

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

**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**

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

**MOTION RECORD
(Stay Extension and Other Relief)
(Returnable March 25, 2024)**

March 11, 2024

McCarthy Tétrault LLP
Suite 5300, Toronto Dominion Bank Tower
Toronto ON M5K 1E6

R. Paul Steep LSO#: 21869L
Tel: 416-601-7998
E-mail: psteep@mccarthy.ca

James D. Gage LSO#: 34676I
Tel: 416-601-7539
E-mail: jgage@mccarthy.ca

Heather Meredith LSO#: 48354R
Tel: 416-601-8342
E-mail: hmeredith@mccarthy.ca

Trevor Courtis LSO#: 67715A
Tel: 416-601-7643
E-mail: tcourtis@mccarthy.ca

Lawyers for the Applicant

INDEX

**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.**

**MOTION RECORD
(Stay Extension and Other Relief)
(Returnable March 25, 2024)**

INDEX

| TAB | DOCUMENT |
|------------|--|
| 1 | Notice of Motion |
| 2 | Affidavit of Milena Trentadue sworn March 6, 2024 |
| A. | Exhibit "A" – Second Amended and Restated Initial Order dated April 25, 2019 |
| B. | Exhibit "B" – Stay Extension Order dated September 27, 2023 |
| C. | Exhibit "C" – Endorsement dated October 5, 2023 |
| D. | Exhibit "D" – Representative Counsel Order dated December 9, 2019 |
| E. | Exhibit "E" – Endorsement dated May 24, 2019 |
| 3 | Draft Order |

TAB 1

**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

**NOTICE OF MOTION
(Stay Extension and Other Relief)
(Returnable March 25, 2024)**

Rothmans, Benson & Hedges Inc. (the “**Applicant**” or “**RBH**”) will make a motion before the Honourable Chief Justice Morawetz of the Ontario Superior Court of Justice (Commercial List) on March 25, 2024 at 9:00 a.m., or as soon after that time as the motion can be heard, by judicial videoconference via Zoom at Toronto, Ontario. Please refer to the Virtual Hearing Protocol attached as Schedule “A” hereto in order to attend.

THE MOTION IS FOR:

- (a) an order extending the Stay Period (defined below) until and including September 30, 2024 (the “**Requested Stay Extension Period**”);
- (b) an order permitting employee grievance proceedings to be commenced and continued provided that the monetary value or cost to RBH of the grievance does not exceed \$250,000 and the prior written consent of RBH and the Monitor (defined below) is obtained; and
- (c) such other relief as this Honourable Court may allow.

THE GROUNDS FOR THE MOTION ARE:

1. The facts in support of this motion are set out in the affidavit of Milena Trentadue sworn March 6, 2024 (the “**Trentadue Affidavit**”). Capitalized terms used and not otherwise defined herein have the meanings ascribed to them in the Trentadue Affidavit.
2. On March 22, 2019, the Court granted an initial order (as amended from time to time, the “**Initial Order**”) pursuant to the *Companies’ Creditors Arrangement Act* (Canada) (the “**CCAA**”). The Initial Order, among other things, (i) granted a stay of proceedings in favour of RBH with a stay period until and including April 19, 2019 (as extended from time to time, the “**Stay Period**”); and (ii) appointed Ernst & Young Inc. as Monitor of RBH (the “**Monitor**”).
3. On April 5, 2019, the Court granted the First Amended and Restated Initial Order which, among other things, (i) appointed the Hon. Warren K. Winkler, K.C. as an officer of the court to act as a neutral third party to mediate a global settlement of the Tobacco Claims (the “**Court-Appointed Mediator**”), and (ii) extended the Stay Period up to and including June 28, 2019. The Initial Order was further amended and restated by the Second Amended and Restated Initial Order dated April 25, 2019.
4. 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 must not be disclosed.
5. The Stay Period has been subsequently extended from time to time, most recently by an order dated September 27, 2023. The Stay Period is presently extended up to and including March 29, 2024.
6. In the time since the Stay Period was last extended, RBH has acted and continues to act in good faith and with due diligence in these CCAA proceedings by, among other things:
 - (a) continuing to operate its business in the normal course and in accordance with the Initial Order;
 - (b) meeting with and providing business updates and information to the Monitor at its request;

- (c) actively engaging in the complex multi-party mediation process by, among other things, participating in numerous meetings virtually every week with the Court-Appointed Mediation, the Monitors and the claimants and drafting, reviewing and exchanging voluminous written materials;
 - (d) continuing to manage and populate the RBH Data Room to assist the claimants in the mediation process; and
 - (e) communicating with counsel for the Monitors and the other Tobacco Companies, when appropriate, to ensure the parties' respective CCAA proceedings are procedurally coordinated.
6. The Stay Period presently expires on March 29, 2024.
7. An order extending the Stay Period until and including September 30, 2024 is appropriate and necessary to allow the complex multi-party mediation process to continue with the goal of producing a global settlement of the Tobacco Claims.
8. While the mediation is confidential, progress has been made on a number of issues over the last six months. However, there are some major issues that must be worked out in accordance with the schedule and process designed by the Court-Appointed Mediator.
9. A global settlement that addresses all pending and potential Tobacco Claims is the best outcome for the parties. It will end years of litigation, maximize recoveries for the claimants and minimize delay and costs for the parties.
10. While it is the best outcome for the parties, negotiating a global settlement is highly complex and time-consuming. The mediation involves numerous parties (including all ten Provinces, three Territories and various different representatives of consumers and others across Canada in class actions and putative class actions and/or with asserted and unasserted claims), multi-faceted issues and hundreds of billions of dollars in asserted claims.
11. The claims advanced include:

- (a) HCCR Claims brought in actions by all ten Provinces and asserted by all three Territories involving claims of hundreds of billions of dollars against the tobacco industry. These claims have myriad contested issues, including establishing a tobacco-related wrong and issues relating to causation, damages and valuation;
- (b) the Quebec Class Actions (subject to a possible appeal to the Supreme Court of Canada although currently stayed) in which RBH and its co-defendants, ITCAN and JTIM (but not the parents or affiliates of the three) were held to be jointly and severally liable for up to approximately \$13.5 billion, of which approximately \$2.7 billion (or 20%) was allocated to RBH (each amount inclusive of interest to March 1, 2019); and
- (c) claims of consumers and others in a series of actual and proposed class actions and individual claims. Such claims include: certain Dormant Class Actions (which have not moved past the point of initial filing and face numerous procedural and substantive hurdles); a class action filed by the Growers' Board; and potential liability to plaintiffs who have not yet asserted claims.

