

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

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

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

APPLICANTS

**MOTION RECORD OF IMPERIAL TOBACCO CANADA LIMITED AND
IMPERIAL TOBACCO COMPANY LIMITED
(Motion for Stay Extension returnable September 29, 2020)**

September 21, 2020

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

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

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

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

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

Applicants

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

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

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

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

APPLICANTS

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TAB 1

**ONTARIO
SUPERIOR COURT OF JUSTICE
COMMERCIAL LIST**

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

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

APPLICANTS

**NOTICE OF MOTION
(Motion for Stay Extension
returnable September 29, 2020)**

The Applicants will make a motion before the Honourable Justice McEwen of the Ontario Superior Court of Justice (Commercial List) on Tuesday, September 29, 2020 at 10:00 a.m., or as soon after that time as the motion can be heard, by judicial videoconference via Zoom at Toronto, Ontario. Please refer to the Virtual Hearing Protocol attached as Schedule "A" for details on attending the motion.

PROPOSED METHOD OF HEARING: The motion is to be heard orally.

THE MOTION IS FOR:

1. An Order substantially in the form attached to the Motion Record at Tab 3 providing the following relief:
 - (a) if necessary, abridging the time for service of this Notice of Motion and the Motion Record and dispensing with service on any person other than those served; and
 - (b) extending the Stay Period (defined below) until and including March 31, 2021; and
2. Such further and other relief as this Court may deem just.

THE GROUNDS FOR THE MOTION ARE:

1. The Applicants face an existential threat from tobacco-related litigation across Canada, including multiple class actions, government claims seeking to recover health care costs, and other ongoing proceedings (collectively, the “**Tobacco Litigation**”);
2. On March 1, 2019, the Court of Appeal for Quebec issued a judgment affirming a lower court decision that held Imperial Tobacco Canada Limited, JTI-Macdonald Corp., and Rothmans Benson & Hedges Inc. jointly and severally liable for a maximum of \$13.6 billion;
3. In addition, the plaintiffs in the Tobacco Litigation collectively seek hundreds of billions of dollars in damages, which exceeds the Applicants’ total assets by many orders of magnitude;
4. The Applicants were granted protection from their creditors under the *Companies’ Creditors Arrangement Act*, RSC 1985, c C-36, as amended (the “**CCAA**”), pursuant to the Initial Order of the Ontario Superior Court of Justice (Commercial List) dated March 12, 2019 (as amended from time to time, the “**Initial Order**”);
5. FTI Consulting Canada Inc. was appointed to act as the Monitor in the Initial Order;
6. Justice Winkler was appointed as the Court-Appointed Mediator in the Initial Order;
7. The Initial Order granted a stay of proceedings until April 11, 2019, or such later date as this Court may order (as extended by further court orders, the “**Stay Period**”);
8. The Court has previously extended the Stay Period until September 30, 2020;
9. The requested extension of the Stay Period is necessary and appropriate in the circumstances to allow for the continued operation of the Applicants’ business while they work towards developing a consensual plan of compromise or arrangement for the resolution of the Tobacco Claims (as defined in the Initial Order);
10. The Applicants have been acting in and continue to act in good faith and with due diligence in these CCAA proceedings;

11. During the extended Stay Period, the Applicants intend to continue engaging in the mediation process under the direction of the Court-Appointed Mediator and to work diligently (in consultation with the Monitor) to explore a negotiated resolution with the Tobacco Litigation stakeholders;
12. It is just and convenient and in the interests of the Applicants and their respective stakeholders that the Stay Period be extended;
13. The Applicants have sufficient liquidity to continue operations through the requested Stay Period;
14. The Monitor supports the extension of the Stay Period;
15. The provisions of the CCAA, including section 11.02, and the inherent and equitable jurisdiction of this Honourable Court;
16. Rules 1.04, 1.05, 2.03, 3.02, 16 and 37 of the Ontario *Rules of Civil Procedure*, R.R.O. 1990, Reg. 194, as amended, and section 106 of the Ontario *Courts of Justice Act*, R.S.O. 1990, c. C.43, as amended; and
17. Such further and other grounds as counsel may advise and this Court may permit.

