

**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 returnable October 2, 2019)**

September 23, 2019

OSLER, HOSKIN & HARCOURT LLP

P.O. Box 50, 1 First Canadian Place
Toronto, ON M5X 1B8

Deborah Glendinning (LSO# 31070N)

Marc Wasserman (LSO# 44066M)

John A. MacDonald (LSO# 25884R)

Craig Lockwood (LSO# 46668M)

Tel: (416) 362-2111

Fax: (416) 862-6666

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

TO: THE SERVICE LIST

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

**ONTARIO
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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

**COMMON SERVICE LIST
(as at September 5, 2019)**

| | |
|------------|--|
| TO: | <p>THORNTON GROUT FINNIGAN LLP 100 Wellington Street West Suite 3200 TD West Tower, Toronto-Dominion Centre Toronto, ON M5K 1K7 Fax: 416-304-1313</p> <p>Robert I. Thornton Tel: 416-304-0560 Email: rthornton@tgf.ca</p> <p>Leanne M. Williams Tel: 416-304-0060 Email: lwilliams@tgf.ca</p> <p>Rebecca L. Kennedy Tel: 416-304-0603 Email: rkennedy@tgf.ca</p> |
|------------|--|

* For any additions or questions, please contact Nancy Thompson at nancy.thompson@blakes.com

| | |
|----------------|---|
| | <p>Rachel A. Bengino Tel: 416-304-1153 Email: rbengino@tgf.ca</p> <p>Mitchell W. Grossell Tel: 416-304-7978 Email: mgrossell@tgf.ca</p> <p>John L. Finnigan Tel: 416-304-0558 Email: jfinnigan@tgf.ca</p> <p>Lawyers for JTI-Macdonald Corp.</p> |
| AND TO: | <p>DELOITTE RESTRUCTURING INC. Bay Adelaide East 8 Adelaide Street West Suite 200 Toronto, ON M5H 0A9 Fax: 416-601-6690</p> <p>Paul Casey Tel: 416-775-7172 Email: paucasey@deloitte.ca</p> <p>Warren Leung Tel: 416-874-4461 Email: waleung@deloitte.ca</p> <p>Jean-Francois Nadon Tel: 514-390-0059 Email: jnadon@deloitte.ca</p> <p>Phil Reynolds Tel: 416-956-9200 Email: philreynolds@deloitte.ca</p> <p>The Monitor of JTI-Macdonald Corp.</p> |
| AND TO: | <p>BLAKE, CASSELS & GRAYDON LLP 199 Bay Street Suite 4000, Commerce Court West Toronto, ON M5L 1A9 Fax: 416-863-2653</p> |

| | |
|----------------|--|
| | <p>Pamela Huff Tel: 416-863-2958 Email: pamela.huff@blakes.com</p> <p>Linc Rogers Tel: 416-863-4168 Email: linc.rogers@blakes.com</p> <p>Chris Burr Tel: 416-863-3261 Email: chris.burr@blakes.com</p> <p>Aryo Shalviri Tel: 416-863-2962 Email: aryo.shalviri@blakes.com</p> <p>Caitlin McIntyre Tel: 416-863-4174 Email: caitlin.mcintyre@blakes.com</p> <p>Nancy Thompson, Law Clerk Tel: 416-863-2437 Email: nancy.thompson@blakes.com</p> <p>Lawyers for Deloitte Restructuring Inc., in its capacity as Monitor of JTI-Macdonald Corp.</p> |
| AND TO: | <p>MILLER THOMSON LLP Scotia Plaza 40 King Street West, Suite 5800 Toronto, ON M5H 3S1</p> <p>Craig A. Mills Tel: 416-595-8596 Email: cmills@millerthomson.com</p> <p>Lawyers for North Atlantic Operating Company, Inc.</p> |
| AND TO: | <p>MILLER THOMSON LLP 1000, rue De La Gauchetière Ouest, bureau 3700 Montreal, QC H3B 4W5</p> <p>Hubert Sibre Tel: 514-879-4088 Email: hsibre@millerthomson.com</p> <p>Lawyers for AIG Insurance Canada</p> |

| | |
|----------------|---|
| AND TO: | BLUETREE ADVISORS INC. First Canada Place 100 King Street West Suite 5600 Toronto, ON M5X 1C9 William E. Aziz Tel: 416-640-7122 Email: baziz@bluetreadvisors.com Chief Restructuring Officer of JTI-Macdonald Corp. |
| AND TO: | STIKEMAN ELLIOTT LLP Commerce Court West 199 Bay Street, Suite 5300 Toronto, ON M5L 1B9 Fax: 416-947-0866 David R. Byers Tel: 416-869-5697 Email: dbyers@stikeman.com Maria Konyukhova Tel: 416-869-5230 Email: mkonyukhova@stikeman.com Lesley Mercer Tel: 416-869-6859 Email: lmercer@stikeman.com Sanja Sopic Tel: 416-869-6825 Email: ssopic@stikeman.com Lawyers for British American Tobacco p.l.c., B.A.T. Industries p.l.c. and British American Tobacco (Investments) Limited |
| AND TO: | OSLER, HOSKIN & HARCOURT LLP 100 King Street West 1 First Canadian Place Suite 6200, P.O. Box 50 Toronto, ON M5X 1B8 Fax: 416-862-6666 Deborah Glendinning Tel: 416-862-4714 Email: dglendinning@osler.com |

| | |
|----------------|---|
| | <p>Marc Wasserman Tel: 416-862-4908 Email: mwasserman@osler.com</p> <p>John A. MacDonald Tel: 416-862-5672 Email: jmacdonald@osler.com</p> <p>Michael De Lellis Tel: 416-862-5997 Email: mdelellis@osler.com</p> <p>Lawyers for Imperial Tobacco Canada Limited and Imperial Tobacco Company Limited</p> |
| AND TO: | <p>DAVIES WARD PHILLIPS & VINEBERG LLP 155 Wellington Street West Toronto, ON M5V 3J7</p> <p>Jay Swartz Tel: 416-863-5520 Email: jswartz@dwpv.com</p> <p>Robin Schwill Tel: 416-863-5502 Email: rschwill@dwpv.com</p> <p>Natasha MacParland Tel: 416-863-5567 Email: nmacparland@dwpv.com</p> <p>Lawyers for FTI Consulting Canada Inc., in its capacity as Monitor of Imperial Tobacco Canada Limited and Imperial Tobacco Company Limited</p> |
| AND TO: | <p>FTI CONSULTING CANADA INC. 79 Wellington Street West Suite 2010, P.O. Box 104 Toronto, ON M4K 1G8 Fax: 416-649-8101</p> <p>Greg Watson Tel: 416-649-8077 Email: greg.watson@fticonsulting.com</p> <p>Paul Bishop Tel: 416-649-8053 Email: paul.bishop@fticonsulting.com</p> |

| | |
|----------------|---|
| | <p>Jeffrey Rosenberg Tel: 416-649-8073 Email: jeffrey.rosenberg@fticonsulting.com</p> <p>Kamran Hamidi Tel: 416-649-8068 Email: kamran.hamidi@fticonsulting.com</p> <p>Daliwar Azhar Tel: 416-649-8133 Email: dilawar.azhar@fticonsulting.com</p> <p>Monitor of Imperial Tobacco Canada Limited and Imperial Tobacco Company Limited</p> |
| AND TO: | <p>MCCARTHY TÉTRAULT LLP 66 Wellington Street West Suite 5300 TD Bank Tower, Box 48 Toronto, ON M5K 1E6 Fax: 416-868-0673</p> <p>James Gage Tel: 416-601-7539 Email: jgage@mccarthy.ca</p> <p>Heather Meredith Tel: 416-601-8342 Email: hmeredith@mccarthy.ca</p> <p>Paul Steep Tel: 416-601-7998 Email: psteep@mccarthy.ca</p> <p>Trevor Courtis Tel: 416-601-7643 Email: tcourtis@mccarthy.ca</p> <p>Deborah Templer Tel: 416-601-8421 Email: dtempler@mccarthy.ca</p> <p>Lawyers for Rothmans, Benson & Hedges, Inc.</p> |
| AND TO: | <p>BCF LLP 1100, René-Lévesque Blvd., Suite 2500 Montreal, QC H3B 5C9</p> |

