

**ONTARIO
SUPERIOR COURT OF JUSTICE
COMMERCIAL LIST**

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

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

**SIXTH REPORT OF THE MONITOR
NOVEMBER 26, 2019**

INTRODUCTION

1. On March 8, 2019, JTI-Macdonald Corp. (“**JTIM**” or the “**Applicant**”) filed for and obtained protection under the *Companies' Creditors Arrangement Act* (the “**CCAA**”). Pursuant to the Order of this Court granted on the same date (the “**JTIM Initial Order**”), Deloitte Restructuring Inc. was appointed as the Monitor in these proceedings (in such capacity, the “**Monitor**”). The proceedings commenced by the Applicant under the CCAA are referred to herein as the “**CCAA Proceedings**”.
2. The CCAA Proceedings are being conducted in parallel with CCAA proceedings of Imperial Tobacco Canada Limited and Imperial Tobacco Company Limited (collectively, “**ITL**”), and Rothmans, Benson & Hedges Inc. (“**RBH**”, together with JTIM and ITL, the “**CCAA Applicants**”). The stated objective of these parallel, unconsolidated CCAA proceedings is to provide the CCAA Applicants with an opportunity to identify and settle multi-billion dollar claims against each of them through a structured process.

3. JTIM's day-to-day business and operations have continued in the ordinary course, against the backdrop of the Court-supervised CCAA Proceedings, and are expected to continue on in the ordinary course for the foreseeable future.
4. In furtherance of the collective goal of resolving numerous, substantial and complicated claims, the Honourable Warren K. Winkler, Q.C. has been appointed as mediator (the "**Court-Appointed Mediator**"), with a mandate to oversee and coordinate a multiparty, comprehensive mediation among the CCAA Applicants and their key stakeholders (the "**Mediation**").

PURPOSE

5. The purpose of this Sixth Report of the Monitor (the "**Sixth Report**") is to provide the Court with information and updates on the following:
 - a) the need for representative counsel in the CCAA Proceedings;
 - b) the activities of JTIM and the Monitor from September 25, 2019 (the date of the Fifth Report of the Monitor (the "**Fifth Report**"), filed in connection with the previous motion to extend the stay of proceedings granted in the CCAA Proceedings (the "**Stay**")) to the date of this Sixth Report; and
 - c) the Monitor's recommendation.

TERMS OF REFERENCE AND DISCLAIMER

6. In preparing this Sixth Report and making the comments herein, the Monitor has been provided with, and has relied upon, unaudited financial information, books and records and financial information prepared by JTIM, and discussions with management of the Applicant (“**Management**”) (collectively, the “**Information**”).
7. The Monitor has reviewed the Information for reasonableness, internal consistency and use in the context in which it was provided. However, the Monitor has not audited or otherwise attempted to verify the accuracy or completeness of the Information in a manner that would wholly or partially comply with Canadian Generally Accepted Assurance Standards (“**Canadian GAAS**”) pursuant to the *Chartered Professional Accountants Canada Handbook* and, accordingly, the Monitor expresses no opinion or other form of assurance contemplated under Canadian GAAS in respect of the Information.
8. Some of the information referred to in this Sixth Report consists of financial projections. An examination or review of the financial projections, as outlined in the *Chartered Professional Accountants Canada Handbook*, has not been performed.
9. Future oriented financial information referred to in this Sixth Report was prepared based on Management’s estimates and assumptions. Readers are cautioned that since projections are based upon assumptions about future events and conditions that are not ascertainable, the actual results will vary from the projections, even if the assumptions materialize, and the variations could be significant.

10. Unless otherwise stated, all monetary amounts noted herein are expressed in Canadian dollars.

OCTOBER 2, 2019 MOTIONS

11. On October 2, 2019, this Court heard motions by (i) JTIM seeking to extend the Stay until March 6, 2020; and (ii) the Canadian Cancer Society seeking standing in the CCAA proceedings of each of the CCAA Applicants and the right to participate in the Mediation.
12. An order was granted extending the Stay until March 12, 2020 (as that date better accommodated the Court's schedule).
13. On October 3, 2019, the Court issued an endorsement that permitted the Canadian Cancer Society to participate in the CCAA Proceedings subject to certain conditions but did not permit their participation in the Mediation at this time.
14. Copies of all orders and endorsements granted in the CCAA Proceedings are located on the Monitor's website, accessible at: <https://www.insolvencies.deloitte.ca/en-ca/pages/JTIMacdonaldCorp.aspx>.

THE NEED FOR REPRESENTATIVE COUNSEL

15. The Monitor has consulted with JTIM, the monitors of the other CCAA Applicants (together with the Monitor, the "**Monitors**"), the Court-Appointed Mediator, and other stakeholders to consider ways to best ensure that the broad cross section of individuals that may be able to assert claims against the CCAA Applicants (and parties related to them) arising from alleged "Tobacco Related Wrongs" (as defined in Appendix "A" hereto) are

able to have those claims addressed in a fair, consistent and efficient manner, including through the Mediation. The Monitors are of the view that the appointment of representative counsel in respect of these individuals, to the extent they are not otherwise members of a certified class action, provides the best platform to accomplish this goal.

16. The basis for the Monitors' collective view is more particularly set out in Appendix "A". The Monitor understands that an identical copy of Appendix "A" will be attached to the reports of each of the other Monitors.

ACTIVITIES OF JTIM SINCE THE FIFTH REPORT

17. The activities of JTIM since the Fifth Report that are related to or arising out of these CCAA Proceedings, the Mediation and the various matters being addressed therein, include:
 - (a) communications with the Court-Appointed Mediator and his counsel in order to advance the Mediation;
 - (b) negotiating non-disclosure agreements with certain stakeholders with regards to the disclosure of commercially sensitive and confidential information;
 - (c) compiling commercially sensitive and confidential information for the inclusion in a dataroom created by the Monitor containing comprehensive information about the Applicant's business, operations and finances, for the sole purpose of providing information to specified participants in the Mediation (the "**Dataroom**");

- (d) preparing for and attending a plenary session scheduled by the Court-Appointed Mediator and pursuing the Mediation generally;
- (e) managing relationships with customers, suppliers and other stakeholders to minimize business disruptions and to maintain an uninterrupted supply of products and services;
- (f) providing regular updates and information to the Monitor and its counsel;
- (g) continuing implementation of the global transformation project as described in the Fifth Report;
- (h) communicating, via counsel, to the provinces involved in the Health Care Cost Recovery litigation (“**HCCR Actions**”), confirming JTIM’s position that the Provinces preserve all data relevant to the Provinces’ claims against the defendants in such Actions, notwithstanding a reported request by Statistics Canada that such information be returned or removed; and
- (i) addressing various transition matters in connection with the new plain and standardized packaging measures that came into force on November 9, 2019, including purchasing and installing new machinery and transitioning to the production of products and packaging to meet the plain packaging requirements.

ACTIVITIES OF THE MONITOR SINCE THE FIFTH REPORT

18. The Monitor has undertaken the following activities since the Fifth Report:
- a) assisted JTIM in cash flow variance reporting;
 - b) attended calls and meetings with Management regarding the business operations, compilation of financial and other information for the Dataroom, and the conduct of the CCAA Proceedings;
 - c) responded to the comprehensive information requests from the financial advisor to the Provinces of British Columbia, Manitoba, New Brunswick, Nova Scotia, Prince Edward Island and Saskatchewan, in their capacities as plaintiffs in the HCCR Actions, and counsel to the Province of Quebec, in its capacity as plaintiff in the HCCR Actions;
 - d) attended a meeting with counsel to the Provinces of Alberta and Newfoundland & Labrador and counsel and financial advisor to the Province of Quebec in connection with their asserted claims in the HCCR Actions;
 - e) coordinated with the other Monitors and their respective counsel on the Mediation, population of financial and other information in the Dataroom and similar datarooms for ITL and RBH, and procedural aspects of the three CCAA proceedings;
 - f) attended meetings with the Court-Appointed Mediator and his counsel in relation to the Mediation, the status of the Dataroom and the coordination of a plenary

session attended by the CCAA Applicants and certain stakeholders of the CCAA Applicants;

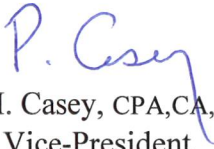
- g) continued the population into the Dataroom of commercially sensitive and confidential information compiled by the Applicant, with the assistance of the Monitor, and coordinated terms of access by stakeholders;
- h) communicated with the Court with respect to certain procedural matters;
- i) as part of its standard oversight procedures, continued to monitor receipts from, and payments to, related parties, in respect of goods and services provided (the Monitor confirms that it is not aware of any deviation from standard payment terms in connection with the various related party contracts, other than as required by order of the Court); and
- j) provided fee disclosure in accordance with and subject to the terms of the order of the Court requiring such disclosure to those parties that have requested same.

