

**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

**MOTION RECORD  
OF QUEBEC CLASS ACTION PLAINTIFFS**

April 18, 2019

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**(Quebec Class Action Plaintiffs)**

**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

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# TAB A

**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 COMP ANY LIMITED**

**NOTICE OF MOTION FOR CLARIFICATION OF AN ORDER**

**(Quebec Class Action Plaintiffs)**

The Quebec Class Action Plaintiffs<sup>1</sup> will make a motion to Justice McEwen presiding over the Commercial List on Thursday, April 25, 2019 at 10:00 a.m., or as soon thereafter as the motion can be heard, at 330 University Avenue, Toronto, Ontario.

All defined terms used herein shall have the same meaning as ascribed to them in the Order (Insurance Settlement) dated April 5, 2019 issued by Justice McEwen in this proceeding (the “**QCAP Insurance Settlements Order**”).

**PROPOSED METHOD OF HEARING:** The motion is to be heard orally.

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<sup>1</sup> The plaintiffs in the two class action lawsuits instituted in Quebec in 1998, referred to as *Blais* and *Letourneau*, in respect of which the Superior Court of Quebec (Justice Riordan) and the Court of Appeal of Quebec rendered judgments condemning ITL, RBH and JTIM to pay substantial moral and punitive damages.

**THE MOTION IS FOR:**

1. an order, if necessary, abridging the time for service and filing of this Notice of Motion and the Motion Record of the Quebec Class Action Plaintiffs, and dispensing with service on any person other than those served;
2. an order modifying the QCAP Insurance Settlements Order by revising paragraph 1 thereof as follows:

**THIS COURT ORDERS** that the ITCAN Initial Order is hereby varied by lifting the stay of proceedings provided for in the ITCAN Initial Order, to the extent required, solely to allow the Quebec Class Action Plaintiffs to seek from the Honourable Justice Brian Riordan, J.S.C., the approval of the Insurance Settlements, which includes all matters directly related thereto, in particular, the implementation of the Insurance Settlements and the distribution of the proceeds thereof.

**THE GROUNDS FOR THE MOTION ARE:**

3. By way of the QCAP Insurance Settlements Order, Justice McEwen granted, on an uncontested basis, the request made by the Quebec Class Action Plaintiffs to lift the stay of proceedings provided for in the ITCAN Initial Order, to the extent required, to permit the Quebec Class Action Plaintiffs to apply to Justice Riordan, J.S.C., to approve the Insurance Settlements, in accordance with Quebec law.
4. In accordance with the QCAP Insurance Settlements Order, the Quebec Class Action Plaintiffs filed a *Motion to Approve Settlements Between the Class Action Plaintiffs and*

*Certain Insurers in Liquidation* (the “**Approval Motion**”) with the Superior Court of Quebec on April 16, 2019.

5. The Approval Motion contains conclusions seeking the approval of the Insurance Settlements, as well as for the proposed use of the proceeds of the Insurance Settlements, the whole in accordance with article 590 of the *Code of Civil Procedure*, CQLR c C-25.01, which states the following (emphasis added):

**590. A transaction, acceptance of a tender, or an acquiescence is valid only if approved by the court. Such approval cannot be given unless notice has been given to the class members.**

*In the case of a transaction, the notice must state that the transaction will be submitted to the court for approval on the date and at the place indicated. **It must specify the nature of the transaction, the method of execution chosen and the procedure to be followed by class members to prove their claim. The notice must also inform class members that they may assert their contentions before the court regarding the proposed transaction and the distribution of any remaining balance. The judgment approving the transaction determines, if necessary, the mechanics of its execution.***

6. On April 17, 2019, an email was sent to Justice Riordan by Me Alexandre Fallon on behalf of ITL, in which it is alleged that the relief being sought in the Approval Motion is not permitted by the “*limited relief from the stay*” granted in the QCAP Insurance Settlements Order.
7. However, the Quebec Class Action Plaintiffs had specifically requested that the stay of proceedings be lifted, to the extent required, in order to obtain the approval of the Insurance Settlement Agreements, as required by Quebec law, which necessarily includes the implementation of the Insurance Settlements and the distribution of the proceeds thereof.

8. The Applicant has no interest in the Insurance Settlements, which involve only the Quebec Class Action Plaintiffs and third parties, were not dependent on the outcome of the Class Actions, and were only peripherally covered by the stay of proceedings, since Quebec law requires the approval of any settlement agreement by the judge presiding over the relevant class action proceedings. Furthermore, the proceeds of the Insurance Settlements are the sole property of the Quebec Class Action Plaintiffs.
9. The Applicant is purposely interfering with the execution of the QCAP Insurance Settlements Order, and improperly attempting to micro-manage the use by the Quebec Class Action Plaintiffs of settlement proceeds to which the Applicant has no right or interest.
10. On the one hand, the Applicant has insisted before this Court that it is committed to settling all claims against it, including those of the Quebec Class Action Plaintiffs and has urged this Court to "give peace a chance", while on the other hand, it is abusively interfering with the rights of the Quebec Class Action Plaintiffs to seek approval by the Superior Court of Quebec of the Insurance Settlements in which it has no financial interest whatsoever and is continuing the war of attrition which it has actively engaged in for the past 21 years.
11. It is in the interests of justice that the QCAP Insurance Settlements Order be clarified in the manner requested to ensure that ITCAN cannot further improperly interfere with the approval steps specifically contemplated by such Order.

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

1. The Affidavit of Tina Silverstein sworn on April 18, 2019 and the documents attached thereto; and
2. Such further and other materials as counsel may advise and this Honorable Court may permit.

April 18, 2019

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**Lawyers for the Quebec Class Action  
Plaintiffs**

# **TAB B**

**ONTARIO**  
**SUPERIOR COURT OF JUSTICE**  
**COMMERICAL 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**

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

**AFFIDAVIT OF TINA SILVERSTEIN**  
**(sworn April 18, 2019)**

I, Tina Silverstein, of the City of Montreal, in the Province of Quebec, MAKE OATH AND  
SAY:

1. I am one of the attorneys representing the class representatives (the "**Quebec Class Action Plaintiffs**") who instituted two class action lawsuits in Quebec in 1998 (the "**Quebec Class Actions**") on behalf of approximately 1 million members against Imperial Tobacco Canada Ltd. ("**ITL**"), Rothmans, Benson & Hedges Inc. ("**RBH**") and JTI-MacDonald Corporation.
2. This Affidavit is sworn to support the Quebec Class Action Plaintiffs' Motions for Clarification of an Order dated April 18, 2019.
3. All defined terms used in the present Affidavit have the same meaning as ascribed to them in the QCAP Notices of Motions for Clarification.

4. The Quebec Class Action Plaintiffs request the clarification of the QCAP Insurance Settlements Order and the QCAP Kansa Settlement Order (collectively, the “**Orders**”), attached hereto as **Exhibit-1** and **Exhibit-2**, to clarify that in lifting the stay of proceedings with respect to the approval of the Insurance Settlements, all matters directly related thereto, including in respect of the implementation of the Insurance Settlements and the distribution of the settlement proceeds, are within the jurisdiction of the Honourable Justice Brian Riordan, J.S.C.

5. The Orders lifted the stay of proceedings, to the extent required, to permit the Quebec Class Action Plaintiffs to apply to Justice Riordan, J.S.C., to approve the Insurance Settlements, in accordance with Quebec law.

6. The Quebec Class Action Plaintiffs made their requests to lift the stay of proceedings on a *de bene esse* basis, because of the broad terms of the stay of proceedings contained in the ITCAN Initial Order and the RBH Initial Order, which could be construed as encompassing proceedings in the Quebec Class Actions that do not directly involve the Applicants. In support of such requests, I swore an affidavit dated March 27, 2019, which is attached hereto as **Exhibit-3**.