THE FOLLOWING DOCUMENTARY EVIDENCE will be used at the hearing of this motion:

1. The Affidavit of Eric Thauvette sworn September 21, 2020;
2. The Eight Report of the Monitor (to be filed); and
3. Such further and other evidence as counsel may advise and this Court may permit.

September 21, 2020

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Lawyers for the Applicants, Imperial Tobacco
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Limited

TO: THE COMMON SERVICE LIST

PROTOCOL FOR MOTION BY ZOOM VIDEO CONFERENCE

Scheduling and Specific Requirements

1. Any person on the Service List that wishes to appear virtually on the motion, ("Participants") must register by 4:00 p.m. 2 business days in advance of the hearing (Friday, September 25th, 2020 for the motion scheduled September 29th, 2020), by emailing Veritext Litigation Solutions Canada, Inc. (scheduling@neesonsreporting.com) and copying each Monitor's counsel (mpercy@dwpv.com, msassi@casselsbrock.com, nancy.thompson@blakes.com) and also advise if they intend to make submissions. All Participants will provide contact information, including a name, who they are acting for, an email address and phone number for the counsel slip.
2. Subject to the Court's overriding discretion over all matters, Monitors' counsel will coordinate with Participants and the Court to develop an agenda for the hearing.
3. Participants will appear by video. Monitors' counsel will distribute the Zoom link and the sync.com link to Participants. Participants are not permitted to forward or share either the Zoom link or the sync.com link. No person should have access to the live video of the hearing other than Participants. If a Participant is unable to attend by video, they should contact Monitors' counsel.
4. Counsel is not required to gown for the hearing. Instead, business attire is required for all Participants appearing by video.
5. For access by the general public, a listen-only phone line will be posted on each of the Monitors' websites by 10:00 a.m. on not less than 2 business days prior to the hearing. The listen-only phone line will be muted and no submissions can be made over this listen-only phone line.
6. No recording of any part of the hearing (including audio) may be made unless authorized in advance by the Court.
7. For greater certainty, notice and service requirements are set out in the Rules of Civil Procedure, and the various orders and endorsements in the proceedings. For ease of reference, we have included paragraphs 58-63 of the Second Amended and Restated Initial Order dated March 8, 2019 in the JTIM proceedings, attached as Appendix "A". It should be noted that similar notice and service requirements have been set out in various orders and endorsements in the parallel proceedings of Imperial and RBH. Nothing in this protocol modifies or amends Orders of the Court related to service requirements, the Rules of Civil Procedure, any Commercial List Practice Direction or other applicable rules.
8. Participants will be placed into a virtual waiting room upon entering the Zoom meeting.

Technical Requirements

9. Participants will require a device with a working microphone and webcam. The device can be a computer (desktop or laptop), tablet or smartphone. The device must be connected to an internet connection that is sufficient to send and receive video and audio.
10. Each Participant is responsible for ensuring that they have suitable equipment to participate in the hearing and that such equipment works properly. Participants must test such equipment well in advance of the scheduled hearing to ensure:
 - (a) that they are familiar with how to use such equipment;
 - (b) the compatibility and functioning of such equipment; and
 - (c) that the remote location has adequate internet bandwidth to support the use of the Zoom without interruption.
11. Each Participant is also responsible for ensuring that they are familiar with the features and operation of Zoom. Participants must ensure that they have downloaded any necessary software, and practiced using Zoom, well in advance of the scheduled hearing.
12. Participants should log on using the Zoom link provided approximately 30 minutes before the hearing is scheduled to begin. During this time, Participants should speak to each other to determine if there are any audio/visual/connection issues.
13. It is suggested that Participants use the “gallery view” mode, rather than the “active speaker” mode, available on Zoom.
14. Should a Participant become disconnected from Zoom or experience technical difficulties during the hearing, they should immediately inform the Court by sending an email to Veritext Litigation Solutions Canada, Inc. (scheduling@neesonsreporting.com).

