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

ONTARIO
SUPERIOR COURT OF JUSTICE
COMMERCIAL LIST

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

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

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

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

Applicants

JOINT FACTUM OF THE MONITORS/CCAA PLAN ADMINISTRATORS

Motions for Pending Litigation Dismissal Orders & QCC Reserve Protocol Orders
(Returnable November 13, 2025)

November 7, 2025

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TO: THE COMMON SERVICE LIST &
COUNSEL AND CERTAIN PARTIES TO THE PENDING LITIGATION

Court File No. CV-19-615862-00CL
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PART I – INTRODUCTION[1]

1. The Monitors and CCAA Plan Administrators jointly bring these Motions: (1) to facilitate the orderly termination and dismissal of the Pending Litigation, as contemplated by the CCAA Plans; and (2) to implement the CCAA Court's earlier direction to establish a protocol (the "**QCC Reserve Protocol**") for the release of the reserve held back from the Quebec Class Counsel Fee (the "**QCC Reserve**") and the return of any Recovered Tax Amounts (defined below).

2. With respect to the Pending Litigation, the Fourth A&R CCAA Plans do not explicitly authorize the CCAA Plan Administrators or Monitors to seek orders necessary to terminate the Pending Litigation, nor does the Sanction Order explicitly identify the Pending Litigation in a manner that would readily facilitate a receiving court's understanding of the specific actions to be dismissed. Thus, the Monitors and CCAA Plan Administrators seek the CCAA Court's approval of the proposed Pending Litigation Dismissal Orders to streamline the process for terminating and dismissing the Pending Litigation.

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1 This Factum is jointly filed by (i) FTI Consulting Canada Inc. ("**FTI**") in its capacity as Court-appointed monitor and CCAA Plan Administrator of Imperial Tobacco Canada Limited ("**ITCAN**") and Imperial Tobacco Company Limited (together with ITCAN, "**Imperial**"); (ii) Ernst & Young Inc. ("**EY**") in its capacity as Court-appointed monitor and CCAA Plan Administrator for Rothmans, Benson & Hedges Inc. ("**RBH**"); and (iii) Deloitte Restructuring Inc. ("**Deloitte**") in its capacity as Court-appointed monitor and CCAA Plan Administrator for JTI-Macdonald Corp. ("**JTIM**" and, together with Imperial and RBH, the "**Tobacco Companies**" or "**Applicants**"). FTI, EY, and Deloitte are hereinafter collectively referred to as the "**Monitors**" and the "**CCAA Plan Administrators**" in the above-captioned coordinated proceedings (the "**CCAA Proceedings**") under the *Companies' Creditors Arrangement Act*, R.S.C., 1985, c. C-36, as amended (the "**CCAA**"). Capitalized terms not defined herein have the meanings given to them in the Fourth Amended and Restated Court-Appointed Mediator's and Monitors' Plans of Compromise or Arrangement in respect of each Applicant dated August 27, 2025 (the "**Fourth A&R CCAA Plans**"). References to the "CCAA Plans" in this factum refer either to the initial plans of compromise or arrangement in respect of each Applicant dated October 17, 2024, or the Fourth A&R CCAA Plans, as the context requires.

3. With respect to the QCC Reserve Protocol, the CCAA Court's assistance is required to implement its earlier direction, pursuant to the Quebec Class Counsel Fee Approval Orders dated August 25, 2025 (the "**QCC Fee Approval Orders**"), directing the Monitors to establish a protocol for the release of the QCC Reserve and the return of any Recovered Tax Amounts. The Monitors have developed the QCC Reserve Protocol in consultation with the Court-Appointed Mediator and Quebec Class Counsel.

4. In light of the foregoing, the Monitors and CCAA Plan Administrators, respectfully seek:

(a) the **Pending Litigation Dismissal Orders** authorizing the Monitors and CCAA Plan Administrators to seek orders and take any other steps, as necessary or appropriate, to terminate and dismiss the Pending Litigation on a with prejudice and without costs basis (the "**Dismissals**"); and

(b) the **QCC Reserve Protocol Orders** approving the proposed QCC Reserve Protocol as set out in Schedule "A" to the QCC Reserve Protocol Orders.

