

**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

**COMPENDIUM OF IMPERIAL TOBACCO CANADA LIMITED
AND IMPERIAL TOBACCO COMPANY LIMITED**

(MOTION FOR STAY EXTENSION RETURNABLE MARCH 30, 2021)

March 29, 2021

OSLER, HOSKIN & HARCOURT LLP
P.O. Box 50, 1 First Canadian Place
Toronto, ON M5X 1B8

Deborah Glendinning (LSO# 31070N)
Marc Wasserman (LSO# 44066M)
John A. MacDonald (LSO# 25884R)
Craig Lockwood (LSO# 46668M)

Tel: (416) 362-2111
Fax: (416) 862-6666

Lawyers to the Applicants, Imperial Tobacco
Canada Limited and Imperial Tobacco
Company Limited

TO: THE COMMON SERVICE LIST

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

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ARRANGEMENT OF IMPERIAL TOBACCO CANADA
LIMITED AND IMPERIAL TOBACCO COMPANY LIMITED

APPLICANTS

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TAB 1

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

**ONTARIO
SUPERIOR COURT OF JUSTICE
COMMERCIAL LIST**

THE HONOURABLE
JUSTICE MCEWEN

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TUESDAY, THE 12TH
DAY OF MARCH, 2019



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

AND IN THE MATTER OF A PLAN OF COMPROMISE OR ARRANGEMENT OF IMPERIAL TOBACCO CANADA LIMITED AND IMPERIAL TOBACCO COMPANY LIMITED (the "Applicants")

SECOND AMENDED AND RESTATED INITIAL ORDER

THIS APPLICATION, made by the Applicants, pursuant to the *Companies' Creditors Arrangement Act*, R.S.C. 1985, c. C-36, as amended (the "CCAA") was heard this day at 330 University Avenue, Toronto, Ontario.

ON READING (i) the affidavit of Eric Thauvette sworn March 12, 2019 and the exhibits thereto (the "**Thauvette Affidavit**"), (ii) the affidavit of Nancy Roberts sworn March 12, 2019, and (iii) the pre-filing report dated March 12, 2019 (the "**Monitor's Pre-Filing Report**") of FTI Consulting Canada Inc. ("**FTI**") in its capacity as the proposed Monitor of the Applicants, and on hearing the submissions of counsel for the Applicants, BAT (as defined herein), FTI and the Honourable Warren K. Winkler, Q.C. in his capacity as proposed Court-Appointed Mediator (as defined herein), and on reading the consent of FTI to act as the Monitor,

SERVICE

1. THIS COURT ORDERS that the time for service and filing of the Notice of Application and the Application Record is hereby abridged and validated so that this Application

is properly returnable today and hereby dispenses with further service thereof.

APPLICATION

2. THIS COURT ORDERS AND DECLARES that the Applicants are companies to which the CCAA applies.

PLAN OF ARRANGEMENT

3. THIS COURT ORDERS that the Applicants, individually or collectively, shall have the authority to file and may, subject to further order of this Court, file with this Court a plan of compromise or arrangement (hereinafter referred to as the “**Plan**”).

DEFINITIONS

4. THIS COURT ORDERS that for purposes of this Order:

- (a) “**BAT**” means British American Tobacco p.l.c.;
- (b) “**BAT Group**” means, collectively, BAT, BATIF, B.A.T Industries p.l.c., British American Tobacco (Investments) Limited, Carreras Rothmans Limited or entities related to or affiliated with them other than the Applicants and the ITCAN Subsidiaries;
- (c) “**BATIF**” means B.A.T. International Finance p.l.c.;
- (d) “**Co-Defendants**” means JTI-Macdonald Corp. and Rothmans, Benson & Hedges Inc.;
- (e) “**Deposit Posting Order**” means the order of the Quebec Court of Appeal granted October 27, 2015 or any other Order requiring the posting of security or the payment of a deposit in respect of the Quebec Class Actions;
- (f) “**ITCAN**” means Imperial Tobacco Canada Limited;
- (g) “**ITCAN Subsidiaries**” means the direct and indirect subsidiaries of the Applicants listed in Schedule “B”;

- (h) “**Pending Litigation**” means any and all actions, applications and other lawsuits existing at the time of this Order in which any of the Applicants is a named defendant or respondent (either individually or with other Persons (as defined below)) relating in any way whatsoever to a Tobacco Claim, including without limitation the litigation listed in Schedule “A”;
- (i) “**Quebec Class Actions**” means the proceedings in the Quebec Superior Court and the Quebec Court of Appeal in (i) *Cécilia Létourneau et al. v. JTI Macdonald Corp., Imperial Tobacco Canada Limited and Rothmans, Benson & Hedges Inc.* and (ii) *Conseil Québécois sur le Tabac et la Santé and Jean-Yves Blais v. JTI Macdonald Corp., Imperial Tobacco Canada Limited and Rothmans, Benson & Hedges Inc.* and all decisions and orders in such proceedings, including, without limitation, the Deposit Posting Order;
- (j) “**Sales & Excise Taxes**” means all goods and services, harmonized sales or other applicable federal, provincial or territorial sales taxes, and all federal excise taxes and customs and import duties and all federal, provincial and territorial tobacco taxes;
- (k) “**Tobacco Claim**” means any right or claim (including, without limitation, a claim for contribution or indemnity) of any Person against or in respect of the Applicants, the ITCAN Subsidiaries or any member of the BAT Group that has been advanced (including, without limitation, in the Pending Litigation), that could have been advanced or that could be advanced, and whether such right or claim is on such Person’s own account, on behalf of another Person, as a dependent of another Person, or on behalf of a certified or proposed class, or made or advanced as a government body or agency, insurer, employer, or otherwise, under or in connection with:
- (i) applicable law, to recover damages in respect of the development, manufacture, production, marketing, advertising, distribution, purchase or sale of Tobacco Products, the use of or exposure to Tobacco Products or any representation in respect of Tobacco Products, in Canada, or in the case

of any of the Applicants, anywhere else in the world; or

- (ii) the legislation listed on Schedule “C”, as may be amended or restated, or similar or analogous legislation that may be enacted in future,

excluding any right or claim of a supplier relating to goods or services supplied to, or the use of leased or licensed property by, the Applicants, the ITCAN Subsidiaries or any member of the BAT Group; and

- (l) “**Tobacco Products**” means tobacco or any product made or derived from tobacco or containing nicotine that is intended for human consumption, including any component, part, or accessory of or used in connection with a tobacco product, including cigarettes, cigarette tobacco, roll your own tobacco, smokeless tobacco, electronic cigarettes, vaping liquids and devices, heat-not-burn tobacco, and any other tobacco or nicotine delivery systems and shall include materials, products and by-products derived from or resulting from the use of any tobacco products.

POSSESSION OF PROPERTY AND OPERATIONS

5. THIS COURT ORDERS that the Applicants shall remain in possession and control of their respective current and future assets, undertakings and properties of every nature and kind whatsoever, and wherever situate including all proceeds thereof (the “**Property**”). Subject to further Order of this Court, the Applicants shall continue to carry on business in a manner consistent with the preservation of their business (the “**Business**”) and Property. The Applicants are authorized and empowered to continue to retain and employ the employees, independent contractors, consultants, agents, experts, accountants, counsel and such other persons (collectively “**Assistants**”) currently retained or employed by them, with liberty to retain such further Assistants as they deem reasonably necessary or desirable in the ordinary course of business, to preserve the value of the Property or Business or for the carrying out of the terms of this Order.

6. THIS COURT ORDERS that the Applicants and the applicable ITCAN Subsidiaries shall be entitled to continue to utilize the central cash management system currently in place as described in the Thauvette Affidavit or replace it with another substantially similar

resiliation of the lease shall be without prejudice to such Applicant's claim to the fixtures in dispute.

17. THIS COURT ORDERS that if a notice of disclaimer or resiliation is delivered pursuant to Section 32 of the CCAA, then (a) during the notice period prior to the effective time of the disclaimer or resiliation, the landlord may show the affected leased premises to prospective tenants during normal business hours, on giving the relevant Applicant and the Monitor 24 hours' prior written notice, and (b) at the effective time of the disclaimer or resiliation, the relevant landlord shall be entitled to take possession of any such leased premises without waiver of or prejudice to any claims or rights such landlord may have against such Applicant in respect of such lease or leased premises, provided that nothing herein shall relieve such landlord of its obligation to mitigate any damages claimed in connection therewith.

