

**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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**MOTION RECORD OF IMPERIAL TOBACCO CANADA LIMITED AND  
IMPERIAL TOBACCO COMPANY LIMITED  
(Motion for Stay Extension returnable September 27, 2021)**

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September 17, 2021

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

Deborah Glendinning (LSO# 31070N)  
Marc Wasserman (LSO# 44066M)  
John A. MacDonald (LSO# 25884R)  
Craig Lockwood (LSO# 46668M)

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

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

**TO: THE COMMON SERVICE LIST**

Court File No. 19-CV-615862-00CL  
Court File No. 19-CV-616077-00CL  
Court File No. 19-CV-616779-00CL

**ONTARIO**  
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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 **JTI-MACDONALD CORP.**

AND IN THE MATTER OF A PLAN OF COMPROMISE OR  
ARRANGEMENT OF **IMPERIAL TOBACCO CANADA LIMITED**  
AND **IMPERIAL TOBACCO COMPANY LIMITED**

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

**Applicants**

**COMMON SERVICE LIST**  
**(as at July 19, 2021)**

<b>TO:</b>	<b>THORNTON GROUT FINNIGAN LLP</b> 100 Wellington Street West, Suite 3200 TD West Tower, Toronto-Dominion Centre Toronto, ON M5K 1K7 Fax: 416-304-1313  <b>Robert I. Thornton</b> Tel: 416-304-0560 Email: rthornton@tgf.ca  <b>Leanne M. Williams</b> Tel: 416-304-0060 Email: lwilliams@tgf.ca  <b>Rebecca L. Kennedy</b> Tel: 416-304-0603 Email: rkennedy@tgf.ca
------------	----------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------

\* For any additions or questions, please contact Nancy Thompson at [nancy.thompson@blakes.com](mailto:nancy.thompson@blakes.com)

	<p><b>Rachel A. Bengino</b> Tel: 416-304-1153 Email: rbengino@tgf.ca</p> <p><b>Mitchell W. Grossell</b> Tel: 416-304-7978 Email: mgrossell@tgf.ca</p> <p><b>John L. Finnigan</b> Tel: 416-304-0558 Email: jfinnigan@tgf.ca</p> <p>Lawyers for JTI-Macdonald Corp.</p>
<p><b>AND TO:</b></p>	<p><b>DELOITTE RESTRUCTURING INC.</b> Bay Adelaide East 8 Adelaide Street West Suite 200 Toronto, ON M5H 0A9 Fax: 416-601-6690</p> <p><b>Paul Casey</b> Tel: 416-775-7172 Email: paucasey@deloitte.ca</p> <p><b>Warren Leung</b> Tel: 416-874-4461 Email: waleung@deloitte.ca</p> <p><b>Jean-Francois Nadon</b> Tel: 514-390-0059 Email: jnadon@deloitte.ca</p> <p><b>Phil Reynolds</b> Tel: 416-956-9200 Email: philreynolds@deloitte.ca</p> <p><b>Jonathan Chu</b> Tel: 416-643-8261 Email: jochu@deloitte.ca</p> <p>The Monitor of JTI-Macdonald Corp.</p>

<b>AND TO:</b>	<p><b>BLAKE, CASSELS &amp; GRAYDON LLP</b> 199 Bay Street Suite 4000, Commerce Court West Toronto, ON M5L 1A9 Fax: 416-863-2653</p> <p><b>Pamela Huff</b> Tel: 416-863-2958 Email: pamela.huff@blakes.com</p> <p><b>Linc Rogers</b> Tel: 416-863-4168 Email: linc.rogers@blakes.com</p> <p><b>Chris Burr</b> Tel: 416-863-3261 Email: chris.burr@blakes.com</p> <p><b>Aryo Shalviri</b> Tel: 416-863-2962 Email: aryo.shalviri@blakes.com</p> <p><b>Caitlin McIntyre</b> Tel: 416-863-4174 Email: caitlin.mcintyre@blakes.com</p> <p><b>Nancy Thompson, Law Clerk</b> Tel: 416-863-2437 Email: nancy.thompson@blakes.com</p> <p>Lawyers for Deloitte Restructuring Inc., in its capacity as Monitor of JTI-Macdonald Corp.</p>
<b>AND TO:</b>	<p><b>MILLER THOMSON LLP</b> Scotia Plaza 40 King Street West, Suite 5800 Toronto, ON M5H 3S1</p> <p><b>Craig A. Mills</b> Tel: 416-595-8596 Email: cmills@millerthomson.com</p> <p>Lawyers for North Atlantic Operating Company, Inc.</p>
<b>AND TO:</b>	<p><b>MILLER THOMSON LLP</b> 1000, rue De La Gauchetière Ouest, bureau 3700 Montreal, QC H3B 4W5</p>

	<p><b>Hubert Sibre</b> Tel: 514-879-4088 Email: hsibre@millertthomson.com</p> <p>Lawyers for AIG Insurance Canada</p>
<b>AND TO:</b>	<p><b>BLUETREE ADVISORS INC.</b> First Canada Place 100 King Street West Suite 5600 Toronto, ON M5X 1C9</p> <p><b>William E. Aziz</b> Tel: 416-640-7122 Email: baziz@bluetreeadvisors.com</p> <p>Chief Restructuring Officer of JTI-Macdonald Corp.</p>
<b>AND TO:</b>	<p><b>STIKEMAN ELLIOTT LLP</b> Commerce Court West 199 Bay Street, Suite 5300 Toronto, ON M5L 1B9 Fax: 416-947-0866</p> <p><b>David R. Byers</b> Tel: 416-869-5697 Email: dbyers@stikeman.com</p> <p><b>Maria Konyukhova</b> Tel: 416-869-5230 Email: mkonyukhova@stikeman.com</p> <p><b>Lesley Mercer</b> Tel: 416-869-6859 Email: lmercer@stikeman.com</p> <p><b>Sanja Sopic</b> Tel: 416-869-6825 Email: ssopic@stikeman.com</p> <p>Lawyers for British American Tobacco p.l.c., B.A.T. Industries p.l.c. and British American Tobacco (Investments) Limited</p>

<b>AND TO:</b>	<p><b>OSLER, HOSKIN &amp; HARCOURT LLP</b> 100 King Street West 1 First Canadian Place Suite 6200, P.O. Box 50 Toronto, ON M5X 1B8 Fax: 416-862-6666</p> <p><b>Deborah Glendinning</b> Tel: 416-862-4714 Email: dglendinning@osler.com</p> <p><b>Marc Wasserman</b> Tel: 416-862-4908 Email: mwasserman@osler.com</p> <p><b>John A. MacDonald</b> Tel: 416-862-5672 Email: jmacdonald@osler.com</p> <p><b>Michael De Lellis</b> Tel: 416-862-5997 Email: mdelellis@osler.com</p> <p><b>Craig Lockwood</b> Tel: 416-862-5988 Email: clockwood@osler.com</p> <p>Lawyers for Imperial Tobacco Canada Limited and Imperial Tobacco Company Limited</p>
<b>AND TO:</b>	<p><b>DAVIES WARD PHILLIPS &amp; VINEBERG LLP</b> 155 Wellington Street West Toronto, ON M5V 3J7</p> <p><b>Jay Swartz</b> Tel: 416-863-5520 Email: jswartz@dwpv.com</p> <p><b>Robin Schwill</b> Tel: 416-863-5502 Email: rschwill@dwpv.com</p> <p><b>Natasha MacParland</b> Tel: 416-863-5567 Email: nmacparland@dwpv.com</p>

