

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

ONTARIO
SUPERIOR COURT OF JUSTICE
COMMERCIAL LIST

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

AND IN THE MATTER OF A PLAN OF COMPROMISE
OR ARRANGEMENT OF **JTI-MACDONALD CORP.**

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

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

Applicants

JOINT FACTUM OF THE MONITORS / CCAA PLAN ADMINISTRATORS

**Motions for CCAA Plan Amendment Orders, Plan Administration Trust Orders &
Collateral Agent Orders
(Returnable August 27, 2025)**

August 25, 2025

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

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

**Lawyers for the RBH Monitor / CCAA Plan
Administrator**

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

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

**Lawyers for the Imperial Monitor / CCAA
Plan Administrator**

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

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

**Lawyers for the JTIM Monitor / CCAA
Plan Administrator**

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

TABLE OF CONTENTS

	Page No.
PART I – INTRODUCTION.....	1
PART II – SUMMARY OF FACTS.....	3
A. The CCAA Plans Require and Permit the Amendments	3
B. The Plan Administration Reserve Trust Orders Are Necessary to Implement the CCAA Plans	5
(i) Establishment and Administration of Plan Administration Reserve Accounts.....	5
(ii) The Proposed Amendment to the RBH Insurance Settlement Order, Solely in the RBH CCAA Proceeding.....	8
C. The Collateral Agent Orders is Necessary to Implement the CCAA Plans	9
(i) Selection of the Collateral Agent	9
(ii) The Collateral Agency Agreement.....	10
(iii) The Limitation of the Collateral Agent’s Liability	11
PART III – STATEMENT OF ISSUES, LAW & ARGUMENT	12
A. The CCAA Plan Amendment Orders Should be Granted	13
(i) The CCAA Plans Require Court Approval of the Amendments	13
(ii) This Court Should Exercise its Discretion to Approve the Amendments Without Requiring a Further Creditors’ Meeting.....	14
B. The Plan Administration Reserve Trust Orders Should be Granted.....	15

(i)	The CCAA Court has Authority Pursuant to Section 11 of the CCAA.....	15
(ii)	The Plan Administration Reserve Trust Orders are Appropriate	16
C.	The RBH Insurance Settlement Order Should be Amended	16
D.	The Collateral Agent Orders Should be Granted	17
(i)	The CCAA Court has Authority Pursuant to Section 11	17
(ii)	The Collateral Agent Orders are Appropriate	17
(iii)	The Limitation of Liability of the Collateral Agent Is Appropriate in the Circumstances.....	18
PART IV – ORDERS REQUESTED		20

PART I – INTRODUCTION¹

1. The CCAA Plans were unanimously approved by voting creditors at three separate, sequential meetings of Affected Creditors of Imperial, RBH, and JTIM (the “**Meetings**”) on December 12, 2024. The CCAA Plans were amended and restated on December 5, 2024 and January 27, 2025, respectively and, in each case, the amendments were not materially adverse to the interests of the Affected Creditors or Unaffected Creditors.
2. The CCAA Plans were further amended and restated pursuant to an Order of the Court issued on March 3, 2025 in each of the CCAA Proceedings.
3. The Third Amended and Restated CCAA Plans in respect of each Tobacco Company (together, the “**Third A&R CCAA Plans**”) were sanctioned pursuant to an Order of the CCAA Court issued on March 6, 2025 in each of the CCAA Proceedings.
4. The Court-Appointed Mediator and the Monitors have identified certain provisions in the Third A&R CCAA Plans that require amendment prior to the Plan Implementation Date in order to cure errors and inconsistencies and better effect the implementation of the compromise contemplated in the CCAA Plans.

¹ This Factum is jointly filed by (i) FTI Consulting Canada Inc. (“**FTI**”) in its capacity as Court-appointed monitor of Imperial Tobacco Canada Limited (“**ITCAN**”) and Imperial Tobacco Company Limited (together with ITCAN, “**Imperial**”); (ii) Ernst & Young Inc. (“**EY**”) in its capacity as monitor for Rothmans, Benson & Hedges Inc. (“**RBH**”); and (iii) Deloitte Restructuring Inc. (“**Deloitte**”) in its capacity as monitor for JTI-Macdonald Corp. (“**JTIM**” and, together with Imperial and RBH, the “**Tobacco Companies**” or “**Applicants**”). FTI, EY, and Deloitte are hereinafter referred to as the “**Monitors**” and the “**CCAA Plan Administrators**” in the above-captioned coordinated proceedings (the “**CCAA Proceedings**”) under the *Companies’ Creditors Arrangement Act*, R.S.C., 1985, c. C-36, as amended (the “**CCAA**”). Capitalized terms not defined herein have the meanings given to them in the Fourth Amended and Restated Court-Appointed Mediator’s and Monitors’ Plans of Compromise or Arrangement in respect of each Applicant dated August 22, 2025 (the “**Fourth A&R CCAA Plans**”). References to the “**CCAA Plans**” in this factum refer either to the initial plans of compromise or arrangement in respect of each Applicant dated October 17, 2024 or the Fourth A&R CCAA Plans, as the context requires.

