

**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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**COMPENDIUM OF THE APPLICANTS  
IMPERIAL TOBACCO CANADA LIMITED  
AND IMPERIAL TOBACCO COMPANY LIMITED  
FOR COMEBACK HEARING**

**(Returnable April 4 and 5, 2019)**

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April 4, 2019

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1. Original Initial Order made March 12, 2019
2. Endorsement of Justice McEwen dated March 15, 2019
3. Affidavit of Eric Thauvette sworn March 12, 2019 without exhibits
4. Draft Amended and Restated Initial Order
5. Blackline between Original Initial Order and Draft Amended and Restated Initial Order

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Court File No.

CV-19-616077aal

**ONTARIO  
SUPERIOR COURT OF JUSTICE  
COMMERCIAL LIST**

THE HONOURABLE  
JUSTICE MCEWEN

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TUESDAY, THE 12TH  
DAY OF MARCH, 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 IMPERIAL TOBACCO CANADA LIMITED AND IMPERIAL TOBACCO COMPANY LIMITED (the "Applicants")

**INITIAL ORDER**

THIS APPLICATION, made by the Applicants, pursuant to the *Companies' Creditors Arrangement Act*, R.S.C. 1985, c. C-36, as amended (the "CCAA") was heard this day at 330 University Avenue, Toronto, Ontario.

ON READING (i) the affidavit of Eric Thauvette sworn March 12, 2019 and the exhibits thereto (the "**Thauvette Affidavit**"), (ii) the affidavit of Nancy Roberts sworn March 12, 2019, and (iii) the pre-filing report dated March 12, 2019 (the "**Monitor's Pre-Filing Report**") of FTI Consulting Canada Inc. ("**FTI**") in its capacity as the proposed Monitor of the Applicants, and on hearing the submissions of counsel for the Applicants, BAT (as defined herein), FTI and the Honourable Warren K. Winkler, Q.C. in his capacity as proposed Interim Tobacco Claimant Coordinator (as defined herein), and on reading the consent of FTI to act as the Monitor,

**SERVICE**

1. THIS COURT ORDERS that the time for service and filing of the Notice of Application and the Application Record is hereby abridged and validated so that this Application

is properly returnable today and hereby dispenses with further service thereof.

## **APPLICATION**

2. THIS COURT ORDERS AND DECLARES that the Applicants are companies to which the CCAA applies.

## **PLAN OF ARRANGEMENT**

3. THIS COURT ORDERS that the Applicants, individually or collectively, shall have the authority to file and may, subject to further order of this Court, file with this Court a plan of compromise or arrangement (hereinafter referred to as the “**Plan**”).

## **DEFINITIONS**

4. THIS COURT ORDERS that for purposes of this Order:

- (a) “**BAT**” means British American Tobacco p.l.c.;
- (b) “**BAT Group**” means, collectively, BAT, BATIF, B.A.T Industries p.l.c., British American Tobacco (Investments) Limited, Carreras Rothmans Limited or entities related to or affiliated with them other than the Applicants and the ITCAN Subsidiaries;
- (c) “**BATIF**” means B.A.T. International Finance p.l.c.;
- (d) “**Deposit Posting Order**” means the order of the Quebec Court of Appeal granted October 27, 2015 or any other Order requiring the posting of security or the payment of a deposit in respect of the Quebec Class Actions;
- (e) “**ITCAN**” means Imperial Tobacco Canada Limited;
- (f) “**ITCAN Subsidiaries**” means the direct and indirect subsidiaries of the Applicants listed in Schedule “B”;
- (g) “**Pending Litigation**” means any and all actions, applications and other lawsuits existing at the time of this Order in which any of the Applicants is a named

defendant or respondent (either individually or with other Persons (as defined below)) relating in any way whatsoever to a Tobacco Claim, including without limitation the litigation listed in Schedule “A”;

- (h) “**Quebec Class Actions**” means the proceedings in the Quebec Superior Court and the Quebec Court of Appeal in (i) *Cécilia Létourneau et al. v. JTI Macdonald Corp., Imperial Tobacco Canada Limited and Rothmans, Benson & Hedges Inc.* and (ii) *Conseil Québécois sur le Tabac et la Santé and Jean-Yves Blais v. JTI Macdonald Corp., Imperial Tobacco Canada Limited and Rothmans, Benson & Hedges Inc.* and all decisions and orders in such proceedings, including, without limitation, the Deposit Posting Order;
- (i) “**Sales & Excise Taxes**” means all goods and services, harmonized sales or other applicable federal, provincial or territorial sales taxes, and all federal excise taxes and customs and import duties and all federal, provincial and territorial tobacco taxes;
- (j) “**Tobacco Claim**” means any right or claim (including, without limitation, a claim for contribution or indemnity) of any Person against or in respect of the Applicants, the ITCAN Subsidiaries or any member of the BAT Group that has been advanced (including, without limitation, in the Pending Litigation), that could have been advanced or that could be advanced, and whether such right or claim is on such Person’s own account, on behalf of another Person, as a dependent of another Person, or on behalf of a certified or proposed class, or made or advanced as a government body or agency, insurer, employer, or otherwise, under or in connection with:
  - (i) applicable law, to recover damages in respect of the development, manufacture, production, marketing, advertising, distribution, purchase or sale of Tobacco Products, the use of or exposure to Tobacco Products or any representation in respect of Tobacco Products, in Canada, or in the case of any of the Applicants, anywhere else in the world; or

- (ii) the legislation listed on Schedule “C”, as may be amended or restated, or similar or analogous legislation that may be enacted in future,
- excluding any right or claim of a supplier relating to goods or services supplied to, or the use of leased or licensed property by, the Applicants, the ITCAN Subsidiaries or any member of the BAT Group; and
- (k) “**Tobacco Products**” means tobacco or any product made or derived from tobacco or containing nicotine that is intended for human consumption, including any component, part, or accessory of or used in connection with a tobacco product, including cigarettes, cigarette tobacco, roll your own tobacco, smokeless tobacco, electronic cigarettes, vaping liquids and devices, heat-not-burn tobacco, and any other tobacco or nicotine delivery systems and shall include materials, products and by-products derived from or resulting from the use of any tobacco products.

## **POSSESSION OF PROPERTY AND OPERATIONS**

5. THIS COURT ORDERS that the Applicants shall remain in possession and control of their respective current and future assets, undertakings and properties of every nature and kind whatsoever, and wherever situate including all proceeds thereof (the “**Property**”). Subject to further Order of this Court, the Applicants shall continue to carry on business in a manner consistent with the preservation of their business (the “**Business**”) and Property. The Applicants are authorized and empowered to continue to retain and employ the employees, independent contractors, consultants, agents, experts, accountants, counsel and such other persons (collectively “**Assistants**”) currently retained or employed by them, with liberty to retain such further Assistants as they deem reasonably necessary or desirable in the ordinary course of business, to preserve the value of the Property or Business or for the carrying out of the terms of this Order.

6. THIS COURT ORDERS that the Applicants shall be entitled to continue to utilize the central cash management system currently in place as described in the Thauvette Affidavit or replace it with another substantially similar central cash management system (the “**Cash Management System**”) and that any present or future bank or other Person providing the Cash

Management System (including, without limitation, BATIF and its affiliates, The Bank of Nova Scotia and Citibank, N.A.) shall not be under any obligation whatsoever to inquire into the propriety, validity or legality of any transfer, payment, collection or other action taken under the Cash Management System, or as to the use or application by the Applicants of funds transferred, paid, collected or otherwise dealt with in the Cash Management System, shall be entitled to provide the Cash Management System without any liability in respect thereof to any Person other than the Applicants, pursuant to the terms of the documentation applicable to the Cash Management System, and shall be, in its capacity as provider of the Cash Management System, an unaffected creditor under the Plan with regard to any claims or expenses it may suffer or incur in connection with the provision of the Cash Management System.

7. THIS COURT ORDERS that the Applicants shall be entitled but not required to pay the following expenses whether incurred prior to, on or after the date of this Order:

- (a) all outstanding and future wages, salaries, commissions, compensation, vacation pay, bonuses, incentive and share compensation plan payments, employee and retiree pension and other benefits and related contributions and payments (including, without limitation, expenses related to the Applicants' employee and retiree medical, dental, disability, life insurance and similar benefit plans or arrangements, employee assistance programs and contributions to or any payments in respect of the Applicants' other retirement programs), reimbursement expenses (including, without limitation, amounts charged to corporate credit cards), termination pay, salary continuance and severance pay payable to employees, independent contractors and other personnel, in each case incurred in the ordinary course of business and consistent with existing compensation policies and arrangements or with Monitor approval;
- (b) the fees and disbursements of any Assistants retained or employed by the Applicants, including without limitation in respect of any proceedings under Chapter 15 of the United States Bankruptcy Code, 11 U.S.C. §§ 101-1330, as amended, at their standard rates and charges;
- (c) with the consent of the Monitor, amounts for goods or services actually supplied to the Applicants prior to the date of this Order:

- (i) by logistics or supply chain providers, including customs brokers and freight forwarders;
  - (ii) by providers of information technology, social media marketing strategies and publishing services; and
  - (iii) in respect of the Loyalty Program as set out in the Thauvette Affidavit;
- (d) with the consent of the Monitor, amounts payable in respect of any Intercompany Transactions (as defined herein); and
- (e) by other third party suppliers, if, in the opinion of the Applicants, such payment is necessary or desirable to preserve the operations of the Business or the Property.

8. THIS COURT ORDERS that, except as otherwise provided to the contrary herein, the Applicants shall be entitled but not required to pay all reasonable expenses incurred by the Applicants in carrying on the Business in the ordinary course after this Order, and in carrying out the provisions of this Order, which expenses shall include, without limitation:

- (a) all expenses and capital expenditures reasonably necessary for the preservation of the Property or the Business including, without limitation, payments on account of insurance (including directors and officers insurance), maintenance and security services;
- (b) capital expenditures other than as permitted in clause (a) above to replace or supplement the Property or that are otherwise of benefit to the Business, provided that Monitor approval is obtained for any single such expenditure in excess of \$1 million or an aggregate of such expenditures in a calendar year in excess of \$5 million; and
- (c) payment for goods or services supplied or to be supplied to the Applicants on or after the date of this Order (including the payment of any royalties).

9. THIS COURT ORDERS that the Applicants are authorized to complete outstanding transactions and engage in new transactions with any member of the BAT Group and to continue, on and after the date hereof, to buy and sell goods and services and to allocate, collect

and pay costs, expenses and other amounts from and to the members of the BAT Group, including without limitation in relation to head office and shared services, finished, unfinished and semi-finished materials, personnel, administrative, technical and professional services, and royalties and fees in respect of trademark licenses (collectively, together with the Cash Management System and all transactions and all inter-company funding policies and procedures between any of the Applicants and any member of the BAT Group, the “**Intercompany Transactions**”) in the ordinary course of business as described in the affidavit or as otherwise approved by the Monitor. All Intercompany Transactions in the ordinary course of business between the Applicants and any member of the BAT Group, including the provision of goods and services from any member of the BAT Group to any of the Applicants, shall continue on terms consistent with existing arrangements or past practice or as otherwise approved by the Monitor.

10. THIS COURT ORDERS that the Applicants shall remit, in accordance with legal requirements, or pay (whether levied, accrued or collected before, on or after the date of this Order):

- (a) any statutory deemed trust amounts in favour of the Crown in right of Canada or of any Province thereof or any other taxation authority which are required to be deducted from employees’ wages, including, without limitation, amounts in respect of (i) employment insurance, (ii) Canada Pension Plan, (iii) Quebec Pension Plan, and (iv) income taxes;
- (b) all Sales & Excise Taxes required to be remitted by the Applicants in connection with the Business; and
- (c) any amount payable to the Crown in right of Canada or of any Province thereof or any political subdivision thereof or any other taxation authority in respect of municipal realty, municipal business or other taxes, assessments or levies of any nature or kind which are entitled at law to be paid in priority to claims of secured creditors and which are attributable to or in respect of the carrying on of the Business by the Applicants.

11. THIS COURT ORDERS that the Applicants are, subject to paragraph 12, authorized to post and to continue to have posted, cash collateral, letters of credit, performance

bonds, payment bonds, guarantees and other forms of security from time to time, in an aggregate amount not exceeding \$111 million (the “**Bonding Collateral**”), to satisfy regulatory or administrative requirements to provide security that have been imposed on the Applicants in the ordinary course and consistent with past practice in relation to the collection and remittance of federal excise taxes and customs and import duties and federal, provincial and territorial tobacco taxes, whether the Bonding Collateral is provided directly or indirectly by the Applicants as such security.

12. THIS COURT ORDERS that the Canadian federal, provincial and territorial authorities entitled to receive payments or collect monies from the Applicants in respect of Sales & Excise Taxes are hereby stayed during the Stay Period from requiring that any additional bonding or other security be posted by or on behalf of the Applicants in connection with Sales & Excise Taxes, or any other matters for which such bonding or security may otherwise be required.

13. THIS COURT ORDERS that until a real property lease is disclaimed or resiliated in accordance with the CCAA, the Applicants shall pay all amounts constituting rent or payable as rent under real property leases (including, for greater certainty, common area maintenance charges, utilities and realty taxes and any other amounts payable to the landlord under the lease) or as otherwise may be negotiated between the relevant Applicant and the landlord from time to time (“**Rent**”), for the period commencing from and including the date of this Order, at such intervals as such Rent is usually paid in the ordinary course of business. On the date of the first of such payments, any Rent relating to the period commencing from and including the date of this Order shall also be paid.

14. THIS COURT ORDERS that, except as specifically permitted herein, the Applicants are hereby directed, until further Order of this Court: (a) to make no payments of principal, interest thereon or otherwise on account of amounts owing by the Applicants or claims to which they are subject to any of their creditors as of this date and to post no security in respect of such amounts or claims, including pursuant to an order or judgment; (b) to grant no security interests, trust, liens, charges or encumbrances upon or in respect of any of their Property; and (c) to not grant credit or incur liabilities except in the ordinary course of the Business.

**RESTRUCTURING**

15. THIS COURT ORDERS that the Applicants shall, subject to such requirements as are imposed by the CCAA, have the right to:

- (a) permanently or temporarily cease, downsize or shut down any of their respective businesses or operations and to dispose of redundant or non-material assets not exceeding \$1,000,000 in any one transaction or \$5,000,000 in the aggregate;
- (b) terminate the employment of such of its employees or temporarily lay off such of its employees as it deems appropriate;
- (c) pursue all avenues of refinancing of the Business or Property, in whole or part, subject to prior approval of this Court being obtained before any material refinancing; and
- (d) pursue all avenues to resolve any of the Tobacco Claims, in whole or in part,

all of the foregoing to permit the Applicants to proceed with an orderly restructuring of the Business (the “**Restructuring**”).

16. THIS COURT ORDERS that the Applicants shall provide each of the relevant landlords with notice of the relevant Applicant’s intention to remove any fixtures from any leased premises at least seven (7) days prior to the date of the intended removal. The relevant landlord shall be entitled to have a representative present in the leased premises to observe such removal and, if the landlord disputes the relevant Applicant’s entitlement to remove any such fixture under the provisions of the lease, such fixture shall remain on the premises and shall be dealt with as agreed between any applicable secured creditors, such landlord and such Applicant, or by further Order of this Court upon application by such Applicant on at least two (2) days’ notice to such landlord and any such secured creditors. If the relevant Applicant disclaims or resiliates the lease governing such leased premises in accordance with Section 32 of the CCAA, it shall not be required to pay Rent under such lease pending resolution of any such dispute (other than Rent payable for the notice period provided for in Section 32(5) of the CCAA), and the disclaimer or resiliation of the lease shall be without prejudice to such Applicant’s claim to the fixtures in dispute.

17. THIS COURT ORDERS that if a notice of disclaimer or resiliation is delivered pursuant to Section 32 of the CCAA, then (a) during the notice period prior to the effective time of the disclaimer or resiliation, the landlord may show the affected leased premises to prospective tenants during normal business hours, on giving the relevant Applicant and the Monitor 24 hours' prior written notice, and (b) at the effective time of the disclaimer or resiliation, the relevant landlord shall be entitled to take possession of any such leased premises without waiver of or prejudice to any claims or rights such landlord may have against such Applicant in respect of such lease or leased premises, provided that nothing herein shall relieve such landlord of its obligation to mitigate any damages claimed in connection therewith.

### **STAY OF PROCEEDINGS**

18. THIS COURT ORDERS that until and including April 11, 2019, or such later date as this Court may order (the "**Stay Period**"), no proceeding or enforcement process in any court or tribunal (each, a "**Proceeding**"), including but not limited to any Pending Litigation and any other Proceeding in relation to any other Tobacco Claim, shall be commenced, continued or take place against or in respect of the Applicants, the ITCAN Subsidiaries, the Monitor, any of their respective employees and representatives acting in that capacity, the Interim Tobacco Claimant Coordinator, or affecting the Business or the Property or the funds deposited pursuant to the Deposit Posting Order except with the written consent of the Applicants and the Monitor, or with leave of this Court, and any and all Proceedings currently under way or directed to take place against or in respect of any of the Applicants or the ITCAN Subsidiaries, any of their respective employees and representatives acting in that capacity or affecting the Business or the Property or the funds deposited pursuant to the Deposit Posting Order are hereby stayed and suspended pending further Order of this Court. All counterclaims, cross-claims and third party claims of the Applicants in the Pending Litigation are likewise subject to this stay of Proceedings during the Stay Period.

19. THIS COURT ORDERS that, during the Stay Period, no Proceeding in Canada that relates in any way to a Tobacco Claim or to the Applicants, the Business or the Property, including the Pending Litigation, shall be commenced, continued or take place against or in respect of any member of the BAT Group except with the written consent of the Applicants and the Monitor, or with leave of this Court, and any and all such Proceedings currently underway or directed to take

place against or in respect of any member of the BAT Group are hereby stayed and suspended pending further Order of this Court.

20. THIS COURT ORDERS that, to the extent any prescription, time or limitation period relating to any Proceeding against or in respect of the Applicants, the ITCAN Subsidiaries or any member of the BAT Group that is stayed pursuant to this Order may expire, the term of such prescription, time or limitation period shall hereby be deemed to be extended by a period equal to the Stay Period.

#### **NO EXERCISE OF RIGHTS OR REMEDIES**

21. THIS COURT ORDERS that during the Stay Period, all rights and remedies of any individual, firm, corporation, governmental body or agency, or any other entities (all of the foregoing, collectively being “**Persons**” and each being a “**Person**”) against or in respect of the Applicants, the ITCAN Subsidiaries or the Monitor or their respective employees and representatives acting in that capacity, or affecting the Business or the Property or to obtain the funds deposited pursuant to the Deposit Posting Order (including, for greater certainty, any enforcement process or steps or other rights and remedies under or relating to the Quebec Class Actions against the Applicants, the Property or the ITCAN Subsidiaries), are hereby stayed and suspended except with the written consent of the Applicants and the Monitor, or leave of this Court, provided that nothing in this Order shall (i) empower the Applicants or the ITCAN Subsidiaries to carry on any business which the Applicants or the ITCAN Subsidiaries are not lawfully entitled to carry on, (ii) affect such investigations, actions, suits or proceedings by a regulatory body as are permitted by Section 11.1 of the CCAA, (iii) prevent the filing of any registration to preserve or perfect a security interest, or (iv) prevent the registration of a claim for lien.

#### **NO INTERFERENCE WITH RIGHTS**

22. THIS COURT ORDERS that during the Stay Period, no Person shall discontinue, fail to honour, alter, interfere with, repudiate, terminate or cease to perform any right, renewal right, contract, agreement, licence or permit in favour of or held by the Applicants or the ITCAN Subsidiaries, except with the written consent of the Applicants and the Monitor, or leave of this Court.

### **CONTINUATION OF SERVICES**

23. THIS COURT ORDERS that during the Stay Period, all Persons having oral or written agreements with the Applicants or the ITCAN Subsidiaries or statutory or regulatory mandates for the supply of goods and/or services, including without limitation all computer software, communication and other data services, centralized banking services, payroll services, insurance, transportation services, utility, customs clearing, warehouse or logistical services or other services to the Business, the Applicants or the ITCAN Subsidiaries, are hereby restrained until further Order of this Court from discontinuing, altering, interfering with or terminating the supply of such goods or services as may be required by the Applicants or the ITCAN Subsidiaries, and that the Applicants and the ITCAN Subsidiaries shall be entitled to the continued use of their current premises, telephone numbers, facsimile numbers, internet addresses and domain names, provided in each case that the normal prices or charges for all such goods or services received after the date of this Order are paid by the Applicants and the ITCAN Subsidiaries in accordance with normal payment practices of the Applicants and the ITCAN Subsidiaries or such other practices as may be agreed upon by the supplier or service provider and the respective Applicant or ITCAN Subsidiary and the Monitor, or as may be ordered by this Court.

### **NON-DEROGATION OF RIGHTS**

24. THIS COURT ORDERS that, notwithstanding anything else in this Order, no Person shall be prohibited from requiring immediate payment for goods, services, use of leased or licensed property or other valuable consideration provided on or after the date of this Order, nor shall any Person be under any obligation on or after the date of this Order to advance or re-advance any monies or otherwise extend any credit to the Applicants. Nothing in this Order shall derogate from the rights conferred and obligations imposed by the CCAA.

### **SALES AND EXCISE TAX CHARGE**

25. THIS COURT ORDERS that the Canadian federal, provincial and territorial authorities that are entitled to receive payments or collect monies from the Applicants in respect of Sales & Excise Taxes (including for greater certainty the Canada Border Services Agency) shall be entitled to the benefit of and are hereby granted a charge (the “**Sales and Excise Tax Charge**”) on the Property, which charge shall not exceed an aggregate amount of \$580 million, as security

for all amounts owing by the Applicants in respect of Sales & Excise Taxes, after taking into consideration any Bonding Collateral posted in respect thereof. The Sales and Excise Tax Charge shall have the priority set out in paragraphs 45 and 47 hereof.

#### **PROCEEDINGS AGAINST DIRECTORS AND OFFICERS**

26. THIS COURT ORDERS that during the Stay Period, and except as permitted by subsection 11.03(2) of the CCAA, no Proceeding may be commenced or continued against any of the former, current or future directors or officers of the Applicants with respect to any claim against the directors or officers that arose before the date hereof and that relates to any obligations of the Applicants whereby the directors or officers are alleged under any law to be liable in their capacity as directors or officers for the payment or performance of such obligations.

#### **DIRECTORS' AND OFFICERS' INDEMNIFICATION AND CHARGE**

27. THIS COURT ORDERS that the Applicants shall indemnify their directors and officers against obligations and liabilities that they may incur as directors or officers of the Applicants after the commencement of the within proceedings, except to the extent that, with respect to any officer or director, the obligation or liability was incurred as a result of the director's or officer's gross negligence or wilful misconduct.

28. THIS COURT ORDERS that the directors and officers of the Applicants shall be entitled to the benefit of and are hereby granted a charge (the "**Directors' Charge**") on the Property, which charge shall not exceed an aggregate amount of \$16 million, as security for the indemnity provided in paragraph 27 of this Order. The Directors' Charge shall have the priority set out in paragraphs 45 and 47 herein.

29. THIS COURT ORDERS that, notwithstanding any language in any applicable insurance policy to the contrary, (a) no insurer shall be entitled to be subrogated to or claim the benefit of the Directors' Charge, and (b) the Applicants' directors and officers shall only be entitled to the benefit of the Directors' Charge to the extent that they do not have coverage under any directors' and officers' insurance policy, or to the extent that such coverage is insufficient to pay amounts indemnified in accordance with paragraph 27 of this Order.

**APPOINTMENT OF MONITOR**

30. THIS COURT ORDERS that FTI Consulting Canada Inc. is hereby appointed pursuant to the CCAA as the Monitor, an officer of this Court, to monitor the business and financial affairs of the Applicants with the powers and obligations set out in the CCAA or set forth herein and that the Applicants and their shareholders, officers, directors, and Assistants shall advise the Monitor of all material steps taken by the Applicants pursuant to this Order, and shall co-operate fully with the Monitor in the exercise of its powers and discharge of its obligations and provide the Monitor with the assistance that is necessary to enable the Monitor to adequately carry out the Monitor's functions.

31. THIS COURT ORDERS that the Monitor, in addition to its prescribed rights and obligations under the CCAA, is hereby directed and empowered to:

- (a) monitor the Applicants' receipts and disbursements;
- (b) report to this Court at such times and intervals as the Monitor may deem appropriate with respect to matters relating to the Property, the Business, and such other matters as may be relevant to the proceedings herein;
- (c) advise the Applicants in their preparation of the Applicants' cash flow statements;
- (d) advise the Applicants in their development of the Plan and any amendments to the Plan;
- (e) assist the Applicants, to the extent required by the Applicants, with the holding and administering of creditors' or shareholders' meetings for voting on the Plan;
- (f) have full and complete access to the Property, including the premises, books, records, data, including data in electronic form, and other financial documents of the Applicants, to the extent that is necessary to adequately assess the Applicants' business and financial affairs or to perform its duties arising under this Order;
- (g) be at liberty to engage independent legal counsel or such other persons as the Monitor deems necessary or advisable respecting the exercise of its powers and performance of its obligations under this Order;

- (h) assist the Applicants, to the extent required by the Applicants, in its efforts to explore the potential for a resolution of any of the Tobacco Claims;
- (i) consult with the Interim Tobacco Claimant Coordinator in connection with the Interim Tobacco Claimant Coordinator's mandate, including in relation to any negotiations to settle any Tobacco Claims and the development of the Plan;
- (j) be and is hereby appointed to serve as the "foreign representative" of the Applicants in respect of an application to the United States Bankruptcy Court for relief pursuant to Chapter 15 of the United States Bankruptcy Code, 11 U.S.C. §§ 101-1330, as amended; and
- (k) perform such other duties as are required by this Order or by this Court from time to time.

32. THIS COURT ORDERS that the Monitor shall not take possession of the Property and shall take no part whatsoever in the management or supervision of the management of the Business and shall not, by fulfilling its obligations hereunder, be deemed to have taken or maintained possession or control of the Business or Property, or any part thereof.

33. THIS COURT ORDERS that nothing herein contained shall require the Monitor to occupy or to take control, care, charge, possession or management (separately and/or collectively, "**Possession**") of any of the Property that might be environmentally contaminated, might be a pollutant or a contaminant, or might cause or contribute to a spill, discharge, release or deposit of a substance contrary to any federal, provincial or other law respecting the protection, conservation, enhancement, remediation or rehabilitation of the environment or relating to the disposal of waste or other contamination including, without limitation, the *Canadian Environmental Protection Act*, the *Ontario Environmental Protection Act*, the *Ontario Water Resources Act*, the *Ontario Occupational Health and Safety Act*, the *Quebec Environment Quality Act*, the *Quebec Act Respecting Occupational Health and Safety* and any regulations under any of the foregoing statutes (the "**Environmental Legislation**"), provided however that nothing herein shall exempt the Monitor from any duty to report or make disclosure imposed by applicable Environmental Legislation. The Monitor shall not, as a result of this Order or anything done in pursuance of the

Monitor's duties and powers under this Order, be deemed to be in Possession of any of the Property within the meaning of any Environmental Legislation, unless it is actually in possession.

34. THIS COURT ORDERS that the Monitor shall provide any creditor of the Applicants and the Interim Tobacco Claimant Coordinator with information provided by the Applicants in response to reasonable requests for information made in writing by such person addressed to the Monitor. The Monitor shall not have any responsibility or liability with respect to the information disseminated by it pursuant to this paragraph. In the case of information that the Monitor has been advised by the Applicants is confidential, the Monitor shall not provide such information to creditors unless otherwise directed by this Court or on such terms as the Monitor and the Applicants may agree.

35. THIS COURT ORDERS that, in addition to the rights and protections afforded the Monitor under the CCAA or as an officer of this Court, the Monitor shall incur no liability or obligation as a result of its appointment or the carrying out of the provisions of this Order, save and except for any gross negligence or wilful misconduct on its part. Nothing in this Order shall derogate from the protections afforded the Monitor by the CCAA or any applicable legislation.

36. THIS COURT ORDERS that the Monitor, counsel to the Monitor and counsel to the Applicants shall be paid their reasonable fees and disbursements, in each case at their standard rates and charges, by the Applicants as part of the costs of these proceedings. The Applicants are hereby authorized and directed to pay the accounts of the Monitor, counsel to the Monitor and counsel to the Applicants on a bi-weekly basis and, in addition, the Applicants are hereby authorized, *nunc pro tunc*, to pay to the Monitor, counsel to the Monitor and counsel to the Applicants retainers to be held by them as security for payment of their respective fees and disbursements outstanding from time to time.

37. THIS COURT ORDERS that the Monitor and its legal counsel shall pass their accounts from time to time, and for this purpose the accounts of the Monitor and its legal counsel are hereby referred to a judge of the Commercial List of the Ontario Superior Court of Justice.

38. THIS COURT ORDERS that the Monitor, counsel to the Monitor and counsel to the Applicants shall be entitled to the benefit of and are hereby granted a charge (the "**Administration Charge**") on the Property, which charge shall not exceed an aggregate amount

of \$5 million, as security for their professional fees and disbursements incurred at the standard rates and charges of the Monitor and such counsel, both before and after the making of this Order in respect of these proceedings. The Administration Charge shall have the priority set out in paragraphs 45 and 47 hereof.

#### **INTERIM TOBACCO CLAIMANT COORDINATOR**

39. THIS COURT ORDERS that the Hon. Warren K. Winkler Q.C. is hereby appointed, on an interim basis until April 30, 2019 or as may be agreed to by the Applicants and the Monitor (the “**Interim Period**”), as an officer of the Court and shall act as an independent third party (the “**Interim Tobacco Claimant Coordinator**”) to assist and to coordinate the interests of all Persons (other than any defendant or respondent, any of their respective affiliates, and the federal, provincial and territorial governments of Canada) in these proceedings (the “**Tobacco Claimants**”) in connection with the Pending Litigation and any Tobacco Claim (the “**Interim Duties**”).

40. THIS COURT ORDERS that, during the Interim Period, the Interim Tobacco Claimant Coordinator shall be at liberty to, among other things:

- (a) retain independent legal counsel and such other advisors and persons as the Interim Tobacco Claimant Coordinator considers necessary or desirable to assist him in relation to the Interim Duties;
- (b) consult with Tobacco Claimants, the Monitor, the Applicants and other creditors and stakeholders of the Applicant, including in connection with any recommendations that the Interim Tobacco Claimant Coordinator has in respect of the (i) establishment of a committee of Tobacco Claimants (the “**Tobacco Claimant Committee**”) to consult with and provide input to the Interim Tobacco Claimant Coordinator and the procedures to govern the formation and operation of the Interim Tobacco Claimant Committee; and (ii) procedural mechanisms to be implemented to facilitate the resolution of the Tobacco Claims;
- (c) accept a court appointment of similar nature to represent claimants with interests similar to the Tobacco Claimants in any proceedings under the CCAA commenced by a company that is a co-defendant with any of the Applicants in any action

brought by one or more Tobacco Claimants, including the Pending Litigation; and

- (d) apply to this Court for advice and directions at such times as the Interim Tobacco Claimant Coordinator may so require.

41. THIS COURT ORDERS that, subject to an agreement between the Applicants and the Interim Tobacco Claimant Coordinator, all reasonable fees and disbursements of the Interim Tobacco Claimant Coordinator and his legal counsel and financial and other advisors as may have been incurred by them prior to the date of this Order or which shall be incurred by them in relation to the Interim Duties shall be paid by the Applicants on a monthly basis, forthwith upon the rendering of accounts to the Applicants.

42. THIS COURT ORDERS that the Interim Tobacco Claimant Coordinator shall be entitled to the benefit of and is hereby granted a charge (the “**Interim Tobacco Claimant Coordinator Charge**”) on the Property, which charge shall not exceed an aggregate amount of \$1 million, as security for his fees and disbursements and for the fees and disbursements of his legal counsel and financial and other advisors, in each case incurred at their standard rates and charges, both before and after the making of this Order in respect of these proceedings. The Interim Tobacco Claimant Coordinator Charge shall have the priority set out in paragraphs 45 and 47 hereof.

43. THIS COURT ORDERS that the Interim Tobacco Claimant Coordinator is authorized to take all steps and to do all acts necessary or desirable to carry out the terms of this Order, including dealing with any Court, regulatory body or other government ministry, department or agency, and to take all such steps as are necessary or incidental thereto.

44. THIS COURT ORDERS that, in addition to the rights and protections afforded as an officer of this Court, the Interim Tobacco Claimant Coordinator shall incur no liability or obligation as a result of his appointment or the carrying out of the provisions of this Order, save and except for any gross negligence or wilful misconduct on his part. Nothing in this Order shall derogate from the protections afforded a person pursuant to Section 142 of the *Courts of Justice Act* (Ontario).

**VALIDITY AND PRIORITY OF CHARGES CREATED BY THIS ORDER**

45. THIS COURT ORDERS that the priorities of the Administration Charge, the Interim Tobacco Claimant Coordinator Charge, the Directors' Charge, and the Sales and Excise Tax Charge (collectively, the "**Charges**"), as among them, shall be as follows:

- (a) First – Administration Charge (to the maximum amount of \$5 million) and the Interim Tobacco Claimant Coordinator Charge (to the maximum amount of \$1 million), *pari passu*;
- (b) Second – Directors' Charge (to the maximum amount of \$16 million); and
- (c) Third – the Sales and Excise Tax Charge (to the maximum amount of \$580 million).

46. THIS COURT ORDERS that the filing, registration or perfection of the Charges shall not be required, and that the Charges shall be valid and enforceable for all purposes, including as against any right, title or interest filed, registered, recorded or perfected subsequent to the Charges coming into existence, notwithstanding any such failure to file, register, record or perfect.

47. THIS COURT ORDERS that each of the Charges shall constitute a charge on the Property and such Charges shall rank in priority to all other security interests, trusts, liens, charges encumbrances, and claims of secured creditors, statutory or otherwise (collectively, the "**Encumbrances**") in favour of any Person in respect of such Property save and except for:

- (a) purchase-money security interests or the equivalent security interests under various provincial legislation and financing leases (that, for greater certainty, shall not include trade payables);
- (b) statutory super-priority deemed trusts and liens for unpaid employee source deductions;
- (c) deemed trusts and liens for any unpaid pension contribution or deficit with respect to the DB Plans, the DC Plan (as such terms are defined in the Thauvette Affidavit) and any of the Applicants' other pension plans, but only to the extent that any such

deemed trusts and liens are statutory super-priority deemed trusts and liens afforded priority by statute over all pre-existing Encumbrances granted or created by contract; and

- (d) liens for unpaid municipal property taxes or utilities that are given first priority over other liens by statute.

48. THIS COURT ORDERS that except as otherwise expressly provided for herein, or as may be approved by this Court, the Applicants shall not grant any Encumbrances over any Property that rank in priority to, or *pari passu* with, any of the Charges unless the Applicants also obtain the prior written consent of the Monitor and the beneficiaries of the Charges affected thereby (collectively, the “**Chargees**”), or further Order of this Court.

49. THIS COURT ORDERS that each of the Charges shall not be rendered invalid or unenforceable and the rights and remedies of the Chargees thereunder shall not otherwise be limited or impaired in any way by (a) the pendency of these proceedings and the declarations of insolvency made herein; (b) any application(s) for bankruptcy order(s) issued pursuant to the *Bankruptcy and Insolvency Act* (“**BIA**”), or any bankruptcy order made pursuant to such applications; (c) the filing of any assignments for the general benefit of creditors made pursuant to the BIA; (d) the provisions of any federal or provincial statutes; or (e) any negative covenants, prohibitions or other similar provisions with respect to borrowings, incurring debt or the creation of Encumbrances, contained in any existing loan documents, lease, sublease, offer to lease or other agreement (collectively, an “**Agreement**”) which binds the Applicants, and notwithstanding any provision to the contrary in any Agreement:

- (a) the creation of the Charges shall not create or be deemed to constitute a breach by the Applicants of any Agreement to which it is a party;
- (b) none of the Chargees shall have any liability to any Person whatsoever as a result of any breach of any Agreement caused by or resulting from the creation of the Charges; and

- (c) the payments made by the Applicants pursuant to this Order and the granting of the Charges do not and will not constitute preferences, fraudulent conveyances, transfers at undervalue, oppressive conduct, or other challengeable or voidable transactions under any applicable law.