	Lawyers for FTI Consulting Canada Inc., in its capacity as Monitor of Imperial Tobacco Canada Limited and Imperial Tobacco Company Limited
<b>AND TO:</b>	<b>FTI CONSULTING CANADA INC.</b> 79 Wellington Street West Suite 2010, P.O. Box 104 Toronto, ON M4K 1G8 Fax: 416-649-8101  <b>Greg Watson</b> Tel: 416-649-8077 Email: greg.watson@fticonsulting.com  <b>Paul Bishop</b> Tel: 416-649-8053 Email: paul.bishop@fticonsulting.com  <b>Jeffrey Rosenberg</b> Tel: 416-649-8073 Email: jeffrey.rosenberg@fticonsulting.com  <b>Kamran Hamidi</b> Tel: 416-649-8068 Email: kamran.hamidi@fticonsulting.com  <b>Tyler Rivas-Perri</b> Tel: 416-649-8076 Email: tyler.rivas-perri@fticonsulting.com  Monitor of Imperial Tobacco Canada Limited and Imperial Tobacco Company Limited
<b>AND TO:</b>	<b>MCCARTHY TÉTRAULT LLP</b> 66 Wellington Street West Suite 5300 TD Bank Tower, Box 48 Toronto, ON M5K 1E6 Fax: 416-868-0673  <b>James Gage</b> Tel: 416-601-7539 Email: jgage@mccarthy.ca  <b>Heather Meredith</b> Tel: 416-601-8342 Email: hmeredith@mccarthy.ca



	<p><b>Paul Steep</b> Tel: 416-601-7998 Email: psteep@mccarthy.ca</p> <p><b>Trevor Courtis</b> Tel: 416-601-7643 Email: tcourtis@mccarthy.ca</p> <p><b>Deborah Templer</b> Tel: 416-601-8421 Email: dtempler@mccarthy.ca</p> <p>Lawyers for Rothmans, Benson &amp; Hedges, Inc.</p>
<b>AND TO:</b>	<p><b>BCF LLP</b> 1100, René-Lévesque Blvd., Suite 2500 Montreal, QC H3B 5C9</p> <p><b>Me Bertrand Giroux</b> Tel: 514-397-6935 Email: bertrand.giroux@bcf.ca</p> <p><b>Me Mireille Fontaine</b> Tel: 514-397-4561 Email: mireille.fontaine@bcf.ca</p> <p>Lawyers for the Top Tube Company</p>
<b>AND TO:</b>	<p><b>TORYS LLP</b> 79 Wellington St. West, Suite 3000 Box 270, TD Centre Toronto, ON M5K 1N2 Fax: 416-865-7380</p> <p><b>Scott Bomhof</b> Tel: 416-865-7370 Email: sbomhof@torys.com</p> <p><b>Adam Slavens</b> Tel: 416-865-7333 Email: aslavens@torys.com</p> <p>Lawyers for JT Canada LLC Inc. and PricewaterhouseCoopers Inc., in its capacity as receiver of JTI-Macdonald TM Corp.</p>

<b>AND TO:</b>	<p><b>PRICEWATERHOUSECOOPERS</b> PwC Tower 18 York St., Suite 2600 Toronto, ON M5J 0B2 Fax: 416-814-3210</p> <p><b>Mica Arlette</b> Tel: 416-814-5834 Email: mica.arlette@pwc.com</p> <p><b>Tyler Ray</b> Email: tyler.ray@pwc.com</p> <p>Receiver and Manager of JTI-Macdonald TM Corp.</p>
<b>AND TO:</b>	<p><b>BENNETT JONES</b> 100 King Street West Suite 3400 Toronto, ON M5X 1A4 Fax: 416-863-1716</p> <p><b>Jeff Leon</b> Tel: 416-777-7472 Email: leonj@bennettjones.com</p> <p><b>Mike Eizenga</b> Tel: 416-777-4879 Email: eizengam@bennettjones.com</p> <p><b>Sean Zweig</b> Tel: 416-777-6254 Email: zweigs@bennettjones.com</p> <p>Lawyers for the Provinces of British Columbia, Manitoba, New Brunswick, Nova Scotia, Prince Edward Island and Saskatchewan, in their capacities as plaintiffs in the HCCR Legislation claims</p>
<b>AND TO:</b>	<p><b>MINISTRY OF THE ATTORNEY GENERAL</b> Legal Services Branch 1001 Douglas Street Victoria, BC V8W 2C5 Fax: 250-356-6730</p> <p><b>Peter R. Lawless</b> Tel: 250-356-8432 Email: peter.lawless@gov.bc.ca</p>

<b>AND TO:</b>	<p><b>KSV ADVISORY INC.</b> 150 King Street West Suite 2308, Box 42 Toronto, ON M5H 1J9 Fax: 416-932-6266</p> <p><b>Noah Goldstein</b> Tel: 416-932-6207 Email: ngoldstein@ksvadvisory.com</p> <p><b>Bobby Kofman</b> Email: bkofman@ksvadvisory.com</p> <p>Financial Advisory for the Provinces of British Columbia, Manitoba, New Brunswick, Nova Scotia, Prince Edward Island and Saskatchewan, in their capacities as plaintiffs in the HCCR Legislation claims</p>
<b>AND TO:</b>	<p><b>MINISTRY OF THE ATTORNEY GENERAL</b> Crown Law Office - Civil 720 Bay Street, 8th Floor Toronto, ON M7A 2S9 Fax: 416-326-4181</p> <p><b>Jacqueline Wall</b> Tel: 416-434-4454 Email: jacqueline.wall@ontario.ca</p> <p><b>Edmund Huang</b> Tel: 416-524-1654 Email: edmund.huang@ontario.ca</p> <p><b>Peter Entecott</b> Tel: 647-467-7768 Email: peter.entecott@ontario.ca</p> <p>Lawyers for Her Majesty the Queen in Right of Ontario</p>
<b>AND TO:</b>	<p><b>FISHMAN FLANZ MELAND PAQUIN LLP</b> 4100 – 1250 René-Lévesque Blvd. West Montreal, QC H3A 3H3</p> <p><b>Avram Fishman</b> Email: afishman@ffmp.ca</p> <p><b>Mark E. Meland</b> Tel: 514-932-4100 Email: mmeland@ffmp.ca</p>

