

No: 500-06-000076-980

PROVINCE DE QUÉBEC DISTRICT
DE MONTRÉAL

COUR SUPÉRIEURE
(Chambre des actions collectives)

THE LAW PRACTICE OF WAGNER &
ASSOCIATES INC.

Demandeurs

c.

JTI-MACDONALD CORP.
IMPERIAL TOBACCO CANADA LIMITEE
ROTHMANS, BENSON & HEDGES INC.

Défendeurs

-et-

FTI CONSULTING CANADA INC.
ERNST & YOUNG INC.
DELOITTE RESTRUCTURING INC.

Intervenants

-et-

SERVICES PROACTIO INC.
EPIQ CLASS ACTION SERVICES
CANADA INC.
CONSEIL QUÉBÉCOIS SUR LE TABAC
ET LA SANTÉ et JEAN-YVES BLAIS

Mis-en-cause

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

ONTARIO
SUPERIOR COURT OF JUSTICE
COMMERCIAL LIST

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

AND IN THE MATTER OF THE PLANS OF
COMPROMISE OR ARRANGEMENT OF:

JTI-MACDONALD CORP.

-and-

IMPERIAL TOBACCO CANADA
LIMITED AND IMPERIAL TOBACCO
COMPANY LIMITED

-and-

ROTHMANS, BENSON & HEDGES INC.

MOTION RECORD

**PCC Representative Counsel's Motion for Directions regarding Emphysema Diagnosis in
PCC Compensation Plan and Quebec Administration Plan**

(In Writing)

March 26, 2026

WAGNERS

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PCC Representative Counsel

**TO: THE COMMON SERVICE
LIST**

**EPIQ CLASS ACTION
SERVICES CANADA INC.**

SERVICES PROACTIO INC.

No: 500-06-000076-980

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-and-

ROTHMANS, BENSON & HEDGES INC.

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AND IN THE MATTER OF THE PLANS OF
COMPROMISE OR ARRANGEMENT OF:

JTI-MACDONALD CORP.

-and-

IMPERIAL TOBACCO CANADA
LIMITED AND IMPERIAL TOBACCO
COMPANY LIMITED

-and-

ROTHMANS, BENSON & HEDGES INC.

**PCC Representative Counsel's Motion for Directions regarding Emphysema Diagnosis in PCC
Compensation Plan and Quebec Administration Plan**

(In Writing)

NOTICE OF MOTION

TAKE NOTICE that Representative Counsel for the Pan-Canadian Claimants (“**PCC Representative Counsel**”) makes a motion in writing before the Honourable Chief Justice

Geoffrey B. Morawetz presiding over the Ontario Superior Court of Justice (Commercial List) (“**CCAA Court**”) and before the Honourable Justice Catherine Piché presiding over the Superior Court of Québec (“**QSC**”) seeking direction to affirm the clear language of the Pan-Canadian Claimants’ Compensation Plan (the “**PCC Compensation Plan**”) and the Quebec Class Action Administration Plan (the “**Quebec Administration Plan**”) (collectively, the “**Compensation Plans**”) substantially in the form of Orders included at Tab 3 of the Motion Record, to the effect that:

- (i) under the Compensation Plans, proof of a diagnosis of Emphysema satisfies the PCC Compensable Disease eligibility criterion under the PCC Compensation Plan and the *Blais* Compensable Disease eligibility criterion under the Quebec Administration Plan; and
- (ii) for this purpose, a claimant is required to establish a diagnosis of either Emphysema or COPD (GOLD Grade III or IV), and not both.

THE MOTION IS BROUGHT pursuant to the *Companies’ Creditors Arrangement Act*, R.S.C. 1985, c. C-36, as amended (the “**CCAA**”) and in accordance with the Plans of Compromise and Arrangement of JTI-Macdonald Corp. (“**JTIM**”), Imperial Tobacco Canada Limited and Imperial Tobacco Company Limited (together, “**Imperial**”), and Rothmans, Benson & Hedges Inc. (“**RBH**”) (collectively, the “**CCAA Plans**”), approved by Order of the Court dated March 6, 2025, which include the Quebec Administration Plan and PCC Compensation Plan.

PROPOSED METHOD OF HEARING: The motion is to be conducted in writing.

