

**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 **JTI-MACDONALD CORP.**

**Applicant**

**MOTION RECORD**

**(Re: Amendment to Representative Counsel Order)  
(Returnable on October 31, 2024)**

October 24, 2024

**THORNTON GROUT FINNIGAN LLP**  
100 Wellington Street West  
Suite 3200, TD West Tower  
Toronto ON M5K 1K7

**Robert I. Thornton** (LSO# 24266B)  
Email: [rthornton@tgf.ca](mailto:rthornton@tgf.ca)

**Leanne M. Williams** (LSO# 41877E)  
Email: [lwilliams@tgf.ca](mailto:lwilliams@tgf.ca)

**Rachel Nicholson** (LSO# 68348V)  
Email: [rnicholson@tgf.ca](mailto:rnicholson@tgf.ca)

**Mitchell W. Grossell** (LSO#69993I)  
Email: [mgrossell@tgf.ca](mailto:mgrossell@tgf.ca)

Tel: 416-304-1616  
Fax: 416-304-1313

Lawyers for the Applicant

**TO: THE COMMON SERVICE LIST**

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# Tab 1

**ONTARIO  
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**Applicant**

**NOTICE OF CROSS MOTION  
(Re: Amendment to Representative Counsel Order)  
(Returnable on October 31, 2024)**

The Applicant will make a cross motion to Chief Justice Morawetz of the Ontario Superior Court of Justice (Commercial List) on October 31, 2024 at 9:00 a.m. (Eastern), or as soon after that time as the motion can be heard, by judicial video conference via Zoom at Toronto, Ontario.

**PROPOSED METHOD OF HEARING:** The motion is to be heard:

- In writing under subrule 37.12.1 (1) because it is (*insert one of* on consent, unopposed *or* made without notice);
- In writing as an opposed motion under subrule 37.12.1 (4);
- In person;
- By telephone conference;
- By video conference, via Zoom, the details of which will be made available by the Court in Case Center.

**THE CROSS MOTION IS FOR:**

1. An Order, substantially in the form included at Tab 2 of the Motion Record that amends the Representative Counsel Order dated December 6, 2019 (the “**Representative Counsel Order**”) to, among other things, amend the definition of “TRW Claimants” to “Pan-Canadian Claimants” to reflect the scope of representation of the Representative Counsel (as defined below) during the mediation; and
2. Such further and other relief as this Court deems just.

**THE GROUNDS FOR THE MOTION ARE:**

**A. Background of CCAA Proceedings**

1. All capitalized terms not otherwise defined herein shall have the meanings set forth in the Second Amended and Restated Initial Order dated April 25, 2019.
2. The Applicant is: (a) a defendant in significant healthcare cost recovery litigation commenced by each province and territory in Canada, alleging over \$600 billion in claims against JTIM and the other defendants in the HCCR Actions, (b) subject to the judgment in the Quebec Class Actions, and (c) a named defendant in certain class actions that have been commenced, but not certified, in six provinces in Canada.
3. The Applicant sought the protections available under the CCAA to maintain the *status quo* of its operations, preserve going concern value, and provide the Applicant with a period of stability while attempting to find a collective resolution to the Tobacco Claims made against the Applicant.

4. On March 8, 2019, the Applicant was granted protection from its creditors under the CCAA pursuant to the Initial Order. Deloitte Restructuring Inc. was appointed as monitor of the Applicant (in such capacity, the “**Monitor**”).
5. On April 5, 2019, pursuant to the Amended and Restated Initial Order, the Honourable Warren K. Winkler, K.C. (the “**Court-Appointed Mediator**”) was appointed to mediate a global settlement of the Tobacco Claims against the Applicant and the other defendants.
6. Since the date of the Initial Order, Imperial Tobacco Company Limited and Imperial Tobacco Canada Limited (together, “**Imperial**”) and Rothmans, Benson & Hedges Inc. (“**RBH**”, together with the Applicant and Imperial, the “**Tobacco Companies**”) have sought protection from their creditors under the CCAA. FTI Consulting Canada Inc. (“**FTI**”) was appointed as the monitor for Imperial, and Ernst & Young Inc. (“**EY**”) was appointed as the monitor for RBH.
7. On November 25, 2019, the Monitor, FTI and EY (collectively, the “**Tobacco Monitors**”) filed a joint motion for the Representative Counsel Order to, among other things, appoint The Law Practice of Wagner & Associates, Inc. as representative counsel (the “**Representative Counsel**”) for the TRW Claimants (as defined in the Representative Counsel Order). This appointment was sought to ensure that the Representative Counsel could effectively participate in and negotiate on behalf of the TRW Claimants during mediation.
8. Given the current multitude of class actions initiated against the Tobacco Companies, the Tobacco Monitors sought the appointment of Representative Counsel to facilitate the

efficient, timely and consistent resolution of any and all claims that could be asserted by the TRW Claimants.

9. On December 6, 2019, the Court granted the Representative Counsel Order.

**B. The Amended Representative Counsel Order**

10. Since the Representative Counsel Order, Representative Counsel has represented the TRW Claimants during the mediation overseen by the Court-Appointed Mediator.
11. On October 17, 2024, the Monitor served a motion record seeking, among other things, a Meeting Order to: (a) accept the filing of a Plan of Compromise and Arrangement dated October 17, 2024 (the “**M&M Plan**”), and (b) scheduling a creditors’ meeting for Affected Creditors to consider and vote on the M&M Plan.
12. During discussions among the Tobacco Companies and the Claimants, including Representative Counsel, the scope and definition of Tobacco Claims has evolved and been clarified. These changes are reflected in the M&M Plan.
13. The Representative Counsel Order must be amended to align the scope of the Representative Counsel’s current representation with the language used in the M&M Plan. This amendment is necessary to clarify that the Representative Counsel has represented at mediation and continues to represent all individuals (excluding the Quebec Class Action Plaintiffs in relation to QCAP Claims, as defined in the M&M Plan) with Tobacco Claims that are subject to the release.

14. The Applicant proposes replacing the term TRW Claimants with Pan-Canadian Claimant and certain other corresponding definitions, for consistency across both the order and the M&M Plan.
15. The amended Representative Counsel Order is substantially in the form included at Schedule “A” of Tab 2 of the Motion Record and a blackline comparison of the amended Representative Counsel Order to the Representative Counsel Order is substantially in the form included at Tab 3 of the Motion Record.
16. Paragraph 3 of the Representative Counsel Order permits the definition of TRW Claimants to be amended, following consultation among the Court-Appointed Mediator, the Tobacco Monitors and Representative Counsel and as approved by further order of this Court.
17. As part of the mediation, the Applicant has consulted with the Court-Appointed Mediator, the Tobacco Monitors and the other Tobacco Companies with respect to the need to amend the Representative Counsel Order.
18. The Applicant additionally relies on:
  - (a) the provisions of the CCAA and the statutory, inherent and equitable jurisdiction of this Court;
  - (b) Rules 1.04, 1.05, 2.03, 3.02, 10.01, 16, 37 and 39 of the *Rules of Civil Procedure*, R.R.O. 1990, Reg 194, as amended and the *Courts of Justice Act*, R.S.O. 1990, c. C.43 as amended; and
  - (c) such further and other grounds as counsel may advise and this Court may permit.



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

- (a) the Affidavit of William E. Aziz sworn October 24, 2024; and
- (b) such further and other evidence as counsel may advise and this Court may permit.

October 24, 2024

**Thornton Grout Finnigan LLP**

100 Wellington Street West,  
Suite 3200, TD West Tower,  
Toronto, ON M5K 1K7

**Robert I. Thornton** (LSO# 24266B)

Email: [rthornton@tgf.ca](mailto:rthornton@tgf.ca)

**Leanne M. Williams** (LSO# 41877E)

Email: [lwilliams@tgf.ca](mailto:lwilliams@tgf.ca)

**Rachel A. Nicholson** (LSO# 68348V)

Email: [rnicholson@tgf.ca](mailto:rnicholson@tgf.ca)

**Mitchell W. Grossell** (LSO# 69993I)

Email: [mgrossell@tgf.ca](mailto:mgrossell@tgf.ca)

Tel: 416-304-1616

Fax: 416-304-1313

Lawyers for the Applicant

**TO: THE COMMON SERVICE LIST**

**Schedule "A"**

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

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

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

**Applicants**

**COMMON SERVICE LIST  
(as of October 18, 2024)**

<b>TO:</b>	<p><b>THORNTON GROUT FINNIGAN LLP</b> 100 Wellington Street West, Suite 3200 TD West Tower, Toronto-Dominion Centre Toronto, ON M5K 1K7 Fax: 416-304-1313</p> <p><b>Robert I. Thornton</b> Tel: 416-304-0560 Email: rthornton@tgf.ca</p> <p><b>Leanne M. Williams</b> Tel: 416-304-0060 Email: lwilliams@tgf.ca</p> <p><b>Rachel A. Nicholson</b> Tel: 416-304-1153 Email: rnicholson@tgf.ca</p>
------------	--

\* For any additions or questions, please contact Nancy Thompson at [nancy.thompson@blakes.com](mailto:nancy.thompson@blakes.com)

