

**ONTARIO
SUPERIOR COURT OF JUSTICE
COMMERCIAL LIST**

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THE HONOURABLE)

FRIDAY, THE 6TH

MR. JUSTICE MCEWEN)

DAY OF DECEMBER, 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**

Applicant



**ORDER
(APPOINTMENT OF REPRESENTATIVE COUNSEL)**

THIS JOINT MOTION made by the Tobacco Monitors being FTI Consulting Canada Inc. in its capacity as court-appointed Monitor (the "**Imperial Monitor**") of Imperial Tobacco Canada Limited and Imperial Tobacco Company Limited (collectively, "**Imperial**"), Ernst & Young Inc. in its capacity as court-appointed Monitor of Rothmans, Benson & Hedges Inc. ("**RBH**") and Deloitte Restructuring Inc. in its capacity as court-appointed Monitor of JTI-Macdonald Corp. ("**JTIM**" and together with Imperial and RBH, the "**Applicants**") for advice and directions regarding an order appointing representative counsel in these proceedings was heard this day at 330 University Avenue, Toronto, Ontario,

ON READING the Joint Notice of Motion of the Tobacco Monitors dated November 25, 2019 including the Sixth Report to Court of the Imperial Monitor dated November 26, 2019 (the "**Sixth Report**") filed, and on hearing the submissions of counsel for each of the Tobacco Monitors, the Applicants and such other counsel as were present, no one else appearing although duly served as appears from the affidavits of service of Monique Sassi sworn

November 25 and November 26, 2019 and the affidavit of service of Robert Nicholls sworn November 27, 2019.

1. **THIS COURT ORDERS** that the timing and method of service and filing of this motion is hereby abridged and validated such that the motion is properly returnable today and this Court hereby dispenses with further service of this motion and of this Order.

2. **THIS COURT ORDERS** that capitalized terms not otherwise defined in this Order shall have the meaning given to them in the Sixth Report.

3. **THIS COURT ORDERS** that The Law Practice of Wagner & Associates, Inc. (the "**Representative Counsel**") be and is hereby appointed to represent in these proceedings the TRW Claimants as defined in Schedule "A" hereto, which definition may be amended following consultation among the Court-Appointed Mediator, the Tobacco Monitors and Representative Counsel and as approved by further order of this Court.

4. **THIS COURT ORDERS** that, subject to further order of this Court, Representative Counsel shall represent the interests of the TRW Claimants as set out in paragraph 5 below without any obligation to consult with or seek individual instructions from those on whose behalf they have been appointed to represent, provided however, that Representative Counsel is hereby authorized, but not obligated, to establish a committee (the "**Representative Committee**") on such terms as may be agreed to by the Court-Appointed Mediator and the Tobacco Monitors or established by further order of this Court.

5. **THIS COURT ORDERS** that Representative Counsel be and is hereby authorized to take all steps and to perform all acts necessary or desirable to carry out the terms of this Order, including, without limitation, by:

- (a) participating in and negotiating on behalf of the TRW Claimants in the Mediation;

- (b) working with the Court-Appointed Mediator and the Tobacco Monitors to develop a process for the identification of valid and provable claims of TRW Claimants, and as appropriate, addressing such claims in the Mediation or the CCAA Proceedings;
- (c) responding to inquiries from TRW Claimants in the CCAA Proceedings; and
- (d) performing such other actions as approved by this Court.

For greater certainty, nothing in this Order shall be construed as determining the validity of any claims of any TRW Claimants.

6. **THIS COURT ORDERS** that Representative Counsel be and is hereby authorized, at its discretion, on such terms as may be consented to by the Court-Appointed Mediator and the Tobacco Monitors or further order of this Court to retain and consult with subject area experts and other professional and financial advisors as the Representative Counsel may consider necessary to assist it with the discharge of its mandate.

7. **THIS COURT ORDERS** that paragraphs 36 and 38 of the Second Amended and Restated Initial Order are hereby amended and are deemed from and after the date hereof to include Representative Counsel as appointed herein among the parties who shall be paid their reasonable professional fees and disbursements in each case on an hourly basis, from and after the date of this Order and among those who benefit from the Administration Charge as defined therein and shall be paid by the Applicants in accordance with an agreement among the Applicants.

8. **THIS COURT ORDERS** that Representative Counsel shall not be liable for any act or omission in respect of their appointment or the fulfillment of their duties in carrying out the provisions of this Order, other than for gross negligence or willful misconduct. No action or


other proceedings shall be commenced against Representative Counsel in respect of alleged gross negligence or willful misconduct, except with prior leave of this Court on at least 7 days' notice to Representative Counsel and upon such further order as this Court may make in respect of security for costs to be given by the plaintiff for the costs of the Representative Counsel in connection with any such action or proceeding.