APPENDIX "A"

58. **THIS COURT ORDERS** that, subject to paragraph 59, all motions in this proceeding are to be brought on not less than seven (7) calendar days' notice to all persons on the Service List. Each Notice of Motion shall specify a date (the "**Return Date**") and time for the hearing.

59. **THIS COURT ORDERS** that motions for relief on an urgent basis need not comply with the notice protocol described herein.

60. **THIS COURT ORDERS** that any interested Person wishing to object to the relief sought in a motion must serve responding motion material or, if they do not intend to file material, a notice in all cases stating the objection to the motion and the grounds for such objection in writing (the "**Responding Material**") to the moving party, the Applicant and the Monitor, with a copy to all Persons on the Service List, no later than 5 p.m. on the date that is four (4) calendar days prior to the Return Date (the "**Objection Deadline**").

61. **THIS COURT ORDERS** that, if no Responding Materials are served by the Objection Deadline, the judge having carriage of the motion (the "**Presiding Judge**") may determine:

- (a) whether a hearing is necessary;
- (b) whether such hearing will be in person, by telephone or by written submissions only; and
- (c) the parties from whom submissions are required

(collectively, the "**Hearing Details**"). In the absence of any such determination, a hearing will be held in the ordinary course.

62. **THIS COURT ORDERS** that, if no Responding Materials are served by the Objection Deadline, the Monitor shall communicate with the Presiding Judge regarding whether a determination has been made by the Presiding Judge concerning the Hearing Details. The Monitor shall thereafter advise the Service List of the Hearing Details and the Monitor shall report upon its dissemination of the Hearing Details to the Court in a timely manner, which may be contained in the Monitor's next report in the proceeding.

63. **THIS COURT ORDERS** that if any party objects to the motion proceeding on the Return Date or believes that the Objection Deadline does not provide sufficient time to respond to the motion, such objecting party shall, promptly upon receipt of the Notice of Motion and in any event prior to the Objection Deadline, contact the moving party and the Monitor (together with the objecting party and any other party who has served Responding Materials, the "**Interested Parties**") to advise of such objection and the reasons therefor. If the Interested Parties are unable to resolve the objection to the timing and schedule for the motion following good faith consultations, the Interested Parties may seek a scheduling appointment before the Presiding Judge to be held prior to the Return Date or on such other date as may be mutually agreed by the Interested Parties or as directed by the Presiding Judge to establish a schedule for the motion. At the scheduling appointment, the Presiding Judge may provide directions including a schedule for the delivery of any further materials and the hearing of the contested motion, and may address such other matters, including interim relief, as the Court may see fit. Notwithstanding the foregoing, the Presiding Judge may require the Interested Parties to proceed with the contested motion on the Return Date or on any other date as may be directed by the Presiding Judge or as may be mutually agreed by the Interested Parties, if otherwise satisfactory to the Presiding Judge.

APPENDIX "B"

1. All Participants will have their microphones muted and may only unmute their own microphones when they are addressing the Court. When parties are not muted, they must avoid making extraneous noise (including for example, typing and shuffling papers) as these noises may interfere with the hearing.
2. Participants must ensure that they participate in the Zoom hearing from a well-lit room so that they are easily visible.
3. Participants must ensure that they participate in the Zoom hearing from a quiet location where they (and the Court) will not be interrupted or disturbed during the hearing.
4. All mobile devices must be turned off or put on silent mode during the hearing.
5. Participants must refrain from speaking over other Participants.
6. Participants should make submissions in accordance with the order set out in the agenda. If there is a need to make submissions out of sequence, Participants should make a request in a manner directed by the Court. The Court may ask Participants to signal when they intend to address the Court by raising their hand (either by physically raising their hand or by using the virtual "raise hand" feature in Zoom).
7. Participants must state their name and who they represent before addressing the Court.
8. Upon entry into the virtual waiting room, each Participant joining by video should identify themselves, including any person off camera that may be viewing the video feed. This also allows any audio or visual issues to be identified. Each Participant is obligated to immediately notify the presiding judge if any additional person joins them in viewing the video feed.
9. If a Participant intends to rely on any documents, the materials you intend to rely on must be served and shared on the Monitors' sync.com link (or subsequent platform approved by the Court i.e. Case lines) and all references during the hearing should reference the folder structure uploaded to sync.com.
10. If a party wishes to share certain documents during the hearing, the documents should be provided to the Monitors in advance so that it can be added to the agenda and a method for sharing can be set up.