STAY OF PROCEEDINGS

18. THIS COURT ORDERS that until and including April 11, 2019, or such later date as this Court may order (the "**Stay Period**"), no proceeding or enforcement process in any court or tribunal (each, a "**Proceeding**"), including but not limited to an application for leave to appeal to the Supreme Court of Canada in the Quebec Class Action (a "**QCA Leave Application**"), the Pending Litigation and any other Proceeding in relation to any other Tobacco Claim, shall be commenced, continued or take place by, against or in respect of the Applicants, the ITCAN Subsidiaries, the Monitor, any of their respective employees and representatives acting in that capacity, the Court-Appointed Mediator, or affecting the Business or the Property or the funds deposited pursuant to the Deposit Posting Order, ^{by the Applicants} except with leave of this Court, and any and all Proceedings currently under way or directed to take place by, against or in respect of any of the Applicants or the ITCAN Subsidiaries, any of their respective employees and representatives acting in that capacity or affecting the Business or the Property or the funds deposited pursuant to the Deposit Posting Order are hereby stayed and suspended pending further Order of this Court. All counterclaims, cross-claims and third party claims of the Applicants in the Pending Litigation are likewise subject to this stay of Proceedings during the Stay Period.

19. THIS COURT ORDERS that, during the Stay Period, (i) none of the Pending Litigation or any Proceeding in relation to any other Tobacco Claim shall be commenced, continued, or take place against or in respect of any Person named as a defendant or respondent

(other than JTI-Macdonald Corp. and Rothmans, Benson & Hedges Inc.) in any of the Pending Litigation (such Persons, the “**Other Defendants**”); and (ii) no Proceeding in Canada that relates in any way to a Tobacco Claim or to the Applicants, the Business or the Property shall be commenced, continued or take place against or in respect of any member of the BAT Group except, in either case, with leave of this Court, and any and all such Proceedings currently underway or directed to take place against or in respect of any of the Other Defendants or any member of the BAT Group are hereby stayed and suspended pending further Order of this Court.

20. THIS COURT ORDERS that, to the extent any prescription, time or limitation period relating to any Proceeding by, against or in respect of the Applicants, the ITCAN Subsidiaries, any of the Other Defendants, or any member of the BAT Group that is stayed pursuant to this Order may expire, including but not limited to any prescription of time whereby the Applicants would be required to commence the QCA Leave Application, the term of such prescription, time or limitation period shall hereby be deemed to be extended by a period equal to the Stay Period.

NO EXERCISE OF RIGHTS OR REMEDIES

21. THIS COURT ORDERS that during the Stay Period, all rights and remedies of any individual, firm, corporation, governmental body or agency, or any other entities (all of the foregoing, collectively being “**Persons**” and each being a “**Person**”) against or in respect of the Applicants, the ITCAN Subsidiaries or the Monitor or their respective employees and representatives acting in that capacity, or affecting the Business or the Property or to obtain the funds deposited pursuant to the Deposit Posting Order (including, for greater certainty, any enforcement process or steps or other rights and remedies under or relating to the Quebec Class Actions against the Applicants, the Property or the ITCAN Subsidiaries), are hereby stayed and suspended except with the written consent of the Applicants and the Monitor, or leave of this Court, provided that nothing in this Order shall (i) empower the Applicants or the ITCAN Subsidiaries to carry on any business which the Applicants or the ITCAN Subsidiaries are not lawfully entitled to carry on, (ii) affect such investigations, actions, suits or proceedings by a regulatory body as are permitted by Section 11.1 of the CCAA, (iii) prevent the filing of any registration to preserve or perfect a security interest, or (iv) prevent the registration of a claim for lien.

NO INTERFERENCE WITH RIGHTS

22. THIS COURT ORDERS that during the Stay Period, no Person shall discontinue, fail to honour, alter, interfere with, repudiate, terminate or cease to perform any right, renewal right, contract, agreement, licence or permit in favour of or held by the Applicants or the ITCAN Subsidiaries, except with the written consent of the Applicants and the Monitor, or leave of this Court.

CONTINUATION OF SERVICES

23. THIS COURT ORDERS that during the Stay Period, all Persons having oral or written agreements with the Applicants or the ITCAN Subsidiaries or statutory or regulatory mandates for the supply of goods and/or services, including without limitation all computer software, communication and other data services, centralized banking services, payroll services, insurance, transportation services, utility, customs clearing, warehouse or logistical services or other services to the Business, the Applicants or the ITCAN Subsidiaries, are hereby restrained until further Order of this Court from discontinuing, altering, interfering with or terminating the supply of such goods or services as may be required by the Applicants or the ITCAN Subsidiaries, and that the Applicants and the ITCAN Subsidiaries shall be entitled to the continued use of their current premises, telephone numbers, facsimile numbers, internet addresses and domain names, provided in each case that the normal prices or charges for all such goods or services received after the date of this Order are paid by the Applicants and the ITCAN Subsidiaries in accordance with normal payment practices of the Applicants and the ITCAN Subsidiaries or such other practices as may be agreed upon by the supplier or service provider and the respective Applicant or ITCAN Subsidiary and the Monitor, or as may be ordered by this Court.

NON-DEROGATION OF RIGHTS

24. THIS COURT ORDERS that, notwithstanding anything else in this Order, no Person shall be prohibited from requiring immediate payment for goods, services, use of leased or licensed property or other valuable consideration provided on or after the date of this Order, nor shall any Person be under any obligation on or after the date of this Order to advance or re-advance any monies or otherwise extend any credit to the Applicants. Nothing in this Order shall derogate from the rights conferred and obligations imposed by the CCAA.

SCHEDULE "A"
PENDING LITIGATION

A. Medicaid Claim Litigation

	Jurisdiction	File Date & Court File No.	Plaintiff(s)	Defendant(s)
1.	Alberta	June 8, 2012; 1201-07314 (Calgary)	Her Majesty in Right of Alberta	Altria Group, Inc.; B.A.T Industries p.l.c.; British American Tobacco (Investments) Limited; British American Tobacco p.l.c.; Canadian Tobacco Manufacturers Council; Carreras Rothmans Limited; Imperial Tobacco Canada Limited; JTI-MacDonald Corp.; Philip Morris International, Inc.; Philip Morris USA, Inc.; R.J. Reynolds Tobacco Company; R.J. Reynolds Tobacco International, Inc.; Rothmans, Benson & Hedges Inc.; and Rothmans Inc.
2.	British Columbia	January 24, 2001, further amended February 17, 2011; S010421 (Vancouver)	Her Majesty the Queen in right of British Columbia	Imperial Tobacco Canada Limited, Rothmans, Benson & Hedges Inc., Rothmans Inc., JTI-Macdonald Corp., Canadian Tobacco Manufacturers' Council, B.A.T Industries p.l.c., British American Tobacco (Investments) Limited, Carreras Rothmans Limited, Philip Morris Incorporated, Philip Morris International, Inc., R. J. Reynolds Tobacco Company, R. J. Reynolds Tobacco International, Inc., Rothmans International Research Division and Ryesekks p.l.c.
3.	Manitoba	May 31, 2012, amended October 16, 2012; CI 12-01-78127 (Winnipeg)	Her Majesty the Queen in right of the Province of Manitoba	Rothmans, Benson & Hedges Inc., Rothmans, Inc., Altria Group, Inc., Philip Morris U.S.A. Inc., Philip Morris International, Inc., JTI-MacDonald Corp., R.J. Reynolds Tobacco Company, R.J. Reynolds Tobacco International Inc., Imperial Tobacco Canada Limited, British American Tobacco p.l.c., B.A.T Industries p.l.c., British American Tobacco (Investments) Limited, Carreras Rothmans Limited, and Canadian Tobacco Manufacturers' Council
4.	New Brunswick	March 13, 2008; F/C/88/08 (Fredericton)	Her Majesty the Queen in right of the Province of New Brunswick	Rothmans Inc., Rothmans, Benson & Hedges Inc., Carreras Rothmans Limited, Altria Group, Inc., Phillip Morris U.S.A. Inc., Phillip Morris International Inc., JTI-MacDonald Corp., R.J. Reynolds Tobacco Company, R.J. Reynolds Tobacco International Inc., Imperial Tobacco Canada Limited, British American Tobacco p.l.c., B.A.T Industries p.l.c., British American Tobacco (Investments) Limited and Canadian Tobacco Manufacturers' Council