	<p><b>Mitchell W. Grossell</b> Tel: 416-304-7978 Email: mgrossell@tgf.ca</p> <p><b>John L. Finnigan</b> Tel: 416-304-0558 Email: jfinnigan@tgf.ca</p> <p><b>Rebekah O'Hare</b> Tel: 416-307-2423 Email: rohare@tgf.ca</p> <p>Lawyers for JTI-Macdonald Corp.</p>
<p><b>AND TO:</b></p>	<p><b>DELOITTE RESTRUCTURING INC.</b> Bay Adelaide East 8 Adelaide Street West Suite 200 Toronto, ON M5H 0A9 Fax: 416-601-6690</p> <p><b>Paul Casey</b> Tel: 416-775-7172 Email: paucasey@deloitte.ca</p> <p><b>Warren Leung</b> Tel: 416-874-4461 Email: waleung@deloitte.ca</p> <p><b>Jean-Francois Nadon</b> Tel: 514-390-0059 Email: jnadon@deloitte.ca</p> <p><b>Phil Reynolds</b> Tel: 416-956-9200 Email: philreynolds@deloitte.ca</p> <p>The Monitor of JTI-Macdonald Corp.</p>

<b>AND TO:</b>	<p><b>BLAKE, CASSELS &amp; GRAYDON LLP</b> 199 Bay Street Suite 4000, Commerce Court West Toronto, ON M5L 1A9 Fax: 416-863-2653</p> <p><b>Pamela Huff</b> Tel: 416-863-2958 Email: pamela.huff@blakes.com</p> <p><b>Linc Rogers</b> Tel: 416-863-4168 Email: linc.rogers@blakes.com</p> <p><b>Jake Harris</b> Tel: 416-863-2523 Email: jake.harris@blakes.com</p> <p><b>Nancy Thompson, Law Clerk</b> Tel: 416-863-2437 Email: nancy.thompson@blakes.com</p> <p>Lawyers for Deloitte Restructuring Inc., in its capacity as Monitor of JTI-Macdonald Corp.</p>
<b>AND TO:</b>	<p><b>MILLER THOMSON LLP</b> Scotia Plaza 40 King Street West, Suite 5800 Toronto, ON M5H 3S1</p> <p><b>Craig A. Mills</b> Tel: 416-595-8596 Email: cmills@millert Thomson.com</p> <p>Lawyers for North Atlantic Operating Company, Inc.</p>
<b>AND TO:</b>	<p><b>MILLER THOMSON LLP</b> 1000, rue De La Gauchetière Ouest, bureau 3700 Montreal, QC H3B 4W5</p> <p><b>Hubert Sibre</b> Tel: 514-879-4088 Email: hsibre@millert Thomson.com</p> <p>Lawyers for AIG Insurance Canada</p>

<b>AND TO:</b>	<b>BLUETREE ADVISORS INC.</b> First Canada Place 100 King Street West Suite 5600 Toronto, ON M5X 1C9  <b>William E. Aziz</b> Tel: 416-575-2200 Email: baziz@bluetreadvisors.com  Chief Restructuring Officer of JTI-Macdonald Corp.
<b>AND TO:</b>	<b>STIKEMAN ELLIOTT LLP</b> Commerce Court West 199 Bay Street, Suite 5300 Toronto, ON M5L 1B9 Fax: 416-947-0866  <b>David R. Byers</b> Tel: 416-869-5697 Email: dbyers@stikeman.com  <b>Maria Konyukhova</b> Tel: 416-869-5230 Email: mkonyukhova@stikeman.com  <b>Lesley Mercer</b> Tel: 416-869-6859 Email: lmercerc@stikeman.com  Lawyers for British American Tobacco p.l.c., B.A.T. Industries p.l.c. and British American Tobacco (Investments) Limited
<b>AND TO:</b>	<b>OSLER, HOSKIN &amp; HARCOURT LLP</b> 100 King Street West 1 First Canadian Place Suite 6200, P.O. Box 50 Toronto, ON M5X 1B8 Fax: 416-862-6666  <b>Deborah Glendinning</b> Tel: 416-862-4714 Email: dglendinning@osler.com  <b>Marc Wasserman</b> Tel: 416-862-4908 Email: mwasserman@osler.com

	<p><b>John A. MacDonald</b> Tel: 416-862-5672 Email: jmacdonald@osler.com</p> <p><b>Michael De Lellis</b> Tel: 416-862-5997 Email: mdelellis@osler.com</p> <p><b>Craig Lockwood</b> Tel: 416-862-5988 Email: clockwood@osler.com</p> <p><b>Marleigh Dick</b> Tel: 416-862-4725 Email: mdick@osler.com</p> <p><b>Martino Calvaruso</b> Tel: 416-862-6665 Email: mcalvaruso@osler.com</p> <p>Lawyers for Imperial Tobacco Canada Limited and Imperial Tobacco Company Limited</p>
<p><b>AND TO:</b></p>	<p><b>DAVIES WARD PHILLIPS &amp; VINEBERG LLP</b> 155 Wellington Street West Toronto, ON M5V 3J7</p> <p><b>Natasha MacParland</b> Tel: 416-863-5567 Email: nmacparland@dwpv.com</p> <p><b>Chanakya Sethi</b> Tel: 416-863-5516 Email: csethi@dwpv.com</p> <p><b>Rui Gao</b> Tel: 416-367-7613 Email: rgao@dwpv.com</p> <p><b>Benjamin Jarvis</b> Tel: 514-807-0621 Email: bjarvis@dwpv.com</p> <p><b>Robert Nicholls</b> Email: rnicholls@dwpv.com</p>

	<p><b>Anisha Visvanatha</b> Tel: 416-367-7480 Email: avisvanatha@dwpv.com</p> <p><b>Ashley Perley, Law Clerk</b> Tel: 416-566-0463 Email: aperley@dwpv.com</p> <p>Lawyers for FTI Consulting Canada Inc., in its capacity as Monitor of Imperial Tobacco Canada Limited and Imperial Tobacco Company Limited</p>
<b>AND TO:</b>	<p><b>MORGAN, LEWIS &amp; BOCKIUS LLP</b> 101 Park Avenue New York, NY 10178-0060</p> <p><b>Jennifer Feldsher</b> Tel: 212-309-6017 Email: jennifer.feldser@morganlewis.com</p> <p><b>MORGAN, LEWIS &amp; BOCKIUS LLP</b> One State Street Hartford, CT 06103-3178</p> <p><b>David K. Shim</b> Tel: 860-240-2580 Email: david.shim@morganlewis.com</p> <p>US Counsel for FTI Consulting Canada Inc., in its capacity as Monitor of Imperial Tobacco Canada Limited and Imperial Tobacco Company Limited</p>
<b>AND TO:</b>	<p><b>FTI CONSULTING CANADA INC.</b> 79 Wellington Street West Suite 2010, P.O. Box 104 Toronto, ON M4K 1G8 Fax: 416-649-8101</p> <p><b>Greg Watson</b> Tel: 416-649-8077 Email: greg.watson@fticonsulting.com</p> <p><b>Paul Bishop</b> Tel: 416-649-8053 Email: paul.bishop@fticonsulting.com</p> <p><b>Jeffrey Rosenberg</b> Tel: 416-649-8073 Email: jeffrey.rosenberg@fticonsulting.com</p>



	<p><b>Kamran Hamidi</b> Tel: 416-649-8068 Email: kamran.hamidi@fticonsulting.com</p> <p><b>Carter Wood</b> Tel: 416-844-9169 Email: carter.wood@fticonsulting.com</p> <p>Monitor of Imperial Tobacco Canada Limited and Imperial Tobacco Company Limited</p>
<b>AND TO:</b>	<p><b>MCCARTHY TÉTRAULT LLP</b> 66 Wellington Street West Suite 5300 TD Bank Tower, Box 48 Toronto, ON M5K 1E6 Fax: 416-868-0673</p> <p><b>James Gage</b> Tel: 416-601-7539 Email: jgage@mccarthy.ca</p> <p><b>Heather Meredith</b> Tel: 416-601-8342 Email: hmeredith@mccarthy.ca</p> <p><b>Paul Steep</b> Tel: 416-601-7998 Email: psteep@mccarthy.ca</p> <p><b>Trevor Courtis</b> Tel: 416-601-7643 Email: tcourtis@mccarthy.ca</p> <p><b>Deborah Templer</b> Tel: 416-601-8421 Email: dtempler@mccarthy.ca</p> <p>Lawyers for Rothmans, Benson &amp; Hedges, Inc.</p>
<b>AND TO:</b>	<p><b>LAPOINTE ROSENSTEIN MARCHAND MELANÇON LLP</b> 1 Place Ville Marie, Suite 1300 Montreal, QC H3B 0E6</p>

	<p><b>Mireille Fontaine</b> Tel: 514-925-6342 Email: mireille.fontaine@lrmm.com</p> <p>Lawyers for the Top Tube Company</p>
<b>AND TO:</b>	<p><b>TORYS LLP</b> 79 Wellington St. West, Suite 3000 Box 270, TD Centre Toronto, ON M5K 1N2 Fax: 416-865-7380</p> <p><b>Scott Bomhof</b> Tel: 416-865-7370 Email: sbomhof@torys.com</p> <p><b>Adam Slavens</b> Tel: 416-865-7333 Email: aslavens@torys.com</p> <p>Lawyers for JT Canada LLC Inc. and PricewaterhouseCoopers Inc., in its capacity as receiver of JTI-Macdonald TM Corp.</p>
<b>AND TO:</b>	<p><b>PRICEWATERHOUSECOOPERS</b> PwC Tower 18 York St., Suite 2600 Toronto, ON M5J 0B2 Fax: 416-814-3210</p> <p><b>Mica Arlette</b> Tel: 416-814-5834 Email: mica.arlette@pwc.com</p> <p><b>Tyler Ray</b> Email: tyler.ray@pwc.com</p> <p>Receiver and Manager of JTI-Macdonald TM Corp.</p>
<b>AND TO:</b>	<p><b>BENNETT JONES</b> 100 King Street West Suite 3400 Toronto, ON M5X 1A4 Fax: 416-863-1716</p> <p><b>Jeffrey Leon</b> Tel: 416-777-7472 Email: leonj@bennettjones.com</p>

