

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

**Imperial Tobacco Canada Limited and
Imperial Tobacco Company Limited**

TWENTY-FIFTH REPORT OF THE MONITOR

January 15, 2025

**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

**TWENTY-FIFTH REPORT TO THE COURT
SUBMITTED BY FTI CONSULTING CANADA INC.,
IN ITS CAPACITY AS MONITOR**

A. OVERVIEW

1. This report (this “**Report**”) was prepared in connection with the motion filed by FTI Consulting Canada Inc., in its capacity as court-appointed monitor (“**FTI**” or the “**Monitor**”) of Imperial Tobacco Canada Limited (“**ITCAN**”) and Imperial Tobacco Company Limited (together with ITCAN, “**Imperial**”), for orders:
 - i. approving and sanctioning the Imperial Plan (defined below) (the “**Sanction Order**”); and
 - ii. appointing FTI as the CCAA Plan Administrator (the “**CCAA Plan Administrator Appointment Order**”).
2. On December 5, 2024, the Monitor served the First Amended and Restated Court-Appointed Mediator’s and Monitor’s plan of compromise or arrangement pursuant to the *Companies’ Creditors Arrangement Act*, as amended (the “**CCAA**”), concerning, affecting and involving Imperial (including all schedules thereto, the “**Imperial Plan**”). In this Report, unless otherwise defined, all capitalized terms shall have the respective meanings specified in the Imperial Plan.
3. Further information regarding Imperial’s proceedings under the CCAA (these “**CCAA Proceedings**”) and a background on Imperial have been provided in previous reports of the Monitor.

4. All Court materials filed and orders issued in these CCAA Proceedings and the related Chapter 15 Proceedings are available on the Monitor's website at: <http://cfcanada.fticonsulting.com/imperialtobacco>.

B. TERMS OF REFERENCE AND DISCLAIMER

5. In preparing this Report, the Monitor has relied upon certain financial information and forecasts prepared by Imperial as well as discussions and correspondence with senior management and advisors to Imperial, among others. The Monitor has not audited or otherwise attempted to verify the accuracy or completeness of this information. Accordingly, the Monitor expresses no opinion or other form of assurance respecting the information contained in this Report or relied on in its preparation. Forward-looking financial information reported or relied upon in preparing this Report is based on Imperial management's assumptions regarding future events. Actual results may diverge from such forecasts, and these variations may be material.
6. Unless otherwise stated, all monetary amounts contained herein are expressed in Canadian dollars.

C. PURPOSE OF THIS REPORT

7. The purpose of this Report is to provide the Court with information regarding:
 - i. an overview of the Imperial Plan;
 - ii. an overview of the Claims Procedure undertaken and the results of voting at the Meeting held on December 12, 2024;
 - iii. an overview of the Monitor's activities in accordance with the Sanction Protocol Order issued on December 23, 2024 (the "**Sanction Protocol Order**");
 - iv. the statutory compliance of the Imperial Plan;
 - v. the fairness and reasonableness of the Imperial Plan;

- vi. an overview of the lack of alternatives to the Imperial Plan;
- vii. an overview of the CCAA Plan Administrator Appointment Order; and
- viii. the Monitor's comments and recommendations in respect of the foregoing matters.

D. OVERVIEW OF IMPERIAL PLAN

8. In its twentieth report to the Court dated October 25, 2024 (the "**Twentieth Report**"), the Monitor provided the Court an overview of the Imperial Plan. In its twenty-third report to the Court dated December 5, 2024 (the "**Twenty-Third Report**"), the Monitor provided the Court information regarding certain amendments to the Imperial Plan. To avoid unnecessary duplication, these details are not repeated here. The Twentieth Report and the Twenty-Third Report should be read in conjunction with this Report.
9. On April 5, 2019, pursuant to the Amended and Restated Initial Orders granted in each of the Tobacco Companies' CCAA Proceedings, the Court-Appointed Mediator was appointed to act as a neutral third party to mediate a global settlement of the Tobacco Claims (the "**Mediation**"). Since December 9, 2019, the mediation parties have consisted of the Provinces and Territories, QCAPs, PCC Representative Counsel, *Knight* Class Action Plaintiffs, Tobacco Producers and the Tobacco Companies (the "**Mediation Parties**").
10. Since the Mediation commenced in 2019, the Court-Appointed Mediator and the Monitor have participated in extensive discussions and numerous sessions with various combinations of the Mediation Parties. The progress of the Mediation was further complicated by the significant number of Claimants and varying positions held by stakeholders, including within groups of stakeholders represented by certain of the Claimants. The Court-Appointed Mediator convened numerous formal and informal Mediation sessions over five years. These discussions led to a sequence of term sheets exchanged between the Claimants and Tobacco Companies. Ultimately, certain of the Mediation Parties took intractable positions on various issues and these discussions and

