

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

**ONTARIO
SUPERIOR COURT OF JUSTICE
COMMERCIAL 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 IMPERIAL TOBACCO CANADA
LIMITED AND IMPERIAL TOBACCO COMPANY LIMITED

APPLICANTS

**MOTION RECORD OF IMPERIAL TOBACCO CANADA LIMITED
AND IMPERIAL TOBACCO COMPANY LIMITED
(Motion for Stay Extension returnable September 27, 2023)**

September 13, 2023

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

ONTARIO
SUPERIOR COURT OF JUSTICE
(COMMERCIAL 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.**

AND IN THE MATTER OF A PLAN OF COMPROMISE OR
 ARRANGEMENT OF **IMPERIAL TOBACCO CANADA LIMITED**
 AND **IMPERIAL TOBACCO COMPANY LIMITED**

AND IN THE MATTER OF A PLAN OF COMPROMISE OR
 ARRANGEMENT OF **ROTHMANS, BENSON & HEDGES INC.**

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

**ONTARIO
SUPERIOR COURT OF JUSTICE
COMMERCIAL 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 IMPERIAL TOBACCO CANADA
LIMITED AND IMPERIAL TOBACCO COMPANY LIMITED

APPLICANTS

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TAB 1

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

**ONTARIO
SUPERIOR COURT OF JUSTICE
COMMERCIAL 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 IMPERIAL TOBACCO CANADA
LIMITED AND IMPERIAL TOBACCO COMPANY LIMITED

APPLICANTS

NOTICE OF MOTION

(Motion for Stay Extension returnable September 27, 2023)

The Applicants will make a motion before the Honourable Chief Justice Morawetz of the Ontario Superior Court of Justice (Commercial List) on Wednesday, September 27, 2023 at 10:30 a.m., or as soon after that time as the motion can be heard.

PROPOSED METHOD OF HEARING: The motion is to be heard

In writing under subrule 37.12.1 (1) because it is on consent, unopposed *or* made without notice;

In writing as an opposed motion under subrule 37.12.1 (4);

In person;

By telephone conference;

By video conference.

at the following location: Please refer to the Virtual Hearing Protocol attached as Schedule “A” for details on attending the motion.

THE MOTION IS FOR:

1. An Order substantially in the form included in the Motion Record at Tab 3 providing the following relief:
 - (a) if necessary, abridging the time for service of this Notice of Motion and the Motion Record and dispensing with service on any person other than those served; and
 - (b) extending the Stay Period (defined below) until and including March 29, 2024; and
2. Such further and other relief as this Court may deem just.

THE GROUNDS FOR THE MOTION ARE:

1. The Applicants face an existential threat from tobacco-related litigation across Canada, including multiple class actions, government claims seeking to recover health care costs, and other ongoing proceedings (collectively, the “**Tobacco Litigation**”);
2. On March 1, 2019, the Court of Appeal for Quebec issued a judgment affirming a lower court decision that held Imperial Tobacco Canada Limited, JTI-Macdonald Corp., and Rothmans Benson & Hedges Inc. jointly and severally liable for a maximum of \$13.6 billion;
3. In addition, the plaintiffs in the Tobacco Litigation collectively seek hundreds of billions of dollars in damages, which exceeds the Applicants’ total assets by many orders of magnitude;
4. The Applicants were granted protection from their creditors under the *Companies’ Creditors Arrangement Act*, RSC 1985, c C-36, as amended (the “**CCAA**”), pursuant to the Initial Order of the Ontario Superior Court of Justice (Commercial List) dated March 12, 2019 (as amended from time to time, the “**Initial Order**”);
5. FTI Consulting Canada Inc. was appointed to act as the Monitor in the Initial Order;

6. Justice Winkler was appointed as the Court-Appointed Mediator in the Initial Order;
7. The Initial Order granted a stay of proceedings until April 11, 2019, or such later date as this Court may order (as extended by further court orders, the “**Stay Period**”);
8. The Court has previously extended the Stay Period until September 29, 2023;
9. The requested extension of the Stay Period is necessary and appropriate in the circumstances to allow for the continued operation of the Applicants’ business while they work towards developing a consensual plan of compromise or arrangement for the resolution of the Tobacco Claims (as defined in the Initial Order);
10. The Applicants have been acting in and continue to act in good faith and with due diligence in these CCAA proceedings;
11. During the extended Stay Period, the Applicants intend to continue engaging in the mediation process under the direction of the Court-Appointed Mediator and to work diligently (in consultation with the Monitor) to explore a negotiated resolution with the Tobacco Litigation stakeholders;
12. It is just and convenient and in the interests of the Applicants and their respective stakeholders that the Stay Period be extended;
13. The Applicants have sufficient liquidity to continue operations through the requested Stay Period;
14. The Monitor supports the extension of the Stay Period;
15. The provisions of the CCAA, including section 11.02, and the inherent and equitable jurisdiction of this Honourable Court;
16. Rules 1.04 and 37 of the Ontario *Rules of Civil Procedure*, R.R.O. 1990, Reg. 194, as amended, and section 106 of the Ontario *Courts of Justice Act*, R.S.O. 1990, c. C.43, as amended; and
17. Such further and other grounds as counsel may advise and this Court may permit.

THE FOLLOWING DOCUMENTARY EVIDENCE will be used at the hearing of this motion:

1. The Affidavit of Eric Thauvette, sworn September 13, 2023;
2. The Sixteenth Report of the Monitor (to be filed); and
3. Such further and other evidence as counsel may advise and this Court may permit.

September 13, 2023

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Canada Limited and Imperial Tobacco
Company Limited

TO: THE COMMON SERVICE LIST

**IN THE MATTER OF the *Companies' Creditors Arrangement Act*, R.S.C. 1985, c. C-36,
as amended**

Court File No: CV-19-~~64~~77-00CL

**AND IN THE MATTER OF A PLAN OF COMPROMISE OR ARRANGEMENT OF
IMPERIAL TOBACCO CANADA LIMITED AND IMPERIAL TOBACCO
COMPANY LIMITED**

APPLICANTS

ONTARIO
SUPERIOR COURT OF JUSTICE

Proceeding Commenced at Toronto

NOTICE OF MOTION
(Motion for Stay Extension
returnable September 27, 2023)

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Lawyers for the Applicants, Imperial Tobacco Canada
Limited and Imperial Tobacco Company Limited

Schedule “A” – Virtual Hearing Protocol

Please see attached.

PROTOCOL FOR MOTION BY ZOOM VIDEO CONFERENCE

Scheduling and Specific Requirements

1. Any person on the Service List that wishes to appear virtually on the motion (“**Participants**”) must register by 4:00 p.m. two (2) business days in advance of the hearing (Monday, September 25, 2023 for the motion scheduled Wednesday, September 27, 2023), by emailing Veritext Litigation Solutions Canada, Inc. (scheduling@neesonsreporting.com) and copying each Monitor’s counsel (tbarbiero@dwpv.com, sfernandes@cassels.com, nancy.thompson@blakes.com). In their email, Participants should provide contact information, including their name, the party they are acting for, their email address and phone number for the counsel slip, along with a statement regarding whether they intend to make submissions.
2. Subject to the Court’s overriding discretion over all matters, Monitors’ counsel will coordinate with Participants and the Court to develop an agenda for the hearing.
3. All material for use on the motion is to be posted on CaseLines, as more fully described in Appendix “B”.
4. Participants will appear by video. Veritext will distribute the Zoom link to Participants. Participants are not permitted to forward or share the Zoom link. No person should have access to the hearing on Zoom other than Participants. If a Participant is unable to attend by video, they should contact Monitors’ counsel. Participants should carefully review the technical requirements below.
5. Counsel are required to gown for the hearing.
6. For access by the general public, a YouTube link will be posted on each of the Monitors’ websites by 10:00 a.m. not less than two (2) business days prior to the hearing. The YouTube link will allow the general public to view a livestream of the hearing, but not participate in the hearing. For greater clarity, individuals viewing the livestream via YouTube will not be heard or seen by the Court, Judge or Participants.
7. No recording of any part of the hearing (including audio) may be made unless authorized in advance by the Court.
8. For greater certainty, notice and service requirements are set out in the Rules of Civil Procedure and the various orders and endorsements in the proceedings. For ease of reference, we have included paragraphs 58-63 of the Second Amended and Restated Initial Order dated March 8, 2019 in the JTIM proceedings, attached as Appendix “A”. It should be noted that similar

notice and service requirements have been set out in various orders and endorsements in the parallel proceedings of Imperial and RBH. Nothing in this protocol modifies or amends Orders of the Court related to service requirements, the Rules of Civil Procedure, any Commercial List Practice Direction or other applicable rules.

9. Participants will be placed into a virtual waiting room upon entering the Zoom meeting.

Technical Requirements for Zoom Participants

10. Participants will require a device with a working microphone and camera. The device can be a computer (desktop or laptop), tablet or smartphone. The device must be connected to an internet connection that is sufficient to send and receive video and audio.

11. Each Participant is responsible for ensuring that they have suitable equipment to participate in the hearing and that such equipment works properly. Participants must test such equipment well in advance of the scheduled hearing to ensure:

- (a) that they are familiar with how to use such equipment;
- (b) the compatibility and functioning of such equipment; and
- (c) that the remote location has adequate internet bandwidth to support the use of Zoom without interruption.

12. Each Participant is also responsible for ensuring that they are familiar with the features and operation of Zoom. Participants must ensure that they have downloaded any necessary software, and practiced using Zoom, well in advance of the scheduled hearing.

13. Counsel on Zoom should identify their display name in the following format: [First Name] [Last name], for [Client].

14. Participants should log on using the Zoom link provided approximately 30 minutes before the hearing is scheduled to begin. During this time, Participants should speak to each other to determine if there are any audio/visual/connection issues.

15. It is suggested that Participants use the “gallery view” mode, rather than the “active speaker” mode, available on Zoom.

16. It is suggested that only counsel who are making submissions turn on their cameras during the hearing.

17. Should a Participant become disconnected from Zoom or experience technical difficulties during the hearing, they should immediately inform the Court by sending an email to Veritext Litigation Solutions Canada, Inc. (scheduling@neesonsreporting.com).

18. Further participant information is included in Appendix "B."

APPENDIX "A"

58. **THIS COURT ORDERS** that, subject to paragraph 59, all motions in this proceeding are to be brought on not less than seven (7) calendar days' notice to all persons on the Service List. Each Notice of Motion shall specify a date (the "**Return Date**") and time for the hearing.

59. **THIS COURT ORDERS** that motions for relief on an urgent basis need not comply with the notice protocol described herein.

60. **THIS COURT ORDERS** that any interested Person wishing to object to the relief sought in a motion must serve responding motion material or, if they do not intend to file material, a notice in all cases stating the objection to the motion and the grounds for such objection in writing (the "**Responding Material**") to the moving party, the Applicant and the Monitor, with a copy to all Persons on the Service List, no later than 5 p.m. on the date that is four (4) calendar days prior to the Return Date (the "**Objection Deadline**").

61. **THIS COURT ORDERS** that, if no Responding Materials are served by the Objection Deadline, the judge having carriage of the motion (the "**Presiding Judge**") may determine:

- (a) whether a hearing is necessary;
- (b) whether such hearing will be in person, by telephone or by written submissions only; and
- (c) the parties from whom submissions are required

(collectively, the "**Hearing Details**"). In the absence of any such determination, a hearing will be held in the ordinary course.

62. **THIS COURT ORDERS** that, if no Responding Materials are served by the Objection Deadline, the Monitor shall communicate with the Presiding Judge regarding whether a determination has been made by the Presiding Judge concerning the Hearing Details. The Monitor shall thereafter advise the Service List of the Hearing Details and the Monitor shall report upon its dissemination of the Hearing Details to the Court in a timely manner, which may be contained in the Monitor's next report in the proceeding.