RECOMMENDATION

19. The Monitor recommends that the Proposed Representative Counsel be appointed by the Court, pursuant to the terms of the draft order contained in the motion record of the Monitors for the reasons set out in Appendix "A".

All of which is respectfully submitted this 26th day of November, 2019.

**Deloitte Restructuring Inc.,
Solely in its capacity as Court-appointed Monitor
of JTIM and not in its personal capacity**

Per: 
Paul M. Casey, CPA, CA, FCIRP, LIT
Senior Vice-President

Attachment: Appendix "A"

APPENDIX "A"

APPENDIX “A”

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A. GENERAL

1. In this Appendix, unless otherwise defined, all capitalized terms shall have the respective meanings specified in the glossary attached hereto as Schedule “D”.

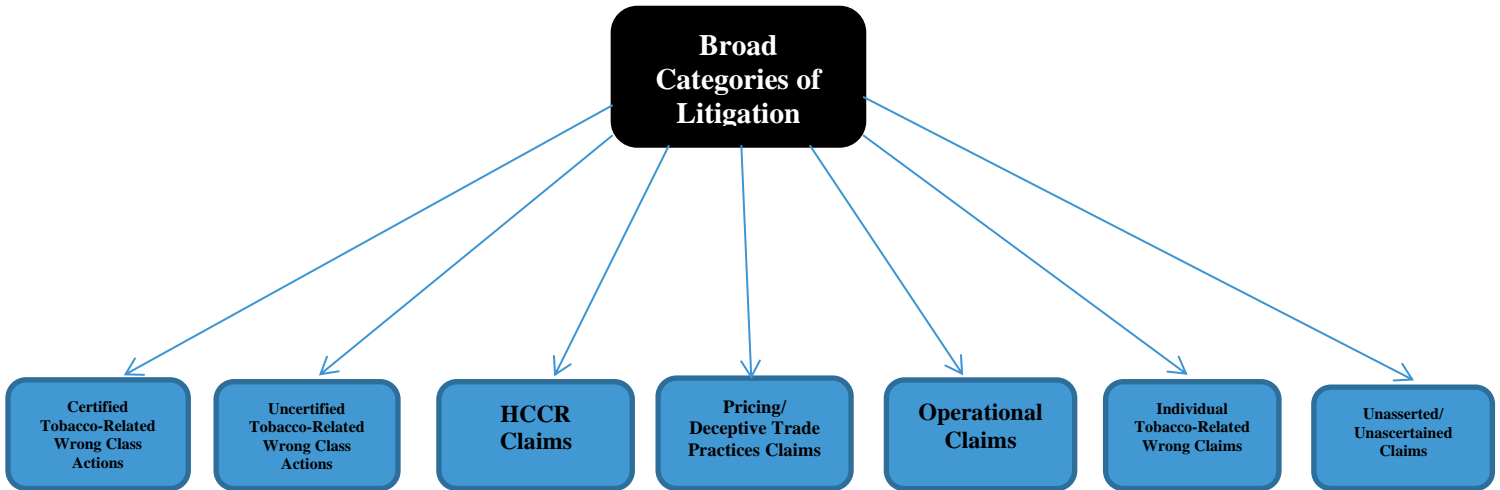
B. INTRODUCTION

2. This Appendix supports a joint motion brought by the Tobacco Monitors in each of their respective Tobacco CCAA Proceedings for the appointment of Wagners, an experienced class action litigation firm based in Halifax, Nova Scotia, as representative counsel for TRW Claimants.
3. These Tobacco CCAA Proceedings are some of the most complex in the history of the CCAA due in large part to the number of tobacco-related legal actions, including uncertified class actions, currently brought against the Applicants and the number of potential claims currently unasserted or unascertained.
4. The current multiplicity of class actions commenced against the Applicants across Canada, most of which are uncertified, do not provide comprehensive representation for all TRW Claimants in these Tobacco CCAA Proceedings. The appointment of the Proposed Representative Counsel will allow for all TRW Claims to be addressed in an efficient, timely and consistent manner under the exclusive jurisdiction of this Court. The efficient treatment of the TRW Claims is necessary to fulfill the chief purpose of these Tobacco CCAA Proceedings: a pan Canadian global settlement.
5. This appointment will provide representation of the interests of individuals with TRW Claims, to the extent they are not currently represented in the certified Quebec and British Columbia class actions, which includes: (i) various residual tobacco-related disease claims that fall outside a previously certified class definition; (ii) various tobacco-related disease claims that are currently the subject of uncertified class actions; and (iii) various tobacco-related disease claims for which no individual or class proceedings have been commenced.

6. Unless otherwise addressed, the number, complexity and interplay among the proceedings in which TRW Claims have been asserted would make the task of dealing with each proceeding individually, overly burdensome on the Applicants, the Tobacco Monitors, the Court-Appointed Mediator and this Court.
7. The appointment of the Proposed Representative Counsel will also increase the TRW Claimants' access to justice in these Tobacco CCAA Proceedings to the benefit of all TRW Claimants, the Applicants and the Applicants' stakeholders, as more fully discussed in the balance of this Appendix.
8. The purpose of this Appendix is to provide the Court with information regarding:
 - a. the existing litigation facing the Applicants;
 - b. the need for, and mandate of, the Proposed Representative Counsel in these Tobacco CCAA Proceedings;
 - c. the qualifications of the Proposed Representative Counsel;
 - d. the Tobacco Monitors' consultations with stakeholders on the appointment of the Proposed Representative Counsel; and
 - e. the Tobacco Monitors' comments and recommendations in respect of the foregoing matters.

C. OVERVIEW OF THE LITIGATION FACING THE APPLICANTS

The following graphic provides an overview of the categories of pending tobacco-related litigation against the Applicants:



9. The litigation against the Applicants, currently stayed by their respective Amended and Restated Initial Orders, consists of a patchwork of claims which have been advanced on behalf of various plaintiffs since as early as 1997.
10. The Applicants are currently facing actions in every Province (but none of the Territories) arising from the enactment of special purpose provincial legislation creating a statutory claim in favour of the provincial governments to permit the recovery of health care costs incurred in connection with tobacco-related diseases. The alleged damages in the HCCR Claims are estimated by the Provinces to be in the hundreds of billions of dollars in the aggregate. Attached as Schedule “A” is an overview of the HCCR Claims. The HCCR Claims are not TRW Claims and are not included in the Proposed Representative Counsel’s mandate.
11. The Applicants are also currently facing individual and class actions with respect to tobacco-related disease claims. Attached as Schedule “B1” is an overview of all the certified and uncertified class actions brought against the Applicants across Canada. Attached as Schedule “B2” is a chart which provides a more detailed summary of the certified and uncertified non-commercial tobacco-related class actions brought against the Applicants across Canada. In addition, attached as Schedule “B3” is a chart which also provides a summary of the individual actions brought against the Applicants for tobacco-related diseases.

12. Three further class actions have been commenced, but not certified, in Ontario alleging that the Applicants improperly paid lower prices for tobacco leaf destined for exported duty-free products, as opposed to the higher domestic leaf price. The proposed class members are growers and producers in Ontario who sold tobacco through the Ontario Flue-Cured Tobacco Growers' Marketing Board pursuant to the terms of certain agreements during the period from January 1, 1986 to December 31, 1996 and are seeking damages for breach of contract. The Tobacco Monitors understand that plaintiff counsel in these actions has most recently taken the position with the Applicants that certification is not required; however, the Applicants dispute this position. No similar claims have been commenced in any of the other provinces. As these class actions are commercial in nature, they are Excluded Claims and are not proposed to be represented by the Proposed Representative Counsel.