7. In accordance with the Orders, the Quebec Class Action Plaintiffs filed a *Motion to Approve Settlements Between the Class Action Plaintiffs and Certain Insurers in Liquidation* (the “**Approval Motion**”) with the Superior Court of Quebec on April 16, 2019, a copy of which, together with its accompanying affidavit, notice, and annex, is attached hereto as **Exhibit-4**.

8. The Approval Motion contains conclusions seeking the approval of the Insurance Settlements, as well as for the proposed use of the proceeds of the Insurance Settlements, the whole in accordance with article 590 of the *Code of Civil Procedure*, CQLR c C-25.01, which states the following [emphasis added]:

**590. A transaction, acceptance of a tender, or an acquiescence is valid only if approved by the court. Such approval cannot be given unless notice has been given to the class members.**

*In the case of a transaction, the notice must state that the transaction will be submitted to the court for approval on the date and at the place indicated. **It must specify the nature of the transaction, the method of execution chosen and the procedure to be followed by class members to prove their claim. The notice must also inform class members that they may assert their contentions before the court regarding the proposed transaction and the distribution of any remaining balance. The judgment approving the transaction determines, if necessary, the mechanics of its execution.***

9. I am advised by Me André Lespérance, one of the lawyers representing the Quebec Class Action Plaintiffs, that the proposed use of the settlement proceeds will be in part to defray the costs associated with interacting with class members and responding to their voluminous queries in a manner consistent with past practice, and in part to reimburse the *Fonds d'aide aux actions collectives* (the Quebec government organization whose function is to provide class action funding), which has provided financial assistance to the Quebec Class Action Plaintiffs over the course of the last 21 years of the class action litigation.

10. On April 17, 2019, an email was sent to Justice Riordan by Me Alexandre Fallon on behalf of RBH and ITL, in which it is alleged that the relief being sought in the Approval Motion is not permitted by the “*limited relief from the stay*” granted in the QCAP Insurance Settlements Order and the QCAP Kansa Settlement Order, a copy of which is attached hereto as **Exhibit-5**.

11. However, the Quebec Class Action Plaintiffs had specifically requested that the stay of proceedings be lifted, to the extent required, in order to obtain the approval of the Insurance Settlements, as required by Quebec law, which necessarily includes the implementation of the Insurance Settlements and the distribution of the proceeds thereof.

12. The Applicants have no interest in the Insurance Settlements, which involve only the Quebec Class Action Plaintiffs and third parties, were not dependent on the outcome of the Class Actions, and were only peripherally covered by the stay of proceedings, since Quebec law requires the approval of any settlement agreement by the judge presiding over the relevant class action proceedings. Furthermore, the proceeds of the Insurance Settlements are the sole property of the Quebec Class Action Plaintiffs.

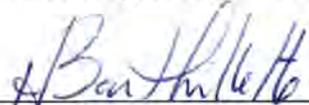
13. It is in the interests of justice that the Orders be clarified in the manner requested to ensure that neither RBH nor ITCAN can further improperly interfere with the approval steps specifically contemplated by such Orders.

14. All of the facts alleged herein are true.

**AND I HAVE SIGNED**

  
\_\_\_\_\_  
**Tina Silverstein**

Solemnly declared before me at Montreal,  
Province of Quebec, this 18<sup>th</sup> day of April, 2019.

  
\_\_\_\_\_  
Commissioner of Oaths for Quebec



This is **Exhibit « 1 »**, referred to in the  
**Affidavit of Tina Silverstein**, sworn before me  
this 18th day of April, 2019



Commissioner of Oaths for Quebec



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

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

THE HONOURABLE ) FRIDAY, THE 5<sup>TH</sup>  
 )  
MR. JUSTICE MCEWEN ) DAY OF APRIL, 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  
ROTHMANS, BENSON & HEDGES INC.



**ORDER  
(Kansa Settlement)**

This motion, made by the Quebec Class Action Plaintiffs for an order varying the Initial Order of Justice Pattillo dated March 22, 2019 (the “**RBH Initial Order**”) by partially lifting the stay of proceedings provided for in the RBH Initial Order, to the extent required, to allow the Quebec Class Action Plaintiffs to seek from the Honourable Justice Brian Riordan J.S.C. the approval of a settlement agreement that they have entered into with the Liquidator of Kansa General International Insurance Company Ltd. (“**Kansa**”) in connection with claims asserted by the Quebec Class Action Plaintiffs in the Kansa liquidation proceedings related to policies of insurance issued in favour of RBH (the “**Kansa Settlement**”), and for an order that the Kansa Settlement be sealed pending further order of the Court, was heard this day at 330 University Avenue, Toronto, Ontario.

ON READING the Affidavit of Tina Silverstein sworn on March 27, 2019 and on hearing the submissions of counsel for the Quebec Class Action Plaintiffs, no party on the service list opposing

although properly served as appears from the affidavit of Antoinette De Pinto sworn March 29, 2019, filed:

1. THIS COURT ORDERS that the RBH Initial Order is hereby varied by <sup>Safety</sup> lifting the stay of proceedings provided for in the RBH Initial Order, to the extent required, to allow the Quebec Class Action Plaintiffs to seek the approval of the Kansa Settlement from the Honourable Justice Brian Riordan J.S.C.
  
2. THIS COURT ORDERS that the Kansa Settlement shall be sealed pending further order of the Court.



ENTERED AT / INSCRIT A TORONTO  
ON / BOOK NO:  
LE / DANS LE REGISTRE NO:

APR 08 2019

PER / PAR: *KW*

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

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

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**ONTARIO**  
**SUPERIOR COURT OF JUSTICE**  
**(COMMERCIAL LIST)**  
Proceedings commenced at TORONTO

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**ORDER**

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**Lawyers for the Quebec Class Action Plaintiffs**

This is **Exhibit « 2 »**, referred to in the  
**Affidavit of Tina Silverstein**, sworn before me  
this 18th day of April, 2019



Commissioner of Oaths for Quebec



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

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

THE HONOURABLE ) FRIDAY, THE 5<sup>TH</sup>  
 )  
MR. JUSTICE MCEWEN ) DAY OF APRIL, 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

Applicants



**ORDER  
(Insurance Settlements)**

This motion, made by the Quebec Class Action Plaintiffs for an order varying the Initial Order of Justice McEwen dated March 12, 2019 (the “**ITCAN Initial Order**”) by partially lifting the stay of proceedings provided for in the ITCAN Initial Order, to the extent required, to allow the Quebec Class Action Plaintiffs to seek from the Honourable Justice Brian Riordan J.S.C. the approval of settlement agreements that they have entered into, respectively, with the Liquidator of Kansa General International Insurance Company Ltd. (“**Kansa**”) in connection with claims asserted by the Quebec Class Action Plaintiffs in the Kansa liquidation proceedings (the “**Kansa Settlement**”) and with the Liquidator of Northumberland General Insurance Company (“**Northumberland**”) in connection with claims asserted by the Quebec Class Action Plaintiffs in the Northumberland liquidation proceedings (the “**Northumberland Settlement**”), related to policies of insurance issued in favour of Imperial Tobacco Canada Ltd. (collectively, the “**Insurance**

**Settlements**”), and for an order that the Insurance Settlements be sealed pending further order of the Court, was heard this day at 330 University Avenue, Toronto, Ontario.