	Jurisdiction	File Date & Court File No.	Plaintiff(s)	Defendant(s)
5.	Newfoundland and Labrador	February 8, 2011, amended June 4, 2014; 01G. No. 0826 (St. John's)	Attorney General of Newfoundland and Labrador	Rothmans Inc., Rothmans, Benson & Hedges Inc., Carreras Rothmans Limited, Altria Group, Inc., Philip Morris USA Inc, Philip Morris International Inc., JTI-MacDonald Corp., RJ Reynolds Tobacco Company, RJ Reynolds Tobacco International Inc., Imperial Tobacco Canada Limited, British American Tobacco p.l.c., B.A.T Industries p.l.c, British America Tobacco (Investments) Limited and Canadian Tobacco Manufacturers' Council
6.	Nova Scotia	January 2, 2015; 434868/737868 (Halifax)	Her Majesty The Queen in Right of the Province of Nova Scotia	Rothmans, Benson & Hedges Inc., Rothmans Inc., Altria Group, Inc., Philip Morris U.S.A. Inc, Philip Morris International Inc., JTI-MacDonald Corp., R.J. Reynolds Tobacco Company, R.J. Reynolds Tobacco International Inc., Imperial Tobacco Canada Limited, British American Tobacco p.l.c., B.A.T Industries p.l.c., British American Tobacco (Investments) Limited, Carreras Rothmans Limited and Canadian Tobacco Manufacturers' Council.
7.	Ontario	Amended December 11, 2009, amended as amended August 25, 2010, fresh as amended March 28, 2014, amended fresh as amended, April 20, 2016; CV-09-387984 (Toronto)	Her Majesty the Queen in right of Ontario	Rothmans Inc., Rothmans, Benson & Hedges Inc., Carreras Rothmans Limited, Altria Group, Inc., Phillip Morris U.S.A. Inc., Phillip Morris International Inc., JTI-MacDonald Corp., R.J. Reynolds Tobacco Company, R.J. Reynolds Tobacco International Inc., Imperial Tobacco Canada Limited, British American Tobacco p.l.c., B.A.T Industries p.l.c., British American Tobacco (Investments) Limited and Canadian Tobacco Manufacturers' Council
8.	Prince Edward Island	September 10, 2012, amended October 17, 2012; SI GS-25019 (Charlottetown)	Her Majesty the Queen in right of the Province of Prince Edward Island	Rothmans, Benson & Hedges Inc., Rothmans, Inc., Altria Group, Inc., Philip Morris U.S.A. Inc., Philip Morris International, Inc., JTI-MacDonald Corp., R.J. Reynolds Tobacco Company, R.J. Reynolds Tobacco International Inc., Imperial Tobacco Canada Limited, British American Tobacco p.l.c., B.A.T Industries p.l.c., British American Tobacco (Investments) Limited, Carreras Rothmans Limited, and Canadian Tobacco Manufacturers' Council
9.	Québec	June 8, 2012; 500-17-072363-123 (Montréal)	Procureur général du Québec	Impérial Tobacco Canada Limitée, B.A.T Industries p.l.c., British American Tobacco (Investments) Limited, Carreras Rothmans Limited, Rothmans, Benson & Hedges, Philip Morris USA Inc., Philip Morris International

	Jurisdiction	File Date & Court File No.	Plaintiff(s)	Defendant(s)
				Inc., JTI-MacDonald Corp., R.J. Reynolds Tobacco Company, R.J. Reynolds Tobacco International, Inc., et Conseil Canadien de Fabricants des Produits du Tabac
10.	Saskatchewan	Amended October 5, 2012; Q.B. 8712012 (Saskatoon)	The Government of Saskatchewan	Rothmans, Benson & Hedges Inc., Rothmans Inc., Altria Group, Inc., Philip Morris International, Inc., JTI-Macdonald Corp., R.J. Reynolds Tobacco Company, R.J. Reynolds Tobacco International Inc., Imperial Tobacco Canada Limited, British American Tobacco p.l.c., B.A.T Industries p.l.c., British American Tobacco (Investments) Limited, Carreras Rothmans Limited, and Canadian Tobacco Manufacturers' Council

B. Tobacco Claim Litigation – Certified and Proposed Class Actions

	Jurisdiction	Date Filed; Court File No.	(Representative) Plaintiff	Defendant(s)
1.	Alberta	June 15, 2009; 0901-08964 (Calgary)	Linda Dorion	Canadian Tobacco Manufacturers' Council, B.A.T Industries p.l.c., British American Tobacco (Investments) Limited, British American Tobacco p.l.c., Imperial Tobacco Canada Limited, Altria Group, Inc., Phillip Morris Incorporated, Phillip Morris International, Inc., Phillip Morris U.S.A. Inc., R.J. Reynolds Tobacco Company, R.J. Reynolds Tobacco, International, Inc., Carreras Rothmans Limited, JTI-MacDonald Corp., Rothmans, Benson & Hedges Inc., Rothmans Inc., Ryesekks p.l.c.
2.	British Columbia	May 8, 2003; L 031300 (Vancouver)	John Smith (a.k.a., Kenneth Knight)	Imperial Tobacco Canada Ltd.
3.	British Columbia	June 25, 2010; 10-2780 (Victoria)	Barbara Bourassa on behalf of the Estate of Mitchell David Bourassa	Imperial Tobacco Canada Limited, B.A.T Industries p.l.c., British American Tobacco (Investments) Limited, British American Tobacco p.l.c., Altria Group, Inc. Phillip Morris International, Inc., Phillip Morris U.S.A. Inc., R.J. Reynolds Tobacco Company, R.J. Reynolds Tobacco International, Inc., Carreras Rothmans Limited, JTI-MacDonald Corp., Rothmans, Benson & Hedges Inc., Rothmans Inc., Ryesekks p.l.c. and Canadian Tobacco Manufacturers' Council ¹

¹ British American Tobacco p.l.c. and Carreras Rothmans Limited have been released from this action.

	Jurisdiction	Date Filed; Court File No.	(Representative) Plaintiff	Defendant(s)
4.	British Columbia	June 25, 2010; 10-2769 (Victoria)	Roderick Dennis McDermid	Imperial Tobacco Canada Limited, B.A.T Industries p.l.c., British American Tobacco (Investments) Limited, British American Tobacco p.l.c., Altria Group, Inc., Phillip Morris International, Inc., Phillip Morris U.S.A. Inc., R.J. Reynolds Tobacco Company, R.J. Reynolds Tobacco International, Inc., Carreras Rothmans Limited, JTI-MacDonald Corp., Rothmans, Benson & Hedges Inc., Rothmans Inc., Ryesekks p.l.c. and Canadian Tobacco Manufacturers' Council ²
5.	Manitoba	June 2009; CI09-01-61479 (Winnipeg)	Deborah Kunta	Canadian Tobacco Manufacturers' Council, B.A.T Industries p.l.c., British American Tobacco (Investments) Limited, British American Tobacco p.l.c., Imperial Tobacco Canada Limited, Altria Group, Inc., Phillip Morris Incorporated, Phillip Morris International Inc., Phillip Morris U.S.A. Inc., R.J. Reynolds Tobacco Company, R.J. Reynolds Tobacco, International, Inc., Carreras Rothmans Limited, JTI-MacDonald Corp., Rothmans, Benson & Hedges Inc., Rothmans Inc and Ryesekks p.l.c.
6.	Nova Scotia	June 18, 2009; 312869 2009 (Halifax)	Ben Semple	Canadian Tobacco Manufacturers' Council, B.A.T Industries p.l.c., British American Tobacco (Investments) Limited, British American Tobacco p.l.c., Imperial Tobacco Canada Limited, Altria Group, Inc., Phillip Morris Incorporated, Phillip Morris International, Inc., Phillip Morris U.S.A. Inc., R.J. Reynolds Tobacco Company, R.J. Reynolds Tobacco, International, Inc., Carreras Rothmans Limited, JTI-MacDonald Corp., Rothmans, Benson & Hedges Inc., Rothmans Inc., Ryesekks p.l.c.
7.	Ontario	December 2, 2009; 64757 (London)	The Ontario Flue-Cured Tobacco Growers' Marketing Board, Andy J. Jacko, Brian Baswick, Ron Kichler and Arpad Dobrentey	Imperial Tobacco Canada Limited, which is to be heard together with similar actions against Rothmans, Benson & Hedges Inc., and JTI-MacDonald Corp.
8.	Ontario	June 27, 2012; 53794/12 (St. Catharines)	Suzanne Jacklin	Canadian Tobacco Manufacturers' Council, B.A.T Industries p.l.c., British American Tobacco (Investments) Limited, British American Tobacco p.l.c., Imperial Tobacco Canada Limited, Altria Group, Inc., Phillip Morris Incorporated, Phillip Morris International Inc., Phillip Morris U.S.A. Inc.,

² British American Tobacco p.l.c. and Carreras Rothmans Limited have been released from this action.

	Jurisdiction	Date Filed; Court File No.	(Representative) Plaintiff	Defendant(s)
				R.J. Reynolds Tobacco Company, R.J. Reynolds Tobacco, International, Inc., Carreras Rothmans Limited, JTI-MacDonald Corp., Rothmans, Benson & Hedges Inc., Rothmans Inc., Ryesecks p.l.c
9.	Quebec	September 30, 2005; 500-06-000070-983 (Montreal)	Christine Fortin, Cécilia Létourneau and Joseph Mandelman	Imperial Tobacco Canada Ltd., Rothmans, Benson & Hedges Inc. and JTI-Macdonald Corp.
10.	Quebec	September 29, 2005; 500-06-000076-980 (Montreal)	Conseil Quebecois Sur Le Tabac Et La Sante and Jean-Yves Blais	Imperial Tobacco Canada Ltd., Rothmans, Benson & Hedges Inc. and JTI Macdonald Corp.
11.	Saskatchewan	July 10, 2009; 1036 of 2009; (June 12, 2009; 916 of 2009 never served) (Regina)	Thelma Adams	Canadian Tobacco Manufacturers' Council, B.A.T Industries p.l.c., British American Tobacco (Investments) Limited, British American Tobacco p.l.c., Imperial Tobacco Canada Limited, Altria Group, Inc., Phillip Morris Incorporated, Phillip Morris International Inc., Phillip Morris USA Inc., R.J. Reynolds Tobacco Company, R.J. Reynolds Tobacco, International, Inc., Carreras Rothmans Limited, JTI-MacDonald Corp., Rothmans, Benson & Hedges Inc., Rothmans Inc. and Ryesecks p.l.c. ³

C. Tobacco Claim Litigation – Individual Actions

	Jurisdiction	Date Filed; Court File No.	(Representative) Plaintiff	Defendant(s)
1.	Nova Scotia	February 20, 2002, 177663 (Halifax)	Peter Stright	Imperial Tobacco Canada Limited
2.	Ontario	May 1, 1997, amended May 25, 1998; fresh as amended March 28, 2004; C17773/97 (Milton)	Ljubisa Spasic as estate trustee of Mirjana Spasic	Imperial Tobacco Limited and Rothmans, Benson & Hedges Inc.
3.	Ontario	Amended September 8, 2014; 00-CV-	Ragoonanan <i>et al.</i>	Imperial Tobacco Canada Limited

³ B.A.T Industries p.l.c., British American Tobacco (Investments) Limited, British American Tobacco p.l.c. have been released from this action.