50. THIS COURT ORDERS that any Charge created by this Order over leases of real property in Canada shall only be a Charge in the Applicants' interest in such real property leases.

### **SERVICE AND NOTICE**

51. THIS COURT ORDERS that the Monitor shall (i) without delay, publish in The Globe and Mail (National Edition) and La Presse a notice containing the information prescribed under the CCAA as well as the date of the Comeback Motion (as defined below) and advising of the appointment of the Interim Tobacco Claimant Coordinator, (ii) within five days after the date of this Order or as soon as reasonably practicable thereafter, (A) make this Order publicly available in the manner prescribed under the CCAA, (B) send, in the prescribed manner, a notice (which shall include the date of the Comeback Motion) to every known creditor who has a claim (contingent, disputed or otherwise) against the Applicants of more than \$5,000, except with respect to (I) Tobacco Claimants, in which cases the Monitor shall only send a notice to the Interim Tobacco Claimant Coordinator and to counsel of record in the applicable Pending Litigation (if any) and (II) in the case of beneficiaries of the DB Plans, the DC Plan (as such terms are defined in the Thauvette Affidavit) and any of the Applicants' other pension plans, in which case the Monitor shall only send a notice to the trustees of each of the DB Plans, the DC Plan and the Applicants' other pension plans, and the Retraite Québec, and (C) prepare a list showing the names and addresses of those creditors and the estimated amounts of those claims, and make it publicly available in the prescribed manner, all in accordance with Section 23(1)(a) of the CCAA and the regulations made thereunder. The list referenced in subparagraph (C) above shall not include the names, addresses or estimated amounts of the claims of those creditors who are individuals or any personal information in respect of an individual.

52. THIS COURT ORDERS that notice of the appointment of the Interim Tobacco Claimant Coordinator shall be provided to the Tobacco Claimants by:

- (a) notice on the Case Website (as defined herein) posted by the Monitor;

- (b) advertisements published without delay by the Monitor in The Globe and Mail (National Edition) and La Presse, which advertisements shall be in addition to the advertisement required under paragraph 51 hereof, and which shall be run on two non-consecutive days following the day on which the advertisement set out in paragraph 51 is run; and
- (c) delivery by the Applicants of a copy of this Order to counsel of record in the applicable Pending Litigation, who shall thereafter (i) post notice of the appointment of the Interim Tobacco Claimant Coordinator on their respective websites and (ii) deliver notice of the appointment of the Interim Tobacco Claimant Coordinator to each representative plaintiff;

53. THIS COURT ORDERS that notice of any motions or other proceedings to which the Tobacco Claimants are entitled or required to receive in these CCAA proceedings and in respect of which the Interim Tobacco Claimant Coordinator has the authority to represent the Tobacco Claimants may be served on the Interim Tobacco Claimant Coordinator and, unless the Court has ordered some other form of service, such service will constitute sufficient service and any further service on Tobacco Claimants is dispensed with.

54. THIS COURT ORDERS that the E-Service Guide of the Commercial List (the “**Guide**”) is approved and adopted by reference herein and, in this proceeding, the service of documents made in accordance with the Guide (which can be found on the Commercial List website at <http://www.ontariocourts.ca/scj/practice/practice-directions/toronto/eservice-commercial/>) shall be valid and effective service. Subject to Rule 17.05 this Order shall constitute an order for substituted service pursuant to Rule 16.04 of the Rules of Civil Procedure. Subject to Rule 3.01(d) of the Rules of Civil Procedure and paragraph 13 of the Guide, service of documents in accordance with the Guide will be effective on transmission. This Court further orders that a Case Website shall be established by the Monitor in accordance with the Guide with the following URL: <http://cfcanada.fticonsulting.com/imperialtobacco> (“**Case Website**”).

55. THIS COURT ORDERS that if the service or distribution of documents in accordance with the Guide is not practicable, the Applicants and the Monitor are at liberty to serve or distribute this Order, any other materials and orders in these proceedings, and any notices or other correspondence, by forwarding true copies thereof by prepaid ordinary mail, courier,

personal delivery, facsimile or other electronic transmission to the Applicants' creditors or other interested parties at their respective addresses as last shown on the records of the Applicants and that any such service or distribution by courier, personal delivery, facsimile or other electronic transmission shall be deemed to be received on the date of forwarding thereof, or if sent by ordinary mail, on the third business day after mailing.

56. THIS COURT ORDERS that the Applicants are authorized to rely on the notice provided in paragraph 51 to provide notice of the comeback motion to be heard on a date to be set by this Court upon the granting of this Order (the "**Comeback Motion**") and shall only be required to serve motion materials relating to the Comeback Motion, in accordance with the Guide, upon those parties who serve a Notice of Appearance in this proceeding prior to the date of the Comeback Motion.

57. THIS COURT ORDERS that the Monitor shall create, maintain and update as necessary a list of all Persons appearing in person or by counsel in this proceeding (the "**Service List**"). The Monitor shall post the Service List, as may be updated from time to time, on the Case Website as part of the public materials to be recorded thereon in relation to this proceeding. Notwithstanding the foregoing, the Monitor shall have no liability in respect of the accuracy of or the timeliness of making any changes to the Service List. The Monitor shall manage the scheduling of all motions that are brought in these proceedings.

58. **THIS COURT ORDERS** that the Applicants and the Monitor and their counsel are at liberty to serve or distribute this Order, any other materials and orders as may be reasonably required in these proceedings, including any notices, or other correspondence, by forwarding true copies thereof by electronic message to the Applicants' creditors or other interested parties and their advisors. For greater certainty, any such distribution or service shall be deemed to be in satisfaction of a legal or juridical obligation, and notice requirements within the meaning of clause 3(c) of the Electronic Commerce Protection Regulations, Reg. 8100 2-175 (SOR/DORS).

## **GENERAL**

59. THIS COURT ORDERS that the Applicants or the Monitor may from time to time apply to this Court to amend, vary, supplement or replace this Order or for advice and directions

concerning the discharge of their respective powers and duties under this Order or the interpretation or application of this Order.

60. THIS COURT ORDERS that nothing in this Order shall prevent the Monitor from acting as an interim receiver, a receiver, a receiver and manager, or a trustee in bankruptcy of the Applicants, the Business or the Property.

61. THIS COURT HEREBY REQUESTS the aid and recognition of any court, tribunal, regulatory or administrative body having jurisdiction in Canada, in the United States or any other country, 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.

62. THIS COURT ORDERS that each of the Applicants and the Monitor be at liberty and is hereby authorized and empowered to apply to any court, tribunal, regulatory or administrative body, wherever located, for the recognition of this Order and for assistance in carrying out the terms of this Order, and that the Monitor is authorized and empowered to act as a representative in respect of the within proceedings for the purpose of having these proceedings recognized in a jurisdiction outside Canada.

63. THIS COURT ORDERS that any interested party (including the Applicants, BAT, BATIF, and the Monitor) may apply to this Court to vary or amend this Order on not less than seven (7) days' notice to any other party or parties likely to be affected by the order sought or upon such other notice, if any, as this Court may order.

64. THIS COURT ORDERS that this Order and all of its provisions are effective as of 12:01 a.m. Eastern Standard/Daylight Time on the date of this Order (the "**Effective Time**") and that from the Effective Time to the time of the granting of this Order any action taken or notice given by any creditor of the Applicants or by any other Person to commence or continue any enforcement, realization, execution or other remedy of any kind whatsoever against the Applicant,

the Property, the Business or the funds deposited pursuant to the Deposit Posting Order shall be deemed not to have been taken or given, as the case may be.



SUPERIOR COURT OF JUSTICE  
ENTERED  
  
MAR 12 2019  
JP  
COUR SUPÉRIEURE DE JUSTICE  
ENTRÉ

**SCHEDULE "A"**  
**PENDING LITIGATION**

**A. Medicaid Claim Litigation**

	<b>Jurisdiction</b>	<b>File Date &amp; Court File No.</b>	<b>Plaintiff(s)</b>	<b>Defendant(s)</b>
1.	Alberta	June 8, 2012; 1201-07314 (Calgary)	Her Majesty in Right of Alberta	Altria Group, Inc.; B.A.T Industries p.l.c.; British American Tobacco (Investments) Limited; British American Tobacco p.l.c.; Canadian Tobacco Manufacturers Council; Carreras Rothmans Limited; Imperial Tobacco Canada Limited; JTI-MacDonald Corp.; Philip Morris International, Inc.; Philip Morris USA, Inc.; R.J. Reynolds Tobacco Company; R.J. Reynolds Tobacco International, Inc.; Rothmans, Benson & Hedges Inc.; and Rothmans Inc.
2.	British Columbia	January 24, 2001, further amended February 17, 2011; S010421 (Vancouver)	Her Majesty the Queen in right of British Columbia	Imperial Tobacco Canada Limited, Rothmans, Benson & Hedges Inc., Rothmans Inc., JTI-Macdonald Corp., Canadian Tobacco Manufacturers' Council, B.A.T Industries p.l.c., British American Tobacco (Investments) Limited, Carreras Rothmans Limited, Philip Morris Incorporated, Philip Morris International, Inc., R. J. Reynolds Tobacco Company, R. J. Reynolds Tobacco International, Inc., Rothmans International Research Division and Ryesekks p.l.c.
3.	Manitoba	May 31, 2012, amended October 16, 2012; CI 12-01-78127 (Winnipeg)	Her Majesty the Queen in right of the Province of Manitoba	Rothmans, Benson & Hedges Inc., Rothmans, Inc., Altria Group, Inc., Philip Morris U.S.A. Inc., Philip Morris International, Inc., JTI-MacDonald Corp., R.J. Reynolds Tobacco Company, R.J. Reynolds Tobacco International Inc., Imperial Tobacco Canada Limited, British American Tobacco p.l.c., B.A.T Industries p.l.c., British American Tobacco (Investments) Limited, Carreras Rothmans Limited, and Canadian Tobacco Manufacturers' Council
4.	New Brunswick	March 13, 2008; F/C/88/08 (Fredericton)	Her Majesty the Queen in right of the Province of New Brunswick	Rothmans Inc., Rothmans, Benson & Hedges Inc., Carreras Rothmans Limited, Altria Group, Inc., Phillip Morris U.S.A. Inc., Phillip Morris International Inc., JTI-MacDonald Corp., R.J. Reynolds Tobacco Company, R.J. Reynolds Tobacco International Inc., Imperial Tobacco Canada Limited, British American Tobacco p.l.c., B.A.T Industries p.l.c., British American Tobacco (Investments) Limited and Canadian Tobacco Manufacturers' Council

	Jurisdiction	File Date & Court File No.	Plaintiff(s)	Defendant(s)
5.	Newfoundland and Labrador	February 8, 2011, amended June 4, 2014; 01G. No. 0826 (St. John's)	Attorney General of Newfoundland and Labrador	Rothmans Inc., Rothmans, Benson & Hedges Inc., Carreras Rothmans Limited, Altria Group, Inc., Philip Morris USA Inc, Philip Morris International Inc., JTI-MacDonald Corp., RJ Reynolds Tobacco Company, RJ Reynolds Tobacco International Inc., Imperial Tobacco Canada Limited, British American Tobacco p.l.c., B.A.T Industries p.l.c, British America Tobacco (Investments) Limited and Canadian Tobacco Manufacturers' Council
6.	Nova Scotia	January 2, 2015; 434868/737868 (Halifax)	Her Majesty The Queen in Right of the Province of Nova Scotia	Rothmans, Benson & Hedges Inc., Rothmans Inc., Altria Group, Inc., Philip Morris U.S.A. Inc, Philip Morris International Inc., JTI-MacDonald Corp., R.J. Reynolds Tobacco Company, R.J. Reynolds Tobacco International Inc., Imperial Tobacco Canada Limited, British American Tobacco p.l.c., B.A.T Industries p.l.c., British American Tobacco (Investments) Limited, Carreras Rothmans Limited and Canadian Tobacco Manufacturers' Council.
7.	Ontario	Amended December 11, 2009, amended as amended August 25, 2010, fresh as amended March 28, 2014, amended fresh as amended, April 20, 2016; CV-09-387984 (Toronto)	Her Majesty the Queen in right of Ontario	Rothmans Inc., Rothmans, Benson & Hedges Inc., Carreras Rothmans Limited, Altria Group, Inc., Phillip Morris U.S.A. Inc., Phillip Morris International Inc., JTI-MacDonald Corp., R.J. Reynolds Tobacco Company, R.J. Reynolds Tobacco International Inc., Imperial Tobacco Canada Limited, British American Tobacco p.l.c., B.A.T Industries p.l.c., British American Tobacco (Investments) Limited and Canadian Tobacco Manufacturers' Council
8.	Prince Edward Island	September 10, 2012, amended October 17, 2012; SI GS-25019 (Charlottetown)	Her Majesty the Queen in right of the Province of Prince Edward Island	Rothmans, Benson & Hedges Inc., Rothmans, Inc., Altria Group, Inc., Philip Morris U.S.A. Inc., Philip Morris International, Inc., JTI-MacDonald Corp., R.J. Reynolds Tobacco Company, R.J. Reynolds Tobacco International Inc., Imperial Tobacco Canada Limited, British American Tobacco p.l.c., B.A.T Industries p.l.c., British American Tobacco (Investments) Limited, Carreras Rothmans Limited, and Canadian Tobacco Manufacturers' Council
9.	Québec	June 8, 2012; 500-17-072363-123 (Montréal)	Procureur général du Québec	Impérial Tobacco Canada Limitée, B.A.T Industries p.l.c., British American Tobacco (Investments) Limited, Carreras Rothmans Limited, Rothmans, Benson & Hedges, Philip Morris USA Inc., Philip Morris International

	Jurisdiction	File Date & Court File No.	Plaintiff(s)	Defendant(s)
				Inc., JTI-MacDonald Corp., R.J. Reynolds Tobacco Company, R.J. Reynolds Tobacco International, Inc., et Conseil Canadien de Fabricants des Produits du Tabac
10.	Saskatchewan	Amended October 5, 2012; Q.B. 8712012 (Saskatoon)	The Government of Saskatchewan	Rothmans, Benson & Hedges Inc., Rothmans Inc., Altria Group, Inc., Philip Morris International, Inc., JTI-Macdonald Corp., R.J. Reynolds Tobacco Company, R.J. Reynolds Tobacco International Inc., Imperial Tobacco Canada Limited, British American Tobacco p.l.c., B.A.T Industries p.l.c., British American Tobacco (Investments) Limited, Carreras Rothmans Limited, and Canadian Tobacco Manufacturers' Council

**B. Tobacco Claim Litigation – Certified and Proposed Class Actions**

	Jurisdiction	Date Filed; Court File No.	(Representative) Plaintiff	Defendant(s)
1.	Alberta	June 15, 2009; 0901-08964 (Calgary)	Linda Dorion	Canadian Tobacco Manufacturers' Council, B.A.T Industries p.l.c., British American Tobacco (Investments) Limited, British American Tobacco p.l.c., Imperial Tobacco Canada Limited, Altria Group, Inc., Phillip Morris Incorporated, Phillip Morris International, Inc., Phillip Morris U.S.A. Inc., R.J. Reynolds Tobacco Company, R.J. Reynolds Tobacco, International, Inc., Carreras Rothmans Limited, JTI-MacDonald Corp., Rothmans, Benson & Hedges Inc., Rothmans Inc., Ryesekks p.l.c.
2.	British Columbia	May 8, 2003; L 031300 (Vancouver)	John Smith (a.k.a., Kenneth Knight)	Imperial Tobacco Canada Ltd.
3.	British Columbia	June 25, 2010; 10-2780 (Victoria)	Barbara Bourassa on behalf of the Estate of Mitchell David Bourassa	Imperial Tobacco Canada Limited, B.A.T Industries p.l.c., British American Tobacco (Investments) Limited, British American Tobacco p.l.c., Altria Group, Inc. Phillip Morris International, Inc., Phillip Morris U.S.A. Inc., R.J. Reynolds Tobacco Company, R.J. Reynolds Tobacco International, Inc., Carreras Rothmans Limited, JTI-MacDonald Corp., Rothmans, Benson & Hedges Inc., Rothmans Inc., Ryesekks p.l.c. and Canadian Tobacco Manufacturers' Council <sup>1</sup>

<sup>1</sup> British American Tobacco p.l.c. and Carreras Rothmans Limited have been released from this action.

	Jurisdiction	Date Filed; Court File No.	(Representative) Plaintiff	Defendant(s)
4.	British Columbia	June 25, 2010; 10-2769 (Victoria)	Roderick Dennis McDermid	Imperial Tobacco Canada Limited, B.A.T Industries p.l.c., British American Tobacco (Investments) Limited, British American Tobacco p.l.c., Altria Group, Inc., Phillip Morris International, Inc., Phillip Morris U.S.A. Inc., R.J. Reynolds Tobacco Company, R.J. Reynolds Tobacco International, Inc., Carreras Rothmans Limited, JTI-MacDonald Corp., Rothmans, Benson & Hedges Inc., Rothmans Inc., Ryesekks p.l.c. and Canadian Tobacco Manufacturers' Council <sup>2</sup>
5.	Manitoba	June 2009; CI09-01-61479 (Winnipeg)	Deborah Kunta	Canadian Tobacco Manufacturers' Council, B.A.T Industries p.l.c., British American Tobacco (Investments) Limited, British American Tobacco p.l.c., Imperial Tobacco Canada Limited, Altria Group, Inc., Phillip Morris Incorporated, Phillip Morris International Inc., Phillip Morris U.S.A. Inc., R.J. Reynolds Tobacco Company, R.J. Reynolds Tobacco, International, Inc., Carreras Rothmans Limited, JTI-MacDonald Corp., Rothmans, Benson & Hedges Inc., Rothmans Inc and Ryesekks p.l.c.
6.	Nova Scotia	June 18, 2009; 312869 2009 (Halifax)	Ben Semple	Canadian Tobacco Manufacturers' Council, B.A.T Industries p.l.c., British American Tobacco (Investments) Limited, British American Tobacco p.l.c., Imperial Tobacco Canada Limited, Altria Group, Inc., Phillip Morris Incorporated, Phillip Morris International, Inc., Phillip Morris U.S.A. Inc., R.J. Reynolds Tobacco Company, R.J. Reynolds Tobacco, International, Inc., Carreras Rothmans Limited, JTI-MacDonald Corp., Rothmans, Benson & Hedges Inc., Rothmans Inc., Ryesekks p.l.c.
7.	Ontario	December 2, 2009; 64757 (London)	The Ontario Flue-Cured Tobacco Growers' Marketing Board, Andy J. Jacko, Brian Baswick, Ron Kichler and Arpad Dobrentey	Imperial Tobacco Canada Limited, which is to be heard together with similar actions against Rothmans, Benson & Hedges Inc., and JTI-MacDonald Corp.
8.	Ontario	June 27, 2012; 53794/12 (St. Catharines)	Suzanne Jacklin	Canadian Tobacco Manufacturers' Council, B.A.T Industries p.l.c., British American Tobacco (Investments) Limited, British American Tobacco p.l.c., Imperial Tobacco Canada Limited, Altria Group, Inc., Phillip Morris Incorporated, Phillip Morris International Inc., Phillip Morris U.S.A. Inc.,

<sup>2</sup> British American Tobacco p.l.c. and Carreras Rothmans Limited have been released from this action.

	Jurisdiction	Date Filed; Court File No.	(Representative) Plaintiff	Defendant(s)
				R.J. Reynolds Tobacco Company, R.J. Reynolds Tobacco, International, Inc., Carreras Rothmans Limited, JTI-MacDonald Corp., Rothmans, Benson & Hedges Inc., Rothmans Inc., Ryeseckks p.l.c
9.	Quebec	September 30, 2005; 500-06-000070-983 (Montreal)	Christine Fortin, Cécilia Létourneau and Joseph Mandelman	Imperial Tobacco Canada Ltd., Rothmans, Benson & Hedges Inc. and JTI-Macdonald Corp.
10.	Quebec	September 29, 2005; 500-06-000076-980 (Montreal)	Conseil Quebecois Sur Le Tabac Et La Sante and Jean-Yves Blais	Imperial Tobacco Canada Ltd., Rothmans, Benson & Hedges Inc. and JTI Macdonald Corp.
11.	Saskatchewan	July 10, 2009; 1036 of 2009; (June 12, 2009; 916 of 2009 never served) (Regina)	Thelma Adams	Canadian Tobacco Manufacturers' Council, B.A.T Industries p.l.c., British American Tobacco (Investments) Limited, British American Tobacco p.l.c., Imperial Tobacco Canada Limited, Altria Group, Inc., Phillip Morris Incorporated, Phillip Morris International Inc., Phillip Morris USA Inc., R.J. Reynolds Tobacco Company, R.J. Reynolds Tobacco, International, Inc., Carreras Rothmans Limited, JTI-MacDonald Corp., Rothmans, Benson & Hedges Inc., Rothmans Inc. and Ryeseckks p.l.c. <sup>3</sup>

### C. Tobacco Claim Litigation – Individual Actions

	Jurisdiction	Date Filed; Court File No.	(Representative) Plaintiff	Defendant(s)
1.	Nova Scotia	February 20, 2002, 177663 (Halifax)	Peter Stright	Imperial Tobacco Canada Limited
2.	Ontario	May 1, 1997, amended May 25, 1998; fresh as amended March 28, 2004; C1773/97 (Milton)	Ljubisa Spasic as estate trustee of Mirjana Spasic	Imperial Tobacco Limited and Rothmans, Benson & Hedges Inc.
3.	Ontario	Amended September 8, 2014; 00-CV-	Ragoonanan <i>et al.</i>	Imperial Tobacco Canada Limited

<sup>3</sup> B.A.T Industries p.l.c., British American Tobacco (Investments) Limited, British American Tobacco p.l.c. have been released from this action.

		183165-CP00 (Toronto)		
4.	Ontario	June 30, 2003; 1442/03 (London)	Scott Landry	Imperial Tobacco Canada Limited
5.	Ontario	June 12, 1997; 21513/97 (North York)	Joseph Battaglia	Imperial Tobacco Canada Limited
6.	Quebec	December 8, 2016; 750-32- 700014-163 (Saint- Hyacinthe)	Roland Bergeron	Imperial Tobacco Canada Limited

**SCHEDULE "B"**  
**ITCAN SUBSIDIARIES**

Imperial Tobacco Services Inc.  
Imperial Tobacco Products Limited  
Marlboro Canada Limited  
Cameo Inc.  
Medallion Inc.  
Allan Ramsay and Company Limited  
John Player & Sons Ltd.  
Imperial Brands Ltd.  
2004969 Ontario Inc.  
Construction Romir Inc.  
Genstar Corporation  
Imasco Holdings Group, Inc.  
ITL (USA) limited  
Genstar Pacific Corporation  
Imasco Holdings Inc.  
Southward Insurance Ltd.  
Liggett & Myers Tobacco Company of Canada Limited

**SCHEDULE “C”  
HEALTH CARE COSTS RECOVERY LEGISLATION**

Jurisdiction	Statute
Alberta	<i>Crown’s Right of Recovery Act</i> , SA 2009, c C-35
British Columbia	<i>Tobacco Damages and Health Care Costs Recovery Act</i> , SBC 2000, c 30
Manitoba	<i>The Tobacco Damages Health Care Costs Recovery Act</i> , SM 2006, c 18
New Brunswick	<i>Tobacco Damages and Health Care Costs Recovery Act</i> , SNB 2006, c T-7.5
Newfoundland and Labrador	<i>Tobacco Health Care Costs Recovery Act</i> , SNL 2001, c T-4.2
Nova Scotia	<i>Tobacco Health-Care Costs Recovery Act</i> , SNS 2005, c 46
Northwest Territories	Proclaimed but not yet in force: <i>Tobacco Damages and Health Care Costs Recovery Act</i> , SNWT 2011, c 33
Nunavut	Proclaimed but not yet in force: <i>Tobacco Damages and Health Care Costs Recovery Act</i> , SNu 2010, c 31
Ontario	<i>Tobacco Damages and Health Care Costs Recovery Act</i> , 2009, SO 2009, c 13
Prince Edward Island	<i>Tobacco Damages and Health Care Costs Recovery Act</i> , SPEI 2009, c 22
Québec	<i>Tobacco-related Damages and Health Care Costs Recovery Act</i> , 2009, CQLR c R-2.2.0.0.1
Saskatchewan	<i>The Tobacco Damages and Health Care Costs Recovery Act</i> , SS 2007, c T-14.2
Yukon	N/A

IN THE MATTER OF the *Companies' Creditors Arrangement Act*, R.S.C. 1985, c. C-36, as amended Court File No:

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

**INITIAL ORDER**

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Matter No: 1144377

**VCD'2''**

**CITATION:** Imperial Tobacco Canada Limited, et al, Re, 2019 ONSC 1684  
**COURT FILE NO.:** CV-19-616077CL  
**DATE:** 20190315

**SUPERIOR COURT OF JUSTICE - ONTARIO**

**RE:** 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

**BEFORE:** McEwen J.

**COUNSEL:** *Deborah Glendinning, Marc Wasserman, John A. MacDonald, and Michael De Lellis*, for the Applicants

*David Byers and Maria Konyukhova*, for the British American Tobacco p.l.c., B.A.T. Industries p.l.c., and British American Tobacco (Investments) Limited

*Jay Swartz, Robin Schwill, and Natasha MacParland*, for the Proposed Monitor, FTI Consulting Canada Inc.

*Jonathan Lisus and Matthew Gottlieb*, for the Proposed Tobacco Claimant Representative

**HEARD:** March 12, 2019

**ENDORSEMENT**

[1] On March 12, 2019 I granted the Initial Order, as amended, with reasons to follow. I am now providing those reasons.

**Background**

[2] Imperial Tobacco Canada Limited (“ITCAN”) and its subsidiary Imperial Tobacco Company Limited (“ITCO”) (together, the “Applicants”) seek an Initial Order for a stay of all existing and prospective proceedings pursuant to s. 11.02(1) of the *Companies’ Creditors Arrangement Act*, R.S.C. 1985, c. C-36, as amended (the “CCAA”), primarily so that they can effect a global resolution of multiple claims that have been brought or may be brought against ITCAN and related companies in Canada. They also seek the same relief on behalf of their related companies.

[3] The timing of this Application stems from the recent judgment of the Quebec Court of Appeal in *Imperial Tobacco Canada ltée c. Conseil québécois sur le tabac et la santé*, 2019 QCCA 358 (the “Quebec Appeal Judgment”), in which the Applicants and co-defendants were found liable for damages totalling approximately \$13.5 billion. Based on the filed record, enforcement of the Quebec Appeal Judgment would likely spell the end of the Applicants’ business because

ITCAN does not have sufficient funds to satisfy the judgment. ITCAN's share of the judgment exceeds \$9 billion.

[4] Amongst other submissions, the Applicants stress that enforcement of the Quebec Appeal Judgment places in serious jeopardy the continued employment of the Applicants' 466 full-time and 98 contract employees across Canada who receive wages and salaries of approximately \$70 million per year. The Applicants also point to the fact that they generate taxes payable to various levels of government across Canada totalling approximately \$4 billion per year. They further stress that, based on industry publications, if the Applicants and other legal producers of tobacco products in Canada cease to operate then the illegal tobacco trade could expand to fill the void.

[5] In addition to the Quebec Appeal Judgment, ITCAN (and in some cases related companies) face more than 20 large proceedings across Canada. In Ontario alone there are four actions claiming damages in excess of \$330 billion. The actions across the country include government actions to recover healthcare costs incurred in connection with smoking related diseases; smoking and health class actions seeking damages on behalf of individuals; and a class action brought by Ontario tobacco growers in relation to certain pricing practices of ITCAN. Most of these cases are in the preliminary stages.

[6] The Applicants submit that in the above circumstances the proposed Initial Order is necessary and reasonable as it seeks an overall solution with respect to the Quebec Appeal Judgment and other outstanding and potential proceedings.

### **Analysis**

[7] ITCAN and ITCO are incorporated pursuant to the *Canada Business Corporations Act*, R.S.C. 1985, c. C-44. ITCO is a privately held subsidiary of ITCAN. Their registered head offices are located in Brampton, Ontario. Their liabilities clearly exceed \$5 million as a result of the Quebec Appeal Judgment. According to the affidavit filed by Mr. Eric Thauvette, the vice-president and chief financial officer of ITCAN, the Applicants do not have sufficient funds to pay the Quebec Appeal Judgment that is currently payable.

[8] Based on the above, the Applicants are insolvent companies to which the CCAA applies. I am also of the view that it is appropriate to grant the stay of proceedings requested by the Applicants. This court, pursuant to the provisions of s. 11.02 of the CCAA, may grant a stay of proceedings if it is satisfied that circumstances exist that make such an order appropriate.

[9] It is settled law that the principal purpose of the CCAA is to maintain the *status quo* while a debtor company has the opportunity to consult with its creditors and stakeholders with a view to continue the company's operations. In the circumstances of this case, ITCAN cannot pay the amount of the Quebec Appeal Judgment and the Judgment is currently enforceable. Enforcement would cause the Applicants serious harm. As I have outlined above, it would also jeopardize tax revenue and legal trade in tobacco. It is therefore appropriate to grant the stay of proceedings requested by the Applicants as all stakeholders would likely be detrimentally affected if the Quebec Appeal Judgment was enforced. These stakeholders include employees, retirees, customers, landlords, suppliers, the provincial and federal governments, and contingent litigation creditors. Specifically, a stay creates a level playing field amongst the litigation claimants.

[10] Insofar as the proposed monitor is concerned I am satisfied that FTI Consulting Canada Inc. (“FTI”) is a suitable monitor and should be appointed in these proceedings pursuant to s. 11.7 of the CCAA. FTI is an experienced monitor who frequently acts in this capacity in CCAA proceedings. FTI is not subject to any of the restrictions set out in s. 11.7(2) of the CCAA.

[11] I also agree with the Applicants that the CCAA extension should be extended to the non-Applicants British American Tobacco p.l.c. (“BAT”) and B.A.T. International Finance p.l.c., B.A.T. Industries P.L.C., British American Tobacco (Investments) Limited, Carreras Rothmans Limited, and entities related to or affiliated with them (the “BAT Affiliates”), Liggett & Myers Tobacco Company of Canada Limited (“Liggett & Myers”), and other non-Applicant subsidiaries noted in the Application Record.

[12] I have jurisdiction to extend the stay: *Tamerlane Ventures Inc., Re*, 2013 ONSC 5461 and *Pacific Exploration & Production Corp., Re*, 2016 ONSC 5429. In my view, it is reasonable to do so in circumstances where most of the outstanding proceedings against ITCAN also name BAT and the BAT Affiliates as co-defendants. Further, Liggett & Myers and the other non-Applicant subsidiaries are highly integrated with the Applicants and indispensable to the Applicants’ business and restructuring. As submitted, certain of them hold trademarks or other assets of ITCAN, provide services to ITCAN, share the cash management system with ITCAN, and/or have guaranteed ITCAN debts from time to time. It is reasonable to extend the stay to these entities. Failure to do so would undermine the intent of the stay. Further, given the stay of proceedings that I have granted with respect to the Applicants, I see no prejudice to claimants in existing and potential proceedings if the stay is extended.

[13] I am further satisfied that the charges requested below by the Applicants are reasonable and should be granted.

[14] The Administration Charge in the amount of \$5 million is fair and reasonable. The restructuring will be an extremely extensive and expensive undertaking. It will involve a great deal of effort by the professional advisors who are subject to this charge. I do not see any duplication of the roles. Furthermore, the Administration Charge is supported by the Applicants’ parent and other related companies, which are secured creditors. The amount is reasonable given the size of this matter.

[15] I am further satisfied that the Tobacco Claimant Coordinator Charge is reasonable. I pause here to note that the Applicants had proposed that a Tobacco Claimant Coordinator be described as the “Tobacco Claimant Representative”. To avoid any confusion that might suggest that the Honourable Warren K. Winkler, Q.C., whom I have appointed, may be seen to displace existing counsel, or to take some sort of role that may be considered binding in nature with respect to any of the litigants affected by this order, the title was amended to Tobacco Claimant Coordinator.

[16] Given the immense size and complexity of this matter, I am of the view that a charge is reasonable with respect to the Honourable Warren K. Winkler, Q.C. as per the terms of the Interim Order so that he, along with others, can begin a claims process. It is also reasonable to allow him to retain the independent counsel requested and provide for a charge of \$1 million.

[17] It is reasonable that the Administration and Tobacco Claimant Coordinator Charges rank as first charges *pari passu* given their importance.

[18] The Directors' and Officers' Charge sought should also be approved to ensure that the Applicants enjoy ongoing stability during these CCAA proceedings.

[19] The directors and officers reasonably insist that a charge be put in place. I agree with their concerns. They also have significant knowledge and experience. The Applicants and related companies require that the directors and officers can continue on with the management of the businesses.

[20] The proposed charge of \$16 million, which stands second in priority to the aforementioned Administration and Tobacco Claim Coordinator Charges, is also reasonable.

[21] Last, insofar as the charges are concerned, I am also satisfied that the charge concerning Sales and Excise Taxes in the maximum amount of \$580 million is also reasonable as a third charge. It is important that this charge be granted so that the directors and officers do not face personal liability for the taxes. I reviewed the Applicants' record and I am satisfied that the amount is fair and reasonable.

[22] All of the charges are supported by FTI.

[23] In addition to the above specific comments, I am further satisfied that the remaining terms of the proposed Interim Order ought to be granted. The Applicants will be carrying on business during the CCAA proceedings. The filed materials demonstrate that the Applicants and their affiliated companies expect that the Applicants will continue to carry on their business in a profitable fashion and be able to meet both their pre-filing and post-filing obligations. It is in the best interests of all stakeholders to allow for the payment of these obligations.

[24] BAT, the BAT Affiliates, and FTI all support the Applicants' position, including their intention and ability to meet their current payables in the ordinary course of conducting business.

[25] For all of the reasons above, the Application was granted and the Interim Order was signed, as amended.

A handwritten signature in black ink, appearing to read 'McEwen J.', is written over a horizontal line.

McEwen J.

**Date:** March 15, 2019

**VCD'3''**

**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

**AFFIDAVIT OF ERIC THAUVETTE**

**(Sworn March 12, 2019)**

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. This Affidavit is made in support of an application by ITCAN and its affiliated company Imperial Tobacco Company Limited (“ITCO”, and collectively with ITCAN, the “Applicants”) for an Initial Order and related relief under the *Companies' Creditors Arrangement Act*, RSC 1985, c C-36, as amended (the “CCAA”).

2. I joined ITCAN on August 12, 1996 as an Internal Auditor. In my current role as the Chief Financial Officer of ITCAN, I am responsible for all financial-related aspects of ITCAN’s business operations. I am also an officer and director of ITCO. As such, I have personal knowledge of the matters deposed to herein including, without limitation, the business affairs of both Applicants. Where I have relied on other sources for information, I have stated the sources of my belief and believe them to be true. In preparing this Affidavit, I have also consulted with other

members of the Applicants’ senior management team (the “Senior Management”) and reviewed certain information provided by financial advisors to the Applicants.

3. This Affidavit is organized in the following sections:

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## ***I. Introduction***

4. ITCAN is primarily a tobacco importer. It is also an importer of Tobacco Heated Products (“THPs”) and Vaping Products (collectively with THPs, the “potentially reduced-risk products” or “PRRPs”). Its subsidiary, ITCO, is the exclusive distributor of tobacco products and PRRPs imported into Canada by ITCAN. ITCO sells 15 brands of cigarette products and PRRPs under various trademarks to approximately 26,825 retailers and 184 wholesalers. Collectively, the Applicants’ operations generated taxes payable to various levels of government totalling approximately \$4.0 billion in 2018. Approximately 466 permanent, full-time and 98 contract employees across Canada rely on the continued existence of the Applicants for their livelihoods. Other key stakeholder groups include ITCAN’s ultimate parent company British American Tobacco, p.l.c. (“BAT”), retired employees, customers, landlords, suppliers, and contingent litigation creditors.

