

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

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

B E T W E E N:

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

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

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

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

Applicants

**MOTION RECORD OF
THE HEART AND STROKE FOUNDATION OF CANADA
(RETURNABLE APRIL 14, 2023)**

February 28, 2023

Tyr LLP
488 Wellington Street West, Suite 300-302
Toronto ON M5V 1E3
Fax: 416.987.2370

James Bunting (LSO# 48244K)
Email: jbunting@tyrllp.com
Tel: 647.519.6607

Maria Naimark (LSO# 83470H)
Email: mnaimark@tyrllp.com
Tel: 437.225.5831

Lawyers for Heart and Stroke Foundation of
Canada

TO: THE COMMON SERVICE LIST

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AND **IMPERIAL TOBACCO COMPANY LIMITED**

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Applicants

**COMMON SERVICE LIST
(as at August 30, 2022)**

| | |
|------------|--|
| TO: | THORNTON GROUT FINNIGAN LLP 100 Wellington Street West, Suite 3200 TD West Tower, Toronto-Dominion Centre Toronto, ON M5K 1K7 Fax: 416-304-1313 Robert I. Thornton Tel: 416-304-0560 Email: rthornton@tgf.ca Leanne M. Williams Tel: 416-304-0060 Email: lwilliams@tgf.ca Rebecca L. Kennedy Tel: 416-304-0603 Email: rkennedy@tgf.ca |
|------------|--|

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

| | |
|----------------|---|
| | <p>Rachel A. Bengino Tel: 416-304-1153 Email: rbengino@tgf.ca</p> <p>Mitchell W. Grossell Tel: 416-304-7978 Email: mgrossell@tgf.ca</p> <p>John L. Finnigan Tel: 416-304-0558 Email: jfinnigan@tgf.ca</p> <p>Lawyers for JTI-Macdonald Corp.</p> |
| AND TO: | <p>DELOITTE RESTRUCTURING INC. Bay Adelaide East 8 Adelaide Street West Suite 200 Toronto, ON M5H 0A9 Fax: 416-601-6690</p> <p>Paul Casey Tel: 416-775-7172 Email: paucasey@deloitte.ca</p> <p>Warren Leung Tel: 416-874-4461 Email: waleung@deloitte.ca</p> <p>Jean-Francois Nadon Tel: 514-390-0059 Email: jnadon@deloitte.ca</p> <p>Phil Reynolds Tel: 416-956-9200 Email: philreynolds@deloitte.ca</p> <p>The Monitor of JTI-Macdonald Corp.</p> |

| | |
|----------------|--|
| AND TO: | <p>BLAKE, CASSELS & GRAYDON LLP 199 Bay Street Suite 4000, Commerce Court West Toronto, ON M5L 1A9 Fax: 416-863-2653</p> <p>Pamela Huff Tel: 416-863-2958 Email: pamela.huff@blakes.com</p> <p>Linc Rogers Tel: 416-863-4168 Email: linc.rogers@blakes.com</p> <p>Chris Burr Tel: 416-863-3261 Email: chris.burr@blakes.com</p> <p>Aryo Shalviri Tel: 416-863-2962 Email: aryo.shalviri@blakes.com</p> <p>Caitlin McIntyre Tel: 416-863-4174 Email: caitlin.mcintyre@blakes.com</p> <p>Nancy Thompson, Law Clerk 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> |
| AND TO: | <p>MILLER THOMSON LLP Scotia Plaza 40 King Street West, Suite 5800 Toronto, ON M5H 3S1</p> <p>Craig A. Mills Tel: 416-595-8596 Email: cmills@millerthomson.com</p> <p>Lawyers for North Atlantic Operating Company, Inc.</p> |

| | |
|----------------|---|
| AND TO: | <p>MILLER THOMSON LLP 1000, rue De La Gauchetière Ouest, bureau 3700 Montreal, QC H3B 4W5</p> <p>Hubert Sibre Tel: 514-879-4088 Email: hsibre@millerthomson.com</p> <p>Lawyers for AIG Insurance Canada</p> |
| AND TO: | <p>BLUETREE ADVISORS INC. First Canada Place 100 King Street West Suite 5600 Toronto, ON M5X 1C9</p> <p>William E. Aziz Tel: 416-640-7122 Email: baziz@bluetreeadvisors.com</p> <p>Chief Restructuring Officer of JTI-Macdonald Corp.</p> |
| AND TO: | <p>STIKEMAN ELLIOTT LLP Commerce Court West 199 Bay Street, Suite 5300 Toronto, ON M5L 1B9 Fax: 416-947-0866</p> <p>David R. Byers Tel: 416-869-5697 Email: dbyers@stikeman.com</p> <p>Maria Konyukhova Tel: 416-869-5230 Email: mkonyukhova@stikeman.com</p> <p>Lesley Mercer Tel: 416-869-6859 Email: lmercer@stikeman.com</p> <p>Sanja Sopic Tel: 416-869-6825 Email: ssopic@stikeman.com</p> <p>Lawyers for British American Tobacco p.l.c., B.A.T. Industries p.l.c. and British American Tobacco (Investments) Limited</p> |

| | |
|----------------|--|
| AND TO: | <p>OSLER, HOSKIN & HARCOURT LLP 100 King Street West 1 First Canadian Place Suite 6200, P.O. Box 50 Toronto, ON M5X 1B8 Fax: 416-862-6666</p> <p>Deborah Glendinning Tel: 416-862-4714 Email: dglendinning@osler.com</p> <p>Marc Wasserman Tel: 416-862-4908 Email: mwasserman@osler.com</p> <p>John A. MacDonald Tel: 416-862-5672 Email: jmacdonald@osler.com</p> <p>Michael De Lellis Tel: 416-862-5997 Email: mdelellis@osler.com</p> <p>Craig Lockwood Tel: 416-862-5988 Email: clockwood@osler.com</p> <p>Stephen Armstrong Tel: 416-862-4880 Email: sarmstrong@osler.com</p> <p>Lawyers for Imperial Tobacco Canada Limited and Imperial Tobacco Company Limited</p> |
| AND TO: | <p>DAVIES WARD PHILLIPS & VINEBERG LLP 155 Wellington Street West Toronto, ON M5V 3J7</p> <p>Natasha MacParland Tel: 416-863-5567 Email: nmacparland@dwpv.com</p> <p>Chanakya Sethi Tel: 416-863-5516 Email: csethi@dwpv.com</p> |

| | |
|----------------|---|
| | <p>Jonathan Yantzi Tel: 416-367-7544 Email: jyantzi@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> |
| AND TO: | <p>FTI CONSULTING CANADA INC. 79 Wellington Street West Suite 2010, P.O. Box 104 Toronto, ON M4K 1G8 Fax: 416-649-8101</p> <p>Greg Watson Tel: 416-649-8077 Email: greg.watson@fticonsulting.com</p> <p>Paul Bishop Tel: 416-649-8053 Email: paul.bishop@fticonsulting.com</p> <p>Jeffrey Rosenberg Tel: 416-649-8073 Email: jeffrey.rosenberg@fticonsulting.com</p> <p>Kamran Hamidi Tel: 416-649-8068 Email: kamran.hamidi@fticonsulting.com</p> <p>Tyler Rivas-Perri Tel: 416-649-8076 Email: tyler.rivas-perri@fticonsulting.com</p> <p>Monitor of Imperial Tobacco Canada Limited and Imperial Tobacco Company Limited</p> |
| AND TO: | <p>MCCARTHY TÉTRAULT LLP 66 Wellington Street West Suite 5300 TD Bank Tower, Box 48 Toronto, ON M5K 1E6 Fax: 416-868-0673</p> <p>James Gage Tel: 416-601-7539 Email: jgage@mccarthy.ca</p> |

| | |
|----------------|--|
| | <p>Heather Meredith Tel: 416-601-8342 Email: hmeredith@mccarthy.ca</p> <p>Paul Steep Tel: 416-601-7998 Email: psteep@mccarthy.ca</p> <p>Trevor Courtis Tel: 416-601-7643 Email: tcourtis@mccarthy.ca</p> <p>Deborah Templer Tel: 416-601-8421 Email: dtempler@mccarthy.ca</p> <p>Natasha Rambaran Tel: 416-601-8110 Email: nrambaran@mccarthy.ca</p> <p>Lawyers for Rothmans, Benson & Hedges, Inc.</p> |
| AND TO: | <p>BCF LLP 1100, René-Lévesque Blvd., Suite 2500 Montreal, QC H3B 5C9</p> <p>Me Bertrand Giroux Tel: 514-397-6935 Email: bertrand.giroux@bcf.ca</p> <p>Me Mireille Fontaine Tel: 514-397-4561 Email: mireille.fontaine@bcf.ca</p> <p>Lawyers for the Top Tube Company</p> |
| AND TO: | <p>TORYS LLP 79 Wellington St. West, Suite 3000 Box 270, TD Centre Toronto, ON M5K 1N2 Fax: 416-865-7380</p> <p>Scott Bomhof Tel: 416-865-7370 Email: sbomhof@torys.com</p> |

| | |
|----------------|--|
| | <p>Adam Slavens 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> |
| AND TO: | <p>PRICEWATERHOUSECOOPERS PwC Tower 18 York St., Suite 2600 Toronto, ON M5J 0B2 Fax: 416-814-3210</p> <p>Mica Arlette Tel: 416-814-5834 Email: mica.arlette@pwc.com</p> <p>Tyler Ray Email: tyler.ray@pwc.com</p> <p>Receiver and Manager of JTI-Macdonald TM Corp.</p> |
| AND TO: | <p>BENNETT JONES 100 King Street West Suite 3400 Toronto, ON M5X 1A4 Fax: 416-863-1716</p> <p>Jeff Leon Tel: 416-777-7472 Email: leonj@bennettjones.com</p> <p>Mike Eizenga Tel: 416-777-4879 Email: eizengam@bennettjones.com</p> <p>Sean Zweig Tel: 416-777-6254 Email: zweigs@bennettjones.com</p> <p>SISKINDS 275 Dundas Street, Unit 1 London, ON N6B 3L1</p> <p>Andre I.G. Michael Tel: 519-660-7860 Email: andre.michael@siskinds.com</p> |

| | |
|----------------|---|
| | Lawyers 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 |
| AND TO: | MINISTRY OF THE ATTORNEY GENERAL Legal Services Branch 1001 Douglas Street Victoria, BC V8W 2C5 Fax: 250-356-6730 Peter R. Lawless Tel: 250-356-8432 Email: peter.lawless@gov.bc.ca |
| AND TO: | KSV ADVISORY INC. 150 King Street West Suite 2308, Box 42 Toronto, ON M5H 1J9 Fax: 416-932-6266 Noah Goldstein Tel: 416-932-6207 Email: ngoldstein@ksvadvisory.com Bobby Kofman Email: bkofman@ksvadvisory.com 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 |
| AND TO: | MINISTRY OF THE ATTORNEY GENERAL Crown Law Office - Civil 720 Bay Street, 8th Floor Toronto, ON M7A 2S9 Fax: 416-326-4181 Jacqueline Wall Tel: 416-434-4454 Email: jacqueline.wall@ontario.ca Edmund Huang Tel: 416-524-1654 Email: edmund.huang@ontario.ca |

| | |
|----------------|---|
| | <p>Peter Entecott Tel: 647-467-7768 Email: peter.entecott@ontario.ca</p> <p>Lawyers for Her Majesty the Queen in Right of Ontario</p> |
| AND TO: | <p>FISHMAN FLANZ MELAND PAQUIN LLP 4100 – 1250 René-Lévesque Blvd. West Montreal, QC H3A 3H3</p> <p>Avram Fishman Email: afishman@ffmp.ca</p> <p>Mark E. Meland Tel: 514-932-4100 Email: mmeland@ffmp.ca</p> <p>Margo R. Siminovitch Email: msiminovitch@ffmp.ca</p> <p>Jason Dolman Email: jdolman@ffmp.ca</p> <p>Nicolas Brochu Email: nbrochu@ffmp.ca</p> <p>Tina Silverstein Email: tsilverstein@ffmp.ca</p> <p>CHAITONS LLP 5000 Yonge Street 10th Floor Toronto, ON M2N 7E9</p> <p>Harvey Chaiton Tel: 416-218-1129 Email: harvey@chaitons.com</p> <p>George Benchetrit Tel: 416-218-1141 Email: george@chaitons.com</p> <p>TRUDEL JOHNSTON & LESPÉRANCE 750, Cote de la Place d'Armes, Bureau 90 Montréal, QC H2Y 2X8 Fax: 514-871-8800</p> |

| | |
|----------------|---|
| | <p>Philippe Trudel Tel: 514-871-0800 Email: philippe@tjl.quebec</p> <p>Bruce Johnston Tel: 514-871-085 Email: bruce@tjl.quebec</p> <p>André Lespérance Tel: 514-871-8385 x204 Email: andre@tjl.quebec</p> <p>Gabrielle Gagné Tel: 514-871-8385 x207 Email: gabrielle@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> |
| AND TO: | <p>KLEIN LAWYERS LLP 100 King Street West, Suite 5600 Toronto, ON M5X 1C9</p> <p>Douglas Lennox Tel: 416-506-1944 Email: dlennox@callkleinlawyers.com</p> <p>KLEIN LAWYERS LLP 400 – 1385 West 8th Avenue Vancouver, BC V6H 3V9</p> <p>David A. Klein Tel: 604-874-7171 Email: dklein@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> |
| AND TO: | <p>JENSEN SHAWA SOLOMON DUGID HAWKES LLP 800, 304 – 8 Avenue SW Calgary, AB T2P 1C2 Fax: 403-571-1528</p> <p>Carsten Jensen, QC Tel: 403-571-1526 Email: jensenc@jssbarristers.ca</p> |

| | |
|----------------|---|
| | <p>Sabri Shawa, QC Tel: 403-571-1527 Email: shawas@jssbarristers.ca</p> <p>Stacy Petriuk Tel: 403-571-1523 Email: petriuks@jssbarristers.ca</p> <p>PALIARE ROLAND ROSENBERG ROTHSTEIN LLP 155 Wellington Street West, 35th Floor Toronto, ON M5V 3H1</p> <p>Kenneth T. Rosenberg Email: ken.rosenberg@paliareroland.com</p> <p>Lilly Harmer Email: lily.harmer@paliareroland.com</p> <p>Massimo (Max) Starnino Email: max.starnino@paliareroland.com</p> <p>Danielle Glatt Email: Danielle.glatt@paliareroland.com</p> <p>Lawyers for Her Majesty the Queen in Right of Alberta</p> |
| AND TO: | <p>STEWART MCKELVEY 1959 Upper Water Street, Suite 900 PO Box 997 Halifax, NS B3J 2X2 Fax: 902-420-1417</p> <p>Robert G. MacKeigan, Q.C. Tel: 902-444-1771 Email: robbie@stewartmckelvey.com</p> <p>Lawyers for Sobeys Capital Incorporated</p> |
| AND TO: | <p>CASSELS BROCK & BLACKWELL LLP 2100 Scotia Plaza 40 King Street West Toronto, ON M5H 3C2</p> <p>Shayne Kukulowicz Tel: 416-860-6463 Fax: 416-640-3176 Email: skukulowicz@cassels.com</p> |

| | |
|----------------|--|
| | <p>Jane Dietrich Tel: 416-860-5223 Fax: 416-640-3144 Email: jdietrich@cassels.com</p> <p>Joseph Bellissimo Tel: 416-860-6572 Fax: 416-642-7150 Email: jbellissimo@cassels.com</p> <p>Monique Sassi Tel: 416-860-6886 Fax: 416-640-3005 Email: msassi@cassels.com</p> <p>Lawyers for Ernst & Young Inc, in its capacity as court-appointed monitor of Rothmans, Benson & Hedges, Inc.</p> |
| AND TO: | <p>ERNST & YOUNG INC. Ernst & Young Tower 100 Adelaide Street West P.O. Box 1 Toronto, ON M5H 0B3</p> <p>Murray A. McDonald Tel: 416-943-3016 Email: murray.a.mcdonald@ca.ey.com</p> <p>Brent Beekenkamp Tel: 416-943-2652 Email: brent.r.beekenkamp@ca.ey.com</p> <p>Edmund Yau Tel: 416-943-2177 Email: edmund.yau@ca.ey.com</p> <p>Matt Kaplan Tel: 416-932-6155 Email: matt.kaplan@ca.ey.com</p> <p>Philip Kan Email: philip.kan@ca.ey.com</p> <p>Monitor of Rothmans, Benson & Hedges, Inc.</p> |

| | |
|----------------|---|
| AND TO: | <p>GOWLING WLG (CANADA) LLP 1 First Canadian Place 100 King Street West, Suite 1600 Toronto, ON M5X 1G5 Fax: 416-862-7661</p> <p>Clifton Prophet Tel: 416-862-3509 Email: clifton.prophet@gowlingwlg.com</p> <p>Steven Sofer Tel: 416-369-7240 Email: steven.sofer@gowlingwlg.com</p> <p>Nicholas Kluge Tel: 416-369-4610 Email: nicholas.kluge@gowlingwlg.com</p> <p>Lawyers for Philip Morris International Inc.</p> |
| AND TO: | <p>PALIARE ROLAND ROSENBERG ROTHSTEIN LLP 155 Wellington Street West, 35th Floor Toronto, ON M5V 3H1</p> <p>Kenneth T. Rosenberg Email: ken.rosenberg@paliareroland.com</p> <p>Lilly Harmer Email: lily.harmer@paliareroland.com</p> <p>Massimo (Max) Starnino Email: max.starnino@paliareroland.com</p> <p>Danielle Glatt Email: Danielle.glatt@paliareroland.com</p> <p>ROEBOTHAN MCKAY MARSHALL Paramount Building 34 Harvey Road, 5th Floor St. John's NL A1C 3Y7 Fax: 709-753-5221</p> <p>Glenda Best Tel: 705-576-2255 Email: gbest@wrmmllaw.com</p> <p>Lawyers for Her Majesty the Queen in Right of Newfoundland</p> |

| | |
|----------------|---|
| AND TO: | WESTROCK COMPANY OF CANADA CORP. 15400 Sherbrooke Street East Montreal, QC H1A 3S2 Dean Jones Tel: 514-642-9251 Email: dean.jones@westrock.com |
| AND TO | MINISTRY OF THE ATTORNEY GENERAL Civil Law Division, FSCO Branch 5160 Yonge Street, 17 th Floor Toronto, ON M2N 6L9 Fax: 416-590-7556 Michael Spagnolo Tel: 416-226-7834 Email: michael.spagnolo@fsrao.ca Lawyers for the Superintendent of Financial Services |
| AND TO: | KAPLAN LAW 393 University Avenue, Suite 2000 Toronto, ON M5G 1E6 Ari Kaplan Tel: 416-565-4656 Email: ari@kaplanlaw.ca Counsel to the Former Genstar U.S. Retiree Group Committee |
| AND TO: | McMILLAN LLP Brookfield Place 181 Bay Street, Suite 4400 Toronto, ON M5J 2T3 Wael Rostom Tel: 416-865-7790 Email: wael.rostom@mcmillan.ca Emile Catimel-Marchand Tel: 514-987-5031 Email: emile.catimel-marchand@mcmillan.ca Lawyers for The Bank of Nova Scotia |

