

CITATION: Imperial Tobacco Canada Limited, 2025 ONSC 1358
COURT FILE NO.: CV-19-615862-00CL; CV-19-616077-00CL; CV-19-616779-00CL
DATE: 2025-03-06

SUPERIOR COURT OF JUSTICE - ONTARIO

RE: **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**

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.

BEFORE: Chief Justice Geoffrey B. Morawetz

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Pamela Huff, Linc Rogers, Jake Harris and Katrina Banham, for Deloitte Restructuring Inc., in its capacity as Monitor of JTI-Macdonald Corp.

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Vern DaRe and Robert Cunningham, for the Canadian Cancer Society

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Clifton Prophet and Nicholas Kluge, for Philip Morris International Inc.

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Glenda Best, K.C. and Ken McClain, for the Province of Newfoundland and Labrador

Brett Harrison and Guneev Bhinder, for the Province of Quebec

Patrick Flaherty, Bryan McLeese, Claire Wortsman, Justin Safayeni and Patrick Carl, for R.J. Reynolds Tobacco Company and R.J. Reynolds Tobacco International Inc.

Ari Kaplan, Representative Counsel for Former Genstar U.S. Retiree Group Committee

Steven Weisz and Dilina Lallani, for Grand River Enterprises Six Nations Ltd.

James Bunting and Sam Cotton, for Heart and Stroke Foundation

Douglas Lennox and David Klein, for Representative Plaintiff, Kenneth Knight, in the Certified British Columbia Class Action

William Sasso and David Robins, for The Ontario Flue-Cured Tobacco Growers' Marketing Board

Matthew Gottlieb and Andrew Winton, for The Honourable Warren K. Winkler, K.C., Court-Appointed Mediator

HEARD: January 29, 30 and 31, 2025

ADDITIONAL SUBMISSIONS: March 3, 2025

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A. INTRODUCTION

[1] On March 8, 2019, JTI-Macdonald Corp. (“JTIM”) obtained an Initial Order pursuant to the *Companies’ Creditors Arrangement Act*, R.S.C. 1985, c. C-36, as amended (the “CCAA”). Deloitte Restructuring Inc. (“Deloitte”) was appointed as the Monitor of JTIM.

[2] On March 12, 2019, Imperial Tobacco Canada Limited and Imperial Tobacco Company Limited (collectively “Imperial”) obtained an Initial Order pursuant to the CCAA. FTI Consulting Canada Inc. (“FTI”) was appointed the Monitor of Imperial.

[3] On March 22, 2019, Rothmans, Benson & Hedge Inc. (“RBH”) obtained an Initial Order pursuant to the CCAA. Ernst & Young Inc. (“E&Y”) was appointed as the Monitor of RBH.

[4] A number of elements of these three CCAA filings overlap and the proceedings of JTIM, Imperial and RBH (the “Tobacco Companies”) are collectively referred to as the CCAA Proceedings.

[5] On April 5, 2019, the Honourable Warren K. Winkler, K.C., was court appointed as mediator (the “Mediator”) of the Tobacco Companies in the CCAA proceedings to oversee and coordinate a multi-party, comprehensive mediation (the “Mediation”) among the Tobacco Companies and their key stakeholders and mediate a global settlement of the Tobacco Claims (as defined in the Imperial Plan, the RBH Plan and the JTIM Plan, collectively the “CCAA Plans”).

[6] After a period of four and a half years, the Tobacco Companies had failed, both individually and collectively, to produce a plan of arrangement or compromise.

[7] On October 5, 2023, the court directed the Monitors to work with the Mediator to develop a plan of compromise or arrangement for each Tobacco Company.

[8] On October 31, 2024, Meeting Orders were granted in each of the Tobacco Companies’ CCAA proceedings pursuant to which a plan of compromise or arrangement in respect of each of the Tobacco Companies dated October 17, 2024 (the “October 17 CCAA Plans”) was accepted for filing and creditors meetings for Affected Creditors were scheduled for December 12, 2024 (the “Meetings”). (Defined terms used but undefined in this endorsement are as set out in the Third Amended and Restated CCAA Plan of Compromise and Arrangement in respect of each Tobacco Company dated February 27, 2025 (the “Third A&R CCAA Plans”).)

[9] On December 5, 2024, the Monitors served CCAA Plans that amended and restated the October 17 CCAA Plans. The amendments were administrative in nature.

[10] The Meetings of Affected Creditors to vote on the CCAA Plans took place on December 12, 2024. The CCAA Plans were unanimously approved by Affected Creditors voting in person or by proxy at each of the three Meetings and the double majority required by the CCAA was achieved for each CCAA Plan as follows:

- (a) at the Imperial Meeting, the Imperial CCAA Plan was unanimously approved by 289,906 votes, representing \$963,822,023,265 in total value of Voting Claims;
- (b) at the RBH Meeting, the RBH CCAA Plan was unanimously approved by 289,904 votes, representing \$963,296,023,265 in total value of Voting Claims; and
- (c) at the JTIM Meeting, the JTIM CCAA Plan was unanimously approved by 289,904 votes, representing \$963,296,023,265 in total value of Voting Claims.

[11] The Monitors now bring motions in each of the CCAA proceedings:

- (d) for Sanction Orders approving and sanctioning the operative CCAA Plans, namely the Third A&R CCAA Plans dated February 27, 2025;
- (e) authorizing and directing CCAA Plan Administrators, the Mediator and the Tobacco Companies to implement the CCAA Plans;
- (f) approving the CCAA Plan Administration Reserve and the PCC Compensation Plan Reserve;
- (g) an order releasing the Released Claims in respect of each Applicant, the Applicant Tobacco Company Group, the Monitors, the CCAA Plan Administrators, the Mediator and the other Released Parties, in accordance with the terms of the CCAA Plans;
- (h) extending the Stay Period to the Effective Time;
- (i) an order appointing Deloitte, FTI and E&Y as CCAA Plan Administrators; and
- (j) ancillary relief.

[12] On March 3, 2025, the Monitors' motions for CCAA Plan Amendment Orders were granted, which reflected an agreement reached by the Tobacco Companies to allocate a \$750 million working capital holdback to RBH. In exchange, RBH, JTIM and JTIM-TM agreed to withdraw their opposition to this motion. The court's endorsement, reported at 2025 ONSC 1375 dated March 3, 2025 is attached as Schedule "A".

[13] For the following reasons, the motions are granted, which, among other things, sanctions the CCAA Plans, as amended.

B. OVERVIEW OF CCAA PLANS

[14] The sanctioning of the CCAA Plans is a momentous achievement in Canadian restructuring history.

[15] In order to appreciate the magnitude of this achievement, it is necessary to provide a detailed summary of the CCAA Plans. If there are any inconsistencies between this summary and the specific provisions of the CCAA Plans, the provisions of the CCAA Plans prevail.

[16] The CCAA Plans of Imperial, RBH and JTIM will effect a global settlement of all Tobacco Claims against such Tobacco Companies.

[17] The enormity of this settlement is best understood by considering the sheer number of parties involved and the complexity of the Tobacco Claims within the scope of the global settlement, including:

- (a) The forty-two Applicant companies involved including: the Applicants – Imperial, RBH and JTIM; the Tobacco Companies’ three international Parents based in the United Kingdom, United States and Japan respectively; and thirty-five Affiliates of the Tobacco Companies;
- (b) In actions pursued in every Province, and in claims advanced by two Territories, in which all Provincial Crowns and Territorial governments were involved in seeking recovery of costs incurred in connection with the provision of past and future health care benefits to treat and care for Canadians suffering from Tobacco-related Diseases;
- (c) Quebec Class Counsel obtained a \$13.7 billion judgment in two Quebec class actions on behalf of smokers who suffered tobacco-related harms, as well as Quebec residents addicted to nicotine in the cigarettes made by the Tobacco Companies;
- (d) The tort claims and potential tort claims of all individual smokers in Canada who have suffered tobacco-related harms, except those Quebec residents covered by the Quebec Class Actions judgment, will be settled through the Pan-Canadian Claimants’ Compensation Plan (“PCC Compensation Plan”) and the Cy-près Fund (described in more detail below). Pan-Canadian Claimants who are not eligible for direct compensation payments under the PCC Compensation Plan will receive indirect benefits from the research, programs and initiatives focused on improving outcomes in Tobacco-related Diseases that will be funded from the Cy-près Fund;
- (e) In three uncertified class actions, the Ontario Flue-Cured Tobacco Growers’ Marketing Board and certain individual tobacco growers pursued breach of contract claims on behalf of tobacco growers; and
- (f) The *Knight* Class Action pursued a certified class action against Imperial alleging misleading marketing of light and mild cigarettes sold in British Columbia.

[18] To obtain the global settlement, the Tobacco Companies will pay all but \$750 million of their aggregate cash on hand upfront, and the majority of their future Net After-Tax Income until

the Global Settlement Amount of \$32.5 billion is paid in full. In return, the Tobacco Companies will receive a release of all Tobacco Claims.

[19] Since the Global Settlement Amount will be paid with a combination of upfront cash and annual payments during the Contribution Period, the CCAA Plans contain terms which are designed to manage the ongoing relationship among the Tobacco Companies and the Claimants to ensure the CCAA Plans are administered properly. The CCAA Plans accomplish this objective by enabling the Provinces, Territories, and any other Claimants who will not be paid their full share of the Global Settlement Amount out of the upfront cash (“Impacted Claimants”), to be provided with insight into the business and operations of the Tobacco Companies through detailed financial disclosure that will be provided over the twenty-or-so-year Contribution Period.

[20] Given the circumstances described above, (i) oversight of the Tobacco Companies by the CCAA Court is required during the administration of the CCAA Plans, (ii) financial and other information from the Tobacco Companies must be provided and explained to the Claimants to whom monies are still owed, and (iii) there must be a reporting function to the CCAA Court regarding the status of the implementation and administration of the CCAA Plans. The CCAA Plans create a role for the Monitors to act as neutral, independent intermediaries – the CCAA Plan Administrators – to perform or facilitate the performance of these functions.

[21] Because the Tobacco Companies will be required to interface with the Provinces and Territories during the administration of the CCAA Plans, it is essential that the Tobacco Companies be able to do so without having to speak separately to individual representatives from each Province and Territory. The CCAA Plans provide the Tobacco Companies with comfort that, during the Contribution Period (which is anticipated to be lengthy), they will not have to deal separately with thirteen individual Provincial and Territorial governments and, instead, will have one representative entity to whom they will direct their attention. In order to communicate with one voice with the Tobacco Companies, the Provinces and Territories shall establish the Provincial and Territorial Liaison Committee (“PTLC”) to coordinate and facilitate their communications with the Tobacco Companies, the CCAA Plan Administrators and others regarding the CCAA Plans during the Contribution Period. The Tobacco Companies through the CCAA Plan Administrators will communicate with the Provinces and Territories jointly as a group through the Chair of the PTLC.

[22] The CCAA Plans settle the claims of the Provinces and Territories to recover the expenditures to provide past and future health care benefits to treat and care for Canadians suffering from Tobacco-related Diseases through the payment to the Provinces and Territories of upfront cash, plus annual payments from the Tobacco Companies’ future Net After-Tax Income during the Contribution Period.

[23] The CCAA Plans also settle the claims of Canadians to recover damages for certain tobacco-related harms caused by their use of or exposure (whether direct or indirect) to Tobacco Products or their emissions. There are three components to the settlement of the claims by Individuals in all Canadian jurisdictions:

- (a) Payment of \$4.119 billion to satisfy the judgment granted by the Quebec Superior Court, and upheld by the Quebec Court of Appeal, awarding damages

to Quebec residents diagnosed with Lung Cancer, Throat Cancer or Emphysema/COPD (GOLD Grade III or IV) who meet the other eligibility criteria of the certified class definition. Eligible Quebec residents will receive direct payments of compensation;

- (b) Payment of \$2.521 billion to fund the PCC Compensation Plan which will provide direct payments of compensation to residents of all of the Provinces and Territories who were diagnosed with Lung Cancer, Throat Cancer or Emphysema/COPD (GOLD Grade III or IV) and meet the other eligibility criteria to qualify for compensation under the PCC Compensation Plan; and
- (c) Payment of \$1.0 billion to create the Cy-près Fund that will be administered by a public charitable foundation (“Cy-près Foundation”) and provide indirect benefits to Individuals residing in all Provinces and Territories who are suffering from tobacco-related harms and do not fulfill the criteria to qualify to receive compensation under the Quebec Administration Plan or the PCC Compensation Plan. The establishment of the Cy-près Foundation is a creative use of a cy-près remedy outside of the context of a class action that is used to fill in the gap where direct compensation is not available to Individuals by providing a remedy in the form of indirect benefits that will flow to:
 - (i) Smokers suffering from Lung Cancer, Throat Cancer or Emphysema/COPD (GOLD Grade III or IV) who are outside the claims period or who smoked less than the requisite tobacco dose to qualify for direct compensation under the PCC Compensation Plan;
 - (ii) Smokers who have tobacco-related harms other than Lung Cancer, Throat Cancer or Emphysema/COPD (GOLD Grade III or IV); and
 - (iii) Persons who smoke or have smoked Tobacco Products who have not yet or may never develop a tobacco-related harm.

[24] The Quebec Administration Plan and the PCC Compensation Plan are innovative in their use of an agent for class counsel to provide assistance to Individual claimants to complete and submit claims forms.

C. BACKGROUND LEADING TO DEVELOPMENT OF CCAA PLANS

[25] JTIM, Imperial and RBH were granted protection from their creditors under the CCAA on March 8, 12 and 22, 2019 respectively. The Tobacco Companies collectively sought to use their CCAA Proceedings to achieve a global settlement of all claims and potential claims against them and their respective parent and affiliated companies in Canada in respect of the development, design, manufacture, production, marketing, advertising, distribution, purchase, sale or disposition of Tobacco Products, the use of or exposure (whether direct or indirect) to Tobacco Products or their emissions, the development of any disease related to the use of Tobacco Products, or any

representation or omission in respect of Tobacco Products (together with certain other Claims related to Tobacco Products, collectively, the “Tobacco Claims”).

