C A N A D A

PROVINCE OF QUÉBEC

DISTRICT OF MONTREAL

(Class Action)

SUPERIOR COURT

No: 500-06-001018-197

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Tracey Arial, Claire O'Brien, Erika and Zoe Patton, Alex Tasciyan, Mathew Nucciaroni and Vito DeCicco

Plaintiffs/Petitioners

vs.

Apple Canada Inc. and **Samsung Electronics Canada**

Respondents

Plaintiffs' Notes and Authorities as concerns Samsung's Motion to Adduce Relevant Evidence:

TO THE HONORABLE MR. JUSTICE PIERRE C. GAGNON. PLANTIFFS SAY:

Overview:

1. Plaintiffs allege that Defendants' cellphone SAR levels are falsely advertised, improperly tested and fail to warn of unhealthy levels of radiation.
2. These class claims are summarized in three (3) syllogisms:

   i. Cellphone models, including certain Defendants' models, when tested using the advertised separation distance emit EMF/SAR in excess of the FCC limit of 1,6 W/kg. This contradicts what is claimed and constitutes false advertising. Defendants are well aware of this fact.

   ii. Cellphone models, including all tested Defendants' models, when tested as used (i.e. separation distance of 2 mm or less) exceed the FCC limit of 1,6 W/kg by up to five (5) times FCC [1]. The

[1] "*Microwave Emissions from Cellphones Exceed Safety Limits in Europe and the U.S. When Touching the Body*", Om P. Ghandi, IEEE. Access, April 18, 2019[2] Plaintiffs respectfully request *Roberto Romeo v INAIL* decisions (Turin, Court of Ivrea, 96-2017 Justice Lucca Fada and Turin Appeal decision 904/2019 published January 13, 2020 and the French cellphone decision *Madame c. Maison Départementale des Personnes en Situation de Handicape 90* be filed as Plaintiffs' Exhibits.

testing regimen is fraudulent, solely intended to mislead, and constitutes diesel-gating. This is failure to warn, failure to inform, and knowingly marketing inherently dangerous products.

iii. Defendants' actions and omissions described above cause serious health damage to humans and the environment. These constitute a breach of fundamental rights, the *Charters* and justify the awarding of punitive damages. As this concerns the *quantum* of damages due the class, it is a matter for the Merits.

Facts Regarding Samsung Testing of SAR

3. SAR values for Defendants' Samsung mobile phones are falsely advertised and fail to adequately warn consumers of health risks. The Innovation, Science and Economic Development (ISED) Canada website on Radiofrequency Energy and Safety (https://www.ic.gc.ca/eic/site/smt-gst.nsf/eng/sf11467.html) explains that "all wireless devices must comply with established SAR limits" and further "ISED requires cell phone manufacturers and other wireless devices to provide information to users on the mini0mum compliance distance to maintain between the cell phone or wireless product and the body" in order to meet the SAR requirement. Thus SAR compliance can only be understood in the context of a compliance or separation distance between the mobile phone and the body.

4. The ISED website further advises consumers "Information regarding SAR values and compliance distance for your wireless device can be found in the following locations:

    a. the user manual

    b. device settings

    c. on the manufacturer's website (or by directly contacting the manufacturer)

    d. on ISED's website using the Radio Equipment List search tool"

5. In the case of Samsung mobile phones, the user manuals do not provide this information. Defendant Samsung's proposed Exhibits S-7 through S-10 do NOT list SAR values. Three of these user manuals (Galaxy J-3, S-8, and S-9) do list separation distances of 1.5 cm in

the Health and Safety sections, while that for the Galaxy S-7 states instead: “SAR values for body-worn devices are measured when used with an accessory that contains no metal and that positions the device a minimum of **x.x cm** from the body.” (Emphasis ours).

