

ONTARIO
SUPERIOR COURT OF JUSTICE
COMMERCIAL LIST

B E T W E E N:

IN THE MATTER OF THE *COMPANIES' CREDITORS*
ARRANGEMENT ACT, R.S.C. 1985, c. C-36, AS AMENDED

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

APPLICANTS

FACTUM OF THE APPLICANTS

August 26, 2025

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TO: THE COMMON SERVICE LIST

PART I - NATURE OF THE MOTION

1. The Applicants, Imperial Tobacco Canada Limited and Imperial Tobacco Company Limited, bring this motion in order to seek the “**Second Insurance Settlement Approval Order**,” which gives effect to the terms of the Additional Insurance Settlements (as defined below) and the corresponding payments to be made by the Additional Participating Insurers (as defined below).

2. The Additional Insurance Settlements, which are supported by FTI Consulting Canada Inc. in its capacity as Monitor of these CCAA proceedings (the “**Monitor**”), will facilitate the ongoing implementation of the plan of arrangement (the “**Plan**”) in these proceedings. The Additional Insurance Settlements are in the best interest of the Applicants and their stakeholders, and the requested relief should be granted by the Court.

PART II - SUMMARY OF FACTS

3. The facts in support of this motion are set out in the Affidavit of Eric Thauvette.¹

4. Following the issuance of the RBH Insurance Settlement and Bar Order on December 23, 2024, the Applicants continued their ongoing dialogue with various insurers and ultimately entered into the following four settlement agreements (the “**June Insurance Settlement Agreements**”):²

- (a) a settlement agreement dated June 12, 2025 with Northumberland General Insurance Company (in liquidation);

¹ Affidavit of Eric Thauvette sworn August 22, 2025 (“**Thauvette Affidavit**”). Unless otherwise specified, capitalized terms in this factum have the same meaning as in the Thauvette Affidavit. Unless otherwise stated, all monetary amounts referred to in this factum are expressed in Canadian dollars.

² Thauvette Affidavit at para. 6.

- (b) a settlement agreement dated June 12, 2025 with Northbridge General Insurance Corporation, Northbridge Commercial Insurance Corporation and Northbridge Personal Insurance Corporation;
- (c) a settlement agreement dated June 12, 2025 with Employers Insurance Company of Wausau; and
- (d) a settlement agreement dated June 16, 2025 with Chubb Insurance Company of Canada (as successor in interest to ACE INA Insurance).

5. On June 18, 2025, this Court approved the Imperial Insurance Settlement and Bar Order sought by the Applicants in respect of the June Insurance Settlement Agreements.³

6. Since the motion on June 18, 2025, the Applicants continued discussions with certain other insurers and entered into the following additional agreements in principle (collectively, the “**Additional Insurance Settlements**”) with the following insurers (the “**Additional Participating Insurers**”): Aviva Insurance Company of Canada (“**Aviva**”), a group composed of La Nordique Compagnie d’Assurance du Canada, The Halifax Insurance Company, Royal & Sun Alliance Insurance Company of Canada and Aetna Casualty Company of Canada (collectively, the “**NHRAE Group**”), Certain Underwriters at Lloyd’s of London (“**Lloyd’s**”), Westport Insurance Corporation – Canada Branch (which assumed the policies issued by Reliance Insurance Companies, Canadian Branch in or around 2019, “**Westport**”), and Zurich Insurance Company Ltd (“**Zurich**”).

³ Thauvette Affidavit at para. 7. Copies of the Imperial Insurance Settlement and Bar Order and the Endorsement of Chief Justice Morawetz are attached to the Thauvette Affidavit as Exhibits “A” and “B”, respectively.

7. The Additional Insurance Settlements collectively contemplate aggregate settlement amounts of \$2,905,000, and, among other terms and conditions, a broad release in favour of the Additional Participating Insurers. The Additional Insurance Settlements also contemplate the issuance of a court order that, among other things: (i) approves the Additional Insurance Settlements, (ii) establishes a bar of claims against the Additional Participating Insurers, and (iii) releases the Additional Participating Insurers in relation to the Imperial Policies (as defined in the Additional Insurance Settlements).⁴

8. The Additional Insurance Settlements are contemplated to include substantially the same terms and conditions as those included in the June Insurance Settlement Agreements.⁵

PART III - THE ISSUES AND THE LAW

9. The issue on this motion is whether the Additional Insurance Settlements should be approved.

A. This Court has Jurisdiction to Approve the Additional Insurance Settlements

10. It is undisputed that CCAA courts have the jurisdiction to approve settlement agreements entered into by debtors during the course of CCAA proceedings.⁶ This authority derives from the

⁴ Thauvette Affidavit at para. 9 and Exhibit “C”.

⁵ Thauvette Affidavit at para. 11.