5. Pursuant to section 20.4(a) of the Third A&R CCAA Plans, the Monitors now move for an Order in each of the CCAA Proceedings (the “**CCAA Plan Amendment Orders**”) to approve certain amendments to the Third A&R CCAA Plans and the Schedules thereto (the “**Amendments**”).

6. In connection with the Amendments, the CCAA Plan Administrators also each move for an Order (the “**Plan Administration Reserve Trust Orders**”) in each of the CCAA Proceedings, (i) approving the selection of BMO Trust Company (“**BMO**”) as trustee of the Administration Reserve Trusts (as defined below), (ii) approving the forms of the trust deeds (the “**Administration Reserve Trust Deeds**”) pursuant to which the Administration Reserve Trusts will be established, (iii) approving BMO’s proposed fees and expenses, and (iv) approving proposed investment guidelines (the “**Investment Guidelines**”) to be followed in respect of the investment of the property in the Administration Reserve Trusts.

7. The CCAA Plan Administrators further move for orders (the “**Collateral Agent Orders**”) in each of the CCAA proceedings, (i) approving the proposed Collateral Agency Agreement in respect of each Tobacco Company (the “**Collateral Agency Agreements**”) (ii) approving the engagement of Computershare Trust Company of Canada (“**Computershare**”) to act as collateral agent (the “**Collateral Agent**”) for the Claimants in respect of certain collateral (the “**Collateral**”) as provided for in the CCAA Plans, and (iii) approving the limitation of liability of the Collateral Agent with respect to the Collateral Agency Agreements.

8. Solely in the CCAA Proceeding of RBH, the RBH CCAA Plan Administrator is seeking relief in the RBH Plan Administration Reserve Trust Order amending the language in the RBH Insurance Settlement Order (as defined below) to authorize and direct RBH to direct the RBH

CCAA Plan Administrator to forward a portion of the Settlement Payments (as defined in the RBH Insurance Settlement Order) to fund the RBH CCAA Plan Administration Reserve.

9. The Monitors do not anticipate that any Affected Creditor or Unaffected Creditor would be prejudiced by the proposed Amendments or the relief sought in the Plan Administration Reserve Trust Orders and Collateral Agent Orders. The Amendments, in each case, are consistent with the spirit of the CCAA Plans. The establishment of the Administration Reserve Trusts is contemplated by the Amendments and is necessary for the implementation of the CCAA Plans. The appointment of the Collateral Agent is contemplated by the CCAA Plans and is necessary for their implementation. The Monitors are not aware of any party that intends to oppose the CCAA Plan Amendment Orders, the Plan Administration Reserve Trust Orders or the Collateral Agent Orders.

10. Accordingly, the Monitors respectfully ask this Court to issue a separate, but substantially identical, CCAA Plan Amendment Order, Plan Administration Reserve Trust Order, and Collateral Agent Order, in each of the CCAA Proceedings. The RBH Monitor respectfully requests the inclusion of the additional provisions in the RBH version of the Plan Administration Reserve Trust Order noted in paragraph 8 hereof.

PART II – SUMMARY OF FACTS

A. The CCAA Plans Require and Permit the Amendments

11. As noted above, the Court-Appointed Mediator and the Monitors have identified the proposed Amendments as being necessary to allow the CCAA Plans to be implemented on the

Plan Implementation Date in a manner that is consistent with the compromise that was approved by the creditors holding Voting Claims.²

12. The Affected Creditors and the Tobacco Companies were consulted during the development of the proposed Amendments.³

13. Pursuant to Section 20.4(a) of the CCAA Plans, the Court-Appointed Mediator and the Monitors are permitted to make non-administrative amendments, restatements, modifications, or supplements to the CCAA Plans following the Meeting Order (issued on October 31, 2024) on notice to the Affected Creditors and the Tobacco Companies, subject to the approval of this Court.⁴

14. The Monitors provided notice to the Common Service List, including the Affected Creditors and the Tobacco Companies, on August 23, 2025 (or, in the case of the Monitor of JTIM, on August 24, 2025) by serving a report of the applicable Monitor, in each case attaching a summary of the proposed Amendments, the applicable Fourth A&R CCAA Plan, and a blackline comparing the applicable Third A&R CCAA Plan to the applicable Fourth A&R CCAA Plan as appendices thereto.⁵

15. The Monitors are not aware of any party that would be prejudiced by the Amendments if granted.⁶ No party has indicated its intention to oppose the relief sought in the CCAA Plan Amendment Orders.⁷

² [EY 30th Report](#) at paras. 12 & 16; [FTI 32nd Report](#) at paras. 6 & 10; [Deloitte 30th Report](#) at paras. 9 & 13.

³ [EY 30th Report](#) at para. 15; [FTI 32nd Report](#) at para. 9; [Deloitte 30th Report](#) at para. 12.

⁴ [EY 30th Report](#) at para. 13; [FTI 32nd Report](#) at para. 7; [Deloitte 30th Report](#) at para. 10.

⁵ [EY 30th Report](#) at para. 14; [FTI 32nd Report](#) at para. 8; [Deloitte 30th Report](#) at para. 11.

⁶ [EY 30th Report](#) at para. 16; [FTI 32nd Report](#) at para. 10; [Deloitte 30th Report](#) at para. 13.

⁷ [EY 30th Report](#) at paras. 15 & 40; [FTI 32nd Report](#) at paras. 9 & 28; [Deloitte 30th Report](#) at paras. 12 & 31.