[26] The Tobacco Claims include the Claims of the following Claimants:

- (a) **Provinces and Territories** – All Provinces commenced actions against the Tobacco Companies and members of their Tobacco Company Groups pursuant to health care costs recovery (“HCCR”) legislation which provide each Provincial Crown with a direct and distinct action against a manufacturer of Tobacco Products to recover the cost of health care benefits caused or contributed to by a tobacco-related wrong. The Northwest Territories and Nunavut proclaimed HCCR Legislation which is not yet in force. Yukon has not enacted HCCR Legislation. The CCAA Plans compromise the claims of Yukon and the other Territories in respect of the present value of the Territories’ total expenditures for past and future health care benefits provided for Insured Persons resulting from Tobacco-related Diseases or the risk of Tobacco-related Diseases;
- (b) **Quebec Class Action Plaintiffs** – In Quebec, the Quebec Class Action Plaintiffs obtained a \$13.7 billion judgment against Imperial, RBH and JTIM in two class actions. The certified class definition in the *Létourneau* Class Action includes Quebec residents who, as of 1998, were addicted to nicotine from September 30, 1994 onward and continued to be daily smokers of the Tobacco Companies’ cigarettes as of February 21, 2005 (or their earlier death). The certified class definition in the *Blais* Class Action includes Quebec residents who, prior to November 20, 1998, had smoked a minimum of 87,600 cigarettes and, prior to March 12, 2012, were diagnosed with Lung Cancer, Throat Cancer or Emphysema/COPD (GOLD Grade III or IV);
- (c) **Pan-Canadian Claimants** – Represented by the Court-appointed PCC Representative Counsel, the Pan-Canadian Claimants are all Individuals, excluding the *Blais* Class Members and *Létourneau* Class Members, who have asserted or may be entitled to assert a PCC Claim against the Tobacco Companies. A PCC Claim is any Claim of any Pan-Canadian Claimant to recover damages in respect of the development, design, manufacture, production, marketing, advertising, distribution, purchase or sale of Tobacco Products, including any representations or omissions in respect thereof, the historical or ongoing use of or exposure (whether directly or indirectly) to Tobacco Products or their emissions and the development of any disease or condition as a result thereof, in each case arising from any conduct, act or omission, existing or taking place at or prior to the Effective Time (whether or not continuing thereafter) including, all Claims that have been, could have been or could be advanced in seventeen actions listed in the CCAA Plans that were commenced in British Columbia, Alberta, Saskatchewan, Manitoba, Ontario, Quebec, Nova Scotia and Newfoundland and Labrador, by Individuals on their own account or under provincial class proceedings legislation. The settlement of the PCC Claims will be achieved through the payment of direct

compensation through the PCC Compensation Plan to eligible PCCs, together with the provision of indirect benefits that will flow to PCCs who are not eligible to receive a direct compensation payment through the research, programs and initiatives focused on improving outcomes in Tobacco-related Diseases that will be funded by the Cy-près Foundation;

- (d) ***Knight Class Action Plaintiffs*** – In British Columbia, the *Knight* Class Action Plaintiffs pursued a certified class action against only Imperial on behalf of persons who purchased Imperial's light or mild cigarettes in British Columbia for personal, family or household use between May 9, 1997 and July 31, 2007; and
- (e) **Tobacco Producers** – The Ontario Flue-Cured Tobacco Growers' Marketing Board and certain individual tobacco growers pursued three uncertified class actions commenced against each of the Tobacco Companies who sold their tobacco through the Ontario Flue-Cured Tobacco Growers' Marketing Board pursuant to the annual Heads of Agreement made with Imperial, RBH and JTIM from January 1, 1986 to December 31, 1996.

[27] The Mediator and the Monitors intend to serve and file Fourth Amended and Restated CCAA Plans for Imperial, RBH and JTIM which make additional revisions of an administrative nature to (i) clarify the process for the establishment of the Cy-près Foundation and the final approval of the Cy-près Foundation after the Sanction Hearing, and (ii) address the non-solicitation of Pan-Canadian Claimants and Quebec Class Action Plaintiffs. None of these amendments are materially adverse to the financial or economic interests of the Affected Creditors or the Unaffected Creditors.

D. PURPOSE AND EFFECT OF CCAA PLANS

[28] If sanctioned, the CCAA Plans will:

- (a) Fully and finally settle, irrevocably compromise and release all Tobacco Claims;
- (b) Bring finality to and resolve all Pending Litigation in Canada against the Tobacco Companies, members of their Tobacco Company Groups and the Canadian Tobacco Manufacturers' Council;
- (c) Effect the distribution of the Global Settlement Amount of \$32.5 billion to the Claimants;
- (d) Effect the restructuring of the businesses of Imperial and RBH by transferring their respective Alternative Products Business to a Newco; and
- (e) Permit Imperial, RBH and JTIM to exit their CCAA Proceedings and continue to carry on business in Canada.

E. STRUCTURE OF THE CCAA PLANS TO SETTLE ALL TOBACCO CLAIMS IN CANADA

[29] The global settlement of all Tobacco Claims in Canada involves the concurrent resolution of the CCAA Proceedings of Imperial, RBH and JTIM in accordance with the terms of the CCAA Plans. The complexity of the structure of the CCAA Plans to settle the Tobacco Claims and the implementation and administration of the terms of the CCAA Plans over an estimated twenty-year Contribution Period necessitate continuing oversight of the Tobacco Companies throughout the Contribution Period. The CCAA Plans provide compensation to Affected Creditors based on future earnings of the Tobacco Companies over a Contribution Period that is currently estimated to span twenty years.

(i) Jurisdiction of CCAA Court

[30] In the CCAA Plan Administrator Appointment Orders, the CCAA Court will be requested to approve the appointment of the Monitors - FTI, EY and Deloitte - to serve as the CCAA Plan Administrators respectively for the CCAA Plans of Imperial, RBH and JTIM. Once appointed, as required and applicable, they may act in both their capacities as Monitors and CCAA Plan Administrators depending upon the duties that they are fulfilling.

[31] The CCAA Court shall have jurisdiction to address and resolve issues that may arise during the administration of the CCAA Plans including such matters as:

- (a) Determining whether a Tobacco Company is no longer Financially Viable due to circumstances beyond the control of the Tobacco Company or its Tobacco Company Group;
- (b) Jointly with the Quebec Superior Court, determining matters relating to the ongoing supervision of the Quebec Class Action Administration Plan;
- (c) Determining matters relating to the ongoing supervision of the Pan-Canadian Claimants' Compensation Plan;
- (d) Supervising the Cy-près Foundation, including approving the establishment of the Cy-près Foundation as a charitable public foundation; approving the appointment of ten directors, including the Chair, to the Foundation Board; and approving proposals from interested individuals and organizations seeking financing and support for research, programs and initiatives which fall within the scope of the mission of the Cy-près Foundation;
- (e) Receiving reports from the CCAA Plan Administrators, the Claims Administrator for the PCC Compensation Plan and the Quebec Administration Plan, and the Chair of the Cy-près Foundation;
- (f) Determining whether the acceleration clause may be invoked in the event that
 - (i) a Tobacco Company breaches the covenant restricting a Tobacco Company from transferring all of its assets and business to any other entity, except in certain prescribed circumstances, or
 - (ii) a Tobacco Company fails to deposit

into the Global Settlement Trust Account or the Supplemental Trust Account, as applicable, any amount at all on account of its respective share of any of the Upfront Contributions, any Annual Contributions or any Reserved Amounts;

- (g) Approving any waivers of an Event of Default or Breach, other than a failure to make a Contribution which obligation may not be waived;
- (h) In accordance with the Dispute Resolution Procedure, determining any Disputes that may arise between the Tobacco Companies, any or all members of the Tobacco Company Groups, Aggrieved Parties and/or the CCAA Plan Administrators arising out of or relating to the CCAA Plan, including the determination of all proceedings relating to the occurrence of an Event of Default and, in exceptional circumstances, a Dispute pertaining to a Breach in lieu of the Arbitrator doing so;
- (i) Determining whether to grant a judgment enforcing an Arbitrator's award that resolved a Dispute arising during the administration of the CCAA Plans; and
- (j) Determining whether a Putative Miscellaneous Claimant should be granted leave to commence a proceeding relating to a Miscellaneous Claim and then determining such Putative Miscellaneous Claimant's claim on the merits.

[32] The CCAA Plan Administrators will be central to the administration of the CCAA Plans in their role as the conduit for the orderly flow of information and reports between, as applicable, the CCAA Court, Quebec Superior Court, Tobacco Companies, Claimants, Cy-près Foundation, Claims Administrator and Administrative Coordinator.

[33] The CCAA Plan Administrators' oversight of the administration of the PCC Compensation Plan and the Quebec Administration Plan shall include:

- (a) Being consulted regarding and, if warranted, applying to the CCAA Court to seek a revision to the terms of the PCC Compensation Plan and the Quebec Administration Plan;
- (b) Upon receipt of a requisition and sufficiently detailed supporting information and data from the Claims Administrator, authorizing the advancement of an instalment of funds held in the PCC Trust Account and QCAP Trust Account to the Claims Administrator's trust account to enable it to make Individual Payments to Eligible PCCs and Compensation Payments to Eligible *Blais* Class Members;
- (c) Reporting to the CCAA Court regarding the progress of the administration of the PCC Compensation Plan, and jointly to the CCAA Court and the Quebec Superior Court regarding the progress of the administration of the Quebec Administration Plan; and
- (d) Submitting the Claims Administrator's budget for the claims administration of the PCC Compensation Plan to the CCAA Court for approval, and the Claims

Administrator's budget for the claims administration of the Quebec Administration Plan for joint approval by the CCAA Court and Quebec Superior Court.

(ii) Overview of Economic Framework of CCAA Plans

[34] In the Tobacco Companies' CCAA Proceedings, the terms of the three CCAA Plans are interrelated and interdependent and have been structured in such a manner as to achieve the global settlement of all Tobacco Claims against Imperial, RBH and JTIM, which essentially comprise the legally compliant tobacco industry in Canada. All three CCAA Plans must be sanctioned by the CCAA Court and commence implementation at the same Effective Time in order to effect the global settlement.

[35] The CCAA Plans contemplate that Annual Contributions will be funded by the Net After-Tax Income generated from the Canadian operations of Imperial, RBH and JTIM. The Tobacco Companies will be maintained as viable going concerns in Canada, which receive ongoing intercompany operational support, in order to maximize their future ability to pay.

[36] The economic framework of the CCAA Plans is structured as follows: the Global Settlement Amount of \$32.5 billion will be paid over a period estimated to be in the range of twenty years by (i) an upfront cash payment from each Tobacco Company calculated based upon its cash and cash equivalents generated from all sources by each Tobacco Company as at the month end prior to the Plan Implementation Date, less the aggregate sum of \$750 million allocated to RBH to fund working capital, plus the Cash Security Deposits held as suretyship with the Registry of the Quebec Court of Appeal ("Upfront Contributions"); plus (ii) annual payments made by each Tobacco Company from its future earnings calculated using a Metric based upon its Net After-Tax Income ("Annual Contributions"); plus (iii) prescribed percentages of any Tax Refund Cash Payments, Annual Amounts and Carry Amounts (collectively, "Reserved Amounts") which will provide the Claimants with percentages of any tax attributes resulting from each Tobacco Company's deduction for income tax purposes of an Upfront Contribution, Annual Contribution or Reserved Amount that is available for carryforward or carryback to another taxation year.

(iii) Global Settlement Amount

[37] The Global Settlement Amount under the CCAA Plans is \$32.5 billion which will be paid from the Tobacco Companies' cash on hand at CCAA Plan implementation as well as the future Net After-Tax Income that will be generated by the Tobacco Companies' operating businesses in Canada post CCAA Plan implementation. Since the Tobacco Companies do not have sufficient assets to pay the Global Settlement Amount in full on the Plan Implementation Date, the \$32.5 billion will be paid by:

1. An Upfront Contribution from each Tobacco Company payable in full on or before the Plan Implementation Date, plus
2. Annual Contributions from each Tobacco Company calculated as percentages of Net After-Tax Income paid on or before the July 30th following each calendar year during the Contribution Period, plus

3. Periodic cash payments of prescribed percentages of any Reserved Amounts deposited into the Supplemental Trust Account by each Tobacco Company.

[38] The Annual Contributions will be based upon a prescribed percentage of each Tobacco Company's Net After-Tax Income calculated in accordance with the Metric. Since the quantum of the Tobacco Companies' future profits after the Plan Implementation Date is not presently determinable, the Contribution Period is not fixed. After the Plan Implementation Date, the Tobacco Companies are required to continue to pay the Annual Contributions and the percentages of the Reserved Amounts to be released from the Supplemental Trust Account to the Global Settlement Trust Account for distribution to the Claimants, until such time as the aggregate amount of the Contributions (inclusive of the Upfront Contributions, Annual Contributions and the Reserved Amounts released to the Global Settlement Trust Account) equals \$32.5 billion. Upon payment of the Global Settlement Amount in full, the Tobacco Companies' obligations in respect of their CCAA Plans shall terminate.

(iv) *Upfront Contributions*

[39] The Upfront Contributions will be equal to the aggregate of:

1. Each Tobacco Company's cash and cash equivalents generated from all sources, excluding Alternative Products for the period commencing at each Tobacco Company's respective Filing Date to the month end prior to the Plan Implementation Date, plus
2. The Cash Security Deposits deposited by Imperial and RBH in the Registry of the Quebec Court of Appeal as security for the payment of the *Blais* Judgment and the *Létourneau* Judgment, less
3. \$750 million which shall be allocated to RBH to provide working capital.

[40] Since the commencement of the CCAA Proceedings in March, 2019, the Tobacco Companies have continued to carry on business and have been accumulating cash which will be included in the Upfront Contributions.

[41] Excluded from the CCAA Plans are Alternative Products which include e-cigarettes (vaping products), and nicotine pouches. In the CCAA Plans, an Alternative Product is formally defined to be: (i) any 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 (a) a substance; or (b) a mixture of substances; (ii) any 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; (iii) any non-combustible tobacco (other than smokeless tobacco) or nicotine delivery product; or (iv) any component, part or accessory of or used in connection with any such device or product referred to above.

[42] Imperial and RBH have Alternative Products Businesses in Canada, whereas JTIM does not. Any Alternative Product Claim against a Tobacco Company or any member of its Tobacco Company Group is an Unaffected Claim which is not released pursuant to the CCAA Plans. Cash

generated from the Alternative Products Businesses of Imperial and RBH is excluded from the calculations of the Annual Contributions.

[43] Since the formula for calculating the Upfront Contributions includes each Tobacco Company's cash on hand as at the month end prior to the Plan Implementation Date, which will occur on an as yet undetermined date, the following calculation of the \$12.456 billion amount of the Upfront Contributions is an estimate as at December 31, 2024 based upon five-year financial forecasts prepared by the Tobacco Companies in the Spring of 2024:

All amounts in CAD, billions

Projected Upfront Contributions as at December 31, 2024:

JTIM:	1.581
IMPERIAL:	4.849
RBH:	5.792
IMPERIAL's Cash Security Deposit:	0.758
RBH's Cash Security Deposit:	0.226
<hr/>	
Total:	13.206
Less: Working Capital	(0.750)
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Projected Available Upfront Contributions:	12.456
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(v) *Annual Contributions*

[44] Each Tobacco Company will make Annual Contributions based upon a prescribed percentage of its Net After-Tax Income that is to be calculated in accordance with the Metric, which is the method by which, on an annual basis, the applicable earnings of the operating business of each Tobacco Company will be determined, excluding the Alternative Products Businesses of Imperial and RBH.

[45] The Metric will **include**:

- (a) Interest income; and
- (b) The proceeds of any disposition of any assets, including capital assets and intangible assets.

[46] The Metric will **exclude**:

- (a) One-time accounting adjustments that are non-operational in nature;

- (b) One-time restructuring and global settlement related adjustments that are non-operational in nature (however, the Metric will not exclude cash expenses associated with CCAA Plan implementation including the Costs for the services of the CCAA Plan Administrators, the Claims Administrator in respect of the administration of the PCC Compensation Plan, the Administrative Coordinator and the PCC Representative Counsel);
- (c) Interest expense to related parties; and
- (d) Any penalties and fines imposed by taxing and/or regulatory authorities.

[47] Each Tobacco Company will calculate the Annual Contributions which it must pay under its CCAA Plan by applying the percentages set out in Table 1 below to its Net After-Tax Income that it will independently determine using its own accounting practices.

