

**ONTARIO
SUPERIOR COURT OF JUSTICE
(COMMERCIAL LIST)**

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

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

APPLICANTS

**MOTION RECORD OF IMPERIAL TOBACCO CANADA LIMITED AND
IMPERIAL TOBACCO COMPANY LIMITED**

(Motion for Stay Extension and Amendments to Initial Order)

March 29, 2019

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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

AND IN THE MATTER OF A PLAN OF COMPROMISE OR ARRANGEMENT OF
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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

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

APPLICANTS

TABLE OF CONTENTS

TAB	DOCUMENT	PAGE
1.	Notice of Motion, dated March 29, 2019	1
A	Schedule "A" – Draft Stay Extension Order	6
B	Schedule "B" – Proposed Amendments to Stay Provisions in Initial Order	9
2.	Affidavit of Eric Thauvette, sworn March 29, 2019	11

TAB 1

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

**ONTARIO
SUPERIOR COURT OF JUSTICE
COMMERCIAL LIST**

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

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

APPLICANTS

**NOTICE OF MOTION
(Motion for Stay Extension and Amendment to Initial Order)**

The Applicants will make a motion before a judge of the Ontario Superior Court of Justice (Commercial List) on April 4, 2019 at 10:00 a.m., or as soon after that time as the motion can be heard, at 330 University Avenue, Toronto, Ontario.

PROPOSED METHOD OF HEARING: The motion is to be heard orally.

THE MOTION IS FOR:

1. An Order substantially in the form attached as Schedule "A" providing, among other things, the following relief:
 - (a) if necessary, abridging the time for service of this Notice of Motion and the Motion Record and dispensing with service on any person other than those served;
 - (b) extending the Stay Period (defined below) until and including June 28, 2019;
2. An Order amending the stay of proceedings granted in the Initial Order (defined below) by deleting paragraphs 18 – 20 and replacing them with the provisions attached as Schedule "B";
and

3. Such further and other relief as this Court may deem just.

THE GROUNDS FOR THE MOTION ARE:

Background

1. The Applicants were granted protection from their creditors under the *Companies' Creditors Arrangement Act*, RSC 1985, c C-36, as amended (the "CCAA"), pursuant to the Initial Order of the Ontario Superior Court of Justice (Commercial List) dated March 12, 2019, as amended and restated (the "**Initial Order**");
2. FTI Consulting Canada Inc. was appointed to act as the Monitor;

Stay Extension

3. The Initial Order granted a stay of proceedings until April 11, 2019, or such later date as this Court may order (the "**Stay Period**");
4. The extension of the Stay Period is necessary and appropriate in the circumstances to allow for the continued operation of the Applicants' business while they work towards developing a plan of compromise or arrangement for the resolution of the Tobacco Claims;
5. The Applicants have been acting in and continue to act in good faith and with due diligence in these CCAA proceedings;
6. It is just and convenient and in the interests of the Applicants and their respective stakeholders that the Stay Period be extended;
7. The Applicants have sufficient liquidity to continue operations through the requested Stay Period;
8. The Monitor supports the extension of the Stay Period;

Amendments to Initial Order

9. The Applicants have proposed certain amendments to the stay of proceedings in the Initial Order to better align with the initial orders granted in the CCAA proceedings of JTI-Macdonald Corp. (“JTI”) and Rothmans Benson & Hedges Inc. (“RBH”);

Other Grounds

10. The provisions of the CCAA, including section 11.02, and the inherent and equitable jurisdiction of this Honourable Court;

11. Rules 1.04, 1.05, 2.03, 3.02, 16 and 37 of the Ontario *Rules of Civil Procedure*, R.R.O. 1990, Reg. 194, as amended, and section 106 of the Ontario *Courts of Justice Act*, R.S.O. 1990, c. C.43, as amended; and

12. Such further and other grounds as counsel may advise and this Court may permit.

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

1. The Affidavit of Eric Thauvette sworn March 29, 2019;
2. The First Report of the Monitor (to be filed); and
3. Such further and other evidence as counsel may advise and this Court may permit.

March 29, 2019

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TO: SERVICE LIST

IN THE MATTER OF THE COMPANIES' CREDITORS ARRANGEMENT ACT, R.S.C. 1985, c. C-36, AS AMENDED
AND IN THE MATTER OF A PLAN OF COMPROMISE OR ARRANGEMENT OF IMPERIAL TOBACCO CANADA LIMITED AND
IMPERIAL TOBACCO COMPANY LIMITED

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

**ONTARIO
SUPERIOR COURT OF JUSTICE**

Proceeding Commenced at Toronto

NOTICE OF MOTION

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TAB A

**ONTARIO
SUPERIOR COURT OF JUSTICE
COMMERCIAL LIST**

THE HONOURABLE MR.) THURSDAY, THE 4TH
)
JUSTICE MCEWEN) DAY OF APRIL, 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

APPLICANTS

**ORDER
(Stay Extension)**

THIS MOTION, made by the Applicants pursuant to the *Companies' Creditors Arrangement Act*, R.S.C. 1985, c. C-36, as amended, for an order extending the Stay Period (defined below) until and including June 28, 2019 and certain other relief, was heard this day at 330 University Avenue, Toronto, Ontario.

