

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

**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 **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

JOINT FACTUM OF THE MONITORS

**Motions for CCAA Plan Amendment Orders
(Returnable March 3, 2025)**

February 28, 2025

DAVIES WARD PHILLIPS & VINEBERG LLP
155 Wellington Street West
Toronto ON M5V 3J7

Natasha MacParland (LSO# 42383G)
Email: nmacparland@dwpv.com
Chanakya A. Sethi (LSO# 63492T)
Email: csethi@dwpv.com

Lawyers for the Imperial Monitor

CASSELS BROCK & BLACKWELL LLP
40 Temperance St. – Suite 3200
Toronto, ON, M5H 0B4

Shayne Kukulowicz (LSO# 30729S)
Email: skukulowicz@cassels.com
Monique Sassi (LSO#63638L)
Email: msassi@cassels.com

Lawyers for the RBH Monitor

BLAKE, CASSELS & GRAYDON LLP
199 Bay Street
Suite 4000
Commerce Court West
Toronto ON M5L 1A9

Pamela L. J. Huff (LSO# 27344V)
Email: pamela.huff@blakes.com
Linc Rogers (LSO# 43562N)
Email: linc.rogers@blakes.com

Lawyers for the JTIM Monitor

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PART I – INTRODUCTION¹

1. The CCAA Plans were unanimously approved by voting creditors at three separate, sequential meetings of Affected Creditors of Imperial, RBH, and JTIM (the “**Meetings**”) on December 12, 2024. The Monitors then brought motions for Orders sanctioning the CCAA Plans and ancillary relief, which were heard together from January 29 to 31, 2025 (the “**Sanction Hearing**”).
2. At the Sanction Hearing, the Tobacco Companies advised this Court that the issue of allocation under the CCAA Plans remained unresolved between them.
3. The Tobacco Companies have now reached an agreement in principle to resolve this allocation issue.
4. Pursuant to the CCAA Plans, the Tobacco Companies are to make Upfront Contributions on or before the Plan Implementation Date equal to the aggregate of each Tobacco Company’s cash and cash equivalents generated from all sources by each Tobacco Company as at the month end prior to the Plan Implementation Date, plus the Cash Security Deposits, less the sum of \$750 million.

¹ This Factum is jointly filed by (i) FTI Consulting Canada Inc. (“**FTI**”) in its capacity as Court-appointed monitor of Imperial Tobacco Canada Limited (“**ITCAN**”) and Imperial Tobacco Company Limited (together with ITCAN, “**Imperial**”); (ii) Ernst & Young Inc. (“**EY**”) in its capacity as monitor for Rothmans Benson & Hedges Inc. (“**RBH**”); and (iii) Deloitte Restructuring Inc. (“**Deloitte**”) in its capacity as monitor for JTI-Macdonald Corp. (“**JTIM**” and, together with Imperial and RBH, the “**Tobacco Companies**” or “**Applicants**”). FTI, EY, and Deloitte are hereinafter referred to as the “**Monitors**” in the above-captioned coordinated proceedings (the “**Proceedings**”) under the *Companies’ Creditors Arrangement Act*, R.S.C., 1985, c. C-36, as amended (“**CCAA**”). Capitalized terms not defined herein have the meanings given to them in the Notices of Motion of the Monitors dated February 27, 2025 or the proposed third amended and restated plans of compromise or arrangement in respect of each Applicant dated February 27, 2025 (the “**Proposed Amended CCAA Plans**”). References to the “**CCAA Plans**” in this factum refer either to the initial plans of compromise or arrangement in respect of each Applicant dated October 17, 2024 or the Proposed Amended CCAA Plans, as the context requires.

5. This \$750 million sum is to be retained by the Tobacco Companies to fund working capital (the “**Working Capital Holdback**”). The Tobacco Companies have agreed in principle that on the Plan Implementation Date, RBH will retain the entire Working Capital Holdback in exchange for RBH, JTIM and JTI-Macdonald TM Corp. (“**JTIM TM**”) withdrawing their objections to the CCAA Plans.²

6. Pursuant to section 20.4(a) of the CCAA Plans, the Monitors now move for CCAA Plan Amendment Orders to approve certain amendments to the CCAA Plans to implement this agreement in principle (the “**Amendments**”). None of the Amendments affect any Affected Creditor or Unaffected Creditor. The Amendments only impact the allocation of the Working Capital Holdback among the Tobacco Companies. The three Tobacco Companies and JTIM TM support these motions.³ The Monitors are not aware of any Claimants which oppose them. Accordingly, the Monitors respectfully ask this Court to issue a separate, but substantially identical, CCAA Plan Amendment Order for each of the Tobacco Companies approving the Amendments and each of the Proposed Amended CCAA Plans.

