ONTARIO SUPERIOR COURT OF JUSTICE
(COMMERCIAL LIST)

COUNSEL/ENDORSEMENT SLIP

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TITLE OF PROCEEDING:

IMPERIAL TOBACCO CANADA LIMITED et al v. JTI-MACDONALD CORP. et al

ROTHMANS, BENSON & HEDGES INC. v. IMPERIAL TOBACCO CANADA LIMITED et al

JTI-MACDONALD CORP. et al v. BENSON & HEDGES INC. et al

BEFORE: JUSTICE Jessica Kimmel

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ENDORSEMENT OF JUSTICE KIMMEL:

Motion to Amend the CCAA Claims Administrator Orders

[1] The Monitors and CCAA Plan Administrators jointly bring motions for Orders (the "Amended and Restated Claims Administrator Orders") amending and restating the Original Claims Administrator Order granted in each of the CCAA Proceedings in August of 2025.

[2] The Amended and Restated Claims Administrator Orders, among other things,

(a) increase the frequency by which Epiq is required to file Claims Administration Budgets to every three months from every twelve months and they require advance court approval of these quarterly budgets;

(b) with the increased frequency of filing and approval of Epiq's budgets and the shorter forecasting window, they remove the cost variance limit of 10%;

(c) require Epiq to continue to provide Weekly Claims Administration Reports throughout the duration of the Claims Administration; and

(d) authorize Epiq to determine the allocation of Common Costs incurred in the Claims Administration.

[3] With the exception of the removal 10% cost variance limit that was the subject of submissions from the Attorney General for Quebec and the applicant Tobacco Companies, the relief sought on these motions was either not opposed or supported by the other stakeholders, including the Quebec Class Action Plaintiffs ("QCAP").

[4] Capitalized terms not otherwise defined in this endorsement shall have the meanings ascribed to them in the Joint Factum of the Monitors and Plan Administrators filed in support of this motion.

Rationale for Proposed Amendments

[5] The March 6, 2025 sanction orders in these CCAA proceedings appointed Epiq Class Actions Services Canada, Inc. as the Claims Administrator in respect of the Third A&R CCAA Plans (in such capacity, the "Claims Administrator"). On August 27, 2025 Epiq Class Actions Services Canada, Inc. was also appointed as agent for the PCC Representative Counsel in respect of the PCC Compensation Plan (in such capacity the "PCC Agent", and together in its capacity as Claims Administrator, "Epiq").

[6] After a year of experience with Epiq acting in these roles, the CCAA Plan Administrators and Epiq have determined that the delivery of the Claims Administration Budgets on a more frequent basis is necessary

and appropriate to ensure stakeholders are provided with an adequate opportunity to monitor the implementation of the Claims Administration.

[7] The increased frequency for delivery of quarterly Claims Administration Budgets and periodic touch points with the Ontario and Quebec courts for their approval of the quarterly budgets is designed to provide stakeholders with reasonably contemporaneous opportunities to review the budgeted Costs in real time.

[8] Budgeting for shorter forecast periods will provide real time information about the cost of the Claims Administration process. Epiq has confirmed that the budgets will include historical comparisons of variances against past budgets in addition to the forward looking quarterly budgets. While the budgets are forward looking, they will take into consideration historic experience.

[9] The Monitors and CCAA Plan Administrators and QCAP will continue to review and approve the payment of Epiq's invoices if they are satisfied that the charges are reasonable.

[10] The continued delivery of the Claims Administration Reports on a weekly and monthly basis throughout the duration of the Claims Administration is designed to provide stakeholders with sufficient insight to monitor the implementation of the Claims Administration as it progresses. The weekly and monthly reports will not be filed with the CCAA court.

[11] The Original Claims Administrator Orders do not expressly contemplate how Costs incurred in respect of tasks relating to more than one of the PCC Claims Administration, QCAP Claims Administration and PCC Agent services (any such costs, the "Common Costs") are to be allocated. To improve efficiency in the Claims Administration, the Amended and Restated Claims Administrator Orders authorize Epiq to allocate Common Costs to the applicable roles equally, or as may otherwise be determined to be appropriate by Epiq based on the circumstances.