| | |
|----------------|---|
| AND TO | <p>MERCHANT LAW GROUP LLP c/o #400 – 333 Adelaide St. West Toronto, ON M5V 1R5 Fax: 613-366-2793</p> <p>Evatt Merchant, QC Tel: 613-366-2795 Email: emerchant@merchantlaw.com</p> <p>Chris Simoes Email: csimoes@merchantlaw.com</p> <p>Lawyers for the Class Action Plaintiffs (MLG)</p> |
| AND TO: | <p>LABSTAT INTERNATIONAL INC. 262 Manitou Drive Kitchener, ON N2C 1L3</p> <p>Kimberly Stevenson Chow (CFO) Tel: 519-748-5409 Email: kstevens@labstat.com</p> |
| AND TO: | <p>CHERNOS FLAHERTY SVONKIN LLP 220 Bay Street, Suite 700 Toronto, ON M5J 2W4 Fax: 647-725-5440</p> <p>Patrick Flaherty Tel: 416-855-0403 Email: pflaherty@cfscounsel.com</p> <p>Bryan D. McLeese Tel: 416-855-0414 Email: bmcleese@cfscounsel.com</p> <p>STOCKWOODS LLP 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>Brian Gover Tel: 416-593-2489 Email: briang@stockwoods.ca</p> |

| | |
|----------------|---|
| | <p>Justin Safayeni 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> |
| AND TO: | <p>COZEN O'CONNOR LLP Bay Adelaide Centre – West Tower 333 Bay Street, Suite 1100 Toronto, Ontario M5H 2R2</p> <p>Steven Weisz Tel: 647-417-5334 Fax: 647-805-0519 Email: sweisz@cozen.com</p> <p>INCH HAMMOND PROFESSIONAL CORPORATION 1 King Street West, Suite 500 Hamilton, ON L8P 4X8</p> <p>Amanda McInnis Tel: 905-525-0031 Email: amcinnis@inchlaw.com</p> <p>Lawyer for Grand River Enterprises Six Nations Ltd.</p> |
| AND TO: | <p>STROSBERG SASSO SUTTS LLP 1561 Ouellette Avenue Windsor, ON M8X 1K5 Fax: 866-316-5308</p> <p>William V. Sasso Tel: 519-561-6222 Email: wvs@strosbergco.com</p> <p>David Robins Tel: 519-561-6215 Email: drobins@strosbergco.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> |

| | |
|----------------|--|
| AND TO: | <p>ATTORNEY GENERAL OF CANADA 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>Diane Winters, General Counsel Tel: 647-256-7459 Email: diane.winters@justice.gc.ca</p> <p>Lawyers for the Minister of National Revenue</p> |
| AND TO: | <p>LAX O'SULLIVAN LISUS GOTTLIEB LLP Suite 2750, 145 King Street West Toronto, ON M5H 1J8</p> <p>Jonathan Lisus Tel: 416-598-7873 Email: jlisus@lolg.ca</p> <p>Matthew Gottlieb Tel: 416-644-5353 Email: mgottlieb@lolg.ca</p> <p>Nadia Campion Tel: 416-642-3134 Email: ncampion@lolg.ca</p> <p>Andrew Winton Tel: 416-644-5342 Email: awinton@lolg.ca</p> <p>Lawyers for the Court-Appointed Mediator</p> |
| AND TO: | <p>FOGLER, RUBINOFF LLP Suite 3000, P.O. Box 95 Toronto-Dominion Centre 77 King Street West Toronto, ON M5K 1G8 Fax: 416-941-8852</p> <p>Vern W. DaRe Tel: 416-941-8842 Email: vdare@foglers.com</p> |

| | |
|----------------|---|
| | <p>CANADIAN CANCER SOCIETY 116 Albert Street, Suite 500 Ottawa, ON K1P 5G3 Fax: 613-565-2278</p> <p>Robert Cunningham Tel: 613-565-2522 ext. 4981 Email: rcunning@cancer.ca</p> <p>Lawyers for Canadian Cancer Society</p> |
| AND TO: | <p>BLANEY MCMURTRY LLP 2 Queen Street East, Suite 1500 Toronto, ON M5C 3G5</p> <p>David Ullmann Tel: 416-596-4289 Email: dullmann@blaney.com</p> <p>Dominic T. Clarke Tel: 416-593-3968 Email: dclarke@blaney.com</p> <p>Alexandra Teodorescu Tel: 416-596-4279 Email: ateodorescu@blaney.com</p> <p>Alex Fernet Brochu Tel: 416-593-3937 Email: afernetbrochu@blaney.com</p> <p>Lawyers for La Nordique Compagnie D'Assurance du Canada</p> |
| AND TO: | <p>LAROCHE ST-PIERRE 2600, boulevard Laurier, porte760 Quebec, QC G1V 4T3</p> <p>Mélanie Létourneau Tel: 418-657-8702, ext. 3793 Email: melanie.letourneau@retraitequebec.gouv.qc.ca</p> <p>Lawyers for Retraite Québec</p> |

| | |
|----------------|---|
| AND TO: | LECKER & ASSOCIATES 4789 Yonge Street, Suite 514 Toronto, ON M2N 0G3 Jared Lecker Email: jlecker@leckerslaw.com Lawyer for Imperial Tobacco claimant |
| AND TO: | McMILLAN LLP 181 Bay Street, Suite 4400 Toronto, ON M5J 2T3 Fax: 416-865-7048 Brett Harrison Tel: 416-865-7932 Email: brett.harrison@mcmillan.ca Lawyers for the Province of Quebec |
| AND TO: | ATTORNEY GENERAL OF CANADA Department of Justice Canada Ontario Regional Office, L.E.A.D. 120 Adelaide Street West, Suite 400 Toronto, ON M5H 1T1 John C. Spencer Tel: 647-256-0557 Email: john.spencer@justice.gc.ca Victor Paolone Tel: 647-256-7548 Email: victor.paolone@justice.gc.ca |
| AND TO: | McMILLAN LLP Brookfield Place 181 Bay Street, Suite 4400 Toronto, ON M5J 2T3 Fax: 416-865-7048 Stephen Brown-Okruhlik Tel: 416-865-7043 Email: stephen.brown-okruhlik@mcmillan.ca Lawyers for Citibank Canada |

| | |
|----------------|--|
| AND TO: | <p>BORDEN LADNER GERVAIS LLP Bay Adelaide Centre, East Tower 22 Adelaide Street West, Suite 3400 Toronto, ON M5H 4E3 Fax: 416-367-6749</p> <p>Alex MacFarlane Tel: 416-367-6305 Email: amacfarlane@blg.com</p> <p>James W. MacLellan Tel: 416-367-6592 Email: jmaclellan@blg.com</p> <p>Bevan Brooksbank Tel: 416-367-6604 Email: bbrooksbank@blg.com</p> <p>Lawyers for Chubb Insurance Company of Canada</p> |
| AND TO: | <p>INDUSTRY CANADA, LEGAL SERVICES 235 Queen Street, 8th Floor, East Tower Ottawa, ON K1A 0H5</p> <p>Adrian Scotchmer Email: adrian.scotchmer@canada.ca</p> <p>Michel Ohayon Email: michel.ohayon@canada.ca</p> |
| AND TO: | <p>ROCHON GENOVA LLP Barristers • Avocats 121 Richmond Street West, Suite 900 Toronto, ON M5H 2K1 Fax: 416-363-0263</p> <p>Joel P. Rochon Tel: 416-363-1867 x222 Email: jrochon@rochongenova.com</p> |

| | |
|----------------|--|
| | <p>Ronald Podolny Tel: 416-363-1867 x288 Email: rpodolny@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> |
| AND TO: | <p>WAGNERS 1869 Upper Water Street, Suite PH301 3rd Floor, Pontac House, Historic Properties Halifax, NS B3J 1S9 Fax: 902-422-1233</p> <p>Raymond F. Wagner, Q.C. Tel: 902-425-7330 Email: raywagner@wagners.co</p> <p>Kate Boyle Tel: 902-425-7330 Email: kboyle@wagners.co</p> <p>Representative Counsel</p> |
| AND TO: | <p>REVENU QUÉBEC 1600, boul. René-Lévesque Ouest Secteur R23DGR Montréal, QC H3H 2V2</p> <p>Alain Casavant Email: alain.casavant@revenuquebec.ca</p> |
| AND TO: | <p>PELLETIER D'AMOURS 1, Complexe Desjardins Tour Sud, 12e étage Montreal, QC H5B 1B1</p> <p>Amy Bowen Email: amy.bowen@dgag.ca</p> <p>Lawyers for Desjardins Assurances</p> |

Email Service List

rthornton@tgf.ca; lwilliams@tgf.ca; rkennedy@tgf.ca; rbengino@tgf.ca; mgrossell@tgf.ca;
jfinnigan@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; chris.burr@blakes.com; aryo.shalviri@blakes.com;
caitlin.mcintyre@blakes.com; emily.hazlett@blakes.com; nancy.thompson@blakes.com;
cmills@millერთhompson.com; hsibre@millერთhompson.com; baziz@bluetreeadvisors.com;
dbyers@stikeman.com; mkonyukhova@stikeman.com; lmercer@stikeman.com;
ssopic@stikeman.com; dglendinning@osler.com; mwasserman@osler.com;
jmacdonald@osler.com; mdelellis@osler.com; clockwood@osler.com; sarmstrong@osler.com;
nmacparland@dwpv.com; csethi@dwpv.com; jyantzi@dwpv.com; tbarbiero@dwpv.com;
greg.watson@fticonsulting.com; paul.bishop@fticonsulting.com;
jeffrey.rosenberg@fticonsulting.com; kamran.hamidi@fticonsulting.com;
tyler.rivas-perri@fticonsulting.com; jgage@mccarthy.ca; hmeredith@mccarthy.ca;
psteep@mccarthy.ca; tcourtis@mccarthy.ca; dtempler@mccarthy.ca; nrambaran@mccarthy.ca;
bertrand.giroux@bcf.ca; mireille.fontaine@bcf.ca; sbomhof@torys.com; aslavens@torys.com;
mica.arlette@pwc.com; tyler.ray@pwc.com; leonj@bennettjones.com;
eizengam@bennettjones.com; zweigs@bennettjones.com; andre.michael@siskinds.com;
peter.lawless@gov.bc.ca; ngoldstein@ksvadvisory.com; bkofman@ksvadvisory.com;
jacqueline.wall@ontario.ca; shahana.kar@ontario.ca; edmund.huang@ontario.ca;
peter.entecott@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;
gabrielle@tjl.quebec; dlennox@callkleinlawyers.com; dklein@callkleinlawyers.com;
jensenc@jssbarristers.ca; shawas@jssbarristers.ca; petriuks@jssbarristers.ca;
ken.rosenberg@paliareroland.com; lily.harmer@paliareroland.com;
max.starnino@paliareroland.com; danielle.glatt@paliareroland.com;
sarita.sanasie@paliareroland.com; natalia.botelho@paliareroland.com;
michelle.jackson@paliareroland.com; robbie@stewartmckelvey.com;
skukulowicz@cassels.com; jdietrich@cassels.com; jbellissimo@cassels.com;
msassi@cassels.com; murray.a.mcdonald@ca.ey.com; brent.r.beekenkamp@ca.ey.com;
edmund.yau@ca.ey.com; matt.kaplan@ca.ey.com; philip.kan@ca.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;
csimoes@merchantlaw.com; jtim.ccaa@merchantlaw.com; rothmans.ccaa@merchantlaw.com;
kstevens@labstat.com; pflaherty@cfscounsel.com; bmcleese@cfscounsel.com;
briang@stockwoods.ca; justins@stockwoods.ca; sweisz@cozen.com; amcinnis@inchlaw.com;
wvs@strosbergco.com; drobins@strosbergco.com; diane.winters@justice.gc.ca; jlisus@lolg.ca;
mgottlieb@lolg.ca; ncampion@lolg.ca; awinton@lolg.ca; vdare@foglers.com;
rcunning@cancer.ca; dullmann@blaney.com; dclarke@blaney.com; ateodorescu@blaney.com;
afernetbrochu@blaney.com; melanie.letourneau@retraitequebec.gouv.qc.ca;
jlecker@leckerslaw.com; john.bringardner@acuris.com; brett.harrison@mcmillan.ca;

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

john.spencer@justice.gc.ca; victor.paolone@justice.gc.ca;
stephen.brown-okruhlik@mcmillan.ca; amacfarlane@blg.com; jmaclellan@blg.com;
bbrooksbank@blg.com; adrian.scotchmer@canada.ca; michel.ohayon@canada.ca;
jrochon@rochongenova.com; rpodolny@rochongenova.com; raywagner@wagners.co;
kboyle@wagners.co; alain.casavant@revenuquebec.ca; amy.bowen@dgag.ca;

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

B E T W E E N:

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

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

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

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

Applicants

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TAB 1

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

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

B E T W E E N:

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.**

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AND IN THE MATTER OF A PLAN OF COMPROMISE OR
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Applicants

NOTICE OF MOTION

The Heart and Stroke Foundation of Canada (the "**HSF**") will make a motion to the Honourable Justice McEwen presiding over the Commercial List on April 14, 2023 at 330 University Avenue, Toronto, Ontario M5G 1R8.

PROPOSED METHOD OF HEARING: The motion is to be heard

- ☐ In writing under subrule 37.12.1 (1);
- ☐ In writing as an opposed motion under subrule 37.12.1 (4);
- ☐ In person;
- ☐ By telephone conference;
- ☒ By video conference.

at the following location: Zoom link to be provided at a later date.

THE MOTION IS FOR:

1. An Order providing the following relief:
 - (a) Leave to bring a motion appointing Tyr LLP as representative counsel for the Future Tobacco Harm Stakeholders (the “**FTH Stakeholders**”), as described in detail below, on terms set out in the proposed FTH Representation Order (the “**Draft Order**”); and
 - (b) such further and other relief as this Court may deem just.

THE GROUNDS FOR THE MOTION ARE:

2. HSF requests an order appointing Tyr LLP as representative counsel for the FTH Stakeholders in the above-noted proceedings under the CCAA (the “**CCAA Proceedings**”), with rights of participation in the on-going mediation process (the “**Mediation**”) before the Honourable W. Winkler, O.C., O.Ont., K.C.
3. The appointment of representative counsel for the FTH Stakeholders at this time is necessary in order to ensure that the interests of the FTH Stakeholders are appropriately addressed and balanced in any proposed plan of arrangement and compromise that is presented to this Honourable Court for consideration and approval (a “**Proposed Plan**”).
4. This Honourable Court, in supervising these CCAA Proceedings and considering any Proposed Plan, must have regard to the constellation of stakeholders impacted by the Court's orders.

5. By endorsement dated February 14, 2023, the Honourable Court directed that the HSF should first obtain leave to bring its motion for a representation order.

6. Founded in 1952, HSF is one of Canada's preeminent charities and is a pioneer in advocacy, education, and the funding of research regarding heart disease and stroke. HSF is a leader in disease prevention including, but not limited to, research and other activities aimed at preventing the harm that is caused by the consumption of tobacco products.

7. It has been definitively established that tobacco use dramatically increases the risk of developing heart disease and stroke. Tobacco use contributes to the buildup of plaque in the arteries, increases the risk of blood clots, reduces the oxygen in the blood, and taxes the cardiovascular system.

8. The applicants in these CCAA Proceedings (the "**Tobacco Companies**") did not have sufficient funds at the time of the initial application to the CCAA to make a meaningful payment or contribution towards the various claims that have been made against them. Therefore, any Proposed Plan will be premised on the Tobacco Companies continuing to sell tobacco products, and their cash-flows following the commencement of these proceedings (the "post-petition" period) will be used to pay much of the settled claims.

9. The post-petition cash-flows will be generated from tobacco sales to the FTH Stakeholders. The FTH Stakeholders are those individuals who will buy and use tobacco products (or be exposed to the use of tobacco products) in the post-petition period. It is their use of and exposure to tobacco products that will directly fund any

Proposed Plan that is approved by this Honourable Court. In simple terms, the future purchases made by the FTH Stakeholders will be used to fund much of the payment of claims under the Proposed Plan that is currently being negotiated.

10. Like all tobacco consumers and those exposed to second-hand tobacco smoke, the FTH Stakeholders will suffer harm as they use tobacco products and are exposed to tobacco smoke in the post-petition period. Accordingly, the funding of any Proposed Plan will be directly linked to the harm that the FTH Stakeholders will suffer.

11. The FTH Stakeholders are not voluntarily consumers. Regardless of the context in which an individual begins using tobacco products, most of those who do become addicted cannot easily quit. Thus, despite the harm to their health, most, if not all, of the FTH Stakeholders will not be able to stop purchasing tobacco products without assistance. Accordingly, this Court must consider the fact that any Proposed Plan will not be funded by the future purchases of voluntary consumers who purchase a product that benefits them, but rather it will be funded because of the adverse impacts suffered by the FTH Stakeholders.

12. At present, the interests of the FTH Stakeholders are not being represented in these CCAA Proceedings or at the Mediation despite the fact that any Proposed Plan will be funded in part through their addictions and harms they suffer, and they will carry the largest burdens to support any future Proposed Plan.

13. The FTH Stakeholders are financial stakeholders in these proceedings. They have a direct financial interest, as their future purchases will fund any agreed-upon settlement, and their future harm will, in the absence of appointment of representative

counsel, not be independently considered and advocated for during these proceedings.

14. Given the harm that will inevitably befall them, the interests of the FTH Stakeholders must be addressed and appropriately balanced before any Proposed Plan can be considered fair, just and legitimate by this Court or the public.

15. Any Proposed Plan will (or should) have a fund established for the payment of certain amounts of a *cy-pres* nature (a “**Fund**”). How that Fund is established, governed, and used will be a critical component in ensuring that the rights and interests of the FTH Stakeholders are adequately addressed and balanced in any Proposed Plan that is approved by this Court. Any Fund must be more than mere window-dressing to assuage concerns of the public regarding the settlement. In short, any Fund must be adequate to meaningfully address the future harm that will be suffered by the FTH Stakeholders, including through, among other things, the funding of tobacco-use prevention and cessation programs and other similar programs that are directly linked to addressing and remediating the harms that will be suffered by the FTH Stakeholders. The Fund must be, and must appear to be, free from interference from the Tobacco Companies themselves or others, such as their creditors, who stand to gain from the continuing or increased use of tobacco products by FTH Stakeholders.

16. The interests of the other participants in the Mediation conflict with those of the FTH Stakeholders with respect to any Fund – the creditors of the Tobacco Companies seek to maximize payments to themselves, and the Tobacco Companies seek to minimize the payments they must make. As a result, the interests of the Tobacco

Companies and their creditors are dependent upon there continuing to be an increasing number of FTH Stakeholders who are consuming tobacco products.

17. It is necessary and appropriate that the interests of the FTH Stakeholders are considered now in a meaningful manner during the Mediation so that this Honourable Court, and the public, can have the confidence that any Proposed Plan can be fairly said to have been, and will be seen to have been, negotiated with their interests and burdens having been considered and balanced in the process.

18. Ensuring that the interests of the FTH Stakeholders are considered and balanced now will allow for a more efficient process than if their interests are first dealt with at a motion for a creditors' meeting or plan sanction.

19. Tyr LLP is well-qualified and positioned to act as representative counsel in this matter.

20. The provisions of the CCAA, including section 11, and the inherent and equitable jurisdiction of this Honourable Court.

21. Such further and other grounds as counsel may advise and this Honourable Court may permit.

THE FOLLOWING DOCUMENTARY EVIDENCE will be used at the hearing of the Motion:

- (a) Affidavit of Diego Marchese, Executive Vice President, Research, Social Enterprise with the Heart and Stroke Foundation of Canada, sworn September 19, 2022, and exhibits thereto.
- (b) Affidavit of Sandy Ballott, sworn February 28, 2023.
- (c) such further and other evidence as counsel may advise and this Honourable Court may permit.