B. The Plan Administration Reserve Trust Orders Are Necessary to Implement the CCAA Plans

(i) Establishment and Administration of Plan Administration Reserve Accounts

16. The CCAA Plan Administrator Appointment Orders authorize the CCAA Plan Administrators to engage a trustee of the trust accounts to be established under the CCAA Plans and to enter into one or more deeds of trust or other agreement with such trustee in form and substance satisfactory to the CCAA Plan Administrators, subject to approval of the CCAA Court.⁸

17. The CCAA Plans provide for the establishment of three trust accounts (collectively, the “**Plan Administration Reserve Accounts**”) to hold the reserves (collectively, the “**Plan Administration Reserves**”) which will serve as security for the Imperial CCAA Plan Administration Reserve Costs, RBH CCAA Plan Administration Reserve Costs, and JTIM CCAA Plan Administration Reserve Costs (collectively, the “**Plan Administration Reserve Costs**”).⁹

18. The CCAA Plan Administrators therefore seek this Court’s approval of: (a) the establishment of trusts (the “**Administration Reserve Trusts**”) to hold the Plan Administration Reserves in favour of the beneficiaries of those reserves pursuant to the CCAA Plans; (b) the engagement and fees and expenses of BMO as trustee thereof; (c) the forms of the Administration Reserve Trust Deeds; and (d) the proposed Investment Guidelines.¹⁰

⁸ [Imperial CCAA Plan Administrator Appointment Order](#) dated March 6, 2025 at para. 13; [RBH CCAA Plan Administrator Appointment Order](#) dated March 6, 2025 at para. 12; [JTIM CCAA Plan Administrator Appointment Order](#) dated March 6, 2025 at para. 12.

⁹ [EY 30th Report](#) at para. 17; [FTI 32nd Report](#) at para. 11; [Deloitte 30th Report](#) at para. 14.

¹⁰ [EY 30th Report](#) at paras. 6(ii) & 41; [FTI 32nd Report](#) at para. 1(ii); [Deloitte 30th Report](#) at paras. 8(ii) & 32.

(a) Selection of BMO

19. BMO was selected as the proposed trustee of the Administration Reserve Trusts to take advantage of efficiencies resulting from its other engagements in connection with the CCAA Plans.¹¹ As previously reported to the CCAA Court, BMO was selected to act as the trustee of the Global Settlement Trust Accounts (in such capacity, the “**Global Settlement Trustee**”) and as bare trustee of the Supplemental Trust Accounts (in such capacity, the “**Supplemental Bare Trustee**”) following a request for proposals process.¹²

(b) BMO’s Fees and Expenses

20. In consideration for its services as a trustee, BMO will be paid an annual fee of 0.04% of the average market value of the assets under administration in the Administration Reserve Trusts, subject to an annual minimum fee.¹³ BMO will also be reimbursed for its legal and tax preparation fees and expenses and all other out-of-pocket expenses incurred in the administration of the Administration Reserve Trusts.¹⁴ The Monitors believe BMO’s proposed fees and expenses are fair and reasonable given the scope of the duties to be performed by BMO in connection with the Administration Reserve Trusts.¹⁵ Such fees are the same as the fees charged by BMO in its roles as Global Settlement Trustee and Supplemental Bare Trustee (other than the minimum annual fee which is substantially lower for this engagement).¹⁶

¹¹ [EY 30th Report](#) at para. 23; [FTI 32nd Report](#) at para. 17; [Deloitte 30th Report](#) at para. 20.

¹² [EY 30th Report](#) at para. 22; [FTI 32nd Report](#) at para. 16; [Deloitte 30th Report](#) at para. 19.

¹³ [EY 30th Report](#) at para. 25; [FTI 32nd Report](#) at para. 19; [Deloitte 30th Report](#) at para. 22.

¹⁴ [EY 30th Report](#) at para. 26; [FTI 32nd Report](#) at para. 20; [Deloitte 30th Report](#) at para. 23.

¹⁵ [EY 30th Report](#) at para. 27; [FTI 32nd Report](#) at para. 21; [Deloitte 30th Report](#) at para. 24.

¹⁶ [EY 30th Report](#) at para. 25; [FTI 32nd Report](#) at para. 19; [Deloitte 30th Report](#) at para. 22.

(c) Forms of Administrative Reserve Trust Deeds

21. The forms of the Administration Reserve Trust Deeds are fair, reasonable and necessary to implement and administer the Fourth A&R CCAA Plans.¹⁷ The material terms of the Administration Reserve Trust Deeds include:

- (a) the legal ownership of the funds held in the Administration Reserve Trusts will be vested in, and administered and managed exclusively by, BMO, as trustee, in accordance with the Administration Reserve Trust Deeds; and
- (b) BMO will make payments from the trust funds to or on behalf of the beneficiaries thereof on account of amounts to which they are entitled under the CCAA Plans in accordance with the Administration Reserve Trust Deeds.¹⁸

(d) Investment Guidelines

22. Pursuant to the Fourth A&R CCAA Plans, the amounts held in the Plan Administration Reserve Accounts are to be invested in accordance with approved investment guidelines, pending disbursement to applicable payees.¹⁹

23. The proposed Investment Guidelines are essentially identical to the investment guidelines approved by this Court pursuant to the Banking Arrangements Order. The objectives of the Investment Guidelines remain to preserve capital, maintain a high degree of liquidity, and were developed to be extremely risk adverse.²⁰

¹⁷ [EY 30th Report](#) at para. 21; [FTI 32nd Report](#) at para. 15; [Deloitte 30th Report](#) at para. 18.

