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Attorneys for FTI Consulting Canada Inc., in its Capacity as Court Appointed Monitor and Authorized Foreign Representative for the Debtor

**UNITED STATES BANKRUPTCY COURT
SOUTHERN DISTRICT OF NEW YORK**

In re:

IMPERIAL TOBACCO CANADA LIMITED,

Debtor in a Foreign Proceeding.¹

Chapter 15

Case No. 19-10771 (SCC)

DECLARATION OF PAUL BISHOP IN SUPPORT OF MONITOR'S STATUS REPORT

I, Paul Bishop, pursuant to 28 U.S.C. § 1746, hereby declare under penalty of perjury as follows:

1. I hereby submit this declaration (the "Declaration"), made in my capacity as a Senior Managing Director of FTI Consulting Canada Inc., the authorized foreign representative of Imperial Tobacco Canada Limited (the "Debtor") and the court-appointed monitor (the "Monitor") of the Debtor and Imperial Tobacco Company Limited in a proceeding (the "Canadian Proceeding") under Canada's *Companies' Creditors Arrangement Act*, R.S.C. 1985 c. C-36, as amended, pending before the Ontario Superior Court of Justice (Commercial List) in Toronto, Ontario (the "Canadian Court"), to apprise the Court of recent, notable developments in the Canadian

¹ The last four digits of the Debtor's taxpayer identification number are 4374. The Debtor's registered office is located at 30 Pedigree Court, Brampton (Ontario) Canada L6T 5T8.



Proceeding since filing of the Monitor's Third Status Report² on July 15, 2022 [Dkt. No. 70] and in support of the *Fourth Status Report* filed contemporaneously herewith.

Update on the Canadian Proceeding and Extension of the Stay by the Canadian Court

2. On July 15, 2022, the Monitor reported to the Court that the Canadian Court had extended the Stay to September 30, 2022, and that the Debtor, with the support of its parent, British American Tobacco ("BAT"), was expanding its business contingency plans to mitigate supply chain disruptions in the future. *See* Dkt. Nos. 67 and 68.

3. Thereafter, on September 29, 2022 and March 31, 2023, the Canadian Court further extended the Stay to March 31, 2023 and September 29, 2023, respectively. On September 27, 2023, the Canadian Court further extended the Stay to March 29, 2024.

4. In addition, on May 17, 2023, the Canadian Court entered an order reassigning the Canadian Proceeding to the Hon. Geoffrey B. Morawetz, Chief Justice of the Superior Court of Justice of Ontario, effective July 1, 2023. Copies of the Stay Extension Orders, the Endorsement, the HSF Leave Decision, the Case Management Order, and the Monitor's reports filed in support thereof are attached hereto as **Exhibit A**.

Legal and Operational Update

5. In April 2019, the Canadian Court, with the consent of the stakeholders, appointed the Hon. Warren K. Winkler, K.C., the former Chief Justice of Ontario, as mediator in respect of certain case issues, including a global resolution of the Tobacco Claims.

² Capitalized terms not defined herein shall have the meanings ascribed to them in the *Verified Chapter 15 Petition for Recognition of Foreign Main Proceeding and Related Relief* or the Fourth Status Report, as applicable.

6. The Debtor has continued to engage in the Mediation with its principal creditor constituencies. Although the Mediation remains highly confidential, I can report that the parties are continuing to work towards a pan-Canadian global settlement of the Tobacco Claims.

7. From a business perspective, the Debtor continues to operate in the ordinary course and, with the assistance of its parent, has continued to invest in contingency planning to prevent or mitigate future supply disruptions in the event of shutdowns in Canada, including re-location of manufacturing and packaging equipment to the United States and Chile.

8. On June 11, 2022, Health Canada, which is a centralized regulatory body overseeing health-related products in Canada, announced a new regulation requiring health warnings be posted on individual cigarettes. This new regulation will be rolled out in a phased approach starting on August 1, 2023. The Debtor continues to assess the overall impact of the regulation on its financial performance and will provide additional guidance as required.

9. On June 22, 2023, Wallace & Carey Inc. (“W&C”), a party to certain long-term tobacco-product distribution contracts with the Debtor, filed for protection under the Companies’ Creditors Arrangement Act in Canada. Following the filing, the Debtor and W&C entered into a receivables-settlement agreement and an agreement for the continued supply of goods and services. These agreements permit the parties to continue their business relationship without disruption while W&C and its affiliates complete their own restructuring.

10. The Debtor, with the assistance of BAT, is also investigating a data breach that the Debtor suffered in August 2023. However, the Debtor does not anticipate any material financial impact as a result of the breach.

11. Lastly, since the Third Status Report, Mr. Frank Silva was appointed as Chief Executive Officer of the Debtor effective as of April 1, 2023. Mr. Silva succeeded Ralf Wittenberg, who has assumed a new role with BAT in London, England.

12. As of the week ended September 3, 2023, the most recent time period in which such financial information was provided to the Canadian Court, the Debtor's business remains cash-flow positive, resulting in a cash balance of \$3.65 billion.

13. In accordance with 11 U.S.C. § 1518, the Monitor will continue to keep the Court apprised of substantial developments in the Canadian Proceeding. The Monitor is also available for a telephonic or in person status conference at the Court's convenience.

[Remainder of page intentionally left blank]

I declare under penalty of perjury under the laws of the United States of America that the foregoing is true and correct to the best of my knowledge, information and belief.

Date: 10/25/2023
Toronto, Canada

A handwritten signature in blue ink that reads "Paul Bishop". The signature is written in a cursive style with a horizontal line underneath it.

Paul Bishop, LIT
Senior Managing Director
FTI Consulting Canada Inc.

EXHIBIT A

STAY EXTENSION ORDERS

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

**ONTARIO
SUPERIOR COURT OF JUSTICE
COMMERCIAL LIST**

THE HONOURABLE)
CHIEF JUSTICE MORAWETZ) WEDNESDAY, THE 27TH DAY OF
)
) SEPTEMBER, 2023

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 29, 2024)

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 on September 27, 2023 by judicial video conference in Toronto, Ontario.

ON READING the Notice of Motion of the Applicants, the Affidavit of Eric Thauvette sworn September 13, 2023, the Sixteenth 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 Marleigh Dick sworn September 15, 2023, 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 on September 27, 2023, and hereby dispenses with further service thereof.

DEFINITIONS AND INTERPRETATIONS

2. **THIS COURT ORDERS** that any capitalized term used and not defined herein shall have the meaning ascribed thereto in the Second Amended and Restated Initial Order in these proceedings dated March 12, 2019.

EXTENSION OF THE STAY PERIOD

3. **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 29, 2024.

PLAN OF ARRANGEMENT

4. **THIS COURT ORDERS** that, as part of the Mediation process, (i) the Monitor work with the Court-Appointed Mediator to develop a Plan; and (ii) the Monitor and Court-Appointed Mediator keep the Court updated as to their progress in respect of the development of a Plan.

GENERAL

5. **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.

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

7. **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.



Chief Justice Geoffrey B. Morawetz

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-19-616077-0000

APPLICANTS

ONTARIO
SUPERIOR COURT OF JUSTICE
COMMERCIAL LIST

Proceeding Commenced at Toronto

ORDER
(Stay Extension to March 29, 2024)

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

Deborah Glendinning (LSO# 31070N)
Marc Wasserman (LSO# 440666M)
John A. MacDonald (LSO# 25884R)
Craig Lockwood (LSO# 46668M)

Tel: 416.362.2111
Fax: 416.862.6666

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



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

**ONTARIO
SUPERIOR COURT OF JUSTICE
COMMERCIAL LIST**

THE HONOURABLE) THURSDAY, THE 30TH DAY OF
JUSTICE MCEWEN)
) MARCH, 2023

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 September 29, 2023)

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 on March 28, 2023 by Zoom in Toronto, Ontario.

ON READING the Notice of Motion of the Applicants, the Affidavit of Eric Thauvette sworn March 16, 2023, the Fifteenth 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 Marleigh Dick sworn March 17, 2023, 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 on March 28, 2023 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 September 29, 2023.

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-19-616077-00C1

**ONTARIO
SUPERIOR COURT OF JUSTICE
COMMERCIAL LIST**

Proceeding Commenced at Toronto

ORDER

(Stay Extension to September 29, 2023)

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

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

Tel: 416.362.2111
Fax: 416.862.6666

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



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

**ONTARIO
SUPERIOR COURT OF JUSTICE
COMMERCIAL LIST**

THE HONOURABLE

JUSTICE MCEWEN

)
)
)

THURSDAY, THE 29TH

DAY OF SEPTEMBER, 2022

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 2023 pm)

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 on September 28, 2022 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 20, 2022, the Thirteenth 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 Marleigh Dick sworn September 20, 2022, filed:

SERVICE

- 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 on September 28, 2022 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 TM March 31, 2023. TM

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-19-616077-00C

**ONTARIO
SUPERIOR COURT OF JUSTICE
COMMERCIAL LIST**

Proceeding Commenced at Toronto

ORDER

(Stay Extension to _____)

OSLER, HOSKIN & HARCOURT LLP

Box 50, 1 First Canadian Place
Toronto ON M5X 1B8

Deborah Glendinning (LSO# 31070N)

Marc Wasserman (LSO# 44066M)

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

ENDORSEMENT

CITATION: Imperial Tobacco Canada Limited, 2023 ONSC 5449
COURT FILE NO.: CV-19-615862-00CL, CV-19-616077-00CL and CV-19-616779-00CL
DATE: 2023-10-05

SUPERIOR COURT OF JUSTICE - ONTARIO

RE: IN THE MATTER OF THE *COMPANIES' CREDITORS ARRANGEMENT ACT*, R.S.C. 1985, c. C-36, AS AMENDED AND IN THE MATTER OF A PLAN OF COMPROMISE OR ARRANGEMENT

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

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

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

BEFORE: Chief Justice Geoffrey B. Morawetz

COUNSEL: *John MacDonald, Deborah Glendinning, Craig Lockwood, Marc Wasserman and Marleigh Dick*, for Imperial Tobacco Canada Limited and Imperial Tobacco Company Limited

Paul Steep, Heather Meredith and Trevor Courtis, for Rothmans, Benson & Hedges Inc.

Robert Thornton and Leanne Williams, for JTI-MacDonald Corp.

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

Jane Dietrich, for Ernst & Young Inc. in its capacity as court appointed Monitor of Rothmans, Benson & Hedges Inc.

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

Robert Cunningham, for The Canadian Cancer Society

Avram Fishman and Mark E. Meland, for Conseil Québécois sur le tabac et la santé, Jean-Yves Blais and Cécilia Létourneau (Quebec Class Action Plaintiffs)

Amanda McInnis and Steven Weisz, for Grand River Enterprises Six Nations Ltd.

Jacqueline Wall, for His Majesty the King in Right of Ontario

Adam Slavens, for JTI Canada LLC Inc. and PricewaterhouseCoopers Inc., in its capacity as Receiver of JTI-Macdonald TM Corp.

David Ullmann, for La Nordique Compagnie D'Assurance du Canada

Raymond Wagner, Madeleine Carter and Lauren Harper, Representative Counsel for the Pan-Canadian Claimants

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

Andre Michael and Michael Eizenga, for the Provinces of British Columbia, Manitoba, New Brunswick, Nova Scotia, Prince Edward Island and Saskatchewan, in their capacities as Plaintiffs in the HCCR Legislation claims

Peter R. Lawless, for Legal Services Branch, British Columbia

Edward R. Gores, for the Ministry of the Attorney General of Nova Scotia

Bryan McLeese, for R.J. Reynolds Tobacco Company and R.J. Reynolds Tobacco International Inc.

Douglas Lennox, for Representative Plaintiff, Kenneth Knight, in the certified British Columbia Class Action, *Knight v. Imperial Tobacco Canada Ltd.*, Supreme Court of British Columbia, Vancouver Registry No. L031300

William V. Sasso and Harvey T. Strosberg, for The Ontario Flue-Cured Tobacco Growers' Marketing Board

Nadia Campion, for Court-Appointed Mediator, The Honourable Warren K. Winkler

Brett Harrison, for the Province of Quebec

**HEARD and
DETERMINED:** September 27, 2023

RELEASED: October 5, 2023

ENDORSEMENT

[1] This endorsement relates to all three Applicants, JTI-MacDonald Corp., ("JTI") Imperial Tobacco Canada Limited and Imperial Tobacco Company Limited (collectively "Imperial") and Rothmans, Benson & Hedges Inc. ("RBH").

[2] At the conclusion of the hearing, a Stay Extension was granted to all Applicants up to and including March 29, 2024, with reasons to follow. Oral directions were provided and these directions are set out at paragraphs [11] - [21].

[3] The evidence in support of the requested relief is set out in the 16th Report of FTI Consulting Canada Inc. as Monitor of Imperial, the 14th Report of Ernst & Young Inc., as Monitor of RBH and the 15th Report of Deloitte Restructuring Inc., Monitor of JTI (collectively, the "Reports").

[4] In addition, the Affidavit of Philippe Trudell, one of the attorneys representing Conseil Québécois sur le tabac et la santé ("QCAPs") was also filed.

[5] All three motions for an extension of the Stay Period were not opposed.

[6] The Reports outline the current state of affairs.

[7] The Record establishes that all three Applicants have been and continue to work in good faith and with due diligence. The Record also establishes that much work remains outstanding and additional time is required until comprehensive plans of arrangement can be finalized.

[8] In addition, the Affidavit of Mr. Trudell outlines the situation facing a number of claimants and underscores the necessity for progress to be made in the development of plans of arrangement.

[9] The Reports confirm that all Applicants have sufficient liquidity to carry on operations during the period of the proposed extension of the Stay Period.

[10] I am satisfied that all three Applicants have established that circumstances exist that require an extension of the Stay Period up to and including March 29, 2024, and such order is granted.

[11] In granting such relief, I am mindful that all stakeholders have been involved in negotiating various issues for a period of approximately four and one-half years. There are a number of outstanding issues which remain to be addressed. I expect that these issues have been outstanding for a considerable period of time. It is now time for all stakeholders to focus on the finalization of comprehensive plans of arrangement. For this reason, I have determined that it is both necessary and appropriate to provide certain directions to the Monitors and to the Honourable Warren K. Winkler, Court-appointed Mediator. These directions were provided orally at the conclusion of the hearing on September 27, 2023 and are repeated below.

[12] The Record establishes that all parties continue to be engaged with the Court-appointed Mediator, the Honourable Warren K. Winkler.

[13] The Record also establishes, through the detailed reports of the Monitors, that each Monitor has a thorough understanding of the issues facing their respective Applicants.

[14] The Record also establishes that these CCAA proceedings are extremely complex.

[15] The dollar value of potential claims is astronomical and is clearly beyond the ability for any or all of the Applicants to satisfy these claims from their available assets.

[16] There is also an unresolved issue as to how the three Applicants will address the issue of allocation of responsibility for such issues.

[17] It would be a challenge for any one Applicant to address the outstanding issues – let alone for all three Applicants to address the issues in the context of a comprehensive Plan of Arrangement.

[18] In formulating an acceptable Plan of Arrangement, it has often been stated that no plan is perfect (See: *Sammi Atlas Inc. (Re)*, (1998) 3 C.B.R. (4th) 171 (Ont. Gen. Div.), at para. 4). The objective is to produce a plan or in this case plans, which will be acceptable to the required statutory majority of creditors and also be seen to be fair and reasonable.

[19] In my view, if a successful plan is to be forthcoming, the best chance for the development of such a plan will be achieved by directing neutral parties to collaborate and develop such a plan. In the circumstances, such neutrals are already in place. The three Court-appointed Monitors are well-positioned to collaborate with each other in conjunction with the Court-appointed Mediator to develop such plans.

[20] The existing structure of the mediation can be utilized to facilitate the development of such plans. The Monitors and the Mediator are obviously familiar with the issues and in view of their existing neutrality, it seems to me that they are in the best position to develop plans that, after due consideration by all three Applicants and the creditors, will have the best opportunity to be considered to be fair and reasonable to all three Applicants and to their creditors.

[21] The Applicants filed for CCAA protection four and one-half years ago. It is now time to move from observable activity to meaningful action.

[22] Accordingly, I am directing the three Monitors, to work in conjunction with the Honourable Warren K. Winkler, Court-appointed Mediator, to develop Plans of Compromise or Arrangement. The Monitors and the Court-appointed Mediator are also directed to keep this Court updated as to their progress.

[23] The motions of all three Applicants are granted, in accordance with the directions noted above.

[24] Three orders that reflect the foregoing have been signed.


Chief Justice Geoffrey B. Morawetz

Date: October 5, 2023

HSF LEAVE DECISION

CITATION: In the Matter of a Plan of Compromise or Arrangement of JTI-Macdonald, Imperial Tobacco and Rothmans, 2023 ONSC 2347
COURT FILE NOS.: CV-19-615862-00CL, CV-19-616077-CL and CV-19-616779-00CL
DATE: 20230623

ONTARIO

SUPERIOR COURT OF JUSTICE

BETWEEN:)
)
In the Matter of the *Companies' Creditors*) *James Bunting and Maria Naimark,*
Arrangement Act, R.S.C. 1985, c. C-36, as) Counsel for the Moving Party, the Heart
amended) and Stroke Foundation of Canada in
) connection with its motion for leave to
AND) appoint Tyr LLP as representative counsel
) for the Future Tobacco Harm Stakeholders
In the Matter of a Plan of Compromise or)
Arrangement of JTI-Macdonald Corp.) *Robert Thornton and Leanne Williams,*
) Counsel for JTI-Macdonald Corp.
AND)
) *Deborah Glendinning, Craig Lockwood,*
In the Matter of a Plan of Compromise or) *Marc Wasserman and Marleigh Dick,*
Arrangement of Imperial Tobacco Canada) Counsel for Imperial Tobacco
Limited and Imperial Tobacco Company Limited)
) *James Gage, Heather Meredith and*
AND) *Natasha Rambaran,* Counsel to Rothmans,
) Benson & Hedges Inc.
In the Matter of a Plan of Compromise or)
Arrangement of Rothmans, Benson & Hedges) *Linc Rogers and Pamela Huff,* Counsel for
Inc.) Deloitte Restructuring Inc. in its capacity
) as Monitor of JTI-Macdonald Corp.
)
) *Natasha MacParland, Chanakya Sethi,*
) *Rui Gao and Benjamin Jarvis,* Counsel for
) FTI Consulting Canada Inc. in its capacity
) as court-appointed Monitor of Imperial
) Tobacco Canada Limited and Imperial
) Tobacco Company Limited
)
) *Jane Dietrich,* Counsel for Ernst & Young
) Inc. in its capacity as court-appointed
) Monitor of Rothmans, Benson & Hedges
) Inc.
)
) *Avram Fishman and Mark Meland,*
) Conseil québécois sur le tabac et la santé,

) Jean-Yves Blais and Cécilia Létourneau
) (Quebec Class Action Plaintiffs)
)
) *Robert Cunningham*, Counsel for the
) Canadian Cancer Society
)
) *Maria Konyukhova*, Counsel for British
) American Tobacco p.l.c., B.A.T.
) Industries p.l.c. and British American
) Tobacco (Investments) Limited
)
) *Amanda McInnis*, Counsel for Grand
) River Enterprises Six Nations Ltd.
)
) *Jacqueline Wall*, Counsel for His Majesty
) the King in Right of Ontario
)
) *Adam Slavens*, Counsel for JT Canada
) LLC Inc. and PricewaterhouseCoopers
) Inc. in its capacity as receiver of JTI-
) Macdonald TM Corp.
)
) *Alex Fernet Brochu*, Counsel for La
) Nordique compagnie d'assurance du
) Canada
)
) *Kate Boyle and Raymond Wagner*,
) Representative Counsel for the Pan-
) Canadian Claimants
)
) *Heather Fisher and Nicholas Kluge*,
) Counsel for Philip Morris International
) Inc.
)
) *Guneev Bhinder*, Counsel for Province of
) Québec
)
) *Jeff Leon*, Counsel for the Provinces of
) British Columbia, Manitoba, New
) Brunswick, Nova Scotia, Prince Edward
) Island and Saskatchewan, in their
) capacities as plaintiffs in the HCCR
) Legislation claims
)
) *Patrick Flaherty and Bryan McLeese*,
) Counsel for R.J. Reynolds Tobacco

) Company and R.J. Reynolds Tobacco
) International Inc.
)
) *Douglas Lennox*, Counsel for
) representative plaintiff, Kenneth Knight,
) in the certified British Columbia class
) action, *Knight v. Imperial Tobacco*
) *Canada Ltd.*, Supreme Court of British
) Columbia, Vancouver Registry No.
) L031300
)
) *William V. Sasso*, Counsel for the Ontario
) Flue-Cured Tobacco Growers’ Marketing
) Board
)
) *Jonathan Lisus and Nadia Campion*,
) Counsel for the court-appointed Mediator,
) The Honourable Mr. Winkler, O.C., O.On,
) K.C.
)
)
) **Heard: April 14, 2023**
)
)

MCEWEN, J.

REASONS FOR DECISION

[1] The Heart and Stroke Foundation of Canada (“HSF”) seeks leave to bring a motion to appoint Tyr LLP (“Tyr”) as representative counsel for the Future Tobacco Harm Stakeholders (“FTH Stakeholders”) in the within Applications.

[2] The motion is opposed by the three Monitors: Deloitte Restructuring Inc. in its capacity as court-appointed Monitor of JTI-Macdonald Corp. (“JTIM”); FTI Consulting Canada Inc. in its capacity as court-appointed Monitor of Imperial Tobacco Canada Limited and Imperial Tobacco Company Limited (“Imperial”); and Ernst & Young Inc. in its capacity as court-appointed Monitor of Rothmans, Benson & Hedges Inc. (“RBH”) (collectively the “Monitors”). The Province of Québec supports the Monitors. Neither JTIM, Imperial, RBH nor any other stakeholder take a position on this motion for leave. For the reasons that follow, I dismiss the HSF’s motion.

BACKGROUND

[3] In March 2019, JTIM, Imperial and RBH (collectively the “Applicants”) filed for protection pursuant to the provisions of the *Companies’ Creditors Arrangement Act*, R.S.C. 1985,

c. C-36 (the “CCAA”). They sought, amongst other things, a resolution of several significant current and future litigation claims.

[4] I have been case-managing these three separate, but co-ordinated, Applications since that time (the “CCAA Proceedings”). The CCAA Proceedings are enormously complex. They involve multiple, significant tobacco-related actions brought against the Applicants as well as a number of potential tobacco-related claims that are currently unasserted or unascertained. These include ongoing class action proceedings as well as the outstanding judgment of the Court of Appeal of Quebec that largely upheld an earlier trial decision and awarded approximately \$13.5 billion to the Quebec class action plaintiffs. Additionally, there are numerous ongoing proceedings involving government-initiated litigation.

[5] In April 2019, shortly after the CCAA Proceedings were initiated, I appointed the former Chief Justice for Ontario, The Honourable Warren K. Winkler O.C., O.Ont, K.C. (the “Court-Appointed Mediator”) to mediate a global settlement of all claims against the Applicants, both current and future (the “Mediation”). Pursuant to the Appointment Order, the Court-Appointed Mediator is empowered to, amongst other things, adopt a process which in his discretion, he considers appropriate to facilitate negotiation of a global settlement, as well as deciding which stakeholders or other persons, if any, he considers appropriate to consult as part of the Mediation.

[6] It is noteworthy that in September 2019, the Canadian Cancer Society (“CCS”) brought a motion seeking an order allowing it to participate in the Mediation. Amongst other things, the CCS argued that although it was not a creditor, it was an important public health stakeholder in the CCAA Proceedings. Therefore, it had a direct financial interest in the CCAA Proceedings, since any settlement would impact the financial resources to be devoted to patients, education and research to reduce tobacco use. In furtherance of its argument, the CCS submitted that it was well-positioned to advance tobacco control measures for inclusion in a settlement. The HSF provided a letter supporting the CCS’s motion, while noting that it did not intend to bring a motion before the Court to participate in the CCAA Proceedings.

[7] I allowed the CCS limited participation in the CCAA Proceedings, but I did not allow it to participate in the Mediation. While I accepted that the CCS was a social stakeholder, I found that it did not have a direct financial interest in the CCAA Proceedings as it was neither a creditor nor a debtor. While I also accepted that the CCS had extensive experience as a health charity, and it was open to it to liaise with the government and other stakeholders outside of the Mediation, I had given the Court-Appointed Mediator broad discretion to shape the Mediation process. This included broad discretion to consult with a wide variety of persons or entities that he considered appropriate. I further noted that it was important to allow the Court-Appointed Mediator, who has vast experience in this area, the ability to carry on with the flexibility outlined in my Appointment Order in these very complicated and significant CCAA Proceedings.

[8] As part of my decision concerning the CCS’s limited participation in the CCAA Proceedings I ordered that, if the CCS wished to initiate its own motion, it required leave that could be requested in writing, on notice to the Applicants and other stakeholders.

[9] Thereafter, in December 2019, the Monitors brought a motion seeking advice and direction with respect to orders appointing representative counsel regarding the unasserted and

unascertained claims. They proposed that representative counsel – the law practice of Wagner & Associates Inc. (“Wagners”) – advance claims on behalf of individuals, with some limited exceptions that do not apply to the within motion, who have asserted claims or may be entitled to assert claims for Tobacco-Related Wrongs (respectively the “TRW Claims” and “TRW Claimants”).

[10] As I noted in my decision dated December 6, 2019 (the “December Decision”), the thrust of the motion was that the multiplicity of actions against the Applicants across Canada did not provide comprehensive representation for all individuals in the CCAA Proceedings. It was therefore necessary to have representation for all the TRW Claimants so that they could be properly represented with respect to the primary goal of the CCAA Proceedings: a pan-Canadian global settlement. This would benefit the Applicants, the TRW Claimants and all stakeholders. I granted the relief sought by the Monitors and ordered that Wagners, as an experienced class action litigation firm, was well-qualified to act.

[11] The Order appointing Wagners provided the firm with a broad mandate to represent the TRW Claimants defined in Schedule “A” to the Order. Of importance to the within motion is the following partial definition of TRW Claimants set out in Schedule “A”:

“TRW Claimants” means **all individuals** (including their respective successors, heirs, assigns, litigation guardians and designated representatives under applicable provincial family law legislation) **who assert or may be entitled to assert a claim or cause of action as against one or more of the Applicants**, the ITCAN subsidiaries, the BAT Group, the JTIM Group or the PMI Group, each as defined below, or persons indemnified by such entities, **in respect of:**

- (i) the development, manufacture, importation, production, marketing, advertising, distribution, purchase or sale of Tobacco Products (defined below),
- (ii) **the historical or ongoing use of or exposure to Tobacco Products;** or
- (iii) any representation in respect of Tobacco Products,

[Emphasis added.]

[12] Over the past four years, the Mediation has been conducted by the Court-Appointed Mediator. Pursuant to the provisions of the Order Setting out the Attendance at Mediation Protocol, the Court-Appointed Mediator has continued to designate and require the attendance of persons or entities that he deems necessary as well as excluding persons or entities that he does not believe to be necessary.

[13] The Court-Appointed Mediator, in accordance with the Court-Appointed Mediator Communication and Confidentiality Protocol Endorsement continues to update the Court on the Mediation process.

[14] At the recent Stay Extension Motion I granted a further six-month stay to September 29, 2023. I noted in my Endorsement that the Mediation continues to progress and the Applicants and the stakeholders are optimistic that a resolution of these extremely significant and complicated CCAA Proceedings is in sight.

[15] Consistent with my decision concerning motions brought by the CCS, the HSF sought leave to bring this motion to act as the representative plaintiff for FTH Stakeholders. By way of my February 14, 2023 Endorsement, I ordered, over the objections of the HSF, that the leave motion be heard in advance of the motion itself, assuming leave was granted.

THE TEST FOR LEAVE

Position of the Parties

[16] The HSF and the Monitors disagree as to what test for leave should be applied in this case.

[17] The HSF submits that this Court has broad discretion pursuant to s. 11 of the *CCAA* to manage the CCAA Proceedings. Generally, s. 11 provides this Court with the jurisdiction to make any order that it considers appropriate in the circumstances.

[18] The HSF therefore submits that, based on s. 11, this Court has the jurisdiction to appoint representatives on behalf of a stakeholder in a *CCAA* matter. It further submits that the factors to be considered by the Court are those set out in *Canwest Publishing Inc. (Re)*, 2010 ONSC 1328, 65 C.B.R. (5th) 152, at para. 21:

- The vulnerability and resources of the group sought to be represented.
- Any benefit to the companies under *CCAA* protection.
- Any social benefit to be derived from representation of the group.
- The facilitation of the administration of the proceedings and efficiency.
- The avoidance of a multiplicity of legal retainers.
- The balance of convenience and whether it is fair and just including to the creditors of the estate.
- Whether representative counsel has already been appointed for those who have similar interests to the group seeking representation and who is also prepared to act for the group seeking the order.
- The position of other stakeholders and the Monitor.

[19] In the context of the motion before me, the HSF argues that the most significant factor for this Court to consider is whether there appears to be an unrepresented interest that is appropriate for representation within the CCAA Proceedings. If this is the case, the HSF submits that this

Court ought to grant leave unless there are “exceptional factors or circumstances” that outweigh the substantial value and importance of having a valid and interested constituency represented within the CCAA Proceedings.

[20] The HSF concedes that this test has not previously been applied by any court; however, given the unique circumstances of this case and the provisions of the *CCAA*, it is a reasonable test and ought to be applied.

[21] The Monitors disagree.

[22] First, they submit that the HSF, as a stakeholder seeking leave, bears the onus to persuade the Court that leave ought to be granted: see *Village Green Lifestyle Community Corp., Re* (2007), 27 C.B.R. (5th) 199 (Ont. S.C.), at para. 12.

[23] Further, the Monitors argue that although there is no specific test for leave to bring a motion, whether under the *Rules of Civil Procedure*, R.R.O. 1990, Reg. 194 or in the insolvency context, general insolvency principles should guide this Court, including the baseline considerations that a court should always bear in mind when exercising *CCAA* authority¹ and the test under the *CCAA* for “comeback” relief.

[24] In the insolvency context, the Monitors further rely upon the decision in *Century Services Inc.* wherein the Supreme Court of Canada noted, at para. 59, that judicial discretion must be exercised in furtherance of the *CCAA*’s purposes.

[25] They also submit that, as outlined by the Supreme Court of Canada in *9354-9186 Québec inc. v. Callidus Capital Corp.*, 2020 SCC 10, [2020] 1 S.C.R. 521, at para. 49, citing *Century Services Inc.*, at paras. 69, 70, the aforementioned fundamental principle underlines three basic considerations that a supervising judge must keep in mind when addressing any request for relief:

- (i) whether the order sought is “appropriate in the circumstances”;
- (ii) whether the party seeking relief has been acting “in good faith”; and
- (iii) whether the party seeking relief has been acting “with due diligence”.