(I) Certified Class Actions

13. The Applicants are currently facing the following three certified class actions: (a) two Quebec class actions commenced in 1998, and (b) one British Columbia class action commenced in 2003 against Imperial. In the two Quebec proceedings, the Quebec Litigation Plaintiffs have received judgments against the Applicants.
14. Pursuant to the Quebec Judgment, the Applicants were found to be liable to the Quebec Litigation Plaintiffs for (i) causing throat cancer, lung cancer or emphysema in persons residing in Quebec who smoked at least 87,600 cigarettes before November 20, 1998 and were diagnosed with lung cancer, throat cancer or emphysema before March 12, 2012, and for (ii) causing persons residing in Quebec who smoked upwards of 15 cigarettes a day during the period from September 30, 1998 to February 21, 2005 to become addicted to cigarettes.
15. The Applicants appealed the Quebec Judgment and on March 1, 2019, the Court of Appeal of Quebec issued the Quebec Appeal Judgment, upholding the lower court's decision and finding the Applicants liable to pay up to approximately \$14 billion to the Quebec Litigation Plaintiffs for damages including interest.

16. The Quebec Litigation Plaintiffs comprise two certified classes which do not include all potential TRW Claims which could be asserted in Quebec. It is proposed that TRW Claimants in Quebec, to the extent not covered by the Quebec Judgment, would be represented by the Proposed Representative Counsel.
17. A class action has also been certified in British Columbia asserting a claim with respect to the improper marketing of “light” and “mild” branded products by Imperial. Such claim is currently limited to residents of British Columbia and others who have opted into such British Columbian proceeding. No similar claims have been commenced against any of the other Applicants, or in any of the other provinces (other than Newfoundland and Labrador, where certification of a similar class was denied). It is proposed that TRW Claimants in British Columbia to the extent not covered by this certified British Columbia class action would be represented by the Proposed Representative Counsel.
18. Individuals participating in certified class actions may have other tobacco-related disease claims which are not included in the certified class definitions. These claims are TRW Claims which are proposed to be included in the Proposed Representative Counsel’s mandate.

(II) Uncertified Class Actions

19. Class actions have been commenced, but not certified, in Alberta, Manitoba, Nova Scotia and Saskatchewan seeking damages for tobacco-related diseases and a disgorgement of revenues or profits, among other things, but do not include all potential tobacco-related claims which could be asserted in such provinces.
20. Class proceedings have also been commenced, but not certified, in Ontario, seeking damages for tobacco-related diseases. Such claims are more circumscribed than the uncertified proceedings commenced in the above-noted provinces, as the proposed class is limited to smokers who have been diagnosed with chronic obstructive pulmonary disease, heart disease or cancer. No other

tobacco-related disease claims have been asserted in this uncertified Ontario class action.

21. Similarly, two class actions have been commenced, but not certified, in British Columbia seeking damages in respect of heart disease and chronic respiratory disease, respectively. No other tobacco-related disease claims have been asserted in these uncertified British Columbia class actions. The claims brought in Ontario and British Columbia do not include all the potential tobacco-related claims which could be brought in such provinces.
22. Notably, all of the above-noted uncertified class actions are at a preliminary stage; no substantive steps have been taken to advance the litigation, including with respect to certification of the classes. More information with respect to such actions can be found in Schedule “B2”. It is contemplated that the Proposed Representative Counsel would represent TRW Claimants in Alberta, Manitoba, Nova Scotia, Saskatchewan, Ontario and British Columbia, which includes those who may fall within the proposed class definitions in the above-noted uncertified class actions.

(III) No Class Actions Commenced

23. No class proceedings or individual proceedings have been commenced in New Brunswick, Newfoundland and Labrador, Prince Edward Island or any of the Territories with respect to any of the above-noted categories of potential claims.
24. It is contemplated that the Proposed Representative Counsel would represent all TRW Claimants in such provinces and Territories.

D. THE NEED FOR REPRESENTATIVE COUNSEL IN THESE CCAA PROCEEDINGS

(I) Definition of TRW Claimants

25. The Tobacco Monitors propose that the TRW Claimants for which the Proposed Representative Counsel will be appointed to represent be defined as: all

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

26. Excluded from the definition of TRW Claimants for the purposes of the relief sought herein, are any claims:

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

(b) captured by any of the following commercial class actions:

i. *The Ontario Flue-Cured Tobacco Growers' Marketing Board v. JTI-Macdonald Corp.*, Court File No. 64462 CP (London, Ontario);

ii. *The Ontario Flue-Cured Tobacco Growers' Marketing Board v. Rothmans, Benson & Hedges Inc.*, Court File No. 1056/10CP (London, Ontario); and

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

(c) captured by the following certified Quebec and British Columbia class actions:

i. *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);

ii. *Cécilia Létourneau et al. v. Imperial Tobacco Canada Ltd., et al.*, Court File No. 500-06-000070-983 (Montreal, Quebec); or

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

27. There is a need for the Proposed Representative Counsel to represent the interests of the TRW Claimants for the following reasons, discussed in greater detail below: (a) the TRW Claimants would benefit from the appointment of the Proposed Representative Counsel; (b) the Applicants and their stakeholders would benefit from the appointment of the Proposed Representative Counsel; (c) the appointment of the Proposed Representative Counsel will improve access to justice; and (d) the appointment of the Proposed Representative Counsel is fair and convenient.

(II) The TRW Claimants Would Benefit from the Appointment of the Proposed Representative Counsel

28. The TRW Claimants are a vulnerable group which may be unduly prejudiced in the absence of representation. The appointment of the Proposed Representative Counsel will benefit the TRW Claimants by ensuring that:

- a. all TRW Claimants are represented under the exclusive jurisdiction of this Court;
- b. all TRW Claimants are treated consistently;
- c. all TRW Claimants are able to participate effectively in these Tobacco CCAA Proceedings; and
- d. there will be a single point of contact for the TRW Claimants.

(a) All TRW Claimants Represented

29. The definition of TRW Claimants includes all individuals who assert or may be entitled to assert a TRW Claim against the Applicants, the ITCAN subsidiaries, the BAT Group, the JTIM Group or the PMI Group, or persons indemnified by such entities in Canada, or in the case of the Applicants, anywhere else in the world. Such TRW Claims include but are not limited to: (i) various residual

tobacco-related disease claims that fall outside a previously certified class definition, (ii) various tobacco-related disease claims that are currently the subject of uncertified class actions, and (iii) various tobacco-related disease claims for which no individual or class proceedings have been commenced.

30. Further, as discussed above, many of the TRW Claims are unascertained and unasserted and as such, many of the TRW Claimants may be unaware of these Tobacco CCAA Proceedings and/or the extent to which their rights may be compromised or altered in the Applicants' restructurings. The Proposed Representative Counsel will represent all TRW Claimants, including those with claims that are unascertained and unasserted.

(b) Consistent Treatment

31. The appointment of the Proposed Representative Counsel will ensure all of the TRW Claimants are treated consistently in these Tobacco CCAA Proceedings, preventing the prejudice which would otherwise be suffered by such parties.

(c) Effective Participation

32. These Tobacco CCAA Proceedings are particularly complex, as three separate tobacco companies, which comprise almost the entire legal tobacco industry in Canada, filed for CCAA protection at virtually the same time. Additionally, Imperial has sought relief in the US under Chapter 15 of the US Bankruptcy Code. Many of the TRW Claimants may lack the financial means or ability to engage meaningfully in these Tobacco CCAA Proceedings without the assistance of the Proposed Representative Counsel.

(d) Single Point of Contact

33. The TRW Claimants are comprised of a large number of individual stakeholders. It would therefore be particularly difficult for the TRW Claimants to have a cohesive voice in these Tobacco CCAA Proceedings in the absence of the appointment of the Proposed Representative Counsel.

