

CU-19-615062-00CL
CU-19-616077-00CL
CU-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: 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 time lines are inter-related and longer time periods for stays affects urgency.

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

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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

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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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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

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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
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**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."