E3350

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 ORAL COMPENDIUM OF THE COURT-APPOINTED MEDIATOR & IMPERIAL & RBH MONITORS (Returnable October 31, 2024)

October 30, 2024

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E2967

E3351

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TO: COMMON SERVICE LIST

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

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Applicants

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ONTARIO
SUPERIOR COURT OF JUSTICE
COMMERCIAL LIST

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Applicants

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22.	*Paris Fur Co. v. Nu-West Fur Corp.*, 1950 CarswellQue 23 (SC)
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CITATION: Imperial Tobacco Limited, 2024 ONSC 5388
COURT FILE NO.: CV-19-615862-00CL, CV-19-616077-00CL and CV-19-616779-00CL
DATE: 2024-10-01

SUPERIOR COURT OF JUSTICE - ONTARIO

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

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 & HEDGGES INC.

BEFORE: Chief Justice Geoffrey B. Morawetz (**In Writing**)

DETERMINED: October 1, 2024

ENDORSEMENT

[1] This endorsement relates to all three Applicants, JTI-MacDonald Corp., Imperial Tobacco Canada Limited and Imperial Tobacco Company Limited, and Rothmans, Benson & Hedges Inc.

[2] The motions, returnable today, to extend the Stay Period for the three Applicants for six months, are adjourned to October 31, 2024.

[3] Having reviewed the records, including the Reports filed by the three Monitors, I am satisfied that each Applicant continues to work in good faith and with due diligence such that an extension of the Stay Period until October 31, 2024 is warranted.

[4] Each Applicant has sufficient liquidity to maintain operations during the extension of the Stay Period.

[5] The Court has every expectation that matters will progress such that meetings of creditors can take place on or before December 12, 2024.

[6] The Stay Period for each Applicant is extended to October 31, 2024.

E3356

[7] Three Orders have been signed to reflect the foregoing.

Chief Justice Geoffrey B. Morawetz

Date: October 1, 2024

CITATION: Imperial Tobacco Canada Limited, 2023 ONSC 5449
COURT FILE NO.: CV-19-615862-00CL, CV-19-616077-00CL and CV-19-616779-00CL
DATE: 2023-10-05

SUPERIOR COURT OF JUSTICE - ONTARIO

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

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 & HEDGGES INC.

BEFORE: Chief Justice Geoffrey B. Morawetz

COUNSEL: *John MacDonald, Deborah Glendinning, Craig Lockwood, Marc Wasserman and Marleigh Dick*, for Imperial Tobacco Canada Limited and Imperial Tobacco Company Limited

Paul Steep, Heather Meredith and Trevor Courtis, for Rothmans, Benson & Hedges Inc.

Robert Thornton and Leanne Williams, for JTI-MacDonald Corp.

Natasha MacParland, Chanakya Sethi, Benjamin Jarvis and Mehak Suri, for FTI Consulting Canada Inc. in its capacity as court-appointed Monitor of Imperial Tobacco Canada Limited and Imperial Tobacco Company Limited

Jane Dietrich, for Ernst & Young Inc. in its capacity as court appointed Monitor of Rothmans, Benson & Hedges Inc.

Pamela Huff, Linc Rogers and Jake Harris, for Deloitte Restructuring Inc. in its capacity as Monitor of JTI-Macdonald Corp.

Robert Cunningham, for The Canadian Cancer Society

Avram Fishman and Mark E. Meland, for Conseil Québécois sur le tabac et la santé, Jean-Yves Blais and Cécilia Létourneau (Quebec Class Action Plaintiffs)

Amanda McInnis and Steven Weisz, for Grand River Enterprises Six Nations Ltd.

Jacqueline Wall, for His Majesty the King in Right of Ontario

Adam Slavens, for JTI Canada LLC Inc. and PricewaterhouseCoopers Inc., in its capacity as Receiver of JTI-Macdonald TM Corp.

David Ullmann, for La Nordique Compagie D'Assurance du Canada

Raymond Wagner, Madeleine Carter and Lauren Harper, Representative Counsel for the Pan-Canadian Claimants

Clifton Prophet and Nichols Kluge, for Philip Morris International Inc.

Andre Michael and Michael Eizenga, 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

Peter R. Lawless, for Legal Services Branch, British Columbia

Edward R. Gores, for the Ministry of the Attorney General of Nova Scotia

Bryan McLeese, for R.J. Reynolds Tobacco Company and R.J. Reynolds Tobacco International Inc.

Douglas Lennox, for Representative Plaintiff, Kenneth Knight, in the certified British Columbia Class Action, *Knight v. Imperial Tobacco Canada Ltd.*, Supreme Court of British Columbia, Vancouver Registry No. L031300

William V. Sasso and Harvey T. Strosberg, for The Ontario Flue-Cured Tobacco Growers' Marketing Board

Nadia Campion, for Court-Appointed Mediator, The Honourable Warren K. Winkler

Brett Harrison, for the Province of Quebec

HEARD and DETERMINED: September 27, 2023

RELEASED: October 5, 2023

ENDORSEMENT

[1] This endorsement relates to all three Applicants, JTI-MacDonald Corp., ("JTI") Imperial Tobacco Canada Limited and Imperial Tobacco Company Limited (collectively "Imperial") and Rothmans, Benson & Hedges Inc. ("RBH").

E3359

[2] At the conclusion of the hearing, a Stay Extension was granted to all Applicants up to and including March 29, 2024, with reasons to follow. Oral directions were provided and these directions are set out at paragraphs [11] - [21].

[3] The evidence in support of the requested relief is set out in the 16th Report of FTI Consulting Canada Inc. as Monitor of Imperial, the 14th Report of Ernst & Young Inc., as Monitor of RBH and the 15th Report of Deloitte Restructuring Inc., Monitor of JTI (collectively, the "Reports").

[4] In addition, the Affidavit of Philippe Trudell, one of the attorneys representing Conseil Québecois sur le tabac et la santé ("QCAPs") was also filed.

[5] All three motions for an extension of the Stay Period were not opposed.

[6] The Reports outline the current state of affairs.

[7] The Record establishes that all three Applicants have been and continue to work in good faith and with due diligence. The Record also establishes that much work remains outstanding and additional time is required until comprehensive plans of arrangement can be finalized.

[8] In addition, the Affidavit of Mr. Trudell outlines the situation facing a number of claimants and underscores the necessity for progress to be made in the development of plans of arrangement.

[9] The Reports confirm that all Applicants have sufficient liquidity to carry on operations during the period of the proposed extension of the Stay Period.

[10] I am satisfied that all three Applicants have established that circumstances exist that require an extension of the Stay Period up to and including March 29, 2024, and such order is granted.

[11] In granting such relief, I am mindful that all stakeholders have been involved in negotiating various issues for a period of approximately four and one-half years. There are a number of outstanding issues which remain to be addressed. I expect that these issues have been outstanding for a considerable period of time. It is now time for all stakeholders to focus on the finalization of comprehensive plans of arrangement. For this reason, I have determined that it is both necessary and appropriate to provide certain directions to the Monitors and to the Honourable Warren K. Winkler, Court-appointed Mediator. These directions were provided orally at the conclusion of the hearing on September 27, 2023 and are repeated below.

[12] The Record establishes that all parties continue to be engaged with the Court-appointed Mediator, the Honourable Warren K. Winkler.

[13] The Record also establishes, through the detailed reports of the Monitors, that each Monitor has a thorough understanding of the issues facing their respective Applicants.

[14] The Record also establishes that these CCAA proceedings are extremely complex.

[15] The dollar value of potential claims is astronomical and is clearly beyond the ability for any or all of the Applicants to satisfy these claims from their available assets.

[16] There is also an unresolved issue as to how the three Applicants will address the issue of allocation of responsibility for such issues.

[17] It would be a challenge for any one Applicant to address the outstanding issues – let alone for all three Applicants to address the issues in the context of a comprehensive Plan of Arrangement.

[18] In formulating an acceptable Plan of Arrangement, it has often been stated that no plan is perfect (See: *Sammi Atlas Inc. (Re)*, (1998) 3 C.B.R. (4th) 171 (Ont. Gen. Div.), at para. 4). The objective is to produce a plan or in this case plans, which will be acceptable to the required statutory majority of creditors and also be seen to be fair and reasonable.

[19] In my view, if a successful plan is to be forthcoming, the best chance for the development of such a plan will be achieved by directing neutral parties to collaborate and develop such a plan. In the circumstances, such neutrals are already in place. The three Court-appointed Monitors are well-positioned to collaborate with each other in conjunction with the Court-appointed Mediator to develop such plans.

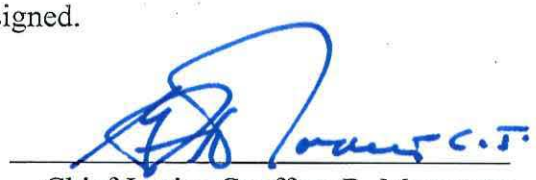
[20] The existing structure of the mediation can be utilized to facilitate the development of such plans. The Monitors and the Mediator are obviously familiar with the issues and in view of their existing neutrality, it seems to me that they are in the best position to develop plans that, after due consideration by all three Applicants and the creditors, will have the best opportunity to be considered to be fair and reasonable to all three Applicants and to their creditors.

[21] The Applicants filed for CCAA protection four and one-half years ago. It is now time to move from observable activity to meaningful action.

[22] Accordingly, I am directing the three Monitors, to work in conjunction with the Honourable Warren K. Winkler, Court-appointed Mediator, to develop Plans of Compromise or Arrangement. The Monitors and the Court-appointed Mediator are also directed to keep this Court updated as to their progress.

[23] The motions of all three Applicants are granted, in accordance with the directions noted above.

[24] Three orders that reflect the foregoing have been signed.



Chief Justice Geoffrey B. Morawetz

Date: October 5, 2023

Court File Number: CV-19-615862-00CL
CV-19-616077-00CL
CV-19-616779-00CL

E3361

Superior Court of Justice
Commercial List

FILE/DIRECTION/ORDER

JTI-MacDonald Corp/Imperial Tobacco/RBH. Inc.
Plaintiff(s)

AND

Defendant(s)

Case Management ☑ Yes ☐ No by Judge: McEWEN J

Counsel	Telephone No:	Facsimile No:
see attached		

☐ Order ☐ Direction for Registrar **(No formal order need be taken out)**
☐ Above action transferred to the Commercial List at Toronto **(No formal order need be taken out)**

☐ Adjourned to: _____
☐ Time Table approved (as follows):

The Applicants, various stakeholders and Monitor's counsel reattended on March 28, 2023 with respect to the Applicants' motions to extend the Stay Period to September 29, 2023.

The Provinces of Ontario, British Columbia, Manitoba, New Brunswick, Nova Scotia, PEI and Saskatchewan did not oppose the motion nor did

30 March 23
Date

Judge's Signature

☑ Additional Pages nine

E2978

Court File Number: _____ E3362

Superior Court of Justice
Commercial List

FILE/DIRECTION/ORDER

Judges Endorsment Continued

Representative Counsel for the Pan Canadian Claimants ("PCC"). All were supportive of a 6 month extension.

The Monitors also support the relief sought by the Applicants.

While no stakeholder opposes an extension of the Stay Period, QCAP submits that the extension should be limited to 3 months. QCAP is supported by the Province of Quebec, Representative Counsel in the British Columbia class action and the Canadian Cancer Society.

For the reasons that follow I am granting the Applicants' motions and extending the Stay Period to September 29, 2023.

There is no suggestion that the Applicants do not continue to act

Judges Initials _____

E2979

Court File Number: _____ E3363

Superior Court of Justice
Commercial List

FILE/DIRECTION/ORDER

Judges Endorsment Continued

in good faith and with due diligence. Outstanding orders are being complied with and the extremely complicated mediation before The Honourable Mr. Winkler continues. Both the Monitors and the Honourable Mr Winkler advise that good progress continues to be made. Ontario is optimistic that negotiations are coming to fruition, and there were no real submissions to the contrary.

The Applicants further submitted that they are concerned that a 3 month extension would pose a distraction; that the stay periods and the mediation timelines remain independent; the Applicants do not control the timelines; it is not surprising that a complex matter such as this has taken a

Judges Initials TM

E2980

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FILE/DIRECTION/ORDER

Judges Endorsment Continued

relatively long time to progress; and, that a compressed timeline may actually do more harm than good as stakeholders may move too quickly, negotiations may fail and break down.

QCAP, on the other hand, is understandably seeking a tighter timeline of 3 months. They, and their supporters, primarily make the following submissions.

First, QCAP submits that the 3 month extension is not a distraction but a catalyst for settlement. Six months eases the pressure.

Second, they argue that the stay periods and mediation timelines are interrelated and longer time periods for stays affects urgency.

Third, they say that there is evidence of delay and since

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Superior Court of Justice
Commercial List

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Judges Endorsment Continued

the mediation is confidential the Applicants cannot simply advise the Court that there is no delay, in a bald way, and have a longer stay partially granted on that basis.

QCAP also relies on the affidavit evidence of Ms. Blais and Mr. Trudel which set out the suffering class members have endured and the frustration they experience in waiting for an outcome in these CCAA proceedings. One cannot review the contents of those affidavits and not feel genuine sympathy for those affected.

Notwithstanding this however, I am still respectful of the view that 6 months is fair

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Judges Initials TM

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Superior Court of Justice
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Judges Endorsment Continued

and reasonable in the difficult circumstances of this case.

Again, no one questions the bona fides of the Applicants' participation in the mediation. I accept that good progress continues to be made based on the Monitor's Reports and my discussions with the Honourable Mr. Winkler – which were confirmed by his Counsel at the hearing.

There is now optimism that a successful resolution is in sight.

In the objective opinion of the Monitors and the Honourable Mr. Winkler 6 months is sensible and preferable.

I am also concerned that the 3 month time period proposed by QCAP may backfire and have the exact opposite effect of

Judges Initials _____

E2983

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FILE/DIRECTION/ORDER

Judges Endorsment Continued

enhancing the prospects of settlement.

In mid April the significant motion of the Heart and Stroke Foundation will be heard. I am concerned that a 3 month extension simply does not allow meaningful time to deal with the motion, important negotiations and the further stay motion.

Although the CCAA submissions are compelling I must consider what is overall preferable for all stakeholders, including the Provinces that do not oppose and the PCC, which also sadly contains members who have passed or are ill, and believes that resolution requires additional time.

It is primarily for the above reasons that I have concluded

Judges Initials _____

E2984

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Superior Court of Justice
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FILE/DIRECTION/ORDER

Judges Endorsment Continued

that the 6 month Stay Period ought to be granted.

Keeping Q&AP's submissions in mind however, as I stated at the hearing, I fully expect all parties to the mediation to fully engage in the process and provide the Honourable Mr. Winkler and the Monitors with their full and timely co-operation. Even though 6 months have been granted, it does not mean that negotiations should not be approached without some sense of urgency.

Last, upon reflection I am not initiating a further case conference in 3 months. I do not want to create another possible distraction from the important further steps in the

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Superior Court of Justice
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FILE/DIRECTION/ORDER

Judges Endorsment Continued

ongoing mediation.

In keeping with the endorsement I am requesting that Monitors' counsel forward to me draft orders for signature.

Judges Initials _____

E2986

Participant Information

Please upload a completed participant information form into the CaseLines event folder/bundle. Where possible, the moving party for the event is asked to coordinate with other parties to complete one form for the hearing.[1] In criminal matters, each party may upload their own form. The participant information form must be saved using the court's document naming convention (e.g. Participant Information – All Parties – 1-JUN-2021 or Participant Information – Defendant Smith – 01-JUN-2021).

CASE INFORMATION	
Court File Number(s)	Court File No. CV-19-616077-00CL Court File No. CV-19-616779-00CL Court File No. CV-19-615862-00CL
Court Location	Toronto
Case Name	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.** AND IN THE MATTER OF A PLAN OF COMPROMISE OR ARRANGEMENT OF **JTI-MACDONALD CORP.**
Date of Hearing	March 28, 2023

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[1] The Participant information Form replaced the Counsel Slip.

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[2] Please provide a phone number where you can be reached during the hearing, if necessary.
[3] Please provide a phone number where you can be reached during the hearing, if necessary.

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Nicola Hartigan **Klein Lawyers LLP**	Representative plaintiff, Kenneth Knight, in the certified British Columbia class action, Knight v. Imperial Tobacco Canada Ltd., Supreme Court of British Columbia, Vancouver Registry No. L031300	604.714-0689	nhartigan@callkleinlawyers.com
William V. Sasso **Strosberg Sasso Sutts LLP**	The Ontario Flue-Cured Tobacco Growers' Marketing Board	519.561.6222	wvs@strosbergco.com
Nadia Campion Jonathan Lisus **Lax O'Sullivan Lisus Gottlieb LLP**	Court-Appointed Mediator, The Honourable Mr. Winkler	416.642.3134 416.598.7873	ncampion@lolg.ca jlisus@lolg.ca

CV-19-615062-00CL

Court File Number: CV-19-616077-00CL

E3374

CV-19-616774-00CL

Superior Court of Justice
Commercial List

FILE/DIRECTION/ORDER

JTI-MacDonald Corp. / Imperial Tobacco / RBH Inc
Plaintiff(s)

AND

Defendant(s)

Case Management ☑ Yes ☐ No by Judge: McEwen J

Counsel	Telephone No:	Facsimile No:
See attached		

☐ Order ☐ Direction for Registrar **(No formal order need be taken out)**
☐ Above action transferred to the Commercial List at Toronto **(No formal order need be taken out)**

☐ Adjourned to: _____
☐ Time Table approved (as follows):

The attached orders shall go as per the drafts filed and signed. Over the objections of QCAP (supported by the Canadian Cancer Society) I have, somewhat reluctantly, come to the conclusion that the six month stay period proposed by the Applicants is preferrable to the three month period proposed by QCAP, and is

29 Sept 22
Date

McEwen J
Judge's Signature

☑ Additional Pages three

E2991

Court File Number: _____ E3375

Superior Court of Justice
Commercial List

FILE/DIRECTION/ORDER

Judges Endorsment Continued

fair and reasonable in the current circumstances of the Court-ordered mediation.

The Applicants' position is supported by the Monitors and a number of stakeholders noted in the Agenda. Counsel for The Honourable Mr. Winkler takes no position, but advises that good progress is being made in the mediation.

While I appreciate the significance of the submissions of OCAP, I am prepared to grant another six month extension.

I am concerned that a shorter extension would distract the stakeholders involved in the mediation from the important task at hand and have them also focus on the return date which would be

Judges Initials DM

E2992

Court File Number: E3376

Superior Court of Justice
Commercial List

FILE/DIRECTION/ORDER

Judges Endorsment Continued

shortly after the December holidays.

Further, there is no evidence of delay in this enormously complicated mediation and no stakeholder questions the tireless and productive efforts of the Honourable Mr. Winkler and the Monitors.

Also, the timelines of the stay extension, and mediation timelines, are independant of each other and not interrelated so as to suggest unwarranted delay may result.

I do, however, wish to repeat some of my comments at the hearing. Specifically, I urge all parties to the mediation to remain completely focused on resolution and provide the Honourable Mr. Winkler and the Monitor with their full cooperation over the next six months.

Judges Initials DM

McEwen

E2993

Court File Number: CV-19-615862-00CL
CV-19-616077-00CL
CV-19-616779-00CL

E3377

Superior Court of Justice
Commercial List

FILE/DIRECTION/ORDER

JTI-MacDonald Corp/Imperial Tobacco/RBH. Inc.
Plaintiff(s)

AND

Defendant(s)

Case Management ☑ Yes ☐ No by Judge: McEWEN J

Counsel	Telephone No:	Facsimile No:
see attached		

☐ Order ☐ Direction for Registrar **(No formal order need be taken out)**
☐ Above action transferred to the Commercial List at Toronto **(No formal order need be taken out)**

☐ Adjourned to: _____
☐ Time Table approved (as follows):

The Applicants, various stakeholders and Monitor's counsel reattended on March 28, 2023 with respect to the Applicants' motions to extend the Stay Period to September 29, 2023.

The Provinces of Ontario, British Columbia, Manitoba, New Brunswick, Nova Scotia, PEI and Saskatchewan did not oppose the motion nor did

30 March 23
Date

Judge's Signature

☑ Additional Pages nine

E2994

Superior Court of Justice
Commercial List

FILE/DIRECTION/ORDER

Judges Endorsment Continued

Representative Counsel for the Pan Canadian Claimants ("PCC"). All were supportive of a 6 month extension.

The Monitors also support the relief sought by the Applicants.

While no stakeholder opposes an extension of the Stay Period™, QCAP submits that the extension should be limited to 3 months. QCAP is supported by the Province of Quebec, Representative Counsel in the British Columbia class action and the Canadian Cancer Society.

For the reasons that follow I am granting the Applicants' motions and extending the Stay Period to September 29, 2023.

There is no suggestion that the Applicants do not continue to act

Judges Initials _____

Court File Number: _____ E3379

Superior Court of Justice
Commercial List

FILE/DIRECTION/ORDER

Judges Endorsment Continued

in good faith and with due diligence. Outstanding orders are being complied with and the extremely complicated mediation before The Honourable Mr. Winkler continues. Both the Monitors and the Honourable Mr Winkler advise that good progress continues to be made. Ontario is optimistic that negotiations are coming to fruition, and there were no real submissions to the contrary.

