

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 PROPOSED PLAN
OF COMPROMISE OR ARRANGEMENT WITH RESPECT TO
ROTHMANS, BENSON & HEDGES INC.

MOTION RECORD OF THE APPLICANT

(Motion For Stay Extension)
(Returnable September 29, 2020)

September 18, 2020

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**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 PROPOSED PLAN
OF COMPROMISE OR ARRANGEMENT WITH RESPECT TO
ROTHMANS, BENSON & HEDGES INC.

**NOTICE OF MOTION
(Returnable September 29, 2020)**

Rothmans, Benson & Hedges Inc. (the “**Applicant**” or “**RBH**”) will make a motion before Justice McEwen of the Ontario Superior Court of Justice (Commercial List) on September 29, 2020 at 10:00 a.m. or as soon after that time as the motion can be heard at 330 University Avenue, in Toronto.

THE MOTION IS FOR:

- (a) an order extending the Stay Period (as defined in the order of Justice Pattillo dated March 22, 2019, as amended and restated (the “**Initial Order**”)), up to and including March 31, 2021; and
- (b) such other relief as this Honourable Court may allow.

THE GROUNDS FOR THE MOTION ARE:

1. The facts in support of this motion are as set out in the affidavit of Peter Luongo sworn September 18, 2020 (the “**Luongo Affidavit**”). Capitalized terms used and not otherwise defined herein have the meanings ascribed to them in the Luongo Affidavit.
2. On March 22, 2019, Justice Pattillo granted the Initial Order in these proceedings pursuant to the CCAA that, among other things, imposed a stay of proceedings with a Stay

Period up to and including April 5, 2019, which Stay Period has been extended up to and including September 30, 2020.

3. In the time since the Stay Period was last extended, RBH has acted in good faith and with due diligence. Among other things, RBH has:

- (a) continued to operate its cash flow positive Business in the normal course in accordance with the Initial Order;
- (b) met with and provided business updates and information to the Monitor as requested by it;
- (c) actively engaged in the mediation process, including RBH counsel participating in multiple discussions with the Court-Appointed Mediator;
- (d) continued to manage and populate the RBH Data Room to assist the Claimants in the mediation process; and
- (e) communicated with counsel for ITCAN and JTIM and their respective monitors, where appropriate, to ensure the parties' respective CCAA proceedings are procedurally coordinated.

4. RBH is seeking an extension of the Stay Period up to and including March 31, 2021 to allow the multi-party mediation process directed by the Court-Appointed Mediator to continue, with the goal of negotiating a global resolution of the Tobacco Claims. An extension of the Stay Period up to and including March 31, 2021 would provide a reasonable period of time to allow for meaningful progress in the mediation, having regard to the complexity of issues subject to mediation and the number of parties.

5. At the same time, RBH will continue to operate its cash flow positive Business in the normal course, in accordance with the Initial Order, generating positive cash flow for the benefit of Stakeholders. RBH will have sufficient funds available to continue operations throughout the requested extension of the Stay Period.

6. The Monitor supports the extension of the Stay Period as requested.

7. RBH also relies upon the following:

- (a) section 11.02 and other provisions of the CCAA and the inherent and equitable jurisdiction of this Court; and
- (b) 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) the Affidavit of Peter Luongo, sworn September 18, 2020;
- (b) the Sixth Report of the Monitor, to be filed; and
- (c) such further and other materials as counsel may advise and this Court may permit.

September 18, 2020

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TO: THE SERVICE LIST

**ONTARIO
SUPERIOR COURT OF JUSTICE -
COMMERCIAL LIST**

Proceeding commenced at Toronto

**NOTICE OF MOTION
(Returnable September 29, 2020)**

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Tab 2

**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 PROPOSED PLAN OF COMPROMISE OR
ARRANGEMENT OF ROTHMANS, BENSON & HEDGES INC.**

Applicant

**AFFIDAVIT OF PETER LUONGO
(Sworn September 18, 2020)**

I, Peter Luongo, of the City of Toronto, in the Province of Ontario, MAKE OATH AND SAY:

1. I am the Managing Director of Rothmans, Benson & Hedges Inc. ("**RBH**"). I have been employed within the "**PMI Group**", consisting of RBH's ultimate parent, Philip Morris International Inc. ("**PMI**") and its affiliates, including RBH, for approximately 7 years. Throughout this time I have been employed by Philip Morris International Management S.A. I have been in my present role since December 1, 2016. From June 2013 to November 2016, I was the Vice President, Treasury and Planning for PMI. Before that, I was a partner at Centerview Partners, an investment banking advisory firm. Through my current role as Managing Director of RBH, I am familiar with RBH operations, financial results and strategies and, as such, I have personal knowledge of the matters to which I depose in this affidavit. Where I do not possess personal knowledge, I have stated the source of my knowledge and believe it to be true.