12. In the absence of a global settlement with the Tobacco Companies that is implemented by way of a CCAA plan, a complex and time-consuming process would likely be required to establish and value all outstanding claims and resolve the myriad contested issues they entail before distributions could be made. The time required for such a process would likely dwarf the time required to complete the negotiation of a settlement and implement a CCAA plan (recognizing more time for settlement discussions is necessary and the exact length of this latter period is uncertain).

13. For some context, the Quebec Class Actions took approximately 17 years to get to a first-instance judgment and remain subject to further appeal nearly 25 years later. Similarly, despite British Columbia's first claim having been brought in 1998, the HCCR Actions are all in their relative infancy with none having yet proceeded to trial and many are still in the early days of discovery. Other pending litigation – like the Dormant Class Actions – has not advanced beyond initial pleadings. Given the nature of the Tobacco Claims and the experience in the litigation to

date, whether or not the exercise is carried out through a CCAA claims process, identifying and valuing such claims will be complicated and likely take years and years to complete.

14. Moreover, even if some claims were eventually proven and valued (including identification of the claimants to the extent not known), a creditor with a proven and valued claim would be required to share *pari passu* with all other claimants once proven and valued. In the face of the vast quantum of highly contested, contingent claims relative to any reasonable estimate of the value of the assets, there is no practical alternative for any creditor to obtain a distribution in advance of other creditors without an agreement or CCAA plan with the Tobacco Companies.

15. The additional time contemplated by the Requested Stay Extension Period would provide a reasonable period of time to allow for additional progress in the mediation, having regard to the complexity of issues subject to the mediation and the number of parties involved, and is consistent with past stay extensions.

16. During this ongoing mediation process, the extension of the Stay Period is important to keep RBH's litigation creditors and contingent creditors on an equal footing while RBH seeks to develop a CCAA plan with its creditors.

17. It is just and convenient and in the interests of RBH and its stakeholders that the Stay Period be extended.

18. RBH will continue to operate its business in the normal course and in accordance with the Initial Order for the benefit of its stakeholders.

19. RBH will have sufficient funds available to continue its operations throughout the requested extension of the Stay Period.

20. The relief related to employee grievances will allow employees to seek a determination on day-to-day operational matters without RBH or the employees having to seek leave from the Court each time a grievance is commenced.

21. Appropriate safeguards are in place to ensure that RBH's other stakeholders are not prejudiced by these grievances being allowed to proceed, specifically (i) the

requirement of RBH and Monitor consent, and (ii) the limit on the monetary value of the grievance.

22. The Monitor supports the requested extension of the Stay Period and the relief related to employee grievances.

23. RBH also relies upon the following:

- (a) section 11.02, the provisions of the CCAA and the inherent and equitable jurisdiction of this Court;
- (b) rules 1.04, 2.03, 3.02, 16, 37 and 39 of the *Rules of Civil Procedure* (Ontario), as amended; and
- (c) 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 Milena Trentadue, sworn March 6, 2024;
- (b) the Fifteenth Report of the Monitor, to be filed; and
- (c) such further and other materials as counsel may advise and this Court may permit.

March 11, 2024

McCarthy Tétrault LLP
Suite 5300, Toronto Dominion Bank Tower
Toronto ON M5K 1E6

R. Paul Steep LSO#: 21869L
Tel: 416-601-7998
E-mail: psteep@mccarthy.ca

James D. Gage LSO#: 34676I
Tel: 416-601-7539
E-mail: jgage@mccarthy.ca

Schedule "A" – Virtual Hearing Protocol

Scheduling and Specific Requirements

1. Any person on the Service List that wishes to appear virtually on the motion ("**Participants**") must register by 4:00 p.m. two (2) business days in advance of the hearing (Thursday, March 21 for the motion scheduled Monday, March 25, 2024), by emailing Veritext Litigation Solutions Canada, Inc. (scheduling@neesonsreporting.com) and copying each Monitor's counsel (tbarbiero@dwpv.com, sfernandes@cassels.com, nancy.thompson@blakes.com). In their email, Participants should provide contact information, including a name, who they are acting for, an email address and phone number for the counsel slip, along with a statement regarding whether they intend to make submissions.
2. Subject to the Court's overriding discretion over all matters, Monitors' counsel will coordinate with Participants and the Court to develop an agenda for the hearing.
3. All material for use on the motion is to be posted on CaseLines, as more fully described in **Appendix "B"**.
4. Participants will appear by video. Monitors' counsel will distribute the Zoom link to Participants. Participants are not permitted to forward or share the Zoom link. No person should have access to the hearing on Zoom other than Participants. If a Participant is unable to attend by video, they should contact Monitors' counsel. Participants should carefully review the technical requirements below.
5. Counsel is not required to gown for the hearing. Instead, business attire is required for all Participants appearing by video.
6. For access by the general public, a YouTube link will be posted on each of the Monitors' websites by 10:00 a.m. not less than two (2) business days prior to the hearing. The YouTube link will allow the general public to view a livestream of the hearing, but not participate in the hearing. For greater clarity, individuals viewing the livestream via YouTube will not be heard or seen by the Court, Judge or Participants.

7. No recording of any part of the hearing (including audio) may be made unless authorized in advance by the Court.

8. For greater certainty, notice and service requirements are set out in the Rules of Civil Procedure, and the various orders and endorsements in the proceedings. For ease of reference, we have included paragraphs 58-63 of the Second Amended and Restated Initial Order dated March 8, 2019 in the JTIM proceedings, attached as **Appendix "A"**. It should be noted that similar notice and service requirements have been set out in various orders and endorsements in the parallel proceedings of Imperial and RBH. Nothing in this protocol modifies or amends Orders of the Court related to service requirements, the Rules of Civil Procedure, any Commercial List Practice Direction or other applicable rules.

9. Participants will be placed into a virtual waiting room upon entering the Zoom meeting.

Technical Requirements for Zoom Participants

10. Participants will require a device with a working microphone and camera. The device can be a computer (desktop or laptop), tablet or smartphone. The device must be connected to an internet connection that is sufficient to send and receive video and audio.

