

**ONTARIO  
SUPERIOR COURT OF JUSTICE  
COMMERCIAL LIST**

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 February 27, 2025)**

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 “**Imperial Applicants**”). As such, I have personal knowledge of the matters deposed 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 Imperial Applicants’ senior management team, legal, financial and other advisors of the Imperial Applicants, and representatives of FTI Consulting Canada Inc. (“**FTI**” or the “**Monitor**”). In addition, I receive frequent updates from the Imperial Applicants’ counsel regarding these proceedings.

3. This affidavit is made in support of a motion by each of the Monitor and the Monitors for each of RBH and JTIM (both defined below) for certain amendments to the Second Amended and Restated Court-Appointed Mediator's and Monitor's CCAA Plan of Compromise and Arrangement dated January 27, 2025 in respect of the Tobacco Companies (defined below) (the "**Plan**" and the amendments, the "**Plan Amendments**"), pursuant to Article 20.4 of the Plan. A copy of a blackline showing the Plan Amendments is attached hereto as **Exhibit "A"**.

#### **PART I - BACKGROUND**

4. On January 15, 2025, the Monitors each filed a motion seeking an Order (the "**Sanction Order**"), among other things, approving and sanctioning the First Amended and Restated Plan of Compromise and Arrangement dated December 5, 2024 in respect of each of the Tobacco Companies. In advance of the hearing of the motion (the "**Sanction Hearing**"), the Monitors filed the current version of the Plan.

5. Rothmans Benson & Hedges Inc. ("**RBH**") and JTI Macdonald Corp. ("**JTIM**") filed responding materials on January 20, 2025, objecting to the proposed Plan. The objections related to, among other things, allocation of the Global Settlement Amount (as defined in Article 5.1 of the Plan) between the Imperial Applicants, RBH and JTIM (collectively, the "**Tobacco Companies**").

6. The Imperial Applicants filed materials in reply to the objections of RBH and JTIM, including my affidavit sworn January 27, 2025 (the "**Thauvette Reply Affidavit**").

## PART II - THE PLAN AMENDMENTS

7. Article 5.2 of the Plan states that “the issue of allocation of the Global Settlement Amount as between the Tobacco Companies in the three CCAA Proceedings remains unresolved”.

8. As described in the Thauvette Reply Affidavit, the Plan does not presently address the allocation of the \$750 million holdback amount contemplated by Article 5.4 of the Plan (the “**Holdback Amount**”) as between the Tobacco Companies.

9. Following the Sanction Hearing, in an effort to find a path forward and to resolve the objections of RBH and JTIM to the proposed Plan, the Imperial Applicants and JTIM have agreed to surrender any entitlement to the Holdback Amount and to allocate the full Holdback Amount to RBH in exchange for a withdrawal of any and all objections to the Plan by the Tobacco Companies.

10. The proposed Plan Amendments, which I understand have been agreed to by all three Tobacco Companies, seek to incorporate this mutual agreement by incorporating the following changes to the Plan:

- (a) The removal of Article 5.2 of the Plan;
- (b) A new definition of the “**RBH Retained Amount**” in Article 5.4 of the Plan, meaning the sum of \$750 million, which shall be deducted from the aggregate amount of the Upfront Contributions and retained by RBH;
- (c) A new provision in Article 5.4 of the Plan that allows RBH to deal in its sole discretion with the RBH Retained Amount, including with respect to transfers or distributions of the RBH Retained Amount; and

(d) Certain administrative changes to effect the amendments described above.

11. The Imperial Applicants support the Monitor's motion for approval of the Plan Amendments on the basis that such amendments, if implemented, will resolve all outstanding objections to the Plan by the Tobacco Companies.

12. The Plan Amendments have been provided to the Mediator, the Monitors and the Claimants (as defined in the Plan).

SWORN BEFORE ME over videoconference this 27th day of February, 2025 in accordance with O. Reg. 431/20, Administering Oath or Declaration Remotely. The affiant is located in the City of Montreal, in the Province of Quebec and the commissioner is located in the City of Calgary, in the Province of Alberta.



\_\_\_\_\_  
Commissioner for Taking Affidavits  
(or as may be)



\_\_\_\_\_  
ERIC THAUVETTE

This is Exhibit "A" referred to in the Affidavit of Eric Thauvette sworn by Eric Thauvette of the Montreal, in the Province of Quebec, before me at the City of Calgary, in the Province of Alberta, on February 27, 2025 in accordance with O. Reg. 431/20, Administering Oath or Declaration Remotely.