2. This affidavit is sworn in support of a motion by RBH for an Order substantially in the form attached at Tab 3 of the Applicant's Motion Record:

- (a) extending the Stay Period, as defined in the Order of Justice Pattillo dated March 22, 2019 as amended and restated on April 5, 2019 and April 26, 2019 (the "**Initial Order**"), from October 1, 2020 to and including March 31, 2021 (the "**Stay Extension Period**"); and

(b) granting such further and other relief as counsel may request.

3. Capitalized terms used but not defined herein have the meanings ascribed thereto in the Initial Order.

Background

4. On March 22, 2019 Justice Pattillo granted an Initial Order pursuant to the *Companies' Creditors Arrangement Act* ("CCAA") that, among other things, appointed Ernst & Young Inc. as Monitor of RBH (the "**Monitor**") and imposed a stay of proceedings up to and including April 19, 2019 in relation to any Tobacco Claims as against RBH or the Monitor and any proceedings in Canada relating in any way to a Tobacco Claim as against the PMI Group.

5. On April 5, 2019, Justice McEwen granted an amended and restated Initial Order (the "**First Amended and Restated Initial Order**") and an order extending the Stay Period up to and including June 28, 2019. Justice McEwen granted a second amended and restated Initial Order on April 26, 2019 and extended the Stay Period on June 26, 2019, October 2, 2019 and February 20, 2020. The Stay Period presently expires on September 30, 2020.

Engagement with Mediation Process, Court-Appointed Mediator and Monitor

6. In the First Amended and Restated Initial Order, Justice McEwen appointed the Hon. Warren K. Winkler Q.C. (the "**Court-Appointed Mediator**") as an officer of the court to act as a neutral third party to mediate a global settlement of the Tobacco Claims. Among other things, the Court-Appointed Mediator is empowered to do the following carrying out his mandate:

- (a) adopt processes which, in his discretion, he considers appropriate to facilitate negotiation of a global settlement; and
- (b) consult with all Persons with Tobacco Claims, the Monitor, the Applicant, the Co-Defendants, other creditors and stakeholders of the Applicant and/or the Co-Defendants and any other persons the Court-Appointed Mediator considers appropriate.

7. Further to that order, the Court-Appointed Mediator has established and is implementing a process that he considers appropriate to facilitate the resolution of issues in this complex case. To date, this has included asking the parties to submit mediation briefs, directing the establishment of data rooms and meetings with parties, individually, in groups, and in plenary sessions. RBH has actively engaged and complied with each step.

8. Pursuant to the endorsement of Justice McEwen dated May 24, 2019, the mediation is confidential and all statements, discussions, offers made and documents produced by any of the parties in the course of the mediation process shall not be disclosed. Accordingly, the description of the activities of RBH and the mediation process below is general in nature.

A. Mediation Brief

9. In accordance with the procedure and timelines established by the Court-Appointed Mediator, RBH delivered its mediation brief on August 1, 2019. Mediation briefs were concurrently delivered by Imperial Tobacco Canada Limited (“**ITCAN**”), JTI-Macdonald Corp. (“**JTIM**”) and the various other parties that are participating in the mediation process (the “**Claimants**”).

10. The parties were provided with an opportunity to deliver reply briefs by September 12, 2019. Reply briefs were filed by certain Claimants.

B. Data Room and NDAs

11. At the request and under the direction of the Court-Appointed Mediator, RBH worked cooperatively with the Monitor to establish a data room to assist the Claimants in the mediation process (the “**RBH Data Room**”). RBH worked with the Monitor to review information requests and compile numerous documents and other information to populate the RBH Data Room for its launch.

12. Similar data rooms were also established by the monitors of ITCAN and JTIM (collectively with the RBH Data Room, the “**Data Rooms**”).

13. Since the launch of the RBH Data Room, RBH has worked with the Monitor to supplement the original information in the RBH Data Room from time to time, as appropriate, in relation to the progress of the mediation.

14. The information in the Data Rooms is strictly confidential and to be used for the sole purpose of the mediation process and no other purpose. As such, counsel for RBH participated in discussions with the Claimants that have expressed an interest in accessing the RBH Data Room, along with their legal and financial advisors, to establish the terms and conditions for access to the RBH Data Room in the form of Non-Disclosure Agreements (“**NDA**s”). On August 16, 2019, the Data Rooms first went “live” to be accessed by parties who had executed NDAs and the Data Rooms continue to be used for the purposes of the mediation process.

C. Mediation Sessions

15. The Court-Appointed Mediator scheduled a plenary session including RBH, ITCAN, JTIM, their respective monitors, and the Claimants on October 8, 2019. RBH participated in that plenary session along with the other parties.

16. Since that plenary session, at the request of the Court-Appointed Mediator, RBH has participated in numerous meetings with the Court-Appointed Mediator and others, as requested by him, and has prepared information from time to time as part of the mediation process.

D. Ongoing Engagement with Court-Appointed Mediator and Monitor

17. In addition to many mediation meetings during the past few months, I am advised by R. Paul Steep of McCarthy Tétrault LLP that counsel for RBH has also been in frequent contact with the Court-Appointed Mediator and the Monitor.