Table 1

Years after Plan Implementation Date	Percentage of Net After-Tax Income (“NATI”)
Years 1 - 5	85% of NATI
Years 6 - 10	80% of NATI
Years 11 - 15	75% of NATI
Year 16 and following until \$32.5 billion has been paid in full	70% of NATI

[48] The Annual Contributions for Year 1 shall be adjusted to eliminate the portion of Year 1 that occurs prior to the Plan Implementation Date. The Annual Contributions for the final calendar year of the Contribution Period shall be pro-rated to ensure that the Global Settlement Amount of \$32.5 billion is not exceeded.

[49] A Tobacco Company shall only be permitted to reduce the percentage of its Annual Contributions by the next 5% increment provided that it has made all of the payments of Annual Contributions due and owing for all prior years.

F. ALLOCATION OF GLOBAL SETTLEMENT AMOUNT

(i) Allocation of \$32.5 Billion Global Settlement Amount

[50] The following Claimants participated in the mediation, unanimously voted to approve the CCAA Plans at the Meetings on December 12, 2024 and will be entitled to receive shares of the Global Settlement Amount:

1. Provinces and Territories;
2. Quebec Class Action Plaintiffs;
3. Pan-Canadian Claimants;
4. *Knight* Class Action Plaintiffs; and
5. Tobacco Producers.

[51] The Global Settlement Amount will be allocated among the Claimants, the Cy-près Fund, the Miscellaneous Claims Fund and two cash reserves that will be established on the Plan Implementation Date as security for the payment of the Costs (both Costs outstanding as of the Plan Implementation Date and Costs incurred after the Plan Implementation Date) of the services provided by the Monitors, CCAA Plan Administrators, Court-Appointed Mediator, Claims Administrator, Administrative Coordinator and PCC Representative Counsel, as set out in Table 2 below:

Table 2

Amount Allocated from Global Settlement Amount	Amount in CAD, billions
Provinces and Territories Settlement Amount	24.725
QCAP Settlement Amount ((\$4.250 minus \$0.131 allocated to Cy-près Foundation)	4.119
PCC Compensation Plan Amount	2.521
Cy-près Fund (inclusive of \$0.131 QCAP Cy-près Contribution)	1.000
Tobacco Producers Settlement Amount	0.015
<i>Knight</i> Class Action Plaintiffs Settlement Amount	0.015
Miscellaneous Claims Amount (may be increased to \$0.060 if the Tobacco Companies make an election pursuant to Section 18.2.1)	0.025
CCAA Plan Administration Reserve	0.075
PCC Compensation Plan Reserve	0.005
Global Settlement Amount	32.500

(ii) Allocation of Upfront Contributions

[52] Set out in Table 3 below is the projected allocation of the Upfront Contributions which are estimated to be \$12.456 billion as of December 31, 2024:

Table 3

Amount Allocated from Upfront Contributions	Amount in CAD, billions
Provinces and Territories	6.202
Quebec Class Action Plaintiffs	3.869
Pan-Canadian Claimants	1.750
Cy-près Foundation	0.500
Tobacco Producers	0.015
<i>Knight</i> Class Action Plaintiffs	0.015
Miscellaneous Claims Fund	0.025
CCAA Plan Administration Reserve	0.075
PCC Compensation Plan Reserve	0.005
Total Estimated Upfront Contributions	12.456

(iii) Allocation Among Provinces and Territories

[53] The Provinces and Territories have agreed that the Provinces and Territories Settlement Amount will be apportioned among the Provinces and Territories in accordance with the percentages set out in Table 4 below:

Table 4

Province/Territory	Percentage Share of Provinces and Territories Settlement Amount
British Columbia	14.4710%
Alberta	12.6272%
Saskatchewan	2.8787%
Manitoba	4.5252%
Ontario	28.7761%
Québec	26.8248%

Province/Territory	Percentage Share of Provinces and Territories Settlement Amount
New Brunswick	2.4117%
Nova Scotia	3.1740%
Prince Edward Island	0.6605%
Newfoundland and Labrador	2.1471%
Yukon	0.3973%
Northwest Territories	0.7269%
Nunavut	0.3795%
Total:	100.0000%

G. PARENT AND TOBACCO COMPANY GROUP SUPPORT THROUGH INTERCOMPANY SERVICES

[54] Imperial, RBH and JTIM each carries on business in Canada within a highly integrated, global Tobacco Company Group having an international Parent, based respectively in the U.K., the U.S. and Japan, and many Affiliates and direct or indirect Subsidiaries. Each Tobacco Company is dependent on Intercompany Transactions to buy and sell goods, services, licenses and intellectual property and allocate, collect and pay costs, expenses and other amounts from and to the members of its Tobacco Company Group.

[55] The agreement by the Tobacco Companies' respective Parents and relevant Affiliates to provide shared services and other operational support to the Tobacco Companies during the Contribution Period via the Intercompany Transactions is one part of the consideration for the full and final settlement and release of all Tobacco Claims against the Tobacco Company Groups of Imperial, RBH and JTIM.

[56] During the Contribution Period, each Tobacco Company's Parent and relevant Affiliates shall continue to provide the Tobacco Company and its Subsidiaries with Intercompany Services that are (a) consistent with existing arrangements or past practice, or as otherwise approved by the CCAA Plan Administrators, (b) in compliance with Applicable Law and subject to the Tobacco Company Group's transfer pricing policies across global markets, and (c) subject to normal course market adjustments. Any adjustments to Intercompany Services within the Tobacco Company Group shall not affect the Tobacco Company in a manner that is materially less favourable as compared to the terms on which similar Intercompany Services are provided to any other members of the Tobacco Company Group.

(i) Payment Assurances for the Benefit of Provinces, Territories and Impacted Claimants

[57] The Tobacco Producers and *Knight* Class Action Plaintiffs will be paid their full shares of the Global Settlement Amount from the Upfront Contributions. The QCAPs, PCCs and Cy-près Foundation will be paid, in substantial part, from the Upfront Contributions with the balance of their full shares projected to be received after the end of Years 1, 2 and 5 respectively of the Contribution Period. The payment period for the Provinces and Territories will extend over the balance of the Contribution Period which, depending on the Tobacco Companies' future financial performance, could extend beyond twenty years.

[58] The CCAA Plans do not include any agreements whereby guarantors would provide guarantees for the Tobacco Companies' performance of their obligations to pay the Global Settlement Amount in full. The payment assurances provided for in the CCAA Plans are comprised of: (i) Contribution Security to be granted by all three Tobacco Companies; (ii) the JTIM Subordination Agreement; and (iii) certain restrictions on the Tobacco Companies' ability to transfer cash outside of Canada during the Contribution Period.

(ii) Contribution Security

[59] As a condition to the implementation of the CCAA Plans, at least ten Business Days prior to the Plan Implementation Date, each Tobacco Company is required to execute a Contribution Security Agreement granting security to a Collateral Agent (to be engaged prior to the Effective Time) for the exclusive benefit of the Claimants over all its present and after acquired assets, undertakings and properties to secure the Tobacco Company's obligation to pay the Annual Contributions and Reserved Amounts. Set out in Table 5 below are the forms of Contribution Security to be granted by each Tobacco Company based upon the nature of their assets and properties:

Table 5

Form of Contribution Security	Imperial	RBH	JTIM
Contribution Security Agreement	√	√	√
Deed of Immoveable Hypothec		√	√
Deed of Moveable Hypothec	√	√	√
Demand Debenture granting mortgage on real property		√	
Subordination Agreement			√

[60] The Contribution Security shall be subordinate to (i) any statutory deemed trusts; and (ii) any security granted by a Tobacco Company to any lender in connection with an operating facility, subject to certain limits.

[61] The Contribution Security shall only be enforceable upon the occurrence of an Event of Default which has not been cured. No exercise of remedies pursuant to the Contribution Security Agreement may occur without the approval of the CCAA Court which shall have exclusive jurisdiction to determine all matters relating to the enforcement of such agreement.

(iii) JTIM Subordination Agreement

[62] JTIM TM, which is a wholly owned subsidiary of JTIM, owns and licenses to JTIM trademarks used in JTIM's business under a trademark license agreement dated October 8, 1999, as amended from time to time. JTIM TM is also JTIM's largest secured creditor pursuant to ten secured convertible debentures.

[63] As a condition to the implementation of the CCAA Plans, at least ten Business Days prior to the Plan Implementation Date, JTIM TM is required to enter into the JTIM Subordination Agreement that subordinates JTIM TM's existing security over JTIM's assets, undertakings and properties to the Collateral Agent and defers the exercise of any rights and recourses by JTIM TM against JTIM and its property, until such time as the Global Settlement Amount has been paid in full. JTIM shall have the right to use the trademarks licensed under the trademark license agreement until the Global Settlement Amount has been paid in full.

[64] During the Contribution Period, before the Global Settlement Amount has been paid in full, JTIM shall be permitted to:

- (a) Pay principal and interest (including default interest and fees) on its debentures owing to JTIM TM, and any arrears of royalty and license fees that accrued prior to the Effective Time, solely from JTIM's share of the Net After-Tax Income and any amounts released from the Supplemental Trust Account to JTIM that remain with JTIM, subject to the requirement that JTIM shall retain its cash, cash equivalents and investments in Canada until such time as the Annual Contributions and Reserved Amounts have been paid in respect of each fiscal year; and
- (b) Pay from amounts generated from its ongoing operations, the royalties and license fees in respect of trademark license arrangements that are in place on the Plan Implementation Date (except during a Standstill Period that is described in Sections 8 and 9 of the JTIM Subordination Agreement).

(iv) Retention/Transfer of Cash outside of Canada

[65] Prior to filing for protection from their creditors under the CCAA in March, 2019, each Tobacco Company used their Intercompany Transactions as a mechanism to transfer cash generated from their Canadian operations out of Canada to other companies within their Tobacco Company Groups. To provide assurance to the Provinces, Territories and Impacted Claimants, in each year during the Contribution Period, each Tobacco Company will fulfill its obligations to pay

its Annual Contribution and any Reserved Amount in full before transferring any cash to other companies within its Tobacco Company Group.

H. GLOBAL RELEASE AND SETTLEMENT OF CLAIMS

[66] Pursuant to the CCAA Plans Imperial, RBH and JTIM and all members of their Tobacco Company Groups will be released from all Tobacco Claims. Since the Tobacco Companies will be obligated to pay out 85%, declining in five-year increments to 70%, of their Net After-Tax Income over the protracted Contribution Period, they need comfort that, in exchange for such payments, the Release will include the domestic Tobacco Companies, their Parents and all of their affiliates to fully and finally settle the Tobacco Claims which have been brought, or may be brought, against them.

[67] The composite list of Claimants who will be bound by the Release includes: all Provinces and Territories; the Quebec Class Action Plaintiffs; the Pan-Canadian Claimants; the Tobacco Producers; and the *Knight* Class Action Plaintiffs. The development of the Pan-Canadian Claimants' Compensation Plan, the Cy-près Foundation and the Miscellaneous Claims Fund was the means for the Tobacco Companies to provide consideration for the release of Claims of the PCCs and any Miscellaneous Claimants, among others. In addition to the global Release, the Claimants will execute contractual releases in favour of each Tobacco Company to provide even greater certainty of the release of all Tobacco Claims and, in particular, any Section 5.1(2) and Section 19(2) Claims of the Claimants.

(i) Scope of Released Claims

[68] At the Effective Time, each of the Released Parties shall be fully, finally, irrevocably and unconditionally released and forever discharged of and from any and all Released Claims that any of the Releasers has ever had, now has, or may hereafter have against the Released Parties or any of them (either individually or with any other Person), whether or not based on conduct continuing after the Effective Time and whether or not presently known to any of the Releasers.

[69] The Released Parties include: the Tobacco Companies; members of their respective Tobacco Company Groups that were named as defendants in actions commenced in Canada; every other current or former Affiliate of any of the Tobacco Companies and their Tobacco Company Groups and each of their respective indemnitees; and the Canadian Tobacco Manufacturers' Council (a trade association of the Canadian tobacco industry that addresses smoking and health issues).

[70] The Releasers include: the Provinces and Territories; Quebec Class Action Plaintiffs; Pan-Canadian Claimants; *Knight* Class Action Plaintiffs; Tobacco Producers; and every other Person having an Affected Claim or a Released Claim,

[71] The expansive and global scope of the Release is achieved through the release of all Tobacco Claims against the Released Parties. A Tobacco Claim is any Claim of any Person against a Tobacco Company, any member of its Tobacco Company Group, or any Director of any such companies, that has been, could have been or could be advanced, by a Person, or on behalf of a certified or proposed class, or by a Government (including the Provinces, Territories and Canada), to recover damages or any other remedy or costs in respect of the development, design,

manufacture, production, marketing, advertising, distribution, purchase, sale or disposition of Tobacco Products, the use of or exposure (whether direct or indirect) to Tobacco Products or their emissions, the development of any disease related to the use of Tobacco Products, or any representation or omission in respect of Tobacco Products, including any misrepresentations, breach of duty or fraud in respect thereof by any member of the Tobacco Company Group or its Representatives in Canada or, in the case of the Tobacco Company, anywhere else in the world, in each case arising from any conduct, act or omission existing or taking place at or prior to the Effective Time (whether or not continuing thereafter) and including any Section 5.1(2) Claim or Section 19(2) Claim.

[72] The Tobacco Claims include any:

- (a) **Provincial HCCR Claim** which is any Claim that has been, could have been or could be advanced in any of the actions commenced by the Provinces under the HCCR Legislation;
- (b) **Territorial HCCR Claim** which is any Claim that has been, could have been or could be advanced in relation to the recovery of the present value of the Territories' total expenditures for past and future health care benefits provided for Insured Persons resulting from Tobacco-related Disease or the risk of Tobacco-related Disease;
- (c) **QCAP Claim** which is any Claim that has been, could have been or could be advanced in the *Blais* Class Action and the *Létourneau* Class Action;
- (d) **PCC Claim** which is any Claim of any Pan-Canadian Claimant that has been made or may in the future be made against any of the Released Parties, by a Person, or on behalf of a certified or proposed class, to recover damages or any other remedy in respect of the development, design, manufacture, production, marketing, advertising, distribution, purchase or sale of Tobacco Products, including any representations or omissions in respect thereof, the historical or ongoing use of or exposure (whether directly or indirectly) to Tobacco Products or their emissions and the development of any disease or condition as a result thereof, in each case arising from any conduct, act or omission, existing or taking place at or prior to the Effective Time (whether or not continuing thereafter) including all Claims that have been, could have been or could be advanced in seventeen actions listed in the CCAA Plans that were commenced in British Columbia, Alberta, Saskatchewan, Manitoba, Ontario, Quebec, Nova Scotia and Newfoundland and Labrador, by Individuals on their own account or under provincial class proceedings legislation. The PCC Claims will be settled by the provision of direct compensation under the PCC Compensation Plan as well as indirect benefits by virtue of the *Cy-près* Foundation;
- (e) ***Knight* Claim** which is any Claim that has been, could have been or could be advanced in the certified *Knight* Class Action against Imperial alleging deceptive marketing of light and mild cigarettes; and

- (f) **Tobacco Producers Claim** which is any Claim that has been, could have been or could be advanced in the three uncertified class actions commenced against each of the Tobacco Companies by the Ontario Flue-Cured Tobacco Growers' Marketing Board, and certain individual Tobacco Producers, who sold their tobacco through the Ontario Flue-Cured Tobacco Growers' Marketing Board pursuant to the annual Heads of Agreement made with Imperial, RBH and JTIM from January 1, 1986 to December 31, 1996.