11. Each Participant is responsible for ensuring that they have suitable equipment to participate in the hearing and that such equipment works properly. Participants must test such equipment well in advance of the scheduled hearing to ensure:

- (a) that they are familiar with how to use such equipment;
- (b) the compatibility and functioning of such equipment; and
- (c) that the remote location has adequate internet bandwidth to support the use of Zoom without interruption.

12. Each Participant is also responsible for ensuring that they are familiar with the features and operation of Zoom. Participants must ensure that they have downloaded any necessary software, and practiced using Zoom, well in advance of the scheduled hearing.

13. Counsel on Zoom should identify their display name in the following format: [First Name] [Last name], for [Client].
14. Participants should log on using the Zoom link provided approximately 30 minutes before the hearing is scheduled to begin. During this time, Participants should speak to each other to determine if there are any audio/visual/connection issues.
15. It is suggested that Participants use the "gallery view" mode, rather than the "active speaker" mode, available on Zoom.
16. It is suggested that only counsel who are making submissions turn on their cameras during the hearing.
17. Should a Participant become disconnected from Zoom or experience technical difficulties during the hearing, they should immediately inform the Court by sending an email to Veritext Litigation Solutions Canada, Inc. (scheduling@neesonsreporting.com).
18. Further participant information is included in **Appendix "B"**.

APPENDIX "A"

58. **THIS COURT ORDERS** that, subject to paragraph 59, all motions in this proceeding are to be brought on not less than seven (7) calendar days' notice to all persons on the Service List. Each Notice of Motion shall specify a date (the "**Return Date**") and time for the hearing.

59. **THIS COURT ORDERS** that motions for relief on an urgent basis need not comply with the notice protocol described herein.

60. **THIS COURT ORDERS** that any interested Person wishing to object to the relief sought in a motion must serve responding motion material or, if they do not intend to file material, a notice in all cases stating the objection to the motion and the grounds for such objection in writing (the "**Responding Material**") to the moving party, the Applicant and the Monitor, with a copy to all Persons on the Service List, no later than 5 p.m. on the date that is four (4) calendar days prior to the Return Date (the "**Objection Deadline**").

61. **THIS COURT ORDERS** that, if no Responding Materials are served by the Objection Deadline, the judge having carriage of the motion (the "**Presiding Judge**") may determine:

- (a) whether a hearing is necessary;
- (b) whether such hearing will be in person, by telephone or by written submissions only; and
- (c) the parties from whom submissions are required

(collectively, the "**Hearing Details**"). In the absence of any such determination, a hearing will be held in the ordinary course.

62. **THIS COURT ORDERS** that, if no Responding Materials are served by the Objection Deadline, the Monitor shall communicate with the Presiding Judge regarding whether a determination has been made by the Presiding Judge concerning the Hearing Details. The Monitor shall thereafter advise the Service List of the Hearing Details and the Monitor shall report upon its dissemination of the Hearing Details to the Court in a timely manner, which may be contained in the Monitor's next report in the proceeding.

63. **THIS COURT ORDERS** that if any party objects to the motion proceeding on the Return Date or believes that the Objection Deadline does not provide sufficient time to respond to the motion, such objecting party shall, promptly upon receipt of the Notice of Motion and in any event prior to the Objection Deadline, contact the moving party and the Monitor (together with the objecting party and any other party who has served Responding Materials, the "**Interested Parties**") to advise of such objection and the reasons therefor. If the Interested Parties are unable to resolve the objection to the timing and schedule for the motion following good faith consultations, the Interested Parties may seek a scheduling appointment before the Presiding Judge to be held prior to the Return Date or on such other date as may be mutually agreed by the Interested Parties or as directed by the Presiding Judge to establish a schedule for the motion. At the scheduling appointment, the Presiding Judge may provide directions including a schedule for the delivery of any further materials and the hearing of the contested motion, and may address such other matters, including interim relief, as the Court may see fit. Notwithstanding the foregoing, the Presiding Judge may require the Interested Parties to proceed with the contested motion on the Return Date or on any other date as may be directed by the Presiding Judge or as may be mutually agreed by the Interested Parties, if otherwise satisfactory to the Presiding Judge.

APPENDIX "B"

1. All Participants will have their microphones muted and may only unmute their own microphones when they are addressing the Court. When parties are not muted, they must avoid making extraneous noise (including for example, typing and shuffling papers) as these noises may interfere with the hearing.
2. Participants must ensure that they participate in the Zoom hearing from a well-lit room so that they are easily visible. Participants must also ensure that no filters are active that may distort or otherwise conceal their appearance.
3. Participants must ensure that they participate in the Zoom hearing from a quiet location where they (and the Court) will not be interrupted or disturbed during the hearing.
4. All mobile devices must be turned off or put on silent mode during the hearing.
5. Participants must refrain from speaking over other Participants.
6. Participants should make submissions in accordance with the order set out in the agenda. If there is a need to make submissions out of sequence, Participants should make a request in a manner directed by the Court. The Court may ask Participants to signal when they intend to address the Court by raising their hand (either by physically raising their hand or by using the virtual "raise hand" feature in Zoom).
7. Participants must state their name and who they represent before addressing the Court.
8. Upon entry into the virtual waiting room, each Participant joining by video should identify themselves, including any person off camera that may be viewing the video feed. This also allows any audio or visual issues to be identified. Each Participant is obligated to immediately notify the presiding judge if any additional person joins them in viewing the video feed.
9. If a Participant intends to rely on any documents, the materials you intend to rely on must be served and shared on the relevant CaseLines bundle and all references during the hearing should reference the CaseLines page numbering associated with such CaseLines bundle.

10. If a party wishes to share certain documents during the hearing, the documents should be provided to the Monitors in advance so that it can be added to the agenda and a method for sharing can be set up.

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

Proceeding commenced at Toronto

**NOTICE OF MOTION
(Stay Extension Order)
(Returnable March 25, 2024)**

McCarthy Tétrault LLP
Suite 5300, TD Bank Tower
Toronto ON M5K 1E6

R. Paul Steep LSO#: 21869L
Tel: 416-601-7998
E-mail: psteep@mccarthy.ca

James D. Gage LSO#: 34676I
Tel: 416-601-7539
E-mail: jgage@mccarthy.ca

Trevor Courtis LSO#: 67715A
Tel: 416-601-7643
E-mail: tcourtis@mccarthy.ca

Lawyers for the Applicants

TAB 2

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

**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**

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

Applicant

**AFFIDAVIT OF MILENA TRENTADUE
(Sworn March 6, 2024)**

I, Milena Trentadue, 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**” or the “**Applicant**”). I have served in this capacity since February 1, 2024. I have been employed with RBH, an affiliate of Philip Morris International Inc. (“**PMI**”), for over five years. Prior to my appointment as Managing Director of RBH, I served as a Director of Commercial Deployment from January 2019 to January 2024. Prior to joining RBH, I spent over 20 years in the consumer packaged goods industry.
2. Through my current role as Managing Director of RBH, I am familiar with RBH’s operations, financial results and strategies and, as such, 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 information and believe it to be true.