9. **THIS COURT ORDERS** that the Representative Counsel may from time to time apply to this Court for advice and directions in respect of their appointment or the fulfillment of their duties in carrying out the provisions of this Order, upon notice to the Applicants and the Tobacco Monitors and to other interested parties, unless otherwise ordered by this Court.



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Schedule "A"

Definition of TRW Claimants

"TRW Claimants" means all individuals (including their respective successors, heirs, assigns, litigation guardians and designated representatives under applicable provincial family law legislation) who assert or may be entitled to assert a claim or cause of action as against one or more of the Applicants, the ITCAN subsidiaries, the BAT Group, the JTIM Group or the PMI Group, each as defined below, or persons indemnified by such entities, in respect of:

- (i) the development, manufacture, importation, production, marketing, advertising, distribution, purchase or sale of Tobacco Products (defined below),
- (ii) the historical or ongoing use of or exposure to Tobacco Products; or
- (iii) any representation in respect of Tobacco Products,

in Canada or in the case of the Applicants, anywhere else in the world, including, without limitation, claims for contribution or indemnity, personal injury or tort damages, restitutionary recovery, non-pecuniary damages or claims for recovery grounded in provincial consumer protection legislation but specifically excluding claims:

- (i) in any person's capacity as a trade supplier, contract counterparty, employee, pensioner, or retiree;
- (ii) captured by any of the following commercial class actions:
 - (A) *The Ontario Flue-Cured Tobacco Growers' Marketing Board v. JTI-Macdonald Corp.*, Court File No. 64462 CP (London, Ontario);
 - (B) *The Ontario Flue-Cured Tobacco Growers' Marketing Board v. Rothmans, Benson & Hedges Inc.*, Court File No. 1056/10CP (London, Ontario);
 - (C) *The Ontario Flue-Cured Tobacco Growers' Marketing Board v. Imperial Tobacco Canada Ltd.*, Court File No. 64757 CP (London, Ontario);
- (iii) captured by any of the following class actions:
 - (A) *Conseil québécois sur le tabac et la santé et al. v. JTI-Macdonald Corp. et al.*, Court File No. 500-06-000076-980 (Montreal, Quebec);
 - (B) *Cécilia Létourneau et al. v. Imperial Tobacco Canada Ltd., et al.*, Court File No. 500-06-000070-983 (Montreal, Quebec);

(C) *Kenneth Knight v. Imperial Tobacco*, Court File No. L031300
(Vancouver, British Columbia).

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

"ITCAN Subsidiaries" means Imperial Tobacco Services Inc., Imperial Tobacco Products Limited, Marlboro Canada Limited, Cameo Inc., Medallion Inc., Allan Ramsay and Company Limited, John Player & Sons Ltd., Imperial Brands Ltd., 2004969 Ontario Inc., Construction Romir Inc., Genstar Corporation, Imasco Holdings Group, Inc., ITL (USA) limited, Genstar Pacific Corporation, Imasco Holdings Inc., Southward Insurance Ltd., Liggett & Myers Tobacco Company of Canada Limited or entities related to or affiliated with them other than the ITL Applicants and the BAT Group.

"JTIM Group" means the entities currently or formerly related to or affiliated with JTIM.

"PMI Group" means Phillip Morris International Inc. and all entities related to or affiliated with it, other than RBH.

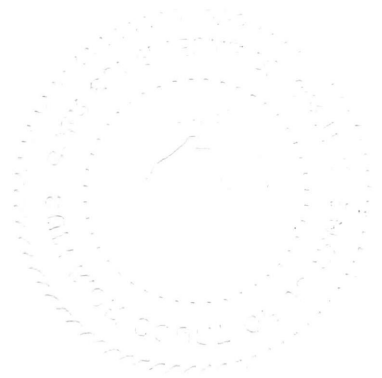
"Tobacco Products" means any product made in whole or in part of tobacco that is intended for human consumption or use, including any component, part, or accessory of or used in connection with a tobacco product, including cigarettes, tobacco sticks (intended for smoking and requiring further preparation before they are smoked), loose tobacco intended for incorporation into cigarettes, cigars, cigarillos, pipe tobacco, kreteks, bidis and smokeless tobacco (including chewing tobacco, nasal snuff and oral snuff), but does not include Vapour Products.

"Vapour Products" means:

- (i) a device that produces emissions in the form of an aerosol and is intended to be brought to the mouth for inhalation of the aerosol without burning of (i) a substance or (ii) a mixture of substances;
- (ii) a part or accessory that may be used with those devices; and
- (iii) a substance or mixture of substances, whether or not it contains tobacco or nicotine, that is intended for use with or without those devices to produce emissions in the form of an aerosol without burning.

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
(RE APPOINTMENT OF
REPRESENTATIVE COUNSEL)**

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