THE GROUNDS FOR THE MOTION ARE:

1. The CCAA Court has jurisdiction under Section 8.2 of the CCAA Plans to hear and determine matters relating to the interpretation, administration, and ongoing supervision of the PCC Compensation Plan. The Superior Court of Quebec and the CCAA Court jointly have jurisdiction under section 7.2 of the CCAA Plans to hear and determine matters relating to the interpretation, administration, and ongoing supervision of the Quebec Administration Plan.
2. The PCC Compensation Plan and the Quebec Administration Plan form part of the CCAA Plans and are currently being implemented. They are intended to be administered in accordance with their intent and text.
3. The eligibility criteria under the Compensation Plans were informed by the certified class definition and findings in the *Blais* Class Action, in which emphysema was held to be a compensable disease, without reference to any severity levels.
4. In developing the PCC Eligibility Criteria, particular attention was paid to aligning those criteria with the *Blais* class definition, with a view to achieving parity of treatment of claimants across jurisdictions. The selection of Emphysema and COPD (GOLD Grade III or IV) as Compensable Diseases was informed by: (i) the epidemiological analysis of Dr. Prabhat Jha, which supported the inclusion of Lung Cancer, Throat Cancer, and COPD as tobacco-related diseases appropriate for compensation; and (ii) the *Blais* judgments, which provided the judicial foundation for compensation for Lung Cancer, Throat Cancer, and Emphysema.

5. The Compensation Plans expressly define Emphysema and COPD (GOLD Grade III or IV) distinctly, and as Compensable Diseases.
6. This Motion seeks directions to affirm the clear language of the Compensation Plans, to provide guidance to the Claims Administrator in the fair and consistent administration of the Plans. The requested directions do not amend or modify the Compensation Plans in any manner.
7. The requested directions do not displace or interfere with the role of the Claims Administrator in assessing the sufficiency of the medical evidence submitted in support of individual claims in accordance with the Compensation Plans.
8. PCC Representative Counsel has conferred with Quebec Class Counsel, who have advised that the QCAPs fully support the conclusions herein sought as they relate to the Quebec Administration Plan.

THE FOLLOWING will be used in support of the Motion:

9. Written Submissions of PCC Representative Counsel;
10. The CCAA Plans; and
11. Such further and other materials as counsel may advise and this Honourable Court may permit.

DATED: March 26, 2026



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No. : 500-06-000076-980

C O U R S U P É R I E U R E
(Chambres des actions collectives) DISTRICT
DE MONTRÉAL

CONSEIL QUÉBÉCOIS SUR LE TABAC ET LA SANTÉ

Demandeur

JTI MACDONALD CORP. -et- IMPERIAL TOBACCO CANADA LIMITED -et- ROTHMANS, BENSON & HEDGES

Défenderesses

INC. DELOITTE RESTRUCTURING INC. -et- FTI CONSULTING CANADA INC. -et- ERNST & YOUNG INC.

Intervenants

**PROCUREUR GÉNÉRAL DU QUÉBEC -et- RÉGIE DE L'ASSURANCE MALADIE DU QUÉBEC -et- SERVICES PROACTIO INC. -et- EPIQ
CLASS ACTION SERVICES CANADA INC. -et- THE LAW PRACTICE OF WAGNER & ASSOCIATES INC. -et- SANTÉ QUÉBEC**

Mis en cause

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

O N T A R I O
S U P E R I O R C O U R T O F J U S T I C E
C O M M E R C I A L L I S T

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

**AND IN THE MATTER OF THE PLANS OF COMPROMISE OR ARRANGEMENT OF: JTI-MACDONALD CORP.-and-IMPERIAL TOBACCO
CANADA LIMITED AND IMPERIAL TOBACCO COMPANY LIMITED -and- ROTHMANS, BENSON & HEDGES INC.**

**PCC REPRESENTATIVE COUNSEL'S MOTION FOR DIRECTIONS REGARDING EMPHYSEMA DIAGNOSIS IN PCC
COMPENSATION PLAN AND QUEBEC ADMINISTRATION PLAN**

(In Writing)

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PROVINCE DE QUÉBEC DISTRICT
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Demandeurs

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ROTHMANS, BENSON & HEDGES INC.

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FTI CONSULTING CANADA INC.
ERNST & YOUNG INC.
DELOITTE RESTRUCTURING INC.

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SERVICES PROACTIO INC.
EPIQ CLASS ACTION SERVICES
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JTI-MACDONALD CORP.

-and-

IMPERIAL TOBACCO CANADA
LIMITED AND IMPERIAL TOBACCO
COMPANY LIMITED

-and-

ROTHMANS, BENSON & HEDGES INC.