34. The Proposed Representative Counsel will communicate with the TRW Claimants, all three Applicants, the Tobacco Monitors, the Court-Appointed Mediator and this Court. As the single point of contact among such parties, the Proposed Representative Counsel will avoid confusion among the TRW Claimants, increase their access to information, ensure their position is being advanced and keep them apprised of developments in these Tobacco CCAA Proceedings.

(III) The Applicants and their Stakeholders Would Benefit from the Appointment of the Proposed Representative Counsel

35. The Applicants and their stakeholders would benefit from the appointment of the Proposed Representative Counsel in two significant ways: (a) the Proposed Representative Counsel will provide consistency and increased stakeholder participation in the Applicants' restructurings, and (b) representation of all TRW Claimants will lead to efficiencies and cost-savings in the administration of these Tobacco CCAA Proceedings.

(a) Consistency and Increased Stakeholder Participation

36. The Applicants have commenced these Tobacco CCAA Proceedings for the primary purpose of effecting a pan Canadian global settlement.
37. To date, certain represented parties have actively participated in these Tobacco CCAA Proceedings through Court attendances, participation in the Mediation and gaining access to confidential information in respect of the Applicants' financial status and forecast activities through the Data Rooms. As discussed above, however, there are a large number of stakeholder claims that are unascertained or unasserted and many class actions which remain uncertified in these Tobacco CCAA Proceedings. Indeed, many of the TRW Claimants may not be aware that such proceedings are underway.

38. The Proposed Representative Counsel will seek to ensure that the TRW Claimants are treated consistently and have an opportunity to participate in these Tobacco CCAA Proceedings in the following ways:
- a. the Proposed Representative Counsel will receive and distribute (as appropriate), pertinent information relating to the Applicants and their financial circumstances, these Tobacco CCAA Proceedings and the Mediation;
 - b. the Proposed Representative Counsel will coordinate communication among and between the TRW Claimants, the Tobacco Monitors, the Court-Appointed Mediator and the three Applicants;
 - c. the Proposed Representative Counsel will represent the interests of the TRW Claimants for the purpose of all decisions which might affect their rights in the course of these Tobacco CCAA Proceedings and the Mediation, and if necessary, bring to the Court, the Court-Appointed Mediator or the Tobacco Monitors' attention any matters or legal arguments that need to be addressed; and
 - d. the Proposed Representative Counsel will represent the TRW Claimants on matters related to any settlement or plan of compromise or arrangement put forth by the Applicants.
39. This will fulfill the primary purpose of these Tobacco CCAA Proceedings by allowing the Applicants to have greater confidence when negotiating a pan Canadian global settlement that affected interests have been adequately represented and to ensure consistency in the treatment of stakeholders with common interests.

(b) Efficiencies

40. The task of identifying and communicating with thousands of unrepresented claimants with varying levels of resources and legal sophistication would be costly and administratively burdensome on the Applicants.
41. The Proposed Representative Counsel will act as the single point of contact among the TRW Claimants, the Applicants, the Tobacco Monitors, the Court and the Court-Appointed Mediator for the purpose of service, communication and negotiating key steps in these Tobacco CCAA Proceedings and the Mediation, thereby reducing the administrative costs paid by the Applicants in connection therewith, to the benefit of the Applicants and their stakeholders.
42. The appointment of the Proposed Representative Counsel also avoids the need for a multiplicity of retainers. The TRW Claimants will not need to each engage counsel to advance individual claims. This will avoid fragmentation and duplication of efforts and resources, which further benefits the Applicants and their stakeholders.

(IV) Improved Access to Justice

43. The appointment of the Proposed Representative Counsel will promote access to justice. As discussed above, the TRW Claimants are a vulnerable group, some of whose individual interests would likely be unrepresented in these Tobacco CCAA Proceedings in the absence of representative counsel.
44. A representation order will give a strong and cohesive voice to the significant number of individuals affected by Tobacco-Related Wrongs who, following the Applicants' CCAA filings, are at risk of having limited recourse against the Applicants. The TRW Claimants, as stakeholders in the Applicants' insolvencies, are affected by these Tobacco CCAA Proceedings. Representation of their interests ensures that all stakeholders will have the opportunity to provide input during the course of these Tobacco CCAA Proceedings.

45. The appointment of the Proposed Representative Counsel will fulfil the objective of the CCAA: to facilitate restructurings. It is well recognized that the chance for a successful reorganization is enhanced where participants achieve common ground and all stakeholders are treated as fairly as the circumstances permit. This is an important objective that would be advanced by a representation order. The Proposed Representative Counsel will ensure that the TRW Claimants are represented at the negotiating table and that there is a level playing field with the various other claimants.

(V) The Appointment of the Proposed Representative Counsel is Fair and Convenient

46. While the TRW Claimants are broadly defined, all TRW Claimants have a common interest in that each alleges an individual claim against one or more of the Applicants and their related parties due to a Tobacco-Related Wrong.

47. In these circumstances, the TRW Claimants are a vulnerable group of stakeholders with sufficient commonality who would be prejudiced if the Proposed Representative Counsel was not appointed.

48. Further, the appointment of representative counsel has been used in many Canadian insolvency proceedings to enable stakeholder groups to navigate and actively participate in complex CCAA proceedings.

49. Given the unique circumstances of these Tobacco CCAA Proceedings discussed in detail herein - multiple jurisdictions, the large number of personal unasserted and unascertained claims, as well as the uncertified class actions - it is essential that the TRW Claimants are represented by a single point of contact within the exclusive jurisdiction of this Court seized of these Tobacco CCAA Proceedings.

50. The appointment of the Proposed Representative Counsel will benefit not only the TRW Claimants by improving their access to justice, but also other stakeholders by reducing the administrative burden associated with these Tobacco CCAA Proceedings. For these reasons, the appointment of the Proposed Representative

Counsel is fair and convenient and outweighs any potential prejudice to the Applicants' other creditors and stakeholders.

E. THE PROPOSED MANDATE

51. The Proposed Representative Counsel will represent the interests of the TRW Claimants without any obligation to consult with or seek individual instructions from the TRW Claimants, provided however, that the Proposed Representative Counsel will be authorized, but not obliged, to establish a committee of TRW Claimants on such terms as may be agreed to by the Court-Appointed Mediator and the Tobacco Monitors or established by Court order.

52. The Proposed Representative Counsel will be authorized to take all steps and perform all acts that are necessary or desirable in representing the TRW Claimants including, without limitation, by:
 - a. participating in and negotiating on behalf of the TRW Claimants in the Mediation;
 - b. working with the Court-Appointed Mediator and the Tobacco Monitors to develop a process for the identification of valid and provable TRW Claims, and as appropriate, addressing such claims in the Mediation or the Tobacco CCAA Proceedings;
 - c. responding to inquiries from TRW Claimants in the Tobacco CCAA Proceedings; and
 - d. performing such other actions as approved by the Court.

53. The Proposed Representative Counsel will also be 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 the Court, to retain and consult with subject area experts and other professional and financial advisors as the Proposed

Representative Counsel may consider necessary to assist it with the discharge of its mandate.

54. While a significant number of TRW Claimants would benefit from representation by the Proposed Representative Counsel, there are legal defences and arguments that may preclude some TRW Claimants from receiving a distribution in these Tobacco CCAA Proceedings. After appointment, it is contemplated that the Proposed Representative Counsel will work with the Tobacco Monitors and the Court-Appointed Mediator to classify and define the valid TRW Claims the holders of which may be entitled to a distribution in these Tobacco CCAA Proceedings. The inclusion of an opt-out mechanism for TRW Claimants will also be considered at that time.

F. THE PROPOSED REPRESENTATIVE COUNSEL

55. Before the Proposed Representative Counsel was selected a number of experienced and qualified firms with expertise representing class action plaintiffs were considered, including existing counsel in the tobacco-related litigation generally. Although these Tobacco CCAA Proceedings are not class actions, the Tobacco Monitors are of the view that given the nature of the TRW Claims that may be asserted by the Proposed Representative Counsel, such experience would be beneficial.
56. The Proposed Representative Counsel has demonstrated expertise in class action matters and therefore has the requisite knowledge, support staff and infrastructure to advise multiple clients and facilitate effective communication and information sharing among the TRW Claimants, the Applicants, the Tobacco Monitors, the Court and the Court-Appointed Mediator.
57. The Tobacco Monitors are of the view that the independence of Proposed Representative Counsel is critical. Due to the number of counsel involved in the litigation described herein and these Tobacco CCAA Proceedings, many otherwise qualified counsel were conflicted. After weighing these factors, the

Proposed Representative Counsel was determined to be the best suited to represent the interests of the TRW Claimants.