The Applicants further submitted that they are concerned that a 3 month extension would pose a distraction; that the stay periods and the mediation timelines remain independent; the Applicants do not control the timelines; it is not surprising that a complex matter such as this has taken a

Page 3 of 9

Judges Initials TM

E2996

Court File Number: _____ E3380

Superior Court of Justice
Commercial List

FILE/DIRECTION/ORDER

Judges Endorsment Continued

relatively long time to progress; and, that a compressed timeline may actually do more harm than good as stakeholders may move too quickly, negotiations may fail and break down.

QCAP, on the other hand, is understandably seeking a tighter timeline of 3 months. They, and their supporters, primarily make the following submissions.

First, QCAP submits that the 3 month extension is not a distraction but a catalyst for settlement. Six months eases the pressure.

Second, they argue that the stay periods and mediation timelines are interrelated and longer time periods for stays affects urgency.

Third, they say that there is evidence of delay and since

Judges Initials _____

E2997

Court File Number: _____ E3381

Superior Court of Justice
Commercial List

FILE/DIRECTION/ORDER

Judges Endorsment Continued

the mediation is confidential the Applicants cannot simply advise the Court that there is no delay, in a bald way, and have a longer stay partially granted on that basis.

QCAP also relies on the affidavit evidence of Ms. Blais and Mr. Trudel which set out the suffering class members have endured and the frustrations they experience in waiting for an outcome in these CCAA proceedings. One cannot review the contents of those affidavits and not feel genuine sympathy for those affected.

Notwithstanding this however, I am still respectful of the view that 6 months is fair

Page 5 of 9

Judges Initials TM

E2998

Court File Number: _____ E3382

Superior Court of Justice
Commercial List

FILE/DIRECTION/ORDER

Judges Endorsment Continued

and reasonable in the difficult circumstances of this case.

Again, no one questions the bona fides of the Applicants' participation in the mediation. I accept that good progress continues to be made based on the Monitor's Reports and my discussions with the Honourable Mr. Winkler – which were confirmed by his Counsel at the hearing.

There is now optimism that a successful resolution is in sight.

In the objective opinion of the Monitors and the Honourable Mr. Winkler 6 months is sensible and preferable.

I am also concerned that the 3 month time period proposed by QCAP may backfire and have the exact opposite effect of

Judges Initials _____

E2999

Court File Number: _____ E3383

Superior Court of Justice
Commercial List

FILE/DIRECTION/ORDER

Judges Endorsment Continued

enhancing the prospects of settlement.

In mid April the significant motion of the Heart and Stroke Foundation will be heard. I am concerned that a 3 month extension simply does not allow meaningful time to deal with the motion, important negotiations and the further stay motion.

Although the CCAA submissions are compelling I must consider what is overall preferable for all stakeholders, including the Provinces that do not oppose and the PCC, which also sadly contains members who have passed or are ill, and believes that resolution requires additional time.

It is primarily for the above reasons that I have concluded

Judges Initials _____

E3000

Court File Number: _____ E3384

Superior Court of Justice
Commercial List

FILE/DIRECTION/ORDER

Judges Endorsment Continued

that the 6 month Stay Period ought to be granted.

Keeping Q&AP's submissions in mind however, as I stated at the hearing, I fully expect all parties to the mediation to fully engage in the process and provide the Honourable Mr. Winkler and the Monitors with their full and timely co-operation. Even though 6 months have been granted, it does not mean that negotiations should not be approached without some sense of urgency.

Last, upon reflection I am not initiating a further case conference in 3 months. I do not want to create another possible distraction from the important further steps in the

Page 8 of 9

Judges Initials _____

E3001

Court File Number: _____ E3385

Superior Court of Justice
Commercial List

FILE/DIRECTION/ORDER

Judges Endorsment Continued

ongoing mediation.

In keeping with the endorsement I am requesting that Monitors' counsel forward to me draft orders for signature.

Judges Initials _____

E3002

Participant Information

Please upload a completed participant information form into the CaseLines event folder/bundle. Where possible, the moving party for the event is asked to coordinate with other parties to complete one form for the hearing.[1] In criminal matters, each party may upload their own form. The participant information form must be saved using the court's document naming convention (e.g. Participant Information – All Parties – 1-JUN-2021 or Participant Information – Defendant Smith – 01-JUN-2021).

CASE INFORMATION	
Court File Number(s)	Court File No. CV-19-616077-00CL Court File No. CV-19-616779-00CL Court File No. CV-19-615862-00CL
Court Location	Toronto
Case Name	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.** AND IN THE MATTER OF A PLAN OF COMPROMISE OR ARRANGEMENT OF **JTI-MACDONALD CORP.**
Date of Hearing	March 28, 2023

PARTICIPANT INFORMATION

For Plaintiff, Applicant, Moving Party, Crown:

Name of Person Appearing (and how they wish to be addressed, e.g. preferred pronouns)	Name of Party	Phone Number	Email Address
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[1] The Participant information Form replaced the Counsel Slip.

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Robert Thornton Rebecca Kennedy **Thornton Grout Finnigan LLP**	JTI-MacDonald Corp.	416.304.0560 416.304.0603	rthornton@tgf.ca rkennedy@tgf.ca

For Defendant, Responding Party, Defence:

Name of Person Appearing (and how they wish to be addressed, e.g. preferred pronouns)	Name of Party	Phone Number[2]	Email Address
n/a			

For Other:

Name of Person Appearing (and how they wish to be addressed, e.g. preferred pronouns)	Name of Party	Phone Number[3]	Email Address
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Murray McDonald **Ernst & Young Inc.**	Ernst & Young Inc. in its capacity as court-appointed Monitor of Rothmans, Benson & Hedges Inc.	416.943.3016	murray.a.mcdonald@ca.ey.com
Paul Casey Phil Reynolds Warren Leung Connie Chen **Deloitte Restructuring Inc.**	Deloitte Restructuring Inc. in its capacity as Monitor of JTI-Macdonald Corp.	416.775.7172 416.956.9200 416.874.4461	paucasey@deloitte.ca philreynolds@deloitte.ca waleung@deloitte.ca kanglchen@deloitte.ca

[2] Please provide a phone number where you can be reached during the hearing, if necessary.
[3] Please provide a phone number where you can be reached during the hearing, if necessary.

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Linc Rogers Jake Harris **Blake, Cassels & Graydon LLP**	Deloitte Restructuring Inc. in its capacity as Monitor of JTI-Macdonald Corp.	416.863.4168 416.863-2523	linc.rogers@blakes.com jake.harris@blakes.com
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Bruce Johnston **Trudel Johnston & Lesperance**	Conseil québécois sur le tabac et la santé, Jean-Yves Blais and Cécilia Létourneau (Quebec Class Action Plaintiffs)	514.649.8385	bruce@tjl.quebec
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David Ullmann Alex Fernet Brochu **Blaney McMurtry LLP**	La Nordique Compagnie D'Assurance du Canada	416.596.4289 416.593.3937	dullmann@blaney.com afernetbrochu@blaney.com
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Nicola Hartigan **Klein Lawyers LLP**	Representative plaintiff, Kenneth Knight, in the certified British Columbia class action, Knight v. Imperial Tobacco Canada Ltd., Supreme Court of British Columbia, Vancouver Registry No. L031300	604.714-0689	nhartigan@callkleinlawyers.com
William V. Sasso **Strosberg Sasso Sutts LLP**	The Ontario Flue-Cured Tobacco Growers' Marketing Board	519.561.6222	wvs@strosbergco.com
Nadia Campion Jonathan Lisus **Lax O'Sullivan Lisus Gottlieb LLP**	Court-Appointed Mediator, The Honourable Mr. Winkler	416.642.3134 416.598.7873	ncampion@lolg.ca jlisus@lolg.ca

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.

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

ROTHMANS, BENSON & HEDGES INC.

October 2, 2019

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

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

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

2 October 19

For reasons to soon follow the Stay Period is extended to March 12, 2020.

ONTARIO
SUPERIOR COURT OF JUSTICE
(COMMERCIAL LIST)

Proceeding commenced at Toronto

RESPONDING MOTION RECORD
(Re: Stay Extension Motion)
(Returnable October 2, 2019)

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(Quebec Class Action Plaintiffs)

Oct 2, 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 **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 COMPROMISEOR ARRANGEMENT OF **ROTHMANS, BENSON & HEDGES INC.**

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

3 October 19

For reasons to soon follow CCS is permitted to participate in these CCAA proceedings subject to the conditions that will be set out in the reasons. CCS is not permitted, however, to participate in the mediation process at this time.

ONTARIO
SUPERIOR COURT OF JUSTICE

PROCEEDING COMMENCED AT
TORONTO

RESPONDING MOTION RECORD OF THE CANADIAN CANCER SOCIETY (OCTOBER 2, 2019)

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Email: rcunning@cancer.ca

Lawyers for Canadian Cancer Society

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

ONTARIO
SUPERIOR COURT OF JUSTICE
COMMERCIAL LIST

THE HONOURABLE	)	TUESDAY, THE 12TH
JUSTICE MCEWEN	)	DAY OF MARCH, 2019
	)	

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

AND IN THE MATTER OF A PLAN OF COMPROMISE OR ARRANGEMENT OF IMPERIAL TOBACCO CANADA LIMITED AND IMPERIAL TOBACCO COMPANY LIMITED (the "Applicants")

SECOND AMENDED AND RESTATED INITIAL ORDER

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

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

SERVICE

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

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

APPLICATION

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

PLAN OF ARRANGEMENT

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

DEFINITIONS

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

(a) "**BAT**" means British American Tobacco p.l.c.;

(b) "**BAT Group**" means, collectively, BAT, BATIF, B.A.T Industries p.l.c., British American Tobacco (Investments) Limited, Carreras Rothmans Limited or entities related to or affiliated with them other than the Applicants and the ITCAN Subsidiaries;

(c) "**BATIF**" means B.A.T. International Finance p.l.c.;

(d) "**Co-Defendants**" means JTI-Macdonald Corp. and Rothmans, Benson & Hedges Inc.;

(e) "**Deposit Posting Order**" means the order of the Quebec Court of Appeal granted October 27, 2015 or any other Order requiring the posting of security or the payment of a deposit in respect of the Quebec Class Actions;

(f) "**ITCAN**" means Imperial Tobacco Canada Limited;

(g) "**ITCAN Subsidiaries**" means the direct and indirect subsidiaries of the Applicants listed in Schedule "B";

(h) "**Pending Litigation"** means any and all actions, applications and other lawsuits existing at the time of this Order in which any of the Applicants is a named defendant or respondent (either individually or with other Persons (as defined below)) relating in any way whatsoever to a Tobacco Claim, including without limitation the litigation listed in Schedule "A";

(i) "**Quebec Class Actions**" means the proceedings in the Quebec Superior Court and the Quebec Court of Appeal in (i) *Cécilia Létourneau et al. v. JTI Macdonald Corp., Imperial Tobacco Canada Limited and Rothmans, Benson & Hedges Inc.* and (ii) *Conseil Québécois sur le Tabac et la Santé and Jean-Yves Blais v. JTI Macdonald Corp., Imperial Tobacco Canada Limited and Rothmans, Benson & Hedges Inc.* and all decisions and orders in such proceedings, including, without limitation, the Deposit Posting Order;

(j) "**Sales & Excise Taxes**" means all goods and services, harmonized sales or other applicable federal, provincial or territorial sales taxes, and all federal excise taxes and customs and import duties and all federal, provincial and territorial tobacco taxes;

(k) "**Tobacco Claim**" means any right or claim (including, without limitation, a claim for contribution or indemnity) of any Person against or in respect of the Applicants, the ITCAN Subsidiaries or any member of the BAT Group that has been advanced (including, without limitation, in the Pending Litigation), that could have been advanced or that could be advanced, and whether such right or claim is on such Person's own account, on behalf of another Person, as a dependent of another Person, or on behalf of a certified or proposed class, or made or advanced as a government body or agency, insurer, employer, or otherwise, under or in connection with:

(i) applicable law, to recover damages in respect of the development, manufacture, production, marketing, advertising, distribution, purchase or sale of Tobacco Products, the use of or exposure to Tobacco Products or any representation in respect of Tobacco Products, in Canada, or in the case

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

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

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

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

POSSESSION OF PROPERTY AND OPERATIONS

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

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

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

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

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

(b) the fees and disbursements of any Assistants retained or employed by the Applicants, including without limitation in respect of any proceedings under Chapter 15 of the United States Bankruptcy Code, 11 U.S.C. §§ 101-1330, as amended, at their standard rates and charges;

(c) with the consent of the Monitor, amounts for goods or services actually supplied to the Applicants prior to the date of this Order:

(i) by logistics or supply chain providers, including customs brokers and freight forwarders;

(ii) by providers of information technology, social media marketing strategies and publishing services; and

(iii) in respect of the Loyalty Program as set out in the Thauvette Affidavit;

(d) with the consent of the Monitor, amounts payable in respect of any Intercompany Transactions (as defined herein); and

(e) by other third party suppliers, if, in the opinion of the Applicants, such payment is necessary or desirable to preserve the operations of the Business or the Property.

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

(a) all expenses and capital expenditures reasonably necessary for the preservation of the Property or the Business including, without limitation, payments on account of insurance (including directors and officers insurance), maintenance and security services;

(b) capital expenditures other than as permitted in clause (a) above to replace or supplement the Property or that are otherwise of benefit to the Business, provided that Monitor approval is obtained for any single such expenditure in excess of $1 million or an aggregate of such expenditures in a calendar year in excess of $5 million; and

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

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

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

(a) any statutory deemed trust amounts in favour of the Crown in right of Canada or of any Province thereof or any other taxation authority which are required to be deducted from employees' wages, including, without limitation, amounts in respect of (i) employment insurance, (ii) Canada Pension Plan, (iii) Quebec Pension Plan, and (iv) income taxes;

(b) all Sales & Excise Taxes required to be remitted by the Applicants in connection with the Business; and

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

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

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

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

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

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RESTRUCTURING

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

(a) permanently or temporarily cease, downsize or shut down any of their respective businesses or operations and to dispose of redundant or non-material assets not exceeding $1,000,000 in any one transaction or $5,000,000 in the aggregate;

(b) terminate the employment of such of its employees or temporarily lay off such of its employees as it deems appropriate;

(c) pursue all avenues of refinancing of the Business or Property, in whole or part, subject to prior approval of this Court being obtained before any material refinancing; and

(d) pursue all avenues to resolve any of the Tobacco Claims, in whole or in part,

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

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

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

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

STAY OF PROCEEDINGS

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

19. THIS COURT ORDERS that, during the Stay Period, (i) none of the Pending Litigation or any Proceeding in relation to any other Tobacco Claim shall be commenced, continued, or take place against or in respect of any Person named as a defendant or respondent

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(other than JTI-Macdonald Corp. and Rothmans, Benson & Hedges Inc.) in any of the Pending Litigation (such Persons, the "**Other Defendants**"); and (ii) no Proceeding in Canada that relates in any way to a Tobacco Claim or to the Applicants, the Business or the Property shall be commenced, continued or take place against or in respect of any member of the BAT Group except, in either case, with leave of this Court, and any and all such Proceedings currently underway or directed to take place against or in respect of any of the Other Defendants or any member of the BAT Group are hereby stayed and suspended pending further Order of this Court.

20. THIS COURT ORDERS that, to the extent any prescription, time or limitation period relating to any Proceeding by, against or in respect of the Applicants, the ITCAN Subsidiaries, any of the Other Defendants, or any member of the BAT Group that is stayed pursuant to this Order may expire, including but not limited to any prescription of time whereby the Applicants would be required to commence the QCA Leave Application, the term of such prescription, time or limitation period shall hereby be deemed to be extended by a period equal to the Stay Period.

NO EXERCISE OF RIGHTS OR REMEDIES

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

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NO INTERFERENCE WITH RIGHTS

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

CONTINUATION OF SERVICES

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

NON-DEROGATION OF RIGHTS

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

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SALES AND EXCISE TAX CHARGE

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

PROCEEDINGS AGAINST DIRECTORS AND OFFICERS

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

DIRECTORS' AND OFFICERS' INDEMNIFICATION AND CHARGE

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

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

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

APPOINTMENT OF MONITOR

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

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

(a) monitor the Applicants' receipts and disbursements;

(b) report to this Court at such times and intervals as the Monitor may deem appropriate with respect to matters relating to the Property, the Business, and such other matters as may be relevant to the proceedings herein;

(c) advise the Applicants in their preparation of the Applicants' cash flow statements;

(d) advise the Applicants in their development of the Plan and any amendments to the Plan;

(e) assist the Applicants, to the extent required by the Applicants, with the holding and administering of creditors' or shareholders' meetings for voting on the Plan;

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(f) have full and complete access to the Property, including the premises, books, records, data, including data in electronic form, and other financial documents of the Applicants, to the extent that is necessary to adequately assess the Applicants' business and financial affairs or to perform its duties arising under this Order;

(g) be at liberty to engage independent legal counsel or such other persons as the Monitor deems necessary or advisable respecting the exercise of its powers and performance of its obligations under this Order;

(h) assist the Applicants, to the extent required by the Applicants, in its efforts to explore the potential for a resolution of any of the Tobacco Claims;

(i) consult with the Court-Appointed Mediator in connection with the Court-Appointed Mediator's mandate, including in relation to any negotiations to settle any Tobacco Claims and the development of the Plan;

(j) be and is hereby appointed to serve as the "foreign representative" of the Applicants in respect of an application to the United States Bankruptcy Court for relief pursuant to Chapter 15 of the United States Bankruptcy Code, 11 U.S.C. §§ 101-1330, as amended; and

(k) perform such other duties as are required by this Order or by this Court from time to time.

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

33. THIS COURT ORDERS that nothing herein contained shall require the Monitor to occupy or to take control, care, charge, possession or management (separately and/or collectively, "**Possession**") of any of the Property that might be environmentally contaminated, might be a pollutant or a contaminant, or might cause or contribute to a spill, discharge, release or deposit of a substance contrary to any federal, provincial or other law respecting the protection, conservation, enhancement, remediation or rehabilitation of the environment or relating to the disposal of waste

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or other contamination including, without limitation, the *Canadian Environmental Protection Act*, the Ontario *Environmental Protection Act*, the *Ontario Water Resources Act*, the Ontario *Occupational Health and Safety Act*, the Quebec *Environment Quality Act*, the Quebec *Act Respecting Occupational Health and Safety* and any regulations under any of the foregoing statutes (the "**Environmental Legislation**"), provided however that nothing herein shall exempt the Monitor from any duty to report or make disclosure imposed by applicable Environmental Legislation. The Monitor shall not, as a result of this Order or anything done in pursuance of the Monitor's duties and powers under this Order, be deemed to be in Possession of any of the Property within the meaning of any Environmental Legislation, unless it is actually in possession.

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

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

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

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

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

COURT-APPOINTED MEDIATOR

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

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

(a) Adopt processes which, in his discretion, he considers appropriate to facilitate negotiation of a global settlement;

(b) Retain independent legal counsel and such other advisors and persons as the Court-Appointed Mediator considers necessary or desirable to assist him in carrying out his mandate;

(c) Consult with all Persons with Tobacco Claims ("**Tobacco Claimants**"), the Monitor, the Applicants, the Co-Defendants, other creditors and stakeholders of the Applicants and/or the Co-Defendants and any other persons the Court-Appointed Mediator considers appropriate;

(d) Accept a court appointment of similar nature in any proceedings under the CCAA commenced by a company that is a co-defendant or respondent with the Applicants

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

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

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

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

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

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

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VALIDITY AND PRIORITY OF CHARGES CREATED BY THIS ORDER

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

(a) First – Administration Charge (to the maximum amount of $5 million) and the Court-Appointed Mediator Charge (to the maximum amount of $1 million), *pari passu*;

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

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

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

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

(a) purchase-money security interests or the equivalent security interests under various provincial legislation and financing leases (that, for greater certainty, shall not include trade payables);

(b) statutory super-priority deemed trusts and liens for unpaid employee source deductions;

(c) deemed trusts and liens for any unpaid pension contribution or deficit with respect to the DB Plans, the DC Plan (as such terms are defined in the Thauvette Affidavit) and any of the Applicants' other pension plans, but only to the extent that any such

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

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

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

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

(a) the creation of the Charges shall not create or be deemed to constitute a breach by the Applicants of any Agreement to which it is a party;

(b) none of the Chargees shall have any liability to any Person whatsoever as a result of any breach of any Agreement caused by or resulting from the creation of the Charges; and

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

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

SERVICE AND NOTICE

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

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

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

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(b) advertisements published without delay by the Monitor in The Globe and Mail (National Edition) and La Presse, which advertisements shall be in addition to the advertisement required under paragraph 51 hereof, and which shall be run on two non-consecutive days following the day on which the advertisement set out in paragraph 51 is run; and

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

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

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

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

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

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

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

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

GENERAL

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

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

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

61. THIS COURT HEREBY REQUESTS the aid and recognition of any court, tribunal, regulatory or administrative body having jurisdiction in Canada, in the United States or any other country, to give effect to this Order and to assist the Applicants, the Monitor and their respective agents in carrying out the terms of this Order. All courts, tribunals, regulatory and administrative bodies are hereby respectfully requested to make such orders and to provide such assistance to the Applicants and to the Monitor, as an officer of this Court, as may be necessary or desirable to give effect to this Order, to grant representative status to the Monitor in any foreign proceeding, or to assist the Applicants and the Monitor and their respective agents in carrying out the terms of this Order.