| | |
|----------------|---|
| | <p>Me Bertrand Giroux Tel: 514-397-6935 Email: bertrand.giroux@bcf.ca</p> <p>Me Mireille Fontaine Tel: 514-397-4561 Email: mireille.fontaine@bcf.ca</p> <p>Lawyers for the Top Tube Company</p> |
| AND TO: | <p>TORYS LLP 79 Wellington St. West, Suite 3000 Box 270, TD Centre Toronto, ON M5K 1N2 Fax: 416-865-7380</p> <p>Scott Bomhof Tel: 416-865-7370 Email: sbomhof@torys.com</p> <p>Adam Slavens Tel: 416-865-7333 Email: aslavens@torys.com</p> <p>Lawyers for JT Canada LLC Inc. and PricewaterhouseCoopers Inc., in its capacity as receiver of JTI-Macdonald TM Corp.</p> |
| AND TO: | <p>PRICEWATERHOUSECOOPERS PwC Tower 18 York St., Suite 2600 Toronto, ON M5J 0B2 Fax: 416-814-3210</p> <p>Mica Arlette Tel: 416-814-5834 Email: mica.arlette@pwc.com</p> <p>Tyler Ray Email: tyler.ray@pwc.com</p> <p>Receiver and Manager of JTI-Macdonald TM Corp.</p> |
| AND TO: | <p>BENNETT JONES 100 King Street West Suite 3400 Toronto, ON M5X 1A4 Fax: 416-863-1716</p> |

| | |
|----------------|---|
| | <p>Jeff Leon Tel: 416-777-7472 Email: leonj@bennettjones.com</p> <p>Mike Eizenga Tel: 416-777-4879 Email: eizengam@bennettjones.com</p> <p>Sean Zweig Tel: 416-777-6254 Email: zweigs@bennettjones.com</p> <p>Lawyers 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</p> |
| AND TO: | <p>MINISTRY OF THE ATTORNEY GENERAL Legal Services Branch 1001 Douglas Street Victoria, BC V8W 2C5 Fax: 250-356-6730</p> <p>Peter R. Lawless Tel: 250-356-8432 Email: peter.lawless@gov.bc.ca</p> |
| AND TO: | <p>KSV ADVISORY INC. 150 King Street West Suite 2308, Box 42 Toronto, ON M5H 1J9 Fax: 416-932-6266</p> <p>Noah Goldstein Tel: 416-932-6207 Email: ngoldstein@ksvadvisory.com</p> <p>Bobby Kofman Email: bkofman@ksvadvisory.com</p> <p>Financial Advisory 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</p> |

| | |
|----------------|---|
| AND TO: | <p>MINISTRY OF THE ATTORNEY GENERAL Crown Law Office - Civil 720 Bay Street, 8th Floor Toronto, ON M7A 2S9 Fax: 416-326-4181</p> <p>Jacqueline Wall Tel: 416-434-4454 Email: jacqueline.wall@ontario.ca</p> <p>Edmund Huang Tel: 416-524-1654 Email: edmund.huang@ontario.ca</p> <p>Peter Entecott Tel: 647-467-7768 Email: peter.entecott@ontario.ca</p> <p>Lawyers for Her Majesty the Queen in Right of Ontario</p> |
| AND TO: | <p>FISHMAN FLANZ MELAND PAQUIN LLP 4100 – 1250 René-Lévesque Blvd. West Montreal, QC H3A 3H3</p> <p>Avram Fishman Email: afishman@ffmp.ca</p> <p>Mark E. Meland Tel: 514-932-4100 Email: mmeland@ffmp.ca</p> <p>Margo R. Siminovitch Email: msiminovitch@ffmp.ca</p> <p>Jason Dolman Email: jdolman@ffmp.ca</p> <p>Nicolas Brochu Email: nbrochu@ffmp.ca</p> <p>Tina Silverstein Email: tsilverstein@ffmp.ca</p> <p>CHAITONS LLP 5000 Yonge Street 10th Floor Toronto, ON M2N 7E9</p> |

| | |
|-----------------------|--|
| | <p>Harvey Chaiton Tel: 416-218-1129 Email: harvey@chaitons.com</p> <p>George Benchetrit Tel: 416-218-1141 Email: george@chaitons.com</p> <p>TRUDEL JOHNSTON & LESPÉRANCE 750, Cote de la Place d'Armes, Bureau 90 Montréal, QC H2Y 2X8 Fax: 514-871-8800</p> <p>Philippe Trudel Tel: 514-871-0800 Email: philippe@tjl.quebec</p> <p>Bruce Johnston Tel: 514-871-085 Email: bruce@tjl.quebec</p> <p>André Lespérance Tel: 514-871-8385 x204 Email: andre@tjl.quebec</p> <p>Gabrielle Gagné Tel: 514-871-8385 x207 Email: gabrielle@tjl.quebec</p> <p>Lawyers for Conseil québécois sur le tabac et la santé, Jean-Yves Blais and Cécilia Létourneau (Quebec Class Action Plaintiffs)</p> |
| <p>AND TO:</p> | <p>KLEIN LAWYERS 100 King Street West, Suite 5600 Toronto, Ontario M5X 1C9</p> <p>Douglas Lennox Tel: 416-506-1944 Email: dlennox@callkleinlawyers.com</p> <p>Lawyers for the representative plaintiff, Kenneth Knight, in the certified British Columbia class action, <i>Knight v. Imperial Tobacco Canada Ltd.</i>, Supreme Court of British Columbia, Vancouver Registry No. L031300</p> |

| | |
|----------------|--|
| AND TO: | <p>JENSEN SHAWA SOLOMON DUGID HAWKES LLP 800, 304 – 8 Avenue SW Calgary, AB T2P 1C2 Fax: 403-571-1528</p> <p>Carsten Jensen, QC Tel: 403-571-1526 Email: jensenc@jssbarristers.ca</p> <p>Sabri Shawa, QC Tel: 403-571-1527 Email: shawas@jssbarristers.ca</p> <p>Stacy Petriuk Tel: 403-571-1523 Email: petriuks@jssbarristers.ca</p> <p>PALIARE ROLAND ROSENBERG ROTHSTEIN LLP 155 Wellington Street West, 35th Floor Toronto, ON M5V 3H1</p> <p>Kenneth T. Rosenberg Email: ken.rosenberg@paliareroland.com</p> <p>Lilly Harmer Email: lily.harmer@paliareroland.com</p> <p>Massimo (Max) Starnino Email: max.starnino@paliareroland.com</p> <p>Danielle Glatt Email: Danielle.glatt@paliareroland.com</p> <p>Elizabeth Rathbone Tel: 416-646-4300 Email: elizabeth.rathbone@paliareroland.com</p> <p>Lawyers for Her Majesty the Queen in Right of Alberta</p> |
| AND TO: | <p>STEWART MCKELVEY 1959 Upper Water Street, Suite 900 PO Box 997 Halifax, NS B3J 2X2 Fax: 902-420-1417</p> |

| | |
|----------------|--|
| | <p>Robert G. MacKeigan, Q.C. Tel: 902-444-1771 Email: robbie@stewartmckelvey.com</p> <p>Lawyers for Sobeys Capital Incorporated</p> |
| AND TO: | <p>CASSELS BROCK & BLACKWELL LLP 2100 Scotia Plaza 40 King Street West Toronto, ON M5H 3C2</p> <p>Shayne Kukulowicz Tel: 416-860-6463 Fax: 416-640-3176 Email: skukulowicz@casselsbrock.com</p> <p>Jane Dietrich Tel: 416-860-5223 Fax: 416-640-3144 Email: jdietrich@casselsbrock.com</p> <p>Joseph Bellissimo Tel: 416-860-6572 Fax: 416-642-7150 Email: jbellissimo@casselsbrock.com</p> <p>Monique Sassi Tel: 416-860-6886 Fax: 416-640-3005 Email: msassi@casselsbrock.com</p> <p>Lawyers for Ernst & Young Inc, in its capacity as court-appointed monitor of Rothmans, Benson & Hedges, Inc.</p> |
| AND TO: | <p>ERNST & YOUNG INC. Ernst & Young Tower 100 Adelaide Street West P.O. Box 1 Toronto, ON M5H 0B3</p> <p>Murray A. McDonald Tel: 416-943-3016 Email: murray.a.mcdonald@ca.ey.com</p> <p>Brent Beekenkamp Tel: 416-943-2652 Email: brent.r.beekenkamp@ca.ey.com</p> |

| | |
|----------------|--|
| | <p>Edmund Yau Tel: 416-943-2177 Email: edmund.yau@ca.ey.com</p> <p>Matt Kaplan Tel: 416-932-6155 Email: matt.kaplan@ca.ey.com</p> <p>Monitor of Rothmans, Benson & Hedges, Inc.</p> |
| AND TO: | <p>GOWLING WLG (CANADA) LLP 1 First Canadian Place 100 King Street West, Suite 1600 Toronto, ON M5X 1G5 Fax: 416-862-7661</p> <p>Derrick Tay Tel: 416-369-7330 Email: derrick.tay@gowlingwlg.com</p> <p>Clifton Prophet Tel: 416-862-3509 Email: clifton.prophet@gowlingwlg.com</p> <p>Steven Sofer Tel: 416-369-7240 Email: steven.sofer@gowlingwlg.com</p> <p>Lawyers for Philip Morris International Inc.</p> |
| AND TO: | <p>PALIARE ROLAD ROSENBERG ROTHSTEIN LLP 155 Wellington Street West, 35th Floor Toronto, ON M5V 3H1</p> <p>Kenneth T. Rosenberg Email: ken.rosenberg@paliareroland.com</p> <p>Lilly Harmer Email: lily.harmer@paliareroland.com</p> <p>Massimo (Max) Starnino Email: max.starnino@paliareroland.com</p> <p>Danielle Glatt Email: Danielle.glatt@paliareroland.com</p> |