(I) Proposed Firm

58. The Tobacco Monitors propose that Wagners be appointed as representative counsel on the terms provided for in the Draft Order.

(II) Expertise and CV

59. Wagners is based in Halifax, Nova Scotia and is known as one of Atlantic Canada's leading class action law firms. The nine lawyers at Wagners represent clients throughout Nova Scotia, New Brunswick, Prince Edward Island, Newfoundland and Labrador and across the country. Wagners has advised the Tobacco Monitors that it has the necessary support staff and infrastructure to fulfill the Representative Counsel's mandate.
60. Raymond F. Wagner, Q.C. is the founder of Wagners with a well-established, exemplary reputation. With almost 40 years' experience, Mr. Wagner's legal practice has a primary focus on class actions, mass tort litigation, medical negligence and product liability. His firm also represents victims of catastrophic motor vehicle accidents. He has been involved in class action litigation since 2003, and is known for litigating complex, technical and novel issues within this sphere. Attached as Schedule "C" is a copy of Mr. Wagner's *curriculum vitae*.
61. Mr. Wagner has achieved significant settlements for his clients, including a settlement concerning historical institutional abuse at a Nova Scotian institution with a resolution based on restorative justice principles. He is counsel to plaintiffs in a number of proposed and certified class actions including: pharmaceutical litigation on behalf of people who were prescribed the drugs OxyContin, Avandia and Levaquin; alleged historical institutional abuse arising out of deaf schools in Nova Scotia; alleged systemic sexual misconduct and discrimination in the Canadian Armed Forces; recipients of allegedly defective hip products; owners of certain motor vehicles that were subject to a recall; individuals who allegedly

- received flawed pathology and colposcopy assessments; airline passengers allegedly injured during landing; environmental contamination and flooding; customers who purchased medical marijuana that was allegedly contaminated with unauthorized pesticides; and patients whose private medical records were allegedly intruded upon.
62. Mr. Wagner's extensive practice in medical errors and complex litigation, although primarily focused in Nova Scotia, extends to New Brunswick, Prince Edward Island and Newfoundland and Labrador. He has acted as a member of consortiums of plaintiff counsel in a number of class actions which are national in scope. Mr. Wagner has appeared before numerous courts across the country, including in the Atlantic Provinces, Ontario, Quebec, Saskatchewan and at the Federal Court and the Supreme Court of Canada. Mr. Wagner has advised the Tobacco Monitors that Wagners has the capacity to act as representative counsel should it be appointed.
63. Wagners is not and has not been involved in any tobacco-related litigation. The Tobacco Monitors have been informed that a lawyer at Wagners was previously employed by the Nova Scotia Department of Justice, from September 2013 to March 2016. Wagners has advised the Tobacco Monitors that while at the Nova Scotia Department of Justice, this individual had no direct or indirect involvement in or knowledge of any tobacco-related litigation, other than bare knowledge of the existence of same. This individual also had no direct or indirect involvement in or knowledge of these Tobacco CCAA Proceedings. Wagners has advised that this lawyer will not be on the team engaged in this matter. Nonetheless, if appointed, an ethical wall will be established at Wagners to prevent this lawyer from accessing any file, information or material related to these Tobacco CCAA Proceedings. As a result, this does not interfere with the independence of Wagners as Proposed Representative Counsel.
64. The Proposed Representative Counsel has the requisite experience, expertise and independence to effectively represent the TRW Claimants.

(III) Terms of Retainer/Compensation

65. The Proposed Representative Counsel will be paid its reasonable professional fees and disbursements on an hourly basis and shall be paid by the Applicants in a timely manner and in accordance with an agreement among the Applicants.
66. The Proposed Representative Counsel will remit invoices bi-weekly to the Tobacco Monitors, subject to such redactions as are necessary to maintain solicitor-client privilege. No part of the Proposed Representative Counsel's compensation will be on a contingency basis.
67. The Applicants will each pay equal amounts of an initial retainer to the Proposed Representative Counsel in the aggregate amount of \$50,000 to be held by the Proposed Representative Counsel as security for payment of its fees and disbursements outstanding from time to time.
68. Due to the efficiencies and cost-savings attributable to the appointment of the Proposed Representative Counsel, there is sufficient justification to amend the Administration Charges provided for in the applicable Amended and Restated Initial Order in each of the Tobacco CCAA Proceedings, to include the reasonable fees, expenses and disbursements of the Proposed Representative Counsel.

(IV) Lack of Legal Conflicts

69. The Tobacco Monitors have been advised that the Proposed Representative Counsel is not conflicted and has agreed to the appointment.

G. THE TOBACCO MONITORS' CONSULTATIONS WITH STAKEHOLDERS ON PROPOSED REPRESENTATIVE COUNSEL

70. The Court-Appointed Mediator, the Tobacco Monitors and counsel to the Tobacco Monitors consulted with certain major stakeholders in these Tobacco CCAA Proceedings with respect to the relief being sought herein.

H. MONITORS' RECOMMENDATION REGARDING REPRESENTATIVE COUNSEL

71. For the reasons provided above, the Tobacco Monitors recommend the appointment of the Proposed Representative Counsel on the terms set out in the Draft Order.

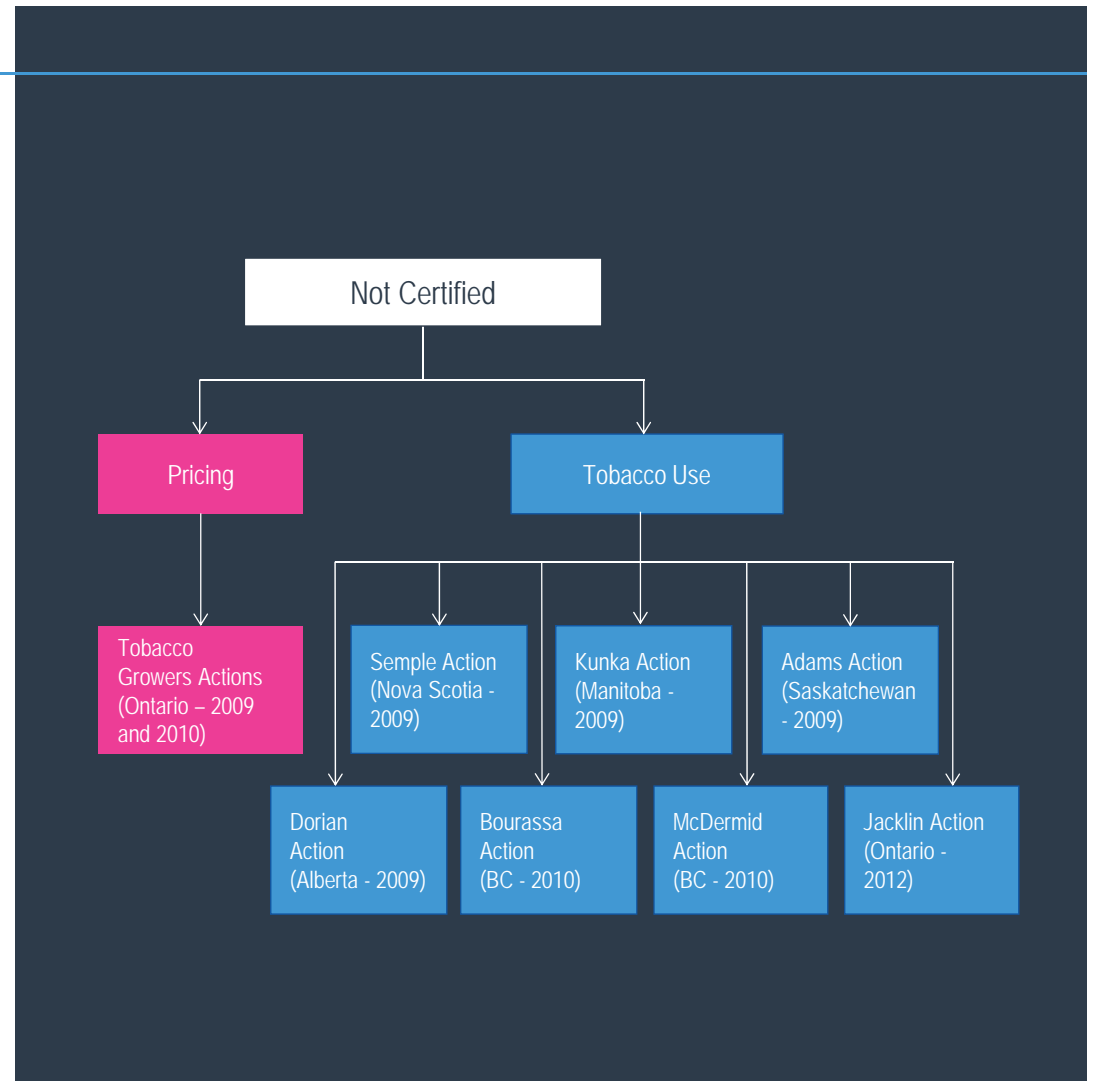
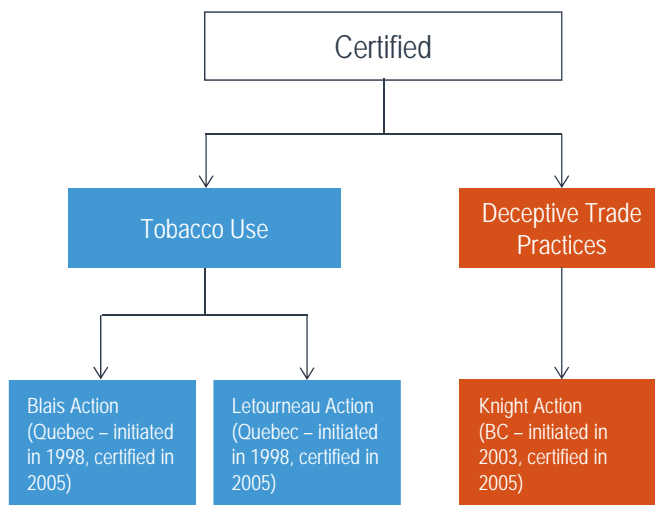
SCHEDULE A