PART II – SUMMARY OF FACTS

A. The CCAA Plans

5. The CCAA Plans were sanctioned by the CCAA Court on March 6, 2025, after having previously received unanimous approval of voting Affected Creditors of Imperial, RBH, and JTIM on December 12, 2024. The CCAA Plans were subsequently amended and restated on several occasions, with the Fourth A&R CCAA Plans, dated August 27, 2025, being the most recent restatements. The Fourth A&R CCAA Plans were implemented on August 29, 2025 (the "**Plan Implementation Date**").

6. The CCAA Plan Administrators were appointed to administer the CCAA Plans for Imperial, RBH, and JTIM respectively and are authorized to take all necessary or appropriate steps to implement the CCAA Plans pursuant to the CCAA Plan Administrator Appointment Orders.

B. The CCAA Plans Contemplate the Resolution of the Pending Litigation

7. The Initial Orders issued by the CCAA Court in the CCAA Proceedings provided for a broad stay of proceedings in favour of the Tobacco Companies and certain of their affiliates. The stay of proceedings included a stay of any Pending Litigation, which was defined as "any and all actions, applications and other lawsuits existing at the time of this Order in which any of the Applicants is a named defendant or respondent … relating in any way whatsoever to a Tobacco Claim."[2] A Tobacco Claim includes "any right or claim … of any Person against or in respect of the" Applicant(s) and their relevant affiliates connected to the recovery of damages for "the development, manufacture, production, marketing, advertising, distribution, purchase or sale of Tobacco Products, the use of or exposure to Tobacco Products or any representation in respect of Tobacco Products" or under HCCR Legislation.[3]

8. One of the purposes of the Fourth A&R CCAA Plans is to provide for the disposition and resolution of the Pending Litigation.[4] Under section 18.3.1 of the Fourth A&R CCAA Plans, the Parties are required to take all steps and actions that are necessary and

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2 Imperial Initial Order dated March 12, 2019 at paras. 4(g) and 18; RBH Initial Order dated March 22, 2019 at paras. 4(b) and 18; JTIM Initial Order dated March 8, 2019 at paras. 4(b) and 18.

3 Imperial Initial Order dated March 12, 2019 at para. 4(j); RBH Initial Order dated March 22, 2019 at para. 4(f); JTIM Initial Order dated March 8, 2019 at para. 4(e).

4 Imperial Fourth A&R CCAA Plan, RBH Fourth A&R CCAA Plan and JTIM Fourth A&R CCAA Plan, s. 2.1(e).

appropriate for the resolution of all Pending Litigation as soon as possible after the Plan Implementation Date.

9. Pending Litigation under the Fourth A&R CCAA Plans includes:

(a) the actions under the HCCR Legislation commenced by the Provinces claiming the recovery of certain Health Care Benefits resulting from the Tobacco Companies' tobacco-related wrongs (as listed in Schedule "U" to the Imperial Fourth A&R CCAA Plan and Schedule "X" to each of the RBH Fourth A&R CCAA Plan and JTIM Fourth A&R CCAA Plan);

(b) the *Knight* Class Action;

(c) the actions under the class proceedings legislation, other than the *Knight* Class Action, commenced by Individuals in certain Provinces (as listed in Schedule "V" to the Imperial Fourth A&R CCAA Plan and Schedule "Y" to each of the RBH Fourth A&R CCAA Plan and JTIM Fourth A&R CCAA Plan);

(d) the uncertified class actions commenced by the Tobacco Producers; and

(e) any action commenced by Individuals in Canada, excluding the Quebec Class Actions, relating to Tobacco Claims or the subject matter of the CCAA Plans (as listed in Schedule "W" to the Imperial Fourth A&R CCAA Plan and

Schedule "Z" to each of the RBH Fourth A&R CCAA Plan and JTIM Fourth A&R CCAA Plan).[5]