ON READING the Notice of Motion of the Applicants, the Affidavit of Eric Thauvette sworn March 29, 2019, the First Report of the Monitor, and on hearing the submissions of respective counsel for the Applicants, the Monitor, and such other counsel as were present, no one else appearing although duly served as appears from the Affidavit of Service of ●, filed:

SERVICE

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

Draft

EXTENSION OF THE STAY PERIOD

2. **THIS COURT ORDERS** that the Stay Period as defined in paragraph 18 of the Initial Order dated March 12, 2019 (the “Initial Order”) is hereby extended from April 11, 2019, until and including June 28, 2019.

GENERAL

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

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

Draft

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

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

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

ONTARIO
SUPERIOR COURT OF JUSTICE
(Commercial List)

Proceeding Commenced at Toronto

ORDER
(Stay Extension)

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Draft

TAB B

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 any Pending Litigation and any other Proceeding in relation to any other Tobacco Claim, shall be commenced, continued or take place against or in respect of the Applicants, the ITCAN Subsidiaries, the Monitor, any of their respective employees and representatives acting in that capacity, the Interim Tobacco Claimant Coordinator, or affecting the Business or the Property or the funds deposited pursuant to the Deposit Posting Order except with the written consent of the Applicants and the Monitor, or with leave of this Court, and any and all Proceedings currently under way or directed to take place 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 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 the written consent of the Applicants and the Monitor, or with leave of this Court, and any and all such Proceedings currently underway or directed to take

place against or in respect of the Other Defendants or any member of the BAT Group, 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.

20. THIS COURT ORDERS that, to the extent any prescription, time or limitation period relating to any Proceeding against or in respect of the Applicants, the ITCAN Subsidiaries, any Other Defendant or any member of the BAT Group that is stayed pursuant to this Order may expire, the term of such prescription, time or limitation period shall hereby be deemed to be extended by a period equal to the Stay Period.

TAB 2

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

**ONTARIO
SUPERIOR COURT OF JUSTICE
(COMMERCIAL LIST)**

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

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

APPLICANTS

AFFIDAVIT OF ERIC THAUVETTE

(Sworn March 29, 2019)

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

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

2. This Affidavit is made in support of a motion by the Applicants for an Order under the *Companies’ Creditors Arrangement Act*, RSC 1985, c C-36, as amended (the “CCAA”),

extending the Stay Period (defined below) up to and including June 28, 2019 and making certain amendments to the Initial Order (defined below).

I. Background

3. The Applicants were granted CCAA protection by an order of the Ontario Superior Court of Justice (Commercial List) dated March 12, 2019 (the “Initial Order”). The Initial Order appointed FTI as the Monitor and granted a stay of proceedings in favour of the Applicants until and including April 11, 2019 (the “Initial Stay Period”), among other things.

4. The Applicants sought CCAA protection as they are facing an existential threat from tobacco-related litigation across Canada, including multiple class actions, government claims seeking to recover health care costs under special purpose provincial legislation (the “Medicaid Actions”), and other ongoing proceedings (collectively the “Tobacco Litigation”). On March 1, 2019, the Court of Appeal for Quebec issued an appeal judgment in two tobacco-related class actions, the Letourneau and Blais class actions (the “Quebec Class Actions”), and awarded damages of up to a potential maximum amount of over \$9 billion against ITCAN. Moreover, ITCAN is currently facing more than 20 large tobacco litigation claims that have been filed across Canada, with claims for damages totalling well over \$600 billion.

5. While the Applicants dispute liability and entitlement to the relief requested, the plaintiffs in the Tobacco Litigation seek damages that, in the aggregate, exceed the Applicants’ total assets by many orders of magnitude. As a result, the Applicants concluded it was in their best interests and the best interests of all of their stakeholders to engage in a restructuring process with the overriding objective of resolving all Tobacco Claims (as defined in the Initial Order) in a controlled and orderly process under Court supervision.

6. ITCAN, JTI-Macdonald Corp. (“JTI”), and Rothmans Benson & Hedges Inc. (“RBH”) are the three major Canadian manufacturers and distributors of tobacco products. JTI and RBH have also been granted CCAA protection under orders made on March 8, 2019 and March 22, 2019, respectively.

