

JR1353

SUPERIOR COURT

(Class Action Division)

CANADA
PROVINCE OF QUÉBEC
DISTRICT OF MONTREAL

N° : 500-06-000076-980
500-06-000070-983

DATE : June 9, 2015

PRESIDING: THE HONORABLE BRIAN RIORDAN, J.S.C.

N° 500-06-000070-983

CÉCILIA LÉTOURNEAU
Plaintiff

v.

JTI-MACDONALD CORP. ("JTM")
and
IMPERIAL TOBACCO CANADA LIMITED. ("ITL")
and
ROTHMANS, BENSON & HEDGES INC. ("RBH")
Defendants (collectively: the "**Companies**")

AND

N° 500-06-000076-980

CONSEIL QUÉBÉCOIS SUR LE TABAC ET LA SANTÉ
and
JEAN-YVES BLAIS
Plaintiffs

v.

JTI-MACDONALD CORP.
and
IMPERIAL TOBACCO CANADA LIMITED.
and
ROTHMANS, BENSON & HEDGES INC.
Defendants

SUMMARY OF THE JUDGMENT

The two class actions against the Canadian cigarette companies are maintained in part.

In both actions, the claim for common or collective damages was limited to moral damages and punitive damages, with both classes of plaintiffs renouncing their potential right to make individual claims for compensatory damages, such as loss of income.

In the Blais File, taken in the name of a class of persons with lung cancer, throat cancer or emphysema, the Court finds the defendants liable for both moral and punitive damages. It holds that they committed four separate faults, including under the general duty not to cause injury to another person, under the duty of a manufacturer to inform its customers of the risks and dangers of its products, under the Quebec Charter of Human Rights and Freedoms and under the Quebec Consumer Protection Act.

In Blais, the Court awards moral damages in the amount of \$6,858,864,000 solidarily among the defendants. Since this action was instituted in 1998, this sum translates to approximately \$15,500,000,000 once interest and the additional indemnity are added. The respective liability of the defendants among themselves is as follows:

ITL - 67%, RBH - 20% and JTM - 13%.

Recognizing that it is unlikely that the defendants could pay that amount all at once, the Court exercises its discretion with respect to the execution of the judgment. It thus orders an initial aggregate deposit of \$1,000,000,000, divided among the defendants in accordance with their share of liability and reserves the plaintiffs' right to request further deposits, if necessary.

In the Létourneau File, taken in the name of persons who were dependent on nicotine, the Court finds the defendants liable for both heads of damage with respect to the same four faults. In spite of such liability, the Court refuses to order the payment of moral damages because the evidence does not establish with sufficient accuracy the total amount of the claims of the members.

The faults under the Quebec *Charter* and the *Consumer Protection Act* allow for the awarding of punitive damages. The Court sets the base for their calculation at one year's before-tax profits of each defendant, this covering both files. Taking into account the particularly unacceptable behaviour of ITL over the Class Period and, to a lesser extent, JTM, the Court increases the sums attributed to them above the base amount to arrive at an aggregate of \$1,310,000,000, divided as follows:

ITL - \$725,000,000, RBH - \$460,000,000 and JTM - \$125,000,000.

It is necessary to divide this amount between the two files. For that, the Court takes account of the significantly higher impact of the defendants' faults on the Blais Class compared to Létourneau. It thus attributes 90% of the total to Blais and 10% to the Létourneau Class.

Nevertheless, in light of the size of the award for moral damages in Blais, the Court feels obliged to limit punitive damages there to the symbolic amount of \$30,000 for each defendant. This represents one dollar for each Canadian death the tobacco industry causes in Canada every year, as stated in a 1995 Supreme Court judgment.

In Létourneau, therefore, the aggregate award for punitive damages, at 10% of the total, is \$131,000,000. That will be divided among the defendants as follows:

ITL - \$72,500,000, RBH - \$46,000,000 and JTM - \$12,500,000

Since there are nearly one million people in the Létourneau Class, this represents only about \$130 for each member. In light of that, and of the fact that there is no condemnation for moral damages in this file, the Court refuses distribution of an amount to each of the members on the ground that it is not possible or would be too expensive to do so.

Finally, the Court orders the provisional execution of the judgment notwithstanding appeal with respect to the initial deposit of one billion dollars of moral damages, plus all punitive damages awarded. The Defendants must deposit these sums in trust with their respective attorneys within sixty days of the date of the judgment. The Court will decide how those amounts are to be disbursed at a later hearing.