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

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

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

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

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

APR 26 2019

PER / PAR: RW

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SCHEDULE "A"
PENDING LITIGATION

A. Medicaid Claim Litigation

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

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

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

B. Tobacco Claim Litigation – Certified and Proposed Class Actions

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

[1] British American Tobacco p.l.c. and Carreras Rothmans Limited have been released from this action.

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

[2] British American Tobacco p.l.c. and Carreras Rothmans Limited have been released from this action.

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

C. Tobacco Claim Litigation – Individual Actions

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

[3] B.A.T Industries p.l.c., British American Tobacco (Investments) Limited, British American Tobacco p.l.c. have been released from this action.

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

SCHEDULE "B"
ITCAN SUBSIDIARIES

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

SCHEDULE "C"
HEALTH CARE COSTS RECOVERY LEGISLATION

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

E3425

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

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

ONTARIO
SUPERIOR COURT OF JUSTICE
(COMMERCIAL LIST)

Proceeding commenced at Toronto

SECOND AMENDED AND RESTATED INITIAL ORDER

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

Deborah Glendinning (LSO# 31070N)
Marc Wasserman (LSO# 44066M)
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Michael De Lellis (LSO# 48038U)

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

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

Matter No: 1144377

E3042

Ontario Supreme Court
Anvil Range Mining Corp., Re
Date: 2001-03-29

Heard: March 22, 2001

Judgment: March 29, 2001

Docket: Doc. 98-BK-001208

Kenneth Kraft and George Karayannides, for Deloitte & Touche Inc. in its capacity as Interim Receiver of Anvil Range Mining Corporation and Anvil Mining Properties Inc.

Tony Reyes, for Golden Hills Ventures Ltd., MacMillan Mining Contractors Ltd., and Vortex Mining Inc.

John Porter, for Her Majesty the Queen in Right of Canada as represented by the Department of Indian Affairs and Northern Development

Kevin R. Aalto and David Estrin, for Cumberland Asset Management, Berner Company Inc., Global Securities Corporation, Peel Brooke Inc., Robert N. Granger, Adrian M.S. White, and Hyundai Corporation

Derek T. Ground, for Ross River Dena Council and Ross River Development Corporation

Richard B. Jones, for Rose Creek Vangorda Mines and Pelly River Mines Limited (NPL)

David Hager, for Cominco Ltd.

Geoffrey B. Morawetz, for Yukon Energy Corporation and as agent for James Grout representing "Leitch Lien Claimants"

Frederick L. Myers, for Government of Yukon

Endorsement. *Farley J.:*

[1] This hearing involved the return of the motion of the Interim Receiver ("IR") which I adjourned on February 21, 2001 as a result of the Cumberland Group's complaint that the IR had not provided a "valuation" pursuant to Cameron J.'s Order of January 16, 2001 [properly December 19, 2000] required the IR's "report to include and updated valuation of the assets". The IR's motion was for the sanctioning of a plan of arrangement (the "Plan") of Anvil Range Mining Corporation and Anvil Mining Properties Inc. (collectively, "Anvil") as approved by certain classes of creditors of Anvil pursuant to the *Companies' Creditors Arrangement Act* ("CCAA") or in the alternative, the approval of a sale of the assets of Anvil on terms substantially similar to those provided in the Plan. The IR's further motion record served on March 14th, contained a March 12, 2001 Anvil Range Mining Corporation Valuation

3. Is the Plan fair and reasonable?

See *Olympia & York Developments Ltd. v. Royal Trust Co.* (1993), 12 O.R. (3d) 500 (Ont. Gen. Div.) at p. 506; *Northland Properties Ltd. v. Excelsior Life Insurance Co. of Canada* (1989), 73 C.B.R. (N.S.) 195 (B.C. C.A.) at p. 201.

[9] Dealing with the first two elements, it appears that the meetings called for voting on the Plan were held pursuant to an order of the Court with the classification of creditors being as approved by this Court. The voting was as contemplated and the Plan was unanimously approved. However, an objection was raised by Messrs. Jones and Aalto that the CCAA did not allow a plan of arrangement to be advanced by an interim receiver and further according to Mr. Aalto that this role being assumed by the IR destroyed the neutrality of the IR. However I would note that similarly there is no provision specifically in the *Bankruptcy and Insolvency Act* for an interim receiver to file a proposal under that legislation. Notwithstanding that in *Re J.S. McMillan Fisheries Ltd.* (1998), 1 C.B.R. (4th) 226 (B.C. S.C.), Tysoe J. stated at p. 231:

> As the Company had no management, the Order appointing Ernst & Young Inc. as Interim Receiver authorized it to negotiate and file a Proposal in relation to the Company.

Further, Blair J. authorized the filing of a Plan by either the IR or the secured creditors and there was no appeal of his order. See the Court of Appeal decision in *Ontario (Registrar of Mortgage Brokers) v. Matrix Financial Corp.,* [1993] O.J. No. 2102 (Ont. C.A.). I would further point out that while the secured creditors had the opportunity of filing a Plan, they did not do so but rather they agreed amongst themselves that the authorized alternate, the IR, do so. The IR is an officer of the Court and pursuant to this court appointment, it owes a duty to be objective and neutral as amongst all of the affected parties in this insolvency, including the unsecured creditors and the shareholders. Given where the Plimsoll Line is in this situation, it is extremely inappropriate for the objectors to assert, without any evidence of substance, that the IR has adopted an adversarial role. Given my reasons of February 21, I would not have expected that barrage to have been repeated. That is not to say that, merely because the IR files a Plan, it should be taken by this Court as being fair and reasonable and further that objections not be received on this point. However, merely because the objectors (Cumberland Group) were advocating an alternative plan (a plan which in my view is unrealistic in the circumstances in light of the unsecureds being so far under water, the unworkability of this alternate, the concerns for remediation and the retention of $600,000 as working capital out of

all that the Cumberland Group has to point to is that its leave to appeal to the Supreme Court of Canada has not been heard yet.

[20] Mr. Aalto referred to *Royal Bank v. Fracmaster Ltd.,* [1999] A.J. No. 675 (Alta. C.A.) at para. 16 with respect to the CCAA not being used to provide for a liquidation in a guise of a CCAA reorganization. But see my views above. In any event, the IR has sought alternative relief allowing it to sell the assets, which sale would be on a commercially equivalent basis as the Plan under the CCAA contemplates. Given that the Plan would operate more efficiently in that respect, I see no reason to provide that this proceed as a sale by the IR.

[21] In the end result, I am of the view that the Plan is fair and reasonable for the foregoing reasons and therefore the three part test has been met. The Plan is sanctioned and approved.

[22] I may be spoken to as to costs if necessary by booking an appointment through the Commercial List Office.

Motion granted.

SUPERIOR COURT

(Commercial Division)

CANADA
PROVINCE OF QUEBEC
DISTRICT OF MONTREAL

N° : 500-11-049838-150

DATE : JULY 4, 2019

BY THE HONOURABLE DAVID R. COLLIER, J.S.C.

In the matter of the *Companies' Creditors Arrangement Act*

9323-7055 QUEBEC INC.
(formerly Aquadis International Inc.)
Debtor

and

RAYMOND CHABOT Inc, (Mr Jean Gagnon, CPA, CA, CIRP)
Applicant / Monitor

JUDGMENT

I. OVERVIEW

[1] The Monitor has submitted a Plan of Compromise and Arrangement for the Court's approval (the "Plan"). The Plan has received the unanimous approval of the creditors of 9323-7055 Québec inc., formerly Aquadis International inc. ("Aquadis"). Nevertheless, a number of persons who are not party to the Plan oppose its ratification (the "Opposing Retailers"). The Opposing Retailers object that the Plan would entitle the Monitor to take legal action against them on behalf of Aquadis' creditors. They argue that such an action would not be necessary for the restructuring of Aquadis and

[25] The Monitor could have brought one action naming JYIC and the retailers as joint defendants. Instead he sued JYIC, excluding the retailers because he was still negotiating with them. Had the retailers been included in the action, they would certainly have invoked their recursory right against JYIC – as they are sure to do in the Monitor's proposed action. Assuming the Court has jurisdiction over JYIC,[16] it is foreseeable that the two actions will be joined.

[26] It is important to note that under the Plan all of Aquadis' creditors, whether they are party to the Plan, or merely subject to it like the Opposing Retailers, receive equal treatment regarding their claims.

[27] It bears mention that the Opposing Retailers were aware in November 2016 of the Court's Order authorizing the Monitor to institute legal action against Canadian distributors. They did not oppose the Order at that time, or thereafter attempt to have it set aside or varied. The Opposing Retailers claim they are not challenging the Order now, but they are clearly doing so, and their complaint is late. The Plan merely continues the power granted to the Monitor over two and a half years ago.

[28] Finally, the Monitor has asked for an order condemning the Opposing Retailers to pay costs on a solicitor-client basis, arguing that their opposition to the Plan is entirely without merit. The Court notes the novel character of the Plan and does not consider the opposition abusive.

FOR THESE REASONS, THE COURT:

[29] **GRANTS** the Monitor's application to sanction and approve the Amended Plan of Compromise and Arrangement dated April 25, 2019;

[30] **THE WHOLE** with costs against the Opposing Parties.

_____

DAVID R. COLLIER, J.S.C.

Mtre Alain N. Tardif
Mtre Gabriel Faure
MC CARTHY TETREAULT
Mtre Francis C. Meagher
LAPOINTE ROSENSTEIN MARCHAND MELANÇON
Counsel for Applicant / Monitor

[16] JYIC has filed a declinatory exception contesting the Court's jurisdiction over it. The motion has not yet been heard.

Ontario Supreme Court
Canadian Red Cross Society/Société canadienne de la Croix-Rouge, Re
Date: 1998-08-19

In the matter of the Companies' Creditors Arrangement Act, R.S.C. 1985 c. C-36

In the matter of a plan of compromise or arrangement of the Canadian Red Cross Society/La Société canadienne de la Croix-Rouge

Ontario Court of Justice, General Division [Commercial List] Blair J.

Judgment: August 19, 1998[1]

Docket: 98-CL-002970

B. Zarnett, B. Empey and J. Latham, for Canadian Red Cross.

E.B. Leonard, S.J. Page and D.S. Ward, for Provinces except Que. and for the Canadian Blood Services.

Jeffrey Carhart, for Héma - Québec and for the Government of Québec.

Marlene Thomas and John Spencer, for the Attorney General of Canada.

Pierre R. Lavigne and Frank Bennett, for Quebec .'86-90 Hepatitis C Claimants.

Pamela Huff and Bonnie Tough, for the 1986-1990 Haemophiliac Hepatitis C Claimants.

Harvin Pitch and Kenneth Arenson, for the 1986-1990 Hepatitis C Class Action Claimants.

Aubrey Kaufman and David Harvey, for the Pre 86/Post 90 Hepatitis C Class Action Claimants.

Bruce Lemer, for B.C. 1986-90 Class Action.

Donna Ring, for HIV Claimants.

David A. Klein, for B.C. Pre-86/Post-90 Hepatitis C Claimants.

David Thompson - Agent for Quebec Pre-86/Post 90 Hepatitis C Claimants.

Michael Kainer, for Service Employees International Union.

I.V.B. Nordheimer, for Bayer Corporation.

R.N. Robertson, Q.C., and S.E. Seigel, for T.D. Bank.

James H. Smellie, for the Canadian Blood Agency.

[1] Additional reasons at (1998), 5 C.B.R. (4th) 319 (Ont. Gen. Div. [Commercial List]); further additional reasons at (1998), 5 C.B.R. (4th) 321 (Ont. Gen. Div. [Commercial List]).

troubling implications for the integrity and safety of that system. I do not think, firstly, that the argument is a jurisdictional one, and secondly, that it can prevail in any event.

[43] I cannot accept the submission that the Court has no jurisdiction to make the order sought. The source of the authority is twofold: it is to be found in the power of the Court to impose terms and conditions on the granting of a stay under section 11; and it may be grounded upon the inherent jurisdiction of the Court, not to make orders which contradict a statute, but to "fill in the gaps in legislation so as to give effect to the objects of the CCAA, including the survival program of a debtor until it can present a plan": *Dylex Ltd., Re* (1995), 31 C.B.R. (3d) 106 (Ont. Gen. Div. [Commercial List]), per Farley J., at p. 110.

[44] As Mr. Zarnett pointed out, paragraph 20 of the Initial Order granted in these proceedings on July 20, 1998, makes it a condition of the protection and stay given to the Red Cross that it not be permitted to sale or dispose of assets valued at more than $1 million without the approval of the Court. Clearly this is a condition which the Court has the jurisdiction to impose under section 11 of the Act. It is a necessary conjunction to such a condition that the debtor be entitled to come back to the Court and seek approval of a sale of such assets, if it can show it is in the best interests of the Company and its creditors as a whole that such approval be given. That is what it has done.

[45] It is very common in CCAA restructurings for the Court to approve the sale and disposition of assets during the process and before the Plan if formally tendered and voted upon. There are many examples where this had occurred, the recent Eaton's restructuring being only one of them. The CCAA is designed to be a flexible instrument, and it is that very flexibility which gives it its efficacy. As Farley J said in *Dylex Ltd.* supra (p. 111), "the history of CCAA law has been an evolution of judicial interpretation". It is not infrequently that judges are told, by those opposing a particular initiative at a particular time, that if they make a particular order that is requested it will be the first time in Canadian jurisprudence (sometimes in global jurisprudence, depending upon the level of the rhetoric) that such an order has made! Nonetheless, the orders are made, if the circumstances are appropriate and the orders can be made within the framework and in the spirit of the CCAA legislation. Mr. Justice Farley has well summarized this approach in the following passage from his decision in *Lehndorff General Partner Ltd., Re* (1993), 17 C.B.R. (3d) 24 (Ont. Gen. Div. [Commercial List]), at p. 31, which I adopt:

SUPERIOR COURT

(Commercial Division)
(*Companies' Creditors Arrangement Act*)

CANADA
PROVINCE OF QUEBEC
DISTRICT OF MONTREAL

No: 500-11-020963-035

DATE: MARCH 19, 2004

PRESIDING: THE HONOURABLE PAUL CHAPUT, J.S.C.

IN THE MATTER OF THE PLAN OF ARRANGEMENT AND REORGANIZATION OF:

CABLE SATISFACTION INTERNATIONAL INC.
Debtor
v.
RICHTER & ASSOCIÉS INC.
Interim Receiver/Monitor/Petitioner

JUDGMENT

---

[1] The Interim Receiver/Monitor ("Monitor") petitions the Court to sanction a plan of arrangement and reorganization of Cable Satisfaction International Inc. (Csii). The petition is filed pursuant to section 6 of the *Companies' Creditors Arrangement Act* (C.C.A.A.) and section 191 of the *Canada Business Corporations Act* (C.B.C.A.).

Context

[2] The Initial Order was made on July 4, 2003 at the request of Csii. That order was subsequently amended.

he would table on behalf of the Noteholders before the creditors an amendment to the Plan.

[14] On the same day, the Monitor announced the proposed amendment by press release. Csii published a press release on March 15, advising that it had not approved the proposed amendment and did not know if the creditors would approve it.

[15] The purpose of the amendment was to eliminate the 2% participation of the shareholders and increase the share of the Noteholders to 30%.

[16] At the meeting, the creditors voted to accept the amendment and then voted to accept the Amended and Restated Plan ("the Amended Plan").

[17] The Monitor asks the Court to sanction the Amended Plan.

[18] On behalf of Csii, its attorneys have filed a Contestation to the Monitor's motion to sanction the Amended Plan.

[19] The Contestation raises three reasons why the Amended Plan should not be sanctioned by the Court:

Absence of Consent of Csii

[20] Csii alleges that a plan of arrangement proposed under the C.C.A.A., just as a proposal in bankruptcy, must be viewed as a contract. If it is to be altered or modified, the consent of the debtor company must be obtained.

Unfairness of the Amended Plan

[21] According to Csii, it would be unfair to the shareholders to sanction the Amended Plan which eliminates their participation in the reorganization of the company, since the proxies, in particular those of 97% of the Noteholders representing 87% in value, contained instructions to vote for the Plan as proposed.

Lack of Procedural Fairness

[22] Csii takes the position that, given the proxies to vote in favour of the Plan, the representative of the Noteholders had no authority to propose amendments to the Plan.

> "…The court's role is to ensure that the creditors who are bound unwillingly under the Act are not made victims of the majority and forced to accept terms that are unconscionable…" Re Keddy Motors Inns Ltd., [1992] 13 C.B.R. (3d) 245 (C.A.N.E.) (p. 258)

Il y a maintenant lieu de passer aux moyens invoqués par les appellants au soutien de leur appel.»

[24] As summarized by Chief Justice McEachern of the B.C. Court of Appeal in *Northland Properties Limited v. Excelsior Life Insurance Co. of Canada*:[2]

> "The authorities do not permit any doubt about the principles to be applied in a case such as this. They are set out over and over again in many decided cases and may be summarized as follows:
>
> (1) There must be strict compliance with all statutory requirements (it was not suggested in this case that the statutory requirements had not been satisfied);
>
> (2) All material filed and procedures carried out must be examined to determine if anything has been done which is not authorized by the C.C.A.A.;
>
> (3) The plan must be fair and reasonable.

[25] The same principles apply to an application in the case of a reorganization under Section 191 C.B.C.A. *In re Doman Industries Ltd.*,[3] Tysoe, J. writes :

> "It was common ground between counsel on this application that the test to be applied by the Court under s. 191 of the *CBCA* is similar to the test applied in deciding whether to sanction a reorganization plan under the *CCAA*; namely:
>
> (1) there must be compliance with all statutory requirements;
>
> (2) the debtor company must be acting in good faith;
>
> (3) the capital restructuring must be fair and reasonable.

[26] The statutory requirements under the C.C.A.A. include various matters such as: the status of the company as a "debtor company"; the amount of its indebtedness; compliance with Court orders, especially that dealing with the calling of the creditors meeting; the determination of the classes of creditors; the procedure for calling the meeting of creditors and the voting.

[27] As appears from the Contestation filed, an issue is raised as to the legality of the proposal to amend the plan and the voting of the creditors on the Amended Plan.

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[2] (1988), 73 C.B.R. (N.S.) 175 (B.C.C.A.), p. 3 and 4.
[3] 41 C.B.R. (4th) 42 (B.C.S.C.), 45.

[28] Save for that issue, on the basis of the documents filed and the testimony of the Monitor, it appears that the statutory requirements have been met.

[29] Also, it is to be noted that the Amended Plan does contain a provision for the payment of the Crown claims as required by section 18.2 C.C.A.A. In addition, the Monitor has informed the Court that no such claims have become payable since the Court issued the Initial Order.

Contestation

[30] The intent of the Contestation is that the Court refuses to sanction the Amended Plan, since it takes away the advantage which the shareholders would receive under the Plan.

[31] It was raised during the pleadings that Csii cannot appear before the Court to plead in favour of the shareholders.

[32] It is doubtful that Csii has the required legal interest to attend before the Court to argue what should be done in the interest of the shareholders. No doubt, as provided in section 122 C.B.C.A., the directors and officers of a corporation must act in the best interest of the corporation. But, in the present case, it is not the directors or officers who are before the Court, but Csii through its attorneys.

[33] However, at the outset of the hearing, no preliminary exception was taken to the filing of the Contestation by Csii and the Contestation was pleaded.

- - - - -

[34] The Contestation raises that the consent of Csii should have been obtained to the proposed amendment to the Plan, as a plan under the C.C.A.A. is to be considered a contract.

[35] That is not the case. As is provided in section 4 of the C.C.A.A., the arrangement or compromise is a proposal. It is a plan of terms and conditions for the arrangement or compromise to be presented to the creditors for their consideration and eventual acceptance.

[36] In the case of *Michaud*,[4] Delisle, J. commented that the binding force of the arrangement or compromise arises from the law itself through the sanction of the Court, and not from the effect of mutually agreed upon the terms as in a contract.

> «S'il est vrai qu'un arrangement est une offre qui, pour être soumise à l'autorité compétente pour homologation, nécessite son acceptation par les créanciers dans les proportions exigées par la L.A.C.C., il n'est pas exact, avec respect, de

[4] Above, note 1, p. 18.

(*emphasis added*)

> [Paragraph 170] "[…] "Where secured creditors have compromised their claims and unsecured creditors are accepting 13 cents on the dollar in a potential pool of unsecured claims totalling possibly in excess of $1 billion, it is not unfair that shareholders receive nothing."
>
> (*emphasis added)*

[54] In the end, the Amended Plan does not appear to be unfair and should be sanctioned.

[55] (As regards the other conclusions sought in the Motion, there was no contestation.)

