish security totaling CAD 226 million (approximately \$172.5 million), in the form of cash into a court trust or letters of credit, in six equal consecutive quarterly installments of approximately CAD 37.6 million (approximately \$28.7 million) beginning in December 2015 through March 2017. See the *Blais* description for further detail concerning

the security order. The Court of Appeal heard oral arguments on the merits appeal in November 2016. Our subsidiary and PMI believe that the findings of liability and damages were incorrect and should ultimately be set aside on any one of many grounds, including the following: (i) holding that defendants violated Quebec law by failing to warn class members of the risks of smoking even after the court found that class members knew, or should have known, of the risks, (ii) finding that plaintiffs were not required to prove that defendants' alleged misconduct caused injury to each class member in direct contravention of binding precedent, (iii) creating a factual presumption, without any evidence from class members or otherwise, that defendants' alleged misconduct caused all smoking by all class members, (iv) holding that the addiction class members' claims for punitive damages were not time-barred even though the case was filed more than three years after a prominent addiction warning appeared on all packages, and (v) awarding punitive damages to punish defendants without proper consideration as to whether punitive damages were necessary to deter future misconduct.

In the second class action pending in Canada, *Conseil Québécois Sur Le Tabac Et La Santé and Jean-Yves Blais v. Imperial Tobacco Ltd., Rothmans, Benson & Hedges Inc. and JTI Macdonald Corp., Quebec Superior Court, Canada*, filed in November 1998, our subsidiary and other Canadian manufacturers (Imperial Tobacco Canada Ltd. and JTI-MacDonald Corp.) are defendants. The plaintiffs, an anti-smoking organization and an individual smoker, sought compensatory and punitive damages for each member of the class who allegedly suffers from certain smoking-related diseases. The class was certified in 2005. Trial began in March 2012 and concluded in December 2014. The trial court issued its judgment on May 27, 2015. The trial court found our subsidiary and two other Canadian manufacturers liable and found that the class members' compensatory damages totaled approximately CAD 15.5 billion, including pre-judgment interest (approximately \$11.8 billion). The trial court awarded compensatory damages on a joint and several liability basis, allocating 20% to our subsidiary (approximately CAD 3.1 billion, including pre-judgment interest (approximately \$2.37 billion)). In addition, the trial court awarded CAD 90,000 (approximately \$69,000) in punitive damages, allocating CAD 30,000 (approximately \$23,000) to our subsidiary and found that defendants violated the Civil Code of Quebec, the Quebec Charter of Human Rights and Freedoms, and the Quebec Consumer Protection Act by failing to warn adequately of the dangers of smoking. The trial court also found that defendants conspired to prevent consumers from learning the dangers of smoking. The trial court further held that these civil faults were a cause of the class members' diseases. The trial court rejected other grounds of fault advanced by the class, holding that: (i) the evidence was insufficient to show that defendants marketed to youth, (ii) defendants' advertising did not convey false information about the characteristics of cigarettes, and (iii) defendants did not commit a fault by using the descriptors light or mild for cigarettes with a lower tar delivery. The trial court estimated the disease class at 99,957 members. The trial court ordered defendants to pay CAD 1 billion (approximately \$763 million) of the compensatory damage award into a trust within 60 days, CAD 200 million (approximately \$153 million) of which is our subsidiary's portion and ordered briefing on a proposed claims process for the distribution of damages to individual class members and for payment of attorneys' fees and legal costs. In June 2015, our subsidiary commenced the appellate process by filing its inscription of appeal of the trial court's judgment with the Court of Appeal of Quebec. Our subsidiary also filed a motion to cancel the trial court's order for payment into a trust within 60 days notwithstanding appeal. In July 2015, the Court of Appeal granted the motion to cancel and overturned the trial court's ruling that our subsidiary make an initial payment within 60 days. In August 2015, plaintiffs filed a motion with the Court of Appeal seeking an order that defendants place irrevocable letters of credit totaling CAD 5 billion (approximately \$3.8 billion) into trust, to secure the judgments in both the *Létourneau* and *Blais* cases. Plaintiffs subsequently withdrew their motion for security against JTI-MacDonald Corp. and proceeded only against our subsidiary and Imperial Tobacco Canada Ltd. In October 2015, the Court of Appeal granted the motion and ordered our subsidiary to furnish security totaling CAD 226 million (approximately \$172.5 million) to cover both the *Létourneau* and *Blais* cases. Such security may take the form of cash into a court trust or letters of credit, in six equal consecutive quarterly installments of approximately CAD 37.6 million (approximately \$28.7 million) beginning in December 2015 through March 2017. The Court of Appeal ordered Imperial Tobacco Canada Ltd. to furnish security totaling CAD 758 million (approximately \$578 million) in seven equal consecutive quarterly installments of approximately CAD 108 million (approximately \$82.4 million) beginning in December 2015 through June 2017. In March 2017, our subsidiary made its sixth and final quarterly installment of security for approximately CAD 37.6 million (approximately \$28.7 million) into a court trust. This payment is included in other assets on the consolidated balance sheets and in cash used in operating activities in the consolidated statements of cash flows. The Court of Appeal ordered that the security is payable upon a final judgment of the Court of Appeal affirming the trial court's judgment or upon further order of the Court of Appeal. The Court of Appeal heard oral arguments on the merits appeal in November 2016. Our subsidiary and PMI believe that the findings of liability and damages were incorrect and should ultimately be set aside on any one of many grounds, including the following: (i) holding that defendants violated Quebec law by failing to warn class members of the risks of smoking even after the court found that class members knew, or should have known, of the risks, (ii) finding that plaintiffs were not required to prove that defendants' alleged misconduct caused injury to each class member in direct contravention of binding precedent, (iii) creating a factual presumption, without any evidence from class members or otherwise, that defendants' alleged misconduct caused all smoking by all class members, (iv) relying on epidemiological evidence that did not meet recognized scientific standards, and (v) awarding punitive damages to punish defendants without proper consideration as to whether punitive damages were necessary to deter future misconduct.