**Margo R. Siminovitch**

Email: msiminovitch@ffmp.ca

**Jason Dolman**

Email: jdolman@ffmp.ca

**Nicolas Brochu**

Email: nbrochu@ffmp.ca

**Tina Silverstein**

Email: tsilverstein@ffmp.ca

**CHAITONS LLP**

5000 Yonge Street 10th Floor  
Toronto, ON M2N 7E9

**Harvey Chaiton**

Tel: 416-218-1129

Email: harvey@chaitons.com

**George Benchetrit**

Tel: 416-218-1141

Email: george@chaitons.com

**TRUDEL JOHNSTON & LESPÉRANCE**

750, Cote de la Place d'Armes, Bureau 90  
Montréal, QC H2Y 2X8  
Fax: 514-871-8800

**Philippe Trudel**

Tel: 514-871-0800

Email: philippe@tjl.quebec

**Bruce Johnston**

Tel: 514-871-085

Email: bruce@tjl.quebec

**André Lespérance**

Tel: 514-871-8385 x204

Email: andre@tjl.quebec

**Gabrielle Gagné**

Tel: 514-871-8385 x207

Email: gabrielle@tjl.quebec

Lawyers for Conseil québécois sur le tabac et la santé, Jean-Yves Blais and  
Cécilia Létourneau (Quebec Class Action Plaintiffs)

<b>AND TO:</b>	<p><b>KLEIN LAWYERS LLP</b> 100 King Street West, Suite 5600 Toronto, ON M5X 1C9</p> <p><b>Douglas Lennox</b> Tel: 416-506-1944 Email: dlennox@callkleinlawyers.com</p> <p><b>KLEIN LAWYERS LLP</b> 400 – 1385 West 8<sup>th</sup> Avenue Vancouver, BC V6H 3V9</p> <p><b>David A. Klein</b> Tel: 604-874-7171 Email: dklein@callkleinlawyers.com</p> <p>Lawyers for the representative plaintiff, Kenneth Knight, in the certified British Columbia class action, <i>Knight v. Imperial Tobacco Canada Ltd.</i>, Supreme Court of British Columbia, Vancouver Registry No. L031300</p>
<b>AND TO:</b>	<p><b>JENSEN SHAWA SOLOMON DUGID HAWKES LLP</b> 800, 304 – 8 Avenue SW Calgary, AB T2P 1C2 Fax: 403-571-1528</p> <p><b>Carsten Jensen, QC</b> Tel: 403-571-1526 Email: jensenc@jssbarristers.ca</p> <p><b>Sabri Shawa, QC</b> Tel: 403-571-1527 Email: shawas@jssbarristers.ca</p> <p><b>Stacy Petriuk</b> Tel: 403-571-1523 Email: petriuks@jssbarristers.ca</p> <p><b>PALIARE ROLAND ROSENBERG ROTHSTEIN LLP</b> 155 Wellington Street West, 35<sup>th</sup> Floor Toronto, ON M5V 3H1</p> <p><b>Kenneth T. Rosenberg</b> Email: ken.rosenberg@pailareroland.com</p> <p><b>Lilly Harmer</b> Email: lily.harmer@paliareroland.com</p>

	<p><b>Massimo (Max) Starnino</b> Email: max.starnino@paliareroland.com</p> <p><b>Danielle Glatt</b> Email: Danielle.glatt@paliareroland.com</p> <p><b>Elizabeth Rathbone</b> Tel: 416-646-4300 Email: elizabeth.rathbone@paliareroland.com</p> <p>Lawyers for Her Majesty the Queen in Right of Alberta</p>
<b>AND TO:</b>	<p><b>STEWART MCKELVEY</b> 1959 Upper Water Street, Suite 900 PO Box 997 Halifax, NS B3J 2X2 Fax: 902-420-1417</p> <p><b>Robert G. MacKeigan, Q.C.</b> Tel: 902-444-1771 Email: robbie@stewartmckelvey.com</p> <p>Lawyers for Sobeys Capital Incorporated</p>
<b>AND TO:</b>	<p><b>CASSELS BROCK &amp; BLACKWELL LLP</b> 2100 Scotia Plaza 40 King Street West Toronto, ON M5H 3C2</p> <p><b>Shayne Kukulowicz</b> Tel: 416-860-6463 Fax: 416-640-3176 Email: skukulowicz@cassels.com</p> <p><b>Jane Dietrich</b> Tel: 416-860-5223 Fax: 416-640-3144 Email: jdietrich@cassels.com</p> <p><b>Joseph Bellissimo</b> Tel: 416-860-6572 Fax: 416-642-7150 Email: jbellissimo@cassels.com</p> <p><b>Monique Sassi</b> Tel: 416-860-6886</p>

	<p>Fax: 416-640-3005 Email: msassi@cassels.com</p> <p>Lawyers for Ernst &amp; Young Inc, in its capacity as court-appointed monitor of Rothmans, Benson &amp; Hedges, Inc.</p>
<b>AND TO:</b>	<p><b>ERNST &amp; YOUNG INC.</b> Ernst &amp; Young Tower 100 Adelaide Street West P.O. Box 1 Toronto, ON M5H 0B3</p> <p><b>Murray A. McDonald</b> Tel: 416-943-3016 Email: murray.a.mcdonald@ca.ey.com</p> <p><b>Brent Beekenkamp</b> Tel: 416-943-2652 Email: brent.r.beekenkamp@ca.ey.com</p> <p><b>Edmund Yau</b> Tel: 416-943-2177 Email: edmund.yau@ca.ey.com</p> <p><b>Matt Kaplan</b> Tel: 416-932-6155 Email: matt.kaplan@ca.ey.com</p> <p><b>Philip Kan</b> Email: philip.kan@ca.ey.com</p> <p>Monitor of Rothmans, Benson &amp; Hedges, Inc.</p>
<b>AND TO:</b>	<p><b>GOWLING WLG (CANADA) LLP</b> 1 First Canadian Place 100 King Street West, Suite 1600 Toronto, ON M5X 1G5 Fax: 416-862-7661</p> <p><b>Clifton Prophet</b> Tel: 416-862-3509 Email: clifton.prophet@gowlingwlg.com</p> <p><b>Steven Sofer</b> Tel: 416-369-7240 Email: steven.sofer@gowlingwlg.com</p>

	<p><b>Nicholas Kluge</b> Tel: 416-369-4610 Email: nicholas.kluge@gowlingwlg.com</p> <p>Lawyers for Philip Morris International Inc.</p>
<b>AND TO:</b>	<p><b>PALIARE ROLAND ROSENBERG ROTHSTEIN LLP</b> 155 Wellington Street West, 35<sup>th</sup> Floor Toronto, ON M5V 3H1</p> <p><b>Kenneth T. Rosenberg</b> Email: ken.rosenberg@paliareroland.com</p> <p><b>Lilly Harmer</b> Email: lily.harmer@paliareroland.com</p> <p><b>Massimo (Max) Starnino</b> Email: max.starnino@paliareroland.com</p> <p><b>Danielle Glatt</b> Email: Danielle.glatt@paliareroland.com</p> <p><b>Elizabeth Rathbone</b> Tel: 416-646-4300 Email: elizabeth.rathbone@paliareroland.com</p> <p><b>ROEBOTHAN MCKAY MARSHALL</b> Paramount Building 34 Harvey Road, 5<sup>th</sup> Floor St. John's NL A1C 3Y7 Fax: 709-753-5221</p> <p><b>Glenda Best</b> Tel: 705-576-2255 Email: gbest@wrmlaw.com</p> <p>Lawyers for Her Majesty the Queen in Right of Newfoundland</p>
<b>AND TO:</b>	<p><b>WESTROCK COMPANY OF CANADA CORP.</b> 15400 Sherbrooke Street East Montreal, QC H1A 3S2</p> <p><b>Dean Jones</b> Tel: 514-642-9251 Email: dean.jones@westrock.com</p>