[56] **FOR THESE REASONS, THE COURT:**

[57] **GRANTS** the motion pf Petitioner to sanction the Second Amended and Restated Plan of Arrangement and Reorganization of Cable Satisfaction International Inc. (the "Motion");

[58] **DECLARES** that the time for service of the Motion is hereby abridged and that Cable Satisfaction International Inc., all creditors and shareholders have been properly notified;

[59] **DECLARES** that capitalized terms used in the Motion and not otherwise defined herein shall have the meaning set out in the Second Amended and Restated Plan of Arrangement and Reorganization, Exhibit M-19 (the "Amended Plan");

[60] **SANCTIONS** the Amended Plan pursuant to Section 6 of the *Companies' Creditors Arrangement Act*;

[61] **DIRECTS** and **AUTHORIZES** Richter & Associés Inc., acting for and on behalf of Cable Satisfaction International Inc., to complete all of the corporate and financial transactions contemplated under the Amended Plan, including, without limitation, (i) all acts required in section 3.1 of the Amended Plan, and (ii) the incorporation of a new wholly-owned subsidiary under the laws of the Netherlands;

[62] **DECLARES** that the compromises and the reorganization of share capital effected by the Amended Plan (including section 6 thereof) are approved, binding and effective upon all Affected Creditors, shareholders of Cable Satisfaction International Inc. and other Persons affected by the Amended Plan;

[63] **APPROVES** the form of articles of reorganization, Exhibit M-21, providing for the reorganization of Cable Satisfaction International Inc.'s share capital, including the appointment of the New Board as contemplated by Section 9.4 of the Amended Plan;

COURT OF APPEAL FOR BRITISH COLUMBIA

Citation: *8640025 Canada Inc. (Re),* 2018 BCCA 93

Date: 20180314
Docket: CA44978

In the Matter of the *Companies' Creditors Arrangement Act*, R.S.C. 1985, c. C-36, as amended

In the Matter of the *Canada Business Corporations Act*, R.S.C. 1985, c. C-44, as amended

In the Matter of a Plan of Compromise and Arrangement of 8640025 Canada Inc., Teliphone Data Centers Inc. and Teliphone Canada Corp.

Between:

8640025 Canada Inc., Teliphone Data Centers Inc. and Teliphone Canada Corp.

Respondents
(Petitioners)

And

TNW Networks Corp.; Teliphone Corp.; Cloud-Phone Inc.; ChoiceTel Networks Ltd.; Titan Communications Inc.; 8583498 Canada Ltd.; 9151-4877 Quebec Inc., dba Dialek Telecom; Orion Communications Inc.; Investel Capital Corporation; New York Telecommunication Exchange Inc.. operating as NYTEX; United American Corp. (US Florida), formerly Teliphone USA Corp.; Coastline Broadcasting Ltd.; and Benoit Laliberte

Applicants
(Appellants)

And

Ernest & Young Inc., Court-Appointed Monitor for the Petitioners

Respondent
(Respondent)

Before: The Honourable Madam Justice Newbury
The Honourable Madam Justice Kirkpatrick
The Honourable Madam Justice Fisher

On appeal from: An order of the Supreme Court of British Columbia, dated December 14, 2017 (*8640025 Canada Inc. (Re)*, Vancouver Registry Docket S1610905).

> "autopsy litigation." Proposal proceedings under the *BIA* are no less real-time litigation than proceedings under the *CCAA*. As Justice Farley, who was the individual who coined the phrase in the first instance, said in *Re Royal Oak Mines Inc.*, 1999 CarswellOnt 792; 7 C.B.R. (4th) 293 at para. 5 (Ont. Ct. Just. Gen. Div.):
>
> > Frequently those who do not have familiarity with real time litigation have difficulty appreciating that, in order to preserve value for everyone involved, Herculean tasks have to be successfully completed in head spinning short times. All the same everyone is entitled the opportunity to advance their interests.
>
> [At para. 48.]

There is no reason to suggest that liquidations are any less time-sensitive than the more usual compromises or restructurings under the *CCAA.*

The Role of the Monitor

[47] The use of court-appointed monitors has also been an innovation in the courts' treatment of *CCAA* cases. Prior to 1997, monitors were appointed pursuant to the inherent jurisdiction of the superior courts. They reviewed the financial and business affairs of the debtor, provided independent information to the court on the progress of the proceedings, and assisted in administrative matters such as notifying creditors and organizing and managing meetings of creditors: see Sarra, *Rescue* at 257.

[48] The professionalism and impartiality of the monitor's role were codified in 1997 following the recommendations of a task force that reported in 1994: see Sarra at 258. Section 11.7(1) now requires that a monitor be appointed by a court on the initial application and that the person so appointed be a trustee within the meaning of s. 2(1) of the *BIA*. Section 11.7(2) disqualifies certain persons who would have an interest in the debtor or would not be seen to be impartial. As officers of the court, monitors must remain impartial and "objectively look out for be concerned for the interests of all stakeholders": see *Re Laidlaw Inc.* (2002) 34 C.B.R. (4th) 72 (Ont. S.C.J.), *per* Farley J.

[49] Section 23 sets out the various duties of monitors, which apply unless the court orders otherwise. Generally, these are duties of monitoring the company's

business affairs and reporting to the court thereon, carrying out appraisals or investigations considered necessary by the monitor, assisting the company's creditors in certain respects, advising the court on the "reasonableness and fairness" of any proposed compromise or arrangement, making certain documents publicly available and carrying out "any other functions in relation to the company that the court may direct." Courts have used s. 23(1)(k) liberally to assign additional functions to monitors that go beyond investigating and reporting to the court. As noted by Yaad Rotem in "Contemplating a Corporate Governance Model for Bankruptcy Reorganizations: Lessons from Canada", (2008) 3 *Va. L.& Bus. Rev*. 125, monitors have been authorized to act as financial advisors to the parties or the court, to facilitate or mediate between management and creditors, and to fulfill certain functions of directors or managers. (At 148.) The monitor may even effectively replace the board of directors and senior management of a corporation: see *Re Royal Oak Mines Inc.* (1999) 11 C.B.R. (4th) 122 (Ont. Gen. Div.) Thus Professor Sarra writes:

> Long gone are the days when the monitor acted as a passive observer, reporting to the court. Monitors now play a range of roles, including mediator or facilitator in the negotiations, debtor advisor, creditor assuager and officer of the court. The recent amendments bolster this authority, requiring in a number of instances, such as DIP Financing and the sale of assets to related parties, that the court consider the views of the monitor. However, the court has observed that while the support or approval of the monitor is an important factor, it is not decisive in and of itself. The courts continue to stress the need for independence and impartiality of the monitor. In approving a series of agreements that provided the debtors with certainty with respect to ongoing funding, the resolution of inter-company issues, and a settlement with taxing authorities, the court held it was appropriate to place reliance on the views of the monitor who had the benefit of intensive involvement for over a year and was active in the negotiations leading up to the proposed settlement. [*Evolution, supra* at 234–5; emphasis added.]

In this case, it will be recalled, the April order 'enhanced' the Monitor's powers: it contemplated that the Monitor would carry out the day-to-day management of the petitioners' operations.

[50] In recent years, Canadian courts have also adopted the practice of appointing claims officers to assist in determining the "amount represented by a claim of any

9354-9186 Québec inc. and 9354-9178 Québec inc. *Appellants*

v.

Callidus Capital Corporation, International Game Technology, Deloitte LLP, Luc Carignan, François Vigneault, Philippe Millette, Francis Proulx and François Pelletier *Respondents*

and

Ernst & Young Inc., IMF Bentham Limited (now known as Omni Bridgeway Limited), Bentham IMF Capital Limited (now known as Omni Bridgeway Capital (Canada) Limited), Insolvency Institute of Canada and Canadian Association of Insolvency and Restructuring Professionals *Interveners*

- and -

IMF Bentham Limited (now known as Omni Bridgeway Limited) and Bentham IMF Capital Limited (now known as Omni Bridgeway Capital (Canada) Limited) *Appellants*

v.

Callidus Capital Corporation, International Game Technology, Deloitte LLP, Luc Carignan, François Vigneault, Philippe Millette, Francis Proulx and François Pelletier *Respondents*

and

9354-9186 Québec inc. et 9354-9178 Québec inc. *Appelantes*

c.

Callidus Capital Corporation, International Game Technology, Deloitte S.E.N.C.R.L., Luc Carignan, François Vigneault, Philippe Millette, Francis Proulx et François Pelletier *Intimés*

et

Ernst & Young Inc., IMF Bentham Limited (maintenant connue sous le nom d'Omni Bridgeway Limited), Corporation Bentham IMF Capital (maintenant connue sous le nom de Corporation Omni Bridgeway Capital (Canada)), Institut d'insolvabilité du Canada et Association canadienne des professionnels de l'insolvabilité et de la réorganisation *Intervenants*

- et -

IMF Bentham Limited (maintenant connue sous le nom d'Omni Bridgeway Limited) et Corporation Bentham IMF Capital (maintenant connue sous le nom de Corporation Omni Bridgeway Capital (Canada)) *Appelantes*

c.

Callidus Capital Corporation, International Game Technology, Deloitte S.E.N.C.R.L., Luc Carignan, François Vigneault, Philippe Millette, Francis Proulx et François Pelletier *Intimés*

et

a "hierarchical" approach to determining whether jurisdiction exists to sanction a proposed measure: ". . . courts [must] rely first on an interpretation of the provisions of the *CCAA* text before turning to inherent or equitable jurisdiction to anchor measures taken in a *CCAA* proceeding" (para. 65). In most circumstances, a purposive and liberal interpretation of the provisions of the *CCAA* will be sufficient "to ground measures necessary to achieve its objectives" (para. 65).

[66] Applying this approach, we conclude that jurisdiction exists under s. 11 of the *CCAA* to bar a creditor from voting on a plan of arrangement or compromise where the creditor is acting for an improper purpose.

[67] Courts have long recognized that s. 11 of the *CCAA* signals legislative endorsement of the "broad reading of *CCAA* authority developed by the jurisprudence" (*Century Services*, at para. 68). Section 11 states:

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.

On the plain wording of the provision, the jurisdiction granted by s. 11 is constrained only by restrictions set out in the *CCAA* itself, and the requirement that the order made be "appropriate in the circumstances".

[68] Where a party seeks an order relating to a matter that falls within the supervising judge's purview, and for which there is no *CCAA* provision conferring more specific jurisdiction, s. 11 necessarily is the

(*Century Services*, par. 61; voir aussi par. 62). Dans l'arrêt *Century Services*, notre Cour a souscrit à l'approche « hiérarchisée » qui vise à déterminer si le tribunal a compétence pour sanctionner une mesure proposée : « . . . les tribunaux procédèrent d'abord à une interprétation des dispositions de la *LACC* avant d'invoquer leur compétence inhérente ou leur compétence en equity pour justifier des mesures prises dans le cadre d'une procédure fondée sur la *LACC* » (par. 65). Dans la plupart des cas, une interprétation téléologique et large des dispositions de la *LACC* suffira à « justifier les mesures nécessaires à la réalisation de ses objectifs » (par. 65).

[66] Après avoir appliqué cette approche, nous concluons que l'art. 11 de la *LACC* confère au tribunal le pouvoir d'interdire à un créancier de voter sur un plan d'arrangement ou une transaction s'il agit dans un but illégitime.

[67] Les tribunaux reconnaissent depuis longtemps que le libellé de l'art. 11 de la *LACC* indique que le législateur a sanctionné « l'interprétation large du pouvoir conféré par la *LACC* qui a été élaborée par la jurisprudence » (*Century Services*, par. 68). L'article 11 est ainsi libellé :

Pouvoir général du tribunal

11 Malgré toute disposition de la *Loi sur la faillite et l'insolvabilité* ou de la *Loi sur les liquidations et les restructurations*, le tribunal peut, dans le cas de toute demande sous le régime de la présente loi à l'égard d'une compagnie débitrice, rendre, sur demande d'un intéressé, mais sous réserve des restrictions prévues par la présente loi et avec ou sans avis, toute ordonnance qu'il estime indiquée.

Selon le libellé clair de la disposition, le pouvoir conféré par l'art. 11 n'est limité que par les restrictions imposées par la *LACC* elle-même, ainsi que par l'exigence que l'ordonnance soit « indiquée » dans les circonstances.

[68] Lorsqu'une partie sollicite une ordonnance relativement à une question qui entre dans le champ de compétence du juge surveillant, mais pour laquelle aucune disposition de la *LACC* ne confère plus

Alberta Court of Queen's Bench
Canadian Airlines Corp. (Re)
Date: 2000-05-12

A.L. Friend, Q.C., H.M. Kay, Q.C., and R.B. Low, Q.C., for Canadian Airlines.

V.P. Lalonde and Ms M. Lalonde, for AMR Corporation.

S. Dunphy, for Air Canada.

P.T. McCarthy, Q.C., for PricewaterhouseCoopers.

D. Nishimura, for Resurgence Asset Management LLC.

E. Halt, for Claims Officer.

A.J. McConnell, for Bank of Nova Scotia Trust Company of New York and Montreal Trust Co. of Canada.

(Calgary No. 0001-05071)

May 12, 2000.

[1] PAPERNY J. (orally): — Resurgence Asset Management LLC "Resurgence" appeared on behalf of holders of approximately 60 percent of the unsecured notes issued by Canadian Airlines Corporation in the total amount of $100 million U.S. These unsecured note holders are proposed to be classified as unsecured creditors in the plan that is the subject of these proceedings.

[2] Resurgence applied for the following relief:

1. An order lifting the stay of proceedings against Canadian Airlines Corporation and Canadian Airlines International Ltd. (respectively "CAC" and "CAIL" and collectively called "Canadian") to permit Resurgence to commence and proceed with an oppression action against Canadian, Air Canada and others.

2. Further, and in the alternative, Resurgence sought the same relief described in item one above in the context of the C.C.A.A. proceedings.

3. An order that any and all unsecured claims held or controlled, directly or indirectly by Air Canada shall be placed in a separate class and either not allowed to be voted at all, or, alternatively, allowed to be voted in separate class from all other affected unsecured claims.

4. An order that there be a separation in class between creditors of CAC and CAIL

5. An order striking Section 6.2(2)(ii) of the plan on the basis that it is contrary to the C.C.A.A.

[3] Resurgence abandoned the application described in item 1 above, and the application in item 2 was addressed in my ruling given May 8, 2000, in these proceedings.

different legal rights in the same class, so long as their legal rights were not so dissimilar that it was still possible for them to vote with a common interest.

[26] Tysoe J. went on to find that legal interests should be considered in the context of the proposed plan and that it was also necessary to examine the legal rights of creditors in the context of the possible failure of the plan.

[27] In other words, "interest" for the purpose of classification does not include the personality or identity of the creditor, and the interests it may have in the broader commercial sphere that might influence its decision or predispose it to vote in a particular way; rather, "interest" involves the entitlement of the debt holder viewed within the context of the provisions of the proposed plan. In that regard, see *Woodward's Ltd.* at page 212.

[28] In *Fairview Industries Ltd.*, the court held that in classification there need not be a commonality of interest of debts involved, so long as the legal interests were the same. Justice Glube (as she then was) stated that it did not automatically follow that those with different commercial interests, for example, those with security on "quick" assets, are necessarily in conflict with those with security on "fixed" assets. She stated that just saying there is a conflict is insufficient to warrant separation.

[29] In *Sklar-Peppler Furniture Corp. v. Bank of Nova Scotia* (1991), 86 D.L.R. (4th) 621 (Ont. Gen. Div.) at 626 like *Norcen Energy Resources Ltd.,* the "identity of interests" approach was rejected. The court preserved a class of creditors which included debenture holders, terminated employees, realty lessors and equipment lessors.

[30] Borins J. held that not every difference in the nature of the debt warrants a separate class and that in placing a broad and purposive interpretation on the C.C.A.A., the court should "take care to resist approaches which would potentially jeopardize a potentially viable plan." He observed that "excessive fragmentation is counterproductive to the legislative intent to facilitate corporate reorganization" and that it would be "improper to create a special class simply for the benefit of an opposing creditor which would give that creditor the potential to exercise an unwarranted degree of power." (p. 627).

[31] In summary, the cases establish the following principles applicable to assessing commonality of interest:

1. Commonality of interest should be viewed on the basis of the non-fragmentation test, not on an identity of interest test;

Court of Queen's Bench of Alberta

Citation: Canada North Group Inc (*Companies' Creditors Arrangement Act*), 2017 ABQB 550

Date: 20170911
Docket: 1703 12327
Registry: Edmonton

In the Matter of the *Companies' Creditors Arrangement Act*, RSC 1985, c C-36, as amended

AND

In the Matter of a Plan of Arrangement of
Canada North Group Inc, Canada North Camps Inc, Campcorp Structures Ltd, DJ Catering Ltd, 816956 Alberta Ltd, 1371047 Alberta Ltd, and 1919209 Alberta Ltd

Applicants

Reasons for Judgment
of the
Honourable Madam Justice J.E. Topolniski

Introduction

[1] This case is about whether Court ordered "super-priority" security interests granted in a *Companies' Creditor Arrangement Act* [1](*CCAA*) proceeding can take priority over statutory deemed trusts in favour of Her Majesty the Queen in Right of Canada, as represented by the Minister of National Revenue (CRA) for unremitted source deductions.

[2] Acknowledging that its success on this motion would cause a chill on commercial restructuring, CRA relies on the comeback provision in an initial *CCAA* Order made July 5, 2017 (Initial Order) to vary "super-priority" charges made in favour of an interim financier, the directors of the debtor companies, and the Monitor and its counsel (Priority Charges), which

[1] RSC 1985, c C-36 as amended, ss 11.2, 11.4, 11.51 11.52.

[51] Likewise, in ***Re Royal Oak Mines Inc,*** Blair J (as he then was) observed that the comeback clause is a means of sorting out issues as they arise during the course of the restructuring.[24]

[52] Logically, non-disclosure of material information in an *ex parte* initial application also supports recourse via the comeback clause.[25]

[53] An analogous form of statutory recourse is found in *BIA* s 187(5). A sparingly used tool, variance under this provision is a practical means of determining if an order should continue in the face of changed circumstances or fresh evidence.[26]

[54] Equally, under r 9.15(1) of the Alberta *Rules of Court* the Court can set aside, vary, or discharge an entered judgment or order (interlocutory or final) if it was made without notice to an affected person, or to correct an accident or mistake if the person did not have adequate notice of the trial. In a similar vein, r 9.15(4) allows the Court to set aside, vary, or discharge an interlocutory order by agreement of the parties, or because of fresh evidence, or other grounds that the Court considers just.

[55] Likely because many, if not most, *CCAA* authorities deal with variance of *ex parte* initial orders, little is written about recourse by appeal versus comeback. One example is the rather unusual case of ***Re Algoma Steel Inc***,[27] where creditors filed a simultaneous comeback motion and appeal of the initial *ex parte* order. The appeal was heard first. The Court of Appeal found that the appeal was premature (because the order was a "lights on" order) and said that variance should have been pursued.

[56] Comeback motions must be made *post haste* because of delay prejudice and the mounting prejudice caused by the momentum of proceeding itself - which Rowbothom JA described as the virtual impossibility of unscrambling the egg in ***Temple City***.[28]

[57] Next, I will discuss service and timing concerns.

Service

[58] It is trite that the point of service is that a party must get notice of the proceeding and that a party serving documents on a proper address for service must be able to do so with confidence.[29]

[59] As previously noted, CRA was served on June 28 at the CRA Office by courier delivery.

[60] Rule 11.14(1)(b) provides that service is effected on statutory entities and other entities by "being sent by recorded mail, addressed to the entity, to the entity's principal place of

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[24] ***Re Royal Oak Mines Inc*** (1999), 6 CBR (4th) 314 (ONSCJ GD) at para 28.
[25] ***Re CanaSea PetroGas Group Holdings Ltd***.
[26] ***Elias v Hutchison*** (1980), 12 Alta LR (2d) 241 (at para 6), 35 CBR (NS) 30 (QB), aff'd (1981), 121 DLR (3d) 95, 37 CBR (NS) 149 (ABCA); ***Christiansen v Paramount Developments Corp***, 1998 ABQB 1005 (at para 24), 8 CBR (4th) 220 ; ***Fitch v Official Receiver*** (1995), [1996] 1 WLR 242 (UK CA); ***Re Lyall*** (1991), 8 CBR (3d) 82 (BCSC).
[27] ***Re Algoma Steel Inc***, [2001] OJ No 1994 (Ont Sup Ct J), leave to appeal refused, 147 OAC 291, 25 CBR (4th) 194 (CA).
[28] At para 14.
[29] ***Re Concrete Equities Inc***, 2012 ABCA 266 at paras 19, 24.

Century Services Inc. *Appellant*

v.

Attorney General of Canada on behalf of Her Majesty The Queen in Right of Canada *Respondent*

INDEXED AS: CENTURY SERVICES INC. *v.* CANADA (ATTORNEY GENERAL)

2010 SCC 60

File No.: 33239.

2010: May 11; 2010: December 16.

Present: McLachlin C.J. and Binnie, LeBel, Deschamps, Fish, Abella, Charron, Rothstein and Cromwell JJ.

ON APPEAL FROM THE COURT OF APPEAL FOR BRITISH COLUMBIA

Bankruptcy and Insolvency — Priorities — Crown applying on eve of bankruptcy of debtor company to have GST monies held in trust paid to Receiver General of Canada — Whether deemed trust in favour of Crown under Excise Tax Act prevails over provisions of Companies' Creditors Arrangement Act purporting to nullify deemed trusts in favour of Crown — Companies' Creditors Arrangement Act, R.S.C. 1985, c. C-36, s. 18.3(1) — Excise Tax Act, R.S.C. 1985, c. E-15, s. 222(3).

Bankruptcy and insolvency — Procedure — Whether chambers judge had authority to make order partially lifting stay of proceedings to allow debtor company to make assignment in bankruptcy and to stay Crown's right to enforce GST deemed trust — Companies' Creditors Arrangement Act, R.S.C. 1985, c. C-36, s. 11.