In the third class action pending in Canada, *Kunta v. Canadian Tobacco Manufacturers' Council, et al., The Queen's Bench, Winnipeg, Canada*, filed June 12, 2009, we, our subsidiaries, and our indemnitees (PM USA and Altria), and other members of the industry are defendants. The plaintiff, an individual smoker, alleges her own addiction to tobacco products and chronic obstructive pulmonary disease ("COPD"), severe asthma, and mild reversible lung disease resulting from the use of tobacco products. She is seeking compensatory and punitive damages on behalf of a proposed class comprised of all smokers, their estates, dependents and family members, as well as restitution of profits, and reimbursement of government health care costs allegedly caused by tobacco products. In September 2009,

This is **Exhibit « 34 »**, referred to in the  
**Affidavit of Bruce Johnston**, sworn before me  
this 27th day of March, 2019

*Elena Bordi*



Commissioner of Oaths for Quebec

## PRESS RELEASE

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PHILIP MORRIS INTERNATIONAL

## **PHILIP MORRIS INTERNATIONAL INC. REVISES FULL-YEAR 2019 REPORTED DILUTED EARNINGS PER SHARE FORECAST TO BE AT LEAST \$5.28, REFLECTING A CHARGE ASSOCIATED WITH A JUDGMENT IN TWO QUÉBEC SMOKING AND HEALTH CLASS ACTIONS**

NEW YORK, March 4, 2019 – On March 1, 2019, the Court of Appeal of Québec in Montreal issued its judgment in two class action lawsuits against Rothmans, Benson & Hedges Inc. (RBH), a subsidiary of Philip Morris International Inc. (PMI), as well as Imperial Tobacco Canada Limited, and JTI-Macdonald Corp. PMI is not a party to the cases.

In 2015, the trial court ruled in favor of plaintiffs and found that the estimated class members' damages totaled approximately CAD 15.6 billion including interest. In its decision, the Court of Appeal largely affirmed the total amount of compensatory and punitive damages including the trial court's order for the defendants to deposit a portion of the damages, approximately CAD 1.1 billion, into trust accounts within 60 days. RBH's share of the deposit is approximately CAD 257 million. RBH previously deposited CAD 226 million as security with the Court of Appeal. RBH will seek leave to appeal this judgment to the Supreme Court of Canada. See PMI's Form 10-K for the year ended December 31, 2018 for more information about these legal proceedings.

As a result of this decision against RBH, PMI will incur in its consolidated results a pre-tax charge of approximately \$194 million, representing approximately \$142 million net of tax, in the first quarter of 2019, recorded as tobacco litigation-related expenses. The charge reflects PMI's assessment of the portion of the judgment that it believes is probable and estimable at this time and corresponds to the trust account deposit required by the court. The company is monitoring developments in these proceedings and further assessing the situation, as there is a significant lack of clarity with respect to several factors, including the actual number of claimants, the associated administrative process for verification of their applications, further proceedings, and actions by parties to these proceedings. Therefore, the ultimate liability may differ significantly from this amount.