<b>AND TO</b>	<b>MINISTRY OF THE ATTORNEY GENERAL</b> Civil Law Division, FSCO Branch 5160 Yonge Street, 17 <sup>th</sup> Floor Toronto, ON M2N 6L9 Fax: 416-590-7556  <b>Thomas Felix</b> Tel: 416-226-7834 Email: thomas.felix@fsrao.ca  Lawyers for the Superintendent of Financial Services
<b>AND TO:</b>	<b>KAPLAN LAW</b> 393 University Avenue, Suite 2000 Toronto, ON M5G 1E6  <b>Ari Kaplan</b> Tel: 416-565-4656 Email: ari@kaplanlaw.ca  Counsel to the Former Genstar U.S. Retiree Group Committee
<b>AND TO:</b>	<b>McMILLAN LLP</b> Brookfield Place 181 Bay Street, Suite 4400 Toronto, ON M5J 2T3  <b>Wael Rostom</b> Tel: 416-865-7790 Email: wael.rostom@mcmillan.ca  <b>Emile Catimel-Marchand</b> Tel: 514-987-5031 Email: catimel-marchand@mcmillan.ca  Lawyers for The Bank of Nova Scotia
<b>AND TO</b>	<b>MERCHANT LAW GROUP LLP</b> c/o #400 – 333 Adelaide St. West Toronto, ON M5V 1R5 Fax: 613-366-2793  <b>Evatt Merchant, QC</b> Tel: 613-366-2795 Email: emerchant@merchantlaw.com

	<p><b>Chris Simoes</b> Email: csimoes@merchantlaw.com</p> <p>Lawyers for the Class Action Plaintiffs (MLG)</p>
<b>AND TO:</b>	<p><b>LABSTAT INTERNATIONAL INC.</b> 262 Manitou Drive Kitchener, ON N2C 1L3</p> <p><b>Kimberly Stevenson Chow (CFO)</b> Tel: 519-748-5409 Email: kstevens@labstat.com</p>
<b>AND TO:</b>	<p><b>CERNOS FLAHERTY SVONKIN LLP</b> 220 Bay Street, Suite 700 Toronto, ON M5J 2W4 Fax: 647-725-5440</p> <p><b>Patrick Flaherty</b> Tel: 416-855-0403 Email: pflaherty@cfscounsel.com</p> <p><b>Bryan D. McLeese</b> Tel: 416-855-0414 Email: bmcleese@cfscounsel.com</p> <p><b>STOCKWOODS LLP</b> 77 King Street West, Suite 4130 TD North Tower, P.O. Box 140, TD Centre Toronto, ON M5K 1H1 Fax: 416-593-9345</p> <p><b>Brian Gover</b> Tel: 416-593-2489 Email: briang@stockwoods.ca</p> <p><b>Justin Safayeni</b> Tel: 416-593-3494 Email: justins@stockwoods.ca</p> <p>Lawyers for R.J. Reynolds Tobacco Company and R.J. Reynolds Tobacco International Inc.</p>
<b>AND TO:</b>	<p><b>WEISZ FELL KOUR</b> 100 King Street West, Suite 5600 Toronto, ON M5X 1C9</p>

	<p><b>Steven Weisz</b> Tel: 416-613-8281 Email: sweisz@wfkllaw.ca</p> <p><b>INCH HAMMOND PROFESSIONAL CORPORATION</b> 1 King Street West, Suite 500 Hamilton, ON L8P 4X8</p> <p><b>Amanda McInnis</b> Tel: 905-525-0031 Email: amcinnis@inchlaw.com</p> <p>Lawyer for Grand River Enterprises Six Nations Ltd.</p>
<b>AND TO:</b>	<p><b>STROSBERG SASSO SUTTS LLP</b> 1561 Ouellette Avenue Windsor, ON M8X 1K5 Fax: 866-316-5308</p> <p><b>William V. Sasso</b> Tel: 519-561-6222 Email: wvs@strosbergco.com</p> <p><b>David Robins</b> Tel: 519-561-6215 Email: drobins@strosbergco.com</p> <p>Lawyers for The Ontario Flue-Cured Tobacco Growers' Marketing Board, plaintiffs in Ontario Superior Court of Justice Court File No. 1056/10CP (Class Proceedings)</p>
<b>AND TO:</b>	<p><b>ATTORNEY GENERAL OF CANADA</b> Department of Justice Canada Ontario Regional Office, Tax Law Section 120 Adelaide Street West, Suite 400 Toronto, ON M5H 1T1 Fax: 416-973-0810</p> <p><b>Diane Winters, General Counsel</b> Tel: 647-256-7459 Email: diane.winters@justice.gc.ca</p> <p>Lawyers for the Minister of National Revenue</p>
<b>AND TO:</b>	<p><b>LAX O'SULLIVAN LISUS GOTTLIEB LLP</b> Suite 2750, 145 King Street West Toronto, ON M5H 1J8</p>

	<p><b>Jonathan Lisus</b> Tel: 416-598-7873 Email: jlisus@lolg.ca</p> <p><b>Matthew Gottlieb</b> Tel: 416-644-5353 Email: mgottlieb@lolg.ca</p> <p><b>Nadia Campion</b> Tel: 416-642-3134 Email: ncampion@lolg.ca</p> <p><b>Andrew Winton</b> Tel: 416-644-5342 Email: awinton@lolg.ca</p> <p>Lawyers for the Court-Appointed Mediator</p>
<b>AND TO:</b>	<p><b>FOGLER, RUBINOFF LLP</b> Suite 3000, P.O. Box 95 Toronto-Dominion Centre 77 King Street West Toronto, ON M5K 1G8 Fax: 416-941-8852</p> <p><b>Vern W. DaRe</b> Tel: 416-941-8842 Email: vdare@foglers.com</p> <p><b>CANADIAN CANCER SOCIETY</b> 116 Albert Street, Suite 500 Ottawa, ON K1P 5G3 Fax: 613-565-2278</p> <p><b>Robert Cunningham</b> Tel: 613-565-2522 ext. 4981 Email: rcunning@cancer.ca</p> <p>Lawyers for Canadian Cancer Society</p>
<b>AND TO:</b>	<p><b>BLANEY MCMURTRY LLP</b> 2 Queen Street East, Suite 1500 Toronto, ON M5C 3G5</p> <p><b>David Ullmann</b> Tel: 416-596-4289 Email: dullmann@blaney.com</p>