	<p><b>Mike Eizenga</b> Tel: 416-777-4879 Email: eizengam@bennettjones.com</p> <p><b>Sean Zweig</b> Tel: 416-777-6254 Email: zweigs@bennettjones.com</p> <p><b>MCKENZIE LAKE LAWYERS</b> 140 Fullarton Street, Suite 1800 London, ON N6A 5P2</p> <p><b>Michael Peerless</b> Tel: 519-667-2644 Email: mike.peerless@mckenzielake.com</p> <p><b>SISKINDS</b> 275 Dundas Street, Unit 1 London, ON N6B 3L1</p> <p><b>Andre I.G. Michael</b> Tel: 519-660-7860 Email: andre.michael@siskinds.com</p> <p><b>James Virtue</b> Tel: 519-660-7898 Email: jim.virtue@siskinds.com</p> <p>Lawyers for the Province of British Columbia, Province of Manitoba, Province of New Brunswick, Province of Nova Scotia, Province of Prince Edward Island, Province of Saskatchewan, Government of Northwest Territories, Government of Nunavut, and Government of Yukon in their capacities as plaintiffs in the HCCR Legislation claims</p>
<b>AND TO:</b>	<p><b>MINISTRY OF THE ATTORNEY GENERAL</b> Legal Services Branch 1001 Douglas Street Victoria, BC V8W 2C5 Fax: 250-356-6730</p> <p><b>Peter R. Lawless</b> Tel: 250-356-8432 Email: peter.lawless@gov.bc.ca</p>

<b>AND TO:</b>	<p><b>KSV ADVISORY INC.</b> 150 King Street West Suite 2308, Box 42 Toronto, ON M5H 1J9 Fax: 416-932-6266</p> <p><b>Noah Goldstein</b> Tel: 416-932-6207 Email: ngoldstein@ksvadvisory.com</p> <p><b>Bobby Kofman</b> Email: bkofman@ksvadvisory.com</p> <p>Financial Advisory 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</p>
<b>AND TO:</b>	<p><b>MINISTRY OF THE ATTORNEY GENERAL</b> Crown Law Office - Civil 720 Bay Street, 8th Floor Toronto, ON M7A 2S9 Fax: 416-326-4181</p> <p><b>Jacqueline Wall</b> Tel: 416-434-4454 Email: jacqueline.wall@ontario.ca</p> <p>Lawyers for His Majesty the King in Right of Ontario</p>
<b>AND TO:</b>	<p><b>FISHMAN FLANZ MELAND PAQUIN LLP</b> 4100 – 1250 René-Lévesque Blvd. West Montreal, QC H3A 3H3</p> <p><b>Avram Fishman</b> Email: afishman@ffmp.ca</p> <p><b>Mark E. Meland</b> Tel: 514-932-4100 Email: mmeland@ffmp.ca</p> <p><b>Margo R. Siminovitch</b> Email: msiminovitch@ffmp.ca</p> <p><b>Jason Dolman</b> Email: jdolman@ffmp.ca</p>

	<p><b>Nicolas Brochu</b> Email: nbrochu@ffmp.ca</p> <p><b>Tina Silverstein</b> Email: tsilverstein@ffmp.ca</p> <p><b>CHAITONS LLP</b> 5000 Yonge Street 10th Floor Toronto, ON M2N 7E9</p> <p><b>Harvey Chaiton</b> Tel: 416-218-1129 Email: harvey@chaitons.com</p> <p><b>George Benchetrit</b> Tel: 416-218-1141 Email: george@chaitons.com</p> <p><b>TRUDEL JOHNSTON &amp; LESPÉRANCE</b> 750, Cote de la Place d'Armes, Bureau 90 Montréal, QC H2Y 2X8 Fax: 514-871-8800</p> <p><b>Philippe Trudel</b> Tel: 514-871-8385, x203 Email: philippe@tjl.quebec</p> <p><b>Bruce Johnston</b> Tel: 514-871-8385, x202 Email: bruce@tjl.quebec</p> <p><b>André Lespérance</b> Tel: 514-871-8805 Email: andre@tjl.quebec</p> <p>Lawyers for Conseil québécois sur le tabac et la santé, Jean-Yves Blais and Cécilia Létourneau (Quebec Class Action Plaintiffs)</p>
<b>AND TO:</b>	<p><b>KLEIN LAWYERS LLP</b> 100 King Street West, Suite 5600 Toronto, ON M5X 1C9</p> <p><b>Douglas Lennox</b> Tel: 416-506-1944 Email: dlennox@callkleinlawyers.com</p>

	<p><b>KLEIN LAWYERS LLP</b> 400 – 1385 West 8<sup>th</sup> Avenue Vancouver, BC V6H 3V9</p> <p><b>David A. Klein</b> Email: dklein@callkleinlawyers.com</p> <p><b>Nicola Hartigan</b> Tel: 604-874-7171 Email: nhartigan@callkleinlawyers.com</p> <p>Lawyers for the representative plaintiff, Kenneth Knight, in the certified British Columbia class action, <i>Knight v. Imperial Tobacco Canada Ltd.</i>, Supreme Court of British Columbia, Vancouver Registry No. L031300</p>
<p><b>AND TO:</b></p>	<p><b>JENSEN SHAWA SOLOMON DUGID HAWKES LLP</b> 800, 304 – 8 Avenue SW Calgary, AB T2P 1C2 Fax: 403-571-1528</p> <p><b>Carsten Jensen, QC</b> Tel: 403-571-1526 Email: jensenc@jssbarristers.ca</p> <p><b>Sabri Shawa, QC</b> Tel: 403-571-1527 Email: shawas@jssbarristers.ca</p> <p><b>Stacy Petriuk</b> Tel: 403-571-1523 Email: petriuks@jssbarristers.ca</p> <p><b>PALIARE ROLAND ROSENBERG ROTHSTEIN LLP</b> 155 Wellington Street West, 35<sup>th</sup> Floor Toronto, ON M5V 3H1</p> <p><b>Kenneth T. Rosenberg</b> Email: ken.rosenberg@paliareroland.com</p> <p><b>Lilly Harmer</b> Email: lily.harmer@paliareroland.com</p> <p><b>Massimo (Max) Starnino</b> Email: max.starnino@paliareroland.com</p> <p>Lawyers for His Majesty the King in Right of Alberta</p>

<b>AND TO:</b>	<p><b>STEWART MCKELVEY</b> 1959 Upper Water Street, Suite 900 P.O. Box 997 Halifax, NS B3J 2X2 Fax: 902-420-1417</p> <p><b>Robert G. MacKeigan, K.C.</b> Tel: 902-444-1771 Email: robbie@stewartmckelvey.com</p> <p>Lawyers for Sobeys Capital Incorporated</p>
<b>AND TO:</b>	<p><b>CASSELS BROCK &amp; BLACKWELL LLP</b> Suite 3200, Bay Adelaide Centre – North Tower 40 Temperance Street Toronto, ON M5H 0B4</p> <p><b>Shayne Kukulowicz</b> Tel: 416-860-6463 Fax: 416-640-3176 Email: skukulowicz@cassels.com</p> <p><b>Joseph Bellissimo</b> Tel: 416-860-6572 Fax: 416-642-7150 Email: jbellissimo@cassels.com</p> <p><b>Monique Sassi</b> Tel: 416-860-6886 Fax: 416-640-3005 Email: msassi@cassels.com</p> <p>Lawyers for Ernst &amp; Young Inc, in its capacity as court-appointed monitor of Rothmans, Benson &amp; Hedges, Inc.</p>
<b>AND TO:</b>	<p><b>ERNST &amp; YOUNG INC.</b> Ernst &amp; Young Tower 100 Adelaide Street West P.O. Box 1 Toronto, ON M5H 0B3</p> <p><b>Murray A. McDonald</b> Tel: 416-943-3016 Email: murray.a.mcdonald@parthenon.ey.com</p>

	<p><b>Brent Beekenkamp</b> Tel: 416-943-2652 Email: brent.r.beekenkamp@parthenon.ey.com</p> <p><b>Edmund Yau</b> Tel: 416-943-2177 Email: edmund.yau@parthenon.ey.com</p> <p><b>Matt Kaplan</b> Tel: 416-932-6155 Email: matt.kaplan@parthenon.ey.com</p> <p>Monitor of Rothmans, Benson &amp; Hedges, Inc.</p>
<b>AND TO:</b>	<p><b>GOWLING WLG (CANADA) LLP</b> 1 First Canadian Place 100 King Street West, Suite 1600 Toronto, ON M5X 1G5 Fax: 416-862-7661</p> <p><b>Clifton Prophet</b> Tel: 416-862-3509 Email: clifton.prophet@gowlingwlg.com</p> <p><b>Steven Sofer</b> Tel: 416-369-7240 Email: steven.sofer@gowlingwlg.com</p> <p><b>Nicholas Kluge</b> Tel: 416-369-4610 Email: nicholas.kluge@gowlingwlg.com</p> <p>Lawyers for Philip Morris International Inc.</p>
<b>AND TO:</b>	<p><b>PALIARE ROLAND ROSENBERG ROTHSTEIN LLP</b> 155 Wellington Street West, 35<sup>th</sup> Floor Toronto, ON M5V 3H1</p> <p><b>Kenneth T. Rosenberg</b> Email: ken.rosenberg@paliareroland.com</p> <p><b>Lilly Harmer</b> Email: lily.harmer@paliareroland.com</p> <p><b>Massimo (Max) Starnino</b> Email: max.starnino@paliareroland.com</p>