63. **THIS COURT ORDERS** that if any party objects to the motion proceeding on the Return Date or believes that the Objection Deadline does not provide sufficient time to respond to the motion, such objecting party shall, promptly upon receipt of the Notice of Motion and in any event prior to the Objection Deadline, contact the moving party and the Monitor (together with the objecting party and any other party who has served Responding Materials, the "**Interested Parties**") to advise of such objection and the reasons therefor. If the Interested Parties are unable to resolve the objection to the timing and schedule for the motion following good faith consultations, the Interested Parties may seek a scheduling appointment before the Presiding Judge to be held prior to the Return Date or on such other date as may be mutually agreed by the Interested Parties or as directed by the Presiding Judge to establish a schedule for the motion. At the scheduling appointment, the Presiding Judge may provide directions including a schedule for the delivery of any further materials and the hearing of the contested motion, and may address such other matters, including interim relief, as the Court may see fit. Notwithstanding the foregoing, the Presiding Judge may require the Interested Parties to proceed with the contested motion on the Return Date or on any other date as may be directed by the Presiding Judge or as may be mutually agreed by the Interested Parties, if otherwise satisfactory to the Presiding Judge.

APPENDIX “B”

1. All Participants will have their microphones muted and may only unmute their own microphones when they are addressing the Court. When parties are not muted, they must avoid making extraneous noise (including for example, typing and shuffling papers) as these noises may interfere with the hearing.
2. Participants must ensure that they participate in the Zoom hearing from a well-lit room so that they are easily visible. Participants must also ensure that no filters are active that may distort or otherwise conceal their appearance.
3. Participants must ensure that they participate in the Zoom hearing from a quiet location where they (and the Court) will not be interrupted or disturbed during the hearing.
4. All mobile devices must be turned off or put on silent mode during the hearing.
5. Participants must refrain from speaking over other Participants.
6. Participants should make submissions in accordance with the order set out in the agenda. If there is a need to make submissions out of sequence, Participants should make a request in a manner directed by the Court. The Court may ask Participants to signal when they intend to address the Court by raising their hand (either by physically raising their hand or by using the virtual “raise hand” feature in Zoom).
7. Participants must state their name and who they represent before addressing the Court.
8. Upon entry into the virtual waiting room, each Participant joining by video should identify themselves, including any person off camera that may be viewing the video feed. This also allows any audio or visual issues to be identified. Each Participant is obligated to immediately notify the presiding judge if any additional person joins them in viewing the video feed.
9. If a Participant intends to rely on any documents, the materials you intend to rely on must be served and shared on the relevant CaseLines bundle and all references during the hearing should reference the CaseLines page numbering associated with such CaseLines bundle.
10. If a party wishes to share certain documents during the hearing, the documents should be provided to the Monitors in advance so that it can be added to the agenda and a method for sharing can be set up.

TAB 2

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

ONTARIO
SUPERIOR COURT OF JUSTICE
COMMERCIAL LIST Type text here

B E T W E E N:

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 IMPERIAL TOBACCO CANADA
LIMITED AND IMPERIAL TOBACCO COMPANY LIMITED

APPLICANTS

AFFIDAVIT OF ERIC THAUVETTE
(sworn September 13, 2023)

I, Eric Thauvette, of the City of Montreal, in the Province of Quebec, the Vice President and Chief Financial Officer of Imperial Tobacco Canada Limited (“**ITCAN**”), MAKE OATH AND SAY:

1. I am the Chief Financial Officer of ITCAN and, in that role, I am responsible for all financial-related aspects of ITCAN’s business operations. I am also an officer and director of ITCAN’s subsidiary and the other applicant, Imperial Tobacco Company Limited (“**ITCO**”, and collectively with ITCAN, the “**Applicants**”). As such, I have personal knowledge of the matters deposited to herein. Where I have relied on other sources for information, I have stated the sources of my information and believe them to be true.

2. In preparing this affidavit, I have consulted with other members of the Applicants’ senior management team, legal, financial and other advisors of the Applicants, and representatives of FTI Consulting Canada Inc. (“**FTI**” or the “**Monitor**”). In addition, I receive frequent updates from the Applicants’ counsel regarding these proceedings.

- 2 -

3. This affidavit is made in support of a motion by the Applicants for an order under the *Companies' Creditors Arrangement Act*, RSC 1985, c C-36, as amended (the “**CCAA**”), extending the Stay Period (defined below) up to and including March 29, 2024.

PART I - BACKGROUND

4. The Applicants were granted CCAA protection by an order of the Ontario Superior Court of Justice (Commercial List) dated March 12, 2019 (as amended from time to time, the “**Initial Order**”). The Initial Order appointed FTI as the Monitor and granted a stay of proceedings (the “**Stay**”) in favour of the Applicants and certain related parties until and including April 11, 2019 or such later date as the Court may order (as extended by further court orders, the “**Stay Period**”). At the most recent stay extension hearing, held on March 28, 2023, this Court extended the Stay Period until and including September 29, 2023.

5. The Applicants sought CCAA protection following the judgment (the “**Quebec Judgment**”) of the Quebec Court of Appeal on March 1, 2019, affirming a lower court decision in favour of the Quebec Class Action Plaintiffs (the “**QCAPs**”) that held ITCAN, JTI-Macdonald Corp. (“**JTIM**”), and Rothmans Benson & Hedges Inc. (“**RBH**” and, with the Applicants and JTIM, the “**Tobacco Companies**”) jointly and severally liable for a maximum of \$13.6 billion. This class proceeding, together with the various consumer and government claims across the country (the “**Tobacco Litigation**”), collectively seek notional recovery of hundreds of billions of dollars from the Applicants and the other legal Canadian tobacco manufacturers.

6. Although the Applicants dispute both the legal and factual foundation of the claims asserted in the Tobacco Litigation, as well as the corresponding quantification of damages, they ultimately determined that it is in the best interests of the Applicants' stakeholders to engage in a restructuring

- 3 -

process with the overriding objective of preserving the value of their business and resolving all Tobacco Claims (as defined in the Initial Order) in an orderly process under Court supervision.

7. ITCAN, JTIM, and RBH are the three major Canadian manufacturers and distributors of tobacco products. JTIM and RBH have also been granted CCAA protection under orders made on March 8, 2019 and March 22, 2019, respectively. Counsel for the Tobacco Companies have consulted on common issues in order to coordinate the three CCAA proceedings to the maximum extent possible.

PART II - THE MEDIATION AND CURRENT STATUS OF THE CCAA PROCEEDINGS

8. At the joint comeback hearing for the ITCAN, JTIM, and RBH CCAA proceedings on April 4 – 5, 2019 (the “**Comeback Hearing**”), Justice Winkler was appointed the “Court-Appointed Mediator” in all three CCAA proceedings with a mandate to, among other things, adopt any process he considered appropriate for facilitating a global settlement of the Tobacco Claims.

9. Pursuant to an endorsement dated May 24, 2019, the mediation conducted by the Court-Appointed Mediator (the “**Mediation**”) is confidential and all steps taken or information produced by any of the parties in the Mediation shall not be disclosed. Therefore, the description of the Mediation and the Applicants’ participation below is general in nature.

10. During the most recent Stay Period, the Applicants have continued to engage in the Mediation in accordance with the directions provided by the Court-Appointed Mediator, including participating in numerous meetings with the Court-Appointed Mediator and others. In addition, the Applicants have responded from time to time to requests for information from Tobacco

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Litigation stakeholders and uploaded documents on an as needed basis to the confidential data room set up in connection with the Mediation.

11. The Applicants continue to believe that the Mediation and interactions facilitated by the Court-Appointed Mediator will allow all stakeholders to better understand the competing interests of other parties in the CCAA proceedings, and assist in identifying a path forward for ultimately developing a consensual plan of compromise or arrangement. The Applicants have diligently adhered to all directions made by the Court-Appointed Mediator relating to scheduling and the Mediation, and will continue to do so during the extended Stay Period.

PART III - OTHER MATTERS

12. As an update to matters addressed in my prior affidavits, it is noted that:

- ITCAN continued implementing the previously announced reorganization plan to ensure its structure is fit for its current and future business needs and to align its organizational structure and ways of working to those of the BAT Group, following the redesign performed by the BAT Group in 2022 and at the beginning of 2023. The announced reorganization has translated into 26 terminations, most of which have been implemented, with a severance cost of \$2.4M CAD and estimated annual savings of \$7M CAD. Aside from this reorganization plan, ITCAN continues to manage its human resources and to adjust its organizational structure in the normal course of business, as required to meet its current and future business needs. Although ITCAN previously announced that Roberta Palazzetti would be taking over as Chief Executive Officer, Frank Silva was appointed as Chief Executive Officer instead, effective April 1, 2023;

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- On February 28, 2023, the Heart and Stroke Foundation of Canada (“**HSF**”) served its motion record for a motion to be heard before this Court on April 14, 2023, seeking an Order (a) providing leave to bring a motion appointing Tyr LLP as representative counsel for the Future Tobacco Harm Stakeholders, as described in its motion record on terms set out in its draft order; and (b) granting the proposed representative counsel “rights of participation” in the Mediation (the “**HSF Motion**”). On March 14, 2023, the Monitors each filed a Report, jointly opposing the granting of leave for HSF to bring the HSF Motion. On June 23, 2023, the Court released its decision dismissing the HSF Motion;
- Following the Health Canada consultation in the summer of 2022 on draft packaging and labelling regulations, described in my previous affidavit, the *Regulations Amending the Tobacco Products Regulations (Plain and Standardized Appearance)* came into effect in August 2023. ITCAN is continuing to assess and prepare for the potential impact of these Regulations on its business, with the support of the BAT Group. Product discontinuation and rationalization are being considered for some non-strategic components of the ITCAN portfolio;
- The Quebec government has implemented a flavour ban on vaping products as of October 31, 2023. ITCAN is continuing to prepare for the impact of this ban on its business. It will be charging the write off and returns of unsaleable products to Nicoventures;
- Wallace & Carey (“**W&C**”), a logistics supplier and purchaser of goods, filed for CCAA protection in June 2023. ITCAN has been able to continue business with W&C with payment arrangements agreed upon in July 2023, which are continuing in the short term;

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- In late August 2023, ITCAN suffered an intrusion into one of its IT platforms. This platform is not business critical and the intrusion did not affect any of ITCAN's banking, payment, accounting or order taking functions. An internal investigation is ongoing, with the support of the BAT Group, to gather all the facts relating to this event and to identify potential improvements or reinforcements. For the time being, ITCAN's estimated loss relating to this event is immaterial;
- In March of 2019, three shipping containers containing cigarettes owned by ITCAN were stolen from the Port of Montreal while under the control of Ryder Truck Rental of Canada Ltd. and/or related entities ("**Ryder**"). ITCAN's insurer, CHUBB European Group SE ("**CHUBB**") paid ITCAN approximately \$2.8M for the loss in question and initiated a subrogated claim against Ryder in the Province of Quebec naming ITCAN and CHUBB as plaintiffs. The subrogated claim is in the early stages of litigation and ITCAN has been asked by CHUBB to produce relevant documents and to identify a discovery witness. ITCAN intends to provide CHUBB with the requested assistance given the payment made to it by CHUBB in connection with the insured loss;
- ITCAN volumes declined -11.5% in the last reporting period (March 2023 to August 2023) vs. the same period last year. Although the volume decline is affecting all the regions, it is significantly more severe in the Western provinces and it is largely driven by the growth of illicit trade, a finding that is consistent with the 25% year-over-year decline in tobacco tax revenue, reported by British Columbia in their recently published 2022-23 Public Accounts. In British Columbia and Manitoba, ITCAN's volume decline reached -20% and -16% respectively compared to the previous year; and

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- A review of the cash flow actuals vs. forecast for the period from March 6, 2023, until September 1, 2023, shows a net positive operating cash flow of approximately \$200 million and forecasted net cash inflow of approximately \$538 million.