ON READING the Affidavit of Tina Silverstein sworn on March 27, 2019 and on hearing the submissions of counsel for the Quebec Class Action Plaintiffs, no party on the service list opposing although properly served as appears from the affidavit of Antoinette De Pinto sworn March 29, 2019, filed:

1. THIS COURT ORDERS that the ITCAN Initial Order is hereby varied by <sup>Ms. Suley</sup> lifting the stay of proceedings provided for in the ITCAN Initial Order, to the extent required, to allow the Quebec Class Action Plaintiffs to seek the approval of the Kansa Settlement and of the Northumberland Settlement from the Honourable Justice Brian Riordan J.S.C.

2. THIS COURT ORDERS that the Insurance Settlements shall be sealed pending further order of the Court.



ENTERED AT / INSCRIT À TORONTO  
ON / BOOK NO:  
LE / DANS LE REGISTRE NO:

APR 08 2019

PER / PAR: *fw*

IN THE MATTER OF A PLAN OF COMPROMISE OR ARRANGEMENT OF IMPERIAL TOBACCO CANADA LIMITED et al  
Court File No. CV-19-616077-00CL

**ONTARIO**  
**SUPERIOR COURT OF JUSTICE**  
**(COMMERCIAL LIST)**  
Proceedings commenced at TORONTO

**ORDER**

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1250 René-Levesque Blvd. West, Suite 4100  
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**Lawyers for the Quebec Class Action Plaintiffs**

This is **Exhibit « 3 »**, referred to in the  
**Affidavit of Tina Silverstein**, sworn before me  
this 18th day of April, 2019



Commissioner of Oaths for Quebec



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

**ONTARIO  
SUPERIOR COURT OF JUSTICE  
COMMERICAL 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**

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

**AFFIDAVIT OF TINA SILVERSTEIN**  
**(sworn March 27, 2019)**

I, Tina Silverstein, of the City of Montreal, in the Province of Quebec, MAKE OATH AND  
SAY:

1. I am one of the attorneys representing the class representatives (the "**Quebec Class Action Plaintiffs**") who instituted two class action lawsuits in Quebec in 1998 (the "**Quebec Class Actions**") on behalf of approximately 1 million members against Imperial Tobacco Canada Ltd. ("**Imperial**"), Rothmans, Benson & Hedges Inc. ("**RBH**") and JTI-MacDonald Corporation.
2. This Affidavit is sworn to support (i) the Quebec Class Action Plaintiffs' Motion for Comeback Hearing in respect of the Initial Order dated March 12, 2019 granted by the Honourable Justice McEwen (the "**ITCAN Initial Order**", which includes Imperial), and (ii) the Quebec Class

Action Plaintiffs' Motion for Comeback Hearing in respect of the Initial Order dated March 22, 2019 granted by the Honourable Justice Pattillo (the "**RBH Initial Order**").

3. The Quebec Class Action Plaintiffs request the partial lifting of the stay of proceedings provided for in the ITCAN Initial Order and the RBH Initial Order, on a *de bene esse* basis and to the extent required, to allow them to seek from the Honourable Justice Brian Riordan, J.S.C. (the "**Class Action Judge**") the approval of the following settlement agreements that they have entered into with third parties well prior to the commencement of these CCAA proceedings:

- a. the agreement dated February 16, 2017 entered into between the Quebec Class Action Plaintiffs and Northumberland General Insurance Company, in liquidation ("**Northumberland**"), through its liquidator PricewaterhouseCoopers Inc. (the "**Northumberland Settlement**"), in respect of insurance policies issued by Northumberland to Imperial (the "**Northumberland Policies**"); and
- b. the agreement dated July 4, 2017 entered into between the Quebec Class Action Plaintiffs and Kansa General International Insurance Company Ltd., in liquidation, formerly Kansa General Insurance Company ("**Kansa**") and its liquidator (the "**Kansa Settlement**") in respect of insurance policies issued by Kansa to Imperial and/or its predecessor entities, and to RBH and/or related entities (the "**Kansa Policies**");

(together, the "**Settlement Agreements**").

4. Each of Kansa and Northumberland is in liquidation and in the advanced stages of being wound up. Kansa was also declared bankrupt in Finland.

5. For ease of reference, the numbering of exhibits herein will continue the numbering sequence that was used in the Johnston JTIM Affidavit, in the Johnston ITCAN Affidavit, and in the Johnston RBH Affidavit, rather than restarting at "Exhibit 1".

6. Copies of the Kansa Settlement and the Northumberland Settlement are filed with this Affidavit, under seal, as **Exhibits “38” and “39”** respectively, since the terms thereof stipulate that they shall remain confidential and not be disclosed to third parties, as appears from the following extracts from the Settlement Agreements relating to confidentiality:

a. In the Kansa Settlement:

*16. (...) the parties hereto agree that the terms of this Settlement Agreement shall not be disclosed by them to any third parties, other than as may be required by law or governmental authority or by the courts having carriage of the Quebec Actions and the Kansa Liquidation Proceedings. In respect of any proceedings including, but not limited to, those related to the Court Approvals, the parties hereto shall request that this Settlement Agreement be produced under seal.*

b. In the Northumberland Settlement:

*15. The parties each covenant and agree that the terms of this Settlement Agreement are confidential and shall not be disclosed by them to anyone other than to the lawyers, or accountants providing services to the parties, or as may be required by law or governmental authority (...).*

7. Furthermore, Exhibits “38” and “39” are filed under seal because of the sensitive nature of the commercial terms thereof.

8. Because of the broad terms of the stay of proceedings contained in the ITCAN Initial Order and the RBH Initial Order (which may be construed to encompass proceedings in the Quebec Class Actions not directly involving Imperial and RBH), there is some uncertainty as to whether the terms thereof would prohibit the Quebec Class Action Plaintiffs from seeking the approval of the Settlement Agreements by the Class Action Judge, which is both a requirement of Quebec law, and a condition of the Settlement Agreements that requires approval by the Class Action Judge within 90 days of the release of the Appeal Judgment rendered on March 1, 2019.

9. Article 590 of the *Code of Civil Procedure of Quebec* provides that a settlement (transaction) on behalf of class members in a class action requires court approval by the judge supervising the class action.

10. The Settlement Agreements, entered into solely between the Quebec Class Action Plaintiffs and Kansa and Northumberland respectively, do not involve Imperial or RBH, or their property.

11. In particular, in the case of Kansa, both Imperial and RBH had settled all of their claims related to the Kansa Policies and specifically waived any further claims in relation thereto pursuant to settlement agreements that they entered into directly with Kansa in 2015.

12. In the case of Northumberland, at the time the Northumberland Settlement was executed, the Northumberland liquidator confirmed to the Quebec Class Action Plaintiffs that it was contemporaneously entering into a full and final settlement with Imperial in respect of all of its claims regarding the Northumberland Policies.

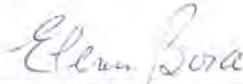
13. Finally, the payment of the settlement amounts to the Quebec Class Action Plaintiffs, in accordance with the terms of the Settlement Agreements, was not contingent upon whether the Quebec Class Action Plaintiffs obtained a favorable or unfavorable result in the appeals of the Riordan Judgment rendered on May 27, 2015; the amounts were payable in all circumstances subject only to approval by the Class Action Judge.