| | |
|----------------|--|
| | <p>Elizabeth Rathbone Tel: 416-646-4300 Email: elizabeth.rathbone@paliareroland.com</p> <p>ROEBOTHAN MCKAY MARSHALL Paramount Building 34 Harvey Road, 5th Floor St. John's NL A1C 3Y7 Fax: 709-753-5221</p> <p>Glenda Best Tel: 705-576-2255 Email: gbest@wrmmlaw.com</p> <p>Lawyers for Her Majesty the Queen in Right of Newfoundland</p> |
| AND TO: | <p>WESTROCK COMPANY OF CANADA CORP. 15400 Sherbrooke Street East Montreal, QC H1A 3S2</p> <p>Dean Jones Tel: 514-642-9251 Email: dean.jones@westrock.com</p> |
| AND TO | <p>MINISTRY OF THE ATTORNEY GENERAL Civil Law Division, FSCO Branch 5160 Yonge Street, 17th Floor Toronto, ON M2N 6L9 Fax: 416-590-7556</p> <p>Michael Scott Tel: 416-226-7834 Email: michael.scott@fSCO.gov.on.ca</p> <p>Lawyers for the Superintendent of Financial Services</p> |
| AND TO: | <p>KAPLAN LAW 393 University Avenue, Suite 2000 Toronto, ON M5G 1E6</p> <p>Ari Kaplan Tel: 416-565-4656 Email: ari@kaplanlaw.ca</p> <p>Counsel to the Former Genstar U.S. Retiree Group Committee</p> |

| | |
|----------------|--|
| AND TO: | <p>McMILLAN LLP Brookfield Place 181 Bay Street, Suite 4400 Toronto, ON M5J 2T3</p> <p>Wael Rostom Tel: 416-865-7790 Email: wael.rostom@mcmillan.ca</p> <p>Michael J. Hanlon Tel: 416-987-5061 Email: michael.hanlon@mcmillan.ca</p> <p>Lawyers for The Bank of Nova Scotia</p> |
| AND TO | <p>MERCHANT LAW GROUP LLP c/o #400 – 333 Adelaide St. West Toronto, ON M5V 1R5 Fax: 613-366-2793</p> <p>Evatt Merchant, QC Tel: 613-366-2795 Email: emerchant@merchantlaw.com</p> <p>Chris Simoes Email: csimoes@merchantlaw.com</p> <p>Lawyers for the Class Action Plaintiffs (MLG)</p> |
| AND TO: | <p>LABSTAT INTERNATIONAL INC. 262 Manitou Drive Kitchener, ON N2C 1L3</p> <p>Kimberly Stevenson Chow (CFO) Tel: 519-748-5409 Email: kstevens@labstat.com</p> |
| AND TO: | <p>CHERNOS FLAHERTY SVONKIN LLP 220 Bay Street, Suite 700 Toronto, ON M5J 2W4 Fax: 647-725-5440</p> <p>Patrick Flaherty Tel: 416-855-0403 Email: pflaherty@cfscounsel.com</p> |

| | |
|----------------|---|
| | <p>Bryan D. McLeese Tel: 416-855-0414 Email: bmcleese@cfscounsel.com</p> <p>STOCKWOODS LLP 77 King Street West, Suite 4130 TD North Tower, P.O. Box 140, TD Centre Toronto, ON M5K 1H1 Fax: 416-593-9345</p> <p>Brian Gover Tel: 416-593-2489 Email: briang@stockwoods.ca</p> <p>Justin Safayeni Tel: 416-593-3494 Email: justins@stockwoods.ca</p> <p>Lawyers for R.J. Reynolds Tobacco Company and R.J. Reynolds Tobacco International Inc.</p> |
| AND TO: | <p>BRAUTI THORNING LLP 161 Bay Street, Suite 2900 Toronto, ON M5J 2S1</p> <p>Steven Weisz Tel: 416-304-6522 Email: sweisz@btlegal.ca</p> <p>INCH HAMMOND PROFESSIONAL CORPORATION 1 King Street West, Suite 500 Hamilton, ON L8P 4X8</p> <p>Amanda McInnis Tel: 905-525-0031 Email: amcinnis@inchlaw.com</p> <p>Lawyer for Grand River Enterprises Six Nations Ltd.</p> |
| AND TO: | <p>STROSBERG SASSO SUTTS LLP 1561 Ouellette Avenue Windsor, ON M8X 1K5 Fax: 866-316-5308</p> <p>William V. Sasso Tel: 519-561-6222 Email: wvs@strosbergco.com</p> |

| | |
|----------------|--|
| | <p>David Robins Tel: 519-561-6215 Email: drobins@strosbergco.com</p> <p>Lawyers for The Ontario Flue-Cured Tobacco Growers' Marketing Board, plaintiffs in Ontario Superior Court of Justice Court File No. 1056/10CP (Class Proceedings)</p> |
| AND TO: | <p>ATTORNEY GENERAL OF CANADA Department of Justice Canada Ontario Regional Office, Tax Law Section 120 Adelaide Street West, Suite 400 Toronto, ON M5H 1T1 Fax: 416-973-0810</p> <p>Diane Winters, General Counsel Tel: 647-256-7459 Email: diane.winters@justice.gc.ca</p> <p>Lawyers for the Minister of National Revenue</p> |
| AND TO: | <p>LAX O'SULLIVAN LISUS GOTTLIEB LLP Suite 2750, 145 King Street West Toronto, ON M5H 1J8</p> <p>Jonathan Lisus Tel: 416-598-7873 Email: jlisus@lolg.ca</p> <p>Matthew Gottlieb Tel: 416-644-5353 Email: mgottlieb@lolg.ca</p> <p>Nadia Campion Tel: 416-642-3134 Email: ncampion@lolg.ca</p> <p>Andrew Winton Tel: 416-644-5342 Email: awinton@lolg.ca</p> <p>Lawyers for the Court-Appointed Mediator</p> |

| | |
|----------------|---|
| AND TO: | <p>FOGLER, RUBINOFF LLP Suite 3000, P.O. Box 95 Toronto-Dominion Centre 77 King Street West Toronto, ON M5K 1G8 Fax: 416-941-8852</p> <p>Vern W. DaRe Tel: 416-941-8842 Email: vdare@foglers.com</p> <p>CANADIAN CANCER SOCIETY 116 Albert Street, Suite 500 Ottawa, ON K1P 5G3 Fax: 613-565-2278</p> <p>Robert Cunningham Tel: 613-565-2522 ext. 4981 Email: rcunning@cancer.ca</p> <p>Lawyers for Canadian Cancer Society</p> |
| AND TO: | <p>BLANEY MCMURTRY LLP 2 Queen Street East, Suite 1500 Toronto, ON M5C 3G5</p> <p>David Ullmann Tel: 416-596-4289 Email: dullmann@blaney.com</p> <p>Dominic T. Clarke Tel: 416-593-3968 Email: dclarke@blaney.com</p> <p>Alexandra Teodorescu Tel: 416-596-4279 Email: ateodorescu@blaney.com</p> <p>Lawyers for La Nordique Compagnie D'Assurance du Canada</p> |
| AND TO: | <p>VAILLANCOURT & CLOCCHIATTI 2600, boul. Laurier, bur. 760 Quebec, QC G1V 4T3 Fax: 416-643-050-</p> |

| | |
|----------------|--|
| | <p>Marc-André Maltais Tel: 418-657-8702, ext. 3018 Email: marc-andre.maltais@retraitequebec.gouv.qc.ca</p> <p>Lawyers for Retraite Québec</p> |
| AND TO: | <p>LECKER & ASSOCIATES 4789 Yonge Street, Suite 514 Toronto, ON M2N 0G3</p> <p>Kimberley Sebag Tel: 416-223-5391 x339 Email: ksebag@leckerslaw.com</p> <p>Lawyer for Imperial Tobacco claimant</p> |
| AND TO: | <p>McMILLAN LLP 181 Bay Street, Suite 4400 Toronto, ON M5J 2T3 Fax: 416-865-7048</p> <p>Brett Harrison Tel: 416-865-7932 Email: brett.harrison@mcmillan.ca</p> <p>Lawyers for the Province of Quebec</p> |
| AND TO: | <p>ATTORNEY GENERAL OF CANADA Department of Justice Canada Ontario Regional Office, L.E.A.D. 120 Adelaide Street West, Suite 400 Toronto, ON M5H 1T1</p> <p>John C. Spencer Tel: 647-256-0557 Email: john.spencer@justice.gc.ca</p> <p>Victor Paolone Tel: 647-256-7548 Email: victor.paolone@justice.gc.ca</p> |