Trusts — Express trusts — GST collected but unremitted to Crown — Judge ordering that GST be held by Monitor in trust account — Whether segregation of Crown's GST claim in Monitor's account created an express trust in favour of Crown.

Century Services Inc. *Appelante*

c.

Procureur général du Canada au nom de Sa Majesté la Reine du chef du Canada *Intimé*

RÉPERTORIÉ : CENTURY SERVICES INC. *c.* CANADA (PROCUREUR GÉNÉRAL)

2010 CSC 60

N^o^ du greffe : 33239.

2010 : 11 mai; 2010 : 16 décembre.

Présents : La juge en chef McLachlin et les juges Binnie, LeBel, Deschamps, Fish, Abella, Charron, Rothstein et Cromwell.

EN APPEL DE LA COUR D'APPEL DE LA COLOMBIE-BRITANNIQUE

Faillite et insolvabilité — Priorités — Demande de la Couronne à la société débitrice, la veille de la faillite, sollicitant le paiement au receveur général du Canada de la somme détenue en fiducie au titre de la TPS — La fiducie réputée établie par la Loi sur la taxe d'accise en faveur de la Couronne l'emporte-t-elle sur les dispositions de la Loi sur les arrangements avec les créanciers des compagnies censées neutraliser ces fiducies? — Loi sur les arrangements avec les créanciers des compagnies, L.R.C. 1985, ch. C-36, art. 18.3(1) — Loi sur la taxe d'accise, L.R.C. 1985, ch. E-15, art. 222(3).

Faillite et insolvabilité — Procédure — Le juge en cabinet avait-il le pouvoir, d'une part, de lever partiellement la suspension des procédures pour permettre à la compagnie débitrice de faire cession de ses biens en faillite et, d'autre part, de suspendre les mesures prises par la Couronne pour bénéficier de la fiducie réputée se rapportant à la TPS? — Loi sur les arrangements avec les créanciers des compagnies, L.R.C. 1985, ch. C-36, art. 11.

Fiducies — Fiducies expresses — Somme perçue au titre de la TPS mais non versée à la Couronne — Ordonnance du juge exigeant que la TPS soit détenue par le contrôleur dans son compte en fiducie — Le fait que le montant de TPS réclamé par la Couronne soit détenu séparément dans le compte du contrôleur a-t-il créé une fiducie expresse en faveur de la Couronne?

matter, . . . subject to this Act, [to] make an order under this section" (*CCAA*, s. 11(1)). The plain language of the statute was very broad.

[68] In this regard, though not strictly applicable to the case at bar, I note that Parliament has in recent amendments changed the wording contained in s. 11(1), making explicit the discretionary authority of the court under the *CCAA*. Thus, in s. 11 of the *CCAA* as currently enacted, a court may, "subject to the restrictions set out in this Act, . . . make any order that it considers appropriate in the circumstances" (S.C. 2005, c. 47, s. 128). Parliament appears to have endorsed the broad reading of *CCAA* authority developed by the jurisprudence.

[69] The *CCAA* also explicitly provides for certain orders. Both an order made on an initial application and an order on subsequent applications may stay, restrain, or prohibit existing or new proceedings against the debtor. The burden is on the applicant to satisfy the court that the order is appropriate in the circumstances and that the applicant has been acting in good faith and with due diligence (*CCAA*, ss. 11(3), (4) and (6)).

[70] The general language of the *CCAA* should not be read as being restricted by the availability of more specific orders. However, the requirements of appropriateness, good faith, and due diligence are baseline considerations that a court should always bear in mind when exercising *CCAA* authority. Appropriateness under the *CCAA* is assessed by inquiring whether the order sought advances the policy objectives underlying the *CCAA*. The question is whether the order will usefully further efforts to achieve the remedial purpose of the *CCAA* — avoiding the social and economic losses resulting from liquidation of an insolvent company. I would add that appropriateness extends not only to the purpose of the order, but also to the means it employs. Courts should be mindful that chances for successful reorganizations are enhanced where participants achieve common ground and all

d'un intéressé, [. . .] sous réserve des autres dispositions de la présente loi [. . .] rendre l'ordonnance prévue au présent article » (*LACC*, par. 11(1)). Cette formulation claire était très générale.

[68] Bien que ces dispositions ne soient pas strictement applicables en l'espèce, je signale à ce propos que le législateur a, dans des modifications récentes, apporté au texte du par. 11(1) un changement qui rend plus explicite le pouvoir discrétionnaire conféré au tribunal par la *LACC*. Ainsi, aux termes de l'art. 11 actuel de la *LACC*, le tribunal peut « rendre [. . .] sous réserve des restrictions prévues par la présente loi [. . .] toute ordonnance qu'il estime indiquée » (L.C. 2005, ch. 47, art. 128). Le législateur semble ainsi avoir jugé opportun de sanctionner l'interprétation large du pouvoir conféré par la *LACC* qui a été élaborée par la jurisprudence.

[69] De plus, la *LACC* prévoit explicitement certaines ordonnances. Tant à la suite d'une demande initiale que d'une demande subséquente, le tribunal peut, par ordonnance, suspendre ou interdire toute procédure contre le débiteur, ou surseoir à sa continuation. Il incombe à la personne qui demande une telle ordonnance de convaincre le tribunal qu'elle est indiquée et qu'il a agi et continue d'agir de bonne foi et avec la diligence voulue (*LACC*, par. 11(3), (4) et (6)).

[70] La possibilité pour le tribunal de rendre des ordonnances plus spécifiques n'a pas pour effet de restreindre la portée des termes généraux utilisés dans la *LACC*. Toutefois, l'opportunité, la bonne foi et la diligence sont des considérations de base que le tribunal devrait toujours garder à l'esprit lorsqu'il exerce les pouvoirs conférés par la *LACC*. Sous le régime de la *LACC*, le tribunal évalue l'opportunité de l'ordonnance demandée en déterminant si elle favorisera la réalisation des objectifs de politique générale qui sous-tendent la Loi. Il s'agit donc de savoir si cette ordonnance contribuera utilement à la réalisation de l'objectif réparateur de la *LACC* — à savoir éviter les pertes sociales et économiques résultant de la liquidation d'une compagnie insolvable. J'ajouterais que le critère de l'opportunité s'applique non seulement à l'objectif de l'ordonnance, mais aussi aux moyens utilisés. Les tribunaux

CITATION: In the Matter of a Plan of Compromise or Arrangement of JTI-Macdonald, Imperial Tobacco and Rothmans, 2023 ONSC 2347
COURT FILE NOS.: CV-19-615862-00CL, CV-19-616077-CL and CV-19-616779-00CL
DATE: 20230623

ONTARIO

SUPERIOR COURT OF JUSTICE

BETWEEN:	)
	)
In the Matter of the *Companies' Creditors Arrangement Act*, R.S.C. 1985, c. C-36, as amended	) *James Bunting and Maria Naimark*, Counsel for the Moving Party, the Heart and Stroke Foundation of Canada in connection with its motion for leave to appoint Tyr LLP as representative counsel for the Future Tobacco Harm Stakeholders
AND	)
In the Matter of a Plan of Compromise or Arrangement of JTI-Macdonald Corp.	) *Robert Thornton and Leanne Williams*, Counsel for JTI-Macdonald Corp.
AND	)
In the Matter of a Plan of Compromise or Arrangement of Imperial Tobacco Canada Limited and Imperial Tobacco Company Limited	) *Deborah Glendinning, Craig Lockwood, Marc Wasserman and Marleigh Dick*, Counsel for Imperial Tobacco
AND	) *James Gage, Heather Meredith and Natasha Rambaran*, Counsel to Rothmans, Benson & Hedges Inc.
In the Matter of a Plan of Compromise or Arrangement of Rothmans, Benson & Hedges Inc.	) *Linc Rogers and Pamela Huff*, Counsel for Deloitte Restructuring Inc. in its capacity as Monitor of JTI-Macdonald Corp.
	) *Natasha MacParland, Chanakya Sethi, Rui Gao and Benjamin Jarvis*, Counsel for FTI Consulting Canada Inc. in its capacity as court-appointed Monitor of Imperial Tobacco Canada Limited and Imperial Tobacco Company Limited
	) *Jane Dietrich*, Counsel for Ernst & Young Inc. in its capacity as court-appointed Monitor of Rothmans, Benson & Hedges Inc.
	) *Avram Fishman and Mark Meland*, Counseil québécois sur le tabac et la santé,

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) Jean-Yves Blais and Cécilia Létourneau
) (Quebec Class Action Plaintiffs)
)
) *Robert Cunningham*, Counsel for the
) Canadian Cancer Society
)
) *Maria Konyukhova*, Counsel for British
) American Tobacco p.l.c., B.A.T.
) Industries p.l.c. and British American
) Tobacco (Investments) Limited
)
) *Amanda McInnis*¸ Counsel for Grand
) River Enterprises Six Nations Ltd.
)
) *Jacqueline Wall*, Counsel for His Majesty
) the King in Right of Ontario
)
) *Adam Slavens*, Counsel for JT Canada
) LLC Inc. and PricewaterhouseCoopers
) Inc. in its capacity as receiver of JTI-
) Macdonald TM Corp.
)
) *Alex Fernet Brochu*, Counsel for La
) Nordique compagnie d'assurance du
) Canada
)
) *Kate Boyle and Raymond Wagner*,
) Representative Counsel for the Pan-
) Canadian Claimants
)
) *Heather Fisher and Nicholas Kluge*,
) Counsel for Philip Morris International
) Inc.
)
) *Guneev Bhinder*, Counsel for Province of
) Québec
)
) *Jeff Leon*, Counsel 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
)
) *Patrick Flaherty and Bryan McLeese*,
) Counsel for R.J. Reynolds Tobacco

) Company and R.J. Reynolds Tobacco
) International Inc.
)
) *Douglas Lennox*, Counsel for
) representative plaintiff, Kenneth Knight,
) in the certified British Columbia class
) action, *Knight v. Imperial Tobacco*
) *Canada Ltd.*, Supreme Court of British
) Columbia, Vancouver Registry No.
) L031300
)
) *William V. Sasso*, Counsel for the Ontario
) Flue-Cured Tobacco Growers' Marketing
) Board
)
) *Jonathan Lisus and Nadia Campion*,
) Counsel for the court-appointed Mediator,
) The Honourable Mr. Winkler, O.C., O.On,
) K.C.
)
)
) **Heard: April 14, 2023**
)
)

MCEWEN, J.

REASONS FOR DECISION

[1] The Heart and Stroke Foundation of Canada ("HSF") seeks leave to bring a motion to appoint Tyr LLP ("Tyr") as representative counsel for the Future Tobacco Harm Stakeholders ("FTH Stakeholders") in the within Applications.

[2] The motion is opposed by the three Monitors: Deloitte Restructuring Inc. in its capacity as court-appointed Monitor of JTI-Macdonald Corp. ("JTIM"); FTI Consulting Canada Inc. it its capacity as court-appointed Monitor of Imperial Tobacco Canada Limited and Imperial Tobacco Company Limited ("Imperial"); and Ernst & Young Inc. in its capacity as court-appointed Monitor of Rothmans, Benson & Hedges Inc. ("RBH") (collectively the "Monitors"). The Province of Québec supports the Monitors. Neither JTIM, Imperial, RBH nor any other stakeholder take a position on this motion for leave. For the reasons that follow, I dismiss the HSF's motion.

BACKGROUND

[3] In March 2019, JTIM, Imperial and RBH (collectively the "Applicants") filed for protection pursuant to the provisions of the *Companies' Creditors Arrangement Act*, R.S.C. 1985,

c. C-36 (the "*CCAA*"). They sought, amongst other things, a resolution of several significant current and future litigation claims.

[4] I have been case-managing these three separate, but co-ordinated, Applications since that time (the "CCAA Proceedings"). The CCAA Proceedings are enormously complex. They involve multiple, significant tobacco-related actions brought against the Applicants as well as a number of potential tobacco-related claims that are currently unasserted or unascertained. These include ongoing class action proceedings as well as the outstanding judgment of the Court of Appeal of Quebec that largely upheld an earlier trial decision and awarded approximately $13.5 billion to the Quebec class action plaintiffs. Additionally, there are numerous ongoing proceedings involving government-initiated litigation.

[5] In April 2019, shortly after the CCAA Proceedings were initiated, I appointed the former Chief Justice for Ontario, The Honourable Warren K. Winkler O.C., O.Ont, K.C. (the "Court-Appointed Mediator") to mediate a global settlement of all claims against the Applicants, both current and future (the "Mediation"). Pursuant to the Appointment Order, the Court-Appointed Mediator is empowered to, amongst other things, adopt a process which in his discretion, he considers appropriate to facilitate negotiation of a global settlement, as well as deciding which stakeholders or other persons, if any, he considers appropriate to consult as part of the Mediation.

[6] It is noteworthy that in September 2019, the Canadian Cancer Society ("CCS") brought a motion seeking an order allowing it to participate in the Mediation. Amongst other things, the CCS argued that although it was not a creditor, it was an important public health stakeholder in the CCAA Proceedings. Therefore, it had a direct financial interest in the CCAA Proceedings, since any settlement would impact the financial resources to be devoted to patients, education and research to reduce tobacco use. In furtherance of its argument, the CCS submitted that it was well-positioned to advance tobacco control measures for inclusion in a settlement. The HSF provided a letter supporting the CCS's motion, while noting that it did not intend to bring a motion before the Court to participate in the CCAA Proceedings.

[7] I allowed the CCS limited participation in the CCAA Proceedings, but I did not allow it to participate in the Mediation. While I accepted that the CCS was a social stakeholder, I found that it did not have a direct financial interest in the CCAA Proceedings as it was neither a creditor nor a debtor. While I also accepted that the CCS had extensive experience as a health charity, and it was open to it to liaise with the government and other stakeholders outside of the Mediation, I had given the Court-Appointed Mediator broad discretion to shape the Mediation process. This included broad discretion to consult with a wide variety of persons or entities that he considered appropriate. I further noted that it was important to allow the Court-Appointed Mediator, who has vast experience in this area, the ability to carry on with the flexibility outlined in my Appointment Order in these very complicated and significant CCAA Proceedings.

[8] As part of my decision concerning the CCS's limited participation in the CCAA Proceedings I ordered that, if the CCS wished to initiate its own motion, it required leave that could be requested in writing, on notice to the Applicants and other stakeholders.

[9] Thereafter, in December 2019, the Monitors brought a motion seeking advice and direction with respect to orders appointing representative counsel regarding the unasserted and

unascertained claims. They proposed that representative counsel – the law practice of Wagner & Associates Inc. ("Wagners") – advance claims on behalf of individuals, with some limited exceptions that do not apply to the within motion, who have asserted claims or may be entitled to assert claims for Tobacco-Related Wrongs (respectively the "TRW Claims" and "TRW Claimants").

[10] As I noted in my decision dated December 6, 2019 (the "December Decision"), the thrust of the motion was that the multiplicity of actions against the Applicants across Canada did not provide comprehensive representation for all individuals in the CCAA Proceedings. It was therefore necessary to have representation for all the TRW Claimants so that they could be properly represented with respect to the primary goal of the CCAA Proceedings: a pan-Canadian global settlement. This would benefit the Applicants, the TRW Claimants and all stakeholders. I granted the relief sought by the Monitors and ordered that Wagners, as an experienced class action litigation firm, was well-qualified to act.

[11] The Order appointing Wagners provided the firm with a broad mandate to represent the TRW Claimants defined in Schedule "A" to the Order. Of importance to the within motion is the following partial definition of TRW Claimants set out in Schedule "A":

> "TRW Claimants" means **all individuals** (including their respective successors, heirs, assigns, litigation guardians and designated representatives under applicable provincial family law legislation) **who assert or may be entitled to assert a claim or cause of action as against one or more of the Applicants**, the ITCAN subsidiaries, the BAT Group, the JTIM Group or the PMI Group, each as defined below, or persons indemnified by such entities, **in respect of**:
>
> > (i) the development, manufacture, importation, production, marketing, advertising, distribution, purchase or sale of Tobacco Products (defined below),
> >
> > (ii) **the historical or ongoing use of or exposure to Tobacco Products**; or
> >
> > (iii) any representation in respect of Tobacco Products,
>
> [Emphasis added.]

[12] Over the past four years, the Mediation has been conducted by the Court-Appointed Mediator. Pursuant to the provisions of the Order Setting out the Attendance at Mediation Protocol, the Court-Appointed Mediator has continued to designate and require the attendance of persons or entities that he deems necessary as well as excluding persons or entities that he does not believe to be necessary.

[13] The Court-Appointed Mediator, in accordance with the Court-Appointed Mediator Communication and Confidentiality Protocol Endorsement continues to update the Court on the Mediation process.

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[14] At the recent Stay Extension Motion I granted a further six-month stay to September 29, 2023. I noted in my Endorsement that the Mediation continues to progress and the Applicants and the stakeholders are optimistic that a resolution of these extremely significant and complicated CCAA Proceedings is in sight.

[15] Consistent with my decision concerning motions brought by the CCS, the HSF sought leave to bring this motion to act as the representative plaintiff for FTH Stakeholders. By way of my February 14, 2023 Endorsement, I ordered, over the objections of the HSF, that the leave motion be heard in advance of the motion itself, assuming leave was granted.

THE TEST FOR LEAVE

Position of the Parties

[16] The HSF and the Monitors disagree as to what test for leave should be applied in this case.

[17] The HSF submits that this Court has broad discretion pursuant to s. 11 of the *CCAA* to manage the CCAA Proceedings. Generally, s. 11 provides this Court with the jurisdiction to make any order that it considers appropriate in the circumstances.

[18] The HSF therefore submits that, based on s. 11, this Court has the jurisdiction to appoint representatives on behalf of a stakeholder in a *CCAA* matter. It further submits that the factors to be considered by the Court are those set out in *Canwest Publishing Inc. (Re)*, 2010 ONSC 1328, 65 C.B.R. (5th) 152, at para. 21:

- The vulnerability and resources of the group sought to be represented.
- Any benefit to the companies under *CCAA* protection.
- Any social benefit to be derived from representation of the group.
- The facilitation of the administration of the proceedings and efficiency.
- The avoidance of a multiplicity of legal retainers.
- The balance of convenience and whether it is fair and just including to the creditors of the estate.
- Whether representative counsel has already been appointed for those who have similar interests to the group seeking representation and who is also prepared to act for the group seeking the order.
- The position of other stakeholders and the Monitor.

[19] In the context of the motion before me, the HSF argues that the most significant factor for this Court to consider is whether there appears to be an unrepresented interest that is appropriate for representation within the CCAA Proceedings. If this is the case, the HSF submits that this

Court ought to grant leave unless there are "exceptional factors or circumstances" that outweigh the substantial value and importance of having a valid and interested constituency represented within the CCAA Proceedings.

[20] The HSF concedes that this test has not previously been applied by any court; however, given the unique circumstances of this case and the provisions of the *CCAA*, it is a reasonable test and ought to be applied.

[21] The Monitors disagree.

[22] First, they submit that the HSF, as a stakeholder seeking leave, bears the onus to persuade the Court that leave ought to be granted: see *Village Green Lifestyle Community Corp., Re* (2007), 27 C.B.R. (5th) 199 (Ont. S.C.), at para. 12.

[23] Further, the Monitors argue that although there is no specific test for leave to bring a motion, whether under the *Rules of Civil Procedure*, R.R.O. 1990, Reg. 194 or in the insolvency context, general insolvency principles should guide this Court, including the baseline considerations that a court should always bear in mind when exercising *CCAA* authority[1] and the test under the *CCAA* for "comeback" relief.

[24] In the insolvency context, the Monitors further rely upon the decision in *Century Services Inc.* wherein the Supreme Court of Canada noted, at para. 59, that judicial discretion must be exercised in furtherance of the *CCAA*'s purposes.

[25] They also submit that, as outlined by the Supreme Court of Canada in *9354-9186 Québec inc. v. Callidus Capital Corp.*, 2020 SCC 10, [2020] 1 S.C.R. 521, at para. 49, citing *Century Services Inc.*, at paras. 69, 70, the aforementioned fundamental principle underlines three basic considerations that a supervising judge must keep in mind when addressing any request for relief:

(i) whether the order sought is "appropriate in the circumstances";

(ii) whether the party seeking relief has been acting "in good faith"; and

(iii) whether the party seeking relief has been acting "with due diligence".

[26] Building upon those principles, the Monitors submit that the first branch of the test set out in *Callidus*, i.e., whether the order sought is appropriate in the circumstances, ought to be expanded to include the considerations on the test for comeback relief. They therefore propose the following test for leave should be applied:

(i) whether the party seeking relief has been acting in good faith by bringing the motion;

(ii) whether the party seeking relief has been acting with due diligence;

[1] *Century Services Inc. v. Canada (Attorney General)*, 2010 SCC 60, [2010] 3 S.C.R. 379, at para. 70.

(iii) whether there has been a change in circumstances that would necessitate the variance to existing orders; and

(iv) whether the proposed variance will prejudice the progress of the CCAA Proceedings.

[27] The Monitors say the comeback relief test is appropriate because the HSF asks the Court to vary two of its earlier orders. The first being the Amended and Restated Initial Orders (the "ARIOs") wherein the Monitors submit that the HSF seeks to add new parties to the Mediation. The second being the Representative Council Order wherein the HSF seeks to appoint Tyr as additional representative counsel.