Overview of Provincial Health Care Cost Recovery Claims



SCHEDULE B1

Overview of Class Actions



SCHEDULE B2

Chart of Certified and Uncertified Class Actions

The charts contained in this Schedule B2 and in Schedule B3 below set out the outstanding Canadian litigation against the Applicants, as disclosed in their CCAA filing materials, in respect of non-commercial tobacco-related class actions and individual actions. The charts exclude direct actions by provinces to recover health care costs. All Applicants are defendants in each class action, except for one action in British Columbia, as noted below. The status of each of the actions is based on information provided to the Tobacco Monitors by the Applicants.

Jurisdiction	Action	Year Commenced	Class Definition	Certified	Plaintiff's Counsel	Amount Claimed	Status of Action
Quebec	Létourneau and Blais class actions	1998 (certified in 2005)	<p><u>Létourneau action</u>: All persons residing in Quebec who, as of September 30, 1998, were addicted to nicotine in cigarettes manufactured by the defendants and who: (i) started smoking before September 30, 1994 and since that date have smoked principally cigarettes manufactured by the defendants; (ii) between September 1 and September 30, 1998, they smoked on a daily basis an average of at least 15 cigarettes manufactured by the defendants; and (iii) on February 21, 2005, or until their death if it occurred before that date, they were still smoking on a daily basis an average of at least 15 cigarettes manufactured by the defendants. The group also includes the heirs of members who meet the above criteria.</p> <p><u>Blais action</u>: All persons residing in Quebec who: (i) smoked before November 20, 1998 at least 12 pack years of cigarettes manufactured by the defendants (the</p>	Yes	<p>Kugler Kandestin and Trudel Johnston & Lespérance</p> <p>Fishman Flanz Meland Paquin LLP is counsel in these CCAA proceedings.</p>	In both class actions, the damages awarded total approx. \$14 billion, with interest and indemnity.	Actions instituted in 1998. Class action certified in 2005. Trial occurred 2012 to 2014. Superior Court judgment released in 2015. Court of Appeal decision released in 2019.

Jurisdiction	Action	Year Commenced	Class Definition	Certified	Plaintiff's Counsel	Amount Claimed	Status of Action
			equivalent of a minimum of 87,600 cigarettes); and (ii) have been diagnosed, before March 12, 2012 with: (a) lung cancer, (b) cancer (squamous cell carcinoma) of the throat, namely the larynx, oropharynx or hypophalanx, or (c) emphysema. The group also includes the heirs of persons deceased after November 20, 1998 who meet the above criteria.				
Newfoundland	N/A	N/A	N/A	N/A	N/A	N/A	N/A
Prince Edward Island	N/A	N/A	N/A	N/A	N/A	N/A	N/A
Nova Scotia	Ben Semple v. Canadian Tobacco Manufacturer's Council et al. HFX No. 312869	2009	<u>Proposed class definition:</u> All individuals, including their estates, their dependants and family members, who purchased or smoked cigarettes designed, manufactured, marketed, or distributed by the defendants, for the period January 1, 1954 to the expiry of the opt-out period set by the Court.	No	Merchant Law Group	Unquantified	The Statement of Claim was filed in 2009. No further steps have been taken to advance this action.
New Brunswick	N/A	N/A	N/A	N/A	N/A	N/A	N/A
Ontario	Suzanne Jacklin v Canadian Tobacco	2012	<u>Proposed class definition:</u> All individuals, including their estates, who were alive on	No	Merchant Law Group	Unquantified	The Statement of Claim was filed in 2012. No further steps

Jurisdiction	Action	Year Commenced	Class Definition	Certified	Plaintiff's Counsel	Amount Claimed	Status of Action
	Manufacturers' Council et al., Court File No. 53794/12		June 12, 2007, and who suffered, or who currently suffer, from chronic pulmonary disease, heart disease or cancer, after having smoked a minimum of 25,000 cigarettes designed, manufactured, imported or distributed by the defendants.				have been taken to advance this action.
Manitoba	Deborah Kunta v Canadian Tobacco Manufacturers' Council et al., File No. CI09-01-61479	2009	<u>Proposed class definition:</u> All individuals, including their estates, and who purchased or smoked cigarettes manufactured by the defendants, and their dependants and family members.	No	Merchant Law Group	Unquantified	The Statement of Claim was filed in 2009. No further steps have been taken to advance this action.
Saskatchewan	Thelma Adams v Canadian Tobacco Manufacturers' Council et al., Q.B. No. 1036	2009	<u>Proposed class definition:</u> All individuals who were alive on July 10, 2009, and who have suffered, or who currently suffer, from chronic pulmonary disease, emphysema, heart disease, or cancer, after having smoked a minimum of 25,000 cigarettes designed, manufactured imported, marketed or distributed by the defendants.	No	Merchant Law Group	Unquantified	The Statement of Claim and a Notice of motion for certification were served in 2009. ¹ Certain defendants brought motions challenging jurisdiction in January 2010. No steps have been taken to advance this action since 2010.
Saskatchewan	Thelma Adams v Canadian Tobacco Manufacturers' Council et al., Q.B.	2009	<u>Proposed class definition:</u> All individuals, including their estates, their dependants and family members, who purchased or smoked cigarettes designed, manufactured	No	Merchant Law Group	Unquantified	The Statement of Claim was filed in 2009. The plaintiff filed notices of discontinuance for certain defendants in 2010. No

¹ Phillip Morris' 2018 Annual Report states that, in September 2009, plaintiff's counsel informed the defendants that it did not anticipate taking any action in other cases while pursuing the class action filed in Saskatchewan.