10. The Fourth A&R CCAA Plans contemplate that, under the Sanction Orders, the Tobacco Companies and the Claimants are deemed to consent to orders that facilitate the dismissal of the Pending Litigation. This includes orders requesting that the applicable courts in which the Pending Litigation was commenced or appealed (the "**Pending Litigation Courts**") "[a]id, recognize and assist the CCAA Court to confirm that, effective as and from the Plan Implementation Date, the CCAA Plan[s] ha[ve] fully and finally resolved and definitively settled the Pending Litigation" and issue any "orders as may be necessary to terminate all of the Pending Litigation by a with prejudice dismissal without costs."[6]

11. The Sanction Orders further provide that:

(a) all parties to the Pending Litigation are deemed to have given the consents required to effect the termination of the Pending Litigation as of the Plan Implementation Date;

(b) the Sanction Orders are to be given full force and effect in all Canadian Provinces and Territories and abroad; and

(c) each court within Canada where the Pending Litigation has been commenced is requested to give effect to the Sanction Orders and the

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5 Imperial Fourth A&R CCAA Plan, RBH Fourth A&R CCAA Plan and JTIM Fourth A&R CCAA Plan, s. 18.3.1.

6 Imperial Fourth A&R CCAA Plan, RBH Fourth A&R CCAA Plan and JTIM Fourth A&R CCAA Plan, s. 18.3.1.

CCAA Plans and to assist the Tobacco Companies and Monitors to carry out the terms of both.[7]

12. The Sanction Orders authorize and direct the Tobacco Companies and Monitors "to take all steps and actions, and to do all things, necessary or appropriate to implement the CCAA Plan[s]".[8] However, neither the Sanction Orders nor the Fourth A&R CCAA Plans expressly authorize the CCAA Plan Administrators or Monitors to seek dismissals of the Pending Litigation.

13. Further, the Pending Litigation matters are spread across multiple schedules to each of the CCAA Plans and the operative provisions concerning the dismissals are dispersed across the CCAA Plans and the Sanction Orders. As a result, seeking dismissals in each applicable court would require filing a voluminous record in each proceeding.

14. Correspondence has regularly been provided to the Pending Litigation Courts pursuant to the Court-to-Court Communications Order issued by the CCAA Court on July 9, 2019, informing such courts of the periodic extensions of the Stay Period and the issuance of the Sanction Order.[9]

15. The Pending Litigation Dismissal Orders consolidate all of the Pending Litigation in a single schedule to such orders and will authorize the CCAA Plan Administrators and Monitors to facilitate the dismissal of the Pending Litigation to avoid a multiplicity of

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7 Imperial Sanction Order, RBH Sanction Order and JTIM Sanction Order each dated March 6, 2025 at paras. 34, 62-63.

8 Imperial Sanction Order, RBH Sanction Order and JTIM Sanction Order each dated March 6, 2025 at para. 15(a).

9 FTI 33rd Report at para. 21; EY 31st Report at para. 22; Deloitte 31st Report at para. 21.

extensive filings by the Parties across various courts. The Pending Litigation Dismissal Orders thus clarify, consolidate, and explicitly incorporate all relevant provisions under the Fourth A&R CCAA Plans and the Sanction Orders that are necessary to terminate the Pending Litigation.[10]

16. The CCAA Plan Administrators and Monitors do not intend to seek the termination of the Pending Litigation matters brought by each of the Provinces, *Knight* Class Counsel, and Counsel for the Tobacco Producers (the "**Mediation Participants**"). Instead, counsel to the Monitors and CCAA Plan Administrators requested that such Mediation Participants take all necessary steps to seek with prejudice dismissals without costs of each of the Pending Litigation matters brought by such parties. The CCAA Plan Administrators and Monitors understand that each of the Mediation Participants has begun to take such steps.

17. With the exception of the Pending Litigation involving the Mediation Participants, the CCAA Plan Administrators and Monitors intend to coordinate to deliver a single communication to each Pending Litigation Court to avoid duplicative efforts. If the proposed Pending Litigation Dismissal Orders are granted, the Monitors and CCAA Plan Administrators intend to work with the Tobacco Companies to ensure the efficient and expedited dismissal of the Pending Litigation.