		183165-CP00 (Toronto)		
4.	Ontario	June 30, 2003; 1442/03 (London)	Scott Landry	Imperial Tobacco Canada Limited
5.	Ontario	June 12, 1997; 21513/97 (North York)	Joseph Battaglia	Imperial Tobacco Canada Limited
6.	Quebec	December 8, 2016; 750-32- 700014-163 (Saint- Hyacinthe)	Roland Bergeron	Imperial Tobacco Canada Limited

SCHEDULE "B"
ITCAN SUBSIDIARIES

Imperial Tobacco Services Inc.
Imperial Tobacco Products Limited
Marlboro Canada Limited
Cameo Inc.
Medallion Inc.
Allan Ramsay and Company Limited
John Player & Sons Ltd.
Imperial Brands Ltd.
2004969 Ontario Inc.
Construction Romir Inc.
Genstar Corporation
Imasco Holdings Group, Inc.
ITL (USA) limited
Genstar Pacific Corporation
Imasco Holdings Inc.
Southward Insurance Ltd.
Liggett & Myers Tobacco Company of Canada Limited

**SCHEDULE “C”
HEALTH CARE COSTS RECOVERY LEGISLATION**

Jurisdiction	Statute
Alberta	<i>Crown’s Right of Recovery Act, SA 2009, c C-35</i>
British Columbia	<i>Tobacco Damages and Health Care Costs Recovery Act, SBC 2000, c 30</i>
Manitoba	<i>The Tobacco Damages Health Care Costs Recovery Act, SM 2006, c 18</i>
New Brunswick	<i>Tobacco Damages and Health Care Costs Recovery Act, SNB 2006, c T-7.5</i>
Newfoundland and Labrador	<i>Tobacco Health Care Costs Recovery Act, SNL 2001, c T-4.2</i>
Nova Scotia	<i>Tobacco Health-Care Costs Recovery Act, SNS 2005, c 46</i>
Northwest Territories	Proclaimed but not yet in force: <i>Tobacco Damages and Health Care Costs Recovery Act, SNWT 2011, c 33</i>
Nunavut	Proclaimed but not yet in force: <i>Tobacco Damages and Health Care Costs Recovery Act, SNu 2010, c 31</i>
Ontario	<i>Tobacco Damages and Health Care Costs Recovery Act, 2009, SO 2009, c 13</i>
Prince Edward Island	<i>Tobacco Damages and Health Care Costs Recovery Act, SPEI 2009, c 22</i>
Québec	<i>Tobacco-related Damages and Health Care Costs Recovery Act, 2009, CQLR c R-2.2.0.0.1</i>
Saskatchewan	<i>The Tobacco Damages and Health Care Costs Recovery Act, SS 2007, c T-14.2</i>
Yukon	N/A

IN THE MATTER OF the *Companies' Creditors Arrangement Act*, R.S.C. 1985, c. C-36,
as amended

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

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

APPLICANTS

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

Proceeding commenced at Toronto

**SECOND AMENDED AND RESTATED INITIAL
ORDER**

OSLER, HOSKIN & HARCOURT LLP
1 First Canadian Place, P.O. Box 50
Toronto, ON M5X 1B8

Deborah Glendinning (LSO# 31070N)
Marc Wasserman (LSO# 44066M)
John A. MacDonald (LSO# 25884R)
Michael De Lellis (LSO# 48038U)

Tel: (416) 362-2111
Fax: (416) 862-6666

Lawyers to the Applicants,
Imperial Tobacco Canada Limited
and Imperial Tobacco Company Limited

Matter No: 1144377

TAB 2

Court File No.

**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 March 12, 2019)

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. This Affidavit is made in support of an application by ITCAN and its affiliated company Imperial Tobacco Company Limited (“ITCO”, and collectively with ITCAN, the “Applicants”) for an Initial Order and related relief under the *Companies’ Creditors Arrangement Act*, RSC 1985, c C-36, as amended (the “CCAA”).

2. I joined ITCAN on August 12, 1996 as an Internal Auditor. In my current role as the Chief Financial Officer of ITCAN, I am responsible for all financial-related aspects of ITCAN’s business operations. I am also an officer and director of ITCO. As such, I have personal knowledge of the matters deposed to herein including, without limitation, the business affairs of both Applicants. Where I have relied on other sources for information, I have stated the sources of my belief and believe them to be true. In preparing this Affidavit, I have also consulted with other

members of the Applicants’ senior management team (the “Senior Management”) and reviewed certain information provided by financial advisors to the Applicants.

3. This Affidavit is organized in the following sections:

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I. Introduction

4. ITCAN is primarily a tobacco importer. It is also an importer of Tobacco Heated Products (“THPs”) and Vaping Products (collectively with THPs, the “potentially reduced-risk products” or “PRRPs”). Its subsidiary, ITCO, is the exclusive distributor of tobacco products and PRRPs imported into Canada by ITCAN. ITCO sells 15 brands of cigarette products and PRRPs under various trademarks to approximately 26,825 retailers and 184 wholesalers. Collectively, the Applicants’ operations generated taxes payable to various levels of government totalling approximately \$4.0 billion in 2018. Approximately 466 permanent, full-time and 98 contract employees across Canada rely on the continued existence of the Applicants for their livelihoods. Other key stakeholder groups include ITCAN’s ultimate parent company British American Tobacco, p.l.c. (“BAT”), retired employees, customers, landlords, suppliers, and contingent litigation creditors.

5. The Applicants face an existential threat from litigation across Canada, including multiple class actions, government claims seeking to recover health care costs, and other ongoing proceedings (collectively the “Tobacco Litigation”). While the Applicants dispute liability and entitlement to remedial relief, the plaintiffs in the Tobacco Litigation seek hundreds of billions of

dollars in damages in the aggregate, which exceeds the Applicants' total assets by many orders of magnitude.

6. In particular, on March 1, 2019, the Court of Appeal for Quebec issued an appeal judgment that condemns ITCAN to pay a potential maximum amount that, with interest, is over \$9 billion in the Letourneau and Blais class actions in Quebec (bearing court file numbers 500-06-00070-983 and 500-06-000076-80). A copy of the Quebec Court of Appeal's judgment (the "Quebec Appeal Judgment") is attached as Exhibit "A". An English summary of the Quebec Appeal Judgement is attached as Exhibit "B".

7. As the Applicants do not have the financial resources to pay their current and contingent liabilities, they are insolvent and believe that it is in their best interests and the best interests of all of their stakeholders to engage in a restructuring process with the overriding objective of resolving all claims brought or that could be brought under applicable law in relation to the development, manufacturing, production, marketing, advertising of, any representations made in respect of, the purchase, sale, and use of, or exposure to, the Tobacco Products,¹ including but not limited to the claims in the Tobacco Litigation (collectively the "Tobacco Claims") in a controlled and orderly process under Court supervision.

8. In the interim, the Applicants intend to carry on business in the ordinary course to preserve the overall value of the business enterprise in the interests of all stakeholders.

¹ As defined in the proposed Initial Order, "Tobacco Products" means tobacco or any product made or derived from tobacco or containing nicotine that is intended for human consumption, including any component, part, or accessory of or used in connection with a tobacco product, including cigarettes, cigarette tobacco, roll your own tobacco, smokeless tobacco, electronic cigarettes, vaping liquids and devices, heat-not-burn tobacco, and any other tobacco or nicotine delivery systems and shall include materials, products and by-products derived from or resulting from the use of any tobacco products.

9. The Applicants are proposing that the Honourable Warren K. Winkler (the “Tobacco Claimant Representative”) be appointed by the Court with the mandate to represent the interests of all persons with any Tobacco Claim (the “Tobacco Claimants”), other than the federal, provincial and territorial governments of Canada (the “Government Claimants”), in negotiating a settlement with the Applicants and others. In the Initial Order, the Applicants are requesting that the Tobacco Claimant Representative be appointed on an interim basis until April 30, 2019, or a later date agreed to by the Applicants and the Monitor (the “Interim Period”). The Applicants propose to commence stakeholder discussions immediately with the assistance of the proposed Monitor and the court-appointed Tobacco Claimant Representative.