14. All of the facts alleged herein are true.

AND I HAVE SIGNED

  
\_\_\_\_\_  
Tina Silverstein

Solemnly declared before me at Montreal,  
Province of Quebec, this 27<sup>th</sup> day of March, 2018

  
\_\_\_\_\_  
Commissioner of Oaths for Quebec



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

**ONTARIO**  
**SUPERIOR COURT OF JUSTICE**  
**COMMERICAL 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**

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

**LIST OF EXHIBITS TO SILVERSTEIN AFFIDAVIT**

<i>Exhibit</i>	<i>Description</i>
36	The agreement entered into between the Quebec Class Action Plaintiffs and Northumberland General Insurance Company dated February 16, 2017 ( <b>NOT INCLUDED – UNDER SEAL</b> )
37	The agreement entered into between the Quebec Class Action Plaintiffs and Kansa General International Insurance Company Ltd. dated July 4, 2017 ( <b>NOT INCLUDED – UNDER SEAL</b> )

**EXHIBIT 36 (NOT INCLUDED – UNDER SEAL)**

**EXHIBIT 37 (NOT INCLUDED – UNDER SEAL)**

This is **Exhibit « 4 »**, referred to in the  
**Affidavit of Tina Silverstein**, sworn before me  
this 18th day of April, 2019

*Hélène Bouthillette*

Commissioner of Oaths for Quebec



CANADA

SUPERIOR COURT  
(class action)

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PROVINCE OF QUEBEC  
DISTRICT OF MONTREAL

No: 500-06-000076-980

**CONSEIL QUÉBÉCOIS SUR LE TABAC ET  
LA SANTÉ and JEAN-YVES BLAIS**

Plaintiffs

v.

**JTI-MACDONALD CORP.  
IMPERIAL TOBACCO CANADA LIMITEE  
ROTHMANS, BENSON & HEDGES INC.**

Defendants

**FONDS D'AIDE AUX ACTIONS  
COLLECTIVES**

Mise en cause

---

**CECILIA LÉTOURNEAU**

Plaintiff

No: 500-06-000070-983

v.

**JTI-MACDONALD CORP.  
IMPERIAL TOBACCO CANADA LIMITEE  
ROTHMANS, BENSON & HEDGES INC.**

Defendants

**FONDS D'AIDE AUX ACTIONS  
COLLECTIVES**

Mise en cause

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**MOTION TO APPROVE SETTLEMENTS BETWEEN THE CLASS ACTION  
PLAINTIFFS AND CERTAIN INSURERS IN LIQUIDATION**

(arts. 590, 595 and 597 C.C.Q.)

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**TO THE HONOURABLE JUSTICE BRIAN RIORDAN, OF THE SUPERIOR COURT, DISTRICT OF MONTREAL, THE PLAINTIFFS RESPECTFULLY SUBMIT:**

1. By way of the present Motion, Conseil Québécois sur le Tabac et la Santé, Jean-Yves Blais and Cécilia Létourneau (the “**Class Action Plaintiffs**”) request this Honourable Court’s approval of the two settlement agreements (collectively, the “**Settlement Agreements**”) that they have entered into with Kansa General International Insurance Company Ltd., in liquidation, formerly Kansa General Insurance Company (“**Kansa**”) and Northumberland General Insurance Company, in liquidation (“**Northumberland**”).
2. For the reasons explained more fully herein, the Class Action Plaintiffs submit that the Settlement Agreements are in the best interests of the classes that they represent (the “**Blais Class**” and the “**Létourneau Class**” respectively), and consequently, should be approved by this Honourable Court.

**A. THE KANSA SETTLEMENT**

3. The settlement agreement entered into between the Class Action Plaintiffs, Kansa and its Liquidator on July 4, 2017 (the “**Kansa Settlement**”), if approved by this Honourable Court, will settle any potential rights that the Class Action Plaintiffs may have pursuant to the following policies of insurance issued by Kansa to Imperial Tobacco Canada Limited and/or its predecessor entities (“**ITL**”) between April 1, 1983 and April 1, 1986:

<b>Policy Number</b>	<b>Policy Periods</b>	<b>Amount of coverage</b>
2500906	April 1, 1983-April 1, 1984	\$10,000,000
2501920	April 1, 1984-April 1, 1985	\$5,000,000*
2502857	April 1, 1985-April 1, 1986	\$5,000,000

\* Note that this policy was originally issued for \$10,000,000 of coverage, however was reduced by endorsement to \$5,000,000 on August 1, 1984.

(the “**Kansa ITL Policies**”)

The Kansa Settlement will also settle any potential rights that the Class Action Plaintiffs may have pursuant to the following policies of insurance issued by Kansa to Rothmans, Benson & Hedges Inc. and/or related entities (“**RBH**”) between June 30, 1979 and March 31, 1990:

<b>Policy Number</b>	<b>Policy Periods</b>	<b>Amount of coverage</b>
560053	June 30, 1979-June 30, 1980 June 30, 1980-June 30, 1981	\$5,000,000
100750	June 30, 1981-June 30, 1982	\$1,000,000
300437	June 30, 1981-June 30, 1982	\$9,000,000
2000280	June 30, 1982-March 31, 1983 March 31, 1983-March 31, 1984 March 31, 1984-March 31, 1985 March 31, 1985-March 31, 1986	\$5,000,000
2002862	March 31, 1987-March 31, 1988	\$4,000,000
2002922	March 31, 1988-March 31, 1989 March 31, 1989-March 31, 1990	\$3,000,000*

\*Note that this policy was increased to \$5,000,000 for the 1989-1990 policy period.

(the “**Kansa RBH Policies**”)

4. Kansa was declared bankrupt by Division 5 of the Helsinki District Court in Helsinki, Finland on December 30, 1994 and has been in liquidation in Montreal, Quebec pursuant to the *Winding-up and Restructuring Act* (the “**WURA**”) in court file number 500-05-002760-955 (the “**Kansa Liquidation Proceedings**”) since March 8, 1995. The Honourable Justice Jean-Yves Lalonde is presently supervising the Kansa Liquidation Proceedings.
5. Having only become aware of the existence of the Kansa Liquidation Proceedings, on December 22, 2016, the Class Action Plaintiffs asserted claims in those proceedings, as injured third persons, under the Kansa ITL Policies and the Kansa RBH Policies (collectively, the “**Kansa Policies**”) on the basis of the condemnation against the insureds ITL and RBH in the trial judgment rendered by the present Court on May 27, 2015 (corrected on June 9, 2015) (the “**Trial Judgment**”).
6. Although the Trial Judgment was not yet final at the time, the Class Action Plaintiffs sought to preserve any rights that they may have pursuant to the Kansa Policies, after being advised that the Kansa Liquidation Proceedings were nearing completion, and in fact, that there was only one outstanding claim at the time preventing the liquidation from closing and the estate from being distributed.
7. Kansa’s liquidator (the “**Kansa Liquidator**”) formally objected to the claims of the Class Action Plaintiffs on numerous grounds and denied that there was any coverage available under the Kansa Policies.

8. At the time that they asserted their claims, the Class Action Plaintiffs ascertained for the first time that ITL and RBH had previously settled with, and provided releases to, Kansa and the Kansa Liquidator of any and all claims that these insureds had under the Kansa Policies.
9. In view of (i) the prior settlement by ITL and RBH of any interest that they may have had as insureds under the Kansa Policies, (ii) the significant costs and time that would have been required to litigate the contested claims of the Class Action Plaintiffs against the Kansa Liquidator, and (iii) the fact that Kansa was insolvent and in the final stages of its liquidation, the Class Action Plaintiffs, through their counsel, entered into serious negotiations with the Kansa Liquidator in order to see if there was a possibility of settling the matter.
10. As a result of such negotiations, on July 4, 2017, Kansa, the Kansa Liquidator and the Class Action Plaintiffs entered into a settlement agreement (the “**Kansa Settlement**”), which is produced under seal herewith as **Exhibit P-1**.
11. As appears from the Kansa Settlement:
  - (i) the Kansa Liquidator denies that there is any coverage available under the Kansa Policies;
  - (ii) ITL and RBH previously settled in 2015 (after the Trial Judgment was rendered) all of their claims under the same Kansa Policies for a consideration that, in the aggregate, was significantly less than the amount of the present settlement payable to the Class Action Plaintiffs; and
  - (iii) the settlement amount was payable to the Class Action Plaintiffs regardless of the outcome of any appeal of the Trial Judgment.
12. The Kansa Settlement was subject to court approval by the court in the Kansa Liquidation Proceedings (the “**Winding-Up Court**”), which was obtained on July 18, 2017, as appears from the judgment rendered by the Honourable Justice Jean-Yves Lalonde, produced herewith as **Exhibit P-2**.
13. The Kansa Settlement is also subject to court approval by the present Court, which is being requested herein.
14. If Court approval is obtained, the Kansa Liquidator will then seek the required authorization from the Winding-Up Court to pay the settlement amount, and the

payment will be made to counsel for the Class Action Plaintiffs, in trust, within 30 days of such judgment.