term sheets failed to result in a consensual resolution that would lead to a global settlement.

11. Pursuant to the endorsement of the Court dated October 5, 2023 (the “**October 5 Endorsement**”), the Imperial Plan was developed by the Court-Appointed Mediator and the Monitors of the Tobacco Companies. The Imperial Plan was formulated to satisfy, to the greatest extent reasonably possible, the broadest range of the Mediation Parties’ interests and positions. On October 31, 2024, the Imperial Plan was accepted for filing and the Monitor was authorized to convene the Meeting pursuant to the Meeting Order.
12. The purpose of the Imperial Plan is principally to effect a full and final settlement and irrevocable compromise of all Tobacco Claims, to permit Imperial to exit these CCAA Proceedings, and to continue to carry on its business as a going concern.
13. As more particularly described in the Twentieth Report, the primary consideration for the global releases of the Applicants, their affiliates, parent companies and Tobacco Company Groups is \$32.5 billion (the “**Global Settlement Amount**”) plus a potential additional \$35 million designated to the Miscellaneous Claims Fund.
14. The Global Settlement Amount is to be satisfied by (i) funds contributed at the time of implementation of the Imperial Plan (the “**Upfront Contributions**”), and (ii) annual contributions to be made by the Tobacco Companies based on their after-tax net income, as adjusted pursuant to the Imperial Plan (the “**Annual Contributions**”).
15. There remains an allocation issue among the Tobacco Companies in each of the CCAA Proceedings. The Monitor does not take a position on this issue.
16. The Imperial Plan does not include any provision that sections 38 and 95 to 101 of the *Bankruptcy and Insolvency Act* do not apply in respect of the Imperial Plan.

E. CLAIMS PROCEDURE UNDERTAKEN AND RESULTS OF MEETING

17. In its twenty-fourth report to the Court dated December 13, 2024 (the “**Twenty-Fourth Report**”), the Monitor reported on the Claims Procedure undertaken by the Monitor in

accordance with the Claims Procedure Order dated October 31, 2024 and the results from the Meeting of Affected Creditors held on December 12, 2024. To avoid unnecessary duplication, these details are not repeated here. The Twenty-Fourth Report should be read in conjunction with this Report.

(i) Classification of Creditors

18. In accordance with the Meeting Order, all Affected Creditors were grouped together in a single class to vote on the resolution to approve the Imperial Plan at the Meeting. Each of these Affected Creditors holds unsecured Tobacco Claims against Imperial.
19. In accordance with the Meeting Order, Unaffected Creditors of Imperial were not entitled to vote at the Meeting.

(ii) Meeting Results

20. As detailed in the scrutineer's report attached to the Twenty-Fourth Report, 100% of the value of Voting Claims present and voting in person or by proxy at the Meeting voted in favour of the resolution approving the Imperial Plan. The Imperial Plan was thus approved by the Required Majority of Affected Creditors.
21. Accordingly and pursuant to the Meeting Order, the Monitor now brings this motion for the Sanction Order.