| | |
|----------------|---|
| AND TO: | <p>McMILLAN LLP Brookfield Place 181 Bay Street, Suite 4400 Toronto, ON M5J 2T3 Fax: 416-865-7048</p> <p>Stephen Brown-Okruhlik Tel: 416-865-7043 Email: stephen.brown-okruhlik@mcmillan.ca</p> <p>Lawyers for Citibank Canada</p> |
| AND TO: | <p>BORDEN LADNER GERVAIS LLP Bay Adelaide Centre, East Tower 22 Adelaide Street West, Suite 3400 Toronto, ON M5H 4E3 Fax: 416-367-6749</p> <p>Alex MacFarlane Tel: 416-367-6305 Email: amacfarlane@blg.com</p> <p>James W. MacLellan Tel: 416-367-6592 Email: jmaclellan@blg.com</p> <p>Judith Manger Tel: 416-367-6428 Email: jmanger@blg.com</p> <p>Lawyers for Chubb Insurance Company of Canada</p> |

Email Service List

rthornton@tgf.ca; lwilliams@tgf.ca; rkennedy@tgf.ca; rbengino@tgf.ca; mgrossell@tgf.ca; jfinnigan@tgf.ca; rmanea@tgf.ca; paucasey@deloitte.ca; waleung@deloitte.ca; jnadon@deloitte.ca; philreynolds@deloitte.ca; pamela.huff@blakes.com; linc.rogers@blakes.com; chris.burr@blakes.com; aryo.shalviri@blakes.com; caitlin.mcintyre@blakes.com; emily.hazlett@blakes.com; nancy.thompson@blakes.com; cmills@millერთhompson.com; hsibre@millერთhompson.com; baziz@bluetreadvisors.com; dbyers@stikeman.com; mkonyukhova@stikeman.com; lmercer@stikeman.com; ssopic@stikeman.com; dglendinning@osler.com; mwasserman@osler.com; jmacdonald@osler.com; mdelellis@osler.com; wmalik@osler.com; jswartz@dwpv.com; rschwill@dwpv.com; nmacparland@dwpv.com; szaifman@dwpv.com; nrenner@dwpv.com; tbarbiero@dwpv.com; greg.watson@fticonsulting.com; paul.bishop@fticonsulting.com; jeffrey.rosenberg@fticonsulting.com; kamran.hamidi@fticonsulting.com; dilawar.azhar@fticonsulting.com; jgage@mccarthy.ca; hmeredith@mccarthy.ca; psteep@mccarthy.ca; tcourtis@mccarthy.ca; dtempler@mccarthy.ca; kfick@mccarthy.ca; bertrand.giroux@bcf.ca; mireille.fontaine@bcf.ca; sbomhof@torys.com; aslavens@torys.com; mica.arlette@pwc.com; tyler.ray@pwc.com; leonj@bennettjones.com; eizengam@bennettjones.com; zweigs@bennettjones.com; peter.lawless@gov.bc.ca; ngoldstein@ksvadvisory.com; bkofman@ksvadvisory.com; jacqueline.wall@ontario.ca; shahana.kar@ontario.ca; edmund.huang@ontario.ca; peter.entecott@ontario.ca; afishman@ffmp.ca; mmeland@ffmp.ca; msiminovitch@ffmp.ca; jdolman@ffmp.ca; nbrochu@ffmp.ca; tsilverstein@ffmp.ca; harvey@chaitons.com; george@chaitons.com; philippe@tjl.quebec; bruce@tjl.quebec; andre@tjl.quebec; gabrielle@tjl.quebec; dlennox@callkleinlawyers.com; jensenc@jssbarristers.ca; shawas@jssbarristers.ca; petriuks@jssbarristers.ca; ken.rosenberg@paliareroland.com; lily.harmer@paliareroland.com; max.starnino@paliareroland.com; danielle.glatt@paliareroland.com; elizabeth.rathbone@paliareroland.com; karen.lam@paliareroland.com; sarita.sanasie@paliareroland.com; natalia.botelho@paliareroland.com; michelle.jackson@paliareroland.com; robbie@stewartmckelvey.com; skukulowicz@casselsbrock.com; jdietrich@casselsbrock.com; jbellissimo@casselsbrock.com; msassi@casselsbrock.com; murray.a.mcdonald@ca.ey.com; brent.r.beekenkamp@ca.ey.com; edmund.yau@ca.ey.com; matt.kaplan@ca.ey.com; derrick.tay@gowlingwlw.com; clifton.prophet@gowlingwlw.com; steven.sofer@gowlingwlw.com; gbest@wrmmlaw.com; dean.jones@westrock.com; michael.scott@fsco.gov.on.ca; ari@kaplanlaw.ca; wael.rostom@mcmillan.ca; michael.hanlon@mcmillan.ca; emerchant@merchantlaw.com; csimoes@merchantlaw.com; jtim.ccaa@merchantlaw.com; rothmans.ccaa@merchantlaw.com; kstevens@labstat.com; pflaherty@cfscounsel.com; bmclease@cfscounsel.com; briang@stockwoods.ca; justins@stockwoods.ca; sweisz@btlegal.ca; amcinnis@inchlaw.com; wvs@strosbergco.com; drobins@strosbergco.com; diane.winters@justice.gc.ca; jlisus@lolg.ca; mgottlieb@lolg.ca; ncampion@lolg.ca; awinton@lolg.ca; vdare@foglers.com; rcunning@cancer.ca; dullmann@blaney.com; dclarke@blaney.com; ateodorescu@blaney.com; marc-andre.maltais@retraitequebec.gouv.qc.ca; ksebag@leckerslaw.com; john.bringardner@acuris.com; brett.harrison@mcmillan.ca; john.spencer@justice.gc.ca; victor.paolone@justice.gc.ca; stephen.brown-okruhlik@mcmillan.ca; amacfarlane@blg.com; jmaclellan@blg.com; jmanger@blg.com;

* For any additions or questions, please contact Nancy Thompson at nancy.thompson@blakes.com

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LIMITED AND IMPERIAL TOBACCO COMPANY LIMITED

APPLICANTS

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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
returnable October 2, 2019)**

The Applicants will make a motion before the Honourable Justice McEwen of the Ontario Superior Court of Justice (Commercial List) on Wednesday, October 2, 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 to the Motion Record at Tab 3 providing 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; and
 - (b) extending the Stay Period (defined below) until and including March 6, 2020; and
2. Such further and other relief as this Court may deem just.

THE GROUNDS FOR THE MOTION ARE:

1. The Applicants face an existential threat from tobacco-related litigation across Canada, including multiple class actions, government claims seeking to recover health care costs, and other ongoing proceedings (collectively, the “**Tobacco Litigation**”);
2. On March 1, 2019, the Court of Appeal for Quebec issued an appeal judgment condemning Imperial Tobacco Canada Limited to pay a potential maximum amount that, with interest, is over \$9 billion;
3. In addition, the plaintiffs in the Tobacco Litigation collectively seek hundreds of billions of dollars in damages, which exceeds the Applicants’ total assets by many orders of magnitude;
4. 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 from time to time, the “**Initial Order**”);
5. FTI Consulting Canada Inc. was appointed to act as the Monitor in the Initial Order;
6. Justice Winkler was appointed as the Court-Appointed Mediator in the Initial Order;
7. The Initial Order granted a stay of proceedings until April 11, 2019, or such later date as this Court may order (as extended by further court orders, the “**Stay Period**”);
8. The Court has previously extended the Stay Period until October 4, 2019;
9. The requested 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 (as defined in the Initial Order);
10. The Applicants have been acting in and continue to act in good faith and with due diligence in these CCAA proceedings;

11. During the extended Stay Period, the Applicants intend to conclude negotiations for forms of nondisclosure agreements, engage in the mediation process under the direction of the Court-Appointed Mediator, and to work diligently (in consultation with the Monitor) to explore a negotiated resolution with the Tobacco Litigation stakeholders;
12. It is just and convenient and in the interests of the Applicants and their respective stakeholders that the Stay Period be extended;
13. The Applicants have sufficient liquidity to continue operations through the requested Stay Period;
14. The Monitor supports the extension of the Stay Period;
15. The provisions of the CCAA, including section 11.02, and the inherent and equitable jurisdiction of this Honourable Court;
16. 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
17. 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 September 23, 2019;
2. The Fifth Report of the Monitor (to be filed); and
3. Such further and other evidence as counsel may advise and this Court may permit.