3. I swear this affidavit in support of RBH's motion for an Order substantially in the form attached at Tab 3 of the Applicant's Motion Record:

- (a) extending the Stay Period (defined below) from March 29, 2024 until and including September 30, 2024 (the "**Requested Stay Extension Period**");
- (b) granting certain relief related to the stay of proceedings as it applies to individual employee grievances; and
- (c) granting such further and other relief as counsel may request.

4. Capitalized terms used but not otherwise defined herein have the meanings given to them in the Second Amended and Restated Initial Order (defined below).

I. BACKGROUND

The Company and its Business

5. RBH is a Canadian company that is headquartered in Toronto. RBH and its predecessor corporations have been engaged in the business of the production and sale of tobacco products in Canada (the "**Business**") for over 100 years. RBH is the second-largest supplier of traditional tobacco products in the tax-paid Canadian market. RBH manufactures and sells cigarettes and fine-cut tobacco as well as distributing pipe tobacco and cigar products. RBH also distributes smoke-free alternatives to cigarettes, developed and produced by the PMI Group ("**Reduced Risk Products**").

Employees and Locations

6. RBH provides employment or consultant work to approximately 780 people located across all ten Canadian Provinces. RBH has its head office in Toronto, Ontario, located in a large commercial building that it owns, and it also owns an old manufacturing plant in Quebec City, Quebec (the “**Quebec Facility**”) where it produces a portion of its finished tobacco products. RBH also sources product outside of Canada, including at the more modern PMI facility in Mexico, the first PMI production plant in the Americas to achieve carbon neutrality.

7. In response to the changing landscape of the tobacco industry in Canada, over the past two decades, RBH has reduced its Canadian workforce and consolidated its three Canadian manufacturing facilities into the Quebec Facility. The Quebec Facility, first established in 1899, has experienced a decline in production volume by approximately 60% since 2016 and requires increasing investments to maintain due to, among other things, high employee turnover rates and material operating costs. The Quebec Facility currently employs approximately 220 employees, the majority of whom are unionized, with a collective agreement that expires in February 2025.

8. RBH employs approximately 370 employees in Ontario. Even with these reductions in its Canadian workforce, I believe RBH is the largest employer among manufacturers of tax-paid tobacco products in Canada although it is the second-largest supplier.

Supply and Distribution Arrangements

9. RBH indirectly sources the majority of the tobacco leaf used in its products from Ontario tobacco growers.

10. RBH also purchases other non-tobacco inputs used by RBH in the manufacture of tobacco products from third party suppliers. Such inputs include cigarette papers, liners, filters and packaging materials.

11. RBH sells its products through retailers and wholesale distributors and uses the services of third parties for logistics and other services, each of whom benefits from RBH's continuing operations either directly or indirectly.

Significant Tax Revenues

12. The Canadian tobacco market is subject to extensive regulation governing the sale and marketing of tobacco products and tobacco-related activities are subject to significant federal and provincial taxation. Provincial and federal taxes account for more than 60% of the price of tax-paid cigarettes.

The Pending Litigation

13. While the operations of the Business are stable and cash-flow positive, these CCAA proceedings were initiated to address the extensive litigation to which RBH had become subject (collectively, the "**Pending Litigation**"), including:

- (a) Health Care Cost Recovery ("**HCCR**") actions initiated by all ten Canadian Provinces and asserted by the governments of all three Territories;

- (a) judgments issued in two class action proceedings in Quebec in which RBH is a defendant (the “**Quebec Class Actions**”); and
- (b) a significant number of early-stage actions and legal proceedings in which RBH is a defendant or respondent, including the Dormant Class Actions and the Tobacco Growers’ Action (each as defined herein and described further below),

relating to the purchase, sale, disposition, distribution, manufacture, production, development, design, advertising or marketing of tobacco products, the use of or exposure to tobacco products or their emissions, or representations or omissions in respect of tobacco products (the “**Tobacco Claims**”).

14. As discussed further below, the Pending Litigation involves myriad contested issues and significant complexity. In the absence of a global settlement of claimants with the Tobacco Companies that is implemented by way of a CCAA plan, a complex and time-consuming process would likely be required to establish and value all outstanding Pending Litigation claims and resolve the many contested issues before distributions could be made.

Health Care Cost Recovery Actions

15. Notwithstanding the significant amounts that are collected by the Provinces each year in respect of the production and sale of tobacco by RBH, ITCAN and JTIM (collectively, the “**Tobacco Companies**”), the governments of all ten Canadian Provinces have initiated actions (each an “**HCCR Action**” and collectively the “**HCCR Actions**”), and the governments of all three Territories have asserted claims, against the Tobacco Companies and certain of their

affiliates for the cost of health care benefits that allegedly have been and will be incurred by the province in respect of disease allegedly caused or contributed to by wrongfully-induced exposure to tobacco products (each an “**HCCR Claim**” and collectively the “**HCCR Claims**”).

16. In the HCCR Actions, the Provinces claim hundreds of billions of dollars from the tobacco industry.

17. RBH vigorously disputes both liability and the calculation of alleged damages claimed in the HCCR Claims and there are numerous contested issues, including establishing a tobacco-related wrong and issues relating to causation, damages and valuation. Among other things, the defendants have raised that the Provinces and Territories do not account for the significant revenue they receive in the form of tobacco taxes.

18. The HCCR Actions were initiated between 1998 and 2015. None of them have proceeded to trial. The British Columbia, New Brunswick and Ontario HCCR Actions were the most advanced; however, as of March 2019 they remained at the pre-trial discovery stage. The remaining HCCR Actions were either in earlier pre-trial discovery stages (in the case of Newfoundland & Labrador, Manitoba, Quebec and Alberta) or had yet to proceed to discovery (in the case of Saskatchewan, Prince Edward Island and Nova Scotia).