6. The device settings on these handsets provide neither SAR values nor compliance distances. Rather, they redirect to the manufacturer’s website.
7. The manufacturer’s website for each handset does provide SAR values, but specifies: “Body-worn SAR testing has been carried out at a **separation distance** of **1.5 cm**. To meet RF exposure guidelines during body-worn operation, the device should be positioned at least this distance away from the body.” (Emphasis ours). This statement directly contradicts the Galaxy S-7 User Manual.
8. The last location ISED recommends for consumers to find SAR and Compliance Distance information is the ISED Radio Equipment List for their mobile phones. Defendant Samsung’s proposed Exhibits S-11 through S-14 reproduce the ISED Radio Equipment Lists for certain mobile phones ((Galaxy J-3, S-7, S-8, and S-9, respectively). While the Lists for the Galaxy S-7 and S-8 **do not declare** a Compliance Distance, those for the Galaxy J-3 and S-9 declare a Compliance Distance of **0 mm** for Body RF Exposure. In each case, these lists contradict both the user manuals and the manufacturer’s website regarding SAR and compliance or separation distance.
9. Taken individually and together, these four sources of health and safety information available to consumers are confusing, incomplete and mutually contradictory, and constitute false advertising and a failure to adequately warn consumers of health risks.

Reply to Samsung Electronics Canada ("Samsung") Application for Leave to Adduce Evidence

10. Defendant Samsung's statement at para. 5 is misleading. The data set from the Chicago Tribune investigation is only one of five data sets alleged by plaintiffs. These Five (5) data sets indicate SAR levels for tested mobile phones exceed the FCC limit of 1.6 W/kg either when tested with manufacturer's separation distance or when tested as used by consumers (seprataion distance of 2 mm or less). These data show that (A) Defendants failed to meet advertised test results and *grossly* mislead about SAR testing. Defendants diesel-gate cellphone RF testing, in large part by testing at distances that exceed actual use, and in a specific, narrowly-defined position that in no way represents how mobile phones are actually held in relation to the head or body. Even the stated separation distance of testing is a complete misrepresentation of how SAR tests are performed as they in no way capture the separation between the mobile phone transmitter and the user. Defendants' advertised SAR levels are false and intentionally misleading; and (B) consumers may experience RF radiation levels in normal use that greatly exceed manufacturers' declared SAR ratings, as indicated in five (5) data sets, three (3) of which are summarized in Exhibit P-3G, a fourth in Exhibit P-3D (and a fifth in Penumbra Study, Exhibit P-3H *en liasse*, filed February 13, 2020, notified together with Plaintiffs' Motion to Amend of February 7, 2020).
11. Para. 7 reference to "incomplete allegations" is irrelevant at Authorization, as there is no duty that Plaintiffs file their complete case at this stage. Furthermore, Plaintiffs say that claim concerns false advertising and the duty to inform pursuant to the *Consumer Protection Act* and the *Civil Code* of Quebec. The health hazards of RF are, with respect,

relevant for the *quantum* of damages and therefore to be determined only at the Merits stage. Expert evidence is crucial, to decide health damages, so *not* relevant for 575 (2).

12. At para. 9 ff Samsung alleges that the FCC Reports are relevant in order to adduce various irrelevant FCC documentation. The sole "relevance" of the FCC to these proceedings is the fact that Defendant's cellphones claim: "this device meets FCC **limits** for exposure to radio waves" (emphasis added). The only thing that is relevant in Canada is that SAR limit number. It is the *only* reason Plaintiff mentions FCC. For this reason alone, proposed Exhibits S-1 and S-2 are not relevant at any stage. Even if they were, which is denied, their veracity is highly questionable given the pro-industry bias of the FCC. In this regard see: "Captured Agency: How the Federal Communications Commission is Dominated by the Industries It Presumably Regulates" by Norm Alster, Harvard University, Edmund J. Safra Center for Ethics, (https://ethics.harvard.edu/files/center-for-ethics/files/capturedagency_alster.pdf):

> "So how does the FCC handle a scientific split that seems to suggest bias in industry sponsored research?
> In a posting on its Web site that reads like it was written by wireless lobbyists, the FCC chooses strikingly patronizing language to slight and trivialize the many scientists and health and safety experts who've found cause for concern. In a two page Web post titled ―Wireless Devices and Health Concerns, ‖ the FCC four times refers to either ―" some health and safety interest groups", ― "some parties," or ― "some consumers" before in each case rebutting their presumably groundless concerns about wireless risk. 33

See as well Huff, *infra*., and Turin Appeal decision 904/2019 in *Romeo c INAIL* which held:

<u>Principles on which the expertise and the judgment were based.</u>

Scientists financed by the telephone industry, as well as ICNIRP members, are less reliable compared to independent scientists.