F. SANCTION PROTOCOL

22. In accordance with the Sanction Protocol Order:
 - i. on December 24, 2024, the Monitor caused the Sanction Protocol Order to be posted to the Monitor's website;
 - ii. on December 24, 2024, the Monitor caused the Omnibus Sanction Hearing Notice and the Sanction Hearing Objection Notice, in both French and English, to be posted to the Monitor's website;

- iii. on December 24, 2024, the Monitors jointly published press releases in English and French on Cision Newswire containing a copy of the Omnibus Sanction Hearing Notice;
- iv. on December 27, 2024, the Monitor emailed a copy of the Omnibus Sanction Hearing Notice, the Sanction Hearing Objection Notice, and a copy of the Sanction Protocol Order to: (i) each Person that appears on the Common Service List, including any Affected Creditor with a Negative Notice Claim; (ii) any person known to Imperial or the Monitor as having a potential Affected Claim based on the books and records of Imperial that was not captured in any Statement of Negative Notice Claim or in any Miscellaneous Claimant Proof of Claim; and (iii) any Putative Miscellaneous Claimant that had identified itself in writing to the Monitor by the Miscellaneous Claims Bar Date; and
- v. on January 7, 2025, the Omnibus Sanction hearing Notice was published in the Globe and Mail (National Edition), the National Post (National Edition) and Le Devoir.

G. STATUTORY COMPLIANCE OF THE IMPERIAL PLAN

- 23. The Imperial Plan satisfies the requirements of the CCAA, in particular the requirements contained in section 6 thereof.
- 24. The Monitor is not aware of any Affected Claims that are being compromised under the Imperial Plan which are prohibited from being compromised pursuant to the CCAA.
- 25. In particular, the Imperial Plan does not compromise or affect any of the following Claims:
 - i. any Claim of any Government against Imperial in respect of any amounts that are outstanding, provided for in section 6(3) of the CCAA;
 - ii. any Claim for accrued and unpaid wages and vacation pay owing to an employee of Imperial whose employment was terminated between the Filing Date and the Plan Implementation Date; and

- iii. any Claim for unpaid amounts provided for in sections 6(5)(a) and 6(6)(a) of the CCAA.
- 26. The Imperial Plan does not contemplate the payment of any amounts to Imperial's parent companies.
- 27. Imperial has complied with the Orders granted by the Court during the CCAA Proceedings in all material respects.
- 28. All material filed and procedures carried out have been done in accordance with the CCAA and the Orders granted by this Court and no unauthorized steps were taken.

H. THE IMPERIAL PLAN IS FAIR AND REASONABLE

(i) Scope of Releases

- 29. In exchange for the Upfront Contributions, the promise to pay the Annual Contributions and the agreement of Imperial's parent companies and relevant affiliates to provide shared services and other operational support to Imperial, the Imperial Plan provides for broad and comprehensive releases to be granted to the Applicants, their parent companies, their Tobacco Company Groups and each of their respective indemnitees for all Tobacco Claims. In addition, each Claimant will provide a contractual release to each of the Applicants which shall release all possible claims pursuant to subsections 5.1(2) and 19(2) of the CCAA (the "**Claimant Contractual Releases**"). The full execution of these Claimant Contractual Releases is a condition precedent to the implementation of the Imperial Plan.
- 30. In connection with these broad releases, the Released Parties and the Provinces and Territories recognize that a legislature's sovereign power to enact, amend and repeal legislation cannot be fettered. However, in the event that any legislation (including any regulations promulgated thereunder) similar or analogous to the HCCR Legislation is enacted or amended by a Province or Territory at any time after the Plan Implementation Date, the Released Parties and the Provinces and Territories are in agreement that the enactment of such future legislation shall not render unenforceable

or otherwise make ineffective any of the terms of the Claimant Contractual Releases or releases granted pursuant to the CCAA Plans.

31. The releases being granted to the Applicants, their Affiliates and their indemnitees are necessary and essential to the implementation of the Imperial Plan.
32. The CCAA Plans also contemplate broad and comprehensive releases of the Monitors, CCAA Plan Administrators, Court-Appointed Mediator and Administrative Coordinator and their Representatives. These parties are necessary to ensure the orderly, efficient and fair administration of the CCAA Plans.
33. The Imperial Plan was unanimously approved by Voting Claims present and voting in person or by proxy at the Meeting. Accordingly, the releases in the Imperial Plan were unanimously approved.
34. The releases proposed under the Imperial Plan are rationally connected and essential to the implementation thereof. The Monitor believes such releases are fair and reasonable in the circumstances. In coming to this conclusion the Monitor has taken many factors into account including:
 - i. the standard for releases relating to CCAA debtors and professionals in CCAA plans generally;
 - ii. the Affected Creditors' support of the Plan, including the treatment of the Tobacco Claims and the releases thereof;
 - iii. the fact that the releases related to claims against directors and officers do not purport to provide releases which are prohibited by the CCAA;
 - iv. the fact that pursuant to the Imperial Plan, the Claimants will each execute Claimant Contractual Releases, confirming their consent to the releases under the Imperial Plan;

- v. the fact that the releases are necessary in order to achieve the goal of a global settlement of the Tobacco Claims and to allow Imperial to continue as a going concern; and
- vi. the impact of liquidation if the Imperial Plan is not sanctioned.