[73] The Provinces' actions against the Tobacco Companies and members of their Tobacco Company Groups were brought pursuant to the HCCR Legislation enacted in each Province which, *inter alia*, provides that each Provincial Crown has a direct and distinct action against a manufacturer of Tobacco Products to recover the cost of health care benefits caused or contributed to by a tobacco related wrong. The Northwest Territories and Nunavut proclaimed HCCR Legislation which is not yet in force. Yukon has not enacted HCCR Legislation.

[74] The CCAA Plans provide assurance to the Tobacco Companies that the Provinces and Territories will not enact future legislation that will circumvent the global release. The issue to be addressed is that, notwithstanding the release of the Provinces' and Territories' tobacco-related health care costs claims, future governments in the Provinces and Territories might enact legislation similar to the HCCR Legislation to advance future Tobacco Claims. To address this concern, the CCAA Plans provide that the Released Parties and the Provinces and Territories recognize that a legislature's sovereign power to enact, amend and repeal legislation cannot be fettered. However, in the event that any legislation (including any regulations promulgated thereunder) similar or analogous to the HCCR Legislation may be enacted or amended by a Province or Territory at any time after the Effective Time, the Released Parties and the Provinces and Territories are *ad idem* that the enactment of such future legislation shall not render unenforceable or otherwise make ineffective any of the terms of the Claimant Contractual Releases or the CCAA Plans.

[75] In addition to Tobacco Claims, the Released Claims include any Claims:

- (a) In respect of the assets, obligations, business or affairs of the Released Parties in Canada or, in the case of Imperial, RBH and JTIM, anywhere else in the world, relating to Tobacco Products, which are based on or arising from any conduct, act or omission, existing or taking place at or prior to the Effective Time (whether or not continuing thereafter);
- (b) In respect of the CCAA Proceedings (and the Chapter 15 Proceedings of Imperial and JTIM (if commenced)) up to the Effective Time, provided that the Released Party is not determined by (i) a final order of the CCAA Court to have committed fraud in the CCAA Proceedings, or (ii) a final order of the US Bankruptcy Court to have committed fraud in the Chapter 15 Proceedings of Imperial or JTIM; and
- (c) Existing at or prior to the Effective Time that have been, could have been or could be advanced in the CCAA Proceedings.

[76] The CCAA Plans also provide comprehensive releases by all Persons, including the Released Parties, Releasers, Affected Creditors and Unaffected Creditors, of any claims that could be advanced against: (i) FTI, EY and Deloitte in their capacities as the Monitors and the CCAA Plan Administrators; (ii) FTI in its capacity as Foreign Representative in Imperial's Chapter 15 Proceeding; (iii) the Mediator; (iv) the Administrative Coordinator; and (v) the Chief Restructuring Officer ("CRO") for JTIM.

(ii) Injunctions

[77] The CCAA Plans give effect to comprehensive permanent injunctions that will forever bar the commencement of any proceeding in respect of all Affected Claims and all Released Claims against any of the Released Parties, the Monitors, the CCAA Plan Administrators, the Mediator, the Administrative Coordinator and the CRO and their respective Representatives.

(iii) Claimant Contractual Release

[78] In addition to the comprehensive terms of the Release set out in the CCAA Plans, the Claimants will execute contractual releases in favour of each Tobacco Company ("Claimant Contractual Releases"), for the purpose of providing even greater certainty with respect to the release of the Tobacco Claims and, in particular, any Section 5.1(2) and Section 19(2) Claims of the Claimants.

[79] The Released Claims are expressly defined to include any Section 5.1(2) Claim and any Section 19(2) Claim. At the Meetings of Eligible Voting Creditors held in each CCAA Proceeding on December 12, 2024, the Claimants voted unanimously to approve the CCAA Plans of Imperial, RBH and JTIM.

[80] In order to provide certainty with respect to the release of any Section 5.1(2) and Section 19(2) Claims, the Claimants will execute Claimant Contractual Releases in favour of the Released Parties, the Monitors, the CCAA Plan Administrators, the Mediator and the Administrative Coordinator, and their respective Representatives, that shall take effect as at the Effective Time. The Claimant Contractual Releases include express releases of any Section 5.1(2) Claim and any Section 19(2) Claim.

[81] Each Tobacco Company shall also execute the Claimant Contractual Releases in order to give effect to their releases of the Monitors, the CCAA Plan Administrators, the Mediator and the Administrative Coordinator, and their respective Representatives.

(iv) Unaffected Claims

[82] The principal purpose of the CCAA Plans is the settlement of the Tobacco Claims. Accordingly, liabilities of the Tobacco Companies other than the Tobacco Claims are largely unaffected. The Unaffected Claims that will not be compromised and released pursuant to the CCAA Plans include:

- (a) Any Alternative Product Claim;
- (b) Any Cash Management Bank Claim;

- (c) Any Employee Priority Claim;
- (d) Any Governmental Priority Claim;
- (e) Any Claims in respect of CCAA Plan Administration Reserve Costs and the PCC Compensation Plan Reserve Costs;
- (f) Any Secured Claim that is not a Tobacco Claim, including the Secured Claim by JTIM TM against JTIM but provided that the JTIM TM Secured Claim shall be subordinated as described in Article 5, Section 5.14 in JTIM's CCAA Plan;
- (g) Any Claim by any Director under any directors' or officers' indemnity policy or agreement with a Tobacco Company to the extent not otherwise covered by the CCAA Charges;
- (h) Any Intercompany Services Claim;
- (i) Any Intercompany Claim, subject to the terms of Article 5, Section 5.15 in the CCAA Plans of Imperial and RBH, and Section 5.16 in JTIM's CCAA Plan;
- (j) Any Claim by a supplier against a Tobacco Company for the supply of goods or services other than a Tobacco Claim;
- (k) Any Claim against a Tobacco Company relating to environmental remediation pursuant to Applicable Law;
- (l) Any Claim by any Person under any contract with a Tobacco Company that has not been disclaimed and which Claim is not a Tobacco Claim;
- (m) Any Claim by Canada or any Province or Territory against any Released Party relating in any manner to:
 - i. Except as otherwise contemplated in Imperial's CCAA Plan, any applicable Taxes of any kind whatsoever applicable to any Released Party, and
 - ii. Such Released Party's compliance with any Applicable Law and statutes and the regulations made thereunder, except for liability for actions or omissions occurring prior to the Effective Time in respect of a Tobacco Claim; and
- (n) Any Claim in respect of Imperial's obligation to pay the balance owed under the Comprehensive Agreement dated July 31, 2008 between Imperial, Canada and the Provinces which settled the claims by Canada and the Provinces against Imperial regarding the trade of contraband products in Canada and related tax collection matters.

(v) ***Consideration Provided by Tobacco Companies and Tobacco Company Groups for Release***

[83] The consideration for the Release to be provided to the Tobacco Companies and, as applicable, certain members of their Tobacco Company Groups, includes:

- (a) The Tobacco Companies' payment of the Upfront Contributions and promise to pay the Annual Contributions and Reserved Amounts to the Global Settlement Trust Account and Supplemental Trust Account until the aggregate \$32.5 billion Global Settlement Amount is paid in full;
- (b) The agreement of each Tobacco Company's Parent and relevant Affiliates to provide shared services and other operational support to the Tobacco Companies;
- (c) The other promises and commitments made by the Released Parties, or any of them as applicable, in the Definitive Documents;
- (d) The QCAP Settlement Amount (\$4.250 billion minus \$131.0 million allocated to the Cy-près Foundation) is the consideration for the full and final settlement and satisfaction of the *Blais* Judgment;
- (e) The QCAP Cy-près Contribution in the amount of \$131.0 million is the consideration for the full and final settlement and satisfaction of the *Létourneau* Judgment;
- (f) The \$2.521 billion funding of the PCC Compensation Plan is the consideration for the full and final settlement and release of all PCC Claims;
- (g) The \$1.0 billion Cy-près Fund will provide consideration for the full and final settlement and release of all claims and potential claims of PCCs who are not receiving direct compensation payments from the PCC Compensation Plan, and *Létourneau* Class Members who are not receiving direct compensation payments from the Quebec Administration Plan, but will be indirectly benefited by falling within the scope of the Cy-près Foundation;
- (h) Consideration for the settlement of the *Knight* Class Action shall be a contribution to the Cy-près Fund and the payment of the *Knight* Class Counsel Fee;
- (i) The \$15.0 million consideration for the settlement of the Tobacco Producers' Actions shall be paid to the Ontario Flue-Cured Tobacco Growers' Marketing Board for the benefit of the Tobacco Producers; and
- (j) The Miscellaneous Claims Fund which is described in the following section.

(vi) *Miscellaneous Claims Fund*

[84] The Miscellaneous Claims Fund was created in order to provide even greater certainty that the CCAA Plans will provide a comprehensive and effective release of all Tobacco Claims. In order to identify any Person, other than a Claimant or an Individual Claimant, who might have a potential Tobacco Claim that has not been ascertained or asserted, the CCAA Plans include a mechanism for such Putative Miscellaneous Claimant to assert, with leave of the CCAA Court, a Miscellaneous Claim against the Miscellaneous Claims Fund. No Claimant or Individual Claimant may assert a Miscellaneous Claim. The existence of any Miscellaneous Claims is not admitted by the Tobacco Companies and is expressly denied.

[85] The Miscellaneous Claims Fund shall be in the amount of \$25.0 million to be paid from the Upfront Contributions. The Tobacco Companies may unanimously elect to increase the Miscellaneous Claims Amount from \$25.0 million to \$60.0 million provided that: (a) the \$35.0 million top-up shall be paid by the Tobacco Companies on top of the \$32.5 billion Global Settlement Amount; (b) the Tobacco Companies are in unanimous agreement regarding how they shall apportion payment of the \$35.0 million among themselves and the source of the top-up funds; and (c) the sourcing of the additional sum of \$35.0 million shall not affect the amount nor the timing of the payments of the Upfront Contributions and the Global Settlement Amount.

[86] A Putative Miscellaneous Claimant is required to seek leave from the CCAA Court to commence a proceeding relating to a Miscellaneous Claim.

[87] All Putative Miscellaneous Claimants shall only have recourse to the Miscellaneous Claims Fund, and any judgments or awards made, or other amounts ordered to be paid in regard to Miscellaneous Claims shall be paid solely from the Miscellaneous Claims Fund.

I. SETTLEMENT OF CLAIMS BY INDIVIDUALS RESIDENT IN CANADA WHO SUFFERED TOBACCO-RELATED HARMS

[88] There are three components to the consideration provided by the CCAA Plans which together constitute a complete package of benefits to settle the claims of Tobacco-Victims who suffer or suffered harm from a Tobacco-related Disease as a result of the use of or exposure to a Tobacco Product sold by Imperial, RBH and JTIM in Canada:

1. **Quebec Class Action Administration Plan** - Pursuant to the *Blais* Judgment, Tobacco-Victims who reside in Quebec, were diagnosed with Lung Cancer, Throat Cancer or Emphysema/COPD (GOLD Grade III or IV) and fulfill the other required eligibility criteria set out in the certified class definition (regarding amount of cigarettes smoked, period of time during which smoking took place, and date of diagnosis), will be able to submit claims for payment of direct compensation through the Quebec Class Action Administration Plan ("Quebec Administration Plan");
2. **Pan-Canadian Claimants' Compensation Plan** - The PCC Compensation Plan is the counterpart to the Quebec Administration Plan that will provide direct compensation payments to Tobacco-Victims residing in the Provinces and Territories, except those Quebec residents covered by the *Blais* Judgment.

To achieve parity as much as possible across Canada, the eligibility criteria under the PCC Compensation Plan tracks the eligibility criteria for the Quebec Administration Plan, in that the Tobacco-Victims must have been diagnosed with Lung Cancer, Throat Cancer or Emphysema/COPD (GOLD Grade III or IV) and must have smoked the same amount of cigarettes (Twelve Pack-Years) during the same period of time (January 1, 1950 to November 20, 1998). The date of diagnosis and the date upon which the Tobacco-Victim must have been alive differ between the two plans due to the differences in the timing of the commencement of the Quebec Class Actions and the commencement of the CCAA Proceedings. The amounts of compensation payable to eligible Tobacco-Victims under the PCC Compensation Plan are discounted 40% from the amounts payable to Tobacco-Victims under the Quebec Administration Plan to take into account the applicable law on causation in Quebec versus the common law jurisdictions, the status of the Quebec Class Action Judgments and litigation risk for the PCCs; and

3. **Cy-près Fund administered by Cy-près Foundation** - Any Tobacco-Victim residing in any Province or Territory who does not meet the eligibility criteria to receive a direct compensation payment under either the Quebec Administration Plan or the PCC Compensation Plan will receive indirect benefits through the research, programs and initiatives focused on improving outcomes in Tobacco-related Diseases that will be funded by grants from the Cy-près Fund.

[89] The package of benefits provided by the Quebec Administration Plan, PCC Compensation Plan and Cy-près Fund will redress the tobacco-related harms suffered by all Tobacco-Victims in Canada. The Quebec Administration Plan and PCC Compensation Plan will enable eligible Tobacco-Victims to access benefits using claims processes that are innovative and unique in that:

- (a) In assessing whether a claim meets the eligibility criteria under either plan, presumptive causation is inferred for Tobacco-Victims who prove a diagnosis of Lung Cancer, Throat Cancer or Emphysema/COPD (GOLD Grade III or IV);
- (b) Both plans will have an agent (Raymond Chabot for the Quebec Administration Plan and Epiq for the PCC Compensation Plan) which will assist Tobacco-Victims to complete and submit their claim forms to the Claims Administrator, so that they will not need to retain a lawyer for this purpose; and
- (c) Tobacco-Victims will not be required to find a physician to complete a form regarding their diagnosis, unless proof of diagnosis cannot be obtained through the provision of a medical test report which proves the diagnosis and date of diagnosis.

[90] The important features of each of the Quebec Administration Plan, PCC Compensation Plan and Cy-près Foundation are described in more detail in the sections that follow.

J. SETTLEMENT OF QUEBEC CLASS ACTION JUDGMENTS AND QUEBEC CLASS ACTION ADMINISTRATION PLAN

(i) Settlement and Satisfaction of Blais Judgment and Létourneau Judgment

[91] In 1998, the *Blais* Class Action and the *Létourneau* Class Action were commenced against Imperial, RBH and JTIM in the Quebec Superior Court. Both proceedings were certified as class actions on February 21, 2005.

[92] On May 27, 2015 (as rectified on June 9, 2015), the Honourable Justice Brian Riordan of the Quebec Superior Court granted judgment against Imperial, RBH and JTIM in both class actions.

[93] On October 27, 2015, the Quebec Court of Appeal ordered Imperial to deposit the sum of \$758 million and RBH to deposit the sum of \$226 million with the Registry of the Quebec Court of Appeal in quarterly instalments as suretyship in respect of payment of the *Blais* Judgment and the *Létourneau* Judgment. These monies totalling \$984 million comprise the Cash Security Deposits which are included in the Upfront Contributions.

[94] On March 1, 2019, the Quebec Court of Appeal upheld the trial judgment in every respect other than to vary the dates from which interest and the additional indemnity are to be calculated. The judgment awarded to the QCAPs in the *Blais* Class Action and the *Létourneau* Class Action totals \$13,699,504,730 inclusive of interest calculated to March 8, 2019.

[95] On March 8, 12 and 22, 2019 respectively, JTIM, Imperial and RBH filed for protection from their creditors under the CCAA because they did not have sufficient funds to satisfy the *Blais* Judgment and *Létourneau* Judgment. The CCAA Court recognized that the Quebec Court of Appeal judgment was the singular event that gave rise to the CCAA Proceedings.