¹⁸ [EY 30th Report](#) at para. 19; [FTI 32nd Report](#) at para. 13; [Deloitte 30th Report](#) at para. 16.

¹⁹ [EY 30th Report](#) at para. 28; [FTI 32nd Report](#) at para. 22; [Deloitte 30th Report](#) at para. 25.

²⁰ [EY 30th Report](#) at paras. 29-30; [FTI 32nd Report](#) at paras. 23-24; [Deloitte 30th Report](#) at paras. 26-27.

(ii) *The Proposed Amendment to the RBH Insurance Settlement Order, Solely in the RBH CCAA Proceeding*

24. The following submissions are made solely by the RBH CCAA Plan Administrator. On December 23, 2024, the CCAA Court granted the RBH Insurance Settlement and Bar Order (the “**RBH Insurance Settlement Order**”) in the CCAA Proceeding of RBH, among other things: (a) approving a settlement between RBH and the Insurers (as defined in the RBH Insurance Settlement Order); (b) directing the Insurers to make the Settlement Payments to the RBH Monitor, to be held in an interest-bearing trust account; and (c) ordering that, on the Plan Implementation Date, the Settlement Payments were to be released by the RBH Monitor and become property of RBH, and RBH would be authorized and directed to direct the RBH Monitor to contribute the Settlement Payments to the RBH Global Settlement Trust Account on behalf of RBH.²¹

25. The Settlement Payments and accrued interest held by the RBH Monitor exceeds the quantum required to be funded to the RBH CCAA Plan Administration Reserve Account under the CCAA Plans.²²

26. The RBH CCAA Plan Administrator and RBH have determined that it is most efficient to amend the RBH Insurance Settlement Order to, on the Plan Implementation Date, authorize and direct RBH to direct the RBH Monitor to fund the RBH CCAA Plan Administration Reserve from the Settlement Payments, with the remainder, and any interest accrued thereon, being forwarded to the RBH Global Settlement Trust Account.²³ For greater clarity, the forwarding of a portion of the Settlement Payments by the RBH Monitor to fund the RBH CCAA Plan Administration

²¹ [RBH Insurance Settlement and Bar Order](#) dated December 23, 2024 at paras. 3-5.

²² [EY 30th Report](#) at para. 33.

²³ [EY 30th Report](#) at para. 34.

Reserve will not constitute a Contribution by the RBH Monitor to the Global Settlement Amount or otherwise, and all such amounts will constitute a Contribution by RBH.

27. RBH supports the proposed amendment to the RBH Insurance Settlement Order.²⁴

28. The RBH CCAA Plan Administrator is not aware of any other party that would be impacted by the proposed amendment to the RBH Insurance Settlement Order.

C. The Collateral Agent Orders is Necessary to Implement the CCAA Plans

(i) Selection of the Collateral Agent

29. The CCAA Plans require that a collateral agent be engaged to enter into an agreement in respect of each Tobacco Company (collectively, the “**Contribution Security Agreement**”) granting security to the Collateral Agent over the Collateral for the exclusive benefit of the Claimants in order to secure the Tobacco Companies’ obligations under the CCAA Plans.²⁵

30. The CCAA Plan Administrators and Court-Appointed Mediator ran a request for proposals process to solicit bids from certain entities that regularly act as collateral agents in similar capacities to act as collateral agent for the Claimants. After careful consideration, Computershare was selected to act as Collateral Agent, subject to Court approval.²⁶

31. The Collateral Agent’s proposed services relate to the administration and enforcement of the Security Documents (as defined in the Collateral Agency Agreements) upon written instruction from the applicable Claimants and approval of the Court. The full scope of the proposed services the Collateral Agent will provide are set out in detail in the Collateral Agency Orders and the 31st

²⁴ [EY 30th Report](#) at para. 36.

²⁵ [EY 29th Report](#) at para. 12; [FTI 31st Report](#) at para. 7; [Deloitte 29th Report](#) at para. 7.

²⁶ [EY 29th Report](#) at paras. 13-14; [FTI 31st Report](#) at paras. 8-9; [Deloitte 29th Report](#) at paras. 8-9.

Report of the Imperial Monitor, 29th Report of the RBH Monitor and 29th Report of the JTIM Monitor.²⁷

32. The Collateral Agent will be paid an initial set up fee, annual fees for ongoing administrative duties and additional fees for services related to an enforcement of the Security Documents. The Collateral Agent will also be entitled to be reimbursed for legal fees incurred in connection with the performance of its obligations under the Security Documents.²⁸ The CCAA Plan Administrators are satisfied as to the reasonableness of the Collateral Agent's fees.²⁹

(ii) The Collateral Agency Agreement

33. To set the terms of the Collateral Agent's engagement and provide for the scope of its services, the Claimants, the Tobacco Companies and the Collateral Agent propose to enter into the Collateral Agency Agreements. The Collateral Agency Agreements by their terms are subject to the approval of the CCAA Court.³⁰

34. The Collateral Agency Agreements govern the manner in which the Collateral Agent may enforce on the Collateral, in accordance with the CCAA Plans.³¹ The Collateral Agent will only enforce on the Collateral upon receiving written instructions from a certain minimum number of Claimants and receiving approval from this Court.³²

²⁷ [EY 29th Report](#) at para. 15; [FTI 31st Report](#) at para. 10; [Deloitte 29th Report](#) at para. 10.