[28] The comeback relief test applies when an interested party applies to a *CCAA* court to vary an initial order. The factors that guide the Court's analysis in this respect are:

(i) "recourse through the comeback clause is available when circumstances change", meaning that recourse is unavailable when there are no changed circumstances;

(ii) "comeback motions must be made *post haste* because of delay prejudice and the mounting prejudice caused by the momentum of proceeding itself"; and

(iii) comeback relief "cannot prejudicially affect the position of the parties who have relied *bona fide* on the previous order in question."

See *Canada v. Canada North Group Inc.*, 2017 ABQB 550, 60 Alta. L.R. (6th) 103, at paras. 50, 56, 68, aff'd 2019 ABCA 314, 93 Alta. L.R. (6th) 29, aff'd 2021 SCC 30, 28 Alta. L.R. (7th) 1.

[29] With that background, the Monitors proposed the four-part test set out in para. 26 above. In relying upon the aforementioned test, the Monitors highlight that a leave test precludes any analysis of the merits of the ultimate motion and the merits should not be addressed on a motion for leave.

Analysis

[30] I prefer the leave test put forth by the Monitors and will employ that test in these Reasons.

[31] As can be seen from the above, the HSF and the Monitors agree that this Court has broad discretion to control and manage the CCAA Proceedings. They diverge, however, as to how the test ought to be applied.

[32] The HSF focuses on the factors set out in granting a representative order in *Canwest* and submits that while the Court did not mandate the application of any specific test, the most significant factor is whether there appears to be an unrepresented interest that is appropriate for representation. The HSF then goes further to say that if this is the case, the Court should grant leave unless there are exceptional factors or circumstances that outweigh the substantial value and importance of having a valid and interested constituency represented in the CCAA Proceedings. The Monitors, on the other hand, while agreeing that there is no specific test for leave, focus on general insolvency principles. They rely on the aforementioned three-part test in *Callidus*, which

they have expanded upon, that sets out baseline considerations in which the applicant bears the burden of proof.

[33] In reviewing the aforementioned case law and the submissions of the parties, I disagree with the HSF that where there is an unrepresented interest, and employing the other factors in *Canwest*, the Court should grant leave unless there are exceptional factors or circumstances. This flips the onus and there is no authority for not only shifting the onus, but also finding that exceptional factors or circumstances are required.

[34] I am of the view that at a leave motion in these CCAA Proceedings that the four-part test set out by the Monitors ought to be applied. I base this conclusion primarily on the fact that, as mentioned above, this is a motion for leave, not the motion itself. The ultimate merits of the motion should not be considered at this stage.

[35] This is precisely where the two tests diverge, and why I prefer the Monitors' test. The Monitors' test speaks to procedural factors that this Court ought to consider. That is appropriate on a motion for leave.

[36] The Monitors' test focuses on the procedural considerations on a motion for leave. For example, whether existing orders may be varied; whether the proposed variance will prejudice parties; and whether parties have exercised due diligence are all procedural considerations that do not stray into a merits analysis.

[37] Finally, the Monitors' test is consistent with the Supreme Court of Canada's jurisprudence on *CCAA* matters. The Supreme Court of Canada is clear in that the factors set out in *Callidus* are to be followed by judges when exercising their discretionary authority.

[38] On the other hand, the test proposed by the HSF blends these two considerations. In this regard, parts of the test stray into an analysis of the ultimate merits of the proposed motion. Such factors will be considered if leave on the motion is granted. It is also worth pointing out that the Court in *Canwest*, the primary authority relied upon by the HSF, was considering the motion itself for whether the representatives should be appointed, and not whether leave should be granted to bring the motion. Whether the Court should grant leave to bring the motion is the focus of the analysis here.

[39] It is also worth pointing out that procedural aspects of the HSF's test set out in *Canwest* overlap with the Monitors' test. Factors like the balance of convenience and the facilitation of the administration of the proceedings and efficiency are still generally considered under the Monitors' test.

[40] Further, in my view, when determining whether an order granting leave is appropriate in the circumstances, I must consider whether the existing ARIOs ought to be varied to add a new stakeholder to the Mediation and whether the Representative Counsel Order ought to be varied to add Tyr. This requires an examination of the nature of the FTH Stakeholders and whether it is appropriate to appoint Tyr as representative counsel on their behalf and insert them into the Mediation, over four years after the Mediation has begun and in its latter stages.

[41] It is with these factors in mind that I will conduct my analysis below.

APPLICATION OF THE TEST FOR LEAVE

The Position of the HSF

[42] In support of its motion for leave, the HSF submits that it is important for this Court to understand that it is not seeking leave to be added as a party to or to participate in the CCAA Proceedings. Instead, the HSF submits that this is simply a motion for leave to bring a motion for a representation order over a group of individuals, the FTH Stakeholders, who have a direct interest in the outcome of this proceeding and who are unrepresented. It is not proposed that the HSF will represent this group; instead, the FTH Stakeholders will be represented by Tyr which will receive advice from an independent, *pro-bono* committee.

[43] In this regard, the HSF makes three primary submissions.

[44] First, it submits that the FTH Stakeholders are a significant stakeholder group that is unrepresented in the Mediation. In this regard, the HSF submits that Wagners, in representing the interests of the TRW Claimants as defined above, does not represent the proposed FTH Stakeholders.

[45] The HSF submits that s. 19(1) of the *CCAA* claims can only be compromised if they predate the filing. Section 19(1) reads as follows:

> 19(1) Subject to subsection (2), the only claims that may be dealt with by a compromise or arrangement in respect of a debtor company are
>
> (a) claims that relate to debts or liabilities, present or future, to which the company is subject on the earlier of
>
> (i) the day on which proceedings commenced under this Act, and
>
> (ii) if the company filed a notice of intention under section 50.4 of the *Bankruptcy and Insolvency Act* or commenced proceedings under this Act with the consent of inspectors referred to in section 116 of the *Bankruptcy and Insolvency Act*, the date of the initial bankruptcy event within the meaning of section 2 of that Act; and
>
> (b) claims that relate to debts or liabilities, present or future, to which the company may become subject before the compromise or arrangement is sanctioned by reason of any obligation incurred by the company before the earlier of the days referred to in subparagraphs (a)(i) and (ii).

[46] Based on the aforementioned wording and the wording contained in the Appointment Order concerning the definition of TRW Claimants, the HSF submits that there is no temporal connection since the FTH Stakeholders are individuals who have yet to suffer tobacco-related

harms since they are comprised of millions of Canadians who will purchase or consume tobacco products or be exposed to their use following the commencement of these CCAA Proceedings or any agreed claims bar date. The HSF submits that these future FTH Stakeholders will become addicted to tobacco, be unable to quit, and that this group has an important interest that is currently unrepresented. Their interests do not align with the current stakeholders in that current stakeholders, including the TRW Claimants, seek to maximize funding for their claims which will be funded, at least partially, by FTH Stakeholders.

[47] The HSF further submits that due to the addictive nature of tobacco, the FTH Stakeholders will suffer harm while they continue to fund, in part, relief sought by other stakeholders including the TRW Claimants.

[48] The HSF lastly submits on this point that even if it could be argued that the FTH Stakeholders and the TRW Claimants could be represented by Wagners, that scenario would present a conflict of interest since the future FTH Stakeholders would be funding the settlement of the TRW Claimants, while experiencing their own addictions.

[49] In these circumstances, the HSF submits that there is currently no one who independently represents the interests of the FTH Stakeholders.

[50] Second, the HSF argues that the interests of the FTH Stakeholders are substantial, important and worthy of at least hearing a motion to determine whether they ought to be included as stakeholders and represented by Tyr, including at the Mediation.

[51] The HSF submits that the FTH Stakeholders have a direct interest since the Applicants will not have sufficient money to fund a settlement and will rely upon post-petition cash flows which will be funded, in part, by FTH Stakeholders.

[52] The HSF further submits that the FTH Stakeholders are further directly impacted by the CCAA Proceedings and that they have a direct interest in the nature and quality of preventative programs that will be implemented through a proposal or settlement, thus making them social stakeholders as well.

[53] Either way, the HSF submits that the FTH Stakeholders have a critical interest that is worth addressing and considering at a motion.

[54] Third, the HSF submits that, based on its test for leave, there are no exceptional circumstances not to hear a motion to appoint it representative counsel. Here, the HSF attempts to refute a number of submissions made by the Monitors. The HSF, as previously noted, submits that it is important to realize that it is not seeking to be added as a party or to have direct participation in the CCAA Proceedings. Rather, it brings this motion for leave to bring a motion for a representation order over the FTH Stakeholders to be represented by Tyr, which will receive advice from an independent, *pro-bono* committee. The HSF therefore submits that its proposed motion is entirely different from the motion the CCS brought that sought direct participation in the Mediation on its own behalf.

[55] The HSF further submits that this is not a motion to vary, as submitted by the Monitors, the ARIOs. Rather the intent in seeking a representation order is to empower and enhance the Mediation and the exercise of the Court-Appointed Mediator's powers within the Mediation.

[56] Additionally, the HSF submits that the test for comeback relief cited above by the Monitors (which, as noted, I agree with) is inapplicable in the context of this motion as they are not fair and relevant considerations given the current lack of representation of the FTH Stakeholders. Specifically, the HSF disputes the Monitors' contention that the HSF delayed in seeking to appoint Tyr as representative counsel for the FTH Stakeholders. The HSF submits there has been no delay as the FTH Stakeholders are unrepresented, have never been represented and as such cannot be accused of having delayed in bringing this motion. As for the argument that the HSF delayed in bringing the motion, it cannot be reasonably argued that the responsibility to identify a group (the FTH Stakeholders) who would have an interest in the CCAA Proceedings should be left to a not-for-profit organization such as the HSF. The HSF argues that other stakeholders could have identified this gap and any alleged delay cannot be laid at the feet of the HSF who does not have insight into the Mediation process.

[57] Overall, therefore, the HSF submits that leave ought to be granted as the public will perceive it as important to properly canvass the interests of an important stakeholder group. Consideration of the motion and the potential appointment of the FTH Stakeholders also precludes potential objections to a settlement when this matter returns to be sanctioned by the Court. In this regard, the HSF points to the recent case involving Purdue Pharma where a proposed settlement announced in the U.S. faced public backlash and lengthened the proceedings: see Brian Mann and Martha Bebinger, "Purdue Pharma, Sacklers reach $6 billion deal with state attorneys general," NPR, March 3, 2022, available at: https://www.npr.org/2022/03/03/1084163626/purdue-sacklers-oxycontin-settlement; *In re: Purdue Pharma L.P., et al*, Motion Of Debtors Pursuant To 11 U.S.C. § 105(A) And 363(B) For Entry Of An Order Authorizing And Approving Settlement Term Sheet at para. 2, March 3, 2022, Case No. 19-23649, United States Bankruptcy Court for the Southern District of New York, available at: https://www.marylandattorneygeneral.gov/press/2022/030322.

[58] Ultimately, in the *Purdue Pharma* case, a revised settlement included significant additional funds of approximately USD $277 million devoted exclusively to opioid-related abatement, including support and service for survivors, victims and their families.

[59] In these circumstances, the HSF submits that it is fair and reasonable to at least allow it an opportunity to argue the motion to appoint Tyr as representative counsel for the FTH Stakeholders. This will add to the constellation of interests that are necessary to resolve the CCAA Proceedings.

The Monitors' Position

[60] The Monitors first stress that pursuant to my earlier Order, the leave motion was to be heard prior to the HSF's motion. Accordingly, only the test for leave applies and it is premature to discuss the merits of the HSF's motion. The focus should only be placed on the threshold requirements and the four principles they submit underlie the basic considerations that a

supervising judge must keep in mind when addressing a request for leave in any *CCAA* matter as set out in para. 26 above.

[61] First, insofar as good faith is concerned, the Monitors concede that the HSF is proceeding in good faith. They submit, however, that the HSF fails to meet the other requirements.

[62] Second, insofar as due diligence is concerned, the Monitors point out that in December 2019, they brought a motion to appoint Wagners on behalf of the TRW Claimants as an effective tool to represent claims that were unascertained or unasserted.

[63] The Monitors submit that had a stakeholder, such as the HSF, thought that the scope of the Representative Counsel Order was not broad enough or that there was a conflict to respond to, that they would have brought a motion to have this Court decide the issue. The Monitors dispute the HSF's contention that as a not-for-profit organization it was not their obligation at the time to respond. Further, the Monitors argue that if the HSF's submission was self-evident, they should and would have known of it at that time.

[64] The Monitors further submit that the HSF delivered a letter of support with respect to the CCS's motion in September 2019 in which the CCS sought to participate in the Mediation which is very similar to the relief now sought by the HSF, albeit on behalf of the FTH Stakeholders. There is no material difference between the HSF's motion and the motion earlier brought by the CCS as both seek to advocate on behalf of other individuals. Based on the foregoing, the Monitors submit that the HSF has not acted with due diligence and in essence seeks to relitigate the issue as to whether a third party should be inserted into the Mediation.

[65] Third, the Monitors argue that there has been no change of circumstances that would justify variances to the ARIOs. The Monitors submit that the FTH Stakeholders are partly or entirely represented in the mediation. The Monitors submit that the definition of TRW Claimants includes the FTH Stakeholders and that it captures "all individuals … who assert or may be entitled to assert a claim or cause of action against one or more of the Applicants … in respect of … the historical or ongoing use of or exposure to Tobacco Products". Based on the plain wording of the above definition, the Monitors submit that this includes the FTH Stakeholders who are, by their own definition, "people who will purchase – consume tobacco products or be exposed to their use following commencement of these proceedings/or claims bar date."

[66] The Monitors further point to the December Decision wherein Wagners was appointed on behalf of the TRW Claimants and particularly paragraphs 30 and 42 where I state as follows:

> [30] The social benefits of access to justice, in the facilitating of a complex restructuring, are met. At this time many of the TRW Claims are unascertained and unasserted. As such, many of the TRW Claimants are likely unaware of these CCAA proceedings. The Representation Order sought would further promote access to justice by giving the TRW Claimants a powerful, single voice in the process.
>
> …

> [42] I agree with the Tobacco Monitors that a single point of contact is critical in these proceedings. As I have previously indicated, these restructurings are amongst the most complex in CCAA history for a number of reasons, which include the vast number and size of the complicated tobacco-related actions that have been, or could be, commenced against the Applicants.

[67] Based on the foregoing, the Monitors submit that this Court specifically anticipated that the TRW Claims included those that were unascertained and unasserted including those that had been, or could be, commenced against the Applicants. They also point to the fact that I further noted that a single point of contact was critical insofar as the TRW Claims were concerned.

[68] The Monitors alternatively argue that even if certain members of the FTH Stakeholders were not captured within the definition of the TRW Claimants, their interests are adequately represented in the Mediation and that this has been acknowledged by the HSF in its factum where it states that the concerns of the FTH Stakeholders are ultimately about "public health writ large". The Monitors submit that the interests of the public at large can be adequately accounted for and addressed by many different participants in the Mediation, including the provinces who represent public and social interests, including harm reduction; Wagners, who represent the individuals who assert or may be entitled to assert claims; the Monitors, who are officers of the court and have the obligation to consider the interests of all stakeholders; and the Court-appointed Mediator who has been provided with the broad discretion to consult with a variety of persons as he considers appropriate. Further, in this regard, the Monitors submit that what the HSF is really seeking to do is add new parties to the Mediation and therefore vary the ARIOs. The HSF's request is functionally the same as the CCS's earlier request and that as a result, Tyr, an additional representative counsel, would be inserted.

[69] Further, with respect to the HSF's submission that the FTH Stakeholders are in a conflict with respect to other TRW Claims, the Monitors submit that the HSF is passing off speculation as evidence and the HSF's affiant, Diego Marchese, an Executive Vice-President with the HSF, is not part of the Mediation. As such, he does not know the positions the parties have taken, particularly the TRW Claimants, or what action they have taken thereafter. In any event, the Monitors submit it is premature to even consider any issues of conflict since we are still at the leave stage and issues such as conflict are not yet engaged.

[70] Insofar as s. 19(1) of the *CCAA* is concerned, the Monitors submit that this motion does not raise any issues under s. 19(1). There is no claims bar date, no stakeholder is asking that these claims be compromised and the goal of the Mediation is to reach a settlement. Further, as noted, the Order appointing Wagners as counsel for the TRW Claimants provides for future claims or causes of action.

[71] Fourth, perhaps most significantly, the Monitors also submit that the belated introduction of the FTH Stakeholders jeopardizes the significant progress that has been achieved to date in the Mediation which, as noted, is hopefully entering its final stages. Accordingly, there is prejudice to the progress of the CCAA Proceedings.

[72] The Monitors submit, relying in part upon the decision of this Court in *Target Canada Co. Re*, 2016 ONSC 316, 32 C.B.R. (6th) 48, at para. 31 that the *CCAA* process is one of building

blocks. Stays are granted, plans are developed and orders are made. If parties wish to change the terms of such orders, such developments could run counter to the building block approach that underpins the proceedings. The Monitors submit that this is particularly true in the within case which has been ongoing for over four years, with good progress and optimism that a successful resolution is in sight. The Monitors submit that the Court should not risk disrupting the progress and potentially delaying resolution by compelling the participation of a new stakeholder at this late stage. They stress that this is particularly so where the Court-Appointed Mediator has not exercised his discretion or judgment to include the FTH Stakeholders or made any recommendations in this regard to this Court. The Monitors also point out that several parties have expressed serious concerns about the length of time the Mediation is taking and introducing a new stakeholder will almost certainly exacerbate those concerns.

[73] Last, the Monitors submit that even if leave is denied, the HSF will still retain the ability to participate in these proceedings as a social stakeholder in many meaningful ways as this Court has previously recognized the value of social stakeholders. It should not, however, be permitted to seek special treatment at this late stage by forcing the FTH Stakeholders into the Mediation and asking this Court to second guess the discretion and judgment of the Court-Appointed Mediator.

[74] The fact that the HSF speculates that it is better to insert the FTH Stakeholders now than have them appear at a sanction hearing is not only speculative, but does not form part of the test for obtaining leave to bring this motion. There is simply no evidence before the Court to support an order including the FTH Stakeholders.

[75] Based on the foregoing, the Monitors submit that the HSF's motion is an impermissible attempt to alter the *status quo* where there has been no change in circumstances, the HSF has not moved promptly and that the proposed variance would prejudice the progress of the CCAA Proceedings.

Analysis

[76] In considering whether leave ought to be granted, as noted, I have accepted the four-part test urged upon me by the Monitors which I reiterate below:

(i) whether the HSF is proceeding in good faith by bringing this motion;

(ii) whether the HSF has acted with the requisite due diligence in doing so;

(iii) whether there has been a change in circumstances that would necessitate the variance to existing orders; and

(iv) whether the proposed variance would not prejudice the progress of the CCAA Proceedings.

[77] For the reasons that follow I accept the arguments put forth by the Monitors.

[78] I begin by noting that there is no question that the HSF satisfies part (i) of the aforementioned test. The HSF has been acting in good faith in seeking the representation order.

It is a well-established not-for-profit charity. The HSF is also a leader in disease prevention which includes activities at preventing harm caused by smoking.

[79] Second, insofar as the requirement of due diligence is concerned, while I am not being critical of the HSF, I cannot conclude that they have acted with due diligence in the circumstances of this case and particularly the well-known, ongoing Mediation. As I have indicated, the Mediation has been proceeding for over four years. The HSF did have the ability to bring its motion sooner, which I have compared to the CCS motion, of which the HSF was well aware.

[80] Third, I accept that there has not been a change of circumstances.

[81] In this regard, the definition of TRW Claimants is broad enough to include the FTH Stakeholders which is evidenced in the December Decision in which I specifically appoint Wagners on behalf of the TRW Claimants to include individuals that are not currently represented, scattered across the country and do not have the ability or resources to advance this claim in these complex CCAA Proceedings. This would include, as defined in the representation order, individuals who assert or may be entitled to assert claims with respect to a broad range of alleged wrongs generally relating to tobacco-related personal harm. I pause here to note that when I delivered my December Decision and approved the resulting order, I was clearly of the view that the definition of TRW Claimants was to include future claims. This was reflected in my December Decision that specifically included unascertained and unasserted claims, as set out in paragraph 30 of that decision and reproduced above at paragraph 68. This definition captures claims by the FTH Stakeholders.

[82] Additionally, in any event, I accept the Monitors' submissions that even if the FTH Stakeholders are not captured within the definition of the TRW Claimants, their interests are adequately represented in the Mediation.

[83] Further, insofar as any potential conflict of interest is concerned, even if I was to consider it at the leave stage, there is no evidentiary basis to advance this submission. Unquestionably, Wagners, on behalf of the TRW Claimants, will represent a number of different constituencies. Neither Wagners nor the Court-appointed Mediator or the Monitors have identified any conflicts about which I should be concerned.

[84] Mr. Marquese deposes at para. 8 of his affidavit that "I understand that as a result of the nature of the claims being addressed in these proceedings, that a likely component of any Proposed Plan would be the establishment of a fund that will be used to make future payments for public or social purposes or programs in lieu of the ability to make payments directly to claimants." He generally goes on to further depose that, based on his understanding how the fund is established, governed and used will be a critical component in ensuring that the rights and interests of FTH Stakeholders are adequately addressed and that all parties participating in the CCAA Proceedings and Mediation are in conflict with FTH Stakeholders.