February 28, 2023

Tyr LLP

488 Wellington Street West
Suite 300-302
Toronto, ON M5V 1E3
Fax: 416-987-2370

James Bunting (LSO# 48244K)

Email: jbunting@tyrllp.com
Tel: 647.519.6607

Maria Naimark (LSO# 83470H)

Email: mnaimark@tyrllp.com
Tel: 437.225.5831

Lawyers for Heart and Stroke Foundation of
Canada

TO: THE COMMON SERVICE LIST

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

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

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

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 ARRANGEMENT OF **ROTHMANS, BENSON & HEDGES INC.**

Applicants

**COMMON SERVICE LIST
 (as at August 30, 2022)**

| | |
|------------|---|
| TO: | <p>THORNTON GROUT FINNIGAN LLP 100 Wellington Street West, Suite 3200 TD West Tower, Toronto-Dominion Centre Toronto, ON M5K 1K7 Fax: 416-304-1313</p> <p>Robert I. Thornton Tel: 416-304-0560 Email: rthornton@tgf.ca</p> <p>Leanne M. Williams Tel: 416-304-0060 Email: lwilliams@tgf.ca</p> <p>Rebecca L. Kennedy Tel: 416-304-0603 Email: rkennedy@tgf.ca</p> |
|------------|---|

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

| | |
|----------------|---|
| | <p>Rachel A. Bengino Tel: 416-304-1153 Email: rbengino@tgf.ca</p> <p>Mitchell W. Grossell Tel: 416-304-7978 Email: mgrossell@tgf.ca</p> <p>John L. Finnigan Tel: 416-304-0558 Email: jfinnigan@tgf.ca</p> <p>Lawyers for JTI-Macdonald Corp.</p> |
| AND TO: | <p>DELOITTE RESTRUCTURING INC. Bay Adelaide East 8 Adelaide Street West Suite 200 Toronto, ON M5H 0A9 Fax: 416-601-6690</p> <p>Paul Casey Tel: 416-775-7172 Email: paucasey@deloitte.ca</p> <p>Warren Leung Tel: 416-874-4461 Email: waleung@deloitte.ca</p> <p>Jean-Francois Nadon Tel: 514-390-0059 Email: jnadon@deloitte.ca</p> <p>Phil Reynolds Tel: 416-956-9200 Email: philreynolds@deloitte.ca</p> <p>The Monitor of JTI-Macdonald Corp.</p> |

| | |
|----------------|---|
| AND TO: | <p>BLAKE, CASSELS & GRAYDON LLP 199 Bay Street Suite 4000, Commerce Court West Toronto, ON M5L 1A9 Fax: 416-863-2653</p> <p>Pamela Huff Tel: 416-863-2958 Email: pamela.huff@blakes.com</p> <p>Linc Rogers Tel: 416-863-4168 Email: linc.rogers@blakes.com</p> <p>Chris Burr Tel: 416-863-3261 Email: chris.burr@blakes.com</p> <p>Aryo Shalviri Tel: 416-863-2962 Email: aryo.shalviri@blakes.com</p> <p>Caitlin McIntyre Tel: 416-863-4174 Email: caitlin.mcintyre@blakes.com</p> <p>Nancy Thompson, Law Clerk 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> |
| AND TO: | <p>MILLER THOMSON LLP Scotia Plaza 40 King Street West, Suite 5800 Toronto, ON M5H 3S1</p> <p>Craig A. Mills Tel: 416-595-8596 Email: cmills@millerthomson.com</p> <p>Lawyers for North Atlantic Operating Company, Inc.</p> |

| | |
|----------------|--|
| AND TO: | <p>MILLER THOMSON LLP 1000, rue De La Gauchetière Ouest, bureau 3700 Montreal, QC H3B 4W5</p> <p>Hubert Sibre Tel: 514-879-4088 Email: hsibre@millerthomson.com</p> <p>Lawyers for AIG Insurance Canada</p> |
| AND TO: | <p>BLUETREE ADVISORS INC. First Canada Place 100 King Street West Suite 5600 Toronto, ON M5X 1C9</p> <p>William E. Aziz Tel: 416-640-7122 Email: baziz@bluetreeadvisors.com</p> <p>Chief Restructuring Officer of JTI-Macdonald Corp.</p> |
| AND TO: | <p>STIKEMAN ELLIOTT LLP Commerce Court West 199 Bay Street, Suite 5300 Toronto, ON M5L 1B9 Fax: 416-947-0866</p> <p>David R. Byers Tel: 416-869-5697 Email: dbyers@stikeman.com</p> <p>Maria Konyukhova Tel: 416-869-5230 Email: mkonyukhova@stikeman.com</p> <p>Lesley Mercer Tel: 416-869-6859 Email: lmercer@stikeman.com</p> <p>Sanja Sopic Tel: 416-869-6825 Email: ssopic@stikeman.com</p> <p>Lawyers for British American Tobacco p.l.c., B.A.T. Industries p.l.c. and British American Tobacco (Investments) Limited</p> |

| | |
|----------------|--|
| AND TO: | <p>OSLER, HOSKIN & HARCOURT LLP 100 King Street West 1 First Canadian Place Suite 6200, P.O. Box 50 Toronto, ON M5X 1B8 Fax: 416-862-6666</p> <p>Deborah Glendinning Tel: 416-862-4714 Email: dglendinning@osler.com</p> <p>Marc Wasserman Tel: 416-862-4908 Email: mwasserman@osler.com</p> <p>John A. MacDonald Tel: 416-862-5672 Email: jmacdonald@osler.com</p> <p>Michael De Lellis Tel: 416-862-5997 Email: mdelellis@osler.com</p> <p>Craig Lockwood Tel: 416-862-5988 Email: clockwood@osler.com</p> <p>Stephen Armstrong Tel: 416-862-4880 Email: sarmstrong@osler.com</p> <p>Lawyers for Imperial Tobacco Canada Limited and Imperial Tobacco Company Limited</p> |
| AND TO: | <p>DAVIES WARD PHILLIPS & VINEBERG LLP 155 Wellington Street West Toronto, ON M5V 3J7</p> <p>Natasha MacParland Tel: 416-863-5567 Email: nmacparland@dwpv.com</p> <p>Chanakya Sethi Tel: 416-863-5516 Email: csethi@dwpv.com</p> |

| | |
|----------------|---|
| | <p>Jonathan Yantzi Tel: 416-367-7544 Email: jyantzi@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> |
| AND TO: | <p>FTI CONSULTING CANADA INC. 79 Wellington Street West Suite 2010, P.O. Box 104 Toronto, ON M4K 1G8 Fax: 416-649-8101</p> <p>Greg Watson Tel: 416-649-8077 Email: greg.watson@fticonsulting.com</p> <p>Paul Bishop Tel: 416-649-8053 Email: paul.bishop@fticonsulting.com</p> <p>Jeffrey Rosenberg Tel: 416-649-8073 Email: jeffrey.rosenberg@fticonsulting.com</p> <p>Kamran Hamidi Tel: 416-649-8068 Email: kamran.hamidi@fticonsulting.com</p> <p>Tyler Rivas-Perri Tel: 416-649-8076 Email: tyler.rivas-perri@fticonsulting.com</p> <p>Monitor of Imperial Tobacco Canada Limited and Imperial Tobacco Company Limited</p> |
| AND TO: | <p>MCCARTHY TÉTRAULT LLP 66 Wellington Street West Suite 5300 TD Bank Tower, Box 48 Toronto, ON M5K 1E6 Fax: 416-868-0673</p> <p>James Gage Tel: 416-601-7539 Email: jgage@mccarthy.ca</p> |

| | |
|----------------|--|
| | <p>Heather Meredith Tel: 416-601-8342 Email: hmeredith@mccarthy.ca</p> <p>Paul Steep Tel: 416-601-7998 Email: psteep@mccarthy.ca</p> <p>Trevor Courtis Tel: 416-601-7643 Email: tcourtis@mccarthy.ca</p> <p>Deborah Templer Tel: 416-601-8421 Email: dtempler@mccarthy.ca</p> <p>Natasha Rambaran Tel: 416-601-8110 Email: nrambaran@mccarthy.ca</p> <p>Lawyers for Rothmans, Benson & Hedges, Inc.</p> |
| AND TO: | <p>BCF LLP 1100, René-Lévesque Blvd., Suite 2500 Montreal, QC H3B 5C9</p> <p>Me Bertrand Giroux Tel: 514-397-6935 Email: bertrand.giroux@bcf.ca</p> <p>Me Mireille Fontaine Tel: 514-397-4561 Email: mireille.fontaine@bcf.ca</p> <p>Lawyers for the Top Tube Company</p> |
| AND TO: | <p>TORYS LLP 79 Wellington St. West, Suite 3000 Box 270, TD Centre Toronto, ON M5K 1N2 Fax: 416-865-7380</p> <p>Scott Bomhof Tel: 416-865-7370 Email: sbomhof@torys.com</p> |

| | |
|----------------|--|
| | <p>Adam Slavens 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> |
| AND TO: | <p>PRICEWATERHOUSECOOPERS PwC Tower 18 York St., Suite 2600 Toronto, ON M5J 0B2 Fax: 416-814-3210</p> <p>Mica Arlette Tel: 416-814-5834 Email: mica.arlette@pwc.com</p> <p>Tyler Ray Email: tyler.ray@pwc.com</p> <p>Receiver and Manager of JTI-Macdonald TM Corp.</p> |
| AND TO: | <p>BENNETT JONES 100 King Street West Suite 3400 Toronto, ON M5X 1A4 Fax: 416-863-1716</p> <p>Jeff Leon Tel: 416-777-7472 Email: leonj@bennettjones.com</p> <p>Mike Eizenga Tel: 416-777-4879 Email: eizengam@bennettjones.com</p> <p>Sean Zweig Tel: 416-777-6254 Email: zweigs@bennettjones.com</p> <p>SISKINDS 275 Dundas Street, Unit 1 London, ON N6B 3L1</p> <p>Andre I.G. Michael Tel: 519-660-7860 Email: andre.michael@siskinds.com</p> |

| | |
|----------------|---|
| | Lawyers 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 |
| AND TO: | MINISTRY OF THE ATTORNEY GENERAL Legal Services Branch 1001 Douglas Street Victoria, BC V8W 2C5 Fax: 250-356-6730 Peter R. Lawless Tel: 250-356-8432 Email: peter.lawless@gov.bc.ca |
| AND TO: | KSV ADVISORY INC. 150 King Street West Suite 2308, Box 42 Toronto, ON M5H 1J9 Fax: 416-932-6266 Noah Goldstein Tel: 416-932-6207 Email: ngoldstein@ksvadvisory.com Bobby Kofman Email: bkofman@ksvadvisory.com 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 |
| AND TO: | MINISTRY OF THE ATTORNEY GENERAL Crown Law Office - Civil 720 Bay Street, 8th Floor Toronto, ON M7A 2S9 Fax: 416-326-4181 Jacqueline Wall Tel: 416-434-4454 Email: jacqueline.wall@ontario.ca Edmund Huang Tel: 416-524-1654 Email: edmund.huang@ontario.ca |

| | |
|----------------|---|
| | <p>Peter Entecott Tel: 647-467-7768 Email: peter.entecott@ontario.ca</p> <p>Lawyers for Her Majesty the Queen in Right of Ontario</p> |
| AND TO: | <p>FISHMAN FLANZ MELAND PAQUIN LLP 4100 – 1250 René-Lévesque Blvd. West Montreal, QC H3A 3H3</p> <p>Avram Fishman Email: afishman@ffmp.ca</p> <p>Mark E. Meland Tel: 514-932-4100 Email: mmeland@ffmp.ca</p> <p>Margo R. Siminovitch Email: msiminovitch@ffmp.ca</p> <p>Jason Dolman Email: jdolman@ffmp.ca</p> <p>Nicolas Brochu Email: nbrochu@ffmp.ca</p> <p>Tina Silverstein Email: tsilverstein@ffmp.ca</p> <p>CHAITONS LLP 5000 Yonge Street 10th Floor Toronto, ON M2N 7E9</p> <p>Harvey Chaiton Tel: 416-218-1129 Email: harvey@chaitons.com</p> <p>George Benchetrit Tel: 416-218-1141 Email: george@chaitons.com</p> <p>TRUDEL JOHNSTON & LESPÉRANCE 750, Cote de la Place d'Armes, Bureau 90 Montréal, QC H2Y 2X8 Fax: 514-871-8800</p> |

| | |
|----------------|---|
| | <p>Philippe Trudel Tel: 514-871-0800 Email: philippe@tjl.quebec</p> <p>Bruce Johnston Tel: 514-871-085 Email: bruce@tjl.quebec</p> <p>André Lespérance Tel: 514-871-8385 x204 Email: andre@tjl.quebec</p> <p>Gabrielle Gagné Tel: 514-871-8385 x207 Email: gabrielle@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> |
| AND TO: | <p>KLEIN LAWYERS LLP 100 King Street West, Suite 5600 Toronto, ON M5X 1C9</p> <p>Douglas Lennox Tel: 416-506-1944 Email: dlennox@callkleinlawyers.com</p> <p>KLEIN LAWYERS LLP 400 – 1385 West 8th Avenue Vancouver, BC V6H 3V9</p> <p>David A. Klein Tel: 604-874-7171 Email: dklein@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> |
| AND TO: | <p>JENSEN SHAWA SOLOMON DUGID HAWKES LLP 800, 304 – 8 Avenue SW Calgary, AB T2P 1C2 Fax: 403-571-1528</p> <p>Carsten Jensen, QC Tel: 403-571-1526 Email: jensenc@jssbarristers.ca</p> |

| | |
|----------------|---|
| | <p>Sabri Shawa, QC Tel: 403-571-1527 Email: shawas@jssbarristers.ca</p> <p>Stacy Petriuk Tel: 403-571-1523 Email: petriuks@jssbarristers.ca</p> <p>PALIARE ROLAND ROSENBERG ROTHSTEIN LLP 155 Wellington Street West, 35th Floor Toronto, ON M5V 3H1</p> <p>Kenneth T. Rosenberg Email: ken.rosenberg@paliareroland.com</p> <p>Lilly Harmer Email: lily.harmer@paliareroland.com</p> <p>Massimo (Max) Starnino Email: max.starnino@paliareroland.com</p> <p>Danielle Glatt Email: Danielle.glatt@paliareroland.com</p> <p>Lawyers for Her Majesty the Queen in Right of Alberta</p> |
| AND TO: | <p>STEWART MCKELVEY 1959 Upper Water Street, Suite 900 PO Box 997 Halifax, NS B3J 2X2 Fax: 902-420-1417</p> <p>Robert G. MacKeigan, Q.C. Tel: 902-444-1771 Email: robbie@stewartmckelvey.com</p> <p>Lawyers for Sobeys Capital Incorporated</p> |
| AND TO: | <p>CASSELS BROCK & BLACKWELL LLP 2100 Scotia Plaza 40 King Street West Toronto, ON M5H 3C2</p> <p>Shayne Kukulowicz Tel: 416-860-6463 Fax: 416-640-3176 Email: skukulowicz@cassels.com</p> |

| | |
|----------------|---|
| | <p>Jane Dietrich Tel: 416-860-5223 Fax: 416-640-3144 Email: jdietrich@cassels.com</p> <p>Joseph Bellissimo Tel: 416-860-6572 Fax: 416-642-7150 Email: jbellissimo@cassels.com</p> <p>Monique Sassi Tel: 416-860-6886 Fax: 416-640-3005 Email: msassi@cassels.com</p> <p>Lawyers for Ernst & Young Inc, in its capacity as court-appointed monitor of Rothmans, Benson & Hedges, Inc.</p> |
| AND TO: | <p>ERNST & YOUNG INC. Ernst & Young Tower 100 Adelaide Street West P.O. Box 1 Toronto, ON M5H 0B3</p> <p>Murray A. McDonald Tel: 416-943-3016 Email: murray.a.mcdonald@ca.ey.com</p> <p>Brent Beekenkamp Tel: 416-943-2652 Email: brent.r.beekenkamp@ca.ey.com</p> <p>Edmund Yau Tel: 416-943-2177 Email: edmund.yau@ca.ey.com</p> <p>Matt Kaplan Tel: 416-932-6155 Email: matt.kaplan@ca.ey.com</p> <p>Philip Kan Email: philip.kan@ca.ey.com</p> <p>Monitor of Rothmans, Benson & Hedges, Inc.</p> |

| | |
|----------------|---|
| AND TO: | <p>GOWLING WLG (CANADA) LLP 1 First Canadian Place 100 King Street West, Suite 1600 Toronto, ON M5X 1G5 Fax: 416-862-7661</p> <p>Clifton Prophet Tel: 416-862-3509 Email: clifton.prophet@gowlingwlg.com</p> <p>Steven Sofer Tel: 416-369-7240 Email: steven.sofer@gowlingwlg.com</p> <p>Nicholas Kluge Tel: 416-369-4610 Email: nicholas.kluge@gowlingwlg.com</p> <p>Lawyers for Philip Morris International Inc.</p> |
| AND TO: | <p>PALIARE ROLAND ROSENBERG ROTHSTEIN LLP 155 Wellington Street West, 35th Floor Toronto, ON M5V 3H1</p> <p>Kenneth T. Rosenberg Email: ken.rosenberg@paliareroland.com</p> <p>Lilly Harmer Email: lily.harmer@paliareroland.com</p> <p>Massimo (Max) Starnino Email: max.starnino@paliareroland.com</p> <p>Danielle Glatt Email: Danielle.glatt@paliareroland.com</p> <p>ROEBOTHAN MCKAY MARSHALL Paramount Building 34 Harvey Road, 5th Floor St. John's NL A1C 3Y7 Fax: 709-753-5221</p> <p>Glenda Best Tel: 705-576-2255 Email: gbest@wrmmmlaw.com</p> <p>Lawyers for Her Majesty the Queen in Right of Newfoundland</p> |

| | |
|----------------|---|
| AND TO: | WESTROCK COMPANY OF CANADA CORP. 15400 Sherbrooke Street East Montreal, QC H1A 3S2 Dean Jones Tel: 514-642-9251 Email: dean.jones@westrock.com |
| AND TO | MINISTRY OF THE ATTORNEY GENERAL Civil Law Division, FSCO Branch 5160 Yonge Street, 17 th Floor Toronto, ON M2N 6L9 Fax: 416-590-7556 Michael Spagnolo Tel: 416-226-7834 Email: michael.spagnolo@fsrao.ca Lawyers for the Superintendent of Financial Services |
| AND TO: | KAPLAN LAW 393 University Avenue, Suite 2000 Toronto, ON M5G 1E6 Ari Kaplan Tel: 416-565-4656 Email: ari@kaplanlaw.ca Counsel to the Former Genstar U.S. Retiree Group Committee |
| AND TO: | McMILLAN LLP Brookfield Place 181 Bay Street, Suite 4400 Toronto, ON M5J 2T3 Wael Rostom Tel: 416-865-7790 Email: wael.rostom@mcmillan.ca Emile Catimel-Marchand Tel: 514-987-5031 Email: emile.catimel-marchand@mcmillan.ca Lawyers for The Bank of Nova Scotia |

| | |
|----------------|---|
| AND TO | <p>MERCHANT LAW GROUP LLP c/o #400 – 333 Adelaide St. West Toronto, ON M5V 1R5 Fax: 613-366-2793</p> <p>Evatt Merchant, QC Tel: 613-366-2795 Email: emerchant@merchantlaw.com</p> <p>Chris Simoes Email: csimoes@merchantlaw.com</p> <p>Lawyers for the Class Action Plaintiffs (MLG)</p> |
| AND TO: | <p>LABSTAT INTERNATIONAL INC. 262 Manitou Drive Kitchener, ON N2C 1L3</p> <p>Kimberly Stevenson Chow (CFO) Tel: 519-748-5409 Email: kstevens@labstat.com</p> |
| AND TO: | <p>CHERNOS FLAHERTY SVONKIN LLP 220 Bay Street, Suite 700 Toronto, ON M5J 2W4 Fax: 647-725-5440</p> <p>Patrick Flaherty Tel: 416-855-0403 Email: pflaherty@cfscounsel.com</p> <p>Bryan D. McLeese Tel: 416-855-0414 Email: bmcleese@cfscounsel.com</p> <p>STOCKWOODS LLP 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>Brian Gover Tel: 416-593-2489 Email: briang@stockwoods.ca</p> |