13. ITCAN has also continued, alone or in concert with BAT, with certain initiatives to improve or streamline business operations and expand its product offering including:

- The project for the replacement of automated equipment in the Ryder (ITCAN's primary logistics provider) distribution centres in Ontario and Quebec is ongoing and is following a revised scope and budget, as previously reported, and the expected completion date remains June 2024;
- The distribution centre located in Brampton, Ontario is expected to move to Vaughan, Ontario in October 2023;
- ITCAN has selected a supplier for implementing the environmental risk management measures that were previously approved by the Ministry of Environment for the Aylmer site. This work will be conducted in the fall of 2023 and is expected to cost approximately \$600,000;
- ITCAN is continuing operation of its eight VUSE stores for the sale of vape related products including e-cigarettes, liquids and accessories. Although there were previous plans to operate two additional retail stores in 2023, there are no longer concrete plans to open any new stores in the next six months; and

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- Health Canada approved Zonnic for sale as a nicotine replacement product in July 2023 and ITCAN expects to start distributing this product for Nicoventures during the next stay extension period.

14. Overall, there has been negligible disruption of the Applicants' business operations. The stay of proceedings has therefore achieved its objective of providing operational stability and fostering an environment that encourages stakeholder discussions.

PART IV - STAY EXTENSION

15. As noted above, the Applicants are seeking to extend the Stay Period up to and including March 29, 2024, or for a further six-month period. The rationale for this extension requires a consideration of the Mediation landscape and associated challenges relating to a Canadian tobacco industry restructuring with multi-party negotiations involving diverse economic interests.

16. In my affidavit sworn March 12, 2019 (the "**Initial Affidavit**") in support of the Initial Order, the Tobacco Litigation facing the Applicants in addition to the Quebec Judgment of \$13.6 billion was highlighted:

143. ITCAN is facing more than 20 large tobacco litigation claims that have been filed across Canada (four of which are in Ontario) with claims for damages totalling well over \$600 billion. A chart outlining these proceedings and certain other litigation across Canada is appended at Schedule A. These proceedings include the categories described below.

144. **The Government "Medicaid" Actions:** These actions initiated against ITCAN in ten provinces all arise from the enactment of special purpose provincial legislation creating a statutory claim in favour of the provincial governments to permit the recovery of health care costs incurred in connection with smoking-related diseases. On a substantive basis, the legislation enacted by the various provinces and resultant litigation is virtually identical except for some differences in Quebec.

149. **Smoking/Health Class Actions:** Non-government plaintiffs have initiated substantially similar proposed smoking and health class actions against ITCAN in a number of provinces.¹ Many of the class actions name ITCAN, BAT, the BAT Affiliates, the other two major Canadian tobacco manufacturers, a number of other international corporations, the Canadian Tobacco Manufacturers' Council and several *ex juris* tobacco companies and seek unspecified damages on behalf of individuals who have suffered chronic respiratory diseases, heart diseases or cancer.

151. **Ontario Tobacco Grower Class Action:** On December 11, 2009, ITCAN was served with a class action filed by Ontario tobacco farmers and the Ontario Flue Cured Tobacco Growers' Marketing Board ("Growers' Action"). Separate but identical suits were also served on JTI and RBH. The Plaintiffs allege that, during 1989-1995, ITCAN improperly paid lower prices for tobacco leaf destined for duty-free products, as opposed to the higher domestic leaf price. The suit claims \$50 million in damages ...

17. The Schedule "A" Pending Litigation chart referenced in the Initial Affidavit is attached as **Exhibit "A"** for ease of reference.

18. In addition to the foregoing, Representative Counsel for individuals asserting claims or entitled to assert claims for a Tobacco-Related Wrong (a "**TRW Claim**") was appointed by Order dated December 9, 2019. The scope of the Representative Counsel mandate and rationale for appointment, including the statement that "these restructurings are amongst the most complex in CCAA history", was summarized by the Honourable Justice McEwen in January 3, 2020 Reasons for Decision attached as **Exhibit "B"**:

[22] The Tobacco Monitors, as noted, propose that Representative Counsel will represent individuals with TRW Claims in all provinces and territories to the extent that they are not currently represented in the Certified Class Actions. These would include various residual tobacco-related disease claims that fall outside the certified class definitions in the Certified Class Actions, claims that are currently the subject of the Uncertified Actions and the tobacco-related claims for which no individual or class proceedings have been commenced. Of course, it would not include the provinces' health cost recovery claims nor the existing, uncertified commercial

¹ Not only are the issues in the various class actions similar, seven of the class actions in the provinces of Ontario, Nova Scotia, Manitoba, Saskatchewan, Alberta and British Columbia were filed by the same law firm.

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class actions in Ontario which have been commenced by the tobacco growers and producers.

[23] In order to achieve a pan-Canadian global settlement, the Tobacco Monitors submit it is necessary to appoint Representative Counsel to ensure that the TRW Claims, as defined, are addressed in an efficient, timely and consistent manner. The TRW Claimants are scattered across the country. Most do not have any representation and likely do not have the ability or resources to advance their claims in these complex CCAA proceedings.

[28] The TRW Claimants, as noted, are vulnerable individuals in complex proceedings where they are unorganized and likely lack resources. The Applicants and indeed all stakeholders will benefit from a pan-Canadian settlement.

[42] I agree with the Tobacco Monitors that a single point of contact is critical in these proceedings. As I have previously indicated, these restructurings are amongst the most complex in CCAA history for a number of reasons, which include the vast number and size of the complicated tobacco-related actions that have been, or could be, commenced against the Applicants.

19. The ongoing Mediation must therefore balance the interests of a broad array of Tobacco Litigation claimants ranging from provincial governments with statutory claims to individuals with personal injury claims reduced to judgment, to asserted and unasserted personal injury claims under the umbrella of the Representative Counsel.

20. There is also a significant additional layer of complexity in this restructuring, as it encompasses three separate global industry groups, not just individual Canadian companies, each of which are operating different businesses in Canada, with different business models and structures.

21. This Honourable Court has recognized the importance of the Mediation to all stakeholders, including the Tobacco Companies, by granting Stay Period extensions from time to time. Many of the Stay Extensions have been unopposed but this Honourable Court has been required on occasion to consider stakeholder requests for Stay Period extensions of less than six months.

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22. Earlier in the CCAA proceedings, the QCAPs opposed a six-month Stay Period extension to March 6, 2020. The Honourable Justice McEwen addressed this opposition in an October 3, 2019 endorsement and related reasons released October 18, 2019, both attached as **Exhibit “C”**. More recently, Stay Period extensions of six months were opposed by various stakeholders, as addressed by the Honourable Justice McEwen in endorsements of September 29, 2022 and March 30, 2023 attached as **Exhibits “D”** and **“E”**, respectively. After considering various factors, the Honourable Justice McEwen granted the six-month extensions in each case.

23. The considerations taken into account by the Court relating to Stay Period extension requests have evolved over time. That said, the Applicants have a vested interest in the successful conclusion of the Mediation and have committed throughout to a negotiated global resolution of the Tobacco Claims with the assistance of the Mediator.

24. There has been significant progress in the Mediation, and the Applicants believe that a shorter stay extension may impede that progress going forward. ITCAN affirms its commitment to the Mediation process and its ongoing support of the Mediation objectives. The timelines for the Mediation are governed by – among other things – the Mediator, the numerous participants (each of whom has unique and often times divergent interests), and the underlying issues in dispute. Accordingly, they are largely beyond the Applicants’ control, and any perceived delays in the process cannot be attributed to ITCAN. To the contrary, the Applicants have acted in good faith, without delay and in accordance with the applicable timelines, throughout the Mediation process. Due to the confidential nature of the Mediation process, however, the Applicants cannot comment further on the nature or extent of the progress to date or what issues remain to be resolved by the parties.

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25. The Applicants, with the assistance of the Monitor, have prepared an updated Cash Flow Forecast for the 30-week period commencing the week of September 4, 2023, through the week of March 29, 2024, which reflects that the Applicants are projected to have sufficient funding to continue to operate in the normal course during the proposed extension of the Stay Period. I understand that the Monitor will be attaching the updated Cash Flow Forecast with its report that will be filed with the Court.

26. The Monitor has expressed its support for the extension of the Stay Period to March 29, 2024.

SWORN BEFORE ME over videoconference this 13th day of September, 2023 in accordance with O. Reg. 431/20, Administering Oath or Declaration Remotely. The affiant is located in the City of Montréal, in the Province of Quebec and the commissioner is located in the City Toronto, in the Province of Ontario.



Commissioner for Taking Affidavits
MARLEIGH ERYN DICK
LSO# 79390S



ERIC THAUVETTE

TAB A

THIS IS **EXHIBIT “A”** REFERRED TO IN THE
AFFIDAVIT OF ERIC THAUVETTE, SWORN BEFORE ME
OVER VIDEO CONFERENCE
THIS 13th DAY OF SEPTEMBER, 2023.

A handwritten signature in blue ink, appearing to read 'Michael', is written above a horizontal line.

Commissioner for taking affidavits

Schedule A - Litigation

Copies of the first page of each of the statements of claim referenced in the chart below are attached to this Affidavit as Exhibit “V”.

Jurisdiction	Description
I. Government Medicaid Actions	
Alberta	On May 31, 2012, Alberta enacted its <i>Crown's Right of Recovery Act</i> . On August 8, 2012, ITCAN was served with the suit naming ITCAN, BAT, the BAT Affiliates, other Canadian and international tobacco manufacturers and the Canadian Tobacco Manufacturers' Council as defendants. The claim seeks damages quantified at \$10 billion. This case remains at a preliminary stage. No trial date has been set.
British Columbia	On January 24, 2001, British Columbia enacted the <i>Tobacco Damages and Health Care Costs Recovery Act</i> . The provincial government filed a suit against ITCAN, the BAT Affiliates, other Canadian and international tobacco manufacturers, and the Canadian Tobacco Manufacturers' Council. The action did not specify an amount claimed, but seeks to recover the present value of the total expenditures supposedly incurred by the government for health care benefits provided for Insured persons resulting from tobacco-related diseases or the risk thereof, as well as the present value of the estimated total expenditure that could reasonably be expected will be provided for the same purposes. An expert report filed by the province in early 2017 estimated damages to be around \$118 billion. Document production is ongoing and examinations for discovery commenced in January 2018. No trial date has been set.
Manitoba	On June 13, 2006, Manitoba enacted its <i>Tobacco Damages Health Care Costs Recovery Act</i> . ITCAN was served with the suit on July 4, 2012 naming ITCAN, BAT, the BAT Affiliates, other Canadian and international tobacco manufacturers and the Canadian Tobacco Manufacturers' Council as defendants. The province did not quantify the damages. This case remains at a preliminary stage and no trial date has been set.
New Brunswick	On March 14, 2008, the government of New Brunswick filed a Medicaid suit against ITCAN, BAT, the BAT Affiliates, other Canadian and international tobacco manufacturers and the Canadian Tobacco Manufacturers' Council. ITCAN was served on April 10, 2008. Damages have been quantified by the Province in the range of \$11-\$60 billion (from 1954 to 2060). Pursuant to a case management order, the trial is