	<p><b>Dominic T. Clarke</b> Tel: 416-593-3968 Email: dclarke@blaney.com</p> <p><b>Alexandra Teodorescu</b> Tel: 416-596-4279 Email: ateodorescu@blaney.com</p> <p><b>Alex Fernet Brochu</b> Tel: 416-593-3937 Email: afernetbrochu@blaney.com</p> <p>Lawyers for La Nordique Compagnie D'Assurance du Canada</p>
<b>AND TO:</b>	<p><b>VAILLANCOURT &amp; CLOCCHIATTI</b> 2600, boul. Laurier, bur. 760 Quebec, QC G1V 4T3 Fax: 416-643-050-</p> <p><b>Marc-André Maltais</b> Tel: 418-657-8702, ext. 3018 Email: marc-andre.maltais@retraitequebec.gouv.qc.ca</p> <p>Lawyers for Retraite Québec</p>
<b>AND TO:</b>	<p><b>LECKER &amp; ASSOCIATES</b> 4789 Yonge Street, Suite 514 Toronto, ON M2N 0G3</p> <p><b>Brook Auld</b> Tel: 416-223-5391 Email: bauld@leckerslaw.com</p> <p>Lawyer for Imperial Tobacco claimant</p>
<b>AND TO:</b>	<p><b>McMILLAN LLP</b> 181 Bay Street, Suite 4400 Toronto, ON M5J 2T3 Fax: 416-865-7048</p> <p><b>Brett Harrison</b> Tel: 416-865-7932 Email: brett.harrison@mcmillan.ca</p> <p>Lawyers for the Province of Quebec</p>

<b>AND TO:</b>	<b>ATTORNEY GENERAL OF CANADA</b> Department of Justice Canada Ontario Regional Office, L.E.A.D. 120 Adelaide Street West, Suite 400 Toronto, ON M5H 1T1  <b>John C. Spencer</b> Tel: 647-256-0557 Email: john.spencer@justice.gc.ca  <b>Victor Paolone</b> Tel: 647-256-7548 Email: victor.paolone@justice.gc.ca
<b>AND TO:</b>	<b>McMILLAN LLP</b> Brookfield Place 181 Bay Street, Suite 4400 Toronto, ON M5J 2T3 Fax: 416-865-7048  <b>Stephen Brown-Okruhlik</b> Tel: 416-865-7043 Email: stephen.brown-okruhlik@mcmillan.ca  Lawyers for Citibank Canada
<b>AND TO:</b>	<b>BORDEN LADNER GERVAIS LLP</b> Bay Adelaide Centre, East Tower 22 Adelaide Street West, Suite 3400 Toronto, ON M5H 4E3 Fax: 416-367-6749  <b>Alex MacFarlane</b> Tel: 416-367-6305 Email: amacfarlane@blg.com  <b>James W. MacLellan</b> Tel: 416-367-6592 Email: jmaclellan@blg.com  <b>Bevan Brooksbank</b> Tel: 416-367-6604 Email: bbrooksbank@blg.com  Lawyers for Chubb Insurance Company of Canada

<b>AND TO:</b>	<b>INDUSTRY CANADA, LEGAL SERVICES</b> 235 Queen Street, 8 <sup>th</sup> Floor, East Tower Ottawa, ON K1A 0H5  <b>Adrian Scotchmer</b> Email: adrian.scotchmer@canada.ca  <b>Michel Ohayon</b> Email: michel.ohayon@canada.ca
<b>AND TO:</b>	<b>ROCHON GENOVA LLP</b> Barristers • Avocats 121 Richmond Street West, Suite 900 Toronto, ON M5H 2K1 Fax: 416-363-0263  <b>Joel P. Rochon</b> Tel: 416-363-1867 x222 Email: jrochon@rochongenova.com  <b>Ronald Podolny</b> Tel: 416-363-1867 x288 Email: rpodolny@rochongenova.com  Lawyers for Suzanne Jacklin, Barbara Bourassa on behalf of the Estate of Mitchell David Bourassa, Roderick Dennis McDermid, Linda Dorion, Thelma Adams, Ben Sample and Deborah Kunta, in their capacity as Representative Plaintiffs in certain proposed class proceedings
<b>AND TO:</b>	<b>WAGNERS</b> 1869 Upper Water Street, Suite PH301 3 <sup>rd</sup> Floor, Pontac House, Historic Properties Halifax, NS B3J 1S9 Fax: 902-422-1233  <b>Raymond F. Wagner, Q.C.</b> Tel: 902-425-7330 Email: raywagner@wagners.co  <b>Kate Boyle</b> Tel: 902-425-7330 Email: kboyle@wagners.co  Representative Counsel

<b>AND TO:</b>	<b>REVENU QUÉBEC</b> 1600, boul. René-Lévesque Ouest Secteur R23DGR Montréal, QC H3H 2V2  <b>Alain Casavant</b> Email: alain.casavant@revenuquebec.ca
<b>AND TO:</b>	<b>PELLETIER D'AMOURS</b> 1, Complexe Desjardins Tour Sud, 12e étage Montreal, QC H5B 1B1  <b>David Robinson</b> Email: david.robinson@dgag.ca  Lawyers for Desjardins Assurances