Jurisdiction	Action	Year Commenced	Class Definition	Certified	Plaintiff's Counsel	Amount Claimed	Status of Action
	No. 916		or distributed by the defendants, for the period July 1, 1954 to the expiry of the opt-out period set by the court.				further steps have been taken to advance the action.
Alberta	Linda Dorion v Canadian Tobacco Manufacturers' Council et al. Court File #0901-08964	2009	<u>Proposed class definition:</u> All individuals, including their estates, and who purchased or smoked cigarettes designed, manufactured, marketed or distributed by the defendants, and their dependants and family members.	No	Merchant Law Group	Unquantified	The Statement of Claim was filed in 2009. No further steps have been taken to advance the action.
British Columbia	Barbara Bourassa on behalf of the Estate of Mitchell David Bourassa v Imperial Tobacco Canada Limited et al., No 10-2780 Barbara Bourassa on behalf of the Estate of Mitchell David Bourassa v Imperial Tobacco Canada Limited et al., No 14-4722	2010	<u>Proposed class definition:</u> All individuals, including their estates, who were alive on June 12, 2007, and who have suffered, or who currently suffer, from chronic respiratory diseases, after having smoked a minimum of 25,000 cigarettes designed, manufactured, imported, marketed or distributed by the defendants.	No	Merchant Law Group	Unquantified	Statement of Claim (No 10-2780) filed in 2010. Certain defendants brought motions challenging jurisdiction in 2010. Plaintiff filed a new Statement of Claim (No 14-4722) on December 29, 2014. No further steps have been taken to advance these actions.

Jurisdiction	Action	Year Commenced	Class Definition	Certified	Plaintiff's Counsel	Amount Claimed	Status of Action
British Columbia	Roderick Dennis McDermid v Imperial Tobacco Canada Limited et al., No. 10-2769	2010	<u>Proposed class definition:</u> All individuals, including their estates, who were alive on June 12, 2007, and who have suffered, or who currently suffer, from heart disease, after having smoked a minimum of 25,000 cigarettes designed, manufactured, imported, marketed or distributed by the defendants.	No	Merchant Law Group	Unquantified	Statement of Claim filed in 2010. Certain defendants brought motions challenging jurisdiction in 2010. No further steps have been taken to advance this action.
British Columbia	Knight v Imperial Tobacco Canada Ltd. [Note: Imperial Tobacco Canada Ltd. is the sole defendant in this action]	2003	<u>Certified class definition:</u> Persons who, during the Class Period, purchased the defendant's light or mild brands of cigarettes in British Columbia for personal, family or household use. The defendant's light and mild brands of cigarettes includes the following brands: Player's Light, Player's Light Smooth, Player's Extra Light, du Maurier Light, du Maurier Extra Light, du Maurier Ultra Light, du Maurier Special Mild, Matinée Extra Mild, Matinee Ultra Mild and Cameo Extra Mild. The Class Period is the period from May 9, 1997 up to July 31, 2007 [per 2006 BCCA 235, confirming certification, varying class period].	Yes	Klein Lawyers LLP	Unquantified	Action commenced in May 2003. Defence filed in April 2004. Class action certified in February 2005 (and confirmed by Court of Appeal in 2006). The parties exchanged electronic productions in 2009, following a motion by the plaintiff to compel a list of documents. The plaintiff served a notice to admit documents on October 3, 2016. In 2017, the defendant brought an application to dismiss the class action for delay. The defendant's motion to dismiss for delay was dismissed on August 23, 2017 (2017 BCSC 1487). The Opt-out and Opt-in periods expired on May 15, 2018. No opt-out requests were received, and eight opt-in forms

Jurisdiction	Action	Year Commenced	Class Definition	Certified	Plaintiff's Counsel	Amount Claimed	Status of Action
							were received. Class membership is therefore now fixed. The parties concluded a Discovery Agreement on January 26, 2018, which provided for written interrogatories. The plaintiff delivered its written interrogatories on January 7, 2019.
Yukon	N/A	N/A	N/A	N/A	N/A	N/A	N/A
Northwest Territories	N/A	N/A	N/A	N/A	N/A	N/A	N/A
Nunavut	N/A	N/A	N/A	N/A	N/A	N/A	N/A

SCHEDULE B3

Chart of Individual Actions

Jurisdiction	Commenced	Parties	Status
Nova Scotia (Halifax)	March 5, 2002, amended September 5, 2002, 177663	Peter Stright v. Imperial Tobacco Canada Limited	On April 19, 2002, the defendant was served with an individual product liability claim for unspecified damages alleging that the plaintiff, Peter Stright, is addicted to tobacco and developed Buerger's disease as a result of smoking. The defendant filed its Statement of Defence in 2004 and certain documents were subsequently produced by the plaintiff. In May 2017, the plaintiff sought a trial date. On June 9, 2017, pursuant to a motion brought by ITCAN, the Nova Scotia Supreme Court set aside the plaintiff's request, as the necessary conditions for setting a trial date had not been met. No trial date has been set.
Ontario (Toronto)	Amended September 8, 2014, 00-CV- 183165-CP00	Ragoonanan <i>et al.</i> v. Imperial Tobacco Canada Limited	In 2005, the plaintiff, Ragoonanan, was denied certification of a class proceeding on behalf of "all persons who suffered damage to persons and/or property as a result of fires occurring after October 1, 1987, due to cigarettes that did not automatically extinguish upon being dropped or left unattended." In 2011, the Court granted the plaintiff's request to continue as an individual action. The plaintiff's Statement of Claim does not specify the amount of pecuniary damages, but the amount claimed will be in excess of \$11 million. A defence has been filed. The case remains at a preliminary stage.
Ontario (Milton)	Mirjana Spasic v. BAT Industries p.l.c., C18187/97	Ljubisa Spasic, as Estate Trustee of the Estate of Mirjana Spasic v. B.A.T. Industries P.L.C.	On September 16, 1997, Mirjana Spasic filed an individual smoking and health action against B.A.T. Industries P.L.C. Mrs. Spasic sought \$1,000,000.00 in damages, reimbursement for moneys expended on purchasing cigarettes, aggravated, punitive, and exemplary damages, interest and costs. On March 10, 1998, an order was issued by the Milton court, continuing the action with Ljubisa Spasic as estate trustee of Mirjana Spasic. No further steps have been taken to advance the action.
Ontario (London)	June 30, 2003, 1442/03	Scott Landry v. Imperial Tobacco Canada Limited	On September 12, 2003, a suit was brought by Scott Landry before the London Ontario Small Claims Court. The plaintiff alleges negligence for failing to warn him that nicotine is addictive and dangerous and seeks an amount of \$10,000 to cover the costs of fighting his addiction. A Statement of Defence was filed on or about July 24, 2003. At a pre-trial conference on October 31, 2003, the plaintiff agreed to provide particulars regarding his claim. The case has been in abeyance since that time.

Ontario (North York)	June 12, 1997, 21513/97	Joseph Battaglia v. Imperial Tobacco Canada Limited	On June 12, 1997, a suit was brought by Joseph Battaglia before the North York Ontario Small Claims Court. The plaintiff alleged that he suffered from heart disease and that the defendant was negligent for failing to warn that nicotine is addictive and dangerous. He sought an amount of \$6,000. A Statement of Defence was filed on or about June 27, 1997. After a trial, a judgment was rendered on 1 June 1, 2001, dismissing the plaintiff's claim. On July 2, 2001 an appeal was filed by the plaintiff. The appeal was never heard and the plaintiff passed away on September 3, 2004. The case has been in abeyance since that time.
Quebec (Saint-Hyacinthe)	December 8, 2016, 750-32-700014-163	Roland Bergeron v. Imperial Tobacco Canada Limited	On December 12, 2016, a Statement of Claim filed by Roland Bergeron in the Small Claims Division of the Court of Québec in Saint-Hyacinthe. The plaintiff alleges that he was diagnosed with pulmonary emphysema in 2015 and is claiming \$15,000 in damages for harm to his health. On December 28, 2016, a contestation (defence) was filed, denying the allegations and arguing that the matter should be stayed pending the outcome of the Blais class action, as the legal issues raised in both proceedings are the same. On February 17, 2017, the plaintiff consented to the stay request and on February 22, 2017, the Court granted the stay request.
Quebec (Small Claims)	2010	Paradis, in personal capacity and on behalf of estate of Lorraine Trepanier v. Rothmans, Benson & Hedges Inc.	Stayed pending resolution of Letourneau/Blais class actions.
Quebec (Superior Court)	July 2017	Couture v. Rothmans, Benson & Hedges Inc.	Action was stayed until June 2019 (prior to CCAA filing).