### **2019 Full-Year Forecast**

As a result of this charge, PMI today revises its full-year 2019 reported diluted earnings per share forecast to be at least \$5.28 at the exchange rates prevailing at the time of PMI's earnings release of February 7, 2019. Excluding the impact of this charge of approximately \$0.09 per share and an unfavorable currency impact, at the then prevailing exchange rates, of approximately \$0.14 per share, this forecast represents a projected increase of at least 8.0% versus adjusted diluted earnings per share of \$5.10 in 2018 (calculated as reported diluted EPS of \$5.08, plus tax items of \$0.02 per share primarily related to the implementation of the Tax Cuts and Jobs Act).

Assumptions underlying this forecast, as communicated by PMI in its earnings release of February 7, 2019, and reiterated at the CAGNY Conference of February 20, 2019, remain unchanged.

This forecast excludes the impact of any future acquisitions, unanticipated asset impairment and exit cost charges, future changes in currency exchange rates, further developments related to the Tax Cuts and Jobs Act, further developments pertaining to the judgment in the two Québec Class Action lawsuits against RBH described above, and any unusual events. Factors described in the Forward-Looking and Cautionary Statements section of this release represent continuing risks to these projections.

### **Forward-Looking and Cautionary Statements**

This press release contains projections of future results and other forward-looking statements. Achievement of future results is subject to risks, uncertainties and inaccurate assumptions. In the event that risks or uncertainties materialize, or underlying assumptions prove inaccurate, actual results could vary materially from those contained in such forward-looking statements. Pursuant to the “safe harbor” provisions of the Private Securities Litigation Reform Act of 1995, PMI is identifying important factors that, individually or in the aggregate, could cause actual results and outcomes to differ materially from those contained in any forward-looking statements made by PMI.

PMI's business risks include: excise tax increases and discriminatory tax structures; increasing marketing and regulatory restrictions that could reduce our competitiveness, eliminate our ability to communicate with adult consumers, or ban certain of our products; health concerns relating to the use of tobacco products and exposure to environmental tobacco smoke; litigation related to tobacco use; intense competition; the effects of global and individual country economic, regulatory and political developments, natural disasters and conflicts; changes in adult smoker behavior; lost revenues as a result of counterfeiting, contraband and cross-border purchases; governmental investigations; unfavorable currency exchange rates and currency devaluations, and limitations on the ability to repatriate funds; adverse changes in applicable corporate tax laws; adverse changes in the cost and quality of tobacco and other agricultural products and raw materials; and the integrity of its information systems and effectiveness of its data privacy policies. PMI's future profitability may also be adversely affected should it be unsuccessful in its attempts to produce and commercialize reduced-risk products or if regulation or taxation do not differentiate between such products and cigarettes; if it is unable to successfully introduce new products, promote brand equity, enter new markets or improve its margins through increased prices and productivity gains; if it is unable to expand its brand portfolio internally or through acquisitions and the development of strategic business

relationships; or if it is unable to attract and retain the best global talent. Future results are also subject to the lower predictability of our reduced-risk product category's performance.

PMI is further subject to other risks detailed from time to time in its publicly filed documents, including those described under Item 1A. "Risk Factors" in PMI's annual report on Form 10-K for the year ended December 31, 2018. PMI cautions that the foregoing list of important factors is not a complete discussion of all potential risks and uncertainties. PMI does not undertake to update any forward-looking statement that it may make from time to time, except in the normal course of its public disclosure obligations.

###

#### **Philip Morris International: Building a Smoke-Free Future**

Philip Morris International (PMI) is leading a transformation in the tobacco industry to create a smoke-free future and ultimately replace cigarettes with smoke-free products to the benefit of adults who would otherwise continue to smoke, society, the company and its shareholders. PMI is a leading international tobacco company engaged in the manufacture and sale of cigarettes, smoke-free products and associated electronic devices and accessories, and other nicotine-containing products in markets outside the U.S. PMI is building a future on a new category of smoke-free products that, while not risk-free, are a much better choice than continuing to smoke. Through multidisciplinary capabilities in product development, state-of-the-art facilities and scientific substantiation, PMI aims to ensure that its smoke-free products meet adult consumer preferences and rigorous regulatory requirements. PMI's smoke-free IQOS product portfolio includes heated tobacco and nicotine-containing vapor products. As of December 31, 2018, PMI estimates that approximately 6.6 million adult smokers around the world have already stopped smoking and switched to PMI's heated tobacco product, which is currently available for sale in 44 markets in key cities or nationwide under the IQOS brand. For more information, please visit [www.pmi.com](http://www.pmi.com) and [www.pmiscience.com](http://www.pmiscience.com).