September 23, 2019

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

Deborah Glendinning
Tel: 416-862-4714

Email: dglendinning@osler.com

Marc Wasserman

Tel: 416-862-4908

Email: mwasserman@osler.com

John MacDonald

Tel: 416-862-5672

Email: jmacdonald@osler.com

Craig Lockwood

Tel: 416-862-5988

Email: clockwood@osler.com

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

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
(Motion for Stay Extension
returnable October 2, 2019)**

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

Deborah Glendinning (LSO# 31070N)
Marc Wasserman (LSO# 44066M)
John A. MacDonald (LSO# 25884R)
Craig Lockwood (LSO# 46668M)

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

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

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 September 23, 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”). In addition, I receive frequent updates from the Applicants’ counsel regarding these proceedings.

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 March 6, 2020.

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 (as amended from time to time, the "Initial Order"). The Initial Order appointed FTI as the Monitor and granted a stay of proceedings in favour of the Applicants and certain related parties until and including April 11, 2019 or such later date as the Court may order (as extended by further court orders, the "Stay Period"). Most recently, this Court extended the Stay Period until and including October 4, 2019.

4. The Applicants sought CCAA protection in the face of 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, 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, and awarded damages of up to a potential maximum amount of over \$9 billion against ITCAN. Moreover, ITCAN is a defendant in more than 20 large Tobacco Litigation claims that have been filed across Canada that collectively seek notional recovery of hundreds of billions of dollars.

5. ITCAN, JTI-Macdonald Corp. ("JTI"), and Rothmans Benson & Hedges Inc. ("RBH" and, with the Applicants and JTI, the "Tobacco Companies") 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. Counsel for the

Tobacco Companies have consulted on common issues in order to coordinate the three CCAA proceedings to the maximum extent possible.

II. The Mediation and Current Status of the CCAA Proceedings

6. At the joint comeback hearing for the Imperial, JTI, and RBH CCAA proceedings on April 4 – 5, 2019 (the “Comeback Hearing”), Justice Winkler was appointed the “Court-Appointed Mediator” in all three CCAA proceedings with a mandate to, among other things, adopt any process he considered appropriate for facilitating a global settlement of the Tobacco Litigation.

7. During the most recent Stay Period, the Applicants engaged in the mediation process in accordance with the directions provided by the Court-Appointed Mediator:

- (a) *Mediation Briefs*: Pursuant to a schedule set by the Court-Appointed Mediator, the Applicants, JTI, RBH, and various Tobacco Litigation plaintiffs exchanged mediation briefs on August 1, 2019. The provinces also submitted reply mediation briefs on September 12, 2019.
- (b) *Non-Disclosure Agreements*: The Applicants have continued to negotiate non-disclosure agreements (“NDAs”) with the provinces in order to facilitate the sharing of confidential information by the Applicants with the provinces and their professional advisors.

The Applicants have been negotiating two forms of NDAs with the provinces: (i) a form of NDA that will govern the sharing of confidential information with external advisors retained by the provinces (an “Advisor NDA”); and (ii) a form of NDA that will govern the sharing of confidential information directly with the provinces (an “Interested Party NDA”). The Applicants have now agreed on a form of

Advisor NDA with the Consortium¹, Alberta, Newfoundland and Labrador and Ontario, and Advisor NDAs with certain advisors to these provinces have been entered into. The Applicants and provinces are currently negotiating a form of amending agreement to the Advisor NDAs. In addition, negotiations on the form of Interested Party NDA with the provinces are ongoing and have advanced significantly during the most recent Stay Period. The Applicants anticipate reaching an agreement on a final form of Interested Party NDA with the provinces in the near future.

- (c) *Data Room*: In order to facilitate the exchange of information necessary for a successful mediation process, data rooms were set up during the most recent Stay Period for each of the Imperial, JTI and RBH CCAA proceedings.

For the Imperial data room, the Applicants were sent an initial request for documents and information (including historical financial information, information regarding intercompany transactions, future oriented financials, and information related to the Tobacco Litigation) that was compiled by the Monitor in consultation with the Court-Appointed Mediator. The Applicants undertook an extensive process to collect the documents and information, and provided them to the Monitor for uploading to the Imperial data room. The data room went live on August 16, 2019. I understand that the other Tobacco Companies received similar information requests and that their data rooms went live on the same date.

The data rooms are being maintained by the Monitor for the respective CCAA proceedings under guidelines developed in consultation with the Court-Appointed

¹ British Columbia, Manitoba, New Brunswick, Nova Scotia, Prince Edward Island, and Saskatchewan.

Mediator. Among other things, parties and professional advisors seeking access to the data rooms must first execute an NDA. The Monitors in the three CCAA proceedings and certain professional advisors for the Consortium, Ontario and the Court-Appointed Mediator have been provided access to the Imperial data room.

The data room guidelines contemplate that parties may submit requests for additional documents or information. The Monitor has received one such request. The Applicants located documents and information responsive to the additional request, which were provided to the Monitor and uploaded to the data room.

- (d) *Meetings with Court-Appointed Mediator:* The Applicants participated in numerous meetings with the Court-Appointed Mediator during the most recent Stay Period. In addition, the Applicants understand that the Court-Appointed Mediator has held meetings with the Tobacco Litigation plaintiffs and other stakeholders, including representatives of British American Tobacco, p.l.c. and its affiliates (collectively, the “BAT Group”).

8. The Court-Appointed Mediator has scheduled a plenary session, which will be attended by the Tobacco Companies, the Tobacco Litigation plaintiffs, and other stakeholders. The Applicants anticipate that the Court-Appointed Mediator will schedule further steps in the mediation process following the plenary session.

9. The Applicants continue to believe that this mediation process and interactions facilitated by the Court-Appointed Mediator will allow all stakeholders to better understand the competing interests of other parties in the CCAA proceedings, and assist in identifying a path forward for ultimately developing a plan of compromise or arrangement. The Applicants have

diligently adhered to all directions made by the Court-Appointed Mediator relating to scheduling and the mediation process, and will continue to do so during the extended Stay Period.

III. Implementation of the Genstar Settlement

10. Before the most recent extension of the Stay Period, the Applicants entered into a settlement (the “Genstar Settlement”) related to a deferred income plan, a supplemental executive retirement plan, and a supplementary pension plan established by Genstar Corporation (collectively, the “Genstar Plans”).

11. On June 26, 2019, the Court granted an Order approving and giving effect to the Genstar Settlement (the “Genstar Settlement Approval Order”). Among other things, the Genstar Settlement Approval Order provided that the Applicants would pay USD \$1.44 million (the “Notice Amount”) to the Genstar Plans’ beneficiaries (the “Genstar Beneficiaries”) in accordance with a formula developed by the Court-appointed representative counsel (“Representative Counsel”) and representatives for the Genstar Beneficiaries. In addition, the Genstar Settlement Approval Order provided that the Applicants would pay USD \$160,000 to Representative Counsel on account of legal fees and disbursements (with the Notice Amount, the “Settlement Payments”).

12. Subsequently, FTI, in its capacity as the foreign representative of ITCAN, filed a motion with the United States Bankruptcy Court for the Southern District of New York (the “U.S. Court”) for an order recognizing and enforcing the Genstar Settlement Approval Order. The U.S. Court granted a recognition order on July 18, 2019.

13. After obtaining the Genstar Settlement Approval Order and the U.S. recognition order, the Applicants made the Settlement Payments. However, the Applicants encountered a few logistical issues in making the Settlement Payments:

- (a) The Applicants anticipated paying the Notice Amount to the Genstar beneficiaries through direct deposits to their accounts. However, the payments were sent out as cheques instead, without the Applicants' knowledge, which created unexpected delays in the Genstar Beneficiaries receiving their shares of the Notice Amount. In addition, the cheque for one Genstar Beneficiary was sent to an outdated address. However, the Applicants understand that the cheque was later forwarded to the correct address and that all Genstar Beneficiaries have now received their Settlement Payments.
- (b) As a result of a processing error, 5 Genstar Beneficiaries were sent a cheque for an incorrect amount (3 were underpaid and 2 were overpaid). After discovering this error, the Applicants promptly sent payments for the difference to the 3 underpaid Genstar Beneficiaries through direct deposits to their accounts. The Applicants and U.S. counsel to FTI sent letters to the overpaid beneficiaries to ask that the overpayments be returned, and both beneficiaries have returned the overpayment.

14. As these issues came to light, Representative Counsel and the Applicants' counsel worked cooperatively to respond to inquiries from Genstar Beneficiaries promptly. In addition, the Applicants provided updates to and consulted with the Monitor as it became aware of the Settlement Payment issues. Despite these challenges, the Applicants successfully made all of the Settlement Payments required by the Genstar Settlement Approval Order.