IN THE MATTER OF THE COMPANIES' CREDITORS ARRANGEMENT ACT, R.S.C. 1985, c. C-36, AS AMENDED
AND IN THE MATTER OF A PLAN OF COMPROMISE OR ARRANGEMENT OF IMPERIAL TOBACCO CANADA LIMITED AND
IMPERIAL TOBACCO COMPANY LIMITED

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

**ONTARIO
SUPERIOR COURT OF JUSTICE**

Proceeding Commenced at Toronto

NOTICE OF MOTION
(Motion for Stay Extension
returnable September 29, 2020)

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TAB 2

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

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

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

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

APPLICANTS

AFFIDAVIT OF ERIC THAUVETTE

(Sworn September 21, 2020)

I, Eric Thauvette, of the City of Montreal, in the Province of Quebec, the Vice President and Chief Financial Officer of Imperial Tobacco Canada Limited (“ITCAN”), MAKE OATH AND SAY:

1. I am the Chief Financial Officer of ITCAN and, in that role, I am responsible for all financial-related aspects of ITCAN’s business operations. I am also an officer and director of ITCAN’s subsidiary and the other applicant, Imperial Tobacco Company Limited (“ITCO”, and collectively with ITCAN, the “Applicants”). As such, I have personal knowledge of the matters deposed to herein. Where I have relied on other sources for information, I have stated the sources of my information and believe them to be true. In preparing this affidavit, I have consulted with other members of the Applicants’ senior management team, legal, financial and other advisors of the Applicants, and representatives of FTI Consulting Canada Inc. (“FTI” or the “Monitor”). In addition, I receive frequent updates from the Applicants’ counsel regarding these proceedings.

2. This affidavit is made in support of a motion by the Applicants for an order under the *Companies' Creditors Arrangement Act*, RSC 1985, c C-36, as amended (the "CCAA"), extending the Stay Period (defined below) up to and including March 31, 2021.

I. Background

3. The Applicants were granted CCAA protection by an order of the Ontario Superior Court of Justice (Commercial List) dated March 12, 2019 (as amended from time to time, the "Initial Order"). The Initial Order appointed FTI as the Monitor and granted a stay of proceedings (the "Stay") in favour of the Applicants and certain related parties until and including April 11, 2019 or such later date as the Court may order (as extended by further court orders, the "Stay Period"). At the most recent stay extension hearing, held on February 20, 2020, this Court extended the Stay Period until and including September 30, 2020.

4. The Applicants sought CCAA protection following the judgment of the Quebec Court of Appeal on March 1, 2019, affirming a lower court decision that held ITCAN, JTI-Macdonald Corp. ("JTIM"), and Rothmans Benson & Hedges Inc. ("RBH" and, with the Applicants and JTIM, the "Tobacco Companies") jointly and severally liable for a maximum of \$13.6 billion. This class proceeding, together with the various consumer and government claims across the country (the "Tobacco Litigation"), collectively seek notional recovery of hundreds of billions of dollars from the Applicants and the other legal Canadian tobacco manufacturers. Although the Applicants dispute both the legal and factual foundation of the claims asserted in the Tobacco Litigation, as well as the corresponding quantification of damages, they ultimately determined that it is in the best interests of the Applicants' stakeholders to engage in a restructuring process with the overriding objective of preserving the value of their business and resolving all Tobacco Claims (as defined in the Initial Order) in an orderly process under Court supervision.