## **B. THE NORTHUMBERLAND SETTLEMENT**

15. The settlement agreement entered into between the Class Action Plaintiffs and Northumberland, through its Liquidator PricewaterhouseCoopers Inc. (the “**Northumberland Liquidator**”), on February 16, 2017 relates to the following policies of insurance issued by Northumberland to ITL between April 1, 1981 and April 1, 1983:

<b>Policy Number</b>	<b>Policy Periods</b>	<b>Amount of coverage</b>
ITV-10451	April 1, 1981-April 1, 1982	\$1,000,000
IVX 2174	April 1, 1981-April 1, 1982 April 1, 1982-April 1, 1983	\$10,000,000

(the “**Northumberland Policies**”)

16. Northumberland was placed in liquidation in Ontario in 1985.
17. ITL put Northumberland and PwC on notice with respect to the potential claims it may assert as an insured party under the Northumberland Policies.
18. The Class Action Plaintiffs advised PwC that, as injured third persons, they would have rights under the Northumberland Policies resulting from the Trial Judgment.
19. The Northumberland Liquidator has denied that there is any liability pursuant to the Northumberland Policies and that there are valid coverage defenses thereunder.
20. However, given that Northumberland was nearing the end of its very long liquidation process, the Northumberland Liquidator sought to settle the potential claims with both ITL and the Class Action Plaintiffs separately to avoid delay and the possibility of further litigation.
21. As a result of these negotiations, the Northumberland Liquidator entered into a Settlement Agreement with the Class Action Plaintiffs, a copy of which is communicated herewith under seal as **Exhibit P-3** (the “**Northumberland Settlement**”).

22. As appears from the Northumberland Settlement:
- (i) the Northumberland Liquidator denies that there is any coverage available under the Northumberland Policies;
  - (ii) at the same time as it entered into the Northumberland Settlement with the Class Action Plaintiffs, the Northumberland Liquidator also settled ITL's claims pursuant to the same Northumberland Policies;
  - (iii) the amount for which the Northumberland Liquidator has settled with ITL is not greater than the amount for which it has settled with the Class Action Plaintiffs; and
  - (iv) the settlement amount was payable to the Class Action Plaintiffs regardless of the outcome of the appeals of the Trial Judgment;
23. The Northumberland Settlement is subject to obtaining court approval from this Honourable Court.
24. The payment of the settlement amount pursuant to the Northumberland Settlement has already been transferred in trust to the attorneys representing the Northumberland Liquidator, and shall be transferred in trust to the attorneys representing the Class Action Plaintiffs within 5 days of the receipt of a judgment approving the Northumberland Settlement, as is being requested herein.

**C. THE SETTLEMENT AGREEMENTS ARE IN THE BEST INTERESTS OF THE CLASS MEMBERS**

25. Class Action Plaintiffs request that the Settlement Agreements remain under seal and that the settlement amounts payable thereunder not be disclosed in these Court proceedings in order to preserve their ability to negotiate most effectively with other insurers of ITL and RBH, the vast majority of which insurers are neither insolvent nor in liquidation.
26. As described above, the Kansa Liquidator and the Northumberland Liquidator have each specifically denied that there is any coverage under the Kansa Policies and the Northumberland Policies respectively.
27. While the Class Action Plaintiffs do not acknowledge that there is an absence of coverage, failing a settlement, they recognized that a significant amount of money

- and time would have needed to be devoted by them to pursue litigation that would have been vigorously contested by these insurers, both of which are in liquidation.
28. Further, given the timing of the negotiations between the Class Action Plaintiffs and these insurers, and the fact that both liquidations were nearing completion, significant amounts of money and time would have needed to be spent by the Class Action Plaintiffs in respect of these claims even before they had the benefit of a final judgment in their favour.
  29. While the Court of Appeal has since substantially maintained the Trial Judgment on March 1, 2019 (the “**Appeal Judgment**”), ITL and RBH have both indicated that they are considering further requesting leave to appeal the Appeal Judgment to the Supreme Court of Canada.
  30. The approval of the Settlement Agreements is in the best interests of the class members because it will enable immediate payment by the Liquidators of the respective insurers of the settlement amounts, which are not contingent upon the ultimate success of the present litigation, and which can be used to maximize the take-up rate in the present files and reimburse the *Fonds d’aide aux actions collectives*.
  31. It is obvious that the benefits of immediate payment for the Class Action Plaintiffs outweigh the substantial risk of pursuing litigation against the involved insurers, especially in the context of their insolvency.
  32. The settlement amounts thus represent a significant recovery in the circumstances.
  33. In view of the fact that ITL and RBH filed on March 12 and March 22, 2019 respectively for protection under the *Companies’ Creditors Arrangement Act* before the Ontario Superior Court of Justice (the “**CCAA Court**”) and obtained a stay of proceedings, including in respect of the Class Actions, the Class Action Plaintiffs sought from the CCAA Court, on a *de bene esse* basis, a partial lift of the stay of proceedings, to the extent that such a lift was required for settlements only involving third parties, to allow them to seek this Court’s approval of the Settlement Agreements.
  34. On April 5, 2019, Mr. Justice McEwen of the CCAA Court issued Orders, on an uncontested basis, partially lifting the stay of proceedings in order to allow Class Action Plaintiffs to seek this Court’s approval of the Settlement Agreements, which is required as a condition thereof, the whole as appears from the Orders issued by

the CCAA Court on April 5, 2019 and communicated herewith, *en liasse*, as **Exhibit P-4**.

**D. PROPOSED REPARATION**

35. The total number of class members is estimated at 100,000 in the Blais action and 1 million members in the Letourneau action such that awards to members resulting directly from the Settlement Agreements would not be significant on an individual basis and given this Court's previous conclusion that distributing such an amount to each member would be too expensive to administer, Class Action Plaintiffs submit that another form of reparation should be ordered.
36. If approved, the amounts payable under the settlements could notably allow the funding of an extensive campaign to maximize the number of members who will be indemnified at the end of the claims process. In order to achieve the best take-up rate possible, significant resources will need to be deployed. Class Action Plaintiffs suggest that the amount of up to \$ 500,000 be allocated to the maximization of claims.
37. The Class Action Plaintiffs suggest that the balance of the amounts payable under the settlements be paid to the *Fonds d'aide aux actions collectives* which has carried part of the financial burden of the Class Actions over the many years since the inception of the file. This payment would constitute an advance on the reimbursement of the financial aid provided to Class Action Plaintiffs and owed by the Class Counsel on amounts received as fees, legal costs or expenses.
38. Parties to the Settlement Agreements are acting in good faith and acknowledge that the said agreements involve mutual tradeoffs. Counsel for the Class Action Plaintiffs, who have great experience in class action litigation, believe that these agreements are in the best interests of members, especially those not yet identified, as it will give the means to Class Counsel to reach them.
39. Accordingly, it is respectfully submitted that this Honourable Court should approve the Settlement Agreements and that the Class Action Plaintiffs be authorized to use the proceeds thereof as described above.