**PCC Representative Counsel's Written Submissions on the Motion for Directions
regarding Emphysema Diagnosis in PCC Compensation Plan and Quebec Administration
Plan**

(In Writing)

PART I - INTRODUCTION

1. Representative Counsel for the Pan-Canadian Claimants (“**PCC Representative Counsel**”) brings this motion in writing seeking directions from the CCAA Court and the Superior Court of Quebec (“**QSC**”) to affirm the clear language of the PCC Compensation Plan and the Quebec Administration Plan (collectively, the “**Compensation Plans**”) that Emphysema and COPD (GOLD Grade III or IV) are each Compensable Diseases under the Compensation Plans.¹

2. Specifically, PCC Representative Counsel seeks affirmation that: (i) proof of a diagnosis of Emphysema satisfies the PCC Compensable Disease eligibility criterion under the PCC Compensation Plan and the *Blais* Compensable Disease eligibility criterion under the Quebec Administration Plan; and (ii) for this purpose, a claimant is required to establish a diagnosis of either Emphysema or COPD (GOLD Grade III or IV), and not both, in order to be entitled to compensation thereunder.

3. The motion arises in the context of the implementation of the Compensation Plans and seeks that the Courts affirm the correct interpretation of the existing eligibility criteria in order to support the fair and consistent administration of claims submitted to the Claims Administrator.

4. As explained below, the directions sought are grounded in the plain language of the Compensation Plans and are consistent with the judicial findings on which they were based. The Plans were drafted to provide compensation for Emphysema, as held in the *Blais* judgments, and to provide compensation for COPD at GOLD Grade III or IV in order to achieve parity across

¹ All capitalized terms used but not defined herein have the meanings given to them in the Fourth Amended and Restated Court-Appointed Mediator’s and Monitor’s CCAA Plan of Compromise and Arrangement dated August 27, 2025 in respect of each Imperial, RBH and JTIM in these CCAA Proceedings (collectively, the “**CCAA Plans**”).

jurisdictions and to account for the evolution of diagnostic terminology over the compensable diagnostic windows applicable to each Plan.² Properly interpreted, the Compensation Plans do not require a claimant to prove diagnosis with both diseases, nor do they qualify Emphysema by reference to GOLD grading or severity to qualify for compensation.

PART II: SUMMARY OF FACTS

A. The Emphysema Findings in the *Blais* Judgment

5. The eligibility criteria under both the PCC Compensation Plan and the Quebec Administration Plan were developed with reference to the certified class definition in the *Blais* Class Action and the judicial findings made in that proceeding.

6. Pursuant to the *Blais* trial Judgment, Tobacco-Victims residing in Quebec who were diagnosed with Lung Cancer, Throat Cancer or Emphysema and who satisfy the other eligibility criteria set out in the certified class definition relating to smoking history and date of diagnosis, were awarded moral damages.³

7. In his reasons, Justice Riordan awarded damages to individuals diagnosed with emphysema. He did not qualify emphysema by reference to any particular level of severity. He did, however, draw a distinction between emphysema, which was compensable under the judgment, and chronic bronchitis which was not.

8. Justice Riordan's findings with respect to emphysema are set out in the following excerpts from the *Blais* trial judgment:

² Diagnosis before March 12, 2012 for the Quebec Administration Plan, and between March 8, 2015 and March 8, 2019 for the PCC Compensation Plan.

³ *Létourneau v JTI-Macdonald Corp*, [2015 QCCS 2382](#) at paras 1212, 1213, upheld *Imperial Tobacco Canada ltée c Conseil québécois sur le tabac et la santé*, [2019 QCCA 358](#) at paras 1282, 1283.

662 For emphysema, the Plaintiffs again counted on the report of Dr. Desjardins (Exhibit 1382 - 1382.2 in English). As with Dr. Guertin's report, Dr. Desjardins' opinion covers a broader scope than the Disease at issue. He analyzed the case of COPD, Chronic Obstructive Pulmonary Disease, which includes both emphysema and chronic bronchitis. As with the case of throat cancer, based on his explanation of the troubles and inconveniences of COPD victims, the Court does not hesitate to apply his broader analysis to the specific case of emphysema.

663 Dr. Desjardins describes in detail the physical and mental prejudice typically suffered by persons with emphysema and the suffering and loss of quality of life resulting from the various treatments. He uses what is known as the "GOLD Guidelines" to rank the impact on the quality of life to the relative gravity of the sickness.

664 His evidence is uncontradicted and the Court holds that the causal link between that prejudice and emphysema is established.

....

674 Dr. Desjardins deals with emphysema in his report through an analysis of COPD, which includes both emphysema and chronic bronchitis. He justifies that approach by noting that a high percentage of individuals with COPD have both diseases, but not all³⁰⁹. He opines that "among the risk factors known for COPD, smoking is by far the most important"³¹⁰.