Analysis

<u>Jurisdiction and Justification for Granting the Requested Orders</u>

[12] Section 11 of the CCAA "confers jurisdiction on the court in the broadest of terms" and enables this Court to "make any order that it considers appropriate in the circumstances". This broad power "is constrained only by restrictions set out in the CCAA itself, and the requirement that the order made be "appropriate in the circumstances": see *Canada v. Canada North Group Inc*., 2021 SCC 30, at para. 21; *9354-9186 Québec inc. v. Callidus Capital Corp*., 2020 SCC 10, at para. 67.

[13] Whether an order is appropriate is assessed in relation to the well-established remedial objectives of the CCAA, including facilitating the reorganization of a debtor company, providing for timely, efficient and impartial resolution of a debtor's insolvency, and ensuring the fair and equitable treatment of the claims against a debtor: see *Canada North*, at para. 21; *Imperial Tobacco Canada Limited*, 2025 ONSC 1358, para 205.

[14] The Amended and Restated Claims Administrator Orders are consistent with the remedial objectives of the CCAA, including facilitating the efficient and impartial resolution of the Tobacco Companies' insolvencies through the Fourth A&R CCAA Plans, of which the Claims Administration is a key component.

[15] Each of the CCAA Plan Administrators has filed a report recommending that this Court grant the Amended and Restated Claims Administrator Orders. The Tobacco Companies, Epiq and the PTLC, were each consulted with respect to the Amended and Restated Claims Administrator Orders.

<u>Objection to Removal of 10% Variance Limit</u>

[16] Only the Attorney General of Quebec (in this respect, supported by the Tobacco Companies) objected or raised concerns about one aspect of the relief, specifically that:

(a) the court should have disclosure about the actual costs to date when deciding whether to grant the requested order, particularly in circumstances where it appears that the projected costs have been exceeded in the first year of administration;

(b) Epiq should still be held accountable to a 10 % variance limit against its more frequent (quarterly) budgets or at least against an annual budget.

[17] The AG Quebec argues that the proposed amendment removing the 10% variance limit from the Original Claims Order should not be made because that limit is an automatic, real-time safeguard that acts as a check on administration costs, which already appear to be significantly higher than the original projections.

[18] As a starting point of reference, it is important to appreciate that the Claims Administrator Order approved a Global Claims Administration Costs Framework (the "Framework"). The Framework was not an approved budget and, for example, it has been pointed out by QCAP that the Framework did not include third-party costs, such as Epiq's legal counsel costs, or sales taxes. The Framework was intended to be a rough estimate and to provide a template for the types of information that would ultimately be included in the annual budgets to be approved by the two Courts. The AG Quebec incorrectly conflates the Framework with a Court-approved annual budget and then tries to suggest that the non-existent budget was exceeded.

[19] The variance limit mandates Epiq to seek approval prior to exceeding 10% of the total amount of the First Annual Global Claims Administration Costs Budget. It is an automatic trigger that prevents further cost overrun. It governs the current period, not the upcoming period. The AG Quebec is concerned that the quarterly budget approvals do not serve the same purpose as the variance limit. They neither provide an automatic trigger nor address the current period.

[20] However, the trigger itself was based on a comparison between the total aggregate costs that Epiq was fulfilling in its three different roles: as PCC Agent, as QCAP Administrator and as CCAA Plan Administrator. The costs cannot be realistically compared or measured on a global basis, especially now when the QCAP Plan has come to an end whereas the PCC Plan is continuing. In a given year, one program could be over-budget whereas another could be under budget. Furthermore, since the variance is only activated at 110% of budget it would not likely become apparent that there even was a variance until close to the end of the year and, in the meantime, Epiq’s accounts are being submitted, reviewed by various stakeholders, including QCAP and the Monitors and CCAA Plan Administrators and being paid. In contrast, quarterly budgets with variance to budget comparisons for prior periods and a requirement for court approval with the benefit of that historic information and accompanying explanations would provide closer to “real time” disclosure and information to stakeholders.