IV. Other Matters

15. As explained in my affidavit sworn on June 17, 2019 for the previous stay extension motion (the "June Thauvette Affidavit"), the Federal government published the *Tobacco Products Regulations (Plain and Standardized Appearance)*, SOR/2019-107 (the "Regulations") mandating

plain and standardized appearance of tobacco packages and products on May 1, 2019. The Regulations will be implemented in two phases. In phase 1, manufacturers will no longer be able to sell branded tobacco products after November 9, 2019 while retailers have an additional 90 days to sell branded tobacco products. In phase 2, manufacturers will have to ensure that all manufacturing, sales and distribution of cigarettes are in a slide and shell packaging format after November 9, 2021 while retailers have an additional 3 months to ensure all sales of cigarettes are in a slide and shell packaging format.

16. During the transition under phase 1, the Applicants anticipate there will be accelerated sales of certain branded products to certain of their wholesale and retail customer base, resulting in corresponding inventory level fluctuations. As a result, the Applicants anticipate timing differences in historical levels of receipts and disbursements in the short term with the expectation that their cash flows will be regularized once the transition to plain packaging is complete.

17. In addition, ITCAN must indemnify British American Tobacco Mexico, S.A. de C.V. (“BAT Mexico”) for certain costs resulting from the transition to plain packaging. Since July 2015, ITCAN has purchased finished tobacco products from BAT Mexico under a Finished Good Supply contract manufacturing agreement (the “BAT MX Agreement”). While BAT Mexico owns all of the materials and equipment needed to produce the tobacco products, ITCAN is required to compensate BAT Mexico for the costs of implementing any changes requested by ITCAN under the BAT MX Agreement. It is currently estimated that ITCAN will have to pay BAT Mexico approximately £5.4 million as compensation for branded wrapping material purchased by BAT Mexico that can no longer be used because of the Regulations and approximately £27.8 million as compensation for BAT Mexico writing off the undepreciated cost of manufacturing equipment

that will be rendered obsolete by the Regulations. It is currently anticipated that BAT Mexico will be taking an impairment charge for the manufacturing equipment in December 2019 resulting in BAT Mexico invoicing ITCAN in the same month, with payment being made by ITCAN to BAT Mexico in early 2020.

18. The June Thauvette Affidavit also referenced a letter agreement (the “Letter Agreement”) between the Applicants and the Bank of Nova Scotia (“BNS”) in which BNS agreed to renew or extend outstanding LCs on terms set out in the Letter Agreement, including an agreement by the Applicants to maintain a minimum cash balance in their accounts with BNS in an amount equal to the daily settlement risk borne by BNS and the total amount of the LCs (the “Minimum Balance”). On July 29, 2019, the Applicants and BNS entered into an Amended and Restated Letter Agreement. The principal changes introduced in the Amended and Restated Letter Agreement are (a) BNS agreeing that it may, at its discretion, issue additional LCs; (b) the Applicants agreeing to increase the Minimum Balance by an amount equal to 103% of any additional LCs issued by BNS; and (c) the Applicants agreeing, if required by BNS, to seek an order creating a charge in BNS’ favour securing BNS’s exposure under all outstanding LCs. A copy of the Amended and Restated Letter Agreement without schedules is attached as Exhibit “A”.

19. On June 10, 2019, the Canada Revenue Agency (the “CRA”) issued notices of reassessment for ITCAN’s 2014 and 2011 taxation years:

- (a) The 2014 reassessment denied three deductions made by ITCAN in calculating its taxable income: (i) a deduction for amounts paid to settle litigation relating to dividends paid in 1986 and 1987 by the Flintkote Company, an indirect subsidiary of ITCAN; (ii) a deduction for legal expenses related to the Flintkote litigation; and (iii) a deduction related to fees charged by BAT Mexico for having to write-off its

undepreciated cost in certain equipment that became redundant after ITCAN was no longer able to sell a certain type of tobacco product due to regulatory changes in Canada in 2014.

- (b) The 2011 reassessment denied the carry back of losses arising in 2014 and was entirely consequential to the 2014 reassessment.

20. ITCAN objected to both the 2011 and 2014 reassessments by filing a Notice of Objection on September 5, 2019.

21. On September 12, 2019, BAT publicly announced a programme to simplify its business and create a more efficient, agile and focused BAT Group by, among other things, reducing management layers, creating a fewer number of larger and more accountable business units, and simplifying key business processes. The programme is expected to be substantially complete by January 2020 and envisages a reduction of around 2,300 roles globally. The Applicants do not expect any significant changes in their business as a result of this programme and expect that it will have a minimal impact on their operations in Canada.

22. Overall, there has been negligible disruption of the Applicants' business operations. The stay of proceedings has therefore achieved its objective of providing operational stability and fostering an environment that encourages stakeholder discussions.

V. Stay Extension

23. As noted above, the Applicants are seeking to extend the Stay Period up to and including March 6, 2020.

24. 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. During the

extended Stay Period, the Applicants intend to conclude negotiations for the remaining NDAs, to engage in the mediation process under the direction of the Court-Appointed Mediator, and to work diligently (in consultation with the Monitor) to explore a negotiated resolution with the Tobacco Litigation stakeholders.

25. The Applicants' overriding objective remains the eventual global resolution of all Tobacco Claims in a co-ordinated fashion, without preferring the claim of one stakeholder over the others, which will require the continuing participation of all stakeholders in a co-ordinated process under continuing Court supervision.

26. 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. In assisting with preparation of the Cash Flow Forecast, the Applicants highlighted uncertainty in the market that may limit their ability to maintain and/or increase prices of their products, which may have an adverse impact on sales revenues. In addition, the Applicants have experienced a decline in sales during the past several months as compared to year-over-year numbers for the same period. The Applicants understand that the other Tobacco Companies in Canada and tobacco companies in the United States have experienced similar declines. The Applicants are currently analyzing the data in consultation with the Monitor to better understand this development.

27. The Monitor has expressed its support for the extension of the Stay Period to March 6, 2020.

SWORN BEFORE ME at the City of Montreal, in the Province of Quebec, this 23rd day of September, 2019.

I. Berthiaume
Commissioner for Taking Affidavits

Eric Thauvette
Eric Thauvette



Ontario

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

Proceeding commenced at Toronto

AFFIDAVIT OF ERIC THAUVETTE
(Sworn September 23, 2019)

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

Deborah Glendinning (LSO# 31070N)
Marc Wasserman (LSO# 44066M)
John A. MacDonald (LSO# 25884R)
Craig Lockwood (LSO# 46668M)

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

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

Matter No: 1144377

TAB A

This is **Exhibit "A"** referred to in the Affidavit of Eric Thauvette sworn before me this 23rd day of September, 2019.

I. Berthiaume

A COMMISSIONER FOR TAKING AFFIDAVITS, ETC.



Private and Confidential

July 29, 2019

Imperial Tobacco Canada Limited
3711 St-Antoine Street West
Montreal, QC H4C 3P6

Imperial Tobacco Company Limited
3711 St-Antoine Street West
Montreal, QC H4C 3P6

Attention: Eric Thauvette

Dear Sir:

Re: *Re Imperial Tobacco Canada Limited and Imperial Tobacco Company Limited, CV-19-616077-00CL (the "CCAA Proceedings")*

We hereby refer to:

- A credit agreement dated March 26, 2010 (the "**LC Credit Agreement**") among The Bank of Nova Scotia ("**Us**", "**We**" or "**BNS**"), as lender, and Imperial Tobacco Canada Limited ("**ITCAN**") and Imperial Tobacco Company Limited ("**ITCO**"), as borrowers, and establishing a committed standby letter of credit facility in a maximum amount of \$100,000,000 (the "**LC Credit Facility**") and the letters of credit issued thereunder described in Schedule "A" (the "**Province LCs**");
- Three (3) letters of credit issued at the request of ITCAN on a discretionary stand-alone basis independently from the LC Credit Agreement and further detailed in Schedule "B" hereof (the "**Pension LCs**" and, together with the Province LCs and any Additional LCs (as defined below), the "**LCs**" and each a "**LC**");
- A letter agreement dated March 26, 2010 between BNS and ITCAN establishing a revolving demand credit facility by way of overdraft in a maximum amount of \$25,000,000, as amended on December 22, 2015 (the "**Overdraft Facility Agreement**"), which was terminated prior to the commencement of the CCAA Proceedings with your consent and agreement;
- A Canadian Dollar money management services positioning service agreement (inter-company) dated July 20, 2010 among BNS, ITCAN, ITCO, Imperial Tobacco Products Limited ("**ITPL**"), Channel 2 Inc. ("**Channel 2**") and Imperial Tobacco IT Solutions Inc. ("**IT Solutions**") (the "**CAD Positioning Agreement**"). ITPL no longer holds any accounts with Us and has been removed from the CAD Positioning Agreement. Channel 2 merged with, and is continuing as, ITCO. IT Solutions changed its name to Imperial Tobacco Services Inc. ("**IT Services**"; and, together with ITCAN and ITCO, "**You**"); and
- A US Dollar money management services positioning service agreement (inter-company) dated July 20, 2010 among BNS, ITCAN, ITCO and ITPL (the "**USD Positioning**");

Agreement” and, together with the CAD Positioning Agreement, the **“Positioning Agreements”**). ITPL has been removed from the US Positioning Agreement.