[85] Mr. Marquese does not cite any basis for his understanding, which almost entirely undermines his purported evidence. Further, I do not know how he could have such insight into the confidential Mediation in which the HSF is not a party. Nothing to date has been brought forward to this Court to support Mr. Marquese's understanding or belief. Based on my own

knowledge of the ongoing Mediation and Mr. Marquese's understandable lack of insight, I do not accept that the FTH Stakeholders operate in a conflict with other stakeholders and particularly do not act in conflict with the TRW Claimants.

[86] I am further of the view that my decision does not run contrary to the provisions of s. 19(1) of the *CCAA*. I accept the Monitors' submissions above and the claims of the FTH Stakeholders, to the extent they may exist, are no different in nature than other unascertained and unasserted claims of any TRW Claimants.

[87] Fourth, insofar as the issue of prejudice is concerned, as I have indicated, the Mediation appears to be reaching its latter stages after four years. Substantial progress has been made. This has been confirmed by both the Court-appointed Mediator and the Monitors. A resolution is in sight.

[88] I am very hesitant to introduce new participants at this late stage, which will, in my view, almost certainly complicate matters in circumstances where the Monitors and Court-appointed Mediator have not identified any concerns. In this regard I am satisfied that the ultimate order sought by the HSF would likely prejudice the progress of the CCAA Proceedings.

[89] In reaching this conclusion, I emphasize that the HSF retains its ability to participate in the CCAA Proceedings as a social stakeholder and if difficulties arise with respect to what the HSF has identified as the FTH Stakeholders, the matter may return to the Court.

[90] I conclude by noting two things. First, once again, I have tremendous faith in the Court-Appointed Mediator to address any concerns or conflicts as alleged by the HSF and bring them to the Court if, in fact, they exist. Second, even if I was to accept the test for leave proposed by the HSF and consider the *Canwest* factors, I would come to the same conclusion for the reasons above.

DISPOSITION

[91] The HSF's motion for leave to bring a motion seeking to have Tyr appointed as representative counsel to the FTH Stakeholders is dismissed.

McEwen J.

Date: June 23, 2023

CITATION: In the Matter of a Plan of Compromise or Arrangement of JTI-Macdonald, Imperial Tobacco and Rothmans, 2023 ONSC 2347
COURT FILE NOS.: CV-19-615862-00CL, CV-19-616077-CL and CV-19-616779-00CL
DATE: 20230623

ONTARIO
SUPERIOR COURT OF JUSTICE

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.

REASONS FOR DECISION

McEwen J.

Released: June 23, 2023

CITATION: Jaguar Mining Inc. (Re), 2014 ONSC 494
COURT FILE NO.: CV-13-10383-00CL
DATE: 20140116

SUPERIOR COURT OF JUSTICE – ONTARIO
(COMMERCIAL LIST)

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

AND:

IN THE MATTER OF A PLAN OF COMPROMISE OR ARRANGEMENT OF JAGUAR MINING INC., Applicant

BEFORE: **MORAWETZ R.S.J.**

COUNSEL: **Tony Reyes and Evan Cobb, for the Applicant, Jaguar Mining Inc.**

Robert J. Chadwick and Caroline Descours, for the Ad Hoc Committee of Noteholders

Joseph Bellissimo, for Global Resource Fund, Secured Lender

Jeremy Dacks, for FTI Consulting Canada Inc., Proposed Monitor

Robin B. Schwill, for the Special Committee of the Board of Directors

HEARD & ENDORSED: **DECEMBER 23, 2013**

REASONS: **JANUARY 16, 2014**

ENDORSEMENT

[1] On December 23, 2013, I heard the CCAA application of Jaguar Mining Inc. ("Jaguar") and made the following three endorsements:

1. CCAA protection granted. Initial Order signed. Reasons will follow. It is expected that parties will utilize the e-Service Protocol which can be

[48] In view of Jaguar's desire to move quickly to implement the Recapitalization, I have also been persuaded that it is both necessary and appropriate to grant the Claims Procedure Order and the Meeting Order at this time. These are procedural steps in the CCAA process and do not require any assessment by the court as to the fairness and reasonableness of the Plan at this stage.

[49] Counsel to Jaguar submits that Jaguar's approach to classification of the affected unsecured creditors is appropriate in these circumstances, citing a commonality of interest. Counsel also references s. 22(2) of the CCAA. For the purposes of today's motion, I am prepared to accept this argument. However, this is an issue that can, if raised, be reviewed at the comeback hearing.

[50] In the result, an Initial Order is granted together with a Meeting Order and Claims Procedure Order. All orders have been signed in the form presented.

MORAWETZ R.S.J.

Date: January 16, 2014

CITATION: Just Energy Group Inc. et. al. v. Morgan Stanley Capital Group Inc. et. al., 2022 ONSC 3698
COURT FILE NO.: CV-21-00658423-00CL
DATE: 20220623

ONTARIO

SUPERIOR COURT OF JUSTICE

BETWEEN:	)	
	)	
IN THE MATTER OF THE *COMPANIES' CREDITORS ARRANGEMENT ACT*, R.S.C. 1985, c. C-36, AS AMENDED	)	*Jeremy Dacks, Shawn Irving, Marc Wasserman* and *Michael De Lellis*, for the Applicants, the Just Energy Group
	)	
– and –	)	Allyson Smith, U.S. Counsel to the Just Energy Group
IN THE MATTER OF A PLAN OF COMPROMISE OR ARRANGMENT OF JUST ENERGY GROUP INC., JUST ENERGY CORP., ONTARIO ENERGY COMMODITIES INC., UNIVERSALE ENERGY CORPORATION, JUST ENERGY FINANCE CANDA ULC,	)	*Ryan Jacobs, Alan Merskey, Jane Dietrich* and John M. Picone, Canadian Counsel to LVS III SPE XV LP, TOCU XVII LLC, HVS XVI LLC, and OC II LVS XIV LP in their capacity as the DIP Lenders
HUDSON ENERGY CANADA CORP., JUST MANAGEMENT CORP., JUST ENERGY FINANCE HOLDING INC., 11929747 CANADA INC., 12175592 CANADA INC., JE SERVICES HOLDCO I INC., JE SERVICES HOLDCO II INC.,	)	*David Botter, Sarah Schultz* and *Abid Quereshi*, US Counsel to LVS III SPE XV LP, TOCU XVII LLC, HVS XVI LLC, and OC II LVS XIV LP in their capacity as the DIP Lenders
8704104 CANADA INC., JUST ENERGY ADVANCED SOLUTIONS CORP., JUST ENERGY (U.S.) CORP., JUST ENERGY ILLINOIS CORP., JUST ENERGY	)	*Heather Meredith, James Gage and Natasha Rambaran*, Canadian Counsel to the Agent and the Credit Facility Lenders
INDIANA CORP., JUST ENERGY MASSACHUSETTS CORP., JUST ENERGY NEW YORK CORP., JUST ENERGY TEXAS I CORP., JUST ENERGY, LLC, JUST ENERGY PENNSYLVANIA CORP., JUST ENERGY MICHIGAN CORP., JUST ENERGY SOLUTIONS INC., HUDSON ENERGY SERVICES LLC, HUDSON	)	*Jeff Larry, Max Starnino* and *Danielle Glatt*, Counsel to US Counsel for Fira Donin and Inna Golovan, in their capacity as proposed class representatives in *Donin et al. v. Just Energy Group Inc. et al.*; Counsel to US Counsel for Trevor Jordet, in his capacity as proposed class representative in *Jordet v. Just Energy Solutions Inc.*
ENERGY CORP., INTERACTIVE ENERGY GROUP LLC , HUDSON PARENT HOLDINGS LLC, DRAG	)	*Steven Wittels* and *Susan Russell*, US Counsel for the Respondent Fira Donin and Inna Golovan, in their capacity as proposed

MARKETING LLS, JUST ENERGY ADVANCED SOLUTIONS LLC, FULCRUM RETAIL ENERGY LLC, FULCRUM RETAIL HOLDINGS LLC, TARA ENERGY, LLC, JUST ENERGY MARKETING CORP., JUST ENERGY CONNECTICUT CORP., JUST ENERGY LIMITED, JUST SOLAR HOLDINGS CORP. and JUST ENERGY (FINANCE) HUNGARY ZRT.	)	class representatives in *Donin et al. v. Just Energy Group Inc. et al.*; US Counsel for Trevor Jordet, in his capacity as proposed class representative in *Jordet v. Just Energy Solutions Inc.*
Applicants	)	*Howard Gorman, Ryan Manns and Aaron Stephenson*, for Shell Energy North American (Canada) Inc. and Shell Energy North America (US)
– and –	)	
MORGAN STANLEY CAPITAL GROUP INC.	)	*Mike Weinczok*, for Computershare Trust Company of Canada
Respondents	)	*Jessica MacKinnon*, for Macquarie Energy LLC and Macquarie Energy Canada Ltd.
	)	*Bevan Brooksbank*, for Chubb Insurance Co of Canada
	)	*Jason Wadden*, for Dundon Advisers LLC
	)	*Pat Corney*, for the Ontario Energy Board
	)	*Virginia Gauthier*, for NextEra Energy Marketing, LLC
	)	*Harvey Chaiton*, for Pariveda Solutions, Inc.
	)	*Alexandra McCawley*, for FortisBC Energy Inc.
	)	*Chris Burr*, for Energy Earth, LLC
	)	*Robert Thornton, Rebecca Kennedy, Rachel Nicholson* and *Puya Fesharaki*, for FTI Consulting Canada Inc., as Monitor

) *John F. Higgins* and *Emily Nasir*, U.S.
) Counsel to FTI Consulting Canada Inc., as
) Monitor
)
) **HEARD:** June 7, 2022

ENDORSEMENT

MCEWEN J.

[1] On June 10, 2022 I released a brief endorsement setting out certain orders and requesting supplementary written submissions (the "written submissions") concerning the appropriateness of the terms of the proposed differential consideration being offered to unsecured creditors in the Plan. I specifically asked that submissions address the rationale for providing New Common Shares to the unsecured Term Loan Lenders and cash consideration to the General Unsecured Creditor Class.

[2] This endorsement deals with those written submissions.

[3] Having read the written submissions I accept the Applicants' submissions, which are supported by the DIP Lender, that the appropriateness of the terms of the proposed differential compensation ought to be dealt with at the Sanction Hearing.

[4] A material condition precedent to the proposed Plan is that Just Energy cease to be a reporting issuer under the *U.S. Exchange Act* after it emerges from CCAA. In order to do so, Just Energy must meet certain mandatory requirements to cease being a reporting issuer. The current structure of the Plan contemplates that only the Term Loan Lenders receive the New Common Shares. If there is also a distribution to the General Unsecured Creditors Class, the Applicants and DIP Lender submit that these requirements would be impossible to meet.

[5] They also submit that it is also not possible to give the Term Loan Lenders cash instead of New Common Shares because there is insufficient cash available.

[6] It also bears noting that experts retained by the Applicants and U.S. Class Counsel have delivered conflicting reports as to fairness of the proposed differential consideration. To date there have been no cross-examinations of the experts.

[7] As noted in my previous decision, the threshold for granting a Meetings Order is rather low. Given the complicated nature of the proposed differential consideration and the conflicting experts' reports, it is preferrable to wait until the Sanction Hearing to determine the fairness of this

Court of Queen's Bench of Alberta

Citation: Kerr Interior Systems Ltd. (Re), 2011 ABQB 214

Date: 20110330
Docket: 0703 14357
Registry: Edmonton

Between:

In the Matter of the *Companies' Creditors Arrangement Act*, R.S.C. 1985, c. C-36, as amended

And In the Matter of the Plan of Compromise or Arrangement of Kerr Interior Systems Ltd. and Composite Building Systems Inc.

Memorandum of Decision
of the
Honourable Madam Justice J.E. Topolniski

I. Introduction

[1] This case concerns the court's jurisdiction to authorize debtors to call a further meeting of creditors to reconsider a plan of arrangement (the "Plan") made pursuant to the *Companies' Creditors Arrangement Act*, R.S.C. 1985, c. C-36 ("*CCAA*") after court sanction and part performance. The Plan called for payment of $2,600,000.00, including a first installment of $260,000.00 (the "Payment").

[2] Kerr Interior Systems Ltd. ("Kerr") and Composite Building Systems Inc. ("Composite") (collectively the "Debtors") obtained an initial *CCAA* order granting them the usual stay of proceedings and protections on November 7, 2007 ("Initial Order"). Kerr's primary business is the supply and installation of commercial steel stud and drywall load bearing frames. Composite was in the business of fabricating the steel panels installed by Kerr, but ceased operating and transferred its assets to Kerr sometime between the fall of 2009 and the spring of 2010. It is unclear whether Composite is back in business today.

CITATION: Laurentian University of Sudbury, 2021 ONSC 3885
COURT FILE NO.: CV-21-00656040-00CL
DATE: 2021-05-31

SUPERIOR COURT OF JUSTICE - ONTARIO

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

AND IN THE MATTER OF A PLAN OF COMPROMISE OR ARRANGEMENT OF LAURENTIAN UNIVERSITY OF SUDBURY

BEFORE: Chief Justice G.B. Morawetz

COUNSEL: *D.J. Miller, Mitch W. Grossell and Derek Harland*, for the Applicant

Ashley Taylor, Elizabeth Pillon and Ben Muller, for the Court-appointed Monitor Ernst & Young Inc

Vern W. DaRe, for the DIP Lender

Aryo Shalviri and Jules Monteyne, for the Royal Bank of Canada

Stuart Brotman and Dylan Chochla, for the Toronto Dominion Bank

George Benchetrit, for the Bank of Montreal

Peter J. Osborne, for the Board of Governors

Joseph Bellissimo and Natalie Levine, for Huntington University

Andrew Hatnay, Demetrios Yiokaris, for Thorneloe University

Alex MacFarlane and Lydia Wakulowsky, for Northern Ontario School of Medicine

Mark G. Baker and Andre Luzhetskyy, for Laurentian University Students' General Association

Guneev Bhinder, for the Canada Foundation for Innovation

André Claude, for the University of Sudbury

Tracey Henry, for Laurentian University Staff Union (LUSU)

Charlie Sinclair, Counsel for Laurentian University Faculty Association (LUFA)

[32] A claims process order must be carefully drafted so as to ensure that the process by which claims are determined is both fair and reasonable to all stakeholders, including those who will be directly affected by the acceptance of other claims (*Steels Industrial Products Ltd. (Re)*, 2012 BCSC 1501 at para. 38 ("*Steels*")).

[33] TD Bank submits that its proposal is consistent with the entitlements of creditors under the *Bankruptcy and Insolvency Act*, R.S.C. 1985, c. B-3 ("BIA") to review proofs of claim filed by others and to seek an order from the court expunging or reducing a proof of claim accepted by a trustee. TD Bank points out that such entitlements are available to creditors under the BIA in both bankruptcy and commercial proposal proceedings and to the extent possible, aspects of insolvency law that are common to the BIA and CCAA should be harmonized. The examples provided by TD Bank are BIA, ss. 26, 37, 66, 126 and 135(5); see also *Century Services* at para. 24.

[34] TD Bank references the following cases as examples where the disclosure and involvement of certain parties has been incorporated into the claims process. These cases are *Crystallex International Corp., Re*, 2012 ONSC 6812; *Target Canada Co*. (11 June 2015), Toronto, CV-15-10832-00CL (Ont. S.C.) at para. 30; *Carillion Canada Holdings Inc.* (6 July 2018), Toronto, CV-18-590812-00CL (Ont. S.C.); and *Steels* at para. 13.

[35] TD Bank acknowledges there are no set rules in the CCAA which govern the Claims Process. I agree with this statement.

[36] The facts underlining each of the cases relied upon by TD Bank needs to be taken into account. *Crystallex* had been a bitterly fought proceeding extending nearly 10 years. *Target Canada* was a liquidation proceeding from the outset. *Carillion* was also a liquidating CCAA process, as was *Steels.* Suffice to say, there are considerable differences in how a supervising judge will approach a liquidating CCAA in contrast to a CCAA proceeding leading to an operational restructuring. For this reason, the cases referred to by TD Bank are of limited assistance.

[37] In an operational restructuring, it is necessary to consider the timelines. From the outset, Laurentian has proceeded on the basis that it intends to remain in operation. Laurentian has stressed that it is essential that these proceedings be completed as soon as possible. The proceedings cannot be completed without the Claims Process being finalized. I am concerned that the TD Bank proposals could delay the Claims Process from being completed on a timely basis.

[38] The proposal to establish Consultation Parties is problematic. Under the TD Bank proposal, the Pre-filing Lenders are involved in the consultation process as are such other stakeholders as the Monitor deems appropriate. The TD Bank proposal affects claims in excess of $5 million. In the context of this proceeding, a $5 million claim is a significant claim. I am hard-pressed to think of a situation where such a claimant would not be deemed an appropriate Consultation Party. I am given to understand that there might be in the range of 15 or so claims over $5 million. If each claimant or a substantial majority of these claimants is deemed to be a Consultation Party, the sheer size of the group would impede its mandate and progress. The process will cease to be efficient and effective in resolving issues.

1950 CarswellQue 23
Quebec Superior Court

Paris Fur Co. v. Nu-West Fur Corp.

1950 CarswellQue 23, 30 C.B.R. 193

In re Paris Fur Company Inc. (Debtor) and Nu-West Fur Corpn. of Canada Limited

Bertrand J.

Judgment: January 27, 1950

Counsel: *J. Rudner* and *Lawrence Marks*, for petitioners.
Clarence Gross and *Jacques Panneton, K.C.*, for debtor-respondent.

Subject: Corporate and Commercial; Insolvency

:

The Court, having heard the parties on a demand by the above described petitioners to sanction a proposal of compromise on the debtor-company's outstanding unsecured debts, examined the proceedings and deliberated, renders the following judgment:

On December 3, 1949 the above debtor corporation presented before the Court its petition asking that, for reasons therein specified, particularly its inability to meet its liabilities as they became due, the Court order a special general meeting of its unsecured creditors for the purpose of submitting to them a scheme of settlement of its debts, pursuant to the dispositions of *The Companies' Creditors Arrangement Act 1933* [16 C.B.R. 447]; the whole with costs against the petitioners.

By a judgment of that very date, the Court granted the petition, ordered the meeting to be held on December 16, 1949 at the Montreal Old Court House, stayed and suspended all proceedings against the debtor company, and appointed a chairman to take charge of the meeting granted, the whole with costs against the company petitioner.

The record purports to show that notices stating the date and place for the meeting called for were sent by registered mail to all unsecured creditors, whose list as given under oath is attached to the debtor's petition and corresponds in figures to the balance sheet as at November 30, 1949 also attached.

A meeting was in fact held on December 16 and proces-verbal thereof kept and transcribed for the record under the signature of Joseph Duhamel as chairman. It appears thereby that 26 out of 46 unsecured creditors, representing $86,971.95 of ordinary debts out of a total of $95,210.49, therefore the majority in number and more than three-fourths in value, voted in favour of a plan of arrangement whereby the debtors would pay 100 cents on the dollar from now down to April 30, 1951 by instalments, the equivalent of 75 cents whereof would be guaranteed personally by Naphthali Nadel, president of the debtor-company, according to a written undertaking by said Nadel, who as a collateral security agrees to transfer hypothecarily to a committee of two for the creditors his property 5207-5209 Jeanne Mance in Montreal, by notarial deed, with a right in their favour to collect and deposit all revenues, but with obligation for them to pay all charges, including capital of mortgage, interest and taxes as they may become due, and all other accessories more fully particularized in the writing signed and filed in the Court's record.

On December 29, the petitioners whose petition is now considered, Nu-West Fur et al., without any notice to the debtors, had two guardians appointed by this Court to take possession of the debtor's business and premises, and also control all receipts and disbursements. That same day, the debtor filed in Court a desistment from its previous petition for calling the meeting of its creditors and from all proceedings thereunder, but said desistment made no mention of the costs incurred on them.

E3476

After these happenings, creditors Nu-West Fur and Turgel Fur presented on December 30 their petition now pondered, wherein they recite the above facts and pray that the Court sanction the proposal of compromise agreed to as above, same to be declared binding on and between all persons concerned therein, including the guarantor Nadel.

On January 3, 1950 when the petition just mentioned was being discussed in open Court, the debtor-company again filed a desistment from its demand by petition of December 3, 1949 for a meeting of its creditors and all proceedings thereunder, with an additional declaration "that it does not intend to take advantage of the provisions of the Companies' Creditors Arrangement Act, the whole with costs s'il y a lieu".

So the Court is now called upon to decide whether it still has to adjudicate on the petition under consideration by the named creditors to ratify the agreement already referred to, or is no longer seized of the said demand by the effect of the new desistment now providing for any costs incurred.

First of all, it is no longer within the debtor-company's discretion at the present stage to desist from its petition for a meeting of its creditors, as it has been granted by the Court at its request, and acted upon so completely that the parties involved could not be put back into their position previous to its presentation, contrary to the spirit of arts. 275 and 277 C.C.P.

Furthermore, the desistment, if countenanced, would amount to setting aside or nullifying a judgment of this Court, at the option of one only of the many parties now interested and involved therein, all of which makes no legal sense, and does not sound respectful of the orders of the Court and the process developed thereunder, even due account being taken of art. 548 C.C.P., as this disposition, by implication at least, protects vested rights.