[96] The QCAP Settlement Amount (\$4.250 billion including \$131.0 million allocated to the Cy-près Foundation) is the consideration for the full and final settlement and satisfaction of the *Blais* Judgment and the *Létourneau* Judgment.

[97] The purpose of the Quebec Administration Plan is to effect the distribution of the compensation ordered in the *Blais* Judgment, as compromised in accordance with the CCAA Plans, to be paid to eligible persons resident in Quebec who are suffering from at least one of three Tobacco-related Diseases caused by smoking cigarettes sold in Canada by Imperial, RBH and JTIM.

(ii) Blais Eligibility Criteria

[98] The Quebec Administration Plan will provide direct compensation in the form of monetary payments to QCAPs who meet all of the following *Blais* Eligibility Criteria to qualify as *Blais* Class Members pursuant to the *Blais* Judgment:

- (a) On the date that a Tobacco-Victim Claimant or Succession Claimant submits their Proof of Claim:

- (i) If the Tobacco-Victim Claimant is alive, they must reside in Quebec, or
 - (ii) If the Tobacco-Victim Claimant is deceased, they must have resided in Quebec on the date of their death;
- (b) The Tobacco-Victim Claimant was alive on November 20, 1998;
- (c) Between January 1, 1950 and November 20, 1998, the Tobacco-Victim Claimant smoked a minimum of Twelve Pack-Years of cigarettes sold by the Tobacco Companies:

Twelve Pack-Years of cigarettes is the equivalent of 87,600 cigarettes which is calculated as any combination of the number of cigarettes smoked in a day multiplied by the number of days of consumption. For example, Twelve Pack-Years equals:

10 cigarettes smoked per day for 24 years $(10 \times 365 \times 24) = 87,600$ cigarettes, or

20 cigarettes smoked per day for 12 years $(20 \times 365 \times 12) = 87,600$ cigarettes, or

30 cigarettes smoked per day for 8 years $(30 \times 365 \times 8) = 87,600$ cigarettes;

- (d) Before March 12, 2012, the Tobacco-Victim Claimant was diagnosed with:
- i. Lung Cancer, or
 - ii. Throat Cancer, or
 - iii. Emphysema/COPD (GOLD Grade III or IV) (collectively, the “*Blais* Compensable Diseases”); and
- (e) On the date of the diagnosis with a *Blais* Compensable Disease the Tobacco-Victim Claimant resided in Quebec.

[99] Pursuant to the *Blais* Judgment, the Heirs of Tobacco-Victims who died *prior to or on* November 20, 1998 are not eligible to receive a Compensation Payment from the Quebec Administration Plan. The Heirs of Tobacco-Victims who died *after* November 20, 1998 may qualify to receive a Compensation Payment through a Succession Claim made under the Quebec Administration Plan.

[100] The Quebec Administration Plan and PCC Compensation Plan both set out harmonization principles that direct the Claims Administrator to ensure that a resident of Quebec is not paid a Compensation Payment under the Quebec Administration Plan pursuant to the *Blais* Judgment as well as an Individual Payment from the PCC Compensation Plan. An individual resident in Quebec

is only permitted to make one claim for compensation either as a *Blais* Class Member under the Quebec Administration Plan or as a PCC-Claimant under the PCC Compensation Plan. A Quebec resident is not permitted to make a claim to both claims processes.

(iii) Amount of Compensation Payments to Eligible *Blais* Class Members

[101] Table 6 below summarizes the compensation available to Eligible *Blais* Class Members under the Quebec Administration Plan:

Table 6

Quebec Class Action Administration Plan		
Column 1 Compensable Disease	Compensation Payment (or such lesser amount as may be determined by the Claims Administrator to be available for the subclass of claimants; quantum will vary based upon the actual take-up rate and other factors and shall not exceed the maximum amounts specified in this table)	
	Column 2 Compensation Payment for Eligible <i>Blais</i> Class Members who started to smoke before January 1, 1976	Column 3 Compensation Payment for Eligible <i>Blais</i> Class Members who started to smoke on or after January 1, 1976 (80% of Column 2)
Lung Cancer	\$100,000	\$80,000
Throat Cancer	\$100,000	\$80,000
Emphysema/COPD (GOLD Grade III or IV)	\$30,000	\$24,000

(iv) Proof of Eligibility for Compensation Payments

[102] The Quebec Administration Plan was designed with the specific intention that Tobacco-Victim Claimants and Succession Claimants will be able to complete and submit the claims forms without retaining the services of either their own third-party lawyer or any non-lawyer who may offer form completion, form submission or other related services.

K. PAN-CANADIAN CLAIMANTS' COMPENSATION PLAN

(i) Rationale for Inclusion of PCC Compensation Plan in CCAA Plans

[103] When JTIM filed for protection from its creditors under the CCAA on March 8, 2019, litigation had already been commenced in Canada against the Tobacco Companies and the

Tobacco Company Groups by or on behalf of individuals in Canada in the following three broad claimant groups: the QCAPs in Quebec; *Knight* Class Action Plaintiffs in British Columbia; and claimants who fall within the uncertified proposed class definitions in seven actions commenced under class proceedings legislation in British Columbia, Alberta, Saskatchewan, Manitoba, Ontario and Nova Scotia.

[104] As at March 8, 2019, the scope of the claims pleaded in the actions pending against the Tobacco Companies and the Tobacco Company Groups did not cover all claims or potential claims which could be advanced against these entities by individuals resident in Canada. There were individuals resident in all Provinces and Territories who may have had claims or potential claims which were not included in the three broad claimant groups described above and were unascertained and unquantifiable. Significantly, this group of individuals was unrepresented by counsel and may have been unaware of the existence of the CCAA proceedings and that their rights may be affected and their claims may be compromised in the CCAA Plans.

[105] The PCC Compensation Plan and the Cy-près Foundation together are the consideration provided for in the CCAA Plans to settle and fully and finally release all claims and potential claims against Imperial, RBH and JTIM and their respective Tobacco Company Groups in Canada by the Pan-Canadian Claimants who are defined to be all Individuals resident in the Provinces and Territories, excluding the QCAPs, who have either advanced or may be entitled to advance a Tobacco Claim. The PCC Compensation Plan and the Cy-près Foundation are critically important to the global settlement of the Tobacco Claims because, together, they identify those persons who will be bound by the settlement of the PCC Claims in accordance with the terms of the CCAA Plans.

[106] The development of the PCC Eligibility Criteria was informed by the following:

1. The Breach Period (January 1, 1950 and November 20, 1998) and Critical Tobacco Dose (PCCs smoked a minimum of twelve pack-years of cigarettes) are the same as those approved by the Quebec Courts in the *Blais* Judgment;
2. The PCC Claims Period (March 8, 2015 and March 8, 2019 inclusive of those dates) was informed by an analysis of the limitations law applicable in each Province and Territory, as well as relevant historical background and the desire to achieve parity among the PCCs residing in all the Provinces and Territories by choosing a uniform four-year limitation period for all jurisdictions;
3. The PCC Compensable Diseases are the same as those approved by the Quebec Courts in the *Blais* Class Action with the diagnoses of Emphysema and COPD (GOLD Grade III or IV) being treated as sufficiently equivalent; and
4. Expert epidemiological evidence from Dr. Prabhat Jha was used to (i) define which Tobacco-related Diseases will qualify for compensation under the PCC Compensation Plan, and (ii) quantify the estimated number of PCCs who may qualify to receive compensation under the PCC Compensation Plan.

(ii) PCC Eligibility Criteria

[107] To be eligible to receive compensation under the PCC Compensation Plan, each PCC-Claimant must meet all of the following PCC Eligibility Criteria:

(a) On the date that a PCC-Claimant submits their Claim Package:

- i. If the PCC-Claimant is alive, they must reside in a Province or Territory in Canada, or
- ii. If the PCC-Claimant is deceased, they must have resided in a Province or Territory in Canada on the date of their death;

(b) The PCC-Claimant was alive on March 8, 2019;

(c) Between January 1, 1950 and November 20, 1998, the PCC-Claimant smoked a minimum of Twelve Pack-Years of cigarettes sold by the Tobacco Companies:

Twelve Pack-Years of cigarettes is the equivalent of 87,600 cigarettes which is calculated as any combination of the number of cigarettes smoked in a day multiplied by the number of days of consumption. For example, Twelve Pack-Years equals:

10 cigarettes smoked per day for 24 years $(10 \times 365 \times 24) = 87,600$ cigarettes, or

20 cigarettes smoked per day for 12 years $(20 \times 365 \times 12) = 87,600$ cigarettes, or

30 cigarettes smoked per day for 8 years $(30 \times 365 \times 8) = 87,600$ cigarettes.

(d) Between March 8, 2015 and March 8, 2019 (inclusive of those dates), the PCC-Claimant was diagnosed with:

- i. Lung Cancer, or
- ii. Throat Cancer, or
- iii. Emphysema/COPD (GOLD Grade III or IV) (collectively, the “PCC Compensable Diseases”); and

(e) On the date of the diagnosis with a PCC Compensable Disease the PCC-Claimant resided in a Province or Territory in Canada.

(iii) Amount of Compensation Payments to Eligible Pan-Canadian Claimants

[108] Table 7 below summarizes the compensation available to Eligible Pan-Canadian Claimants under the PCC Compensation Plan:

Table 7

PCC Compensation Plan		
Column 1 PCC Compensable Disease	Individual Payment (or such lesser amount as may be determined by the Claims Administrator to be available for the subclass of claimants; quantum will vary based upon the actual take-up rate and other factors and shall not exceed the maximum amounts specified in this table)	
	Column 2 Compensation for PCCs who started to smoke before January 1, 1976 (60% of damages awarded to Quebec Class Action Plaintiffs)	Column 3 Compensation for PCCs who started smoking on or after January 1, 1976 (80% of Column 2)
Lung Cancer	\$60,000	\$48,000
Throat Cancer	\$60,000	\$48,000
Emphysema/COPD (GOLD Grade III or IV)	\$18,000	\$14,400

[109] An Individual who meets all the PCC Eligibility Criteria shall be paid for the single PCC Compensable Disease with which they have been diagnosed that will provide them with the highest amount of compensation from the PCC Compensation Plan. No “double recovery” or overlapping recovery will be permitted if a PCC-Claimant has been diagnosed with more than one PCC Compensable Disease.

L. SUPERVISION, OVERSIGHT AND ADMINISTRATION OF THE QUEBEC ADMINISTRATION PLAN AND THE PCC COMPENSATION PLAN

[110] The CCAA Court shall have an ongoing supervisory role in respect of the administration of the CCAA Plans which include the Quebec Administration Plan and the PCC Compensation Plan.

[111] Matters relating to the ongoing supervision of the Quebec Administration Plan, including any changes to the terms thereof, shall be heard and determined jointly by the CCAA Court and the Quebec Superior Court. In performing this function, the CCAA Court and the Quebec Superior Court may communicate with one another in accordance with a protocol to be worked out and established by them. Matters relating to the ongoing supervision of the PCC Compensation Plan, including any changes to the terms thereof, shall be heard and determined solely by the CCAA Court.

[112] At the Sanction Hearing, the Court was asked to approve:

- (a) The terms of the Quebec Administration Plan and the PCC Compensation Plan;
- (b) The appointment of Epiq Class Actions Services Canada, Inc. as the Claims Administrator to administer both the Quebec Administration Plan and the PCC Compensation Plan; and
- (c) The appointment of Daniel Shapiro, K.C. to serve as the Administrative Coordinator who will coordinate and serve as a liaison and conduit to facilitate the flow of information between the Claims Administrator and the CCAA Plan Administrators in regard to both the Quebec Administration Plan and the PCC Compensation Plan.

M. CY-PRÈS FOUNDATION

(i) Rationale for Inclusion of Cy-près Foundation in CCAA Plans

[113] The Tobacco Companies will fund \$1.0 billion to establish the Cy-près Fund that will be administered by a public charitable foundation. The Cy-près Fund is intended to serve the interests of the PCCs and *Létourneau* Class Members by providing them with indirect benefits as an approximation of remedial compensation for those PCCs not eligible to receive direct compensation from the PCC Compensation Plan and *Létourneau* Class Members who are not eligible to receive compensation under the Quebec Administration Plan.

[114] The Cy-près Fund is an essential component of the global settlement of the Tobacco Claims in Canada. In respect of PCCs who are not eligible to receive direct compensation under the PCC Compensation Plan there is a high probability that their claims would not succeed against the Tobacco Companies for several reasons including: (i) their claims are likely statute-barred or subject to the defence of laches; and (ii) they were diagnosed with Tobacco-related Diseases which fall below the threshold to identify diseases which were presumptively caused by smoking the Tobacco Companies' cigarettes, such that they would be required to prove entitlement to direct compensation by establishing medical causation and legal causation in an individual trial. Such PCCs do not have a legal entitlement in the form of a judgment, membership in a class in a certified class action, or an individual claim that has a high probability of success, or any other practicable means to recover direct compensation for Tobacco-related Diseases caused by smoking the Tobacco Companies' cigarettes.

[115] The establishment of the Cy-près Fund is consistent with the class action legislation and case law developed in Canada to make provision for indirect prospective benefits to a class of

persons for whom direct compensation is impracticable, and who would not otherwise receive monetary relief.

[116] The Cy-près Fund will provide consideration for the full and final settlement and release of all claims and potential claims of PCCs who are not receiving direct compensation payments from the PCC Compensation Plan, and *Létourneau* Class Members who are not receiving direct compensation payments from the Quebec Administration Plan but will be indirectly benefited by falling within the scope of the Foundation. This broad group of claimants includes the following persons and any affected family members or estates:

1. Smokers suffering from lung or throat cancer or Emphysema/COPD (Gold Grade III or IV) who are outside the claims period or who smoked less than the requisite twelve pack years or, in the case of Emphysema/COPD, were not classified as Gold Grade III or IV or the equivalent;
2. Smokers who have tobacco-related harms other than Lung Cancer or Throat Cancer and Emphysema/COPD (Gold Grade III or IV) or the equivalent; and
3. Persons who smoke or have smoked Tobacco Products who have not yet or may never develop a tobacco-related harm.

[117] The Cy-près Fund will provide indirect benefits to the PCCs that are rationally connected to Tobacco-related Diseases and the varying circumstances of the diverse group of PCCs and *Létourneau* Class Members covered by the Cy-près Fund.

(ii) Purpose of Cy-près Foundation

[118] The Cy-près Foundation's purpose is to fund research, programs and initiatives focused on improving outcomes in Tobacco-related Diseases. The Cy-près Foundation will indirectly benefit users of Tobacco Products and their affected family members or estates who are not directly compensated through the Quebec Administration Plan or PCC Compensation Plan.

[119] The Cy-près Foundation will fund research, programs and initiatives regarding tobacco-related cancers, Emphysema/COPD and other illnesses and conditions which are reasonably and rationally connected to tobacco-related harms. The research, programs and initiatives that are funded by the Cy-près Foundation will achieve earlier diagnosis, better treatment and improved outcomes for Persons suffering from these diseases.

(iii) Establishment and Administration of Cy-près Foundation

[120] The establishment of the Cy-près Foundation will take place in two phases: the first occurring at the Sanction Hearing, and the second occurring at the hearing for the final approval by the CCAA Court of the Cy-près Foundation, so as to permit the finalization of the administrative aspects of the Cy-près Foundation.