(ii) Conditions Precedent

35. The implementation of the Imperial Plan is conditional upon the satisfaction or the waiver (to the extent permitted) of numerous conditions. Set out below is a summary of some of the more material conditions precedent:

- i. the Sanction Order will have been granted by the Court consistent with the terms of Section 19.2 of the Imperial Plan;
- ii. the Effective Time of the CCAA Plans of RBH and JTIM shall become effective at the same time or immediately prior to or immediately subsequent to the Effective Time of the Imperial Plan;
- iii. Imperial shall have deposited its share of the Upfront Contributions into the Global Settlement Trust Account;
- iv. Imperial's and RBH's Cash Security Deposits will have been released from suretyship and deposited into the Global Settlement Trust Account; and
- v. the Claimant Contractual Releases will have been executed, delivered and become effective in accordance with their terms, subject only to the occurrence of the Plan Implementation Date, on terms satisfactory to each Claimant, to the extent that Imperial and such Claimant are parties receiving or giving the applicable release.

I. ALTERNATIVES TO THE IMPERIAL PLAN

36. Throughout the Mediation, alternatives to the Imperial Plan were considered, but due to the positions taken by various Mediation Parties, no viable alternative could be achieved.

37. The Court in its October 5 Endorsement held that for “a successful plan to be forthcoming, the best chance for the development of such a plan will be achieved by directing neutral parties to collaborate and develop such a plan.” The Imperial Plan was developed by the Court-Appointed Mediator and the Monitors pursuant to the Court’s October 5 Endorsement. It was formulated to satisfy, to the greatest extent reasonably possible, the broadest range of the Mediation Parties’ interests and positions.
38. The three coordinated CCAA Proceedings of the Tobacco Companies are complex, involving tens of thousands of stakeholders with varying interests and nearly \$1 trillion of Affected Claims. Imperial has been in these CCAA Proceedings for almost six years. No other viable alternative to the Imperial Plan has been proposed which has the consent of the Affected Creditors of Imperial. In contrast, the Imperial Plan has been unanimously approved by voting Affected Creditors at the Meeting and, together with the CCAA Plans of the other Tobacco Companies, provides for a pan-Canadian global settlement of the Tobacco Claims against the Tobacco Companies.
39. Given the lack of another realistic, commercially viable alternative proposal, and the complexity and diverse interests of the numerous stakeholders in the Tobacco Companies’ CCAA Proceedings, the Monitor has concluded that there is no viable alternative to the Imperial Plan.
40. The potential aggregate liability of the Tobacco Companies in respect of these actions is close to \$1 trillion. The likely alternative to the Imperial Plan would be the liquidation or bankruptcy of Imperial. The Monitor is of the view that the Imperial Plan strikes a fair and reasonable balance among Imperial’s stakeholders while allowing Imperial to continue as a going concern.

J. CCAA PLAN ADMINISTRATOR APPOINTMENT ORDER

41. Due to the complexity and anticipated duration of the implementation of the Imperial Plan and the need to coordinate the administration of the CCAA Plan of each Tobacco Company, the Monitor will assume the role of CCAA Plan Administrator in accordance with the terms of the CCAA Plan Administrator Appointment Order and the Imperial

Plan. Substantively identical orders appointing CCAA Plan Administrators are being sought in the other Tobacco Companies' CCAA Proceedings.

42. This Report contains an overview of certain material portions of the CCAA Plan Administrator Appointment Order, but is not exhaustive.