Jurisdiction	Description
	scheduled to commence on November 4, 2019. The trial date will have to be rescheduled as a result of certain recently-released motion decisions.
Newfoundland and Labrador	On January 8, 2011, Newfoundland and Labrador enacted its <i>Tobacco Damages and Health Care Costs Recovery Act</i> and filed a lawsuit against ITCAN, BAT, the BAT Affiliates, the other two major Canadian manufacturers, a number of other international corporations and the Canadian Tobacco Manufacturers' Council. No damages have been specified. ITCAN was served on February 8, 2011 and has filed its defence. Document production commenced in 2018. No trial date has been set.
Nova Scotia	On December 8, 2005, the province of Nova Scotia enacted its <i>Tobacco Damages and Health-Care Costs Recovery Act</i> . On January 22, 2015, ITCAN was served with the Nova Scotia Medicaid suit naming ITCAN, BAT, the BAT Affiliates, other Canadian and international tobacco manufacturers and the Canadian Tobacco Manufacturers' Council as defendants. The damages have not been quantified by the province. ITCAN delivered its Statement of Defence on July 3, 2015. This case remains at a preliminary stage and no trial date has been set.
Ontario	See description in the body of the Affidavit.
Prince Edward Island	On June 12, 2012, Prince Edward Island enacted its <i>Tobacco Damages and Health Care Costs Recovery Act</i> . ITCAN was served with the PEI Medicaid suit on November 15, 2012 naming ITCAN, BAT, the BAT Affiliates, other Canadian and international tobacco manufacturers and the Canadian Tobacco Manufacturers' Council as defendants. The damages have not been quantified by the province. ITCAN delivered its Statement of Defence in February 2015. This case remains at a preliminary stage and no trial date has been set.
Quebec	<p>On August 25, 2009, ITCAN and the other Canadian tobacco manufacturers filed a constitutional challenge of the Quebec Medicaid Legislation. The basis of the challenge is the <i>Quebec Charter of Human Rights and Freedoms</i>, and the abrogation of prescription rights that ITCAN has relied on in the Quebec class actions. On March 5, 2014, ITCAN's challenge was dismissed. ITCAN filed its Inscription in Appeal of this judgment on April 4, 2014 and on September 28, 2015, the Quebec Court of Appeal confirmed the first instance judgment dismissing the Corporation's challenge. ITCAN did not appeal the Quebec Court of Appeal judgment to the Supreme Court of Canada.</p> <p>On June 8, 2012, the Quebec Medicaid suit was served upon ITCAN. The suit also names B.A.T. Industries p.l.c., British American Tobacco (Investments) Limited, the two other major Canadian manufacturers and several other <i>ex juris</i> tobacco companies. The suit claims \$60 billion in</p>

Jurisdiction	Description
	medical recoupment costs. ITCAN filed its plea on December 15, 2014. The case remains at a preliminary stage and no trial date has been set.
Saskatchewan	In April 2007, Saskatchewan enacted its <i>Tobacco Damages and Health Care Costs Recovery Act</i> . ITCAN was served with the Saskatchewan Medicaid suit on July 3, 2012 naming ITCAN, BAT, the BAT Affiliates, other Canadian and international tobacco manufacturers and the Canadian Tobacco Manufacturers' Council as defendants. The damages have not been quantified by the province. ITCAN delivered its Statement of Defence in February 2015. This case remains at a preliminary stage and no trial date has been set.
II. Class Actions	
Quebec	See description in the body of the Affidavit.
British Columbia	On May 14, 2003, legal proceedings were filed against ITCAN by Kenneth Knight in the Supreme Court of British Columbia. The class action was certified on behalf of British Columbians who purchased ITCAN's cigarettes bearing "light" and "mild" descriptors on the packaging. The action alleges that ITCAN engaged in "deceptive trade practices" contrary to the provincial <i>Trade Practices Act</i> in the marketing of its cigarette brands with these descriptors. The proceedings seek to enjoin ITCAN from using these descriptors on its cigarette brands, as well as the compensation of all amounts spent by the proposed class on the said products, and the disgorgement of profits from the sale of these products (although liability is limited to 1997 onwards). On April 30, 2004, ITCAN filed its Statement of Defence. After several preliminary motions and appeals, the action remains at a preliminary stage and no trial date has yet been set.
Nova Scotia, Manitoba, Saskatchewan, Alberta	In June 2009, four smoking and health class actions were filed in Nova Scotia (the Semple claim), Manitoba (the Kunta claim), Saskatchewan (the Adams claim) and Alberta (the Dorion claim) by the same law firm. The suits name ITCAN, BAT, the BAT Affiliates, the two other major Canadian tobacco manufacturers, the Canadian Tobacco Manufacturers' Council and several <i>ex juris</i> tobacco companies. The Adams claim has since been discontinued against BAT, the BAT Affiliates and Ryesekks p.l.c. All cases remain at a preliminary stage, and damages have not been quantified by the Plaintiffs. No certification materials have been delivered and no dates for the certification motion have been set.
British Columbia	On July 16, 2010, two new smoking and health class actions were filed against ITCAN in British Columbia. These suits were filed by the same law firm that filed the four smoking and health claims in Nova Scotia, Manitoba, Saskatchewan, and Alberta in June 2009, and named the same

Jurisdiction	Description
	<p>defendants: ITCAN, BAT, the BAT Affiliates, the two other major Canadian tobacco manufacturers, the Canadian Tobacco Manufacturers' Council and several <i>ex juris</i> tobacco companies. The Bourassa claim is allegedly filed on behalf of all individuals who have suffered chronic respiratory disease and the McDermid claim proposes a class based on heart disease. Both claims state that they have been brought on behalf of those who have smoked a minimum of 25,000 cigarettes. Both class actions have been dismissed against BAT, Carreras Rothmans Limited and Ryeseeks p.l.c. No damages have been quantified and the suits remain at a preliminary stage. No certification motion materials have been delivered and no date for the certification motions have been set.</p>
Ontario	<p>On June 27, 2012 a smoking and health class action was filed against ITCAN in Ontario (the "Ontario Class Action"). These suits were filed by the same law firm that filed the four smoking and health claims in Nova Scotia, Manitoba, Saskatchewan, and Alberta in June 2009 and the two claims in British Columbia in July 2010. The suit names ITCAN, BAT, the BAT Affiliates, the other two major Canadian tobacco manufacturers, a number of other international corporations, the Canadian Tobacco Manufacturers' Council and several <i>ex juris</i> tobacco companies and seeks unspecified damages on behalf of individuals who have suffered chronic respiratory diseases, heart diseases or cancer. No damages have been quantified and the suit remains at a preliminary stage. No certification motion materials have been delivered and no date for the certification motion has been set.</p>
Ontario	See description of the Growers' Action in the body of the Affidavit.
III. Other Proceedings	
Ontario	<p>In 2005, the Plaintiff, Ragoonanan, was denied certification of a class proceeding on behalf of "all persons who suffered damage to persons and/or property as a result of fires occurring after October 1, 1987, due to cigarettes that did not automatically extinguish upon being dropped or left unattended." In 2011, the Court granted the Plaintiff's request to continue as an individual action against ITCAN. The Plaintiff's Statement of Claim does not specify the amount of pecuniary damages, but the amount claimed will be in excess of \$11 million. ITCAN has filed its defence. The case remains at a preliminary stage.</p>
Ontario	<p>On September 12, 2003, a suit was brought against ITCAN by Scott Landry before the London Ontario Small Claims Court. The Plaintiff alleges that ITCAN was negligent for failing to warn him that nicotine is addictive and dangerous and seeks an amount of \$10,000 to cover the costs of fighting his addiction. ITCAN filed its Statement of Defence on or about July 24, 2003. At a pre-trial conference on October 31, 2003, the</p>

Jurisdiction	Description
	Plaintiff agreed to provide ITCAN with particulars regarding his claim. The case has been in abeyance since that time.
Ontario	On June 12, 1997, a suit was brought against ITCAN by Joseph Battaglia before the North York Ontario Small Claims Court. The Plaintiff alleged that he suffered from heart disease and that ITCAN was negligent for failing to warn that nicotine is addictive and dangerous. He sought an amount of \$6,000. ITCAN filed its Statement of Defence on or about June 27, 1997. After a trial, a judgment was rendered on 1 June 1, 2001, dismissing the Plaintiff's claim. On July 2, 2001 an appeal was filed by the Plaintiff. The appeal was never heard and the Plaintiff passed away on September 3, 2004. The case has been in abeyance since that time.
Nova Scotia	On April 19, 2002, ITCAN was served with an individual product liability claim for unspecified damages alleging that the Plaintiff, Peter Stright, is addicted to tobacco and developed Buerger's disease as a result of smoking. ITCAN filed its Statement of Defence in 2004 and certain documents were subsequently produced by the Plaintiff. No trial date has been set.
Quebec	On December 12, 2016, ITCAN was served with a Statement of Claim filed by Roland Bergeron in the Small Claims Division of the Court of Québec in Saint-Hyacinthe. The Plaintiff alleges that he was diagnosed with pulmonary emphysema in 2015 and is claiming \$15,000 in damages for harm to his health. On December 28, 2016, ITCAN filed a contestation to the claim, denying the allegations and arguing that the matter should be stayed pending the outcome of the Blais class action, as the legal issues raised in both proceedings are the same. On February 17, 2017, the Plaintiff consented to the stay request and on February 22, 2017, the Court granted the stay request.

TAB B

THIS IS **EXHIBIT “B”** REFERRED TO IN THE
AFFIDAVIT OF ERIC THAUVETTE, SWORN BEFORE ME
OVER VIDEO CONFERENCE
THIS 13th DAY OF SEPTEMBER, 2023.

A handwritten signature in blue ink, appearing to read 'Michael', is written above a horizontal line.

Commissioner for taking affidavits

CITATION: 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, 2020 ONSC 61
COURT FILE NOS.: CV-19-615862-00CL, CV-19-616077-00CL, and CV-19-616779-00CL

DATE: 20200103

ONTARIO

SUPERIOR COURT OF JUSTICE

BETWEEN:

In The Matter of the *Companies' Creditors Arrangement Act*, R.S.C. 1985, c. C-36, As Amended

)
)
) *Robert I. Thornton, John Finnigan and*
) *Leanne M. Williams*, counsel for the
) Applicant, JTI-Macdonald Corp.

AND:

In The Matter of a Plan of Compromise or Arrangement of JTI-Macdonald Corp.

)
) *Deborah Glendinning and Craig Lockwood*,
) counsel for the Applicant, Imperial Tobacco
) Canada Limited and Imperial Tobacco
) Company Limited

AND:

In The Matter of a Plan of Compromise or Arrangement of Imperial Tobacco Canada Limited and Imperial Tobacco Company Limited

)
) *Paul Steep, James Gage and*
) *Heather Meredith*, counsel for the Applicant,
) Rothmans, Benson & Hedges Inc.

AND:

In The Matter of a Plan of Compromise or Arrangement of Rothmans, Benson & Hedges Inc.

)
) *Avram Fishman, Mark E. Meland, Andre*
) *Lesperance, Bruce Johnston and Harvey*
) *Chaiton*, counsel for Quebec Class Action
) Plaintiffs

)
) *Jacqueline Wall*, counsel for Her Majesty
) The Queen In Right of Ontario

)
) *Lily Harmer*, counsel for Her Majesty The
) Queen In Right of Alberta and
) Newfoundland & Labrador

)
) *Michael Eizenga*, counsel for the
) Consortium

)
) *Nicholas Kluse*, counsel for Philip Morris
) International Inc.

)
) *Natasha MacParland*, counsel for FTI
) Consulting Canada Inc., Monitor of Imperial
) Tobacco Canada Limited and Imperial
) Tobacco Company Limited

-) Tobacco Canada Limited and Imperial
-) Tobacco Company Limited
-)
-) *Linc Rogers*, counsel for Deloitte
-) Restructuring Inc., Monitor of JTI-
-) Macdonald Corp.
-)
-) *Jane Dietrich*, counsel for Ernst & Young
-) Inc., Monitor of Rothmans, Benson &
-) Hedges Inc.
-)
-) *Adam Slavens*, counsel for the Receiver of
-) JTI-Macdonald Corp. and JTIM Canada
-) LCC
-)
-) *Douglas Lennox*, counsel in certified British
-) Columbia Class Action
-)
-) *Robert Cunningham*, counsel for Canadian
-) Cancer Society
-)
-) *Joel Rochon* and *Peter Jervis*, counsel for
-) Moving Counsel
-)
-) *Nadia Champion*, counsel for Court-
-) Appointed Mediator

HEARD: December 6, 2019

REASONS FOR DECISION

MCEWEN J.