5. ITCAN, JTIM, and RBH are the three major Canadian manufacturers and distributors of tobacco products. JTIM and RBH have also been granted CCAA protection under orders made on March 8, 2019 and March 22, 2019, respectively. Counsel for the Tobacco Companies have consulted on common issues in order to coordinate the three CCAA proceedings to the maximum extent possible.

II. The Mediation and Current Status of the CCAA Proceedings

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

7. Pursuant to an endorsement dated May 24, 2019, the mediation conducted by the Court-Appointed Mediator (the “Mediation”) is confidential and all steps taken or information produced by any of the parties in the Mediation shall not be disclosed. Therefore, the description of the Mediation and the Applicants’ participation below is general in nature.

8. During the most recent Stay Period, the Applicants have continued to engage in the Mediation in accordance with the directions provided by the Court-Appointed Mediator, including participating in numerous meetings with the Court-Appointed Mediator and others. In addition, the Applicants have continued responding to requests for information from Tobacco Litigation stakeholders during the most recent Stay Period.

9. The Applicants continue to believe that the Mediation and interactions facilitated by the Court-Appointed Mediator will allow all stakeholders to better understand the competing interests of other parties in the CCAA proceedings, and assist in identifying a path forward for

ultimately developing a consensual plan of compromise or arrangement. The Applicants have diligently adhered to all directions made by the Court-Appointed Mediator relating to scheduling and the Mediation, and will continue to do so during the extended Stay Period.

III. Other Matters

10. On March 16, 2020, this Court made an order partially lifting the Stay to permit ITCAN to participate as a respondent to an application (the “Ottawa Application”) brought by the City of Ottawa (“Ottawa”). As described in the affidavit sworn by Nancy Roberts on March 6, 2020 in connection with the Applicants’ lift-stay motion, the Applicants sought leave to be able to participate in the Ottawa Application because it concerned certain lands that Ottawa may be contractually obligated to convey to ITCAN in certain circumstances and the position taken by the respondent appeared to put ITCAN’s contractual rights at risk. After obtaining the March 16 order, the Applicants conducted a thorough review and analysis of any potential residual interest that they may pursue in the context of the Ottawa Application. The Applicants, after consultation with the Monitor, concluded that there were no rights that were potentially implicated by the issues raised in the Ottawa Application and so ultimately did not seek party status. Counsel to Ottawa has continued to keep the Applicants apprised of the status of the matter.

11. As explained in my affidavit sworn September 23, 2019 (the “September Thauvette Affidavit”), ITCAN is required to indemnify British American Tobacco Mexico, S.A. de C.V. (“BAT Mexico”) for certain costs resulting from the transition to plain packaging as, under a Finished Good Supply contract manufacturing agreement, ITCAN is required to compensate BAT Mexico for the costs of implementing any changes requested by ITCAN. Given the Mediation and as a result of discussions with various stakeholders, ITCAN decided to delay making the payments while the Monitor examined and reported on them. After the Applicants agreed to delay making

the payments, ITCAN employees met with the Monitor and explained the detailed composition of the proposed payments. The Applicants and BAT Mexico are in the process of gathering further documentation and other information in order to answer questions raised by the Monitor, which documents and information have been provided to the Monitor as they are received. ITCAN, in consultation with the Monitor, has decided to include the payments owing to BAT Mexico as a liability in its financial statements but will not be making the payments to BAT Mexico until the Monitor has reported on them.

12. The Applicants have taken various steps to address the effects of the COVID-19 pandemic during the most recent Stay Period. On March 16, 2020, the Applicants shifted to a remote-work model. In addition, the Applicants increased their inventory to be better prepared for any supply chain disruptions.

13. The COVID-19 pandemic had a temporary impact on the Applicants' supply chain. In early April, BAT Mexico was forced to shut down its factory in Monterrey, Mexico, which supplied a majority of the finished tobacco products sold by the Applicants, as a result of public health measures. During this time, the Applicants purchased finished tobacco products from British American Tobacco, p.l.c. ("BAT") affiliates in Brazil and Chile. The BAT Mexico factory resumed its activities gradually over the summer and, as of the date of this affidavit, it is fully operational. On the whole, while the Applicants experienced certain challenges and incurred certain additional costs, the supply chain disruptions caused by the COVID-19 pandemic have had a short term impact on the Applicants' business. The Applicants have also further detailed and expanded their business contingency plan to provide for additional options and be better prepared for future disruptions in the event there is a COVID-19 resurgence. In addition, the Applicants are currently engaged in discussions with a supplier regarding terms for ongoing business.