Quebec Class Actions

19. The Quebec Class Actions were originally filed in 1998 as separate actions and were classified as class actions in 2005 and subsequently consolidated for trial. The Quebec Class Actions consist of (i) *Jean-Yves Blais and the Conseil québécois sur le tabac et la santé v.*

JTI-Macdonald Corp. et al. (Court File No. 500-06-000076-980) (the “**Blais Action**”), and
(ii) *Cécilia Létourneau v. v. JTI-Macdonald Corp. et al.* (Court File No. 500-06-000070-983)
(the “**Letourneau Action**”).

20. The Blais Action was brought on behalf of individuals residing in Quebec that, among other things, smoked a minimum quantity before November 20, 1998 and were diagnosed before March 12, 2012 with three specified illnesses allegedly caused by tobacco smoke, specifically (i) lung cancer, (ii) throat cancer and (iii) emphysema.¹ The class members in the Blais Action were divided into three subclasses based on the disease they had been diagnosed with.

21. The Letourneau Action was brought on behalf of individuals residing in Quebec that had developed a nicotine dependency.

22. On May 27, 2015 – approximately 17 years after the civil action was commenced – Justice Riordan of the Quebec Superior Court issued a judgment, corrected June 9, 2015 (the “**Quebec Trial Judgment**”), awarding compensatory and punitive damages in the aggregate amount of approximately \$6.858 billion (or approximately \$13.529 billion inclusive of interest to March 1, 2019) (the “**Global Damages Award**”) against RBH and its co-defendants, ITCAN and JTIM (the “**Co-Defendants**”).

¹ The certified class definition (as amended by the Quebec Appeal Judgment), included individuals who met all of the following criteria:

- (a) individuals residing in Quebec;
- (b) individuals who have smoked, between January 1, 1950 and November 20, 1998, a minimum of Twelve (12) Pack/Years of cigarettes (the equivalent of 87,600 cigarettes) manufactured by any of the Tobacco Companies; and
- (c) individuals who have been diagnosed before March 12, 2012 with:
 - (i) Lung Cancer;
 - (ii) Throat Cancer; or
 - (iii) Emphysema;

23. The Quebec Trial Judgment estimated the compensatory damages in the Blais Action based on an estimate of the size of each subclass (lung cancer: 72,398; throat cancer: 7,243; emphysema: 20,316) and a uniform damages figure for each subclass member (lung cancer: \$100,000; throat cancer: \$100,000; emphysema: \$30,000).

24. In the Letourneau Action, Justice Riordan dismissed the claims for compensatory damages, holding that the plaintiffs had failed to meet the conditions for collective recovery, and awarded punitive damages of \$131 million. However, since the Letourneau class included an estimated 918,218 members and the punitive damages awarded therefore represented only about \$130 per member, the Court refused distribution of an amount to each of the members on the ground that it would not be possible and would be too expensive to do so.

25. RBH and the Co-Defendants have joint and several contingent liability in respect of the Global Damages Award less the punitive damages awarded individually against the Co-Defendants. The trial judge allocated the Global Damages Award as follows:

- (a) 20% was allocated to RBH (or approximately \$2.7 billion inclusive of interest to March 1, 2019);
- (b) 67% was allocated to ITCAN (or approximately \$9.1 billion inclusive of interest to March 1, 2019); and
- (c) 13% was allocated to JTIM (or approximately \$1.75 billion inclusive of interest to March 1, 2019),

based on, among other things, the court's determination of each company's culpability and market share over the class period.

26. RBH and the Co-Defendants commenced an appeal of the Quebec Trial Judgment which was heard in November 2016 and decided on March 1, 2019 (the “**Quebec Appeal Judgment**”). The Quebec Court of Appeal upheld the Quebec Trial Judgment in most aspects.

27. The Global Damages Award is based on estimated subclass sizes. The actual number of individuals that apply for and meet the requirements for inclusion in each subclass would depend on the outcome of a claims process for eligible class members.

28. RBH continues to vigorously contest the liability for and quantum of the Global Damages Award. As a result of these proceedings, RBH’s right to bring an application for leave to appeal the Quebec Appeal Judgment to the Supreme Court of Canada has been stayed, and the time periods for it to do so have been extended by a period equal to the Stay Period, while RBH pursues a global compromise of all claims against it, including the Global Damages Award.

Dormant Class Actions

29. In addition to the HCCR Actions, RBH, along with other members of the tobacco industry, is a defendant in seven putative class actions for alleged tobacco addictions and tobacco-related harms caused by products sold by the defendants: two actions in British Columbia and one action in each of Alberta, Saskatchewan, Manitoba, Ontario and Nova Scotia (each a “**Dormant Class Action**” and collectively, the “**Dormant Class Actions**”).

30. The Dormant Class Actions were initially filed in 2009 and 2010. None of the Dormant Class Actions has been certified. The Dormant Class Actions were at different

stages of early development and they face numerous procedural and substantive hurdles. In one British Columbia action, the plaintiffs were scheduled to file their class certification materials in January 2015, but had not filed them by March 2019. In the putative class actions in Ontario, Alberta, Manitoba and Nova Scotia and the other British Columbia proceeding, no steps had been taken since January 2010.

31. RBH vigorously disputes the allegations and claims asserted in the Dormant Class Actions.

Tobacco Growers' Action

32. In 2009, the Ontario Flue-Cured Tobacco Growers' Marketing Board (the "**Growers' Board**") filed a putative class action in Ontario against RBH alleging breach of contract and seeking damages on the basis that RBH improperly affected the price of tobacco through alleged smuggling activities in the early 1990s (the "**Tobacco Growers' Action**").

33. The class action has not been certified. RBH vigorously disputes the allegations and claims asserted by the plaintiffs in the Tobacco Growers' Action, who collectively are seeking damages in excess of \$100 million.

CCAA PROCEEDINGS

Commencement of CCAA Proceedings

34. RBH commenced these proceedings pursuant to the *Companies' Creditors Arrangement Act* (Canada) (the "**CCAA**") to prevent disruption of the Business as a result of

the Pending Litigation, and to enable it to explore a global resolution of these litigation claims.

35. On March 22, 2019, the Court granted an initial order (the “**Initial Order**”) pursuant to the CCAA. The Initial Order, among other things, (i) granted a stay of proceedings in favour of RBH with a stay period until and including April 19, 2019 (as extended from time to time, the “**Stay Period**”); and (ii) appointed Ernst & Young Inc. as Monitor of RBH (the “**Monitor**”).

