

**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 27, 2021)**

September 17, 2021

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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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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
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AND TO:	REVENU QUÉBEC 1600, boul. René-Lévesque Ouest Secteur R23DGR Montréal, QC H3H 2V2 Alain Casavant Email: alain.casavant@revenuquebec.ca
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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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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 27, 2021)**

The Applicants will make a motion before the Honourable Justice McEwen of the Ontario Superior Court of Justice (Commercial List) on Monday, September 27, 2021 at 10 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 by videoconference.

THE MOTION IS FOR:

1. An Order substantially in the form included in 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, 2022; 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, 2021;
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 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 17, 2021;
2. The Tenth Report of the Monitor (to be filed); and

3. Such further and other evidence as counsel may advise and this Court may permit.

September 17, 2021

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Limited

TO: THE COMMON SERVICE 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

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 27, 2021)**

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Limited and Imperial Tobacco Company Limited

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 17, 2021)

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.
2. 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.

3. 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, 2022.

I. Background

4. 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 March 30, 2021, this Court extended the Stay Period until and including September 30, 2021.

5. 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.

6. 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.

7. 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

8. 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.

9. 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.

10. 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, during the most recent Stay Period, the Applicants have continued responding to requests for information from Tobacco Litigation stakeholders and uploading documents on an as needed basis to the confidential data room set up in connection with the Mediation.

11. 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

12. As an update to matters addressed in my prior affidavits, it is noted that:

- ITCAN is consulting with the Monitor relating to its contractual obligation to indemnify British America Tobacco Mexico, S.A. de C.V. (“BAT Mexico”) for certain costs incurred in the transition to plain packaging and no payments will be made to until the Monitor has reported on this issue;
- ITCAN is still participating in the Customs Self-Assessment and Partners in Protection Programs offered by the Canada Border Services Agency (“CBSA”) facilitating the importation of products into Canada. Following discussions with representatives of CBSA, the purported suspension of such programs by CBSA was suspended;
- ITCAN continues to assign intellectual property rights to Nicoventures from time to time in respect of inventions relating to services provided by ITCAN under a Supply of Marketing Services Agreement;
- Discussions are ongoing with the Department of Justice and Canada Revenue Agency related to creditor claims and tax-related matters;

- The Applicants continue taking steps to address the effects of the COVID-19 pandemic during the most recent stay period. The Applicants continue to maintain increased inventory levels to be prepared in the event of any supply chain disruptions. Moreover, the remote-work model remains in effect for virtually all administrative functions; and
- In anticipation of the lifting of the public health restrictions on workplace access, ITCAN is incurring capital expenditures of approximately \$3.5 Million for Montreal head office leasehold improvements over the next six months including IT, meeting room upgrades and collaboration amenities to enhance employee connectivity for working at the office or remotely.

13. The Applicants, with the support of the BAT operations network, continue to expand their business contingency plans to provide for additional manufacturing options in contemplation of future disruptions, including in the event there is a COVID-19 resurgence. The initiatives include the purchase by the BAT group of certain new equipment and the reallocation of existing production equipment with a combined book value of approximately \$29 Million, to be placed manufacturing plants in the USA and Chile. ITCAN will incur development costs of approximately \$5.8 Million in connection with this initiative between now and March 2022.

14. With respect to plain packaging regulations, the Federal government published the *Tobacco Products Regulations (Plain and Standardized Appearance)*, SOR/2019-107 (the

“Regulations”) mandating plain and standardized appearance of tobacco packages and products on May 1, 2019. The Regulations include two phases, with phase 1 completed.

15. In phase 2, manufacturers must ensure that all manufacturing, sales and distribution of cigarettes are in a slide and shell packaging format after November 9, 2021. The Applicants are on track for phase 2 compliance.

16. In anticipation of this Phase 2 and following approval from the Monitor, ITCAN has arranged for the transfer of second-hand slide and shell production equipment to Canada from BAT manufacturing facilities in Chile, Mexico, USA and Honduras, to manufacture plain packaging products for sale in Canada. ITCAN will continue to purchase substantially all of its tobacco products from BAT Mexico.

17. ITCAN has also undertaken or is planning several initiatives, alone or in concert with BAT, to improve or streamline business operations and expand its product offering including:

- The expenditure of approximately \$20 Million by March 2023 to upgrade Ryder (its primary logistics provider) distribution centres in Ontario and Quebec. This expenditure includes the replacement of obsolete equipment, site preparation and set-up.
- The transfer of fine-cut tobacco manufacturing capability from BAT Mexico to BAT manufacturing facilities in Germany and Hungary, in order to gain efficiency as a result of obsolescence of the fine-cut manufacturing equipment in Mexico; and
- The opening of five additional VUSE stores by the end of this year (in addition to the four stores currently in operation) for the sale of vape related products including e-cigarettes, liquids and accessories.

18. Recently, ITCAN announced senior executive changes in its Legal and External Affairs (“LEX”) group. Tamara Gitto, current Vice President LEX Canada, has been appointed Associate General Counsel – Business Conduct and Compliance for BAT. Her replacement is Eric Gagnon, the current ITCAN Head of External and Corporate Affairs.

19. 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

20. As noted above, the Applicants are seeking to extend the Stay Period up to and including March 31, 2022.

21. 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.

22. 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.

23. 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 6, 2021 through the week of March 28, 2022, 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.

24. The Monitor has expressed its support for the extension of the Stay Period to March 31, 2022.

SWORN BEFORE ME over video teleconference this 17th day of September, 2021 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
John A. MacDonald
(LSO# 25884R)



Eric Thauvette

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

AFFIDAVIT OF ERIC THAUVETTE
(Sworn September 17 , 2021)

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Lawyers to the Applicants, Imperial Tobacco Canada
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)	MONDAY, THE 27 th
)	
JUSTICE MCEWEN)	DAY OF SEPTEMBER, 2021

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 to March 31, 2022)**

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 17, 2021, the Tenth 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 Pina Macri affirmed September 17, 2021, 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, 2022.

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 to March 31, 2022)

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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 27, 2021)

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Matter No: 1144377