OVERVIEW

[1] JTI-Macdonald Corp. (“JTIM”), Imperial Tobacco Canada Limited and Imperial Tobacco Company Limited (“Imperial”), and Rothmans, Benson & Hedges Inc. (“RBH”) (collectively “the Applicants”) have filed for protection pursuant to the provisions of the *Companies’ Creditors Arrangement Act*, R.S.C. 1985, c. C-36 (the “*CCAA*”) seeking a resolution of the multiple, significant litigation claims.

[2] These *CCAA* proceedings are complex in nature and involve a number of significant tobacco-related actions that have been brought against the Applicants as well as a number of potential tobacco-related claims which are currently unasserted or unascertained.

[3] On December 6, 2019 the three Monitors (Deloitte Restructuring Inc. in its capacity as court-appointed Monitor of JTIM, FTI Consulting Canada Inc. in its capacity as court-appointed Monitor of Imperial and Ernst & Young Inc. in its capacity as court-appointed Monitor of RBH) (collectively the “Tobacco Monitors”) brought a joint motion in all three Applications seeking advice and directions with respect to orders appointing Representative Counsel regarding the unasserted and unascertained claims. The Tobacco Monitors proposed that Representative Counsel – The Law Practice of Wagner & Associates, Inc. (“Wagners”) – would advance claims on behalf of individuals (the “TRW Claimants”), with some limited exceptions described below, who have asserted claims or may be entitled to certain claims for a Tobacco-Related Wrong (the “TRW Claims”).

[4] The thrust of the joint motion is that the multiplicity of actions against the Applicants across Canada do not provide comprehensive representation for all individuals in these *CCAA* proceedings.

[5] It is therefore necessary to have representation for all of the TRW Claimants so that they may be properly represented with respect to the primary goal of these *CCAA* proceedings – a pan-Canadian global settlement. This will benefit the TRW Claimants, the Applicants and all stakeholders.

[6] The proposed Representative Counsel, Wagners, would represent all individuals outside of those claims that are currently the subject of a previously certified class action. There are currently three certified class actions. Two by the Quebec Class Action Plaintiffs (“QCAP”) and one in British Columbia (the “Knight Class Action”) (collectively the “Certified Class Actions”).

[7] At the hearing of the joint motion, Rochon Genova LLP and The Merchant Law Group (collectively “Moving Counsel”) sought permission to appear as co-counsel with Wagners. Moving Counsel seek to become involved in these Applications since The Merchant Law Group issued eight tobacco-related statements of claim, all of which are uncertified (the “Uncertified Actions”), as follows:

- *Suzanne Jacklin v. Canadian Tobacco Manufacturers’ Council et al.*, No. 53974/12 (Ontario)
- *Barbara Bourassa on behalf of the estate of Mitchell David Bourassa v. Imperial Tobacco Canada Limited et al.*, No. 10-2780 (British Columbia)
- *Roderick Dennis McDermid v. Imperial Tobacco Canada Limited et al.*, No. 10-2769 (British Columbia)
- *Linda Dorion v. Canadian Tobacco Manufacturers’ Council et al.*, No. 0901-08964 (Alberta)

- *Thelma Adams v. Canadian Tobacco Manufacturers' Council et al.*, No. 916 (Saskatchewan)
- *Thelma Adams v. Canadian Tobacco Manufacturers' Council et al.*, No. 1036 (Saskatchewan)
- *Ben Semple v. Canadian Tobacco Manufacturers' Council et al.*, No. 312869 (Nova Scotia)
- *Deborah Kunta v. Canadian Tobacco Manufacturers' Council et al.*, No. CI09-01- 61479 (Manitoba)

[8] Moving Counsel seek to represent the interests of the proposed class members in the Uncertified Actions. In essence, Moving Counsel would partner together, with Rochon Genova LLP acting as lead counsel within their team. Moving Counsel would then act on behalf of individuals who could be included in the Uncertified Actions, while Wagners would act for the remaining individuals in Canada (outside of the Certified Class Actions above).

[9] On December 9, 2019 I granted the Tobacco Monitors' motion and denied the request of Moving Counsel to act as co-counsel with Wagners, with Reasons to follow.

[10] I am now taking the opportunity to provide those Reasons.

THE ADJOURNMENT REQUEST

[11] At the commencement of the motion, Moving Counsel sought an adjournment. It was opposed by the Tobacco Monitors, the Applicants, Quebec, the provinces of British Columbia, Manitoba, New Brunswick, Nova Scotia, Prince Edward Island and Saskatchewan (collectively "the Consortium"), QCAP and the Knight Class Action. No stakeholder supported the adjournment request.

[12] The basis for the adjournment request was as follows:

- Rochon Genova LLP had just been retained by The Merchant Law Group on December 4, 2019.
- Moving Counsel wanted to file additional materials to support the position that they be allowed to act.
- Moving Counsel had an important role to play in the ongoing *CCAA* proceedings.
- It was important that the individuals in the Uncertified Actions have their own representation.
- Only a short adjournment was required and there would be no prejudice to the other stakeholders.

[13] After hearing submissions I denied the adjournment request subject to the caveat that if something arose during argument with respect to the appointment of Representative Counsel that, in my view, required an adjournment, I would reconsider the issue. No such issue arose.

[14] In denying the request for an adjournment I accepted the submissions of the Tobacco Monitors and supporting stakeholders as follows:

- The Merchant Law Group had been advised verbally of the motion on November 21, 2019.
- The motion materials were served on both The Merchant Law Group and Rochon Genova LLP on November 25, 2019, with supporting reports being delivered on November 26, 2019, all within the timelines required by the *Rules of Civil Procedure*, R.R.O. 1990, Reg. 194.
- The Initial Orders in both the JTIM and RBH proceedings provided timelines for service of motions which were met by the Tobacco Monitors' counsel.
- Neither The Merchant Law Group, nor Rochon Genova LLP, complied with the portions of the Initial Orders with respect to the required timelines to file responding materials to a motion.
- A short adjournment would be next to impossible given the number of counsel involved and the pending holiday season.
- There would be prejudice if the motion was adjourned. Significant progress has been made in the court-ordered mediation before the Honourable Warren Winkler, Q.C. This mediation was at a critical stage and any delays would upset significant milestones, some of which have occurred between the date of the hearing and the release of these Reasons.

[15] Moving Counsel did not file any materials to support the request for an adjournment although, in my view, they had a reasonable amount of time to do so. They were, however, able to provide fulsome affidavit evidence in support of their position that they ought to be retained to represent individuals in the Uncertified Actions commenced by The Merchant Law Group.

[16] In these circumstances, an adjournment was not warranted or necessary given the affidavit filed by Moving Counsel and the well-informed submissions they were able to make after the adjournment request was denied.

THE TOBACCO MONITORS' MOTION TO APPOINT REPRESENTATIVE COUNSEL

[17] I will first deal with whether Representative Counsel ought to be appointed and then whether Moving Counsel ought to be able to represent those individuals potentially able to claim in the Uncertified Actions.

[18] At the outset it bears noting that no stakeholder opposes the Tobacco Monitors' motion to appoint Wagners as Representative Counsel to represent all TRW Claimants. The Applicants and

significant stakeholders such as the Consortium, QCAP and the Knight Class Action consent. Other significant stakeholders, being Ontario, Quebec, Alberta and Newfoundland & Labrador, expressly do not oppose.

Jurisdiction

[19] I accept the Tobacco Monitors' submission that Canadian courts have jurisdiction to appoint Representative Counsel in insolvency proceedings pursuant to both s. 11 of the *CCAA* and r. 10.01 of the *Rules of Civil Procedure*. Section 11 of the *CCAA* affords this court broad discretion to make "any order that it considers appropriate in the circumstances" while r. 10.01(f) permits this court to "appoint one or more persons to represent any person or class of persons who are ... unascertained or who have a present, future, contingent or unascertained interest in or may be affected by the proceeding and who cannot be readily ascertained, found or served."

[20] On a number of occasions courts have used the aforementioned provisions to appoint counsel to represent a broad range of litigants in complicated *CCAA* proceedings: see *Cash Store Financial Services, Re*, 2014 ONSC 4567; *Montreal, Maine & Atlantic Canada Co., Re* (April 4, 2014), Doc. 450-11-000167-134 (Q.C.S.C.); and *Sears Canada Inc., Re* (January 25, 2018), Court File No. CV-17-11846-00CL (Ont. S.C.).

[21] Based on the above, I am satisfied that I have the jurisdiction to appoint Representative Counsel to represent the TRW Claimants in these proceedings. No one took issue with this court having jurisdiction.

The TRW Claims

[22] The Tobacco Monitors, as noted, propose that Representative Counsel will represent individuals with TRW Claims in all provinces and territories to the extent that they are not currently represented in the Certified Class Actions. These would include various residual tobacco-related disease claims that fall outside the certified class definitions in the Certified Class Actions, claims that are currently the subject of the Uncertified Actions and the tobacco-related claims for which no individual or class proceedings have been commenced. Of course, it would not include the provinces' health cost recovery claims nor the existing, uncertified commercial class actions in Ontario which have been commenced by the tobacco growers and producers.

[23] In order to achieve a pan-Canadian global settlement, the Tobacco Monitors submit it is necessary to appoint Representative Counsel to ensure that the TRW Claims, as defined, are addressed in an efficient, timely and consistent manner. The TRW Claimants are scattered across the country. Most do not have any representation and likely do not have the ability or resources to advance their claims in these complex *CCAA* proceedings.

[24] As mentioned, The Merchant Law Group has commenced Uncertified Actions in British Columbia, Alberta, Saskatchewan, Manitoba, Ontario and Nova Scotia. No class proceedings or individual proceedings have been commenced in New Brunswick, Newfoundland & Labrador, Prince Edward Island or any of the Territories.

[25] Overall, the TRW Claimants, as defined in the draft order, are individuals who assert or may be entitled to assert claims with respect to a broad range of alleged wrongs generally relating to tobacco-related personal injury. I accept that the broad definition of the TRW Claimants is satisfactory and it can be refined at a later period.

It is Appropriate to Appoint Representative Counsel

[26] In determining whether it is appropriate to appoint Representative Counsel, I agree with the Tobacco Monitors' submission that the relevant factors are set out in *Canwest Publishing Inc.*, 2010 ONSC 1328, at para. 21, as follows:

- The vulnerability and resources of the group sought to be represented.
- Any benefit to the companies under *CCAA* protection.
- The facilitation of the administration of the proceedings and efficiency.
- Any social benefit to be derived from representation of the group.
- The avoidance of a multiplicity of legal retainers.
- Whether representative counsel has already been appointed for those who have similar interests to the group seeking representation and is prepared to act for the group seeking the order.
- The balance of convenience and fairness.
- The position of other stakeholders and the monitors.

[27] In this case I accept that all of the factors have been met.

[28] The TRW Claimants, as noted, are vulnerable individuals in complex proceedings where they are unorganized and likely lack resources. The Applicants and indeed all stakeholders will benefit from a pan-Canadian settlement.

[29] Without Representative Counsel the administration of these proceedings would be cumbersome and perhaps undoable. The appointment of Representative Counsel will facilitate efficiency and make the proceedings more cost effective by providing a clear mechanism for communicating with the TRW Claimants.

[30] The social benefits of access to justice, in the facilitating of a complex restructuring, are met. At this time many of the TRW Claims are unascertained and unasserted. As such, many of the TRW Claimants are likely unaware of these *CCAA* proceedings. The Representation Order sought would further promote access to justice by giving the TRW Claimants a powerful, single voice in the process.

[31] A multiplicity of legal retainers between several counsel is also obviated which will save time and money. The TRW Claimants would also be assisted by Representative Counsel acting as a single point of contact among all of the other stakeholders, the Applicants and the Tobacco Monitors.

[32] The balance of convenience and fairness favour the retainer of Representative Counsel as no firm is currently advancing a certified class action and is prepared to act for the TRW Claimants. None of the other stakeholders object and significant stakeholders consent to the orders sought.