36. On April 5, 2019, the Court granted an amended and restated initial order (the “**First Amended and Restated Initial Order**”) which, among other things, extended the Stay Period up to and including June 28, 2019. The Initial Order was further amended and restated by a second amended and restated initial order (the “**Second Amended and Restated Initial Order**”) dated April 25, 2019. A copy of the Second Amended and Restated Initial Order is attached hereto as **Exhibit “A”**.

37. The Stay Period has been subsequently extended from time to time, most recently by an order dated September 27, 2023. The Stay Period is presently extended up to and including March 29, 2024. A copy of the most recent stay extension order is attached hereto as **Exhibit “B”** (the “**September 2023 Order**”). A copy of the associated endorsement of the Court is attached hereto as **Exhibit “C”** (the “**September 2023 Endorsement**”).

Mediation Process and Representative Counsel

Appointment of Court-Appointed Mediator

38. Pursuant to the First Amended and Restated Initial Order, the Court appointed the Hon. Warren K. Winkler, K.C. as an officer of the court to act as a neutral third party to mediate a global settlement of the Tobacco Claims (the “**Court-Appointed Mediator**”). Among other things, the Court-Appointed Mediator is empowered to:

- (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, RBH, the Co-Defendants, other creditors and stakeholders of RBH and/or the Co-Defendants and any other persons the Court-Appointed Mediator considers appropriate.

Appointment of Representative Counsel

39. On December 9, 2019, on a joint motion brought by the monitors of each of the Tobacco Companies (the “**Tobacco Monitors**”), the Court issued an order (the “**Representative Counsel Order**”) appointing The Law Practice of Wagner & Associates, Inc. (“**Representative Counsel**”) to represent the interests of the Pan-Canadian Claimants in these proceedings. A copy of the Representative Counsel Order is attached hereto as **Exhibit “D”**.

40. The “**Pan-Canadian Claimants**” include all individuals who assert or may be entitled to assert a claim or cause of action as against one or more of the Tobacco Companies and certain of their affiliates in respect of (i) the development, manufacture, importation, production, marketing, advertising, distribution, purchase or sale of Tobacco Products (as

defined in the Representative Counsel Order); (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 Tobacco Companies, anywhere else in the world, but specifically excluding claims:

- (a) in any person's capacity as a trade supplier, contract counterparty, employee, pensioner, or retiree;
- (b) captured by the Quebec Class Actions;
- (c) captured by the Tobacco Growers' Action and similar actions against ITCAN and JTIM; and
- (d) captured by a deceptive practices class action brought against ITCAN only that has been certified in British Columbia.²

41. The individuals represented by Representative Counsel include those with (i) various residual tobacco-related disease claims that fall outside the class definitions in the Quebec Class Actions; (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.

42. Representative Counsel was appointed to allow for the interests of the Pan-Canadian Claimants to be addressed in an efficient, timely and consistent manner under the exclusive

² *Kenneth Knight v. Imperial Tobacco*, Court File No. L031300 (Vancouver, British Columbia).

jurisdiction of this Court. Pursuant to the Representative Counsel Order, Representative Counsel has been authorized to, among other things:

- (a) participate in and negotiate on behalf of the Pan-Canadian Claimants in the mediation;
- (b) work with the Court-Appointed Mediator and the Tobacco Monitors to develop a process for the identification of valid and provable claims of Pan-Canadian Claimants and as appropriate, address such claims in the mediation or these CCAA proceedings;
- (c) respond to inquiries from Pan-Canadian Claimants in the CCAA proceedings; and
- (d) perform such other actions as approved by this Court.

The Court-Appointed Mediator is Implementing a Process to Facilitate a Global Settlement

43. While I do not participate directly in the mediation process, I am updated regularly on the process by our counsel. The summary below of the steps taken in the mediation process to date and the status of that process is based on the information conveyed to me by our counsel. In no way am I disclosing communications made for the purpose of giving or receiving solicitor-client advice, nor am I waiving any such privilege.

44. The mediation is extremely complex and involves numerous parties, including the three Tobacco Companies, all ten Provinces, all three Territories, Representative Counsel,

class counsel in the Quebec Class Actions and plaintiffs' counsel in certain other actions against the Tobacco Companies. The mediation involves multi-faceted issues and claims with asserted damages of hundreds of billions of dollars.

45. 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 must not be disclosed. A copy of this endorsement is attached hereto as **Exhibit "E"**.

46. Accordingly, the description of the activities of RBH and the mediation process below is general in nature.

47. To date, the mediation process has included:

- (d) a plenary session in October 2019 and the exchange of mediation briefs;
- (e) each of the Tobacco Companies and their respective Monitors creating data rooms to assist the claimants and responding to information requests and providing ongoing disclosure to the claimants regarding the business and financial performance of the Tobacco Companies;
- (f) participating in numerous further in-person and virtual meetings directed by the Court-Appointed Mediator and engaging in constant and ongoing discussions with the Court-Appointed Mediator, the Monitor(s), the other Tobacco Companies and/or other stakeholders; and

- (g) receiving, reviewing, preparing and providing information and written materials from time to time.

48. RBH has actively engaged in the mediation process and has complied with all of the steps as directed by the Court-Appointed Mediator from time to time.

49. Since the September 2023 Order, RBH has participated in numerous meetings virtually every week (apart from the holidays) with the Monitors, Court-Appointed Mediator and other stakeholders and has drafted, exchanged and/or reviewed voluminous written materials. RBH has worked collaboratively with the Monitors, Court-Appointed Mediator and other stakeholders to attempt to solve the myriad complex and multi-faceted issues that must be worked out before a global resolution of Tobacco Claims can be implemented.

50. RBH believes that progress on a number of these issues has been made over the last six months. However, there are some major issues that must be worked out in accordance with the schedule and process designed by the Court-Appointed Mediator before a plan of compromise or arrangement can be finalized and filed in the context of the mediation. RBH continues to work hard at these issues.

51. A global settlement that addresses all pending and potential Tobacco Claims remains the best outcome for the parties since it will end years of litigation, maximize recoveries for the claimants and minimize delay and costs for the parties.

BUSINESS UPDATES

52. RBH has continued to operate its business in the ordinary course during these CCAA proceedings, subject to the provisions of the Second Amended and Restated Initial Order.