**E. NOTICES TO CLASS MEMBERS**

40. Pursuant to article 590 C.C.P., notices have to be given to class members before approval of a transaction. Class Action Plaintiffs submit the proposed Notice to class members communicated herewith as **Annex 1**.
41. The proposed Notice to class members specifies the nature of the transaction and the method of execution, as well as the date and time of the hearing where class members may assert their contentions before the court regarding the proposed transaction.
42. Class Action Plaintiffs suggest that the Notice to class members be sent electronically to all persons registered on the Class Counsel database who have submitted an email address.

**WHEREFORE MAY IT PLEASE THE COURT TO:**

**GRANT** the present Motion;

**ORDER** that the Settlement Agreements remain under seal and that the settlement amounts payable thereunder not be disclosed;

**ORDER** the electronic notification of the attached Notice to all persons registered on the Class Counsel database who have submitted an email address;

**APPROVE** the settlement agreement dated July 4, 2017 (Exhibit P-1 under seal) entered into between Kansa General International Insurance Company Ltd., Ferdinand Alfieri, in his capacity as liquidator of Kansa General International Insurance Company Ltd., Jean-Yves Blais (now deceased) and Conseil Québécois sur le Tabac et la Santé, in their capacity as class representatives in Court File number 500-06-000076-980 and Cécilia Létourneau, in her capacity as class representative in Court File number 500-06-000070-983;

**APPROVE** the settlement agreement dated February 16, 2017 (Exhibit P-3 under seal) entered into between Northumberland General Insurance Company, through its liquidator PricewaterhouseCoopers Inc., Jean-Yves Blais (now deceased) and Conseil Québécois sur le Tabac et la Santé in their capacity as class representatives in Court File number 500-6-000076-980 and Cécilia Létourneau, in her capacity as class representative in Court File number 500-06-000070-983; and

**AUTHORIZE** Class Counsel to withdraw from the Court record Exhibits P-1 and P-3;

**ORDER** that the proceeds of the Settlement Agreements be paid to Fishman Flanz Meland Paquin LLP in trust (“**FFMP**”), as contemplated in the Settlement Agreements, and forthwith thereafter transferred by FFMP to the Trust account of the law firm Trudel Johnston & Lespérance;

**AUTHORIZE** Class Counsel to use \$ 500,000 of the proceeds of the Settlement Agreements to maximize the take-up rate in the class actions.

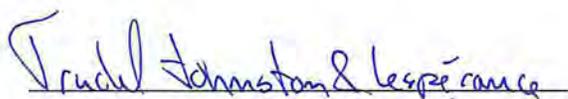
**AUTHORIZE** Class Counsel to use the balance of the proceeds to reimburse the *Fonds d'aide aux actions collectives* for the financial aid provided in the class action proceedings.

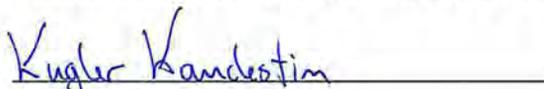
**ORDER** an accounting of the use of the proceeds of the Settlement Agreements before the Court;

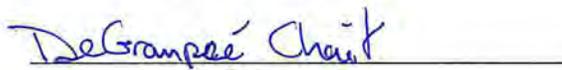
**GRANT** provisional execution of the present judgment notwithstanding appeal;

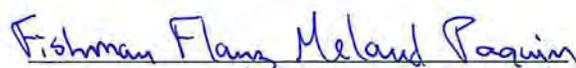
**THE WHOLE** without costs.

Montreal, this 16th day of April 2019

  
TRUDEL JOHNSTON & LESPÉRANCE

  
KUGLER KANDESTIN

  
DeGRANDPRÉ CHAIT

  
FISHMAN FLANZ MELAND PAQUIN

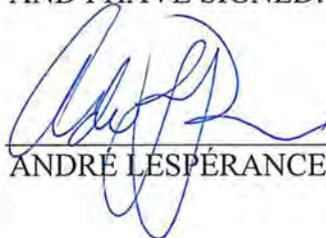
*Attorneys for Plaintiffs*

**AFFIDAVIT**

I, the undersigned, ANDRÉ LESPÉRANCE, Attorney, practicing law at the firm of Trudel Johnston & Lesperance, situated at 750 Côte de la Place d'Armes, Suite 90, in the City and District of Montreal, Province of Quebec, solemnly declare the following:

1. I am one of the attorneys for Plaintiffs;
2. The facts alleged in the present Motion are true and correct.

AND I HAVE SIGNED:

  
ANDRÉ LESPÉRANCE

Solemnly declared before me, at Montreal,  
on this 16<sup>th</sup> day of April, 2019

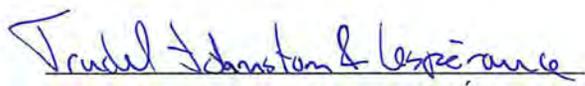
  
Commissioner of Oaths for Quebec

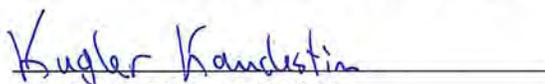


**LIST OF EXHIBITS**

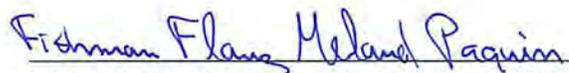
- Exhibit P-1:** Kansa Settlement (CONFIDENTIAL & UNDER SEAL).
- Exhibit P-2:** Winding-Up Court.
- Exhibit P-3:** Northumberland Settlement (CONFIDENTIAL & UNDER SEAL).
- Exhibit P-4:** Orders issued by the CCAA Court on April 5, 2019, partially lifting the stay of proceedings in RBH and ITL files, *en liasse*.

Montreal, this 16th day of April 2019

  
TRUDEL JOHNSTON & LESPÉRANCE

  
KUGLER KANDESTIN

  
DeGRANDPRÉ CHAIT

  
FISHMAN FLANZ MELAND PAQUIN

*Attorneys for Plaintiffs*

**NOTICE OF PRESENTATION**

**TO : Me François Grondin  
Me Guy Pratte  
Me Patrick Plante  
Me Kevin Lee LaRoche  
BORDEN LADNER GERVAIS  
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Suite 900  
Montreal (Quebec) H3B 5H4  
Tel: 514 879-1212  
Fax: 514 954-1905**

**Attorneys of JTI-Macdonald Corp.**

**Me Deborah Glendinning  
Me Thomas Craig Lockwood  
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1000, rue De La Gauchetière West  
Suite 2100  
Montreal (Quebec) H3B 4W5  
Tel.: 514 904-8100  
Fax: 514 904-8101  
Attorneys of Imperial Tobacco Canada Ltd.**

**Me Frikia Belogbi  
Fonds d'aide aux actions collectives  
1, Notre-Dame Street East  
Suite 10.30  
Montreal (Quebec) H2Y 1B6  
Tel. : 514 393-2087  
Fax : 514 864-2998**

**Attorney of Fonds d'aide aux action  
collectives**

**Me Doug Mitchell  
Me Catherine Elizabeth McKenzie  
IRVING MITCHELL KALICHMAN  
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Tel.: 514 934-7727 (Me McKenzie)  
Fax: 514 935-2999**

**Attorneys of JTI-Macdonald Corp.**

**Me Simon V. Potter  
Me Michael Feder  
MCCARTHY TETRAULT  
1000, rue De La Gauchetière West  
Suite 2500  
Montreal (Quebec) H3B 0A2  
Tel.: 514 397-4100  
Fax: 514 875-6246  
Attorneys of Rothmans, Benson &  
Hedges Inc.**

**TAKE NOTICE** that the present Motion will be presented for adjudication before Justice Brian Riordan of the superior Court, sitting in and for the District of Montreal, at the Courthouse of Montreal, 1 Notre-Dame Street East, Montreal, Quebec, room, date and time to be determined.