[33] Wagners has the necessary expertise. Once again, no one opposes the appointment of Wagners as Representative Counsel. This includes Moving Counsel, notwithstanding their position that they be appointed as co-counsel with Wagners.

[34] Wagners, which is based in Halifax, is recognized as a leading class action law firm. I am satisfied that, as a result of their experience in the area, they have demonstrated the necessary expertise in class action matters to represent the TRW Claimants. Additionally, I am satisfied that the method proposed by the Tobacco Monitors infuses the necessary degree of independence in Wagners so that they can vigorously represent the TRW Claimants.

[35] Last, Wagners is not conflicted in this matter and will take the necessary steps to ensure that no conflicts arise.

MOVING COUNSEL SHOULD NOT BE APPOINTED AS CO-COUNSEL

Position of Moving Counsel

[36] While Moving Counsel do not oppose Wagners being appointed as Representative Counsel, they submit that they ought to be appointed as co-counsel for the following reasons:

- The court should be hesitant to displace The Merchant Law Group who is counsel of record in the eight Uncertified Actions.
- Rochon Genova LLP, who would be lead counsel, is well qualified to assist.
- Involving Moving Counsel would provide “additional firepower” on behalf of the TRW Claimants, which would be of benefit to them.
- Moving Counsel should not be denied the right to represent the plaintiffs in the Uncertified Actions simply because the actions have not been certified. Rochon Genova LLP has represented plaintiffs in similar circumstances, such as the proposed class members in the well-known *Lac-Mégantic* matter.
- In circumstances where Wagners’ appointment is unopposed, Moving Counsel would enjoy greater independence and be in a better position to advocate on behalf of the proposed class members in the Uncertified Actions.

Position of the Tobacco Monitors

[37] The Tobacco Monitors primarily submit as follows:

- The Merchant Law Group is not in a solicitor-client relationship with individuals outside of the eight individuals named in the Uncertified Actions.
- Wagners would represent all TRW Claimants equally and impartially.
- It is important to have a single point of contact. This will ensure efficiency and clarity, and control costs.
- The within motion is not a carriage motion. Therefore, only the *Canwest* factors ought to apply.
- Wagners, pursuant to the terms of the proposed order, can retain additional counsel of its choosing to assist, if need-be.
- Rochon Genova LLP would be acting in a conflict of interest since it already represents plaintiffs bringing claims against Imperial.
- Adding Moving Counsel as co-counsel will only complicate matters, add delay and is contrary to the wishes of the Applicants and significant stakeholders in a scenario where no stakeholder supports the position taken by Moving Counsel.

Analysis

[38] I accept the position of the Tobacco Monitors and the supporting submissions of the Consortium and QCAP.

[39] First, I accept that based on the authority set out in *Pearson v. Inco. Ltd.* (2001), 57 O.R. (3d) 278 (S.C.), leave to appeal to Div. Ct. refused [2002] O.J. No. 2134 (S.C.) (at paras. 13 and 18), The Merchant Law Group is not in a solicitor-client relationship with the proposed class members in the Uncertified Actions. In fact, The Merchant Law Group, on its own website, states that potential class members who provide contact information are not creating a solicitor-client relationship.

[40] We are therefore left with the situation where The Merchant Law Group, and ultimately Moving Counsel, represent eight individual clients at this point in time.

[41] Further, it cannot be ignored that The Merchant Law Group has taken no steps to advance the Uncertified Actions it has commenced. All eight of them have remained dormant since they were issued between 2009 to 2012. Moving Counsel has filed no materials to suggest otherwise. In these circumstances it can hardly be said that any meaningful steps have been taken to the benefit of proposed class members.

[42] I agree with the Tobacco Monitors that a single point of contact is critical in these proceedings. As I have previously indicated, these restructurings are amongst the most complex in CCAA history for a number of reasons, which include the vast number and size of the complicated tobacco-related actions that have been, or could be, commenced against the Applicants.

[43] I further agree with the Tobacco Monitors that the most efficient and cost-effective way to deal with the TRW Claimants is to appoint a single law firm which can deal with all of the claims in an even-handed manner throughout Canada. To add Moving Counsel at this stage would unduly complicate matters and add expense and delay. This is particularly true where The Merchant Law Group has taken no steps over several years and now Moving Counsel would have to quickly prepare and become involved as co-counsel representing a discrete group different from the TRW Claimants that would be represented by Wagners. The legal team proposed by Moving Counsel in its filed affidavit has already changed and one of the counsel proposed is no longer prepared to act.

[44] Additionally, Moving Counsel submits that they be paid in the discretion of the Court-Appointed Mediator at the end of the proceedings, which adds an element of uncertainty and added expense in a situation where Wagners has agreed to work for an hourly rate.

[45] These matters are far different from the *Lac-Mégantic* case due to their national scope and number of significant and varied claims. Further, in *Lac-Mégantic*, there was no proposal similar to the one being made by the Tobacco Monitors.

[46] In this regard, it is also important to repeat that this is a purely procedural motion to provide representation for the TRW Claimants to promote a pan-Canadian settlement. It is not a carriage motion.

[47] Rochon Genova LLP would also have to deal with its current conflict, for which it provides no clear path.

[48] Overall, I am of the view that when all significant stakeholders support, or do not oppose, the appointment of Wagners, and based on the above analysis and submissions by the Tobacco Monitors, the far preferable path is to have Wagners represent all of the TRW Claimants. To add Moving Counsel would unduly complicate matters and would not provide any benefit to the TRW Claimants. Indeed, Moving Counsel propose that they would represent only those individuals potentially within the Uncertified Actions which could lead to division, complication and expense. It could also cause delay if Moving Counsel and Wagners could not agree on important matters. All of these risks are unnecessary and remedied by Wagners acting on behalf of all TRW Claimants.

[49] Taking into consideration all of the factors in appointing Representative Counsel and the very complicated nature of these proceedings, I am of the view that Wagners, an experienced class action litigation firm, is well qualified to be appointed as Representative Counsel. It is preferable that Wagners alone be appointed and be given the discretion, as set out in the draft order, to retain others to assist if necessary.

[50] In this regard, I conclude by stating that there is no reason to believe that Wagners would be any less vigorous in its representation of the TRW Claimants as would Moving Counsel or any other law firm. There is no basis for this submission. The Tobacco Monitors, as court officers, have made a very reasonable recommendation after a long consultation process with the Applicants and all of the stakeholders.

DISPOSITION

[51] Based on the foregoing, as per my December 9, 2019 Endorsement, the Tobacco Monitors' joint motion appointing Representative Counsel in these proceedings was granted. The request of Moving Counsel to appear as co-counsel was denied. The Orders were therefore signed as per the drafts filed in all three Applications.

A handwritten signature in black ink, appearing to read "McEwen J.", is written above a horizontal line. The signature is stylized and cursive.

McEwen J.

Released: January 03, 2020

CITATION: 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, 2020 ONSC 61
COURT FILE NOS.: CV-19-615862-00CL, CV-19-616077-00CL, and CV-19-616779-00CL
DATE: 20200103

ONTARIO

SUPERIOR COURT OF JUSTICE

BETWEEN:

In The Matter of the *Companies' Creditors Arrangement Act*, R.S.C. 1985, c. C36, As Amended

AND:

In The Matter of a Plan of Compromise or Arrangement of JTI-Macdonald Corp.

AND:

In The Matter of a Plan of Compromise or Arrangement of Imperial Tobacco Canada Limited and Imperial Tobacco Company Limited

AND:

In The Matter of a Plan of Compromise or Arrangement of Rothmans, Benson & Hedges Inc.

REASONS FOR DECISION

McEwen J.

Released: January 03, 2020

TAB C

THIS IS **EXHIBIT “C”** REFERRED TO IN THE
AFFIDAVIT OF ERIC THAUVETTE, SWORN BEFORE ME
OVER VIDEO CONFERENCE
THIS 13th DAY OF SEPTEMBER, 2023.



Commissioner for taking affidavits

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:

October 2, 2019

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

JTI-MACDONALD CORP.
IMPERIAL TOBACCO CANADA LIMITED AND IMPERIAL TOBACCO COMPANY LIMITED
ROTHMANS, BENSON & HEDGES INC.

2 October 19
For reasons to soon follow
the stay period is extended to
March 12, 2020.
McEust

ONTARIO
SUPERIOR COURT OF JUSTICE
(COMMERCIAL LIST)
Proceeding commenced at Toronto

RESPONDING MOTION RECORD
(Re: Stay Extension Motion)
(Returnable October 2, 2019)

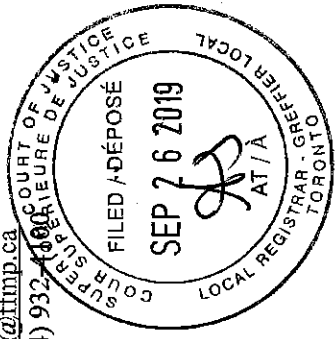
FISHMAN FLANZ MELAND PAQUIN LLP
Barristers and Solicitors
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Yves Blais and Cécilia Létourneau
(Quebec Class Action Plaintiffs)



Oct 2, 2019

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.
AND IN THE MATTER OF A PLAN OF COMPROMISE OR ARRANGEMENT OF IMPERIAL TOBACCO CANADA LIMITED AND IMPERIAL TOBACCO COMPANY LIMITED
AND IN THE MATTER OF A PLAN OF COMPROMISE OR ARRANGEMENT OF ROTHMANS, BENSON & HEDGES INC.

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

3 October 19
For reasons to soon follow CCS
is permitted to participate in these
CCAA proceedings subject to the
conditions that will be set out in the
reasons. CCS is not permitted, however,
to participate in the mediation process
at this time.

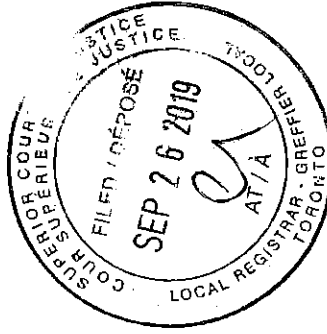
med est

**ONTARIO
SUPERIOR COURT OF JUSTICE**

PROCEEDING COMMENCED AT
TORONTO

**RESPONDING MOTION RECORD OF THE
CANADIAN CANCER SOCIETY (OCTOBER 2, 2019)**

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CANADIAN CANCER SOCIETY
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Lawyers for Canadian Cancer Society

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
(COMMERCIAL 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.**

AND IN THE MATTER OF A PLAN OF COMPROMISE
OR ARRANGEMENT OF **IMPERIAL TOBACCO CANADA LIMITED**
AND **IMPERIAL TOBACCO COMPANY LIMITED**

AND IN THE MATTER OF A PLAN OF COMPROMISE
OR ARRANGEMENT OF **ROTHMANS, BENSON & HEDGES INC.**

**UNOFFICIAL TRANSCRIPT OF ENDORSEMENT
OF JUSTICE MCEWEN
Released October 18, 2019**

On October 2, 2019, I dealt with three motions and shortly thereafter released decisions with Reasons to follow.

I am now providing those Reasons:

1. ITCAN Payments to BAT Mexico

QCAP seeks an order that all payments to BAT Mexico referred to in the Thauvette Affidavit be prohibited during the Stay Period.

This issue was resolved on the basis that it will be deferred until the Monitor has had an opportunity to review the matter and report. If the parties cannot resolve this dispute it will return to the Court. Pending a return to the Court¹, ITCAN has undertaken not to make the payments.

¹ Or resolution between the parties.

I also pause here to note that I was surprised, and upon reflection very concerned, to hear QCAP's submission that QCAP has not asked to be part of the data room and that QCAP considers it "a colossal waste of time".