18. A comprehensive list of all Pending Litigation, including that involving the Mediation Participants, is summarized in Schedule "A" to the Pending Litigation Dismissal Orders.

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10 FTI 33rd Report at para. 24; EY 31st Report at paras. 25-26; Deloitte 31st Report at para. 24.

C. The Proposed QCC Reserve Protocol Facilitates the Execution of the QCC Fee Approval Orders

19. Under the QCC Fee Approval Orders, the QCC Reserve in the aggregate amount of $50,000,000 is to be retained in the Imperial QCAP Trust Account, RBH QCAP Trust Account, and JTIM QCAP Trust Account (collectively, the "**QCAP Trust Accounts**") pending release on terms and timing to be established by the Monitors, in consultation with the Court-Appointed Mediator and Quebec Class Counsel, or by further order of the CCAA Court.[11] The QCC Reserve is intended to be held back and paid to Eligible *Blais* Class Members in the event the aggregate claims of such QCAPs are greater than the amounts allocated to the QCAP Trust Accounts under the CCAA Plans. To the extent the aggregate claims of Eligible *Blais* Class Members are less than the amount allocated to the QCAP Trust Accounts, any residual amount in the QCC Reserve will be remitted to Quebec Class Counsel.[12]

20. In accordance with the QCC Fee Approval Order, any Sales and Excise Taxes recovered by the Quebec Class Counsel through refund, reimbursement, or otherwise and any interest paid by the relevant tax authority on an after-tax basis (the "**Recovered Tax Amounts**"), is to be returned to the QCAP Trust Accounts by the Quebec Class Counsel.[13] The Sales and Excise Taxes applicable to the Quebec Class Counsel Fee amount to $127,463,892.77.[14] This sum is included in the total aggregate Quebec Class Counsel Fee of $978,641,807.77, which excludes the QCC Reserve and any Sales and Excise Taxes thereon.

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11 QCC Fee Approval Order dated August 25, 2025 at paras. 5 and 7.
12 Amended Fees Endorsement dated August 25, 2025 at para. 79.
13 QCC Fee Approval Order dated August 25, 2025 at para. 6.
14 FTI 33rd Report at para. 29; EY 31st Report at para. 30; Deloitte 31st Report at para. 29.

21. The Sales and Excise Taxes applicable to the QCC Reserve amount to $7,487,500 (the "**Reserve Taxes**"). The Reserve Taxes will be payable in the event the QCC Reserve is released to Quebec Class Counsel, and, therefore, the proposed QCC Reserve Protocol provides that the Reserve Taxes will also be reserved in the QCAP Trust Accounts.[15]

22. As of the Plan Implementation Date, the QCC Reserve, inclusive of the potential Reserve Taxes, was fully funded and is held in the following accounts:

(a) Imperial QCAP Trust Account: $24,997,462.68 (being $21,741,650.51 plus $3,255,812.17 of Reserve Taxes);

(b) RBH QCAP Trust Account: $24,826,307.01 (being $21,592,787.14 plus $3,233,519.87 of Reserve Taxes); and

(c) JTIM QCAP Trust Account: $7,663,730.31 (being $6,665,562.35 plus $998,167.96 of Reserve Taxes).[16]

23. The QCC Reserve and Reserve Taxes may accrue investment income in the QCAP Trust Accounts. Any such investment income (including that which is accumulated or capitalized in the QCAP Trust Account), less applicable investment expenses and taxes ("**Net Income**"), will be added to the QCC Reserve pursuant to the proposed QCC Reserve Protocol. The QCC Reserve, inclusive of any Net Income earned on such amounts and any Reserve Taxes, is referred to as the "**Total QCC Reserve**".[17]

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15 FTI 33rd Report at para. 30; EY 31st Report at para. 31; Deloitte 31st Report at para. 30.
16 FTI 33rd Report at para. 31; EY 31st Report at para. 32; Deloitte 31st Report at para. 31.
17 FTI 33rd Report at para. 32; EY 31st Report at para. 33; Deloitte 31st Report at para. 32.