II. Discussions with Tobacco Litigation Plaintiffs

7. I am advised by Marc Wasserman of Osler, Hoskin & Harcourt LLP that the Applicants’ counsel extended invitations to counsel representing plaintiffs in various Tobacco Litigation to meet with them and to establish lines of communications shortly after the granting of the Initial Order. In particular, meetings were held with counsel for the following Tobacco Litigation plaintiffs: (a) the Quebec Class Action plaintiffs; (b) British Columbia, Manitoba, New Brunswick, Nova Scotia, Prince Edward Island, and Saskatchewan in those provinces’ Medicaid Actions; (c) Ontario in Ontario’s Medicaid Action; and (d) Alberta in Alberta’s Medicaid Action. The Monitor and its counsel participated in all of these meetings.

8. The Applicants’ meetings with counsel for the Tobacco Litigation plaintiffs were productive with a frank and open exchange of views, including with respect to the Initial Order and the CCAA proceedings. The Applicants agreed to consider matters raised by counsel for the Tobacco Litigation plaintiffs and to move forward on a consensual basis to the extent possible. The Applicants intend to continue this dialogue with a view to developing a framework for future discussions and, ultimately, a plan of compromise or arrangement for the benefit of all stakeholders.

9. The Applicants’ counsel have also met with the Honourable Warren K. Winkler in his capacity as the “Interim Tobacco Claimant Coordinator” and his counsel to discuss his appointment in these CCAA proceedings.

III. Communications with Suppliers, Vendors, and Customers

10. Since filing for CCAA protection, the Applicants' senior management have spoken directly to representatives of numerous strategic business relationship partners, including suppliers of transportation, financial, and marketing services. The Monitor participated in many of these discussions. Further, counsel for the Applicants, the Monitor, and counsel for the Monitor have communicated with counsel representing certain suppliers.

11. The Applicants are working diligently with the Monitor to consensually resolve creditor and supplier issues as they arise. This includes considering requests for payment of pre-filing obligations, dealing with the ongoing needs of the business and operations, and answering general questions about the CCAA process and how it will affect particular vendors, suppliers, or other creditors.

12. The Applicants have also advised significant customers that they intend to continue business in the ordinary course and have the financial resources to do so.

13. The early communication strategy for critical business relationships implemented by the Applicants and the Monitor yielded positive results. All of the Applicants' suppliers have continued to supply goods and services post-filing based on existing arrangements or terms negotiated with the Applicants with the result that there has been negligible disruption or impairment of the Applicants' business operations.

IV. Communications with Employees and Retirees

14. The Applicants sent communications to their employees and Canadian retirees shortly after obtaining the Initial Order to inform them of the CCAA filing and to proactively address any concerns that the employees and retirees may have had.

15. An email was sent to all of the Applicants' employees on March 12, 2019 informing them that the Applicants had applied for CCAA protection, and assuring them that the Applicants will continue to operate in the ordinary course, that employee pay, bonuses and benefits would not be affected, and that the Applicants did not have any plans for staffing changes because of the CCAA filing. The email to employees attached a set of FAQs providing additional information about the CCAA filing.

16. The Applicants also held a townhall meeting for their employees in Montreal on the morning of March 13, 2019. The townhall was streamed live and recorded for field employees outside of Montreal as well.

17. A letter dated March 13, 2019 was sent to the Applicants' Canadian retirees informing them that the Applicants had applied for CCAA protection, and assuring them that these CCAA proceedings will not have any impact on the Applicants' day-to-day operations or their Canadian pensions and benefits. The letter also included a set of FAQs providing additional information about the CCAA filing, referred retirees to the Monitor's website, and noted that additional information about the CCAA proceedings was available on the website.

V. Communications with Tax Authorities

18. I am advised by Mr. Wasserman that the Applicants' counsel met with counsel for the Canada Revenue Agency to discuss various issues, including payments under the July 31, 2008 Comprehensive Agreement between ITCAN and Her Majesty the Queen in Right of Canada and the Provinces and matters related to the Applicants' tax audit. In addition, ITCAN has had discussions with the provincial taxing authorities.

VI. Chapter 15 Proceedings

19. I am advised by Jennifer Feldsher of Bracewell LLP, U.S. counsel to FTI, that on March 13, 2019 (the “Petition Date”), FTI, as Monitor, filed a petition for relief under Chapter 15 of the United States Bankruptcy Code (the “Bankruptcy Code”) on behalf of ITCAN, seeking (a) recognition of the Monitor as the foreign representative of ITCAN; (b) recognition of this CCAA proceeding as a foreign main proceeding pursuant to sections 1515, 1517, and 1520 of the Bankruptcy Code; (c) recognition and enforcement of the Initial CCAA Order; and (d) other appropriate relief under the Bankruptcy Code (the “Chapter 15 Case”).