This is **Exhibit « 35 »**, referred to in the  
**Affidavit of Bruce Johnston**, sworn before me  
this 27th day of March, 2019

*Elena Bordi*



Commissioner of Oaths for Québec

In the Matter Of:  
Conseil Quebecois Sur le Tabac et la Sante et al v.  
JTI-MacDonald Corp. et al

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WILLIAM GIFF  
June 30, 2015

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neelsons

141 Adelaide Street West | 11<sup>th</sup> Floor  
Toronto, Ontario M5H 3L5  
1.888.525.6666 | 416.413.7755

1 C A N A D A (CLASS ACTION)  
2 PROVINCE OF QUEBEC SUPERIOR COURT  
3 DISTRICT OF MONTREAL \_\_\_\_\_  
4 NO.: 500-06-000076-9 CONSEIL QUÉBÉCOIS SUR LE  
5 TABAC ET LA SANTÉ,  
6 and JEAN-YVES BLAIS  
7 PLAINTIFFS  
8 v.  
9 JTI-MACDONALD CORP., and  
10 IMPERIAL TOBACCO CANADA LTÉE,  
11 and  
12 ROTHMANS BENSON & HEDGES INC.  
13 DEFENDANTS

14 \_\_\_\_\_  
15  
16  
17 --- This is the Cross-Examination of WILLIAM GIFF  
18 upon his affidavit sworn June 26, 2015, taken at  
19 the offices of Osler, Hoskin & Harcourt,  
20 1000 De La Gauchetière Street West, Suite 2100,  
21 Montreal, Quebec, on the 30th day of June, 2015.

22 -----  
23

24 REPORTED BY: Judith M. Caputo, RPR, CSR, CRR

25

1                   But under reserve of my objection,  
2                   please go ahead.

3                   MR. TRUDEL: Thank you, Mr. Potter.

4                   BY MR. TRUDEL:

5           57           Q. So, what are the credit facilities  
6                   in place for RBH as of now?

7                   A. As of now, we have no credit  
8                   facilities today.

9           58           Q. So nothing in place? My question  
10                   is not if you use or draw on credit facilities --

11                   A. Yeah.

12           59           Q. -- but any arrangement by Philip  
13                   Morris International to provide credit on an  
14                   as-needed basis?

15                   A. No. Today we have no access to  
16                   PMI credit, nor any other credit at this point.

17           60           Q. Have you ever had access in the  
18                   past?

19                   A. Yes.

20           61           Q. When?

21                   A. To the PMI credit facilities?

22           62           Q. Yes.

23                   A. We had historically - I don't know  
24                   when it started - but there was a treasury  
25                   arrangement where excess cash would be either

1           loaned to or borrowed from PMI, depending on our  
2           cash flow position.

3                       So to the extent that we needed  
4           short-term financing, we could get from the PMI  
5           finance cash pool, short-term in nature. That was  
6           stopped at the date of the judgment based on PMI's  
7           decision.

8       63                       Q.     Does RBH own any real estate?

9                       A.     Yes. We have several facilities.  
10          We have one in Quebec where our factory is. We  
11          have a small piece of land in Brampton.

12       64                       Q.     Um-hum.

13                       A.     And then some warehousing space,  
14          but that's the two big ones.

15       65                       Q.     If you go on the first page of the  
16          financials, at the balance sheets on the "assets"  
17          description, there is a "Property, Plant and  
18          Equipment". And the value as of December 2014  
19          would be \$111 million?

20                       A.     Yes.

21       66                       Q.     Are there any mortgage on these?

22                       A.     No. Actually, the bulk of that by  
23          the way is equipment, cigarette manufacturing  
24          equipment.

25                               I think -- look, I'm not sure on the

1 don't know the details of the -- but that agreement  
2 was -- how it was booked, and this was before PMI's  
3 break. What they did is, they booked the net  
4 present value of the 550. And then what we do  
5 every year is accrete the net present revenue value  
6 to ultimate value through interest.

7 So pretty much the bulk of that  
8 interest expense is really the accretion each year  
9 of the settlement.

10 92 Q. Do you pay dividends to your  
11 parent company?