⁶ *Robertson v. ProQuest Information & Learning Co.*, [2011 ONSC 1647](#) at para. 22 [*Robertson*].

general discretion granted to the court by s. 11 of the CCAA,⁷ and reflects the court's authority to act in the greater good in a manner consistent with the purpose and spirit of the CCAA.⁸

11. In determining whether to approve a proposed settlement, CCAA courts consider the following three factors:⁹

- (a) whether the settlement is fair and reasonable in the circumstances;
- (b) whether the settlement will benefit the debtor and its stakeholders generally; and
- (c) whether the settlement is consistent with the purpose and spirit of the CCAA.

12. In determining whether a settlement is fair and reasonable, the court must consider whether the proposed settlement properly balances the interests of all parties and treats all parties equitably.¹⁰ As part of this process, the court is required to consider the benefits that the settlement offers to creditors as a whole, while at the same ensuring that objecting creditors (if any) are not suffering excessive prejudice or having their rights unjustly confiscated.¹¹

B. The Additional Insurance Settlements Should be Approved

13. The criteria outlined above are satisfied. The Additional Insurance Settlements are fair and reasonable in the circumstances, and beneficial for the Applicants and their stakeholders generally.

⁷ *Return on Innovation Capital Ltd. v. Gandi Innovations Ltd.*, [2010 ONSC 1759](#) at para. 11; *Nortel Networks Corp.*, (Re), [2010 ONSC 1708](#) at paras. 68-71 [*Nortel*]; *1057863 B.C. Ltd. (Re)*, [2024 BCSC 1111](#) at para. 13 [*Northern Pulp*].

⁸ *Calpine Canada Energy Ltd. (Re)*, [2007 ABQB 504](#) at para. 75 [*Calpine*].

⁹ *Robertson*, at para. 22; see also *Labourers' Pension Fund of Central and Eastern Canada v. Sino-Forest Corp.*, [2013 ONSC 1078](#) at para. 49; *The Cash Store Financial Services Inc. (Re)*, [2015 ONSC 7538](#) at para. 14.

¹⁰ *Nortel*, at para. 73.

¹¹ *Calpine*, at para. 62.

Like the June Insurance Settlement Agreements, the Additional Insurance Settlements provide certainty with respect to the total aggregate contribution to be provided by the Additional Participating Insurers, while simultaneously facilitating the implementation of the Plan by increasing the funds available for distribution to creditors. Further, the Additional Insurance Settlements, which are the product of good faith negotiations, are supported by the Monitor.¹²

(a) The Additional Insurance Settlements Will Provide Certainty to the Parties

14. The Additional Insurance Settlements provide the parties with certainty in relation to the total aggregate contribution being provided by the Additional Participating Insurers.¹³

15. Courts have approved settlement agreements where the settlement would provide certainty to a difficult and complex restructuring.¹⁴

16. Further, the terms of the Additional Insurance Settlements are consistent with settlement agreements with insurers which have previously been approved in parallel CCAA proceedings and that were previously approved in these proceedings with respect to the June Insurance Settlement Agreements.¹⁵

¹² Thauvette Affidavit at paras. 13-14.

¹³ Thauvette Affidavit at para. 9.

¹⁴ *Northern Pulp*, at para. 17(b).

¹⁵ Thauvette Affidavit at para. 6, in reference to the settlements approved in *Rothmans, Benson & Hedges Inc. (Re)*, (December 23, 2024), Ont S.C.J. [Commercial List], Court File No. CV- 19-00616779-00CL ([RBH Insurance Settlement and Bar Order](#)) [RBH Insurance Settlement and Bar Order] and Exhibit “A” to the Thauvette Affidavit at para. 6.

(b) The Additional Insurance Settlements Will Facilitate Plan Implementation

17. The Additional Insurance Settlements will also facilitate the implementation of the Plan. The Additional Insurance Settlements provide for payments by the Additional Participating Insurers, which are to be held in trust by the Monitor until the Plan Implementation Date or the business day following Payment Delivery (as defined in the Second Insurance Settlement Approval Order), whichever is later, at which point the Applicants will direct the Monitor to contribute such amounts to the Global Settlement Amount.¹⁶

18. The payments by the Additional Participating Insurers will provide available funding for distribution in accordance with the Plan, to the benefit of eligible claimants generally.

(c) The Additional Insurance Settlements are the Product of Good Faith Negotiations and are Supported by the Monitor

19. The Additional Insurance Settlement are the product of good faith, arms-length negotiations with the settling parties, and are supported by the Monitor.¹⁷

20. Each of these facts strongly supports the approval of the Additional Insurance Settlements. In approving settlements, courts have noted favourably where the settlement was the outcome of good faith negotiation between the parties.¹⁸ Further, courts place significant weight on the support of the monitor for a settlement.¹⁹

¹⁶ Thauvette Affidavit at para. 12.

¹⁷ Thauvette Affidavit at paras. 13-14.

¹⁸ *Northern Pulp*, at para. 18.