[121] The Foundation Board shall establish a secretariat and direct its activities to facilitate the effective and efficient governance, administration and operation of the Cy-près Foundation which

will include the solicitation, receipt, review and evaluation of the merits of proposals submitted by individuals and organizations seeking distributions from the Cy-près Fund. The Foundation Board shall establish the criteria, reflective of the mission of the Cy-près Foundation, for applicants to qualify to receive distributions from the Cy-près Fund. The Foundation Board shall publish requests for proposals soliciting the submission of proposals from interested individuals and organizations seeking financing and support for research, programs and initiatives which fall within the scope of the mission of the Cy-près Foundation. Following a peer review process, proposals accepted by the Foundation Board will be submitted to the CCAA Plan Administrators for their review. If accepted by the CCAA Plan Administrators, they will submit them to the CCAA Court for approval.

(iv) Oversight of Cy-près Foundation

[122] The CCAA Court is responsible for the ultimate supervision of the Cy-près Foundation. The CCAA Plan Administrators will be the overseers of the Cy-près Foundation and will function as the intermediaries relative to the supervisory role of the CCAA Court. In this capacity, the CCAA Plan Administrators will gather the data and information concerning the Cy-près Foundation that will be of significance to the CCAA Court when it approves various functions of the Cy-près Foundation as it will be required to do from time to time. The CCAA Plan Administrators will report to the CCAA Court regarding the activities of the Cy-près Foundation annually, or more frequently as they deem necessary.

(v) Term of Operation of Cy-près Foundation

[123] The Cy-près Foundation shall not be dissolved, nor shall its work be terminated until such time as specified by the CCAA Court.

N. DISPOSITION OF PENDING PROCEEDINGS

[124] The principal purpose of the CCAA Plans is that they will bring finality to thirty years of litigation in Canada against the Tobacco Companies and members of their Tobacco Company Groups. To achieve this objective, as soon as possible after the Plan Implementation Date:

1. the Parties shall take all steps necessary to dismiss with prejudice and without costs all Pending Litigation against the Tobacco Companies, certain members of their respective Tobacco Company Groups, and the Canadian Tobacco Manufacturers' Council; and
2. the Tobacco Companies and the QCAPs shall take all steps and actions necessary to dismiss with prejudice and without costs any leave applications or appeals from the judgments in the Quebec Class Actions or any related motions pending in the Quebec Superior Court, the Court of Appeal of Quebec and/or the Supreme Court of Canada. After the QCAP Claims Process has ended and the Eligible *Blais* Class Members have been paid their Compensation Payments; the Tobacco Companies and the QCAPs shall consent to motions seeking the Closing Judgment to be brought in the Quebec Superior Court by the Quebec Class Counsel in the *Blais* Class Action and the *Létourneau* Class Action.

O. POSITION OF THE PARTIES

[125] The parties made submissions over three days – January 29 – 31, 2025. It was apparent that the Tobacco Companies had differing views of the Plan.

[126] There was a consensus among the Tobacco Companies with respect to the total compensation to be paid - \$32.5 billion – over an extended period of time.

[127] The Tobacco Companies had failed to reach an agreement as to how the \$750 million working capital holdback was to be allocated amongst themselves.

[128] The dispute has now been resolved. Subsequent to the hearing, the Tobacco Companies reached an agreement that the \$750 million working capital holdback was to be allocated 100% to RBH.

[129] This agreement is reflected in the Plan Amendment Order which was granted on March 3, 2025.

[130] As a result of the Plan Amendment Order, the CCAA Plans now have the support of all three Tobacco Companies and their respective Monitors. The consideration being paid to Claimants remains unchanged and the payment schedule remains unaltered.

[131] The following parties are supportive of the CCAA Plan, as amended, being sanctioned:

- (a) JTIM;
- (b) JTIM TM;
- (c) Imperial;
- (d) RBH;
- (e) Deloitte, Monitor of JTIM;
- (f) FTI, Monitor of Imperial;
- (g) E&Y, Monitor of RBH;
- (h) QCAPs;
- (i) PCCs;
- (j) *Knight*;
- (k) Tobacco Producers;
- (l) British Columbia;
- (m) Alberta;

- (n) Saskatchewan;
- (o) Manitoba;
- (p) Ontario;
- (q) Quebec;
- (r) New Brunswick;
- (s) Nova Scotia;
- (t) Prince Edward Island;
- (u) Newfoundland and Labrador;
- (v) Yukon Territory;
- (w) North-West Territories; and
- (x) Nunavut Territory.

(i) Heart and Stroke Foundation of Canada and Canadian Cancer Society

[132] Two organizations expressed opposition to the CCAA Plans in their current form. The organizations are the Heart and Stroke Foundation of Canada (“HSF”) and the Canadian Cancer Society (“CCS”).

[133] HSF and CCS raised concerns with respect to the following:

- (a) The structure of the Cy-près Foundation; and
- (b) The scope of the Release.

[134] It is of fundamental importance to note that neither HSF nor CCS is an Affected Creditor or Unaffected Creditor of the Tobacco Companies. HSF and CCS are “social stakeholders” in these proceedings.

[135] HSF submits that an essential flaw in the CCAA Plans rests in the mandate of the \$1 billion Cy-près Foundation.

[136] HSF complains that, in its current form, the Cy-près Foundation has a narrow mandate to only fund research programs and initiatives focused on improving outcomes in tobacco-related diseases. As such, the CCAA Plans and the Cy-près Foundation do not address the legitimate interests of millions of individuals who will suffer harm from the future use of tobacco products (the “FTH Stakeholders”).

[137] HSF further submits that the FTH Stakeholders interests, and those of the Canadian public more broadly, require the inclusion of tobacco prevention and reduction measures, including smoking cessation and public awareness.

[138] HSF points out that the Foundation is currently precluded from funding initiatives and programs related to tobacco use prevention and reduction.

[139] HSF submits that the CCAA Plans should not be sanctioned unless and until the CCAA Plans are amended to include prevention and reduction measures within the mandate of the Cy-près Foundation.

[140] It was acknowledged by HSF that the FTH Stakeholders do not have claims in these CCAA proceedings because, they did not use tobacco products and/or suffer harm before the CCAA proceedings began. However, HSF submits that the potential future claims for the harm places FTH Stakeholders in a position where they will be deeply impacted by the CCAA Plans.

[141] HSF also voiced complaints with the scope of the releases. HSF submits that while the releases are anchored to wrongs committed by the Tobacco Companies that occurred before the effective time, they capture future claims “that could be advanced”, whether “directly or indirectly”, on a “continuing” basis.

[142] HSF also submits that the October 31, 2024 amendment to the Representation Counsel Order was prejudicial to FTH Stakeholders as it incorporated a forward-looking nature of released claims.

[143] From the standpoint of HSF, the sole issue is whether the CCAA Plans are fair and reasonable.

[144] In its current form, HSF submits that the Plans do not meet the third part of the test to sanction a plan, for three interrelated reasons:

- (i) The CCAA Plans do not address or protect the legitimate interests of FTH Stakeholders;
- (ii) The CCAA Plans are not in the public interest; and
- (iii) There are other alternatives that would remedy these deficiencies.

[145] HSF stresses that the court’s decision should be informed by the objectives of the CCAA which are to facilitate the reorganization of a debtor company “for the benefit of the Company, its creditors, employees and in many instances, a much broader constituency of affected persons: see *CanWest Global Communications Corp., Re*, 2010 ONSC 4209, 70 C.B.R. (5th) 1, at para. 20 (*Canwest Global*).

[146] The solution put forward by HSF is as follows: “Stated simply, there is a clear and preferable commercial alternative to the CCAA Plans: Modified CCAA Plans that include prevention and reduction measures within the mandate of the Cy-près Foundation.”

[147] CCS is not opposed to the allocation of funds under the CCAA Plans. However, CCS submits that the CCAA Plans should not be sanctioned in their current form and that they should be modified to:

- (i) Ensure there is not a release to protect tobacco companies from liability for future wrongful conduct;
- (ii) Restrict promotion;
- (iii) Require public disclosure of internal Tobacco Companies' documents provided in provincial lawsuits;
- (iv) Expand the mandate of the Cy-près Foundation; and
- (v) Make a series of administrative changes related to the Cy-près Foundation to improve the Foundation's operations and impact.

[148] CCS points out that Tobacco Companies want to increase tobacco sales or at least forestall the decline of tobacco sales. CCS wants to minimize tobacco sales. The ultimate objective is to have a tobacco-free society.

[149] With respect to the releases, CCS is concerned that the effect of Article 11 of the CCAA Plans is to provide a release from liability for tobacco companies for some future wrongful conduct after the effective time.

[150] CCS also wants changes to the CCAA Plans to restrict promotional expenditures.

[151] CCS also wants production of documents received by Ontario and New Brunswick as part of pretrial discovery in their provincial lawsuits.

[152] CCS recognizes the documents provided to Ontario and New Brunswick are subject to confidentiality, but they submit that under the CCAA, the court could order production by court order pursuant to s.11 of the CCAA as the court may "make any order that it considers appropriate in the circumstances."

[153] Alternatively, CCS submits that another approach would be to give the parties six months to work out an acceptable proposal.

[154] CCS has also proposed a redraft of the mandate of the Cy-près Foundation so as to expand the mandate of the Cy-près Foundation to include programs and initiatives to reduce tobacco use which would increase the benefit and impact of the foundation.

(ii) Tobacco Companies, Monitors and Claimants

[155] The Tobacco Companies, Monitors and Claimants all oppose any modifications to the mandate of the Cy-près Foundation or changes to the Releases.

(iii) *Discussion*

[156] I do not, for a moment, doubt the laudable objectives of HSF and CCS. The facts are clear. The use of tobacco products and smoking in particular are harmful to your health and, in many cases, can cause death or have serious health implications. HSF and CCS advocate for the elimination of tobacco products.

[157] However, in considering the arguments put forth by HSF and CCS, it is necessary to consider the impact these arguments would have on the CCAA Plans as a whole and their impact on the broad range of stakeholders.

[158] In *Target Canada Co. (Re)*, 2016 ONSC 316 at para 81, I noted that the CCAA process is one of building blocks. The same comment applies to these proceedings. The Mediator and the Monitors have achieved an unprecedented consensus among the QCAPs, the PCCs, *Knight*, Tobacco Producers, and the Provincial and Territorial governments. All these parties have legal rights as creditors of the Tobacco Companies.

[159] In addition, the Tobacco Companies are also supportive of the CCAA Plans.

[160] Having regard to such widespread support for the CCAA Plans, it is my view that the recommendations offered by HSF and CCS – as social stakeholders – must be approached with great caution. The court’s role in determining what is fair and reasonable for purposes of sanctioning a plan of arrangement does not extend to amending or rewriting the CCAA Plans to incorporate the concerns of social stakeholders, notwithstanding how laudable those concerns may be.

[161] This Court has observed in the comparable context of a class-action settlement as follows:

The parties have chosen to settle the issues on a legal basis and the agreement before the court is part of that legal process. The court is therefore constrained by its jurisdiction, that is, to determine whether the settlement is fair and reasonable and in the best interests of the classes as a whole in the context of the legal issues. Consequently, extra-legal concerns even though they may be valid in a social or political context, remain extra-legal and outside the ambit of the court’s review of the settlement. [emphasis added]

(See: *Baxter v. Canada (Attorney General)*, 2006 CanLII 41673 (ONSC) at para. 9.)

[162] HSF and CCS are social stakeholders in this proceeding. They have put forth their positions forcefully. However, the solutions and suggestions provided by HSF and CCS are, in my view, unworkable. In essence, HSF and CCS wish this court to amend the CCAA Plans. This is not a viable option.

[163] The CCAA Proceedings have been ongoing for nearly six years. For four and a half years, there was limited progress. Commencing in the fall of 2023, when the Monitors and the Mediator took control over the preparation and drafting of the CCAA Plans, there was a turning point. Today, the CCAA Plans are before the court on a motion to sanction.

[164] The decision for the court to make is a binary one. It is to either sanction the CCAA Plans or to reject the CCAA Plans. It is not the role or the function of the court to redraft or amend the CCAA Plans. The views expressed by HSF and CCS are important to consider. However, in my view, these views have been taken into account by the drafters of the CCAA Plans.

[165] The quantum of funds for the Cy-près Foundation is unprecedented. It is funded to the extent of \$1 billion. Its objectives have been clearly set out and described above. In my view, the Cy-près Foundation will benefit not only Claimants who are not entitled to monetary compensation but will also benefit society in general. The mandate of the Cy-près Foundation may not meet all of the objectives of CCS and HSF. However, the mandate has been established through many hours of negotiation between the Tobacco Companies, the Monitors, Claimants and the Mediator.

[166] The funding of the Foundation requires a significant contribution from the Tobacco Companies. It also requires significant concessions from Claimants. The Claimants have collectively agreed to an allocation of \$1 billion to the Foundation.

[167] The Monitors and by extension, the Mediator, recommend that the court sanction the CCAA Plans, as is. This includes approving the mandate of the Cy-près Foundation in its current form.

[168] The mandate of the Cy-près Foundation may not be perfect from the standpoint of HSF and CCS, but that does not entitle HSF and CCS to substitute their proposed solutions and proposed language from that which is set out in the Cy-près Foundation. Furthermore, it does not warrant a rejection of the CCAA Plans. The position of HSF that the CCAA Plans should be rejected if their suggestions are not incorporated is, quite simply, something this court should not and cannot accept.

[169] The concerns of HSF and CCS have been considered by the Monitors and the Mediator. A \$1 billion Cy-près Foundation is being created. The establishment of the Cy-près Foundation satisfies me that the CCAA Plans have taken into account the interests of social stakeholders and the public at large.

[170] The mandate of the Cy-près Foundation is both reasonable and appropriate in the circumstances and it is approved.

[171] The Claimants, who will be receiving meaningful compensation as a result of the sanctioning of the CCAA Plans, have waited long enough. Litigation was commenced in 1998. Judgment was obtained in 2015 and confirmed on appellate review in 2019. The CCAA Proceedings were commenced in 2019 and are before this court today to be sanctioned. Thousands of Claimants have sadly passed away during this period. The QCAPs and the PCCs have waited long enough to receive compensation. The wait, for many, has been intolerable. That wait ends today.

[172] With respect to the scope of the release, HSF and CCS complain that the effect of the release is that it covers future wrongful conduct.

[173] A full and complete response to this submission was set out by Ms. Wall in her responding argument on behalf of the Province of Ontario. I can do no better than to reproduce the salient

points made by Ms. Wall, taken from the January 31, 2025 unofficial transcript provided by the real-time reporter, commencing at page 115 where Ms. Wall references the position of HSF:

“The future tobacco harm stakeholders are millions of...”

“... individuals who will purchase or consume tobacco products or be exposed to their use following the commencement of these proceedings but who have not suffered any harm prior to the [claims] bar date.”

[174] Ms. Wall responds as follows at p. 118:

Now the Heart and Stroke Foundation have made up the term “FTH stakeholders”. This is not a concept that was used at all in the mediation, and I’ll explain why. It’s based on fundamental misunderstandings of, first, the concept of the Pan-Canadian claimants, so I’m going to talk about what the Pan-Canadian claimants are; and secondly, the scope of the release, and I think this is quite important to deal with, the scope of the release.

“The first step in the development of the PCC compensation plan was to identify the potential causes of action that could be advanced by the PCCs against the tobacco companies and the tobacco company groups. Understanding the causes of action are necessary to determine the scope of the PCCs’ claims and potential claims that will need to be released in the global settlement.”