	<p><b>ROEBOTHAN MCKAY MARSHALL</b> Paramount Building 34 Harvey Road, 5<sup>th</sup> Floor St. John's NL A1C 3Y7 Fax: 709-753-5221</p> <p><b>Glenda Best</b> Tel: 705-576-2255 Email: gbest@wrmlaw.com</p> <p>Lawyers for His Majesty the King in Right of Newfoundland</p>
<b>AND TO:</b>	<p><b>WESTROCK COMPANY OF CANADA CORP.</b> 15400 Sherbrooke Street East Montreal, QC H1A 3S2</p> <p><b>Dean Jones</b> Tel: 514-642-9251 Email: dean.jones@westrock.com</p>
<b>AND TO</b>	<p><b>FINANCIAL SERVICES REGULATORY AUTHORITY OF ONTARIO (FSRA)</b> Legal and Enforcement Division 25 Sheppard Avenue West, Suite 100 Toronto, Ontario M2N 6S6</p> <p><b>Michael Spagnolo</b> Legal Counsel Tel: 647-801-8921 Email: michael.spagnolo@fsrao.ca</p>
<b>AND TO:</b>	<p><b>KAPLAN LAW</b> 393 University Avenue, Suite 2000 Toronto, ON M5G 1E6</p> <p><b>Ari Kaplan</b> Tel: 416-565-4656 Email: ari@kaplanlaw.ca</p> <p>Counsel to the Former Genstar U.S. Retiree Group Committee</p>
<b>AND TO:</b>	<p><b>McMILLAN LLP</b> Brookfield Place 181 Bay Street, Suite 4400 Toronto, ON M5J 2T3</p>

	<p><b>Wael Rostom</b> Tel: 416-865-7790 Email: wael.rostom@mcmillan.ca</p> <p><b>Emile Catimel-Marchand</b> Tel: 514-987-5031 Email: emile.catimel-marchand@mcmillan.ca</p> <p>Lawyers for The Bank of Nova Scotia</p>
<b>AND TO</b>	<p><b>MERCHANT LAW GROUP LLP</b> c/o #400 – 333 Adelaide St. West Toronto, ON M5V 1R5 Fax: 613-366-2793</p> <p><b>Evatt Merchant, QC</b> Tel: 613-366-2795 Email: emerchant@merchantlaw.com</p> <p>Lawyers for the Class Action Plaintiffs (MLG)</p>
<b>AND TO:</b>	<p><b>LABSTAT INTERNATIONAL INC.</b> 262 Manitou Drive Kitchener, ON N2C 1L3</p> <p><b>Andrea Echeverria</b> Tel: 519-748-5409 Email: aecheverria@labstat.com</p>
<b>AND TO:</b>	<p><b>CERNOS FLAHERTY SVONKIN LLP</b> 220 Bay Street, Suite 700 Toronto, ON M5J 2W4 Fax: 647-725-5440</p> <p><b>Patrick Flaherty</b> Tel: 416-855-0403 Email: pflaherty@cfscounsel.com</p> <p><b>Bryan D. McLeese</b> Tel: 416-855-0414 Email: bmcleese@cfscounsel.com</p> <p><b>Clair Wortsman</b> Email: cwortsman@cfscounsel.com</p>

	<p><b>STOCKWOODS LLP</b> 77 King Street West, Suite 4130 TD North Tower, P.O. Box 140, TD Centre Toronto, ON M5K 1H1 Fax: 416-593-9345</p> <p><b>Brian Gover</b> Tel: 416-593-2489 Email: briang@stockwoods.ca</p> <p><b>Justin Safayeni</b> Tel: 416-593-3494 Email: justins@stockwoods.ca</p> <p>Lawyers for R.J. Reynolds Tobacco Company and R.J. Reynolds Tobacco International Inc.</p>
<b>AND TO:</b>	<p><b>COZEN O'CONNOR LLP</b> Bay Adelaide Centre – North Tower 40 Temperance Street, Suite 2700 Toronto, Ontario M5H 0B4</p> <p><b>Steven Weisz</b> Tel: 647-417-5334 Fax: 416-361-1405 Email: sweisz@cozen.com</p> <p><b>INCH HAMMOND PROFESSIONAL CORPORATION</b> 1 King Street West, Suite 500 Hamilton, ON L8P 4X8</p> <p><b>Amanda McInnis</b> Tel: 905-525-0031 Email: amcinnis@inchlaw.com</p> <p>Lawyer for Grand River Enterprises Six Nations Ltd.</p>
<b>AND TO:</b>	<p><b>STROSBERG WINGFIELD SASSO LLP</b> 1561 Ouellette Avenue Windsor, ON M8X 1K5 Fax: 866-316-5308</p> <p><b>William V. Sasso</b> Tel: 519-561-6222 Email: william.sasso@swslitigation.com</p>

	<p><b>David Robins</b> Tel: 519-561-6215 Email: david.robins@sWSlitigation.com</p> <p>Lawyers for The Ontario Flue-Cured Tobacco Growers' Marketing Board, plaintiffs in Ontario Superior Court of Justice Court File No. 1056/10CP (Class Proceedings)</p>
<b>AND TO:</b>	<p><b>ATTORNEY GENERAL OF CANADA</b> Department of Justice Canada Ontario Regional Office, Tax Law Section 120 Adelaide Street West, Suite 400 Toronto, ON M5H 1T1 Fax: 416-973-0810</p> <p><b>Edward Park</b> Tel: 647-292-9368 Email: edward.park@justice.gc.ca</p> <p><b>Kevin Dias</b> Email: kevin.dias@justice.gc.ca</p> <p>Lawyers for the Minister of National Revenue</p>
<b>AND TO:</b>	<p><b>LAX O'SULLIVAN LISUS GOTTLIEB LLP</b> Suite 2750, 145 King Street West Toronto, ON M5H 1J8</p> <p><b>Jonathan Lisus</b> Tel: 416-598-7873 Email: jlisus@lolg.ca</p> <p><b>Matthew Gottlieb</b> Tel: 416-644-5353 Email: mgottlieb@lolg.ca</p> <p><b>Nadia Campion</b> Tel: 416-642-3134 Email: ncampion@lolg.ca</p> <p><b>Andrew Winton</b> Tel: 416-644-5342 Email: awinton@lolg.ca</p> <p>Lawyers for the Court-Appointed Mediator</p>

<b>AND TO:</b>	<p><b>FOGLER, RUBINOFF LLP</b> Suite 3000, P.O. Box 95 Toronto-Dominion Centre 77 King Street West Toronto, ON M5K 1G8 Fax: 416-941-8852</p> <p><b>Vern W. DaRe</b> Tel: 416-941-8842 Email: vdare@foglers.com</p> <p><b>CANADIAN CANCER SOCIETY</b> 116 Albert Street, Suite 500 Ottawa, ON K1P 5G3 Fax: 613-565-2278</p> <p><b>Robert Cunningham</b> Tel: 613-565-2522 ext. 4981 Email: rcunning@cancer.ca</p> <p>Lawyers for Canadian Cancer Society</p>
<b>AND TO:</b>	<p><b>BLANEY MCMURTRY LLP</b> 2 Queen Street East, Suite 1500 Toronto, ON M5C 3G5</p> <p><b>David R. Mackenzie</b> Tel: 416-597-4890 Email: dmackenzie@blaney.com</p> <p><b>David Ullmann</b> Tel: 416-596-4289 Email: dullmann@blaney.com</p> <p><b>Alexandra Teodorescu</b> Tel: 416-596-4279 Email: ateodorescu@blaney.com</p> <p>Lawyers for La Nordique Compagnie D'Assurance du Canada</p>
<b>AND TO:</b>	<p><b>ST-PIERRE LÉTOURNEAU</b> 2600, boulevard Laurier, porte760 Quebec, QC G1V 4T3</p>

	<p><b>Marc-André Maltais</b> Tel: 418-657-8702, ext. 3107 Email: marc-andre.maltais1@retraitequebec.gouv.qc.ca</p> <p>Lawyers for Retraite Québec</p>
<b>AND TO:</b>	<p><b>LECKER &amp; ASSOCIATES</b> 4789 Yonge Street, Suite 514 Toronto, ON M2N 0G3</p> <p><b>Shira Levine</b> Email: slevine@leckerslaw.com</p> <p>Lawyer for Imperial Tobacco claimant</p>
<b>AND TO:</b>	<p><b>McMILLAN LLP</b> 181 Bay Street, Suite 4400 Toronto, ON M5J 2T3 Fax: 416-865-7048</p> <p><b>Brett Harrison</b> Tel: 416-865-7932 Email: brett.harrison@mcmillan.ca</p> <p><b>Tushara Weerasooriya</b> Tel: 416-865-7890 Email: tushara.weerasooriya@mcmillan.ca</p> <p><b>Guneev Bhinder</b> Tel: 416-307-4067 Email: guneev.bhinder@mcmillan.ca</p> <p>Lawyers for the Province of Quebec</p>
<b>AND TO:</b>	<p><b>ATTORNEY GENERAL OF CANADA</b> Department of Justice Canada Ontario Regional Office, L.E.A.D. 120 Adelaide Street West, Suite 400 Toronto, ON M5H 1T1</p> <p><b>Victor Paolone</b> Tel: 647-256-7548 Email: victor.paolone@justice.gc.ca</p>