[26] Building upon those principles, the Monitors submit that the first branch of the test set out in *Callidus*, i.e., whether the order sought is appropriate in the circumstances, ought to be expanded to include the considerations on the test for comeback relief. They therefore propose the following test for leave should be applied:

- (i) whether the party seeking relief has been acting in good faith by bringing the motion;
- (ii) whether the party seeking relief has been acting with due diligence;

¹ *Century Services Inc. v. Canada (Attorney General)*, 2010 SCC 60, [2010] 3 S.C.R. 379, at para. 70.

- (iii) whether there has been a change in circumstances that would necessitate the variance to existing orders; and
- (iv) whether the proposed variance will prejudice the progress of the CCAA Proceedings.

[27] The Monitors say the comeback relief test is appropriate because the HSF asks the Court to vary two of its earlier orders. The first being the Amended and Restated Initial Orders (the “ARIOs”) wherein the Monitors submit that the HSF seeks to add new parties to the Mediation. The second being the Representative Council Order wherein the HSF seeks to appoint Tyr as additional representative counsel.

[28] The comeback relief test applies when an interested party applies to a CCAA court to vary an initial order. The factors that guide the Court’s analysis in this respect are:

- (i) “recourse through the comeback clause is available when circumstances change”, meaning that recourse is unavailable when there are no changed circumstances;
- (ii) “comeback motions must be made *post haste* because of delay prejudice and the mounting prejudice caused by the momentum of proceeding itself”; and
- (iii) comeback relief “cannot prejudicially affect the position of the parties who have relied *bona fide* on the previous order in question.”

See *Canada v. Canada North Group Inc.*, 2017 ABQB 550, 60 Alta. L.R. (6th) 103, at paras. 50, 56, 68, *aff’d* 2019 ABCA 314, 93 Alta. L.R. (6th) 29, *aff’d* 2021 SCC 30, 28 Alta. L.R. (7th) 1.

[29] With that background, the Monitors proposed the four-part test set out in para. 26 above. In relying upon the aforementioned test, the Monitors highlight that a leave test precludes any analysis of the merits of the ultimate motion and the merits should not be addressed on a motion for leave.

Analysis

[30] I prefer the leave test put forth by the Monitors and will employ that test in these Reasons.

[31] As can be seen from the above, the HSF and the Monitors agree that this Court has broad discretion to control and manage the CCAA Proceedings. They diverge, however, as to how the test ought to be applied.

[32] The HSF focuses on the factors set out in granting a representative order in *Canwest* and submits that while the Court did not mandate the application of any specific test, the most significant factor is whether there appears to be an unrepresented interest that is appropriate for representation. The HSF then goes further to say that if this is the case, the Court should grant leave unless there are exceptional factors or circumstances that outweigh the substantial value and importance of having a valid and interested constituency represented in the CCAA Proceedings. The Monitors, on the other hand, while agreeing that there is no specific test for leave, focus on general insolvency principles. They rely on the aforementioned three-part test in *Callidus*, which

they have expanded upon, that sets out baseline considerations in which the applicant bears the burden of proof.

[33] In reviewing the aforementioned case law and the submissions of the parties, I disagree with the HSF that where there is an unrepresented interest, and employing the other factors in *Canwest*, the Court should grant leave unless there are exceptional factors or circumstances. This flips the onus and there is no authority for not only shifting the onus, but also finding that exceptional factors or circumstances are required.

[34] I am of the view that at a leave motion in these CCAA Proceedings that the four-part test set out by the Monitors ought to be applied. I base this conclusion primarily on the fact that, as mentioned above, this is a motion for leave, not the motion itself. The ultimate merits of the motion should not be considered at this stage.

[35] This is precisely where the two tests diverge, and why I prefer the Monitors' test. The Monitors' test speaks to procedural factors that this Court ought to consider. That is appropriate on a motion for leave.

[36] The Monitors' test focuses on the procedural considerations on a motion for leave. For example, whether existing orders may be varied; whether the proposed variance will prejudice parties; and whether parties have exercised due diligence are all procedural considerations that do not stray into a merits analysis.

[37] Finally, the Monitors' test is consistent with the Supreme Court of Canada's jurisprudence on CCAA matters. The Supreme Court of Canada is clear in that the factors set out in *Callidus* are to be followed by judges when exercising their discretionary authority.

[38] On the other hand, the test proposed by the HSF blends these two considerations. In this regard, parts of the test stray into an analysis of the ultimate merits of the proposed motion. Such factors will be considered if leave on the motion is granted. It is also worth pointing out that the Court in *Canwest*, the primary authority relied upon by the HSF, was considering the motion itself for whether the representatives should be appointed, and not whether leave should be granted to bring the motion. Whether the Court should grant leave to bring the motion is the focus of the analysis here.

[39] It is also worth pointing out that procedural aspects of the HSF's test set out in *Canwest* overlap with the Monitors' test. Factors like the balance of convenience and the facilitation of the administration of the proceedings and efficiency are still generally considered under the Monitors' test.

[40] Further, in my view, when determining whether an order granting leave is appropriate in the circumstances, I must consider whether the existing ARIOs ought to be varied to add a new stakeholder to the Mediation and whether the Representative Counsel Order ought to be varied to add Tyr. This requires an examination of the nature of the FTH Stakeholders and whether it is appropriate to appoint Tyr as representative counsel on their behalf and insert them into the Mediation, over four years after the Mediation has begun and in its latter stages.

[41] It is with these factors in mind that I will conduct my analysis below.

APPLICATION OF THE TEST FOR LEAVE

The Position of the HSF

[42] In support of its motion for leave, the HSF submits that it is important for this Court to understand that it is not seeking leave to be added as a party to or to participate in the CCAA Proceedings. Instead, the HSF submits that this is simply a motion for leave to bring a motion for a representation order over a group of individuals, the FTH Stakeholders, who have a direct interest in the outcome of this proceeding and who are unrepresented. It is not proposed that the HSF will represent this group; instead, the FTH Stakeholders will be represented by Tyr which will receive advice from an independent, *pro-bono* committee.

[43] In this regard, the HSF makes three primary submissions.

[44] First, it submits that the FTH Stakeholders are a significant stakeholder group that is unrepresented in the Mediation. In this regard, the HSF submits that Wagners, in representing the interests of the TRW Claimants as defined above, does not represent the proposed FTH Stakeholders.

[45] The HSF submits that s. 19(1) of the CCAA claims can only be compromised if they predate the filing. Section 19(1) reads as follows:

19(1) Subject to subsection (2), the only claims that may be dealt with by a compromise or arrangement in respect of a debtor company are

- (a) claims that relate to debts or liabilities, present or future, to which the company is subject on the earlier of
 - (i) the day on which proceedings commenced under this Act, and
 - (ii) if the company filed a notice of intention under section 50.4 of the *Bankruptcy and Insolvency Act* or commenced proceedings under this Act with the consent of inspectors referred to in section 116 of the *Bankruptcy and Insolvency Act*, the date of the initial bankruptcy event within the meaning of section 2 of that Act; and
- (b) claims that relate to debts or liabilities, present or future, to which the company may become subject before the compromise or arrangement is sanctioned by reason of any obligation incurred by the company before the earlier of the days referred to in subparagraphs (a)(i) and (ii).

[46] Based on the aforementioned wording and the wording contained in the Appointment Order concerning the definition of TRW Claimants, the HSF submits that there is no temporal connection since the FTH Stakeholders are individuals who have yet to suffer tobacco-related

harms since they are comprised of millions of Canadians who will purchase or consume tobacco products or be exposed to their use following the commencement of these CCAA Proceedings or any agreed claims bar date. The HSF submits that these future FTH Stakeholders will become addicted to tobacco, be unable to quit, and that this group has an important interest that is currently unrepresented. Their interests do not align with the current stakeholders in that current stakeholders, including the TRW Claimants, seek to maximize funding for their claims which will be funded, at least partially, by FTH Stakeholders.

[47] The HSF further submits that due to the addictive nature of tobacco, the FTH Stakeholders will suffer harm while they continue to fund, in part, relief sought by other stakeholders including the TRW Claimants.

[48] The HSF lastly submits on this point that even if it could be argued that the FTH Stakeholders and the TRW Claimants could be represented by Wagners, that scenario would present a conflict of interest since the future FTH Stakeholders would be funding the settlement of the TRW Claimants, while experiencing their own addictions.

[49] In these circumstances, the HSF submits that there is currently no one who independently represents the interests of the FTH Stakeholders.

[50] Second, the HSF argues that the interests of the FTH Stakeholders are substantial, important and worthy of at least hearing a motion to determine whether they ought to be included as stakeholders and represented by Tyr, including at the Mediation.

[51] The HSF submits that the FTH Stakeholders have a direct interest since the Applicants will not have sufficient money to fund a settlement and will rely upon post-petition cash flows which will be funded, in part, by FTH Stakeholders.

[52] The HSF further submits that the FTH Stakeholders are further directly impacted by the CCAA Proceedings and that they have a direct interest in the nature and quality of preventative programs that will be implemented through a proposal or settlement, thus making them social stakeholders as well.

[53] Either way, the HSF submits that the FTH Stakeholders have a critical interest that is worth addressing and considering at a motion.

[54] Third, the HSF submits that, based on its test for leave, there are no exceptional circumstances not to hear a motion to appoint it representative counsel. Here, the HSF attempts to refute a number of submissions made by the Monitors. The HSF, as previously noted, submits that it is important to realize that it is not seeking to be added as a party or to have direct participation in the CCAA Proceedings. Rather, it brings this motion for leave to bring a motion for a representation order over the FTH Stakeholders to be represented by Tyr, which will receive advice from an independent, *pro-bono* committee. The HSF therefore submits that its proposed motion is entirely different from the motion the CCS brought that sought direct participation in the Mediation on its own behalf.

[55] The HSF further submits that this is not a motion to vary, as submitted by the Monitors, the ARIOs. Rather the intent in seeking a representation order is to empower and enhance the Mediation and the exercise of the Court-Appointed Mediator's powers within the Mediation.

[56] Additionally, the HSF submits that the test for comeback relief cited above by the Monitors (which, as noted, I agree with) is inapplicable in the context of this motion as they are not fair and relevant considerations given the current lack of representation of the FTH Stakeholders. Specifically, the HSF disputes the Monitors' contention that the HSF delayed in seeking to appoint Tyr as representative counsel for the FTH Stakeholders. The HSF submits there has been no delay as the FTH Stakeholders are unrepresented, have never been represented and as such cannot be accused of having delayed in bringing this motion. As for the argument that the HSF delayed in bringing the motion, it cannot be reasonably argued that the responsibility to identify a group (the FTH Stakeholders) who would have an interest in the CCAA Proceedings should be left to a not-for-profit organization such as the HSF. The HSF argues that other stakeholders could have identified this gap and any alleged delay cannot be laid at the feet of the HSF who does not have insight into the Mediation process.

[57] Overall, therefore, the HSF submits that leave ought to be granted as the public will perceive it as important to properly canvass the interests of an important stakeholder group. Consideration of the motion and the potential appointment of the FTH Stakeholders also precludes potential objections to a settlement when this matter returns to be sanctioned by the Court. In this regard, the HSF points to the recent case involving Purdue Pharma where a proposed settlement announced in the U.S. faced public backlash and lengthened the proceedings: see Brian Mann and Martha Bebinger, "Purdue Pharma, Sacklers reach \$6 billion deal with state attorneys general," NPR, March 3, 2022, available at: <https://www.npr.org/2022/03/03/1084163626/purdue-sacklers-oxycotin-settlement>; *In re: Purdue Pharma L.P., et al*, Motion Of Debtors Pursuant To 11 U.S.C. § 105(A) And 363(B) For Entry Of An Order Authorizing And Approving Settlement Term Sheet at para. 2, March 3, 2022, Case No. 19-23649, United States Bankruptcy Court for the Southern District of New York, available at: <https://www.marylandattorneygeneral.gov/press/2022/030322>.

[58] Ultimately, in the *Purdue Pharma* case, a revised settlement included significant additional funds of approximately USD \$277 million devoted exclusively to opioid-related abatement, including support and service for survivors, victims and their families.

[59] In these circumstances, the HSF submits that it is fair and reasonable to at least allow it an opportunity to argue the motion to appoint Tyr as representative counsel for the FTH Stakeholders. This will add to the constellation of interests that are necessary to resolve the CCAA Proceedings.

The Monitors' Position

[60] The Monitors first stress that pursuant to my earlier Order, the leave motion was to be heard prior to the HSF's motion. Accordingly, only the test for leave applies and it is premature to discuss the merits of the HSF's motion. The focus should only be placed on the threshold requirements and the four principles they submit underlie the basic considerations that a

supervising judge must keep in mind when addressing a request for leave in any *CCAA* matter as set out in para. 26 above.

[61] First, insofar as good faith is concerned, the Monitors concede that the HSF is proceeding in good faith. They submit, however, that the HSF fails to meet the other requirements.

[62] Second, insofar as due diligence is concerned, the Monitors point out that in December 2019, they brought a motion to appoint Wagners on behalf of the TRW Claimants as an effective tool to represent claims that were unascertained or unasserted.

[63] The Monitors submit that had a stakeholder, such as the HSF, thought that the scope of the Representative Counsel Order was not broad enough or that there was a conflict to respond to, that they would have brought a motion to have this Court decide the issue. The Monitors dispute the HSF's contention that as a not-for-profit organization it was not their obligation at the time to respond. Further, the Monitors argue that if the HSF's submission was self-evident, they should and would have known of it at that time.

[64] The Monitors further submit that the HSF delivered a letter of support with respect to the CCS's motion in September 2019 in which the CCS sought to participate in the Mediation which is very similar to the relief now sought by the HSF, albeit on behalf of the FTH Stakeholders. There is no material difference between the HSF's motion and the motion earlier brought by the CCS as both seek to advocate on behalf of other individuals. Based on the foregoing, the Monitors submit that the HSF has not acted with due diligence and in essence seeks to relitigate the issue as to whether a third party should be inserted into the Mediation.

[65] Third, the Monitors argue that there has been no change of circumstances that would justify variances to the ARIOs. The Monitors submit that the FTH Stakeholders are partly or entirely represented in the mediation. The Monitors submit that the definition of TRW Claimants includes the FTH Stakeholders and that it captures "all individuals ... who assert or may be entitled to assert a claim or cause of action against one or more of the Applicants ... in respect of ... the historical or ongoing use of or exposure to Tobacco Products". Based on the plain wording of the above definition, the Monitors submit that this includes the FTH Stakeholders who are, by their own definition, "people who will purchase – consume tobacco products or be exposed to their use following commencement of these proceedings/or claims bar date."

[66] The Monitors further point to the December Decision wherein Wagners was appointed on behalf of the TRW Claimants and particularly paragraphs 30 and 42 where I state as follows:

[30] The social benefits of access to justice, in the facilitating of a complex restructuring, are met. At this time many of the TRW Claims are unascertained and unasserted. As such, many of the TRW Claimants are likely unaware of these *CCAA* proceedings. The Representation Order sought would further promote access to justice by giving the TRW Claimants a powerful, single voice in the process.

...

[42] I agree with the Tobacco Monitors that a single point of contact is critical in these proceedings. As I have previously indicated, these restructurings are amongst the most complex in CCAA history for a number of reasons, which include the vast number and size of the complicated tobacco-related actions that have been, or could be, commenced against the Applicants.

[67] Based on the foregoing, the Monitors submit that this Court specifically anticipated that the TRW Claims included those that were unascertained and unasserted including those that had been, or could be, commenced against the Applicants. They also point to the fact that I further noted that a single point of contact was critical insofar as the TRW Claims were concerned.

[68] The Monitors alternatively argue that even if certain members of the FTH Stakeholders were not captured within the definition of the TRW Claimants, their interests are adequately represented in the Mediation and that this has been acknowledged by the HSF in its factum where it states that the concerns of the FTH Stakeholders are ultimately about “public health writ large”. The Monitors submit that the interests of the public at large can be adequately accounted for and addressed by many different participants in the Mediation, including the provinces who represent public and social interests, including harm reduction; Wagners, who represent the individuals who assert or may be entitled to assert claims; the Monitors, who are officers of the court and have the obligation to consider the interests of all stakeholders; and the Court-appointed Mediator who has been provided with the broad discretion to consult with a variety of persons as he considers appropriate. Further, in this regard, the Monitors submit that what the HSF is really seeking to do is add new parties to the Mediation and therefore vary the ARIOs. The HSF’s request is functionally the same as the CCS’s earlier request and that as a result, Tyr, an additional representative counsel, would be inserted.

[69] Further, with respect to the HSF’s submission that the FTH Stakeholders are in a conflict with respect to other TRW Claims, the Monitors submit that the HSF is passing off speculation as evidence and the HSF’s affiant, Diego Marchese, an Executive Vice-President with the HSF, is not part of the Mediation. As such, he does not know the positions the parties have taken, particularly the TRW Claimants, or what action they have taken thereafter. In any event, the Monitors submit it is premature to even consider any issues of conflict since we are still at the leave stage and issues such as conflict are not yet engaged.

[70] Insofar as s. 19(1) of the CCAA is concerned, the Monitors submit that this motion does not raise any issues under s. 19(1). There is no claims bar date, no stakeholder is asking that these claims be compromised and the goal of the Mediation is to reach a settlement. Further, as noted, the Order appointing Wagners as counsel for the TRW Claimants provides for future claims or causes of action.

[71] Fourth, perhaps most significantly, the Monitors also submit that the belated introduction of the FTH Stakeholders jeopardizes the significant progress that has been achieved to date in the Mediation which, as noted, is hopefully entering its final stages. Accordingly, there is prejudice to the progress of the CCAA Proceedings.

[72] The Monitors submit, relying in part upon the decision of this Court in *Target Canada Co. Re.*, 2016 ONSC 316, 32 C.B.R. (6th) 48, at para. 31 that the CCAA process is one of building

blocks. Stays are granted, plans are developed and orders are made. If parties wish to change the terms of such orders, such developments could run counter to the building block approach that underpins the proceedings. The Monitors submit that this is particularly true in the within case which has been ongoing for over four years, with good progress and optimism that a successful resolution is in sight. The Monitors submit that the Court should not risk disrupting the progress and potentially delaying resolution by compelling the participation of a new stakeholder at this late stage. They stress that this is particularly so where the Court-Appointed Mediator has not exercised his discretion or judgment to include the FTH Stakeholders or made any recommendations in this regard to this Court. The Monitors also point out that several parties have expressed serious concerns about the length of time the Mediation is taking and introducing a new stakeholder will almost certainly exacerbate those concerns.

[73] Last, the Monitors submit that even if leave is denied, the HSF will still retain the ability to participate in these proceedings as a social stakeholder in many meaningful ways as this Court has previously recognized the value of social stakeholders. It should not, however, be permitted to seek special treatment at this late stage by forcing the FTH Stakeholders into the Mediation and asking this Court to second guess the discretion and judgment of the Court-Appointed Mediator.

[74] The fact that the HSF speculates that it is better to insert the FTH Stakeholders now than have them appear at a sanction hearing is not only speculative, but does not form part of the test for obtaining leave to bring this motion. There is simply no evidence before the Court to support an order including the FTH Stakeholders.

[75] Based on the foregoing, the Monitors submit that the HSF's motion is an impermissible attempt to alter the *status quo* where there has been no change in circumstances, the HSF has not moved promptly and that the proposed variance would prejudice the progress of the CCAA Proceedings.

Analysis

[76] In considering whether leave ought to be granted, as noted, I have accepted the four-part test urged upon me by the Monitors which I reiterate below:

- (i) whether the HSF is proceeding in good faith by bringing this motion;
- (ii) whether the HSF has acted with the requisite due diligence in doing so;
- (iii) whether there has been a change in circumstances that would necessitate the variance to existing orders; and
- (iv) whether the proposed variance would not prejudice the progress of the CCAA Proceedings.

[77] For the reasons that follow I accept the arguments put forth by the Monitors.

[78] I begin by noting that there is no question that the HSF satisfies part (i) of the aforementioned test. The HSF has been acting in good faith in seeking the representation order.

It is a well-established not-for-profit charity. The HSF is also a leader in disease prevention which includes activities at preventing harm caused by smoking.

[79] Second, insofar as the requirement of due diligence is concerned, while I am not being critical of the HSF, I cannot conclude that they have acted with due diligence in the circumstances of this case and particularly the well-known, ongoing Mediation. As I have indicated, the Mediation has been proceeding for over four years. The HSF did have the ability to bring its motion sooner, which I have compared to the CCS motion, of which the HSF was well aware.

[80] Third, I accept that there has not been a change of circumstances.

[81] In this regard, the definition of TRW Claimants is broad enough to include the FTH Stakeholders which is evidenced in the December Decision in which I specifically appoint Wagners on behalf of the TRW Claimants to include individuals that are not currently represented, scattered across the country and do not have the ability or resources to advance this claim in these complex CCAA Proceedings. This would include, as defined in the representation order, individuals who assert or may be entitled to assert claims with respect to a broad range of alleged wrongs generally relating to tobacco-related personal harm. I pause here to note that when I delivered my December Decision and approved the resulting order, I was clearly of the view that the definition of TRW Claimants was to include future claims. This was reflected in my December Decision that specifically included unascertained and unasserted claims, as set out in paragraph 30 of that decision and reproduced above at paragraph 68. This definition captures claims by the FTH Stakeholders.

[82] Additionally, in any event, I accept the Monitors' submissions that even if the FTH Stakeholders are not captured within the definition of the TRW Claimants, their interests are adequately represented in the Mediation.

[83] Further, insofar as any potential conflict of interest is concerned, even if I was to consider it at the leave stage, there is no evidentiary basis to advance this submission. Unquestionably, Wagners, on behalf of the TRW Claimants, will represent a number of different constituencies. Neither Wagners nor the Court-appointed Mediator or the Monitors have identified any conflicts about which I should be concerned.

[84] Mr. Marquese deposes at para. 8 of his affidavit that "I understand that as a result of the nature of the claims being addressed in these proceedings, that a likely component of any Proposed Plan would be the establishment of a fund that will be used to make future payments for public or social purposes or programs in lieu of the ability to make payments directly to claimants." He generally goes on to further depose that, based on his understanding how the fund is established, governed and used will be a critical component in ensuring that the rights and interests of FTH Stakeholders are adequately addressed and that all parties participating in the CCAA Proceedings and Mediation are in conflict with FTH Stakeholders.

[85] Mr. Marquese does not cite any basis for his understanding, which almost entirely undermines his purported evidence. Further, I do not know how he could have such insight into the confidential Mediation in which the HSF is not a party. Nothing to date has been brought forward to this Court to support Mr. Marquese's understanding or belief. Based on my own

knowledge of the ongoing Mediation and Mr. Marquese's understandable lack of insight, I do not accept that the FTH Stakeholders operate in a conflict with other stakeholders and particularly do not act in conflict with the TRW Claimants.

[86] I am further of the view that my decision does not run contrary to the provisions of s. 19(1) of the *CCAA*. I accept the Monitors' submissions above and the claims of the FTH Stakeholders, to the extent they may exist, are no different in nature than other unascertained and unasserted claims of any TRW Claimants.

[87] Fourth, insofar as the issue of prejudice is concerned, as I have indicated, the Mediation appears to be reaching its latter stages after four years. Substantial progress has been made. This has been confirmed by both the Court-appointed Mediator and the Monitors. A resolution is in sight.

[88] I am very hesitant to introduce new participants at this late stage, which will, in my view, almost certainly complicate matters in circumstances where the Monitors and Court-appointed Mediator have not identified any concerns. In this regard I am satisfied that the ultimate order sought by the HSF would likely prejudice the progress of the *CCAA* Proceedings.

[89] In reaching this conclusion, I emphasize that the HSF retains its ability to participate in the *CCAA* Proceedings as a social stakeholder and if difficulties arise with respect to what the HSF has identified as the FTH Stakeholders, the matter may return to the Court.

[90] I conclude by noting two things. First, once again, I have tremendous faith in the Court-Appointed Mediator to address any concerns or conflicts as alleged by the HSF and bring them to the Court if, in fact, they exist. Second, even if I was to accept the test for leave proposed by the HSF and consider the *Canwest* factors, I would come to the same conclusion for the reasons above.

DISPOSITION

[91] The HSF's motion for leave to bring a motion seeking to have Tyr appointed as representative counsel to the FTH Stakeholders is dismissed.



McEwen J.

Date: June 23, 2023

CITATION: In the Matter of a Plan of Compromise
or Arrangement of JTI-Macdonald, Imperial Tobacco
and Rothmans, 2023 ONSC 2347

COURT FILE NOS.: CV-19-615862-00CL,
CV-19-616077-CL and CV-19-616779-00CL

DATE: 20230623

**ONTARIO
SUPERIOR COURT OF JUSTICE**

In the Matter of the *Companies' Creditors Arrangement
Act*, R.S.C. 1985, c. C-36, as amended

AND

In the Matter of a Plan of Compromise or Arrangement of
JTI-Macdonald Corp.

AND

In the Matter of a Plan of Compromise or Arrangement of
Imperial Tobacco Canada Limited and Imperial Tobacco
Company Limited

AND

In the Matter of a Plan of Compromise or Arrangement of
Rothmans, Benson & Hedges Inc.

REASONS FOR DECISION

McEwen J.

Released: June 23, 2023

CASE MANAGEMENT ORDER

CU-19-615002-00CL
CU-19-616779-00CL

Superior Court of Justice
Commercial List

FILE/DIRECTION/ORDER

JTI - MacDonald / Imperial Tobacco / RBH
AND
Plaintiff(s)

Defendant(s)

Case Management Yes No by Judge: McEwen

Counsel	Telephone No:	Facsimile No:

- Order Direction for Registrar (No formal order need be taken out)
- Above action transferred to the Commercial List at Toronto (No formal order need be taken out)
- Adjourned to: _____
- Time Table approved (as follows):

Given my pending retirement Chief Justice Morawetz has agreed to assume case management of these CCAA matters as of July 1/23.

17 May 23
Date

[Signature]
Judge's Signature

Additional Pages _____

MONITOR'S REPORTS

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

**Imperial Tobacco Canada Limited and
Imperial Tobacco Company Limited**

SIXTEENTH REPORT OF THE MONITOR

September 20, 2023



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

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

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

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

**SIXTEENTH REPORT TO THE COURT
SUBMITTED BY FTI CONSULTING CANADA INC.,
IN ITS CAPACITY AS MONITOR**

A. GENERAL

1. This Report addresses Imperial's Motion for a Stay Extension returnable September 27, 2023 and various other issues.
2. In this Report, unless otherwise defined, all capitalized terms shall have the respective meanings specified in the glossary attached to this Report as Appendix "A". The first instance of each capitalized term, if defined in the glossary, is bookmarked to the glossary.

B. INTRODUCTION

3. The principal purpose of these CCAA Proceedings and their related Chapter 15 Proceedings is to restructure and compromise Imperial's liabilities; specifically, the liabilities arising from the Tobacco Claims, including the Quebec Appeal Judgment.
4. The Initial Order in these CCAA Proceedings was issued by the Court on March 12, 2019, amended and restated on April 5, 2019, further amended and restated on April 25, 2019, and updated by written endorsement on March 6, 2020. On April 17, 2019, the U.S. Bankruptcy Court issued the Foreign Recognition Order recognizing the CCAA Proceedings as the main proceedings and staying proceedings against ITCAN in the United States.

5. A list of the Orders issued by the Court and the U.S. Bankruptcy Court in these CCAA Proceedings can be found in Appendix “B” to this Report.

C. BACKGROUND

6. Imperial is the largest distributor of Tobacco Products in Canada. It operates two businesses: tobacco and logistics. The tobacco business includes the marketing and sale of Tobacco Products and Vapour Products. The logistics business distributes Tobacco Products and Vapour Products for tobacco manufacturers along with certain non-tobacco products.
7. Imperial is highly integrated with BAT and its affiliates. It benefits from a wide range of services, licences, and rights that certain BAT affiliates provide. These services and functions have been and continue to be vital to Imperial’s business.
8. Further information regarding these CCAA Proceedings and a background on Imperial have been provided in previous Monitor’s Reports.
9. All Court materials filed and orders issued in these CCAA Proceedings and the related Chapter 15 Proceedings are available on the Monitor’s website at: <http://cfcanada.fticonsulting.com/imperialtobacco>.

D. TERMS OF REFERENCE AND DISCLAIMER

10. In preparing this Report, the Monitor has relied upon certain financial information and forecasts prepared by Imperial as well as discussions and correspondence with senior management and advisors to Imperial, amongst others. The Monitor has not audited or otherwise attempted to verify the accuracy or completeness of this information. Accordingly, the Monitor expresses no opinion or other form of assurance respecting the information contained in this Report or relied on in its preparation. Forward-looking financial information reported or relied upon in preparing this Report is based on Imperial management’s assumptions regarding future events. Actual results may diverge from such forecasts, and these variations may be material.

11. Unless otherwise stated, all monetary amounts contained herein are expressed in Canadian Dollars.
12. This Report should be read in conjunction with the September 2023 Thauvette Affidavit, which can be found [here](#).

E. PURPOSE OF THIS REPORT

13. The purpose of this Report is to provide the Court with information regarding:
 - i. an update on the Mediation;
 - ii. Imperial's business activities, industry developments, and trends impacting Imperial's business;
 - iii. Imperial's budget to actual cash-flow results for the 26-week period ending September 3, 2023;
 - iv. the Cash Flow Forecast for the 30-week period commencing the week of September 4, 2023, through the week of March 25, 2024;
 - v. the activities of the Monitor and its counsel since March 22, 2023, the date of the Fifteenth Report;
 - vi. Imperial's request for an order extending the Stay of Proceedings up to and including March 29, 2024; and
 - vii. the Monitor's comments and recommendations in respect of the foregoing matters.

F. UPDATE ON COURT PROCEEDINGS

14. On March 28, 2023, the Court heard a motion seeking the extension of the Stay of Proceedings and, on March 30, 2023, issued the September 2023 Stay Extension Order, which extended the Stay Period to September 29, 2023. A copy of the September 2023 Stay Extension Order can be found [here](#).

15. On June 26, 2023, the Court issued its HSF Leave Motion Endorsement denying the HSF Leave Motion, which sought leave to bring the HSF Representation Motion. The Court found, amongst other things, that (i) HSF did not act with due diligence in bringing its motions “four years” into a “well-known, ongoing Mediation”; (ii) the Future Tobacco Harm Stakeholders were already “adequately represented” in the Mediation; and (iii) the introduction of HSF into the proceedings at this late stage “would likely prejudice the progress of the CCAA Proceedings”. A copy of the HSF Leave Motion Endorsement can be found [here](#).
16. The hearing on the Motion for a Stay Extension returnable September 27, 2023 will proceed by Zoom Video Conference according to the protocol developed by counsel to the Tobacco Monitors and approved by the Court. The general public will have access to the hearing via a secure, dedicated YouTube livestream. This protocol has been served on the consolidated service list, is posted on the Monitor’s website and can be found in Appendix “C” to this Report.