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

*Commissioner for Taking Affidavits (or as may be)*

**MARLEIGH ERYN DICK**  
**LSO# 79390S**

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

**ONTARIO  
SUPERIOR COURT OF JUSTICE  
(COMMERCIAL LIST)**

IN THE MATTER OF THE *COMPANIES' CREDITORS ARRANGEMENT ACT*,  
RSC 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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**~~SECOND~~THIRD AMENDED AND RESTATED  
COURT-APPOINTED MEDIATOR'S AND MONITOR'S  
CCAA PLAN OF COMPROMISE AND ARRANGEMENT**

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**PURSUANT TO THE  
*COMPANIES' CREDITORS ARRANGEMENT ACT***

**concerning, affecting and involving**

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

**~~JANUARY~~FEBRUARY 27, 2025**

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**~~SECOND~~THIRD AMENDED AND RESTATED  
COURT-APPOINTED MEDIATOR'S AND MONITOR'S  
CCAA PLAN OF COMPROMISE AND ARRANGEMENT  
CONCERNING, AFFECTING AND INVOLVING  
IMPERIAL TOBACCO CANADA LIMITED AND  
IMPERIAL TOBACCO COMPANY LIMITED**

**WHEREAS** Imperial Tobacco Canada Limited (“ITCAN”) and Imperial Tobacco Company Limited (“ITCO”) (collectively, “**Imperial**”) are insolvent;

**AND WHEREAS** Imperial was granted protection from its creditors under the CCAA pursuant to the initial Order of the Honourable Justice McEwen of the CCAA Court dated March 12, 2019 (“**Initial Order**”);

**AND WHEREAS** by the Initial Order the CCAA Court appointed FTI Consulting Canada Inc. (“FTI”) as an officer of the CCAA Court and the monitor of Imperial (“**Monitor**”);

**AND WHEREAS** by an Order dated April 5, 2019, the CCAA Court appointed the Honourable Warren K. Winkler, K.C. (“**Court-Appointed Mediator**”) as an officer of the CCAA Court to, as a neutral third party, mediate a global settlement of the Tobacco Claims;

**AND WHEREAS** by an Order dated September 27, 2023, the Honourable Chief Justice Geoffrey B. Morawetz directed the Monitor to work with the Court-Appointed Mediator to develop a plan of compromise and arrangement concerning Imperial;

**NOW THEREFORE**, set out herein is the ~~second~~third amended and restated plan of compromise and arrangement of Imperial developed by the Court-Appointed Mediator and Monitor pursuant to the Order dated September 27, 2023 and in accordance with the CCAA.

## **ARTICLE 1. INTERPRETATION**

### **1.1 Definitions**

In the CCAA Plan, including all Schedules hereto, unless otherwise stated or the context otherwise requires:

“**Administration Charge**” means the charge over the Property for the benefit of the Monitor, counsel to the Monitor, the PCC Representative Counsel and counsel to Imperial, created by paragraph 38 of the Initial Order, and having the priority provided in paragraphs 45 and 47 of such Order.

“**Administrative Coordinator**” means Daniel Shapiro, K.C., in his capacity as the Court-appointed administrative coordinator in respect of the administration of



Members both before and after the Plan Implementation Date, in respect of their fees, disbursements and costs as Quebec Class Counsel, and any applicable Sales and Excise Taxes payable thereon. All Costs incurred in respect of the services provided by Raymond Chabot (as agent for the Quebec Class Counsel on behalf of the QCAPs) both before and after the Plan Implementation Date shall be paid by Quebec Class Counsel out of the Quebec Class Counsel Fee.

“**Quebec Superior Court**” means the Superior Court of Quebec, Class Action Division, at Montreal.

“**Raymond Chabot**” means Raymond Chabot Administrateur Provisoire Inc. and its Affiliates.

“**RBH**” means Rothmans, Benson & Hedges Inc.

“**RBH Retained Amount**” [has the meaning given in Article 5, Section 5.4.](#)

“**Release**” has the meaning given in Article 18, Section 18.1.1.