E. Commitment to Mediation

18. RBH is committed to engaging in the CCAA process and taking meaningful steps to seek to develop and implement a global resolution of the Tobacco Claims. To that end, RBH has actively participated in the mediation sessions led by the Court-Appointed Mediator and is committed to continuing to do so.

F. Other Matters

19. In the time since the Stay Period was last extended, RBH has acted in good faith and with due diligence including, among other things:

- (a) continuing to operate its cash-flow positive Business in the normal course in accordance with the Initial Order;
- (b) meeting with and providing business updates and information to the Monitor as requested by it;
- (c) actively engaging with the mediation process, including by RBH counsel participating in multiple discussions with the Court-Appointed Mediator;
- (d) continuing to manage and populate the RBH Data Room to assist the Claimants in the mediation process; and
- (e) communicating with counsel for ITCAN and JTIM and their respective monitors, where appropriate, to ensure the parties' respective CCAA proceedings are procedurally coordinated.

G. Extension of the Stay Period

20. The Stay Period presently expires on September 30, 2020.

21. Mediation sessions are ongoing and it is difficult to provide any firm estimate of the time required to complete the mediation and to develop and implement a CCAA plan. Given the number of parties and scope of the issues, RBH anticipates that the ongoing mediation will require numerous additional meetings between the Court-Appointed Mediator and the various parties to continue to explore positions, develop a resolution and create consensus in respect thereof. Meaningful progress has been made already with the exchange of mediation briefs, the population of the Data Rooms, the completion of a plenary session, and participation in numerous mediation sessions led by the Court-Appointed Mediator.

22. RBH is of the view that positive progress has been made in the mediation, but the complex process to complete the mediation and to develop and implement a CCAA plan requires more time. At this stage, RBH is seeking an extension of the Stay Period up to and including March 31, 2021.

23. The extension of the Stay Period is necessary for the multi-party mediation process directed by the Court-Appointed Mediator to continue, with the goal of negotiating a global resolution of the Tobacco Claims. RBH believes that it is critical to give this process the time and attention required by the Court-Appointed Mediator to ensure the best chances of achieving a successful resolution.

24. A stay extension until March 31, 2021 would provide a reasonable period of time to allow for additional meaningful progress in the mediation, having regard to the complexity of issues subject to mediation and the number of parties.

25. At the same time, RBH has and will continue to operate the Business and generate positive cash flow for the benefit of its Stakeholders.

26. The requested extension of the stay of proceedings is important to keep RBH's litigation creditors and contingent creditors on an equal footing while it explores a plan of compromise or arrangement with its creditors.

27. RBH has sufficient funds to continue operating the Business throughout the Stay Extension Period in accordance with the Initial Order, as set out in the cash flow forecast to be delivered by the Monitor. I understand that JTIM and ITCAN will be seeking similar extensions of the stay period in each of their respective CCAA proceedings.

28. I also understand that the Monitor supports the extension of the Stay Period as requested and will provide further information in a report to the Court, to be filed.

^{18th}
SWORN BEFORE ME over videoconference on
this 17th day of September, 2020. The affiant was
located in the City of North York, in the
Province of Ontario and the Commissioner was
located in the Town of Whitchurch-Stouffville, in
the Province of Ontario. This affidavit was
commissioned remotely as a result of the
COVID-19 pandemic.



PETER LUONGO
Managing Director

A Commissioner for taking Affidavits
Name: Trevor Courtis (LSO# 67715A)

ONTARIO
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AFFIDAVIT OF PETER LUONGO
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Lawyers for the Applicant

Tab 3

**ONTARIO
SUPERIOR COURT OF JUSTICE
COMMERCIAL LIST**

THE HONOURABLE)	TUESDAY, THE 29th
)	
MR. JUSTICE MCEWEN)	DAY OF SEPTEMBER, 2020
)	

**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
ROTHMANS, BENSON & HEDGES INC.**

Applicant

**ORDER
(Stay Extension)**

THIS MOTION, made by Rothmans, Benson & Hedges Inc. (the “**Applicant**”), pursuant to the *Companies' Creditors Arrangement Act*, R.S.C. 1985, c. C-36, as amended for an order extending the Stay Period (as defined herein) was heard this day by judicial videoconference via Zoom in Toronto, Ontario due to the COVID-19 pandemic.

ON READING the Notice of Motion of the Applicant dated September 18, 2020, the affidavit of Peter Luongo sworn September 18, 2020 and the Sixth Report of Ernst & Young Inc. in its capacity as Monitor of the Applicant (the “**Monitor**”); and on hearing the submissions of counsel for the Applicant, the Monitor, and such other counsel as were present, no one else appearing although duly served as appears from the affidavit of service of ● dated September ●, 2020.

EXTENSION OF STAY PERIOD

1. **THIS COURT ORDERS** that the Stay Period as defined in the order of Justice Pattillo dated March 22, 2019, as amended and restated, is hereby extended up to and including March 31, 2021.

ONTARIO
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ORDER

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