²⁸ [EY 29th Report](#) at para. 16; [FTI 31st Report](#) at para. 11; [Deloitte 29th Report](#) at para. 11.

²⁹ [EY 29th Report](#) at para. 17; [FTI 31st Report](#) at para. 12; [Deloitte 29th Report](#) at para. 12.

³⁰ [EY 29th Report](#) at para. 18; [FTI 31st Report](#) at para. 13; [Deloitte 29th Report](#) at para. 13.

³¹ [EY 29th Report](#) at para. 19; [FTI 31st Report](#) at para. 14; [Deloitte 29th Report](#) at para. 14.

³² [EY 29th Report](#) at paras. 19-20; [FTI 31st Report](#) at paras. 14-15; [Deloitte 29th Report](#) at paras. 14-15.

35. The Collateral Agency Agreements also set out the manner in which the Collateral Agent will distribute the proceeds of the sale of any portion of the Collateral following enforcement.³³

(iii) The Limitation of the Collateral Agent's Liability

36. A condition to the appointment of the Collateral Agent in the Collateral Agency Agreements and the obligations of the Collateral Agent thereunder is that orders limiting the liability of the Collateral Agent (in the manner outlined below) be granted.³⁴

37. Each of the Contribution Security Agreements contain an indemnity provided by each Tobacco Company to the Collateral Agent in respect of liabilities arising under each Contribution Security Agreement.³⁵

38. To protect the Collateral Agent from liabilities under the Collateral Agency Agreements that are not covered by the indemnities in the Contribution Security Agreements (the “**Residual Liabilities**”), the Tobacco Companies have agreed to provide separate indemnities for such Residual Liabilities in the Collateral Agency Agreements. These additional indemnities are limited to the aggregate Contributions remaining to be paid by all Tobacco Companies toward the Global Settlement Amount at any given time (the “**Remaining Contributions**”). The Collateral Agent Orders propose to limit the Residual Liabilities to the Remaining Contributions, except where the Residual Liabilities arise from the Collateral Agent’s negligence, bad faith or wilful misconduct. This ensures that the Collateral Agent has no unindemnified exposure by simply complying with the terms of the Collateral Agency Agreements.³⁶

³³ [EY 29th Report](#) at para. 22; [FTI 31st Report](#) at para. 17; [Deloitte 29th Report](#) at para. 17.

³⁴ [EY 29th Report](#) at para. 24; [FTI 31st Report](#) at para. 19; [Deloitte 29th Report](#) at para. 19.

³⁵ [EY 29th Report](#) at para. 25; [FTI 31st Report](#) at para. 20; [Deloitte 29th Report](#) at para. 20.

³⁶ [EY 29th Report](#) at para. 26; [FTI 31st Report](#) at para. 21; [Deloitte 29th Report](#) at para. 21.

39. The Collateral Agency Agreements provide that, if the applicable Tobacco Company indemnifies the Collateral Agent for any Residual Liabilities, such Tobacco Company may deduct, by way of set-off, from its Annual Contributions to the Global Settlement Amount any such Residual Liabilities. The applicable Tobacco Company may only exercise this set-off if it provides 30-days written notice to the Claimants and no Claimant objects within such notice period, or if the CCAA Court issues a final and non-appealable order permitting the set-off.³⁷

40. The CCAA Plan administrators are not aware of any parties that are opposed to the Collateral Agent Orders.³⁸

PART III – STATEMENT OF ISSUES, LAW & ARGUMENT

41. The issues on these motions are:

- (a) whether this Court should grant the CCAA Plan Amendment Orders;
- (b) whether this Court should approve the Plan Administration Reserve Trust Orders;
- (c) solely in the RBH CCAA Proceeding, whether the Court should amend the RBH Insurance Settlement Order; and
- (d) whether this Court should approve the Collateral Agent Orders.

42. The answer to each of these questions is “yes”.

³⁷ [EY 29th Report](#) at para. 27; [FTI 31st Report](#) at para. 22; [Deloitte 29th Report](#) at para. 22.

³⁸ [EY 29th Report](#) at para. 32; [FTI 31st Report](#) at para. 27; [Deloitte 29th Report](#) at para. 27.

A. The CCAA Plan Amendment Orders Should be Granted

(i) The CCAA Plans Require Court Approval of the Amendments

43. Section 20.4(a) of the Third A&R CCAA Plans requires the Monitors to notify Affected Creditors and the Tobacco Companies and obtain Court approval of any amendment, restatement, modification or supplement to be made following the Meeting Orders that is not solely administrative or error correcting.³⁹

44. Certain of the proposed Amendments are substantive and not solely curative or administrative. They are intended to ensure the implementation of the CCAA Plans accurately reflects the compromise contained in the CCAA Plans. Therefore, the Monitors ask this Court to approve them.⁴⁰

45. The Amendments are not materially adverse to the financial or economic interests of the Affected Creditors or Unaffected Creditors. The Amendments are consistent with the spirit of the CCAA Plans, as unanimously approved by the voting creditors, and are necessary to better implement the compromise contemplated in the CCAA Plans.⁴¹

46. None of the Tobacco Companies or the Claimants have indicated their intention to oppose the Amendments.

³⁹ [EY 30th Report](#) at para. 13; [FTI 32nd Report](#) at para. 7; [Deloitte 30th Report](#) at para. 10.