5. The Applicants face an existential threat from litigation across Canada, including multiple class actions, government claims seeking to recover health care costs, and other ongoing proceedings (collectively the “Tobacco Litigation”). While the Applicants dispute liability and entitlement to remedial relief, the plaintiffs in the Tobacco Litigation seek hundreds of billions of

dollars in damages in the aggregate, which exceeds the Applicants' total assets by many orders of magnitude.

6. In particular, on March 1, 2019, the Court of Appeal for Quebec issued an appeal judgment that condemns ITCAN to pay a potential maximum amount that, with interest, is over \$9 billion in the Letourneau and Blais class actions in Quebec (bearing court file numbers 500-06-00070-983 and 500-06-000076-80). A copy of the Quebec Court of Appeal's judgment (the "Quebec Appeal Judgment") is attached as Exhibit "A". An English summary of the Quebec Appeal Judgement is attached as Exhibit "B".

7. As the Applicants do not have the financial resources to pay their current and contingent liabilities, they are insolvent and believe that it is in their best interests and the best interests of all of their stakeholders to engage in a restructuring process with the overriding objective of resolving all claims brought or that could be brought under applicable law in relation to the development, manufacturing, production, marketing, advertising of, any representations made in respect of, the purchase, sale, and use of, or exposure to, the Tobacco Products,<sup>1</sup> including but not limited to the claims in the Tobacco Litigation (collectively the "Tobacco Claims") in a controlled and orderly process under Court supervision.

8. In the interim, the Applicants intend to carry on business in the ordinary course to preserve the overall value of the business enterprise in the interests of all stakeholders.

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<sup>1</sup> As defined in the proposed Initial Order, "Tobacco Products" means tobacco or any product made or derived from tobacco or containing nicotine that is intended for human consumption, including any component, part, or accessory of or used in connection with a tobacco product, including cigarettes, cigarette tobacco, roll your own tobacco, smokeless tobacco, electronic cigarettes, vaping liquids and devices, heat-not-burn tobacco, and any other tobacco or nicotine delivery systems and shall include materials, products and by-products derived from or resulting from the use of any tobacco products.

9. The Applicants are proposing that the Honourable Warren K. Winkler (the “Tobacco Claimant Representative”) be appointed by the Court with the mandate to represent the interests of all persons with any Tobacco Claim (the “Tobacco Claimants”), other than the federal, provincial and territorial governments of Canada (the “Government Claimants”), in negotiating a settlement with the Applicants and others. In the Initial Order, the Applicants are requesting that the Tobacco Claimant Representative be appointed on an interim basis until April 30, 2019, or a later date agreed to by the Applicants and the Monitor (the “Interim Period”). The Applicants propose to commence stakeholder discussions immediately with the assistance of the proposed Monitor and the court-appointed Tobacco Claimant Representative.

10. The Applicants seek a standard stay of proceedings with respect to the Applicants and that the stay be extended to (a) the Applicants’ wholly owned non-applicant subsidiaries; and (b) Liggett & Myers Tobacco Company of Canada Limited (“Liggett & Myers”), in which ITCAN holds a 50% voting interest and 70% equity participation. The rationale for extending the stay of proceedings to these non-applicant entities is that they are highly integrated with the Applicants and are indispensable to the Applicants’ business and restructuring: certain of these non-applicant entities hold the trademarks or other assets of ITCAN, while others provide services to ITCAN, share the cash management system with ITCAN, or have guaranteed certain ITCAN debts from time to time.

11. The Applicants also seek to extend the stay of proceedings to BAT and certain of BAT’s affiliates<sup>2</sup> (collectively, the “BAT Affiliates”), but only in respect of the Tobacco Claims and proceedings related to the Applicants, their business, or their property.

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<sup>2</sup> B.A.T. International Finance p.l.c., B.A.T Industries p.l.c., British American Tobacco (Investments) Limited, Carreras Rothmans Limited, and entities related to or affiliated with them other than the Applicants and the ITCAN Subsidiaries (as defined in the Initial Order).

12. The Applicants believe that it is appropriate to extend this limited stay to BAT and the BAT Affiliates for several reasons. First, ITCAN, BAT, and the BAT Affiliates are named as co-defendants in class actions and health care recovery proceedings across Canada and are alleged to be jointly and severally liable for having engaged in a conspiracy to suppress information regarding the dangers of smoking and to encourage smoking. These claims against ITCAN, BAT, and the BAT Affiliates can only be effectively determined in one forum. Moreover, permitting the claims to continue against BAT and the BAT Affiliates while they are also being resolved in the CCAA proceedings creates the risk of inconsistent outcomes. The Applicants therefore seek a stay of proceedings in favour of BAT and the BAT Affiliates with the objective of facilitating a global resolution of the Tobacco Claims.

13. Second, a stay of proceedings in favor of BAT and the BAT Affiliates will allow ITCAN, BAT, and the BAT Affiliates to focus on developing and implementing a plan of compromise or arrangement without the costs and distraction that would inevitably ensue if plaintiffs continued pursuing the Tobacco Litigation against BAT and the BAT Affiliates at the same time as this CCAA proceeding. Given the nature of the Tobacco Claims, I believe that BAT and the BAT Affiliates would require considerable assistance and involvement of ITCAN personnel and resources if the Tobacco Litigation were to continue against them.

14. As described below, the legal tobacco industry is highly regulated and taxed. But, according to estimates from 2016, the illegal tobacco industry constitutes almost one quarter of the Canadian tobacco market.<sup>3</sup> The unlawful production, distribution, and sale of cigarettes in

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<sup>3</sup> Christian Leuprecht, *Smoking Gun: Strategic Containment of Contraband Tobacco and Cigarette Trafficking in Canada* (2016, Macdonald-Laurier Institute) at p. 13-15 [Leuprecht, “Smoking Gun”]; See also: RCMP Report, *Contraband Tobacco Enforcement Strategy* (2013, [http://publications.gc.ca/collections/collection\\_2013/grc-rcmp/PS64-109-2013-eng.pdf](http://publications.gc.ca/collections/collection_2013/grc-rcmp/PS64-109-2013-eng.pdf)) [RCMP, “Contraband Enforcement”]; Public Safety Canada, *The Status Of The Contraband Tobacco Situation In Canada – Report to the Minister of Public Safety by the Task Force on Illicit Tobacco Products* (2009, Public Safety Canada) [Public Safety Canada, “The Status of Contraband”].

Canada has reached unprecedented levels in recent years.<sup>4</sup> I understand from industry, government and academic publications that this deprives Canadian governments of significant revenues,<sup>5</sup> finances criminal gangs and organized crime,<sup>6</sup> fosters other criminal activities,<sup>7</sup> and provides youth with easy and affordable access to tobacco products<sup>8</sup> (a carton of 200 legally sold cigarettes costs upwards of \$80, compared to \$8-\$50 for the same number of illegal cigarettes).<sup>9</sup> The Canadian government recently announced that it will be introducing new and extensive regulations on tobacco products and their packaging following amendments to the *Tobacco Act* made via Bill S-5. These new regulations will almost certainly drive even more consumers of legal and compliant, fully-taxed products to the illicit market. Among other things, I believe that the lack of product differentiation will allow contraband manufacturers to easily “mimic” the legal products and will dramatically impede regulatory and enforcement efforts.

15. Accordingly, there are advantages to ITCAN and its co-defendants in the Tobacco Litigation resolving the outstanding claims in a fair and orderly manner and emerging from these restructuring proceedings as a going concern. Otherwise, it would not be unreasonable to foresee the illegal tobacco trade expanding to fill the void in the marketplace to meet the continuing demand for tobacco products.

16. Based on my own knowledge of the Applicants’ business and discussions with Senior Management, I am confident that the Applicants can return to being viable businesses after a CCAA restructuring. This approach will preserve the underlying value of the Applicants’ business while facilitating the primary goal of developing a plan of compromise or arrangement

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<sup>4</sup> Leuprecht, “Smoking Gun” at p. 13; See also RCMP, “Contraband Enforcement” at p. 7.

<sup>5</sup> Leuprecht, “Smoking Gun” at p. 15.

<sup>6</sup> Leuprecht, “Smoking Gun” at p. 15; See also RCMP, “Contraband Enforcement” at p. 8.

<sup>7</sup> Public Safety Canada, “The Status of Contraband” at p. 1 and 3.

<sup>8</sup> RCMP, “Contraband Enforcement” at p. 12.

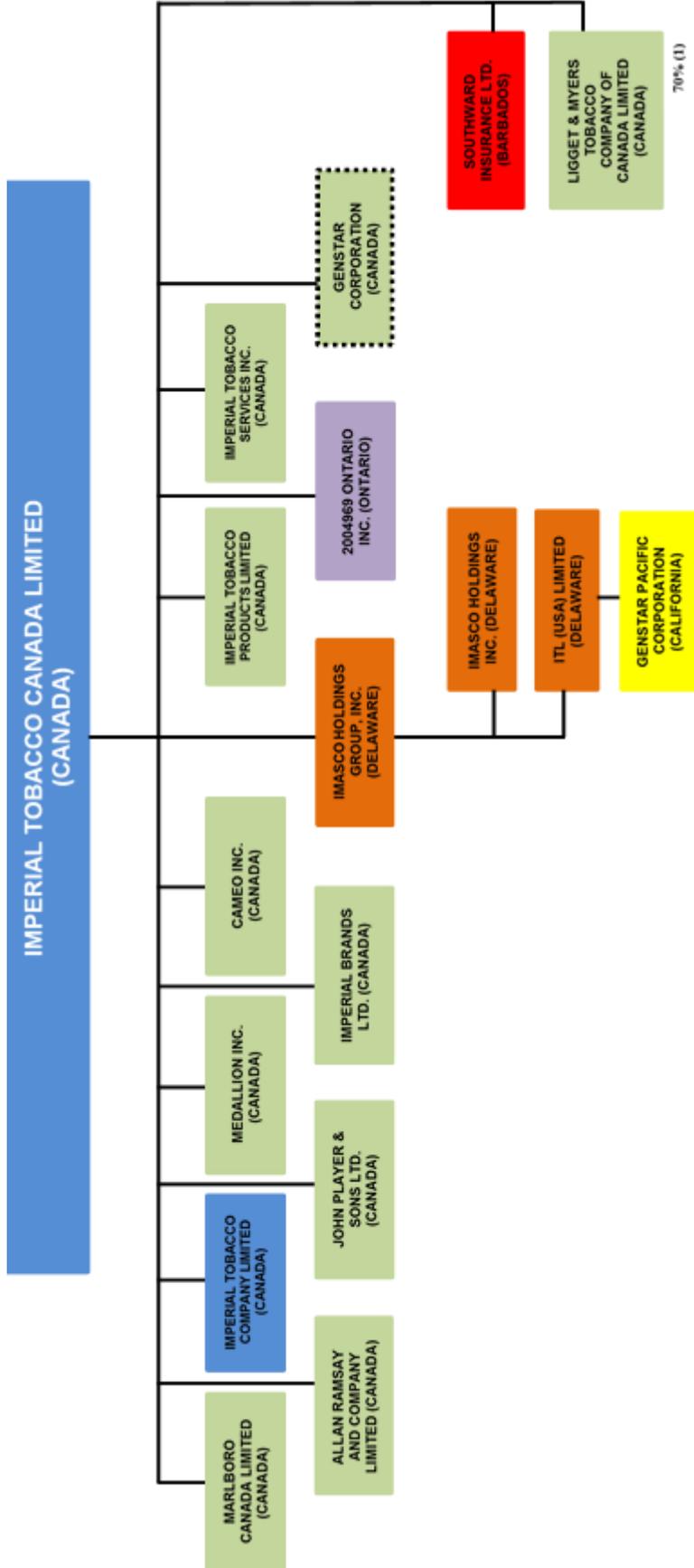
<sup>9</sup> Leuprecht, “Smoking Gun” at p. 6.

for the resolution of the Tobacco Claims in the most expeditious manner and under Court supervision.

## ***II. Corporate Structure of the Applicants***

17. ITCAN is a privately-held corporation incorporated under the *Canadian Business Corporations Act*, RSC 1985, c C-44, that is 100% owned by British American Tobacco International (Holdings) B.V., which is itself an indirect subsidiary of BAT. ITCO is a privately-held direct subsidiary of ITCAN. The Applicants' registered head offices are located in Brampton, Ontario. The Applicants amended their constating documents on October 4, 2017 to make Brampton the location of their registered head office. The Applicants' central decision making function, both long-range and day-to-day, is exercised in Canada.

18. The chart on the following page shows the organizational structure of the Applicants. ITCAN directly or indirectly owns 100% of the issued and outstanding shares of the entities included in the chart, with the exception of Liggett & Myers. Included in parentheses within the corporate organization chart is the respective jurisdiction of incorporation of each entity.



**KEY**

- Applicant
- Canada
- California
- Delaware
- Barbados
- Ontario

(a) *Description of ITCAN and ITCO*

19. ITCAN is the parent company of ITCO and various other affiliated companies. Since July 2015, ITCAN purchases finished tobacco products from its affiliate British American Tobacco Mexico S.A. de C.V. (“BAT MX”) and imports them into Canada. ITCAN also buys a small amount of tobacco finished products from two other BAT affiliated companies. Additionally, ITCAN buys raw materials and pays an assembly fee to Bastos du Canada Limitée, a competitor, to manufacture a small amount of Marlboro and other branded cigarettes in Quebec which cannot be produced in Mexico due to trademark issues.

20. ITCO buys finished cigarette products from ITCAN and sells and distributes them to third parties including wholesalers and retailers (including duty free retailers).<sup>10</sup> ITCO also buys materials for roll-your-own cigarettes, such as paper booklets and tubes, from third-party suppliers and sells them to retailers. ITCO is responsible for the operation of all of the Applicants’ distribution centres in Canada.

21. ITCO is the largest revenue generator of ITCAN’s subsidiaries. ITCO pays discretionary dividends annually to ITCAN from the profits that it earns from its operations. As of December 31, 2018, ITCO employs all of the Applicants’ employees who work in sales positions (approximately 255 full-time employees).

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<sup>10</sup> ITCO also buys the Glo Products and Vype Products from ITCAN, as described below, but sells them in some different channels than the conventional cigarette products.

22. The Applicants have also entered into new lines of business involving the PRRPs under various licensing agreements, which include:

- (a) a tobacco heating product and tobacco sticks named Glo, which creates an inhalable vapour by warming tobacco sticks at temperatures up to 240 degrees Celsius (in contrast to the conventional burning of tobacco); and
- (b) electronic cigarettes (“e-cigarettes”) and a liquid product named Vype, which is a battery-powered device that converts liquids such as liquid nicotine into a mist or vapor that the user inhales.

23. ITCAN acquires these PRRPs from Nicoventures Trading Limited (“Nicoventures”), a BAT affiliate that sources the PRRPs from outside of Canada, and ITCAN earns licensing fees for distributing the PRRPs in Canada. ITCAN began acquiring Glo heater and component parts as well as the tobacco sticks used in the heater (collectively, the “Glo Products”) from Nicoventures in April 2017, and began acquiring the Vype device and the liquids used in the Vype devices (collectively, the “Vype Products”) from Nicoventures in May 2018.

(b) *Description of Other Entities*

24. The following are ITCAN’s other wholly-owned Canadian subsidiaries as well as Liggett & Myers, with a short description of the function of each company:

- (a) **Imperial Tobacco Services Inc.** (“IT Services”): As of December 31, 2018, IT Services provides payroll services for nine individuals under contract with IT Services. These individuals are based in Canada and provide regional or global services to various affiliates. IT Services pays these salaries and then recoups the amounts plus a markup from the BAT-affiliated companies receiving services.

- (b) **Imperial Tobacco Products Limited, Marlboro Canada Limited, Cameo Inc., Medallion Inc., Allan Ramsay and Company Limited, John Player & Sons Ltd., and Imperial Brands Ltd.** (collectively, the “Trademark Companies”): These companies hold various Canadian trademarks and have no employees or suppliers. The Trademark Companies earn royalties by licensing their trademarks to ITCAN. The Trademark Companies pay dividends annually to ITCAN. ITCAN pays income taxes on behalf of the Trademark Companies as none of these companies have their own bank accounts. All transactions are effected through intercompany journal transfers.
- (c) **Liggett & Myers:** This is a dormant Canadian company in which ITCAN has a 50% voting interest and 70% equity participation. The company holds the Canadian trademark for Chesterfield. The Applicants distribute a small quantity of products with this trademark.
- (d) **2004969 Ontario Inc.:** This Ontario corporation is dormant. It holds a small parcel of contaminated land from ITCAN’s former tobacco processing and storage operations. There are no outstanding orders to remediate and the Applicants are currently conducting Phase 1 & Phase 2 environmental assessments of the site. Remediation has not been carried out. There is no recent and precise estimate of the remediation costs although a reserve of approximately \$5.8 million has been taken for that purpose since 2007.
- (e) **Genstar Corporation** (“Genstar”): This is a dormant Canadian company.

25. The following are ITCAN's foreign subsidiaries, with a short description of the function of each company:

- (a) **Imasco Holdings Group, Inc.** ("IHGI"): IHGI is a largely dormant Delaware corporation that holds certain legacy obligations as a result of the historical acquisition and restructuring of various companies and businesses of Imasco Limited in the U.S. IHGI has no operations. ITCAN makes capital contributions as necessary to IHGI on a monthly basis and then writes off these amounts (approximately USD \$7.0 million a year). IHGI holds various liabilities including: (i) certain workers' compensation claim liabilities; (ii) a U.S. tax-qualified defined benefit pension plan for approximately 2,534 former U.S. employees of Genstar Company, Hardee's Food Systems Inc., and Fast Food Merchandisers Inc. (the "IHGI U.S. Pension Plan"); (iii) 2 leases; and (iv) potential liability with respect to unclaimed balances relating to the acquisition of Peoples Drug Stores Incorporated. Until recently, IHGI provided a post-retirement health benefit obligation for approximately 148 former employees of Genstar Company, Hardee's Food Systems Inc., and Fast Food Merchandisers Inc. This plan was terminated by IHGI effective as of December 31, 2018, and participants are required to file any and all claims incurred on or before such date for eligible care, services or products under the plan on or before March 31, 2019. Various U.S. suppliers, supported by certain ITCAN employees, administer IHGI's and IHGI's subsidiaries' liabilities.
  
- (b) **ITL (USA) Limited** ("ITL USA"): ITL USA is a dormant Delaware company that is a subsidiary of IHGI. It is subject to certain legacy obligations, including certain

contractual pension and deferred compensation obligations, that are described in greater detail in the section regarding pension benefits below.

- (c) **Genstar Pacific Corporation:** This is a dormant California company that is a subsidiary of ITL USA. On June 6, 2018, ITCAN received a letter alleging that it, as successor in interest to various entities formerly affiliated with Genstar Pacific Corporation, may be liable for certain environmental response costs incurred by the BKK Working Group in connection with landfills in West Covina, California, based on purported disposal of waste material at one of the landfills by various alleged Genstar-affiliated entities. The BKK Working Group has not commenced any action in relation to the environmental response costs and the parties have entered into a tolling agreement. ITCAN has also indirectly become aware of a letter dated August 13, 2018, sent by the U.S. Environmental Protection Agency, offering an opportunity to accept a “de minimis settlement offer” with respect to alleged environmental liability at the Casmalia Resources Superfund Site in Barbara County, California. The letter references alleged liability of various “Genstar” entities but ITCAN believes the allegations are in error.
- (d) **Imasco Holdings Inc.:** This is a dormant Delaware company that is a subsidiary of IHGI.
- (e) **Southward Insurance Ltd.:** This company was incorporated under the laws of Barbados as a licensed insurer. Its principal activity currently consists of managing the run off of various treaties, which involve the operation of retrocession pools with various insurance companies. The company is required by its insurance license

to maintain minimum levels of solvency and liquidity. These requirements have been met as at December 31, 2018.

26. ITCAN's subsidiaries (apart from ITCO) are not currently Applicants in these proceedings. However, ITCAN is seeking to extend the stay in these proceedings to its non-Applicant subsidiaries.

27. ITCAN receives dividends from certain of its subsidiaries calculated annually, which amounted to approximately \$113 million in 2017 and \$102 million in 2018.

### ***III. The Business of the Applicants***

#### ***(a) Canadian Tobacco Industry***

28. Five million adult Canadian consumers purchase tobacco products. ITCAN leads the industry with roughly 48% market share of all legal sales in 2018. The two other major Canadian manufacturers and distributors of tobacco products are JTI-Macdonald Corp. ("JTI") and Rothmans Benson & Hedges Inc. ("RBH"). JTI was granted court protection under the CCAA in Ontario on March 8, 2019.

29. The legal tobacco industry is highly regulated and taxed. In 2018, the Applicants' operations generated approximately \$4.0 billion in federal and provincial taxes (\$590.7 million in Ontario alone). The manufacture, sale, and use of tobacco products are subject to numerous laws and regulations enacted at the federal, provincial, and municipal levels. Legislation in all 13 provinces and territories bans retail display of cigarettes, and federal regulations restrict the use of nearly all ingredients. A few years ago, the government adopted a law to increase the size of graphic health warnings on cigarette packaging from 50% to 75% of the package surface.<sup>11</sup> The

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<sup>11</sup> *Tobacco Products Labelling Regulations (Cigarettes and Little Cigars)*, SOR/2011-177.

tax on tobacco products represents 64% or more of the retail price, depending on the province. Following the enactment of Bill S-5,<sup>12</sup> Health Canada proposed the *Tobacco Products Regulations (Plain and Standardized Appearance)* that would implement further extensive regulations on tobacco products and their packaging, including measures that would standardize the appearance of tobacco products and packages, and prohibit any brand colours, logos and other images. The Department of Health published draft regulations and there was a consultation period until September 6, 2018.

30. On the other hand, according to recent estimates, the percentage of Canadians who had smoked contraband doubled from 16.5% to 32.7% between 2006 and 2008.<sup>13</sup> As of 2015, untaxed tobacco was estimated to make up almost one quarter of the market.<sup>14</sup> Based on industry, government and academic publications, the unlawful production, distribution, and sale of cigarettes in Canada has reached unprecedented levels in recent years, with over 50 illegal cigarette factories and roughly 300 smoke shacks in Ontario and Quebec situated, for the most part, on First Nations territories.<sup>15</sup> There are more than 175 groups known or believed to be tied to organized crime that profit from illegal tobacco.<sup>16</sup> If the legal producers of tobacco products in Canada ceased operating, I believe is very likely that the illegal tobacco trade will expand to fill the void in the marketplace to meet the continuing demand for tobacco products.

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<sup>12</sup> Bill S-5 was entitled “*An Act to amend the Tobacco Act and the Non-smokers’ Health Act and to make consequential amendments to other Acts*”.

<sup>13</sup> Leuprecht, “Smoking Gun” at p. 13.

<sup>14</sup> Leuprecht, “Smoking Gun” at p. 13.

<sup>15</sup> RCMP, “Contraband Enforcement” at p. 20 and 27.

<sup>16</sup> Leuprecht, “Smoking Gun” at p. 7.

(b) **Products**

31. The Applicants offer a range of tobacco products, including cigarettes, tobacco heated products, and e-cigarettes. The following chart lists conventional cigarette-related products and the PRRPs that the Applicants offer:

<b>Product</b>	<b>Brand</b>
Cigarettes	<ul style="list-style-type: none"><li>• du MAURIER</li><li>• John Player Standard</li><li>• John Player Plus</li><li>• John Player Special</li><li>• Marlboro</li><li>• Matinée</li><li>• Medallion</li><li>• Pall Mall</li><li>• Peter Jackson</li><li>• Player's</li><li>• Viceroy</li><li>• Vogue</li><li>• Avanti</li></ul>
Fine cut tobacco (Roll your own)	<ul style="list-style-type: none"><li>• Peter Jackson Special Cut 100% Red, Peter Jackson Menthol Special Cut 50%</li><li>• Player's Fine Cut, John Player Standard Rich Taste Special Cut 50%, John Player Standard Rich Taste Special Cut 90%</li></ul>
Tubes	<ul style="list-style-type: none"><li>• Embassy</li><li>• Peter Jackson Red</li></ul>

<b>Product</b>	<b>Brand</b>
	<ul style="list-style-type: none"><li>• Player’s Blue, Player’s Red, Player’s Grey</li></ul>
Cigarette paper	<ul style="list-style-type: none"><li>• Player’s Booklets, Embassy Booklets, Zig Zag Booklets</li></ul>
Potentially Reduced-Risk Products	<ul style="list-style-type: none"><li>• Glo</li><li>• Vype</li></ul>

32. The Applicants have their largest market share in Ontario (54.66% of their sales were in Ontario in 2018). They sell to approximately 9,236 stores in Ontario and generated 37% of their total revenue in 2018 in Ontario, more than in any other province.

33. The Applicants also distribute the Glo tobacco heated product. ITCAN purchases the Glo Products from Nicoventures. The Glo Products are currently only sold to residents of British Columbia, Alberta, and Ontario. In British Columbia, Glo Products are sold (1) at one location called Taste & Circle in Vancouver operated by ITCO, which is described below; (2) online by ITCO, as described below; and (3) from retailers, including some duty-free retailers. In Ontario and Alberta, Glo Products are sold from retailers (including some duty-free retailers) and online.

34. Since the passing of Bill S-5, the Applicants have begun selling their Vype e-cigarette products in Canada to retailers, duty-free retailers, and online. ITCAN purchases both the Vype device and the liquids used in the device from Nicoventures as well.

(c) ***Programs***

35. In 2017, the Applicants launched an online loyalty program for retailers and clerks to educate them about the Applicants’ products (the “Loyalty Program”). The Loyalty Program is maintained on a website operated by a third-party service provider named Comarch Canada Corp.

Participating retailers and store clerks were able to earn points that can be redeemed for modest gifts and prizes.<sup>17</sup> These gifts and prizes are provided by KLF Media Inc. (also doing business as Loyalty Source) and Zeste Incentive, a third party that specializes in sourcing prizes for rewards programs. The Loyalty Program is currently under review.

36. In 2017, the Applicants launched the Zyne Platform which allows individuals who register on the platform to receive tobacco information or brand-preference advertising and online publications. This information is only sent to persons who have been verified as adults. Equifax, Transunion, and Jumio provide online identification services to confirm whether a user is an adult and can therefore access the website based on the user's first name, last name, date of birth, and address. The maintenance of the platform (including the publishing of content for online magazines and brand content that focuses on the du Maurier, Pall Mall, and John Player brands) is managed by ITCAN.

37. ITCAN re-launched the Zyne Platform in the fourth quarter of 2018. The platform's development is now managed by Volume 7 Inc. but ownership and maintenance of the platform remains with ITCAN.

(d) ***Real Estate and Leases***

38. ITCAN leases its registered head office space in Brampton and other office space in Montreal.

39. One of ITCAN's subsidiaries owns a small parcel of contaminated land in Ontario at the site of its former tobacco processing and storage operations.

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<sup>17</sup> As at December 31, 2018, the financial liability associated with these points was approximately \$660,993.

40. ITCAN leases office space in Manhattan, New York where it is registered to do business and maintains its only place of business in the United States. ITCAN utilizes its New York office to assist in administering the funding of pension plans and certain other obligations of its subsidiaries in the United States, and to otherwise assist in the management of its interests in the United States.

41. ITCO uses distribution centres located in Alberta, British Columbia, Newfoundland and Labrador, Ontario, and Quebec. ITCO has contracted with Ryder Integrated Logistics, a division of Ryder Truck Rental Canada Ltd. (“Ryder”), a leading provider of commercial transportation, logistics, and supply chain management solutions, to supply and operate all of the distribution centres in Canada, with the exception of one distribution centre in Newfoundland and Labrador that is supplied and operated by Baine Johnston Corporation (“BJC”).

42. ITCO reimburses Ryder for all approved operating costs Ryder incurs on ITCO’s behalf, including leasing costs (which have been accounted for as operating leases) as well as amortization charged back on the carrying costs of property, warehouse and equipment (which have been accounted for as finance lease assets and obligations by the Applicants).<sup>18</sup> At the end of the finance lease term, ITCO has the option to purchase the equipment at a nominal amount. Although Ryder entered into warehouse leases for the distribution centres, the leases specify that, subject to some limitations, the leases can be assigned by Ryder to ITCO under certain circumstances.

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<sup>18</sup> BJC is not reimbursed for operating costs. Instead, it receives a Base Fee for its services and an annual Improvements Amortization Fee.

43. On February 1, 2017, ITCO leased space in Vancouver, British Columbia in order to open a retail space. ITCO currently operates a retail space called “Taste and Circle” at this location, which is comprised of one adults-only section that sells Glo Products and accessories.

44. The Applicants intend to maintain their existing leases during the course of these proceedings.

(e) ***Employees***

45. The Applicants employ approximately 466 permanent full-time employees in Canada who rely on the continued existence of the Applicants for their livelihoods. The following chart sets out the approximate number of the Applicants’ permanent employees by province as at December 31, 2018:

<b>Location</b>	<b>Employees</b>
Quebec	268
Ontario	103
Alberta	29
British Columbia	35
Saskatchewan	7
Manitoba	7
Nova Scotia	7
New Brunswick	6
Newfoundland and Labrador	4
<b>Total (Approximately)</b>	<b>466</b>

46. In addition, as of December 31, 2018, the Applicants employed approximately 98 contract employees on a full-time basis.

47. The Applicants paid wages and salaries of approximately \$70 million in 2018.

48. The Applicants do not anticipate any changes with respect to their employees as a result of this CCAA filing.

(f) ***Pension Benefits***

49. The Applicants have three registered Canadian pension plans in place. The Imasco Pension Fund Society (“IPFS”) and the Imperial Tobacco Corporate Pension Plan (“ITCPP”) are registered, defined benefit pension plans (collectively, the “DB Plans”). The Imperial Tobacco Canada Limited Defined Contribution Pension Plan (the “DC Plan”) is a registered, defined contribution pension plan. Benefits under the DB Plans are determined based on a formula which includes the employee’s years of service and final average remuneration. The DB Plans were closed to new members in May 2006; however there are still active employees who are DB Plan members. The DC Plan is provided for employees who joined the Applicants since May 2006.

50. The DB Plans are registered in Quebec and both have an actuarial surplus on a “going concern” basis as of January 1, 2018. While the DB Plans are not currently fully funded on a solvency basis, I’m informed by Julien Ranger of Osler, Hoskin & Harcourt LLP (“Osler”) and believe that pension plans registered in Quebec are not required to be funded on a solvency basis. Since the DB Plans each have an actuarial surplus on a going concern basis, no amortization payments are required with respect to the DB Plans pursuant to the applicable Quebec pension legislation. ITCAN intends to continue to make “normal cost” payments or “current service” contributions and any legally required amortization payments in respect of the DB Plans and any required employer contributions to the DC Plan during the course of these proceedings.

51. ITCAN has caused two irrevocable Letters of Credit (“LOCs”) to be issued in favour of the ITCPP and two LOCs to be issued in favour of the IPFS, as permitted by the *Supplemental Pension Plans Act*, C R-15.1, to partially offset the required pension contributions

for ITCPP and IPFS, as applicable. The total amount of these LOCs is approximately \$68 million. Three of the LOCs are issued by the Bank of Nova Scotia (“BNS”) (\$31 million) and one LOC is issued by HSBC Bank Canada (“HSBC”) (\$37 million).

52. If for any reason the pension administrator of the ITCPP or the IPFS makes a demand for payment in respect of any of these LOCs, the face value of the LOC becomes immediately payable into the ITCPP or the IPFS, as applicable. ITCAN must reimburse BNS within 5 business days after receiving notice from BNS of a drawing under an LOC issued by BNS.

53. Similar LOC provisions require that ITCAN pay HSBC within 10 business days of HSBC making such a demand after a draw down on the LOC issued by HSBC. ITCAN does not have any bank accounts with HSBC.

54. As mentioned above in the description of IHGI liabilities, there is also a U.S. tax qualified defined benefit pension plan (the “IHGI U.S. Pension Plan”), which Mark Maloney of King & Spalding LLP advises and I believe is subject to Title IV of the *U.S. Employee Retirement Income Security Act of 1974*, as amended (“ERISA”). ITCAN also intends to continue to make ordinary course payments in respect of the IHGI U.S. Pension Plan during the course of these proceedings.

55. Detailed descriptions of these four pension plans as well as other (non-registered) pension and retirement savings obligations are summarized in a chart in Exhibit “C”. ITCAN also intends to continue to make its required ordinary course payments in respect of the additional pension and retirement savings obligations during the course of these proceedings, with the exception of (i) a non-U.S. tax qualified “deferred income plan” for approximately 53 individuals who are either former senior management employees of Genstar or their surviving spouses

(“GCDIP”), (ii) a non-U.S. tax qualified “supplemental executive retirement plan” for approximately 14 individuals who were either former Genstar employees or their surviving spouses (“SERP”), and (iii) a non-U.S. tax qualified “supplementary pension plan” for 3 individuals who were either former Genstar employees or their surviving spouses (“SPEN”). The GCDIP, SERP, and SPEN are not U.S.-tax qualified retirement plans or funded. Pursuant to an agreement dated April 2, 1986, ITCAN guaranteed payment of these obligations.

56. The present value of the plan obligations under the GCDIP, SERP, and SPEN is estimated to be approximately \$43 million dollars in the aggregate. ITCAN proposes that any further payments with respect to these obligations be stayed pursuant to the Initial Order.

(g) *Stock-Based Compensation Plans*

57. Eligible senior executives of ITCAN participate in some of BAT’s stock-based compensation plans, including a long-term incentive plan (“LTIP”) and a deferred share bonus scheme (“DSBS”). Under those plans, participants are awarded common shares in BAT, subject to the terms and conditions of either the LTIP or DSBS and the governing award documentation.

58. Under the LTIP, participants receive an Award Certificate every year setting out the number of shares covered by the award for that year. Participants are eligible to receive BAT shares at no cost – up to the maximum set out in the award – with the actual number of shares to be received depending on the achievement of performance conditions over the three-year period covered by the award. Participants are also entitled to receive a cash payment equivalent to the dividends that would have accrued to a shareholder during the performance period on the number of shares that vest. If a participant ceases employment prior to the end of the performance period, the vesting, if any, is subject to the terms and conditions of the LTIP and related documentation.

59. Under the DSBS, awards of common shares in BAT generally vest after three years from date of grant and may be subject to forfeit if the participant leaves employment before the end of the three-year holding period. If a participant ceases employment prior to the third anniversary of the award, the vesting, if any, is subject to the terms and conditions of the DSBS and related documentation.

60. During the three year vesting period, the BAT shares are held in trust by the Imperial Tobacco Canada Employee Trust (the “Employee Trust”). ITCAN contributes cash to the Employee Trust, which the Trust uses to acquire BAT shares. The shares are then distributed to the beneficiaries – the eligible employees of ITCAN – once the awards vest under the terms of the LTIP and/or DSBS, as applicable. BAT does not pay dividends on the shares to the Employee Trust, as dividends have been waived by the Employee Trust. According to the Employee Trust’s financial statement, the assets of the Employee Trust as of December 31, 2018 consist of shares (approximate market value of £7.3 million) and very nominal cash. The trustee of the Employee Trust is AST Trust Company. ITCAN intends to continue the LTIP and DSBS programs during the course of these proceedings.

61. The Applicants have developed an Incentive Bonus Program for certain key employees during the CCAA proceedings. The Program is based on a pre-existing retention and recognition framework that BAT applies globally. It provides incentives for three groups of employees to encourage them to remain with the Applicants during the CCAA proceedings as described below:

- (a) *Leadership Team*: Approximately four members of the Applicants’ leadership team will be eligible for a bonus of up to 50% of base salary for each year of the program, with half of the amount paid in six-month recognition payouts and half at the end

of the program. The program will end at the end earlier of three years or the completion of a successful CCAA restructuring, and the bonus payments will be pro-rated based on active service during the bonus program period.