20. The Chapter 15 Case was filed in the United States Bankruptcy Court for the Southern District of New York (the “U.S. Court”). Along with the petition for recognition of ITCAN’s CCAA proceeding (the “Recognition Hearing”), FTI also filed a (i) notice application to schedule the recognition hearing, specify a deadline for filing objections, and specify a form and manner of notice to interested parties (the “Notice Application”); and (ii) an application for interim relief seeking a temporary restraining order and a preliminary injunction order staying execution against the assets, business operations and supply chain, inventory management and distribution processes of ITCAN in the United States pending the Recognition Hearing (the “Injunctive Relief”).

21. Judge Shelley C. Chapman was assigned to the case and an initial hearing took place before her on March 14, 2019. At the first day hearing, Judge Chapman approved the Notice Application and the Injunctive Relief on an *ex parte* basis.

22. Objections to the Injunctive Relief were due on March 22, 2019. FTI did not receive any timely objections to entry of the preliminary injunction order or the requested Injunctive Relief. Accordingly, the Court cancelled the hearing and entered the preliminary injunction order

on March 25, 2019. Under the preliminary injunction order, the following relief was granted pending the Recognition Hearing:

- (a) establishing the Monitor as the “foreign representative” of ITCAN;
- (b) enjoining all persons and entities from seizing, attaching, possessing, executing, and/or enforcing liens against the assets, businesses operation, or processes of ITCAN; and
- (c) providing that the automatic stay pursuant to section 362 of the Bankruptcy Code applies in the Chapter 15 Case within the territorial jurisdiction of the United States.

23. The Recognition Hearing is scheduled for April 15, 2019, and any objections are due by April 8, 2019.

24. Notice of FTI’s motion papers and approved orders in the Chapter 15 Case have been served on, among others, those entities against whom provisional relief was being sought in the United States and parties to litigation pending in the United States in which ITCAN was a party as of the Petition Date.

25. On March 27, 2019, Bracewell, in its capacity as U.S. counsel to the Monitor, also sent a notice to participants in the following non-qualified deferred compensation plans, advising the participants that ITCAN had made a determination to discontinue funding such plans during the pendency of the CCAA proceeding:

- (a) the “deferred income plan” for individuals who are either former senior management employees of Genstar or their beneficiaries;

- (b) the “supplemental executive retirement Plan” for individuals who were either former Genstar employees or their beneficiaries; and
- (c) the “supplementary pension plan” for individuals who were either former Genstar employees or their beneficiaries.

VII. Stay Extension

26. The Applicants are seeking to extend the Stay Period up to and including June 28, 2019. The extension of the Stay Period is necessary and appropriate in the circumstances to allow for the continued operation of the Applicants’ business while they work towards developing a plan of compromise or arrangement for the resolution of the Tobacco Claims.

27. I believe that the Applicants have acted and are continuing to act in good faith and with due diligence in these CCAA proceedings since the granting of the Initial Order. As described above, the Applicants have been working diligently, in consultation with the Monitor, to establish lines of communication with the Tobacco Litigation plaintiffs with a view towards ultimately developing a plan of compromise or arrangement.

28. I understand that the Monitor will be providing an updated Cash Flow Forecast which will demonstrate that the Applicants will have access to sufficient liquidity to fund operations during the requested extension of the Stay Period.

29. The Monitor has expressed its support for the extension of the Stay Period to June 28, 2019.

SWORN BEFORE ME at the City of Montreal, in the Province of Quebec, this 29th day of March, 2019.

I. Berthiaume
Commissioner for Taking Affidavits

Eric Thauvette
Eric Thauvette



APPLICANTS

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

Proceeding commenced at Toronto

AFFIDAVIT OF ERIC THAUVETTE
(Sworn March 29, 2019)

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Matter No: 1144377

**IN THE MATTER OF the *Companies' Creditors Arrangement Act*, R.S.C. 1985, c. C-36, as amended
AND IN THE MATTER OF A PLAN OF COMPROMISE OR ARRANGEMENT OF IMPERIAL
TOBACCO CANADA LIMITED AND IMPERIAL TOBACCO COMPANY LIMITED**

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

APPLICANTS

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

Proceeding commenced at Toronto

**MOTION RECORD OF IMPERIAL TOBACCO
CANADA LIMITED AND IMPERIAL TOBACCO
COMPANY LIMITED**
(Motion for Stay Extension and Amendment to Initial Order)

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