PART II – SUMMARY OF FACTS

A. The CCAA Plans Do Not Presently Allocate the Working Capital Holdback Between the Tobacco Companies

7. At each of the Meetings held on December 12, 2024, the Affected Creditors, voting in person or by proxy, voted unanimously in favour of the applicable CCAA Plan.⁴

² Affidavit of Eric Thauvette sworn February 27, 2025 (“[Thauvette Affidavit](#)”) at para. 9; Affidavit of William E. Aziz (“[Aziz Affidavit](#)”) at paras. 20-21; Affidavit of Milena Trentadue sworn February 28, 2025 (“[Trentadue Affidavit](#)”) at para. 11.

³ [Thauvette Affidavit](#) at para. 11; [Aziz Affidavit](#) at paras. 20-21; [Trentadue Affidavit](#) at para. 11.

⁴ [FTI 24th Report](#) at Appendix A: Scrutineer’s Report; [EY 22nd Report](#) at Appendix A: Scrutineer’s Report; [Deloitte 21st Report](#) at Appendix A: Scrutineer’s Report.

8. The CCAA Plans were amended and restated on December 5, 2024 and January 27, 2025, respectively. In each case, in accordance with section 20.4(b), such previous amendments were not materially adverse to the interests of the Affected Creditors or Unaffected Creditors.⁵

9. Currently, the CCAA Plans do not allocate the Working Capital Holdback among the Tobacco Companies.

B. The Allocation of the Working Capital Holdback Was Not Agreed to by the Tobacco Companies Prior to or at the Sanction Hearing

10. The Sanction Hearing was held from January 29 to 31, 2025.

11. Prior to the Sanction Hearing, the Tobacco Companies had not resolved certain allocation issues, including the allocation of the Working Capital Holdback amongst them. The Imperial and RBH Monitors did not take a position on this issue and advised this Court that the issue must either be agreed upon by the Tobacco Companies or decided by this Court.⁶ Ultimately, the allocation issue was not resolved by the Tobacco Companies at the Sanction Hearing and it remained outstanding when the Sanction Hearing concluded on January 31, 2025.

C. The Tobacco Companies Have Agreed in Principle to Resolve the Allocation Issue

12. The Tobacco Companies have now reached an agreement in principle to solve the allocation of the Working Capital Holdback.⁷ The Tobacco Companies have agreed, subject to this Court's approval and the implementation of the Amendments, that the entire Working Capital Holdback will be retained by RBH on the Plan Implementation Date. RBH will be free to deal with the Working Capital Holdback in its sole discretion, including being free to transfer or distribute

⁵ [FTI 23rd Report](#) at para. 6; [EY 21st Report](#) at para. 12; [Deloitte 20th Report](#) at para. 8; [FTI 27th Report](#) at para. 6; [EY 25th Report](#) at para. 16; [Deloitte 24th Report](#) at para. 6.

⁶ [Joint Factum of the Imperial and RBH Monitors](#) dated January 22, 2025 at para. 12.

⁷ [FTI 28th Report](#) at para. 9; [EY 26th Report](#) at para. 16; [Deloitte 25th Report](#) at para. 10; [Thauvette Affidavit](#) at para. 11; [Aziz Affidavit](#) at para. 20; [Trentadue Affidavit](#) at para. 11.

such monies outside of Canada.⁸ As a result of this agreement in principle, section 5.2 of the CCAA Plans will be intentionally deleted. In exchange, RBH, JTIM and JTIM TM have agreed to withdraw all of their objections to the CCAA Plans.⁹

D. The Proposed Amendments to the CCAA Plans

13. Limited amendments are required to the CCAA Plans to implement the Tobacco Companies' agreement. In summary, the Amendments:

- (a) delete section 5.2 of the CCAA Plans;
- (b) amend section 5.4 to (i) provide that the Working Capital Holdback is to be retained by RBH as the "**RBH Retained Amount**", (ii) permit RBH to deal with the RBH Retained Amount in its sole discretion, including to transfer or distribute such monies outside of Canada in such manner as RBH may determine, and (iii) to clarify that any such transfers or distributions of the RBH Retained Amount will be deemed to be Permitted Transfers for the purposes of Article 11 of the CCAA Plans; and
- (c) make certain administrative changes to effect the Amendments.¹⁰

PART III – STATEMENT OF ISSUES, LAW & ARGUMENT

14. The sole issue on these motions is whether this Court should grant the CCAA Plan Amendment Orders. The answer is "yes".