24. The proposed QCC Reserve Protocol was developed by the Monitors in consultation with the Court-Appointed Mediator and Quebec Class Counsel to govern the treatment of the Total QCC Reserve and the Recovered Tax Amounts.

25. In summary, the proposed QCC Reserve Protocol provides that:

(a) after the deadline by which Tobacco-Victim Claimants and Succession Claimants (each as defined in the Quebec Administration Plan) are required to submit their completed proofs of claim, the Claims Administrator, in consultation with the CCAA Plan Administrators, will determine the final aggregate amount payable to all Eligible *Blais* Class Members (the "**Compensation Payments**");

(b) the Compensation Payments will be determined no later than the earlier of (i) the date by which the Claims Administrator has accepted or rejected all proofs of claim, and (ii) 180 days after the deadline for the submission of proofs of claim;

(c) if the Compensation Payments are determined to be greater than the funds in the QCAP Trust Accounts inclusive of the Total QCC Reserve, all of the Total QCC Reserve will be paid to Eligible *Blais* Class Members;

(d) if the Compensation Payments are determined to be greater than the funds in the QCAP Trust Accounts exclusive of the Total QCC Reserve, but less than the funds in the QCAP Trust Accounts inclusive of the Total QCC Reserve, the portion of the Total QCC Reserve required to satisfy the

Compensation Payments will be allocated to the Eligible *Blais* Class Members and the remainder will be paid to Quebec Class Counsel; and

(e) if the Compensation Payments are determined to be less than or equal to the aggregate balance of funds in the QCAP Trust Accounts exclusive of the Total QCC Reserve, all of the Total QCC Reserve will be paid to the Quebec Class Counsel.[18]

26. Under the proposed QCC Reserve Protocol, the Quebec Class Counsel are to reasonably monitor whether they receive or obtain the benefit of any Recovered Tax Amounts and, if so, immediately inform the CCAA Plan Administrators in writing of the quantum thereof and deposit said amount into the QCAP Trust Accounts.[19]

27. The proposed QCC Reserve Protocol also provides that any Recovered Tax Amounts and Net Income earned on such amounts shall be applied towards the satisfaction of the Compensation Payments or paid to the Provinces and Territories in accordance with paragraph 55.1 of the Quebec Administration Plan. Under no circumstances will these monies be returned to the Quebec Class Counsel.[20]

28. Per the proposed QCC Reserve Protocol, all payments and allocations to or from the QCAP Trust Accounts as described above will be made in proportion to the shares of the Upfront Contributions made by each of Imperial, RBH, and JTIM.[21]

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18 FTI 33rd Report at para. 34; EY 31st Report at para. 35; Deloitte 31st Report at para. 34.
19 FTI 33rd Report at para. 35; EY 31st Report at para. 36; Deloitte 31st Report at para. 35.
20 FTI 33rd Report at para. 36; EY 31st Report at para. 37; Deloitte 31st Report at para. 36.
21 FTI 33rd Report at para. 35; EY 31st Report at para. 36; Deloitte 31st Report at para. 35.

PART III – STATEMENT OF ISSUES, LAW & AUTHORITIES

29. The issues on these motions are:

(a) whether this Court should grant the Pending Litigation Dismissal Orders; and

(b) whether this Court should grant the QCC Reserve Protocol Orders.

30. The Monitors and CCAA Plan Administrators respectfully submit that the answer to each of these questions is “yes”.

A. Section 11 of the CCAA Affords This Court Broad Authority to Make Orders ‘Appropriate in the Circumstances’

31. Section 11 of the CCAA “confers jurisdiction on the court in the broadest of terms” and enables this Court to “make any order that it considers appropriate in the circumstances.”[22] As the Supreme Court has explained, the “vast” power conferred by section 11 “is constrained only by restrictions set out in the CCAA itself, and the requirement that the order made be ‘appropriate in the circumstances’.”[23] The appropriateness of a section 11 order is also assessed in relation to its grounding in the well-established remedial objectives of the CCAA.