- (b) *Group 1:* Approximately six employees identified as critical will be eligible for a bonus of up to 25% to 37.5% of base salary for each year of the program, with half of the amount paid in six-month recognition payouts and half at the end of the program. The program will end at the end of earlier of two years or the completion of a successful CCAA proceeding, and the bonus payments will be pro-rated based on active service during the bonus program period.
- (c) *Group 2:* Approximately 25 employees identified as having key talents and critical skills will be eligible to receive a bonus of up to 12.5% to 25% of base salary for each year of the program, all of which will be paid at the end of the program. The program will end at the end of earlier of two years or the completion of a successful CCAA proceeding, and the bonus payments will be pro-rated based on active service during the bonus program period.

62. The Incentive Bonus Plan for the Leadership Team and Group 1 was triggered by the Applicants' initial filing, whereas the Plan for Group 2 employees will be triggered by the Applicants at a later date. In each case, the bonus payments are subject to a number of conditions, including successful performance by the employee and the employee remaining in their current role for the entire duration of the program for their group, with a full claw back if an employee resigns or is terminated for cause before the end of the program.

63. The Incentive Bonus Plan will cost an estimated \$5 million over the life of the Plan. The payments to employees will not be secured by a court-ordered charge.

(h) ***Post-Retirement and Post-Employment Benefits***

64. In both Canada and the U.S., there are unfunded plans that provide healthcare and life insurance benefits during retirement, as well as post-employment benefits, including various disability plans and medical benefits available to former or inactive employees. These benefits are available to approximately 2051 members of the DB Plans. DC Plan members are not eligible for these benefits. Approximately 148 IHGI U.S. Pension Plan members were also entitled to post-retirement health benefits from IHGI until December 31, 2018. However, this plan was terminated by IHGI effective as of December 31, 2018 and participants are required to file any and all claims incurred on or before such date for eligible care, services or products under the plan by March 31, 2019.

65. The aggregate annual cash contribution in 2018 to provide these post-employment and post-retirement benefits was approximately \$5.1 million for Canada and USD \$1.7 million for the U.S.

66. The post-retirement health plan is administered by Blue Cross in Canada and by Zenith American Solutions in the U.S. ITCAN intends to continue these programs during the course of these proceedings. However, the U.S. post-retirement health plan will only be continued to the extent necessary to process any and all claims incurred on or before December 31, 2018 (the date this plan was terminated) for eligible care, services or products under the plan that are properly filed by March 31, 2019.

(i) *Supply Chain*

67. ITCAN purchases finished conventional cigarette products from its affiliate, BAT MX to import into Canada.<sup>19</sup> Invoices from BAT MX are payable within 30 days following the month end. All ITCAN purchases of finished products from BAT affiliates referenced in this affidavit are on an agreed to, arm's length price.

68. ITCAN acquires title to the purchased finished product once it is loaded onto trucks in Mexico to be transported through the U.S. to Canada. Along the way, finished goods are warehoused in two free trade zone distribution centres located in Shelby, Montana and Cleveland, Ohio. ITCAN then imports the finished goods into Canada. Based on historical 2018 data, there are approximately four weeks' worth of finished product inventory stored in the U.S. warehouses, one-and-a-half weeks' worth of inventory in transit, and 8 to 10 days' worth of inventory in Canada at any given time. 73% of the volume of finished product that ITCAN imports (destined for sale in Manitoba, Ontario, Quebec, New Brunswick, Newfoundland and Labrador, Nova Scotia, and Prince Edward Island) crosses the Canadian border in Ontario.

69. ITCAN purchases certain finished Vogue super slim, DuMaurier super slim, and Pall Mall super slim cigarettes from ITCAN's affiliate British American Tobacco (Supply Chain WE) Limited. These cigarettes are currently imported from Poland and Switzerland to Montreal by sea or air. ITCAN takes title to these goods according to the terms of the purchase orders, which currently state that ITCAN takes title upon delivery in the Montreal port. A third party, Kuehne

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<sup>19</sup> As discussed above, ITCAN also buys certain finished goods directly from British American Tobacco (Supply Chain WE) Limited and Souza Cruz S.A.. Additionally, ITCAN buys raw materials and pays an assembly fee to Bastos du Canada Limitée, a competitor, to manufacture a small amount of Marlboro and other brands of cigarettes in Quebec.

and Nagel, manages the logistics to transport the products into Canada, including the selection of the carriers used to transport the product into Canada.

70. Similarly, ITCAN purchases certain finished John Player Choice cigarettes from ITCAN's affiliate Souza Cruz S.A. ("Souza Cruz"). These cigarettes are currently imported from Brazil to Montreal by sea or air. ITCAN takes title to these goods upon delivery in the Montreal port. Souza Cruz selects the carriers used to transport these products into Canada.

71. ITCAN purchases the Glo Products from Nicoventures.<sup>20</sup> Pursuant to a Distribution Agreement dated July 18, 2017 between ITCAN and Nicoventures, ITCAN is Nicoventures' exclusive distributor of the Glo Products in Canada. However, pursuant to a further agreement between ITCAN and ITCO, ITCO acts as the ultimate distributor of Glo Products in Canada. Nicoventures sources the Glo heater and its component parts from China, and then Kuehne and Nagel manages the logistics to transport the products into Canada, including the selection of the carriers used to transport the product into Canada. Nicoventures sources the tobacco sticks from Russia and they are transported to Canada by various air carriers (depending on availability). Currently, all of the Glo Products arrive by air in Vancouver.<sup>21</sup>

72. ITCAN purchases Vype Products from Nicoventures.<sup>22</sup> Pursuant to a Distribution Agreement dated September 11, 2017, ITCAN is Nicoventures' exclusive distributor of the Vype Products in Canada. However, pursuant to a further agreement between ITCAN and ITCO, ITCO acts as the ultimate distributor of Vype Products in Canada. Nicoventures sources the Vype device

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<sup>20</sup> ITCAN, as licensee under a Trademark Agreement with Imperial Brands Ltd., provides Nicoventures with a sub-license to use the du Maurier trademark for these and related products in Canada.

<sup>21</sup> ITCAN takes title to the Glo Products according to the terms of the purchase order, which currently states that ITCAN takes title upon delivery in the Vancouver airport.

<sup>22</sup> ITCAN, as licensee under a Trademark Agreement with Imperial Brands Ltd., provides Nicoventures with a sub-license to use the du Maurier trademark in relation to the Vype products in Canada.

and its component parts from China and the liquids from the United Kingdom. Kuehne and Nagel manages logistical issues regarding the importation of these products.

73. In addition to the two Distribution Agreements, ITCAN has also entered into a Supply of Marketing Services Agreement with Nicoventures dated July 18, 2017. Under this agreement, ITCAN provides marketing support services to Nicoventures in exchange for Nicoventures paying all “Charges” under the Agreement. The Charges consist of the direct and indirect costs attributable to the marketing support services plus a markup if ITCAN or its subsidiaries are the ones providing the services, or the costs without any markup if a third party is engaged to provide the services. ITCAN invoices the Charges to Nicoventures on a quarterly basis.

74. When finished products arrive in Canada, they are transported to various distribution centres. Pursuant to the General Sales And Distribution Agreement between ITCAN and ITCO, ITCO is in charge of distribution of finished products in the Canadian distribution centres. However, the day-to-day operation and management of the distribution centres in both Canada and the U.S. is performed by either Ryder or BJC.

75. ITCO buys finished products from ITCAN pursuant to a sales and distribution agreement (attached to this Affidavit as Exhibit “D”), which was amended pursuant to an Amendment Agreement effective January 1, 2017 (attached to this Affidavit as Exhibit “E”) to reflect the purchase and sale of the PRRPs. ITCO pays a small markup to ITCAN which covers the cost of importing the finished cigarette products (but not for Glo Products and Vype Products). Pursuant to the General Sales And Distribution Agreement, title in the finished cigarette products, Glo Products, and Vype Products is transferred from ITCAN to ITCO when they are received in an ITCO distribution centre. ITCO also buys finished paper products for roll-your-own cigarettes from third party suppliers for sale in the retail market.

76. ITCO is the only Applicant that sells finished cigarette products and PRRPs to wholesalers and retailers. ITCO typically engages Ryder or BJC to pick and pack the orders and to manage the delivery of the orders to ITCO's customers. The delivery is performed by Ryder (or a subcontracted party selected by Ryder such as Celadon), UPS, Millennium Express or Loomis Express, as the case may be. However, in remote or less densely populated areas, ITCO engages a wholesaler (Wallace & Carrey Inc.) to pick and pack the orders and to manage the delivery of those orders to ITCO's customers. The retailers and wholesalers pay ITCO for finished cigarette products through pre-authorized payments.

77. For retail sales of Vype Products and Glo Products, ITCO engages Ryder to pick and pack the orders and to manage the delivery of the orders to ITCO's customers. For online sales of Vype Products, ITCO engages Ryder to pick and pack the orders and Canada Post delivers the orders to ITCO's customers. For online sales of Glo Products, the picking and packing of orders is done at the Taste and Circle store in Vancouver described above, and Canada Post delivers the orders to ITCO's customers.

78. The Applicants also have e-commerce sites for selling the PRRPs online. For Glo Products, on April 1, 2018, ITCO began operating an internet e-commerce site over which customers residing in British Columbia who have been verified as adults can purchase Glo Products. In addition, since the passing of Bill S-5, ITCO has begun selling Vype Products to adult customers residing in Canada, excluding Quebec and Nova Scotia, through an internet e-commerce site managed by Nicoventures. ITCO has agreements with third parties that facilitate these online transactions and collection of funds on the backend.

79. It is essential to the success of these restructuring proceedings that the Applicants' global supply chain is maintained without interruption.

(j) *Tax Bonds and Letters of Credit*

80. The Applicants are required to collect federal excise taxes and import duties (collectively, “Federal Tobacco Tax”) and provincial tobacco taxes (“PTT” and, collectively with Federal Tobacco Tax, “Tobacco Taxes”) on all tobacco products imported into Canada and sold in a province. The Applicants currently hold the amounts collected as Tobacco Taxes and remit the Tobacco Taxes so collected as required. Tobacco Taxes are remitted monthly in arrears, with dates that vary by jurisdiction. The Applicants have posted bonds to the federal and provincial governmental authorities in connection with its Tobacco Tax obligations (the largest of which is with respect to its Ontario tax obligations). The Applicants also collect GST, HST, PST, and other retail sales taxes in connection with the sale of tobacco products, which are also remitted monthly in arrears (the “Sales Taxes” and, collectively with Tobacco Taxes, the “Sales & Excise Taxes”).

81. The peak monthly Federal Tobacco Tax is estimated to be approximately \$228 million, which includes the remittance payment for the month in question and the tobacco importations for a stub period within the same month (as the importation period for Federal tax purposes straddles 2 months). The peak monthly PTT is estimated to be approximately \$282 million, including an estimate to address the PTT that has been collected but is to be remitted at the next remittance date and for tobacco products imported in those provinces where importation is the triggering factor. In addition, the peak GST and HST is estimated to be approximately \$70 million, including an estimate to address the GST and HST that has been collected but is to be remitted at the next remittance date.

82. In addition to the LOC's relating to pension obligations (as described above), ITCAN and/or ITCO have posted bonds or LOCs in respect of certain obligations, including tax obligations, in the aggregate amount of approximately \$111 million.<sup>23</sup>

83. The sureties for the bonds is Ace INA Insurance. The bond documents are largely similar and an example is attached to this Affidavit as Exhibit "F".

84. On March 26, 2010, ITCAN entered into an unsecured committed Credit Agreement of \$100 million with the Bank of Nova Scotia ("BNS LOC Facility"), which is extended yearly for an additional period of 364 days. The BNS LOC Facility only permits the issuance of LOCs to meet ITCAN's obligations related to all past, present and future taxes, levies, imports, duties, deductions, withholdings, assessments, fees or other charges imposed by any governmental authority, including any interest, additions to tax or penalties. Two LOCs issued in respect of Alberta and British Columbia Provincial Tobacco Taxes in the total amount of \$30 million are the only current LOCs issued under the BNS LOC Facility.

85. ITCAN has an irrevocable standby LOC issued by HSBC for the benefit of the Minister of Finance (Ontario) in the amount of \$28 million. This LOC was given only with respect to certain of ITCAN's tax obligations. The LOC is scheduled to expire each year on December 21st but is automatically renewed for successive periods of one year unless written notice is given 90 days prior to the expiry date. No such written notice has been given.

(k) ***Banking and Cash Management System***

86. The only Applicant and Applicant subsidiary companies with bank accounts are ITCAN, ITCO, IT Services, IHGI, ITL USA, and Southward Insurance Ltd. The Canadian bank

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<sup>23</sup> In addition, IHGI has posted a LOC in the US in the amount of approximately USD\$ 0.3 million.

accounts of ITCAN, ITCO, and IT Services are with BNS and IHGI's Canadian account is with Citibank. ITCAN has a U.S. bank account with Citibank N.A. in New York City, which is used to fund IHGI's operating expenses and to pay the rent for ITCAN's New York office. (Two of ITCAN's subsidiaries, ITL USA and IHGI, have U.S. bank accounts with Citibank in Delaware and Toronto.) Southward Insurance Ltd.'s bank account is with BNS in Barbados.

87. ITCAN, ITCO and IT Services each have one Canadian dollar denominated zero balanced account with BNS. ITCAN has a second Canadian dollar denominated account (the "Master Account") used to sweep and replenish the zero balanced accounts. Positive cash balances from zero balanced accounts are automatically swept into the Master Account on a daily basis with negative cash balances likewise replenished from the Master Account.

88. Similarly, ITCAN and ITCO have US dollar denominated accounts at BNS. ITCO's US dollar denominated account is also a zero dollar balance account, with any balance automatically swept into or replenished from ITCAN's US denominated account on a daily basis. ITCAN also has two foreign currency denominated accounts at BNS: one Euro denominated account and one British Pounds Sterling denominated account. ITCO has one foreign currency denominated account in Euros. Foreign currencies are purchased periodically from a BAT related company, B.A.T. International Finance p.l.c. ("BATIF") pursuant to a Dealing Mandate agreement to pay certain payables denominated in the applicable foreign currency. For any payment in a currency for which there is no bank account, the currency is purchased from BNS at the time of the payment.

89. All bank accounts are used to pay invoices to vendors in their given currency. In addition, ITCAN's accounts are also used for Treasury transactions, while ITCO's Canadian dollar denominated account is also used to collect funds from customers.

90. Movements of cash out of bank accounts (other than one Canadian dollar denominated ITCAN account that is swept into or replenished from the Master Account) are completed through batch file transmissions to the bank except for payments in currency other than Canadian and US dollars, which are paid manually by wire transfers.

91. All of the above-mentioned BNS bank accounts are located in Canada, but are reconciled automatically on a daily basis by a foreign Finance Shared Service Centre (“FSSC”) as part of BAT’s global cash management system.

92. In addition to the foregoing, IPFS (a standalone legal entity which administers the IPFS pension plan) has a Canadian-dollar-denominated account that was used for the pensioners’ payroll and related payments such as deduction at source until January 1, 2018, at which time pension payroll was outsourced to CIBC Mellon.

93. ITCAN’s credit arrangements are extended by BATIF. A Master Intra-Group Treasury Products Agreement sets out the framework for procedures and conditions applicable to all loans made between members of the BAT group of companies on arm’s length terms. Pursuant to that agreement, and as of June 28, 2018, ITCAN has a \$30 million committed secured revolving credit facility (the “Revolving Credit Facility”) that matures on June 28, 2019.

94. Any amounts drawn under the Revolving Credit Facility that are not due before the maturity date will be payable on the maturity date. The repayment obligations of ITCAN under the Revolving Credit Facility are secured by the shares of ITCAN’s subsidiary Imperial Brands Ltd., a guarantee of Imperial Brands Ltd., and a hypothec on trademarks owned by Imperial Brands Ltd.<sup>24</sup>

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<sup>24</sup> Originally du Maurier Company Inc., which amalgamated with Imperial Brands Ltd. effective January 1, 2015.

95. With respect to BATIF's security over the Imperial Brands Ltd. shares and trademarks, ITCAN cannot:

- (a) create any security on, over or affecting these trademarks and shares without the consent of BATIF;
- (b) dispose of all or any part of the trademarks and shares without the consent of BATIF; or
- (c) do or cause or permit anything to be done which in any way depreciates, jeopardizes or otherwise prejudices the value of the trademarks and shares.

96. A critical aspect of the Revolving Credit Facility is that it contains a covenant prohibiting ITCAN and its subsidiaries from additional borrowing in excess of \$50 million without BATIF's consent.

97. ITCAN manages liquidity risk by maintaining an 18-month rolling cash forecast, which is regularly compared to actual cash flows, by maintaining adequate reserves and committed credit facilities, and by matching the maturity profiles of financial assets and liabilities.

98. The Revolving Credit Facility is available on an "as needed basis" to pay for ITCAN's operating costs including amounts payable for finished product, transportation costs, provincial and federal taxes, salaries, pension obligations and overhead. On a weekly basis, ITCAN either pays down or draws from the Revolving Credit Facility.

99. As at March 4, 2019, ITCAN had not drawn down on the Revolving Credit Facility. Prior to June 28, 2018, the amount available to be drawn down on the Revolving Credit Facility was \$350 million and it was renewed at an amount of \$30 million.

100. ITCAN currently has a \$25 million overdraft facility with the Bank of Nova Scotia which serves as a back stop to the Revolving Credit Facility. As of the date hereof, nothing has been drawn on the overdraft facility.

101. As of July 2015, ITCAN commenced inter-company netting pursuant to the In-House Cash Settlement Policy followed by the BAT group of companies globally. Once a month, all inter-company transactions between members of the BAT group of companies are pooled together and netted so that each company receives or pays one net amount. The amounts owing are paid to or by BATIF. In effect, for example, amounts owed by BAT MX to ITCAN are netted against amounts owed by ITCAN to BAT MX and the actual amount that is transferred from one company to the other, if any, is the net amount. For the most part, ITCAN is a payor as a result of these arrangements.

102. ITCAN enters into foreign exchange forward contracts with BATIF for terms not exceeding 18 months to manage its foreign currency exposure arising from anticipated cash flows in the normal course of business and which are primarily denominated in US dollars, Mexican Pesos, and British Pounds Sterling. ITCAN does not trade in derivatives for speculative purposes.

103. Prior to the filing date, a minimum cash balance of between \$10 and \$15 million was targeted in the Master Account. Funds in excess of the target amount are used to reduce the amount owing on a Revolving Credit Facility, if any. If no amounts are outstanding under the Revolving Credit Facility, ITCAN has the option to invest through BATIF.

104. ITCAN's first opportunity to invest funds with BATIF arose after ITCAN found itself in a cash-positive position once it finished paying the amounts owing under an October 27, 2015 Quebec Court of Appeal order requiring ITCAN to pay \$758 million as security into court

(the “Security Judgment”). Beginning in December 2017, ITCAN made short-term investments on a regular basis as follows:

- (a) Once a week, ITCAN reviewed its weekly cash flow forecasts to determine a minimum cash balance and the excess funds available for investing.
- (b) ITCAN communicated the amount and the duration of the investment along with a requested interest rate to BATIF. ITCAN typically invested funds for 7 to 10 days at a time.
- (c) BATIF confirmed the investment and a rate of interest based on its review of the market. The funds were automatically transferred from ITCAN’s accounts to BATIF for investing and returned along with interest at the end of the investment period.

105. ITCAN invested funds ranging from \$95 million to \$325 million in the past six months, with interest rates ranging from 1.1 to 2 percent. ITCAN’s final investment with BATIF was in the amount of \$260 million for seven days on March 5, 2019. In contemplation of applying for CCAA protection, ITCAN asked BATIF to return the \$260 million investment immediately and the funds were returned on March 11, 2019.

106. ITCAN intends to maintain its cash management system throughout the CCAA proceedings, except for ending its short-term investments with BATIF.

(1) ***Comprehensive Agreement***

107. Pursuant to a July 31, 2008 Comprehensive Agreement between ITCAN and Her Majesty the Queen in Right of Canada and the Provinces, ITCAN agreed (without admission of

liability) to make scheduled payments to the Receiver General for Canada in consideration of resolving claims associated with the trade of illicit or contraband products in Canada and related tax collection matters. A copy of the Comprehensive Agreement is attached as Exhibit "G".

108. The Comprehensive Agreement provided for an initial payment by ITCAN of \$50 million on or before December 31, 2008 (which was made) together with scheduled annual payments on April 30 of each year for the preceding fiscal year:

5. In consideration of the agreements, undertakings and obligations of the Releasing Entities under this Agreement, ITCAN shall pay to Canada, for Canada, and on behalf of and as agent for the Provinces, the amounts provided below as follows in Canadian dollars:

- (a) ITCAN shall pay as a liquidated amount \$50 million on or before December 31, 2008;
- (b) each fiscal year from 2009 to 2018 inclusive, ITCAN will make an annual payment to Canada in an amount equal to 2.65% of the Net Sales Revenue for the then most recent fiscal year completed; provided however, that once ITCAN's payments under this subparagraph total \$300 million (in addition to the \$50 million in subparagraph (a) above), no further payments or part payment under this subparagraph shall be made; and
- (c) Commencing in the first fiscal year following the satisfaction of all payment obligations in subparagraphs (a) and (b) above, and continuing for a total of five fiscal years, ITCAN will make an annual payment to Canada in an amount equal to 1% of the Net Sales Revenue for the then most recent fiscal year completed (in the event that Net Sales Revenue for any year is less than \$1 billion or the maximum quantum payable under paragraph 5 (a) and (b) above has not been paid, the percentage for that year shall increase to 2.65%); provided however, that once ITCAN's payments under this subparagraph and subparagraph (b) in the aggregate total \$350 million, no further payment or part payment under this subparagraph shall be made.

6. For each fiscal year, ITCAN shall calculate its Net Sales Revenue and so advise Canada in writing by February 15th of the next year, and (beginning in fiscal 2009) shall pay the annual amounts owing pursuant to this Agreement on or before April 30th of that year.

109. The ITCAN payments under Paragraph 5 (b) of the Comprehensive Agreement for the fiscal years commencing in 2008 are set out below:

2008	\$32,089,268
2009	\$31,801,071

2010	\$31,874,495
2011	\$30,893,937
2012	\$30,174,426
2013	\$30,614,618
2014	\$29,182,399
2015	\$30,941,824
2016	\$32,715,677
2017	\$19,712,284

110. Following the payment for fiscal 2017, the payments made by ITCAN equalled the \$300 million cap under section 5(b) of the Comprehensive Agreement and no more payments were owed under that paragraph.

111. As a result of satisfying its obligations under sections 5(a) and (b) of the Comprehensive Agreement, ITCAN is now required to make payments under section 5(c) beginning in fiscal 2018. The payment for fiscal 2018 (payable in April 2019) will be approximately \$13.9 million. The scheduled payments under paragraph 5(c) of the Comprehensive Agreement total \$50 million in the aggregate, with the last payment anticipated in 2022 for the fiscal year 2021.

(m) *Other Integral Services Provided by BAT and BAT Affiliates*

112. In addition to the manufacturing and financing services provided by certain BAT affiliates (the “BAT Counterparties”), the Applicants benefit from a wide range of services, licenses and rights provided by the BAT Counterparties, including:

- **SAP and IT Infrastructure:** As of July 2015, ITCAN’s computer systems are fully integrated with those of BAT and BAT affiliates on a global SAP computer platform. The systems integration involves all digital data and programs being hosted on a global server located in Europe as opposed to being hosted locally. ITCAN paid \$13.3 million for the year 2018 with installments remitted quarterly.

- **IT Services:** Souza Cruz, a BAT affiliate in Brazil, provides ITCAN with a full range of IT services including data centre management, local infrastructure management, application support services, service desks, on-site user support, WAN & LAN services, security services, software maintenance and licensing, and project design and build services. ITCAN paid approximately \$2.8 million in 2018 to Souza Cruz in relation to IT services with installments remitted monthly.
- **Product Development and Testing:** ITCAN paid approximately \$4.5 million in 2018 to Souza Cruz for product development and ancillary product testing with installments remitted monthly.
- **Accounting and Human Resources Services:** In 2018, ITCAN paid approximately \$2.9 million to British American Tobacco Caribbean & Central America, a BAT affiliate in Costa Rica, for various accounting (including payroll, accounts payable, accounts receivables, accounts reconciliation, data entry), reporting, treasury, and human resources work with installments remitted quarterly.
- **Innovation Royalties:** ITCAN also pays BAT 3% or 5% of its yearly net sales revenue for sales of du Maurier, Pall Mall, Viceroy, John Player and Vogue brand products, which amounted to approximately \$46.8 million in 2018, with installments remitted monthly, for a license to use innovations and technology (including patents, know-how, rights in design, copyright, database rights, and plant variety rights) and communications packages (including advertising, packaging, copy, graphics, point of sale and merchandising materials).

- **Technical and Advisory Services:** In 2018, ITCAN paid BAT technical and advisory fees of approximately \$26.8 million to benefit from BAT's corporate, public affairs, manufacturing and production, marketing, tax, accounting, and human resources expertise in relation to ITCAN's business with installments remitted quarterly.
- **Integrated Sales and Operations Plan:** Since 2003, the process of developing ITCAN's sales and operations plan has been integrated with the sales and operations planning of all BAT affiliates. The development of regional plans based on the pooled data from all markets allows ITCAN to benefit from more accurate supply and demand forecasting.
- **Global Sourcing Agreement:** ITCAN benefits from the exponentially increased buying power of the BAT group of companies when it purchases various products and services relating to the operation of the business.

113. The Applicants' agreements with the BAT Counterparties are confidential and contain commercially sensitive information of a competitive nature.

114. Although the Applicants are not arm's length from the BAT Counterparties given that they are all members of the BAT group of companies, the Applicants and the BAT Counterparties endeavour to ensure that any amounts paid for goods and services are consistent with prices that would be paid by arm's length parties in similar circumstances.

115. Certain intercompany agreements between the Applicants and the BAT Counterparties provide the BAT Counterparties with the right to terminate their agreement on the occurrence of certain insolvency events of default and/or unilaterally. The service relationships,

licenses and rights together with the manufacturing and financing services provided by the BAT Counterparties are collectively vital for preserving the value of the underlying business. Therefore, the Applicants have entered into a Accommodation Agreement dated March 12, 2019 with some of the BAT Counterparties (the “Accommodation Agreement”) in order to maintain these arrangements and not disrupt the Applicants’ operations during these CCAA proceedings. Under the Accommodation Agreement, the relevant BAT Counterparties have agreed to not exercise their termination rights while the Accommodation Agreement is in force. In exchange, the Applicants have agreed to not take certain steps in the CCAA proceedings without the agreement of the relevant BAT Counterparties, including seeking a sanction order or terminating the proceedings, initiating a sales process, or settle any material litigation. A copy of the agreed form of the Accommodation Agreement (which has been signed by the Applicants and will be signed by the relevant BAT Counterparties shortly) is attached as Exhibit “H”.

#### ***IV. The Financial Position of the Applicants***

116. ITCAN’s audited consolidated financial statements for the fiscal year ended December 31, 2018 are attached as Exhibit “I”. Certain information contained in the consolidated financial statements is summarized below. All amounts in this Affidavit are in Canadian Dollars unless otherwise specified.

(a) ***Assets***

117. As at December 31, 2018, ITCAN had total assets of \$5,535 million.

(i) *Current Assets*

118. ITCAN's current assets (as at December 31, 2018) represented \$697 million of its total assets and consisted of:

- Inventories - \$182 million;
- Trade and other receivables - \$84 million; and
- Cash and cash equivalents - \$431 million.

119. Cash and cash equivalents consist of cash and investments that are readily marketable with initial maturities not exceeding 90 days.

(ii) *Non-Current Assets*

120. ITCAN's non-current assets (as at December 31, 2018) represented \$4,838 million of its total assets and consisted of:

- Goodwill - \$3,967 million;
- Other intangible assets - \$4 million;
- Property, plant and equipment - \$17 million;
- Retirement benefit assets - \$45 million;
- Deferred tax assets - \$40 million;

- Restricted security deposit - \$762 million;<sup>25</sup> and
- Other non-current assets - \$3 million.

121. The majority of ITCAN's non-current assets are made up of goodwill, restricted security deposit, deferred tax assets, property plant and equipment, and retirement benefit assets. The \$762 million security deposit consists of the \$758 million of security, plus certain fees, that ITCAN has deposited at the Registry of the Quebec Court of Appeal pursuant to the Security Judgment.

122. Goodwill of \$3,967 million resulted from the February 1, 2000 purchase of Imasco Limited by British American Tobacco (Canada) Limited and the subsequent amalgamation of the two companies to form ITCAN. Goodwill represents the excess of the purchase price, including acquisition costs, over the fair value of the identifiable net assets acquired. Goodwill with an indefinite life is not amortized to earnings but is assessed for impairment on an annual basis. ITCAN performs its annual impairment test as at December 31, or more frequently if there are indications that impairment may have occurred.

(b) *Liabilities*

123. As at December 31, 2018, ITCAN's total liabilities were approximately \$1,088 million. These liabilities consisted of current liabilities of approximately \$867 million, and non-current liabilities of approximately \$221 million.

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<sup>25</sup> This figure included the \$758 million security ITCAN was required to pay into court under the Security Judgment. Following the release of the Quebec Appeal Judgment, the Board of Directors of ITCAN has reassessed the recoverability of the deposit and determined that the security's recoverability is, under IFRS, less than virtually certain. Consequently, a provision of approximately \$758 million will be charged to ITCAN's income statement in 2019.

(i) *Current Liabilities*

124. Current liabilities as at December 31, 2018 included the following:

- Current provisions - \$14 million;
- Non-operating payables - \$54 million;
- Income tax payable - \$222 million;
- Trade and other payables - \$190 million; and
- Government levies creditors - \$387 million.

(ii) *Non-Current Liabilities*

125. ITCAN's non-current liabilities (as at December 31, 2018) included

- Retirement benefit liabilities - \$160 million;
- Non-current payables - \$51 million; and
- Non-current provisions - \$10 million.

(c) *Equity*

126. Capital and reserves as at December 31, 2018 totalled \$4,447 million and included the following:

- Share capital - \$29 million;
- Contributed surplus - \$1,280 million;

- Accumulated other comprehensive income - \$25 million; and
- Retained earnings - \$3,113 million.

127. There are 184,174,156 issued and outstanding common shares.

(d) ***Profits***

128. ITCAN reported profits before taxes and interest of \$792 million in 2018 and \$673 million in 2017. ITCAN's profits after taxes and interest increased from \$487 million in 2017 to \$589 million in 2018.

## ***V. Need for the Requested Relief***

129. The Applicants face an existential threat from the Tobacco Litigation in Canada. The plaintiffs collectively seek hundreds of billions of dollars in damages, which, if those claims were successful, would exceed the Applicants' total assets many times over. Moreover, the Quebec Court of Appeal recently issued the Quebec Appeal Judgment, which condemns ITCAN to pay a potential maximum amount that, with interest, is over \$9 billion. Not only does this amount alone exceed the Applicants' ability to pay, there are many competing claims across Canada that still need to be resolved.

(a) ***Litigation in the Tobacco Industry***

130. The tobacco industry has been the subject of significant product liability and consumer litigation in recent decades. I am advised by Craig Lockwood of Osler and believe that, in Canada, the "traditional" types of claims that have been asserted can be broadly categorized as follows:

- (a) **“Personal Injury Claims”** (*i.e.*, claims asserting defective design and/or failures to warn in respect of various illnesses, most notably lung cancer, respiratory diseases, heart diseases, and various other forms of cancer. This category of claims also includes litigation by non-smokers with respect to the alleged ill-effects of second-hand smoke);
- (b) **“Addiction Claims”** (*i.e.*, claims asserting defective design and/or failures to warn in respect of the addictive properties of cigarettes);
- (c) **“Restitutionary Claims”** (*i.e.*, statutory and/or civil claims seeking the return of the product purchase price or disgorgement of profits based on allegations of misrepresentation and/or false advertising, most notably in relation to historical “light and mild” products); and
- (d) **“Non-Pecuniary Claims”** (*i.e.*, claims for non-monetary damages, such as moral damages and/or punitive damages, related to various categories of alleged historical misconduct).

131. Some combination of these claims are the subject of ongoing litigation in all Canadian jurisdictions (as described below). In addition, the Applicants may face material, as-yet-unasserted claims by various classes of Canadian consumers.

(b) ***The Quebec Judgment***

132. In 1998, plaintiffs filed two class actions against ITCAN, JTI and RBH in the Quebec Superior Court seeking in excess of \$20 billion in compensatory and punitive damages. On February 21, 2005, certification was granted for both cases. The class definitions include the following individuals as class members:

- **The Letourneau action:** All persons residing in Quebec who, as of September 30, 1998, were addicted to nicotine in cigarettes manufactured by the Defendants and who in addition meet the following three criteria: (i) they started smoking before September 30, 1994 and since that date have smoked principally cigarettes manufactured by the Defendants; (ii) between September 1 and September 30, 1998, they smoked on a daily basis an average of at least 15 cigarettes manufactured by the Defendants; and (iii) on February 21, 2005, or until their death if it occurred before that date, they were still smoking on a daily basis an average of at least 15 cigarettes manufactured by the Defendants. The group also includes the heirs of members who meet the criteria described above.
  
- **The Blais action:** All persons residing in Quebec who meet the following criteria: (i) having smoked before November 20, 1998 at least 12 pack years of cigarettes manufactured by the Defendants (the equivalent of a minimum of 87,600 cigarettes); and (ii) have been diagnosed, before March 12, 2012 with: (a) lung cancer, (b) cancer (squamous cell carcinoma) of the throat, namely the larynx, oropharynx or hypophalanx, or (c) emphysema. The group also includes the heirs of persons deceased after November 20, 1998 who meet the criteria described above.

(i) *Judgment and Provisional Execution*

133. The trial concluded in late 2014 and the judgment (the “Quebec Class Action Judgment”) was released on May 27, 2015. The trial judge found the co-defendants jointly liable for an amount that, after interest and as of the date of the judgment, amounts to \$15.6 billion, with

ITCAN's share being approximately \$10.6 billion. A copy of the Quebec Class Action Judgment dated May 27, 2015 is attached as Exhibit "J".

134. The Quebec Class Action Judgment included an order of provisional execution notwithstanding appeal (the "Provisional Execution Order") totalling in excess of \$1 billion for the co-defendants combined, with \$742.5 million payable by ITCAN (the "Provisional Execution Amount"). The Provisional Execution Amount was initially due and payable by July 26, 2015.

135. ITCAN brought a motion before the Quebec Court of Appeal on July 9, 2015 seeking an order cancelling the Provisional Execution Order. The Court of Appeal cancelled the Provisional Execution Order on July 23, 2015. A copy of the Court of Appeal's decision dated July 23, 2015 is attached as Exhibit "K".

136. On July 6, 2015, counsel for the Quebec Class Action plaintiffs requested that ITCAN provide them with seven days' notice of any CCAA filing. A copy of this letter from counsel is attached as Exhibit "L". ITCAN did not respond to this letter.

(ii) *Motion for Security*

137. On August 14, 2015, the plaintiffs delivered a motion seeking security in the amount of \$5 billion as a condition to proceed with the appeal. On October 27, 2015 the Court of Appeal issued the Security Judgment ordering ITCAN to pay a total of \$758 million as security, payable in equal installments of approximately \$108.3 million per quarter over seven quarters, starting on December 30, 2015. A copy of the Security Judgment is attached as Exhibit "M". The instalments have all now been paid.

138. Subsequently, ITCAN brought a motion before the Quebec Court of Appeal to vary the security payment terms. The Court of Appeal dismissed the motion on December 9, 2015. A copy of the Court of Appeal's decision dated December 9, 2015 is attached as Exhibit "N".