Kindly govern yourselves accordingly.

Montreal, this 16th day of April 2019

Trudel Johnston & Lespérance  
TRUDEL JOHNSTON & LESPÉRANCE

Kugler Kandestin  
KUGLER KANDESTIN

DeGrandpré Chait  
DeGRANDPRÉ CHAIT

Fishman Flanz Meland Paquin  
FISHMAN FLANZ MELAND PAQUIN

*Attorneys for Plaintiffs*

## ANNEXE 1

Monsieur, Madame,

Comme vous le savez, la Cour d'appel a condamné les compagnies de tabac à payer près de 7 milliards de dollars, plus intérêts, aux victimes du tabac.

Les compagnies ont annoncé qu'elles demanderaient à la Cour suprême du Canada la permission d'en appeler de ce jugement. Aucune somme ne pourra donc être distribuée pour le moment.

### **Ententes avec deux assureurs en liquidation**

Depuis 2015, nous négocions avec certains assureurs des compagnies de tabac pour obtenir de l'argent pour les membres. En effet, certaines compagnies de tabac possèdent des polices d'assurance responsabilité qui pourraient servir à payer une partie des dommages auxquels les compagnies de tabac ont été condamnées.

Après de longues négociations, nous avons réussi à conclure des ententes pour un montant forfaitaire avec deux de ces compagnies d'assurance.

Pour ne pas nuire à nos négociations avec les autres assureurs des compagnies de tabac, les montants de ces ententes sont confidentiels.

Ces ententes doivent être approuvées par le juge Brian Riordan qui verra le contenu de ces ententes et qui devra déterminer si elles sont justes, raisonnables et dans l'intérêt des membres de l'action collective. Nous sommes d'avis que ce sont de bonnes ententes, notamment parce que ces assureurs sont insolubles et ont nié couverture. De plus, le temps et les coûts nécessaires pour poursuivre les compagnies d'assurance en question auraient été significatifs malgré un résultat incertain.

La somme des ententes est largement insuffisante pour permettre une distribution aux milliers de membres. Nous demanderons donc au juge de nous permettre d'utiliser cette somme pour financer une campagne pour rejoindre plus de membres et pour rembourser une portion de l'aide financière accordée par le Fonds d'aide aux actions collectives.

Nous demanderons au juge Riordan d'approuver ces ententes le [REDACTED] 2019.

Vous pouvez consulter la demande d'approbation des ententes sur notre site : <http://tjl.quebec/recours-collectifs/maladies-liees-au-tabagisme/>.

### **Opposition**

Si vous êtes membre du groupe, vous avez le droit de vous opposer à l'approbation de ces ententes. Pour ce faire, écrivez-nous vos motifs de contestation en répondant au présent courriel au plus tard le [REDACTED].

Nous remettrons toute contestation reçue au juge Riordan. De plus, si vous le désirez, vous

pourrez expliquer vos motifs d'opposition au juge Riordan lors de l'audition du [REDACTED] 2019.

N'hésitez pas à communiquer avec nous si vous désirez plus d'informations.



Trudel Johnston & Lespérance

**T.** 438 384-7230 ou 1-888-880-1844

**C.** [tabac@tjl.quebec](mailto:tabac@tjl.quebec)

Madam, Sir,

As you know, the Court of Appeal condemned the tobacco companies to pay \$7 billion, plus interest, to victims of tobacco.

The companies announced that they intend to apply to the Supreme Court of Canada for leave to appeal this judgment. Therefore, it will not be possible to distribute any amount to members for the moment.

### **Agreements with two Insurers in liquidation**

Since 2015, we have been negotiating with certain insurers of tobacco companies to obtain money for the members. Indeed, certain tobacco companies have liability insurance policies, some of which could be used to pay part of the amount of damages to which the companies were condemned.

After lengthy negotiations, we have succeeded in obtaining lump sum payments with two of those insurance companies, so far.

The amounts covered by these agreements will remain confidential so as not to interfere with any further negotiations with other insurers.

These agreements must be approved by Justice Brian Riordan who will see the content of the agreements and who will have to determine whether they are fair, reasonable and in your interest. We believe that they are good agreements, particularly given that those insurers are insolvent and have denied coverage under the policies. Also, the length of time and cost to litigate these insurance claims would have been significant with substantial uncertainty as to recovery.

The total sum of the settlement is largely insufficient to warrant a distribution to the thousands of class action members. We will therefore ask the judge to allow us to use these amounts to fund a campaign to reach more members and to reimburse the *Fonds d'aide aux actions collectives* for the financial aid provided.

We will ask Justice Riordan to approve those agreements on [REDACTED] 2019.

The application to approve the settlements can be consulted at <http://tjl.quebec/en/class-action/tobacco-related-diseases-2/>.

### **Objection**

If you are a member of the group, you have the right to object to the approval of these settlement agreements. To do so, send us an email with the reasons for your objection by [REDACTED] 2019.

We will file all written objections with the Superior Court. You may also explain your reasons for objecting to Riordan j. at the hearing on [REDACTED].

Do not hesitate to contact us if you need more information.



Trudel Johnston & Lespérance

**T.** 438 384-7230 ou 1-888-880-1844

**C.** [tabac@tjl.quebec](mailto:tabac@tjl.quebec)

This is **Exhibit « 5 »**, referred to in the  
**Affidavit of Tina Silverstein**, sworn before me  
this 18th day of April, 2019



Commissioner of Oaths for Quebec



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**RE: Rép. : 500-09-025385-154, 500-09-025386-152, 500-09-025387-150**

1 message

**Fallon, Alexandre** <AFallon@osler.com>

Wed, Apr 17, 2019 at 8:27 PM

To: "Brian Riordan (bureau-CS)" <brian.riordan@judex.qc.ca>, Gabrielle Gagné <gabrielle@tjl.quebec>  
Cc: Ayse Dallı <adalli@mccarthy.ca>, "Glendinning, Deborah" <DGlendinning@osler.com>, "Grand'Pierre, Nathalie" <NGrandpierre@osler.com>, Michael Feder <mfeder@mccarthy.ca>, "PPlante@blg.com" <PPlante@blg.com>, "SPOTTER@MCCARTHY.CA" <SPOTTER@mccarthy.ca>, "Lockwood, Craig" <CLockwood@osler.com>, "cmckenzie@imk.ca" <cmckenzie@imk.ca>, "dtempler@MCCARTHY.CA" <dtempler@mccarthy.ca>, "fgrondin@blg.com" <fgrondin@blg.com>, "gkugler@kklex.com" <gkugler@kklex.com>, "gstcyrlarkin@MCCARTHY.CA" <gstcyrlarkin@mccarthy.ca>, "mbeauchemin@dgclcx.com" <mbeauchemin@dgclcx.com>, "pboivin@kklex.com" <pboivin@kklex.com>, "Bruce W. Johnston" <bruce@tjl.quebec>, "Philippe H. Trudel" <philippe@tjl.quebec>, "afishman@ffmp.ca" <afishman@ffmp.ca>, "andre@tjl.quebec" <andre@tjl.quebec>, "mmeland@ffmp.ca" <mmeland@ffmp.ca>

Dear Mr. Justice Riordan,

I am transmitting this response on behalf of both ITL and RBH.

The Plaintiffs' application seeks orders concerning matters that did not form part of their lift-stay motion before the CCAA court but that are subject to the CCAA court's stay of proceedings. The current orders of the CCAA court lifting the stay only permit approval of the settlements; they do not permit any party to take any other step in this proceeding, including any step regarding distribution of the proceeds of settlement.