53. On November 9, 2021, the remaining measures of the Tobacco Products Regulations (Plain and Standardized Appearance) (the “**Plain Packaging Regulations**”) came into force, requiring all cigarettes in Canada to be sold in slide and shell packaging. Pursuant to the Plain Packaging Regulations, retailers have been required to comply with all requirements for cigarettes effective February 9, 2022.

54. On May 31, 2023, the Government of Canada announced the new Tobacco Products Appearance, Packaging and Labelling Regulations, which are the third phase of plain packaging regulations (the “**Phase 3 Regulations**”) and require health warnings to be printed directly on individual cigarettes. Additional measures include a rotation scheme of health related messages on a pre-determined schedule and the ability to update the content of these messages without updating the Phase 3 Regulations.

55. The Phase 3 Regulations came into effect August 1, 2023 and will be implemented through a phased approach over the next three years. Effective January 31, 2024, RBH complied by having new health messages on all tobacco packages.

56. Significant investments have been and will be required to be made in the Quebec Facility given the Plain Packaging Regulations and Phase 3 Regulations as well as the age and over-capacity of the Quebec Facility. Investments were incurred this year for the replacement and upgrade of equipment to comply with new building regulations and safety requirements. RBH investments in the Quebec Facility are expected to continue at a similar level in future years.

57. RBH has been appointed the limited risk distributor of Reduced Risk Products for Philip Morris Products S. A. in the territory of Canada. Under this agreement, compensation

to RBH will be in accordance with the current Reduced Risk Products agreement wherein RBH will earn a profit margin based on a percentage of net sales of these products.

58. RBH started the distribution of a vape product, VEEV, in October 2021, and a disposable vape product under the same brand family in July 2022 through its distributors and retailers. At present, VEEV is available in all Provinces and is also sold on the e-commerce platform, with the exception of Quebec and Nova Scotia.

59. In November 2023, RBH launched a new heated tobacco product, IQOS ILUMA, which offers advanced features and innovative technology targets to elevate the overall consumer experience of adult nicotine users. At present, IQOS ILUMA is available in all Provinces.

60. In October 2022, the Government of Canada implemented a Federal Excise Duty (“**FED**”) on vaping liquids and restricted production of non-tax-stamped vaping products. The implemented FED rate on vaping products is CAD \$1.00 per 2 mL, or fraction thereof, for the first 10 mL of vaping substance, and CAD \$1.00 per 10 mL for amounts over the first 10 mL. RBH has fully complied with the requirement by the effective date.

61. In November 2023, a new provincial tax was announced on all vaping products in Ontario, Quebec, Nunavut, and the Northwest Territories effective July 1, 2024, at the same level as FED. Furthermore, only provincial stamps will be used on vaping products imported to Canada, replacing the federally-marked stamps. Wholesalers and retailers are allowed to sell vaping products with federal stamps until October 1, 2024. RBH will ensure compliance with the new tax requirements by the effective date.

62. One of RBH's contracted wholesalers, Wallace & Carey Inc. and its subsidiary Loudon Bros Limited (collectively "W&C") (which represents ~12% of RBH's total sales), obtained creditor protection under the CCAA on June 23, 2023. Loudon Bros Limited closed operations on September 8, 2023.

63. To mitigate collection risks, RBH had a consignment arrangement with W&C, and shipments were only released to W&C's customers after RBH has received payment. The consignment arrangement was terminated, and all products were returned to RBH by February 2024. Since commencing its CCAA proceedings, orders from W&C have continued at the business-as-usual level and RBH has not experienced any collection failures. As of January 31, 2024, RBH had no outstanding receivables from W&C. As a result, the commencement of CCAA proceedings by W&C has not had any material impact on RBH's business or financial position.

64. On February 1, 2024, I was appointed as the new Managing Director of RBH, succeeding Mindaugas Trumpaitis who has become the Regional President for Latin America and Canada, PMI. I am the first female to hold this position for RBH. In this role, I am committed to advancing RBH's smoke-free vision.

STAY EXTENSION

65. In the time since the Stay Period was last extended, RBH has acted and continues to act in good faith and with due diligence in these CCAA proceedings by, among other things:

- (a) continuing to operate its business in the normal course and in accordance with the Second Amended and Restated Initial Order;

- (b) meeting with and providing business updates and information to the Monitor at its request;
- (c) actively engaging in the complex multi-party mediation process by, among other things, participating in meetings, engaging in discussions with the Court-Appointed Mediator and/or the Monitor(s), engaging in discussions and negotiations with the other Tobacco Companies and with claimants, and receiving, reviewing, preparing and providing information and written materials;
- (d) following the mediation process and meeting the deadlines established by the Court-Appointed Mediator;
- (e) continuing to manage and populate the data room to assist the claimants in the mediation process; and
- (f) communicating with counsel for the Monitors and the other Tobacco Companies, when appropriate, to ensure the parties' respective CCAA proceedings are procedurally coordinated.

66. The Stay Period presently expires on March 29, 2024.

67. Mediation sessions and the confidential negotiations underlying a global resolution are ongoing. While significant progress has been made to date, additional time is required to complete the mediation and to develop and implement a CCAA plan.

68. It is difficult to provide a precise estimate of the time needed to complete the mediation and to develop and implement a CCAA plan. Given the number of parties and scope of the issues, as noted above, RBH anticipates that the ongoing mediation process continues to require additional time before a global resolution of Tobacco Claims can be achieved.

69. The extension of the Stay Period until and including September 30, 2024 is necessary 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.

70. RBH believes that it is critical to continue to give the mediation process the time and attention required to ensure the best chances of achieving a successful resolution. In the past, six-month extensions have been an appropriate length to support and facilitate the mediation, given its complexity, and a further six-month extension is appropriate at this time.

71. The additional time contemplated by the Requested Stay Extension Period would provide a reasonable period of time to allow for additional progress in the mediation, having regard to the complexity of issues subject to the mediation and the number of parties involved, and is consistent with past stay extensions. At the same time, RBH has and will continue to operate the business for the benefit of its stakeholders.

72. During this ongoing mediation process, the extension of the Stay Period is important to keep RBH's litigation creditors and contingent creditors on an equal footing while RBH seeks to develop a CCAA plan.

INDIVIDUAL EMPLOYEE GRIEVANCE PROCEEDINGS

73. As noted above, the Quebec Facility currently employs approximately 220 employees, the majority of whom are unionized.