## Email Service List

rthornton@tgf.ca; lwilliams@tgf.ca; rkennedy@tgf.ca; rbengino@tgf.ca; mgrossell@tgf.ca; jfinnigan@tgf.ca; rmanea@tgf.ca; paucasey@deloitte.ca; waleung@deloitte.ca; jnadon@deloitte.ca; philreynolds@deloitte.ca; jochu@deloitte.ca; pamela.huff@blakes.com; linc.rogers@blakes.com; chris.burr@blakes.com; aryo.shalviri@blakes.com; caitlin.mcintyre@blakes.com; emily.hazlett@blakes.com; nancy.thompson@blakes.com; cmills@millერთhompson.com; hsibre@millერთhompson.com; baziz@bluetreeadvisors.com; dbyers@stikeman.com; mkonyukhova@stikeman.com; lmercer@stikeman.com; ssopic@stikeman.com; dglendinning@osler.com; mwasserman@osler.com; jmacdonald@osler.com; mdelellis@osler.com; clockwood@osler.com; jswartz@dwpv.com; rschwill@dwpv.com; nmacparland@dwpv.com; nrenner@dwpv.com; tbarbiero@dwpv.com; rnicholls@dwpv.com; mpercy@dwpv.com; greg.watson@fticonsulting.com; paul.bishop@fticonsulting.com; jeffrey.rosenberg@fticonsulting.com; kamran.hamidi@fticonsulting.com; tyler.rivas-perri@fticonsulting.com; jgage@mccarthy.ca; hmeredith@mccarthy.ca; psteep@mccarthy.ca; tcourtis@mccarthy.ca; dtempler@mccarthy.ca; bertrand.giroux@bcf.ca; mireille.fontaine@bcf.ca; sbomhof@torys.com; aslavens@torys.com; mica.arlette@pwc.com; tyler.ray@pwc.com; leonj@bennettjones.com; eizengam@bennettjones.com; zweigs@bennettjones.com; peter.lawless@gov.bc.ca; ngoldstein@ksvadvisory.com; bkofman@ksvadvisory.com; jacqueline.wall@ontario.ca; shahana.kar@ontario.ca; edmund.huang@ontario.ca; peter.entecott@ontario.ca; afishman@ffmp.ca; mmeland@ffmp.ca; msiminovitch@ffmp.ca; jdolman@ffmp.ca; nbrochu@ffmp.ca; tsilverstein@ffmp.ca; harvey@chaitons.com; george@chaitons.com; philippe@tjl.quebec; bruce@tjl.quebec; andre@tjl.quebec; gabrielle@tjl.quebec; dlennox@callkleinlawyers.com; dklein@callkleinlawyers.com; jensenc@jssbarristers.ca; shawas@jssbarristers.ca; petriuks@jssbarristers.ca; ken.rosenberg@paliareroland.com; lily.harmer@paliareroland.com; max.starnino@paliareroland.com; danielle.glatt@paliareroland.com; elizabeth.rathbone@paliareroland.com; sarita.sanasie@paliareroland.com; natalia.botelho@paliareroland.com; michelle.jackson@paliareroland.com; robbie@stewartmckelvey.com; skukulowicz@cassels.com; jdietrich@cassels.com; jbellissimo@cassels.com; msassi@cassels.com; murray.a.mcdonald@ca.ey.com; brent.r.beekenkamp@ca.ey.com; edmund.yau@ca.ey.com; matt.kaplan@ca.ey.com; philip.kan@ca.ey.com; clifton.prophet@gowlingwlg.com; steven.sofer@gowlingwlg.com; nicholas.kluge@gowlingwlg.com; gbest@wrmmlaw.com; dean.jones@westrock.com; thomas.felix@fsrao.ca; ari@kaplanlaw.ca; wael.rostom@mcmillan.ca; catimel-marchand@mcmillan.ca; emerchant@merchantlaw.com; csimoes@merchantlaw.com; jtim.ccaa@merchantlaw.com; rothmans.ccaa@merchantlaw.com; kstevens@labstat.com; pflaherty@cfscounsel.com; bmcleese@cfscounsel.com; briang@stockwoods.ca; justins@stockwoods.ca; sweisz@wfkaw.ca; amcinnis@inchlaw.com; wvs@strosbergco.com; drobins@strosbergco.com; diane.winters@justice.gc.ca; jlisus@lolg.ca; mgottlieb@lolg.ca; ncampion@lolg.ca; awinton@lolg.ca; vdare@foglers.com; rcunning@cancer.ca; dullmann@blaney.com; dclarke@blaney.com; ateodorescu@blaney.com; afernetbrochu@blaney.com; marc-andre.maltais@retraitequebec.gouv.qc.ca; bauld@leckerslaw.com; john.bringardner@acuris.com; brett.harrison@mcmillan.ca;

\* For any additions or questions, please contact Nancy Thompson at nancy.thompson@blakes.com

john.spencer@justice.gc.ca; victor.paolone@justice.gc.ca;  
stephen.brown-okruhlik@mcmillan.ca; amacfarlane@blg.com; jmaclellan@blg.com;  
bbrooksbank@blg.com; adrian.scotchmer@canada.ca; michel.ohayon@canada.ca;  
jrochon@rochongenova.com; rpodolny@rochongenova.com; raywagner@wagners.co;  
kboyle@wagners.co; alain.casavant@revenuquebec.ca; david.robinson@dgag.ca;

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SUPERIOR COURT OF JUSTICE  
(COMMERCIAL LIST)**

IN THE MATTER OF THE *COMPANIES' CREDITORS  
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LIMITED AND IMPERIAL TOBACCO COMPANY LIMITED

APPLICANTS

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# **TAB 1**

**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

**NOTICE OF MOTION  
(Motion for Stay Extension  
returnable September 27, 2021)**

The Applicants will make a motion before the Honourable Justice McEwen of the Ontario Superior Court of Justice (Commercial List) on Monday, September 27, 2021 at 10 a.m, or as soon after that time as the motion can be heard, by judicial videoconference via Zoom at Toronto, Ontario. Please refer to the Virtual Hearing Protocol attached as Schedule "A" for details on attending the motion.

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

**THE MOTION IS FOR:**

1. An Order substantially in the form included in the Motion Record at Tab 3 providing the following relief:
  - (a) if necessary, abridging the time for service of this Notice of Motion and the Motion Record and dispensing with service on any person other than those served; and

- (b) extending the Stay Period (defined below) until and including March 31, 2022; and
2. Such further and other relief as this Court may deem just.

**THE GROUNDS FOR THE MOTION ARE:**

1. The Applicants face an existential threat from tobacco-related litigation across Canada, including multiple class actions, government claims seeking to recover health care costs, and other ongoing proceedings (collectively, the “**Tobacco Litigation**”);
2. On March 1, 2019, the Court of Appeal for Quebec issued a judgment affirming a lower court decision that held Imperial Tobacco Canada Limited, JTI-Macdonald Corp., and Rothmans Benson & Hedges Inc. jointly and severally liable for a maximum of \$13.6 billion;
3. In addition, the plaintiffs in the Tobacco Litigation collectively seek hundreds of billions of dollars in damages, which exceeds the Applicants’ total assets by many orders of magnitude;
4. The Applicants were granted protection from their creditors under the *Companies’ Creditors Arrangement Act*, RSC 1985, c C-36, as amended (the “**CCAA**”), pursuant to the Initial Order of the Ontario Superior Court of Justice (Commercial List) dated March 12, 2019 (as amended from time to time, the “**Initial Order**”);
5. FTI Consulting Canada Inc. was appointed to act as the Monitor in the Initial Order;
6. Justice Winkler was appointed as the Court-Appointed Mediator in the Initial Order;
7. The Initial Order granted a stay of proceedings until April 11, 2019, or such later date as this Court may order (as extended by further court orders, the “**Stay Period**”);
8. The Court has previously extended the Stay Period until September 30, 2021;
9. The requested extension of the Stay Period is necessary and appropriate in the circumstances to allow for the continued operation of the Applicants’ business while they work towards developing a consensual plan of compromise or arrangement for the resolution of the Tobacco Claims (as defined in the Initial Order);

10. The Applicants have been acting in and continue to act in good faith and with due diligence in these CCAA proceedings;
11. During the extended Stay Period, the Applicants intend to continue engaging in the mediation process under the direction of the Court-Appointed Mediator and to work diligently (in consultation with the Monitor) to explore a negotiated resolution with the Tobacco Litigation stakeholders;
12. It is just and convenient and in the interests of the Applicants and their respective stakeholders that the Stay Period be extended;
13. The Applicants have sufficient liquidity to continue operations through the requested Stay Period;
14. The Monitor supports the extension of the Stay Period;
15. The provisions of the CCAA, including section 11.02, and the inherent and equitable jurisdiction of this Honourable Court;
16. Rules 1.04 and 37 of the Ontario *Rules of Civil Procedure*, R.R.O. 1990, Reg. 194, as amended, and section 106 of the Ontario *Courts of Justice Act*, R.S.O. 1990, c. C.43, as amended; and
17. Such further and other grounds as counsel may advise and this Court may permit.