B. The Pending Litigation Dismissal Orders Are Appropriate

32. The Pending Litigation Dismissal Orders are appropriate in the circumstances and accordingly should be granted.

22 *Harte Gold Corp. (Re)*, 2022 ONSC 653 at para. 18; CCAA, *supra*, s. 11.
23 *Canada v. Canada North Group Inc.*, 2021 SCC 30 at para. 21, per Côté J.; *9354-9186 Québec inc. v. Callidus Capital Corp.*, 2020 SCC 10 at para. 67.

33. As discussed above, neither the Sanction Orders nor the Fourth A&R CCAA Plans expressly authorize the CCAA Plan Administrators or Monitors to seek dismissals of the Pending Litigation. Additionally, the Pending Litigation matters are spread across multiple schedules to each of the CCAA Plans and the operative provisions concerning the dismissals are dispersed across the CCAA Plans and the Sanction Orders. As a result, seeking dismissals in each applicable court would require filing a voluminous record in each proceeding.

34. The Pending Litigation Dismissal Orders will simplify the process for the termination and dismissal of the Pending Litigation by consolidating (i) the list of Pending Litigation matters into one schedule and (ii) the operative provisions into a single order for each proceeding. Not only will this aid the Monitors and CCAA Plan Administrators to facilitate the dismissal of the Pending Litigation but it will also help secure the aid and cooperation of the Pending Litigation Courts.

35. One purpose of the CCAA Plans is to "[p]rovide for the disposition and resolution of all Pending Litigation."[24] The Pending Litigation Dismissal Orders will assist in the realization of this purpose. Accordingly, such orders will further the remedial objectives of the CCAA as they will assist in the facilitation of the compromise previously held by the CCAA Court to be fair and reasonable.[25]

24 Imperial Fourth A&R CCAA Plan, RBH Fourth A&R CCAA Plan and JTIM Fourth A&R CCAA Plan, s. 2.1(e).

25 Imperial Sanction Order, RBH Sanction Order and JTIM Sanction Order each dated March 6, 2025 at para. 9(f).

36. The Monitors and CCAA Plan Administrators are not aware of any party opposing the granting of the Pending Litigation Dismissal Orders.[26]

C. The QCC Reserve Protocol Orders Are Appropriate

37. The QCC Reserve Protocol Orders are also appropriate in the circumstances and accordingly should be granted.

38. As discussed above, this Court directed the Monitors, in consultation with the Court-Appointed Mediator and Quebec Class Counsel, to establish a protocol for the release of the QCC Reserve. The proposed QCC Reserve Protocol was developed by the Monitors in consultation with the other parties and ensures that the QCC Reserve is distributed fairly and equitably. In short, the approval of the proposed QCC Reserve Protocol is necessary to give full effect to the QCC Fee Approval Order and is therefore appropriate in the circumstances.

39. The Monitors and CCAA Plan Administrators are not aware of any party opposing the granting of the QCC Reserve Protocol Order.[27]

PART IV – ORDER REQUESTED

40. For the above reasons, the Monitors and CCAA Plan Administrators, respectfully request that this Court grant: (i) the Pending Litigation Dismissal Orders and (ii) the QCC Reserve Protocol Orders in the forms attached at Tabs 3 and 4 to the Motion Records of the Monitors and CCAA Plan Administrators dated November 4, 2025.

ALL OF WHICH IS RESPECTFULLY SUBMITTED this 7 day of November, 2025.

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26 FTI 33rd Report at para. 38; EY 31st Report at para. 39; Deloitte 31st Report at para. 38.
27 FTI 33rd Report at para. 38; EY 31st Report at para. 39; Deloitte 31st Report at para. 38.

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SCHEDULE "A"

LIST OF AUTHORITIES

1. *Harte Gold Corp. (Re)*, 2022 ONSC 653.

2. *Canada v. Canada North Group Inc.*, 2021 SCC 30.

3. *9354-9186 Québec inc. v. Callidus Capital Corp.*, 2020 SCC 10.

SCHEDULE "B"

TEXT OF STATUTES, REGULATIONS & BY - LAWS

Companies' Creditors Arrangement Act **(R.S.C., 1985, c. C-36)**

General power of court

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

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JOINT FACTUM OF THE MONITORS AND CCAA PLAN ADMINISTRATORS
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