<b>AND TO:</b>	<b>McMILLAN LLP</b> Brookfield Place 181 Bay Street, Suite 4400 Toronto, ON M5J 2T3 Fax: 416-865-7048  <b>Stephen Brown-Okruhlik</b> Tel: 416-865-7043 Email: stephen.brown-okruhlik@mcmillan.ca  Lawyers for Citibank Canada
<b>AND TO:</b>	<b>BORDEN LADNER GERVAIS LLP</b> Bay Adelaide Centre, East Tower 22 Adelaide Street West, Suite 3400 Toronto, ON M5H 4E3 Fax: 416-367-6749  <b>Alex MacFarlane</b> Tel: 416-367-6305 Email: amacfarlane@blg.com  <b>James W. MacLellan</b> Tel: 416-367-6592 Email: jmaclellan@blg.com  <b>Bevan Brooksbank</b> Tel: 416-367-6604 Email: bbrooksbank@blg.com  Lawyers for Chubb Insurance Company of Canada
<b>AND TO:</b>	<b>INDUSTRY CANADA, LEGAL SERVICES</b> 235 Queen Street, 8 <sup>th</sup> Floor, East Tower Ottawa, ON K1A 0H5  <b>Adrian Scotchmer</b> Email: adrian.scotchmer@canada.ca
<b>AND TO:</b>	<b>ROCHON GENOVA LLP</b> Barristers • Avocats 121 Richmond Street West, Suite 900 Toronto, ON M5H 2K1 Fax: 416-363-0263

	<p><b>Joel P. Rochon</b> Tel: 416-363-1867 x222 Email: jrochon@rochongenova.com</p> <p>Lawyers for Suzanne Jacklin, Barbara Bourassa on behalf of the Estate of Mitchell David Bourassa, Roderick Dennis McDermid, Linda Dorion, Thelma Adams, Ben Sample and Deborah Kunta, in their capacity as Representative Plaintiffs in certain proposed class proceedings</p>
<b>AND TO:</b>	<p><b>WAGNERS</b> 1869 Upper Water Street, Suite PH301 3<sup>rd</sup> Floor, Pontac House, Historic Properties Halifax, NS B3J 1S9 Fax: 902-422-1233</p> <p><b>Raymond F. Wagner, K.C.</b> Tel: 902-425-7330 Email: raywagner@wagners.co</p> <p><b>Kate Boyle</b> Tel: 902-425-7330 Email: kboyle@wagners.co</p> <p><b>Maddy Carter</b> Tel: 902-425-7330 Email: mcarter@wagners.co</p> <p><b>Lauren Harper</b> Tel: 905-425-7330 Email: lharper@wagners.co</p> <p>Representative Counsel</p>
<b>AND TO:</b>	<p><b>REVENU QUÉBEC</b> 1600, boul. René-Lévesque Ouest Secteur R23DGR Montréal, QC H3H 2V2</p> <p><b>Alain Casavant</b> Email: alain.casavant@revenuquebec.ca</p>
<b>AND TO:</b>	<p><b>PELLETIER D'AMOURS</b> 1, Complexe Desjardins Tour Sud, 12e étage Montreal, QC H5B 1B1</p>



	<p><b>Geneviève Chabot</b> Email: genevieve.chabot@dgag.ca</p> <p>Lawyers for Desjardins Assurances</p>
<b>AND TO:</b>	<p><b>SMART &amp; BIGGAR / FETHERSTONHAUGH</b> 55 Metcalfe Street, Suite 1000 P.O. Box 2999, Station D Ottawa, ON K1P 5Y6</p> <p><b>Kohji Suzuki</b> Email: ksuzuki@smartbiggar.ca</p> <p><b>Francois Guay</b> Email: fguay@smartbiggar.ca</p> <p><b>Christian Bolduc</b> Email: cbolduc@smartbiggar.ca</p> <p><b>Melanie Powers</b> Email: mlpowers@smartbiggar.ca</p> <p><b>Matthew Burt</b> Email: meburt@smartbiggar.ca</p> <p>Lawyers for, and creditor of, Imperial Tobacco Canada Limited and Imperial Tobacco Company Limited</p>
<b>AND TO:</b>	<p><b>KORNBLUM LAW PROFESSIONAL CORPORATION</b> 508 Lawrence Avenue West Toronto, ON M6A 1A1</p> <p><b>Jeffrey Pariag</b> Tel: 416-782-0007 Email: jpariag@kornblum.ca</p> <p>Lawyers for Mr. Girsh Nair</p>
<b>AND TO:</b>	<p><b>TYR LLP</b> 488 Wellington Street West, Suite 300-302 Toronto, ON M5V 1E3</p> <p><b>James Bunting</b> Tel: 647-519-6607 Email: jbunting@tyrllp.com</p>

	<p><b>Maria Naimark</b> Tel: 437-225-5831 Email: mnaimark@tyrllp.com</p> <p>Lawyers for the Heart and Stroke Foundation</p>
<b>AND TO:</b>	<p><b>HEART AND STROKE FOUNDATION</b> 2300 Yonge Street Toronto, ON M4P 1E4</p> <p><b>Emily Sternberg</b> Email: emily.sternberg@heartandstroke.ca</p>
<b>AND TO:</b>	<p><b>TYR LLP</b> 488 Wellington Street West, Suite 300-302 Toronto, ON M5V 1E3</p> <p><b>James Doris</b> Tel: 647-519-5840 Email: jdoris@tyrllp.com</p> <p>Lawyers for the U.S. Department of Justice</p>
<b>AND TO:</b>	<p><b>GOODMANS LLP</b> Bay Adelaide Centre – West Tower 333 Bay Street, Suite 3400 Toronto, ON M5H 2S7 Tel: 416-979-2211 Fax: 416-979-1234</p> <p><b>Gale Rubenstein</b> Email: grubenstein@goodmans.ca</p> <p><b>Peter Ruby</b> Email: pruby@goodmans.ca</p> <p>Lawyers for PricewaterhouseCoopers Inc. as Liquidator of Northumberland General Insurance Company</p>

<p><b>Courtesy Copy To:</b></p>	<p><b>DEBTWIRE</b> 1501 Broadway, 8<sup>th</sup> Floor New York, NY 10036</p> <p><b>John Bringardner</b> Tel: 646-378-3143 Email: john.bringardner@acuris.com</p> <p>Global Legal Editor</p>
-------------------------------------	--

## Email Service List

rthornton@tgf.ca; lwilliams@tgf.ca; rnicholson@tgf.ca; mgrossell@tgf.ca; jfinnigan@tgf.ca; rohare@tgf.ca; rmanea@tgf.ca; paucasey@deloitte.ca; waleung@deloitte.ca; jnadon@deloitte.ca; philreynolds@deloitte.ca; pamela.huff@blakes.com; linc.rogers@blakes.com; jake.harris@blakes.com; nancy.thompson@blakes.com; cmills@millერთhompson.com; hsibre@millერთhompson.com; baziz@bluetreadvisors.com; dbyers@stikeman.com; mkonyukhova@stikeman.com; lmercer@stikeman.com; dglendinning@osler.com; mwasserman@osler.com; jmacdonald@osler.com; mdelellis@osler.com; clockwood@osler.com; mdick@osler.com; mcalvaruso@osler.com; nmacparland@dwpv.com; csethi@dwpv.com; rgao@dwpv.com; bjarvis@dwpv.com; rnicholls@dwpv.com; avisvanatha@dwpv.com; aperley@dwpv.com; ahui@dwpv.com; jennifer.feldsher@morganlewis.com; david.shim@morganlewis.com; greg.watson@fticonsulting.com; paul.bishop@fticonsulting.com; jeffrey.rosenberg@fticonsulting.com; kamran.hamidi@fticonsulting.com; carter.wood@fticonsulting.com; jgage@mccarthy.ca; hmeredith@mccarthy.ca; psteep@mccarthy.ca; tcourtis@mccarthy.ca; dtempler@mccarthy.ca; mireille.fontaine@lrm.com; sbomhof@torys.com; aslavens@torys.com; mica.arlette@pwc.com; tyler.ray@pwc.com; leonj@bennettjones.com; eizengam@bennettjones.com; zweigs@bennettjones.com; mike.peerless@mckenzielake.com; andre.michael@siskinds.com; jim.virtue@siskinds.com; peter.lawless@gov.bc.ca; ngoldstein@ksvadvisory.com; bkofman@ksvadvisory.com; jacqueline.wall@ontario.ca; afishman@ffmp.ca; mmeland@ffmp.ca; msiminovitch@ffmp.ca; jdolman@ffmp.ca; nbrochu@ffmp.ca; tsilverstein@ffmp.ca; harvey@chaitons.com; george@chaitons.com; philippe@tjl.quebec; bruce@tjl.quebec; andre@tjl.quebec; dlennox@callkleinlawyers.com; dklein@callkleinlawyers.com; nhartigan@callkleinlawyers.com; jensenc@jssbarristers.ca; shawas@jssbarristers.ca; petriuks@jssbarristers.ca; ken.rosenberg@paliareroland.com; lily.harmer@paliareroland.com; max.starnino@paliareroland.com; beatrice.loschiavo@paliareroland.com; natalia.botelho@paliareroland.com; michelle.jackson@paliareroland.com; robbie@stewartmckelvey.com; skukulowicz@cassels.com; jbellissimo@cassels.com; msassi@cassels.com; murray.a.mcdonald@parthenon.ey.com; brent.r.beekenkamp@parthenon.ey.com; edmund.yau@parthenon.ey.com; matt.kaplan@parthenon.ey.com; clifton.prophet@gowlingwlg.com; steven.sofer@gowlingwlg.com; nicholas.kluge@gowlingwlg.com; gbest@wrmmlaw.com; dean.jones@westrock.com; michael.spagnolo@fsrao.ca; ari@kaplanlaw.ca; wael.rostom@mcmillan.ca; emile.catimel-marchand@mcmillan.ca; emerchant@merchantlaw.com; jtim.ccaa@merchantlaw.com; aecheverria@labstat.com; pflaherty@cfscounsel.com; bmclease@cfscounsel.com; cwortsman@cfscounsel.com; briang@stockwoods.ca; justins@stockwoods.ca; sweisz@cozen.com; amcinnis@inchlaw.com; william.sasso@swslitigation.com; david.robins@swslitigation.com; edward.park@justice.gc.ca; kevin.dias@justice.gc.ca; jlisus@lolg.ca; mgottlieb@lolg.ca; ncampion@lolg.ca; awinton@lolg.ca; vdare@foglers.com; rcunning@cancer.ca; dmackenzie@blaney.com; dullmann@blaney.com; ateodorescu@blaney.com; marc-andre.maltais1@retraitequebec.gouv.qc.ca; slevine@leckerslaw.com; john.bringardner@acuris.com; brett.harrison@mcmillan.ca;