“The thesis underlying the PCC claims is that the tobacco companies have committed breaches of the common-law, equitable, and/or statutory duties or obligations that they owed to individuals in each province and [territory] who have been exposed to tobacco product manufactured by them and offered for sale in each tobacco jurisdiction”.

“The PCCs potentially could base their claims on one or more causes of action, including, without limitation, first conspiracy”.

....

“The cause of action will be commencing in about 1953. The tobacco companies conspired and acted in concert to prevent individuals in each province and territory from acquiring knowledge of the harmful and addictive properties of cigarettes in circumstances where they knew or ought to have known that their claims would cause tobacco-related diseases in such persons”.

And I’ll go back to the public-knowledge date in a moment:

“...the tobacco companies knew or ought to have known that their cigarettes, when smoked as intended, were addictive and could cause or contribute to disease, and as manufacturers of cigarettes sold to individuals

in each province and territory, they owed a duty of care to warn the public of smoke cigarettes of the risks of addiction and disease from smoking as was known or should have been known to them based on research on smoking and health from 1950 onward.

The tobacco companies failed to provide any warning and effective warnings of the risk of tobacco-related disease which were known to them. They suppressed information known to them and misinformed and misled individuals about the risks of addiction and diseases from smoking.”

And finally:

“Another basis of the – these are causes of action, allegations that could ground claims by PCCs would be misrepresentation. Since 1950, the tobacco companies misrepresented the risks of smoking by denying any link between smoking and addiction, which was contrary to what was known or should have been known to them based on research that was known to them on smoking and health.”

So I'll leave it there. So only a person who has a cause of action has a claim that can be released. [*emphasis added*]

I mention to you the public-knowledge date, and this becomes relevant in a few minutes when we revisit Mr. Bunting's hypothetical FTH stakeholder named Sarah.

The public-knowledge date, that term came out of the Quebec class action judgement. The Court made a finding regarding what it called the public-knowledge date, which is the date by which individuals knew or should have known of the risks of smoking the applicants' cigarettes that could cause the smoking, tobacco-related diseases.

The [Quebec] Court found that the [public-knowledge] date to be March 1st of 1996, so the breach period during which the tobacco companies committed their wrongful conduct which grounds the causes of action, begins in 1950 and ends, very important, ends at the public-knowledge date.

The public-knowledge date in the PCC compensation plan was adjusted from that March 1st of 96 date to November 20, 1998, to create some parity with the PCC-certified - sorry, the QCAP-certified class definition, which used November 1998, which was the date of the certification of the class action – I'm sorry, the issuance of the Statement of Claim.

...

So what does all this information I've set out for you do? And this is all – what I'm taking you through is all in the plan, the document.

So if a person smoked before the public-knowledge date, then they may have a cause of action because they smoked before the public knew or should have known of the risks that smoking the cigarettes of the applicants could cause tobacco-related diseases. Such is a person may have a claim that can be released.

But if a person starts smoking after the public-knowledge date, then they don't have a cause of action. They use the applicants' tobacco products when they knew or should have known of the risk of smoking the cigarettes that caused the tobacco-related diseases. Such a person does not have a claim that can be released.

Now, if you recall Mr. Bunting's hypothetical "Sarah", she was an FTH stakeholder, as he termed her, who first tried smoking in high school in 2025. She then became a heavier smoker addicted to nicotine in university and thereafter developed a tobacco-related disease and went to a lawyer to consult about her claim.

Sarah does not have any cause of action against the tobacco companies because she started smoking, in that hypothetical, 27 years after the public-knowledge date in 1996. She used tobacco products that, due to Canadian regulations and legislation, et cetera, have clear warnings in 2025 on their packages, and now, on the actual cigarettes, warning of the risks of smoking and the risk of tobacco-related disease.

So, since Sarah doesn't have a cause of action, she doesn't have any claim to release.

So what the Heart and Stroke Foundation has missed with this concept they've been putting forward is not every person who smokes and suffers from a tobacco-related disease has a cause of action and entitles them to redress. And this is product liability principles, and a person who doesn't have a cause of action does not have a claim that is released in the plans.

[175] In my view, the foregoing submissions of Ms. Wall address the concerns of the HSF, as well as the concerns of CCS with respect to the scope of the Release.

P. THE LAW

[176] The issues on this motion are:

- (a) Should the Court sanction the CCAA Plans?
- (b) Should the Court grant the releases sought?
- (c) Should the Court grant the CCAA Plan Administrator Appointment Orders?

[177] In seeking approval of a plan of compromise or arrangement under the CCAA, the debtor company must establish that:

- (a) There has been strict compliance with all statutory requirements;

- (b) Nothing has been done or purported to be done that is not authorized by the CCAA and prior orders of the Court in the CCAA proceedings; and
- (c) The plan must be fair and reasonable.

See *Canadian Airlines Corp. (Re)*, 2000 ABQB 442, 84 Alta. L.R. (3d) 9, at para. 178, leave to appeal refused, 2000 ABCA 238, variation refused, 2001 ABCA 9, leave to appeal refused, [2001] S.C.R. xii (note) [*Canadian Airlines*]; *Laurentian University of Sudbury*, 2022 ONSC 5645, at para. 23; and *Lydian International Limited (Re)*, 2020 ONSC 4006, at para. 22 [*Lydian International*].

(i) Strict Compliance with Statutory Requirements

[178] I find that the statutory requirements for the sanction of the CCAA Plans under s. 6 of the CCAA have been satisfied.

[179] The Tobacco Companies, Monitors and Court-Appointed Mediator have complied with the procedural requirements of the CCAA, the Second Amended and Restated Initial Orders, the Claims Procedure Orders, the Meeting Orders, the Sanction Protocol Orders and all other Orders granted by the Court in the CCAA Proceedings. In particular:

- (a) At the time that each Initial order was granted, the Court found that the CCAA applied to each of the Tobacco Companies and that each of the Tobacco Companies had liabilities that exceeded the \$5 million threshold under the CCAA: see *Imperial Tobacco Canada Limited, et al., Re*, 2019 ONSC 1684, 68 C.B.R. (6th) 322, at para. 7; *JTI-Macdonald Corp., Re*, 2019 ONSC 1625, at para. 11; and the Endorsement of Justice Pattillo dated March 21, 2019, at p. 3;
- (b) Notices of the Meetings were distributed in accordance with the Meeting Orders: see Imperial Meeting Order (October 31, 2024), at paras. 16-19; JTIM Meeting Order (October 31, 2024), at paras. 16-19; and RBH Meeting Order (October 31, 2024), at paras. 16-19;
- (c) The classification of creditors for voting purposes for each of the Tobacco Companies was approved by this Court: Imperial Meeting Order, at para. 20; JTIM Meeting Order, at para. 20; and RBH Meeting Order, at para. 20);
- (d) The Meetings were properly constituted, and voting on the CCAA Plans at the Meetings was properly carried out in accordance with the Meeting Orders: see FTI 25th Report, at paras 20-21; EYI 22nd Report, at paras. 21-25; Deloitte 21st Report, at paras. 17-20);
- (e) The CCAA Plans comply with the statutory requirements set out in subsections 6(3), 6(5) and 6(6) of the CCAA and the Meeting Orders: see *Companies' Creditors Arrangement Act*, R.S.C. 1985, c. C-36, s. 6(1); FTI 25th Report, at para. 33; EYI 23rd Report, at para. 16; and Deloitte 22nd Report, at para. 56(a)).

[180] In addition, the CCAA Plans comply with the statutory requirements set out in subsections 6(3), 6(5) and 6(6) of the CCAA, which provide that the Court may not sanction a plan of arrangement unless it contains certain specified provisions concerning Crown claims, employee claims and pension claims. Such claims are Unaffected Claims under the CCAA Plans.

[181] Further, in compliance with subsection 6(8) of the CCAA, the CCAA Plans do not contemplate the payment of any amounts to equity holders of the Tobacco Companies.

(ii) No Unauthorized Matters

[182] Second, no unauthorized matters have occurred in these CCAA Proceedings.

[183] In considering whether any unauthorized steps have been taken by the debtor companies, courts can rely on the Monitors' reports and the materials filed by the parties and their stakeholders: *Canadian Airlines, supra*, at para. 64; and *Canwest Global, supra*, at para. 17.

[184] Throughout the course of these CCAA Proceedings, the Tobacco Companies, the Monitors and the Court-Appointed Mediator have acted in good faith and with due diligence and have complied with the requirements of the CCAA and the Orders of this Court: see EYI 23rd Report, at para. 24; FTI 25th Report, at para. 38; *Canadian Airlines, supra*, at para. 64; *Canwest Global, supra*, at para. 17). The Tobacco Companies have regularly filed affidavits to keep this Court apprised of all material matters over the course of the CCAA Proceedings. This Court was satisfied that at each stay extension in respect of each of the CCAA Proceedings the Tobacco Companies had acted and were acting in good faith and with due diligence. Further, the Monitors have provided regular reports, none of which have identified any non-compliance with the CCAA or this Court's Orders.

(iii) The CCAA Plans are Fair and Reasonable

[185] In reviewing the fairness and reasonableness of the CCAA Plans, the Court does not and should not require perfection: see *Sammi Atlas Inc., Re*, 3 C.B.R. (4th) 171, at para. 4. As the Court stated in *Canadian Airlines*, at paras. 178-179:

In summary, in assessing whether a plan is fair and reasonable, courts have emphasized that perfection is not required.... Rather, various rights and remedies must be sacrificed to varying degrees to result in a reasonable, viable compromise for all concerned. The court is required to view the "big picture" of the plan and assess its impact as a whole....

Fairness and reasonableness are not abstract notions, but must be measured against the available commercial alternatives. The triggering of the statute, namely insolvency, recognizes a fundamental flaw within the company. In these imperfect circumstances there can never be a perfect plan, but rather only one that is supportable.

[186] The Court's discretion is "an exercise in assessing current reality by comparing available commercial alternatives to what is offered in the proposed plan": see *Canadian Airlines, supra*, at para. 3; *Canwest Global, supra*, at para. 19). The Court should be informed by the objectives of

the CCAA, namely, to facilitate the reorganization of a debtor company for the benefit of the company, its creditors, employees and, in many instances, a much broader constituency of affected persons: see *Canwest Global, supra*, at para. 20.

[187] Factors that establish that a plan is fair and reasonable include: (i) the claims are properly classified; (ii) the plan was approved by the double majority of creditors as required by the CCAA; (iii) there is no viable alternative to the plan; and (iv) the public interest: see *Canwest Global, supra*, at para. 21; *Canadian Airlines, supra*, at para. 96; *Nelson Financial Group Ltd. (Re)*, 2011 ONSC 2750, 79 C.B.R. (5th) 307, at para. 37; and *Sino-Forest Corporation (Re)*, 2012 ONSC 7050, at para. 61).

[188] Each Monitor has concluded that the CCAA Plans are fair and reasonable, as set out below.

[189] The classification of Affected Creditors in a single class for voting purposes was appropriate in the circumstances and was approved pursuant to the Meeting Orders. None of the Affected Creditors have disputed their classification into a single class.

[190] Creditor Approval is the most important factor and “creates an inference that the plan is fair and reasonable”: see *Canadian Airlines, supra*, at para. 97. The unanimous approval of the CCAA Plans by Affected Creditors voting in person, or by proxy at the meetings, reflects their belief in exercising their business judgment, that the CCAA Plans are fair, reasonable and economically feasible. The Court should not second-guess or displace the business judgment of the Affected Creditors who, with the Tobacco Companies, participated in the development of the CCAA Plans in their best interests: see *Olympia & York, supra*, at paras. 36-37; and *Canadian Airlines, supra*, at para. 97.

[191] That there is no “alternative transaction that would provide greater recovery than the recoveries contemplated in the Plans” weighs in favour of a finding that the CCAA Plans are fair and reasonable: see *Canwest Global, supra*, at para. 25. As noted above, the Monitors and the Court-Appointed Mediator have considered possible alternatives to the CCAA Plans and have concluded that there is no viable alternative to the CCAA Plans which have the consent of the Affected Creditors.

[192] The Tobacco Companies face aggregate liability of approximately \$1 trillion arising from the Tobacco Claims. As this Court has previously recognized, the “astronomical” dollar value of potential claims “is clearly beyond the ability for any or all of the [Tobacco Companies] to satisfy”: 2023 ONSC 5449, at para. 15. If the CCAA Plans are not sanctioned by this Court and implemented, the likely outcome is the liquidation or bankruptcy of the Tobacco Companies: see FTI 25th Report, at para. 40.

[193] In my view, each factor supports a finding that the CCAA Plans are fair and reasonable in the unique circumstances of these CCAA Proceedings and within the context of the CCAA: *Canadian Airlines, supra* at para. 94.

(iv) Nothing in the CCAA Plans is Contrary to the Public Interest

[194] Nothing in the CCAA Plans is Contrary to the Public Interest. In fact, the CCAA Plans:

- (a) Provide meaningful recovery to Affected Creditors, including the individual QCAP and PCCR Claimants, as well as the Provinces and Territories;
- (b) Require the creation and funding of the Cy-près Foundation, a \$1 billion public charitable foundation designed to provide indirect benefits to a diverse group of PCCs, *Létourneau* Class Members and the general public; and
- (c) Allow the Tobacco Companies to continue as going concerns, which will benefit their employees, suppliers and other stakeholders.

Q. THE THIRD PARTY RELEASES SHOULD BE GRANTED

[195] This Court has jurisdiction to approve the Third-Party Releases

[196] It is well-established that the Court has jurisdiction, in appropriate circumstances, to sanction plans containing releases in favour of third parties: see *Metcalfe & Mansfield Alternative Investments II Corp. (Re)*, 2008 ONCA 587, 92 O.R. (3d) 513, at para. 61, leave to appeal refused, 2008 CanLII 46997 (S.C.C.) [*Metcalfe*]. In addition to approving releases of directors and officers, courts have also sanctioned plans releasing other third parties that contributed to a plan, including the debtor's affiliates, employee representatives and others: see *Sino-Forest Corporation (Re)*, 2012 ONSC 7050, at paras. 70-74, leave to appeal refused, 2013 ONCA 456, leave to appeal refused, 2014 CanLII 11054 (S.C.C.) (releasing the debtor's subsidiaries); *Target Canada Co., Re*, 2016 ONSC 3651, at paras. 40-47 [*Target*] (releasing the debtor's parent company, who was also the plan sponsor); *Laurentian, supra*, at paras. 39-45 (releasing a university with which the debtor had a relationship); *Lydian International, supra*, at paras. 50-64 (releasing senior lenders).

[197] In determining whether to approve a third-party release, the Court will consider the following factors, none of which alone is determinative:

- (a) Whether the parties to be released from claims are necessary and essential to the restructuring of the debtor;
- (b) Whether the claims to be released are rationally connected to the purpose of the plan and necessary for it;
- (c) Whether the plan could succeed without the releases;
- (d) Whether the parties being released are contributing to the plan;
- (e) Whether the release benefits the debtors as well as the creditors generally;
- (f) Whether the creditors who voted on the plan had knowledge of the nature and effect of the releases; and
- (g) Whether the releases are fair and reasonable and not overly broad or offensive to public policy: see *Metcalfe, supra*, at para. 113; *Laurentian, supra*, at para. 40, citing *Lydian International, supra*, at para. 54.