G. UPDATE ON THE MEDIATION

17. The Monitor continues to work with Imperial to populate the Imperial Data Room with financial and other information relevant to these CCAA Proceedings and to respond to information requests. The Imperial Data Room is accessible only to those advisors of Mediation Participants who have executed NDAs.
18. The Court-Appointed Mediator, with the assistance of the Tobacco Monitors, has continued to conduct the Mediation and engage in meaningful discussions with the Mediation Participants. The Mediation negotiations are confidential.

H. IMPERIAL’S BUSINESS ACTIVITIES, INDUSTRY DEVELOPMENTS AND TRENDS IMPACTING IMPERIAL’S BUSINESS

(i) Changes in BAT and Imperial’s Management

19. As discussed in the Fifteenth Report, BAT announced at the beginning of 2023 that it would be making changes to its management and adopting a new regional structure with a view to streamlining and accelerating the transformation of its business, including the

implementation of fewer but larger business units across the globe. The Monitor has been advised that the majority of the re-organization plan has now been implemented.

20. Effective April 1, 2023, Mr. Frank Silva assumed the role of Chief Executive Officer at Imperial, with previous Chief Executive Officer Ralf Wittenberg transitioning out of his existing roles with the company. Mr. Silva has occupied various executive roles in the tobacco industry and notably served as Regional Marketing Director for BAT's Asia Pacific and Middle East region (APME).

(ii) Insolvency of Wallace & Carey Inc.

21. Wallace & Carey Inc. ("W&C"), a party to certain long-term tobacco-product distribution contracts with Imperial, recently filed for and received, along with certain affiliates, CCAA protection pursuant to an order issued by the Alberta Court of King's Bench dated June 22, 2023. Subsequent to the filing, Imperial and W&C entered into two agreements: a receivables-settlement agreement and an agreement for the continued supply of goods and services. These agreements seek to allow the parties to continue their business relationship while W&C and its affiliates complete a restructuring under the CCAA.

(iii) New Federal Packaging Regulations

22. On August 1, 2023, the Canadian government promulgated the *Regulations Amending the Tobacco Products Regulations (Plain and Standardized Appearance)*, which, amongst other things, require health warnings to be labelled directly on individual cigarettes. The regulations will be implemented in phases and with different implementation timelines for manufacturers and retailers. The Monitor understands that Imperial is continuing to assess the overall financial impact of the regulations and that further disclosure will be provided as required.

(iv) Distribution-Center Relocation

23. Imperial is currently in the process of moving one of its distribution centers from Brampton, Ontario to Vaughan, Ontario, in order to increase operational efficiencies. The transition is expected to be completed by October 2023.

(v) Quebec Ban on Flavoured Vape Products

24. On August 2, 2023, the Quebec government published new regulations under the *Regulation under the Tobacco Control Act* that will prohibit the sale of flavoured vaping products in the province. These regulations come into effect on October 31, 2023. As a result, Imperial will write off certain “Vuse” Vapour Products held in inventory totaling approximately \$8 million. This amount will then be recharged to Imperial’s affiliate Nicoventures under the DSA. As a result, there will be no financial impact on Imperial.

(vi) Vuse Store Openings

25. As discussed in the Fifteenth Report, Imperial operates Vuse retail stores. As of the date of this Report, ITCAN operates eight Vuse stores. While the Fifteenth Report noted that more store openings were anticipated in 2023, ITCAN no longer plans to open additional Vuse stores this year.

(vii) Approval and Roll-Out of “Zonnic” Product

26. On July 13, 2023, Health Canada approved “Zonnic”, Nicoventures’ non-tobacco nicotine pouch, for sale in Canada as a nicotine replacement product. Imperial anticipates launching Zonnic in Canada in the fourth quarter of 2023. Imperial’s marketing and distribution of Zonnic will be conducted pursuant to the existing MSA and DSA with Nicoventures.

(viii) Data Breach Incident

27. Imperial has advised the Monitor that in August 2023 it experienced a data breach on one of its IT application platforms. An internal investigation is currently ongoing with the support of the BAT Group to establish the facts surrounding this data breach. As of the date of this Report, no material financial impact is expected as a result of the incident.

I. ENVIRONMENTAL RISK ASSESSMENT OF AYLMEYER PROCESSING PLANT

28. As previously discussed in the Thirteenth Report, on November 14, 2018, the Ministry of the Environment, Conservation and Parks accepted ITCAN’s risk assessment report on Area 101 at 259 Elm Street in Aylmer, Ontario. ITCAN committed to installing a soil cover

over the pesticide-contaminated soils at the site. The estimated cost of completing this work, which was delayed due to the COVID-19 Pandemic, is approximately \$600,000. Subject to the results of ongoing soil testing, the work is now anticipated to begin in the fourth quarter of 2023.

J. RECEIPTS AND DISBURSEMENTS FOR THE 26-WEEK PERIOD ENDING SEPTEMBER 3, 2023

29. Imperial's cash balance as of the week ended September 3, 2023 was \$3,651 million, as compared to the forecasted cash balance of \$3,434 million. The actual net cash flows of Imperial were approximately \$538 million, as compared to the forecasted net cash inflow of \$338 million over the 26-week period resulting in a positive variance of \$200 million, as explained below:

VARIANCE REPORT	Actuals	Forecast	Variance
<i>(CAD\$ in thousands)</i>	For the 26-week period ending Sep 03, 2023		
RECEIPTS			
Trade Receipts	2,254,123	2,118,452	135,672
DISBURSEMENTS			
<i>Operating Disbursements</i>			
Taxes and Levies	(1,371,124)	(1,388,006)	16,882
Operations	(408,147)	(441,836)	33,690
<i>Total Operating Disbursements</i>	(1,779,271)	(1,829,843)	50,572
OPERATING CASH FLOWS	474,853	288,609	186,244
<i>Financing Disbursements</i>			
Interest and Related Fees on Existing Facilities	69,615	54,762	14,853
<i>Restructuring Disbursements</i>			
Professional Fees	(6,167)	(5,688)	(479)
NET CASH FLOWS	538,301	337,683	200,618
CASH			
Beginning Balance	3,096,164	3,096,164	-
Net Cash Inflows / (Outflows)	538,301	337,683	200,618
Foreign Exchange Gain / (Loss)	16,151	-	16,151
ENDING CASH	3,650,616	3,433,847	216,769

30. The significant budget to actual variances and corresponding explanations are as follows:
- i. *trade receipts*: positive variance of \$136 million, or 6.4% against the forecast, primarily driven by higher-than-forecasted sales of \$110 million and higher-than-forecast price increases of \$26 million. Imperial experienced a volume decline of 11.5% for cigarettes whereas the cash flow forecast assumed a volume decline of 14.9% during the reporting period.
 - ii. *taxes and levies*: positive variance of \$17 million, or 1.2% against the forecast, driven by provincial tobacco tax payments.

- iii. *operating disbursements*: positive timing variance of \$34 million, that consists of a \$17 million positive variance relating to timing of disbursements for trade suppliers that are expected to reverse in the future reporting period and a \$17 million positive variance driven by higher-than-forecast reimbursement of expenses relating to the Vapour Products in the current reporting period. These expenses were incurred in the prior reporting period and are fully reimbursed pursuant to the terms under the MSA with Nicoventures.
- iv. *interest income*: positive permanent variance of \$15 million that is driven by the higher-than-forecasted interest rate earned on funds held by Imperial as a result of the high interest rate environment.

K. CASH FLOW FORECAST

- 31. Imperial, with the assistance of the Monitor, has prepared a Cash Flow Forecast for the 30-week period ending the week of March 25, 2024. The Cash Flow Forecast is attached as Appendix “D” to this Report.
- 32. During the Forecast Period, total operating receipts are forecast to be approximately \$2,329 million and total operating disbursements are forecast to be approximately \$1,985 million, resulting in a net positive operating cash flow of approximately \$344 million. In addition, Imperial forecasts interest income of approximately \$92 million in respect of cash balances on deposit in Canada and professional fee disbursements of approximately \$7 million, such that net cash inflow is forecast to be approximately \$429 million.
- 33. Although net cash flows are positive during the Forecast Period, there are 7 weeks within this period which are forecasted to have negative operating cash flows. These negative cash flows are driven by the timing of the payment of taxes and government levies due at the end of each month. Cash flows in the weeks that fall on or around month-end tax payments are expected to be negative and then offset by the positive cash flows during the remainder of the month.

34. The Monitor has reviewed the Cash Flow Forecast to the standard required of a Court-appointed monitor by Section 23(1)(b) of the CCAA. Section 23(1)(b) requires a monitor to review the debtor's cash flow statement as to its reasonableness and to file a report with the court on the monitor's findings. The Canadian Association of Insolvency and Restructuring Professionals' Standards of Professional Practice include a standard for a monitor fulfilling its statutory responsibilities under the CCAA in respect of its report on the Cash Flow Forecast.
35. In accordance with the standard, the Monitor's review of the Cash Flow Forecast consisted of inquiries, analytical procedures and discussions related to the Cash Flow Forecast and its underlying assumptions. The Monitor's procedures with respect to the assumptions were limited to evaluating whether they were consistent with the purpose of the Cash Flow Forecast. The Monitor also reviewed the support provided by Imperial's management for the assumptions and the preparation and presentation of the Cash Flow Forecast.
36. Based on the Monitor's review, nothing has come to its attention that causes it to believe, in any material respect, that:
- i. the assumptions are not consistent with the purpose of the Cash Flow Forecast;
 - ii. as at the date of this Report, the assumptions are not suitably supported and consistent with the plans of Imperial or do not provide a reasonable basis for the Cash Flow Forecast; or
 - iii. the Cash Flow Forecast does not reflect the assumptions.
37. As described in the Terms of Reference above, since the Cash Flow Forecast is based on assumptions regarding future events, actual results will diverge from the information presented even if the assumptions occur, and the variations could be material. Accordingly, the Monitor expresses no assurances as to whether the Cash Flow Forecast will be achieved. In addition, the Monitor expresses no opinion or other form of assurance with respect to the accuracy of the financial information presented in the Cash Flow Forecast or relied upon by the Monitor in preparing this Report.

38. The Cash Flow Forecast has been prepared solely for the purposes described above and may not be suitable or appropriate for other purposes.

L. NEW TOBACCO AND VAPOUR REGULATIONS

39. Tobacco Products and Vapour Products continue to come under increased scrutiny globally, resulting in stringent regulations and, in some cases, outright bans.

40. Appendix “E” to this Report summarizes the various regulatory changes related to Tobacco Products and Vapour Products that have been considered and/or implemented across Canada since the date of the Thirteenth Report.

M. OVERVIEW OF THE MONITOR’S ACTIVITIES

41. Since the date of the Thirteenth Report, the Monitor and its counsel have held numerous meetings and discussions with Imperial and its counsel to:

- i. monitor Imperial’s business activities;
- ii. monitor Imperial’s receipts and disbursements;
- iii. assist in the preparation of the Cash Flow Forecast;
- iv. prepare monthly professional fee disclosures;
- v. gather and review Information to be included in the Imperial Data Room;
- vi. address vendor and stakeholder inquiries;
- vii. evaluate a variety of legal and operational issues as they arise;
- viii. attend monthly board meetings;
- ix. review proposed capital expenditures; and
- x. further their understanding of Imperial’s business environment and the factors expected to impact its future business prospects.

42. The Monitor has also regularly attended meetings with the Court-Appointed Mediator and the Mediation Participants and has provided the Court-Appointed Mediator with information necessary to advance the Mediation.
43. The Tobacco Monitors and their counsel have met regularly to discuss ongoing matters including the Mediation, reviewing Information to be included in the Applicants' Data Rooms, procedural aspects of these CCAA Proceedings and the relief sought herein.

(i) Litigation Update

44. The Monitor is aware of, and has been monitoring, various ancillary litigation matters and information requests involving or respecting Imperial which arose subsequent to the initiation of the CCAA Proceedings and the implementation of the Stay of Proceedings. The Monitor believes that Imperial has been acting in good faith with respect to such matters, addressing the litigation on a case-by-case basis and apprising the Monitor of the actions it intends to take ahead of time. The amounts at issue have largely been immaterial.

(ii) Professional Fee Disclosure

45. Pursuant to the Professional Fee Disclosure Order, the Monitor continues to provide to the Quebec Litigation Plaintiffs and other parties who requested such information a summary, broken down by firm, of the restructuring fees incurred on or after March 12, 2019, and paid to the CCAA Professionals each month.

N. STAY OF PROCEEDINGS

46. Imperial is seeking an extension of the Stay Period up to and including March 29, 2024 to allow it, with the assistance of the Monitor to:
 - i. operate its business in the ordinary course; and
 - ii. engage in the Mediation and work towards a solution for the benefit of all stakeholders in respect of the Tobacco Claims.
47. The Monitor supports an extension of the Stay Period up to and including March 29, 2024 for the following reasons:



- (a) Imperial is acting in good faith and with due diligence;
- (b) Imperial is continuing to engage meaningfully in the Mediation with the Court-Appointed Mediator;
- (c) Progress has been made in the Mediation since the last Stay Period extension hearing on March 28, 2023; and
- (d) the Cash Flow Forecast indicates that Imperial is projected to have sufficient funding to continue to operate in the normal course throughout the proposed extension to the Stay of Proceedings.

The Monitor respectfully submits this Sixteenth Report.

Dated this 20th day of September 2023.

FTI Consulting Canada Inc.

FTI Consulting Canada Inc.

in its capacity as Monitor of Imperial Tobacco Canada Limited and Imperial Tobacco Company Limited, and not in its personal capacity.

**APPENDIX “A”
GLOSSARY**

“**Applicants**” means, collectively, Imperial, JTIM and Rothmans.

“**BAT**” means British American Tobacco p.l.c., a public company listed on the London Stock Exchange.

“**BAT Group**” means, collectively, British American Tobacco p.l.c., B.A.T. International Finance p.l.c., 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 Imperial and the ITCAN Subsidiaries.

“**BAT Mexico**” means British American Tobacco Mexico S.A. de C.V.

“**Cash Flow Forecast**” means the cash flow forecast of Imperial’s receipts and disbursements for the 30-week period commencing the week of March 6, 2023, and continuing through the week of September 25, 2023.

“**CCAA**” means the *Companies’ Creditors Arrangement Act*, R.S.C., 1985, c. C-36, as amended.

“**CCAA Proceedings**” means Court File No. CV-19-616077-00CL commenced by Imperial under the CCAA.

“**CCAA Professionals**” means the Monitor, counsel to the Monitor, counsel to Imperial, and any financial advisor Imperial has retained in connection with these CCAA Proceedings, except for any financial advisor in respect of whose work Imperial properly asserts solicitor-client, settlement, litigation or other privilege.

“**Chapter 15 Proceedings**” means the proceedings commenced by ITCAN on March 13, 2019, for relief under Chapter 15 of the U.S. Bankruptcy Code.

“**Comeback Motion**” means the Comeback Motion, as defined in the Initial Order, which was heard on April 4, 5, 25 and 26, 2019.

“**Consortium of Provinces**” means, collectively, the Province of British Columbia, the Province of Manitoba, the Province of New Brunswick, the Province of Nova Scotia, the Province of Prince Edward Island and the Province of Saskatchewan, in each province’s capacity as a plaintiff in the HCCR Claims.

“**Court**” means the Ontario Superior Court of Justice (Commercial List).

“**Court-Appointed Mediator**” means the Honourable Warren K. Winkler K.C., acting as an officer of the Court and as a neutral third party to mediate a pan-Canadian global settlement in the context of these Tobacco CCAA Proceedings.

“**COVID-19 Pandemic**” means the global pandemic caused by the novel coronavirus.

“**Data Rooms**” means data rooms containing Information in respect of the Applicants which are responsive to requests submitted by Mediation Participants, and as well as other information, which the Tobacco Monitors considered relevant.

“**Deloitte**” means Deloitte Restructuring Inc.

“**DSA**” means the Vype Product Distribution Agreement between ITCAN and Nicoventures Trading Limited, an affiliate of ITCAN.

“**Eighth Report**” means the eighth report of the Monitor filed on September 22, 2020.

“**Eleventh Report**” means the eleventh report of the Monitor filed on March 15, 2022.

“**Excluded Claims**” means the claims excluded from the definition of TRW Claimants as described in paragraph 26 of Appendix “C” to the Sixth Report.

“**EY**” means Ernst & Young Inc.

“**Fifth Report**” means the report filed by the Monitor on September 25, 2019.

“**First Report**” means the report filed by the Monitor on April 3, 2019 in connection with the relief sought at the Comeback Motion.

“**Flintkote**” means the Flintkote Company.

“**Flintkote Issue**” means the lawsuit brought against ITCAN in respect of certain distributions received by ITCAN from Flintkote (a previous indirect subsidiary of a predecessor of ITCAN) and legal expenses related to same, as more fully described in the Tenth Report.

“**Forecast Period**” means the 30-week period commencing the week of September 4, 2023 through the week of March 25, 2024.

“**Fourth Report**” means the report filed by the Monitor on June 24, 2019.

“**Fourteenth Report**” means the report filed by the Monitor on March 14, 2023.

“**Fifteenth Report**” means the report filed by the Monitor on March 22, 2023.

“**FTI**” means FTI Consulting Canada Inc.

“**Future Tobacco Harm Stakeholders**” as defined in the HSF Representation Motion, means those individuals who will buy and use tobacco products (or be exposed to the use of tobacco products) subsequent to the commencement of the CCAA Proceedings.

“**Genstar**” means Genstar Corporation, a subsidiary of ITCAN.

“**HCCR Claims**” means the claims started by each of the Provinces under each Province’s health care cost recovery legislation, to recover health care costs associated with smoking and the use of Tobacco Products.

“**HSF**” means the Heart and Stroke Foundation of Canada.

“**HSF Leave Motion Endorsement**” means a judgment issued by the Court on June 26, 2023 denying the HSF Leave Motion seeking leave to bring the HSF Representation Motion.

“**HSF Leave Motion**” means a motion brought by HSF returnable April 14, 2023 for leave to bring the HSF Representation Motion.

“**HSF Representation Motion**” means a motion brought by HSF dated September 19, 2022, seeking the appointment of Tyr LLP as representative counsel for the Future Tobacco Harm Stakeholders.

“**HSF Representation Motion Leave Hearing Order and Endorsement**” means an order and endorsement issued by the Court on February 14, 2023, setting a hearing date of April 14, 2023 for the hearing respecting leave to bring the HSF Representation Motion.

“**Imperial**” means, collectively, ITCAN and ITCO.

“**Imperial Data Room**” means a data room containing Information in respect of Imperial.

“**Information**” means common categories of information in respect of the Applicants which are responsive to requests submitted by Mediation Participants, as well as other information which the Tobacco Monitors considered relevant.

“**Initial Order**” means the initial order granted by the Court on March 12, 2019, as amended and restated as of April 5, 2019 and further amended and restated as of April 25, 2019 and updated by written endorsement on March 6, 2020, which authorized, among other things, the Stay of Proceedings and FTI’s appointment as Monitor of Imperial’s CCAA Proceedings.

“**ITCAN**” means Imperial Tobacco Canada Limited.

“**ITCAN Subsidiaries**” means 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, Imasco Holdings Group, Inc., ITL (USA) limited, Genstar Pacific Corporation, Imasco Holdings Inc., Southward Insurance Ltd., Liggett & Myers Tobacco Company of Canada Limited or entities related to or affiliated with them other than Imperial and the BAT Group.

“**ITCO**” means Imperial Tobacco Company Limited.

“**JTIM**” means JTI-Macdonald Corp.

“**JTIM Group**” means the entities currently or formerly related to or affiliated with JTIM.

“**March 2021 Stay Extension Order**” means an Order of the Court, dated September 29, 2020, extending the length of the Stay of Proceedings to March 31, 2021.

“**March 2022 Stay Extension Order**” means an Order of the Court, dated September 27, 2021, extending the length of the Stay of Proceedings to March 31, 2022.

“**March 2023 Stay Extension Order**” means an Order of this Court, dated September 29, 2022, extending the length of the Stay of Proceedings to March 31, 2023.

“**March 2023 Thauvette Affidavit**” means the Affidavit of Eric Thauvette, Vice President and Chief Financial Officer of ITCAN, sworn March 16, 2023.

“**March 2020 Stay Extension Order**” means an Order of the Court, dated October 8, 2019, extending the length of the Stay of Proceedings to March 12, 2020.

“**Mediation**” means the mediation process conducted by the Court-Appointed Mediator.

“**Mediation Participants**” means the Applicants, the Consortium of Provinces, the Provinces of Alberta, Newfoundland and Labrador, Ontario, and Quebec, the Quebec Litigation Plaintiffs, the TRW Claimants represented by Wagners, the “tobacco light class action plaintiffs”, and the Tobacco Growers’ Marketing Board.

“**Monitor**” means FTI Consulting Canada Inc.

“**Monitor’s Reports**” means collectively, the Pre-Filing Report, the First Report, the Second Report, the Third Report, the Fourth Report, the Fifth Report, the Sixth Report, the Seventh Report, the Eighth Report, the Ninth Report, the Tenth Report, the Eleventh Report, the Twelfth Report, the Thirteenth Report, the Fourteenth Report, the Fifteenth Report, and this Report.

“**MSA**” means the Supply of Marketing Services Agreement between ITCAN and Nicoventures Trading Limited, an affiliate of ITCAN.

“**New Excise Act Security Order**” means the order issued on July 11, 2022, authorizing ITCAN to post security as required by certain amendments to the Excise Act and to take any steps necessary to otherwise comply with the requirements of such security

“**NDA**” means a non-disclosure agreement for the purposes of gaining access to the Data Rooms.

“**Ninth Report**” means the report filed by the Monitor on March 19, 2021.

“**October Endorsement**” means an Endorsement of the Court, dated October 18, 2019, providing reasons for the March 2020 Stay Extension Order and the deferment of the issue of certain payments to BAT Mexico.

“**PMI Group**” means Philip Morris International Inc. and all entities related to or affiliated with it, other than Rothmans.

“**Pre-Filing Report**” means the report filed by the Monitor on March 12, 2019, in its capacity as proposed Monitor of Imperial, in connection with Imperial’s initial application for relief under the CCAA.

“**Professional Fee Disclosure Order**” means an order of the Court which authorized, among other things, the disclosure of the professional restructuring fees in these CCAA Proceedings by the Monitor on or before the 15th of every month, beginning with June 2019.

“**Provinces**” means all of the provinces of Canada.

“**Quebec Appeal Judgment**” means the Court of Appeal of Quebec’s decision on the appeal of the Quebec Judgment issued March 1, 2019.

“**Quebec Judgment**” means the Quebec Superior Court’s judgment on the “Letourneau action” and the “Blais action” released on May 27, 2015 and corrected on June 9, 2015.

“**Quebec Litigation Plaintiffs**” means, collectively, the representative plaintiffs and the certified class members in each of the “Letourneau action” and the “Blais action”, as described in the March 12, 2019 Thauvette Affidavit.

“**Quebec Tobacco Tax**” means the new tax on the purchase and sale of tobacco products introduced in the Province of Quebec, which came into effect on February 9, 2023.

“**Report**” means this Sixteenth Report of the Monitor filed on September 20, 2023.

“**Representative Counsel Order**” means the order by the Court on December 9, 2019, appointing Wagners as representative counsel to the TRW Claimants.

“**Rothmans**” means Rothmans Benson & Hedges Inc.

“**Second Amended and Restated Initial Order**” means the Initial Order, as amended and restated as of April 25, 2019.

“**Second Report**” means the report filed by the Monitor on April 24, 2019.

“**September 2021 Stay Extension Order**” means an order of the Court, dated March 30, 2021, extending the length of the Stay of Proceedings to September 30, 2021

“**September 2022 Stay Extension Order**” means an order of the Court, dated September 29, 2022, extending the length of the Stay of Proceedings to March 31, 2023.

“**September 2023 Stay Extension Order**” means an order of the Court, dated March 30, 2023, extending the length of the Stay of Proceedings to September 29, 2023.

“**September 2023 Thauvette Affidavit**” means the Affidavit of Eric Thauvette, Vice President and Chief Financial Officer of ITCAN, sworn September 13, 2023.

“**Seventh Report**” means the report filed by the Monitor on February 13, 2020.

“**Shapiro**” means Daniel Shapiro Legal Professional Corporation.

“**Sixth Report**” means the report filed by the Monitor on November 26, 2019.

“**Stay of Proceedings**” means the stay of proceedings during the Stay Period in favour of Imperial and their non-applicant subsidiaries, including Liggett & Meyers Tobacco Company of Canada Limited, as well as a limited stay in favour of BAT and certain BAT affiliates.

“**Stay Period**” means the term of the Stay of Proceedings, to March 31, 2023.

“**Tenth Report**” means the report filed by the Monitor on September 20, 2021.

“**Third Report**” means the report filed by the Monitor on May 13, 2019.

“**Thirteenth Report**” means the report filed by the Monitor on September 23, 2022.

“**Tobacco CCAA Proceedings**” means these CCAA Proceedings, Court File No. 19-CV-615862-00CL commenced by JTIM under the CCAA and Court File No. CV-19-616779-00CL commenced by Rothmans under the CCAA.

“**Tobacco Claims**” means all claims brought or that could be brought under applicable law against the Applicants 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.

“**Tobacco Monitors**” means, collectively, the Monitor, EY in its capacity as monitor for Rothmans, and Deloitte in its capacity as monitor for JTIM.

“**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, 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, but does not include heat-not-burn tobacco products or Vapour Products.

“**Tobacco-Related Wrongs**” means all claims or causes of action in respect of: (i) the development, manufacture, production, importation, marketing, advertising, distribution, purchase or sale of Tobacco Products; (ii) the historical or ongoing use of or exposure to Tobacco Products; or (iii) any representation in respect of Tobacco Products, including, without limitation, claims for contribution or indemnity, personal injury or tort damages, restitutionary recovery, non-pecuniary damages or claims for recovery grounded in provincial consumer protection legislation, but does not include the Excluded Claims.

“**TRW Claimants**” means all individuals (including their respective successors, heirs, assigns, litigation guardians and designated representatives under applicable provincial family law legislation) who assert or may be entitled to assert a claim or cause of action as against one or more of the Applicants, the ITCAN subsidiaries, the BAT Group, the JTIM Group or the PMI Group,

or persons indemnified by such entities, in respect of Tobacco-Related Wrongs in Canada, or in the case of the Applicants, anywhere else in the world.

“**Twelfth Report**” means the twelfth report of the Monitor filed on July 8, 2022.

“**U.S.**” means the United States of America.

“**U.S. Bankruptcy Code**” means title 11 of the United States Code.

“**U.S. Bankruptcy Court**” means the United States Bankruptcy Court for the Southern District of New York.

“**U.S. Counsel**” means Morgan, Lewis & Bockius LLP, U.S. counsel to the Monitor.

“**Vapour Products**” means potential reduced risk, rechargeable, battery-powered devices that heat liquid formulations – e-liquids – to create a vapour which is inhaled, and which are sold under the tradename of Vype/Vuse.

“**Wagners**” means The Law Practice of Wagner & Associates, Inc.

APPENDIX “B” ORDERS

Please see below for a description of the orders issued by the Court and the U.S. Bankruptcy Court in these CCAA Proceedings.

1. Initial Order:

The Initial Order of the Ontario Superior Court of Justice (Commercial List) made on March 12, 2019, as amended and restated as of April 5, 2019 and further amended and restated as of April 25, 2019, pursuant to which:

- (a) Imperial was granted an initial stay of proceedings under the CCAA until April 11, 2019; and
- (b) FTI was appointed as the Monitor.

A copy of the Initial Order can be found [here](#).

2. Comeback Motion:

The Comeback Motion was heard on April 4 and 5, 2019. Following the Comeback Motion:

- (a) the Court issued an order dated April 5, 2019 extending the Stay of Proceedings to June 28, 2019, a copy of which can be found [here](#);
- (b) the Court issued the Insurance Lift-Stay Order dated April 5, 2019, partially lifting the Stay of Proceedings to allow the Quebec Litigation Plaintiffs to seek the approval of certain insurance settlements, a copy of which can be found [here](#); and
- (c) the Court issued an order dated April 5, 2019 amending and restating the Initial Order and appointing Hon. Warren K. Winkler, Q.C. as the Court-Appointed Mediator, a copy of which can be found [here](#).

3. Foreign Recognition Order:

On April 17, 2019, the U.S. Bankruptcy Court issued the Foreign Recognition Order recognizing the CCAA Proceedings as the main proceedings and staying proceedings against ITCAN in the United States. The Foreign Recognition Order can be found [here](#).

4. Second Amended and Restated Initial Order:

The Second Amended and Restated Initial Order was issued following the continuation of the Comeback Motion on April 25 and 26, 2019, a copy of which can be found [here](#).

5. Representation Order:

On April 25, 2019, the Court issued the Representation Order appointing Ari Kaplan of Kaplan Law as representative counsel to Robert M. Brown and George A. Foster, the court-appointed representatives of all persons with entitlements under certain retirements plans, including survivors and beneficiaries of such persons and any other person under the Representation Order. A copy of the Representation Order can be found [here](#).

6. Order to Amend the Ontario Claim:

On April 29, 2019, the Court issued the Order to Amend the Ontario Claim, partially lifting the Stay of Proceedings to permit the Province of Ontario to seek leave to amend its Amended Fresh as Amended Statement of Claim in the proceedings related to Ontario's HCCR Claims. A copy of the Order to Amend the Ontario Claim can be found [here](#).

7. Notice Procedure Order:

On May 14, 2019, the Court issued the Notice Procedure Order, which among other things, appointed Vivian Bennan-Dolezar as an additional representative to the represented parties under the Representation Order and approved the form and manner of notice of the Settlement Approval Hearing to such represented parties. A copy of the Notice Procedure Order can be found [here](#).

8. Professional Fee Disclosure Order:

The Professional Fee Disclosure Order was issued on May 14, 2019 and can be found [here](#).

9. Communication and Confidentiality Protocol Endorsement:

On May 24, 2019, the Court issued the Communication and Confidentiality Protocol Endorsement, pursuant to which the Court approved the communication and confidentiality protocol as between the Court and the Court-Appointed Mediator. A copy of the Communication and Confidentiality Protocol Endorsement can be found [here](#).

10. Clarification of Insurance Lift-Stay Order:

On May 31, 2019, the Court issued the Clarification of Insurance Lift-Stay Order which clarified the scope of the Insurance Lift-Stay Order. A copy of the Clarification of Insurance Lift-Stay Order can be found [here](#).