\* For any additions or questions, please contact Nancy Thompson at nancy.thompson@blakes.com

tushara.weerasooriya@mcmillan.ca; guneev.bhinder@mcmillan.ca;  
victor.paolone@justice.gc.ca; stephen.brown-okruhlik@mcmillan.ca; amacfarlane@blg.com;  
jmaclellan@blg.com; brooksbank@blg.com; adrian.scotchmer@canada.ca;  
jrochon@rochongenova.com; raywagner@wagners.co; mcarter@wagners.co;  
lharper@wagners.co; kboyle@wagners.co; alain.casavant@revenuquebec.ca;  
genevieve.chabot@dgag.ca; ksuzuki@smartbiggar.ca; fguay@smartbiggar.ca;  
cbolduc@smartbiggar.ca; mlpowers@smartbiggar.ca; meburt@smartbiggar.ca;  
jpariag@kornblumlaw.ca; jbunting@tyrllp.com; mnaimark@tyrllp.com;  
emily.sternberg@heartandstroke.ca; jdoris@tyrllp.com; john.bringardner@acuris.com;  
grubenstein@goodmans.ca; pruby@goodmans.ca;

**Schedule "B"**

## 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(s) (“**Participants**”) must register by 4:00 p.m. two (2) business days in advance of the hearing (Tuesday, October, 29, 2024 for the motion(s) scheduled for Thursday, October 31, 2024), by emailing Veritext Litigation Solutions Canada, Inc. (scheduling@neesonsreporting.com) and copying each Monitor’s counsel (aperley@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(s) 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 registered 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](mailto: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.

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.**

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

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

Proceeding commenced at Toronto

**NOTICE OF CROSS MOTION  
(Re: Amendment to Representative Counsel Order)  
(Returnable on October 31, 2024)**

**THORNTON GROUT FINNIGAN LLP**

100 Wellington Street West  
Suite 3200, TD West Tower  
Toronto ON M5K 1K7

**Robert I. Thornton** (LSO# 24266B)

Email: [rthornton@tgf.ca](mailto:rthornton@tgf.ca)

**Leanne M. Williams** (LSO# 41877E)

Email: [lwilliams@tgf.ca](mailto:lwilliams@tgf.ca)

**Rachel A. Nicholson** (LSO #68348V)

Email: [rnicholson@tgf.ca](mailto:rnicholson@tgf.ca)

**Mitchell W. Grossell** (LSO# 69993I)

Email: [mgrossell@tgf.ca](mailto:mgrossell@tgf.ca)

Tel: 416-304-1616

Fax: 416-304-1313

Lawyers for the Applicant

# Tab 2

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

THE HONOURABLE CHIEF ) THURSDAY THE 31<sup>ST</sup>  
 )  
JUSTICE MORAWETZ ) DAY OF OCTOBER, 2024  
 )

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.**

**ORDER  
(RE AMENDED APPOINTMENT OF REPRESENTATIVE COUNSEL ORDER)**

**THIS CROSS MOTION**, made by JTI-Macdonald Corp. (the “**Applicant**”), pursuant to the *Companies' Creditors Arrangement Act*, R.S.C. 1985, c. C-36, as amended (the “**CCAA**”) was heard this day by way of judicial video conference in Toronto, Ontario in accordance with the Guidelines to Determine Mode of Proceeding in Civil.

**ON READING** the affidavit of William E. Aziz sworn October 24, 2024, filed, and on hearing the submissions of counsel for the Applicant, counsel for the Monitor and such other counsel as were present, no one else appearing although duly served as appears from the affidavit of service of Natalie Longmore sworn [●], filed.

## **SERVICE**

1. **THIS COURT ORDERS** that the filing and service of the Notice of Cross Motion and Motion Record, including the method and timing of notice, pursuant to the E-Service Protocol of the Commercial List is hereby approved and validated and that the time for service of the Notice of Cross Motion and Motion Record is hereby validated so that this Cross Motion is properly returnable today and hereby dispenses with further service thereof.

2. **THIS COURT ORDERS** that effective as of the date hereof, the Appointment of Representative Counsel Order of Mr. Justice McEwen dated December 6, 2019, be and hereby is amended in the form attached as Schedule “A” hereto.

## **GENERAL**

3. **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 to give effect to this Order and to assist the Applicant 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 Applicant and its court-appointed monitor as may be necessary or desirable to give effect to this Order or assist in carrying out the terms of this Order.

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Chief Justice G.B. Morawetz



**Schedule "A"**

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

THE HONOURABLE ) FRIDAY THE 6<sup>th</sup>  
 )  
MR. JUSTICE MCEWEN ) DAY OF DECEMBER, 2019

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

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

Applicant

**AMENDED ORDER  
(APPOINTMENT OF REPRESENTATIVE COUNSEL)**

**THIS JOINT MOTION** made by the “**Tobacco Monitors**”, being Deloitte Restructuring Inc. in its capacity as court-appointed Monitor (the “**JTIM Monitor**”) of JTI-Macdonald Corp. (“**JTIM**”), Ernst & Young Inc. in its capacity as court-appointed Monitor of Rothmans, Benson & Hedges Inc. (“**RBH**”) and FTI Consulting Canada Inc. in its capacity as court-appointed Monitor of Imperial Tobacco Canada Limited and Imperial Tobacco Company Limited (collectively, the “**ITL Applicants**” and together with JTIM and RBH, the “**Applicants**”) for advice and directions regarding an order appointing representative counsel in these proceedings was heard this day at 330 University Avenue, Toronto, Ontario,

**ON READING** the Joint Notice of Motion of the Tobacco Monitors dated November 25, 2019 including the Sixth Report of the JTIM Monitor dated November 26, 2019 (the “**Sixth Report**”) filed, and on hearing the submissions of counsel for each of the Tobacco Monitors, the

Applicants and such other counsel as were present, no one else appearing although duly served as appears from the affidavit of service of Melissa Feriozzo sworn December 2, 2019.

1. **THIS COURT ORDERS** that the timing and method of service and filing of this motion is hereby abridged and validated such that the motion is properly returnable today and hereby dispenses with further service thereof.

2. **THIS COURT ORDERS** that capitalized terms not otherwise defined in this Order shall have the meaning given to them in the Sixth Report.

3. **THIS COURT ORDERS** that The Law Practice of Wagner & Associates, Inc. (the “**Representative Counsel**”) be and is hereby appointed to represent in these proceedings the Pan-Canadian Claimants as defined in Schedule “A” hereto, which definition may be amended following consultation among the Court-Appointed Mediator, the Tobacco Monitors and Representative Counsel and as approved by further order of this Court.

4. **THIS COURT ORDERS** that, subject to further order of this Court, Representative Counsel shall represent the interests of the Pan-Canadian Claimants as set out in paragraph 5 below without any obligation to consult with or seek individual instructions from those on whose behalf they have been appointed to represent, provided however, that Representative Counsel is hereby authorized, but not obligated, to establish a committee (the “**Representative Committee**”) on such terms as may be agreed to by the Court-Appointed Mediator and the Tobacco Monitors or established by further order of this Court.

5. **THIS COURT ORDERS** that Representative Counsel be and is hereby authorized to take all steps and to perform all acts necessary or desirable to carry out the terms of this Order, including, without limitation, by:

- (a) participating in and negotiating on behalf of the Pan-Canadian Claimants in the Mediation;
- (b) working with the Court-Appointed Mediator and the Tobacco Monitors to develop a process for the identification of valid and provable claims of Pan-Canadian Claimants and as appropriate, addressing such claims in the Mediation or the CCAA Proceedings;
- (c) responding to inquiries from Pan-Canadian Claimants in the CCAA Proceedings;  
and
- (d) performing such other actions as approved by this Court.

6. **THIS COURT ORDERS** that Representative Counsel be and is hereby authorized, at its discretion, on such terms as may be consented to by the Court-Appointed Mediator and the Tobacco Monitors or further order of this Court to retain and consult with subject area experts and other professional and financial advisors as the Representative Counsel may consider necessary to assist it with the discharge of its mandate.

7. **THIS COURT ORDERS** that paragraphs 38 and 40 of the JTIM Initial Order are hereby amended and are deemed from and after the date hereof to include Representative Counsel as appointed herein among the parties who shall be paid their reasonable professional fees and disbursements in each case on an hourly basis, from and after the date of this Order and among

those who benefit from the Administration Charge as defined therein and shall be paid by the Applicants in accordance with an agreement among the Applicants.