*(iii) The Appeal*

139. ITCAN filed its appeal submissions from the trial judgment on December 11, 2015 and the appeal was heard during the week of November 21, 2016 and on November 30, 2016. On March 1, 2019, the Quebec Court of Appeal substantially upheld the lower court's decision. The Quebec Appeal Judgment made two notable modifications to the trial judgment: (i) the total claim amount was reduced by just over \$1 million; and (ii) the claim amount was divided into 15 different increments which bear interest from various dates between November 20, 1998 and December 31, 2011 (instead of having the entire claim amount bear interest from November 20, 1998), which reduced the interest payable on the total claim amount by approximately \$3 billion. Following the rendering of the Quebec Appeal Judgment:

- (a) the total maximum liability for moral damages, with interest and additional indemnity, is over \$13.5 billion, of which ITCAN's share is \$9,064,365,117.54 with interest and additional indemnity as of the date of the Quebec Appeal Judgment; and
- (b) in addition to moral damages, ITCAN is condemned to pay punitive damages that, with interest and additional indemnity, total \$89,199,977.26 as of the date of the Quebec Appeal Judgment. In total, the Quebec Appeal Judgment condemns ITCAN to pay a maximum amount of up to \$9,153,565,094.80.

140. The Quebec Appeal Judgment orders the defendants to pay an initial deposit into court within 60 days of the judgment. ITCAN's share of the total initial deposit is \$759.2 million. ITCAN is of the view that the \$758 million security already deposited by it with the Quebec Court of Appeal should be applied to the initial deposit and that ITCAN is only required to pay an additional \$1.2 million into court. As such, ITCAN is of the view that the deposit required under the Quebec Appeal Judgment is already essentially paid into court.

141. Following the release of the Quebec Appeal Judgment, the Applicants have received the following communications:

- (a) On March 6, 2019, ITCAN's counsel received a letter from counsel for British Columbia, Manitoba, New Brunswick, Nova Scotia, Prince Edward Island, and Saskatchewan in connection with the Government Medicaid Actions (described below) requesting advance notice prior to any CCAA filing. ITCAN did not respond to this request. A copy of the March 6, 2019 letter is attached as Exhibit "O".
- (b) On March 7, 2019, ITCAN's counsel received a letter from counsel for Ontario in its Government Medicaid Action requesting advance notice prior to any CCAA filing. ITCAN did not respond to this request. A copy of the March 7, 2019 letter is attached as Exhibit "P".
- (c) On March 8, 2019, counsel for the Quebec Class Action plaintiffs sent a letter to the Board of Directors of ITCAN threatening to hold the directors personally liable if ITCAN made any payments to shareholders or related parties, and demanding copies of all liability insurance policies insuring the directors and officers of

ITCAN. ITCAN did not respond to this letter. A copy of the March 8, 2019 letter is attached as Exhibit “Q”.

(iv) *Applicants’ Inability to Pay*

142. The Applicants are unable to pay the maximum amount owing under the Quebec Appeal Judgment. While the actual amount that ITCAN would be required to pay depends on the rate of take up among class members, the potential maximum amount that ITCAN is condemned to pay under the judgment is billions of dollars more than all of its assets as of December 31, 2018.

(c) *Other Tobacco Litigation*

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.

145. I will use the Ontario Medicaid Action as an example. Her Majesty the Queen in Right of Ontario is claiming \$330 billion in damages against various defendants including: (i) ITCAN’s ultimate parent, BAT, together with the BAT Affiliates; (ii) RBH and JTI and their affiliates, Rothmans Inc., Rothmans, Benson & Hedges Inc., Altria Group, Inc., Philip Morris

U.S.A. Inc., Philip Morris International, Inc., JTI-Macdonald Corp., R.J. Reynolds Tobacco Company, R.J. Reynolds Tobacco International Inc.; and (iii) the Canadian Tobacco Manufacturers' Council, a tobacco trade group. A copy of the Ontario Medicaid Action Amended Statement of Claim is attached as Exhibit "R".

146. The Ontario Medicaid Action seeks to recover health care costs under the *Tobacco Damages and Health Care Costs Recovery Act*, 2009, S.O. 2009, C.13 (the "*Ontario Tobacco Damages Recovery Act*"). In addition to seeking damages for various alleged "tobacco related wrongs" under the *Ontario Tobacco Damages Recovery Act*, Her Majesty the Queen in Right of Ontario advances claims for damages based on an extensive array of conspiracy allegations including, without limitation, a conspiracy among:

- (a) **The "International Tobacco Industry"** alleged to have "conspired, and acted in concert in committing tobacco related wrongs";<sup>26</sup>
- (b) **The "Canadian Tobacco Industry"** alleged to have "conspired and acted in concert to prevent the Crown and persons in Ontario and other jurisdictions from acquiring knowledge of the harmful and addictive properties of cigarettes, and committed tobacco related wrongs in circumstances where they knew or ought to have known that harm and health care costs would result from acts done in furtherance of the conspiracy, concert of action and common design.";<sup>27</sup> and
- (c) **Each of the "Corporate Groups"** including the BAT Group Members (defined to include BAT, B.A.T Industries p.l.c., and British American Tobacco (Investments) Limited) alleged to have caused persons in Ontario to start to, or continue to "smoke

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<sup>26</sup> Paragraph 86 of the Ontario Medicaid Action Amended Statement of Claim.

<sup>27</sup> Paragraph 108 of the Ontario Medicaid Action Amended Statement of Claim.

cigarettes manufactured and promoted by the Defendants” or exposed such persons to cigarette smoke thereby creating an “increased risk of tobacco related disease.”<sup>28</sup>

147. Furthermore, Her Majesty the Queen in Right of Ontario relies on section 4 of the *Ontario Tobacco Damages Recovery Act* to assert that “the Defendants are jointly and severally liable for the cost of health care benefits provided to insured persons in Ontario resulting from tobacco related disease or the risk of tobacco related disease.”<sup>29</sup>

148. The New Brunswick Medicaid trial is currently scheduled to begin in November 2019 under a court order, but will have to be rescheduled as a result of certain recently-released motion decisions. The other Medicaid actions, including the Ontario Medicaid Action, remain at more preliminary stages.

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.<sup>30</sup> 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. Copies of the class action Statements of Claim are attached as Exhibit “S”.

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<sup>28</sup> Paragraph 141 of the Ontario Medicaid Action Amended Statement of Claim.

<sup>29</sup> Paragraph 158 of the Ontario Medicaid Action Amended Statement of Claim.

<sup>30</sup> 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.

150. As in the Government Medicaid Actions, certain of the class actions allege a conspiracy among the defendants designed to prevent consumers from learning of the health dangers associated with cigarettes.

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. ITCAN was served with certification materials on September 7, 2011. ITCAN has alleged that the Growers' Action is time barred. In a decision dated June 30, 2014, the Court dismissed this preliminary challenge. ITCAN was granted leave to appeal on April 23, 2015. The appeal was heard by the Divisional Court on April 21, 2016 and dismissed in July 2016. Leave to appeal to the Court of Appeal for Ontario was sought and was dismissed in November 2016. The case remains at a preliminary stage and no certification hearing date has yet been set.

## ***VI. Relief Sought***

### ***(a) Stay of Proceedings***

152. The Applicants are insolvent and require a stay of proceedings and other protections provided by the CCAA so that they are provided with the time to restructure their affairs and attempt to maximize enterprise value. The Applicants are also seeking to have the stay extended to their non-applicant subsidiaries, including Liggett & Meyers Tobacco Company of Canada Limited, because they are highly integrated with the Applicants and are indispensable to the Applicants' business and their restructuring.

153. As described above, the stay of proceedings is proposed to extend to all Tobacco Claims against not only the Applicants, but also against BAT and the BAT Affiliates. The Applicants believe that it is appropriate to do so for several reasons, including:

- (a) ITCAN, BAT and the BAT Affiliates are named as co-defendants in class actions and health care recovery proceedings across Canada and are alleged to be jointly and severally liable for having engaged in a conspiracy to suppress information regarding the dangers of smoking and to encourage smoking. These claims against ITCAN, BAT, and the BAT Affiliates can only be effectively determined in one forum. The Applicants therefore seek a stay of proceedings in favour of BAT and the BAT Affiliates with the objective of facilitating a global resolution of the Tobacco Claims; and
- (b) A stay of proceedings in favor of BAT and the BAT Affiliates will allow ITCAN, BAT, and the BAT Affiliates to focus on developing and implementing a plan of compromise or arrangement without the costs and distraction that would inevitably ensue if the plaintiffs were to continue pursuing the Tobacco Claims against BAT and the BAT Affiliates at the same time as this CCAA proceeding.

(b) *Monitor*

154. FTI Consulting Canada Inc. (“FTI”) has consented to act as the Monitor of the Applicants under the CCAA. A copy of the Monitor’s consent is attached as Exhibit “T”.

(c) *Administration Charge*

155. The Applicants propose that the Monitor along with its counsel and counsel to the Applicants be granted a court-ordered charge on all of the present and future assets, property and

undertaking of the Applicants (the “Property”) as security for their respective fees and disbursements relating to services rendered in respect of the Applicants up to a maximum amount of \$5 million (the “Administration Charge”). The Administration Charge is proposed to rank *pari passu* with the Tobacco Claimant Representative Charge (as defined in the Initial Order) and to have first priority over all other charges.

(d) ***Tobacco Claimant Representative***

156. The Applicants propose that the Honourable Warren K. Winkler be appointed by the Court as the Tobacco Claimant Representative to represent the interests of Tobacco Claimants (excluding Government Claimants) in the CCAA proceedings on an interim basis. I understand that an Affidavit of Nancy Roberts, sworn on March 12, 2019, has been filed to address this issue.

(e) ***Directors’ and Officers’ Protection***

157. I am one of four individuals currently serving on the Board of Directors of both ITCAN and ITCO. I have been on the Boards since June 1, 2013. The other three directors, their additional roles (if any), and their start dates are set out below:

- (a) Jorge Araya: A member of the Boards since January 16, 2015. He is also the President and CEO of ITCAN.
- (b) Tamara Gitto: A member of the Boards since December 31, 2012. She is also the Vice President, Legal and External Affairs of ITCAN and the Vice President, Law and General Counsel of ITCO.
- (c) Robert Casey: A member of the ITCAN Board since March 11, 2019. He is also the Assistant General Counsel – Corporate Legal for British-American Tobacco

(Holdings) Limited and a former director of various BAT Affiliates, including BATIF and B.A.T Industries p.l.c.

158. The Applicants require the continuing support and insight of their Directors and Officers (the “Directors”) to preserve the value of the Applicants’ business as a going concern enterprise and to address the financial challenges associated with these CCAA proceedings.

159. I am advised by Marc Wasserman of Osler and believe that, in certain circumstances, directors can be held liable for certain obligations of a company owing to employees and government entities, which may include unpaid accrued wages, unpaid accrued vacation pay, unremitted source deductions, health taxes, workers’ compensation and other payroll related obligations (the “Employee Liabilities”). In addition, the Applicants are required to collect Federal Tobacco Taxes and PTT on all tobacco products imported into Canada and sold in a province. The Applicants also collect and remit Sales Taxes. I am further advised by Marc Wasserman and believe that the requirement of the Applicants to collect and remit Sales & Excise Taxes likewise creates potential financial exposure for the Directors.

160. Given the discreet nature of the potential Director liabilities associated with each of the potential Employee Liabilities and the Sales & Excise Taxes, the Applicants are seeking separate charges for the Employee Liabilities (the “Directors Charge”) and Sales & Excise Taxes (the “Sales & Excise Tax Charge”). This approach has the advantage of segregating the potential Director liabilities arising from different aspects of the Applicant’s business and creates transparency for stakeholders such as, for example, the government entities as the intended beneficiaries of the proposed Sales & Excise Tax Charge.

161. The Applicants maintain director and officer liability insurance (the “D&O Insurance”) extending primary coverage with \$15 million aggregate limits of liability and excess

liability policies with cumulative aggregate limits of liability of \$230 Million. The Applicants also granted contractual indemnities in favour of the Directors. However, the economic value of contractual indemnities granted by entities that are admittedly insolvent is questionable. Likewise, the Directors are collectively reluctant to rely solely on the D&O Insurance given the contractual contingencies and uncertainty associated with possible coverage related issues beyond their control in a complex restructuring.

162. With respect to the Employee Liabilities, the Applicants sought the assistance of FTI, in its capacity as proposed Monitor, to estimate the potential scope of the Employee Liabilities. The largest payroll period was used as a proxy and extended to cover the stub period between the payroll cut off date and payment date resulting in a total estimated exposure of approximately \$13 million. Although the Applicants intend to comply with applicable laws with respect to matters affecting it, the failure to successfully complete a restructuring creates the prospect of material personal liabilities for Directors.

163. In light of the potential liabilities and the uncertainties surrounding available indemnities and insurance, the Directors have indicated to the Applicants that their continued participation in this proceeding requires the granting of a \$16 million Directors Charge. In addition, the proposed Initial Order provides that Directors will only have recourse to the Directors' Charge as a "back-stop" in the event that the D&O Insurance (which covers most typical director and officer liabilities) is not available or applicable.

164. It is imperative that the Directors have the confidence that they will be insulated to the extent possible from post-filing claims arising from the discharge of their duties for the benefit of all stakeholders. Granting the requested Directors Charge will therefore pave the way for the Directors to focus on the ultimate objective of working towards developing and implementing a

successful plan of compromise or arrangement to permit the Applicants to emerge from this CCAA proceeding as a viable business.

(f) *Sales & Excise Tax Charge*

165. As described previously in this affidavit, the Applicants collect significant amounts of Sales & Excise Taxes with responsibility for remitting these sums to the applicable government authorities on statutory remittance dates.

166. With respect to the Federal Tobacco Tax, ITCAN utilizes the “self-assessment” method which involves ITCAN calculating the tax payable for the import of tobacco in any given month and remitting those taxes on the payment date in the following month. There are two methods for collection and remittance of PTT: the purchase method and the sales method. Under the purchase method, ITCAN collects PTT when tobacco products are delivered to its distribution centres. Under the sales method, ITCAN collects PTT when tobacco products are sold to its customers. The specific collection and remittance method in each jurisdiction is dictated by each province.

167. The Directors have considered alternative methods for the collection and remittance of Sales & Excise Taxes such as segregation of funds or accelerated remittances with a view to limiting the corresponding financial exposure associated with non-payment. These deliberations resulted in the conclusion that continuing with current practices is the most viable option from an operational perspective. The alteration of current practices would materially impair the Applicants’ liquidity and the implementation of new procedures contemporaneously with the Applicants initiating a Court supervised restructuring process is viewed as increasing the risk profile of the Directors since the current practices have been reliable in the past.

168. Collected but unremitted Sales Taxes and Tobacco Taxes at any given time have been estimated with the assistance of FTI in its capacity as Proposed Monitor, and can exceed \$70 million and \$510 million respectively. The collection and remittance obligations for Sales & Excise Taxes therefore exposes the Directors to significant financial liabilities.

169. As a result, it is proposed that this Honourable Court grant a Sales & Excise Tax Charge in favour of Canadian federal, provincial, and territorial authorities that are entitled to receive payments or collect monies from the Applicants in respect of Sales & Excise Taxes in the amount of \$580 million over the Applicants' property to secure the remittance of any collected but unremitted Sales & Excise Taxes. The quantum of the Sales & Excise Tax Charge takes into account the bonds and letters of credit posted with applicable governmental authorities to avoid double counting. In light of the proposed Sales & Excise Tax Charge, the Initial Order also provides that the applicable government authorities be stayed from requiring that any additional bonding or other security be posted by or on behalf of the Applicants in connection with Sales Taxes.

170. The granting of the requested Sales & Excise Tax Charge is intended to satisfy any concerns that the applicable governmental authorities may have regarding the treatment of Sales & Excise Taxes in these proceedings. The Sales & Excise Sales Tax Charge should assure such governmental authorities that there is no need for concern regarding the Applicant's remittance of Sales & Excise Taxes in accordance with its ordinary practice and no need to seek to impose further bonding requirements on the Applicants with respect to such taxes.

(g) ***Priority of Court-Ordered Charges***

171. It is proposed that the relative priority of the Administration Charge, the Directors' Charge and the Sales & Excise Tax Charge shall be as follows:

First – Administration Charge (to the maximum amount of \$5 million) and the Tobacco Claimant Representative Charge (to the maximum amount of \$1 million), *pari passu*;;

Second – Directors’ Charge (to the maximum amount of \$16 million); and

Third – Sales & Excise Tax Charge (to the maximum amount of \$580 million).

(h) ***Cash Flow Forecast***

172. ITCAN has prepared 13-week cash flow projections and the underlying assumptions as required by the CCAA. A copy of the cash flow projections is attached as Exhibit “U”. The cash flow projections demonstrate that the Applicants have sufficient liquidity to continue going concern operations during the initial stay period. I confirm that:

- (a) All material information relative to the 13-week cash flow projections and to the underlying assumptions has been disclosed to FTI in its capacity as Monitor; and
- (b) Senior Management has taken all actions that it considers necessary to ensure that:
  - (i) the individual assumptions underlying the 13-week cash flow projections are appropriate in the circumstances; and
  - (ii) the individual assumptions underlying the 13-week cash flow projections, taken as a whole, are appropriate in the circumstances.

173. The Applicants anticipate that the Monitor will provide oversight and assistance and will report to the Court in respect of ITCAN’s actual results relative to the cash flow forecast during this proceeding.

(i) ***Critical Suppliers***

174. In addition to the standard provisions in the Model Order, the Applicants also seek the entitlement, but not the requirement, to pay the following expenses:

- (a) with the consent of the Monitor, amounts for goods or services actually supplied to the Applicants prior to the date of the Initial Order by various third-party suppliers including logistics or supply chain providers, customs brokers and freight forwarders; providers of information technology, social media marketing strategies and publishing services; and in respect of the Loyalty Program.
- (b) any other third-party suppliers, if, in the opinion of the Applicants, such payment is necessary or desirable to preserve the operations of the business.
- (c) any royalties due to arm's length parties.
- (d) with the consent of the Monitor, amounts for inventory and other intercompany supplies actually supplied to the Applicants by BAT and its affiliates prior to the Initial Order and amounts due prior to the Initial Order for shared services, licenses or rights provided to the Applicants by BAT and its affiliates. For any amounts that become due after the Initial Order is granted, the Applicants are permitted to continue paying amounts owing to BAT and its affiliates for transactions in the ordinary course of business or as otherwise approved by the Monitor.

(j) ***Chapter 15 Proceedings***

175. FTI, as Monitor, intends to initiate a case under chapter 15 of Title 11 of the United States Code (the "Bankruptcy Code") on behalf of ITCAN, seeking (a) recognition of the Monitor

as the foreign representative of ITCAN, (b) recognition of this CCAA proceeding as a foreign main proceeding pursuant to sections 1515, 1517 and 1520 of the Bankruptcy Code, (c) recognition and enforcement of the Initial CCAA Order, and (d) other appropriate relief under the Bankruptcy Code (the “Chapter 15 Case”).

176. FTI, as Monitor, intends to file the Chapter 15 Case in the United States Bankruptcy Court for the Southern District of New York, where it maintains its principle place of business in the United States.

(k) *Conclusion*

177. I believe that granting the Initial CCAA Order sought by the Applicants is in the best interests of the Applicants and all interested parties. Without the requested stay, the Applicants face cessation of going concern operations, the liquidation of their assets and the loss of their employees’ jobs. Furthermore, a successful restructuring of the Applicants’ business will avoid the pitfalls associated with contraband tobacco manufacturers having the opportunity to gain additional market share to the detriment of the industry and authorities that regulate and tax the sale of tobacco related products for the benefit of the public at large.

178. The Applicants require a realistic dialogue with their stakeholders under the protection of the CCAA with the goal of negotiating a compromise of the Tobacco Claims, while maintaining the ongoing value of the business. The granting of the requested stay of proceedings and the other relief sought will permit an orderly restructuring of the Applicants’ affairs under Court supervision, with minimal short-term disruption to their business.

179. BAT is a publicly traded company that is listed, among other places, on the London Stock Exchange and the New York Stock Exchange. The Applicants have to take into account

potential public market considerations in New York and London in their CCAA application, including in relation to notice and timing of their filing.

SWORN BEFORE ME at the City of  
Toronto, in the Province of Ontario, this  
12<sup>th</sup> day of March, 2019.

Waleed Malik  
Commissioner for Taking Affidavits

WALEED MALIK  
LSO. No. 678460

Eric Thauvette  
Eric Thauvette

### 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
<b>I. Government Medicaid Actions</b>	
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.
<b>II. Class Actions</b>	
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	<p>See description of the Growers' Action in the body of the Affidavit.</p>
<p><b>III. Other Proceedings</b></p>	
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>

<b>Jurisdiction</b>	<b>Description</b>
	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.

**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**

Court File No:

*Ontario*

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

Proceeding commenced at Toronto

**AFFIDAVIT OF ERIC THAUVETTE**  
(Sworn March 12, 2019)

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

Matter No: 1144377

**VCD'4''**

**ONTARIO  
SUPERIOR COURT OF JUSTICE  
COMMERCIAL LIST**

THE HONOURABLE )  
JUSTICE MCEWEN ) TUESDAY, THE 12TH  
DAY OF MARCH, 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 IMPERIAL TOBACCO CANADA  
LIMITED AND IMPERIAL TOBACCO COMPANY LIMITED  
(the "Applicants")

**AMENDED AND RESTATED INITIAL ORDER**

THIS APPLICATION, made by the Applicants, pursuant to the *Companies' Creditors Arrangement Act*, R.S.C. 1985, c. C-36, as amended (the "CCAA") was heard this day at 330 University Avenue, Toronto, Ontario.

ON READING (i) the affidavit of Eric Thauvette sworn March 12, 2019 and the exhibits thereto (the "**Thauvette Affidavit**"), (ii) the affidavit of Nancy Roberts sworn March 12, 2019, and (iii) the pre-filing report dated March 12, 2019 (the "**Monitor's Pre-Filing Report**") of FTI Consulting Canada Inc. ("**FTI**") in its capacity as the proposed Monitor of the Applicants, and on hearing the submissions of counsel for the Applicants, BAT (as defined herein), FTI and the Honourable Warren K. Winkler, Q.C. in his capacity as proposed Court-Appointed Mediator (as defined herein), and on reading the consent of FTI to act as the Monitor,

**SERVICE**

1. THIS COURT ORDERS that the time for service and filing of the Notice of Application and the Application Record is hereby abridged and validated so that this Application

is properly returnable today and hereby dispenses with further service thereof.

## **APPLICATION**

2. THIS COURT ORDERS AND DECLARES that the Applicants are companies to which the CCAA applies.

## **PLAN OF ARRANGEMENT**

3. THIS COURT ORDERS that the Applicants, individually or collectively, shall have the authority to file and may, subject to further order of this Court, file with this Court a plan of compromise or arrangement (hereinafter referred to as the “**Plan**”).

## **DEFINITIONS**

4. THIS COURT ORDERS that for purposes of this Order:

- (a) “**BAT**” means British American Tobacco p.l.c.;
- (b) “**BAT Group**” means, collectively, BAT, BATIF, B.A.T Industries p.l.c., British American Tobacco (Investments) Limited, Carreras Rothmans Limited or entities related to or affiliated with them other than the Applicants and the ITCAN Subsidiaries;
- (c) “**BATIF**” means B.A.T. International Finance p.l.c.;
- (d) “**Co-Defendants**” means JTI-Macdonald Corp. and Rothmans, Benson & Hedges Inc.;
- (e) “**Deposit Posting Order**” means the order of the Quebec Court of Appeal granted October 27, 2015 or any other Order requiring the posting of security or the payment of a deposit in respect of the Quebec Class Actions;
- (f) “**ITCAN**” means Imperial Tobacco Canada Limited;
- (g) “**ITCAN Subsidiaries**” means the direct and indirect subsidiaries of the Applicants listed in Schedule “B”;

- (h) “**Pending Litigation**” means any and all actions, applications and other lawsuits existing at the time of this Order in which any of the Applicants is a named defendant or respondent (either individually or with other Persons (as defined below)) relating in any way whatsoever to a Tobacco Claim, including without limitation the litigation listed in Schedule “A”;
- (i) “**Quebec Class Actions**” means the proceedings in the Quebec Superior Court and the Quebec Court of Appeal in (i) *Cécilia Létourneau et al. v. JTI Macdonald Corp., Imperial Tobacco Canada Limited and Rothmans, Benson & Hedges Inc.* and (ii) *Conseil Québécois sur le Tabac et la Santé and Jean-Yves Blais v. JTI Macdonald Corp., Imperial Tobacco Canada Limited and Rothmans, Benson & Hedges Inc.* and all decisions and orders in such proceedings, including, without limitation, the Deposit Posting Order;
- (j) “**Sales & Excise Taxes**” means all goods and services, harmonized sales or other applicable federal, provincial or territorial sales taxes, and all federal excise taxes and customs and import duties and all federal, provincial and territorial tobacco taxes;
- (k) “**Tobacco Claim**” means any right or claim (including, without limitation, a claim for contribution or indemnity) of any Person against or in respect of the Applicants, the ITCAN Subsidiaries or any member of the BAT Group that has been advanced (including, without limitation, in the Pending Litigation), that could have been advanced or that could be advanced, and whether such right or claim is on such Person’s own account, on behalf of another Person, as a dependent of another Person, or on behalf of a certified or proposed class, or made or advanced as a government body or agency, insurer, employer, or otherwise, under or in connection with:
- (i) applicable law, to recover damages in respect of the development, manufacture, production, marketing, advertising, distribution, purchase or sale of Tobacco Products, the use of or exposure to Tobacco Products or any representation in respect of Tobacco Products, in Canada, or in the case

of any of the Applicants, anywhere else in the world; or

- (ii) the legislation listed on Schedule “C”, as may be amended or restated, or similar or analogous legislation that may be enacted in future,

excluding any right or claim of a supplier relating to goods or services supplied to, or the use of leased or licensed property by, the Applicants, the ITCAN Subsidiaries or any member of the BAT Group; and

- (l) **“Tobacco Products”** means tobacco or any product made or derived from tobacco or containing nicotine that is intended for human consumption, including any component, part, or accessory of or used in connection with a tobacco product, including cigarettes, cigarette tobacco, roll your own tobacco, smokeless tobacco, electronic cigarettes, vaping liquids and devices, heat-not-burn tobacco, and any other tobacco or nicotine delivery systems and shall include materials, products and by-products derived from or resulting from the use of any tobacco products.

## **POSSESSION OF PROPERTY AND OPERATIONS**

5. THIS COURT ORDERS that the Applicants shall remain in possession and control of their respective current and future assets, undertakings and properties of every nature and kind whatsoever, and wherever situate including all proceeds thereof (the **“Property”**). Subject to further Order of this Court, the Applicants shall continue to carry on business in a manner consistent with the preservation of their business (the **“Business”**) and Property. The Applicants are authorized and empowered to continue to retain and employ the employees, independent contractors, consultants, agents, experts, accountants, counsel and such other persons (collectively **“Assistants”**) currently retained or employed by them, with liberty to retain such further Assistants as they deem reasonably necessary or desirable in the ordinary course of business, to preserve the value of the Property or Business or for the carrying out of the terms of this Order.

6. THIS COURT ORDERS that the Applicants shall be entitled to continue to utilize the central cash management system currently in place as described in the Thauvette Affidavit or replace it with another substantially similar central cash management system (the **“Cash**

**Management System**”) and that any present or future bank or other Person providing the Cash Management System (including, without limitation, BATIF and its affiliates, The Bank of Nova Scotia and Citibank, N.A.) shall not be under any obligation whatsoever to inquire into the propriety, validity or legality of any transfer, payment, collection or other action taken under the Cash Management System, or as to the use or application by the Applicants of funds transferred, paid, collected or otherwise dealt with in the Cash Management System, shall be entitled to provide the Cash Management System without any liability in respect thereof to any Person other than the Applicants, pursuant to the terms of the documentation applicable to the Cash Management System, and shall be, in its capacity as provider of the Cash Management System, an unaffected creditor under the Plan with regard to any claims or expenses it may suffer or incur in connection with the provision of the Cash Management System.

7. THIS COURT ORDERS that the Applicants shall be entitled but not required to pay the following expenses whether incurred prior to, on or after the date of this Order:

- (a) all outstanding and future wages, salaries, commissions, compensation, vacation pay, bonuses, incentive and share compensation plan payments, employee and retiree pension and other benefits and related contributions and payments (including, without limitation, expenses related to the Applicants’ employee and retiree medical, dental, disability, life insurance and similar benefit plans or arrangements, employee assistance programs and contributions to or any payments in respect of the Applicants’ other retirement programs), reimbursement expenses (including, without limitation, amounts charged to corporate credit cards), termination pay, salary continuance and severance pay payable to employees, independent contractors and other personnel, in each case incurred in the ordinary course of business and consistent with existing compensation policies and arrangements or with Monitor approval;
- (b) the fees and disbursements of any Assistants retained or employed by the Applicants, including without limitation in respect of any proceedings under Chapter 15 of the United States Bankruptcy Code, 11 U.S.C. §§ 101-1330, as amended, at their standard rates and charges;

- (c) with the consent of the Monitor, amounts for goods or services actually supplied to the Applicants prior to the date of this Order:
  - (i) by logistics or supply chain providers, including customs brokers and freight forwarders;
  - (ii) by providers of information technology, social media marketing strategies and publishing services; and
  - (iii) in respect of the Loyalty Program as set out in the Thauvette Affidavit;
- (d) with the consent of the Monitor, amounts payable in respect of any Intercompany Transactions (as defined herein); and
- (e) by other third party suppliers, if, in the opinion of the Applicants, such payment is necessary or desirable to preserve the operations of the Business or the Property.

8. THIS COURT ORDERS that, except as otherwise provided to the contrary herein, the Applicants shall be entitled but not required to pay all reasonable expenses incurred by the Applicants in carrying on the Business in the ordinary course after this Order, and in carrying out the provisions of this Order, which expenses shall include, without limitation:

- (a) all expenses and capital expenditures reasonably necessary for the preservation of the Property or the Business including, without limitation, payments on account of insurance (including directors and officers insurance), maintenance and security services;
- (b) capital expenditures other than as permitted in clause (a) above to replace or supplement the Property or that are otherwise of benefit to the Business, provided that Monitor approval is obtained for any single such expenditure in excess of \$1 million or an aggregate of such expenditures in a calendar year in excess of \$5 million; and
- (c) payment for goods or services supplied or to be supplied to the Applicants on or after the date of this Order (including the payment of any royalties).

9. THIS COURT ORDERS that the Applicants are authorized to complete outstanding transactions and engage in new transactions with any member of the BAT Group and to continue, on and after the date hereof, to buy and sell goods and services and to allocate, collect and pay costs, expenses and other amounts from and to the members of the BAT Group, including without limitation in relation to head office and shared services, finished, unfinished and semi-finished materials, personnel, administrative, technical and professional services, and royalties and fees in respect of trademark licenses (collectively, together with the Cash Management System and all transactions and all inter-company funding policies and procedures between any of the Applicants and any member of the BAT Group, the “**Intercompany Transactions**”) in the ordinary course of business as described in the affidavit or as otherwise approved by the Monitor. All Intercompany Transactions in the ordinary course of business between the Applicants and any member of the BAT Group, including the provision of goods and services from any member of the BAT Group to any of the Applicants, shall continue on terms consistent with existing arrangements or past practice or as otherwise approved by the Monitor.

10. THIS COURT ORDERS that the Applicants shall remit, in accordance with legal requirements, or pay (whether levied, accrued or collected before, on or after the date of this Order):

- (a) any statutory deemed trust amounts in favour of the Crown in right of Canada or of any Province thereof or any other taxation authority which are required to be deducted from employees’ wages, including, without limitation, amounts in respect of (i) employment insurance, (ii) Canada Pension Plan, (iii) Quebec Pension Plan, and (iv) income taxes;
- (b) all Sales & Excise Taxes required to be remitted by the Applicants in connection with the Business; and
- (c) any amount payable to the Crown in right of Canada or of any Province thereof or any political subdivision thereof or any other taxation authority in respect of municipal realty, municipal business or other taxes, assessments or levies of any nature or kind which are entitled at law to be paid in priority to claims of secured creditors and which are attributable to or in respect of the carrying on of the Business by the Applicants.

11. THIS COURT ORDERS that the Applicants are, subject to paragraph 12, authorized to post and to continue to have posted, cash collateral, letters of credit, performance bonds, payment bonds, guarantees and other forms of security from time to time, in an aggregate amount not exceeding \$111 million (the “**Bonding Collateral**”), to satisfy regulatory or administrative requirements to provide security that have been imposed on the Applicants in the ordinary course and consistent with past practice in relation to the collection and remittance of federal excise taxes and customs and import duties and federal, provincial and territorial tobacco taxes, whether the Bonding Collateral is provided directly or indirectly by the Applicants as such security.

12. THIS COURT ORDERS that the Canadian federal, provincial and territorial authorities entitled to receive payments or collect monies from the Applicants in respect of Sales & Excise Taxes are hereby stayed during the Stay Period from requiring that any additional bonding or other security be posted by or on behalf of the Applicants in connection with Sales & Excise Taxes, or any other matters for which such bonding or security may otherwise be required.

13. THIS COURT ORDERS that until a real property lease is disclaimed or resiliated in accordance with the CCAA, the Applicants shall pay all amounts constituting rent or payable as rent under real property leases (including, for greater certainty, common area maintenance charges, utilities and realty taxes and any other amounts payable to the landlord under the lease) or as otherwise may be negotiated between the relevant Applicant and the landlord from time to time (“**Rent**”), for the period commencing from and including the date of this Order, at such intervals as such Rent is usually paid in the ordinary course of business. On the date of the first of such payments, any Rent relating to the period commencing from and including the date of this Order shall also be paid.

14. THIS COURT ORDERS that, except as specifically permitted herein, the Applicants are hereby directed, until further Order of this Court: (a) to make no payments of principal, interest thereon or otherwise on account of amounts owing by the Applicants or claims to which they are subject to any of their creditors as of this date and to post no security in respect of such amounts or claims, including pursuant to an order or judgment; (b) to grant no security interests, trust, liens, charges or encumbrances upon or in respect of any of their Property; and (c) to not grant credit or incur liabilities except in the ordinary course of the Business.

**RESTRUCTURING**

15. THIS COURT ORDERS that the Applicants shall, subject to such requirements as are imposed by the CCAA, have the right to:

- (a) permanently or temporarily cease, downsize or shut down any of their respective businesses or operations and to dispose of redundant or non-material assets not exceeding \$1,000,000 in any one transaction or \$5,000,000 in the aggregate;
- (b) terminate the employment of such of its employees or temporarily lay off such of its employees as it deems appropriate;
- (c) pursue all avenues of refinancing of the Business or Property, in whole or part, subject to prior approval of this Court being obtained before any material refinancing; and
- (d) pursue all avenues to resolve any of the Tobacco Claims, in whole or in part,

all of the foregoing to permit the Applicants to proceed with an orderly restructuring of the Business (the “**Restructuring**”).

16. THIS COURT ORDERS that the Applicants shall provide each of the relevant landlords with notice of the relevant Applicant’s intention to remove any fixtures from any leased premises at least seven (7) days prior to the date of the intended removal. The relevant landlord shall be entitled to have a representative present in the leased premises to observe such removal and, if the landlord disputes the relevant Applicant’s entitlement to remove any such fixture under the provisions of the lease, such fixture shall remain on the premises and shall be dealt with as agreed between any applicable secured creditors, such landlord and such Applicant, or by further Order of this Court upon application by such Applicant on at least two (2) days’ notice to such landlord and any such secured creditors. If the relevant Applicant disclaims or resiliates the lease governing such leased premises in accordance with Section 32 of the CCAA, it shall not be required to pay Rent under such lease pending resolution of any such dispute (other than Rent payable for the notice period provided for in Section 32(5) of the CCAA), and the disclaimer or

resiliation of the lease shall be without prejudice to such Applicant's claim to the fixtures in dispute.