"A large part of the scientific literature excluding the carcinogenicity of radio frequency exposure, or anyway claiming that research having reached opposite conclusions cannot be considered conclusive… **is in a position of a conflict of interest**, which, by the way, is not always stated: cf. in particular, on page 94 of the report, the observation of the appeal respondent's defense (in no way dispute by the

> other party) according to which **the authors of the studies indicated by INAIL**, listed by name, are **ICNIRP and/or SCENIHR members, who received, whether directly or indirectly, financing from industry** (p. 33).

The Turin court-appointed experts declare the following:

> it is believed that **studies published by authors having not stated the existence of conflicts of interest should be given less weight.** In the case in question, **situations of conflict of interest may arise** with respect to the assessment of the effects of radio frequencies on health, for example:
>
> - In those **cases where the author of the study has provided consultancy services to the telephone industry or has received, from the telephone industry, funding** to carry out studies
> - **The case where the author is an ICNIRP member**
>
> In fact, the ICNIRP is a **private organization**, whose guidelines on radio frequencies have **great economic and strategic importance for the telecommunications industry**, with which, moreover, **several ICNIRP members have links through consultancy relationships**… Apart from potential links with the industry, it goes without saying that ICNIRP members **should refrain from assessing the health effects of radio frequency levels** which the ICNIRP itself has already declared safe and therefore, not harmful to health.

In *Madame c. Maison Départementale des Personnes en Situation de Handicape 90*, Madam Marie-Elizabeth Farne, Tribunale du Contentieux de L'Incapacité de Toulouse (2015) found 85% incapacity due to hypersensitivity to electromagnetic waves, based on irrefutable clinical indications. This diagnosis was that symptoms disappeared when electromagnetism was eliminated (page 4). The Court concluded 85% long term incapacity (page 5).

The Oceana Radiofrequency Scientific Advisory Association (ORSAA, February 2020) sets out principles to determine if scientific opinion is solid: converging evidence, consensus by experts, scientific denialism, industry-funded studies are unlikely to be trustworthy, null results are vacuous, balanced debate required, and modern science versus Newtonian physics. On the latter issue:

> "The science of the invisible (e.g. electron transfer) is vastly different from the science of the visible (e.g. machines). Without any understanding of complex

biology, telecommunications engineers are creating infrastructure and signaling systems that are disrupting the basic processes on which life exists. The ARPANSA and ICNIRP assurances of safety are feebly based on Newtonian physics. They sound plausible to the lay person, but they are of no relevance to what is actually occurring" (page 2).

Modern Science versus Newtonian Physics Exhibit

These decisions are attached herewith as **Exhibit PNA-1**)[2]. As concerns "Safety Code" 6 and conflict of interest, CMAJ News, September 3, 2013, p. E573 "Chair of Wi-Fi safety panel steps down, attached herewith as **Exhibit PNA-2.**

Conflict of interest as the crucial factor in testing EMF exposure and its effect on health are studied in "Cellphones and Brain Tumors, 15 Reasons for Concern: Science, Spin and the Truth Behind Interphone (August 25, 2009) at page 28:

Flaw 11: Funding Bias

If studies are funded by an entity with a financial interest in the findings, it has been shown, more often than not, the findings of such a study are favorable to the financial interest compared to studies where the funding has no financial interest.