14. As noted in my affidavit sworn February 13, 2020 in connection with the most recent stay extension motion (the “February Thauvette Affidavit”), ITCAN was planning to purchase certain used machinery from BAT Mexico at its depreciated net book value. ITCAN subsequently arranged for the machinery to be sold and shipped to a BAT affiliate in Chile to assist with the production of certain tobacco products as part of their business contingency plan described above. The Monitor reviewed and approved both ITCAN’s purchase of and resale of the machinery.

15. ITCAN will be purchasing certain additional used machinery from BAT affiliates during the proposed extended Stay Period at an aggregate cost of approximately \$12.9 million. These purchases are being reviewed by the Monitor.

16. As explained in detail in my affidavit sworn March 12, 2019 in support of the Initial Order, the Applicants had a number of intercompany agreements and arrangements with BAT affiliates. A few of these arrangements were transferred to other BAT affiliates as part of a rearrangement of certain functions within the BAT group. Certain financing and cash management arrangements with B.A.T. International Finance p.l.c. (“BATIF”) were shifted to BAT Operating Finance Limited (“BATOF”), which did not have any impact on the Applicants’ operations or the costs incurred in relation to the financing and cash management functions in issue. In addition, the trade-mark and patent commercialisation activities of British-American Tobacco (Holdings) Limited were transferred to British-American Tobacco (Western Europe Commercial Trading) Limited, which did not result in any changes to the pre-existing terms and conditions of the Applicants’ Sub-License Agreements with British-American Tobacco (Holdings) Limited.

17. Effective September 1, 2020, Ralf Wittenberg assumed the position of Chief Executive Officer and President of both Applicants. Mr. Wittenberg was previously the Area

Director, Central Europe North, for the BAT Group and has held senior management roles in the BAT Group for 25 years.

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

IV. Stay Extension

19. As noted above, the Applicants are seeking to extend the Stay Period up to and including March 31, 2021.

20. I believe that the Applicants have acted and are continuing to act in good faith and with due diligence in these CCAA proceedings since the granting of the Initial Order. During the extended Stay Period, the Applicants intend to continue engaging in the Mediation under the direction of the Court-Appointed Mediator and to work diligently (in consultation with the Monitor) to explore a negotiated resolution with the Tobacco Litigation stakeholders.

21. The Applicants' overriding objective remains the eventual global resolution of all Tobacco Claims in a co-ordinated fashion, which will require the continuing participation of all stakeholders in a co-ordinated process under continuing Court supervision.

22. The Applicants, with the assistance of the Monitor, have prepared an updated Cash Flow Forecast for the 30-week period commencing the week of September 7, 2020 through the week of March 29, 2021, which reflects that the Applicants are projected to have sufficient funding to continue to operate in the normal course during the proposed extension of the Stay Period. I understand that the Monitor will be attaching the updated Cash Flow Forecast with its report that will be filed with the Court. As noted in the September Thauvette Affidavit and the February


Thauvette Affidavit, the Applicants had experienced a decline in sale volumes during the several months before the swearing of those affidavits as compared to year-over-year numbers for the same period. The Applicants had expected that this trend would continue in 2020. However, although there have been sale volume fluctuations during the COVID-19 pandemic, the Applicants' overall sale volumes since the last stay extension have been higher than forecast. The Applicants believe that the higher-than-expected sale volumes were caused by, among other things, restricted access to First Nation reserves for tobacco purchases during the COVID-19 pandemic.