17. THIS COURT ORDERS that if a notice of disclaimer or resiliation is delivered pursuant to Section 32 of the CCAA, then (a) during the notice period prior to the effective time of the disclaimer or resiliation, the landlord may show the affected leased premises to prospective tenants during normal business hours, on giving the relevant Applicant and the Monitor 24 hours' prior written notice, and (b) at the effective time of the disclaimer or resiliation, the relevant landlord shall be entitled to take possession of any such leased premises without waiver of or prejudice to any claims or rights such landlord may have against such Applicant in respect of such lease or leased premises, provided that nothing herein shall relieve such landlord of its obligation to mitigate any damages claimed in connection therewith.

#### **STAY OF PROCEEDINGS**

18. THIS COURT ORDERS that until and including April 11, 2019, or such later date as this Court may order (the "**Stay Period**"), no proceeding or enforcement process in any court or tribunal (each, a "**Proceeding**"), including but not limited to any Pending Litigation and any other Proceeding in relation to any other Tobacco Claim, shall be commenced, continued or take place against or in respect of the Applicants, the ITCAN Subsidiaries, the Monitor, any of their respective employees and representatives acting in that capacity, the Court-Appointed Mediator, or affecting the Business or the Property or the funds deposited pursuant to the Deposit Posting Order except with the written consent of the Applicants and the Monitor, or with leave of this Court, and any and all Proceedings currently under way or directed to take place against or in respect of any of the Applicants or the ITCAN Subsidiaries, any of their respective employees and representatives acting in that capacity or affecting the Business or the Property or the funds deposited pursuant to the Deposit Posting Order are hereby stayed and suspended pending further Order of this Court. All counterclaims, cross-claims and third party claims of the Applicants in the Pending Litigation are likewise subject to this stay of Proceedings during the Stay Period.

19. THIS COURT ORDERS that, during the Stay Period, (i) none of the Pending Litigation or any Proceeding in relation to any other Tobacco Claim shall be commenced, continued, or take place against or in respect of any Person named as a defendant or respondent in any of the Pending Litigation (such Persons the "**Other Defendants**"); and (ii) no Proceeding in

Canada that relates in any way to a Tobacco Claim or to the Applicants, the Business or the Property shall be commenced, continued or take place against or in respect of any member of the BAT Group except, in either case, with the written consent of the Applicants and the Monitor, or with leave of this Court, and any and all such Proceedings currently underway or directed to take place against or in respect of the Other Defendants or any member of the BAT Group, or affecting the Business or the Property or the funds deposited pursuant to the Deposit Posting Order are hereby stayed and suspended pending further Order of this Court.

20. THIS COURT ORDERS that, to the extent any prescription, time or limitation period relating to any Proceeding against or in respect of the Applicants, the ITCAN Subsidiaries, any Other Defendant or any member of the BAT Group that is stayed pursuant to this Order may expire, the term of such prescription, time or limitation period shall hereby be deemed to be extended by a period equal to the Stay Period.

#### **NO EXERCISE OF RIGHTS OR REMEDIES**

21. THIS COURT ORDERS that during the Stay Period, all rights and remedies of any individual, firm, corporation, governmental body or agency, or any other entities (all of the foregoing, collectively being “**Persons**” and each being a “**Person**”) against or in respect of the Applicants, the ITCAN Subsidiaries or the Monitor or their respective employees and representatives acting in that capacity, or affecting the Business or the Property or to obtain the funds deposited pursuant to the Deposit Posting Order (including, for greater certainty, any enforcement process or steps or other rights and remedies under or relating to the Quebec Class Actions against the Applicants, the Property or the ITCAN Subsidiaries), are hereby stayed and suspended except with the written consent of the Applicants and the Monitor, or leave of this Court, provided that nothing in this Order shall (i) empower the Applicants or the ITCAN Subsidiaries to carry on any business which the Applicants or the ITCAN Subsidiaries are not lawfully entitled to carry on, (ii) affect such investigations, actions, suits or proceedings by a regulatory body as are permitted by Section 11.1 of the CCAA, (iii) prevent the filing of any registration to preserve or perfect a security interest, or (iv) prevent the registration of a claim for lien.

#### **NO INTERFERENCE WITH RIGHTS**

22. THIS COURT ORDERS that during the Stay Period, no Person shall discontinue, fail to honour, alter, interfere with, repudiate, terminate or cease to perform any right, renewal right, contract, agreement, licence or permit in favour of or held by the Applicants or the ITCAN Subsidiaries, except with the written consent of the Applicants and the Monitor, or leave of this Court.

### **CONTINUATION OF SERVICES**

23. THIS COURT ORDERS that during the Stay Period, all Persons having oral or written agreements with the Applicants or the ITCAN Subsidiaries or statutory or regulatory mandates for the supply of goods and/or services, including without limitation all computer software, communication and other data services, centralized banking services, payroll services, insurance, transportation services, utility, customs clearing, warehouse or logistical services or other services to the Business, the Applicants or the ITCAN Subsidiaries, are hereby restrained until further Order of this Court from discontinuing, altering, interfering with or terminating the supply of such goods or services as may be required by the Applicants or the ITCAN Subsidiaries, and that the Applicants and the ITCAN Subsidiaries shall be entitled to the continued use of their current premises, telephone numbers, facsimile numbers, internet addresses and domain names, provided in each case that the normal prices or charges for all such goods or services received after the date of this Order are paid by the Applicants and the ITCAN Subsidiaries in accordance with normal payment practices of the Applicants and the ITCAN Subsidiaries or such other practices as may be agreed upon by the supplier or service provider and the respective Applicant or ITCAN Subsidiary and the Monitor, or as may be ordered by this Court.

### **NON-DEROGATION OF RIGHTS**

24. THIS COURT ORDERS that, notwithstanding anything else in this Order, no Person shall be prohibited from requiring immediate payment for goods, services, use of leased or licensed property or other valuable consideration provided on or after the date of this Order, nor shall any Person be under any obligation on or after the date of this Order to advance or re-advance any monies or otherwise extend any credit to the Applicants. Nothing in this Order shall derogate from the rights conferred and obligations imposed by the CCAA.

### **SALES AND EXCISE TAX CHARGE**

25. THIS COURT ORDERS that the Canadian federal, provincial and territorial authorities that are entitled to receive payments or collect monies from the Applicants in respect of Sales & Excise Taxes (including for greater certainty the Canada Border Services Agency) shall be entitled to the benefit of and are hereby granted a charge (the “**Sales and Excise Tax Charge**”) on the Property, which charge shall not exceed an aggregate amount of \$580 million, as security for all amounts owing by the Applicants in respect of Sales & Excise Taxes, after taking into consideration any Bonding Collateral posted in respect thereof. The Sales and Excise Tax Charge shall have the priority set out in paragraphs 45 and 47 hereof.

### **PROCEEDINGS AGAINST DIRECTORS AND OFFICERS**

26. THIS COURT ORDERS that during the Stay Period, and except as permitted by subsection 11.03(2) of the CCAA, no Proceeding may be commenced or continued against any of the former, current or future directors or officers of the Applicants with respect to any claim against the directors or officers that arose before the date hereof and that relates to any obligations of the Applicants whereby the directors or officers are alleged under any law to be liable in their capacity as directors or officers for the payment or performance of such obligations.

### **DIRECTORS’ AND OFFICERS’ INDEMNIFICATION AND CHARGE**

27. THIS COURT ORDERS that the Applicants shall indemnify their directors and officers against obligations and liabilities that they may incur as directors or officers of the Applicants after the commencement of the within proceedings, except to the extent that, with respect to any officer or director, the obligation or liability was incurred as a result of the director’s or officer’s gross negligence or wilful misconduct.

28. THIS COURT ORDERS that the directors and officers of the Applicants shall be entitled to the benefit of and are hereby granted a charge (the “**Directors’ Charge**”) on the Property, which charge shall not exceed an aggregate amount of \$16 million, as security for the indemnity provided in paragraph 27 of this Order. The Directors’ Charge shall have the priority set out in paragraphs 45 and 47 herein.

29. THIS COURT ORDERS that, notwithstanding any language in any applicable insurance policy to the contrary, (a) no insurer shall be entitled to be subrogated to or claim the benefit of the Directors’ Charge, and (b) the Applicants’ directors and officers shall only be entitled

to the benefit of the Directors' Charge to the extent that they do not have coverage under any directors' and officers' insurance policy, or to the extent that such coverage is insufficient to pay amounts indemnified in accordance with paragraph 27 of this Order.

### **APPOINTMENT OF MONITOR**

30. THIS COURT ORDERS that FTI Consulting Canada Inc. is hereby appointed pursuant to the CCAA as the Monitor, an officer of this Court, to monitor the business and financial affairs of the Applicants with the powers and obligations set out in the CCAA or set forth herein and that the Applicants and their shareholders, officers, directors, and Assistants shall advise the Monitor of all material steps taken by the Applicants pursuant to this Order, and shall co-operate fully with the Monitor in the exercise of its powers and discharge of its obligations and provide the Monitor with the assistance that is necessary to enable the Monitor to adequately carry out the Monitor's functions.

31. THIS COURT ORDERS that the Monitor, in addition to its prescribed rights and obligations under the CCAA, is hereby directed and empowered to:

- (a) monitor the Applicants' receipts and disbursements;
- (b) report to this Court at such times and intervals as the Monitor may deem appropriate with respect to matters relating to the Property, the Business, and such other matters as may be relevant to the proceedings herein;
- (c) advise the Applicants in their preparation of the Applicants' cash flow statements;
- (d) advise the Applicants in their development of the Plan and any amendments to the Plan;
- (e) assist the Applicants, to the extent required by the Applicants, with the holding and administering of creditors' or shareholders' meetings for voting on the Plan;
- (f) have full and complete access to the Property, including the premises, books, records, data, including data in electronic form, and other financial documents of

the Applicants, to the extent that is necessary to adequately assess the Applicants' business and financial affairs or to perform its duties arising under this Order;

- (g) be at liberty to engage independent legal counsel or such other persons as the Monitor deems necessary or advisable respecting the exercise of its powers and performance of its obligations under this Order;
- (h) assist the Applicants, to the extent required by the Applicants, in its efforts to explore the potential for a resolution of any of the Tobacco Claims;
- (i) consult with the Court-Appointed Mediator in connection with the Court-Appointed Mediator's mandate, including in relation to any negotiations to settle any Tobacco Claims and the development of the Plan;
- (j) be and is hereby appointed to serve as the "foreign representative" of the Applicants in respect of an application to the United States Bankruptcy Court for relief pursuant to Chapter 15 of the United States Bankruptcy Code, 11 U.S.C. §§ 101-1330, as amended; and
- (k) perform such other duties as are required by this Order or by this Court from time to time.

32. THIS COURT ORDERS that the Monitor shall not take possession of the Property and shall take no part whatsoever in the management or supervision of the management of the Business and shall not, by fulfilling its obligations hereunder, be deemed to have taken or maintained possession or control of the Business or Property, or any part thereof.

33. THIS COURT ORDERS that nothing herein contained shall require the Monitor to occupy or to take control, care, charge, possession or management (separately and/or collectively, "**Possession**") of any of the Property that might be environmentally contaminated, might be a pollutant or a contaminant, or might cause or contribute to a spill, discharge, release or deposit of a substance contrary to any federal, provincial or other law respecting the protection, conservation, enhancement, remediation or rehabilitation of the environment or relating to the disposal of waste or other contamination including, without limitation, the *Canadian Environmental Protection Act*, the *Ontario Environmental Protection Act*, the *Ontario Water Resources Act*, the *Ontario*

*Occupational Health and Safety Act*, the *Quebec Environment Quality Act*, the *Quebec Act Respecting Occupational Health and Safety* and any regulations under any of the foregoing statutes (the “**Environmental Legislation**”), provided however that nothing herein shall exempt the Monitor from any duty to report or make disclosure imposed by applicable Environmental Legislation. The Monitor shall not, as a result of this Order or anything done in pursuance of the Monitor’s duties and powers under this Order, be deemed to be in Possession of any of the Property within the meaning of any Environmental Legislation, unless it is actually in possession.

34. THIS COURT ORDERS that the Monitor shall provide any creditor of the Applicants and the Court-Appointed Mediator with information provided by the Applicants in response to reasonable requests for information made in writing by such person addressed to the Monitor. The Monitor shall not have any responsibility or liability with respect to the information disseminated by it pursuant to this paragraph. In the case of information that the Monitor has been advised by the Applicants is confidential, the Monitor shall not provide such information to creditors unless otherwise directed by this Court or on such terms as the Monitor and the Applicants may agree.

35. THIS COURT ORDERS that, in addition to the rights and protections afforded the Monitor under the CCAA or as an officer of this Court, the Monitor shall incur no liability or obligation as a result of its appointment or the carrying out of the provisions of this Order, save and except for any gross negligence or wilful misconduct on its part. Nothing in this Order shall derogate from the protections afforded the Monitor by the CCAA or any applicable legislation.

36. THIS COURT ORDERS that the Monitor, counsel to the Monitor and counsel to the Applicants shall be paid their reasonable fees and disbursements, in each case at their standard rates and charges, by the Applicants as part of the costs of these proceedings. The Applicants are hereby authorized and directed to pay the accounts of the Monitor, counsel to the Monitor and counsel to the Applicants on a bi-weekly basis and, in addition, the Applicants are hereby authorized, *nunc pro tunc*, to pay to the Monitor, counsel to the Monitor and counsel to the Applicants retainers to be held by them as security for payment of their respective fees and disbursements outstanding from time to time.

37. THIS COURT ORDERS that the Monitor and its legal counsel shall pass their accounts from time to time, and for this purpose the accounts of the Monitor and its legal counsel are hereby referred to a judge of the Commercial List of the Ontario Superior Court of Justice.

38. THIS COURT ORDERS that the Monitor, counsel to the Monitor and counsel to the Applicants shall be entitled to the benefit of and are hereby granted a charge (the “**Administration Charge**”) on the Property, which charge shall not exceed an aggregate amount of \$5 million, as security for their professional fees and disbursements incurred at the standard rates and charges of the Monitor and such counsel, both before and after the making of this Order in respect of these proceedings. The Administration Charge shall have the priority set out in paragraphs 45 and 47 hereof.

#### **COURT-APPOINTED MEDIATOR**

39. THIS COURT ORDERS that the Hon. Warren K. Winkler, Q.C. is hereby appointed, as an officer of the Court and shall act as a neutral third party (the “**Court-Appointed Mediator**”) to mediate a global settlement of the Tobacco Claims.

40. THIS COURT ORDERS that in carrying out his mandate, the Court-Appointed Mediator may, among other things:

- (a) Adopt processes which, in his discretion, he considers appropriate to facilitate negotiation of a global settlement;
- (b) Retain independent legal counsel and such other advisors and persons as the Court-Appointed Mediator considers necessary or desirable to assist him in carrying out his mandate;
- (c) Consult with all Persons with Tobacco Claims (“**Tobacco Claimants**”), the Monitor, the Applicants, the Co-Defendants, other creditors and stakeholders of the Applicants and/or the Co-Defendants and any other persons the Court-Appointed Mediator considers appropriate;
- (d) Accept a court appointment of similar nature in any proceedings under the CCAA commenced by a company that is a co-defendant or respondent with the Applicants

or the Co-Defendants in any action brought by one or more Tobacco Claimants, including the Pending Litigation;

- (e) Apply to this Court for advice and directions as, in his discretion, the Court-Appointed Mediator deems necessary.

41. THIS COURT ORDERS that, subject to an agreement between the Applicants and the Court-Appointed Mediator, all reasonable fees and disbursements of the Court-Appointed Mediator and his legal counsel and financial and other advisors as may have been incurred by them prior to the date of this Order or which shall be incurred by them in relation to carrying out his mandate shall be paid by the Applicants and the Co-Defendants on a monthly basis, forthwith upon the rendering of accounts to the Applicants and the Co-Defendants.

42. THIS COURT ORDERS that the Court-Appointed Mediator shall be entitled to the benefit of and is hereby granted a charge (the “**Court-Appointed Mediator Charge**”) on the Property, which charge shall not exceed an aggregate amount of \$1 million, as security for his fees and disbursements and for the fees and disbursements of his legal counsel and financial and other advisors, in each case incurred at their standard rates and charges, both before and after the making of this Order in respect of these proceedings. The Court-Appointed Mediator Charge shall have the priority set out in paragraphs 45 and 47 hereof.

43. THIS COURT ORDERS that the Court-Appointed Mediator is authorized to take all steps and to do all acts necessary or desirable to carry out the terms of this Order, including dealing with any Court, regulatory body or other government ministry, department or agency, and to take all such steps as are necessary or incidental thereto.

44. THIS COURT ORDERS that, in addition to the rights and protections afforded as an officer of this Court, the Court-Appointed Mediator shall incur no liability or obligation as a result of his appointment or the carrying out of the provisions of this Order, save and except for any gross negligence or wilful misconduct on his part. Nothing in this Order shall derogate from the protections afforded a person pursuant to Section 142 of the *Courts of Justice Act* (Ontario).

#### **VALIDITY AND PRIORITY OF CHARGES CREATED BY THIS ORDER**

45. THIS COURT ORDERS that the priorities of the Administration Charge, the Court-Appointed Mediator Charge, the Directors' Charge, and the Sales and Excise Tax Charge (collectively, the "**Charges**"), as among them, shall be as follows:

- (a) First – Administration Charge (to the maximum amount of \$5 million) and the Court-Appointed Mediator Charge (to the maximum amount of \$1 million), *pari passu*;
- (b) Second – Directors' Charge (to the maximum amount of \$16 million); and
- (c) Third – the Sales and Excise Tax Charge (to the maximum amount of \$580 million).

46. THIS COURT ORDERS that the filing, registration or perfection of the Charges shall not be required, and that the Charges shall be valid and enforceable for all purposes, including as against any right, title or interest filed, registered, recorded or perfected subsequent to the Charges coming into existence, notwithstanding any such failure to file, register, record or perfect.

47. THIS COURT ORDERS that each of the Charges shall constitute a charge on the Property and such Charges shall rank in priority to all other security interests, trusts, liens, charges encumbrances, and claims of secured creditors, statutory or otherwise (collectively, the "**Encumbrances**") in favour of any Person in respect of such Property save and except for:

- (a) purchase-money security interests or the equivalent security interests under various provincial legislation and financing leases (that, for greater certainty, shall not include trade payables);
- (b) statutory super-priority deemed trusts and liens for unpaid employee source deductions;
- (c) deemed trusts and liens for any unpaid pension contribution or deficit with respect to the DB Plans, the DC Plan (as such terms are defined in the Thauvette Affidavit) and any of the Applicants' other pension plans, but only to the extent that any such deemed trusts and liens are statutory super-priority deemed trusts and liens afforded

priority by statute over all pre-existing Encumbrances granted or created by contract; and

- (d) liens for unpaid municipal property taxes or utilities that are given first priority over other liens by statute.

48. THIS COURT ORDERS that except as otherwise expressly provided for herein, or as may be approved by this Court, the Applicants shall not grant any Encumbrances over any Property that rank in priority to, or *pari passu* with, any of the Charges unless the Applicants also obtain the prior written consent of the Monitor and the beneficiaries of the Charges affected thereby (collectively, the “**Chargees**”), or further Order of this Court.

49. THIS COURT ORDERS that each of the Charges shall not be rendered invalid or unenforceable and the rights and remedies of the Chargees thereunder shall not otherwise be limited or impaired in any way by (a) the pendency of these proceedings and the declarations of insolvency made herein; (b) any application(s) for bankruptcy order(s) issued pursuant to the *Bankruptcy and Insolvency Act* (“**BIA**”), or any bankruptcy order made pursuant to such applications; (c) the filing of any assignments for the general benefit of creditors made pursuant to the BIA; (d) the provisions of any federal or provincial statutes; or (e) any negative covenants, prohibitions or other similar provisions with respect to borrowings, incurring debt or the creation of Encumbrances, contained in any existing loan documents, lease, sublease, offer to lease or other agreement (collectively, an “**Agreement**”) which binds the Applicants, and notwithstanding any provision to the contrary in any Agreement:

- (a) the creation of the Charges shall not create or be deemed to constitute a breach by the Applicants of any Agreement to which it is a party;
- (b) none of the Chargees shall have any liability to any Person whatsoever as a result of any breach of any Agreement caused by or resulting from the creation of the Charges; and
- (c) the payments made by the Applicants pursuant to this Order and the granting of the Charges do not and will not constitute preferences, fraudulent conveyances,

transfers at undervalue, oppressive conduct, or other challengeable or voidable transactions under any applicable law.

50. THIS COURT ORDERS that any Charge created by this Order over leases of real property in Canada shall only be a Charge in the Applicants' interest in such real property leases.

### **SERVICE AND NOTICE**

51. THIS COURT ORDERS that the Monitor shall (i) without delay, publish in The Globe and Mail (National Edition) and La Presse a notice containing the information prescribed under the CCAA as well as the date of the Comeback Motion (as defined below) and advising of the appointment of the Court-Appointed Mediator, (ii) within five days after the date of this Order or as soon as reasonably practicable thereafter, (A) make this Order publicly available in the manner prescribed under the CCAA, (B) send, in the prescribed manner, a notice (which shall include the date of the Comeback Motion) to every known creditor who has a claim (contingent, disputed or otherwise) against the Applicants of more than \$5,000, except with respect to (I) Tobacco Claimants, in which cases the Monitor shall only send a notice to the Court-Appointed Mediator and to counsel of record in the applicable Pending Litigation (if any) and (II) in the case of beneficiaries of the DB Plans, the DC Plan (as such terms are defined in the Thauvette Affidavit) and any of the Applicants' other pension plans, in which case the Monitor shall only send a notice to the trustees of each of the DB Plans, the DC Plan and the Applicants' other pension plans, and the Retraite Québec, and (C) prepare a list showing the names and addresses of those creditors and the estimated amounts of those claims, and make it publicly available in the prescribed manner, all in accordance with Section 23(1)(a) of the CCAA and the regulations made thereunder. The list referenced in subparagraph (C) above shall not include the names, addresses or estimated amounts of the claims of those creditors who are individuals or any personal information in respect of an individual.

52. THIS COURT ORDERS that notice of the appointment of the Court-Appointed Mediator shall be provided to the Tobacco Claimants by:

- (a) notice on the Case Website (as defined herein) posted by the Monitor;
- (b) advertisements published without delay by the Monitor in The Globe and Mail (National Edition) and La Presse, which advertisements shall be in addition to the

advertisement required under paragraph 51 hereof, and which shall be run on two non-consecutive days following the day on which the advertisement set out in paragraph 51 is run; and

- (c) delivery by the Applicant of a copy of this Order to counsel of record in the applicable Pending Litigation, who shall thereafter (i) post notice of the appointment of the Court-Appointed Mediator on their respective websites and (ii) deliver notice of the appointment of the Court-Appointed Mediator to each representative plaintiff;

53. THIS COURT ORDERS that notice of any motions or other proceedings to which the Tobacco Claimants are entitled or required to receive in these CCAA proceedings and in respect of which the Court-Appointed Mediator has the authority to represent the Tobacco Claimants may be served on the Court-Appointed Mediator and, unless the Court has ordered some other form of service, such service will constitute sufficient service and any further service on Tobacco Claimants is dispensed with.

54. THIS COURT ORDERS that the E-Service Guide of the Commercial List (the “**Guide**”) is approved and adopted by reference herein and, in this proceeding, the service of documents made in accordance with the Guide (which can be found on the Commercial List website at <http://www.ontariocourts.ca/scj/practice/practice-directions/toronto/eservice-commercial/>) shall be valid and effective service. Subject to Rule 17.05 this Order shall constitute an order for substituted service pursuant to Rule 16.04 of the Rules of Civil Procedure. Subject to Rule 3.01(d) of the Rules of Civil Procedure and paragraph 13 of the Guide, service of documents in accordance with the Guide will be effective on transmission. This Court further orders that a Case Website shall be established by the Monitor in accordance with the Guide with the following URL: <http://cfcanda.fticonsulting.com/imperialtobacco> (“**Case Website**”).

55. THIS COURT ORDERS that if the service or distribution of documents in accordance with the Guide is not practicable, the Applicants and the Monitor are at liberty to serve or distribute this Order, any other materials and orders in these proceedings, and any notices or other correspondence, by forwarding true copies thereof by prepaid ordinary mail, courier, personal delivery, facsimile or other electronic transmission to the Applicants’ creditors or other interested parties at their respective addresses as last shown on the records of the Applicants and

that any such service or distribution by courier, personal delivery, facsimile or other electronic transmission shall be deemed to be received on the date of forwarding thereof, or if sent by ordinary mail, on the third business day after mailing.

56. THIS COURT ORDERS that the Applicants are authorized to rely on the notice provided in paragraph 51 to provide notice of the comeback motion to be heard on a date to be set by this Court upon the granting of this Order (the “**Comeback Motion**”) and shall only be required to serve motion materials relating to the Comeback Motion, in accordance with the Guide, upon those parties who serve a Notice of Appearance in this proceeding prior to the date of the Comeback Motion.

57. THIS COURT ORDERS that the Monitor shall create, maintain and update as necessary a list of all Persons appearing in person or by counsel in this proceeding (the “**Service List**”). The Monitor shall post the Service List, as may be updated from time to time, on the Case Website as part of the public materials to be recorded thereon in relation to this proceeding. Notwithstanding the foregoing, the Monitor shall have no liability in respect of the accuracy of or the timeliness of making any changes to the Service List. The Monitor shall manage the scheduling of all motions that are brought in these proceedings.

58. **THIS COURT ORDERS** that the Applicants and the Monitor and their counsel are at liberty to serve or distribute this Order, any other materials and orders as may be reasonably required in these proceedings, including any notices, or other correspondence, by forwarding true copies thereof by electronic message to the Applicants’ creditors or other interested parties and their advisors. For greater certainty, any such distribution or service shall be deemed to be in satisfaction of a legal or juridical obligation, and notice requirements within the meaning of clause 3(c) of the Electronic Commerce Protection Regulations, Reg. 8100 2-175 (SOR/DORS).

## **GENERAL**

59. THIS COURT ORDERS that the Applicants or the Monitor may from time to time apply to this Court to amend, vary, supplement or replace this Order or for advice and directions concerning the discharge of their respective powers and duties under this Order or the interpretation or application of this Order.

60. THIS COURT ORDERS that nothing in this Order shall prevent the Monitor from acting as an interim receiver, a receiver, a receiver and manager, or a trustee in bankruptcy of the Applicants, the Business or the Property.

61. THIS COURT HEREBY REQUESTS the aid and recognition of any court, tribunal, regulatory or administrative body having jurisdiction in Canada, in the United States or any other country, 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.

62. THIS COURT ORDERS that each of the Applicants and the Monitor be at liberty and is hereby authorized and empowered to apply to any court, tribunal, regulatory or administrative body, wherever located, for the recognition of this Order and for assistance in carrying out the terms of this Order, and that the Monitor is authorized and empowered to act as a representative in respect of the within proceedings for the purpose of having these proceedings recognized in a jurisdiction outside Canada.

63. THIS COURT ORDERS that any interested party (including the Applicants, BAT, BATIF, and the Monitor) may apply to this Court to vary or amend this Order on not less than seven (7) days' notice to any other party or parties likely to be affected by the order sought or upon such other notice, if any, as this Court may order.

64. THIS COURT ORDERS that this Order and all of its provisions are effective as of 12:01 a.m. Eastern Standard/Daylight Time on the date of this Order (the "**Effective Time**") and that from the Effective Time to the time of the granting of this Order any action taken or notice given by any creditor of the Applicants or by any other Person to commence or continue any enforcement, realization, execution or other remedy of any kind whatsoever against the Applicant, the Property, the Business or the funds deposited pursuant to the Deposit Posting Order shall be deemed not to have been taken or given, as the case may be.



**SCHEDULE “A”  
PENDING LITIGATION**

**A. Medicaid Claim Litigation**

	<b>Jurisdiction</b>	<b>File Date &amp; Court File No.</b>	<b>Plaintiff(s)</b>	<b>Defendant(s)</b>
1.	Alberta	June 8, 2012; 1201-07314 (Calgary)	Her Majesty in Right of Alberta	Altria Group, Inc.; B.A.T Industries p.l.c.; British American Tobacco (Investments) Limited; British American Tobacco p.l.c.; Canadian Tobacco Manufacturers Council; Carreras Rothmans Limited; Imperial Tobacco Canada Limited; JTI-MacDonald Corp.; Philip Morris International, Inc.; Philip Morris USA, Inc.; R.J. Reynolds Tobacco Company; R.J. Reynolds Tobacco International, Inc.; Rothmans, Benson & Hedges Inc.; and Rothmans Inc.
2.	British Columbia	January 24, 2001, further amended February 17, 2011; S010421 (Vancouver)	Her Majesty the Queen in right of British Columbia	Imperial Tobacco Canada Limited, Rothmans, Benson & Hedges Inc., Rothmans Inc., JTI-Macdonald Corp., Canadian Tobacco Manufacturers' Council, B.A.T Industries p.l.c., British American Tobacco (Investments) Limited, Carreras Rothmans Limited, Philip Morris Incorporated, Philip Morris International, Inc., R. J. Reynolds Tobacco Company, R. J. Reynolds Tobacco International, Inc., Rothmans International Research Division and Ryeseckks p.l.c.
3.	Manitoba	May 31, 2012, amended October 16, 2012; CI 12-01-78127 (Winnipeg)	Her Majesty the Queen in right of the Province of Manitoba	Rothmans, Benson & Hedges Inc., Rothmans, Inc., Altria Group, Inc., Philip Morris U.S.A. Inc., Philip Morris International, Inc., JTI-MacDonald Corp., R.J. Reynolds Tobacco Company, R.J. Reynolds Tobacco International Inc., Imperial Tobacco Canada Limited, British American Tobacco p.l.c., B.A.T Industries p.l.c., British American Tobacco (Investments) Limited, Carreras Rothmans Limited, and Canadian Tobacco Manufacturers' Council
4.	New Brunswick	March 13, 2008; F/C/88/08 (Fredericton)	Her Majesty the Queen in right of the Province of New Brunswick	Rothmans Inc., Rothmans, Benson & Hedges Inc., Carreras Rothmans Limited, Altria Group, Inc., Phillip Morris U.S.A. Inc., Phillip Morris International Inc., JTI-MacDonald Corp., R.J. Reynolds Tobacco Company, R.J. Reynolds Tobacco International Inc., Imperial Tobacco Canada Limited, British American Tobacco p.l.c., B.A.T Industries p.l.c., British American Tobacco (Investments) Limited and Canadian Tobacco Manufacturers' Council

	<b>Jurisdiction</b>	<b>File Date &amp; Court File No.</b>	<b>Plaintiff(s)</b>	<b>Defendant(s)</b>
5.	Newfoundland and Labrador	February 8, 2011, amended June 4, 2014; 01G. No. 0826 (St. John's)	Attorney General of Newfoundland and Labrador	Rothmans Inc., Rothmans, Benson & Hedges Inc., Carreras Rothmans Limited, Altria Group, Inc., Philip Morris USA Inc, Philip Morris International Inc., JTI-MacDonald Corp., RJ Reynolds Tobacco Company, RJ Reynolds Tobacco International Inc., Imperial Tobacco Canada Limited, British American Tobacco p.l.c., B.A.T Industries p.l.c, British America Tobacco (Investments) Limited and Canadian Tobacco Manufacturers' Council
6.	Nova Scotia	January 2, 2015; 434868/737868 (Halifax)	Her Majesty The Queen in Right of the Province of Nova Scotia	Rothmans, Benson & Hedges Inc., Rothmans Inc., Altria Group, Inc., Philip Morris U.S.A. Inc, Philip Morris International Inc., JTI-MacDonald Corp., R.J. Reynolds Tobacco Company, R.J. Reynolds Tobacco International Inc., Imperial Tobacco Canada Limited, British American Tobacco p.l.c., B.A.T Industries p.l.c., British American Tobacco (Investments) Limited, Carreras Rothmans Limited and Canadian Tobacco Manufacturers' Council.
7.	Ontario	Amended December 11, 2009, amended as amended August 25, 2010, fresh as amended March 28, 2014, amended fresh as amended, April 20, 2016; CV-09-387984 (Toronto)	Her Majesty the Queen in right of Ontario	Rothmans Inc., Rothmans, Benson & Hedges Inc., Carreras Rothmans Limited, Altria Group, Inc., Phillip Morris U.S.A. Inc., Phillip Morris International Inc., JTI-MacDonald Corp., R.J. Reynolds Tobacco Company, R.J. Reynolds Tobacco International Inc., Imperial Tobacco Canada Limited, British American Tobacco p.l.c., B.A.T Industries p.l.c., British American Tobacco (Investments) Limited and Canadian Tobacco Manufacturers' Council
8.	Prince Edward Island	September 10, 2012, amended October 17, 2012; SI GS-25019 (Charlottetown)	Her Majesty the Queen in right of the Province of Prince Edward Island	Rothmans, Benson & Hedges Inc., Rothmans, Inc., Altria Group, Inc., Philip Morris U.S.A. Inc., Philip Morris International, Inc., JTI-MacDonald Corp., R.J. Reynolds Tobacco Company, R.J. Reynolds Tobacco International Inc., Imperial Tobacco Canada Limited, British American Tobacco p.l.c., B.A.T Industries p.l.c., British American Tobacco (Investments) Limited, Carreras Rothmans Limited, and Canadian Tobacco Manufacturers' Council
9.	Québec	June 8, 2012; 500-17-072363-123 (Montréal)	Procureur général du Québec	Impérial Tobacco Canada Limitée, B.A.T Industries p.l.c., British American Tobacco (Investments) Limited, Carreras Rothmans Limited, Rothmans, Benson & Hedges, Philip Morris USA Inc., Philip Morris International

	<b>Jurisdiction</b>	<b>File Date &amp; Court File No.</b>	<b>Plaintiff(s)</b>	<b>Defendant(s)</b>
				Inc., JTI-MacDonald Corp., R.J. Reynolds Tobacco Company, R.J. Reynolds Tobacco International, Inc., et Conseil Canadien de Fabricants des Produits du Tabac
10.	Saskatchewan	Amended October 5, 2012; Q.B. 8712012 (Saskatoon)	The Government of Saskatchewan	Rothmans, Benson & Hedges Inc., Rothmans Inc., Altria Group, Inc., Philip Morris International, Inc., JTI-Macdonald Corp., R.J. Reynolds Tobacco Company, R.J. Reynolds Tobacco International Inc., Imperial Tobacco Canada Limited, British American Tobacco p.l.c., B.A.T Industries p.l.c., British American Tobacco (Investments) Limited, Carreras Rothmans Limited, and Canadian Tobacco Manufacturers' Council

## **B. Tobacco Claim Litigation – Certified and Proposed Class Actions**

	<b>Jurisdiction</b>	<b>Date Filed; Court File No.</b>	<b>(Representative) Plaintiff</b>	<b>Defendant(s)</b>
1.	Alberta	June 15, 2009; 0901-08964 (Calgary)	Linda Dorion	Canadian Tobacco Manufacturers' Council, B.A.T Industries p.l.c., British American Tobacco (Investments) Limited, British American Tobacco p.l.c., Imperial Tobacco Canada Limited, Altria Group, Inc., Phillip Morris Incorporated, Phillip Morris International, Inc., Phillip Morris U.S.A. Inc., R.J. Reynolds Tobacco Company, R.J. Reynolds Tobacco, International, Inc., Carreras Rothmans Limited, JTI-MacDonald Corp., Rothmans, Benson & Hedges Inc., Rothmans Inc., Ryesekks p.l.c.
2.	British Columbia	May 8, 2003; L 031300 (Vancouver)	John Smith (a.k.a., Kenneth Knight)	Imperial Tobacco Canada Ltd.
3.	British Columbia	June 25, 2010; 10-2780 (Victoria)	Barbara Bourassa on behalf of the Estate of Mitchell David Bourassa	Imperial Tobacco Canada Limited, B.A.T Industries p.l.c., British American Tobacco (Investments) Limited, British American Tobacco p.l.c., Altria Group, Inc. Phillip Morris International, Inc., Phillip Morris U.S.A. Inc., R.J. Reynolds Tobacco Company, R.J. Reynolds Tobacco International, Inc., Carreras Rothmans Limited, JTI-MacDonald Corp., Rothmans, Benson & Hedges Inc., Rothmans Inc., Ryesekks p.l.c. and Canadian Tobacco Manufacturers' Council <sup>1</sup>

<sup>1</sup> British American Tobacco p.l.c. and Carreras Rothmans Limited have been released from this action.