10. The Applicants seek a standard stay of proceedings with respect to the Applicants and that the stay be extended to (a) the Applicants’ wholly owned non-applicant subsidiaries; and (b) Liggett & Myers Tobacco Company of Canada Limited (“Liggett & Myers”), in which ITCAN holds a 50% voting interest and 70% equity participation. The rationale for extending the stay of proceedings to these non-applicant entities is that they are highly integrated with the Applicants and are indispensable to the Applicants’ business and restructuring: certain of these non-applicant entities hold the trademarks or other assets of ITCAN, while others provide services to ITCAN, share the cash management system with ITCAN, or have guaranteed certain ITCAN debts from time to time.

11. The Applicants also seek to extend the stay of proceedings to BAT and certain of BAT’s affiliates² (collectively, the “BAT Affiliates”), but only in respect of the Tobacco Claims and proceedings related to the Applicants, their business, or their property.

² B.A.T. International Finance p.l.c., B.A.T Industries p.l.c., British American Tobacco (Investments) Limited, Carreras Rothmans Limited, and entities related to or affiliated with them other than the Applicants and the ITCAN Subsidiaries (as defined in the Initial Order).

12. The Applicants believe that it is appropriate to extend this limited stay to BAT and the BAT Affiliates for several reasons. First, ITCAN, BAT, and the BAT Affiliates are named as co-defendants in class actions and health care recovery proceedings across Canada and are alleged to be jointly and severally liable for having engaged in a conspiracy to suppress information regarding the dangers of smoking and to encourage smoking. These claims against ITCAN, BAT, and the BAT Affiliates can only be effectively determined in one forum. Moreover, permitting the claims to continue against BAT and the BAT Affiliates while they are also being resolved in the CCAA proceedings creates the risk of inconsistent outcomes. The Applicants therefore seek a stay of proceedings in favour of BAT and the BAT Affiliates with the objective of facilitating a global resolution of the Tobacco Claims.

13. Second, a stay of proceedings in favor of BAT and the BAT Affiliates will allow ITCAN, BAT, and the BAT Affiliates to focus on developing and implementing a plan of compromise or arrangement without the costs and distraction that would inevitably ensue if plaintiffs continued pursuing the Tobacco Litigation against BAT and the BAT Affiliates at the same time as this CCAA proceeding. Given the nature of the Tobacco Claims, I believe that BAT and the BAT Affiliates would require considerable assistance and involvement of ITCAN personnel and resources if the Tobacco Litigation were to continue against them.

14. As described below, the legal tobacco industry is highly regulated and taxed. But, according to estimates from 2016, the illegal tobacco industry constitutes almost one quarter of the Canadian tobacco market.³ The unlawful production, distribution, and sale of cigarettes in

³ Christian Leuprecht, *Smoking Gun: Strategic Containment of Contraband Tobacco and Cigarette Trafficking in Canada* (2016, Macdonald-Laurier Institute) at p. 13-15 [Leuprecht, “Smoking Gun”]; See also: RCMP Report, *Contraband Tobacco Enforcement Strategy* (2013, http://publications.gc.ca/collections/collection_2013/grc-rcmp/PS64-109-2013-eng.pdf) [RCMP, “Contraband Enforcement”]; Public Safety Canada, *The Status Of The Contraband Tobacco Situation In Canada – Report to the Minister of Public Safety by the Task Force on Illicit Tobacco Products* (2009, Public Safety Canada) [Public Safety Canada, “The Status of Contraband”].

Canada has reached unprecedented levels in recent years.⁴ I understand from industry, government and academic publications that this deprives Canadian governments of significant revenues,⁵ finances criminal gangs and organized crime,⁶ fosters other criminal activities,⁷ and provides youth with easy and affordable access to tobacco products⁸ (a carton of 200 legally sold cigarettes costs upwards of \$80, compared to \$8-\$50 for the same number of illegal cigarettes).⁹ The Canadian government recently announced that it will be introducing new and extensive regulations on tobacco products and their packaging following amendments to the *Tobacco Act* made via Bill S-5. These new regulations will almost certainly drive even more consumers of legal and compliant, fully-taxed products to the illicit market. Among other things, I believe that the lack of product differentiation will allow contraband manufacturers to easily “mimic” the legal products and will dramatically impede regulatory and enforcement efforts.

15. Accordingly, there are advantages to ITCAN and its co-defendants in the Tobacco Litigation resolving the outstanding claims in a fair and orderly manner and emerging from these restructuring proceedings as a going concern. Otherwise, it would not be unreasonable to foresee the illegal tobacco trade expanding to fill the void in the marketplace to meet the continuing demand for tobacco products.

16. Based on my own knowledge of the Applicants’ business and discussions with Senior Management, I am confident that the Applicants can return to being viable businesses after a CCAA restructuring. This approach will preserve the underlying value of the Applicants’ business while facilitating the primary goal of developing a plan of compromise or arrangement

⁴ Leuprecht, “Smoking Gun” at p. 13; See also RCMP, “Contraband Enforcement” at p. 7.

⁵ Leuprecht, “Smoking Gun” at p. 15.

⁶ Leuprecht, “Smoking Gun” at p. 15; See also RCMP, “Contraband Enforcement” at p. 8.

⁷ Public Safety Canada, “The Status of Contraband” at p. 1 and 3.

⁸ RCMP, “Contraband Enforcement” at p. 12.

⁹ Leuprecht, “Smoking Gun” at p. 6.

for the resolution of the Tobacco Claims in the most expeditious manner and under Court supervision.

II. Corporate Structure of the Applicants

17. ITCAN is a privately-held corporation incorporated under the *Canadian Business Corporations Act*, RSC 1985, c C-44, that is 100% owned by British American Tobacco International (Holdings) B.V., which is itself an indirect subsidiary of BAT. ITCO is a privately-held direct subsidiary of ITCAN. The Applicants' registered head offices are located in Brampton, Ontario. The Applicants amended their constating documents on October 4, 2017 to make Brampton the location of their registered head office. The Applicants' central decision making function, both long-range and day-to-day, is exercised in Canada.

18. The chart on the following page shows the organizational structure of the Applicants. ITCAN directly or indirectly owns 100% of the issued and outstanding shares of the entities included in the chart, with the exception of Liggett & Myers. Included in parentheses within the corporate organization chart is the respective jurisdiction of incorporation of each entity.

- Accumulated other comprehensive income - \$25 million; and
- Retained earnings - \$3,113 million.

127. There are 184,174,156 issued and outstanding common shares.

(d) ***Profits***

128. ITCAN reported profits before taxes and interest of \$792 million in 2018 and \$673 million in 2017. ITCAN's profits after taxes and interest increased from \$487 million in 2017 to \$589 million in 2018.

V. Need for the Requested Relief

129. The Applicants face an existential threat from the Tobacco Litigation in Canada. The plaintiffs collectively seek hundreds of billions of dollars in damages, which, if those claims were successful, would exceed the Applicants' total assets many times over. Moreover, the Quebec Court of Appeal recently issued the Quebec Appeal Judgment, which condemns ITCAN to pay a potential maximum amount that, with interest, is over \$9 billion. Not only does this amount alone exceed the Applicants' ability to pay, there are many competing claims across Canada that still need to be resolved.

(a) ***Litigation in the Tobacco Industry***

130. The tobacco industry has been the subject of significant product liability and consumer litigation in recent decades. I am advised by Craig Lockwood of Osler and believe that, in Canada, the "traditional" types of claims that have been asserted can be broadly categorized as follows:

- (a) **“Personal Injury Claims”** (*i.e.*, claims asserting defective design and/or failures to warn in respect of various illnesses, most notably lung cancer, respiratory diseases, heart diseases, and various other forms of cancer. This category of claims also includes litigation by non-smokers with respect to the alleged ill-effects of second-hand smoke);
- (b) **“Addiction Claims”** (*i.e.*, claims asserting defective design and/or failures to warn in respect of the addictive properties of cigarettes);
- (c) **“Restitutionary Claims”** (*i.e.*, statutory and/or civil claims seeking the return of the product purchase price or disgorgement of profits based on allegations of misrepresentation and/or false advertising, most notably in relation to historical “light and mild” products); and
- (d) **“Non-Pecuniary Claims”** (*i.e.*, claims for non-monetary damages, such as moral damages and/or punitive damages, related to various categories of alleged historical misconduct).

131. Some combination of these claims are the subject of ongoing litigation in all Canadian jurisdictions (as described below). In addition, the Applicants may face material, as-yet-unasserted claims by various classes of Canadian consumers.