⁸ [FTI 28th Report](#) at Appendix A; [EY 26th Report](#) at Appendix A; [Deloitte 25th Report](#) at Appendix A.

⁹ [Thauvette Affidavit](#) at para. 11; [Aziz Affidavit](#) at paras. 20-21; [Trentadue Affidavit](#) at para. 11.

¹⁰ [FTI 28th Report](#) at Appendix A; [EY 26th Report](#) at Appendix A; [Deloitte 25th Report](#) at Appendix A.

A. The CCAA Plans Require Court Approval of the Amendments

15. Section 20.4(a) of the CCAA Plans requires the Monitors to notify Affected Creditors and the Tobacco Companies and obtain Court approval of any amendment, restatement, modification or supplement to be made following the Meeting Orders that is not solely: (i) administrative; or (ii) error correcting.

16. The proposed Amendments are substantive and not merely curative. Therefore, the Monitors ask this Court to approve them. The Amendments do not affect and are not materially adverse to the financial or economic interests of Affected Creditors or Unaffected Creditors. The Amendments only impact the allocation of the Working Capital Holdback among the Tobacco Companies. The Affected Creditors and Tobacco Companies received notice of these motions on February 27, 2025. All three Tobacco Companies and JTIM TM support the Amendments.¹¹ The Monitors are not aware of any Claimants which oppose these Amendments.

B. This Court Should Exercise its Discretion to Approve the Amendments Without Requiring a Further Creditors' Meeting

17. Sections 6 and 7 of the CCAA provide this Court authority to sanction a plan and to alter or modify its terms.¹² When amendments are proposed **after** the creditors' meeting, section 7 of the CCAA gives this Court the discretion to sanction an amended plan without convening an additional creditors' meeting if this Court is satisfied that the creditors or shareholders are not adversely affected by the proposed amendments.¹³

18. This Court should exercise its discretion under section 7 of the CCAA to approve the Amendments without requiring further creditors' meetings in these CCAA Proceedings.

¹¹ [Thauvette Affidavit](#) at para. 11; [Aziz Affidavit](#) at paras. 20-21; [Trentadue Affidavit](#) at para. 11.

¹² *Ontario v. Canadian Airlines Corp.*, [2001 ABQB 983](#) at [para. 56](#) [*Canadian Airlines*].

¹³ *Canadian Airlines Corp.*, *supra* at [para. 56](#).

19. No Affected Creditor or Unaffected Creditor will be adversely affected by the Amendments. The proposed Amendments have no affect on them. Each of the Monitors has adhered to Section 20.4(a) of the CCAA Plans by providing notice to the Common Service and moving for this Court's approval of the Amendments. Such provision together with the balance of the CCAA Plans were approved unanimously by Affected Creditors, voting in person or by proxy on the applicable CCAA Plan.¹⁴ Each of the Monitors has filed a report recommending that this Court approve the Amendments and grant the CCAA Plan Amendment Order.¹⁵ Most importantly, if the Amendments are approved, RBH, JTIM and JTIM TM will withdraw their objections to the CCAA Plans.¹⁶ For the foregoing reasons, the CCAA Plan Amendment Orders are appropriate in the circumstances of these complex and coordinated CCAA Proceedings.

PART IV – ORDERS REQUESTED

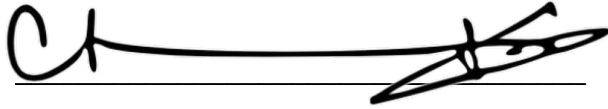
20. For the above reasons, the Monitors respectfully request that this Court grant the CCAA Plan Amendment Order sought in each CCAA Proceeding, in the forms attached at Tab 3 to each of the Motion Records of the Monitors dated February 27, 2025.

¹⁴ [FTI 24th Report](#) at Appendix A: Scrutineer's Report; [EY 22nd Report](#) at Appendix A: Scrutineer's Report; [Deloitte 21st Report](#) at Appendix A: Scrutineer's Report.

¹⁵ [FTI 28th Report](#) at para.17; [EY 26th Report](#) at para. 23; [Deloitte 25th Report](#) at para. 18.

¹⁶ [Thauvette Affidavit](#) at para. 11; [Aziz Affidavit](#) at paras. 20-21; [Trentadue Affidavit](#) at para. 11.