Any resolution must be based on evidence and facts. I cannot see how QCAP, or for that matter, any stakeholder can meaningfully assess its own position if it does not have an understanding of the Applicants' financial situation and the positions of the other stakeholders. Anything less impedes the court-ordered mediation and is not in the best interests of all stakeholders. It is also unacceptable to this Court. All stakeholders must be fully engaged in the process which is one of the most complicated legal undertakings in Canadian history.

I also wish to note that in addition to the ITCAN payments to BAT Mexico, an issue surrounding certain restructuring within JTIM arose. As noted above, the issue concerning ITCAN is being deferred and the JTIM restructuring appears to be modest in nature.

I do wish, however, to remind the Applicants that they have an obligation to advise the Court, the mediator and the stakeholders of any material change to their operations which directly or indirectly affect these proceedings.

I should further acknowledge QCAP's submission wherein it seeks leave to return to Court prior to March 12, 2020 if it considers that the progress being made in the court-ordered mediation is insufficient.

I am not prepared to grant QCAP or any other stakeholder this right. To do so would tilt the playing field in favour of the stakeholder wielding this power.

In conclusion, I reiterate that extending the Stay Period to March 12, 2020 is reasonable and allows for achievable progress to be made. The necessary provisions of ss. 11.02 and 11.03 of the CCAA have been met.

3. The Motion of the Canadian Cancer Society

The Canadian Cancer Society ("CCS") seeks orders allowing it to continue to participate in these CCAA proceedings before the Court and to also participate in the court-ordered mediation.

The Supply Agreement will be produced to QCAP on a confidential basis. It is otherwise available in the Data Room and available to those parties who have executed the NDAs.

2. Extension of the Stay Period

By Order dated October 3, 2019, I extended the Stay Period to March 12, 2020.

The Applicants, supported by the Consortium, sought to extend the Stay Period to March 6, 2020 (a date on which I am not available).

QCAP submitted that the Stay Period should be extended only to January 15, 2020. In my view, this timeline is unrealistically short. As I advised counsel at the last stay extension hearing and reminded them again at this motion, I thought that the October 2, 2019 date was overly ambitious. To, again, set a short extension period would distract the stakeholders from the court-ordered mediation process.

Further, much has been accomplished when one considers the enormous complexity of these three significant CCAA proceedings.

Since the last stay extension, a number of positive steps have been taken. Chief among them is the progress in the court-ordered mediation.

The Hon. Mr. Winkler conducted extensive meetings with the necessary stakeholders and, by the time these reasons are released, will have conducted a plenary session of approximately 80 participants.

Additionally, amongst other things, the Data Room has been set up and many NDAs completed.

Further, all three Applicants have sufficient liquidity to operate within the Stay Period.

I specifically do not accept QCAP's submission that there is not "at least a kernel of a plan".

This submission is contradicted by the record which demonstrates that meaningful progress has been made. It further ignores the considerable efforts expended by the Hon. Mr. Winkler and the stakeholders involved in the court-ordered mediation process.

As I set out in my October 3, 2019 endorsement, I am prepared to allow CCS limited participation in the Court proceedings. I am not, however, allowing it to participate in the mediation at this time.

First, with respect to the Court proceedings, no one objects to CCS participating. CCS is on the service list and receives filings. Thus far, I have not restricted its ability to make submissions. In this regard, I accept that CCS is a social stakeholder. I am not convinced, however, that CCS has a direct financial interest in these CCAA proceedings. It is neither a creditor nor a debtor. CCS, like many other persons, may be indirectly impacted by a settlement.

Given CCS's goals and its experience, I believe it is reasonable to allow it to participate in the Court proceedings subject to this Court's discretion.

Going forward, CCS is free to file materials in response to filings made by other stakeholders. I will then determine the extent to which CCS can make submissions.

CCS will require leave if it wishes to initiate its own motion. Leave can be requested in writing, on notice.

Second, with respect to mediation, I am not prepared to allow CCS to participate at this time. As noted, it is neither a creditor nor a debtor. I accept that CCS has extensive experience as a health charity and it is open to CCS to liaise with the government and other stakeholders outside the mediation process if it deems it desirable to do so.

Further, I have given the Hon. Mr. Winkler broad discretion to conduct the mediation process. This includes broad discretion to consult with a wide variety of persons as he considers appropriate.

I see no reason, at this time, to vary that order. It is important to allow the Hon. Mr. Winkler, who has vast experience in this area, the ability to carry on with the flexibility outlined in my Orders in these very complicated and significant matters.

“McEwen, J.”

TAB D

THIS IS **EXHIBIT “D”** REFERRED TO IN THE
AFFIDAVIT OF ERIC THAUVETTE, SWORN BEFORE ME
OVER VIDEO CONFERENCE
THIS 13th DAY OF SEPTEMBER, 2023.

A handwritten signature in blue ink, appearing to read "Michael", is written above a horizontal line.

Commissioner for taking affidavits

CV-19-615062-00CL
CV-19-6160787-00CL
CV-19-616779-00CL

Court File Number:

Superior Court of Justice
Commercial List

FILE/DIRECTION/ORDER

JTI-MacDonald Corp. / Imperial Tobacco / RBH Inc
Plaintiff(s)

AND

Defendant(s)

Case Management Yes No by Judge: McEwen

Counsel	Telephone No:	Facsimile No:
<u>see attached</u>		

- Order Direction for Registrar (No formal order need be taken out)
- Above action transferred to the Commercial List at Toronto (No formal order need be taken out)
- Adjourned to: _____
- Time Table approved (as follows):

The attached orders shall go as per the drafts filed and signed. Over the objections of QCAP (supported by the Canadian Cancer Society) I have, somewhat reluctantly, come to the conclusion that the six month stay period proposed by the Applicants is preferable to the three month period proposed by QCAP, and is

29 Sept 22
Date

McEwen
Judge's Signature

Additional Pages three

Court File Number: _____

Superior Court of Justice
Commercial List

FILE/DIRECTION/ORDER

Judges Endorsment Continued

Fair and reasonable in the current
circumstances of the Court-ordered
mediation.

The Applicants' position is supported
by the Monitors and a number of
stakeholders noted in the Agenda-Counsel
for The Honourable Mr. Winkler takes
no position, but advises that good
progress is being made in the
mediation.

While I appreciate the significance
of the submissions of QCAP, I
am prepared to grant another six
month extension.

I am concerned that a shorter
extension would distract the
stakeholders involved in the mediation
from the important task at hand
and have them also focus on
the return date which would be

Superior Court of Justice
Commercial List

FILE/DIRECTION/ORDER

Judges Endorsment Continued

shortly after the December holidays.

Further, there is no evidence of delay in this enormously complicated mediation and no stakeholder questions the tireless and productive efforts of The Honourable Mr. Winkler and the Monitors.

Also, the timelines of the stay extension, and mediation timelines, are independent of each other and not interrelated so as to suggest unwarranted delay may result.

I do, however, wish to repeat some of my comments at the hearing. Specifically, I urge all parties to the mediation to remain completely focused on resolution and provide The Honourable Mr. Winkler and the Monitors with their full cooperation over the next six months.

Court File Nos. CV-19-615862-00CL,
CV-19-616077-00CL,
CV-19-616779-00CL

**ONTARIO
SUPERIOR COURT OF JUSTICE
COMMERCIAL LIST**

JTI-MACDONALD CORP / IMPERIAL TOBACCO / RBH INC.

Applicants

ENDORSEMENT BY JUSTICE MCEWEN

September 29, 2022

The attached orders shall go as per the drafts filed and signed.

Over the objections of QCAP (supported by the Canadian Cancer Society) I have, somewhat reluctantly, come to the conclusion that the six month stay period proposed by the Applicants is preferable to the three month period proposed by QCAP, and is fair and reasonable in the current circumstance of the Court-ordered mediation.

The Applicants' position is supported by the Monitors and a number of stakeholders noted in the Agenda. Counsel for The Honourable Mr. Winkler takes no position, but advises that good progress is being made in the mediation.

While I appreciate the significance of the submissions of QCAP, I am prepared to grant another six month extension.

I am concerned that a shorter extension would distract the stakeholders involved in the mediation from the important task at hand and have them also focus on the return date which would be shortly after the December holidays.

Further, there is no evidence of delay in this enormously complicated mediation and no stakeholder questions the tireless and productive efforts of The Honourable Mr. Winkler and the Monitors.

Also, the timelines of the stay extension, and mediation timelines, are independent of each other and not interrelated so as to suggest unwarranted delay may result.

I do, however, wish to repeat some of my comments at the hearing. Specifically, I urge all parties to the mediation to remain completely focused on resolution and provide The Honourable Mr. Winkler and the Monitors with their full cooperation over the next six months.

McEwen J.

TAB E

THIS IS **EXHIBIT “E”** REFERRED TO IN THE
AFFIDAVIT OF ERIC THAUVETTE, SWORN BEFORE ME
OVER VIDEO CONFERENCE
THIS 13th DAY OF SEPTEMBER, 2023.

A handwritten signature in blue ink, appearing to read 'M. D. D.', is written above a horizontal line.

Commissioner for taking affidavits

Court File Number:

CU-19-615062-00CL
CU-19-616077-95-00CL
CU-19-616779-00CL

Superior Court of Justice
Commercial List

FILE/DIRECTION/ORDER

JTI-MacDonald Corp/Imperial Tobacco/RBH, Inc.
Plaintiff(s)
AND

Defendant(s)

Case Management Yes No by Judge: McEWONT

Counsel	Telephone No:	Facsimile No:
<u>see attached</u>		

- Order Direction for Registrar (No formal order need be taken out)
- Above action transferred to the Commercial List at Toronto (No formal order need be taken out)
- Adjourned to: _____
- Time Table approved (as follows):

The Applicants, various stakeholders and Monitors' counsel reattended on March 28, 2023 with respect to the Applicants' motions to extend the Stay Period to September 29, 2023. The Provinces of Ontario, British Columbia, Manitoba, New Brunswick, Nova Scotia, PEI and Saskatchewan did not oppose the motion, nor did

30 March 23
Date

McEWONT
Judge's Signature

Additional Pages nine

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Judges Endorsment Continued

Representative Counsel for the Pan
Canadian Claimants ("PCC"). All
were supportive of a 6 month
extension.

The Monitors also support the
relief sought by the Applicants.

While no stakeholder opposes
an extension of the Stay Period,
QCAP submits that the extension
should be limited to 3 months.

QCAP is supported by the Province
of Quebec, Representative Counsel in
the British Columbia class action
and the Canadian Cancer Society.

For the reasons that follow
I am granting the Applicants'
motions and extending the Stay
Period to September 29, 2023.

There is no suggestion that the
Applicants do not continue to act

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Judges Endorsment Continued

in good faith and with due diligence. Outstanding orders are being complied with and the extremely complicated mediation before The Honourable Mr. Winkler continues. Both the Monitors and the Honourable Mr Winkler advise that good progress continues to be made. Ontario is optimistic that negotiations are coming to fruition and there were ~~no~~ real submissions to the contrary.

The Applicants further submitted that they are concerned that a 3 month extension would pose a distraction; that the stay periods and the mediation timelines remain independent; the Applicants do not control the timelines; it is not surprising that a complex matter such as this has taken a

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FILE/DIRECTION/ORDER

Judges Endorsment Continued

relatively long time to progress; and that a compressed timeline may actually do more harm than good as stakeholders may move too quickly negotiations may fail and break down.

QCAP on the other hand is understandably seeking a tighter time line of 3 months. They and their supporters, primarily, make the following submissions.

First, QCAP submits that the 3 month extension is not a distraction but a catalyst for settlement. Six months eases the pressure.

Second, they argue that the stay periods and mediation timelines are interrelated and longer time periods for stays affects urgency.

Third, they say that there is evidence of delay and since

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FILE/DIRECTION/ORDER

Judges Endorsment Continued

the mediation is confidential the Applicants cannot simply advise the Court that there is no delay, in a bald way, and have a longer stay partially granted on that basis.