11. October Stay Extension Order:

The October Stay Extension Order was issued on June 26, 2019 and extended the Stay of Proceedings to October 4, 2019. A copy of the October Stay Extension Order can be found [here](#).

12. Genstar Settlement Approval Order:

The Genstar Settlement Approval Order was issued on June 26, 2019, approving, among other things (i) the settlement entered into on April 25, 2019 between ITCAN and Robert M. Brown and

George A. Foster, as representatives in respect of those certain retirement plans; and (ii) the distribution of the proceeds of such settlement among all persons with entitlements under certain retirements plans, including survivors and beneficiaries of such persons and any other person under the Representation Order. A copy of the Genstar Settlement Approval Order can be found [here](#).

13. Order Appointing a Financial Advisor to the Court-Appointed Mediator:

The Order Appointing a Financial Advisor to the Court-Appointed Mediator was issued on June 27, 2019, which appointed Alvarez & Marsal Canada Inc. as the financial advisor to the Court-Appointed Mediator. A copy of the Order Appointed a Financial Advisor to the Court-Appointed Mediator can be found [here](#).

14. Court-to-Court Communications Order:

On July 9, 2019, the Court issued the Court-to-Court Communications Order, approving court-to-court communications between the Court, the U.S. Bankruptcy Court and any other court in any province or territory of Canada. A copy of the Court-to-Court Communications Order can be found [here](#).

15. Order Recognizing the Genstar Settlement Approval Order:

The U.S. Bankruptcy Court granted an order recognizing the Genstar Settlement Approval Order on July 18, 2019. A copy of which can be found [here](#).

16. Order Recognizing the Court-to-Court Communications Order:

The U.S. Bankruptcy Court granted an order recognizing the Court-to-Court Communications Order on September 5, 2019. A copy of which can be found [here](#).

17. March 2020 Stay Extension Order and October Endorsement:

The March 2020 Stay Extension Order was issued on October 2, 2019 and extended the Stay of Proceedings to March 12, 2020. A copy of the March 2020 Stay Extension Order can be found [here](#). Justice McEwen released the October Endorsement on October 18, 2019 providing reasons for the March 2020 Stay Extension Order and the deferment of the issue of certain payments to BAT Mexico. A copy of the October Endorsement can be found [here](#).

18. Representative Counsel Order:

The Representative Counsel Order was issued on December 9, 2019 and appointed Wagners as representative counsel to the TRW Claimants. A copy of the Representative Counsel Order can be found [here](#).

19. September Stay Extension Order:

The September Stay Extension Order was issued on February 20, 2020 and extended the Stay of Proceedings to September 30, 2020. A copy of the September Stay Extension Order can be found [here](#).

20. Notice Protocol Endorsement:

The Notice Protocol Endorsement was issued on March 6, 2020 and further amended the Second Amended and Restated Initial Order by adding paragraphs to govern the notice protocol for moving and responding parties in the CCAA Proceedings. A copy of the Notice Protocol Endorsement can be found [here](#).

21. Limited Lift of Stay Order:

The Limited Lift of Stay Order was issued on March 16, 2020 and partially lifted the Stay of Proceedings to allow ITCAN to be added as a respondent to the application brought by the City of Ottawa bearing Court File No. 19-81809. A copy of the Limited Lift of Stay Order can be found [here](#).

22. Consultant Order:

The Consultant Order was issued on September 15, 2020 and appointed Shapiro as consultant to the Court-Appointed Mediator. A copy of the Consultant Order can be found [here](#).

23. March 2021 Stay Extension Order:

The March 2021 Stay Extension Order was issued on September 29, 2020, extending the Stay of Proceedings to March 31, 2021. A copy of the March 2021 Stay Extension Order can be found [here](#).

24. September 2021 Stay Extension Order:

The September 2021 Stay Extension Order was issued on March 30, 2021, extending the Stay of Proceedings to September 30, 2021. A copy of the September 2021 Stay Extension Order can be found [here](#).

25. March 2022 Stay Extension Order:

The March 2022 Stay Extension Order was issued on September 27, 2021, extending the Stay of Proceedings to March 31, 2022. A copy of the March 2022 Stay Extension Order can be found [here](#).

26. September 2022 Stay Extension Order:

The September 2022 Stay Extension Order was issued on March 22, 2022, extending the Stay of Proceedings to September 30, 2022. A copy of the September 2022 Stay Extension Order can be found [here](#).

27. New Excise Act Security Order:

The New Excise Act Security Order was issued on July 11, 2022, authorizing ITCAN to post security as required by certain amendments to the Excise Act in an aggregate amount not exceeding

\$5 million, and to take any steps necessary to otherwise comply with the requirements of such security. A copy of the New Excise Act Security Order can be found [here](#).

28. March 2023 Stay Extension Order:

The March 2023 Stay Extension Order was issued on September 29, 2022, extending the Stay of Proceedings to March 31, 2023. A copy of the March 2023 Stay Extension Order can be found [here](#).

29. HSF Representation Motion Leave Hearing Order and Endorsement:

The HSF Representation Motion Leave Hearing Order and Endorsement was issued by the Court on February 14, 2023, setting a hearing date of April 14, 2023 for the hearing on whether to grant the HSF Leave Motion, by which HSF seeks leave to bring the HSF Representation Motion. A copy of the endorsement in respect of the HSF Representation Motion Leave Hearing Order and Endorsement can be found [here](#). A copy of the HSF Representation Motion can be found [here](#).

30. September 2023 Stay Extension Order:

The September 2023 Stay Extension Order was issued on March 30, 2022, extending the Stay of Proceedings to September 29, 2023. A copy of the September 2023 Stay Extension Order can be found [here](#).

31. HSF Leave Motion Endorsement:

The HSF Leave Motion Endorsement was issued on June 26, 2023 denying the HSF Leave Motion, which sought leave to bring the HSF Representation Motion. A copy of the HSF Leave Motion Endorsement can be found [here](#).

APPENDIX "C"
PROTOCOL FOR MOTION BY ZOOM VIDEO CONFERENCE

Please see attached.

PROTOCOL FOR MOTION BY ZOOM VIDEO CONFERENCE

Scheduling and Specific Requirements

1. Any person on the Service List that wishes to appear virtually on the motion (“**Participants**”) must register by 4:00 p.m. two (2) business days in advance of the hearing (Monday, September 25, 2023 for the motion scheduled Wednesday, September 27, 2023), by emailing Veritext Litigation Solutions Canada, Inc. (scheduling@neesonsreporting.com) and copying each Monitor’s counsel (tbarbiero@dwpv.com, sfernandes@cassels.com, nancy.thompson@blakes.com). In their email, Participants should provide contact information, including their name, the party they are acting for, their email address and phone number for the counsel slip, along with a statement regarding whether they intend to make submissions.
2. Subject to the Court’s overriding discretion over all matters, Monitors’ counsel will coordinate with Participants and the Court to develop an agenda for the hearing.
3. All material for use on the motion is to be posted on CaseLines, as more fully described in Appendix “B”.
4. Participants will appear by video. Veritext will distribute the Zoom link to Participants. Participants are not permitted to forward or share the Zoom link. No person should have access to the hearing on Zoom other than Participants. If a Participant is unable to attend by video, they should contact Monitors’ counsel. Participants should carefully review the technical requirements below.
5. Counsel are required to gown for the hearing.
6. For access by the general public, a YouTube link will be posted on each of the Monitors’ websites by 10:00 a.m. not less than two (2) business days prior to the hearing. The YouTube link will allow the general public to view a livestream of the hearing, but not participate in the hearing. For greater clarity, individuals viewing the livestream via YouTube will not be heard or seen by the Court, Judge or Participants.
7. No recording of any part of the hearing (including audio) may be made unless authorized in advance by the Court.
8. For greater certainty, notice and service requirements are set out in the Rules of Civil Procedure and the various orders and endorsements in the proceedings. For ease of reference, we have included paragraphs 58-63 of the Second Amended and Restated Initial Order dated March 8, 2019 in the JTIM proceedings, attached as Appendix “A”. It should be noted that similar

notice and service requirements have been set out in various orders and endorsements in the parallel proceedings of Imperial and RBH. Nothing in this protocol modifies or amends Orders of the Court related to service requirements, the Rules of Civil Procedure, any Commercial List Practice Direction or other applicable rules.

9. Participants will be placed into a virtual waiting room upon entering the Zoom meeting.

Technical Requirements for Zoom Participants

10. Participants will require a device with a working microphone and camera. The device can be a computer (desktop or laptop), tablet or smartphone. The device must be connected to an internet connection that is sufficient to send and receive video and audio.

11. Each Participant is responsible for ensuring that they have suitable equipment to participate in the hearing and that such equipment works properly. Participants must test such equipment well in advance of the scheduled hearing to ensure:

- (a) that they are familiar with how to use such equipment;
- (b) the compatibility and functioning of such equipment; and
- (c) that the remote location has adequate internet bandwidth to support the use of Zoom without interruption.

12. Each Participant is also responsible for ensuring that they are familiar with the features and operation of Zoom. Participants must ensure that they have downloaded any necessary software, and practiced using Zoom, well in advance of the scheduled hearing.

13. Counsel on Zoom should identify their display name in the following format: [First Name] [Last name], for [Client].

14. Participants should log on using the Zoom link provided approximately 30 minutes before the hearing is scheduled to begin. During this time, Participants should speak to each other to determine if there are any audio/visual/connection issues.

15. It is suggested that Participants use the “gallery view” mode, rather than the “active speaker” mode, available on Zoom.

16. It is suggested that only counsel who are making submissions turn on their cameras during the hearing.

17. Should a Participant become disconnected from Zoom or experience technical difficulties during the hearing, they should immediately inform the Court by sending an email to Veritext Litigation Solutions Canada, Inc. (scheduling@neesonsreporting.com).

18. Further participant information is included in Appendix "B."

APPENDIX "A"

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

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

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

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

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

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

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

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

APPENDIX "B"

1. All Participants will have their microphones muted and may only unmute their own microphones when they are addressing the Court. When parties are not muted, they must avoid making extraneous noise (including for example, typing and shuffling papers) as these noises may interfere with the hearing.
2. Participants must ensure that they participate in the Zoom hearing from a well-lit room so that they are easily visible. Participants must also ensure that no filters are active that may distort or otherwise conceal their appearance.
3. Participants must ensure that they participate in the Zoom hearing from a quiet location where they (and the Court) will not be interrupted or disturbed during the hearing.
4. All mobile devices must be turned off or put on silent mode during the hearing.
5. Participants must refrain from speaking over other Participants.
6. Participants should make submissions in accordance with the order set out in the agenda. If there is a need to make submissions out of sequence, Participants should make a request in a manner directed by the Court. The Court may ask Participants to signal when they intend to address the Court by raising their hand (either by physically raising their hand or by using the virtual "raise hand" feature in Zoom).
7. Participants must state their name and who they represent before addressing the Court.
8. Upon entry into the virtual waiting room, each Participant joining by video should identify themselves, including any person off camera that may be viewing the video feed. This also allows any audio or visual issues to be identified. Each Participant is obligated to immediately notify the presiding judge if any additional person joins them in viewing the video feed.
9. If a Participant intends to rely on any documents, the materials you intend to rely on must be served and shared on the relevant CaseLines bundle and all references during the hearing should reference the CaseLines page numbering associated with such CaseLines bundle.
10. If a party wishes to share certain documents during the hearing, the documents should be provided to the Monitors in advance so that it can be added to the agenda and a method for sharing can be set up.

APPENDIX "D"
CASH FLOW FORECAST

Please see attached.

Imperial Tobacco Canada Limited

CCAA Cash Flow Forecast

(CAD\$ in thousands)

Week Beginning (Monday)	4-Sep-23	11-Sep-23	18-Sep-23	25-Sep-23	2-Oct-23	9-Oct-23	16-Oct-23	23-Oct-23	30-Oct-23	6-Nov-23	13-Nov-23	20-Nov-23	27-Nov-23	4-Dec-23	11-Dec-23
Forecast Week	1	2	3	4	5	6	7	8	9	10	11	12	13	14	15
RECEIPTS															
Trade Receipts	87,836	88,871	87,395	86,376	88,076	84,700	86,929	85,595	90,161	89,028	87,266	86,881	74,635	73,773	73,155
DISBURSEMENTS															
Operating Disbursements															
Taxes and Levies	-	(72,516)	(28,397)	(29,533)	(150,820)	(35,599)	(59,564)	(3,305)	(145,217)	-	(60,094)	(26,268)	(128,415)	-	(58,520)
Operations	(8,550)	(9,637)	(11,201)	(28,227)	(11,880)	(6,632)	(5,895)	(18,639)	(11,349)	(6,171)	(5,565)	(17,527)	(35,557)	(2,155)	(8,385)
Total Operating Disbursements	(8,550)	(82,153)	(39,598)	(57,759)	(162,699)	(42,231)	(65,458)	(21,944)	(156,567)	(6,171)	(65,659)	(43,795)	(163,972)	(2,155)	(66,906)
OPERATING CASH FLOWS	79,286	6,719	47,797	28,616	(74,624)	42,468	21,471	63,651	(66,405)	82,857	21,606	43,086	(89,337)	71,618	6,250
<i>Financing Income</i>															
Interest and Related Fees	-	-	-	6,359	4,311	-	-	-	12,486	-	-	-	14,743	-	-
Restructuring Disbursements															
Professional Fees	(820)	(200)	(200)	(200)	(200)	(200)	(200)	(200)	(200)	(200)	(200)	(200)	(200)	(200)	(200)
NET CASH FLOWS	78,466	6,519	47,598	34,776	(70,513)	42,268	21,271	63,452	(54,119)	82,657	21,406	42,886	(74,794)	71,418	6,050
CASH															
Beginning Balance	3,650,616	3,729,082	3,735,601	3,783,198	3,817,974	3,747,461	3,789,730	3,811,001	3,874,452	3,820,333	3,902,990	3,924,397	3,967,283	3,892,489	3,963,907
Net Cash Inflows / (Outflows)	78,466	6,519	47,598	34,776	(70,513)	42,268	21,271	63,452	(54,119)	82,657	21,406	42,886	(74,794)	71,418	6,050
ENDING CASH	3,729,082	3,735,601	3,783,198	3,817,974	3,747,461	3,789,730	3,811,001	3,874,452	3,820,333	3,902,990	3,924,397	3,967,283	3,892,489	3,963,907	3,969,957

Notes to the CCAA Forecast:

- [1] The purpose of this cash flow forecast is to estimate the liquidity requirements of the Company during the forecast period.
- [2] Forecast Trade Receipts include collections from the sale of tobacco-related products and other categories, net of returns, and inclusive of sales taxes. The sales forecast is based on historical sales patterns, seasonality, and current management's expectations. The cash flow forecast includes certain price increases. The Company's ability to maintain the price increase is dependent on market conditions.
- [3] Forecast Taxes and Levies disbursements reflect the remittance of the federal excise tax, provincial tobacco taxes, sales taxes, and the Company's corporate income taxes.
- [4] Forecast Operations disbursements include employee-related costs, selling, general, administrative costs and intercompany costs. Intercompany costs include costs relating to the purchase of tobacco-related products and other categories, and services including: innovation fees, consulting and advisory fees, IT-related costs, product development and testing, accounting and human resources. Included in the intercompany costs is a disbursement of \$5.5 million to BAT Mexico for costs associated with the retirement of certain equipment and materials that are obsolete after the implementation of the Tobacco Products Regulations (Plain and Standardized Appearance).
- [5] Forecast Interest and Related Fees reflect interest income earned net of any sundry payments relating to existing facilities.
- [6] Forecast Professional Fees include fees for the Company's Counsel, the Monitor, the Monitor's Counsel, the Company's US Counsel, the Monitor's US Counsel, the US Noticing Agent, the Court-Appointed Mediator, the Court-Appointed Mediator's Counsel and the Representative Counsel for the TRW Claimants.

Imperial Tobacco Canada Limited

CCAA Cash Flow Forecast

(CAD\$ in thousands)

Week Beginning (Monday)	18-Dec-23	25-Dec-23	1-Jan-24	8-Jan-24	15-Jan-24	22-Jan-24	29-Jan-24	5-Feb-24	12-Feb-24	19-Feb-24	26-Feb-24	4-Mar-24	11-Mar-24	18-Mar-24	25-Mar-24	30-Mar-24	30-Week Total
RECEIPTS																	
Trade Receipts	96,079	117,848	54,338	60,803	51,804	53,179	60,766	63,931	62,006	67,118	70,714	72,539	73,800	72,633	80,822		2,329,707
DISBURSEMENTS																	
Operating Disbursements																	
Taxes and Levies	(20,233)	(91,313)	(34,799)	(42,856)	(24,507)	(34,822)	(117,472)	-	(39,585)	(14,755)	(110,595)	-	(38,246)	(17,304)	(117,051)		(1,501,707)
Operations	(46,894)	(7,173)	(6,885)	(8,733)	(4,260)	(41,918)	(7,813)	(5,744)	(6,090)	(48,143)	(11,083)	(5,582)	(6,042)	(29,055)	(60,785)		(483,571)
Total Operating Disbursements	(67,127)	(98,487)	(41,684)	(51,589)	(28,767)	(76,740)	(125,285)	(5,744)	(45,675)	(62,898)	(121,678)	(5,582)	(44,288)	(46,360)	(177,836)		(1,985,357)
OPERATING CASH FLOWS	28,952	19,361	12,654	9,214	23,037	(23,560)	(64,519)	58,187	16,331	4,220	(50,964)	66,957	29,512	26,273	(97,014)		343,100
<i>Financing Income</i>																	
Interest and Related Fees	-	7,450	8,029	-	-	-	15,936	-	-	-	14,946	-	-	-	7,721		91,991
Restructuring Disbursements	(200)	(200)	(200)	(200)	(200)	(200)	(200)	(200)	(200)	(200)	(200)	(200)	(200)	(200)	(200)		(6,000)
Professional Fees	(200)	(200)	(200)	(200)	(200)	(200)	(200)	(200)	(200)	(200)	(200)	(200)	(200)	(200)	(200)		(6,000)
NET CASH FLOWS	28,753	26,612	20,484	9,014	22,837	(23,760)	(48,783)	57,988	16,132	4,021	(36,218)	66,757	29,312	26,073	(89,493)		429,091
CASH																	
Beginning Balance	3,969,957	3,998,710	4,025,321	4,045,805	4,054,819	4,077,656	4,053,896	4,005,113	4,063,101	4,079,233	4,083,253	4,047,035	4,113,793	4,143,105	4,169,178		3,650,075
Net Cash Inflows / (Outflows)	28,753	26,612	20,484	9,014	22,837	(23,760)	(48,783)	57,988	16,132	4,021	(36,218)	66,757	29,312	26,073	(89,493)		429,091
ENDING CASH	3,998,710	4,025,321	4,045,805	4,054,819	4,077,656	4,053,896	4,005,113	4,063,101	4,079,233	4,083,253	4,047,035	4,113,793	4,143,105	4,169,178	4,079,685		4,079,685

Notes to the CCAA Forecast:

- [1] The purpose of this cash flow forecast is to estimate the liquidity requirements of the Company during the forecast period.
- [2] Forecast Trade Receipts include collections from the sale of tobacco-related products and other categories, net of returns, and inclusive of sales taxes. The sales forecast is based on historical sales patterns, seasonality, and current management's expectations. The cash flow forecast includes certain price increases. The Company's ability to maintain the price increase is dependent on market conditions.
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- [5] Forecast Interest and Related Fees reflect interest income earned net of any sundry payments relating to existing facilities.
- [6] Forecast Professional Fees include fees for the Company's Counsel, the Monitor, the Monitor's Counsel, the Company's US Counsel, the Monitor's US Counsel, the US Noticing Agent, the Court-Appointed Mediator, the Court-Appointed Mediator's Counsel and the Representative Counsel for the TRW Claimants.

APPENDIX “E”
REGULATION OF TOBACCO AND VAPOUR PRODUCTS

Please see below for a summary of the tobacco and vaping regulations that are being considered and implemented across Canada since the date of the Fifteenth Report.

Tobacco

1. **Federal:** On August 1, 2023, the Canadian government promulgated the *Regulations Amending the Tobacco Products Regulations (Plain and Standardized Appearance)*, which, amongst other things, require health warnings to be labelled directly on individual cigarettes. The regulations will be implemented via a phased approach and with different implementation timelines for manufacturers and retailer.
2. **Federal:** On August 1, 2023, the Canadian government promulgated the *Order Amending Schedule 1 to the Tobacco and Vaping Products Act*, which permits the use of colouring agents to whiten the tipping paper of cigarettes, of light cigars where present and of tubes, where a white background for the health and warning is required.

Vaping

1. **Quebec:** On August 2, 2023, the Quebec government published new regulations under the *Regulation under the Tobacco Control Act* that will, amongst other things, prohibit the sale of flavoured vaping products in the province. These regulations come into effect October 31, 2023.
2. **Federal:** On June 21, 2023, the Canadian government published the *Vaping Products Reporting Regulations*, which introduce a requirement to report on sales of vapour devices and consumables as well as on the ingredients used in said consumables. The first of said reports will be due on December 31, 2023, with continuing reports being due biannually.

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

**SIXTEENTH REPORT OF THE MONITOR
SEPTEMBER 20, 2023**

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

**Imperial Tobacco Canada Limited and
Imperial Tobacco Company Limited**

FIFTEENTH REPORT OF THE MONITOR

March 22, 2023

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Appendix “E” Regulation of Tobacco and Vapour Products

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

**FIFTEENTH REPORT TO THE COURT
SUBMITTED BY FTI CONSULTING CANADA INC.,
IN ITS CAPACITY AS MONITOR**

A. GENERAL

1. This Report addresses Imperial's Motion for a Stay Extension returnable March 28, 2023 and various other issues.
2. In this Report, unless otherwise defined, all capitalized terms shall have the respective meanings specified in the glossary attached to this Report as Appendix "A". The first instance of each capitalized term, if defined in the glossary, is bookmarked to the glossary.

B. INTRODUCTION

3. The principal purpose of these CCAA Proceedings and their related Chapter 15 Proceedings is to restructure and compromise Imperial's liabilities; specifically, the liabilities arising from the Tobacco Claims, including the Quebec Appeal Judgment.
4. The Initial Order in these CCAA Proceedings was issued by the Court on March 12, 2019, amended and restated on April 5, 2019, further amended and restated on April 25, 2019, and updated by written endorsement on March 6, 2020. On April 17, 2019, the U.S. Bankruptcy Court issued the Foreign Recognition Order recognizing the CCAA Proceedings as the main proceedings and staying proceedings against ITCAN in the United States.

5. A list of the Orders issued by the Court and the U.S. Bankruptcy Court in these CCAA Proceedings can be found in Appendix “B” to this Report.

C. BACKGROUND

6. Imperial is the largest distributor of Tobacco Products in Canada. It operates two businesses: tobacco and logistics. The tobacco business includes the marketing and sale of Tobacco Products and Vapour Products. The logistics business distributes Tobacco Products and Vapour Products for tobacco manufacturers along with certain non-tobacco products.
7. Imperial is highly integrated with BAT and its affiliates. It benefits from a wide range of services, licences, and rights that certain BAT affiliates provide. These services and functions have been and continue to be vital to Imperial’s business.
8. Further information regarding these CCAA Proceedings and a background on Imperial have been provided in previous Monitor’s Reports.
9. All Court materials filed and orders issued in these CCAA Proceedings and the related Chapter 15 Proceedings are available on the Monitor’s website at: <http://cfcanada.fticonsulting.com/imperialtobacco>.

D. TERMS OF REFERENCE AND DISCLAIMER

10. In preparing this Report, the Monitor has relied upon certain financial information and forecasts prepared by Imperial as well as discussions and correspondence with senior management and advisors to Imperial, amongst others. The Monitor has not audited or otherwise attempted to verify the accuracy or completeness of this information. Accordingly, the Monitor expresses no opinion or other form of assurance respecting the information contained in this Report or relied on in its preparation. Forward-looking financial information reported or relied upon in preparing this Report is based on Imperial management’s assumptions regarding future events. Actual results may diverge from such forecasts, and these variations may be material.

11. Unless otherwise stated, all monetary amounts contained herein are expressed in Canadian Dollars.
12. This Report should be read in conjunction with the March 2023 Thauvette Affidavit, which can be found [here](#).

E. PURPOSE OF THIS REPORT

13. The purpose of this Report is to provide the Court with information regarding:
 - i. an update on the Mediation;
 - ii. Imperial's business activities, industry developments, and trends impacting Imperial's business;
 - iii. Imperial's budget to actual cash-flow results for the 26-week period ending March 5, 2023;
 - iv. the Cash Flow Forecast for the 30-week period commencing the week of March 6, 2023, through the week of September 25, 2023;
 - v. the activities of the Monitor and its counsel since September 23, 2022, the date of the Thirteenth Report;
 - vi. Imperial's request for an order extending the Stay of Proceedings up to and including September 29, 2023; and
 - vii. the Monitor's comments and recommendations in respect of the foregoing matters.

F. UPDATE ON COURT PROCEEDINGS

14. On September 28, 2022, the Court heard a motion seeking the extension of the Stay of Proceedings and, on September 29, 2022, issued the March 2023 Stay Extension Order, which extended the Stay Period to March 31, 2023. A copy of the March 2023 Stay Extension Order can be found [here](#).

15. On February 14, 2023, the Court issued the HSF Representation Motion Leave Hearing Order and Endorsement, which set April 14, 2023 as the date for the hearing on whether the HSF Leave Motion, which seeks leave to bring the HSF Representation Motion, should be granted. If leave is granted, there will be a subsequent hearing on whether the HSF Representation Motion should be allowed. A copy of the endorsement in respect of the HSF Representation Motion Leave Hearing Order and Endorsement can be found [here](#).
16. On March 14, 2023, the Tobacco Monitors each issued a report, the Monitor's Fourteenth Report among them, commenting on the HSF Leave Motion. The Tobacco Monitors' respective reports each contain an appendix outlining the Tobacco Monitors' joint submission to the Court concerning the HSF Leave Motion (see Appendix "A" to the Monitor's Fourteenth Report). A copy of the Monitor's Fourteenth Report can be found [here](#).
17. The hearing on the Motion for a Stay Extension returnable March 28, 2023 will proceed by Zoom Video Conference according to the protocol developed by counsel to the Tobacco Monitors and approved by the Court. The general public will have access to the hearing via a secure, dedicated YouTube livestream. This protocol has been served on the consolidated service list, is posted on the Monitor's website and can be found in Appendix "C" to this Report.

G. UPDATE ON THE MEDIATION

18. The Monitor continues to work with Imperial to populate the Imperial Data Room with financial and other information relevant to these CCAA Proceedings and to respond to information requests. The Imperial Data Room is accessible only to those advisors of Mediation Participants who have executed NDAs.
19. The Court-Appointed Mediator, with the assistance of the Tobacco Monitors, has continued to conduct the Mediation and engage in meaningful discussions with the Mediation Participants. Although the Mediation is confidential, the Monitor can report that

the parties are continuing to advance the Mediation with a view to facilitating a pan-Canadian global settlement of the Tobacco Claims.

H. IMPERIAL'S BUSINESS ACTIVITIES, INDUSTRY DEVELOPMENTS AND TRENDS IMPACTING IMPERIAL'S BUSINESS

(i) Changes in BAT and Imperial's Management and Structure

20. On January 31, 2023, BAT announced that it would be making changes to its management and adopting a new regional structure with a view to streamlining and accelerating the transformation of its business, including the implementation of fewer but larger business units across the globe. The full announcement can be found [here](#).
21. Imperial has advised the Monitor that the BAT reorganization plan will impact 60 positions at Imperial, resulting in approximately 30 layoffs with estimated severance costs of \$2.5 million and forecasted annual cost savings of approximately \$8 million.
22. The Monitor has been advised that, effective April 2023, Roberta Palazzetti will assume the role of Chief Executive Officer at Imperial, with current Chief Executive Officer Ralf Wittenberg transitioning out of his existing roles with the company. Ms. Palazzetti was most recently the Chief Executive Officer of BAT Italy and Area Director for BAT Southern Europe.

(ii) Consultations with Health Canada on Proposed Packaging Regulations

23. Imperial has advised the Monitor that it has responded to a Health Canada consultation regarding packaging and labeling regulations that would require warning labels on individual cigarettes, among other packaging changes, as set out in the proposed *Regulations Amending the Tobacco Products Regulations (Plain and Standardized Appearance)* published by the Canadian government on June 11, 2022. While the timing and implementation of these proposed regulations remain uncertain, Imperial is continuing to assess the impact on its business.

(iii) Quebec's Tobacco Tax Increase

24. On February 9, 2023, a planned increase in the Quebec Tobacco Tax applicable to the purchase and sale of tobacco products in Quebec, came into effect. The Quebec Tobacco Tax was raised from \$29.80 to \$37.80 per carton of 200 cigarettes.

(iv) Nicoventures Vapour Products

25. Nicoventures' 2022 financial performance showed revenues growing by over 30 percent, which was driven mainly by the launch of a disposable-device product line towards the end of the year.

(v) Vuse Store Openings

26. As part of Imperial's strategy to market its "Vuse" Vapour Products, it has opened additional Vuse retail stores. As of the date of this Report, ITCAN currently operates eight Vuse stores and anticipates opening two additional Vuse stores by the end of 2023.