(b) ***The Quebec Judgment***

132. In 1998, plaintiffs filed two class actions against ITCAN, JTI and RBH in the Quebec Superior Court seeking in excess of \$20 billion in compensatory and punitive damages. On February 21, 2005, certification was granted for both cases. The class definitions include the following individuals as class members:

- **The Letourneau action:** All persons residing in Quebec who, as of September 30, 1998, were addicted to nicotine in cigarettes manufactured by the Defendants and who in addition meet the following three criteria: (i) they started smoking before September 30, 1994 and since that date have smoked principally cigarettes manufactured by the Defendants; (ii) between September 1 and September 30, 1998, they smoked on a daily basis an average of at least 15 cigarettes manufactured by the Defendants; and (iii) on February 21, 2005, or until their death if it occurred before that date, they were still smoking on a daily basis an average of at least 15 cigarettes manufactured by the Defendants. The group also includes the heirs of members who meet the criteria described above.

- **The Blais action:** All persons residing in Quebec who meet the following criteria: (i) having smoked before November 20, 1998 at least 12 pack years of cigarettes manufactured by the Defendants (the equivalent of a minimum of 87,600 cigarettes); and (ii) have been diagnosed, before March 12, 2012 with: (a) lung cancer, (b) cancer (squamous cell carcinoma) of the throat, namely the larynx, oropharynx or hypophalanx, or (c) emphysema. The group also includes the heirs of persons deceased after November 20, 1998 who meet the criteria described above.

(i) *Judgment and Provisional Execution*

133. The trial concluded in late 2014 and the judgment (the “Quebec Class Action Judgment”) was released on May 27, 2015. The trial judge found the co-defendants jointly liable for an amount that, after interest and as of the date of the judgment, amounts to \$15.6 billion, with

ITCAN's share being approximately \$10.6 billion. A copy of the Quebec Class Action Judgment dated May 27, 2015 is attached as Exhibit "J".

134. The Quebec Class Action Judgment included an order of provisional execution notwithstanding appeal (the "Provisional Execution Order") totalling in excess of \$1 billion for the co-defendants combined, with \$742.5 million payable by ITCAN (the "Provisional Execution Amount"). The Provisional Execution Amount was initially due and payable by July 26, 2015.

135. ITCAN brought a motion before the Quebec Court of Appeal on July 9, 2015 seeking an order cancelling the Provisional Execution Order. The Court of Appeal cancelled the Provisional Execution Order on July 23, 2015. A copy of the Court of Appeal's decision dated July 23, 2015 is attached as Exhibit "K".

136. On July 6, 2015, counsel for the Quebec Class Action plaintiffs requested that ITCAN provide them with seven days' notice of any CCAA filing. A copy of this letter from counsel is attached as Exhibit "L". ITCAN did not respond to this letter.

(ii) *Motion for Security*

137. On August 14, 2015, the plaintiffs delivered a motion seeking security in the amount of \$5 billion as a condition to proceed with the appeal. On October 27, 2015 the Court of Appeal issued the Security Judgment ordering ITCAN to pay a total of \$758 million as security, payable in equal installments of approximately \$108.3 million per quarter over seven quarters, starting on December 30, 2015. A copy of the Security Judgment is attached as Exhibit "M". The instalments have all now been paid.

138. Subsequently, ITCAN brought a motion before the Quebec Court of Appeal to vary the security payment terms. The Court of Appeal dismissed the motion on December 9, 2015. A copy of the Court of Appeal's decision dated December 9, 2015 is attached as Exhibit "N".

(iii) *The Appeal*

139. ITCAN filed its appeal submissions from the trial judgment on December 11, 2015 and the appeal was heard during the week of November 21, 2016 and on November 30, 2016. On March 1, 2019, the Quebec Court of Appeal substantially upheld the lower court's decision. The Quebec Appeal Judgment made two notable modifications to the trial judgment: (i) the total claim amount was reduced by just over \$1 million; and (ii) the claim amount was divided into 15 different increments which bear interest from various dates between November 20, 1998 and December 31, 2011 (instead of having the entire claim amount bear interest from November 20, 1998), which reduced the interest payable on the total claim amount by approximately \$3 billion. Following the rendering of the Quebec Appeal Judgment:

- (a) the total maximum liability for moral damages, with interest and additional indemnity, is over \$13.5 billion, of which ITCAN's share is \$9,064,365,117.54 with interest and additional indemnity as of the date of the Quebec Appeal Judgment; and
- (b) in addition to moral damages, ITCAN is condemned to pay punitive damages that, with interest and additional indemnity, total \$89,199,977.26 as of the date of the Quebec Appeal Judgment. In total, the Quebec Appeal Judgment condemns ITCAN to pay a maximum amount of up to \$9,153,565,094.80.

140. The Quebec Appeal Judgment orders the defendants to pay an initial deposit into court within 60 days of the judgment. ITCAN's share of the total initial deposit is \$759.2 million. ITCAN is of the view that the \$758 million security already deposited by it with the Quebec Court of Appeal should be applied to the initial deposit and that ITCAN is only required to pay an additional \$1.2 million into court. As such, ITCAN is of the view that the deposit required under the Quebec Appeal Judgment is already essentially paid into court.

141. Following the release of the Quebec Appeal Judgment, the Applicants have received the following communications:

- (a) On March 6, 2019, ITCAN's counsel received a letter from counsel for British Columbia, Manitoba, New Brunswick, Nova Scotia, Prince Edward Island, and Saskatchewan in connection with the Government Medicaid Actions (described below) requesting advance notice prior to any CCAA filing. ITCAN did not respond to this request. A copy of the March 6, 2019 letter is attached as Exhibit "O".
- (b) On March 7, 2019, ITCAN's counsel received a letter from counsel for Ontario in its Government Medicaid Action requesting advance notice prior to any CCAA filing. ITCAN did not respond to this request. A copy of the March 7, 2019 letter is attached as Exhibit "P".
- (c) On March 8, 2019, counsel for the Quebec Class Action plaintiffs sent a letter to the Board of Directors of ITCAN threatening to hold the directors personally liable if ITCAN made any payments to shareholders or related parties, and demanding copies of all liability insurance policies insuring the directors and officers of

ITCAN. ITCAN did not respond to this letter. A copy of the March 8, 2019 letter is attached as Exhibit “Q”.

(iv) *Applicants’ Inability to Pay*

142. The Applicants are unable to pay the maximum amount owing under the Quebec Appeal Judgment. While the actual amount that ITCAN would be required to pay depends on the rate of take up among class members, the potential maximum amount that ITCAN is condemned to pay under the judgment is billions of dollars more than all of its assets as of December 31, 2018.

(c) *Other Tobacco Litigation*

143. ITCAN is facing more than 20 large tobacco litigation claims that have been filed across Canada (four of which are in Ontario) with claims for damages totalling well over \$600 billion. A chart outlining these proceedings and certain other litigation across Canada is appended at Schedule A. These proceedings include the categories described below.

144. **The Government “Medicaid” Actions:** These actions initiated against ITCAN in ten provinces all arise from the enactment of special purpose provincial legislation creating a statutory claim in favour of the provincial governments to permit the recovery of health care costs incurred in connection with smoking-related diseases. On a substantive basis, the legislation enacted by the various provinces and resultant litigation is virtually identical except for some differences in Quebec.

145. I will use the Ontario Medicaid Action as an example. Her Majesty the Queen in Right of Ontario is claiming \$330 billion in damages against various defendants including: (i) ITCAN’s ultimate parent, BAT, together with the BAT Affiliates; (ii) RBH and JTI and their affiliates, Rothmans Inc., Rothmans, Benson & Hedges Inc., Altria Group, Inc., Philip Morris

U.S.A. Inc., Philip Morris International, Inc., JTI-Macdonald Corp., R.J. Reynolds Tobacco Company, R.J. Reynolds Tobacco International Inc.; and (iii) the Canadian Tobacco Manufacturers' Council, a tobacco trade group. A copy of the Ontario Medicaid Action Amended Statement of Claim is attached as Exhibit "R".

146. The Ontario Medicaid Action seeks to recover health care costs under the *Tobacco Damages and Health Care Costs Recovery Act*, 2009, S.O. 2009, C.13 (the "*Ontario Tobacco Damages Recovery Act*"). In addition to seeking damages for various alleged "tobacco related wrongs" under the *Ontario Tobacco Damages Recovery Act*, Her Majesty the Queen in Right of Ontario advances claims for damages based on an extensive array of conspiracy allegations including, without limitation, a conspiracy among:

- (a) **The "International Tobacco Industry"** alleged to have "conspired, and acted in concert in committing tobacco related wrongs";²⁶
- (b) **The "Canadian Tobacco Industry"** alleged to have "conspired and acted in concert to prevent the Crown and persons in Ontario and other jurisdictions from acquiring knowledge of the harmful and addictive properties of cigarettes, and committed tobacco related wrongs in circumstances where they knew or ought to have known that harm and health care costs would result from acts done in furtherance of the conspiracy, concert of action and common design.";²⁷ and
- (c) **Each of the "Corporate Groups"** including the BAT Group Members (defined to include BAT, B.A.T Industries p.l.c., and British American Tobacco (Investments) Limited) alleged to have caused persons in Ontario to start to, or continue to "smoke

²⁶ Paragraph 86 of the Ontario Medicaid Action Amended Statement of Claim.