8. **THIS COURT ORDERS** that Representative Counsel shall not be liable for any act or omission in respect of their appointment or the fulfillment of their duties in carrying out the provisions of this Order, other than for gross negligence or willful misconduct. No action or other proceedings shall be commenced against Representative Counsel in respect of alleged gross negligence or willful misconduct, except with prior leave of this Court, on at least 7 days' notice to Representative Counsel, and upon further order in respect of security for costs, to be given by the plaintiff for the costs, on a substantial indemnity basis, of the Representative Counsel in connection with any such action or proceeding.

9. **THIS COURT ORDERS** that the Representative Counsel may from time to time apply to this Court for advice and directions in respect of their appointment or the fulfillment of their duties in carrying out the provisions of this Order, upon notice to the Applicants and the Tobacco Monitors and to other interested parties, unless otherwise ordered by this Court.

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## Schedule “A”

### Definition of Pan-Canadian Claimants

For the purposes of this Schedule “A”, capitalized terms not otherwise defined herein shall have the meaning given to them in the CCAA Plan of Compromise and Arrangement dated October 17, 2024.

“**Pan-Canadian Claimants**” or “**PCCs**”, means Individuals, excluding the Quebec Class Action Plaintiffs in relation to QCAP Claims, who have asserted or may be entitled to assert a PCC Claim.

“**PCC Claim**” means any Claim of any Pan-Canadian Claimant that has been made or may in the future be asserted or made in whole or in part against or in respect of the Released Parties, or any one of them (either individually or with any other Person), that has been advanced, could have been advanced or could be advanced, whether on such Pan-Canadian Claimant’s own account, or on their behalf, or on behalf of a certified or proposed class, to recover damages or any other remedy in respect of the development, design, manufacture, production, marketing, advertising, distribution, purchase or sale of Tobacco Products, including any representations or omissions in respect thereof, the historical or ongoing use of or exposure (whether directly or indirectly) to Tobacco Products or their emissions and the development of any disease or condition as a result thereof, whether existing or hereafter arising, in each case based on, arising from or in respect of any conduct, act, omission, transaction, duty, responsibility, indebtedness, liability, obligation, dealing, fact, matter or occurrence existing or taking place at or prior to the Effective Time (whether or not continuing thereafter) including, all Claims that have been advanced, could have been advanced or could be advanced in the following actions commenced by Individuals under provincial class proceedings legislation and actions commenced by Individuals, or in any other similar proceedings:

- (a) *Barbara Bourassa v. Imperial Tobacco Canada Limited et al.* (Supreme Court of British Columbia, Court File No. 10-2780 and Court File No. 14-4722);
- (b) *Roderick Dennis McDermid v. Imperial Tobacco Canada Limited et al.* (Supreme Court of British Columbia, Court File No. 10-2769);
- (c) *Linda Dorion v. Canadian Tobacco Manufacturers’ Council et al.* (Alberta Court. of Queen’s Bench, Court File No. 0901-08964);
- (d) *Thelma Adams v. Canadian Tobacco Manufacturers’ Council et al.* (Saskatchewan Court of Queen’s Bench, Court File No. 916 of 2009);
- (e) *Deborah Kunta v. Canadian Tobacco Manufacturers’ Council et al.* (Manitoba Court of Queen’s Bench, Court File No. C109-01-61479);
- (f) *Suzanne Jacklin v. Canadian Tobacco Manufacturers’ Council* (Ontario Superior Court of Justice, Court File No. 53794/12);

- (g) *Ben Semple v. Canadian Tobacco Manufacturers' Council et al.* (Supreme Court of Nova Scotia, Court File No. 312869);
- (h) *Victor Todd Sparkes v. Imperial Tobacco Canada Limited* (Newfoundland and Labrador Supreme Court - Trial Division, Court File No. 200401T2716 CP);
- (i) *Peter Stright v. Imperial Tobacco Canada Limited* (Supreme Court of Nova Scotia, Court File No. 177663);
- (j) *Ljubisa Spasic as estate trustee of Mirjana Spasic v. Imperial Tobacco Limited and Rothmans, Benson & Hedges Inc.* (Ontario Superior Court of Justice, Court File No. C17773/97);
- (k) *Ljubisa Spasic as estate trustee of Mirjana Spasic v. B.A.T. Industries P.L.C.* (Ontario Superior Court of Justice, Court File No. C18187/97);
- (l) *Ragoonanan v. Imperial Tobacco Canada Limited* (Ontario Superior Court of Justice, Court File No. 00-CV-183165-CP00);

“**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 the ITL Applicants and the ITCAN Subsidiaries.

“**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 Corporation, 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 the ITL Applicants and the BAT Group.

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

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

“**Tobacco Products**” means any product made in whole or in part of tobacco that is intended for human consumption or use, including any component, part, or accessory of or used in connection with a tobacco product, including cigarettes, tobacco sticks (intended for smoking and requiring further preparation before they are smoked), loose tobacco intended for incorporation into cigarettes, cigars, cigarillos, pipe tobacco, kreteks, bidis and smokeless tobacco (including chewing tobacco, nasal snuff and oral snuff), but does not include any Alternative Product.

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.**

Court File No.: CV-19-615862-00CL

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**ONTARIO**  
**SUPERIOR COURT OF JUSTICE**  
PROCEEDINGS COMMENCED AT  
TORONTO

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**AMENDED ORDER**  
**(RE APPOINTMENT OF REPRESENTATIVE COUNSEL)**

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**Blake, Cassels & Graydon LLP**  
Barristers & Solicitors  
199 Bay Street  
Suite 4000, Commerce Court West  
Toronto ON M5L 1A9

**Pamela Huff LSO #27344V**  
Tel: 416-863-2958  
[pamela.huff@blakes.com](mailto:pamela.huff@blakes.com)

**Linc Rogers LSO #43562N**  
Tel: 416-863-4168  
[linc.rogers@blakes.com](mailto:linc.rogers@blakes.com)

**Chris Burr LSO #55172H**  
Tel: 416-863-3261  
Fax: 416-863-2653  
[chris.burr@blakes.com](mailto:chris.burr@blakes.com)  
Lawyers for the JTIM Monitor



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.**

Court File No.: CV-19-615862-00CL

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

Proceedings commenced at Toronto

**ORDER  
(RE AMENDED APPOINTMENT OF  
REPRESENTATIVE COUNSEL ORDER)**

**Thornton Grout Finnigan LLP**  
100 Wellington Street West  
Suite 3200, TD West Tower,  
Toronto, ON M5K 1K7

**Robert I. Thornton** (LSO# 24266B)

Email: [rthornton@tgf.ca](mailto:rthornton@tgf.ca)

**Leanne M. Williams** (LSO# 41877E)

Email: [lwilliams@tgf.ca](mailto:lwilliams@tgf.ca)

**Rachel A. Nicholson** (LSO# 68348V)

Email: [rnicholson@tgf.ca](mailto:rnicholson@tgf.ca)

**Mitchell W. Grossell** (LSO# 69993I)

Email: [mgrossell@tgf.ca](mailto:mgrossell@tgf.ca)

Tel: 416-304-1616

Fax: 416-304-1313

Lawyers for the Applicant

# Tab 3

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

THE HONOURABLE ) FRIDAY THE 6<sup>th</sup>  
 )  
MR. JUSTICE MCEWEN ) DAY OF DECEMBER, 2019  
 )

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

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

Applicant

**AMENDED ORDER  
(APPOINTMENT OF REPRESENTATIVE COUNSEL)**

**THIS JOINT MOTION** made by the “**Tobacco Monitors**”, being Deloitte Restructuring Inc. in its capacity as court-appointed Monitor (the “**JTIM Monitor**”) of JTI-Macdonald Corp. (“**JTIM**”), Ernst & Young Inc. in its capacity as court-appointed Monitor of Rothmans, Benson & Hedges Inc. (“**RBH**”) and FTI Consulting Canada Inc. in its capacity as court-appointed Monitor of Imperial Tobacco Canada Limited and Imperial Tobacco Company Limited (collectively, the “**ITL Applicants**” and together with JTIM and RBH, the “**Applicants**”) for advice and directions regarding an order appointing representative counsel in these proceedings was heard this day at 330 University Avenue, Toronto, Ontario,

**ON READING** the Joint Notice of Motion of the Tobacco Monitors dated November 25, 2019 including the Sixth Report of the JTIM Monitor dated November 26, 2019 (the “**Sixth Report**”) filed, and on hearing the submissions of counsel for each of the Tobacco Monitors, the Applicants and such other counsel as were present, no one else appearing although duly served as

appears from the affidavit of service of Melissa Feriozzo sworn December 2, 2019.

1. **THIS COURT ORDERS** that the timing and method of service and filing of this motion is hereby abridged and validated such that the motion is properly returnable today and hereby dispenses with further service thereof.
2. **THIS COURT ORDERS** that capitalized terms not otherwise defined in this Order shall have the meaning given to them in the Sixth Report.
3. **THIS COURT ORDERS** that The Law Practice of Wagner & Associates, Inc. (the “**Representative Counsel**”) be and is hereby appointed to represent in these proceedings the ~~TRW~~Pan-Canadian Claimants as defined in Schedule “A” hereto, which definition ~~may be~~may be amended following consultation among the Court-Appointed Mediator, the Tobacco Monitors and Representative Counsel and as approved by further order of this Court.
4. **THIS COURT ORDERS** that, subject to further order of this Court, Representative Counsel shall represent the interests of the ~~TRW~~Pan-Canadian Claimants as set out in paragraph 5 below without any obligation to consult with or seek individual instructions from those on whose behalf they have been appointed to represent, provided however, that Representative Counsel is hereby authorized, but not obligated, to establish a committee (the “**Representative Committee**”) on such terms as may be agreed to by the Court-Appointed Mediator and the Tobacco Monitors or established by further order of this Court.
5. **THIS COURT ORDERS** that Representative Counsel be and is hereby authorized to take all steps and to perform all acts necessary or desirable to carry out the terms of this Order, including, without limitation, by:

- (a) participating in and negotiating on behalf of the ~~TRW~~Pan-Canadian Claimants in the Mediation;
- (b) working with the Court-Appointed Mediator and the Tobacco Monitors to develop a process for the identification of valid and provable claims of ~~TRW~~Pan-Canadian Claimants and as appropriate, addressing such claims in the Mediation or the CCAA Proceedings;
- (c) responding to inquiries from ~~TRW~~Pan-Canadian Claimants in the CCAA Proceedings; and
- (d) performing such other actions as approved by this Court.