SCHEDULE C

RAYMOND WAGNER, Q.C.

Wagners
1869 Upper Water Street, Suite PH301
Halifax, NS B3J 1S9
Tel: 902 425 7330
Email: raywagner@wagners.co

EXPERIENCE

1982 – PRESENT

FOUNDER AND PRINCIPAL, THE LAW PRACTICE OF WAGNER & ASSOCIATES, INC.

Plaintiff firm with a primary focus on class actions, mass tort litigation, medical negligence, product liability and catastrophic motor vehicle accidents.

Acts as counsel in a number of proposed, certified and resolved class actions, including:

- pharmaceutical litigation on behalf of individuals prescribed the drugs OxyContin, Avandia, Vioxx, Yasmin and Levaquin;
- historical institutional abuse arising out of the Nova Scotia Home for Colored Children;
- historical institutional abuse arising out of deaf schools in Nova Scotia;
- systemic sexual misconduct and discrimination in the Canadian Armed Forces;
- product liability regarding defective medical devices and implants;
- product liability arising from motor vehicle recalls and defective parts;
- individuals affected by the pathology and colposcopy errors at the Miramichi Hospital in New Brunswick;
- passengers injured during the landing of Air Canada flight AC624 from Toronto Pearson International Airport en route to Halifax Stanfield International Airport on March 28, 2015;
- property owners and victims of localized environmental contamination and flooding;
- borrowers who received loans with inflated interest;
- consumers affected by manufacturers' alleged price fixing;
- customers who purchased medical marijuana that was contaminated with unauthorized pesticides; and
- patients of the former South West Nova District Health Authority and Capital District Health Authority (now the Nova Scotia District Health Authority) whose private medical records were intruded upon by employees of the respective Health Authorities.

In the medical malpractice area, acts as counsel to patients catastrophically injured by medical negligence, with a special focus on complex birth trauma litigation.

EDUCATION

1979

BACHELOR OF LAWS DEGREE, DALHOUSIE LAW SCHOOL, DALHOUSIE UNIVERSITY

BAR ADMISSION

FEBRUARY, 1980

NOVA SCOTIA

PROFESSIONAL MEMBERSHIPS

- Nova Scotia Barristers' Society
- Atlantic Provinces Trial Lawyers Association
- Ontario Trial Lawyers Association
- Canadian Bar Association
- American Association for Justice / Association of Trial Lawyers of America
- Canadian Caucus of the American Association of Justice

PROFESSIONAL ACHIEVEMENTS

- Founder and inaugural President of the Atlantic Provinces Trial Lawyers Association
- Inaugural Chairperson of the Canadian Caucus to the American Association for Justice
- Organized and addressed first Nova Scotia Barristers' Society Class Action Conference
- Nova Scotia Statutory Costs and Fees Committee (Retired)
- Nova Scotia Barristers' Society Rules Committee (Retired)
- Nova Scotia Bench and Bar Civil Procedure Rules Committee
- Invited to speak at 2011 WeFree day conference in Italy about OxyContin
- 2012 Recipient of the Lorne Clarke, QC Access to Justice Award
- 2012 Received Queen's Counsel designation
- 2014 Recipient of Bruce T. Hillyer Award from Ontario Trial Lawyers Association
- 2015 One of five finalists for the Public Justice Trial Lawyer of the Year Award
- Appearances before the Courts in Nova Scotia, New Brunswick, Prince Edward Island, Newfoundland and Labrador, Ontario, and Saskatchewan;
- Appearances before the Supreme Court of Canada and the Federal Court

LECTURES & SPEAKING ENGAGEMENTS

- Atlantic Provinces Trial Lawyers Association
- Dalhousie Law School
- Continuing Legal Education Society of Nova Scotia
- Public Legal Education Society
- Cape Breton Barristers' Society
- Barreau du Québec
- Ontario Trial Lawyers Association
- Osgoode Hall Law School – National Symposium on Class Actions
- Canadian Bar Association
- Canadian Pain Society
- Canadian Institute
- American Association of Justice
- Lexpert
- WeFree Day, San Patrignano, Italy, Italian National TV

SCHEDULE D

SCHEDULE D

GLOSSARY

“**Administration Charges**” means the charges on the property of the Applicants granted to the Tobacco Monitors and counsel to the Applicants as security for their professional fees and disbursements.

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

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

“**BAT Group**” means, collectively, British American Tobacco p.l.c., B.A.T. International Finance p.l.c., B.A.T Industries p.l.c., British American Tobacco (Investments) Limited, Carreras Rothmans Limited or entities related to or affiliated with them other than Imperial and the ITCAN Subsidiaries.

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

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

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

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

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

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

“**Draft Order**” means the draft orders prepared in connection with the notice of motion served by the Tobacco Monitors on November 25, 2019, moving for the appointment of the Proposed Representative Counsel.

“**Excluded Claims**” means the claims excluded from the definition of TRW Claimants for the purposes of the relief sought herein as described in paragraph 26 of this Appendix.

“**EY**” means Ernst & Young Inc.

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

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

“**Imperial**” means collectively, ITCAN and Imperial Tobacco Company Limited.

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

“**ITCAN Subsidiaries**” means Imperial Tobacco Services Inc., Imperial Tobacco Products Limited, Marlboro Canada Limited, Cameo Inc., Medallion Inc., Allan Ramsay and Company Limited, John Player & Sons Ltd., Imperial Brands Ltd., 2004969 Ontario Inc., Construction Romir Inc., Genstar 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 Imperial and the BAT Group.

“**JTIM**” means JTI-Macdonald Corp.

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

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

“**Mediation Participants**” means the Applicants, the Consortium of Provinces, the Provinces of Alberta, Newfoundland and Labrador, Ontario, and Quebec, the Quebec Litigation Plaintiffs, the “personal injury class action plaintiffs” represented by Merchant, the “tobacco light class action plaintiffs”, and the Ontario Flue-Cured Tobacco Growers Marketing Board.

“**Merchant**” means Merchant Law Group LLP.

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

“**Proposed Representative Counsel**” means Wagners.

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

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

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

“Quebec Litigation Plaintiffs” means, collectively, the representative plaintiffs and the certified class members in each of the Letourneau and Blais class actions in Quebec bearing court file numbers 500-06-00070-983 and 500-06-000076-80 respectively.

“Rothmans” means Rothmans Benson & Hedges Inc.

“Territories” means the territories of Canada, being the Yukon, Northwest Territories and Nunavut.

“Tobacco CCAA Proceedings” means Court File No. CV-19-616077-00CL commenced by Imperial under the CCAA, Court File No. 19-CV-615862-00CL commenced by JTIM under the CCAA and Court File No. CV-19-616779-00CL commenced by Rothmans under the CCAA.

“Tobacco Monitors” means, collectively, FTI in its capacity as monitor for Imperial, EY in its capacity as monitor for Rothmans, and Deloitte in its capacity as monitor for JTIM.

“Tobacco Products” means tobacco or any product made or derived from tobacco or containing nicotine that is intended for human consumption, including any component, part, or accessory of or used in connection with a tobacco product, including cigarettes, cigarette tobacco, roll your own tobacco, smokeless tobacco, and any other tobacco or nicotine delivery systems and shall include materials, products and by-products derived from or resulting from the use of any tobacco products, but does not include heat-not-burn tobacco products or vapour products.

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

“TRW Claims” means any claim asserted or which may be asserted by a TRW Claimant.

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

“US” means the United States of America.

“US Bankruptcy Code” means title 11 of the United States Code.

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

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

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.**

**ONTARIO
SUPERIOR COURT OF JUSTICE
COMMERCIAL LIST**

Proceeding Commenced at Toronto

**SIXTH REPORT OF THE MONITOR
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