²⁷ Paragraph 108 of the Ontario Medicaid Action Amended Statement of Claim.

cigarettes manufactured and promoted by the Defendants” or exposed such persons to cigarette smoke thereby creating an “increased risk of tobacco related disease.”²⁸

147. Furthermore, Her Majesty the Queen in Right of Ontario relies on section 4 of the *Ontario Tobacco Damages Recovery Act* to assert that “the Defendants are jointly and severally liable for the cost of health care benefits provided to insured persons in Ontario resulting from tobacco related disease or the risk of tobacco related disease.”²⁹

148. The New Brunswick Medicaid trial is currently scheduled to begin in November 2019 under a court order, but will have to be rescheduled as a result of certain recently-released motion decisions. The other Medicaid actions, including the Ontario Medicaid Action, remain at more preliminary stages.

149. **Smoking/Health Class Actions:** Non-government plaintiffs have initiated substantially similar proposed smoking and health class actions against ITCAN in a number of provinces.³⁰ Many of the class actions name ITCAN, BAT, the BAT Affiliates, the other two major Canadian tobacco manufacturers, a number of other international corporations, the Canadian Tobacco Manufacturers’ Council and several *ex juris* tobacco companies and seek unspecified damages on behalf of individuals who have suffered chronic respiratory diseases, heart diseases or cancer. Copies of the class action Statements of Claim are attached as Exhibit “S”.

²⁸ Paragraph 141 of the Ontario Medicaid Action Amended Statement of Claim.

²⁹ Paragraph 158 of the Ontario Medicaid Action Amended Statement of Claim.

³⁰ Not only are the issues in the various class actions similar, seven of the class actions in the provinces of Ontario, Nova Scotia, Manitoba, Saskatchewan, Alberta and British Columbia were filed by the same law firm.

150. As in the Government Medicaid Actions, certain of the class actions allege a conspiracy among the defendants designed to prevent consumers from learning of the health dangers associated with cigarettes.

151. **Ontario Tobacco Grower Class Action:** On December 11, 2009, ITCAN was served with a class action filed by Ontario tobacco farmers and the Ontario Flue Cured Tobacco Growers' Marketing Board ("Growers' Action"). Separate but identical suits were also served on JTI and RBH. The Plaintiffs allege that, during 1989-1995, ITCAN improperly paid lower prices for tobacco leaf destined for duty-free products, as opposed to the higher domestic leaf price. The suit claims \$50 million in damages. ITCAN was served with certification materials on September 7, 2011. ITCAN has alleged that the Growers' Action is time barred. In a decision dated June 30, 2014, the Court dismissed this preliminary challenge. ITCAN was granted leave to appeal on April 23, 2015. The appeal was heard by the Divisional Court on April 21, 2016 and dismissed in July 2016. Leave to appeal to the Court of Appeal for Ontario was sought and was dismissed in November 2016. The case remains at a preliminary stage and no certification hearing date has yet been set.

VI. Relief Sought

(a) Stay of Proceedings

152. The Applicants are insolvent and require a stay of proceedings and other protections provided by the CCAA so that they are provided with the time to restructure their affairs and attempt to maximize enterprise value. The Applicants are also seeking to have the stay extended to their non-applicant subsidiaries, including Liggett & Meyers Tobacco Company of Canada Limited, because they are highly integrated with the Applicants and are indispensable to the Applicants' business and their restructuring.

153. As described above, the stay of proceedings is proposed to extend to all Tobacco Claims against not only the Applicants, but also against BAT and the BAT Affiliates. The Applicants believe that it is appropriate to do so for several reasons, including:

- (a) ITCAN, BAT and the BAT Affiliates are named as co-defendants in class actions and health care recovery proceedings across Canada and are alleged to be jointly and severally liable for having engaged in a conspiracy to suppress information regarding the dangers of smoking and to encourage smoking. These claims against ITCAN, BAT, and the BAT Affiliates can only be effectively determined in one forum. The Applicants therefore seek a stay of proceedings in favour of BAT and the BAT Affiliates with the objective of facilitating a global resolution of the Tobacco Claims; and
- (b) A stay of proceedings in favor of BAT and the BAT Affiliates will allow ITCAN, BAT, and the BAT Affiliates to focus on developing and implementing a plan of compromise or arrangement without the costs and distraction that would inevitably ensue if the plaintiffs were to continue pursuing the Tobacco Claims against BAT and the BAT Affiliates at the same time as this CCAA proceeding.

(b) *Monitor*

154. FTI Consulting Canada Inc. (“FTI”) has consented to act as the Monitor of the Applicants under the CCAA. A copy of the Monitor’s consent is attached as Exhibit “T”.

(c) *Administration Charge*

155. The Applicants propose that the Monitor along with its counsel and counsel to the Applicants be granted a court-ordered charge on all of the present and future assets, property and

Schedule A - Litigation

Copies of the first page of each of the statements of claim referenced in the chart below are attached to this Affidavit as Exhibit “V”.

Jurisdiction	Description
I. Government Medicaid Actions	
Alberta	On May 31, 2012, Alberta enacted its <i>Crown's Right of Recovery Act</i> . On August 8, 2012, ITCAN was served with the suit naming ITCAN, BAT, the BAT Affiliates, other Canadian and international tobacco manufacturers and the Canadian Tobacco Manufacturers' Council as defendants. The claim seeks damages quantified at \$10 billion. This case remains at a preliminary stage. No trial date has been set.
British Columbia	On January 24, 2001, British Columbia enacted the <i>Tobacco Damages and Health Care Costs Recovery Act</i> . The provincial government filed a suit against ITCAN, the BAT Affiliates, other Canadian and international tobacco manufacturers, and the Canadian Tobacco Manufacturers' Council. The action did not specify an amount claimed, but seeks to recover the present value of the total expenditures supposedly incurred by the government for health care benefits provided for Insured persons resulting from tobacco-related diseases or the risk thereof, as well as the present value of the estimated total expenditure that could reasonably be expected will be provided for the same purposes. An expert report filed by the province in early 2017 estimated damages to be around \$118 billion. Document production is ongoing and examinations for discovery commenced in January 2018. No trial date has been set.
Manitoba	On June 13, 2006, Manitoba enacted its <i>Tobacco Damages Health Care Costs Recovery Act</i> . ITCAN was served with the suit on July 4, 2012 naming ITCAN, BAT, the BAT Affiliates, other Canadian and international tobacco manufacturers and the Canadian Tobacco Manufacturers' Council as defendants. The province did not quantify the damages. This case remains at a preliminary stage and no trial date has been set.
New Brunswick	On March 14, 2008, the government of New Brunswick filed a Medicaid suit against ITCAN, BAT, the BAT Affiliates, other Canadian and international tobacco manufacturers and the Canadian Tobacco Manufacturers' Council. ITCAN was served on April 10, 2008. Damages have been quantified by the Province in the range of \$11-\$60 billion (from 1954 to 2060). Pursuant to a case management order, the trial is

Jurisdiction	Description
	scheduled to commence on November 4, 2019. The trial date will have to be rescheduled as a result of certain recently-released motion decisions.
Newfoundland and Labrador	On January 8, 2011, Newfoundland and Labrador enacted its <i>Tobacco Damages and Health Care Costs Recovery Act</i> and filed a lawsuit against ITCAN, BAT, the BAT Affiliates, the other two major Canadian manufacturers, a number of other international corporations and the Canadian Tobacco Manufacturers' Council. No damages have been specified. ITCAN was served on February 8, 2011 and has filed its defence. Document production commenced in 2018. No trial date has been set.
Nova Scotia	On December 8, 2005, the province of Nova Scotia enacted its <i>Tobacco Damages and Health-Care Costs Recovery Act</i> . On January 22, 2015, ITCAN was served with the Nova Scotia Medicaid suit naming ITCAN, BAT, the BAT Affiliates, other Canadian and international tobacco manufacturers and the Canadian Tobacco Manufacturers' Council as defendants. The damages have not been quantified by the province. ITCAN delivered its Statement of Defence on July 3, 2015. This case remains at a preliminary stage and no trial date has been set.
Ontario	See description in the body of the Affidavit.
Prince Edward Island	On June 12, 2012, Prince Edward Island enacted its <i>Tobacco Damages and Health Care Costs Recovery Act</i> . ITCAN was served with the PEI Medicaid suit on November 15, 2012 naming ITCAN, BAT, the BAT Affiliates, other Canadian and international tobacco manufacturers and the Canadian Tobacco Manufacturers' Council as defendants. The damages have not been quantified by the province. ITCAN delivered its Statement of Defence in February 2015. This case remains at a preliminary stage and no trial date has been set.
Quebec	<p>On August 25, 2009, ITCAN and the other Canadian tobacco manufacturers filed a constitutional challenge of the Quebec Medicaid Legislation. The basis of the challenge is the <i>Quebec Charter of Human Rights and Freedoms</i>, and the abrogation of prescription rights that ITCAN has relied on in the Quebec class actions. On March 5, 2014, ITCAN's challenge was dismissed. ITCAN filed its Inscription in Appeal of this judgment on April 4, 2014 and on September 28, 2015, the Quebec Court of Appeal confirmed the first instance judgment dismissing the Corporation's challenge. ITCAN did not appeal the Quebec Court of Appeal judgment to the Supreme Court of Canada.</p> <p>On June 8, 2012, the Quebec Medicaid suit was served upon ITCAN. The suit also names B.A.T. Industries p.l.c., British American Tobacco (Investments) Limited, the two other major Canadian manufacturers and several other <i>ex juris</i> tobacco companies. The suit claims \$60 billion in</p>