12 A. To our parent company, yes.

13 93 Q. Which is Philip Morris International?

14 A. Yes.

15 94 Q. Who owns RBH, at 100 percent of  
16 the shares?

17 A. Yes.

18 95 Q. Did you pay in 2014, \$300,000,000  
19 in dividends to the parent company?

20 MR. POTTER: Objection.

21 This has nothing to do with current  
22 ability to pay within the provisional execution  
23 order.

24 Under reserve of that, please go ahead.

25 MR. TRUDEL: Thank you.

1 THE WITNESS: Actually, I think in 2014  
2 we paid 295.

3 BY MR. TRUDEL:

4 96 Q. You're correct. Sorry, that was  
5 in 2013?

6 A. Yeah, yeah.

7 97 Q. You paid \$300,000?

8 A. \$300 million.

9 MR. TRUDEL: Million dollars.

10 BY MR. TRUDEL:

11 98 Q. Is that roughly the level of  
12 dividends you pay on a yearly basis to your parent  
13 company?

14 A. Yeah. Our general historical  
15 practice has been to pay generally the earnings.  
16 So on an annual basis, the earnings of the company  
17 would be dividend to the parent.

18 And if you look since the acquisition  
19 in 2008, of the PMI acquisition of RBH, I think up  
20 until the first quarter, historical retained  
21 earnings -- historical earnings have been about  
22 1.9 and about 1.8 has been paid in dividends. So  
23 generally we try and --

24 99 Q. We're talking about \$1 billion.

25 A. Yes. From 2008, yes.

1 100 Q. Okay. So are those dividends paid  
2 quarterly or --

3 A. Yes, quarterly.

4 101 Q. What was the last payment made?

5 A. We made a payment in April, after  
6 the first quarter. And that was about \$76 million.  
7 Which equate to the first quarter earnings.

8 102 Q. So am I correct to state that you  
9 project paying roughly for 2015, \$392,000,000 on  
10 the projected earnings?

11 A. We have not made a projection on  
12 dividends at this point. Since the date of  
13 judgment, we did not dividend anything.

14 And at this point, we will have to make  
15 a decision as to the course of our dividends. So  
16 we're not projecting dividends today until we know  
17 more of our situation.

18 103 Q. Who decides to declare dividends?

19 A. Ultimately, me.

20 104 Q. You're the one?

21 A. I'm the finance director at RBH,  
22 so dividends would be my responsibility to declare  
23 and pay dividends.

24 105 Q. So if dividends are available to  
25 satisfy the order, if dividends are not paid, that



1 117 Q. -- to try to sell your trademarks?  
2 A. No.  
3 118 Q. Okay.  
4 MR. POTTER: They're broke, too.  
5 BY MR. TRUDEL:  
6 119 Q. I'm going to take a few minutes.  
7 A. Sure.  
8 -- OFF THE RECORD DISCUSSION --  
9 BY MR. TRUDEL:  
10 120 Q. Just another question.  
11 A. Sure.  
12 121 Q. You did mention that most of your  
13 earnings are paid in dividends to Philip Morris  
14 International?  
15 A. Yes.  
16 122 Q. Do you know for how much they  
17 account in their profitability, general  
18 profitability?  
19 MR. POTTER: I'm sorry, in PMI's?  
20 MR. TRUDEL: Yes.  
21 R/F MR. POTTER: Objection. That has  
22 nothing to do with this case or the affidavit.  
23 Objection.  
24 BY MR. TRUDEL:  
25 123 Q. Have you ever seen the financial

**EXHIBIT 36 (NOT INCLUDED – UNDER SEAL)**

**EXHIBIT 37 (NOT INCLUDED – UNDER SEAL)**

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

**JTI-MACDONALD CORP.**

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

**IMPERIAL TOBACCO CANADA LIMITED AND IMPERIAL TOBACCO COMPANY LIMITED**

**Court File No. CV-19-616077-00CL**

**ROTHMANS, BENSON & HEDGES INC.**

**Court File No. CV-19-616779-00CL**

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*ONTARIO*  
**SUPERIOR COURT OF JUSTICE  
(COMMERCIAL LIST)**

Proceeding commenced at Toronto

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**EXHIBITS TO AFFIDAVITS FILED BY THE QUEBEC  
CLASS ACTION PLAINTIFFS  
FOR THE COMEBACK HEARINGS  
(Combined Volume of Exhibits)**

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