⁴⁰ [EY 30th Report](#) at paras. 14 & 16; [FTI 32nd Report](#) at paras. 8 & 10; [Deloitte 30th Report](#) at paras. 11 & 13.

⁴¹ [EY 30th Report](#) at paras. 15-16; [FTI 32nd Report](#) at paras. 9-10; [Deloitte 30th Report](#) at paras. 12-13.

(ii) This Court Should Exercise its Discretion to Approve the Amendments Without Requiring a Further Creditors' Meeting

47. Sections 6 and 7 of the CCAA provide this Court authority to sanction a plan and to alter or modify its terms.⁴² When amendments are proposed *after* the creditors' meeting, section 7 of the CCAA gives this Court the discretion to sanction an amended plan without convening an additional creditors' meeting if this Court is satisfied that the creditors or shareholders are not adversely affected by the proposed amendments.⁴³

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

49. No Affected Creditor, shareholder, or Unaffected Creditor will be adversely affected by the Amendments.⁴⁴

50. Each of the Monitors has filed a report recommending that this Court approve the Amendments and grant the CCAA Plan Amendment Orders.⁴⁵

51. Each of the Monitors has complied with Section 20.4(a) of the CCAA Plans in providing notice to the Common Service List, which includes all Affected Creditors and each Tobacco Company, and moving for this Court's approval of the Amendments.⁴⁶ Section 20.4(a) was

⁴² *Ontario v. Canadian Airlines Corp.*, 2001 ABQB 983 at para. 56 [*Canadian Airlines*]; *Algoma Steel Corp. v. Royal Bank of Canada*, 1992 CanLII 7413 (ONCA); *Ball Machinery Sales Ltd., Re*, 2002 CarswellOnt 2742.

⁴³ *Canadian Airlines Corp.*, *supra* at para. 56.

⁴⁴ [EY 30th Report](#) at para. 16; [FTI 32nd Report](#) at para. 10; [Deloitte 30th Report](#) at para. 13.

⁴⁵ [EY 30th Report](#) at para. 41; [FTI 32nd Report](#) at para. 29; [Deloitte 30th Report](#) at para. 32.

⁴⁶ [EY 30th Report](#) at paras. 14-15; [FTI 32nd Report](#) at paras. 8-9; [Deloitte 30th Report](#) at paras. 11-12.

included in the CCAA Plans that were approved unanimously by Affected Creditors, voting in person or by proxy on the applicable CCAA Plan.

52. The Claimants and the Tobacco Companies were consulted during the development of the proposed Amendments. The Amendments are consistent with the spirit of the CCAA Plans and are intended to permit the compromise contemplated in the CCAA Plans, and unanimously approved by the voting creditors, to be implemented on the Plan Implementation Date.⁴⁷

53. For the foregoing reasons, the Monitors submit that granting the CCAA Plan Amendment Orders is appropriate in the circumstances of these complex and coordinated CCAA Proceedings.

B. The Plan Administration Reserve Trust Orders Should be Granted

(i) The CCAA Court has Authority Pursuant to Section 11 of the CCAA

54. Section 11 of the CCAA “confers jurisdiction on the court in the broadest of terms” and enables this Court to “make any order that it considers appropriate in the circumstances”.⁴⁸ As the Supreme Court has explained, the “vast” power conferred by section 11 “is constrained only by restrictions set out in the CCAA itself, and the requirement that the order made be ‘appropriate in the circumstances’”.⁴⁹ The appropriateness of a section 11 order is also assessed in relation to its grounding in the well-established remedial objectives of the CCAA.

⁴⁷ [EY 30th Report](#) at paras. 13 & 15-16; [FTI 32nd Report](#) at paras. 7 & 9-10; [Deloitte 30th Report](#) at paras. 10 & 12-13.

⁴⁸ *Harte Gold Corp. (Re)*, [2022 ONSC 653](#) at [para. 18](#) [*Harte Gold*]; CCAA, *supra*, [s. 11](#).

⁴⁹ *Canada v. Canada North Group Inc.*, [2021 SCC 30](#) at [para. 21](#), *per* Côté J. [*Canada North*]; 9354-9186 *Québec inc. v. Callidus Capital Corp.*, [2020 SCC 10](#) [*Callidus*] at [para. 67](#).