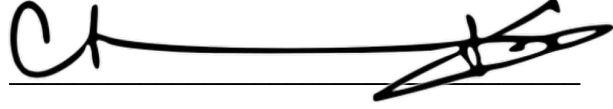
ALL OF WHICH IS RESPECTFULLY SUBMITTED this 28th day of February, 2025.



DAVIES WARD PHILLIPS & VINEBERG LLP
155 Wellington Street West
Toronto ON M5V 3J7

Natasha MacParland (LSO# 42383G)
Email: nmacparland@dwpv.com
Chanakya A. Sethi (LSO# 63492T)
Email: csethi@dwpv.com

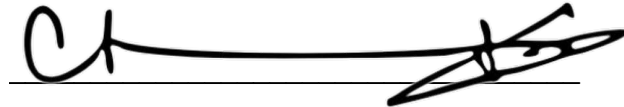
Lawyers for the Imperial Monitor



CASSELS BROCK & BLACKWELL LLP
40 Temperance Street – Suite 3200
Toronto, ON, M5H 0B4

Shayne Kukulowicz (LSO# 30729S)
Email: skukulowicz@cassels.com
Monique Sassi (LSO# 63638L)
Email: msassi@cassels.com

Lawyers for the RBH Monitor



BLAKE, CASSELS & GRAYDON LLP
199 Bay Street
Suite 4000, Commerce Court West
Toronto ON M5L 1A9

Pamela L. J. Huff (LSO# 27344V)
Email: pamela.huff@blakes.com
Linc Rogers (LSO# 43562N)
Email: linc.rogers@blakes.com

Lawyers for the JTIM Monitor

SCHEDULE "A"

LIST OF AUTHORITIES

1. *Ontario v. Canadian Airlines Corp.*, [2001 ABQB 983](#).

SCHEDULE "B"

TEXT OF STATUTES, REGULATIONS & BY-LAWS

Companies' Creditors Arrangement Act (R.S.C., 1985, c. C-36)

Compromises to be sanctioned by court

6 (1) If a majority in number representing two thirds in value of the creditors, or the class of creditors, as the case may be — other than, unless the court orders otherwise, a class of creditors having equity claims, — present and voting either in person or by proxy at the meeting or meetings of creditors respectively held under sections 4 and 5, or either of those sections, agree to any compromise or arrangement either as proposed or as altered or modified at the meeting or meetings, the compromise or arrangement may be sanctioned by the court and, if so sanctioned, is binding

(a) on all the creditors or the class of creditors, as the case may be, and on any trustee for that class of creditors, whether secured or unsecured, as the case may be, and on the company; and

(b) in the case of a company that has made an authorized assignment or against which a bankruptcy order has been made under the Bankruptcy and Insolvency Act or is in the course of being wound up under the Winding-up and Restructuring Act, on the trustee in bankruptcy or liquidator and contributories of the company.

[...]

Court may give directions

7 Where an alteration or a modification of any compromise or arrangement is proposed at any time after the court has directed a meeting or meetings to be summoned, the meeting or meetings may be adjourned on such term as to notice and otherwise as the court may direct, and those directions may be given after as well as before adjournment of any meeting or meetings, and the court may in its discretion direct that it is not necessary to adjourn any meeting or to convene any further meeting of any class of creditors or shareholders that in the opinion of the court is not adversely affected by the alteration or modification proposed, and any compromise or arrangement so altered or modified may be sanctioned by the court and have effect under section 6.

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PROCEEDING COMMENCED AT
TORONTO

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DAVIES WARD PHILLIPS & VINEBERG LLP
155 Wellington Street West
Toronto ON M5V 3J7

Natasha MacParland (LSO# 42383G)
Email: nmacparland@dwpv.com
Chanakya A. Sethi (LSO# 63492T)
Email: csethi@dwpv.com
Lawyers for the Imperial Monitor

BLAKE, CASSELS & GRAYDON LLP
199 Bay Street - Suite 4000
Commerce Court West
Toronto, ON M5L 1A9

Pamela L. J. Huff (LSO# 27344V)
Email: pamela.huff@blakes.com
Linc Rogers (LSO# 43562N)
Email: linc.rogers@blakes.com
Lawyers for the JTIM Monitor

CASSELS BROCK & BLACKWELL LLP
40 Temperance St. – Suite 3200
Toronto, ON, M5H 0B4

Shayne Kukulowicz (LSO# 30729S)
Email: skukulowicz@cassels.com
Monique Sassi (LSO#63638L)
Email: msassi@cassels.com
Lawyers for the RBH Monitor