	<b>Jurisdiction</b>	<b>Date Filed; Court File No.</b>	<b>(Representative) Plaintiff</b>	<b>Defendant(s)</b>
4.	British Columbia	June 25, 2010; 10-2769 (Victoria)	Roderick Dennis McDermid	Imperial Tobacco Canada Limited, B.A.T Industries p.l.c., British American Tobacco (Investments) Limited, British American Tobacco p.l.c., Altria Group, Inc., Phillip Morris International, Inc., Phillip Morris U.S.A. Inc., R.J. Reynolds Tobacco Company, R.J. Reynolds Tobacco International, Inc., Carreras Rothmans Limited, JTI-MacDonald Corp., Rothmans, Benson & Hedges Inc., Rothmans Inc., Ryesekks p.l.c. and Canadian Tobacco Manufacturers' Council <sup>2</sup>
5.	Manitoba	June 2009; CI09-01-61479 (Winnipeg)	Deborah Kunta	Canadian Tobacco Manufacturers' Council, B.A.T Industries p.l.c., British American Tobacco (Investments) Limited, British American Tobacco p.l.c., Imperial Tobacco Canada Limited, Altria Group, Inc., Phillip Morris Incorporated, Phillip Morris International Inc., Phillip Morris U.S.A. Inc., R.J. Reynolds Tobacco Company, R.J. Reynolds Tobacco, International, Inc., Carreras Rothmans Limited, JTI-MacDonald Corp., Rothmans, Benson & Hedges Inc., Rothmans Inc and Ryesekks p.l.c.
6.	Nova Scotia	June 18, 2009; 312869 2009 (Halifax)	Ben Semple	Canadian Tobacco Manufacturers' Council, B.A.T Industries p.l.c., British American Tobacco (Investments) Limited, British American Tobacco p.l.c., Imperial Tobacco Canada Limited, Altria Group, Inc., Phillip Morris Incorporated, Phillip Morris International, Inc., Phillip Morris U.S.A. Inc., R.J. Reynolds Tobacco Company, R.J. Reynolds Tobacco, International, Inc., Carreras Rothmans Limited, JTI-MacDonald Corp., Rothmans, Benson & Hedges Inc., Rothmans Inc., Ryesekks p.l.c.
7.	Ontario	December 2, 2009; 64757 (London)	The Ontario Flue-Cured Tobacco Growers' Marketing Board, Andy J. Jacko, Brian Baswick, Ron Kichler and Arpad Dobrentey	Imperial Tobacco Canada Limited, which is to be heard together with similar actions against Rothmans, Benson & Hedges Inc., and JTI-MacDonald Corp.
8.	Ontario	June 27, 2012; 53794/12 (St. Catharines)	Suzanne Jacklin	Canadian Tobacco Manufacturers' Council, B.A.T Industries p.l.c., British American Tobacco (Investments) Limited, British American Tobacco p.l.c., Imperial Tobacco Canada Limited, Altria Group, Inc., Phillip Morris Incorporated, Phillip Morris International Inc., Phillip Morris U.S.A. Inc.,

<sup>2</sup> British American Tobacco p.l.c. and Carreras Rothmans Limited have been released from this action.

	<b>Jurisdiction</b>	<b>Date Filed; Court File No.</b>	<b>(Representative) Plaintiff</b>	<b>Defendant(s)</b>
				R.J. Reynolds Tobacco Company, R.J. Reynolds Tobacco, International, Inc., Carreras Rothmans Limited, JTI-MacDonald Corp., Rothmans, Benson & Hedges Inc., Rothmans Inc., Ryesekks p.l.c
9.	Quebec	September 30, 2005; 500-06-000070-983 (Montreal)	Christine Fortin, Cécilia Létourneau and Joseph Mandelman	Imperial Tobacco Canada Ltd., Rothmans, Benson & Hedges Inc. and JTI-Macdonald Corp.
10.	Quebec	September 29, 2005; 500-06-000076-980 (Montreal)	Conseil Quebecois Sur Le Tabac Et La Sante and Jean-Yves Blais	Imperial Tobacco Canada Ltd., Rothmans, Benson & Hedges Inc. and JTI Macdonald Corp.
11.	Saskatchewan	July 10, 2009; 1036 of 2009; (June 12, 2009; 916 of 2009 never served) (Regina)	Thelma Adams	Canadian Tobacco Manufacturers' Council, B.A.T Industries p.l.c., British American Tobacco (Investments) Limited, British American Tobacco p.l.c., Imperial Tobacco Canada Limited, Altria Group, Inc., Phillip Morris Incorporated, Phillip Morris International Inc., Phillip Morris USA Inc., R.J. Reynolds Tobacco Company, R.J. Reynolds Tobacco, International, Inc., Carreras Rothmans Limited, JTI-MacDonald Corp., Rothmans, Benson & Hedges Inc., Rothmans Inc. and Ryesekks p.l.c. <sup>3</sup>

### C. Tobacco Claim Litigation – Individual Actions

	<b>Jurisdiction</b>	<b>Date Filed; Court File No.</b>	<b>(Representative) Plaintiff</b>	<b>Defendant(s)</b>
1.	Nova Scotia	February 20, 2002, 177663 (Halifax)	Peter Stright	Imperial Tobacco Canada Limited
2.	Ontario	May 1, 1997, amended May 25, 1998; fresh as amended March 28, 2004; C17773/97 (Milton)	Ljubisa Spasic as estate trustee of Mirjana Spasic	Imperial Tobacco Limited and Rothmans, Benson & Hedges Inc.
3.	Ontario	Amended September 8, 2014; 00-CV-	Ragoonanan <i>et al.</i>	Imperial Tobacco Canada Limited

<sup>3</sup> B.A.T Industries p.l.c., British American Tobacco (Investments) Limited, British American Tobacco p.l.c. have been released from this action.

		183165-CP00 (Toronto)		
4.	Ontario	June 30, 2003; 1442/03 (London)	Scott Landry	Imperial Tobacco Canada Limited
5.	Ontario	June 12, 1997; 21513/97 (North York)	Joseph Battaglia	Imperial Tobacco Canada Limited
6.	Quebec	December 8, 2016; 750-32- 700014-163 (Saint- Hyacinthe)	Roland Bergeron	Imperial Tobacco Canada Limited

**SCHEDULE "B"**  
**ITCAN SUBSIDIARIES**

Imperial Tobacco Services Inc.  
Imperial Tobacco Products Limited  
Marlboro Canada Limited  
Cameo Inc.  
Medallion Inc.  
Allan Ramsay and Company Limited  
John Player & Sons Ltd.  
Imperial Brands Ltd.  
2004969 Ontario Inc.  
Construction Romir Inc.  
Genstar Corporation  
Imasco Holdings Group, Inc.  
ITL (USA) limited  
Genstar Pacific Corporation  
Imasco Holdings Inc.  
Southward Insurance Ltd.  
Liggett & Myers Tobacco Company of Canada Limited

**SCHEDULE “C”**  
**HEALTH CARE COSTS RECOVERY LEGISLATION**

<b>Jurisdiction</b>	<b>Statute</b>
Alberta	<i>Crown’s Right of Recovery Act, SA 2009, c C-35</i>
British Columbia	<i>Tobacco Damages and Health Care Costs Recovery Act, SBC 2000, c 30</i>
Manitoba	<i>The Tobacco Damages Health Care Costs Recovery Act, SM 2006, c 18</i>
New Brunswick	<i>Tobacco Damages and Health Care Costs Recovery Act, SNB 2006, c T-7.5</i>
Newfoundland and Labrador	<i>Tobacco Health Care Costs Recovery Act, SNL 2001, c T-4.2</i>
Nova Scotia	<i>Tobacco Health-Care Costs Recovery Act, SNS 2005, c 46</i>
Northwest Territories	Proclaimed but not yet in force: <i>Tobacco Damages and Health Care Costs Recovery Act, SNWT 2011, c 33</i>
Nunavut	Proclaimed but not yet in force: <i>Tobacco Damages and Health Care Costs Recovery Act, SNu 2010, c 31</i>
Ontario	<i>Tobacco Damages and Health Care Costs Recovery Act, 2009, SO 2009, c 13</i>
Prince Edward Island	<i>Tobacco Damages and Health Care Costs Recovery Act, SPEI 2009, c 22</i>
Québec	<i>Tobacco-related Damages and Health Care Costs Recovery Act, 2009, CQLR c R-2.2.0.0.1</i>
Saskatchewan	<i>The Tobacco Damages and Health Care Costs Recovery Act, SS 2007, c T-14.2</i>
Yukon	N/A

**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

**AMENDED AND RESTATED INITIAL ORDER**

**OSLER, HOSKIN & HARCOURT LLP**

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Toronto, ON M5X 1B8

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

Matter No: 1144377

**VCD'5''**

**ONTARIO  
SUPERIOR COURT OF JUSTICE  
COMMERCIAL LIST**

THE HONOURABLE )  
JUSTICE MCEWEN ) TUESDAY, THE 12TH  
 ) DAY OF MARCH, 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 IMPERIAL TOBACCO CANADA  
LIMITED AND IMPERIAL TOBACCO COMPANY LIMITED  
(the "Applicants")

**AMENDED AND RESTATED INITIAL ORDER**

THIS APPLICATION, made by the Applicants, pursuant to the *Companies' Creditors Arrangement Act*, R.S.C. 1985, c. C-36, as amended (the "CCAA") was heard this day at 330 University Avenue, Toronto, Ontario.

ON READING (i) the affidavit of Eric Thauvette sworn March 12, 2019 and the exhibits thereto (the "**Thauvette Affidavit**"), (ii) the affidavit of Nancy Roberts sworn March 12, 2019, and (iii) the pre-filing report dated March 12, 2019 (the "**Monitor's Pre-Filing Report**") of FTI Consulting Canada Inc. ("**FTI**") in its capacity as the proposed Monitor of the Applicants, and on hearing the submissions of counsel for the Applicants, BAT (as defined herein), FTI and the Honourable Warren K. Winkler, Q.C. in his capacity as proposed ~~Interim Tobacco Claimant Coordinator~~[Court-Appointed Mediator](#) (as defined herein), and on reading the consent of FTI to act as the Monitor,

**SERVICE**

1. THIS COURT ORDERS that the time for service and filing of the Notice of

Application and the Application Record is hereby abridged and validated so that this Application is properly returnable today and hereby dispenses with further service thereof.

## APPLICATION

2. THIS COURT ORDERS AND DECLARES that the Applicants are companies to which the CCAA applies.

## PLAN OF ARRANGEMENT

3. THIS COURT ORDERS that the Applicants, individually or collectively, shall have the authority to file and may, subject to further order of this Court, file with this Court a plan of compromise or arrangement (hereinafter referred to as the **‘Plan’**).

## DEFINITIONS

4. THIS COURT ORDERS that for purposes of this Order:

- (a) **‘BAT’** means British American Tobacco p.l.c.;
- (b) **‘BAT Group’** means, collectively, BAT, BATIF, B.A.T Industries p.l.c., British American Tobacco (Investments) Limited, Carreras Rothmans Limited or entities related to or affiliated with them other than the Applicants and the ITCAN Subsidiaries;
- (c) **‘BATIF’** means B.A.T. International Finance p.l.c.;
- (d) **‘Co-Defendants’** means [JTI-Macdonald Corp. and Rothmans, Benson & Hedges Inc.](#);
- (e) ~~(d)~~ **‘Deposit Posting Order’** means the order of the Quebec Court of Appeal granted October 27, 2015 or any other Order requiring the posting of security or the payment of a deposit in respect of the Quebec Class Actions;
- (f) ~~(e)~~ **‘ITCAN’** means Imperial Tobacco Canada Limited;
- (g) ~~(f)~~ **‘ITCAN Subsidiaries’** means the direct and indirect subsidiaries of the

Applicants listed in Schedule ‘B’;

- (h) ~~(g)~~ **“Pending Litigation”** means any and all actions, applications and other lawsuits existing at the time of this Order in which any of the Applicants is a named defendant or respondent (either individually or with other Persons (as defined below)) relating in any way whatsoever to a Tobacco Claim, including without limitation the litigation listed in Schedule ‘A’;
- (i) ~~(h)~~ **“Quebec Class Actions”** means the proceedings in the Quebec Superior Court and the Quebec Court of Appeal in (i) *Cécilia Létourneau et al. v. JTI Macdonald Corp., Imperial Tobacco Canada Limited and Rothmans, Benson & Hedges Inc.* and (ii) *Conseil Québécois sur le Tabac et la Santé and Jean-Yves Blais v. JTI Macdonald Corp., Imperial Tobacco Canada Limited and Rothmans, Benson & Hedges Inc.* and all decisions and orders in such proceedings, including, without limitation, the Deposit Posting Order;
- (j) ~~(i)~~ **“Sales & Excise Taxes”** means all goods and services, harmonized sales or other applicable federal, provincial or territorial sales taxes, and all federal excise taxes and customs and import duties and all federal, provincial and territorial tobacco taxes;
- (k) ~~(j)~~ **“Tobacco Claim”** means any right or claim (including, without limitation, a claim for contribution or indemnity) of any Person against or in respect of the Applicants, the ITCAN Subsidiaries or any member of the BAT Group that has been advanced (including, without limitation, in the Pending Litigation), that could have been advanced or that could be advanced, and whether such right or claim is on such Person’s own account, on behalf of another Person, as a dependent of another Person, or on behalf of a certified or proposed class, or made or advanced as a government body or agency, insurer, employer, or otherwise, under or in connection with:
- (i) applicable law, to recover damages in respect of the development, manufacture, production, marketing, advertising, distribution, purchase or

sale of Tobacco Products, the use of or exposure to Tobacco Products or any representation in respect of Tobacco Products, in Canada, or in the case of any of the Applicants, anywhere else in the world; or

- (ii) the legislation listed on Schedule “C”, as may be amended or restated, or similar or analogous legislation that may be enacted in future,

excluding any right or claim of a supplier relating to goods or services supplied to, or the use of leased or licensed property by, the Applicants, the ITCAN Subsidiaries or any member of the BAT Group; and

- (1) ~~(1)~~ **“Tobacco Products”** means tobacco or any product made or derived from tobacco or containing nicotine that is intended for human consumption, including any component, part, or accessory of or used in connection with a tobacco product, including cigarettes, cigarette tobacco, roll your own tobacco, smokeless tobacco, electronic cigarettes, vaping liquids and devices, heat-not-burn tobacco, and any other tobacco or nicotine delivery systems and shall include materials, products and by-products derived from or resulting from the use of any tobacco products.

## POSSESSION OF PROPERTY AND OPERATIONS

5. THIS COURT ORDERS that the Applicants shall remain in possession and control of their respective current and future assets, undertakings and properties of every nature and kind whatsoever, and wherever situate including all proceeds thereof (the **“Property”**). Subject to further Order of this Court, the Applicants shall continue to carry on business in a manner consistent with the preservation of their business (the **“Business”**) and Property. The Applicants are authorized and empowered to continue to retain and employ the employees, independent contractors, consultants, agents, experts, accountants, counsel and such other persons (collectively **“Assistants”**) currently retained or employed by them, with liberty to retain such further Assistants as they deem reasonably necessary or desirable in the ordinary course of

business, to preserve the value of the Property or Business or for the carrying out of the terms of this Order.

6. THIS COURT ORDERS that the Applicants shall be entitled to continue to utilize the central cash management system currently in place as described in the Thauvette Affidavit or replace it with another substantially similar central cash management system (the “**Cash Management System**”) and that any present or future bank or other Person providing the Cash Management System (including, without limitation, BATIF and its affiliates, The Bank of Nova Scotia and Citibank, N.A.) shall not be under any obligation whatsoever to inquire into the propriety, validity or legality of any transfer, payment, collection or other action taken under the Cash Management System, or as to the use or application by the Applicants of funds transferred, paid, collected or otherwise dealt with in the Cash Management System, shall be entitled to provide the Cash Management System without any liability in respect thereof to any Person other than the Applicants, pursuant to the terms of the documentation applicable to the Cash Management System, and shall be, in its capacity as provider of the Cash Management System, an unaffected creditor under the Plan with regard to any claims or expenses it may suffer or incur in connection with the provision of the Cash Management System.

7. THIS COURT ORDERS that the Applicants shall be entitled but not required to pay the following expenses whether incurred prior to, on or after the date of this Order:

- (a) all outstanding and future wages, salaries, commissions, compensation, vacation pay, bonuses, incentive and share compensation plan payments, employee and retiree pension and other benefits and related contributions and payments (including, without limitation, expenses related to the Applicants’ employee and retiree medical, dental, disability, life insurance and similar benefit plans or arrangements, employee assistance programs and contributions to or any payments in respect of the Applicants’ other retirement programs), reimbursement expenses (including, without limitation, amounts charged to corporate credit cards), termination pay, salary continuance and severance pay payable to employees, independent contractors and other personnel, in each case incurred in the ordinary course of business and consistent with existing compensation policies and arrangements or with Monitor approval;

- (b) the fees and disbursements of any Assistants retained or employed by the Applicants, including without limitation in respect of any proceedings under Chapter 15 of the United States Bankruptcy Code, 11 U.S.C. §§ 101-1330, as amended, at their standard rates and charges;
- (c) with the consent of the Monitor, amounts for goods or services actually supplied to the Applicants prior to the date of this Order:
  - (i) by logistics or supply chain providers, including customs brokers and freight forwarders;
  - (ii) by providers of information technology, social media marketing strategies and publishing services; and
  - (iii) in respect of the Loyalty Program as set out in the Thauvette Affidavit;
- (d) with the consent of the Monitor, amounts payable in respect of any Intercompany Transactions (as defined herein); and
- (e) by other third party suppliers, if, in the opinion of the Applicants, such payment is necessary or desirable to preserve the operations of the Business or the Property.

8. THIS COURT ORDERS that, except as otherwise provided to the contrary herein, the Applicants shall be entitled but not required to pay all reasonable expenses incurred by the Applicants in carrying on the Business in the ordinary course after this Order, and in carrying out the provisions of this Order, which expenses shall include, without limitation:

- (a) all expenses and capital expenditures reasonably necessary for the preservation of the Property or the Business including, without limitation, payments on account of insurance (including directors and officers insurance), maintenance and security services;
- (b) capital expenditures other than as permitted in clause (a) above to replace or supplement the Property or that are otherwise of benefit to the Business, provided that Monitor approval is obtained for any single such expenditure in excess of \$1

million or an aggregate of such expenditures in a calendar year in excess of \$5 million; and

- (c) payment for goods or services supplied or to be supplied to the Applicants on or after the date of this Order (including the payment of any royalties).

9. THIS COURT ORDERS that the Applicants are authorized to complete outstanding transactions and engage in new transactions with any member of the BAT Group and to continue, on and after the date hereof, to buy and sell goods and services and to allocate, collect and pay costs, expenses and other amounts from and to the members of the BAT Group, including without limitation in relation to head office and shared services, finished, unfinished and semi-finished materials, personnel, administrative, technical and professional services, and royalties and fees in respect of trademark licenses (collectively, together with the Cash Management System and all transactions and all inter-company funding policies and procedures between any of the Applicants and any member of the BAT Group, the “**Intercompany Transactions**”) in the ordinary course of business as described in the affidavit or as otherwise approved by the Monitor. All Intercompany Transactions in the ordinary course of business between the Applicants and any member of the BAT Group, including the provision of goods and services from any member of the BAT Group to any of the Applicants, shall continue on terms consistent with existing arrangements or past practice or as otherwise approved by the Monitor.

10. THIS COURT ORDERS that the Applicants shall remit, in accordance with legal requirements, or pay (whether levied, accrued or collected before, on or after the date of this Order):

- (a) any statutory deemed trust amounts in favour of the Crown in right of Canada or of any Province thereof or any other taxation authority which are required to be deducted from employees’ wages, including, without limitation, amounts in respect of (i) employment insurance, (ii) Canada Pension Plan, (iii) Quebec Pension Plan, and (iv) income taxes;
- (b) all Sales & Excise Taxes required to be remitted by the Applicants in connection with the Business; and

- (c) any amount payable to the Crown in right of Canada or of any Province thereof or any political subdivision thereof or any other taxation authority in respect of municipal realty, municipal business or other taxes, assessments or levies of any nature or kind which are entitled at law to be paid in priority to claims of secured creditors and which are attributable to or in respect of the carrying on of the Business by the Applicants.

11. THIS COURT ORDERS that the Applicants are, subject to paragraph 12, authorized to post and to continue to have posted, cash collateral, letters of credit, performance bonds, payment bonds, guarantees and other forms of security from time to time, in an aggregate amount not exceeding \$111 million (the “**Bonding Collateral**”), to satisfy regulatory or administrative requirements to provide security that have been imposed on the Applicants in the ordinary course and consistent with past practice in relation to the collection and remittance of federal excise taxes and customs and import duties and federal, provincial and territorial tobacco taxes, whether the Bonding Collateral is provided directly or indirectly by the Applicants as such security.

12. THIS COURT ORDERS that the Canadian federal, provincial and territorial authorities entitled to receive payments or collect monies from the Applicants in respect of Sales & Excise Taxes are hereby stayed during the Stay Period from requiring that any additional bonding or other security be posted by or on behalf of the Applicants in connection with Sales & Excise Taxes, or any other matters for which such bonding or security may otherwise be required.

13. THIS COURT ORDERS that until a real property lease is disclaimed or resiliated in accordance with the CCAA, the Applicants shall pay all amounts constituting rent or payable as rent under real property leases (including, for greater certainty, common area maintenance charges, utilities and realty taxes and any other amounts payable to the landlord under the lease) or as otherwise may be negotiated between the relevant Applicant and the landlord from time to time (“**Rent**”), for the period commencing from and including the date of this Order, at such intervals as such Rent is usually paid in the ordinary course of business. On the date of the first of such payments, any Rent relating to the period commencing from and including the date of this Order shall also be paid.

14. THIS COURT ORDERS that, except as specifically permitted herein, the Applicants are hereby directed, until further Order of this Court: (a) to make no payments of principal, interest thereon or otherwise on account of amounts owing by the Applicants or claims to which they are subject to any of their creditors as of this date and to post no security in respect of such amounts or claims, including pursuant to an order or judgment; (b) to grant no security interests, trust, liens, charges or encumbrances upon or in respect of any of their Property; and (c) to not grant credit or incur liabilities except in the ordinary course of the Business.

## RESTRUCTURING

15. THIS COURT ORDERS that the Applicants shall, subject to such requirements as are imposed by the CCAA, have the right to:

- (a) permanently or temporarily cease, downsize or shut down any of their respective businesses or operations and to dispose of redundant or non-material assets not exceeding \$1,000,000 in any one transaction or \$5,000,000 in the aggregate;
- (b) terminate the employment of such of its employees or temporarily lay off such of its employees as it deems appropriate;
- (c) pursue all avenues of refinancing of the Business or Property, in whole or part, subject to prior approval of this Court being obtained before any material refinancing; and
- (d) pursue all avenues to resolve any of the Tobacco Claims, in whole or in part,

all of the foregoing to permit the Applicants to proceed with an orderly restructuring of the Business (the “**Restructuring**”).

16. THIS COURT ORDERS that the Applicants shall provide each of the relevant landlords with notice of the relevant Applicant’s intention to remove any fixtures from any leased premises at least seven (7) days prior to the date of the intended removal. The relevant landlord shall be entitled to have a representative present in the leased premises to observe such removal and, if the landlord disputes the relevant Applicant’s entitlement to remove any such fixture

under the provisions of the lease, such fixture shall remain on the premises and shall be dealt with as agreed between any applicable secured creditors, such landlord and such Applicant, or by further Order of this Court upon application by such Applicant on at least two (2) days' notice to such landlord and any such secured creditors. If the relevant Applicant disclaims or resiliates the lease governing such leased premises in accordance with Section 32 of the CCAA, it shall not be required to pay Rent under such lease pending resolution of any such dispute (other than Rent payable for the notice period provided for in Section 32(5) of the CCAA), and the disclaimer or resiliation of the lease shall be without prejudice to such Applicant's claim to the fixtures in dispute.

17. THIS COURT ORDERS that if a notice of disclaimer or resiliation is delivered pursuant to Section 32 of the CCAA, then (a) during the notice period prior to the effective time of the disclaimer or resiliation, the landlord may show the affected leased premises to prospective tenants during normal business hours, on giving the relevant Applicant and the Monitor 24 hours' prior written notice, and (b) at the effective time of the disclaimer or resiliation, the relevant landlord shall be entitled to take possession of any such leased premises without waiver of or prejudice to any claims or rights such landlord may have against such Applicant in respect of such lease or leased premises, provided that nothing herein shall relieve such landlord of its obligation to mitigate any damages claimed in connection therewith.

#### STAY OF PROCEEDINGS

18. THIS COURT ORDERS that until and including April 11, 2019, or such later date as this Court may order (the "**Stay Period**"), no proceeding or enforcement process in any court or tribunal (each, a "**Proceeding**"), including but not limited to any Pending Litigation and any other Proceeding in relation to any other Tobacco Claim, shall be commenced, continued or take place against or in respect of the Applicants, the ITCAN Subsidiaries, the Monitor, any of their respective employees and representatives acting in that capacity, the ~~Interim Tobacco Claimant Coordinator~~Court-Appointed Mediator, or affecting the Business or the Property or the funds deposited pursuant to the Deposit Posting Order except with the written consent of the Applicants and the Monitor, or with leave of this Court, and any and all Proceedings currently under way or directed to take place against or in respect of any of the Applicants or the ITCAN Subsidiaries, any of their respective employees and representatives acting in that capacity or

affecting the Business or the Property or the funds deposited pursuant to the Deposit Posting Order are hereby stayed and suspended pending further Order of this Court. All counterclaims, cross-claims and third party claims of the Applicants in the Pending Litigation are likewise subject to this stay of Proceedings during the Stay Period.

19. THIS COURT ORDERS that, during the Stay Period, (i) none of the Pending Litigation or any Proceeding in relation to any other Tobacco Claim shall be commenced, continued, or take place against or in respect of any Person named as a defendant or respondent in any of the Pending Litigation (such Persons the “Other Defendants”); and (ii) no Proceeding in Canada that relates in any way to a Tobacco Claim or to the Applicants, the Business or the Property, ~~including the Pending Litigation,~~ shall be commenced, continued or take place against or in respect of any member of the BAT Group except, in either case, with the written consent of the Applicants and the Monitor, or with leave of this Court, and any and all such Proceedings currently underway or directed to take place against or in respect of the Other Defendants or any member of the BAT Group, or affecting the Business or the Property or the funds deposited pursuant to the Deposit Posting Order are hereby stayed and suspended pending further Order of this Court.

20. THIS COURT ORDERS that, to the extent any prescription, time or limitation period relating to any Proceeding against or in respect of the Applicants, the ITCAN Subsidiaries, any Other Defendant or any member of the BAT Group that is stayed pursuant to this Order may expire, the term of such prescription, time or limitation period shall hereby be deemed to be extended by a period equal to the Stay Period.

#### **NO EXERCISE OF RIGHTS OR REMEDIES**

21. THIS COURT ORDERS that during the Stay Period, all rights and remedies of any individual, firm, corporation, governmental body or agency, or any other entities (all of the foregoing, collectively being “**Persons**” and each being a “**Person**”) against or in respect of the Applicants, the ITCAN Subsidiaries or the Monitor or their respective employees and representatives acting in that capacity, or affecting the Business or the Property or to obtain the funds deposited pursuant to the Deposit Posting Order (including, for greater certainty, any enforcement process or steps or other rights and remedies under or relating to the Quebec Class Actions against the Applicants, the Property or the ITCAN Subsidiaries), are hereby stayed and

suspended except with the written consent of the Applicants and the Monitor, or leave of this Court, provided that nothing in this Order shall (i) empower the Applicants or the ITCAN Subsidiaries to carry on any business which the Applicants or the ITCAN Subsidiaries are not lawfully entitled to carry on, (ii) affect such investigations, actions, suits or proceedings by a regulatory body as are permitted by Section 11.1 of the CCAA, (iii) prevent the filing of any registration to preserve or perfect a security interest, or (iv) prevent the registration of a claim for lien.

#### **NO INTERFERENCE WITH RIGHTS**

22. THIS COURT ORDERS that during the Stay Period, no Person shall discontinue, fail to honour, alter, interfere with, repudiate, terminate or cease to perform any right, renewal right, contract, agreement, licence or permit in favour of or held by the Applicants or the ITCAN Subsidiaries, except with the written consent of the Applicants and the Monitor, or leave of this Court.

#### **CONTINUATION OF SERVICES**

23. THIS COURT ORDERS that during the Stay Period, all Persons having oral or written agreements with the Applicants or the ITCAN Subsidiaries or statutory or regulatory mandates for the supply of goods and/or services, including without limitation all computer software, communication and other data services, centralized banking services, payroll services, insurance, transportation services, utility, customs clearing, warehouse or logistical services or other services to the Business, the Applicants or the ITCAN Subsidiaries, are hereby restrained until further Order of this Court from discontinuing, altering, interfering with or terminating the supply of such goods or services as may be required by the Applicants or the ITCAN Subsidiaries, and that the Applicants and the ITCAN Subsidiaries shall be entitled to the continued use of their current premises, telephone numbers, facsimile numbers, internet addresses and domain names, provided in each case that the normal prices or charges for all such goods or services received after the date of this Order are paid by the Applicants and the ITCAN Subsidiaries in accordance with normal payment practices of the Applicants and the ITCAN Subsidiaries or such other practices as may be agreed upon by the supplier or service provider and the respective Applicant or ITCAN Subsidiary and the Monitor, or as may be ordered by this Court.

**NON-DEROGATION OF RIGHTS**

24. THIS COURT ORDERS that, notwithstanding anything else in this Order, no Person shall be prohibited from requiring immediate payment for goods, services, use of leased or licensed property or other valuable consideration provided on or after the date of this Order, nor shall any Person be under any obligation on or after the date of this Order to advance or re-advance any monies or otherwise extend any credit to the Applicants. Nothing in this Order shall derogate from the rights conferred and obligations imposed by the CCAA.

**SALES AND EXCISE TAX CHARGE**

25. THIS COURT ORDERS that the Canadian federal, provincial and territorial authorities that are entitled to receive payments or collect monies from the Applicants in respect of Sales & Excise Taxes (including for greater certainty the Canada Border Services Agency) shall be entitled to the benefit of and are hereby granted a charge (the “**Sales and Excise Tax Charge**”) on the Property, which charge shall not exceed an aggregate amount of \$580 million, as security for all amounts owing by the Applicants in respect of Sales & Excise Taxes, after taking into consideration any Bonding Collateral posted in respect thereof. The Sales and Excise Tax Charge shall have the priority set out in paragraphs 45 and 47 hereof.

**PROCEEDINGS AGAINST DIRECTORS AND OFFICERS**

26. THIS COURT ORDERS that during the Stay Period, and except as permitted by subsection 11.03(2) of the CCAA, no Proceeding may be commenced or continued against any of the former, current or future directors or officers of the Applicants with respect to any claim against the directors or officers that arose before the date hereof and that relates to any obligations of the Applicants whereby the directors or officers are alleged under any law to be liable in their capacity as directors or officers for the payment or performance of such obligations.

**DIRECTORS’ AND OFFICERS’ INDEMNIFICATION AND CHARGE**

27. THIS COURT ORDERS that the Applicants shall indemnify their directors and officers against obligations and liabilities that they may incur as directors or officers of the Applicants after the commencement of the within proceedings, except to the extent that, with

respect to any officer or director, the obligation or liability was incurred as a result of the director's or officer's gross negligence or wilful misconduct.

28. THIS COURT ORDERS that the directors and officers of the Applicants shall be entitled to the benefit of and are hereby granted a charge (the **'Directors' Charge'**) on the Property, which charge shall not exceed an aggregate amount of \$16 million, as security for the indemnity provided in paragraph 27 of this Order. The Directors' Charge shall have the priority set out in paragraphs 45 and 47 herein.

29. THIS COURT ORDERS that, notwithstanding any language in any applicable insurance policy to the contrary, (a) no insurer shall be entitled to be subrogated to or claim the benefit of the Directors' Charge, and (b) the Applicants' directors and officers shall only be entitled to the benefit of the Directors' Charge to the extent that they do not have coverage under any directors' and officers' insurance policy, or to the extent that such coverage is insufficient to pay amounts indemnified in accordance with paragraph 27 of this Order.

#### **APPOINTMENT OF MONITOR**

30. THIS COURT ORDERS that FTI Consulting Canada Inc. is hereby appointed pursuant to the CCAA as the Monitor, an officer of this Court, to monitor the business and financial affairs of the Applicants with the powers and obligations set out in the CCAA or set forth herein and that the Applicants and their shareholders, officers, directors, and Assistants shall advise the Monitor of all material steps taken by the Applicants pursuant to this Order, and shall co-operate fully with the Monitor in the exercise of its powers and discharge of its obligations and provide the Monitor with the assistance that is necessary to enable the Monitor to adequately carry out the Monitor's functions.

31. THIS COURT ORDERS that the Monitor, in addition to its prescribed rights and obligations under the CCAA, is hereby directed and empowered to:

- (a) monitor the Applicants' receipts and disbursements;

- (b) report to this Court at such times and intervals as the Monitor may deem appropriate with respect to matters relating to the Property, the Business, and such other matters as may be relevant to the proceedings herein;
- (c) advise the Applicants in their preparation of the Applicants' cash flow statements;
- (d) advise the Applicants in their development of the Plan and any amendments to the Plan;
- (e) assist the Applicants, to the extent required by the Applicants, with the holding and administering of creditors' or shareholders' meetings for voting on the Plan;
- (f) have full and complete access to the Property, including the premises, books, records, data, including data in electronic form, and other financial documents of the Applicants, to the extent that is necessary to adequately assess the Applicants' business and financial affairs or to perform its duties arising under this Order;
- (g) be at liberty to engage independent legal counsel or such other persons as the Monitor deems necessary or advisable respecting the exercise of its powers and performance of its obligations under this Order;
- (h) assist the Applicants, to the extent required by the Applicants, in its efforts to explore the potential for a resolution of any of the Tobacco Claims;
- (i) consult with the ~~Interim Tobacco Claimant Coordinator~~[Court-Appointed Mediator](#) in connection with the ~~Interim Tobacco Claimant Coordinator~~[Court-Appointed Mediator](#)'s mandate, including in relation to any negotiations to settle any Tobacco Claims and the development of the Plan;
- (j) be and is hereby appointed to serve as the "foreign representative" of the Applicants in respect of an application to the United States Bankruptcy Court for relief pursuant to Chapter 15 of the United States Bankruptcy Code, 11 U.S.C. §§ 101-1330, as amended; and
- (k) perform such other duties as are required by this Order or by this Court from time to time.

32. THIS COURT ORDERS that the Monitor shall not take possession of the Property and shall take no part whatsoever in the management or supervision of the management of the Business and shall not, by fulfilling its obligations hereunder, be deemed to have taken or maintained possession or control of the Business or Property, or any part thereof.

33. THIS COURT ORDERS that nothing herein contained shall require the Monitor to occupy or to take control, care, charge, possession or management (separately and/or collectively, ‘**Possession**’) of any of the Property that might be environmentally contaminated, might be a pollutant or a contaminant, or might cause or contribute to a spill, discharge, release or deposit of a substance contrary to any federal, provincial or other law respecting the protection, conservation, enhancement, remediation or rehabilitation of the environment or relating to the disposal of waste or other contamination including, without limitation, the *Canadian Environmental Protection Act*, the *Ontario Environmental Protection Act*, the *Ontario Water Resources Act*, the *Ontario Occupational Health and Safety Act*, the *Quebec Environment Quality Act*, the *Quebec Act Respecting Occupational Health and Safety* and any regulations under any of the foregoing statutes (the ‘**Environmental Legislation**’), provided however that nothing herein shall exempt the Monitor from any duty to report or make disclosure imposed by applicable Environmental Legislation. The Monitor shall not, as a result of this Order or anything done in pursuance of the Monitor’s duties and powers under this Order, be deemed to be in Possession of any of the Property within the meaning of any Environmental Legislation, unless it is actually in possession.