(ii) *The Plan Administration Reserve Trust Orders are Appropriate*

55. The Plan Administration Reserve Trust Orders are appropriate in the circumstances. They are necessary to implement the CCAA Plans and therefore further the remedial objectives of the CCAA.⁵⁰

56. As explained above, the Plan Administration Reserve Trust Orders are necessary to establish and administer the Plan Administration Reserve Accounts that will hold the Plan Administration Reserves. The CCAA Plans require the Plan Administration Reserves to serve as security for the Plan Administration Reserve Costs. Without the Plan Administration Reserve Trust Orders, there will be no accounts into which the Plan Administration Reserves may be deposited, which will jeopardize the implementation of the CCAA Plans.⁵¹

57. No party will be prejudiced by the Plan Administration Reserve Trust Orders. No party is expected to oppose these motions for the Plan Administration Reserve Trust Orders.⁵²

C. The RBH Insurance Settlement Order Should be Amended

58. The following submissions are made solely by the RBH Monitor. The CCAA Court has jurisdiction to amend the RBH Insurance Settlement Order pursuant to Section 11 of the CCAA.

59. The proposed amendment is intended to permit RBH, through a deemed direction to the Monitor, to fund the RBH Administrative Reserve Trust on the Plan Implementation Date in the most efficient manner and minimize any potential impediments to implementing the RBH CCAA

⁵⁰ *Canadian Airlines Corp.*, *supra* at [para. 95](#); *Callidus*, *supra* at [para. 40](#).

⁵¹ [EY 30th Report](#) at para. 20; [FTI 32nd Report](#) at para. 14; [Deloitte 30th Report](#) at para. 17.

⁵² [EY 30th Report](#) at paras. 21 & 40; [FTI 32nd Report](#) at paras. 15 & 28; [Deloitte 30th Report](#) at paras. 18 & 31.

Plan. The proposed Amendment is consistent with the purpose of the RBH Insurance Settlement Order and the compromise contemplated in the RBH CCAA Plan.⁵³

60. RBH, being the sole party capable of being affected by the proposed amendment to the RBH Insurance Settlement Order, has indicated its support of the proposed amendment.⁵⁴

61. It is appropriate in the circumstances to amend the RBH Insurance Settlement Order as contemplated in the Plan Administration Reserve Trust Order sought in the RBH CCAA Proceeding.

D. The Collateral Agent Orders Should be Granted

(i) The CCAA Court has Authority Pursuant to Section 11

62. As stated above, section 11 of the CCAA “confers jurisdiction on the court in the broadest of terms”, enables this Court to “make any order that it considers appropriate in the circumstances”, and is assessed in relation to its grounding in the well-established remedial objectives of the CCAA.⁵⁵

(ii) The Collateral Agent Orders are Appropriate

63. The Collateral Agent Orders are appropriate in the circumstances.

64. The CCAA Plans contemplate that a collateral agent will be engaged to enter into the Security Documents and take security over the Collateral for the benefit of the Claimants to secure the Tobacco Companies’ obligations under the CCAA Plans. The CCAA Plan Administrators are

⁵³ [EY 30th Report](#) at paras. 31-32.

⁵⁴ [EY 30th Report](#) at para. 36.

⁵⁵ *Harte Gold* at [para. 18](#); *CCAA*, *supra*, [s. 11](#); *Canada North* at [para. 21](#), *per* Côté J.; *Callidus* at [para. 67](#).

satisfied that Computershare's fees to act as Collateral Agent are fair and reasonable.⁵⁶ The approval of the Collateral Agent's engagements and the approval of the Collateral Agency Agreements is necessary to implement the CCAA Plans and furthers the CCAA's objectives.⁵⁷

(iii) *The Limitation of Liability of the Collateral Agent Is Appropriate in the Circumstances*

65. This Court has previously limited the liability of other professionals who have provided services to CCAA Debtors, including financial advisors, chief restructuring officers, employee representative counsel, sale advisors and other similar professionals, where such limitation of liability would further the objectives of the CCAA.⁵⁸

66. For example, in the CCAA Proceeding of JTIM, this Court granted an initial order appointing a Chief Restructuring Officer (the "**JTIM CRO**") of JTIM and limiting the JTIM CRO's liability completely in relation to the CCAA Proceeding outside of his negligence or wilful misconduct. Such limitation of liability is broader than what the Collateral Agent Orders provide to the Collateral Agent. In approving the appointment of the JTIM CRO, Justice Hainey of this Court noted that he was satisfied that the JTIM CRO be appointed, including because, with the assistance of the JTIM CRO, JTIM could focus on maximizing value for JTIM's stakeholders, an important objective of the CCAA.⁵⁹

⁵⁶ [EY 29th Report](#) at paras. 12 & 17-18; [FTI 31st Report](#) at paras. 7 & 12-13; [Deloitte 29th Report](#) at paras. 7 & 12-13.

⁵⁷ *Canadian Airlines Corp.*, *supra* at [para. 95](#); *Callidus*, *supra* at [para. 40](#).

⁵⁸ See, for example, [Initial Order in the CCAA Proceedings of DCL Corporation](#) dated December 20, 2022 at para. 33; [Second Amended Restated Initial Order in the CCAA Proceedings of JTI-Macdonald Corp.](#) dated March 8, 2019 at para. 30; [Amended and Restated Initial Order in the CCAA Proceedings of Nordstrom Canada](#) dated March 10, 2023 at para. 38; [Initial Order in the CCAA Proceedings of Target Canada](#) dated January 15, 2015 at paras. 42, 44, 54, 55 & 67.

⁵⁹ *JTI-Macdonald Corp.*, *Re*, [2019 ONSC 1625](#) at [paras. 26 & 27](#).