[198] The third-party releases in the CCAA Plans were negotiated as part of the overall framework of the compromises in the CCAA Plans and are necessary to achieve the global settlement of the Tobacco Claims and for the CCAA Plans to be implemented. Each of the released third parties either have contributed or will contribute in a tangible and realistic way to the CCAA Plans and, in some cases, are providing consideration absent which the CCAA Plans could not succeed.

[199] The CCAA Proceedings could not proceed without the officers and directors of the Tobacco Companies, the Monitors and the Court-Appointed Mediator, among others, who have each played an integral role in these complex coordinated CCAA Proceedings and have provided meaningful guidance throughout.

[200] Similarly, the implementation of the CCAA Plans would not be possible without the Parent Companies and relevant affiliates in the Tobacco Company Groups. These entities have variously agreed to provide shared services and other operational support to the Tobacco Companies and the Administrative Coordinators, who will administer the PCC Compensation Plan and the Quebec Administration Plan. The Tobacco Companies have further agreed to enter into the Definitive Documents in exchange for the releases. These releases are necessary to ensure the orderly, efficient and fair administration and implementation of the CCAA Plans.

[201] The Affected Creditors received the CCAA Plans and related materials before the Meeting, which detailed the nature and effect of the releases. Under the CCAA Plans, the Claimants will each execute Claimant Contractual Releases, confirming their consent to the releases under the CCAA Plans. The Affected Creditors voted overwhelmingly in favour of the CCAA Plans containing those releases. In my view, the third-party releases are not overly broad and contain the necessary and appropriate carve-outs: see EYI 23rd Report, at paras. 31-33; FTI 25th Report, at paras. 29-34.

[202] I have no doubt the issue of the releases consumed many hours for all those participating in the mediation. The Monitors, and by extension, the Mediator, support the granting of the releases in their current form. They take into account the required factors. It is not for the court to redraft or amend the releases. Again the choice for the court is a binary one. It must either accept the language or reject it.

[203] The Monitors consider the third-party releases proposed in the CCAA Plans to be fair, reasonable and rationally connected to the overall purpose of the CCAA Plans.

[204] I accept this recommendation. The third party releases are approved.

R. THE CCAA PLAN ADMINISTRATOR APPOINTMENT ORDERS SHOULD BE GRANTED

(i) The Court has the Jurisdiction to Grant the CCAA Plan Administrator Appointment Orders

[205] Section 11 of the CCAA “confers jurisdiction on the court in the broadest of terms” and enables the court to “make any order that it considers appropriate in the circumstances”: *Acerus Pharmaceuticals Corporation (Re)*, 2023 ONSC 3314, at para. 9. 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”: *Canada v. Canada North Group Inc.*, 2021 SCC 30, [2021] 2 S.C.R. 571, at para. 21. The appropriateness of a section 11 order is also assessed in relation to its grounding in the well-established remedial objectives of the CCAA, including facilitating the reorganization of a debtor company, providing for timely, efficient and impartial resolution of a debtor’s insolvency, and ensuring the fair and equitable treatment of the claims against a debtor.

(ii) The CCAA Plan Administrator Appointment Orders are Appropriate in the Circumstances

[206] The implementation of the CCAA Plans is expected to be lengthy and complex. Each CCAA Plan is dependent on the implementation of the other two CCAA Plans to ensure the global settlement of all Tobacco Claims against each Tobacco Company. The CCAA Plan Administrator Appointment Orders are therefore designed to facilitate the implementation of the coordinated CCAA Plans, including the continued involvement of the Court-Appointed Mediator.

[207] As neutral third parties, the CCAA Plan Administrators, along with the Court-Appointed Mediator, will give comfort and stability to the Court and the Affected Creditors by overseeing the implementation of the CCAA Plans and reporting as necessary.

[208] I am satisfied that the CCAA Plan Administrator Appointment Orders should be granted to facilitate the restructuring of the Tobacco Companies and advance the goals of the CCAA in these complex and coordinated CCAA proceedings.

DISPOSITION

[209] The motion to sanction the CCAA Plan for each of JTIM, Imperial and RBH, together with the ancillary relief set out at para. [11], is granted.

[210] It remains for the CCAA Plans to be implemented on the Plan Implementation Date. The Stay Period expires today. It is therefore necessary to extend the Stay Period.

[211] I am satisfied that the parties are working in good faith and with due diligence such that an extension of the Stay Period is both necessary and reasonable in the circumstances. The Tobacco Companies have sufficient resources to carry on operations from now to the Plan Implementation Date.

[212] The Stay Period is extended to the Plan Implementation Date.

EXPRESSION OF GRATITUDE

[213] All parties, and the court, are indebted to The Honourable Warren K. Winkler, K.C., and the representatives of the Monitors for their incredible contributions and efforts in forming a consensus among stakeholders that has resulted in the sanctioning of these CCAA Plans.



Chief Justice Geoffrey B. Morawetz

Date: March 6, 2025

SCHEDULE "A"

CITATION: Imperial Tobacco Limited, 2025 ONSC 1375
COURT FILE NOS.: CV-19-615862-00CL, CV-19-616077-00CL and CV-19-616779-00CL
DATE: 2025-03-03

SUPERIOR COURT OF JUSTICE - ONTARIO

RE: **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**

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.

BEFORE: Chief Justice Geoffrey B. Morawetz

COUNSEL: *Craig Lockwood, Deborah Glendinning, Marc Wasserman and Martino Calvaruso*, for Imperial Tobacco Canada Limited and Imperial Tobacco Company Limited

Natasha MacParland and Chanakya Sethi, for FTI Consulting Canada Inc. in its capacity as court-appointed Monitor of Imperial Tobacco Canada Limited and Imperial Tobacco Company Limited

Robert Thornton, for JTI-Macdonald Corp.

Linc Rogers, for Deloitte Restructuring Inc. in its capacity as Monitor of JTI-Macdonald Corp.

Jamey Gage and Trevor Courtis, for Rothmans, Benson & Hedges Inc.

R. Shayne Kukulowicz and Monique Sassi, for Ernst & Young Inc., in its capacity as court-appointed Monitor of Rothmans, Benson & Hedges Inc.

Jacqueline Wall, for the Province of Ontario

Sam Cotton, for the Heart and Stroke Foundation

Jesse Mighton, Jeffrey Leon, Mike Eizenga and Preet Gill, for the Province of British Columbia, Province of Manitoba, Province of New Brunswick, Province of Nova Scotia, Province of Prince Edward Island, Province of Saskatchewan, Government of Northwest Territories, Government of Nunavut and Government of Yukon in their capacities as Plaintiffs in the HCCR Legislation Claims

André I.G. Michael, for the Consortium of Provinces and Territories

Brett Harrison and Guneev Bhinder, for the Province of Quebec

HEARD: March 3, 2025

ENDORSEMENT

[1] This endorsement concerns the ongoing *Companies' Creditors Arrangement Act* ("CCAA") proceedings involving JTI-Macdonald Corp. ("JTI"), Imperial Tobacco Canada Limited and Imperial Tobacco Company Limited (collectively, "Imperial" and Rothmans Benson & Hedges Inc. ("RBH")). JTI, Imperial and RBH are collectively referred to as the "Tobacco Companies". This endorsement relates to all three Tobacco Companies.

[2] Each of Deloitte Restructuring Inc. ("Deloitte"), in its capacity as Court-appointed Monitor of JTI, FTI Consulting Canada Inc. ("FTI"), in its capacity as Court-appointed Monitor of Imperial and Ernst & Young Inc. ("EY") in its capacity as Court-appointed Monitor of RBH brought a motion for an order (CCAA Plan Amendment Order No. 1) approving the proposed amendments as reflected in the Third Amended and Restated Plan of Compromise and Arrangement in each of the CCAA proceedings.

[3] CCAA Plans were unanimously approved by voting creditors at three separate, sequential meetings of Affected Creditors of JTI, Imperial and RBH (the "Meetings") on December 12, 2024. The Monitors then brought motions for orders sanctioning the CCAA Plans and ancillary relief, which were heard from January 29 to 31, 2025 (the "Sanction Hearing").

[4] The Court's decision on the Sanction Hearing is under reserve.

[5] At the Sanction Hearing, the Tobacco Companies advised that the issue of allocation under the CCAA Plans remains unresolved as between them.

[6] The Tobacco Companies have now reached an agreement in principle to resolve the allocation issue.

[7] Pursuant to the CCAA Plans, the Tobacco Companies are to make upfront contributions on or before the Plan Implementation date equal to the aggregate of each Tobacco Companies' cash and cash equivalents generated from all sources by each Tobacco Company prior to the Plan Implementation Date, plus cash security deposits, less the sum of \$750 million.

[8] The allocation of the \$750 million holdback to be retained by the Tobacco Companies to fund working capital (the "Working Capital Holdback") remained unresolved at the time of the

Sanction Hearing. The Tobacco Companies have now agreed in principle that on the Plan Implementation Date, RBH will retain the entire Working Capital Holdback. In exchange for RBH, JTI and JTI Macdonald TM Corp. (“JTI-TM”) have agreed to withdraw all of their objections to the sanctioning of the CCAA Plans.

[9] Pursuant to section 20.4(a) of the CCAA Plans, the Monitors now move for CCAA Plan Amendment Orders to approve certain amendments to the CCAA Plans to implement this agreement in principle (the “Amendments”).

[10] As a result of the agreement in principle, the Tobacco Companies take the position that section 5.2 of the CCAA Plans is to be intentionally deleted.

[11] In addition, the Tobacco Companies require that section 5.4 of the CCAA Plans be amended to: (i) provide that the Working Capital Holdback is to be retained by RBH as the “RBH Retained Amount”, (ii) permit RBH to deal with the RBH Retained Amount in its sole discretion, including to transfer or distribute such monies outside of Canada in such manner as RBH may determine; and (iii) clarify that any such transfers or distributions of the RBH Retained Amount will be deemed to be permitted transfers for the sole purpose of Article 11 of the CCAA Plans.

[12] Certain administrative changes to effect the Amendments may also be required.

[13] None of the amendments affect any Affected Creditor or Unaffected Creditor. The amendments only impact the allocation of the Working Capital Holdback among the Tobacco Companies.

[14] No Claimants oppose the motions.

[15] The only opposition to the requested relief is from the Heart and Stroke Foundation (Heart & Stroke”).

[16] Heart & Stroke makes its submissions as a social stakeholder. It submits that the CCAA Plan Amendment Orders should not be granted because the proposed amendments to the CCAA Plans do not cure the unfairness and unreasonableness of the CCAA Plans arising from the narrow scope of the *Cy-près* Foundation.

[17] In making its submissions, Heart & Stroke relies on the Responding Factum that was referenced at the Sanction Hearing, oral arguments made at the Sanction Hearing and its written submissions for this motion. Heart & Stroke does not raise any new issues on this motion.

[18] The Province of Ontario submitted that Heart & Stroke’s objection to the proposed amendment to the Plan constituted an abuse of process.

[19] Abuse of process is a flexible doctrine which grants the court inherent power to prevent the misuse of its procedure in a way that would bring the administration of justice into disrepute. It may be used to bar the relitigation of issues previously decided and to promote judicial economy and the integrity of the court’s process: *Toronto (City) v. C.U.P.E., Local 79*, 2003 SCC 63, [2003] 3 S.C.R. 77, at paras. 37, 51.

[20] Heart & Stroke previously brought a motion for leave to appoint representative counsel for “Future Tobacco Harms Stakeholders” in this proceeding. In a decision dated June 23, 2023, McEwen J. dismissed that motion, in part on the basis that any claims of the Future Tobacco Harms Stakeholders were no different in nature from the unascertained and unasserted claims of the Pan-Canadian Claimants: 2023 ONSC 2347, at para. 86.

[21] As a result of McEwen J.’s decision, Future Tobacco Harms Stakeholders do not constitute a distinct class of creditors in this CCAA process. Heart & Stroke is neither an Affected Creditor nor an Unaffected Creditor. The court need not consider whether the proposed amendments to the plan are materially prejudicial to their interests.

[22] Heart & Stroke opposes the amendments to the plan on the basis that they do not adequately address the needs of Future Tobacco Harms Stakeholders. If the court were to adopt this argument, the effect would be to treat Future Tobacco Harms Stakeholders as a class of creditors whose approval is required to sanction the plan. In this way, Heart & Stroke’s submissions are an improper attempt to undermine McEwen J.’s decision.

[23] Heart and Stroke is a social stakeholder in this proceeding, but its status does not give it standing to raise objections on issues that do not affect it. In *Parsons v. Canadian Red Cross Society* (2001), 140 O.A.C. 348, the Court of Appeal held that, where a party has no legal rights that are impacted by a particular decision, that party has no standing to appeal that decision. By analogy, where a party’s rights are not impacted by an amendment to a proposed plan of arrangement, that party has no standing to object to the amendment.

[24] The proposed amendments to the plan fix the allocation of the Working Capital Holdback. None of the amendments sought on this motion affect Heart & Stroke as a social stakeholder. The proposed amendments have no impact on the scope of the *Cy-près* Foundation. The issues raised by Heart & Stroke on this motion were raised in the Sanction Hearing. The court’s decision on the motion to sanction the plan is under reserve. Heart & Stroke’s objections will be addressed in the court’s decision on that motion.

[25] Heart & Stroke advanced arguments that had no bearing on the question of whether the motion to amend the plan should be granted, and which challenged the court’s previous decision regarding the status of Future Tobacco Harms Stakeholders. For these reasons, Ontario’s abuse of process concern was not without merit.

[26] In my view, Heart & Stroke’s submissions were ill-advised and are rejected.

[27] The sole issue on these motions is whether the court should grant the CCAA Plan Amendment Orders.

[28] Section 20.4(a) of the CCAA Plan requires the Monitors to notify Affected Creditors and the Tobacco Companies and obtain court approval of any amendment, restatement, modification or supplement to be made following the Meeting Orders that is not solely: (i) administrative; or (ii) error correcting.

[29] The Monitors submit that the proposed amendments are substantive and not merely curative and therefore that the court approve them. They submit that the amendments do not affect

and are not materially adverse to the financial or economic interests of Affected Creditors or Unaffected Creditors. The amendments only impact the allocation of the Working Capital Holdback among the Tobacco Companies. The Affected Creditors and Tobacco Companies received notice of these motions on February 27, 2025. All three Tobacco Companies, along with JTI-TM, support the amendments.

[30] Sections 6 and 7 of the CCAA provide the court with authority to sanction a plan or to alter or modify its terms. When amendments are proposed after the creditors meeting, section 7 of the CCAA gives the court the discretion to sanction an amended plan without convening an additional creditors meeting if the court is satisfied that the creditors or shareholders are not adversely affected by the proposed amendments.

[31] I accept the submissions of the Monitor. I am satisfied that no Affected Creditor or Unaffected Creditor will be affected by the amendments. I am also satisfied that each of the Monitors has adhered to section 20.4(a) of the CCAA Plans by providing notice to the common service list and moving for the court's approval of the amendments.

[32] Each of the Monitors has filed a report recommending that the court approve the amendments and grant the CCAA Plan Amendment Order No. 1.

[33] I am satisfied that the evidence establishes that the requested relief is appropriate in the circumstances. The motions of the Monitors are granted and the orders have been signed.

[34] For greater certainty, the existing Stay of Proceedings remains in effect until such time as the decision on the Sanction Hearing has been released.

“Chief Justice Geoffrey B. Morawetz”

Date: March 3, 2025