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

1. The Affidavit of Eric Thauvette sworn September 17, 2021;
2. The Tenth Report of the Monitor (to be filed); and



3. Such further and other evidence as counsel may advise and this Court may permit.

September 17, 2021

**OSLER, HOSKIN & HARCOURT LLP**

Box 50, 1 First Canadian Place  
Toronto, ON M5X 1B8

Deborah Glendinning

Tel: 416-862-4714

Email: [dglendinning@osler.com](mailto:dglendinning@osler.com)

Marc Wasserman

Tel: 416-862-4908

Email: [mwasserman@osler.com](mailto:mwasserman@osler.com)

John MacDonald

Tel: 416-862-5672

Email: [jmacdonald@osler.com](mailto:jmacdonald@osler.com)

Craig Lockwood

Tel: 416-862-5988

Email: [clockwood@osler.com](mailto:clockwood@osler.com)

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

**TO: THE COMMON SERVICE 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

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

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**ONTARIO  
SUPERIOR COURT OF JUSTICE**

Proceeding Commenced at Toronto

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**NOTICE OF MOTION  
(Motion for Stay Extension  
returnable September 27, 2021)**

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**OSLER, HOSKIN & HARCOURT LLP**

Box 50, 1 First Canadian Place  
Toronto ON M5X 1B8

Deborah Glendinning (LSO# 31070N)  
Marc Wasserman (LSO# 44066M)  
John A. MacDonald (LSO# 25884R)  
Craig Lockwood (LSO# 46668M)

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

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

# **TAB 2**

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

**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 September 17, 2021)**

I, Eric Thauvette, of the City of Montreal, in the Province of Quebec, the Vice President and Chief Financial Officer of Imperial Tobacco Canada Limited (“ITCAN”), MAKE OATH AND SAY:

1. I am the Chief Financial Officer of ITCAN and, in that role, I am responsible for all financial-related aspects of ITCAN’s business operations. I am also an officer and director of ITCAN’s subsidiary and the other applicant, Imperial Tobacco Company Limited (“ITCO”, and collectively with ITCAN, the “Applicants”). As such, I have personal knowledge of the matters deposed to herein. Where I have relied on other sources for information, I have stated the sources of my information and believe them to be true.
2. In preparing this affidavit, I have consulted with other members of the Applicants’ senior management team, legal, financial and other advisors of the Applicants, and representatives of FTI Consulting Canada Inc. (“FTI” or the “Monitor”). In addition, I receive frequent updates from the Applicants’ counsel regarding these proceedings.

3. This affidavit is made in support of a motion by the Applicants for an order under the *Companies' Creditors Arrangement Act*, RSC 1985, c C-36, as amended (the "CCAA"), extending the Stay Period (defined below) up to and including March 31, 2022.

## ***I. Background***

4. The Applicants were granted CCAA protection by an order of the Ontario Superior Court of Justice (Commercial List) dated March 12, 2019 (as amended from time to time, the "Initial Order"). The Initial Order appointed FTI as the Monitor and granted a stay of proceedings (the "Stay") in favour of the Applicants and certain related parties until and including April 11, 2019 or such later date as the Court may order (as extended by further court orders, the "Stay Period"). At the most recent stay extension hearing, held on March 30, 2021, this Court extended the Stay Period until and including September 30, 2021.

5. The Applicants sought CCAA protection following the judgment of the Quebec Court of Appeal on March 1, 2019, affirming a lower court decision that held ITCAN, JTI-Macdonald Corp. ("JTIM"), and Rothmans Benson & Hedges Inc. ("RBH" and, with the Applicants and JTIM, the "Tobacco Companies") jointly and severally liable for a maximum of \$13.6 billion. This class proceeding, together with the various consumer and government claims across the country (the "Tobacco Litigation"), collectively seek notional recovery of hundreds of billions of dollars from the Applicants and the other legal Canadian tobacco manufacturers.

6. Although the Applicants dispute both the legal and factual foundation of the claims asserted in the Tobacco Litigation, as well as the corresponding quantification of damages, they ultimately determined that it is in the best interests of the Applicants' stakeholders to engage in a restructuring process with the overriding objective of preserving the value of their business and

resolving all Tobacco Claims (as defined in the Initial Order) in an orderly process under Court supervision.

7. ITCAN, JTIM, and RBH are the three major Canadian manufacturers and distributors of tobacco products. JTIM and RBH have also been granted CCAA protection under orders made on March 8, 2019 and March 22, 2019, respectively. Counsel for the Tobacco Companies have consulted on common issues in order to coordinate the three CCAA proceedings to the maximum extent possible.

## ***II. The Mediation and Current Status of the CCAA Proceedings***

8. At the joint comeback hearing for the Imperial, JTIM, and RBH CCAA proceedings on April 4 – 5, 2019 (the “Comeback Hearing”), Justice Winkler was appointed the “Court-Appointed Mediator” in all three CCAA proceedings with a mandate to, among other things, adopt any process he considered appropriate for facilitating a global settlement of the Tobacco Claims.

9. Pursuant to an endorsement dated May 24, 2019, the mediation conducted by the Court-Appointed Mediator (the “Mediation”) is confidential and all steps taken or information produced by any of the parties in the Mediation shall not be disclosed. Therefore, the description of the Mediation and the Applicants’ participation below is general in nature.

10. During the most recent Stay Period, the Applicants have continued to engage in the Mediation in accordance with the directions provided by the Court-Appointed Mediator, including participating in numerous meetings with the Court-Appointed Mediator and others. In addition, during the most recent Stay Period, the Applicants have continued responding to requests for information from Tobacco Litigation stakeholders and uploading documents on an as needed basis to the confidential data room set up in connection with the Mediation.

11. The Applicants continue to believe that the Mediation and interactions facilitated by the Court-Appointed Mediator will allow all stakeholders to better understand the competing interests of other parties in the CCAA proceedings, and assist in identifying a path forward for ultimately developing a consensual plan of compromise or arrangement. The Applicants have diligently adhered to all directions made by the Court-Appointed Mediator relating to scheduling and the Mediation, and will continue to do so during the extended Stay Period.

### ***III. Other Matters***

12. As an update to matters addressed in my prior affidavits, it is noted that:

- ITCAN is consulting with the Monitor relating to its contractual obligation to indemnify British America Tobacco Mexico, S.A. de C.V. (“BAT Mexico”) for certain costs incurred in the transition to plain packaging and no payments will be made to until the Monitor has reported on this issue;
- ITCAN is still participating in the Customs Self-Assessment and Partners in Protection Programs offered by the Canada Border Services Agency (“CBSA”) facilitating the importation of products into Canada. Following discussions with representatives of CBSA, the purported suspension of such programs by CBSA was suspended;
- ITCAN continues to assign intellectual property rights to Nicoventures from time to time in respect of inventions relating to services provided by ITCAN under a Supply of Marketing Services Agreement;
- Discussions are ongoing with the Department of Justice and Canada Revenue Agency related to creditor claims and tax-related matters;

- The Applicants continue taking steps to address the effects of the COVID-19 pandemic during the most recent stay period. The Applicants continue to maintain increased inventory levels to be prepared in the event of any supply chain disruptions. Moreover, the remote-work model remains in effect for virtually all administrative functions; and
- In anticipation of the lifting of the public health restrictions on workplace access, ITCAN is incurring capital expenditures of approximately \$3.5 Million for Montreal head office leasehold improvements over the next six months including IT, meeting room upgrades and collaboration amenities to enhance employee connectivity for working at the office or remotely.