675 Based on Dr. Desjardins' full opinion, and in the absence of convincing proof to the contrary, the Court is satisfied that the principal cause of emphysema is smoking at a sufficient level, to be determined through epidemiological analysis.

....

993 Dr. Alain Desjardins' report (Exhibit 1382) opines on the moral damages suffered as a result of emphysema as well as lung cancer. He deals with emphysema through an analysis of COPD, which includes both emphysema and chronic bronchitis. He notes that a high percentage of individuals with COPD have both diseases (page 12), but not all.

994 There is no serious contestation by the Companies that Dr. Desjardins' description of the impact of COPD on the quality of life accurately portrays the impact that emphysema alone would have. As such, his is a useful analysis for the purpose of evaluating moral damages caused to emphysema sufferers by smoking and the Court accepts it as sufficient proof of that.

995 Dr. Siemiatycki follows Dr. Desjardins in basing his analysis of emphysema on information available for COPD. He explains his reasons for this

as follows: “Many epidemiologic and statistical studies are now focused on COPD as the clinical end-point. Fewer focus explicitly on emphysema. Indeed, much of the evidence we now have on the epidemiology of emphysema comes from studies on COPD. Consequently, in this report I will use the term COPD/emphysema to signify that the conditions we are describing and analysing include a mixture of COPD and emphysema, in some unknown ratio. Where possible I have focused on evidence and studies that have been able to address emphysema specifically, but usually it has been some combination of emphysema and chronic bronchitis”.⁴³⁸

996 The Companies attack the accuracy of Dr. Siemiatycki's report on this ground, arguing that, by doing so, he greatly overstates the number of individuals with emphysema only. On that point, Dr. Marais states that "I understand that the prevalence of chronic bronchitis in the population is likely twice that of emphysema"⁴³⁹. Although this criticism has merit, it is not fatal to this portion of Dr. Siemiatycki's report [emphasis added].⁴

9. In describing the consequences of emphysema for affected individuals, Justice Riordan found that the impact of emphysema on the quality of life of a person afflicted with it “is the likelihood, or rather the near certainty, of a premature death”.⁵

999 On the impact of COPD, and thus emphysema, on the quality of life a person afflicted with it, Dr. Desjardins' report (Exhibit 1382) indicates that:

- Over 60% of individuals with COPD report significant limitations in their daily activities caused by shortness of breath and fatigue (page 48);
- Specific activities affected include sports and leisure, social life, sleep, domestic duties, sexuality and family life (Figure J on page 48; see also page 34);
- These limitations, when experienced daily, eventually result in social isolation, loss of self esteem, marital problems, frustration, anxiety, depression and an important reduction in the overall quality of life (pages 48-49);

⁴ *Létourneau v JTI-Macdonald Corp*, [2015 QCCS 2382](#) at paras 662-664, 674-675, 993-996.

⁵ *Létourneau v JTI-Macdonald Corp*, [2015 QCCS 2382](#) at para 1000.

- A person with emphysema can expect to suffer from a persistent cough, spitting up of blood, loss of breath and swelling in the lower members (pages 26-28).

1000 Added to the above, of course, is the likelihood, or rather the near certainty, of a premature death (pages 18 and 19). The anticipation of that cannot but contribute to a loss of enjoyment of life.

1001 As mentioned, the Plaintiffs admit that the degree to which a patient's life is affected by emphysema depends on the degree of severity of the case. Taking that into consideration, Dr. Desjardins used the "GOLD Guidelines", which divide the degree of severity of COPD into five levels, from Level 0, indicating cases "at risk," through Level 4, indicating cases with very severe emphysema (Exhibit 1382, page 41). Dr. Desjardins estimated the percentage of impairment or diminution of the quality of life for each level as 0%, 10%, 30% 60% and 100%. This is in line with the figures used by the U.S. Veteran's Administration (Exh. 1382, pages 51-53).

1002 In an attempt to simplify the file, the Plaintiffs amended the amount claimed for the emphysema subclass to a universal amount of \$30,000, arguing that such a compromise was most conservative and ensured that the award would not unfairly penalize the Companies. This seems reasonable. In fact, if the Court had to arbitrate an amount for this subclass, it would likely have landed a bit higher.

1003 Another advantage to adopting such a low figure is that it serves to correct the distortion in this analysis caused by using COPD statistics, which include chronic bronchitis and emphysema, in lieu of figures for emphysema alone [emphasis added].⁶

10. As reflected in these findings, Justice Riordan treated emphysema as a disease involving enduring pulmonary injury with lasting, irreversible consequences for quality of life and life expectancy. Further, the judgment does not require emphysema to meet a defined severity level in order to be compensable.⁷ That approach is reflected in the structure of the *Blais* class definition and informed the eligibility criteria later incorporated into the Compensation Plans, as described below.