34. THIS COURT ORDERS that the Monitor shall provide any creditor of the Applicants and the ~~Interim Tobacco Claimant Coordinator~~Court-Appointed Mediator with information provided by the Applicants in response to reasonable requests for information made in writing by such person addressed to the Monitor. The Monitor shall not have any responsibility or liability with respect to the information disseminated by it pursuant to this paragraph. In the case of information that the Monitor has been advised by the Applicants is confidential, the Monitor shall not provide such information to creditors unless otherwise directed by this Court or on such terms as the Monitor and the Applicants may agree.

35. THIS COURT ORDERS that, in addition to the rights and protections afforded the Monitor under the CCAA or as an officer of this Court, the Monitor shall incur no liability or

obligation as a result of its appointment or the carrying out of the provisions of this Order, save and except for any gross negligence or wilful misconduct on its part. Nothing in this Order shall derogate from the protections afforded the Monitor by the CCAA or any applicable legislation.

36. THIS COURT ORDERS that the Monitor, counsel to the Monitor and counsel to the Applicants shall be paid their reasonable fees and disbursements, in each case at their standard rates and charges, by the Applicants as part of the costs of these proceedings. The Applicants are hereby authorized and directed to pay the accounts of the Monitor, counsel to the Monitor and counsel to the Applicants on a bi-weekly basis and, in addition, the Applicants are hereby authorized, *nunc pro tunc*, to pay to the Monitor, counsel to the Monitor and counsel to the Applicants retainers to be held by them as security for payment of their respective fees and disbursements outstanding from time to time.

37. THIS COURT ORDERS that the Monitor and its legal counsel shall pass their accounts from time to time, and for this purpose the accounts of the Monitor and its legal counsel are hereby referred to a judge of the Commercial List of the Ontario Superior Court of Justice.

38. THIS COURT ORDERS that the Monitor, counsel to the Monitor and counsel to the Applicants shall be entitled to the benefit of and are hereby granted a charge (the “**Administration Charge**”) on the Property, which charge shall not exceed an aggregate amount of \$5 million, as security for their professional fees and disbursements incurred at the standard rates and charges of the Monitor and such counsel, both before and after the making of this Order in respect of these proceedings. The Administration Charge shall have the priority set out in paragraphs 45 and 47 hereof.

~~INTERIM TOBACCO CLAIMANT COORDINATOR~~

COURT-APPOINTED MEDIATOR

39. THIS COURT ORDERS that the Hon. Warren K. Winkler, Q.C. is hereby appointed, ~~on~~ as an ~~interim basis until April 30, 2019 or as may be agreed to by the Applicants and the Monitor (the “Interim Period”), as an~~ officer of the Court and shall act as ~~an~~ independent a neutral third party (the “~~Interim Tobacco Claimant Coordinator~~”) ~~to assist and to coordinate the interests of all Persons (other than any defendant or respondent, any of their~~

~~respective affiliates, and the federal, provincial and territorial governments of Canada) in these proceedings (the “Tobacco Claimants”) in connection with the Pending Litigation and any “Court-Appointed Mediator”) to mediate a global settlement of the Tobacco Claim (the “Interim Duties”) Claims.~~

40. THIS COURT ORDERS that in carrying out his mandate, ~~during the Interim Period, the Interim Tobacco Claimant Coordinator shall be at liberty to~~ Court-Appointed Mediator may, among other things:

- (a) Adopt processes which, in his discretion, he considers appropriate to facilitate negotiation of a global settlement.
- (b) ~~(a) retain~~ Retain independent legal counsel and such other advisors and persons as the ~~Interim Tobacco Claimant Coordinator~~ Court-Appointed Mediator considers necessary or desirable to assist him in ~~relation to the Interim Duties~~ carrying out his mandate;
- (c) ~~(b) consult~~ Consult with all Persons with Tobacco Claims (“Tobacco Claimants”), the Monitor, the Applicants ~~and, the Co-Defendants~~, other creditors and stakeholders of the Applicant, ~~including in connection with any recommendations that the Interim Tobacco Claimant Coordinator has in respect of the (i) establishment of a committee of Tobacco Claimants (the “Tobacco Claimant Committee”) to consult with and provide input to the Interim Tobacco Claimant Coordinator and the procedures to govern the formation and operation of the Interim Tobacco Claimant Committee; and (ii) procedural mechanisms to be implemented to facilitate the resolution of the Tobacco Claims~~ Applicants and/or the Co-Defendants and any other persons the Court-Appointed Mediator considers appropriate;
- (d) ~~(e) accept~~ Accept a court appointment of similar nature ~~to represent claimants with interests similar to the Tobacco Claimants~~ in any proceedings under the CCAA commenced by a company that is a co-defendant or respondent with ~~any of~~ the Applicants or the Co-Defendants in any action brought by one or more Tobacco Claimants, including the Pending Litigation; ~~and~~

(e) ~~(d) apply~~ Apply to this Court for advice and directions ~~at such times as, in his discretion,~~ the ~~Interim Tobacco Claimant Coordinator may so require~~ Court-Appointed Mediator deems necessary.

41. THIS COURT ORDERS that, subject to an agreement between the Applicants and the ~~Interim Tobacco Claimant Coordinator~~ Court-Appointed Mediator, all reasonable fees and disbursements of the ~~Interim Tobacco Claimant Coordinator~~ Court-Appointed Mediator and his legal counsel and financial and other advisors as may have been incurred by them prior to the date of this Order or which shall be incurred by them in relation to ~~the Interim Duties~~ carrying out his mandate shall be paid by the Applicants and the Co-Defendants on a monthly basis, forthwith upon the rendering of accounts to the Applicants and the Co-Defendants.

42. THIS COURT ORDERS that the ~~Interim Tobacco Claimant Coordinator~~ Court-Appointed Mediator shall be entitled to the benefit of and is hereby granted a charge (the “~~Interim Tobacco Claimant Coordinator~~ Court-Appointed Mediator Charge”) on the Property, which charge shall not exceed an aggregate amount of \$1 million, as security for his fees and disbursements and for the fees and disbursements of his legal counsel and financial and other advisors, in each case incurred at their standard rates and charges, both before and after the making of this Order in respect of these proceedings. The ~~Interim Tobacco Claimant Coordinator~~ Court-Appointed Mediator Charge shall have the priority set out in paragraphs 45 and 47 hereof.

43. THIS COURT ORDERS that the ~~Interim Tobacco Claimant Coordinator~~ Court-Appointed Mediator is authorized to take all steps and to do all acts necessary or desirable to carry out the terms of this Order, including dealing with any Court, regulatory body or other government ministry, department or agency, and to take all such steps as are necessary or incidental thereto.

44. THIS COURT ORDERS that, in addition to the rights and protections afforded as an officer of this Court, the ~~Interim Tobacco Claimant Coordinator~~ Court-Appointed Mediator shall incur no liability or obligation as a result of his appointment or the carrying out of the provisions of this Order, save and except for any gross negligence or wilful misconduct on his part. Nothing in this Order shall derogate from the protections afforded a person pursuant to Section 142 of the *Courts of Justice Act* (Ontario).

## **VALIDITY AND PRIORITY OF CHARGES CREATED BY THIS ORDER**

45. THIS COURT ORDERS that the priorities of the Administration Charge, the ~~Interim Tobacco Claimant Coordinator~~Court-Appointed Mediator Charge, the Directors' Charge, and the Sales and Excise Tax Charge (collectively, the "Charges"), as among them, shall be as follows:

- (a) First – Administration Charge (to the maximum amount of \$5 million) and the ~~Interim Tobacco Claimant Coordinator~~Court-Appointed Mediator Charge (to the maximum amount of \$1 million), *pari passu*;
- (b) Second – Directors' Charge (to the maximum amount of \$16 million); and
- (c) Third – the Sales and Excise Tax Charge (to the maximum amount of \$580 million).

46. THIS COURT ORDERS that the filing, registration or perfection of the Charges shall not be required, and that the Charges shall be valid and enforceable for all purposes, including as against any right, title or interest filed, registered, recorded or perfected subsequent to the Charges coming into existence, notwithstanding any such failure to file, register, record or perfect.

47. THIS COURT ORDERS that each of the Charges shall constitute a charge on the Property and such Charges shall rank in priority to all other security interests, trusts, liens, charges encumbrances, and claims of secured creditors, statutory or otherwise (collectively, the "Encumbrances") in favour of any Person in respect of such Property save and except for:

- (a) purchase-money security interests or the equivalent security interests under various provincial legislation and financing leases (that, for greater certainty, shall not include trade payables);
- (b) statutory super-priority deemed trusts and liens for unpaid employee source deductions;
- (c) deemed trusts and liens for any unpaid pension contribution or deficit with respect to the DB Plans, the DC Plan (as such terms are defined in the Thauvette

Affidavit) and any of the Applicants' other pension plans, but only to the extent that any such deemed trusts and liens are statutory super-priority deemed trusts and liens afforded priority by statute over all pre-existing Encumbrances granted or created by contract; and

- (d) liens for unpaid municipal property taxes or utilities that are given first priority over other liens by statute.

48. THIS COURT ORDERS that except as otherwise expressly provided for herein, or as may be approved by this Court, the Applicants shall not grant any Encumbrances over any Property that rank in priority to, or *pari passu* with, any of the Charges unless the Applicants also obtain the prior written consent of the Monitor and the beneficiaries of the Charges affected thereby (collectively, the "**Chargees**"), or further Order of this Court.

49. THIS COURT ORDERS that each of the Charges shall not be rendered invalid or unenforceable and the rights and remedies of the Chargees thereunder shall not otherwise be limited or impaired in any way by (a) the pendency of these proceedings and the declarations of insolvency made herein; (b) any application(s) for bankruptcy order(s) issued pursuant to the *Bankruptcy and Insolvency Act* ("**BIA**"), or any bankruptcy order made pursuant to such applications; (c) the filing of any assignments for the general benefit of creditors made pursuant to the BIA; (d) the provisions of any federal or provincial statutes; or (e) any negative covenants, prohibitions or other similar provisions with respect to borrowings, incurring debt or the creation of Encumbrances, contained in any existing loan documents, lease, sublease, offer to lease or other agreement (collectively, an "**Agreement**") which binds the Applicants, and notwithstanding any provision to the contrary in any Agreement:

- (a) the creation of the Charges shall not create or be deemed to constitute a breach by the Applicants of any Agreement to which it is a party;
- (b) none of the Chargees shall have any liability to any Person whatsoever as a result of any breach of any Agreement caused by or resulting from the creation of the Charges; and

- (c) the payments made by the Applicants pursuant to this Order and the granting of the Charges do not and will not constitute preferences, fraudulent conveyances, transfers at undervalue, oppressive conduct, or other challengeable or voidable transactions under any applicable law.

50. THIS COURT ORDERS that any Charge created by this Order over leases of real property in Canada shall only be a Charge in the Applicants' interest in such real property leases.

#### **SERVICE AND NOTICE**

51. THIS COURT ORDERS that the Monitor shall (i) without delay, publish in The Globe and Mail (National Edition) and La Presse a notice containing the information prescribed under the CCAA as well as the date of the Comeback Motion (as defined below) and advising of the appointment of the ~~Interim Tobacco Claimant Coordinator~~[Court-Appointed Mediator](#), (ii) within five days after the date of this Order or as soon as reasonably practicable thereafter, (A) make this Order publicly available in the manner prescribed under the CCAA, (B) send, in the prescribed manner, a notice (which shall include the date of the Comeback Motion) to every known creditor who has a claim (contingent, disputed or otherwise) against the Applicants of more than \$5,000, except with respect to (I) Tobacco Claimants, in which cases the Monitor shall only send a notice to the ~~Interim Tobacco Claimant Coordinator~~[Court-Appointed Mediator](#) and to counsel of record in the applicable Pending Litigation (if any) and (II) in the case of beneficiaries of the DB Plans, the DC Plan (as such terms are defined in the Thauvette Affidavit) and any of the Applicants' other pension plans, in which case the Monitor shall only send a notice to the trustees of each of the DB Plans, the DC Plan and the Applicants' other pension plans, and the Retraite Québec, and (C) prepare a list showing the names and addresses of those creditors and the estimated amounts of those claims, and make it publicly available in the prescribed manner, all in accordance with Section 23(1)(a) of the CCAA and the regulations made thereunder. The list referenced in subparagraph (C) above shall not include the names, addresses or estimated amounts of the claims of those creditors who are individuals or any personal information in respect of an individual.

52. THIS COURT ORDERS that notice of the appointment of the ~~Interim Tobacco Claimant Coordinator~~[Court-Appointed Mediator](#) shall be provided to the Tobacco Claimants by:

- (a) notice on the Case Website (as defined herein) posted by the Monitor;
- (b) advertisements published without delay by the Monitor in The Globe and Mail (National Edition) and La Presse, which advertisements shall be in addition to the advertisement required under paragraph 51 hereof, and which shall be run on two non-consecutive days following the day on which the advertisement set out in paragraph 51 is run; and
- (c) delivery by the Applicants of a copy of this Order to counsel of record in the applicable Pending Litigation, who shall thereafter (i) post notice of the appointment of the ~~Interim Tobacco Claimant Coordinator~~Court-Appointed Mediator on their respective websites and (ii) deliver notice of the appointment of the ~~Interim Tobacco Claimant Coordinator~~Court-Appointed Mediator to each representative plaintiff;

53. THIS COURT ORDERS that notice of any motions or other proceedings to which the Tobacco Claimants are entitled or required to receive in these CCAA proceedings and in respect of which the ~~Interim Tobacco Claimant Coordinator~~Court-Appointed Mediator has the authority to represent the Tobacco Claimants may be served on the ~~Interim Tobacco Claimant Coordinator~~Court-Appointed Mediator and, unless the Court has ordered some other form of service, such service will constitute sufficient service and any further service on Tobacco Claimants is dispensed with.

54. THIS COURT ORDERS that the E-Service Guide of the Commercial List (the “**Guide**”) is approved and adopted by reference herein and, in this proceeding, the service of documents made in accordance with the Guide (which can be found on the Commercial List website at <http://www.ontariocourts.ca/scj/practice/practice-directions/toronto/eservice-commercial/>) shall be valid and effective service. Subject to Rule 17.05 this Order shall constitute an order for substituted service pursuant to Rule 16.04 of the Rules of Civil Procedure. Subject to Rule 3.01(d) of the Rules of Civil Procedure and paragraph 13 of the Guide, service of documents in accordance with the Guide will be effective on transmission. This Court further orders that a Case Website shall be established by the Monitor in accordance with the Guide with the following URL: <http://cfcanada.fticonsulting.com/imperialtobacco> (“**Case Website**”).

55. THIS COURT ORDERS that if the service or distribution of documents in accordance with the Guide is not practicable, the Applicants and the Monitor are at liberty to serve or distribute this Order, any other materials and orders in these proceedings, and any notices or other correspondence, by forwarding true copies thereof by prepaid ordinary mail, courier, personal delivery, facsimile or other electronic transmission to the Applicants' creditors or other interested parties at their respective addresses as last shown on the records of the Applicants and that any such service or distribution by courier, personal delivery, facsimile or other electronic transmission shall be deemed to be received on the date of forwarding thereof, or if sent by ordinary mail, on the third business day after mailing.

56. THIS COURT ORDERS that the Applicants are authorized to rely on the notice provided in paragraph 51 to provide notice of the comeback motion to be heard on a date to be set by this Court upon the granting of this Order (the "**Comeback Motion**") and shall only be required to serve motion materials relating to the Comeback Motion, in accordance with the Guide, upon those parties who serve a Notice of Appearance in this proceeding prior to the date of the Comeback Motion.

57. THIS COURT ORDERS that the Monitor shall create, maintain and update as necessary a list of all Persons appearing in person or by counsel in this proceeding (the "**Service List**"). The Monitor shall post the Service List, as may be updated from time to time, on the Case Website as part of the public materials to be recorded thereon in relation to this proceeding. Notwithstanding the foregoing, the Monitor shall have no liability in respect of the accuracy of or the timeliness of making any changes to the Service List. The Monitor shall manage the scheduling of all motions that are brought in these proceedings.

58. **THIS COURT ORDERS** that the Applicants and the Monitor and their counsel are at liberty to serve or distribute this Order, any other materials and orders as may be reasonably required in these proceedings, including any notices, or other correspondence, by forwarding true copies thereof by electronic message to the Applicants' creditors or other interested parties and their advisors. For greater certainty, any such distribution or service shall be deemed to be in satisfaction of a legal or juridical obligation, and notice requirements within the meaning of clause 3(c) of the Electronic Commerce Protection Regulations, Reg. 8100 2-175 (SOR/DORS).

**GENERAL**

59. THIS COURT ORDERS that the Applicants or the Monitor may from time to time apply to this Court to amend, vary, supplement or replace this Order or for advice and directions concerning the discharge of their respective powers and duties under this Order or the interpretation or application of this Order.

60. THIS COURT ORDERS that nothing in this Order shall prevent the Monitor from acting as an interim receiver, a receiver, a receiver and manager, or a trustee in bankruptcy of the Applicants, the Business or the Property.

61. THIS COURT HEREBY REQUESTS the aid and recognition of any court, tribunal, regulatory or administrative body having jurisdiction in Canada, in the United States or any other country, 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.

62. THIS COURT ORDERS that each of the Applicants and the Monitor be at liberty and is hereby authorized and empowered to apply to any court, tribunal, regulatory or administrative body, wherever located, for the recognition of this Order and for assistance in carrying out the terms of this Order, and that the Monitor is authorized and empowered to act as a representative in respect of the within proceedings for the purpose of having these proceedings recognized in a jurisdiction outside Canada.

63. THIS COURT ORDERS that any interested party (including the Applicants, BAT, BATIF, and the Monitor) may apply to this Court to vary or amend this Order on not less than seven (7) days' notice to any other party or parties likely to be affected by the order sought or upon such other notice, if any, as this Court may order.

64. THIS COURT ORDERS that this Order and all of its provisions are effective as of 12:01 a.m. Eastern Standard/Daylight Time on the date of this Order (the ‘**Effective Time**’) and that from the Effective Time to the time of the granting of this Order any action taken or notice given by any creditor of the Applicants or by any other Person to commence or continue any enforcement, realization, execution or other remedy of any kind whatsoever against the Applicant, the Property, the Business or the funds deposited pursuant to the Deposit Posting Order shall be deemed not to have been taken or given, as the case may be.

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**SCHEDULE “A”  
PENDING LITIGATION**

**A. Medicaid Claim Litigation**

	<b>Jurisdiction</b>	<b>File Date &amp; Court File No.</b>	<b>Plaintiff(s)</b>	<b>Defendant(s)</b>
1.	Alberta	June 8, 2012; 1201-07314 (Calgary)	Her Majesty in Right of Alberta	Altria Group, Inc.; B.A.T Industries p.l.c.; British American Tobacco (Investments) Limited; British American Tobacco p.l.c.; Canadian Tobacco Manufacturers Council; Carreras Rothmans Limited; Imperial Tobacco Canada Limited; JTI-MacDonald Corp.; Philip Morris International, Inc.; Philip Morris USA, Inc.; R.J. Reynolds Tobacco Company; R.J. Reynolds Tobacco International, Inc.; Rothmans, Benson & Hedges Inc.; and Rothmans Inc.
2.	British Columbia	January 24, 2001, further amended February 17, 2011; S010421 (Vancouver)	Her Majesty the Queen in right of British Columbia	Imperial Tobacco Canada Limited, Rothmans, Benson & Hedges Inc., Rothmans Inc., JTI-Macdonald Corp., Canadian Tobacco Manufacturers' Council, B.A.T Industries p.l.c., British American Tobacco (Investments) Limited, Carreras Rothmans Limited, Philip Morris Incorporated, Philip Morris International, Inc., R. J. Reynolds Tobacco Company, R. J. Reynolds Tobacco International, Inc., Rothmans International Research Division and Ryesekks p.l.c.
3.	Manitoba	May 31, 2012, amended October 16, 2012; CI 12-01-78127 (Winnipeg)	Her Majesty the Queen in right of the Province of Manitoba	Rothmans, Benson & Hedges Inc., Rothmans, Inc., Altria Group, Inc., Philip Morris U.S.A. Inc., Philip Morris International, Inc., JTI-MacDonald Corp., R.J. Reynolds Tobacco Company, R.J. Reynolds Tobacco International Inc., Imperial Tobacco Canada Limited, British American Tobacco p.l.c., B.A.T Industries p.l.c., British American Tobacco (Investments) Limited, Carreras Rothmans Limited, and Canadian Tobacco Manufacturers' Council
4.	New Brunswick	March 13, 2008; F/C/88/08 (Fredericton)	Her Majesty the Queen in right of the Province of New Brunswick	Rothmans Inc., Rothmans, Benson & Hedges Inc., Carreras Rothmans Limited, Altria Group, Inc., Phillip Morris U.S.A. Inc., Phillip Morris International Inc., JTI-MacDonald Corp., R.J. Reynolds Tobacco Company, R.J. Reynolds Tobacco International Inc., Imperial Tobacco Canada Limited, British American Tobacco p.l.c., B.A.T Industries p.l.c., British American

	Jurisdiction	File Date & Court File No.	Plaintiff(s)	Defendant(s)
				Tobacco (Investments) Limited and Canadian Tobacco Manufacturers' Council
5.	Newfoundland and Labrador	February 8, 2011, amended June 4, 2014; 01G. No. 0826 (St. John's)	Attorney General of Newfoundland and Labrador	Rothmans Inc., Rothmans, Benson & Hedges Inc., Carreras Rothmans Limited, Altria Group, Inc., Philip Morris USA Inc, Philip Morris International Inc., JTI-MacDonald Corp., RJ Reynolds Tobacco Company, RJ Reynolds Tobacco International Inc., Imperial Tobacco Canada Limited, British American Tobacco p.l.c., B.A.T Industries p.l.c, British America Tobacco (Investments) Limited and Canadian Tobacco Manufacturers' Council
6.	Nova Scotia	January 2, 2015; 434868/737868 (Halifax)	Her Majesty The Queen in Right of the Province of Nova Scotia	Rothmans, Benson & Hedges Inc., Rothmans Inc., Altria Group, Inc., Philip Morris U.S.A. Inc, Philip Morris International Inc., JTI-MacDonald Corp., R.J. Reynolds Tobacco Company, R.J. Reynolds Tobacco International Inc., Imperial Tobacco Canada Limited, British American Tobacco p.l.c., B.A.T Industries p.l.c., British American Tobacco (Investments) Limited, Carreras Rothmans Limited and Canadian Tobacco Manufacturers' Council.
7.	Ontario	Amended December 11, 2009, amended as amended August 25, 2010, fresh as amended March 28, 2014, amended fresh as amended, April 20, 2016; CV-09-387984 (Toronto)	Her Majesty the Queen in right of Ontario	Rothmans Inc., Rothmans, Benson & Hedges Inc., Carreras Rothmans Limited, Altria Group, Inc., Phillip Morris U.S.A. Inc., Phillip Morris International Inc., JTI-MacDonald Corp., R.J. Reynolds Tobacco Company, R.J. Reynolds Tobacco International Inc., Imperial Tobacco Canada Limited, British American Tobacco p.l.c., B.A.T Industries p.l.c., British American Tobacco (Investments) Limited and Canadian Tobacco Manufacturers' Council
8.	Prince Edward Island	September 10, 2012, amended October 17, 2012; SI GS-25019 (Charlottetown)	Her Majesty the Queen in right of the Province of Prince Edward Island	Rothmans, Benson & Hedges Inc., Rothmans, Inc., Altria Group, Inc., Philip Morris U.S.A. Inc., Philip Morris International, Inc., JTI-MacDonald Corp., R.J. Reynolds Tobacco Company, R.J. Reynolds Tobacco International Inc., Imperial Tobacco Canada Limited, British American Tobacco p.l.c., B.A.T Industries p.l.c., British American Tobacco (Investments) Limited, Carreras Rothmans Limited, and Canadian Tobacco Manufacturers' Council

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	Jurisdiction	File Date & Court File No.	Plaintiff(s)	Defendant(s)
9.	Québec	June 8, 2012; 500-17-072363-123 (Montréal)	Procureur général du Québec	Impérial Tobacco Canada Limité e, B.A.T Industries p.l.c., British American Tobacco (Investments) Limited, Carreras Rothmans Limited, Rothmans, Benson & Hedges, Philip Morris USA Inc., Philip Morris International Inc., JTI-MacDonald Corp., R.J. Reynolds Tobacco Company, R.J. Reynolds Tobacco International, Inc., et Conseil Canadien de Fabricants des Produits du Tabac
10.	Saskatchewan	Amended October 5, 2012; Q.B. 8712012 (Saskatoon)	The Government of Saskatchewan	Rothmans, Benson & Hedges Inc., Rothmans Inc., Altria Group, Inc., Philip Morris International, Inc., JTI-Macdonald Corp., R.J. Reynolds Tobacco Company, R.J. Reynolds Tobacco International Inc., Imperial Tobacco Canada Limited, British American Tobacco p.l.c., B.A.T Industries p.l.c., British American Tobacco (Investments) Limited, Carreras Rothmans Limited, and Canadian Tobacco Manufacturers' Council

### B. Tobacco Claim Litigation – Certified and Proposed Class Actions

	Jurisdiction	Date Filed; Court File No.	(Representative) Plaintiff	Defendant(s)
1.	Alberta	June 15, 2009; 0901-08964 (Calgary)	Linda Dorion	Canadian Tobacco Manufacturers' Council, B.A.T Industries p.l.c., British American Tobacco (Investments) Limited, British American Tobacco p.l.c., Imperial Tobacco Canada Limited, Altria Group, Inc., Phillip Morris Incorporated, Phillip Morris International, Inc., Phillip Morris U.S.A. Inc., R.J. Reynolds Tobacco Company, R.J. Reynolds Tobacco, International, Inc., Carreras Rothmans Limited, JTI-MacDonald Corp., Rothmans, Benson & Hedges Inc., Rothmans Inc., Ryesekks p.l.c.
2.	British Columbia	May 8, 2003; L 031300 (Vancouver)	John Smith (a.k.a., Kenneth Knight)	Imperial Tobacco Canada Ltd.
3.	British Columbia	June 25, 2010; 10-2780 (Victoria)	Barbara Bourassa on behalf of the Estate of Mitchell David Bourassa	Imperial Tobacco Canada Limited, B.A.T Industries p.l.c., British American Tobacco (Investments) Limited, British American Tobacco p.l.c., Altria Group, Inc. Phillip Morris International, Inc., Phillip Morris U.S.A. Inc., R.J. Reynolds Tobacco Company, R.J. Reynolds Tobacco International, Inc., Carreras Rothmans Limited, JTI-MacDonald

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	Jurisdiction	Date Filed; Court File No.	(Representative) Plaintiff	Defendant(s)
				Corp., Rothmans, Benson & Hedges Inc., Rothmans Inc., Ryesekks p.l.c. and Canadian Tobacco Manufacturers' Council <sup>1</sup>
4.	British Columbia	June 25, 2010; 10-2769 (Victoria)	Roderick Dennis McDermid	Imperial Tobacco Canada Limited, B.A.T Industries p.l.c., British American Tobacco (Investments) Limited, British American Tobacco p.l.c., Altria Group, Inc., Phillip Morris International, Inc., Phillip Morris U.S.A. Inc., R.J. Reynolds Tobacco Company, R.J. Reynolds Tobacco International, Inc., Carreras Rothmans Limited, JTI-MacDonald Corp., Rothmans, Benson & Hedges Inc., Rothmans Inc., Ryesekks p.l.c. and Canadian Tobacco Manufacturers' Council <sup>2</sup>
5.	Manitoba	June 2009; CI09-01-61479 (Winnipeg)	Deborah Kunta	Canadian Tobacco Manufacturers' Council, B.A.T Industries p.l.c., British American Tobacco (Investments) Limited, British American Tobacco p.l.c., Imperial Tobacco Canada Limited, Altria Group, Inc., Phillip Morris Incorporated, Phillip Morris International Inc., Phillip Morris U.S.A. Inc., R.J. Reynolds Tobacco Company, R.J. Reynolds Tobacco, International, Inc., Carreras Rothmans Limited, JTI-MacDonald Corp., Rothmans, Benson & Hedges Inc., Rothmans Inc and Ryesekks p.l.c.
6.	Nova Scotia	June 18, 2009; 312869 2009 (Halifax)	Ben Semple	Canadian Tobacco Manufacturers' Council, B.A.T Industries p.l.c., British American Tobacco (Investments) Limited, British American Tobacco p.l.c., Imperial Tobacco Canada Limited, Altria Group, Inc., Phillip Morris Incorporated, Phillip Morris International, Inc., Phillip Morris U.S.A. Inc., R.J. Reynolds Tobacco Company, R.J. Reynolds Tobacco, International, Inc., Carreras Rothmans Limited, JTI-MacDonald Corp., Rothmans, Benson & Hedges Inc., Rothmans Inc., Ryesekks p.l.c.
7.	Ontario	December 2, 2009; 64757 (London)	The Ontario Flue-Cured Tobacco Growers' Marketing Board, Andy J. Jacko, Brian Baswick, Ron Kichler and Arpad Dobrentey	Imperial Tobacco Canada Limited, which is to be heard together with similar actions against Rothmans, Benson & Hedges Inc., and JTI-MacDonald Corp.
8.	Ontario	June 27, 2012; 53794/12 (St. Catharines)	Suzanne Jacklin	Canadian Tobacco Manufacturers' Council, B.A.T Industries p.l.c., British American Tobacco (Investments) Limited, British American Tobacco p.l.c., Imperial Tobacco Canada Limited, Altria Group, Inc., Phillip

<sup>1</sup> British American Tobacco p.l.c. and Carreras Rothmans Limited have been released from this action.

<sup>2</sup> British American Tobacco p.l.c. and Carreras Rothmans Limited have been released from this action.

	Jurisdiction	Date Filed; Court File No.	(Representative) Plaintiff	Defendant(s)
				Morris Incorporated, Phillip Morris International Inc., Phillip Morris U.S.A. Inc., R.J. Reynolds Tobacco Company, R.J. Reynolds Tobacco, International, Inc., Carreras Rothmans Limited, JTI-MacDonald Corp., Rothmans, Benson & Hedges Inc., Rothmans Inc., Ryesekks p.l.c
9.	Quebec	September 30, 2005; 500-06-000070-983 (Montreal)	Christine Fortin, Cécilia Létourneau and Joseph Mandelman	Imperial Tobacco Canada Ltd., Rothmans, Benson & Hedges Inc. and JTI-Macdonald Corp.
10.	Quebec	September 29, 2005; 500-06-000076-980 (Montreal)	Conseil Quebecois Sur Le Tabac Et La Sante and Jean-Yves Blais	Imperial Tobacco Canada Ltd., Rothmans, Benson & Hedges Inc. and JTI Macdonald Corp.
11.	Saskatchewan	July 10, 2009; 1036 of 2009; (June 12, 2009; 916 of 2009 never served) (Regina)	Thelma Adams	Canadian Tobacco Manufacturers' Council, B.A.T Industries p.l.c., British American Tobacco (Investments) Limited, British American Tobacco p.l.c., Imperial Tobacco Canada Limited, Altria Group, Inc., Phillip Morris Incorporated, Phillip Morris International Inc., Phillip Morris USA Inc., R.J. Reynolds Tobacco Company, R.J. Reynolds Tobacco, International, Inc., Carreras Rothmans Limited, JTI-MacDonald Corp., Rothmans, Benson & Hedges Inc., Rothmans Inc. and Ryesekks p.l.c. <sup>3</sup>

### C. Tobacco Claim Litigation – Individual Actions

	Jurisdiction	Date Filed; Court File No.	(Representative) Plaintiff	Defendant(s)
1.	Nova Scotia	February 20, 2002, 177663 (Halifax)	Peter Stright	Imperial Tobacco Canada Limited
2.	Ontario	May 1, 1997, amended May 25, 1998; fresh as amended March 28, 2004; C17773/97 (Milton)	Ljubisa Spasic as estate trustee of Mirjana Spasic	Imperial Tobacco Limited and Rothmans, Benson & Hedges Inc.
3.	Ontario	Amended September 8, 2014;	Ragoonanan <i>et al.</i>	Imperial Tobacco Canada Limited

<sup>3</sup> B.A.T Industries p.l.c., British American Tobacco (Investments) Limited, British American Tobacco p.l.c. have been released from this action.

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		00-CV-183165-CP00 (Toronto)		
4.	Ontario	June 30, 2003; 1442/03 (London)	Scott Landry	Imperial Tobacco Canada Limited
5.	Ontario	June 12, 1997; 21513/97 (North York)	Joseph Battaglia	Imperial Tobacco Canada Limited
6.	Quebec	December 8, 2016; 750-32-700014-163 (Saint-Hyacinthe)	Roland Bergeron	Imperial Tobacco Canada Limited





**SCHEDULE "B"**  
**ITCAN SUBSIDIARIES**

Imperial Tobacco Services Inc.  
Imperial Tobacco Products Limited  
Marlboro Canada Limited  
Cameo Inc.  
Medallion Inc.  
Allan Ramsay and Company Limited  
John Player & Sons Ltd.  
Imperial Brands Ltd.  
2004969 Ontario Inc.  
Construction Romir Inc.  
Genstar Corporation  
Imasco Holdings Group, Inc.  
ITL (USA) limited  
Genstar Pacific Corporation  
Imasco Holdings Inc.  
Southward Insurance Ltd.  
Liggett & Myers Tobacco Company of Canada Limited

**SCHEDULE “C”  
HEALTH CARE COSTS RECOVERY LEGISLATION**

Jurisdiction	Statute
Alberta	<i>Crown’s Right of Recovery Act</i> , SA 2009, c C-35
British Columbia	<i>Tobacco Damages and Health Care Costs Recovery Act</i> , SBC 2000, c 30
Manitoba	<i>The Tobacco Damages Health Care Costs Recovery Act</i> , SM 2006, c 18
New Brunswick	<i>Tobacco Damages and Health Care Costs Recovery Act</i> , SNB 2006, c T-7.5
Newfoundland and Labrador	<i>Tobacco Health Care Costs Recovery Act</i> , SNL 2001, c T-4.2
Nova Scotia	<i>Tobacco Health-Care Costs Recovery Act</i> , SNS 2005, c 46
Northwest Territories	Proclaimed but not yet in force: <i>Tobacco Damages and Health Care Costs Recovery Act</i> , SNWT 2011, c 33
Nunavut	Proclaimed but not yet in force: <i>Tobacco Damages and Health Care Costs Recovery Act</i> , SNu 2010, c 31
Ontario	<i>Tobacco Damages and Health Care Costs Recovery Act</i> , 2009, SO 2009, c 13
Prince Edward Island	<i>Tobacco Damages and Health Care Costs Recovery Act</i> , SPEI 2009, c 22
Québec	<i>Tobacco-related Damages and Health Care Costs Recovery Act</i> , 2009, CQLR c R-2.2.0.0.1
Saskatchewan	<i>The Tobacco Damages and Health Care Costs Recovery Act</i> , SS 2007, c T-14.2
Yukon	N/A

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

**AMENDED AND RESTATED INITIAL ORDER**

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

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Tel: (416) 362-2111  
Fax: (416) 862-6666

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

Matter No: 1144377

**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

**COMPENDIUM OF  
IMPERIAL TOBACCO CANADA LIMITED AND  
IMPERIAL TOBACCO COMPANY LIMITED  
FOR COMEBACK HEARING  
(Motion Returnable April 4 and 5, 2019)**

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