The Plaintiffs sought and obtained limited relief from the stay ordered by the CCAA court. The CCAA lift-stay order does not permit them to take the additional steps contemplated by their application. We therefore intend to raise this issue with the CCAA court.

Best regards,

**Alexandre Fallon**

Associé

514.904.5809 | [AFallon@osler.com](mailto:AFallon@osler.com)Osler, Hoskin & Harcourt S.E.N.C.R.L./s.r.l | [osler.com](http://osler.com)

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**De :** Brian Riordan (bureau-CS) <brian.riordan@judex.qc.ca>**Envoyé :** 16 avril 2019 17:15**À :** Gabrielle Gagné <gabrielle@tjl.quebec>**Cc :** 'Ayse Dallı' <adalli@MCCARTHY.CA>; Glendinning, Deborah <DGlendinning@osler.com>; Grand'Pierre, Nathalie <NGrandpierre@osler.com>; 'Michael Feder' <mfeder@MCCARTHY.CA>; 'PPlante@blg.com' <PPlante@blg.com>; 'SPOTTER@MCCARTHY.CA' <SPOTTER@MCCARTHY.CA>; Fallon, Alexandre <AFallon@osler.com>; Lockwood, Craig <CLockwood@osler.com>; 'cmckenzie@imk.ca' <cmckenzie@imk.ca>; 'dtempler@MCCARTHY.CA' <dtempler@MCCARTHY.CA>; 'fgrondin@blg.com' <fgrondin@blg.com>; 'gkugler@kklex.com' <gkugler@kklex.com>; 'gstcyrlarkin@MCCARTHY.CA' <gstcyrlarkin@MCCARTHY.CA>; 'mbeauchemin@dgclcx.com' <mbeauchemin@dgclcx.com>; 'pboivin@kklex.com' <pboivin@kklex.com>; Bruce W. Johnston <bruce@tjl.quebec>; Philippe H. Trudel <philippe@tjl.quebec>; [afishman@ffmp.ca](mailto:afishman@ffmp.ca); [andre@tjl.quebec](mailto:andre@tjl.quebec); [mmeland@ffmp.ca](mailto:mmeland@ffmp.ca)**Objet :** RE: Rép. : 500-09-025385-154, 500-09-025386-152, 500-09-025387-150

Bonjour,

Avant d'aller plus loin, j'aimerais connaître la position des Compagnies à cet égard. Ainsi, comme première étape, j'apprécierais que les procureurs d'ITL et de RBH m'indiquent le délai dont ils ont besoin pour communiquer cette information au Tribunal.

Brian Riordan, j.c.s.

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>>> Gabrielle Gagné<gabrielle@tjl.quebec> 2019-04-16 16:53 >>>

Monsieur le juge,

Veillez trouver ci-joint copie d'une demande en approbation d'ententes avec certains assureurs de RBH et ITL qui a été notifiée à nos collègues aujourd'hui. Cette demande n'est pas visée par les procédures présentement pendantes en Ontario (voir décisions ci-jointes, pièce P-4) et qui ne devrait pas être contestée par RBH et ITL.

Si vous le jugez opportun, nous pourrions tenir une conférence de gestion pour discuter de la meilleure façon de faire trancher cette demande.

Cordialement,



Me Gabrielle Gagné

Trudel Johnston & Lespérance

750, Côte de la Place d'Armes

Bureau 90, Montréal QC H2Y 2X8

T. 514 871-8385 poste 207

F. 514 871-8800

tjl.quebec

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**De :** Gabrielle Gagné

**Envoyé :** 08 March 2019 14:08

**À :** 'Brian Riordan (bureau-CS)'

**Cc :** Ayse Dalli; Bruce W. Johnston; Deborah Glendinning; Grand-Pierre; Michael Feder; [PPlante@blg.com](mailto:PPlante@blg.com); Philippe H. Trudel; [SPOTTER@MCCARTHY.CA](mailto:SPOTTER@MCCARTHY.CA); [afallon@osler.com](mailto:afallon@osler.com); André Lespérance; [clockwood@osler.com](mailto:clockwood@osler.com); [cmckenzie@imk.ca](mailto:cmckenzie@imk.ca); [dtempler@MCCARTHY.CA](mailto:dtempler@MCCARTHY.CA); [fgrondin@blg.com](mailto:fgrondin@blg.com); [gkugler@kklex.com](mailto:gkugler@kklex.com); [gstcylarkin@MCCARTHY.CA](mailto:gstcylarkin@MCCARTHY.CA); [mbeauchemin@dgclx.com](mailto:mbeauchemin@dgclx.com); [pboivin@kklex.com](mailto:pboivin@kklex.com)

**Objet :** RE: Rép. : 500-09-025385-154, 500-09-025386-152, 500-09-025387-150

Monsieur le juge,

Nous étions sur le point de vous informer que la Cour d'appel entendra deux requêtes en sursis de RBH et d'ITL le 25 mars prochain. Dans les circonstances, il serait effectivement préférable de reporter notre demande.

Par ailleurs, nous voulons vous présenter prochainement une demande dont le sort n'est pas tributaire de ce que la Cour d'appel décidera en regard des requêtes en sursis. Nous vous ferons parvenir cette demande au début de la semaine prochaine et vous pourrez nous informer du moment où vous jugerez opportun qu'elle soit entendue.

Cordialement,



Me Gabrielle Gagné

Trudel Johnston & Lespérance

750, Côte de la Place d'Armes

Bureau 90, Montréal QC H2Y 2X8

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**De :** Brian Riordan (bureau-CS) [<mailto:brian.riordan@judex.qc.ca>]

**Envoyé :** 08 March 2019 12:40

**À :** Gabrielle Gagné

**Cc :** Ayse Dalli; Bruce W. Johnston; Deborah Glendinning; Grand-Pierre; Michael Feder; [PPlante@blg.com](mailto:PPlante@blg.com); Philippe H. Trudel; [SPOTTER@MCCARTHY.CA](mailto:SPOTTER@MCCARTHY.CA); [afallon@osler.com](mailto:afallon@osler.com); André Lespérance; [clockwood@osler.com](mailto:clockwood@osler.com); [cmckenzie@imk.ca](mailto:cmckenzie@imk.ca); [dtempler@MCCARTHY.CA](mailto:dtempler@MCCARTHY.CA); [fgrondin@blg.com](mailto:fgrondin@blg.com); [gkugler@kklex.com](mailto:gkugler@kklex.com); [gstcyrlarkin@MCCARTHY.CA](mailto:gstcyrlarkin@MCCARTHY.CA); [mbeauchemin@dgclcx.com](mailto:mbeauchemin@dgclcx.com); [pboivin@kklex.com](mailto:pboivin@kklex.com)

**Objet :** Rép. : 500-09-025385-154, 500-09-025386-152, 500-09-025387-150

Me Gagné,

J'accuse réception de votre lettre du 4 mars dernier.

Quant à la prochaine étape, ne faut-il pas attendre que les délais d'appel expirent?

Brian Riordan, j.c.s.

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>>> Gabrielle Gagné<[gabrielle@tjl.quebec](mailto:gabrielle@tjl.quebec)> 2019-03-04 08:58 >>>

Bonjour monsieur le juge,

Veuillez voir la lettre ci-jointe.

Cordialement,



Me Gabrielle Gagné

Trudel Johnston & Lespérance

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IN THE MATTER OF THE *COMPANIES' CREDITORS ARRANGEMENT ACT*, R.S.C. 1985, c.C-36, AS AMENDED  
AND IN THE MATTER OF A PLAN OF COMPROMISE OR ARRANGEMENT OF:

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

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

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

Proceeding commenced at Toronto

**NOTICE OF MOTION**

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**(Quebec Class Action Plaintiffs)**