Dr. Henry Lai at the University of Washington in Seattle maintains a database of cellphone biological studies. The results (Table 1) from his database Guly 2007) report the magnitude of funding bias. The EMF industry-funded studies found an effect from EMF exposures in 28% of the studies, and the independently funded EMF studies found an effect from EMF exposures 67% of the time. The probability that this is a chance finding is extraordinarily minute (p = 2.3 x1Q-9),14

A study on the source of funding of cellphone studies and the reported results reported, "We found that the studies funded exclusively by industry were indeed substantially less likely to report statistically significant effects on a range of end points that may be relevant to health."

[2] Plaintiffs respectfully request *Roberto Romeo v INAIL* decisions (Turin, Court of Ivrea, 96-2017 Justice Lucca Fada and Turin Appeal decision 904/2019 published January 13, 2020 and the French cellphone decision *Madame c. Maison Départementale des Personnes en Situation de Handicape 90* be filed as Plaintiffs' Exhibits.

Cellphone Biological Studies							
		Effect Found		No Effect Found			
		Studies	% All Studies	Studies	% All Studies	Studies	% All Studies
Industry Funded	No.	27	8.3%	69	21.2%	96	29.4%
	%	28.1%		71.9%			
Independently Funded	No.	154	47.5%	76	23.5%	230	70.6%
	%	67.0%		33.0%			
Totals		181	55.5%	145	44.5%	326	100.0%

$Chi^2 = 39.8$ ($p=2.3 \times 10^{-9}$) 11 July 2006 [1]

Table 1: Industry-Funded and Independently-Funded Cellphone Biological Studies

13. At para. 13 Samsung amusingly refers to "FCC's own independent investigation" of the Chicago Study. To employ the word "independent" with reference to an FCC investigation misleads, as does that investigation. Not only is it entirely irrelevant to our arguable case, which is about false advertising, the duty to warn, and intentionally misleading testing, the FCC's extreme industry bias renders proposed Exhibit S-2 entirely unreliable. Plaintiffs' alleged facts are to be presumed true at Authorization. Note that four (4) other data sets, two from the French regulator, come to similar conclusions.

14. At paras. 16 ff Samsung refers to the U.S. Food and Drug Administration Literature Review dated February 2020, sought to be produced as Exhibit S-3. Samsung alleges is "accurate and up to date". Plaintiffs contest these assertions as set out below and vehemently oppose its filing due to lack of relevance at the Authorization stage.

15. Samsung's claim that Exhibit S-3 constitutes an independent literature review is not credible as the essential requirements that make a review "independent" are missing. Other than the fact that the review was issued by the FDA, there is no author, editor nor reviewer

associated with this review, all which would allow the proper assessment of whether or not the review is independent. It appears the FDA is trying to hide the authors of this review. For what purpose? The appropriate way of submitting review documents and scientific research is through a transparent process where all who participated in the work are identified. An example of transparency includes the IARC's review of radiofrequency radiation where six pages near the beginning of the document are dedicated to indicating who participated in their 2013 monograph[3].

16. Plaintiffs insist that if any document is to be filed, it should be transparent in order to verify independence so that there is no potential bias. We also insist that those involved in the FDA's review be identified in order to ensure their independence, which is in doubt.

17. At paras. 21 to 27 Samsung argues that "Safety Code" 6 is relevant, and propose Exhibits S-4, S-5 and S-6. Plaintiffs *do not* "focus on FCC's guidelines". Plaintiffs refer *only* to Samsung's statement on Plaintiff's phones: "this device meets FCC limits for exposure to radio waves". The word "limit" is defined as:

> "The greatest or smallest amount of something that is allowed"
>
> -Oxford Advanced Learners Dictionary
>
> "A point or level beyond which something does not or may not extend or pass"
>
> -Bing.com

A number does not require "context". It is objective. As such, Exhibits S-4 to S-6 are not relevant for Authorization. Nonetheless, the bias and unreliability of "Safety Code" 6 are described in detail in Plaintiff's Exhibit P-3F, the Report of Dr. Magda Havas.