[21] However, the *quid pro quo* from Epiq’s perspective is that forecasting for shorter periods is more difficult (less reliable) and the 10% variance limit is not realistic from a business perspective once the budgeting frequency is increased. From Epiq’s perspective, while that limit was workable when it was applied to costs incurred over an annual period it becomes unworkable when applied to costs anticipated over a shorter period because they cannot be as precisely forecasted.

[22] During the hearing it was suggested that the parties go back to the drawing board to try to work out some other trigger and variance limit. That was what the court would have expected the parties to have been doing in the lead up to this motion, not after it was argued. The idea that there would continue to be annual budgets with a variance limit and the newly introduced quarterly budgets was rejected by Epiq as duplicative and costly, without serving any meaningful purpose.

[23] One of the main concerns that emerged from the oral submissions at the hearing is that there is no requirement under the amended orders for Epiq to explain itself when it exceeds its budget and no mechanism for court approval of Epiq's costs if a trigger is exceeded. However, these concerns are addressed through other mechanics:

(a) Epiq acknowledges that its budgets (after the first one) will contain historic comparisons of actual costs to budgeted costs and, to the extent there are variances, explanations for those will be provided to contextualize the proposed budget for the next period for which they will now have to seek court approval. If stakeholders have concerns they can be raised in that context.

(b) QCAP and the Monitors and CCAA Plan Administrators will continue to review Epiq's accounts before they are paid and they (along with the PTCL) will be receiving the weekly and monthly and quarterly reports from Epiq and will be most familiar with the work that Epiq is doing for which payment is sought. If there are disputes about Epiq's accounts there is a mechanism to come before the Court to address them.

[24] At the conclusion of the hearing the court took a brief recess and returned to indicate that the proposed Amended and Restated Claims Administrator Orders would be granted but that the court was going to give further consideration to whether any aspect of the 10% budget variance limit should be retained. Upon further consideration and deliberation, I am satisfied that, in the circumstances, it is appropriate to remove that 10% budget variance limit (as has been proposed through the amendments reflected in the proposed orders), given the protections that the other amendments provide for stakeholders.

Orders

<u>CCAA Orders</u>

[25] I agree with the Monitors and CCAA Plan Administrators that granting the Amended and Restated Claims Administrator Orders is appropriate in the circumstances of these complex and coordinated CCAA Proceedings and I have signed the orders today, all dated September 9, 2026.

<u>Postscript Regarding Quebec Class Action Plan Administration Approval</u>

[26] During the hearing of this motion, convened only before the CCAA court, counsel for QCAP raised, to this Court's knowledge for the first time, a suggestion that the provisions contained in paragraphs 16-18 of the proposed CCAA Amended and Restated Claims Administrator Orders under the heading Budget and Reporting Obligations may require some endorsement or formal approval by the Quebec Superior Court.

[27] Specifically, insofar as these CCAA orders now provide for different budgets and reporting than what is provided for in section 57.3 of the Quebec Class Action Administration Plan that was adopted by the Superior Court of Québec (which provides for an annual budget), any amendment to that Plan would require the joint approval of both courts, as per Art. 7.1 of the Plan.

[28] Justice Piché was present as an observer during the presentation of these motions before the CCAA Court, and heard the submissions of counsel, but no motion was presented to her or to the Superior Court of Quebec for approval of any corresponding amendments to the Quebec Class Action Administration Plan.

[29] Through communication under the October 15, 2025 direction and appended Court to Court Communication Protocol, Justice Piché has indicated that she would be prepared to provide such approval. However, a motion will have to be presented to her separately to seek such approval. Justice Piché has directed that this motion will be decided in chambers, without further representations, as all parties were already heard on this point.

Date: Sep 11, 2026

Kimmel J.

Jessica Kimmel