67. Similarly in the CCAA proceeding of Target Canada, this Court granted an initial order that approved the engagement of a sale advisor and real estate advisor to the debtor company and limited the liability of such advisors that may have resulted from certain breaches in relation to the agreements the advisors entered into or the charges they were granted pursuant to the initial order.⁶⁰

68. The CCAA Plan Administrators submit that the engagement of the Collateral Agent pursuant to the Collateral Agency Agreements is also in furtherance of important CCAA objectives, as a collateral agent is required to implement the CCAA Plans and therefore effect the compromise contemplated in the CCAA Plans that will see significant benefits for the Affected Creditors and allow the Tobacco Companies to continue as going concerns.⁶¹

69. Additionally, in the view of the CCAA Plan Administrators, the limitation of liability provided for in the Collateral Agent Orders will only be applicable in remote circumstances for the following reasons:

- (a) the liability of the Collateral Agent pursuant to each respective Contribution Security Agreement (indemnified by the Tobacco Companies) is likely to encompass most liabilities the Collateral Agent may incur in fulfilling its duties, and such liability is not capped;

⁶⁰ [Initial Order in the CCAA Proceedings of Target Canada](#) dated January 15, 2015 at paras. 42, 44, 54, 55 & 67.

⁶¹ [EY 29th Report](#) at paras. 12, 23 & 31; [FTI 31st Report](#) at para. 7, 18 & 26; [Deloitte 29th Report](#) at paras. 7, 18 & 26.

- (b) the Residual Liabilities are capped at the amount remaining to be contributed by all Tobacco Companies to the Global Settlement Amount, but this amount will number in the billions of dollars for most of the Contribution Period; and
- (c) the limitation of liability does not apply in circumstances where the liability results from the Collateral Agent's negligence, bad faith or wilful misconduct.⁶²

70. The CCAA Plan Administrators served the proposed Collateral Agent Orders on the Common Service List on August 19, 2025 and no party has come forward to oppose them or indicate that they believe they would be prejudiced by the limitation of liability of the Collateral Agent therein.⁶³ Therefore, the CCAA Plan Administrators submit that the Court should approve the Collateral Agent Orders with the limitation of liability of the Collateral Agent as set out in each Collateral Agent Order.

PART IV – ORDERS REQUESTED

71. For the above reasons, the Monitors and CCAA Plan Administrators respectfully request that this Court grant, in each CCAA Proceeding: (i) the CCAA Plan Amendment Order; and (ii) the CCAA Plan Administration Reserve Trust Order in the forms attached at Tabs 3 and 4 to each of the Motion Record of the RBH Monitor and CCAA Plan Administrator dated August 23, 2025, the Motion Record of the Imperial Monitor and CCAA Plan Administrator dated August 23, 2025 and the Motion Record of the JTIM Monitor and CCAA Plan Administrator dated August 24, 2025, and the Collateral Agent Orders in the forms attached at Tabs 2 to each of the Motion Records of the CCAA Plan Administrators dated August 19, 2025.

⁶² [EY 29th Report](#) at paras. 26 & 28; [FTI 31st Report](#) at paras. 21 & 23; [Deloitte 29th Report](#) at paras. 21 & 23.

⁶³ [EY 29th Report](#) at paras. 32-33; [FTI 31st Report](#) at paras. 27-28; [Deloitte 29th Report](#) at paras. 27-28.

72. For the above reasons, the RBH Monitor respectfully requests that this Court grant, in the RBH CCAA Proceeding, an Order approving the proposed amendment to the RBH Insurance Settlement Order.

ALL OF WHICH IS RESPECTFULLY SUBMITTED this 25th day of August, 2025.

Cassels Brock & Blackwell LLP *Cassels Brock & Blackwell LLP*

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

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

Lawyers for the Imperial Monitor

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

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

Lawyers for the RBH Monitor

Cassels Brock & Blackwell LLP

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

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

Lawyers for the JTIM Monitor

SCHEDULE “A”

LIST OF AUTHORITIES

1. *Ontario v. Canadian Airlines Corp.*, [2001 ABQB 983](#).
2. *Algoma Steel Corp. v. Royal Bank of Canada*, [1992 CanLII 7413 \(ONCA\)](#).
3. *Ball Machinery Sales Ltd., Re*, 2002 CarswellOnt 2742.
4. *Harte Gold Corp. (Re)*, [2022 ONSC 653](#).
5. *Canada v. Canada North Group Inc.*, [2021 SCC 30](#).
6. *9354-9186 Québec inc. v. Callidus Capital Corp.*, [2020 SCC 10](#).
7. *JTI-Macdonald Corp., Re*, [2019 ONSC 1625](#).

SCHEDULE “B”

TEXT OF STATUTES, REGULATIONS & BY-LAWS

Companies’ Creditors Arrangement Act ([R.S.C., 1985, c. C-36](#))

Compromises to be sanctioned by court

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

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

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

[...]

Court may give directions

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

[...]

General power of court

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

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

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

PROCEEDING COMMENCED AT
TORONTO

JOINT FACTUM OF THE MONITORS
Motions for CCAA Plan Amendment Orders, Plan Administration Reserve Trust Orders & Collateral Agent Orders
(Returnable August 27, 2025)

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

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

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

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

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

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