I. RECEIPTS AND DISBURSEMENTS FOR THE 26-WEEK PERIOD ENDING MARCH 5, 2023

27. Imperial's cash balance as of the week ended March 5, 2023 was \$3,096 million, as compared to the forecasted cash balance of \$3,095 million. The actual net cash flows of Imperial were approximately \$199 million, as compared to the forecasted net cash inflow of \$209 million over the 26-week period resulting in a negative variance of \$11 million, as explained below:

VARIANCE REPORT	Actuals	Forecast	Variance
<i>(CAD\$ in thousands)</i>	For the 26-week period ending Mar 05, 2023		
RECEIPTS			
Trade Receipts	2,087,265	2,002,785	84,480
DISBURSEMENTS			
<i>Operating Disbursements</i>			
Taxes and Levies	(1,391,153)	(1,389,739)	(1,414)
Operations	(541,444)	(430,021)	(111,423)
<i>Total Operating Disbursements</i>	(1,932,597)	(1,819,760)	(112,837)
OPERATING CASH FLOWS	154,668	183,025	(28,357)
<i>Financing Disbursements</i>			
Interest and Related Fees on Existing Facilities	48,407	32,015	16,392
<i>Restructuring Disbursements</i>			
Professional Fees	(4,411)	(5,590)	1,179
NET CASH FLOWS	198,665	209,451	(10,786)
CASH			
Beginning Balance	2,885,858	2,885,858	-
Net Cash Inflows / (Outflows)	198,665	209,451	(10,786)
Other (FX)	11,641	-	11,641
ENDING CASH	3,096,164	3,095,308	856

28. The significant budget to actual variances and corresponding explanations are as follows:
- i. *trade receipts*: positive variance of \$84 million, or 4% against the forecast, primarily driven by higher-than-forecast sales. The higher-than-forecast sales collections were mainly driven by a lower than forecasted decline in sales volumes that was assumed by Imperial in the previous cash flow forecast.
 - ii. *taxes and levies*: negative variance of \$1.4 million, or 0.1% against the forecast, was in line with the cash flow forecast as part of the ordinary course of business given the forecasted taxes and levies were approximately \$1,390 million over the current reporting period;

- iii. *operating disbursements*: negative timing variance of \$111 million, primarily driven by higher-than-forecast inventory purchases for its Tobacco and Vapour Products of approximately \$30 million and lower-than-forecast reimbursement of expenses relating to the Vapour Products that is expected to reverse in the future reporting period. Consistent with the previous forecast, higher-than-forecast inventory purchases are primarily driven by accelerated inventory purchases of Vapour Products due to the launch of the disposable Vapour Products in the fourth quarter of 2022.
- iv. *interest income*: positive permanent variance of \$16 million that is driven by the higher-than-forecast interest rate earned on funds held by Imperial as a result of the high interest rate environment.
- v. *professional fees*: positive variance of \$1.2 million that consists of a positive permanent variance of \$0.6 million and a positive timing variance of \$0.6 million that is expected to reverse in the future reporting period.

J. CASH FLOW FORECAST

- 29. Imperial, with the assistance of the Monitor, has prepared a Cash Flow Forecast for the 30-week period ending the week of September 25, 2023. The Cash Flow Forecast is attached as Appendix “D” to this Report.
- 30. During the Forecast Period, total operating receipts are forecast to be approximately \$2,396 million and total operating disbursements are forecast to be approximately \$2,083 million, resulting in a net positive operating cash flow of approximately \$313 million. In addition, Imperial forecasts interest income of approximately \$65 million in respect of cash balances on deposit in Canada and professional fee disbursements of approximately \$7 million, such that net cash inflow is forecast to be approximately \$371 million.
- 31. Although net cash flows are positive during the Forecast Period, there are 10 weeks within this period which are forecasted to have negative operating cash flows. These negative cash flows are driven by the timing of the payment of taxes and government levies due at the

- end of each month. Cash flows in the weeks that fall on or around month-end tax payments are expected to be negative and then offset by the receipt of the positive cash flows during the remainder of the month.
32. The Monitor has reviewed the Cash Flow Forecast to the standard required of a Court-appointed monitor by Section 23(1)(b) of the CCAA. Section 23(1)(b) requires a monitor to review the debtor's cash flow statement as to its reasonableness and to file a report with the court on the monitor's findings. The Canadian Association of Insolvency and Restructuring Professionals' Standards of Professional Practice include a standard for a monitor fulfilling its statutory responsibilities under the CCAA in respect of its report on the Cash Flow Forecast.
33. In accordance with the standard, the Monitor's review of the Cash Flow Forecast consisted of inquiries, analytical procedures and discussions related to the Cash Flow Forecast and its underlying assumptions. The Monitor's procedures with respect to the assumptions were limited to evaluating whether they were consistent with the purpose of the Cash Flow Forecast. The Monitor also reviewed the support provided by Imperial's management for the assumptions and the preparation and presentation of the Cash Flow Forecast.
34. Based on the Monitor's review, nothing has come to its attention that causes it to believe, in any material respect, that:
- i. the assumptions are not consistent with the purpose of the Cash Flow Forecast;
 - ii. as at the date of this Report, the assumptions are not suitably supported and consistent with the plans of Imperial or do not provide a reasonable basis for the Cash Flow Forecast; or
 - iii. the Cash Flow Forecast does not reflect the assumptions.
35. As described in the Terms of Reference above, since the Cash Flow Forecast is based on assumptions regarding future events, actual results will diverge from the information presented even if the assumptions occur, and the variations could be material. Accordingly,

the Monitor expresses no assurances as to whether the Cash Flow Forecast will be achieved. In addition, the Monitor expresses no opinion or other form of assurance with respect to the accuracy of the financial information presented in the Cash Flow Forecast or relied upon by the Monitor in preparing this Report.

36. The Cash Flow Forecast has been prepared solely for the purposes described above and may not be suitable or appropriate for other purposes.

37. **NEW TOBACCO AND VAPOUR REGULATIONS**

38. Tobacco Products and Vapour Products continue to come under increased scrutiny globally, resulting in stringent regulations and, in some cases, outright bans.

39. Appendix “E” to this Report summarizes the various regulatory changes related to Tobacco Products and Vapour Products that have been considered and/or implemented across Canada since the date of the Thirteenth Report.

K. OVERVIEW OF THE MONITOR’S ACTIVITIES

40. Since the date of the Thirteenth Report, the Monitor and its counsel have held numerous meetings and discussions with Imperial and its counsel to:

- i. monitor Imperial’s business activities;
- ii. monitor Imperial’s receipts and disbursements;
- iii. assist in the preparation of the Cash Flow Forecast;
- iv. prepare monthly professional fee disclosures;
- v. gather and review Information to be included in the Imperial Data Room;
- vi. address vendor and stakeholder inquiries;
- vii. evaluate a variety of legal and operational issues as they arise;

- viii. attend monthly board meetings;
 - ix. review proposed capital expenditures; and
 - x. further their understanding of Imperial's business environment and the factors expected to impact its future business prospects.
41. The Monitor has also regularly attended meetings with the Court-Appointed Mediator and the Mediation Participants and has provided the Court-Appointed Mediator with information necessary to advance the Mediation.
42. The Tobacco Monitors and their counsel have met regularly to discuss ongoing matters including the Mediation, reviewing Information to be included in the Applicants' Data Rooms, procedural aspects of these CCAA Proceedings and the relief sought herein.

(i) Litigation Update

43. The Monitor is aware of, and has been monitoring, various ancillary litigation matters and information requests involving or respecting Imperial which arose subsequent to the initiation of the CCAA Proceedings and the implementation of the Stay of Proceedings. The Monitor believes that Imperial has been acting in good faith with respect to such matters, addressing the litigation on a case-by-case basis and apprising the Monitor of the actions it intends to take ahead of time. The amounts at issue have largely been immaterial.

(ii) Professional Fee Disclosure

44. Pursuant to the Professional Fee Disclosure Order, the Monitor continues to provide to the Quebec Litigation Plaintiffs and other parties who requested such information a summary, broken down by firm, of the restructuring fees incurred on or after March 12, 2019, and paid to the CCAA Professionals each month.

L. STAY OF PROCEEDINGS

45. Imperial is seeking, via the Motion for a Stay Extension returnable March 28, 2023, an extension of the Stay Period up to and including September 29, 2023. The Monitor

understands that such extension is necessary for Imperial to operate its business in the ordinary course as it continues to engage in the Mediation conducted by the Court-Appointed Mediator and to work towards developing a plan of compromise or arrangement for a pan-Canadian global settlement of the Tobacco Claims.

46. On March 20, 2023, the Quebec Litigation Plaintiffs filed a Responding Motion Record to the Motion for a Stay Extension requesting that the extension be limited to three months.
47. The Monitor has reviewed the Quebec Litigation Plaintiffs' materials. The Monitor supports an extension of the Stay Period up to and including September 29, 2023 for the following reasons:
 - (a) Imperial is acting in good faith and with due diligence;
 - (b) Imperial is continuing to engage meaningfully in the Mediation with the Court-Appointed Mediator in an effort to reach a pan-Canadian global settlement of the Tobacco Claims; and
 - (c) the Cash Flow Forecast indicates that Imperial is projected to have sufficient funding to continue to operate in the normal course throughout the proposed extension to the Stay of Proceedings.

The Monitor respectfully submits this 15th Report.

Dated this 22nd day of March 2023.

FTI Consulting Canada Inc.

FTI Consulting Canada Inc.

in its capacity as Monitor of Imperial Tobacco Canada Limited and Imperial Tobacco Company Limited, and not in its personal capacity.

**APPENDIX “A”
GLOSSARY**

“**Applicants**” means, collectively, Imperial, JTIM and Rothmans.

“**BAT**” means British American Tobacco p.l.c., a public company listed on the London Stock Exchange.

“**BAT Group**” means, collectively, British American Tobacco p.l.c., B.A.T. International Finance p.l.c., 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 Imperial and the ITCAN Subsidiaries.

“**BAT Mexico**” means British American Tobacco Mexico S.A. de C.V.

“**Cash Flow Forecast**” means the cash flow forecast of Imperial’s receipts and disbursements for the 30-week period commencing the week of March 6, 2023, and continuing through the week of September 25, 2023.

“**CCAA**” means the *Companies’ Creditors Arrangement Act*, R.S.C., 1985, c. C-36, as amended.

“**CCAA Proceedings**” means Court File No. CV-19-616077-00CL commenced by Imperial under the CCAA.

“**CCAA Professionals**” means the Monitor, counsel to the Monitor, counsel to Imperial, and any financial advisor Imperial has retained in connection with these CCAA Proceedings, except for any financial advisor in respect of whose work Imperial properly asserts solicitor-client, settlement, litigation or other privilege.

“**Chapter 15 Proceedings**” means the proceedings commenced by ITCAN on March 13, 2019, for relief under Chapter 15 of the U.S. Bankruptcy Code.

“**Comeback Motion**” means the Comeback Motion, as defined in the Initial Order, which was heard on April 4, 5, 25 and 26, 2019.

“**Consortium of Provinces**” means, collectively, the Province of British Columbia, the Province of Manitoba, the Province of New Brunswick, the Province of Nova Scotia, the Province of Prince Edward Island and the Province of Saskatchewan, in each province’s capacity as a plaintiff in the HCCR Claims.

“**Court**” means the Ontario Superior Court of Justice (Commercial List).

“**Court-Appointed Mediator**” means the Honourable Warren K. Winkler K.C., acting as an officer of the Court and as a neutral third party to mediate a pan-Canadian global settlement in the context of these Tobacco CCAA Proceedings.

“**COVID-19 Pandemic**” means the global pandemic caused by the novel coronavirus.

“**Data Rooms**” means data rooms containing Information in respect of the Applicants which are responsive to requests submitted by Mediation Participants, and as well as other information, which the Tobacco Monitors considered relevant.

“**Deloitte**” means Deloitte Restructuring Inc.

“**Eighth Report**” means the eighth report of the Monitor filed on September 22, 2020.

“**Eleventh Report**” means the eleventh report of the Monitor filed on March 15, 2022.

“**Excluded Claims**” means the claims excluded from the definition of TRW Claimants as described in paragraph 26 of Appendix “C” to the Sixth Report.

“**EY**” means Ernst & Young Inc.

“**Fifth Report**” means the report filed by the Monitor on September 25, 2019.

“**First Report**” means the report filed by the Monitor on April 3, 2019 in connection with the relief sought at the Comeback Motion.

“**Flintkote**” means the Flintkote Company.

“**Flintkote Issue**” means the lawsuit brought against ITCAN in respect of certain distributions received by ITCAN from Flintkote (a previous indirect subsidiary of a predecessor of ITCAN) and legal expenses related to same, as more fully described in the Tenth Report.

“**Forecast Period**” means the 30-week period commencing the week of March 6, 2023 through the week of September 25, 2023.

“**Fourth Report**” means the report filed by the Monitor on June 24, 2019.

“**Fourteenth Report**” means the report filed by the Monitor on March 14, 2023.

“**FTI**” means FTI Consulting Canada Inc.

“**Future Tobacco Harm Stakeholders**” as defined in the HSF Representation Motion, means those individuals who will buy and use tobacco products (or be exposed to the use of tobacco products) subsequent to the commencement of the CCAA Proceedings.

“**Genstar**” means Genstar Corporation, a subsidiary of ITCAN.

“**HCCR Claims**” means the claims started by each of the Provinces under each Province’s health care cost recovery legislation, to recover health care costs associated with smoking and the use of Tobacco Products.

“**HSF**” means the Heart and Stroke Foundation of Canada.

“**HSF Leave Motion**” means a motion brought by HSF returnable April 14, 2023 for leave to bring the HSF Representation Motion.

“**HSF Representation Motion**” means a motion brought by HSF dated September 19, 2022, seeking the appointment of Tyr LLP as representative counsel for the Future Tobacco Harm Stakeholders.

“**HSF Representation Motion Leave Hearing Order and Endorsement**” means an order and endorsement issued by the Court on February 14, 2023, setting a hearing date of April 14, 2023 for the hearing respecting leave to bring the HSF Representation Motion.

“**Imperial**” means, collectively, ITCAN and ITCO.

“**Imperial Data Room**” means a data room containing Information in respect of Imperial.

“**Information**” means common categories of information in respect of the Applicants which are responsive to requests submitted by Mediation Participants, as well as other information which the Tobacco Monitors considered relevant.

“**Initial Order**” means the initial order granted by the Court on March 12, 2019, as amended and restated as of April 5, 2019 and further amended and restated as of April 25, 2019 and updated by written endorsement on March 6, 2020, which authorized, among other things, the Stay of Proceedings and FTI’s appointment as Monitor of Imperial’s CCAA Proceedings.

“**ITCAN**” means Imperial Tobacco Canada Limited.

“**ITCAN Subsidiaries**” means 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, Imasco Holdings Group, Inc., ITL (USA) limited, Genstar Pacific Corporation, Imasco Holdings Inc., Southward Insurance Ltd., Liggett & Myers Tobacco Company of Canada Limited or entities related to or affiliated with them other than Imperial and the BAT Group.

“**ITCO**” means Imperial Tobacco Company Limited.

“**JTIM**” means JTI-Macdonald Corp.

“**JTIM Group**” means the entities currently or formerly related to or affiliated with JTIM.

“**March 2021 Stay Extension Order**” means an Order of the Court, dated September 29, 2020, extending the length of the Stay of Proceedings to March 31, 2021.

“**March 2022 Stay Extension Order**” means an Order of the Court, dated September 27, 2021, extending the length of the Stay of Proceedings to March 31, 2022.

“**March 2023 Stay Extension Order**” means an Order of this Court, dated September 29, 2022, extending the length of the Stay of Proceedings to March 31, 2023.

“**March 2023 Thauvette Affidavit**” means the Affidavit of Eric Thauvette, Vice President and Chief Financial Officer of ITCAN, sworn March 16, 2023.

“**March 2020 Stay Extension Order**” means an Order of the Court, dated October 8, 2019, extending the length of the Stay of Proceedings to March 12, 2020.

“**Mediation**” means the mediation process conducted by the Court-Appointed Mediator.

“**Mediation Participants**” means the Applicants, the Consortium of Provinces, the Provinces of Alberta, Newfoundland and Labrador, Ontario, and Quebec, the Quebec Litigation Plaintiffs, the TRW Claimants represented by Wagners, the “tobacco light class action plaintiffs”, and the Tobacco Growers’ Marketing Board.

“**Monitor**” means FTI Consulting Canada Inc.

“**Monitor’s Reports**” means collectively, the Pre-Filing Report, the First Report, the Second Report, the Third Report, the Fourth Report, the Fifth Report, the Sixth Report, the Seventh Report, the Eighth Report, the Ninth Report, the Tenth Report, the Eleventh Report, the Twelfth Report, the Thirteenth Report, the Fourteenth Report, and this Report.

“**New Excise Act Security Order**” means the order issued on July 11, 2022, authorizing ITCAN to post security as required by certain amendments to the Excise Act and to take any steps necessary to otherwise comply with the requirements of such security

“**NDA**” means a non-disclosure agreement for the purposes of gaining access to the Data Rooms.

“**Ninth Report**” means the report filed by the Monitor on March 19, 2021.

“**October Endorsement**” means an Endorsement of the Court, dated October 18, 2019, providing reasons for the March 2020 Stay Extension Order and the deferment of the issue of certain payments to BAT Mexico.

“**PMI Group**” means Philip Morris International Inc. and all entities related to or affiliated with it, other than Rothmans.

“**Pre-Filing Report**” means the report filed by the Monitor on March 12, 2019, in its capacity as proposed Monitor of Imperial, in connection with Imperial’s initial application for relief under the CCAA.

“**Professional Fee Disclosure Order**” means an order of the Court which authorized, among other things, the disclosure of the professional restructuring fees in these CCAA Proceedings by the Monitor on or before the 15th of every month, beginning with June 2019.

“**Provinces**” means all of the provinces of Canada.

“**Quebec Appeal Judgment**” means the Court of Appeal of Quebec’s decision on the appeal of the Quebec Judgment issued March 1, 2019.

“**Quebec Judgment**” means the Quebec Superior Court’s judgment on the “Letourneau action” and the “Blais action” released on May 27, 2015 and corrected on June 9, 2015.

“**Quebec Litigation Plaintiffs**” means, collectively, the representative plaintiffs and the certified class members in each of the “Letourneau action” and the “Blais action”, as described in the March 12, 2019 Thauvette Affidavit.

“**Quebec Tobacco Tax**” means the new tax on the purchase and sale of tobacco products introduced in the Province of Quebec, which came into effect on February 9, 2023.

“**Report**” means this Fifteenth Report of the Monitor filed on March 22, 2023.

“**Representative Counsel Order**” means the order by the Court on December 9, 2019, appointing Wagners as representative counsel to the TRW Claimants.

“**Rothmans**” means Rothmans Benson & Hedges Inc.

“**Second Amended and Restated Initial Order**” means the Initial Order, as amended and restated as of April 25, 2019.

“**Second Report**” means the report filed by the Monitor on April 24, 2019.

“**September 2021 Stay Extension Order**” means an order of the Court, dated March 30, 2021, extending the length of the Stay of Proceedings to September 30, 2021

“**September 2022 Stay Extension Order**” means an order of the Court, dated September 29, 2022, extending the length of the Stay of Proceedings to March 31, 2023.

“**Seventh Report**” means the report filed by the Monitor on February 13, 2020.

“**Shapiro**” means Daniel Shapiro Legal Professional Corporation.

“**Sixth Report**” means the report filed by the Monitor on November 26, 2019.

“**Stay of Proceedings**” means the stay of proceedings during the Stay Period in favour of Imperial and their non-applicant subsidiaries, including Liggett & Meyers Tobacco Company of Canada Limited, as well as a limited stay in favour of BAT and certain BAT affiliates.

“**Stay Period**” means the term of the Stay of Proceedings, to March 31, 2023.

“**Tenth Report**” means the report filed by the Monitor on September 20, 2021.

“**Third Report**” means the report filed by the Monitor on May 13, 2019.

“**Thirteenth Report**” means the report filed by the Monitor on September 23, 2022.

“**Tobacco CCAA Proceedings**” means these CCAA Proceedings, Court File No. 19-CV-615862-00CL commenced by JTIM under the CCAA and Court File No. CV-19-616779-00CL commenced by Rothmans under the CCAA.

“**Tobacco Claims**” means all claims brought or that could be brought under applicable law against the Applicants 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.

“**Tobacco Monitors**” means, collectively, the Monitor, EY in its capacity as monitor for Rothmans, and Deloitte in its capacity as monitor for JTIM.

“**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, 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, but does not include heat-not-burn tobacco products or Vapour Products.

“**Tobacco-Related Wrongs**” means all claims or causes of action in respect of: (i) the development, manufacture, production, importation, marketing, advertising, distribution, purchase or sale of Tobacco Products; (ii) the historical or ongoing use of or exposure to Tobacco Products; or (iii) any representation in respect of Tobacco Products, including, without limitation, claims for contribution or indemnity, personal injury or tort damages, restitutionary recovery, non-pecuniary damages or claims for recovery grounded in provincial consumer protection legislation, but does not include the Excluded Claims.

“**TRW Claimants**” means all individuals (including their respective successors, heirs, assigns, litigation guardians and designated representatives under applicable provincial family law legislation) who assert or may be entitled to assert a claim or cause of action as against one or more of the Applicants, the ITCAN subsidiaries, the BAT Group, the JTIM Group or the PMI Group, or persons indemnified by such entities, in respect of Tobacco-Related Wrongs in Canada, or in the case of the Applicants, anywhere else in the world.

“**Twelfth Report**” means the twelfth report of the Monitor filed on July 8, 2022.

“**U.S.**” means the United States of America.

“**U.S. Bankruptcy Code**” means title 11 of the United States Code.

“**U.S. Bankruptcy Court**” means the United States Bankruptcy Court for the Southern District of New York.

“**U.S. Counsel**” means Morgan, Lewis & Bockius LLP, U.S. counsel to the Monitor.

“**Vapour Products**” means potential reduced risk, rechargeable, battery-powered devices that heat liquid formulations – e-liquids – to create a vapour which is inhaled, and which are sold under the tradename of Vype/Vuse.

“**Wagners**” means The Law Practice of Wagner & Associates, Inc.

APPENDIX “B” ORDERS

Please see below for a description of the orders issued by the Court and the U.S. Bankruptcy Court in these CCAA Proceedings.

1. Initial Order:

The Initial Order of the Ontario Superior Court of Justice (Commercial List) made on March 12, 2019, as amended and restated as of April 5, 2019 and further amended and restated as of April 25, 2019, pursuant to which:

- (a) Imperial was granted an initial stay of proceedings under the CCAA until April 11, 2019; and
- (b) FTI was appointed as the Monitor.

A copy of the Initial Order can be found [here](#).

2. Comeback Motion:

The Comeback Motion was heard on April 4 and 5, 2019. Following the Comeback Motion:

- (a) the Court issued an order dated April 5, 2019 extending the Stay of Proceedings to June 28, 2019, a copy of which can be found [here](#);
- (b) the Court issued the Insurance Lift-Stay Order dated April 5, 2019, partially lifting the Stay of Proceedings to allow the Quebec Litigation Plaintiffs to seek the approval of certain insurance settlements, a copy of which can be found [here](#); and
- (c) the Court issued an order dated April 5, 2019 amending and restating the Initial Order and appointing Hon. Warren K. Winkler, Q.C. as the Court-Appointed Mediator, a copy of which can be found [here](#).

3. Foreign Recognition Order:

On April 17, 2019, the U.S. Bankruptcy Court issued the Foreign Recognition Order recognizing the CCAA Proceedings as the main proceedings and staying proceedings against ITCAN in the United States. The Foreign Recognition Order can be found [here](#).

4. Second Amended and Restated Initial Order:

The Second Amended and Restated Initial Order was issued following the continuation of the Comeback Motion on April 25 and 26, 2019, a copy of which can be found [here](#).

5. Representation Order

On April 25, 2019, the Court issued the Representation Order appointing Ari Kaplan of Kaplan Law as representative counsel to Robert M. Brown and George A. Foster, the court-appointed representatives of all persons with entitlements under certain retirements plans, including survivors and beneficiaries of such persons and any other person under the Representation Order. A copy of the Representation Order can be found [here](#).

6. Order to Amend the Ontario Claim

On April 29, 2019, the Court issued the Order to Amend the Ontario Claim, partially lifting the Stay of Proceedings to permit the Province of Ontario to seek leave to amend its Amended Fresh as Amended Statement of Claim in the proceedings related to Ontario's HCCR Claims. A copy of the Order to Amend the Ontario Claim can be found [here](#).

7. Notice Procedure Order:

On May 14, 2019, the Court issued the Notice Procedure Order, which among other things, appointed Vivian Bennan-Dolezar as an additional representative to the represented parties under the Representation Order and approved the form and manner of notice of the Settlement Approval Hearing to such represented parties. A copy of the Notice Procedure Order can be found [here](#).

8. Professional Fee Disclosure Order:

The Professional Fee Disclosure Order was issued on May 14, 2019 and can be found [here](#).

9. Communication and Confidentiality Protocol Endorsement

On May 24, 2019, the Court issued the Communication and Confidentiality Protocol Endorsement, pursuant to which the Court approved the communication and confidentiality protocol as between the Court and the Court-Appointed Mediator. A copy of the Communication and Confidentiality Protocol Endorsement can be found [here](#).

10. Clarification of Insurance Lift-Stay Order

On May 31, 2019, the Court issued the Clarification of Insurance Lift-Stay Order which clarified the scope of the Insurance Lift-Stay Order. A copy of the Clarification of Insurance Lift-Stay Order can be found [here](#).

11. October Stay Extension Order

The October Stay Extension Order was issued on June 26, 2019 and extended the Stay of Proceedings to October 4, 2019. A copy of the October Stay Extension Order can be found [here](#).

12. Genstar Settlement Approval Order

The Genstar Settlement Approval Order was issued on June 26, 2019, approving, among other things (i) the settlement entered into on April 25, 2019 between ITCAN and Robert M. Brown and George A. Foster, as representatives in respect of those certain retirement plans; and (ii) the distribution of the proceeds of such settlement among all persons with entitlements under certain retirements plans, including survivors and beneficiaries of such persons and any other person under the Representation Order. A copy of the Genstar Settlement Approval Order can be found [here](#).

13. Order Appointing a Financial Advisor to the Court-Appointed Mediator

The Order Appointing a Financial Advisor to the Court-Appointed Mediator was issued on June 27, 2019, which appointed Alvarez & Marsal Canada Inc. as the financial advisor to the Court-Appointed Mediator. A copy of the Order Appointed a Financial Advisor to the Court-Appointed Mediator can be found [here](#).

14. Court-to-Court Communications Order

On July 9, 2019, the Court issued the Court-to-Court Communications Order, approving court-to-court communications between the Court, the U.S. Bankruptcy Court and any other court in any province or territory of Canada. A copy of the Court-to-Court Communications Order can be found [here](#).

15. Order Recognizing the Genstar Settlement Approval Order

The U.S. Bankruptcy Court granted an order recognizing the Genstar Settlement Approval Order on July 18, 2019. A copy of which can be found [here](#).

16. Order Recognizing the Court-to-Court Communications Order

The U.S. Bankruptcy Court granted an order recognizing the Court-to-Court Communications Order on September 5, 2019. A copy of which can be found [here](#).

17. March 2020 Stay Extension Order and October Endorsement

The March 2020 Stay Extension Order was issued on October 2, 2019 and extended the Stay of Proceedings to March 12, 2020. A copy of the March 2020 Stay Extension Order can be found [here](#). Justice McEwen released the October Endorsement on October 18, 2019 providing reasons for the March 2020 Stay Extension Order and the deferment of the issue of certain payments to BAT Mexico. A copy of the October Endorsement can be found [here](#).

18. Representative Counsel Order

The Representative Counsel Order was issued on December 9, 2019 and appointed Wagners as representative counsel to the TRW Claimants. A copy of the Representative Counsel Order can be found [here](#).

19. September Stay Extension Order

The September Stay Extension Order was issued on February 20, 2020 and extended the Stay of Proceedings to September 30, 2020. A copy of the September Stay Extension Order can be found [here](#).

20. Notice Protocol Endorsement

The Notice Protocol Endorsement was issued on March 6, 2020 and further amended the Second Amended and Restated Initial Order by adding paragraphs to govern the notice protocol for moving and responding parties in the CCAA Proceedings. A copy of the Notice Protocol Endorsement can be found [here](#).

21. Limited Lift of Stay Order

The Limited Lift of Stay Order was issued on March 16, 2020 and partially lifted the Stay of Proceedings to allow ITCAN to be added as a respondent to the application brought by the City of Ottawa bearing Court File No. 19-81809. A copy of the Limited Lift of Stay Order can be found [here](#).

22. Consultant Order

The Consultant Order was issued on September 15, 2020 and appointed Shapiro as consultant to the Court-Appointed Mediator. A copy of the Consultant Order can be found [here](#).

23. March 2021 Stay Extension Order

The March 2021 Stay Extension Order was issued on September 29, 2020, extending the Stay of Proceedings to March 31, 2021. A copy of the March 2021 Stay Extension Order can be found [here](#).

24. September 2021 Stay Extension Order

The September 2021 Stay Extension Order was issued on March 30, 2021, extending the Stay of Proceedings to September 30, 2021. A copy of the September 2021 Stay Extension Order can be found [here](#).

25. March 2022 Stay Extension Order

The March 2022 Stay Extension Order was issued on September 27, 2021, extending the Stay of Proceedings to March 31, 2022. A copy of the March 2022 Stay Extension Order can be found [here](#).

26. September 2022 Stay Extension Order

The September 2022 Stay Extension Order was issued on March 22, 2022, extending the Stay of Proceedings to September 30, 2022. A copy of the September 2022 Stay Extension Order can be found [here](#).

27. New Excise Act Security Order

The New Excise Act Security Order was issued on July 11, 2022, authorizing ITCAN to post security as required by certain amendments to the Excise Act in an aggregate amount not exceeding \$5 million, and to take any steps necessary to otherwise comply with the requirements of such security. A copy of the New Excise Act Security Order can be found [here](#).

28. March 2023 Stay Extension Order

The March 2023 Stay Extension Order was issued on September 29, 2022, extending the Stay of Proceedings to March 31, 2023. A copy of the March 2023 Stay Extension Order can be found [here](#).

29. HSF Representation Motion Leave Hearing Order and Endorsement

The HSF Representation Motion Leave Hearing Order and Endorsement was issued by the Court on February 14, 2023, setting a hearing date of April 14, 2023 for the hearing on whether to grant the HSF Leave Motion, by which HSF seeks leave to bring the HSF Representation Motion. A copy of the endorsement in respect of the HSF Representation Motion Leave Hearing Order and Endorsement can be found [here](#). A copy of the HSF Representation Motion can be found [here](#).

APPENDIX "C"
PROTOCOL FOR MOTION BY ZOOM VIDEO CONFERENCE

Please see attached.

PROTOCOL FOR MOTION BY ZOOM VIDEO CONFERENCE

Scheduling and Specific Requirements

1. Any person on the Service List that wishes to appear virtually on the motion (“**Participants**”) must register by 4:00 p.m. two (2) business days in advance of the hearing (Friday, March 24, 2023, for the motion scheduled Tuesday, March 28, 2023), by emailing Veritext Litigation Solutions Canada, Inc. (scheduling@neesonsreporting.com) and copying each Monitor’s counsel (tbarbiero@dwpv.com, msassi@casselsbrock.com, nancy.thompson@blakes.com). In their email, Participants should provide contact information, including a name, the party they are acting for, an email address and phone number for the counsel slip, along with a statement regarding whether they intend to make submissions.
2. Subject to the Court’s overriding discretion over all matters, the Monitors’ counsel will coordinate with Participants and the Court to develop an agenda for the hearing.
3. All material for use on the motion is to be posted on CaseLines, as more fully described in Appendix “B”.
4. Participants will appear by video. Veritext will distribute the Zoom link to Participants. Participants are not permitted to forward or share the Zoom link. No person should have access to the hearing on Zoom other than Participants. If a Participant is unable to attend by video, they should contact Monitors’ counsel. Participants should carefully review the technical requirements below.
5. Counsel is required to gown for the hearing.
6. For access by the general public, a YouTube link will be posted on each of the Monitors’ websites by 10:00 a.m. not less than two (2) business days prior to the hearing. The YouTube link will allow the general public to view a livestream of the hearing, but not participate in the hearing. For greater clarity, individuals viewing the livestream via YouTube will not be heard or seen by the Court, Judge or Participants.
7. No recording of any part of the hearing (including audio) may be made unless authorized in advance by the Court.
8. For greater certainty, notice and service requirements are set out in the Rules of Civil Procedure, and the various orders and endorsements in the proceedings. For ease of reference, we have included paragraphs 58-63 of the Second Amended and Restated Initial Order dated

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March 8, 2019 in the JTIM proceedings, attached as Appendix "A". It should be noted that similar notice and service requirements have been set out in various orders and endorsements in the parallel proceedings of Imperial and RBH. Nothing in this protocol modifies or amends Orders of the Court related to service requirements, the Rules of Civil Procedure, any Commercial List Practice Direction or other applicable rules.