QCAP also relies on the affidavit evidence of Ms. Blair and Mr. Toudel which set out the suffering class members have endured and the frustration they experience in waiting for an outcome in these QCAA proceedings. One cannot review the contents of those affidavits and not feel genuine sympathy for those affected.

Notwithstanding this however, I am still respectful of the view that 6 months is fair

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Judges Endorsment Continued

and reasonable in the difficult
circumstances of this case.

Again, no one questions the bona
fides of the Applicants' participation
in the mediation. I accept that
good progress continues to be made
based on the Monitor's Reports and
my discussions with the Honourable
Mr. Winkler - which were confirmed
by his Counsel at the hearing.

There is now optimism that
a successful resolution is in sight.

In the objective opinion of the
Monitors and the Honourable Mr.
Winkler 6 months is sensible
and preferable.

I am also concerned that the
3 month time period proposed by
QCAP may backfire and have
the exact opposite effect of

Court File Number: _____

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Judges Endorsment Continued

enhancing the prospects of settlement.

In mid April the significant motion of the Heart and Stroke Foundation will be heard. I am concerned that a 3 month extension simply does not allow meaningful time to deal with the motion, important negotiations and the further stay motion.

Although the QCAP submissions are compelling I must consider what is overall preferable for all stakeholders, including the Provinces that do not oppose and the PCC, which also sadly contains members who have passed or are ill, and believes that resolution requires additional time.

It is primarily for the above reasons that I have concluded

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**Superior Court of Justice
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FILE/DIRECTION/ORDER

Judges Endorsment Continued

that the 6 month Stay Period ought to be granted.

Keeping Q&AP's submissions in mind however, as I stated at the hearing, I fully expect all parties to the mediation to fully engage in the process and provide the Honourable Mr. Winkler and the Maritime with their full and timely co-operation. Even though 6 months have been granted, it does not mean that negotiations should not be approached without some sense of urgency.

Last, upon reflection I am not initiating a further case conference in 3 months. I do not want to create another possible distraction from the important, further steps in the

Court File Number: _____

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Judges Endorsment Continued

ongoing mediation.

✓ ✓ In keeping with the endorsement
I am requesting that Monitor's
counsel forward to me draft orders
for signature.

me [Signature]

Participant Information

Please upload a completed participant information form into the CaseLines event folder/bundle. Where possible, the moving party for the event is asked to coordinate with other parties to complete one form for the hearing.¹ In criminal matters, each party may upload their own form. The participant information form must be saved using the court's document naming convention (e.g. Participant Information – All Parties – 1-JUN-2021 or Participant Information – Defendant Smith – 01-JUN-2021).

CASE INFORMATION

Court File Number(s)	Court File No. CV-19-616077-00CL Court File No. CV-19-616779-00CL Court File No. CV-19-615862-00CL
Court Location	Toronto
Case Name	<p>IN THE MATTER OF THE COMPANIES' CREDITORS ARRANGEMENT ACT, R.S.C. 1985 c. C-36, AS AMENDED</p> <p>AND IN THE MATTER OF A PLAN OF COMPROMISE OR ARRANGEMENT OF IMPERIAL TOBACCO CANADA LIMITED AND IMPERIAL TOBACCO COMPANY LIMITED</p> <p>AND IN THE MATTER OF A PLAN OF COMPROMISE OR ARRANGEMENT OF ROTHMANS, BENSON & HEDGES INC.</p> <p>AND IN THE MATTER OF A PLAN OF COMPROMISE OR ARRANGEMENT OF JTI-MACDONALD CORP.</p>
Date of Hearing	March 28, 2023

PARTICIPANT INFORMATION

For Plaintiff, Applicant, Moving Party, Crown:

Name of Person Appearing (and how they wish to be addressed, e.g. preferred pronouns)	Name of Party	Phone Number	Email Address
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¹ The Participant information Form replaced the Counsel Slip.

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² Please provide a phone number where you can be reached during the hearing, if necessary.

³ Please provide a phone number where you can be reached during the hearing, if necessary.

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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
(COMMERCIAL 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.**

AND IN THE MATTER OF A PLAN OF COMPROMISE
OR ARRANGEMENT OF **IMPERIAL TOBACCO CANADA LIMITED**
AND **IMPERIAL TOBACCO COMPANY LIMITED**

AND IN THE MATTER OF A PLAN OF COMPROMISE
OR ARRANGEMENT OF **ROTHMANS, BENSON & HEDGES INC.**

**UNOFFICIAL TRANSCRIPT OF ENDORSEMENT
OF JUSTICE MCEWEN
Released March 30, 2023**

The Applicants, various stakeholders and Monitors' counsel reattended on March 28, 2023 with respect to the Applicants' motions to extend the Stay Period to September 29, 2023.

The Provinces of Ontario, British Columbia, Manitoba, New Brunswick, Nova Scotia, PEI and Saskatchewan did not oppose the motion, nor did Representative Counsel for the Pan Canadian Claimants ("PCC"). All were supportive of a 6 month extension.

The Monitors also support the relief sought by the Applicants.

While no stakeholder opposes an extension of the Stay Period, QCAP submits that the extension should be limited to 3 months. QCAP is supported by the Province of Quebec, Representative Counsel in the British Columbia class action and the Canadian Cancer Society.

For the reasons that follow I am granting the Applicants' motions and extending the Stay Period to September 29, 2023.

There is no suggestion that the Applicants do not continue to act in good faith and with due diligence. Outstanding orders are being complied with and the extremely complicated mediation before the Honourable Mr. Winkler continues. Both the Monitors and the Honourable Mr. Winkler advise that good progress continues to be made. Ontario is optimistic that negotiations are coming to fruition, and there were no real submissions to the contrary.

The Applicants further submitted that they are concerned that a 3 month extension would pose a distraction; that the stay periods and the mediation timelines remain independent; the Applicants do not control the timelines; it is not surprising that a complex matter such as this has taken a relatively long time to progress; and, that a compressed timeline may actually do more harm than good as stakeholders may move too quickly, negotiations may fail and break down.

QCAP, on the other hand, is understandably seeking a tighter timeline of 3 months. They, and their supporters, primarily make the following submissions.

First, QCAP submits that the 3 month extension is not a distraction but a catalyst for settlement. Six months eases the pressure.

Second, they argue that the stay periods and mediation timelines are interrelated and longer time periods for stays affects urgency.

Third, they say that there is evidence of delay and since the mediation is confidential the Applicants cannot simply advise the Court there is no delay, in a bald way, and have a longer stay partially granted on that basis.

QCAP also relies on the affidavit evidence of Ms. Blais and Mr. Trudel which set out the suffering class members have endured and the frustrations they experience in waiting for an outcome in these CCAA proceedings. One cannot review the contents of those affidavits and not feel genuine sympathy for those affected.

Notwithstanding this, however, I am still respectfully of the view that 6 months is fair and reasonable in the difficult circumstances of this case.

Again, no one questions the *bona fides* of the Applicants' participation in the mediation. I accept that good progress continues to be made based on the Monitors' Reports and my discussions with the Honourable Mr. Winkler – which were confirmed by his counsel at the hearing.

There is now optimism that a successful resolution is in sight.

In the objective opinion of the Monitors and the Honourable Mr. Winkler 6 months is sensible and preferable.

I am also concerned that the 3 month time period proposed by QCAP may backfire and have the exact opposite effect of enhancing the prospects of settlement.

In mid April, the significant motion of the Heart and Stroke Foundation will be heard. I am concerned that a 3 month extension simply does not allow meaningful time to deal with the motion, important negotiations and the further stay motion.

Although the QCAP submissions are compelling, I must consider what is overall preferable for all stakeholders, including the Provinces that do not oppose and the PCC, which also sadly contains members who have passed or are ill, and believes that resolution requires additional time.

It is primarily for the above reasons that I have concluded that the 6 month Stay Period ought to be granted.

Keeping QCAP's submissions in mind however, as I stated at the hearing, I fully expect all parties to the mediation to fully engage in the process and provide the Honourable Mr. Winkler and the Monitors with their full and timely co-operation. Even though 6 months have been granted, it does not mean that negotiations should not be approached without some sense of urgency.

Last, upon reflection, I am not initiating a further case conference in 3 months. I do not want to create another possible distraction from the important, further steps in the ongoing mediation.

In keeping with the endorsement, I am requesting that Monitors' counsel forward to me draft orders for signature.

"McEwen, J."

**IN THE MATTER OF the *Companies' Creditors Arrangement Act*, R.S.C. 1985, c. C-36,
as amended**

Court File No: CV-19-11377-00CL

**AND IN THE MATTER OF A PLAN OF COMPROMISE OR ARRANGEMENT OF
IMPERIAL TOBACCO CANADA LIMITED AND IMPERIAL TOBACCO
COMPANY LIMITED**

APPLICANTS

Ontario
SUPERIOR COURT OF JUSTICE
(COMMERCIAL LIST)

Proceeding commenced at Toronto

AFFIDAVIT OF ERIC THAUVETTE
(Sworn September 13, 2023)

OSLER, HOSKIN & HARCOURT LLP
1 First Canadian Place, P.O. Box 50
Toronto, ON M5X 1B8

Deborah Glendinning (LSO# 31070N)
Marc Wasserman (LSO# 44066M)
John A. MacDonald (LSO# 25884R)
Craig Lockwood (LSO# 46668M)

Tel: (416) 362-2111
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Lawyers to the Applicants, Imperial Tobacco Canada
Limited and Imperial Tobacco Company Limited

TAB 3

EXTENSION OF THE STAY PERIOD

2. **THIS COURT ORDERS** that the Stay Period as defined in paragraph 18 of the Second Amended and Restated Initial Order dated March 12, 2019 is hereby extended until and including March 29, 2024.

GENERAL

3. **THIS COURT ORDERS** that this Order is effective from the date that it is made and is enforceable without any need for entry and filing.

4. **THIS COURT ORDERS** that this Order shall have full force and effect in all provinces and territories in Canada.

5. **THIS COURT HEREBY REQUESTS** the aid and recognition of any court, tribunal, regulatory or administrative body, having jurisdiction in Canada or in the United States of America, to give effect to this Order and to assist the Applicants, the Monitor and their respective agents in carrying out the terms of this Order. All courts, tribunals, regulatory and administrative bodies are hereby respectfully requested to make such orders and to provide such assistance to the Applicants and to the Monitor, as an officer of this Court, as may be necessary or desirable to give effect to this Order, to grant representative status to the Monitor in any foreign proceeding, or to assist the Applicants and the Monitor and their respective agents in carrying out the terms of this Order.

**IN THE MATTER OF the *Companies' Creditors Arrangement Act*, R.S.C. 1985, c. C-36,
as amended**

Court File No: CV-19-616077-00CL

**AND IN THE MATTER OF A PLAN OF COMPROMISE OR ARRANGEMENT OF
IMPERIAL TOBACCO CANADA LIMITED AND IMPERIAL TOBACCO
COMPANY LIMITED**

APPLICANTS

ONTARIO
SUPERIOR COURT OF JUSTICE
COMMERCIAL LIST

Proceeding Commenced at Toronto

ORDER
(Stay Extension to March 29, 2024)

OSLER, HOSKIN & HARCOURT LLP

Box 50, 1 First Canadian Place
Toronto ON M5X 1B8

Deborah Glendinning (LSO# 31070N)
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**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 IMPERIAL
TOBACCO CANADA LIMITED AND IMPERIAL TOBACCO COMPANY LIMITED**

Court File No: CV-19-616077-00CL

APPLICANTS

Ontario
SUPERIOR COURT OF JUSTICE
COMMERCIAL LIST

Proceeding commenced at Toronto

**MOTION RECORD OF IMPERIAL TOBACCO
CANADA LIMITED AND IMPERIAL TOBACCO
COMPANY LIMITED**
(Motion for Stay Extension returnable September 27, 2023)

OSLER, HOSKIN & HARCOURT LLP
1 First Canadian Place, P.O. Box 50
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Deborah Glendinning (LSO# 31070N)
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