¹⁹ *Nortel Networks Corporation (Re)*, [2018 ONSC 6257](#) at para. 27; *Northern Pulp*, at para. 18; *Maple Bank GmbH (Re)*, [2016 ONSC 7218](#) at para. 9.

(d) The Releases in the Additional Insurance Settlements Should be Approved

21. The Additional Insurance Settlements release the Additional Participating Insurers in relation to the Imperial Policies (as defined in the Additional Insurance Settlements). The releases will be effective on the Plan Implementation Date, provided that the Additional Participating Insurers make payments in full.²⁰

22. The Court has repeatedly confirmed that it has jurisdiction to grant orders approving releases (including third-party releases) in the context of CCAA proceedings.²¹ Releases contained in settlement agreements are approved where they are necessary and connected to the resolution of the claims in question, will benefit creditors generally, and are not overly broad or offensive to public policy.²²

23. The proposed releases satisfy these criteria, which are consistent with the releases previously approved by the Court in respect of settlements entered into in the course of these CCAA proceedings,²³ are appropriate in the circumstances and should be approved by the Court. The releases are clearly connected to the resolution of the claims that are the subject of the Additional Insurance Settlements, and are a necessary component of the Additional Insurance Settlements, which contemplate and require the granting of the proposed releases by the Court.²⁴ Further, the proposed releases will benefit the Applicants' creditors generally by providing

²⁰ Thauvette Affidavit at para. 19 and Exhibit "C", s. 4.5.

²¹ See, i.e., *Lydian International Limited (Re)*, [2020 ONSC 4006](#) at para. 53; *Nortel*, at para. 79.

²² *Nortel*, at para. 79.

²³ See RBH Insurance Settlement and Bar Order at para. 6 and Exhibit "A" to the Thauvette Affidavit at para. 6.

²⁴ Thauvette Affidavit at Exhibit "C", s. 4.6.

amounts for contribution by the Applicants of their portion of the Global Settlement Amount.²⁵ The proposed releases are also appropriately limited in scope, as they apply only to claims in relation to the subject matter of each of the Additional Insurance Settlements, and only if the obligations in the Additional Insurance Settlements are satisfied.

PART IV - NATURE OF THE ORDER SOUGHT

24. For the reasons set out above, the Applicants request that this Court grant the proposed Second Insurance Settlement Approval Order substantially in the forms of the draft order included at Tab 3 of the Motion Record.

ALL OF WHICH IS RESPECTFULLY SUBMITTED this 26th day of August, 2025.



OSLER, HOSKIN & HARCOURT LLP
per Marleigh Dick

²⁵ Thauvette Affidavit at para. 12.

SCHEDULE “A”: LIST OF AUTHORITIES

1. *1057863 B.C. Ltd. (Re)*, [2024 BCSC 1111](#)
2. *Calpine Canada Energy Ltd. (Re)*, [2007 ABQB 504](#)
3. *Great Basin Gold Ltd. (Re)*, [2012 BCSC 1773](#)
4. *Labourers' Pension Fund of Central and Eastern Canada v. Sino-Forest Corp.*, [2013 ONSC 1078](#)
5. *Lydian International Limited (Re)*, [2020 ONSC 4006](#)
6. *Maple Bank GmbH (Re)*, [2016 ONSC 7218](#)
7. *Nortel Networks Corp.*, (Re), [2010 ONSC 1708](#)
8. *Nortel Networks Corporation (Re)*, [2018 ONSC 6257](#)
9. *Return on Innovation Capital Ltd. v. Gandi Innovations Ltd.*, [2010 ONSC 1759](#)
10. *Robertson v. ProQuest Information & Learning Co.*, [2011 ONSC 1647](#)
11. *Rothmans, Benson & Hedges Inc. (Re)*, (December 23, 2024), Ont S.C.J. [Commercial List], Court File No. CV- 19-00616779-00CL ([RBH Insurance Settlement and Bar Order](#))
12. *The Cash Store Financial Services Inc. (Re)*, [2015 ONSC 7538](#)

I certify that I am satisfied as to the authenticity of every authority.

Date August 26, 2025



Signature

SCHEDULE “B”
TEXT OF STATUTES, REGULATIONS & BY-LAWS

Companies’ Creditors Arrangement Act, RSC 1985, c C-36

General power of court

11 Despite anything in the Bankruptcy and Insolvency Act or the Winding-up and Restructuring Act, if an application is made under this Act in respect of a debtor company, the court, on the application of any person interested in the matter, may, subject to the restrictions set out in this Act, on notice to any other person or without notice as it may see fit, make any order that it considers appropriate in the circumstances.

**IN THE MATTER OF the *Companies' Creditors Arrangement Act*, R.S.C. 1985, c. C-36,
as amended**

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

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

APPLICANTS

***Ontario*
SUPERIOR COURT OF JUSTICE
COMMERCIAL LIST**

Proceeding commenced at Toronto

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