“**Released Claims**” means, collectively, any and all of the following Claims, excluding Unaffected Claims:

- (a) any Tobacco Claims; and
- (b) any Claims:
  - (i) in respect of the assets, obligations, business or affairs of the Released Parties in Canada or, in the case of Imperial, anywhere else in the world, relating to Tobacco Products, which are based on, arising from or in respect of any conduct, act, omission, transaction, duty, responsibility, indebtedness, liability, obligation, dealing, fact, matter or occurrence existing or taking place at or prior to the Effective Time (whether or not continuing thereafter);
  - (ii) in respect of the CCAA Proceedings and the Chapter 15 Proceedings up to the Effective Time, provided that such Released Party is not determined by (A) a final order of the CCAA Court to have committed fraud in the CCAA Proceedings, or (B) a final order of the US Bankruptcy Court to have committed fraud in the Chapter 15 Proceedings;
  - (iii) existing at or prior to the Effective Time that have been advanced, that could have been advanced or could be advanced in the CCAA Proceeding; and
  - (iv) released as against the Monitors, CCAA Plan Administrators, Foreign Representative, Court-Appointed Mediator and Administrative Coordinator pursuant to Article 18, Sections 18.1.4, 18.1.5 and 18.1.6 herein.

## ARTICLE 5. CCAA PLAN CONSIDERATION

### 5.1 Global Settlement Amount

The global settlement amount under the CCAA Plan shall be **\$32.5 billion** (the “**Global Settlement Amount**”).

### 5.2 Intentionally deleted

### ~~5.2 Allocation among the Tobacco Companies of the Global Settlement Amount~~

~~The issue of allocation of the Global Settlement Amount as between the Tobacco Companies in the three CCAA Proceedings remains unresolved.~~

### 5.3 Global Settlement Trust Account and Supplemental Trust Account

The Tobacco Companies shall deposit their respective Contributions, less applicable Reserved Amounts, into a segregated interest-bearing trust account or trust accounts (“**Global Settlement Trust Account**”). The Tobacco Companies shall deposit their respective Reserved Amounts into an interest-bearing trust account or trust accounts (“**Supplemental Trust Account**”) (for greater certainty, a separate Supplemental Trust Account shall be established and maintained for each Tobacco Company). The Global Settlement Trust Account and Supplemental Trust Account shall be held in Schedule I Chartered Banks designated by the CCAA Plan Administrators, or in a syndicate of Schedule I Chartered Banks which may include such financial institutions as may be approved and designated by the CCAA Plan Administrators (“**Bank**”).

### 5.4 Upfront Contributions

On or before the Plan Implementation Date, each Tobacco Company shall make a cash contribution which shall be deposited into the Global Settlement Trust Account (collectively, the “**Upfront Contributions**”). The Upfront Contributions shall equal the aggregate of each Tobacco Company’s cash and cash equivalents generated from all sources by each Tobacco Company as at the month end prior to the Plan Implementation Date, ~~plus the Cash Security Deposits, less the sum of \$750 million which shall be deducted from the aggregate amount. The aforesaid sum of \$750 million shall be inclusive of~~including all amounts pledged by the Tobacco Companies to cash collateralize any outstanding letters of credit, surety or bonding obligations to the issuers thereof-, plus the Cash Security Deposits, less the sum of \$750 million which shall be deducted from the aggregate amount and retained by RBH (the “**RBH Retained Amount**”). RBH shall be free to deal in its sole discretion with the RBH Retained Amount, including being free to transfer or distribute such monies outside of Canada in such manner as RBH may determine. For greater certainty, any such transfers or distributions of the RBH Retained Amount will be deemed to be a Permitted Transfer for the purposes of Article 11.

### 5.5 Reserved Amounts

Imperial shall make a cash payment equal to any Reserved Amounts into the Supplemental Trust Account at the times referred to in this Section 5.5. Imperial shall

covenant, warranty, representation, undertaking, positive or negative pledge, term, provision, condition or obligation, expressed or implied, in any contract, instrument, credit document, lease, guarantee, agreement for sale, deed, licence, permit or other agreement, written or oral, and any and all amendments or supplements thereto, existing between such Person and Imperial and any and all notices of default and demands for payment or any step or proceeding taken or commenced in connection therewith under any such agreement shall be deemed to have been rescinded and of no further force or effect; provided that, nothing herein shall be deemed to limit or excuse Imperial from performing their obligations thereunder and under the CCAA Plan or be a waiver of any defaults by Imperial under the CCAA Plan or the other Definitive Documents.

| **DATED** as of the 27<sup>th</sup> day of ~~January~~February, 2025.

**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

**AFFIDAVIT OF ERIC THAUVETTE**  
(sworn February 27, 2025)

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