⁶ *Létourneau v JTI-Macdonald Corp*, [2015 QCCS 2382](#) at paras 999-1003.

⁷ *Létourneau v JTI-Macdonald Corp*, [2015 QCCS 2382](#) at paras 1212, 1213; *Imperial Tobacco Canada ltée v Conseil québécois sur le tabac et la santé*, [2019 QCCA 358](#) at para 1282.

11. The Quebec Court of Appeal upheld Justice Riordan's findings regarding emphysema, expressly citing with approval his conclusions concerning the impact of emphysema on quality of life and life expectancy.⁸

B. Parity Between the Quebec Administration Plan and the PCC Compensation Plan

12. The Quebec Administration Plan and the PCC Compensation Plan will provide compensation to Tobacco-Victims who suffer from a Compensable Disease as a result of smoking cigarettes sold by Imperial, RBH and JTIM in Canada, and who meet other eligibility criteria.⁹

13. Under the Quebec Administration Plan, Tobacco-Victims residing in Quebec who were diagnosed with a Compensable Disease and who satisfy the remaining eligibility criteria may submit claims for compensation.¹⁰

14. The PCC Compensation Plan is the counterpart to the Quebec Administration Plan and applies to Tobacco-Victims residing in all the Provinces and Territories, including in Quebec, except those Quebec residents covered by the *Blais* Judgment. The PCC Eligibility Criteria were deliberately aligned with the Quebec Administration Plan, to the extent possible, to achieve parity of treatment across Canada, subject to necessary differences arising from the timing of the commencement of the Quebec Class Actions and the CCAA Proceedings.¹¹

⁸ *Imperial Tobacco Canada ltée v. Conseil québécois sur le tabac et la santé*, [2019 QCCA 358](#) at paras 982-983, 1282-1283.

⁹ *Imperial Tobacco Canada Limited*, [2025 ONSC 1358](#) (CanLII) at para 88.

¹⁰ *Imperial Tobacco Canada Limited*, [2025 ONSC 1358](#) (CanLII) at para 88.

¹¹ *Imperial Tobacco Canada Limited*, [2025 ONSC 1358](#) (CanLII) at para 88.

15. In developing the PCC Eligibility Criteria, particular attention was paid to aligning the PCC Eligibility Criteria with the *Blais* class definition. The selection of Emphysema and COPD (GOLD Grade III or IV) as PCC Compensable Diseases for which presumptive causation may be inferred was informed by: (i) the epidemiological analysis of Dr. Prabhat Jha, which supported the inclusion of Lung Cancer, Throat Cancer and COPD as the Tobacco-related Diseases for which compensation will be paid in the PCC Compensation Plan,¹² and (ii) the *Blais* judgment, which provided the judicial foundation supporting compensation for Lung Cancer, Throat Cancer and Emphysema.¹³

C. Emphysema and COPD (GOLD Grade III or IV) under the Compensation Plans

16. While the *Blais* class definition refers only to Emphysema (not COPD), the inclusion of COPD (GOLD Grade III or IV) as Compensable Diseases under the Compensation Plans reflects the evolution of medical terminology and diagnostic practice since the commencement of the *Blais* Class Action.

17. When *Blais* was commenced in 1998, emphysema was the term most used in clinical practice, on public health warnings on cigarette packs, in the United States Surgeon General's reports summarizing conditions causally related to tobacco use, and amongst the general public. Over time, COPD became the more commonly used diagnostic term.¹⁴

¹² Report of Dr. Prabhat Jha dated March 24, 2021 at p 4, Schedule "L" to CCAA Plans of RBH and JTIM, and Schedule "I" to Imperial's CCAA Plan.

¹³ *Pan-Canadian Claimants' Compensation Plan: Methodology and Analysis* dated December 5, 2024 at para 101, Schedule "Q" to CCAA Plans of RBH and JTIM, and Schedule "N" to Imperial's CCAA Plan.

¹⁴ *Pan-Canadian Claimants' Compensation Plan: Methodology and Analysis* dated December 5, 2024 at paras 102, Schedule "Q" to CCAA Plans of RBH and JTIM, and Schedule "N" to Imperial's CCAA Plan.

18. Accordingly, in earlier years, individuals were more likely to be diagnosed with Emphysema, and in later years, they were more likely be diagnosed with COPD, rather than Emphysema.