9. Participants will be placed into a virtual waiting room upon entering the Zoom meeting.

Technical Requirements for Zoom Participants

10. Participants will require a device with a working microphone and camera. The device can be a computer (desktop or laptop), tablet or smartphone. The device must be connected to an internet connection that is sufficient to send and receive video and audio.

11. Each Participant is responsible for ensuring that they have suitable equipment to participate in the hearing and that such equipment works properly. Participants must test such equipment well in advance of the scheduled hearing to ensure:

- (a) that they are familiar with how to use such equipment;
- (b) the compatibility and functioning of such equipment; and
- (c) that the remote location has adequate internet bandwidth to support the use of Zoom without interruption.

12. Each Participant is also responsible for ensuring that they are familiar with the features and operation of Zoom. Participants must ensure that they have downloaded any necessary software, and practiced using Zoom, well in advance of the scheduled hearing.

13. Counsel on Zoom should identify their display name in the following format: [First Name] [Last name], for [Client].

14. Participants should log on using the Zoom link provided approximately 30 minutes before the hearing is scheduled to begin. During this time, Participants should speak to each other to determine if there are any audio/visual/connection issues.

15. It is suggested that Participants use the "gallery view" mode, rather than the "active speaker" mode, available on Zoom.

16. It is suggested that only counsel who are making submissions turn on their cameras during the hearing.

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17. Should a Participant become disconnected from Zoom or experience technical difficulties during the hearing, they should immediately inform the Court by sending an email to Veritext (scheduling@neesonsreporting.com).
18. Further participant information is included in Appendix "B."

APPENDIX "A"

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

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

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

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

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

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

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

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

APPENDIX "B"

1. All Participants will have their microphones muted and may only unmute their own microphones when they are addressing the Court. When parties are not muted, they must avoid making extraneous noise (including for example, typing and shuffling papers) as these noises may interfere with the hearing.
2. Participants must ensure that they participate in the Zoom hearing from a well-lit room so that they are easily visible. Participants must also ensure that no filters are active that may distort or otherwise conceal their appearance.
3. Participants must ensure that they participate in the Zoom hearing from a quiet location where they (and the Court) will not be interrupted or disturbed during the hearing.
4. All mobile devices must be turned off or put on silent mode during the hearing.
5. Participants must refrain from speaking over other Participants.
6. Participants should make submissions in accordance with the order set out in the agenda. If there is a need to make submissions out of sequence, Participants should make a request in a manner directed by the Court. The Court may ask Participants to signal when they intend to address the Court by raising their hand (either by physically raising their hand or by using the virtual "raise hand" feature in Zoom).
7. Participants must state their name and who they represent before addressing the Court.
8. Upon entry into the virtual waiting room, each Participant joining by video should identify themselves, including any person off camera that may be viewing the video feed. This also allows any audio or visual issues to be identified. Each Participant is obligated to immediately notify the presiding judge if any additional person joins them in viewing the video feed.
9. If a Participant intends to rely on any documents, the materials you intend to rely on must be served and shared on the relevant CaseLines bundle and all references during the hearing should reference the CaseLines page numbering associated with such CaseLines bundle.
10. If a party wishes to share certain documents during the hearing, the documents should be provided to the Monitors in advance so that it can be added to the agenda and a method for sharing can be set up.

APPENDIX "D"
CASH FLOW FORECAST

Please see attached.

Imperial Tobacco Canada Limited

CCAA Cash Flow Forecast

(CAD\$ in thousands)

Week Beginning (Monday)	6-Mar-23	13-Mar-23	20-Mar-23	27-Mar-23	3-Apr-23	10-Apr-23	17-Apr-23	24-Apr-23	1-May-23	8-May-23	15-May-23	22-May-23	29-May-23	5-Jun-23	12-Jun-23
Forecast Week	1	2	3	4	5	6	7	8	9	10	11	12	13	14	15
RECEIPTS															
Trade Receipts	80,420	75,614	76,340	62,948	67,403	60,824	64,445	72,849	88,634	90,139	95,034	89,871	73,139	76,595	77,615
DISBURSEMENTS															
Operating Disbursements	(26,939)	(14,180)	(17,194)	(49,692)	(56,487)	(34,704)	(57,691)	(26,021)	(127,005)	(31,298)	(29,045)	(25,782)	(118,186)	-	(73,067)
Taxes and Levies	(12,672)	(9,287)	(24,530)	(24,859)	(8,612)	(8,559)	(17,033)	(33,370)	(14,234)	(4,267)	(8,478)	(42,166)	(13,920)	(3,241)	(10,042)
Operations	(39,611)	(23,468)	(41,723)	(74,551)	(65,099)	(43,263)	(74,724)	(59,391)	(141,239)	(35,566)	(37,523)	(67,948)	(132,107)	(3,241)	(83,109)
Total Operating Disbursements	40,809	52,147	34,616	(11,603)	2,304	1,7561	(10,279)	13,458	(52,605)	54,573	57,511	21,923	(58,967)	73,355	(5,494)
OPERATING CASH FLOWS															
Financing Income															
Interest and Related Fees	-	-	-	9,230	-	-	-	8,063	-	-	-	-	9,035	-	-
Restructuring Disbursements	(695)	(200)	(200)	(200)	(200)	(200)	(200)	(200)	(200)	(200)	(200)	(200)	(200)	(200)	(200)
Professional Fees															
NET CASH FLOWS	40,115	51,947	34,417	(2,572)	2,104	1,7361	(10,479)	21,321	(52,805)	54,373	57,311	21,723	(50,132)	73,155	(5,694)
CASH															
Beginning Balance	3,096,164	3,136,278	3,188,225	3,222,642	3,220,070	3,222,174	3,239,535	3,229,057	3,250,377	3,197,573	3,251,946	3,309,257	3,330,979	3,280,847	3,354,002
Net Cash Inflows / (Outflows)	40,115	51,947	34,417	(2,572)	2,104	1,7361	(10,479)	21,321	(52,805)	54,373	57,311	21,723	(50,132)	73,155	(5,694)
Other (FX)	-	-	-	-	-	-	-	-	-	-	-	-	-	-	-
ENDING CASH	3,136,278	3,188,225	3,222,642	3,220,070	3,222,174	3,239,535	3,229,057	3,250,377	3,197,573	3,251,946	3,309,257	3,330,979	3,280,847	3,354,002	3,348,309

Notes to the CCAA Forecast:

- [1] The purpose of this cash flow forecast is to estimate the liquidity requirements of the Company during the forecast period.
- [2] Forecast Trade Receipts include collections from the sale of tobacco-related products and other categories, net of returns, and inclusive of sales taxes. The sales forecast is based on historical sales patterns, seasonality, and current management's expectations. The cash flow forecast includes certain price increases. The Company's ability to maintain the price increase is dependent on market conditions.
- [3] Forecast Taxes and Levies disbursements reflect the remittance of the federal excise tax, provincial tobacco taxes, sales taxes, and the Company's corporate income taxes.
- [4] Forecast Operations disbursements include employee-related costs, selling, general, administrative costs and intercompany costs. Intercompany costs include costs relating to the purchase of tobacco-related products and other categories, and services including: innovation fees, consulting and advisory fees, IT-related costs, product development and testing, accounting and human resources. Included in the intercompany costs is a disbursement of \$55 million to BAT Mexico for costs associated with the retirement of certain equipment and materials that are obsolete after the implementation of the Tobacco Products Regulations (Plain and Standardized Appearance).
- [5] Forecast Interest and Related Fees reflect interest income earned net of any sundry payments relating to existing facilities.
- [6] Forecast Professional Fees include fees for the Company's Counsel, the Monitor, the Monitor's Counsel, the Company's US Counsel, the Monitor's US Counsel, the US Noticing Agent, the Court-Appointed Mediator, the Court-Appointed Mediator's Counsel and the Representative Counsel for the TRW Claimants.

Imperial Tobacco Canada Limited

CCAA Cash Flow Forecast

(CAD\$ in thousands)

Week Beginning (Monday)

Forecast Week	16	17	18	19	20	21	22	23	24	25	26	27	28	29	30	30-Week Total
RECEIPTS																
Trade Receipts	76,446	79,931	76,796	78,735	98,652	77,895	105,248	99,150	100,456	99,431	73,841	67,064	68,631	67,615	74,078	2,395,969
DISBURSEMENTS																
Operating Disbursements	(27,942)	(135,495)	(23,471)	(45,235)	(77,992)	(21,900)	(128,892)	(32,409)	(25,986)	(38,819)	(142,573)	-	(75,976)	(31,293)	(28,099)	(1,523,423)
Taxes and Levies	(13,006)	(41,980)	(7,248)	(10,842)	(3,415)	(41,099)	(8,161)	(7,117)	(5,723)	(56,022)	(11,952)	(6,074)	(6,726)	(13,996)	(90,962)	(559,594)
Total Operating Disbursements	(40,949)	(177,475)	(30,719)	(56,077)	(81,408)	(62,999)	(137,053)	(39,527)	(31,709)	(94,841)	(154,525)	(6,074)	(82,702)	(45,289)	(119,061)	(2,082,968)
OPERATING CASH FLOWS	35,497	(97,544)	46,077	22,659	17,244	14,896	(31,805)	59,623	68,747	4,590	(80,684)	60,990	(14,071)	22,325	(44,983)	312,447
Financing Income																
Interest and Related Fees	-	9,667	-	-	-	-	8,874	-	-	-	9,893	-	-	-	10,084	64,895
Restructuring Disbursements	(200)	(200)	(200)	(200)	(200)	(200)	(200)	(200)	(200)	(200)	(200)	(200)	(200)	(200)	(200)	(6,400)
Professional Fees																
NET CASH FLOWS	35,297	(88,076)	45,877	22,459	17,045	14,697	(23,131)	59,424	68,548	4,390	(70,991)	60,791	(14,271)	22,126	(35,099)	371,739
CASH																
Beginning Balance	3,348,309	3,383,606	3,295,530	3,341,407	3,363,866	3,380,910	3,395,607	3,372,476	3,431,900	3,500,447	3,504,838	3,433,847	3,494,638	3,480,367	3,502,492	3,096,194
Net Cash Inflows / (Outflows)	35,297	(88,076)	45,877	22,459	17,045	14,697	(23,131)	59,424	68,548	4,390	(70,991)	60,791	(14,271)	22,126	(35,099)	371,739
Other (FX)																
ENDING CASH	3,383,606	3,295,530	3,341,407	3,363,866	3,380,910	3,395,607	3,372,476	3,431,900	3,500,447	3,504,838	3,433,847	3,494,638	3,480,367	3,502,492	3,467,394	3,467,394

Notes to the CCAA Forecast:

- [1] The purpose of this cash flow forecast is to estimate the liquidity requirements of the Company during the forecast period.
- [2] Forecast Trade Receipts include collections from the sale of tobacco-related products and other categories, net of returns, and inclusive of sales taxes. The sales forecast is based on historical sales patterns, seasonality, and current management's expectations. The cash flow forecast includes certain price increases. The Company's ability to maintain the price increase is dependent on market conditions.
- [3] Forecast Taxes and Levies disbursements reflect the remittance of the federal excise tax, provincial tobacco taxes, sales taxes, and the Company's corporate income taxes.
- [4] Forecast Operations disbursements include employee-related costs, selling, general, administrative costs and intercompany costs. Intercompany costs include costs relating to the purchase of tobacco-related products and other categories, and services including: innovation fees, consulting and advisory fees, IT-related costs, product development and testing, accounting and human resources. Included in the intercompany costs is a disbursement of \$55 million to BAT Mexico for costs associated with the retirement of certain equipment and materials that are obsolete after the implementation of the Tobacco Products Regulations (Plain and Standardized Appearance).
- [5] Forecast Interest and Related Fees reflect interest income earned net of any sundry payments relating to existing facilities.
- [6] Forecast Professional Fees include fees for the Company's Counsel, the Monitor, the Monitor's Counsel, the Company's US Counsel, the Monitor's US Counsel, the US Noticing Agent, the Court-Appointed Mediator, the Court-Appointed Mediator's Counsel and the Representative Counsel for the TRW Claimants.

APPENDIX “E”
REGULATION OF TOBACCO AND VAPOUR PRODUCTS

Please see below for a summary of the tobacco and vaping regulations that are being considered and implemented across Canada since the date of the Thirteenth Report.

Tobacco

1. No new regulations.

Vaping

1. **Federal:** As of January 1, 2023, under the federal *Budget Implementation Act, 2022, No. 1*, which amended the *Excise Act, 2001*, all vaping substances sold at retail must carry a federal “DUTY PAID” excise stamp. This excise rate is set at \$1 per 2 mL of substance in each container up to 10 mL, plus \$1 per 10 mL of liquid above that. The Canadian government is now working with Provinces interested in a coordinated vaping taxation under which an additional duty equal to the federal rate would be applied.
2. **Federal:** Bill C-32 - *An Act to implement certain provisions of the fall economic statement tabled in Parliament on November 3, 2022 and certain provisions of the budget tabled in Parliament on April 7, 2022* received royal assent on December 15, 2022 and came into effect retroactively from October 1, 2022. It introduced new marking requirements for vaping products and cases, including an additional requirement to add the volume of vaping substance per pack onto vaping product cases.

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

**FIFTEENTH REPORT OF THE MONITOR
MARCH 22, 2023**

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

**Imperial Tobacco Canada Limited and
Imperial Tobacco Company Limited**

FOURTEENTH REPORT OF THE MONITOR

March 14, 2023

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Appendix “B” Glossary

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

**FOURTEENTH REPORT TO THE COURT
SUBMITTED BY FTI CONSULTING CANADA INC.,
IN ITS CAPACITY AS MONITOR**

A. GENERAL

1. The present **Report** addresses the **HSF Leave Motion**, which is returnable April 14, 2023 and pursuant to which **HSF** seeks leave to bring the **HSF Representation Motion**.
2. In this Report, unless otherwise defined, all capitalized terms shall have the respective meanings specified in the glossary attached to this Report as Appendix "B". The first instance of each capitalized term, if defined in the glossary, is bookmarked to the glossary.

B. INTRODUCTION

3. The principal purpose of these **CCAA Proceedings** and their related **Chapter 15 Proceedings** is to restructure and compromise Imperial's liabilities; specifically, the liabilities arising from the **Tobacco Claims**, including the **Quebec Appeal Judgment**.
4. The **Initial Order** in these CCAA Proceedings was issued by the **Court** on March 12, 2019, amended and restated on April 5, 2019, further amended and restated on April 25, 2019, and updated by written endorsement on March 6, 2020. On April 17, 2019, the **U.S. Bankruptcy Court** issued the Foreign Recognition Order recognizing the CCAA Proceedings as the main proceedings and staying proceedings against **ITCAN** in the United States.

5. On February 14, 2023, the Court issued the **HSF Representation Motion Leave Hearing Order and Endorsement**, which set April 14, 2023 as the date for the hearing on whether HSF should be granted leave to bring the HSF Representation Motion. There will be a subsequent hearing, if leave is granted, to determine whether the HSF Representation Motion should be allowed. A copy of the endorsement in respect of the HSF Representation Motion Leave Hearing Order and Endorsement can be found [here](#).

C. **BACKGROUND**

6. Imperial is the largest distributor of **Tobacco Products** in Canada. It operates two businesses: tobacco and logistics. The tobacco business includes the marketing and sale of Tobacco Products and **Vapour Products**. The logistics business distributes Tobacco Products and Vapour Products for tobacco manufacturers along with certain non-tobacco products.
7. **Imperial** is highly integrated with **BAT** and its affiliates. It benefits from a wide range of services, licences, and rights that certain BAT affiliates provide. These services and functions have been and continue to be vital to Imperial's business.
8. Further information regarding these CCAA Proceedings and a background on Imperial have been provided in previous .
9. All Court materials filed and orders issued in these CCAA Proceedings and the related Chapter 15 Proceedings are available on the **Monitor's** website at: <http://cfcanada.fticonsulting.com/imperialtobacco/>.

D. **PURPOSE OF THIS REPORT**

10. The purpose of this Report is to report to the Court on the **Tobacco Monitors'** position regarding the motion for leave brought by the Heart and Stroke Foundation of Canada returnable April 14, 2023.

11. Attached as Appendix "A" to this Report are joint submissions prepared by the Tobacco Monitors and counsel to the Tobacco Monitors which discuss the Tobacco Monitors' joint opposition to the granting of leave and the reasons for their position.

The Monitor respectfully submits this Report.

Dated this 14th day of March 2023.

FTI Consulting Canada Inc.

FTI Consulting Canada Inc.

in its capacity as Monitor of Imperial Tobacco Canada Limited and Imperial Tobacco Company Limited, and not in its personal capacity.

APPENDIX “A”
TOBACCO MONITORS' JOINT POSITION ON HSF LEAVE MOTION

A. OVERVIEW

1. In this Appendix, unless otherwise defined, all capitalized terms shall have the respective meanings specified in the glossary attached to the Report as Appendix “B”.
2. This Appendix is filed by the Monitors in the Tobacco CCAA Proceedings in response to the motion for leave (the “**Leave Motion**”) brought by the Heart and Stroke Foundation of Canada (the “**HSF**”) returnable April 14, 2023.
3. By the Leave Motion, HSF asks the Court to hear a motion, for among other things:
 - a. the appointment of Tyr LLP as representative counsel for “Future Tobacco Harm Stakeholders” who, after the granting of the Initial Orders in these proceedings, “will purchase or use tobacco products, or will be exposed to their use”;¹ and,
 - b. granting the proposed representative counsel “rights of participation” in the on-going Court-ordered Mediation.²(collectively, the “**HSF Motion**”).
4. For the reasons as detailed below, the Monitors jointly oppose the granting of leave for HSF to bring the HSF Motion.

B. BACKGROUND

5. These Tobacco CCAA Proceedings were commenced in March of 2019 and are some of the most complex proceedings in the history of the CCAA due in large part to the number of tobacco-related legal actions and Pending Litigation against the Applicants, including: a class action by Quebec plaintiffs and a corresponding decision of the Quebec Superior Court issued May 27, 2015 which was corrected on June 9, 2015 (and upheld by the Court

¹ Affidavit of Diego Marchese sworn September 19, 2022 (the “**Marchese Affidavit**”) at para. 5, [Motion Record of the Heart and Stroke Foundation Canada dated February 28, 2023](#), (the “**HSF Motion Record**”) at Tab 2.

² Notice of Motion of the Heart and Stroke Foundation (“**HSF Notice of Motion**”) at paras. 2 and 1(a), [HSF Motion Record](#) at Tab 1. Paragraph 1(a) of the HSF Notice of Motion notes that the full terms of the representative counsel request are set out in a proposed draft order. To date, no draft order has been provided.

of Appeal in March 2019) which awarded damages in excess of \$13.5 billion; health care cost recovery actions brought by all ten provincial governments; numerous proposed and certified class actions for tobacco-related harm; at least six actions brought by individual and commercial plaintiffs and a number of potential claims or actions currently unasserted or unascertained.

6. In order to advance the complex negotiations among numerous stakeholders, the Amended and Restated Initial Orders provided for, among other things, the appointment of the Court-Appointed Mediator who may “[a]dopt a process which in his discretion, he considers appropriate to facilitate negotiation of a global settlement”, including deciding which stakeholders and other persons, if any, “the Court-Appointed Mediator considers [it] appropriate” to consult as part of the Mediation.³
7. In order to address unrepresented and unidentified potential claimants in these complex proceedings, the Court also made the Representative Counsel Appointment Order on December 9, 2019 in each of the Tobacco CCAA Proceedings which appointed the Representative Counsel for the TRW Claimants who are defined to include “all individuals...who assert or may be entitled to assert a claim or cause of action...in respect of...(ii) the historical or ongoing use of or exposure to Tobacco Products...”.⁴
8. The HSF Motion, which seeks “rights of participation” in the Mediation and appointment of representative counsel for Future Tobacco Harm Stakeholders, if granted would necessarily vary the Amended and Restated Initial Orders and the Representative Counsel Appointment Order.
9. Pursuant to an endorsement dated February 14, 2023, the Court held that HSF was required to bring the Leave Motion prior to scheduling the HSF Motion, if leave is granted.⁵ The Court agreed with the submissions of the Monitors that the HSF should meet certain procedural requirements prior to advancing the substantive issues in the HSF Motion.

³ See for example paragraphs 40(a) and (c) of the [RBH Second Amended and Restated Initial Order](#).

⁴ [Order \(Appointment of Representative Counsel\) dated December 13, 2019](#) at para 3.

⁵ [Endorsement of Justice McEwen dated February 14, 2023](#).

10. The purpose of this Appendix is to provide the Court with information that the Monitors are of the view will assist the Court in considering the Leave Motion and whether circumstances exist which could justify varying or amending the Amended and Restated Initial Orders or the Representative Counsel Appointment Order, including:
- a. whether HSF has acted with due diligence in bringing the HSF Motion given the passage of time since the commencement of these Tobacco CCAA Proceedings, the ongoing Mediation, and the appointment of Representative Counsel;
 - b. whether there has been a change in circumstances that would merit a variation of the prior orders of this Court;
 - c. whether the HSF Motion would unduly hinder the progress of these Tobacco CCAA Proceedings; and
 - d. the Monitors' comments and recommendations in respect of the foregoing matters.

a. Due Diligence

11. As noted, these Tobacco CCAA Proceedings were commenced more than 4 years ago in March of 2019. HSF has been aware of these Tobacco CCAA Proceedings at least since September of 2019.
12. The Canadian Cancer Society (“CCS”) sought leave to bring a motion dated September 24, 2019, seeking, among other things, the participation of CCS in the Mediation (the “CCS Motion”).⁶
13. In support of the CCS Motion, the CCS included a letter from the HSF dated September 20, 2019 which states that the HSF:

does not intend to bring a motion before the Court to participate in the proceedings, and supports the Canadian Cancer Society bringing a motion to the Court to be able to participate in the proceedings before the Court, and to participate in the mediation

⁶ [Responding Motion Record of the Canadian Cancer Society dated September 24, 2019](#) (“CCS Motion Record”).

process that has been authorized by the Court regarding the tobacco companies.⁷

14. In the CCS Motion, the CCS argued that although it was not a creditor, it was an important public health stakeholder and had a direct financial interest in the Tobacco CCAA Proceedings and Mediation since any settlement reached will impact the financial resources to be devoted to patients, education and research. CCS also argued that it had unique knowledge, expertise and experience to participate in the Mediation and pointed to its analysis of the U.S. tobacco settlements in 1997 and 1998.⁸
15. The Court dealt with the CCS Motion in an endorsement dated October 19, 2019 (the “**CCS Endorsement**”) as follows:

...with respect to mediation, I am not prepared to allow CCS to participate at this time. As noted, it is neither a creditor nor a debtor. I accept that CCS has extensive experience as a health charity and it is open to CCS to liaise with the government and other stakeholders outside the mediation process if it deems it desirable to do so.

Further, I have given the Hon. Mr. Winkler broad discretion to conduct the mediation process. This includes broad discretion to consult with a wide variety of persons as he considers appropriate.

I see no reason, at this time, to vary that order. It is important to allow the Hon. Mr. Winkler, who has vast experience in this area, the ability to carry on with the flexibility outlined in my Orders in these very complicated and significant matters.”⁹

16. The HSF Motion is dated September 19, 2022, which is three years after it wrote its letter stating that it would not participate in these Tobacco CCAA Proceedings. It is also three years after the Court denied a similar request of CCS, a similarly situated non-creditor charity, to participate in the Mediation, because among other reasons, the Court-Appointed

⁷ Letter of Support from HSF dated September 20, 2019, Exhibit “A” to Affidavit of Shawn Chirrey, sworn September 24, 2019 (“**Chirrey Affidavit**”), [CCS Motion Record](#) at Tab 2A, page 27.

⁸ Chirrey Affidavit at paras. 4, 7, 13 and 19, [CCS Motion Record](#) at Tab 2.

⁹ [Endorsement of Justice McEwen dated October 18, 2019.](#)

Mediator had the discretion to control the Mediation and no reason was found to vary that order.

17. The Representative Counsel Appointment Order was also made more than 3 years ago. The HSF Motion is predicated on the proposition that additional representative counsel is necessary for various reasons. The Monitors are of the view that such relief would require the variation of the Representative Counsel Appointment Order to modify the scope of representation prescribed by that order. Regardless of the merits of HSF's arguments, there is no reason that any such arguments could not have been made by HSF in December of 2019.
18. HSF has provided no explanation for its decision to now try to insert itself, directly or indirectly, into the Tobacco CCAA Proceedings and the Mediation or for its significant delay in bringing the HSF Motion.

b. No Change in Circumstances

19. As noted, the Court-Appointed Mediator was authorized to control his own process and to decide which stakeholders or other persons that he considers appropriate to be part of that process.¹⁰ The HSF has not provided any evidence about any new events or any change in circumstances over the last 3 to 4 years which would justify varying of the Mediation provisions in the Amended and Restated Initial Orders to compel the Court-Appointed Mediator to include an additional party.
20. The HSF Motion references (i) the background of the HSF; (ii) the harm caused by smoking; (iii) the cash position of the Applicants at the time of the initial application; and (iv) the U.S. tobacco settlements in 1997 and 1998. None of these facts constitute new circumstances that arose or changed since 2019.
21. In 2019, the Court also granted the Representative Counsel Appointment Order which appointed Representative Counsel for all present and future claimants with respect to use of or exposure to tobacco products.

¹⁰ See for example paragraphs 40(a) and (c) of the [RBH Second Amended and Restated Initial Order](#).

22. The Monitors are of the view that the HSF is seeking a variation of the Representative Counsel Appointment Order to carve out “Future Tobacco Harm Stakeholders” without any evidence of a change in circumstances that would justify such a variation.
23. The Monitors also note that the HSF has made an allegation of a “conflict” between various stakeholders in the Mediation. This allegation is unsupported by any evidence. Nevertheless, this argument could have been raised by the HSF in 2019 and making it now does not constitute a change in circumstances.

c. Hindering the Progress of these Tobacco CCAA Proceedings

24. These Tobacco CCAA Proceedings are in their fifth year. The on-going Mediation also started in 2019 to deal with complex negotiations between multiple parties over significant claims.
25. Each of the Monitors has consistently reported since the commencement of the Mediation that the Court-Appointed Mediator has continued to conduct Mediation meetings, facilitate the exchange of information and engage in meaningful discussions with the Applicants and key stakeholders. The Monitors have reported that the parties continue to advance the Mediation and the Court noted in its last endorsement for an extension of the stay period that “good progress” is being made in the Mediation.¹¹
26. Absent a request from the Court-Appointed Mediator for additional parties to participate in the Mediation, the Monitors are concerned that the forced introduction of another party into the Mediation could be disruptive and/or undermine any progress that has been achieved to date.

C. THE TOBACCO MONITORS’ COMMENTS AND RECOMMENDATIONS

27. The Monitors acknowledge that the HSF plays an important and leading role in advocacy, education and the funding of research regarding heart disease and strokes.
28. The Monitors also note that CCS was accepted by the Court as a “social stakeholder” with the ability to participate in the Court proceedings. In this regard, HSF has not been

¹¹ [Endorsement of Justice McEwen dated September 29, 2022.](#)

precluded from appearing or making submissions to the Court in these Tobacco CCAA Proceedings nor is the HSF being deprived of an opportunity to comment on any plan or resolution that may come before the Court for approval.

29. However, participation in the Tobacco CCAA Proceedings is entirely different from the Court fettering the discretion of a very experienced Court-Appointed Mediator who is in control of the Mediation and mandating participation of an additional party, be it HSF or its designate. This is especially true where the Mediation has been ongoing for more than 3 years under the sole discretion of the Court-Appointed Mediator.
30. The Monitors believe the HSF has not acted with due diligence in bringing the HSF Motion nor has there been a material change in circumstances that justifies varying prior orders of the Court. Further, forcing the Court-Appointed Mediator to include another stakeholder (financial, social or otherwise) in the Mediation may in fact be disruptive to the process and hinder any progress.
31. In the circumstances, the Monitors submit that the Leave Motion ought to be dismissed.

**APPENDIX “B”
GLOSSARY**

“**Amended and Restated Initial Orders**” means (i) the initial order of Imperial granted on March 12, 2019, as amended and restated as of April 5, 2019 and further amended on April 25, 2019; (ii) the initial order of JTIM granted on March 8, 2019, as amended and restated as of April 5, 2019 and further amended on April 25, 2019; and (iii) the initial order of Rothmans granted on March 22, 2019, as amended and restated as of April 5, 2019 and further amended on April 26, 2019.

“**Applicants**” means, collectively, Imperial, JTIM and Rothmans.

“**BAT**” means British American Tobacco p.l.c., a public company listed on the London Stock Exchange.

“**BAT Group**” means, collectively, British American Tobacco p.l.c., B.A.T. International Finance p.l.c., 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 Imperial and the ITCAN Subsidiaries.

“**CCAA**” means the *Companies’ Creditors Arrangement Act*, R.S.C., 1985, c. C-36, as amended.

“**CCAA Proceedings**” means Court File No. CV-19-616077-00CL commenced by Imperial under the CCAA.

“**Chapter 15 Proceedings**” means the proceedings commenced by ITCAN on March 13, 2019, for relief under Chapter 15 of the U.S. Bankruptcy Code.

“**Court**” means the Ontario Superior Court of Justice (Commercial List).

“**Court-Appointed Mediator**” means the Honourable Warren K. Winkler K.C., acting as an officer of the Court and as a neutral third party to mediate a pan Canadian global settlement in the context of these Tobacco CCAA Proceedings.

“**Deloitte**” means Deloitte Restructuring Inc.

“**Eighth Report**” means the eighth report of the Monitor filed on September 22, 2020.

“**Eleventh Report**” means the eleventh report of the Monitor filed on March 15, 2022.