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[3] IARC Vol 102- Par 2 RFR, list of participants

18. Defendants proffer “Safety Code” 6 as a defense justifying their measured cellphone emission levels (syllogism 1) and as a defense and disguised expert proof to claim the measured levels simulate how their cellphones are used (Syllogism 2). They further advance it to claim there are no significant health risks from cellphone exposure to the public or the hypersensitive (children, pregnant women and immunosuppressed) (Syllogism 3). Damages health, Charter and punitive are a matter for the merits only, where complete proof of health implications and proper testing will be adjudicated, relying on Expertise.
19. In paras. 28-31 Samsung propose Exhibits S-7 through S-10, the User Manual for their cellphones. The claim Samsung “provided all relevant information to users… with regards to RF energy exposure and compliance with the FCC’s exposure limits” is a defense, so for the Merits.
20. Proposed Exhibit S-7 refers to SAR on pages 2-3 and warranty in Section 2, page 11, first 3 lines, which claim “Products” are free from defects in material and workmanship under normal use and service”, purportedly a defense to the claim they fail to warn. It is not a defense to a Quebec *Consumer Protection Act* hidden defect claim, nor to a claim made pursuant to the *Civil Code* for a defective product as the manufacturer bears the burden of proof. It is also the case where the dangerous thing is electricity. Binding arbitration in S-7 to S-10 not relevant to a Quebec Collective Action given section 11.1 of the *Consumer Protection Act*. While the claims made on page 2 could be relevant for the Merits, as a defense to this Collective Action, we allege the claims made are unreliable as inconsistent with “Electronic Radiation Due to Cellular, Wi-Fi and Bluetooth Technologies: How Safe Are We?” (February 27, 2020) by Neven et als. in IEEE Access. Exhibits S-7 to S-10 are

only relevant insofar as they state "The FCC requires wireless devices to Comply with a Safety Limit of 1.6 watts per kilogram (1.6 w/kg). As this fact is admitted by Plaintiffs and alleged in Gregorio Report P-3G, proposed Exhibit S-7 is irrelevant on authorization.

21. Proposed Exhibit S-8 discusses warranties at page 8 and SAR at page 19. While the purported exclusion of liability for "compliance of the product with the requirements of any law, rule, specification or contract" at page 8 is a Defense outside Quebec, it is inoperative given the *Consumer Protection Act* and *Quebec Civil Code* presumptions of liability and burden on Defendant to prove it was unaware of and unable to avoid the defect. The same applies to "Samsung shall not be liable for any damages of any kind resulting from the purchase or use of the products…"

    Four lines from page 20 of SAR Certificate Information at page 16ff *are* relevant to Plaintiffs' syllogisms: "SAR values for body-worn devices are measured when used with an accessory that contains no metal and that positions the device a minimum of x.x cm from the body". This constitutes a clear admission that Samsung did not disclose to purchasers of the Galaxy 8 the measurement distance employed for establishing SAR limit of 1.6. w/kg. It is relevant re Art. 575(2) as proving our arguable case under syllogisms 1 and 2. *This fact appears to justify the conclusions sought*. The remainder of Exhibit S-8 is not relevant at Authorization. It is respectfully submitted that to contextualize the four (4) lines, the same lines be admitted from Exhibits S-7, S-9 and S-10. Proposed Representative Mathew Nucciaroni owns the model in Question, Samsung Galaxy 7.

22. Proposed Exhibit S-9 refers to warranties at page 8 and SAR Certification at page 20. It is in relevant part identical to proposed Exhibit S-8 and our position in this regard is the same. In *Benjamin c. Crédit VW Canada inc*., 2019 QCCS 2158 Madam Justice Lamarche held

at para. 17, p. 6 that facts intended to contradict those alleged, are not relevant unless they go to the heart of the syllogism. P-7 to 10, except for the lines noted above, do not. They do not provide clarity on an essential element and these contracts are nowhere referred to in the Amended Motion. *Gagné c Railworld* 2014 QCCS 32 para 40 p. 10. The category of documents alleged as Exhibits S-7 to 10 were refused by the Honorable Mr. Justice Bisson in *Li c Equifax* 2018 QCCS 1892 at paras 102-3:

> [102] Cependant, quant à la Pièce D-4 (déclaration assermentée et « Terms of Use »), elle vise directement le mérite du cas personnel du demandeur, tant au niveau du vol de renseignements, que de l'impact de ce vol et des dommages. Les commentaires que le Tribunal a faits plus haut s'appliquent ici. La Pièce D-4 est un moyen de défense au fond. Ce n'est qu'au mérite que le Tribunal pourra trancher, en fonction de toute la preuve pertinente, les questions de savoir si les « Terms of Use » s'appliquent ou non au demandeur et aux membres du groupe, d'en connaître la portée et d'en évaluer les conséquences sur la faute, le dommage et la causalité.
>
> [103] De plus, même si ces « Terms of Use » contiennent des clauses quant au droit applicable et à la compétence potentiellement exclusive des tribunaux d'une autre province, ces éléments sont réservés pour le mérite, alors que seule une preuve complète entourant les circonstances de la conclusion des contrats, leur nature, leur qualification au regard du droit de la consommation et leur compréhension par les parties pourra être présentée et permettre au Tribunal de décider de ces questions. Ces arguments sont de la nature d'une défense au mérite et nécessitent tout un éventail d'éléments de preuve pour en disposer. Cela ne peut se faire à l'autorisation.

23. Plaintiffs do not contest Samsung Exhibits S-11 to 14 as they tend to prove Plaintiffs' syllogisms 1 and 2. Plaintiffs say that though these documents are unreliable, incomplete and do not represent proper testing results, these Exhibits either have no compliance, distance or state a 0 mm compliance distance. However, the phones themselves say they are tested at 15 mm. Defendant Samsung is testing its phones at either the wrong distance or when testing do not indicate at all the distance tested, or misrepresenting to Industry Canada (ISED) the safe-use distance known as compliance distance.

24. At paras. 35 through 37 Samsung correctly points out that Moto e5, Moto g6 Play and Vivo 5 Mini are not Samsung products. While we therefore do not contest proposed Exhibit S-15, we prefer to correct our class definition by removing the reference to those phone models. For purposes of clarity, we re-iterate that the class is intended to refer to all Samsung models sold from 2013 forward.

25. "Shrink wrap" binding arbitration in Samsung's Contract contravenes art. 11.1 of the *Consumer Protection Act* and cannot be heard. *Boudrealt c. Société Télus* 2011 QCCA 3260. See also para 103 of *Li c Equifax* above.

26. Access to justice is to be promoted in collective actions. *Kawasaki Kisen Kaisha Ltd. C. Option Consommateur* 2019 QCCA 1139 para. 2 citing *Oratoire Saint-Joseph du Mont Royal c. J.J.* 2019 SCC 35 at 6-12, 56-62 (per Brown J.) 108-111 (per Gascon J.) and 190-202 + 204-2013 (Cote J. in dissent).

27. Only essential and indispensable proof is permitted to Defendants and only as concerns the syllogism(s). "Completing the factual context is not a ground" *Bouchard c. Bank of Montréal* 2019 QCCS 5661 paras. 42+43 (Carl Thibault JCS), *Lauzon c Municipalite (MRC) de Deux Montagnes*, 2019 QCCS 4650 CanLii, Bisson, J. at paras. 38 page 13, and at para. 72, page 19 citing and applying *Asselin c Desjardins* 2017 1673 (paras. 37-45) and *Primo Bedding Company c. Air Canada* 2019 QCCS 1671 Duprat, J., pp. 6-7 paras 13ff. Prudence is required. *Agostino* cited in *Desaunettes c. Réseau de Transport métropolitain (Exo),* Gagnon J., 2019 QCCS 1894 para 94, p. 14. Defendants' proof must also be succinct and concise. *Lauzon c Municipalite (MRC) de Deux Montagnes*, 2019 QCCS 4650 CanLii, Bisson, J. at paras. 48 page 15. It is preferable that in addition to succinct and precise, where the proposed proof has potentially significant consequences, it becomes essential

and indispensable, fitting the narrow corridor. *Lauzon c Municipalite (MRC) de Deux Montagnes*, 2019 QCCS 4650 CanLii, Bisson, J. para. 88 page 23.