6. **THIS COURT ORDERS** that Representative Counsel be and is hereby authorized, at its discretion, on such terms as may be consented to by the Court-Appointed Mediator and the Tobacco Monitors or further order of this Court to retain and consult with subject area experts and other professional and financial advisors as the Representative Counsel may consider necessary to assist it with the discharge of its mandate.

7. **THIS COURT ORDERS** that paragraphs 38 and 40 of the JTIM Initial Order are hereby amended and are deemed from and after the date hereof to include Representative Counsel as appointed herein among the parties who shall be paid their reasonable professional fees and disbursements in each case on an hourly basis, from and after the date of this Order and among those who benefit from the Administration Charge as defined therein and shall be paid by the Applicants in accordance with an agreement among the Applicants.

8. **THIS COURT ORDERS** that Representative Counsel shall not be liable for any act or omission in respect of their appointment or the fulfillment of their duties in carrying out the

provisions of this Order, other than for gross negligence or willful misconduct. No action or other proceedings shall be commenced against Representative Counsel in respect of alleged gross negligence or willful misconduct, except with prior leave of this Court, on at least 7 days' notice to Representative Counsel, and upon further order in respect of security for costs, to be given by the plaintiff for the costs, on a substantial indemnity basis, of the Representative Counsel in connection with any such action or proceeding.

9. **THIS COURT ORDERS** that the Representative Counsel may from time to time apply to this Court for advice and directions in respect of their appointment or the fulfillment of their duties in carrying out the provisions of this Order, upon notice to the Applicants and the Tobacco Monitors and to other interested parties, unless otherwise ordered by this Court.

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## Schedule “A”

### Definition of ~~TRW~~Pan-Canadian Claimants

~~“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:~~

For the purposes of this Schedule “A”, capitalized terms not otherwise defined herein shall have the meaning given to them in the CCAA Plan of Compromise and Arrangement dated October 17, 2024.

“Pan-Canadian Claimants” or “PCCs”, means Individuals, excluding the Quebec Class Action Plaintiffs in relation to QCAP Claims, who have asserted or may be entitled to assert a PCC Claim.

~~(i) —~~“PCC Claim” means any Claim of any Pan-Canadian Claimant that has been made or may in the future be asserted or made in whole or in part against or in respect of the Released Parties, or any one of them (either individually or with any other Person), that has been advanced, could have been advanced or could be advanced, whether on such Pan-Canadian Claimant’s own account, or on their behalf, or on behalf of a certified or proposed class, to recover damages or any other remedy in respect of the development, design, manufacture, importation, production, marketing, advertising, distribution, purchase or sale of Tobacco Products (defined below), including any representations or omissions in respect thereof, (ii) the historical or ongoing use of or exposure (whether directly or indirectly) to Tobacco Products; or their emissions and the development of any disease or condition as a result thereof, whether existing or hereafter arising, in each case based on, arising from or in respect of any conduct, act, omission, transaction, duty, responsibility, indebtedness, liability, obligation, dealing, fact, matter or occurrence existing or taking place at or prior to the Effective Time (whether or not continuing thereafter) including, all Claims that have been advanced, could have been advanced or could be advanced in the following actions commenced by Individuals under provincial class proceedings legislation and actions commenced by Individuals, or in any other similar proceedings:

~~(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:~~

~~(i) in any person's capacity as a trade supplier, contract counterparty, employee, pensioner, or retiree;~~

~~(ii) 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);~~

(a) *Barbara Bourassa v. Imperial Tobacco Canada Limited et al.* (Supreme Court of British Columbia, Court File No. 10-2780 and Court File No. 14-4722);

(b) *Roderick Dennis McDermid v. Imperial Tobacco Canada Limited et al.* (Supreme Court of British Columbia, Court File No. 10-2769);

(c) *Linda Dorion v. Canadian Tobacco Manufacturers' Council et al.* (Alberta Court. of Queen's Bench, Court File No. 0901-08964);

(d) *Thelma Adams v. Canadian Tobacco Manufacturers' Council et al.* (Saskatchewan Court of Queen's Bench, Court File No. 916 of 2009);

(e) *Deborah Kunta v. Canadian Tobacco Manufacturers' Council et al.* (Manitoba Court of Queen's Bench, Court File No. C109-01-61479);

(f) *Suzanne Jacklin v. Canadian Tobacco Manufacturers' Council* (Ontario Superior Court of Justice, Court File No. 53794/12);

(g) *Ben Semple v. Canadian Tobacco Manufacturers' Council et al.* (Supreme Court of Nova Scotia, Court File No. 312869);

(h) *Victor Todd Sparkes v. Imperial Tobacco Canada Limited* (Newfoundland and Labrador Supreme Court - Trial Division, Court File No. 200401T2716 CP);

(i) *Peter Stright v. Imperial Tobacco Canada Limited* (Supreme Court of Nova Scotia, Court File No. 177663);

(j) ~~(B) *The Ontario Flue-Cured Ljubisa Spasic as estate trustee of Mirjana Spasic v. Imperial Tobacco Growers' Marketing Board v. Limited and Rothmans, Benson & Hedges Inc.* (Ontario Superior Court of Justice, Court File No. 1056/10CP—(London, Ontario) C17773/97);~~

~~(C) — *The Ontario Flue-Cured Tobacco Growers' Marketing Board v. Imperial Tobacco Canada Ltd.*, Court File No. 64757 CP (London, Ontario);~~

~~(iii) 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.*~~

(k) *Ljubisa Spasic as estate trustee of Mirjana Spasic v. B.A.T. Industries P.L.C.* (Ontario Superior Court of Justice, Court File No. C18187/97);



- (I) [Ragoonanan v. Imperial Tobacco Canada Ltd., et al., Court File No. 500-06-000070-983 \(Montreal, Quebec\);](#)
- (C) ~~[Kenneth Knight v. Imperial Tobacco Limited \(Ontario Superior Court of Justice, Court File No. L031300 \(Vancouver, British Columbia\)00-CV-183165-CP00\);](#)~~

“**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 the ITL Applicants and the ITCAN Subsidiaries.

“**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 Corporation, 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 the ITL Applicants and the BAT Group.

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

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

“**Tobacco Products**” means ~~tobacco or~~ any product made in whole or ~~derived from~~ in part of tobacco ~~or containing nicotine~~ that is intended for human consumption or use, including any component, part, or accessory of or used in connection with a tobacco product, including cigarettes, ~~cigarette~~ tobacco, ~~roll your own~~ sticks (intended for smoking and requiring further preparation before they are smoked), loose tobacco intended for incorporation into cigarettes, cigars, cigarillos, pipe tobacco, kreteks, bidis and smokeless tobacco, ~~and any other (including chewing tobacco or nicotine delivery systems and shall include materials, products, nasal snuff and by-products derived from or resulting from the use of any tobacco products oral snuff)~~, but does not include ~~vapour products or heat not burn tobacco products~~ any Alternative Product.

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.**

Court File No.: CV-19-615862-00CL

**ONTARIO**  
**SUPERIOR COURT OF JUSTICE**  
PROCEEDINGS COMMENCED AT  
TORONTO

**AMENDED ORDER**  
**(RE APPOINTMENT OF REPRESENTATIVE COUNSEL)**

**Blake, Cassels & Graydon LLP**  
Barristers & Solicitors  
199 Bay Street  
Suite 4000, Commerce Court West  
Toronto ON M5L 1A9

**Pamela Huff LSO #27344V**  
Tel: 416-863-2958  
[pamela.huff@blakes.com](mailto:pamela.huff@blakes.com)

**Linc Rogers LSO #43562N**  
Tel: 416-863-4168  
[linc.rogers@blakes.com](mailto:linc.rogers@blakes.com)

**Chris Burr LSO #55172H**  
Tel: 416-863-3261  
Fax: 416-863-2653  
[chris.burr@blakes.com](mailto:chris.burr@blakes.com)  
Lawyers for the JTIM Monitor

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.**

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

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

Proceeding commenced at Toronto

**MOTION RECORD  
(Re: Amendment to Representative Counsel Order)  
(Returnable on October 31, 2024)**

**THORNTON GROUT FINNIGAN LLP**  
100 Wellington Street West  
Suite 3200, TD West Tower  
Toronto ON M5K 1K7

**Robert I. Thornton** (LSO# 24266B)

Email: [rthornton@tgf.ca](mailto:rthornton@tgf.ca)

**Leanne M. Williams** (LSO# 41877E)

Email: [lwilliams@tgf.ca](mailto:lwilliams@tgf.ca)

**Rachel Nicholson** (LSO #68348V)

Email: [rnicholson@tgf.ca](mailto:rnicholson@tgf.ca)

**Mitchell W. Grossell** (LSO# 69993I)

Email: [mgrossell@tgf.ca](mailto:mgrossell@tgf.ca)

Tel: 416-304-1616

Fax: 416-304-1313

Lawyers for the Applicant