(i) Powers

43. The CCAA Plan Administrator shall be authorized and empowered to perform all of the functions enumerated in Section 14.4 of the Imperial Plan, and in the CCAA Plan Administrator Appointment Order including the power to:

- i. retain any advisors, including legal, financial, investment or other advisors in connection with the administration of the Imperial Plan;
- ii. establish each of the Trust Accounts (as defined in the CCAA Plan Administrator Appointment Order);
- iii. engage a Trustee (as defined in the CCAA Plan Administrator Appointment Order) to act as the trustee of the Trust Accounts and enter into one or more deeds of trust with such Trustee;
- iv. oversee and direct the deposits into the Trust Accounts;
- v. direct the Trustee to disburse funds from the Trust Accounts in accordance with the Imperial Plan and the CCAA Plan Administrator Appointment Order; and
- vi. serve as the foreign representative of Imperial in the Chapter 15 Proceedings, in its capacity as either the CCAA Plan Administrator or Monitor of Imperial.

(ii) CCAA Plan Administrators' Communications and Coordination

44. Each Tobacco Company's CCAA Plan is dependent on the implementation of the other CCAA Plans to ensure the global settlement of all Tobacco Claims against each Tobacco Company. Imperial and each of the other Tobacco Companies are required to make Annual Contributions until such time as the total Contributions of the Tobacco

Companies, in the aggregate, equal the Global Settlement Amount. Accordingly, the administration of the Imperial Plan must be performed in tandem with the administration of each other CCAA Plan.

45. The CCAA Plan Administrator Appointment Order creates a framework to coordinate the administration of the Tobacco Companies' CCAA Plans amongst the CCAA Plan Administrators (the "**Communication Framework**").
46. The Communication Framework requires, among other things:
 - i. that the CCAA Plan Administrators consult with each other and act jointly and in concert to fulfill their duties and responsibilities pursuant to the Tobacco Companies' CCAA Plans;
 - ii. that each of the CCAA Plan Administrators have access to all documents and information provided by the Trustee of the Trust Accounts to each CCAA Plan Administrator and continuous access to each Tobacco Company's Virtual Data Room;
 - iii. that, to the extent a Tobacco Company's CCAA Plan requires a CCAA Plan Administrator to provide any form of communication to any Person, communicating with a specific representative of such Person shall be sufficient; and
 - iv. each of the CCAA Plan Administrators must unanimously approve certain actions, including (a) disbursing funds from Trust Accounts, (b) moving Trust Accounts to alternative Banks, (c) certain matters in respect of the Cy-près Foundation, (d) waiving an Event of Default or Breach, or (e) any extension of the period in which funds must be held in the Miscellaneous Claims Fund.

(iii) Certain other Administrative Matters

47. There are certain administrative matters which are not dealt with in the Sanction Order or the CCAA Plan Administrator Appointment Order. These matters do not impact the Court's ability to grant the Sanction Order or the CCAA Plan Administrator

Appointment Order. The CCAA Plan Administrator anticipates it will require further direction from the Court with respect to these matters, but intends to apply to the Court for such directions at a later date or dates.

K. CONCLUSIONS & RECOMMENDATIONS

48. The Monitor submits that the Imperial Plan is fair and reasonable given the complexity, number of parties, magnitude of claims and totality of the circumstances leading to its formulation. The Tobacco Companies' CCAA Plans represent a global resolution of the Tobacco Claims on an industry-wide basis as directed by the Court at the inception of this process. The Plan was also approved unanimously by voting Affected Creditors at the Meeting.
49. The Monitor further submits that given the complexity, duration and need for coordination of the administration of the CCAA Plans, the CCAA Plan Administrator Appointment Order is necessary.
50. For all the foregoing reasons, the Monitor recommends that the Sanction Order and CCAA Plan Administrator Appointment Order be granted.

The Monitor respectfully submits this Twenty-Fifth Report.

Dated this 15th day of January 2025

A handwritten signature in black ink that reads "FTI Consulting Canada Inc." The signature is written in a cursive, slightly slanted style.

FTI Consulting Canada Inc.

in its capacity as Monitor of Imperial Tobacco Canada Limited and Imperial Tobacco Company Limited, and not in its personal capacity.

IN THE MATTER OF *THE COMPANIES' CREDITORS ARRANGEMENT ACT*,
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Proceeding commenced at Toronto

**TWENTY-FIFTH REPORT OF THE MONITOR
JANUARY 15, 2025**

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