19. COPD is a broader diagnostic category that can include several respiratory illnesses, including conditions such as asthma and chronic bronchitis that are less strongly correlated to smoking.¹⁵ In developing the Compensation Plans, COPD at the more advanced stages (GOLD Grades III and IV) was used, at the time, as a practical proxy for Emphysema in circumstances where diagnostic practice favoured a COPD diagnosis rather than Emphysema.¹⁶

20. The inclusion of Emphysema and COPD (GOLD Grades III and IV) as Compensable Diseases under the Compensation Plans reflects (i) their established causative association with smoking, (ii) their alignment with the diseases compensated in *Blais*, and (iii) the intention to harmonize the Compensation Plans so that Tobacco-Victims diagnosed with functionally equivalent Tobacco-related Diseases within the compensable diagnostic windows are eligible for compensation regardless of changes in diagnostic terminology.¹⁷

21. The Compensation Plans refer to “Emphysema/COPD (GOLD Grade III or IV)”, using a slash. This drafting convention groups alternative compensable diagnoses for administrative purposes. It does not require a claimant to establish both diagnoses, nor does it collapse Emphysema and COPD into a single condition or import GOLD Grade stages onto Emphysema.

¹⁵ *Pan-Canadian Claimants’ Compensation Plan: Methodology and Analysis* dated December 5, 2024 at para 103, Schedule “Q” to CCAA Plans of RBH and JTIM, and Schedule “N” to Imperial’s CCAA Plan.

¹⁶ *Pan-Canadian Claimants’ Compensation Plan: Methodology and Analysis* dated December 5, 2024 at paras 103-104, Schedule “Q” to CCAA Plans of RBH and JTIM, and Schedule “N” to Imperial’s CCAA Plan.

¹⁷ *Pan-Canadian Claimants’ Compensation Plan: Methodology and Analysis* dated December 5, 2024 at paras 101-104, Schedule “Q” to CCAA Plans of RBH and JTIM, and Schedule “N” to Imperial’s CCAA Plan.

22. This reading is confirmed by the Compensation Plans' definitions: "Emphysema" and "COPD" are defined separately.

23. "Emphysema" is defined as:

the condition of the lung that is marked by distension and eventual rupture of the alveoli with progressive loss of pulmonary elasticity, that is accompanied by shortness of breath with or without cough, and that may lead to impairment of heart action. For the purpose of the PCC Compensation Plan and the Quebec Administration Plan, "Emphysema" includes COPD (GOLD Grade III or IV).¹⁸

24. "COPD" is defined as:

chronic obstructive pulmonary disease (GOLD Grade III or IV). The Global Initiative for Chronic Obstructive Lung Disease ("GOLD") developed a four grade classification system based upon severity of airflow limitation and other diagnostic parameters. The GOLD Grade III (severe) and GOLD Grade IV (very severe) classifications represent the two most severe categories of disease.¹⁹

25. The GOLD grading system applies to COPD diagnoses under the Compensation Plans. It is not a staging requirement applicable to Emphysema.

26. Finally, the plain reading of the Compensation Plans – that Emphysema and COPD (GOLD Grade III or IV) are each compensable diseases – is also reflected in materials already approved by the CCAA Court in connection with the administration of the Plans. In particular, the Combined First Notice, Information Circulars, and Claim Forms describe eligibility by reference to a diagnosis of Emphysema or COPD (GOLD Grade III or IV), using "or" for clarity in communicating the eligibility criteria to claimants.²⁰ The direction sought by this Motion is

¹⁸ CCAA Plans, Article 1, Section 1.1, definition of "Emphysema"; PCC Compensation Plan, Section 1.1, definition of "Emphysema"; Quebec Administration Plan, Section 1.1, definition of "Emphysema".

¹⁹ CCAA Plans, Article 1, Section 1.1, definition of "COPD"; PCC Compensation Plan, Section 1.1, definition of "COPD"; Quebec Administration Plan, Section 1.1, definition of "COPD".

²⁰ Claims Administrator Order, issued August 27, 2025, Schedule "A", Attachments A-G, I.

therefore consistent with the manner in which the Court-approved materials have described and implemented the existing Plan language.

D. Role of the Claims Administrator and Evidence of Diagnosis

27. The medical evidence submitted to the Claims Administrator to prove a diagnosis of Emphysema or COPD (GOLD Grade III or IV) will vary from claimant to claimant. Under the Compensation Plans, Claimants must submit one of the forms of proof specified in section 36 of the PCC Compensation Plan or sections 34, 35 or 37 of the Quebec Administration Plan, as applicable.²¹

28. Once a claimant establishes that they were diagnosed with Emphysema (or, alternatively, COPD GOLD Grade III or IV) within the applicable eligibility period via any of the acceptable forms of proof, including an Official Confirmation (for Quebec residents), a report of a spirometry test, an extract from the Tobacco-Victim's medical records, or a completed Physician Form, the Compensable Disease criterion under the PCC Compensation Plan or Quebec Administration Plan is met.