We further refer to the Second Amended and Restated Initial Order dated March 12, 2019 made by the Ontario Superior Court of Justice (Commercial List) (the **“Court”**) in the CCAA Proceedings (as may be further amended and restated from time to time, the **“Initial Order”**). FTI Consulting Canada Inc. was appointed as Monitor in the CCAA Proceedings (the **“Monitor”**).

The purpose of this letter agreement (**“Agreement”**) is to amend and restate the understandings and agreements originally reached among the undersigned parties to this Agreement (collectively, the **“Parties”**) as confirmed in the original letter agreement dated as of May 22, 2019 for the continuation of certain cash management services and the renewal of the LCs during the CCAA Proceedings, without, however, novating any of the obligations thereunder.

FOR VALUE RECEIVED:

Cash Management

1. You represent and agree that the aggregate balance of unrestricted cash held on deposit in ITCAN’s accounts with Us shall not: (a) from and after the date hereof up to June 28, 2019 fall below \$263,500,000, and (b) from and after June 28, 2019 fall below \$363,500,000 (in each case, the **“Minimum Balance”**). In any event, You will give Us at least 21 days prior written notice of the aggregate unrestricted cash on deposit with Us being projected by You or the Monitor to fall below the applicable Minimum Balance (a **“Balance Notice”**). You will provide Us with timely notice of any and all restricted cash on deposit in ITCAN’s accounts with Us. The Minimum Balance shall be increased by an additional amount equal to 103% of the face value of all Additional LCs, unless You shall have prepaid Your reimbursement obligations with respect to such Additional LCs.
2. You have instructed Us to close the account held for Imasco Pension Funds Society (**“Imasco”**). To the extent applicable, such account shall be brought to a zero balance by Us through netting and combination of Your accounts and the account of Imasco.
3. All account operations and services, including applicable daily payment limits in respect of such accounts and services, will be adjusted as agreed and described in Schedule **“C”**; provided, however, on each day that the actual aggregate unrestricted cash on deposit by ITCAN with Us is less than the applicable Minimum Balance, a reduced daily processing limit for wire transfers shall be established for that day in accordance with the following formula (the **“Reduced Daily Wire Limit”**):

Reduced Daily Wire Limit = \$115,000,000 x (A/the applicable Minimum Balance)

A = the actual aggregate unrestricted cash on deposit by ITCAN with Us determined at or about 10 a.m. (Toronto time) on the applicable date taking into account any items posted in our system overnight but not cleared through Your accounts with Us as at that time;

On each day that actual aggregate unrestricted cash on deposit by ITCAN with Us is below the applicable Minimum Balance, You will stay below the Reduced Daily Wire Limit calculated by You in good faith for such day with the supervision of the Monitor. Without limiting Your forgoing obligation, We may issue a written notice to You from time to time advising You of the Reduced Daily Wire Limit based on the information available to Us in respect of ITCAN's accounts with Us and such determination by Us shall be final and binding on You for the applicable date (or any longer period specified by Us in such notice).

4. Except as amended or superseded by this Agreement, You and We agree that any cash management services provided by BNS to You, including under the Positioning Agreement, will be maintained in accordance with the terms and conditions of the applicable existing agreements with Us and any order of the Court in the CCAA Proceedings.
5. You acknowledge and agree to our netting and combining of, and setting-off against, one or more of any of Your accounts by Us to eliminate any negative balances from time to time in any account that any of You may have with Us irrespective of which of Your names the subject accounts are held in accordance with existing agreements or past practices.
6. Notwithstanding the allowance for a Reduced Daily Wire Limit pursuant to paragraph 3, upon the occurrence of an event described in subparagraphs (a) to (d) and (g) of the definition of a Triggering Event (as defined below), You acknowledge that We are not restricted by this Agreement from making an application to the Court for leave to seek an order permitting Us, among other things, to terminate the Positioning Agreements. Upon the occurrence of an event described in subparagraphs (e) or (f) of the definition of a Triggering Event, We may immediately terminate the Positioning Agreements, zero out all negative account balances through netting of accounts and cancel all daily processing limits in respect of such accounts and services; provided that, upon BNS taking any of the foregoing actions, Your obligation to hold the Minimum Balance on deposit with Us pursuant to paragraph 1 hereof shall be of no further force and effect as of the date that is five business days after the date that an amount of cash equal to the LC Exposure (as defined below) has been deposited in a non-disbursement account with Us in accordance with subparagraph 12(d) hereof.

Letters of Credit

7. You have requested extensions and renewals of the Province LCs and the Pension LCs. You acknowledge and agree that BNS' agreement to permit renewal of those LCs, and of any Additional LCs after the commencement of the CCAA Proceedings constitutes a new post-filing extension of credit by BNS and that You will treat the LC Exposure as such for all purposes, including treating the LC Exposure as unaffected under any plan of arrangement proposed by You. Except as expressly contemplated in paragraphs 7 and 8 hereof, You will not request any new extensions of credit (including letters of credit) and We are under no obligation to extend any further credit under the LC Credit Agreement or otherwise.

8. BNS may, from time to time, on an uncommitted basis and at its sole discretion, agree to issue one or more standby letters of credit or letters of guarantee at the request of ITCAN or ITCO on a stand-alone, basis, in addition to the Province LCs and the Pension LCs, and any renewals thereof (such additional letters of credit or letters of guarantee, and any renewals thereof, are the “**Additional LCs**”, and each, an “**Additional LC**”).
9. Should We decide to issue an Additional LC, the terms and conditions under which such Additional LC is issued, including without limitation with respect to letter of credit commission and issuance, fees payable, term, and, if applicable, any prepayment obligations, will be determined by BNS in its sole discretion at the time of issuance, and set out in LC documentation and reimbursement agreements, in form and content satisfactory to BNS in its sole discretion, with respect to such Additional LC.
10. We agree not to issue any notice of non-renewal under the LCs, allowing automatic renewal of same in accordance with their respective terms until the earlier of (x) the implementation of a plan of arrangement in the CCAA Proceedings, and (y) the occurrence of a Triggering Event (as defined below) upon the occurrence of which We will have the option (but not the obligation) to issue notices of non-renewal in accordance with the terms of the applicable LC, provided, however, that We will refrain from issuing a notice of non-renewal if You deposit unrestricted cash in an amount equal to our LC Exposure (as defined below) in a non-disbursement account with Us in accordance with paragraphs 12(d) and 13. For the purposes of this Agreement “**Triggering Event**” means any of the following: (a) You send Us a Balance Notice, (b) the aggregate cash balance on deposit with BNS falls below the applicable Minimum Balance, (c) You receive notice from Us that You have breached a term of this Agreement and You have not cured such breach within 15 days of receipt of written notice of such breach, (d) a motion or application is filed or commenced by You or any person requesting an order terminating the CCAA Proceedings or requesting to have any one of You become subject to bankruptcy proceeding or any another type of insolvency proceeding (whether or not such proceedings are concurrent); provided, however, that any application for a bankruptcy order or a termination of the CCAA Proceeding will not constitute a Triggering Event unless (i) You are not actively contesting such application or (ii) You are actively contesting such application and leave from the stay is granted for such application to proceed, (e) the CCAA Proceedings are converted to, or overlaid with, another type of insolvency or bankruptcy proceeding, (f) IT Services becomes subject to a bankruptcy or insolvency proceeding or any such proceedings involving IT Services are commenced or applied for by or against IT Services, other than a voluntary filing by IT Services to become an applicant in the CCAA Proceedings, or (g) the BNS Charging Order (as defined below) is not rendered by the Determination Date (as defined below).
11. Upon our request, You will petition the Court for the issuance of an order creating a charge in our favour, over all of your assets ranking ahead of all other security interest, hypothecs, liens or other charges, other than the Administration Charge, the Court-Appointed Mediator Charge, the Directors’ Charge and the Sales and Excise Tax Charge (each as defined in the Initial Order), securing the LC Exposure of all outstanding LCs (the “**BNS Charging Order**”) and the Court shall make the BNS Charging Order within 60 days from the date on which You received such request from Us (the “**Determination Date**”).