| | |
|----------------|---|
| | <p>Justin Safayeni 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> |
| AND TO: | <p>COZEN O'CONNOR LLP Bay Adelaide Centre – West Tower 333 Bay Street, Suite 1100 Toronto, Ontario M5H 2R2</p> <p>Steven Weisz Tel: 647-417-5334 Fax: 647-805-0519 Email: sweisz@cozen.com</p> <p>INCH HAMMOND PROFESSIONAL CORPORATION 1 King Street West, Suite 500 Hamilton, ON L8P 4X8</p> <p>Amanda McInnis Tel: 905-525-0031 Email: amcinnis@inchlaw.com</p> <p>Lawyer for Grand River Enterprises Six Nations Ltd.</p> |
| AND TO: | <p>STROSBERG SASSO SUTTS LLP 1561 Ouellette Avenue Windsor, ON M8X 1K5 Fax: 866-316-5308</p> <p>William V. Sasso Tel: 519-561-6222 Email: wvs@strosbergco.com</p> <p>David Robins Tel: 519-561-6215 Email: drobins@strosbergco.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> |

| | |
|----------------|--|
| AND TO: | <p>ATTORNEY GENERAL OF CANADA 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>Diane Winters, General Counsel Tel: 647-256-7459 Email: diane.winters@justice.gc.ca</p> <p>Lawyers for the Minister of National Revenue</p> |
| AND TO: | <p>LAX O’SULLIVAN LISUS GOTTLIEB LLP Suite 2750, 145 King Street West Toronto, ON M5H 1J8</p> <p>Jonathan Lisus Tel: 416-598-7873 Email: jlisus@lolg.ca</p> <p>Matthew Gottlieb Tel: 416-644-5353 Email: mgottlieb@lolg.ca</p> <p>Nadia Campion Tel: 416-642-3134 Email: ncampion@lolg.ca</p> <p>Andrew Winton Tel: 416-644-5342 Email: awinton@lolg.ca</p> <p>Lawyers for the Court-Appointed Mediator</p> |
| AND TO: | <p>FOGLER, RUBINOFF LLP Suite 3000, P.O. Box 95 Toronto-Dominion Centre 77 King Street West Toronto, ON M5K 1G8 Fax: 416-941-8852</p> <p>Vern W. DaRe Tel: 416-941-8842 Email: vdare@foglers.com</p> |

| | |
|----------------|---|
| | <p>CANADIAN CANCER SOCIETY 116 Albert Street, Suite 500 Ottawa, ON K1P 5G3 Fax: 613-565-2278</p> <p>Robert Cunningham Tel: 613-565-2522 ext. 4981 Email: rcunning@cancer.ca</p> <p>Lawyers for Canadian Cancer Society</p> |
| AND TO: | <p>BLANEY MCMURTRY LLP 2 Queen Street East, Suite 1500 Toronto, ON M5C 3G5</p> <p>David Ullmann Tel: 416-596-4289 Email: dullmann@blaney.com</p> <p>Dominic T. Clarke Tel: 416-593-3968 Email: dclarke@blaney.com</p> <p>Alexandra Teodorescu Tel: 416-596-4279 Email: ateodorescu@blaney.com</p> <p>Alex Fernet Brochu Tel: 416-593-3937 Email: afernetbrochu@blaney.com</p> <p>Lawyers for La Nordique Compagnie D'Assurance du Canada</p> |
| AND TO: | <p>LAROCHE ST-PIERRE 2600, boulevard Laurier, porte 760 Quebec, QC G1V 4T3</p> <p>Mélanie Létourneau Tel: 418-657-8702, ext. 3793 Email: melanie.letourneau@retraitequebec.gouv.qc.ca</p> <p>Lawyers for Retraite Québec</p> |

| | |
|----------------|---|
| AND TO: | LECKER & ASSOCIATES 4789 Yonge Street, Suite 514 Toronto, ON M2N 0G3 Jared Lecker Email: jlecker@leckerslaw.com Lawyer for Imperial Tobacco claimant |
| AND TO: | McMILLAN LLP 181 Bay Street, Suite 4400 Toronto, ON M5J 2T3 Fax: 416-865-7048 Brett Harrison Tel: 416-865-7932 Email: brett.harrison@mcmillan.ca Lawyers for the Province of Quebec |
| AND TO: | ATTORNEY GENERAL OF CANADA Department of Justice Canada Ontario Regional Office, L.E.A.D. 120 Adelaide Street West, Suite 400 Toronto, ON M5H 1T1 John C. Spencer Tel: 647-256-0557 Email: john.spencer@justice.gc.ca Victor Paolone Tel: 647-256-7548 Email: victor.paolone@justice.gc.ca |
| AND TO: | McMILLAN LLP Brookfield Place 181 Bay Street, Suite 4400 Toronto, ON M5J 2T3 Fax: 416-865-7048 Stephen Brown-Okruhlik Tel: 416-865-7043 Email: stephen.brown-okruhlik@mcmillan.ca Lawyers for Citibank Canada |

| | |
|----------------|--|
| AND TO: | <p>BORDEN LADNER GERVAIS LLP Bay Adelaide Centre, East Tower 22 Adelaide Street West, Suite 3400 Toronto, ON M5H 4E3 Fax: 416-367-6749</p> <p>Alex MacFarlane Tel: 416-367-6305 Email: amacfarlane@blg.com</p> <p>James W. MacLellan Tel: 416-367-6592 Email: jmaclellan@blg.com</p> <p>Bevan Brooksbank Tel: 416-367-6604 Email: bbrooksbank@blg.com</p> <p>Lawyers for Chubb Insurance Company of Canada</p> |
| AND TO: | <p>INDUSTRY CANADA, LEGAL SERVICES 235 Queen Street, 8th Floor, East Tower Ottawa, ON K1A 0H5</p> <p>Adrian Scotchmer Email: adrian.scotchmer@canada.ca</p> <p>Michel Ohayon Email: michel.ohayon@canada.ca</p> |
| AND TO: | <p>ROCHON GENOVA LLP Barristers • Avocats 121 Richmond Street West, Suite 900 Toronto, ON M5H 2K1 Fax: 416-363-0263</p> <p>Joel P. Rochon Tel: 416-363-1867 x222 Email: jrochon@rochongenova.com</p> |

| | |
|----------------|--|
| | <p>Ronald Podolny Tel: 416-363-1867 x288 Email: rpodolny@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> |
| AND TO: | <p>WAGNERS 1869 Upper Water Street, Suite PH301 3rd Floor, Pontac House, Historic Properties Halifax, NS B3J 1S9 Fax: 902-422-1233</p> <p>Raymond F. Wagner, Q.C. Tel: 902-425-7330 Email: raywagner@wagners.co</p> <p>Kate Boyle Tel: 902-425-7330 Email: kboyle@wagners.co</p> <p>Representative Counsel</p> |
| AND TO: | <p>REVENU QUÉBEC 1600, boul. René-Lévesque Ouest Secteur R23DGR Montréal, QC H3H 2V2</p> <p>Alain Casavant Email: alain.casavant@revenuquebec.ca</p> |
| AND TO: | <p>PELLETIER D'AMOURS 1, Complexe Desjardins Tour Sud, 12e étage Montreal, QC H5B 1B1</p> <p>Amy Bowen Email: amy.bowen@dgag.ca</p> <p>Lawyers for Desjardins Assurances</p> |

Email Service List

rthornton@tgf.ca; lwilliams@tgf.ca; rkennedy@tgf.ca; rbengino@tgf.ca; mgrossell@tgf.ca;
 jfinnigan@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; chris.burr@blakes.com; aryo.shalviri@blakes.com;
 caitlin.mcintyre@blakes.com; emily.hazlett@blakes.com; nancy.thompson@blakes.com;
 cmills@millერთhompson.com; hsibre@millერთhompson.com; baziz@bluetreadadvisors.com;
 dbyers@stikeman.com; mkonyukhova@stikeman.com; lmercer@stikeman.com;
 ssopic@stikeman.com; dglendinning@osler.com; mwasserman@osler.com;
 jmacdonald@osler.com; mdelellis@osler.com; clockwood@osler.com; sarmstrong@osler.com;
 nmacparland@dwpv.com; csethi@dwpv.com; jyantzi@dwpv.com; tbarbiero@dwpv.com;
 greg.watson@fticonsulting.com; paul.bishop@fticonsulting.com;
 jeffrey.rosenberg@fticonsulting.com; kamran.hamidi@fticonsulting.com;
 tyler.rivas-perri@fticonsulting.com; jgage@mccarthy.ca; hmeredith@mccarthy.ca;
 psteepe@mccarthy.ca; tcourtis@mccarthy.ca; dtempler@mccarthy.ca; nrambaran@mccarthy.ca;
 bertrand.giroux@bcf.ca; mireille.fontaine@bcf.ca; sbomhof@torys.com; aslavens@torys.com;
 mica.arlette@pwc.com; tyler.ray@pwc.com; leonj@bennettjones.com;
 eizengam@bennettjones.com; zweigs@bennettjones.com; andre.michael@siskinds.com;
 peter.lawless@gov.bc.ca; ngoldstein@ksvadvisory.com; bkofman@ksvadvisory.com;
 jacqueline.wall@ontario.ca; shahana.kar@ontario.ca; edmund.huang@ontario.ca;
 peter.entecott@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;
 gabrielle@tjl.quebec; dlennox@callkleinlawyers.com; dklein@callkleinlawyers.com;
 jensenc@jssbarristers.ca; shawas@jssbarristers.ca; petriuks@jssbarristers.ca;
 ken.rosenberg@paliarerland.com; lily.harmer@paliarerland.com;
 max.starnino@paliarerland.com; danielle.glatt@paliarerland.com;
 sarita.sanasie@paliarerland.com; natalia.botelho@paliarerland.com;
 michelle.jackson@paliarerland.com; robbie@stewartmckelvey.com;
 skukulowicz@cassels.com; jdietrich@cassels.com; jbellissimo@cassels.com;
 msassi@cassels.com; murray.a.mcdonald@ca.ey.com; brent.r.beekenkamp@ca.ey.com;
 edmund.yau@ca.ey.com; matt.kaplan@ca.ey.com; philip.kan@ca.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;
 csimoes@merchantlaw.com; jtim.ccaa@merchantlaw.com; rothmans.ccaa@merchantlaw.com;
 kstevens@labstat.com; pflaherty@cfscounsel.com; bmcleese@cfscounsel.com;
 briang@stockwoods.ca; justins@stockwoods.ca; sweisz@cozen.com; amcinnis@inchlaw.com;
 wvs@strosbergco.com; drobins@strosbergco.com; diane.winters@justice.gc.ca; jlisus@lolg.ca;
 mgottlieb@lolg.ca; ncampion@lolg.ca; awinton@lolg.ca; vdare@foglers.com;
 rcunning@cancer.ca; dullmann@blaney.com; dclarke@blaney.com; ateodorescu@blaney.com;
 afernetbrochu@blaney.com; melanie.letourneau@retraitequebec.gouv.qc.ca;
 jlecker@leckerslaw.com; john.bringardner@acuris.com; brett.harrison@mcmillan.ca;

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

john.spencer@justice.gc.ca; victor.paolone@justice.gc.ca;
stephen.brown-okruhlik@mcmillan.ca; amacfarlane@blg.com; jmaclellan@blg.com;
bbrooksbank@blg.com; adrian.scotchmer@canada.ca; michel.ohayon@canada.ca;
jrochon@rochongenova.com; rpodolny@rochongenova.com; raywagner@wagners.co;
kboyle@wagners.co; alain.casavant@revenuquebec.ca; amy.bowen@dgag.ca;

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., IMPERIAL TOBACCO CANADA LIMITED AND IMPERIAL TOBACCO COMPANY LIMITED, AND ROTHMANS, BENSON & HEDGES INC.**

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| <div>ONTARIO</div> <div>SUPERIOR COURT OF JUSTICE (COMMERCIAL LIST)</div> <div>Proceeding commenced at TORONTO</div> | |
| <div>NOTICE OF MOTION</div> | |
| <div><div><div>Tyr LLP</div><div>488 Wellington Street West</div><div>Suite 300-302</div><div>Toronto, ON M5V 1E3</div><div>Fax: 416-987-2370</div></div><div><div>James Bunting (LSO# 48244K)</div><div>Email: jbunting@tyrllp.com</div><div>Tel: 647.519.6607</div></div><div><div>Maria Naimark (LSO# 83470H)</div><div>Tel: 437.225.5831</div><div>Email: mnaimark@tyrllp.com</div></div><div>Lawyers for Heart and Stroke Foundation of Canada</div></div> | |

TAB 2

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

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

B E T W E E N:

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

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

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

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

Applicants

**AFFIDAVIT OF DIEGO MARCHESE
 (SWORN SEPTEMBER 19, 2022)**

I, Diego Marchese, of the Town of Belcarra, in the Province of British Columbia, MAKE
 OATH AND SAY:

1. I am the Executive Vice President, Research, Social Enterprise with the Heart and Stroke Foundation of Canada ("**HSF**"). I have held several senior positions at HSF, including interim CEO, national COO, Executive Vice President and National Vice President, Prevention. Prior to my time at HSF, I served as CEO, COO and Vice President, Research and Health Promotion of HSF BC & Yukon, overseeing the foundation's research, health promotion, patient education and advocacy areas.

2. Given my professional background and my role at HSF, I have personal knowledge of the matters discussed herein. Where matters discussed herein are based on information not within my personal knowledge, I have stated the source of the information and verily believe it to be true.

3. This Affidavit is sworn in support of the motion by HSF for an order appointing Tyr LLP as representative counsel for the Future Tobacco Harm Stakeholders (“**FTH Stakeholders**”) (described below) on terms set out in the proposed FTH Representation Order (the “**Draft Order**”). As set out in the Draft Order, HSF is seeking to have representative counsel appointed for the FTH Stakeholders to participate in the above-noted proceedings under the *Companies’ Creditors Arrangement Act* (“**CCAA**”) (the “**CCAA Proceedings**”). This participation would include participating in the on-going mediation process before the Honourable W. Winkler, OC, OOnt, QC (the “**Mediation**”), in order to ensure that the interests and rights of the FTH Stakeholders are appropriately addressed and balanced in the Mediation and any resulting Proposed Plan (defined below).

A. Overview of HSF’s Motion

4. HSF brings this motion to address the fact that the interests of the millions of FTH Stakeholders are not being represented in the CCAA Proceedings or the Mediation. Their interests must be addressed before any proposed plan of arrangement and compromise (a “**Proposed Plan**”) can be considered fair, just and legitimate by this Court and the public. The interests of the FTH Stakeholders are not being represented during the Mediation despite the fact that it is exactly that group of individuals who will shoulder the largest burdens caused by any Proposed Plan. It is both preferable and necessary that their interests be meaningfully represented during the Mediation so that this Honourable Court can have confidence that any Proposed Plan can be said to have been negotiated with their interests and burdens having been fairly addressed and balanced in the process.

5. The FTH Stakeholders are those individuals who, after the granting of the Initial Order (the “post-petition” period) will purchase or use tobacco products, or will be exposed to their use. Following the approval of any Proposed Plan, it will be the FTH Stakeholders’ purchases that will

directly fund much of the payments and settlements contemplated by a Proposed Plan. It is apparent from publicly available information that the applicants in these CCAA Proceedings (the “**Tobacco Companies**”) did not have sufficient funds to pay a material amount towards the claims that they are facing at the commencement of these proceedings. Moreover, any cash-flow generated during these proceedings will not be sufficient to make meaningful payments towards the claims faced by the Tobacco Companies. Therefore, it is apparent that any Proposed Plan will be premised on (i) the Tobacco Companies continuing to sell tobacco products; and (ii) their post-petition cash flows – money paid by the FTH Stakeholders to purchase tobacco products – being used to make payments required under a Proposed Plan.. In simple terms, the post-petition purchases made by the FTH Stakeholders will be used to fund the payment of claims under the Proposed Plan that is now being negotiated.

6. However, the FTH Stakeholders are not typical consumers. Most, if not all, of the FTH Stakeholders will suffer harm from their post-petition purchases of tobacco products that will fund settlements now being negotiated in the Mediation. Thus, any Proposed Plan that is reliant on the use of post-petition cash flows is a Proposed Plan that is premised on causing future harm to the FTH Stakeholders. There can be no payment of post-petition cash flows under a Proposed Plan without inflicting harm on the FTH Stakeholders.

7. HSF recognizes that the purpose of the CCAA is to rehabilitate companies and that any Proposed Plan approved by the Court will be premised upon the continued existence of the Tobacco Companies and the continued sale and consumption of tobacco products in Canada. While HSF advocates for the eventual discontinuation of the sale of tobacco products in the long run, it recognizes that issue is entirely separate from these proceedings. Nonetheless, because the Proposed Plan must obtain the sanction of the Court, it is both appropriate and necessary that the Court balance and mitigate the future harm that will be borne by the FTH Stakeholders on one

hand, and the wishes of the claimants (the “**Claimants**”) to be compensated for the harms caused in the past on the other.

8. I understand that as a result of the nature of the claims being addressed in these proceedings, that a likely component of any Proposed Plan will be the establishment of a fund that will be used to make future payments for public or social purposes or programs in lieu of the ability to make payments directly to Claimants (the “**Fund**”). How that Fund is established, governed, and used will be a critical component in ensuring that the rights and interests of the FTH Stakeholders are adequately addressed and balanced in any Proposed Plan that is approved by this Court.

9. The interests of the FTH Stakeholders are not currently represented in these proceedings. All of the parties participating in these CCAA Proceedings and in the Mediation are in a conflict with the FTH Stakeholders given that (i) all of the Claimants are incentivized to maximize future cash flows (and, thus, to have more smokers in the future) so that they recover more on their Claims; and (ii) the Tobacco Companies wish to minimize payments. Therefore, no party or representative counsel can claim to be capable of representing the interests of the FTH Stakeholders.

10. For these reasons, HSF believes that it is imperative that representative counsel be appointed to represent the interests of the FTH Stakeholders during these CCAA Proceedings and the Mediation. Specifically, it is imperative that representative counsel be able to participate in matters concerning the structure, quantum, use and governance of the Fund to ensure that the Fund reflects an appropriate balancing of the FTH Stakeholders’ interests and is suitable for the intended purpose. Any Fund must be more than mere window-dressing to assuage concerns of the public about any settlement – any Fund must be adequate to meaningfully address the future harm that will be suffered by the FTH Stakeholders. The Fund must be, and must be seen to be,

free from interference from the Tobacco Companies themselves or others who stand to gain from the continuing or increased use of tobacco products by FTH Stakeholders.

11. What HSF is seeking to accomplish through the relief sought is not novel, but rather has been done elsewhere. I understand that in the settlements with tobacco companies in the US, those settlements included funds that were dedicated to funding programs to reduce tobacco use.

12. HSF knows that the purpose of the CCAA is remedial and accepts in this process that the outcome of the Mediation and any Proposed Plan that is approved by this Honourable Court will not result in the elimination of smoking in Canada, as this goal is simply not the purpose or objective of these CCAA Proceedings. Indeed, HSF recognizes that, as a restructuring process, the purpose of these proceedings and the Mediation is to find a path so that the Tobacco Companies will continue operations in the future, and that this represents some social good in the sense that their continuation will see more of the Claims paid. HSF recognizes that the participation of representative counsel for the FTH Stakeholders must be and will be with a view to having the Tobacco Companies emerge from these CCAA Proceedings. This is why in this affidavit we have referred to the importance and critical need to ensure that there is an appropriate and meaningful balancing of interests so that the future harm to FTH Stakeholders is appropriately addressed and balanced among the constellation of the companies' various stakeholders.

B. About HSF

13. Founded in 1952, HSF is one of Canada's preeminent charities and is a leader in advocacy, education and the funding of research regarding heart disease and stroke. HSF is a leader in disease prevention including, but not limited to, research and activities aimed at preventing the harm that is caused by smoking.