(*St-Jacques v. Le Curé de St. Jean-Berchmans* (1917), 52 Que. S.C. 104; *White v. Reilly* (1937), 43 P.R. 261 cited).

If secs. 4 and 5 of *The Companies' Creditors Arrangement Act* are read together, it appears that the petition calling for a meeting can be urged by "any such creditor"; the text itself does not specify who should or could apply for the Court's sanction of the compromise concluded, and therefore no fundamental or founded objection to any creditor presenting such a demand can be raised. And this finding also disposes of the debtor-company's unilateral move of trying to dispense with the proceedings heretofore completed as a result of its first petition.

When sec. 5 of the Act disposes that the compromise arranged "may be sanctioned by the Court", it cannot be construed as implying that the Court has discretion to refuse its sanction for other reasons than those pertaining to fulfilment of the requirements related to conditions of validity and obligatory strength of the transaction effected between a debtor and its ordinary creditors. Our laws are not based on caprice, nor does their general inspiration exhibit any trend that the Court substitute for the interested parties on terms of their accord, except whenever violation of a legal disposition or principle is traced. No such exception would appear to exist in our case.

The petitioning creditors rely on another ground which is far from negligible. Their reasoning thus runs: the arrangement offered by the debtors and their guarantor in writing before the meeting presided over by a chairman named by the Court having been accepted and concurred in by a unanimous vote recorded in the proces-verbal signed by said chairman, a covenant was thereby formed by mutual consent which could now be enforced, according to articles 982 and 984 C.C.

If this be so, an obligation has been created and nothing but a mutual consent could set the covenant aside, as no cause is shown for its annulment for reasons of law (art. 1022 C.C.).

Finally, no sympathetic concurrence in the debtor's standpoint is warranted, because in final analysis it attempts avoiding payment of what has become due and legally recoverable on the debtor's recognized liabilities, while the guarantor whose personal pledge secures payment does not withdraw his undertaking. And, be it noted, the engagement by the debtor to completely satisfy all claims in the extended delays assented to graces its creditors with no particular advantages, but just represents what it is obliged to in law.

E3093

E3477

Therefore considering that, according to the above observations and the juridical propositions connected therewith, the petition under review should be granted;

The Court doth sanction the proposal of compromise for payment of one hundred cents on the dollar more fully detailed in the writing filed wth the petition as exhibit P.1, and attached to the proces-verbal of the meeting held on December 16, 1949 under *The Companies' Creditors Arrangement Act*, in reference to the above debtor, and doth declare same binding on and between the petitioners, the debtor-respondent, its ordinary creditors and the guarantor Napthali Nadel; the whole with costs against the debtor-respondent.

End of Document

E3094

IN THE SUPREME COURT OF BRITISH COLUMBIA

Citation: *Quest University Canada (Re),* 2020 BCSC 1845

Date: 20201126
Docket: S200586
Registry: Vancouver

In the Matter of the *COMPANIES' CREDITORS ARRANGEMENT ACT*, R.S.C. 1985, c. C-36, as amended

- and -

In the Matter of the *SEA TO SKY UNIVERSITY ACT*, S.B.C. 2002, c. 54

- and -

In the Matter of A PLAN OF COMPROMISE AND ARRANGEMENT OF QUEST UNIVERSITY CANADA

Petitioner

Before: The Honourable Madam Justice Fitzpatrick

Reasons for Judgment
(Claims Process / Meeting Orders / Break Up Fee)

Counsel for the Petitioner:	J.R. Sandrelli T. Jeffries
Counsel for the Monitor PricewaterhouseCoopers Inc.:	V.L. Tickle
Counsel for Primacorp Ventures Inc.:	P. Rubin G. Umbach
Counsel for RCM Capital Management Ltd. and SESA-BC Holdings Ltd.:	K. Jackson
Counsel for Southern Star Developments Ltd.:	P. Reardon K. Strong
Counsel for Vanchorverve Foundation:	C.D. Brousson
Counsel for Halladay Education Group:	D. Lawrenson

Quest do so and that Quest seek and obtain approval of the Plan by its creditors and this Court.

[31] The *CCAA* expressly allows the court to order a meeting of the secured and unsecured creditors to consider a plan of arrangement:

> Compromise with unsecured creditors
>
> 4. Where a compromise or an arrangement is proposed between a debtor company and its unsecured creditors or any class of them, the court may, on the application in a summary way of the company, of any such creditor or of the trustee in bankruptcy or liquidator of the company, order a meeting of the creditors or class of creditors, and, if the court so determines, of the shareholders of the company, to be summoned in such manner as the court directs.
>
> Compromise with secured creditors
>
> 5. Where a compromise or an arrangement is proposed between a debtor company and its secured creditors or any class of them, the court may, on the application in a summary way of the company, or of any such creditor or of the trustee in bankruptcy or liquidator of the company, order a meeting of the creditors or class of creditors, and, if the court so determines, of the shareholders of the company, to be summoned in such manner as the court directs.

[32] It is not the role of the Court at this stage to consider or rule on the fairness or reasonableness of the Plan. Rather, I adopt the discussion in *ScoZinc Ltd. (Re),* 2009 NSSC 163 at para. 7; namely, that I should only exercise my discretion to refuse to refer the Plan to the creditors if the plan is doomed to fail at either the creditor or court approval stage.

[33] The Plan provides for one class of creditors for the purposes of voting, namely the Affected Creditor Class. The Plan provides for payment in full of Convenience Creditors (Creditors with Affected Claims that are less than or equal to $1,000). The Plan also allows Affected Creditors with a Proven Claim greater than $1,000 to make a Cash Election to receive $1,000 in satisfaction of their Claim. These latter provisions will significantly affect approximately 250 students who have claims within these limits.

[34] All Convenience Creditors and Cash Election Creditors are deemed to vote in favour of the Plan.

COURT FILE NO.: 04-CL-5306
DATE: 20051004

SUPERIOR COURT OF JUSTICE – ONTARIO
(Commercial List)

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

AND IN THE MATTER OF A PROPOSED PLAN OF COMPROMISE OR ARRANGEMENT WITH RESPECT TO STELCO INC. AND THE OTHER APPLICANTS LISTED IN SCHEDULE "A"

APPLICATION UNDER THE *COMPANIES' CREDITORS ARRANGEMENT ACT*, R.S.C. 1985, c. C-36, AS AMENDED

BEFORE: FARLEY, J.

COUNSEL: Michael E. Barrack, James D. Gage and Geoff R. Hall for the Applicants

Robert Thornton and Kyla Mahar for the Monitor

Sean Dunphy and Ashley John Taylor for CIT/DIP Lender

John R. Varley for Salaried Active Employees

Paul G. MacDonald and Brett Harrison for the Informal Independent Convertible Debenture Committee

Gale Rubenstein and Fred Myers for the Province

Murray Gold and Andrew Hatnay for Salaried Retirees

William V. Sasso for Georgian Windpower Corporation

Kevin J. Zych, Richard Orzy and Rob Staley for the Informal Committee of Senior Debentureholders

Sharon L.C. White for USW Local 1005

Ken Rosenberg and Lily Harmer for USW International

David P. Jacobs for the USW Locals 5328 and 8782

Peter Jervis for a Group of Equity Holders

Aubrey Kauffman for Tricap Management Ltd.

Virginie Gauthier for Fleet Global

Lara Edwards and Ken Kraft for EDS Canada Inc.

HEARD: October 3, 2005

E N D O R S E M E N T

[1] This endorsement deals with the motions for a meeting order, an order supplementing the claims procedure order, an order confirming the engagements by Stelco of UBS and BMO Nesbitt, an order authorizing Stelco to enter into the Stelco Plan Restructuring Agreement with the Province, an order authorizing Stelco to enter into the Stelco/Tricap Restructuring Agreement and ancillary relief, an order authorizing Stelco to enter into a Stelco/USW Restructuring Agreement and an order extending the stay until December 2, 2005. This relief was opposed by the informal committee of Bondholders, which opposition was supported by the informal committee of Debentureholders and of shareholders plus Local 1005; otherwise it was generally supported by the other stakeholders or not opposed. Indeed, there did not seem to be any opposition to the stay extension, the meeting order and the claims procedure supplement order (Georgian Windpower will be dealt with separately as to the supplemental order).

[2] I would observe that the Stelco CCAA proceedings have been characterized by impasse upon impasse as the various and different stakeholders from time to time have been unwilling or unable to discuss and negotiate in any meaningful way adjustments which are necessary in the interests of a long term viable Stelco. The liquidity crisis which was foreseen as creating great difficulties for Stelco at the time of its filing for CCAA protection on January 29, 2004 (some 20 plus months ago) has not yet occurred because of a spike in steel prices. That does not mean that Stelco is out of the woods with nothing to worry about. Indeed, there is every good reason to be concerned that this crisis is lying in wait to happen. Steel prices have retreated from their spike but remain higher than January, 2004. Unfortunately, input costs have also significantly increased. It has been recognized by the stakeholders and Stelco that significant capital expenditures have to be made to facilitate the productivity required to ensure that Stelco remains competitive to the highest reasonably possible degree. Unfortunately, we have experienced many false starts in capital raising programs and going concern deals involving new investors. The army has been marched up the hill, only to retreat repeatedly before success (if success is possible) is achieved. It seems to me that Stelco as an ongoing enterprise is getting a little shop worn/shopped worn. It would not be helpful to once again start a new general process to find the ideal situation; rather the urgency of the situation requires that a reasonable solution be found.

[3] At the beginning of this year, the Province of Ontario dropped a bombshell on Stelco with the announcement that the Regulation 5.1 pension contribution holiday would be adjusted so that upon emergence from CCAA, Stelco would be required to fund the deficit within 5 years. When I observed that the initiation of Regulation 5.1 in the early 1990s may not have been all that helpful to the process and that in any event, it was not helpful to have such an announcement, not only was the announcement repeated, but it was also confirmed by the Minister of Finance. It seems to me that one must deal with reality as one finds it, not as one wishes, with the best of intentions and objectives, it to be. Fortunately, the Ontario Government has ameliorated its hard line position and

indeed it has been instrumental in breaking a logjam in respect of the CCAA proceedings and the pension issues specifically. That assistance has not been completely altruistic; it comes unsurprisingly with some conditions and benefits to the Province's financial commitments. The Bondholder group and others did not at that time take any steps to take on the Province.

[4] It has to be appreciated that the Stelco CCAA proceedings have not been dealing with a static situation. The ifs have changed from time to time. What was feasible earlier may not be now.

[5] It would seem to me that Stelco is in need of ongoing stabilizing financing. The Tricap deal would provide that to a reasonable degree. I note that the CRO has consulted UBS and BMO Nesbitt and been advised that the Tricap deal is not otherwise available in North American markets as there could be financing notwithstanding significant cash losses in the future. There has been quibbling as to whether Stelco needs the assurance of a $75 million rights offering backstop. It is unclear to me how this quibbling is justified. The Bondholder group does not like the deal nor the position of the Province and the union (not including 1005). They would prefer something along the lines of the Heckler proposal as set forth in his affidavit of September 22, 2005. However, the Tricap arrangement does not preclude Stelco from considering and accepting another financing arrangement it finds superior to the Tricap deal. However, Tricap has demanded a break fee if that happens. The Bondholder group objects to the size of the break fee. I do note that Tricap acknowledges that if the plan (including the Tricap deal) is voted down by the creditors, the break fee is reduced to half. However, one must also realistically appreciate that a rival financing arrangement at this stage, starting from essentially a standing start, would take considerable time for due diligence and there is no assurance that the conditions will be any less onerous than those extracted by Tricap. None of the dollar figures involved in the agreements appear to be so rich as to be so out of line that the quibbling as to their size should be a barrier to the requested authorizations.

[6] I note that the Monitor in its Thirty-Eighth Report supports the position of Stelco.

[7] The Bondholder group has indicated that it is firmly opposed to the plan as presently constituted. That group also notes that more than half of the creditors by $ value have advised the Monitor that they are opposed to the plan as presently constituted. However, the plan is not up for approval before me today. It has been acknowledged that in the next month there will be considerable discussion and negotiation as to the plan which will in fact be put to the vote. The present plan may be adjusted (with the blessing of others concerned) to the extent that it, in a revised form, is palatable to the creditors (assuming that they do not have a massive change of heart as to the presently proposed plan). On the other hand, it may be that no reasonable amount of adjustment may be made so as to make an adjusted plan palatable so that the creditors would be within their voting rights to vote against the plan. As I indicated with respect to the adjournment request reasons, I would trust that all stakeholders and Stelco would deal with this question in a positive way. Generally, I would observe that it is better to move forward than backwards, especially where progress is required.

[8] The Bondholder group calls into question whether the Province can legally affect Regulation 5.1 in the way and to the extent that the Province has indicated. It would seem to me to be undesirable to have the fate of Stelco depend of whether or not the Bondholder group may be correct. However, there does not seem to be any impediment to the Bondholder group initiating separate proceedings against the Province in this regard, but one would have to observe that this type of litigation would likely take years – and where would Stelco be at the end of that time. I note that no one took any previous legal action in that regard.

[9] It would seem to me that in the reality of the presently prevailing circumstances the various agreements up for confirmation provide a base to build on and that positive discussions and negotiations will result in a plan to be voted on that will garner general support. In saying that I wish to be absolutely clear that I am not ruling on or considering in any way the fairness of the plan as presented. However, for the benefit of all stakeholders, it would be beneficial for those who are dissatisfied with the existing proposal (i.e. the Bondholder group and others) to make their objections known to Stelco and their way of resolving the difficulty. There should be a meaningful dialogue with each side willing to listen to and digest the reasonable concerns and solutions of the other.

[10] These reasons are to be read in conjunction with the four handwritten pages of reasons I gave on October 3, 2005.

[11] The stay extension date is to be December 5, 2005 (subject to earlier termination if found warranted by this Court). The other relief requested is granted (subject to the determination of the Georgian Windpower concern about the supplemental claims procedure).

[12] Orders accordingly.

J.M. Farley

DATE: October 4, 2005

In the Matter of the Companies' Creditors Arrangement Act, R.S.C. 1985, c. C-36, as amended

And in the Matter of a Proposed Plan of Compromise or Arrangement with Respect to Stelco Inc. and the Other Applicants Listed Under Schedule "A"

Application Under the Companies' Creditors Arrangement Act, R.S.C. 1985, c. C-36, as amended

[Indexed as: Stelco Inc. (Re) (No.2)]

78 O.R. (3d) 254
[2005] O.J. No. 4733
Docket: M33099 (C44332)

Court of Appeal for Ontario,
Laskin, Rosenberg and LaForme JJ.A.
November 4, 2005

Debtor and creditor -- Companies' Creditors Arrangement Act -- Jurisdiction -- Jurisdiction of supervising judge not limited to preserving status quo -- Supervising judge having power to vary stay and allow company to enter into agreements to facilitate restructuring, provided that creditors have final decision whether or not to approve Plan -- Supervising judge entitled to use his own judgment and conclude that plan was not doomed to fail despite creditors' opposition -- Companies' Creditors Arrangement Act, R.S.C. 1985, c. C-36, s. 11.

The debtor company negotiated agreements with two of its stakeholders and a finance provider which were intrinsic to the success of the Plan of Arrangement that the company proposed. While the stakeholders did not have a right to vote to approve any plan of arrangement and reorganization, they had a functional veto in the sense that no restructuring could be

> The jurisprudence is clear that if it is obvious that no plan will be found acceptable to the required percentages of creditors, then the application should be refused. The fact that Paribas, the Royal Bank and K Mart now say there is no plan that they would approve, does not put an end to the inquiry. All affected constituencies must be considered, including secured, preferred and unsecured creditors, employees, landlords, shareholders, and the public generally ...

(Emphasis added) [page261]

[24] It must be a matter of judgment for the supervising judge to determine whether the Plan is doomed to fail. This Plan is supported by the other stakeholders and the independent Monitor. It is a product of the business judgment of the Stelco board as a way out of the CCAA process. It was open to the motions judge to conclude that the plan was not doomed to fail and that the process should continue. Despite its opposition to the Plan, the appellant's position inherently concedes the possibility of success, otherwise these creditors would have opposed the extension of the stay, opposed the order setting a date for approval of the plan and sought to terminate the CCAA proceedings.

[25] The motions judge said this in his reasons [at para. 2]:

> It seems to me that Stelco as an ongoing enterprise is getting a little shop worn/shopped worn. It would not be helpful to once again start a new general process to find the ideal situation [sic solution?]; rather the urgency of the situation requires that a reasonable solution be found.

He went on to state [at para. 7] that in the month before the vote there "will be considerable discussion and negotiation as to the plan which will in fact be put to the vote" and that the present Plan may be adjusted. He urged the stakeholders and Stelco to "deal with this question in a positive way" and that "it is better to move forward than backwards, especially where progress is required". It is obvious that the motions judge has brought his judgment to bear and decided that the Plan or some

In the Matter of the Companies' Creditors Arrangement Act, R.S.C. 1985, c. C-36, as amended and in the Matter of a Proposed Plan of Compromise or Arrangement with Respect to Stelco Inc., and the Other Applicants Listed Under Schedule "A"

Application Under the Companies' Creditors Arrangement Act, R.S.C. 1985, c. C-36, as amended

[Indexed as: Stelco Inc. (Re)]

78 O.R. (3d) 241
[2005] O.J. No. 4883
Dockets: C44436 and M33171

Court of Appeal for Ontario,
Goudge, Sharpe and Blair JJ.A.
November 17, 2005

Debtor and creditor -- Companies' Creditors Arrangement Act -- Creditors -- Classification -- Classification of creditors should be determined by their legal rights in relation to debtor company as opposed to their rights as creditors in relation to each other.

The appellant represented unsecured creditors who held convertible unsecured subordinated debentures issued by the debtor company pursuant to a Supplemental Trust Indenture. Their claims were subordinated to Senior Debt Holders. The Supplemental Trust Indenture provided that if the Subordinated Debenture Holders received any payment from the company, or any distribution from the assets of the company, before the Senior Debt was fully paid, they were obliged to remit any such payment or distribution to the Senior Debt Holders until the latter had been paid in full, but that no such payment or distribution by the company shall be deemed to constitute

[10] In short, although Stelco is obliged to pay both groups of creditors in full, as between the Subordinated Debenture Holders and the Senior Debt Holders, the latter are entitled to be paid in full before the former receive anything. The Supplemental Trust Indenture makes it clear that the provisions of Article 6 "are intended solely for the purpose of defining the relative rights of [the Subordinated Debenture Holders] and the holders of the Senior Debt" (Art. 6.3).

[11] The appellants contend that the Turnover Payment provisions distinguish their interests from those of the Subordinated Debenture Holders when it comes to voting on Stelco's Proposed Plan. They say that the Subordinated Debenture Holders' interest in maximizing the amounts to be made available to unsecured creditors ends once they have received full recovery, in part as a result of the Turnover Payments that the Subordinated Debenture Holders will be required to make from their portion of the funds. On the other hand, the Subordinated Debenture Holders will have an interest in seeking more because their recovery, for practical purposes, will have only begun once that point is reached.

[12] The respondents submit, for their part, that the appellants are seeking a separate classification for a collateral purpose, i.e., so that they will be able to veto the Proposed Plan, or at least threaten to veto it, unless they are granted a benefit to which they are not entitled -- the elimination of their subordinated position by virtue of the Turnover Payment provisions.

[13] Farley J. rejected the appellants' arguments. The thrust of his decision in this regard is found in paras. 13 and 14 of his reasons: [page246]

> I would note as well that the primary and most significant attribute of the ConCom debt and that of the BondCom debt/ Senior Debt [See Note 2 at the end of the document] plus the trade debt vis--vis Stelco is that it is all unsecured debt. Thus absent valid reason to have separate classes it would be reasonable, logical, rational and practical to have all this unsecured debt in the same class. Certainly that would avoid

any unnecessary fragmentation -- and in this respect multiplicity of classes does not mean that that fragmentation starts only when there are many classes. Unless more than one class is necessary, fragmentation would start at two classes. Fragmentation if necessary, but not necessarily fragmentation.

> Is it necessary to have more than one class? Firstly, it would not appear to me that as between Stelco and the unsecured creditors overall there is any material distinction. Secondly, there would not appear to me to be any confiscation of any rights (or the other side of the coin any new imposition of obligations) upon the holders of the ConCom debt. The subrogation issue was something which these holders assumed on the issue of that debt. Thirdly, I do not see that there is a realistic conflict of interest. Each group of unsecured creditors including the ConCom debt holders and the BondCom debt holders has the same general interest vis--vis Stelco, namely to extract from Stelco through the Plan the maximum value in the sense of consideration possible . . . . That situation is not impacted for our purposes here in this motion by the possibility that in a subsequent dispute between the ConCom holders and the BondCom holders there may be a difference of opinion as to the variation of the considerat ion obtained.

[14] We agree with his conclusion and see no basis to interfere with his findings in that regard.

The Leave Application

[15] The principles to be applied by this court in determining whether leave to appeal should be granted to someone dissatisfied with an order made in a CCAA proceeding are not in dispute. Leave is only sparingly granted in such matters because of their "real time" dynamic and because of the generally discretionary character underlying many of the orders made by supervising judges in such proceedings. There must be serious and arguable grounds that are of real and significant interest to the parties. The court has assessed this criterion on the basis of a four-part test, namely,

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.**

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

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