“**EY**” means Ernst & Young Inc.

“**Fifth Report**” means the report filed by the Monitor on September 25, 2019.

“**First Report**” means the report filed by the Monitor on April 3, 2019.

“**Fourth Report**” means the report filed by the Monitor on June 24, 2019.

“**FTI**” means FTI Consulting Canada Inc.

“**Future Tobacco Harm Stakeholders**” as defined in the HSF Representation Motion, means those individuals who will buy and use tobacco products (or be exposed to the use of tobacco products) subsequent to the commencement of the CCAA Proceedings.

“**Genstar**” means Genstar Corporation, a subsidiary of ITCAN.

“**HSF**” means the Heart and Stroke Foundation of Canada.

“**HSF Leave Motion**” means a motion brought by HSF returnable April 13, 2023 for leave to bring the HSF Representation Motion.

“**HSF Representation Motion**” means a motion brought by HSF dated September 19, 2022, seeking the appointment Tyr LLP as representative counsel for the Future Tobacco Harm Stakeholders.

“**HSF Representation Motion Leave Hearing Order and Endorsement**” means an order and endorsement issued by the Court on February 14, 2023, setting a hearing date of April 14, 2023 for the hearing respecting leave to bring the HSF Representation Motion.

“**Imperial**” means, collectively, ITCAN and ITCO.

“**Initial Order**” means the initial order granted by the Court on March 12, 2019, as amended and restated as of April 5, 2019 and further amended and restated as of April 25, 2019 and updated by written endorsement on March 6, 2020, which authorized, among other things, the Stay of Proceedings and FTI’s appointment as Monitor of Imperial’s CCAA Proceedings.

“**ITCAN**” means Imperial Tobacco Canada Limited.

“**ITCAN Subsidiaries**” means 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, Imasco Holdings Group, Inc., ITL (USA) limited, Genstar Pacific Corporation, Imasco Holdings Inc., Southward Insurance Ltd., Liggett & Myers Tobacco Company of Canada Limited or entities related to or affiliated with them other than Imperial and the BAT Group.

“**ITCO**” means Imperial Tobacco Company Limited.

“**JTIM**” means JTI-Macdonald Corp.

“**JTIM Group**” means the entities currently or formerly related to or affiliated with JTIM.

“**Monitors**” mean FTI, EY and Deloitte collectively.

“**Monitor’s Reports**” means collectively, the Pre-Filing Report, the First Report, the Second Report, the Third Report, the Fourth Report, the Fifth Report, the Sixth Report, the Seventh Report, the Eighth Report, the Ninth Report, the Tenth Report, the Eleventh Report, the Twelfth Report, the Thirteenth Report, and this Report.

“**Ninth Report**” means the report filed by the Monitor on March 19, 2021.

“**Pending Litigation**” has the meaning ascribed in the Amended and Restated Initial Orders.

“**PMI Group**” means Philip Morris International Inc. and all entities related to or affiliated with it, other than Rothmans.

“**Pre-Filing Report**” means the report filed by the Monitor on March 12, 2019, in its capacity as proposed Monitor of Imperial, in connection with Imperial’s initial application for relief under the CCAA.

“**Quebec Appeal Judgment**” means the Court of Appeal of Quebec’s decision on the appeal of the Quebec Judgment whereby the Court of Appeal substantially upheld the Quebec Judgment with two notable modifications: (i) the total claim amount was reduced by just over \$1 million; and (ii) the interest schedule was adjusted, reducing the interest payable on the total claim amount.

“**Quebec Judgment**” means the Quebec Superior Court’s judgment on the “Letourneau action” and the “Blais action” released on May 27, 2015 in which the trial judge found the co-defendants jointly liable for \$15.6 billion, with Imperial’s share being approximately \$10.6 billion.

“**Report**” means this fourteenth report of the Monitor filed on March 14, 2023.

“**Representative Counsel**” means The Law Practice of Wagner & Associates, Inc.

“**Representative Counsel Appointment Order**” means the order granted on December 9, 2010 appointing the Representative Counsel.

“**Rothmans**” means Rothmans Benson & Hedges Inc.

“**Second Report**” means the report filed by the Monitor on April 24, 2019.

“**Seventh Report**” means the report filed by the Monitor on February 13, 2020.

“**Sixth Report**” means the report filed by the Monitor on November 26, 2019.

“**Stay of Proceedings**” means the stay of proceedings during the Stay Period in favour of Imperial and their non-applicant subsidiaries, including Liggett & Meyers Tobacco Company of Canada Limited, as well as a limited stay in favour of BAT and certain BAT affiliates.

“**Tenth Report**” means the report filed by the Monitor on September 20, 2021.

“**Third Report**” means the report filed by the Monitor on May 13, 2019.

“**Thirteenth Report**” means the report filed by the Monitor on September 23, 2022.

“**Tobacco Claims**” means all claims brought or that could be brought under applicable law against the Applicants 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.

“**Tobacco Monitors**” means, collectively, the Monitor, EY in its capacity as monitor for Rothmans, and Deloitte in its capacity as monitor for JTIM.

“**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, 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, but does not include heat-not-burn tobacco products or Vapour Products.

“**Tobacco CCAA Proceedings**” means the 3 proceedings commenced by the Amended and Restated Initial Orders.

“**TRW Claimants**” means all individuals (including their respective successors, heirs, assigns, litigation guardians and designated representatives under applicable provincial family law legislation) who assert or may be entitled to assert a claim or cause of action as against one or more of the Applicants, the ITCAN subsidiaries, the BAT Group, the JTIM Group or the PMI Group, each as defined below, or persons indemnified by such entities, in respect of:

- (i) the development, manufacture, importation, production, marketing, advertising, distribution, purchase or sale of Tobacco Products,
- (ii) the historical or ongoing use of or exposure to Tobacco Products; or
- (iii) any representation in respect of Tobacco Products,

in Canada or in the case of the Applicants, anywhere else in the world, including, without limitation, claims for contribution or indemnity, personal injury or tort damages, restitutionary recovery, non-pecuniary damages or claims for recovery grounded in provincial consumer protection legislation but specifically excluding claims:

- (iv) in any person’s capacity as a trade supplier, contract counterparty, employee, pensioner, or retiree;
- (v) captured by any of the following commercial class actions:
 - (A) *The Ontario Flue-Cured Tobacco Growers’ Marketing Board v. JTI-Macdonald Corp.*, Court File No. 64462 CP (London, Ontario);
 - (B) *The Ontario Flue-Cured Tobacco Growers’ Marketing Board v. Rothmans, Benson & Hedges Inc.*, Court File No. 1056/10CP (London, Ontario);
 - (C) *The Ontario Flue-Cured Tobacco Growers’ Marketing Board v. Imperial Tobacco Canada Ltd.*, Court File No. 64757 CP (London, Ontario);
- (vi) captured by any of the following class actions:
 - (A) *Conseil québécois sur le tabac et la santé et al. v. JTI-Macdonald Corp. et al.*, Court File No. 500-06-000076-980 (Montreal, Quebec);

- (B) *Cécilia Létourneau et al. v. Imperial Tobacco Canada Ltd., et al.*, Court File No. 500-06-000070-983 (Montreal, Quebec);
- (C) *Kenneth Knight v. Imperial Tobacco*, Court File No. L031300 (Vancouver, British Columbia).

“**Twelfth Report**” means the twelfth report of the Monitor filed on July 8, 2022.

“**U.S. Bankruptcy Code**” means title 11 of the United States Code.

“**U.S. Bankruptcy Court**” means the United States Bankruptcy Court for the Southern District of New York.

“**Vapour Products**” means potential reduced risk, rechargeable, battery-powered devices that heat liquid formulations – e-liquids – to create a vapour which is inhaled, and which are sold under the tradename of Vype/Vuse.

**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

**FOURTEENTH REPORT OF THE MONITOR
MARCH 14, 2023**

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

**Imperial Tobacco Canada Limited and
Imperial Tobacco Company Limited**

THIRTEENTH REPORT OF THE MONITOR

September 23, 2022

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

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

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

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

**THIRTEENTH REPORT TO THE COURT
SUBMITTED BY FTI CONSULTING CANADA INC.,
IN ITS CAPACITY AS MONITOR**

A. GENERAL

1. In this Report, unless otherwise defined, all capitalized terms shall have the respective meanings specified in the glossary attached to this Report as Appendix "A". The first instance of each capitalized term, if defined in the glossary, is bookmarked to the glossary.

B. INTRODUCTION

2. The principal purpose of these CCAA Proceedings, and the related Chapter 15 Proceedings, is to restructure and compromise Imperial's liabilities, specifically the liabilities arising from the Tobacco Claims, including the Quebec Appeal Judgment.
3. The Initial Order in these CCAA Proceedings was issued by the Court on March 12, 2019, as amended and restated on April 5, 2019, further amended and restated on April 25, 2019, and updated by written endorsement on March 6, 2020. The U.S. Bankruptcy Court issued the Foreign Recognition Order recognizing the CCAA Proceedings as the main proceedings and staying proceedings against ITCAN in the United States on April 17, 2019.
4. A list of the Orders issued by the Court and the U.S. Bankruptcy Court in these CCAA Proceedings can be found in Appendix "B" to this Report.

C. BACKGROUND

5. Imperial is the largest distributor of Tobacco Products in Canada and operates two businesses: tobacco and logistics. The tobacco business includes the marketing and sale of Tobacco Products and Vapour Products. The logistics business distributes Tobacco Products and Vapour Products for tobacco manufacturers, as well as certain non-tobacco products.
6. Imperial is highly integrated with BAT and its affiliates. Imperial benefits from a wide range of services, licences and rights that certain BAT affiliates provide. These services and functions have been and continue to be vital to Imperial's business.
7. Further information regarding these CCAA Proceedings and Imperial's background is provided in the previous Monitor's Reports.
8. All Court materials filed and orders issued in these CCAA Proceedings and the related Chapter 15 Proceedings are available on the Monitor's website at: <http://cfcanada.fticonsulting.com/imperialtobacco>.

D. TERMS OF REFERENCE AND DISCLAIMER

9. In preparing this Report, the Monitor has relied upon certain financial information and forecasts prepared by Imperial, and discussions and correspondence with, among others, the senior management and advisors to Imperial. The Monitor has not audited or otherwise attempted to verify the accuracy or completeness of this information. Accordingly, the Monitor expresses no opinion or other form of assurance on the information contained in this Report or relied on in its preparation. Future-oriented financial information reported or relied on in preparing this Report is based on Imperial management's assumptions regarding future events; actual results may vary from the forecast, and such variations may be material.
10. Unless otherwise stated, all monetary amounts contained herein are expressed in Canadian Dollars.

11. This Report should be read in conjunction with the September 2022 Thauvette Affidavit, which can be found [here](#).

E. PURPOSE OF THIS REPORT

12. The purpose of this Report is to provide this Court with information regarding:
- i. an update on the Mediation;
 - ii. an update on the continued impact of the COVID-19 Pandemic on Imperial's business, and steps taken to mitigate the effects of future business interruptions;
 - iii. Imperial's business activities, industry developments and trends impacting Imperial's business and Imperial's related business contingency plan;
 - iv. Imperial's budget to actual cash flow results for the 27-week period ending September 4, 2022;
 - v. the Cash Flow Forecast for the 30-week period commencing the week of September 5, 2022, through the week of March 31, 2023;
 - vi. the activities of the Monitor and its counsel since March 15, 2022, the date of the Eleventh Report;
 - vii. Imperial's request for an order extending the Stay of Proceedings up to and including March 31, 2023; and
 - viii. the Monitor's comments and recommendations in respect of the foregoing matters.

F. UPDATE ON COURT PROCEEDINGS

13. On March 22, 2022, the Court heard a motion seeking the extension of the Stay of Proceedings and issued the September 2022 Stay Extension Order, which extended the Stay Period to September 30, 2022. A copy of the September 2022 Stay Extension Order can be found [here](#).

14. On July 11, 2022, the Court issued the New Excise Act Security Order authorizing ITCAN to post security in an aggregate amount not exceeding \$5 million as required by certain amendments to the Excise Tax Act and to take any steps necessary to otherwise comply with such amendments, notwithstanding any restrictions that might otherwise arise under the terms of the Initial Order. A copy of the New Excise Act Security Order can be found [here](#).
15. On July 15, 2022, the Monitor, by its U.S. Counsel, filed the third status report to advise the U.S. Bankruptcy Court of the ongoing developments in these CCAA Proceedings. There was no hearing associated with such filing. A copy of the third status report can be found [here](#).
16. On August 10, 2022, the U.S. Bankruptcy Court reassigned the Chapter 15 Proceedings to Judge John P. Mastando III.
17. We also note that, on April 26, 2022, the scheduling manager for the Supreme Court of British Columbia advised counsel to the Monitor that Madam Justice Jackson had been assigned the HCCR Claims proceedings currently before the Supreme Court of British Columbia.
18. This hearing on the motion to extend the Stay of Proceedings will proceed by Zoom Video Conference according to the protocol developed by counsel to the Tobacco Monitors. The general public will have access to the hearing via a secure, dedicated YouTube livestream. This protocol has been served on the consolidated service list, is posted on the Monitor's website and can be found in Appendix "C" to this Report.

G. UPDATE ON THE MEDIATION

19. The Monitor continues to work with Imperial to populate the Imperial Data Room with financial and other information relevant to these CCAA Proceedings and to respond to information requests. The Imperial Data Room is accessible only to those advisors of Mediation Participants who have executed NDAs.

20. The Court-Appointed Mediator, with the assistance of the Tobacco Monitors, has continued to conduct the Mediation and engage in meaningful discussions with the Applicants and stakeholders. Although the Mediation is confidential, the Monitor can report that the parties are continuing to advance the Mediation with a view to facilitating a pan-Canadian global settlement of the Tobacco Claims.

H. COVID-19 PANDEMIC IMPACT UPDATE

21. As noted in the Monitor's Eleventh Report, the BAT Group purchased and reallocated certain manufacturing and packaging equipment to be installed in the United States and Chile for BAT to produce product for Imperial to prevent a recurrence of the supply chain disruptions that Imperial incurred at the outset of the COVID-19 pandemic. Certain of the equipment was purchased by the BAT Group directly from the manufacturer, while other equipment was reallocated from affiliates of BAT. The total cost of the equipment was approximately \$29 million. Ownership of the equipment remains with the BAT Group. Imperial has advised the Monitor that it has incurred total development costs of \$5.8 million in connection with these contingency arrangements. Imperial has advised the Monitor that the installation of the equipment was completed in the United States by April 2022 and in Chile in September 2022.

I. IMPERIAL'S BUSINESS ACTIVITIES, INDUSTRY DEVELOPMENTS AND TRENDS IMPACTING IMPERIAL'S BUSINESS

(i) Canadian Distribution Centres Upgrade

22. As discussed in the Eleventh Report, the automated equipment in Imperial's Canadian distribution centres operated by Ryder is nearing the end of its useful life and will need to be replaced. As further noted in the Eleventh Report, following a request for proposals, Imperial selected the best proposal based on the terms of the request for proposals. Imperial has advised the Monitor that the projected timeline set out in the Eleventh Report has been revised based on the design phase resulting in a revised scope, and the project is now expected to be completed in June 2024.

(ii) Vuse Store Openings

23. As part of Imperial’s strategy to market its “Vuse” Vapour Products it has opened additional Vuse retail stores. As of the date of this Report, ITCAN currently operates eight Vuse stores and anticipates opening three additional Vuse stores across Canada by 2023.

(iii) Nova Scotia Vaping Products Taxation Security

24. On July 18, 2022, the audit and enforcement branch of the Department of Service Nova Scotia and Internal Services sought additional security in the amount of \$100,000 under section 82 of the *Revenue Act* (Nova Scotia) in relation to Imperial’s vaping products registration in the province.
25. On August 26, 2022, Counsel to Imperial responded to the July 18th request for additional security asserting that Nova Scotia’s request for \$100,000 in additional security is inconsistent with the terms of paragraphs 11 and 12 of the Initial Order, which together set out a framework concerning bonding and security for certain governmental entities. In addition, counsel to Imperial asserted that the request is unnecessary in view of paragraph 25 of the Initial Order, which provides for a charge in favour of certain governments for any amounts owing in respect of Sales & Excise Taxes (as defined in the Initial Order).

J. ENVIRONMENTAL RISK ASSESSMENT OF AYLMER PROCESSING PLANT

26. On November 14, 2018, the Ministry of the Environment, Conservation and Parks accepted ITCAN’s risk assessment report on Area 101 at 259 Elm Street in Aylmer, Ontario. ITCAN committed to installing a soil cover over the pesticide-contaminated soils at the site. The estimate to complete this work, which was delayed due to the COVID-19 Pandemic, is approximately \$600,000. ITCAN anticipates that this work will commence in the fourth quarter of 2022. The Monitor agrees that this work should proceed during these CCAA Proceedings.

K. RECEIPTS AND DISBURSEMENTS FOR THE 27-WEEK PERIOD ENDING SEPTEMBER 4, 2022

27. Imperial’s cash balance as of the week ended September 4, 2022, was \$2,886 million, an increase of approximately \$310 million, as compared to the forecasted net cash inflow of

\$463 million over the 27-week period ending September 4, 2022, giving a net negative variance of \$153 million as explained below:

VARIANCE REPORT	Actuals	Forecast	Variance
<i>CAD in thousands</i>	For the 27-week period ending Sep 04, 2022		
RECEIPTS			
Trade Receipts	2,348,373	2,561,106	(212,734)
DISBURSEMENTS			
<i>Operating Disbursements</i>			
Taxes and Levies	(1,561,893)	(1,654,141)	92,248
Operations	(490,828)	(445,204)	(45,624)
<i>Total Operating Disbursements</i>	<u>(2,052,721)</u>	<u>(2,099,345)</u>	<u>46,624</u>
OPERATING CASH FLOWS	<u>295,651</u>	<u>461,761</u>	<u>(166,110)</u>
<i>Financing Disbursements</i>			
Interest and Related Fees on Existing Facilities	18,200	7,089	11,111
<i>Restructuring Disbursements</i>			
Professional Fees	(3,997)	(5,493)	1,496
NET CASH FLOWS	<u>309,855</u>	<u>463,357</u>	<u>(153,502)</u>
CASH			
Beginning Balance	2,572,504	2,572,504	-
Net Cash Inflows / (Outflows)	309,855	463,357	(153,502)
Other (FX)	3,499	-	3,499
ENDING CASH	<u>2,885,858</u>	<u>3,035,861</u>	<u>(150,003)</u>

28. The significant budget to actual variances and corresponding explanations are as follows:
- i. *trade receipts*: negative variance of \$213 million, or 8% against the forecast, primarily driven by lower-than-forecast sales volumes. As described in paragraph 12 of the September 2022 Thauvette Affidavit, the lower sales were mainly driven by a higher than forecasted decline in overall industry volumes.
 - ii. *taxes and levies*: positive permanent variance of \$92 million, primarily driven by the lower-than-forecast importation of cigarettes into Canada primarily driven by the lower-than-forecast industry volumes.
 - iii. *operating disbursements*: negative timing variance of \$46 million, primarily driven by accelerated inventory purchases for Vapour Products of approximately \$93 million as contingency arrangements to address potential regulatory and

geopolitical issues, which was then partially offset by positive timing differences of \$47 million relating to marketing programs primarily driven by the lower-than-forecast sales which are expected to reverse in future reporting periods as well as reimbursement of Nicoventure expenses for services incurred in previous periods.

- iv. *interest income*: positive permanent variance of \$11 million that is driven by the higher-than-forecast interest rate earned on funds held by the company as a result of rising interest rates.
- v. *professional fees*: positive variance of \$1.5 million that consists of a positive permanent variance of \$1.0 million and a positive timing variance of \$0.5 million that is expected to reverse in the future reporting period.

L. CASH FLOW FORECAST

- 29. Imperial, with the assistance of the Monitor, has prepared a Cash Flow Forecast for the 30-week period ending the week of March 31, 2023. The Cash Flow Forecast is attached as Appendix “D” to this Report.
- 30. During the Forecast Period, total operating receipts are forecast to be approximately \$2,259 million and total operating disbursements are forecast to be approximately \$2,108 million, resulting in a net positive operating cash flow of approximately \$151 million. In addition, Imperial forecasts interest income of approximately \$37 million in respect of cash balances on deposit in Canada and professional fee disbursements of approximately \$6 million, such that net cash inflow is forecast to be approximately \$182 million.
- 31. Although net cash flows are positive during the Forecast Period, there are 11 weeks within this period which are forecasted to have negative operating cash flows. These are largely driven by the timing of the payment of taxes and government levies due at the end of each month. Cash flows in the weeks that fall on or around month-end tax payments are expected to be negative and then offset by the receipt of the positive cash flows during the remainder of the month.

32. The Monitor has reviewed the Cash Flow Forecast to the standard required of a Court-appointed monitor by Section 23(1)(b) of the CCAA. Section 23(1)(b) requires a monitor to review the debtor's cash flow statement as to its reasonableness and to file a report with the court on the monitor's findings. The Canadian Association of Insolvency and Restructuring Professionals' Standards of Professional Practice include a standard for a monitor fulfilling its statutory responsibilities under the CCAA in respect of its report on the Cash Flow Forecast.
33. In accordance with the standard, the Monitor's review of the Cash Flow Forecast consisted of inquiries, analytical procedures and discussions related to the Cash Flow Forecast and its underlying assumptions. The Monitor's procedures with respect to the assumptions were limited to evaluating whether they were consistent with the purpose of the Cash Flow Forecast. The Monitor also reviewed the support provided by Imperial's management for the assumptions and the preparation and presentation of the Cash Flow Forecast.
34. Based on the Monitor's review, nothing has come to its attention that causes it to believe, in all material respects, that:
- i. the assumptions are not consistent with the purpose of the Cash Flow Forecast;
 - ii. as at the date of this Report, the assumptions are not suitably supported and consistent with the plans of Imperial or do not provide a reasonable basis for the Cash Flow Forecast; or
 - iii. the Cash Flow Forecast does not reflect the assumptions.
35. As described in the Terms of Reference above, since the Cash Flow Forecast is based on assumptions regarding future events, actual results will vary from the information presented even if the assumptions occur, and the variations could be material. Accordingly, the Monitor expresses no assurance as to whether the Cash Flow Forecast will be achieved. In addition, the Monitor expresses no opinion or other form of assurance with respect to the accuracy of the financial information presented in the Cash Flow Forecast or relied upon by the Monitor in preparing this Report.

36. The Cash Flow Forecast has been prepared solely for the purposes described above, and readers are cautioned that it may not be appropriate for other purposes.

37. **NEW TOBACCO AND VAPOUR REGULATIONS**

38. Tobacco Products and Vapour Products continue to come under increased global scrutiny resulting in stringent regulation and, in some cases, bans. As noted in previous Monitor's Reports, the Monitor has been advised by Imperial that, due to the new vaping regulations, there continues to be a high level of uncertainty surrounding the consumer demand for Vapour Products in particular.

39. Appendix "E" to this Report summarizes the various regulatory changes related to Tobacco Products and Vapour Products that have been considered and/or implemented across Canada since the date of the Eleventh Report.

M. OVERVIEW OF THE MONITOR'S ACTIVITIES

40. Since the date of the Eleventh Report, the Monitor and its counsel have held numerous meetings and discussions with Imperial and its counsel to:

- i. monitor Imperial's business activities;
- ii. monitor Imperial's receipts and disbursements;
- iii. assist in the preparation of the Cash Flow Forecast;
- iv. prepare monthly professional fee disclosures;
- v. gather and review Information to be included in the Imperial Data Room;
- vi. address vendor and stakeholder inquiries;
- vii. evaluate a variety of legal and operational issues as they arise;
- viii. attend monthly board meetings;
- ix. review proposed capital expenditures; and

- x. further their understanding of Imperial's business environment and the factors expected to impact its future business prospects.
41. As discussed above, the Monitor has continued to engage with Imperial to understand the supply chain disruptions to its operations caused by the COVID-19 Pandemic and review Imperial's business contingency plan.
42. The Monitor has also regularly attended meetings with the Court-Appointed Mediator and stakeholders and has provided the Court-Appointed Mediator with information necessary to advance the Mediation.
43. The Tobacco Monitors and their counsel have met regularly to discuss ongoing matters including the Mediation, reviewing Information to be included in the Applicants' Data Rooms, procedural aspects of these CCAA Proceedings and the relief sought herein.

Professional Fee Disclosure

44. Pursuant to the Professional Fee Disclosure Order, the Monitor continues to provide to the Quebec Litigation Plaintiffs and other parties who requested such information, a summary, by firm, of the restructuring fees incurred on or after March 12, 2019, and paid to the CCAA Professionals each month.

N. STAY OF PROCEEDINGS

45. Imperial is seeking an extension of the Stay Period up to and including March 31, 2023. The Monitor understands that such extension is necessary for Imperial to operate the business in the ordinary course as it continues to engage in the Mediation conducted by the Court-Appointed Mediator and to work towards developing a plan of compromise or arrangement for a pan-Canadian global settlement of the Tobacco Claims.
46. The Monitor supports an extension of the Stay of Proceedings for the following reasons:
- (a) Imperial is acting in good faith and with due diligence;

- (b) Imperial is continuing to engage meaningfully in the Mediation with the Court-Appointed Mediator in an effort to reach a pan-Canadian global settlement of the Tobacco Claims; and
- (c) the Cash Flow Forecast reflects that Imperial is projected to have sufficient funding to continue to operate in the normal course through the proposed extension to the Stay of Proceedings.

The Monitor respectfully submits this Report.

Dated this 23rd day of September 2022.

FTI Consulting Canada Inc.

FTI Consulting Canada Inc.

in its capacity as Monitor of Imperial Tobacco Canada Limited and Imperial Tobacco Company Limited and not in its personal capacity

**APPENDIX “A”
GLOSSARY**

“**Applicants**” means, collectively, Imperial, JTIM and Rothmans.

“**BAT**” means British American Tobacco p.l.c., a public company listed on the London Stock Exchange.

“**BAT Group**” means, collectively, British American Tobacco p.l.c., B.A.T. International Finance p.l.c., 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 Imperial and the ITCAN Subsidiaries.

“**BAT Mexico**” means British American Tobacco Mexico S.A. de C.V.

“**Cash Flow Forecast**” means the cash flow forecast of Imperial’s receipts and disbursements for the 30-week period commencing the week of September 5, 2022 through the week of March 31, 2023.

“**CCAA**” means the *Companies’ Creditors Arrangement Act*, R.S.C., 1985, c. C-36, as amended.

“**CCAA Proceedings**” means Court File No. CV-19-616077-00CL commenced by Imperial under the CCAA.

“**CCAA Professionals**” means the Monitor, counsel to the Monitor, counsel to Imperial, and any financial advisor Imperial has retained in connection with these CCAA Proceedings, except for any financial advisor in respect of whose work Imperial properly asserts solicitor-client, settlement, litigation or other privilege.

“**Chapter 15 Proceedings**” means the proceedings commenced by ITCAN on March 13, 2019, for relief under Chapter 15 of the U.S. Bankruptcy Code.

“**Comeback Motion**” means the Comeback Motion, as defined in the Initial Order, which was heard on April 4, 5, 25 and 26, 2019.

“**Consortium of Provinces**” means, collectively, the Province of British Columbia, the Province of Manitoba, the Province of New Brunswick, the Province of Nova Scotia, the Province of Prince Edward Island and the Province of Saskatchewan, in each province’s capacity as a plaintiff in the HCCR Claims.

“**Court**” means the Ontario Superior Court of Justice (Commercial List).

“**Court-Appointed Mediator**” means the Honourable Warren K. Winkler Q.C., acting as an officer of the Court and as a neutral third party to mediate a pan-Canadian global settlement in the context of these Tobacco CCAA Proceedings.

“**COVID-19 Pandemic**” means the global pandemic caused by the novel coronavirus.

“**Data Rooms**” means data rooms containing Information in respect of the Applicants which are responsive to requests submitted by Mediation Participants, and as well as other information, which the Tobacco Monitors considered relevant.

“**Deloitte**” means Deloitte Restructuring Inc.

“**Eighth Report**” means the eighth report of the Monitor filed on September 22, 2020.

“**Eleventh Report**” means the eleventh report of the Monitor filed on March 15, 2022.

“**Excluded Claims**” means the claims excluded from the definition of TRW Claimants as described in paragraph 26 of Appendix “C” to the Sixth Report.

“**EY**” means Ernst & Young Inc.

“**Fifth Report**” means the report filed by the Monitor on September 25, 2019.

“**First Report**” means the report filed by the Monitor on April 3, 2019 in connection with the relief sought at the Comeback Motion.

“**Flintkote**” means the Flintkote Company.

“**Flintkote Issue**” means the lawsuit brought against ITCAN in respect of certain distributions received by ITCAN from Flintkote (a previous indirect subsidiary of a predecessor of ITCAN) and legal expenses related to same, as more fully described in the Tenth Report.

“**Forecast Period**” means the 31-week period commencing the week of February 28, 2022 through the week of September 30, 2022.

“**Fourth Report**” means the report filed by the Monitor on June 24, 2019.

“**FTI**” means FTI Consulting Canada Inc.

“**Genstar**” means Genstar Corporation, a subsidiary of ITCAN.

“**HCCR Claims**” means the claims started by each of the Provinces under each Province’s health care cost recovery legislation, to recover health care costs associated with smoking and the use of Tobacco Products.

“**Imperial**” means, collectively, ITCAN and ITCO.

“**Imperial Data Room**” means a data room containing Information in respect of Imperial.

“**Information**” means common categories of information in respect of the Applicants which are responsive to requests submitted by Mediation Participants, as well as other information which the Tobacco Monitors considered relevant.

“**Initial Order**” means the initial order granted by the Court on March 12, 2019, as amended and restated as of April 5, 2019 and further amended and restated as of April 25, 2019 and updated by

written endorsement on March 6, 2020, which authorized, among other things, the Stay of Proceedings and FTI's appointment as Monitor of Imperial's CCAA Proceedings.

"ITCAN" means Imperial Tobacco Canada Limited.

"ITCAN Subsidiaries" means 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, Imasco Holdings Group, Inc., ITL (USA) limited, Genstar Pacific Corporation, Imasco Holdings Inc., Southward Insurance Ltd., Liggett & Myers Tobacco Company of Canada Limited or entities related to or affiliated with them other than Imperial and the BAT Group.

"ITCO" means Imperial Tobacco Company Limited.

"JTIM" means JTI-Macdonald Corp.

"JTIM Group" means the entities currently or formerly related to or affiliated with JTIM.

"March 2021 Stay Extension Order" means an Order of the Court, dated September 29, 2020, extending the length of the Stay of Proceedings to March 31, 2021.

"March 2022 Stay Extension Order" means an Order of the Court, dated September 27, 2021, extending the length of the Stay of Proceedings to March 31, 2022.