14. HSF has been dedicated to fighting heart and stroke disease since its foundation. Since its establishment, HSF has invested more than \$1.6 billion in vital heart and brain research. During the same period, the death rate from heart and stroke disease has declined by over 75%.

15. HSF funds research across all four of the themes defined by the Canadian Institutes of Health Research: (i) basic biomedical research; (ii) clinical research; (iii) health services and systems research; and (iv) social, cultural, environmental, and population health research.

16. The impact of this research has been life-changing for millions of Canadians and has contributed to the steep decline in the death rate from heart and stroke diseases in the last fifty years.

17. Not only is HSF a leading Canadian organization that is committed to reducing and preventing the harm caused by smoking, but both it and its benefactors have a direct financial interest in these CCAA proceedings, although HSF is not a creditor. HSF raises money and funds research and programs touching on a wide array of matters affecting heart health and stroke matters. Ensuring that any Proposed Plan provides for an appropriate and well-governed Fund will allow HSF to spend less money on public education / information, advocacy, and research to address tobacco-related health issues, thus allowing it to direct financial and human resources to other pressing health priorities and to other individuals with heart disease and stroke not caused by tobacco. More information about HSF is attached as **Exhibit “A”**.

C. Harm Caused By Smoking

18. It has been definitively established that tobacco use dramatically increases the risk of developing heart disease and stroke. Smoking contributes to the buildup of plaque in the arteries, increases the risk of blood clots, reduces the oxygen in the blood, and taxes the cardiovascular system.

19. Smokers are two times more likely to have a heart attack or stroke and are two times more likely to die from them. Individuals who smoke 25 cigarettes a day or more have three times the risk for heart attack or stroke and are nearly five times more likely to die of heart disease or stroke than non-smokers.

20. The impact of tobacco use on cardiovascular disease is sufficiently acute that within only twenty-four hours of ceasing smoking, the risk of having a heart attack decreases. Within five years of quitting smoking, the risk of having a stroke will be nearly that of a non-smoker; within ten years the risk of dying from lung cancer is cut in half; and within fifteen years the risk of heart disease will be similar to someone who never smoked at all. Thus, smoking prevention and cessation programs are critical tools in the fight against the adverse effects of smoking.

D. The FTH Stakeholders

21. I understand that in addition to the various class action and government lawsuits that were outstanding against the Tobacco Companies at the time these CCAA Proceedings were commenced, this Court appointed counsel to represent the interests of individuals (the “**TRW Claimants**”) with existing or potential claims that were not covered by the Quebec class action, BC lights, and Ontario tobacco farmer lawsuits (i.e., the TRW Claims). A copy of the Order appointing representative counsel for the TRW Claimants is attached as **Exhibit “B”**.

22. I understand that the CCAA Proceedings began in 2019, and that therefore the claims that are being addressed in these proceedings, including the claims of the TRW Claimants, are claims that existed as of the commencement of these CCAA Proceedings. I similarly understand, therefore, that harm that will be suffered in the future by the FTH Stakeholders are not covered by any claims being asserted in the CCAA Proceedings.

23. The interests of the FTH Stakeholders are in conflict with all of the existing Claimants, and their interests cannot be protected or represented by the existing claimants in the CCAA Proceedings. All of the existing Claimants, as creditors, have an interest in maximizing or sustaining future revenues of the Tobacco Companies because those revenues will be used to fund any Proposed Plan.

24. As noted at the outset, I understand that the common and expected outcome of CCAA proceedings of this sort is a plan of arrangement and compromise that can be considered and approved by the Court, and that any Proposed Plan will provide for how the various claims will be paid (either at once or over time). Given the quantum of the claims made against the Tobacco Companies, I understand that it can be expected that any settlement will involve payments made over time. For example, in the US, settlements of state health care cost recovery lawsuits reached in 1997/1998 for similar types of claims involved an estimated US\$246 billion being paid to state governments over 25 years.

25. HSF also understands that, given the quantum of claims against the Tobacco Companies and their limited assets at the time of the initial filing, any Proposed Plan will also be based on some portion of cash flows generated from tobacco sales in the post-petition period will be used to pay the Claimants.

26. Accordingly, in the unique circumstances of this case, it is clear that any resolution of the CCAA Proceedings is going to be premised on using revenue generated from the FTH Stakeholders.

27. Tobacco use unquestionably harms the health of consumers and those exposed to second-hand smoke. Therefore, the health of the FTH Stakeholders' is going to be harmed as the Tobacco Companies generate revenue to pay out the existing claims. There is no reasonable debate that tobacco products are highly addictive and lead to the death of thousands or millions

of tobacco consumers when the products are consumed exactly in the manner in which the manufacturer intends. The harm that will be suffered by the FTH Stakeholders as a result of the on-going sale of tobacco is both real and deadly. Tobacco use is the leading preventable cause of disease and death in Canada, killing almost 48,000 Canadians each year (and reducing life expectancy by nearly 600,000 potential years of life due to premature mortality).¹ Tobacco use leads to heart disease and stroke, emphysema, and numerous forms of cancer. The science is clear on these causal connections. The harm caused by these deaths and illnesses extend from the individuals who perish to their families who may be severely harmed economically, physically, and/or mentally, thereby causing long-term negative impacts on the children of deceased or ill smokers and extending further to others in society.²

28. There are millions of people in Canada who consume tobacco products and who are or will become FTH Stakeholders, even though tobacco use is not as prevalent as it once was. There are still approximately 3.8 million people in Canada who smoke, representing 16% of the population (as per the Canadian Community Health Survey, 2021, and more who use tobacco products other than cigarettes). Health Canada research suggests that a large majority of smokers begin to smoke as teenagers or preteens. There is no evidence to suggest that this trend will not continue during the CCAA Proceedings or afterwards. The fact is that there will be new preteens, teenagers or vulnerable people who begin to smoke and who become new FTH Stakeholders, and that this group of stakeholders will thus continue to exist and grow. It is the cash flow generated from the sale of tobacco to these new preteens, teenagers, and vulnerable

¹ Canada's Tobacco Strategy, Government of Canada, available at <https://www.canada.ca/en/health-canada/services/publications/healthy-living/canada-tobacco-strategy.html>

² For example, in pure economic terms, employers may lose valuable employees, small businesses may shut down if there is no one able to take over for the deceased, and insurance companies will pay more in claims caused by premature tobacco-related deaths, which in turn causes life insurance premiums to be increased for all people. The harm caused by smoking also causes an extraordinary increase in healthcare costs, which are funded by taxpayers.

people during and following these CCAA Proceedings that will be needed to fund any Proposed Plan.

29. Accordingly, any Proposed Plan that is based on post-petition cash flows generated from the FTH Stakeholders is a Proposed Plan that is based on the harm that will be done to the FTH Stakeholders.

30. In my experience and based on research that I have reviewed, few, if any, smokers are happy to be smokers. Most, if not all, smokers want to quit, have tried to quit, have stated an intention to quit, and wish they had never started. In reality, the FTH Stakeholders will, at some point, not be willing consumers who voluntarily give their money to the Tobacco Companies. Rather, most, if not all, of the FTH Stakeholders are individuals who will become addicted to tobacco use and thereby become involuntarily locked into giving the Tobacco Companies more of their money to the detriment of themselves and their families. Regardless of how they start to consume tobacco products, most tobacco consumers will become involuntary consumers at some point, locked in a cycle of addiction, and unwillingly giving the Tobacco Companies more of their money; money that will then be used to fund any Proposed Plan.

31. The consequence of the Proposed Plan being funded by the FTH Stakeholders' purchases of tobacco products is that the Plan will be dependent on causing future harm to the FTH Stakeholders. Accordingly, any Proposed Plan should allocate a portion of the post-petition cash flows to thoughtful and balanced programs that alleviate these real and significant harms, and to assist the FTH Stakeholders to overcome their addictions.

32. The rights and interests of the FTH Stakeholders must be represented, addressed and balanced in these proceedings and in the formulation of any Proposed Plan. HSF is not claiming that a new claim should be made for the FTH Stakeholders because it understands that such future claims are outside of the scope of the CCAA Proceedings. Rather, HSF states that

representative counsel must be appointed so that the structure of any Proposed Plan provides sufficient and adequate measures to balance the harm that will be suffered by the FTH Stakeholders with the needs of the Claimants to have the Tobacco Companies continue to generate revenue in order to pay their claims.

E. Proposed Role of FTH Representative Counsel

33. HSF understands and appreciates that the role of representative counsel for the FTH Stakeholders ("**FTH Representative Counsel**") will not be the same as counsel to a creditor or claimant. Rather, the role of the FTH Representative Counsel would be focussed on ensuring that the quantum, structure, uses and governance of any Fund that is created as part of a Proposed Plan is adequate and sufficient to provide a reasonable balance between the interests of the FTH Stakeholders and the Claimants and Tobacco Companies.

34. It is my understanding that such funds are often established as part of the resolution of various class actions government health care cost recovery cases that are at issue in the CCAA Proceedings. For example, I am aware that such funds were created in the US tobacco-related state government health care cost recovery actions.

35. Any Fund that is established in any Proposed Plan will be the primary, if not only, means by which the interests of the FTH Stakeholders will be addressed in the Proposed Plan. Accordingly, it is imperative that the FTH Stakeholders have representative counsel who are involved in the negotiation of the establishment of any such Fund to ensure that it adequately and sufficiently addresses a proper balancing of interests between the FTH Stakeholders, the Tobacco Companies, and their creditors.

36. It is crucial that any Fund is used for initiatives that will actually benefit the FTH Stakeholders, and not be mere window dressing that provides no real public benefit. For example,

no public benefit will arise if the Fund is used to pay for research on the harms of smoking or if the Fund is used to offset R&D that the companies should be undertaking in any event. Those types of expenditures will merely benefit the Tobacco Companies and are far too speculative to be of any public good. It is only through the participation of representative counsel for the FTH Stakeholders that this Honourable Court and the public can have any assurance that the Fund will be designed so that it may actually provide the intended benefits.

37. In particular, there appear to be at least four core elements in the design of any Fund that require independent representative counsel for FTH Stakeholders:

- (a) **Quantum** – The quantum of the Fund must be adequate and sufficient to meet its intended objectives.
- (b) **Structure** – The structure of the Fund must ensure that the Funds will not be quickly depleted. Given that the Fund may be funded over time, the structure must provide for an adequate balance between spending and capital preservation so as to benefit as many FTH Stakeholders as possible.
- (c) **Uses** – The uses or objects of the Fund must be appropriately established so that the Fund will have sufficient flexibility and effective oversight to achieve the purposes of cessation and prevention for the FTH Stakeholders through the funding of tobacco-use prevention and cessation programs. Moreover, there must be sufficient flexibility to allow the funds to be directed towards uses that are not yet foreseen but could ultimately be effective in achieving the objectives of the Fund.
- (d) **Governance** – The governance of the Fund must be structured so that the proper skills-based board or similar structure is put in place to ensure that the structure

and uses of the Fund meet the objects of the Funds and have credibility in the eyes of the public.

38. It is crucial that FTH Representative Counsel be involved in the Mediation so that any discussions and negotiations regarding a Fund can take place as the structure of the Proposed Plan unfolds in real time and in the context of the confidential Mediation. This is important so that all parties can not only understand the options for the Fund, but also better understand what is within the realm of “possible.” As noted above, HSF understands that to satisfy the purposes of the CCAA, the likely outcome in the CCAA Proceedings is the continued operation of the Tobacco Companies. It is far better and more efficient that those discussions, brainstorming, idea generation and negotiations occur in the context of the confidential Mediation under the guidance of the court-appointed Mediator if FTH Representative Counsel is appointed and permitted to participate, rather than in a public opposition to a Proposed Plan that appears as being inadequate in light of the future harm that will be caused.

39. Recent experience in similar cases provide an example of the need to ensure that the public can have tangible measures by which they can be assured that all interests were considered and protected. For example, in the US insolvency cases regarding opioids, there was severe public backlash when the proposed settlement in those insolvency proceedings was announced. See the articles attached as **Exhibit “C”**. The failure to consider all relevant stakeholders in the proposed opioid bankruptcy settlement led to widespread dissatisfaction by the public, including State and local governments, charities, healthcare groups, and those who would suffer future harm, since the proposed settlement did not adequately represent all stakeholders. The opioid proceedings are similar to the proceedings herein to the extent that the manufacturers and their shareholders reaped billions of dollars in profits by promoting and selling a product that caused, and will continue to cause, significant harm to public health and social welfare.

40. Ultimately, a revised settlement was entered into by four opioid manufacturers that provided for substantial funding to address opioid abatement. The stakeholders in those bankruptcy proceedings eventually included not only the company's creditors and the plaintiffs, but also victims of opioid addiction and "those who need protection from future addiction, and efforts to stop the crisis before it gets any worse".³

41. Ensuring that all relevant stakeholders – including the FTH Stakeholders – can be represented and participate in the creation of the Proposed Plan and any Fund is in the public interest. Having representative counsel for the FTH Stakeholders participate in the proceedings will greatly lessen the likelihood of such public outcries, as the public, including public advocacy groups, will be assured that the interests of and harm to FTH Stakeholders will have been fully considered, advocated for, vetted and negotiated in the context of court-supervised negotiation.

F. Proposed Representative Counsel

42. The marginal cost of having representative counsel appointed for the FTH Stakeholders is negligible in the context of these cases. The representative counsel proposed by HSF – Tyr LLP – has offered a discount on its rates in light of the nature of the case. A letter from Tyr LLP in support of its appointment as proposed representative counsel to the FTH Stakeholders is attached as **Exhibit "D"**.

43. Tyr LLP is a litigation boutique which opened on June 1, 2019. Tyr LLP was founded by three former partners of Davies Ward Phillips & Vineberg LLP ("**Davies**"), a leading full-service firm in Toronto. The team at Tyr LLP will be led by senior partner Jason Wadden, who practiced at Davies for 19 years with a focus on corporate/commercial and insolvency litigation matters. Mr.

³ *The Purdue Bankruptcy Case: What's at Stake*, Wharton Business School (September 23, 2019) quoting Professor Robert I. Field of Drexler University (Law and Health Management), available at [The Purdue Pharma Bankruptcy Case: What's at Stake - Knowledge at Wharton \(upenn.edu\)](https://www.wharton.upenn.edu/news/the-purdue-pharma-bankruptcy-case-whats-at-stake-knowledge-at-wharton-upenn-edu).

Wadden is highly regarded in the legal community for his advocacy, spirit of cooperation and civility, and is consistently recognized and ranked by Lexpert, Benchmark, and Best Lawyers.

G. Proposed Advisory Committee

44. The Draft Order provides that the proposed FTH Representative Counsel will convene a three-person volunteer advisory committee. The three-person committee is a skills-based committee (the “**FTH Advisory Committee**”) whose members are being selected for their professional skill set and to assist counsel given the complexity of the issues surrounding the establishment of any Fund. The FTH Advisory Committee members will be named in the Draft Order and will be bound by the Draft Order to the duties of confidentiality associated with the Mediation or otherwise in these proceedings. The members of the Advisory Committee will be shortly be determined.

45. The members of the Advisory Committee will not be participating on the Advisory Committee in their capacity as a representative of any organization, nor will they have any obligations to any organizations that would require them to report on their participation on the Advisory Committee, these CCAA Proceedings, or the Mediation. Moreover, none of them will be paid for their participation on the committee.

SWORN BEFORE ME by video conference by
Diego Marchese at the City of Toronto, in the
Province of Ontario, before me on September 19,
2022 in accordance with O. Reg. 431/20,
Administering Oath or Declaration Remotely

Maria Naimark

Maria Naimark
Commissioner for Taking Affidavits
(or as may be)

} *Diego Marchese*

DIEGO MARCHESE

This is **Exhibit “A”** referred to in the Affidavit of Diego Marchese sworn
this 19th day of September, 2022

Maria Naimark

Maria Naimark

*Commissioner for Taking Affidavits
(or as may be)*



Donors

Our story

Life. We don't want you to miss it.

For more than 60 years, Heart & Stroke has been dedicated to fighting heart disease and stroke. Our work has saved thousands of lives and improved the lives of millions of others. You'll probably run into someone today who is alive and well thanks to the countless Canadians who have supported our cause with their time and donations.

It could be the young boy you pass on the street whose heart defect was successfully mended thanks to life-saving research. Or the woman at the coffee shop whose stroke was treated with a clot-busting drug. Or the father whose hockey teammates saved his life with CPR.

Our vision: Life. Uninterrupted by heart disease and stroke.

Our progress is real. The death rate from heart disease and stroke has declined more than 75% over the past six decades. See our **latest results**.

Envisioning this kind of progress was what drove a visionary group of Canadians, including researchers and physicians, to establish the beginnings of Heart & Stroke in 1952.

What we do today

Heart & Stroke is a leading funder of life-saving research, which has led to breakthroughs such as heart transplant surgery and a revolutionary stroke treatment that cuts the death rate by 50%.

We empower Canadians to live healthier lives — from preventing and controlling high blood pressure to getting more physical activity. And we fight for change that will create better health for all, such as reducing salt in the food supply and improving access to stroke rehabilitation.

But there's a lot more to do. Much more.

The threat is urgent

Heart disease, stroke and related conditions take one life every five minutes in Canada. An estimated 3.5 million more are living with the devastating effects of these diseases. And 9 in 10 Canadians have at least one risk factor, such as high blood pressure, obesity, tobacco use, lack of physical activity and diabetes.

The threat of heart disease and stroke has never been more urgent. And it's amplified by our aging population, sedentary lifestyles, poor diets and more.

Big challenge, ambitious goals

These are the realities confronting us today. To tackle these challenges, Heart & Stroke is focusing our efforts on areas where we can make the biggest impact:

- **fighting for prevention**

- **saving lives**
- **transforming recovery**
- **investing in life-saving research**

Achieving these goals won't be easy. But the support of our donors and volunteers makes it possible.

We believe life is worth fighting for. And we don't want you to miss it.

Resources

- See our **strategy**.
- Learn more about **Heart & Stroke research**.
- See recent advances made possible by **Heart & Stroke donors**.
- Get our latest **Report to Donors**.
- See our **research breakthroughs over the decades**.

Beat heart disease. Beat stroke. Beat as one.



Our impact



Personal story

“Research is the reason I am alive today.”

Donna Sharman

Stroke survivor

[Read Donna's story](#)

A sense of urgency

The death rate from heart disease and stroke has declined more than 75% over the past 60 years. But there is much more to do.

80%

premature heart disease & stroke that's preventable

5 minutes

how often heart disease, stroke and related conditions take a life

3.5 million

Canadians living with heart disease & stroke

[See our latest results](#)

Recognizing your generosity

Heart & Stroke donors are coming together to fund the life-saving breakthroughs that will beat heart disease and stroke. Watch a thank-you video and see our latest Impact Report at the link below.



Fighting for prevention

9 in 10 Canadians have at least one risk factor for heart disease and stroke. See how we're working to help them reduce those risks.



Convince governments to protect kids' health through a nutrition plan

That includes restricting marketing of unhealthy food and beverages to children and a levy on sugary drinks.

Learn more



Improve the health of Indigenous peoples

Building skills, trust and partnerships is the first step toward urgently needed health reconciliation.

Learn more

Join the fight

Saving lives

When a stroke or cardiac arrest occurs, getting the right care fast is critical. We're working to improve emergency response and treatment.



Teach more Canadians to recognize a stroke so they can act FAST

We're working with partners to share the FAST signs of stroke, proven to help Canadians recognize a stroke and act quickly.

Learn more

**Prepare more Canadians to respond to a cardiac emergency**

Performing CPR and using an automated external defibrillator can double the chances that someone will survive cardiac arrest.