29. By contrast, diagnoses that do not fall within the Compensable Diseases identified in the Compensation Plans, such as asthma or chronic bronchitis, do not satisfy the PCC Eligibility Criteria or the *Blais* Eligibility Criteria, as applicable, and should be assessed accordingly by the Claims Administrator.

²¹ Pan Canadian Claimants' Compensation Plan at Section 36, Schedule "S" to CCAA Plans of RBH and JTIM, and Schedule "P" to Imperial's CCAA; Quebec Administration Plan at Sections 34, 35, 37, Schedule "N" to CCAA Plans of RBH and JTIM, and Schedule "K" to CCAA Plan of Imperial.

PART IV: ORDER REQUESTED

30. PCC Representative Counsel respectfully seeks direction from the CCAA Court and the QSC to affirm the clear language of the Compensation Plans to the effect that:

- a. under the Compensation Plans, proof of a diagnosis of Emphysema satisfies the PCC Compensable Disease eligibility criterion under the PCC Compensation Plan and the *Blais* Compensable Disease eligibility criterion under the Quebec Administration Plan; and
- b. for this purpose, a claimant is required to establish a diagnosis of either Emphysema or COPD (GOLD Grade III or IV), and not both.

31. This direction is sought to affirm the interpretation of the existing language under the Compensation Plans, and to support the fair and consistent administration of claims. It does not displace the role of the Claims Administrator in assessing the sufficiency of the medical evidence submitted in any individual case.

ALL OF WHICH IS RESPECTFULLY SUBMITTED this 26th day of March, 2026.

1. **THIS COURT ORDERS** that the time for service of the Notice of Motion and the Motion Record is hereby abridged and validated so that this Motion is properly returnable today and hereby dispenses with further service thereof.
2. **THIS COURT ORDERS** that, unless otherwise stated herein, all capitalized terms used herein shall have the meanings ascribed to them in the in the Fourth Amended and Restated Court-Appointed Mediator's and Monitor's CCAA Plan of Compromise and Arrangement dated August 27, 2025 in respect of each Imperial, RBH and JTIM in these CCAA Proceedings (collectively, the "**CCAA Plans**").
3. **THIS COURT ORDERS AND DIRECTS** that, for the purposes of the administration of the PCC Compensation Plan and the Quebec Administration Plan, where a claimant seeks to establish a diagnosis with a PCC Compensable Disease or *Blais* Compensable Disease of Emphysema/COPD (GOLD Grade III or IV), proof of a diagnosis of Emphysema satisfies the applicable Compensable Disease eligibility criterion.
4. **THIS COURT ORDERS AND DIRECTS** that, for the purposes of the administration of the PCC Compensation Plan and the Quebec Administration Plan, where a claimant seeks to establish a diagnosis with a PCC Compensable Disease or *Blais* Compensable Disease of Emphysema/COPD (GOLD Grade III or IV), a claimant is required to establish a diagnosis of either Emphysema or COPD (GOLD Grade III or IV), and not both, in order to meet the applicable Compensable Disease eligibility criterion.
5. **THIS COURT ORDERS AND DIRECTS** that nothing in this Order displaces or limits the role of the Claims Administrator in assessing the sufficiency of the medical evidence

submitted in support of any individual claim in accordance with the terms of the PCC Compensation Plan or the Quebec Administration Plan, as applicable.

6. **THIS COURT ORDERS** that this Order shall have full force and effect in all provinces and territories in Canada, outside Canada and against all Persons against whom it may be enforceable.

Chief Justice Geoffrey B. Morawetz

No. : 500-06-000076-980

C O U R S U P É R I E U R E
(Chambres des actions collectives)
D I S T R I C T D E M O N T R É A L

THE LAW PRACTICE OF WAGNER & ASSOCIATES INC.

Demandeur

JTI MACDONALD CORP. -et- IMPERIAL TOBACCO CANADA LIMITED -et- ROTHMANS, BENSON & HEDGES INC.

Défenderesses

DELOITTE RESTRUCTURING INC. -et- FTI CONSULTING CANADA INC. -et- ERNST & YOUNG INC.