"March Stay Extension Order" means an Order of the Court, dated October 8, 2019, extending the length of the Stay of Proceedings to March 12, 2020.

"Mediation" means the mediation process conducted by the Court-Appointed Mediator.

"Mediation Participants" means the Applicants, the Consortium of Provinces, the Provinces of Alberta, Newfoundland and Labrador, Ontario, and Quebec, the Quebec Litigation Plaintiffs, the TRW Claimants represented by Wagners, the "personal injury class action plaintiffs" represented by Merchant, the "tobacco light class action plaintiffs", and the Tobacco Growers' Marketing Board.

"Merchant" means Merchant Law Group LLP.

"Monitor" means FTI Consulting Canada Inc.

"Monitor's Reports" means collectively, the Pre-Filing Report, the First Report, the Second Report, the Third Report, the Fourth Report, the Fifth Report, the Sixth Report, the Seventh Report, the Eighth Report, the Ninth Report, the Tenth Report, the Eleventh Report, the Twelfth Report and this Report.

"NDA" means a non-disclosure agreement for the purposes of gaining access to the Data Rooms.

"Ninth Report" means the report filed by the Monitor on March 19, 2021.

“**October Endorsement**” means an Endorsement of the Court, dated October 18, 2019, providing reasons for the March Stay Extension Order and the deferment of the issue of certain payments to BAT Mexico.

“**PMI Group**” means Philip Morris International Inc. and all entities related to or affiliated with it, other than Rothmans.

“**Pre-Filing Report**” means the report filed by the Monitor on March 12, 2019, in its capacity as proposed Monitor of Imperial, in connection with Imperial’s initial application for relief under the CCAA.

“**Professional Fee Disclosure Order**” means an order of the Court which authorized, among other things, the disclosure of the professional restructuring fees in these CCAA Proceedings by the Monitor on or before the 15th of every month, beginning with June 2019.

“**Provinces**” means all of the provinces of Canada.

“**Quebec Appeal Judgment**” means the Court of Appeal of Quebec’s decision on the appeal of the Quebec Judgment whereby the Court of Appeal substantially upheld the Quebec Judgment with two notable modifications: (i) the total claim amount was reduced by just over \$1 million; and (ii) the interest schedule was adjusted, reducing the interest payable on the total claim amount.

“**Quebec Judgment**” means the Quebec Superior Court’s judgment on the “Letourneau action” and the “Blais action” released on May 27, 2015 in which the trial judge found the co-defendants jointly liable for \$15.6 billion, with Imperial’s share being approximately \$10.6 billion.

“**Quebec Litigation Plaintiffs**” means, collectively, the representative plaintiffs and the certified class members in each of the “Letourneau action” and the “Blais action”, as described in the March 12, 2019 Thauvette Affidavit.

“**Report**” means this eleventh report of the Monitor filed on March 15, 2022.

“**Rothmans**” means Rothmans Benson & Hedges Inc.

“**Second Amended and Restated Initial Order**” means the Initial Order, as amended and restated as of April 25, 2019.

“**Second Report**” means the report filed by the Monitor on April 24, 2019.

“**September 2021 Stay Extension Order**” means an order of the Court, dated March 30, 2021, extending the length of the Stay of Proceedings to September 30, 2021

“**September 2022 Thauvette Affidavit**” means the Affidavit of Eric Thauvette, Vice President and Chief Financial Officer of ITCAN, sworn September 20, 2022.

“**Seventh Report**” means the report filed by the Monitor on February 13, 2020.

“**Shapiro**” means Daniel Shapiro Legal Professional Corporation.

“**Sixth Report**” means the report filed by the Monitor on November 26, 2019.

“**Stay of Proceedings**” means the stay of proceedings during the Stay Period in favour of Imperial and their non-applicant subsidiaries, including Liggett & Meyers Tobacco Company of Canada Limited, as well as a limited stay in favour of BAT and certain BAT affiliates.

“**Stay Period**” means the term of the Stay of Proceedings, to March 31, 2022.

“**Tenth Report**” means the report filed by the Monitor on September 20, 2021.

“**Third Report**” means the report filed by the Monitor on May 13, 2019.

“**Tobacco CCAA Proceedings**” means these CCAA Proceedings, Court File No. 19-CV-615862-00CL commenced by JTIM under the CCAA and Court File No. CV-19-616779-00CL commenced by Rothmans under the CCAA.

“**Tobacco Claims**” means all claims brought or that could be brought under applicable law against the Applicants 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.

“**Tobacco Monitors**” means, collectively, the Monitor, EY in its capacity as monitor for Rothmans, and Deloitte in its capacity as monitor for JTIM.

“**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, 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, but does not include heat-not-burn tobacco products or Vapour Products.

“**Tobacco-Related Wrongs**” means all claims or causes of action in respect of: (i) the development, manufacture, production, importation, marketing, advertising, distribution, purchase or sale of Tobacco Products; (ii) the historical or ongoing use of or exposure to Tobacco Products; or (iii) any representation in respect of Tobacco Products, including, without limitation, claims for contribution or indemnity, personal injury or tort damages, restitutionary recovery, non-pecuniary damages or claims for recovery grounded in provincial consumer protection legislation, but does not include the Excluded Claims.

“**TRW Claimants**” means all individuals (including their respective successors, heirs, assigns, litigation guardians and designated representatives under applicable provincial family law legislation) who assert or may be entitled to assert a claim or cause of action as against one or more of the Applicants, the ITCAN subsidiaries, the BAT Group, the JTIM Group or the PMI Group, or persons indemnified by such entities, in respect of Tobacco-Related Wrongs in Canada, or in the case of the Applicants, anywhere else in the world.

“**Twelfth Report**” means the twelfth report of the Monitor filed on July 8, 2022.

“**U.S.**” means the United States of America.

“**U.S. Bankruptcy Code**” means title 11 of the United States Code.

“**U.S. Bankruptcy Court**” means the United States Bankruptcy Court for the Southern District of New York.

“**U.S. Counsel**” means Morgan, Lewis & Bockius LLP, U.S. counsel to the Monitor.

“**Vapour Products**” means potential reduced risk, rechargeable, battery-powered devices that heat liquid formulations – e-liquids – to create a vapour which is inhaled, and which are sold under the tradename of Vype/Vuse.

“**Wagners**” means The Law Practice of Wagner & Associates, Inc.

APPENDIX “B” ORDERS

Please see below for a description of the orders issued by the Court and the U.S. Bankruptcy Court in these CCAA Proceedings.

1. Initial Order:

The Initial Order of the Ontario Superior Court of Justice (Commercial List) made on March 12, 2019, as amended and restated as of April 5, 2019 and further amended and restated as of April 25, 2019, pursuant to which:

- (a) Imperial was granted an initial stay of proceedings under the CCAA until April 11, 2019; and
- (b) FTI was appointed as the Monitor.

A copy of the Initial Order can be found [here](#).

2. Comeback Motion:

The Comeback Motion was heard on April 4 and 5, 2019. Following the Comeback Motion:

- (a) the Court issued an order dated April 5, 2019 extending the Stay of Proceedings to June 28, 2019, a copy of which can be found [here](#);
- (b) the Court issued the Insurance Lift-Stay Order dated April 5, 2019, partially lifting the Stay of Proceedings to allow the Quebec Litigation Plaintiffs to seek the approval of certain insurance settlements, a copy of which can be found [here](#); and
- (c) the Court issued an order dated April 5, 2019 amending and restating the Initial Order and appointing Hon. Warren K. Winkler, Q.C. as the Court-Appointed Mediator, a copy of which can be found [here](#).

3. Foreign Recognition Order:

On April 17, 2019, the U.S. Bankruptcy Court issued the Foreign Recognition Order recognizing the CCAA Proceedings as the main proceedings and staying proceedings against ITCAN in the United States. The Foreign Recognition Order can be found [here](#).

4. Second Amended and Restated Initial Order:

The Second Amended and Restated Initial Order was issued following the continuation of the Comeback Motion on April 25 and 26, 2019, a copy of which can be found [here](#).

5. Representation Order

On April 25, 2019, the Court issued the Representation Order appointing Ari Kaplan of Kaplan Law as representative counsel to Robert M. Brown and George A. Foster, the court-appointed

representatives of all persons with entitlements under certain retirements plans, including survivors and beneficiaries of such persons and any other person under the Representation Order. A copy of the Representation Order can be found [here](#).

6. Order to Amend the Ontario Claim

On April 29, 2019, the Court issued the Order to Amend the Ontario Claim, partially lifting the Stay of Proceedings to permit the Province of Ontario to seek leave to amend its Amended Fresh as Amended Statement of Claim in the proceedings related to Ontario's HCCR Claims. A copy of the Order to Amend the Ontario Claim can be found [here](#).

7. Notice Procedure Order:

On May 14, 2019, the Court issued the Notice Procedure Order, which among other things, appointed Vivian Bennan-Dolezar as an additional representative to the represented parties under the Representation Order and approved the form and manner of notice of the Settlement Approval Hearing to such represented parties. A copy of the Notice Procedure Order can be found [here](#).

8. Professional Fee Disclosure Order:

The Professional Fee Disclosure Order was issued on May 14, 2019 and can be found [here](#).

9. Communication and Confidentiality Protocol Endorsement

On May 24, 2019, the Court issued the Communication and Confidentiality Protocol Endorsement, pursuant to which the Court approved the communication and confidentiality protocol as between the Court and the Court-Appointed Mediator. A copy of the Communication and Confidentiality Protocol Endorsement can be found [here](#).

10. Clarification of Insurance Lift-Stay Order

On May 31, 2019, the Court issued the Clarification of Insurance Lift-Stay Order which clarified the scope of the Insurance Lift-Stay Order. A copy of the Clarification of Insurance Lift-Stay Order can be found [here](#).

11. October Stay Extension Order

The October Stay Extension Order was issued on June 26, 2019 and extended the Stay of Proceedings to October 4, 2019. A copy of the October Stay Extension Order can be found [here](#).

12. Genstar Settlement Approval Order

The Genstar Settlement Approval Order was issued on June 26, 2019, approving, among other things (i) the settlement entered into on April 25, 2019 between ITCAN and Robert M. Brown and George A. Foster, as representatives in respect of those certain retirement plans; and (ii) the distribution of the proceeds of such settlement among all persons with entitlements under certain retirements plans, including survivors and beneficiaries of such persons and any other person under the Representation Order. A copy of the Genstar Settlement Approval Order can be found [here](#).

13. Order Appointing a Financial Advisor to the Court-Appointed Mediator

The Order Appointing a Financial Advisor to the Court-Appointed Mediator was issued on June 27, 2019, which appointed Alvarez & Marsal Canada Inc. as the financial advisor to the Court-Appointed Mediator. A copy of the Order Appointed a Financial Advisor to the Court-Appointed Mediator can be found [here](#).

14. Court-to-Court Communications Order

On July 9, 2019, the Court issued the Court-to-Court Communications Order, approving court-to-court communications between the Court, the U.S. Bankruptcy Court and any other court in any province or territory of Canada. A copy of the Court-to-Court Communications Order can be found [here](#).

15. Order Recognizing the Genstar Settlement Approval Order

The U.S. Bankruptcy Court granted an order recognizing the Genstar Settlement Approval Order on July 18, 2019. A copy of which can be found [here](#).

16. Order Recognizing the Court-to-Court Communications Order

The U.S. Bankruptcy Court granted an order recognizing the Court-to-Court Communications Order on September 5, 2019. A copy of which can be found [here](#).

17. March Stay Extension Order and October Endorsement

The March Stay Extension Order was issued on October 2, 2019 and extended the Stay of Proceedings to March 12, 2020. A copy of the March Stay Extension Order can be found [here](#). Justice McEwen released the October Endorsement on October 18, 2019 providing reasons for the March Stay Extension Order and the deferment of the issue of certain payments to BAT Mexico. A copy of the October Endorsement can be found [here](#).

18. Representative Counsel Order

The Representative Counsel Order was issued on December 9, 2019 and appointed Wagners as representative counsel to the TRW Claimants. A copy of the Representative Counsel Order can be found [here](#).

19. September Stay Extension Order

The September Stay Extension Order was issued on February 20, 2020 and extended the Stay of Proceedings to September 30, 2020. A copy of the September Stay Extension Order can be found [here](#).

20. Notice Protocol Endorsement

The Notice Protocol Endorsement was issued on March 6, 2020 and further amended the Second Amended and Restated Initial Order by adding paragraphs to govern the notice protocol for

moving and responding parties in the CCAA Proceedings. A copy of the Notice Protocol Endorsement can be found [here](#).

21. Limited Lift of Stay Order

The Limited Lift of Stay Order was issued on March 16, 2020 and partially lifted the Stay of Proceedings to allow ITCAN to be added as a respondent to the application brought by the City of Ottawa bearing Court File No. 19-81809. A copy of the Limited Lift of Stay Order can be found [here](#).

22. Consultant Order

The Consultant Order was issued on September 15, 2020 and appointed Shapiro as consultant to the Court-Appointed Mediator. A copy of the Consultant Order can be found [here](#).

23. March 2021 Stay Extension Order

The March 2021 Stay Extension Order was issued on September 29, 2020, extending the Stay of Proceedings to March 31, 2021. A copy of the March 2021 Stay Extension Order can be found [here](#).

24. September 2021 Stay Extension Order

The September 2021 Stay Extension Order was issued on March 30, 2021, extending the Stay of Proceedings to September 30, 2021. A copy of the September 2021 Stay Extension Order can be found [here](#).

25. March 2022 Stay Extension Order

The March 2022 Stay Extension Order was issued on September 27, 2021, extending the Stay of Proceedings to March 31, 2022. A copy of the March 2022 Stay Extension Order can be found [here](#).

26. September 2022 Stay Extension Order

The March 2022 Stay Extension Order was issued on March 22, 2022, extending the Stay of Proceedings to September 30, 2022. A copy of the September 2022 Stay Extension Order can be found [here](#).

27. New Excise Act Security Order

The New Excise Act Security Order was issued on July 11, 2022, authorizing ITCAN to post security as required by certain amendments to the Excise Act in an aggregate amount not exceeding \$5 million, and to take any steps necessary to otherwise comply with the requirements of such security. A copy of the New Excise Act Security Order can be found [here](#).

APPENDIX "C"
PROTOCOL FOR MOTION BY ZOOM VIDEO CONFERENCE

Please see attached.

Scheduling and Specific Requirements

1. Any person on the Service List that wishes to appear virtually on the motion (“**Participants**”) must register by 4:00 p.m. two (2) business days in advance of the hearing (Monday, September 26, 2022, for the motion scheduled Wednesday, September 28, 2022), by emailing Veritext Litigation Solutions Canada, Inc. (scheduling@neesonsreporting.com) and copying each Monitor’s counsel (tbarbiero@dwpv.com, msassi@casselsbrock.com, nancy.thompson@blakes.com). In their email, Participants should provide contact information, including a name, the party they are acting for, an email address and phone number for the counsel slip, along with a statement regarding whether they intend to make submissions.
2. Subject to the Court’s overriding discretion over all matters, the Monitors’ counsel will coordinate with Participants and the Court to develop an agenda for the hearing.
3. All material for use on the motion is to be posted on CaseLines, as more fully described in Appendix “B”.
4. Participants will appear by video. Veritext will distribute the Zoom link to Participants. Participants are not permitted to forward or share the Zoom link. No person should have access to the hearing on Zoom other than Participants. If a Participant is unable to attend by video, they should contact Monitors’ counsel. Participants should carefully review the technical requirements below.
5. Counsel is required to gown for the hearing.
6. For access by the general public, a YouTube link will be posted on each of the Monitors’ websites by 10:00 a.m. not less than two (2) business days prior to the hearing. The YouTube link will allow the general public to view a livestream of the hearing, but not participate in the hearing. For greater clarity, individuals viewing the livestream via YouTube will not be heard or seen by the Court, Judge or Participants.
7. No recording of any part of the hearing (including audio) may be made unless authorized in advance by the Court.
8. For greater certainty, notice and service requirements are set out in the Rules of Civil Procedure, and the various orders and endorsements in the proceedings. For ease of reference, we have included paragraphs 58-63 of the Second Amended and Restated Initial Order dated March 8, 2019 in the JTIM proceedings, attached as Appendix “A”. It should be noted that similar notice and service requirements have been set out in various orders and endorsements in the parallel proceedings of Imperial and RBH. Nothing in this protocol modifies or amends Orders of

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the Court related to service requirements, the Rules of Civil Procedure, any Commercial List Practice Direction or other applicable rules.

9. Participants will be placed into a virtual waiting room upon entering the Zoom meeting.

Technical Requirements for Zoom Participants

10. Participants will require a device with a working microphone and camera. The device can be a computer (desktop or laptop), tablet or smartphone. The device must be connected to an internet connection that is sufficient to send and receive video and audio.

11. Each Participant is responsible for ensuring that they have suitable equipment to participate in the hearing and that such equipment works properly. Participants must test such equipment well in advance of the scheduled hearing to ensure:

- (a) that they are familiar with how to use such equipment;
- (b) the compatibility and functioning of such equipment; and
- (c) that the remote location has adequate internet bandwidth to support the use of Zoom without interruption.

12. Each Participant is also responsible for ensuring that they are familiar with the features and operation of Zoom. Participants must ensure that they have downloaded any necessary software, and practiced using Zoom, well in advance of the scheduled hearing.

13. Counsel on Zoom should identify their display name in the following format: [First Name] [Last name], for [Client].

14. Participants should log on using the Zoom link provided approximately 30 minutes before the hearing is scheduled to begin. During this time, Participants should speak to each other to determine if there are any audio/visual/connection issues.

15. It is suggested that Participants use the "gallery view" mode, rather than the "active speaker" mode, available on Zoom.

16. It is suggested that only counsel who are making submissions turn on their cameras during the hearing.

17. Should a Participant become disconnected from Zoom or experience technical difficulties during the hearing, they should immediately inform the Court by sending an email to Veritext (scheduling@neesonsreporting.com).

18. Further participant information is included in Appendix "B."

APPENDIX "A"

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

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

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

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

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

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

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

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

APPENDIX "B"

1. All Participants will have their microphones muted and may only unmute their own microphones when they are addressing the Court. When parties are not muted, they must avoid making extraneous noise (including for example, typing and shuffling papers) as these noises may interfere with the hearing.
2. Participants must ensure that they participate in the Zoom hearing from a well-lit room so that they are easily visible. Participants must also ensure that no filters are active that may distort or otherwise conceal their appearance.
3. Participants must ensure that they participate in the Zoom hearing from a quiet location where they (and the Court) will not be interrupted or disturbed during the hearing.
4. All mobile devices must be turned off or put on silent mode during the hearing.
5. Participants must refrain from speaking over other Participants.
6. Participants should make submissions in accordance with the order set out in the agenda. If there is a need to make submissions out of sequence, Participants should make a request in a manner directed by the Court. The Court may ask Participants to signal when they intend to address the Court by raising their hand (either by physically raising their hand or by using the virtual "raise hand" feature in Zoom).
7. Participants must state their name and who they represent before addressing the Court.
8. Upon entry into the virtual waiting room, each Participant joining by video should identify themselves, including any person off camera that may be viewing the video feed. This also allows any audio or visual issues to be identified. Each Participant is obligated to immediately notify the presiding judge if any additional person joins them in viewing the video feed.
9. If a Participant intends to rely on any documents, the materials you intend to rely on must be served and shared on the relevant CaseLines bundle and all references during the hearing should reference the CaseLines page numbering associated with such CaseLines bundle.
10. If a party wishes to share certain documents during the hearing, the documents should be provided to the Monitors in advance so that it can be added to the agenda and a method for sharing can be set up.

APPENDIX "D"
CASH FLOW FORECAST

Please see attached.

Imperial Tobacco Canada Limited

CCAA Cash Flow Forecast

(CAD\$ in thousands)

Week Beginning (Monday)	5-Sep-22	12-Sep-22	19-Sep-22	26-Sep-22	3-Oct-22	10-Oct-22	17-Oct-22	24-Oct-22	31-Oct-22	7-Nov-22	14-Nov-22	21-Nov-22	28-Nov-22	5-Dec-22	12-Dec-22
Forecast Week	1	2	3	4	5	6	7	8	9	10	11	12	13	14	15
RECEIPTS															
Trade Receipts	79,731	80,963	79,755	78,143	82,079	78,907	77,979	75,959	75,768	74,660	77,750	77,206	76,806	87,711	86,677
DISBURSEMENTS															
Operating Disbursements	-	(71,906)	(40,501)	(34,071)	(117,692)	(37,352)	(69,546)	(23,437)	(131,400)	(31,002)	(25,342)	(32,811)	(137,357)	-	(61,777)
Taxes and Levies	(12,195)	(8,786)	(7,381)	(43,356)	(16,480)	(17,353)	(12,746)	13,482	(10,069)	(10,592)	(5,459)	(65,769)	(9,810)	(13,275)	(7,861)
Operations	(12,195)	(8,786)	(7,381)	(43,356)	(16,480)	(17,353)	(12,746)	13,482	(10,069)	(10,592)	(5,459)	(65,769)	(9,810)	(13,275)	(7,861)
Total Operating Disbursements	(12,195)	(80,691)	(47,882)	(77,427)	(134,171)	(54,705)	(82,292)	(9,955)	(141,469)	(41,594)	(30,801)	(98,580)	(147,167)	(13,275)	(69,639)
OPERATING CASH FLOWS	67,537	272	31,873	716	(52,092)	24,201	(4,313)	66,004	(65,701)	33,067	46,949	(21,374)	(70,361)	74,436	17,038
<i>Financing Disbursements</i>															
Interest and Related Fees	-	-	-	5,400	-	-	-	-	4,979	-	-	-	5,164	-	-
Restructuring Disbursements															
Professional Fees	(600)	(200)	(200)	(200)	(200)	(200)	(200)	(200)	(200)	(200)	(200)	(200)	(200)	(200)	(200)
NET CASH FLOWS	66,937	72	31,673	5,917	(52,292)	24,002	(4,512)	65,804	(60,921)	32,867	46,750	(21,574)	(65,396)	74,237	16,838
CASH															
Beginning Balance	2,885,858	2,952,795	2,952,867	2,984,540	2,990,457	2,938,165	2,962,167	2,957,654	3,023,459	2,962,537	2,995,404	3,042,154	3,020,580	2,955,184	3,029,420
Net Cash Inflows / (Outflows)	66,937	72	31,673	5,917	(52,292)	24,002	(4,512)	65,804	(60,921)	32,867	46,750	(21,574)	(65,396)	74,237	16,838
Other (FX)	-	-	-	-	-	-	-	-	-	-	-	-	-	-	-
ENDING CASH	2,952,795	2,952,867	2,984,540	2,990,457	2,938,165	2,962,167	2,957,654	3,023,459	2,962,537	2,995,404	3,042,154	3,020,580	2,955,184	3,029,420	3,046,258

Notes to the CCAA Forecast:

- [1] The purpose of this cash flow forecast is to estimate the liquidity requirements of the Company during the forecast period.
- [2] Forecast Trade Receipts include collections from the sale of tobacco-related products and other categories, net of returns, and inclusive of sales taxes. The sales forecast is based on historical sales patterns, seasonality, and current management's expectations, including the estimated impact of transition to plain-packaging regulations. The cash flow forecast includes certain price increases. The Company's ability to maintain the price increase is dependent on market conditions.
- [3] Forecast Taxes and Levies disbursements reflect the remittance of the federal excise tax, provincial tobacco taxes, sales taxes, and the Company's corporate income taxes.
- [4] Forecast Operations disbursements include employee-related costs, selling, general, administrative costs and intercompany costs. Intercompany costs include costs relating to the purchase of tobacco-related products and other categories, and services including: innovation fees, consulting and advisory fees, IT-related costs, product development and testing, accounting and human resources. Included in the intercompany costs is a disbursement of \$55 million to BAT Mexico for costs associated with the retirement of certain equipment and materials that are obsolete after the implementation of the Tobacco Products Regulations (Plain and Standardized Appearance).
- [5] Forecast Interest and Related Fees reflect interest income earned net of any sundry payments relating to existing facilities.
- [6] Forecast Professional Fees include fees for the Company's Counsel, the Monitor, the Monitor's Counsel, the Company's US Counsel, the Monitor's US Counsel, the US Noticing Agent, the Court-Appointed Mediator, the Court-Appointed Mediator's Counsel and the Representative Counsel for the TRW Claimants.

Imperial Tobacco Canada Limited

CCAA Cash Flow Forecast

(CAD\$ in thousands)

Week Beginning (Monday)	19-Dec-22	26-Dec-22	2-Jan-23	9-Jan-23	16-Jan-23	23-Jan-23	30-Jan-23	6-Feb-23	13-Feb-23	20-Feb-23	27-Feb-23	6-Mar-23	13-Mar-23	20-Mar-23	27-Mar-23	30-Mar-23	30-Week Total
RECEIPTS																	
Trade Receipts	108,750	123,416	87,614	71,103	69,688	70,624	70,034	52,145	54,476	51,660	53,182	54,131	66,368	67,530	68,166	68,166	2,258,988
DISBURSEMENTS																	
Operating Disbursements	(28,901)	(26,060)	(113,231)	(13,986)	(71,208)	(4,553)	(147,084)	(20,903)	(16,058)	(18,328)	(115,234)	(22,847)	(21,576)	(17,884)	(118,499)	(118,499)	(1,570,543)
Taxes and Levies	(67,211)	(1,085)	(6,194)	(12,614)	(3,056)	2,075	(3,383)	(7,952)	(6,292)	(89,907)	(6,755)	(5,792)	(6,448)	(27,201)	(67,975)	(67,975)	(537,436)
Operations	(96,112)	(27,145)	(119,425)	(26,600)	(74,264)	(2,477)	(150,466)	(28,855)	(22,350)	(108,235)	(121,988)	(28,638)	(28,024)	(45,085)	(186,474)	(186,474)	(2,107,981)
Total Operating Disbursements	(192,324)	(274,290)	(348,850)	(53,600)	(148,528)	(4,951)	(300,933)	(56,100)	(44,600)	(306,470)	(134,725)	(34,372)	(34,148)	(72,286)	(186,474)	(186,474)	(3,276,500)
OPERATING CASH FLOWS	(83,574)	49,126)	(261,236)	(17,497)	(78,840)	(25,327)	(230,900)	(33,955)	(9,124)	(254,810)	(81,543)	(29,241)	(38,480)	(34,756)	(118,308)	(118,308)	(1,017,512)
Financing Disbursements																	
Interest and Related Fees	-	5,455	-	-	-	-	5,661	-	-	-	5,356	-	-	-	5,000	5,000	37,014
Restructuring Disbursements	(200)	(200)	(200)	(200)	(200)	(200)	(200)	(200)	(200)	(200)	(200)	(200)	(200)	(200)	(200)	(200)	(6,388)
Professional Fees	12,439	101,527	(32,011)	44,303	(4,776)	67,947	(74,971)	23,090	31,926	(56,775)	(63,650)	25,293	38,144	22,246	(113,508)	(113,508)	181,626
NET CASH FLOWS	12,439	101,527	(32,011)	44,303	(4,776)	67,947	(74,971)	23,090	31,926	(56,775)	(63,650)	25,293	38,144	22,246	(113,508)	(113,508)	181,626
CASH																	
Beginning Balance	3,046,258	3,058,697	3,160,224	3,128,213	3,172,516	3,167,740	3,235,688	3,160,717	3,183,807	3,215,734	3,158,958	3,095,308	3,120,602	3,158,746	3,180,992	3,180,992	2,885,858
Net Cash Inflows / (Outflows)	12,439	101,527	(32,011)	44,303	(4,776)	67,947	(74,971)	23,090	31,926	(56,775)	(63,650)	25,293	38,144	22,246	(113,508)	(113,508)	181,626
Other (FX)	-	-	-	-	-	-	-	-	-	-	-	-	-	-	-	-	-
ENDING CASH	3,058,697	3,160,224	3,128,213	3,172,516	3,167,740	3,235,688	3,160,717	3,183,807	3,215,734	3,158,958	3,095,308	3,120,602	3,158,746	3,180,992	3,067,484	3,067,484	3,067,484

Notes to the CCAA Forecast:

- [1] The purpose of this cash flow forecast is to estimate the liquidity requirements of the Company during the forecast period.
- [2] Forecast Trade Receipts include collections from the sale of tobacco-related products and other categories; net of returns, and inclusive of sales taxes. The sales forecast is based on historical sales patterns, seasonality, and current management's expectations, including the estimated impact of transition to plain-packaging regulations. The cash flow forecast includes certain price increases. The Company's ability to maintain the price increase is dependent on market conditions.
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APPENDIX “E” REGULATION OF TOBACCO AND VAPOUR PRODUCTS

Please see below for a summary of the tobacco and vaping regulations that are being considered and implemented across Canada since the date of the Eleventh Report.

Tobacco

1. **Federal** On June 11, 2022, the Canadian Government published proposed *Regulations Amending the Tobacco Products Regulations (Plain and Standardized Appearance)*. The proposed regulations would introduce a mandatory display of health warnings directly on the tipping paper of individual cigarettes. The proposed regulations would also extend the display of health warnings and toxicity information to all tobacco product packages, and some products would see their health warning size increase from 50% to 75%. The proposed regulations would introduce a rotation scheme for all health-related messages (ranging from 24 to 36 months) and would allow future changes to the content of the health-related messages to be made by Health Canada without the need for a new regulation. The consultation period closed on August 25, 2022.

Vaping

2. **Northwest Territories** On February 9, 2022, the Government of the Northwest Territories enacted the *Tobacco and Vapour Products Control Regulations*, which came into force on March 25, 2022. The Regulations ban the sale of all flavoured vaping products, except tobacco-flavoured products, in all retail channels in the Territory.
3. **Federal** On June 20, 2022, the Canadian Government introduced proposed *Regulations Amending the Tobacco Products Regulations (Plain and Standardized Appearance)*. The draft regulations would require manufacturers of vaping products to submit reports on quarterly sales figures for devices and consumables as well as details of all ingredients used in vaping consumables. The consultation period closed on August 2, 2022.
4. **Federal** On June 24, 2022, the Canadian Government gave royal assent to Bill C-19, *Budget Implementation Act, 2022, No. 1*, which amends the *Excise Act, 2001* and its

regulations. The Act introduces a federal excise tax on nicotine-containing e-liquids. This excise rate is set at \$1 per 2 mL of substance in each container up to 10 mL, plus \$1 per 10 mL of liquid above that. The Act comes into force on October 1, 2022. By January 1, 2023, all vaping substances sold at retail must carry a federal “DUTY PAID” excise stamp. The federal excise will not apply to vaping devices, batteries or other accessories.

**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

**THIRTEENTH REPORT OF THE MONITOR
SEPTEMBER 23, 2022**

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