Learn more

Help save lives

Transforming recovery

About 3.5 million Canadians are living with the effects of heart disease and stroke. We're committed to improving their recovery.



Partner with survivors and their care partners

We're working to help them achieve the best recovery and quality of life possible and prevent future events.

[Learn more](#)



Fund world-leading research on stroke recovery

The Heart & Stroke Canadian Partnership for Stroke Recovery is a world-leading virtual centre of excellence in brain research.

[Learn more](#)

Help us
put heart & stroke research on the fast track.

♥ Donate today

Volunteer

Beat heart disease. **Beat** stroke. **Beat** as one.

This is **Exhibit “B”** referred to in the Affidavit of Diego Marchese sworn
this 19th day of September, 2022

Maria Naimark

Maria Naimark

*Commissioner for Taking Affidavits
(or as may be)*

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

**ONTARIO
SUPERIOR COURT OF JUSTICE
COMMERCIAL LIST**

THE HONOURABLE

MR. JUSTICE MCEWEN

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FRIDAY, THE 6TH

DAY OF DECEMBER, 2019

monday at 12

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

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



Applicant

**ORDER
(APPOINTMENT OF REPRESENTATIVE COUNSEL)**

THIS JOINT MOTION made by the Tobacco Monitors being FTI Consulting Canada Inc. in its capacity as court-appointed Monitor (the "**Imperial Monitor**") of Imperial Tobacco Canada Limited and Imperial Tobacco Company Limited (collectively, "**Imperial**"), Ernst & Young Inc. in its capacity as court-appointed Monitor of Rothmans, Benson & Hedges Inc. ("**RBH**") and Deloitte Restructuring Inc. in its capacity as court-appointed Monitor of JTI-Macdonald Corp. ("**JTIM**" and together with Imperial 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 to Court of the Imperial 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 affidavits of service of Monique Sassi sworn

November 25 and November 26, 2019 and the affidavit of service of Robert Nicholls sworn November 27, 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 this Court hereby dispenses with further service of this motion and of this Order.

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 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 TRW 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 Claimants in the Mediation;

- 3 -

- (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 Claimants, and as appropriate, addressing such claims in the Mediation or the CCAA Proceedings;
- (c) responding to inquiries from TRW Claimants in the CCAA Proceedings; and
- (d) performing such other actions as approved by this Court.

For greater certainty, nothing in this Order shall be construed as determining the validity of any claims of any TRW Claimants.

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 36 and 38 of the Second Amended and Restated 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

- 4 -

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 such further order as this Court may make in respect of security for costs to be given by the plaintiff for the costs 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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LE / DANS LE REGISTRE NO:

DEC 11 2019

PER / PAR: 

Schedule "A"

Definition of TRW 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:

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

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);
 - (B) *The Ontario Flue-Cured Tobacco Growers' Marketing Board v. Rothmans, Benson & Hedges Inc.*, Court File No. 1056/10CP (London, Ontario);
 - (C) *The Ontario Flue-Cured Tobacco Growers' Marketing Board v. Imperial Tobacco Canada Ltd.*, Court File No. 64757 CP (London, Ontario);
- (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. v. Imperial Tobacco Canada Ltd., et al.*, Court File No. 500-06-000070-983 (Montreal, Quebec);

(C) *Kenneth Knight v. Imperial Tobacco*, Court File No. L031300 (Vancouver, British Columbia).

"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 Vapour Products.

"Vapour Products" means:

- (i) a device that produces emissions in the form of an aerosol and is intended to be brought to the mouth for inhalation of the aerosol without burning of (i) a substance or (ii) a mixture of substances;
- (ii) a part or accessory that may be used with those devices; and
- (iii) a substance or mixture of substances, whether or not it contains tobacco or nicotine, that is intended for use with or without those devices to produce emissions in the form of an aerosol without burning.

IN THE MATTER OF THE COMPANIES' CREDITORS ARRANGEMENT ACT, R.S.C.1985, c. C-36,
AS AMENDED AND IN THE MATTER OF A PLAN OF COMPROMISE OR ARRANGEMENT OF
IMPERIAL TOBACCO CANADA LIMITED AND IMPERIAL TOBACCO COMPANY LIMITED

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

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

Proceeding commenced at Toronto

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

DAVIES WARD PHILLIPS & VINEBERG LLP
155 Wellington Street West
Toronto, ON M5V 3J7

Jay Swartz (LSO #15417L)

Tel: 416.863.5502

Natasha MacParland (LSO #42383G)

Tel: 416.863.5567

Fax: 416.863.0871

Lawyers for FTI Consulting Canada Inc.

This is **Exhibit "C"** referred to in the Affidavit of Diego Marchese sworn
this 19th day of September, 2022

Maria Naimark

Maria Naimark

*Commissioner for Taking Affidavits
(or as may be)*

What Americans Don't Know About the Purdue Pharma Bankruptcy Hurts All of Us

BY **RYAN HAMPTON** OCTOBER 6, 2021 12:45 PM EDT

IDEAS Hampton is the author of *Unsettled: How the Purdue Pharma Bankruptcy Failed the Victims of the American Overdose Crisis*.

After two years as a representative of OxyContin's victims in the Purdue Pharma bankruptcy, I'm finally breaking my silence. I served as a co-chair of the Unsecured Creditors Committee inside the case, appointed by the DOJ. I was supposed to advocate for the people who were harmed by Purdue's blockbuster opioid painkiller. Instead, I learned how profoundly broken the bankruptcy system is, and why we never should have hoped it would render the justice we deserved.

Most people imagine court the way it's depicted in the movies. There's a judge and a jury. The single bang of a gavel settles everything. Good wins and justice is done. Bankruptcy court is nothing like this. The process can stretch over agonizing years while creditors fight over the settlement. In September 2019, Purdue Pharma—the maker of OxyContin and a company controlled by the infamous billionaire Sackler family—filed for bankruptcy to protect itself from 2,600 lawsuits for its role in fueling the U.S. overdose crisis through the misbranding and reckless marketing of their flagship product, OxyContin.

Prosecutors Recount 'Cold,

Calculated' Parkland Shooting as Gunman's Sentencing Trial Begins

Throughout the case, victims had to vie with the claims of major corporate interests—like insurance companies and hospitals—and even state governments. Victims weren't taking on Purdue. We were set up to fight every other party with a claim to Purdue's billions, most notably state attorneys general. We were the most deserving and the least protected in this fight. It should be no surprise that we got the short end of the stick, while billions of dollars went to state coffers already flush with unspent funds earmarked for addiction recovery services and programs. The Purdue bankruptcy was the only mechanism for victims to receive any sort of justice from a company that created so much death and destruction to actual people. The "prevention" services the states take claim for in the settlement is not the same as compensating for past harm and injuries to human beings destroyed by OxyContin.

Read more: *Nan Goldin: I've Turned My Opioid Addiction Into Activism*



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BY WELLNESSGUIDE101.COM

The bankruptcy was not a trial. It was not just, nor was it a public hearing of the facts of Purdue's crimes. It was a series of meetings with teams of highly

skilled lawyers, their clients, and Judge Robert Drain of White Plains, New York. The 130,000 victims with claims against the company were at a disadvantage from the very beginning. Many of us hoped to be first in the settlement—as the people actually harmed by OxyContin. Instead, we were last. We got \$750 million (only 7.5% of the total settlement), which is a fraction of what we deserved to compensate for years of illness, family loss, and death. Assessed at a sliding scale, victims will receive an average of \$5,000 per family. That amount wouldn't ever cover the costs of addiction treatment, funerals, or meaningful medical care. It is an insulting figure, especially to the people who lost their loved ones to overdoses.

Read more: *The Opioid Diaries*

To add insult to injury, we were also told that the Sacklers would walk away practically scot-free and unscathed from the case. Every state attorney general knew from the beginning that the Sackler family was seeking a third-party release, freeing them of any civil liability moving forward for their role in the overdose crisis. They would never face another civil suit or be held to any shred of meaningful accountability related to opioids. The third-party releases were pre-negotiated with a majority of government creditors as a part of the Sackler's terms before Purdue even entered bankruptcy court. In July of 2021, the outspoken attorneys general of New York and Massachusetts signed onto the deal, leaving no room for any other options.

While victims were forced to negotiate for every dollar we were owed, it was with this knowledge that we were set up for an unfair resolution to the case. Even after Judge Drain issued his ruling on September 1, some state attorneys general are now appealing the decision, saying that the Sacklers' third-party releases were unfair. At this point, these appeals feel purely symbolic. Every party in the bankruptcy knew these releases were part of the settlement from day one, dating over two years ago. Since the releases require the Sackler family to fund a substantial contribution of \$4.5 billion to the settlement, without their contribution, and if the appeals are successful, the victims' miniscule settlement goes from \$750 million to \$0 overnight. The terms that were set forth between the majority of states and the Sacklers before Purdue

filed for Chapter 11 eliminated any possibility of justice for those harmed by Purdue and the Sacklers.

Read more: *Why Drug Company Executives Haven't Really Seen Justice for Their Role in the Opioid Crisis*

All of these deals and deliberations happened behind closed doors. If those of us who witnessed this gross miscarriage of justice did not speak up, the bankruptcy would settle in silence. This system is broken. It is sick. And it must be changed. Currently, there is some legislation, including the the Nondebtor Release Prohibition Act of 2021, sponsored by Sens. Elizabeth Warren, Dick Durbin, and Richard Blumenthal, as well as Reps. Jerry Nadler, Carolyn Maloney, and David Cicilline addressing bankruptcy reform—but it does not specifically addresses the extraordinary direct harm that victims experience in bankruptcy venues by placing victims first. Sadly, government interests come before victims. That's wrong. It's counter to the ethos of the United States, which is supposed to protect the individual from being taken advantage of by the government and big corporations. Victims should come first. Instead, we're last—when, without our suffering, our deaths, and our outrage, none of these other parties would even have a seat at the table.

It is too late to make things right for Purdue's victims. However, we can begin reforming the bankruptcy system before the next mass tort bankruptcy of this type, where actual people have suffered irreparable harm. The ripple effect of the Purdue bankruptcy will have a significant impact for many other similar cases if rapid changes are not addressed. We can make individual claims a priority and acknowledge that our suffering is more important than a billion-dollar company's quarterly returns. We can make sure that bankruptcy laws are accountable to the people, not the lawyers who do business in their courtrooms—and not offer third-party releases as a sure bet for families like the Sacklers. And we can prevent the dehumanizing tragedy of Purdue Pharma from ever happening in this country again. Without this reform, we will not have justice—the justice we deserve, as survivors of corporate greed.

TIME Ideas hosts the world's leading voices, providing commentary on events in news, society, and culture. We welcome outside contributions. Opinions expressed do not necessarily reflect the views of TIME editors.

CONTACT US AT LETTERS@TIME.COM.

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Purdue Pharma OxyContin *Photographer: George Frey/Bloomberg*
Wealth

Sacklers to Exit From Complex Purdue Bankruptcy With Billions

The settlement caps years of political pressure and public outcry over the blockbuster drug OxyContin.

By Jeremy Hill, Sophie Alexander, Jef Feeley, and Riley Griffin

September 1, 2021 at 4:43 PM EDT *Updated on September 2, 2021 at 8:56 AM EDT*

The Sackler family made billions of dollars on Purdue Pharma LP's blockbuster painkiller OxyContin before their name was tarnished by a staggering public-health crisis in the U.S. Now they're quitting the drug business as part of the company's bankruptcy settlement, which will allow them to largely preserve – and potentially grow – the bulk of their fortune, an estimated \$11 billion.

On Wednesday, U.S. Bankruptcy Judge Robert Drain approved Purdue's plan to resolve thousands of opioid lawsuits that drove it to insolvency.

As part of the settlement, the Sacklers have agreed to contribute about \$4.5 billion, sell their pharmaceutical holdings and forfeit their equity in Purdue. (The Sacklers themselves are not the subject of the bankruptcy proceedings involving Purdue Pharma, but some members of the family are

named alongside the company in the civil lawsuits.) In exchange, they will receive lifetime immunity from civil liability over their role in the opioid crisis.

Read More: Purdue Pharma Seeks Bankruptcy to Short-Circuit Opioid Suits

The arm of the Justice Department that oversees bankruptcy court has staunchly opposed the deal, setting the stage for an appeal, which Drain's ruling would have to overcome in order to become final. Matthew Gold of law firm Kleinberg Kaplan, speaking on behalf of some states still opposing the plan, said in court that the deal has "fatal flaws" that could see it overturned on appeal. Gold filed notices of appeal on behalf of the state of Washington and the District of Columbia shortly after Drain concluded his ruling. Drain has said that an appeal would be costly and would hurt communities in need of opioid relief by diverting money to legal fees rather than policing and treatment budgets.

"One cannot put a price on a human life or an injury such as opioid addiction. And yet, that's what courts do with respect to personal injuries," Drain said while addressing objections to the plan. "The amount that courts reach is rarely, in terms of dollars, sufficient compensation. That is particularly the case where the wrongdoer is insolvent."

The deal caps years of political pressure and public outcry over OxyContin, which was first approved by the Food and Drug Administration in 1995. Almost 250,000 people in the U.S. died from opioid overdoses from 1999 to 2019, according to the Centers for Disease Control and Prevention. Over that same period, prescription opioid-related deaths more than quadrupled. Critics including the U.S. Department of Justice accused Purdue of corporate greed saying it pushed doctors to overprescribe opioids; the company pleaded guilty to three felony charges in 2020.

Contentious Trial

The multiweek trial held over Zoom offered a rare moment of visibility from the family, which largely stayed out of public view in recent years. Four members testified by video conference, at times apologizing and defending their actions.

"Our family cares deeply that OxyContin was part of the opioid crisis, but it was unintentional," said David Sackler, the grandson of late Purdue co-owner Raymond Sackler. "We don't believe our conduct was illegal in any way, and we want to help."



David Sackler testifies via video to a House Oversight Committee hearing on Dec. 17, 2020. *Source: House Television/AP*

Attorneys general for nine states and Washington, D.C., fought the deal, with a handful alleging in court papers that it allows Purdue and the Sacklers to avoid accountability for the role they “played in creating and exacerbating” the opioid epidemic. Almost every U.S. state agreed to support the deal by the time the trial began, and voting tallies -- a standard part of bankruptcy procedure -- show that more than 95% of Purdue's creditors voted in favor of the plan.

“This plan is most assuredly not perfect,” Marshall Huebner, a lawyer for Purdue, said in court. But the alternatives – a “maelstrom of years of litigation” and a “fire tornado” of fighting among creditors – would be far worse, he argued.

Connecticut Attorney General William Tong, a Democrat who opposed the terms protecting the Sacklers from future lawsuits, said the family will continue to accumulate and build on their dynastic wealth.

“They don’t have to sell any cars, any boats, any houses, any art,” said Tong in a phone interview. “They’re going to be able to fund this from their average investment returns.”

“Not only is that outrageous, that’s unjust,” he said.

After the plan was approved, members of the family descended from the late Mortimer Sackler said that while they “dispute the allegations that have been made about our family, we have embraced this path in order to help combat a serious and complex public health crisis.”

In a separate statement, the family of the late Raymond Sackler said the “resolution is an important step toward providing substantial resources for people and communities in need, and it is our hope these funds will help achieve that goal.”

A representative for Jillian Sackler, widow of Arthur Sackler, made clear that neither Arthur, nor his heirs profited from OxyContin, and that they’re not named in any of the lawsuits brought against Purdue or members of the Sackler family.

Sackler Fortune

The Sacklers were once considered a remarkable example of modern American capitalism, rising from humble Brooklyn roots to combine the fields of advertising and drug development. They amassed one of the world’s largest family fortunes and became titans of global philanthropy, with their name emblazoned on museums in New York and Paris as well as university buildings at Oxford and Harvard.

The Sackler Family Business

The Sackler family is relinquishing ownership of Purdue Pharma, liquidating their international pharmaceutical holdings, and paying \$4.325 billion as part of Purdue’s bankruptcy settlement

Source: Bloomberg reporting

Photos: Taco van der Eb/Hollandse Hoogte/Redux, Alan Davidson/Shutterstock, David M. Benett/Getty Images (2), Sylvain Gaboury/Patrick McMullan/Getty Images, Purdue Pharma, Bill Cunningham/The New York Times/Redux, Ronda Churchill/Bloomberg

Over time, they steered profits from the pharmaceutical business into a wide array of ventures. From 2008 to 2017, the family shifted \$10.8 billion of cash out of Purdue, though close to half of that went to taxes, according to court documents.

[Read More: How the Sacklers Shifted \\$10.8 Billion of Their Opioid Fortune](#)

As part of the bankruptcy deal, the Sacklers will relinquish their equity in Purdue; as of 2019, there were no family members left on the board or in management positions. They will also contribute \$4.325 billion in cash and forfeit control of family foundations worth \$175 million.

The proposed payments will be spread out between now and 2030, reducing their immediate impact. One expert witness engaged by the State of Washington estimated in a report submitted to the court that the Sackler fortune could increase to \$14.6 billion by the time the last installment has been paid.

When asked in court if his family might ultimately come out of the deal with more money than it had going in, David Sackler pushed back.

“I don’t think anybody can say that with any certainty,” Sackler said. “As you know, markets go up and down.”

In order to fund the bulk of the cash payments – and as part of the deal to exit the industry – the Sacklers will agree to sell their international pharmaceutical holdings within seven years. That sale could generate something like \$3 billion after taxes, according to asset statements provided to the court. The remainder of the settlement will come out of the \$8.7 billion in assets that the Sacklers still control outside the drug industry.

[Read More: Many Sacklers, Many Trusts: Why Purdue Pharma Wants a Settlement](#)

The Sackler family will separately pay \$225 million to resolve civil allegations brought by the Justice Department over OxyContin marketing and sales tactics.

The multi-generational fortune, split between descendants of brothers Raymond and Mortimer Sackler, is managed by at least four family offices and spans more than a hundred trusts and a web of holding companies, partnerships, legal jurisdictions and strategies. Their assets include billions invested with private equity managers and hedge funds and hundreds of millions in real estate. They also own a small oil & gas company worth an estimated \$313 million.

Dissolving a Family Business

The Sacklers will give up billions of dollars worth of assets in the Purdue Pharma bankruptcy settlement, but will still control a huge fortune

Source: Bloomberg reporting

Prolific art collectors, the Sacklers own hundreds of millions of dollars of paintings, jewelry and other collectibles. The art collection alone of Theresa Sackler, Mortimer's wife, is worth more than \$50 million, according to court reports, while Richard Sackler's collection is estimated at about \$26 million. Another \$100 million worth of art is owned by the family's trusts.

Future of the Opioid Epidemic

Meanwhile, the opioid crisis has been felt across the U.S., and its effects have been exacerbated by the coronavirus pandemic. In 2020, drug overdose deaths in the U.S. hit an all-time high of more than 93,000, according to provisional data from the CDC, with a 30% surge over the course of the year. Much of the spike has been driven by a rapid increase in deaths involving illicit synthetic opioids, such as fentanyl.

[Read More: Opioids Rip Through U.S. Workforce, With Deaths at Record Level](#)

“Things have never been worse: The numbers don't lie,” said Caleb Alexander, an epidemiologist at Johns Hopkins Bloomberg School of Public Health in Baltimore, and founding director of its Center for Drug Safety and Effectiveness. “The settlement will mark the close of one chapter, but there are many more to be written.”

Alexander, who has provided expert testimony for plaintiffs in opioid-focused litigation, said that cities and counties are currently under enormous strain. Of the 50 states, 47 saw drug overdoses increase in 2020. In recent years, the increase in synthetic opioid-related overdose deaths has taken a greater toll on Black and Hispanic Americans and American Indian populations.

However, prescription opioids are still some of the most effective analgesics available. “Unless someone develops a better product, the alternative is excruciating pain,” Judge Drain said of OxyContin in 2019. Alexander acknowledged that while they can be extremely harmful, opioids can be hugely valuable: “Like a hammer or a razor blade, it’s about how it’s applied.”