23. The Monitor has expressed its support for the extension of the Stay Period to March 31, 2021.

SWORN BEFORE ME over video teleconference this 21st day of September, 2020 pursuant to O. Reg 431/20, Administering Oath or Declaration Remotely. The affiant was located in the City of Montreal, in the Province of Quebec, and the Commissioner was located in the City of Toronto, in the Province of Ontario.



Commissioner for Taking Affidavits
Waleed Malik (LSO No. 678460)


Eric Thauvette

Ontario

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

Proceeding commenced at Toronto

AFFIDAVIT OF ERIC THAUVETTE
(Sworn September 21, 2020)

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Limited and Imperial Tobacco Company Limited

Matter No: 1144377

TAB 3

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

**ONTARIO
SUPERIOR COURT OF JUSTICE
COMMERCIAL LIST**

THE HONOURABLE)	TUESDAY, THE 29 TH
)	
JUSTICE MCEWEN)	DAY OF SEPTEMBER, 2020

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

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

APPLICANTS

**ORDER
(Stay Extension)**

THIS MOTION, made by the Applicants pursuant to the *Companies' Creditors Arrangement Act*, R.S.C. 1985, c. C-36, as amended, for an order extending the Stay Period (defined below), was heard this day by judicial video conference in Toronto, Ontario due to the COVID-19 pandemic.

ON READING the Notice of Motion of the Applicants, the Affidavit of Eric Thauvette sworn September 21, 2020, the Eight Report of the Monitor, and on hearing the submissions of respective counsel for the Applicants, the Monitor, and such other counsel as were present, no one else appearing although duly served as appears from the Affidavit of Service of ● affirmed ●, 2020, filed:

SERVICE

1. **THIS COURT ORDERS** that the time for service of the Notice of Motion and the Motion Record herein is hereby abridged and validated so that this Motion is properly returnable today and hereby dispenses with further service thereof.

EXTENSION OF THE STAY PERIOD

2. **THIS COURT ORDERS** that the Stay Period as defined in paragraph 18 of the Second Amended and Restated Initial Order dated March 12, 2019 is hereby extended until and including March 31, 2021.

GENERAL

3. **THIS COURT ORDERS** that this Order is effective from the date that it is made and is enforceable without any need for entry and filing.

4. **THIS COURT ORDERS** that this Order shall have full force and effect in all provinces and territories in Canada.

5. **THIS COURT HEREBY REQUESTS** the aid and recognition of any court, tribunal, regulatory or administrative body, having jurisdiction in Canada or in the United States of America, to give effect to this Order and to assist the Applicants, the Monitor and their respective agents in carrying out the terms of this Order. All courts, tribunals, regulatory and administrative bodies are hereby respectfully requested to make such orders and to provide such assistance to the Applicants and to the Monitor, as an officer of this Court, as may be necessary or desirable to give effect to this Order, to grant representative status to the Monitor in any foreign proceeding, or to assist the Applicants and the Monitor and their respective agents in carrying out the terms of this Order.

IN THE MATTER OF THE COMPANIES' CREDITORS ARRANGEMENT ACT, R.S.C. 1985, c. C-36, AS AMENDED
AND IN THE MATTER OF A PLAN OF COMPROMISE OR ARRANGEMENT OF IMPERIAL TOBACCO CANADA LIMITED AND
IMPERIAL TOBACCO COMPANY LIMITED

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

**ONTARIO
SUPERIOR COURT OF JUSTICE
(Commercial List)**

Proceeding Commenced at Toronto

**ORDER
(Stay Extension)**

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**IN THE MATTER OF the Companies' Creditors Arrangement Act, R.S.C. 1985, c. C-36, as amended
AND IN THE MATTER OF A PLAN OF COMPROMISE OR ARRANGEMENT OF IMPERIAL
TOBACCO CANADA LIMITED AND IMPERIAL TOBACCO COMPANY LIMITED**

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

APPLICANTS

Ontario

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

Proceeding commenced at Toronto

**MOTION RECORD OF IMPERIAL TOBACCO
CANADA LIMITED AND IMPERIAL TOBACCO
COMPANY LIMITED**

(Motion for Stay Extension returnable September 29, 2020)

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