Intervenants

SERVICES PROACTIO INC. -et- EPIQ CLASS ACTION SERVICES CANADA INC. -et- CONSEIL QUÉBÉCOIS SUR LE TABAC ET LA SANTÉ
Mis en cause

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

ONTARIO
SUPERIOR COURT OF
JUSTICE COMMERCIAL LIST

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

AND IN THE MATTER OF THE PLANS OF COMPROMISE OR ARRANGEMENT OF: JTI-MACDONALD CORP.-and-IMPERIAL TOBACCO CANADA LIMITED AND IMPERIAL TOBACCO COMPANY LIMITED -and- ROTHMANS, BENSON & HEDGES INC.

PCC Representative Counsel's Motion for Directions regarding Emphysema Diagnosis in PCC Compensation Plan and Quebec Administration Plan

(In Writing)

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COUR SUPÉRIEURE
(Chambre des actions collectives)

CANADA
PROVINCE DE QUÉBEC
DISTRICT DE MONTRÉAL

N°: 500-06-000076-980

DATE:

SOUS LA PRESIDENCE DE L'HONORABLE CATHERINE PICHE, J.C.S.

Dans l'affaire de la mise en oeuvre du Plan d'administration de l'action collective du Québec:

THE LAW PRACTICE OF WAGNER & ASSOCIATES INC.
Demandeurs

c.

JTI-MACDONALD CORP.
IMPERIAL TOBACCO CANADA LIMITEE ROTHMANS,
BENSON & HEDGES INC.
Défendeurs

-et-

FTI CONSULTING CANADA INC. ERNST & YOUNG
INC.
DELOITTE RESTRUCTURING INC.
Intervenants

-et-

SERVICES PROACTIO INC.
EPIQ CLASS ACTION SERVICES CANADA INC.
CONSEIL QUÉBÉCOIS SUR LE TABAC ET LA SANTÉ et
JEAN-YVES BLAIS

Mis-en-cause

ORDER

THIS MOTION for Directions made by Representative Counsel for the Pan-Canadian Claimants (“**PCC Representative Counsel**”) pursuant to the *Companies’ Creditors Arrangement Act*, R.S.C. 1985, c. C-36, as amended (the “**CCAA**”), jointly before the Ontario Superior Court of Justice (Commercial List) (“**CCAA Court**”) and the Superior Court of Quebec (“**QSC**”) proceeded in writing.

ON READING the written submissions of PCC Representative Counsel, and of such other parties that made written submissions:

1. **THIS COURT ORDERS** that the time for service of the Notice of Motion and the Motion Record is hereby abridged and validated so that this Motion is properly returnable today and hereby dispenses with further service thereof.
2. **THIS COURT ORDERS** that, unless otherwise stated herein, all capitalized terms used herein shall have the meanings ascribed to them in the in the Fourth Amended and Restated Court-Appointed Mediator’s and Monitor’s CCAA Plan of Compromise and Arrangement dated August 27, 2025 in respect of each Imperial, RBH and JTIM in these CCAA Proceedings (collectively, the “**CCAA Plans**”).
3. **THIS COURT ORDERS AND DIRECTS** that, for the purposes of the administration of the PCC Compensation Plan and the Quebec Administration Plan, where a claimant seeks to establish a diagnosis with a PCC Compensable Disease or *Blais* Compensable Disease of Emphysema/COPD (GOLD Grade III or IV), proof of a diagnosis of Emphysema satisfies the applicable Compensable Disease eligibility criterion.

4. **THIS COURT ORDERS AND DIRECTS** that, for the purposes of the administration of the PCC Compensation Plan and the Quebec Administration Plan, where a claimant seeks to establish a diagnosis with a PCC Compensable Disease or *Blais* Compensable Disease of Emphysema/COPD (GOLD Grade III or IV), a claimant is required to establish a diagnosis of either Emphysema or COPD (GOLD Grade III or IV), and not both, in order to meet the applicable Compensable Disease eligibility criterion.

5. **THIS COURT ORDERS AND DIRECTS** that nothing in this Order displaces or limits the role of the Claims Administrator in assessing the sufficiency of the medical evidence submitted in support of any individual claim in accordance with the terms of the PCC Compensation Plan or the Quebec Administration Plan, as applicable.

6. **THIS COURT ORDERS** that this Order shall have full force and effect in all provinces and territories in Canada, outside Canada and against all Persons against whom it may be enforceable.

L'HONORABLE CATHERINE PICHE, J.C.S.

No. : 500-06-000076-980

C O U R S U P É R I E U R E
(Chambres des actions collectives)
D I S T R I C T D E M O N T R É A L

THE LAW PRACTICE OF WAGNER & ASSOCIATES INC.

Demandeur

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Défenderesses

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PCC Representative Counsel's Motion for Directions regarding Emphysema Diagnosis in PCC Compensation Plan and Quebec Administration Plan

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MOTION RECORD

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