The mounting rate of overdose deaths is posing a significant challenge around the country, said Roger Crystal, chief executive officer of Opiant Pharmaceuticals Inc. of Santa Monica, CA, and inventor of Narcan, a nasal spray used in emergencies to treat opioid overdoses.

“Communities nationwide will be well served if the money from these settlements is used to fund a significant public health response,” he said.

[Read More: Purdue Caused \\$2.15 Trillion in U.S. Economic Damage, States Say](#)

Les Burris, an Orlando, Florida, resident who filed a claim for \$4.2 million in the bankruptcy case, lost his 50-year-old wife, Julia, to an opioid overdose. He said the Sackler family is trying to buy its way out of being held responsible for the damage OxyContin has done.

“It’s absolutely terrible,” Burris said of the settlement. “That’s not holding them accountable.”

Future of Purdue

Purdue is one of several drug companies that have faced litigation over its involvement in the opioid epidemic, but it is the first to be effectively nationalized by bankruptcy proceedings. The settlement will dissolve Purdue Pharma, but the specter – its drugs, its pill-making machinery, its patents – will endure.

The assets will be transferred to a limited liability company called NewCo in court papers whose executives will be chosen by the state governments that sued Purdue. The new company’s goal will be to generate revenue that can be distributed to state and local governments, as well as trusts that focus on groups like Native American tribes, babies born with addictions and people claiming personal injuries tied to opioids.



Purdue Pharma headquarters in Stamford, Conn. *Photographer: Victor J. Blue/Bloomberg*

Purdue says this plan will put more than \$10 billion to work fighting opioid abuse. Nearly half of that figure is derived from planned public-health initiatives, namely the discounted distribution of anti-overdose drugs and opioid dependence treatments. This charity has an end date, though. The managers of the new Purdue are obligated sell the company by December 2024 to maximize the amount of money that could be distributed to address opioid woes.

OxyContin has been the most well known, and at times, most prescribed brand-name narcotic medication for treating pain severe enough to require around-the-clock management. From the time the product was introduced, Purdue has fended off generic competition through a robust patent strategy and near-constant litigation.

The drug's formula has also been tweaked along the way. In 2010, Purdue constructed a reformulated pill that couldn't be easily crushed and snorted, and would congeal into a jelly-like substance if water was added. These abuse-deterring safeguards allowed for new patents, and thus, a longer period of market exclusivity.

OxyContin generated \$2.3 billion in net sales in 2010. "By 2018, that number had dropped over half to \$820 million and by 2020 had further dropped to \$517 million," Purdue executives said in filings. OxyContin sales are expected to continue to drop in 2025 and in 2027 when patent protections expire and the product likely serious competition from generic entrants.

Sackler Family Reputation

For the better part of their careers, the Sacklers's connection to the source of their wealth remained little known. That was by design: When Mortimer and Raymond Sackler bought the original Purdue Frederick for \$50,000 in 1952, they decided to keep the name, according to "Empire of Pain," Patrick Radden Keefe's biography of the family.

Over the decades, through donations and naming rights with the world's most prestigious museums and universities, the family made its public name as philanthropists instead, rather than the manufacturers of addicting and overprescribed drugs.



An employee removes letters from signage featuring the Sackler family name at a Tufts University building in Boston, Mass. in 2019. *Photographer: David L. Ryan/The Boston Globe/Getty Images*

But the power of their charitable contributions has waned. The Metropolitan Museum of Art, the Louvre and other institutions have stripped the name in recent years or distanced themselves from the family. The name remains on the Sackler Library at Oxford and the Raymond and Beverly Sackler Institute for Biological, Physical and Engineering Sciences at Yale. In 2019, Yale decided to stop accepting donations from the family.

From John Rockefeller to Andrew Carnegie, wealthy Americans have long used philanthropy to patch over dubious business records and build a more flattering legacy, said Maribel Morey, a historian of philanthropy and executive director at the Miami Institute for the Social Sciences. The Sacklers have changed the conversation, Morey said, making it harder for institutions to justify accepting their money or putting their name on buildings.

In the case of Carnegie, U.S. senators were put off by his labor practices, but there wasn't as widespread a public rebuke, and many libraries and universities still bear his name. "I'm seeing a much more pervasive pushback to the Sacklers," she said.

"A family that has destroyed so many lives should not be able to put its name on our trusted institutions," Massachusetts Attorney General Maura Healey, a Democrat, said in an emailed

statement. “You can’t buy your way to redemption or a good name, no matter how much money you have.”

Morey said that the Sacklers might eventually be welcomed back by universities and nonprofits, which will put up the Sackler name in exchange for big gifts. In an effort to prevent that, a late addition to the bankruptcy settlement bans the family’s naming rights for almost a decade. *—With Tom Maloney and Dawn McCarty*

(Updates fourth paragraph with appeals filed by Washington and D.C.

An earlier version corrected the second paragraph in third section to clarify some proceeds went to taxes.)

Purdue Pharma Pleads Guilty to Criminal Charges for Opioid Sales

The Justice Department announced an \$8 billion settlement with the company. Members of the Sackler family will pay \$225 million in civil penalties but criminal investigations continue.

By Jan Hoffman and Katie Benner

Published Oct. 21, 2020 Updated Sept. 1, 2021

[Purdue Pharma](#), the maker of [OxyContin](#), has agreed to plead guilty to criminal charges related to its marketing of the addictive painkiller, and faces penalties of roughly \$8.3 billion, the Justice Department announced on Wednesday. The settlement could pave the way for a resolution of thousands of lawsuits brought against the company for its role in a public health crisis that has [killed more than 450,000 Americans since 1999](#).

The company's owners, members of the wealthy [Sackler](#) family, have agreed to pay \$225 million in civil penalties. Prosecutors said the agreement did not preclude the filing of criminal charges against Purdue executives or individual [Sacklers](#).

The federal [settlement](#) does not end all of the extensive litigation against Purdue, but it does represent a significant advance in the long legal march by states, tribes, cities and counties to hold the most prominent opioid maker accountable.

In a statement issued after the announcement of the deal, Steve Miller, chairman of the company board, said: "Purdue deeply regrets and accepts responsibility for the misconduct detailed by the Department of Justice in the agreed statement of facts."

Members of the Sackler family said in a statement that they "acted ethically and lawfully." Issued on behalf of members who had served on the company's board, the family statement added: "The board relied on repeated and consistent assurances from Purdue's management team that the company was meeting all legal requirements."

OxyContin, which came on the market in the mid-90s, is seen as an early, ferocious driver of the [opioid](#) epidemic and Purdue is regarded as the architect of muscular, misleading drug marketing. But it is unlikely the company will pay anything close to the \$8.3 billion negotiated in the settlement deal. That is because Purdue sought bankruptcy court protection amid the onslaught of lawsuits, and so the federal government will now have to take its place in a long line of creditors. Typically, creditors end up collecting pennies on the dollar in bankruptcy proceedings.

The settlement does give the Justice Department and the Trump administration a high-profile achievement that the president can tout on the campaign trail. Mr. Trump won the 2016 election in part because he vowed to combat an opioid addiction crisis that had gripped large swaths of the country and continues to be an issue in important swing states.

But state attorneys general from Massachusetts, New York and North Carolina, among others, have raised questions about just how much of an effect the settlement will have with respect to holding the Sackler family to account. Purdue was keen to settle its federal legal troubles under a Trump administration, which it sensed would cut a better deal than a new Biden administration. The \$225 million that the Sacklers would pay as part of their civil settlements is small relative to the family's net worth, estimated to be [at least \\$13 billion](#), much of it generated from sales of OxyContin.

Joe Rice, a negotiator for local governments that are suing Purdue, said, "Purdue is doing everything they can to get this deal done in this administration. It's advantageous to both sides."

This federal case against Purdue is distinct from thousands of opioid-related lawsuits against other drug manufacturers, as well as distributors and pharmacy chains, still pending in federal and state courts.

Purdue has long demanded that the federal charges against it be resolved before it would agree to a larger settlement with cities, tribes, states and individuals, who claim that its relentless marketing of OxyContin directly contributed to a crisis of addiction and overdoses, resulting in towering costs in health care, law enforcement and unemployment. Lawyers close to negotiations expect that the final settlement may emerge early next year.

In the federal settlement, the company agreed to plead guilty to felony charges of defrauding federal health agencies and violating [anti-kickback laws](#). The penalties include \$3.54 billion in criminal fines and \$2 billion in criminal forfeiture of profits, the largest penalties ever levied against a pharmaceutical manufacturer. The company pleaded guilty to marketing opioids to more than 100 doctors that it suspected of writing illegal prescriptions and lying about this to the federal Drug Enforcement Administration.

Purdue also pleaded guilty to paying illegal kickbacks to doctors and to an electronic health records company, Practice Fusion. In January Practice Fusion paid \$145 million in fines for [taking kickbacks](#) from drug manufacturers in exchange for embedding pop-up alerts to physicians, intended to boost opioid prescriptions.

The Purdue settlement also includes \$2.8 billion in civil penalties, related to allegations that the company violated the False Claims Act by using aggressive marketing tactics to convince doctors to unnecessarily prescribe opioids — frivolous prescriptions that experts say helped

fuel a drug addiction crisis that has ravaged America for decades. Those prescriptions were often paid for by federal health care programs like Medicare and Medicaid.

Mr. Miller, the Purdue chairman, said that the resolution of the Justice Department's charges was an essential step in the company's bankruptcy restructuring. "Purdue today is a very different company," he added. "We have made significant changes to our leadership, operations, governance and oversight."

This is the first time since 2007 that Purdue has pleaded guilty to [federal criminal charges](#) for misleading doctors, patients and the government about its drug. At the time, the company paid \$600 million in fines.

To resolve thousands of local lawsuits, Purdue has proposed a global settlement that it values at about \$10 billion. That figure includes future profits from drugs still in development as well as a \$3 billion contribution from the Sacklers, which is separate from the \$225 million the family has agreed to pay the federal government.

A year ago, under the weight of opioid litigation, Purdue filed for bankruptcy, and it is expected to emerge at some point as a new company. At least two other opioid manufacturers, [Insys Therapeutics](#) and [Mallinckrodt](#), have also sought bankruptcy protection because of litigation.

Judge Robert D. Drain, who is overseeing the Purdue bankruptcy case in White Plains, N.Y., will have to approve the terms of the federal settlement and will review the billions of dollars in federal penalties alongside a long line of unsecured creditors. When the bankruptcy is finalized, Purdue said in the federal agreement, it would post documents related to the prosecutions on a public website.

But one bucket of sanctions, the \$2 billion in criminal forfeiture of profits, is more likely to be paid in full. The Justice Department said on Wednesday that it would require that Purdue directly pay the U.S. Treasury just \$225 million, but would earmark the remaining \$1.775 billion for municipalities, states and tribes, on condition that they allocate the money to abate local opioid crises.

A second condition of the settlement has prompted an outcry from some two dozen state attorneys general: the ownership of Purdue, after it emerges from bankruptcy.

Purdue has proposed that the company be run as a "public benefit corporation," with proceeds from continuing limited sales of OxyContin and several overdose-reversing medications under development to go toward opioid abatement. The Justice Department endorses that model.

But in a [forceful letter](#) addressed to Attorney General William P. Barr earlier this month, the state attorneys general decried the public trust model. Governments should not be in the opioid business, they said. Instead, they argued that Purdue should be run privately, with government oversight.

Another objection to the new settlement centers on the resolution of civil claims against individual Sacklers, raised by [private families who are suing](#). [A forensic audit last year](#) by Purdue found that the Sacklers directed at least \$10.7 billion in the company's proceeds to family-controlled trusts and holding companies, even as Purdue was facing legal scrutiny. Much of those proceeds, the Sacklers have said, went toward tax payments.

In a letter to Mr. Barr, a coalition of relatives of opioid victims said the agreement was premature and too little.

Massachusetts, for example, has scheduled depositions against some Sacklers in November, during which more information may come to light.

"The D.O.J. failed," said Maura Healey, the Massachusetts attorney general. "Justice in this case requires exposing the truth and holding the perpetrators accountable, not rushing a settlement to beat an election. I am not done with Purdue and the Sacklers, and I will never sell out the families who have been calling for justice for so long."

During a news briefing on the federal settlement, Deputy Attorney General Jeffrey A. Rosen pushed back on critics who said that the deal was not tough enough on Purdue and the Sackler family. He said that the department had taken "very substantial" and "very significant" punitive action against Purdue, which pleaded guilty to three criminal charges, and he noted that the family would turn over ownership of the company.

A contentious issue with respect to the Sacklers is that the [family itself is not seeking bankruptcy protection](#) and has been seeking release from litigation as a condition of settling the Purdue claims.

Mr. Rice, the negotiator for thousands of local governments, favors the broad contours of a public benefit trust. "You have to figure out what you do with the limited need there may be for some opioids. You don't maximize the value of the Purdue asset if you destroy the product totally," he said. "And you want to make sure that the people who abused the right to sell narcotics pay for what they did. The Sacklers lose their name, their company and substantially more."

Jan Hoffman writes about behavioral health and health law. Her wide-ranging subjects include opioids, vaping, tribes and adolescents. [@JanHoffmanNYT](#)

Katie Benner covers the Justice Department. She was part of a team that won a Pulitzer Prize in 2018 for public service for reporting on workplace sexual harassment issues. [@ktbenner](#)

A version of this article appears in print on , Section A, Page 1 of the New York edition with the headline: Purdue Admits That It Pushed Deadly Opioid

This is **Exhibit “D”** referred to in the Affidavit of Diego Marchese sworn
this 19th day of September, 2022

Maria Naimark

Maria Naimark

*Commissioner for Taking Affidavits
(or as may be)*



488 Wellington Street West
Suite 300-302
Toronto, ON M5V 1E3
CANADA
www.TyrLLP.com

Jason Wadden
+ 1 416 627 9815
jwadden@tyrllp.com

September 19, 2022

DELIVERED VIA EMAIL

CONFIDENTIAL

Emily Sternberg
General Counsel & Corporate Secretary
Heart and Stroke Foundation of Canada
2300 Yonge Street, Suite 1200, Box 2414
Toronto, ON M4P 1E4
Email: emily.sternberg@heartandstroke.ca

Dear Ms Sternberg:

RE: Proposal to Act as Representative Counsel to FTH Stakeholders

Tyr LLP is pleased to submit the following in support of the motion by the Heart & Stroke Foundation of Canada (the “**HSF**”) seeking to appoint Tyr LLP as representative counsel on behalf of the Future Tobacco Harm Stakeholders (the “**FTH Stakeholders**”) in connection with the ongoing CCAA proceedings (“**CCAA Proceedings**”) of JTI-Macdonald, Imperial Tobacco Canada Limited and Imperial Tobacco Company Limited, and Rothmans, Benson & Hedges Inc. (together, the “**Companies**”) (the “**Mandate**”).

1. Introduction to Tyr LLP

Tyr LLP is a litigation boutique which opened on June 1, 2019. Tyr LLP was founded by three former partners of Davies Ward Phillips & Vineberg LLP (“**Davies**”), a leading full-service firm in Toronto. On January 1, 2022, the writer joined Tyr LLP after practicing at Davies and then 18 years at Goodmans LLP, another leading full-service firm in Toronto, in which he focussed on corporate/commercial and insolvency litigation matters.

Each of Tyr LLP’s partners are highly regarded in the legal community for their advocacy as well as their spirit of cooperation and civility, with several senior partners at the firm being recognized and ranked by Lexpert, Benchmark and Best Lawyers, including the writer of this letter. The partners of Tyr LLP have litigated some of Canada’s most complex business law disputes, including before the Supreme Court of Canada, and have been involved in numerous complex insolvency matters. A list of representative cases highlighting the experience of Tyr LLP’s lawyers is attached as **Appendix A**.

2. The Proposed Tyr LLP Team

It is currently contemplated that the writer (Jason Wadden) will be the senior partner who will have overall responsibility for the Mandate, with further assistance being provided by other partners, associates and law clerks as appropriate.

We wish to note the following regarding Tyr LLP's qualifications for this Mandate.

First, Tyr LLP's proposed team, led by the writer, has extensive experience in representing the interests of parties in insolvency proceedings. This has included acting for court-appointed monitors and receivers, debtors, and other creditors. Accordingly, the Tyr LLP team understands the unique role and increased responsibility of carrying out a court-appointed mandate.

Second, Tyr LLP's lawyers have experience in class proceedings for both plaintiffs and defendants. This experience, coupled with its extensive other experience in insolvency and corporate/commercial, gives the Tyr LLP team exactly the right experience and skill set to represent the FTH Stakeholders.

Third, Tyr LLP's lawyers have a history of taking on matters to aid the Court and litigants who need assistance. Previously, the writer was appointed as *amicus curie* to provide an opinion in an insolvency matter where there was a significant group of unrepresented individuals. In his reasons for decision, the Honourable Justice C. Campbell noted as follows:

The Court is indebted to Mr. Jason Wadden and his firm Goodmans LLP for their willingness to assist and for careful and thorough advice provided to the Court. Mr. Wadden's assistance is in the finest tradition of the practising bar.

New Solutions Financial Corporation v. 952339 Ontario Limited, (2007) 29 CBR (5th) 222 (SCJ [Commercial List]) at [para. 4.](#)

3. No Potential Conflicts

The Mandate involves representing the interests of the FTH Stakeholders, being those individuals who will buy and use tobacco products (or be exposed to the use of tobacco products), and whose purchases post the initial filing will directly fund any Plan that is approved by the Court. Tyr LLP is not aware of any conflicts between it and the other stakeholders that would preclude it from acting on this matter or that would impact our representation of the FTH Stakeholders.

We understand that this letter will be attached to an Affidavit submitted by HSF in support of its Motion to appoint Tyr LLP as representative counsel for the FTH Stakeholders in the CCAA Proceedings.

We would be pleased to discuss any of the foregoing with you at your convenience.

Yours very truly,

A handwritten signature in blue ink, consisting of a large loop followed by several strokes, ending in a horizontal line.

Jason Wadden

Appendix A

Representative Cases

Tyr LLP's lawyers apply their trial expertise and strategic advice to assist clients across a diverse range of areas. The lawyers at Tyr LLP have decades of experience pursuing and defending complex commercial disputes, including for some of the world's most well-known public corporations and institutions.

The following describes some of the cases our lawyers are or have been involved with:

- The court-appointed Monitor of Nortel Networks in its cross-border litigation concerning multi-billion claims and various pension-related matters
- The liquidator in the largest liquidation of a credit union in Ontario and the resulting litigation against the former officers, directors, auditors and others
- Represented a financial services regulator in its regulatory enforcement of a large financial services company and resulting fraud and civil litigation claims against former management, directors, professionals and others
- The trustee in bankruptcy and investor protection fund in the bankruptcy of a securities firm and resulting litigation against the former officers and others
- Represented bondholders in complex litigation within CCAA proceedings in mining industry
- Represented companies in contested plans of arrangement proceedings dealing with proposed restructuring of companies
- Representing shareholder group in dispute with company founder who engaged in fraudulent and oppressive conduct
- Representing purchasers and vendors in disputes arising from the sale of businesses, including disputes regarding misrepresentations and earn-out agreements
- Representing Directors and others in regulatory and civil matters arising from the collapse of a network of companies
- Representing a company in its efforts to recover damages for fraud from a former partner and officer, including cross-border asset freezing and recovery orders

- Representing a company and certain of its officers and directors in defending a proposed securities class action brought pursuant to Part XX.III.1 of the *Securities Act* (Ontario).
- Representing an exempt market fund engaged in a number of solar power generation projects and certain former officers and directors in a proceeding before the Ontario Securities Commission and an action in Superior Court of Justice (Ontario).
- Representing a mining company in connection with large commercial arbitrations and various commercial disputes, including a significant arbitration involving BIM's Mary River Mine on Baffin Island under the International Chamber of Commerce Rules.
- Representing a major renewable energy company, defending a \$170 million claim filed on the Commercial List.
- Representing a leading Canadian franchisor in connection with various commercial and franchise disputes.
- Representing a company in defence of a proposed class action seeking over \$100 million in damages in connection with a privacy breach perpetrated by criminal hackers.
- Representing producer defending a proposed class action seeking over \$500 million in damages from various producers for alleged misrepresentations about its products.
- Representing certain former directors of large retailer in connection with an insurance coverage dispute filed on the Commercial List.
- Representing music provider in respect of various civil proceedings, including in connection with a claim of alleged inducement to breach a contract and misuse of confidential information filed on the Commercial List.
- Representing institutional landlord in connection with various commercial disputes, including a series of complex private arbitrations.
- Represented large auto manufacturer defending claims asserted against it in the Ontario Superior Court of Justice for approximately \$250 million by multiple Buick GMC dealers.
- Represented executive and company defending a series of claims for misuse of

confidential information against them that were dismissed following a lengthy trial on the Commercial List.