Jurisdiction	Description
	medical recoupment costs. ITCAN filed its plea on December 15, 2014. The case remains at a preliminary stage and no trial date has been set.
Saskatchewan	In April 2007, Saskatchewan enacted its <i>Tobacco Damages and Health Care Costs Recovery Act</i> . ITCAN was served with the Saskatchewan Medicaid suit on July 3, 2012 naming ITCAN, BAT, the BAT Affiliates, other Canadian and international tobacco manufacturers and the Canadian Tobacco Manufacturers' Council as defendants. The damages have not been quantified by the province. ITCAN delivered its Statement of Defence in February 2015. This case remains at a preliminary stage and no trial date has been set.
II. Class Actions	
Quebec	See description in the body of the Affidavit.
British Columbia	On May 14, 2003, legal proceedings were filed against ITCAN by Kenneth Knight in the Supreme Court of British Columbia. The class action was certified on behalf of British Columbians who purchased ITCAN's cigarettes bearing "light" and "mild" descriptors on the packaging. The action alleges that ITCAN engaged in "deceptive trade practices" contrary to the provincial <i>Trade Practices Act</i> in the marketing of its cigarette brands with these descriptors. The proceedings seek to enjoin ITCAN from using these descriptors on its cigarette brands, as well as the compensation of all amounts spent by the proposed class on the said products, and the disgorgement of profits from the sale of these products (although liability is limited to 1997 onwards). On April 30, 2004, ITCAN filed its Statement of Defence. After several preliminary motions and appeals, the action remains at a preliminary stage and no trial date has yet been set.
Nova Scotia, Manitoba, Saskatchewan, Alberta	In June 2009, four smoking and health class actions were filed in Nova Scotia (the Semple claim), Manitoba (the Kunta claim), Saskatchewan (the Adams claim) and Alberta (the Dorion claim) by the same law firm. The suits name ITCAN, BAT, the BAT Affiliates, the two other major Canadian tobacco manufacturers, the Canadian Tobacco Manufacturers' Council and several <i>ex juris</i> tobacco companies. The Adams claim has since been discontinued against BAT, the BAT Affiliates and Ryesekks p.l.c. All cases remain at a preliminary stage, and damages have not been quantified by the Plaintiffs. No certification materials have been delivered and no dates for the certification motion have been set.
British Columbia	On July 16, 2010, two new smoking and health class actions were filed against ITCAN in British Columbia. These suits were filed by the same law firm that filed the four smoking and health claims in Nova Scotia, Manitoba, Saskatchewan, and Alberta in June 2009, and named the same

Jurisdiction	Description
	<p>defendants: ITCAN, BAT, the BAT Affiliates, the two other major Canadian tobacco manufacturers, the Canadian Tobacco Manufacturers' Council and several <i>ex juris</i> tobacco companies. The Bourassa claim is allegedly filed on behalf of all individuals who have suffered chronic respiratory disease and the McDermid claim proposes a class based on heart disease. Both claims state that they have been brought on behalf of those who have smoked a minimum of 25,000 cigarettes. Both class actions have been dismissed against BAT, Carreras Rothmans Limited and Ryeseeks p.l.c. No damages have been quantified and the suits remain at a preliminary stage. No certification motion materials have been delivered and no date for the certification motions have been set.</p>
Ontario	<p>On June 27, 2012 a smoking and health class action was filed against ITCAN in Ontario (the "Ontario Class Action"). These suits were filed by the same law firm that filed the four smoking and health claims in Nova Scotia, Manitoba, Saskatchewan, and Alberta in June 2009 and the two claims in British Columbia in July 2010. The suit names ITCAN, BAT, the BAT Affiliates, the other two major Canadian tobacco manufacturers, a number of other international corporations, the Canadian Tobacco Manufacturers' Council and several <i>ex juris</i> tobacco companies and seeks unspecified damages on behalf of individuals who have suffered chronic respiratory diseases, heart diseases or cancer. No damages have been quantified and the suit remains at a preliminary stage. No certification motion materials have been delivered and no date for the certification motion has been set.</p>
Ontario	See description of the Growers' Action in the body of the Affidavit.
III. Other Proceedings	
Ontario	<p>In 2005, the Plaintiff, Ragoonanan, was denied certification of a class proceeding on behalf of "all persons who suffered damage to persons and/or property as a result of fires occurring after October 1, 1987, due to cigarettes that did not automatically extinguish upon being dropped or left unattended." In 2011, the Court granted the Plaintiff's request to continue as an individual action against ITCAN. The Plaintiff's Statement of Claim does not specify the amount of pecuniary damages, but the amount claimed will be in excess of \$11 million. ITCAN has filed its defence. The case remains at a preliminary stage.</p>
Ontario	<p>On September 12, 2003, a suit was brought against ITCAN by Scott Landry before the London Ontario Small Claims Court. The Plaintiff alleges that ITCAN was negligent for failing to warn him that nicotine is addictive and dangerous and seeks an amount of \$10,000 to cover the costs of fighting his addiction. ITCAN filed its Statement of Defence on or about July 24, 2003. At a pre-trial conference on October 31, 2003, the</p>

Jurisdiction	Description
	Plaintiff agreed to provide ITCAN with particulars regarding his claim. The case has been in abeyance since that time.
Ontario	On June 12, 1997, a suit was brought against ITCAN by Joseph Battaglia before the North York Ontario Small Claims Court. The Plaintiff alleged that he suffered from heart disease and that ITCAN was negligent for failing to warn that nicotine is addictive and dangerous. He sought an amount of \$6,000. ITCAN filed its Statement of Defence on or about June 27, 1997. After a trial, a judgment was rendered on 1 June 1, 2001, dismissing the Plaintiff's claim. On July 2, 2001 an appeal was filed by the Plaintiff. The appeal was never heard and the Plaintiff passed away on September 3, 2004. The case has been in abeyance since that time.
Nova Scotia	On April 19, 2002, ITCAN was served with an individual product liability claim for unspecified damages alleging that the Plaintiff, Peter Stright, is addicted to tobacco and developed Buerger's disease as a result of smoking. ITCAN filed its Statement of Defence in 2004 and certain documents were subsequently produced by the Plaintiff. No trial date has been set.
Quebec	On December 12, 2016, ITCAN was served with a Statement of Claim filed by Roland Bergeron in the Small Claims Division of the Court of Québec in Saint-Hyacinthe. The Plaintiff alleges that he was diagnosed with pulmonary emphysema in 2015 and is claiming \$15,000 in damages for harm to his health. On December 28, 2016, ITCAN filed a contestation to the claim, denying the allegations and arguing that the matter should be stayed pending the outcome of the Blais class action, as the legal issues raised in both proceedings are the same. On February 17, 2017, the Plaintiff consented to the stay request and on February 22, 2017, the Court granted the stay request.

**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

Court File No:

Ontario

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

Proceeding commenced at Toronto

AFFIDAVIT OF ERIC THAUVETTE
(Sworn March 12, 2019)

OSLER, HOSKIN & HARCOURT LLP
1 First Canadian Place, P.O. Box 50
Toronto, ON M5X 1B8

Deborah Glendinning (LSO# 31070N)
Marc Wasserman (LSO# 44066M)
John A. MacDonald (LSO# 25884R)
Michael De Lellis (LSO# 48038U)

Tel: (416) 362-2111
Fax: (416) 862-6666

Lawyers to the Applicants,
Imperial Tobacco Canada Limited
and Imperial Tobacco Company Limited

Matter No: 1144377

**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

**COMPENDIUM OF IMPERIAL TOBACCO CANADA
LIMITED AND IMPERIAL TOBACCO COMPANY
LIMITED
(Motion for Stay Extension Returnable March 30, 2021)**

OSLER, HOSKIN & HARCOURT LLP
1 First Canadian Place, P.O. Box 50
Toronto, ON M5X 1B8

Deborah Glendinning (LSO# 31070N)
Marc Wasserman (LSO# 44066M)
John A. MacDonald (LSO# 25884R)
Craig Lockwood (LSO# 46668M)

Tel: (416) 362-2111
Fax: (416) 862-6666

Lawyers to the Applicants, Imperial Tobacco Canada
Limited and Imperial Tobacco Company Limited

Matter No: 1144377