13. The Applicants, with the support of the BAT operations network, continue to expand their business contingency plans to provide for additional manufacturing options in contemplation of future disruptions, including in the event there is a COVID-19 resurgence. The initiatives include the purchase by the BAT group of certain new equipment and the reallocation of existing production equipment with a combined book value of approximately \$29 Million, to be placed manufacturing plants in the USA and Chile. ITCAN will incur development costs of approximately \$5.8 Million in connection with this initiative between now and March 2022.

14. With respect to plain packaging regulations, the Federal government published the *Tobacco Products Regulations (Plain and Standardized Appearance)*, SOR/2019-107 (the



“Regulations”) mandating plain and standardized appearance of tobacco packages and products on May 1, 2019. The Regulations include two phases, with phase 1 completed.

15. In phase 2, manufacturers must ensure that all manufacturing, sales and distribution of cigarettes are in a slide and shell packaging format after November 9, 2021. The Applicants are on track for phase 2 compliance.

16. In anticipation of this Phase 2 and following approval from the Monitor, ITCAN has arranged for the transfer of second-hand slide and shell production equipment to Canada from BAT manufacturing facilities in Chile, Mexico, USA and Honduras, to manufacture plain packaging products for sale in Canada. ITCAN will continue to purchase substantially all of its tobacco products from BAT Mexico.

17. ITCAN has also undertaken or is planning several initiatives, alone or in concert with BAT, to improve or streamline business operations and expand its product offering including:

- The expenditure of approximately \$20 Million by March 2023 to upgrade Ryder (its primary logistics provider) distribution centres in Ontario and Quebec. This expenditure includes the replacement of obsolete equipment, site preparation and set-up.
- The transfer of fine-cut tobacco manufacturing capability from BAT Mexico to BAT manufacturing facilities in Germany and Hungary, in order to gain efficiency as a result of obsolescence of the fine-cut manufacturing equipment in Mexico; and
- The opening of five additional VUSE stores by the end of this year (in addition to the four stores currently in operation) for the sale of vape related products including e-cigarettes, liquids and accessories.

18. Recently, ITCAN announced senior executive changes in its Legal and External Affairs (“LEX”) group. Tamara Gitto, current Vice President LEX Canada, has been appointed Associate General Counsel – Business Conduct and Compliance for BAT. Her replacement is Eric Gagnon, the current ITCAN Head of External and Corporate Affairs.

19. Overall, there has been negligible disruption of the Applicants’ business operations. The stay of proceedings has therefore achieved its objective of providing operational stability and fostering an environment that encourages stakeholder discussions.

#### ***IV. Stay Extension***

20. As noted above, the Applicants are seeking to extend the Stay Period up to and including March 31, 2022.

21. I believe that the Applicants have acted and are continuing to act in good faith and with due diligence in these CCAA proceedings since the granting of the Initial Order. During the extended Stay Period, the Applicants intend to continue engaging in the Mediation under the direction of the Court-Appointed Mediator and to work diligently (in consultation with the Monitor) to explore a negotiated resolution with the Tobacco Litigation stakeholders.

22. The Applicants’ overriding objective remains the eventual global resolution of all Tobacco Claims in a co-ordinated fashion, which will require the continuing participation of all stakeholders in a co-ordinated process under continuing Court supervision.

23. The Applicants, with the assistance of the Monitor, have prepared an updated Cash Flow Forecast for the 30-week period commencing the week of September 6, 2021 through the week of March 28, 2022, which reflects that the Applicants are projected to have sufficient funding to continue to operate in the normal course during the proposed extension of the Stay Period. I

understand that the Monitor will be attaching the updated Cash Flow Forecast with its report that will be filed with the Court.

24. The Monitor has expressed its support for the extension of the Stay Period to March 31, 2022.

SWORN BEFORE ME over video teleconference this 17<sup>th</sup> day of September, 2021 pursuant to O. Reg 431/20, *Administering Oath or Declaration Remotely*. The affiant was located in the City of Montreal, in the Province of Quebec, and the Commissioner was located in the City of Toronto, in the Province of Ontario.



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Commissioner for Taking Affidavits  
John A. MacDonald  
(LSO# 25884R)



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Eric Thauvette

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

**AFFIDAVIT OF ERIC THAUVETTE**  
(Sworn September 17 , 2021)

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

Deborah Glendinning (LSO# 31070N)  
Marc Wasserman (LSO# 44066M)  
John A. MacDonald (LSO# 25884R)  
Craig Lockwood (LSO# 46668M)

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

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

Matter No: 1144377

# **TAB 3**

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

**ONTARIO  
SUPERIOR COURT OF JUSTICE  
COMMERCIAL LIST**

THE HONOURABLE	)	MONDAY, THE 27 <sup>th</sup>
	)	
JUSTICE MCEWEN	)	DAY OF SEPTEMBER, 2021

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  
(Stay Extension to March 31, 2022)**

**THIS MOTION**, made by the Applicants pursuant to the *Companies' Creditors Arrangement Act*, R.S.C. 1985, c. C-36, as amended, for an order extending the Stay Period (defined below), was heard this day by judicial video conference in Toronto, Ontario due to the COVID-19 pandemic.

**ON READING** the Notice of Motion of the Applicants, the Affidavit of Eric Thauvette sworn September 17, 2021, the Tenth Report of the Monitor, and on hearing the submissions of respective counsel for the Applicants, the Monitor, and such other counsel as were present, no one else appearing although duly served as appears from the Affidavit of Service of Pina Macri affirmed September 17, 2021, filed:

**SERVICE**

1. **THIS COURT ORDERS** that the time for service of the Notice of Motion and the Motion Record herein is hereby abridged and validated so that this Motion is properly returnable today and hereby dispenses with further service thereof.

**EXTENSION OF THE STAY PERIOD**

2. **THIS COURT ORDERS** that the Stay Period as defined in paragraph 18 of the Second Amended and Restated Initial Order dated March 12, 2019 is hereby extended until and including March 31, 2022.

**GENERAL**

3. **THIS COURT ORDERS** that this Order is effective from the date that it is made and is enforceable without any need for entry and filing.

4. **THIS COURT ORDERS** that this Order shall have full force and effect in all provinces and territories in Canada.

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

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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

**ORDER**  
**(Stay Extension to March 31, 2022)**

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

Deborah Glendinning (LSO# 31070N)  
Marc Wasserman (LSO# 44066M)  
John A. MacDonald (LSO# 25884R)  
Craig Lockwood (LSO# 46668M)

Tel: 416.362.2111  
Fax: 416.862.6666

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



**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

**MOTION RECORD OF IMPERIAL TOBACCO  
CANADA LIMITED AND IMPERIAL TOBACCO  
COMPANY LIMITED  
(Motion for Stay Extension returnable September 27, 2021)**

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1 First Canadian Place, P.O. Box 50  
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