12. Provided that We are continuing to comply with all of our commitments hereunder (after being provided with written notice of any alleged breach and provided with a reasonable period of time to cure), You hereby:
- a. Acknowledge BNS' set-off rights, including without limitation, its contractual, legal and equitable set-off and compensation rights.
 - b. Waive the application of the stay of proceedings granted under the Initial Order (as amended from time to time) as it relates to Us exercising any set-off rights and any other rights contemplated under this Agreement in accordance with the terms of this Agreement.
 - c. Acknowledge and agree that upon a draw being made by a beneficiary under an LC and that draw being honoured by Us, We may immediately satisfy ITCAN's or ITCO's reimbursement obligation to Us in connection with such draw under the LC in full against all amounts which may at any time stand to the credit of ITCAN and/or ITCO in any account held with Us, together with any interest thereon due or accruing due to You (the "**Amounts**"), including by way of set-off. If any reimbursement obligation is satisfied by application of any of the Amounts, the applicable Minimum Balance shall be automatically reduced on a dollar for dollar basis by the amount applied in respect of any such reimbursement. The term "account" shall include a debt owned by Us to You (or any one of You), which by its term is not due.
 - d. You agree: (i) upon the occurrence of an event described in subparagraphs (a) to (c) or (f) of the definition of a Triggering Event, to deposit within 3 business days an amount of cash equal to the Letter of Credit Exposure (as defined in the LC Credit Agreement, with the amendment that such definition will be deemed to include a reference to the Pension LCs and the Additional LCs (to the extent the reimbursement obligations under such LCs have not been prepaid) in addition to the Province LCs; such amended definition for the purpose of this Agreement, the "**LC Exposure**") at that time in a non-disbursement account with Us, or (ii) upon the occurrence of an event described in subparagraphs (d), (e) or (g) of the definition of a Triggering Event, to immediately deposit an amount of cash equal to the LC Exposure at that time in a non-disbursement account with Us, and, in either case, should You fail to do so, We may transfer funds equal to the LC Exposure from Amounts to a non-disbursement account in the name of ITCAN and may also satisfy payment of any outstanding bank fees and Legal Fees from the Amounts in accordance with the terms of this Agreement. The Minimum Balance shall be automatically reduced on a dollar for dollar basis by the amount of the cash on deposit in any such non-disbursement account.
13. Cash held on deposit in any such non-disbursement account shall only be released to You by Us after Your reimbursement obligations relating to drawn LCs have been satisfied in full, all remaining undrawn LCs expire or are returned to Us for cancellation and all of our outstanding bank fees and Legal Fees in accordance with the terms of this Agreement.

14. We agree that any and all fees payable by You to Us in connection with the LCs shall be charged in the ordinary course but only in respect of the LCs that comprise the existing LC Exposure at the applicable time, and no standby, commitment or other fees shall be payable by You to Us in connection with any unused or inaccessible portion of the LC Credit Facility or otherwise pursuant to the LC Credit Agreement or the Overdraft Facility Agreement. No fees shall be payable by You to Us in connection with any LCs that have expired or that have been drawn and paid.

General

15. Subject to paragraph 14 hereof, You agree to make payments for fees owing under the LC Credit Agreement, any of the LCs, the Positioning Agreements or any other agreements with Us in the ordinary course (without set-off). You further agree to pay (without set-off) the reasonable and documented fees incurred by McMillan LLP, as counsel to BNS, up to an aggregate maximum amount of \$500,000 (inclusive of applicable taxes) (the “**Legal Fees**”), within 10 business days of receipt of an invoice (with privileged information redacted). The submission to You of McMillan’s redacted invoices in order to achieve the above in no way constitutes a waiver of BNS’ privilege with regards to the work performed by McMillan LLP.
16. You represent and agree that since the commencement of the CCAA Proceedings You have not to date, and that You will not during the CCAA Proceedings going forward, provide any credit support, credit enhancement or other form of loss protection to any other cash management bank, or issuer of a letter of credit, letter of guarantee, surety bond or similar instrument without also providing the same protection to Us to ensure BNS’ exposure is protected to the same degree and proportion as such other person (taking into account to the quantum of cash management and letter of credit exposure).
17. The rights hereby conferred on BNS are in addition to and not in substitution for or derogation from any other rights which BNS may have under law or under any securities now or hereafter held by BNS including without limitation, any or any other set-off rights.
18. In case any one or more of the provisions contained herein shall, for any reason, be held to be invalid, illegal, or unenforceable in any respect, such invalidity, illegality or unenforceability shall not affect any other provisions of this Agreement, and this Agreement shall be construed as if such provision(s) had never been contained herein, provided that such provision(s) shall be curtailed, limited or eliminated only to the extent necessary to remove the invalidity, illegality or unenforceability.
19. In the event of any conflict or inconsistency between the provisions of this Agreement and the provisions of any other agreement between Us or any one or more of You, then the provisions contained in this Agreement shall prevail to the extent of such conflict or inconsistency.
20. This Agreement shall be governed by and interpreted in accordance with the laws of the Province of Québec, and each of the parties irrevocably attorns to the non-exclusive

jurisdiction of the Court presiding over the CCAA Proceedings to adjudicate all matters related to the agreement set out in this Agreement.

21. Unless otherwise stated, all references herein to sums of money are expressed in, and all payments provided for herein shall be made in, Canadian Dollars.
22. No waiver of any provision of this Agreement is binding unless it is in writing and signed by all the parties to this Agreement entitled to grant the waiver. No failure to exercise, and no delay in exercising, any right or remedy, under this Agreement will be deemed to be a waiver of that right or remedy. No waiver of any breach of any provision of this Agreement will be deemed to be a waiver of any subsequent breach of that provision.
23. This Agreement may be executed and delivered in any number of counterparts, each of which when executed and delivered is an original but all of which taken together constitute one and the same instrument. To evidence its execution of an original counterpart of this Agreement, a party may send a copy of its original signature on the execution page hereof to the other party by facsimile or electronic transmission and such transmissions shall constitute delivery of an executed copy of this Agreement to the receiving party.
24. This Agreement amends and restates the original letter agreement entered into between the Parties as of May 22, 2019, with respect to the subject matter hereof, without, however, novating any of the obligations thereunder. Except as amended hereby, such letter agreement continues with full force and effect, unamended.

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Yours truly,

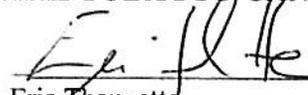
THE BANK OF NOVA SCOTIA

By: 
Name: Rocco Fabiano
Title: Vice President


Name: Sanaa Khatri
Title: Associate Director

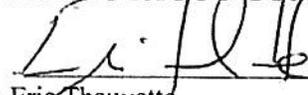
We acknowledge and agree to the terms and conditions in this Agreement.
Dated this 29th day of July, 2019

IMPERIAL TOBACCO CANADA LIMITED

By: 
Name: Eric Thauvette
Title: Vice President & Chief Financial Officer

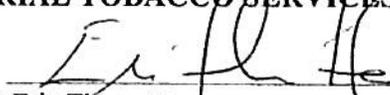
We acknowledge and agree to the terms and conditions in this Agreement.
Dated this 29th day of July, 2019

IMPERIAL TOBACCO COMPANY LIMITED

By: 
Name: Eric Thauvette
Title: Vice President & Chief Financial Officer

We acknowledge and agree to the terms and conditions in this Agreement.
Dated this 29th day of July, 2019

IMPERIAL TOBACCO SERVICES INC.

By: 
Name: Eric Thauvette
Title: President

TAB 3

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

**ONTARIO
SUPERIOR COURT OF JUSTICE
COMMERCIAL LIST**

| | | |
|--------------------|---|--------------------------------|
| THE HONOURABLE MR. |) | WEDNESDAY, THE 2 ND |
| |) | |
| JUSTICE MCEWEN |) | DAY OF OCTOBER, 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 March 6, 2020, 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 September 23, 2019, the Fifth 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 Waleed Malik affirmed September ●, 2019, 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.

EXTENSION OF THE STAY PERIOD

2. **THIS COURT ORDERS** that the Stay Period as defined in paragraph 18 of the Second Amended and Restated Initial Order dated March 12, 2019 is hereby extended until and including March 6, 2020.

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.

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)**

OSLER, HOSKIN & HARCOURT LLP

Box 50, 1 First Canadian Place
Toronto ON M5X 1B8

Deborah Glendinning (LSO# 31070N)
Marc Wasserman (LSO# 44066M)
John A. MacDonald (LSO# 25884R)
Craig Lockwood (LSO# 46668M)

Tel: 416.362.2111
Fax: 416.862.6666

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

**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 returnable October 2, 2019)

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

Deborah Glendinning (LSO# 31070N)
Marc Wasserman (LSO# 44066M)
John A. MacDonald (LSO# 25884R)
Craig Lockwood (LSO# 46668M)

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

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

Matter No: 1144377