28. Authorization since *Oratoire Saint-Joseph* is a filter. Only frivolous actions with no chance of success are denied. *Pilon* c. *Annex Bank of Canada* 2019 QCCS 3607 Hon. Pierre C. Gagnon at paras. 29-30 i.e. "manifestement mal fondée en fait ou en droit" *Oratoire Saint-Joseph* at paras. 22 and 56. The test is similar to a Motion to Dismiss under Art. 168 CCP *(Pilon* at paras 33ff). Should a Judge be presented contradictory facts, he or she is to assume, nonetheless, the facts as alleged for Authorization are true. *Lauzon c Municipalite (MRC) de Deux Montagnes*, 2019 QCCS 4650 CanLii, Bisson, J. at para. 38 p. 13.
29. Only neutral and objective proof is admissible. *Pilon c. Banque Annex of Canada* QCCS 4645, The Honorable Pierre C. Gagnon J. at page 13.
30. A jurisdiction argument based on peremption/preemption is inapplicable in Quebec which has not adopted NEPA[4]. Exclusive jurisdiction for health damages not been (purportedly) conferred by Quebec on the FCC, as Apple claims in *Cohen v. Apple* (Northern California).
31. Industry biased science should not be considered, as decided in the Turin decisions in *Romeo v. INAIL*. In *Lauzon* Mr. Justice Bisson at para. 67 decides that relevant jurisprudence on the party's claims be filed as an Exhibit. In this regard we ask your Lordship to do the same with the Italian decisions *Romeo c. INAIL*, filed in support of Plaintiffs' Motion Seeking Permission to Amend.

[4]President Nixon signed the National Environmental Policy Act (NEPA) into law on January 1, 1970. Congress enacted NEPA to establish a national policy for the environment, provide for the establishment of the Council on Environmental Quality (CEQ), and for other purposes. NEPA was the first major environmental law in the United States and is often called the "Magna Carta" of Federal environmental laws. NEPA requires Federal agencies to assess the environmental effects of proposed major Federal actions prior to making decisions. (NEPA.gov)

32. Other elements of defense, disguised expertise and expertise alleged prematurely (*Lauzon c Municipalite (MRC) de Deux Montagnes*, 2019 QCCS 4650 CanLii, para. 87, and unreliable biased pseudo-scientific claims, alleged prematurely are inadmissible. Contestation of health effects is a matter for the merits. The existence and extent of SAR health effects should only be adjudicated when this Court may examine the issue in detail, and with the benefit of Expert evidence, *Lauzon c Municipalite (MRC) de Deux Montagnes*, 2019 QCCS 4650, Bisson, J., paras. 129-130 (and at para. 61). The proposed Exhibits do not assist with or inform as concerns Plaintiffs' syllogisms 1 and 2 and as the exhaustive factual claim is not before the Court, cause is not now to be considered, *Lauzon c Municipalite (MRC) de Deux Montagnes*, 2019 QCCS 4650 para. 61-62, p. 17. Disguised expertise creates a right to Counter-expertise (para. 87, p. 23).

    Objectivity and neutrality are required for Defendant Exhibits to be allowed. Such neutrality and objectivity must be apparent on the document. Plaintiffs' claim may not be tested or contradicted via expertise, apparent or disguised, *Lauzon c Municipalite (MRC) de Deux Montagnes*, the Honorable Mr. Justice Bisson, paras 97-8.

33. In general, neither Defendant provides *specific* arguments as to why the proposed proof is relevant at Authorization, nor how all or any of it relates to Plaintiffs' Syllogisms 1 and 2. Perhaps some detail will emerge from their Notes and Authorities, but it is not in Defendants' Motions. Such specificity is absolutely required. *Primo Bedding Company c. Air Canada* 2019 QCCS 1671, Hon. Mr. Justice Duprat, p. 8 para. 17, re discovery.

Respectfully submitted this 19th day of May, 2020

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