- Represented a variety of athletes and international federations in arbitration hearings before the Court of Arbitration for Sport in Lausanne, Switzerland, before Sports Resolutions in the United Kingdom and before the Sport Dispute Resolution Centre of Canada.
- Represented large North American auto manufacturer in a class action brought by former dealers who had been discontinued in the wake of the financial crisis in 2008. The plaintiffs sought approximately \$1 billion in damages. The case resulted in a lengthy trial and is one of very few class actions in Canada to proceed to a contested hearing. The claims against General Motors were dismissed.
- Represented large Canadian telecommunications company in a successful appeal to the Supreme Court of Canada in a landmark commercial case involving the proposed \$51.7 billion privatization deal, which has become the leading case in Canada on Directors' and Officers' duties.
- Acted for the Special Committee of a company at trial successfully defending claims of unlawful proxy solicitation in a hostile bid for Patheon.
- Represented company in the first hostile merger proposal in the labour-sponsored investment fund sector.
- Represented founder of pharmaceutical company in defending enforcement proceedings before the Ontario Securities Commission arising from an "earnings warning".

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., IMPERIAL TOBACCO CANADA LIMITED AND IMPERIAL TOBACCO COMPANY LIMITED, AND ROTHMANS, BENSON & HEDGES INC.

ONTARIO

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

Proceeding commenced at TORONTO

**AFFIDAVIT OF DIEGO MARCHESE
(SWORN SEPTEMBER 19, 2022)**

Tyr LLP

488 Wellington Street West
Suite 300-302
Toronto, ON M5V 1E3
Fax: 416-987-2370

Jason Wadden (LSO# 46757M)

Tel: 416.627.9815
Email: jwadden@tyrllp.com

Adam Soliman (LSO# 76741R)

Tel: 416.917.1369
Email: asoliman@tyrllp.com

Maria Naimark (LSO# 83470H)

Tel: 437.225.5831
Email: mnaimark@tyrllp.com

Lawyers for Heart & Stroke Foundation of Canada

TAB 3

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

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

B E T W E E N:

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

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

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

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

Applicants

**AFFIDAVIT OF SANDY BALLOTT
 (SWORN FEBRUARY 28, 2023)**

I, Sandy Ballott, of the City of Brampton, in the Regional Municipality of Peel,
 MAKE OATH AND SAY:

1. I am a law clerk employed by the law firm of Tyr LLP ("**Tyr**"), the lawyers for the Heart and Stroke Foundation of Canada ("**HSF**"). I work directly with James Bunting and Maria Naimark, lawyers at Tyr with carriage of this matter. As such, I have personal knowledge of the facts and matters in my Affidavit. Where I make statements in this Affidavit that are not within my personal knowledge, I have identified the source of the information and verily believe such information to be true.

2. I make this Affidavit in support of HSF's motion for an order appointing Tyr as representative counsel for the Future Tobacco Harm Stakeholders ("**FTH Stakeholders**"), as defined in the Affidavit of Diego Marchese, sworn September 19, 2022, on the terms set out in the proposed FTH Representation Order, and for no other or improper purpose.

3. I am advised by James Bunting, and verily believe it to be true that:

- (a) Following the service of HSF's initial Notice of Motion dated, September 19, 2022, seeking a representative order, certain parties raised alleged conflicts relating to Jason Wadden's involvement in this matter;
- (b) After discussion, these conflicts were resolved on December 19, 2022 privately amongst the concerned parties on the basis that Mr. Wadden would no longer have any involvement in this proceeding;
- (c) Mr. Bunting assumed carriage of the matter from Mr. Wadden and following resolution of the conflict, contacted counsel for the three Monitors on December 22, 2022 to discuss the pending motion. These discussions resulted in the scheduling of a Case Conference to seek the direction of the Court;
- (d) On February 14, 2023, the Court directed that leave should first be obtained permitting the representation motion to proceed and that the leave motion would be heard on April 14, 2023, for 3 hours, via Zoom.

4. The proposed Tyr team for the representative mandate is comprised of James Bunting and Maria Naimark.

5. Mr. Bunting has substantial commercial litigation and class action experience. He has also been involved, including as lead litigation counsel, in numerous CCAA proceedings. Prior to founding Tyr in June 2019, Mr. Bunting was a partner in the litigation group of Davies, Ward Phillips & Vineberg LLP where he practiced for over fifteen years. A copy of Mr. Bunting's biography is attached to my Affidavit as **Exhibit "A"**.

6. Ms. Naimark is an established and effective advocate. Prior to joining Tyr she practised at Sullivan & Cromwell LLP in New York. She is a graduate of Harvard Law School and a former clerk of the Ontario Court of Appeal. A copy of Ms. Naimark's biography is attached to my Affidavit as **Exhibit "B"**.

SWORN BEFORE ME by video conference by Sandy Ballott of the City of Brampton in the Regional Municipality of Peel, before me at the City of Toronto, in the Province of Ontario on February 28, 2023 in accordance with O. Reg 431/20, Administering Oath or Declaration Remotely.

Maria Naimark

Maria Naimark
Commissioner for Taking Affidavits
(or as may be)

Sandy Ballott

SANDY BALLOTT

THIS IS **EXHIBIT "A"** REFERRED TO IN THE AFFIDAVIT
OF SANDY BALLOTT SWORN FEBRUARY 28, 2023.

Maria Naimark

MARIA NAIMARK

*Commissioner for Taking Affidavits
(or as may be)*



James Bunting

Partner

Tel

+1 647 519 6607

Email

jbunting@tyrllp.com

Bar Admissions

Ontario, 2003

Expertise

Advertising
Arbitration & Mediation
Class Actions
Commercial Litigation
Dispute Resolution
Franchise Litigation
Privacy & Data Breach Litigation
Securities Litigation
Sports-Related Disputes

Jim Bunting is a founding partner of Tyr LLP. Known for his bold approach as a trial lawyer, Jim represents clients on their most challenging issues.

Jim has been lead trial counsel in a number of complex and landmark cases. He is a skilled advocate and regularly represents large international companies in complex litigation, including *Google*, *Freshii* and *Stingray*.

Jim is consistently named one of Canada's leading litigators by legal directories. His recognitions include being named in the Report on Business/Lexpert special edition Canada's Leading Litigation Lawyers, in Chambers Canada as an up-and-coming lawyer in Dispute Resolution, in Lexpert as a Rising Star: Leading Lawyer Under 40 and in Benchmark Canada as a Litigation Star in Class Actions, Commercial Litigation and Securities.

Jim believes deeply in giving back to the community. He was awarded the 2016 Lexpert Zenith Award for Diversity & Inclusion to recognize his pro bono work with global athletes. He is representing South African born 800 metre Olympic champion Caster Semenya (and before her Dutee Chand) in appeals seeking to strike down regulations that require certain women to lower their naturally occurring testosterone levels as a condition of participation in women's sport. He also served as Athlete Ombudsperson to the Canadian Olympic Committee during the Olympic Games in Rio, is a former volunteer counsellor and Chair of the Board of Camp Oochigeas and is currently a member of the board of the Jays Care Foundation.

James Bunting

Partner

Tel

+1 647 519 6607

Email

jbunting@tyrllp.com

Office

488 Wellington Street West

Suite 300-302

Toronto, Ontario

M5V 1E3

REPRESENTATIVE WORK

Commercial and Class Actions

Google

Represented Google in numerous civil proceedings including, in response to a landmark reference proceeding filed by the Office of the Privacy Commissioner seeking to confirm a "right to be forgotten" in Canada, defending a class action seeking \$80 million in damages and in the appeal of a precedent setting decision granting a worldwide injunction requiring Google to block certain search results from its search engine.

Robert Schad and Athena Automation Limited

Successfully acted for Robert Schad and his company Athena Automation Limited defending a series of claims for misuse of confidential information against them by Husky Injection Molding Systems Limited that were dismissed following a lengthy trial on the Commercial List.

Stingray Digital

Represent Stingray Group in numerous civil proceedings, including a \$50million claim against its franchisor in a fasttracked action.

Freshii Inc.

Represented Freshii in numerous disputes, including a number of private arbitrations.

Pattern Energy

Represented Pattern Energy in connection with a number of proceedings relating to wind power projects in Ontario, including obtaining an injunction preventing interference with the construction of a project and successfully defending a constitutional challenge to three of the largest wind energy projects undertaken in Ontario.

Rogers Communications Inc.

Acted for Rogers Communications Inc. in connection with a number of consumer class actions, including claims relating to alleged misrepresentations about long distance charges, a class action seeking damages of \$100 million alleging that certain cable services of Rogers were not available as advertised and a multibillion dollar class action proceedings across Canada to recover "system access fees" charged to consumers by wireless service providers in Canada in the period since 1987.

Represented Rogers in a number of other civil proceedings, including successfully defending Rogers in a precedent setting misleading advertising case brought by the Commissioner of Competition.

James Bunting

Partner

Tel

+1 647 519 6607

Email

jbunting@tyrllp.com

Office

488 Wellington Street West
Suite 300-302
Toronto, Ontario
M5V 1E3

REPRESENTATIVE WORK

Commercial and Class Actions (Cont)

InnVest Real Estate Investment Trust

Represented InnVest Real Estate Investment Trust in numerous disputes and also in connection with a reorganization to unwind their "stapled unit" trading structure through a plan of arrangement under the Canada Business Corporations Act and the Trustee Act (Ontario).

HudBay Minerals Inc.

Acted for Jaguar Financial Corporation, a shareholder of HudBay Minerals Inc., in its successful and precedent setting application to the Ontario Securities Commission to set aside a decision of the Listing Committee of the Toronto Stock Exchange and compel HudBay to obtain shareholder approval in respect of HudBay's proposed \$550million acquisition of Lundin Mining Corporation.

GrowthWorks Ltd.

Represented GrowthWorks Ltd. in connection with the merger of GrowthWorks Canadian Fund Ltd. with the VenGrowth group of funds. The transaction represented the first hostile merger proposal in the labour-sponsored investment fund sector. In connection with this transaction an application was brought by the Special Committee of VenGrowth before the OSC.

Patheon Inc.

Acted for the Special Committee of Patheon Inc. at trial successfully defending claims of unlawful proxy solicitation made by JLL Partners Inc. in connection with its hostile bid for Patheon. This is now one of the leading cases in Canada in the area of proxy solicitation.

Scion Capital

Scion Capital (Dr. Michael Bury) in connection with its opposition to the acquisition of Bolivar Gold Corporation by Gold Fields Limited.

Fido Solutions Inc.

Represented Fido Solutions Inc. in the Superior Court of Ontario and Ontario Court of Appeal successfully defending a \$160 million claim commenced against it by Unique Broadband Wireless Services, Inc. relating to an alleged breach of contract, breach of confidence and breach of fiduciary duty.

Brainhunter Inc.

Acted for Brainhunter Inc. and its subsidiaries in their filing for protection under to the *Companies' Creditors Arrangement Act* and the subsequent sale of the business through a court supervised process.

James Bunting

Partner

Tel

+1 647 519 6607

Email

jbunting@tyrllp.com

Office

488 Wellington Street West
Suite 300-302
Toronto, Ontario
M5V 1E3

REPRESENTATIVE WORK

Sports Litigation

World Anti-Doping Agency

Acting for the World Anti-Doping Agency in defence of a civil action filed in the Ontario Superior Court of Justice by three Russian cyclists who were denied entry to the 2016 Olympic Games in Rio de Janeiro.

Caster Semenya

Representing South African Olympic Champion Caster Semenya in international proceedings seeking to invalidate a regulation that requires certain women to lower their naturally occurring testosterone levels as a condition of participation in women's track and field.

Tyson Fury

Represented Tyson Fury, the former heavy-weight champion of the world, in defending doping allegations made against him by UK AntiDoping.

Dutee Chand

Successfully represented Dutee Chand, an Indian-born sprinter, in a landmark international sports ruling suspending the operation of the International Association Athletic Federation's Hyperandrogenism Regulation, which screens female athletes on the basis of their natural testosterone levels.

International Paralympic Committee (IPC)

Successfully represented the International Paralympic Committee (IPC) before the Court of Arbitration for Sport in upholding the decision of the IPC to exclude the Russian Paralympic Committee from the 2016 Paralympic Games in Rio.

Rogers Communications Inc.

Represented Rogers Sportsnet in an action for defamation brought by the former Commissioner of the Canadian Football League.

Represented Rogers Communications Inc. in opposing successfully an urgent injunction attempting to prevent Rogers from broadcasting any Major League Baseball game involving the Cleveland team. Subsequently represented Rogers in respect of the human rights complaint filed about the Cleveland team name and logo.

Canadian Women's National Soccer Team

Represent the members of the Canadian Women's National Soccer Team, including in their creation of the first Canadian Women's Player's Association as well as in a compensation dispute with the Canadian Soccer Association.

Johan Bruyneel

Represented Johan Bruyneel (the former team director of the US Postal and Discovery Teams) before the Court of Arbitration for Sport in an appeal from a decision of an American Arbitration Association award imposing a ten year ban on Mr. Bruyneel.

James Bunting

Partner

Tel

+1 647 519 6607

Email

jbunting@tyrllp.com

Office

488 Wellington Street West
Suite 300-302
Toronto, Ontario
M5V 1E3

REPRESENTATIVE WORK

Sports Litigation (Cont)

Professional Teams and Players

Represented professional league teams in contractual disputes and players in alleged anti-doping rule violations.

International and National Level Athletes

Represented numerous athletes before the Court of Arbitration for Sport, Sport Dispute Resolution Centre of Canada, and National and International Federations in successfully having doping related suspensions substantially reduced or eliminated.

Represented numerous athletes in contractual disputes with sponsors.

ABOUT

RECOGNITIONS

Chambers Canada: Canada's Leading Lawyers for Business—Dispute Resolution: Ontario—Up & Coming (2016)

Benchmark Canada: The Definitive Guide to Canada's Leading Litigation Firms & Attorneys—Class Action (Litigation Star), General Commercial (Litigation Star), Securities (Litigation Star)

Report on Business/Lexpert Special Edition Canada's Leading Litigation Lawyers
Lexpert Guide to the Leading US/Canada CrossBorder Litigation Lawyers in Canada—Corporate Commercial Litigation

The Canadian Legal Lexpert Directory—Litigation: Corporate Commercial, Securities

Lexpert Zenith Award—Diversity and Inclusion (2016)

Lexpert Rising Stars: Leading Lawyers Under 40

The Best Lawyers in Canada—Corporate and Commercial Litigation; Advertising and Marketing Law; Class Action Litigation; Securities Law

COMMUNITY INVOLVEMENT

Camp Oochigeas, Jays Care Foundation

BOARD MEMBERSHIPS

Jays Care Foundation

TEACHING ENGAGEMENTS

Jim has taught civil procedure as an adjunct professor at the University of Western Ontario. He is also a lecturer at ISDE Madrid in its Masters in Sports Law program.

EDUCATION

University of Western Ontario, LLB, 2002

University of Western Ontario, BA, 1999

THIS IS **EXHIBIT "B"** REFERRED TO IN THE AFFIDAVIT
OF SANDY BALLOTT SWORN FEBRUARY 28, 2023.

Maria Naimark

MARIA NAIMARK

*Commissioner for Taking Affidavits
(or as may be)*

Maria Naimark

Associate



Tel:
[+1 437 225 5831](tel:+14372255831)

Email:
mnaimark@tyrllp.com

Bar Admissions:
Ontario, 2021
New York, 2018

- Expertise:
- Arbitration (International & Domestic)
 - Appellate Litigation
 - Class Actions
 - Commercial Litigation
 - Complex public interest disputes
 - Consumer claims
 - Investigations & Regulatory Defence
 - Professional Negligence
 - Securities Litigation
 - Shareholder Remedies

Maria has experience advising clients across a range of civil disputes, with a particular focus on commercial matters She prides herself on creative and effective solutions to all facets of a client’s issues.

Maria Naimark is an established civil litigator. Prior to joining Tyr, Maria practiced as a corporate litigator at *Sullivan & Cromwell LLP* in New York.

In addition to the corporate commercial focus of her practice, Maria’s diverse experience includes a legal internship at the United Nations, the representation of incarcerated people at disciplinary and appellate hearings while in law school, and participation in the editing of *Law of Asylum in the United States*. Throughout her career, she has also maintained an active pro bono practice, with a focus on LGBTQ+ asylum claims, gender-based violence, and community housing.

Maria clerked for the Ontario Court of Appeal from 2018-2019. She graduated from Harvard Law School *cum laude* in 2017. She speaks fluent Russian and Spanish, and conversational French and Hebrew.

+ REPRESENTATIVE WORK

+ ABOUT MARIA

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488 Wellington Street West
Suite 300-302
Toronto, ON M5V 1E3

info@tyrllp.com
[+1 416 477 5525](tel:+14164775525)

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

AND IN THE MATTER OF A PLAN OF COMPROMISE OR ARRANGEMENT OF JTI-MACDONALD CORP., IMPERIAL TOBACCO CANADA LIMITED AND IMPERIAL TOBACCO COMPANY LIMITED, AND ROTHMANS, BENSON & HEDGES INC.

| | |
|---|--|
| <div>ONTARIO</div> <div>SUPERIOR COURT OF JUSTICE (COMMERCIAL LIST)</div> <div>Proceeding commenced at TORONTO</div> | |
| <div>AFFIDAVIT OF SANDY BALLOTT (SWORN FEBRUARY 28, 2023)</div> | |
| <div><div><div>Tyr LLP</div><div>488 Wellington Street West</div><div>Suite 300-302</div><div>Toronto, ON M5V 1E3</div><div>Fax: 416-987-2370</div></div><div><div>James Bunting (LSO# 48244K)</div><div>Tel: 647.519.6607</div><div>Email: jbunting@tyrllp.com</div></div><div><div>Maria Naimark (LSO# 83470H)</div><div>Tel: 437.225.5831</div><div>Email: mnaimark@tyrllp.com</div></div><div>Lawyers for Heart & Stroke Foundation of Canada</div></div> | |

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., IMPERIAL TOBACCO CANADA LIMITED, IMPERIAL TOBACCO COMPANY LIMITED, AND ROTHMANS, BENSON & HEDGES INC.

**ONTARIO
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Proceeding commenced at TORONTO

**MOTION RECORD OF THE HEART AND STROKE
FOUNDATION OF CANADA**

Tyr LLP

488 Wellington Street West
Suite 300-302
Toronto, ON M5V 1E3
Fax: 416-987-2370

James Bunting (LSO# 48244K)

Tel: 647.519.6607
Email: jbunting@tyrllp.com

Maria Naimark (LSO# 83470H)

Tel: 437.225.5831
Email: mnaimark@tyrllp.com

Lawyers for Heart and Stroke Foundation of Canada