74. Grievances are brought on behalf of individual employees from time to time in the ordinary course of RBH's business. In the Affidavit of Peter Luongo sworn March 22, 2019 in support of RBH's application for the Initial Order, Mr. Luongo referred to a small number of grievances that were ongoing at the time and stated that, at that time, RBH intended to continue to resolve those employee grievances in the usual course.

75. Since the commencement of these CCAA proceedings, grievance proceedings have continued to be commenced against RBH, and RBH has continued to respond to grievances brought by individual employees in the ordinary course. To date, six individual grievance proceedings have been either determined by an arbitrator or settled by RBH. RBH has paid an immaterial amount in connection with these determinations and settlements since the filing date.

76. Paragraph 7(a) of the Second Amended and Restated Initial Order entitles RBH to continue to pay wages, salaries, compensation and other benefits in respect of employees incurred in the ordinary course of business.

77. Paragraph 18 of the Second Amended and Restated Initial Order provides that no Proceeding shall be commenced, continued or take place, by, against or in respect of RBH or affecting its Business or Property, except with leave of this Court. I am advised by my counsel at McCarthy Tétrault LLP that while CCAA initial orders often provide discretion

for the debtor company, with the consent of the monitor, to agree in writing to lift the stay to allow certain matters to proceed, that discretion is not afforded to RBH and the Monitor in the Second Amended and Restated Initial Order in this case.

78. RBH is currently subject to 10 grievances brought on behalf of employees dealing with day-to-day operational matters such as suspensions, shifts, duties and individual pension contributions. All of these employee grievances dealing with day-to-day operational matters that are currently outstanding have a monetary value or cost to RBH, if successful, of less than \$250,000.

79. RBH believes that, while the broad stay is appropriate for most court and tribunal proceedings, it is desirable for these employee grievances dealing with day-to-day operational matters to proceed in the ordinary course to ensure employees who continue to provide services to RBH have a means to seek a determination on issues that arise in the day-to-day operation of RBH's business.

80. RBH is seeking an amendment to paragraph 18 of the Second Amended and Restated Initial Order which will expressly permit employee grievance proceedings to continue provided that:

- (a) the monetary value or cost to RBH of the grievance does not exceed \$250,000;
and
- (b) the prior written consent of RBH and the Monitor is obtained.

81. While the broad stay of proceedings will continue in its current form as it relates to the majority of proceedings in courts and tribunals, including in relation to any grievance

proceedings that have a higher monetary value or impact the business of RBH more broadly, this relief will allow employees to seek a determination on their individual issues without RBH or the employees having to seek leave from this Court each time a grievance is commenced. Appropriate safeguards are in place to ensure that RBH’s other stakeholders are not prejudiced by these grievances being allowed to proceed, specifically (i) the requirement of RBH and Monitor consent, and (ii) the limit on the monetary value of the grievance.

CONCLUSION

29. For the reasons stated above, the relief requested in the Order substantially in the form attached at Tab 3 of the Applicant’s Motion Record is in the best interests of RBH and its stakeholders and is appropriate in the circumstances.

SWORN BEFORE ME over videoconference this 6th day of March 2024 in accordance with O. Reg. 431/20, Administering Oath or Declaration Remotely. The affiant was located in the City of Toronto, in the Province of Quebec and the commissioner was located in the Municipality of Central Elgin, in the Province of Ontario.

DocuSigned by:
Trevor Courtis
7ADE0128A1A64BC...
A Commissioner for taking Affidavits, etc.
Trevor Courtis | LSO #67715A

DocuSigned by:
Milena Trentadue
B561C84AA097434...
MILENA TRENTADUE

TAB A

This is **Exhibit "A"** referred to in the
Affidavit of Milena Trentadue,
sworn before me on March 6, 2024

DocuSigned by:

Trevor Courtis

7ADE0128A1A64BC...

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



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

**ONTARIO
SUPERIOR COURT OF JUSTICE
COMMERCIAL LIST**

THE HONOURABLE) THURSDAY, THE 25th
)
MR. JUSTICE MCEWEN) DAY OF APRIL, 2019

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

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

Applicant

ORDER

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 (the "**CCAA**") was heard this day at 330 University Avenue, Toronto, Ontario.

ON READING the Notice of Motion of the Applicant dated March 28, 2019, the affidavit of Peter Luongo sworn March 22, 2019 (the "**Initial Order Affidavit**"), the affidavit of Peter Luongo sworn March 28, 2019 and the exhibits thereto (the "**Luongo Affidavit**"), the Pre-Filing Report of Ernst & Young Inc. in its capacity as the proposed Monitor of the Applicant (the "**Monitor**"), the First Report of 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 Sonia Antonellis dated March 29, 2019 and the affidavit of service of Emilia Moon-de Kemp dated April 3, 2019.

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

APPROVAL OF SECOND AMENDED AND RESTATED INITIAL ORDER

2. **THIS COURT ORDERS AND DECLARES** that the order of Pattillo J. dated March 22, 2019 (the “**Initial Order**”) as amended and restated on April 5, 2019, is hereby amended and restated in the form attached hereto as Schedule “A”.



ENTERED AT / INSCRIT A TORONTO
ON / BOOK NO:
LE / DANS LE REGISTRE NO:

APR 26 2019

PER / PAR: *RW*

Schedule "A"

See attached.

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

**ONTARIO
SUPERIOR COURT OF JUSTICE
COMMERCIAL LIST**

THE HONOURABLE) FRIDAY, THE 22ND
JUSTICE PATTILLO) DAY OF MARCH, 2019

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

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

Applicant

SECOND AMENDED AND RESTATED INITIAL ORDER

THIS APPLICATION, made by Rothmans, Benson & Hedges Inc. (the "**Applicant**"), pursuant to the *Companies' Creditors Arrangement Act*, R.S.C. 1985, c. C-36, as amended (the "**CCAA**") was heard this day at 330 University Avenue, Toronto, Ontario.

ON READING (i) the affidavit of Peter Luongo sworn March 22, 2019 and the exhibits thereto (the "**Luongo Affidavit**") and (ii) the pre-filing report dated March 22, 2019 of Ernst & Young Inc. ("**EYI**") in its capacity as the proposed Monitor of the Applicant, and on hearing the submissions of counsel for the Applicant and EYI, and on reading the consent of EYI to act as the Monitor,

SERVICE

1. **THIS COURT ORDERS** that the time for service and filing of the Notice of Application and the Application Record is hereby abridged and validated so that this Application is properly returnable today and hereby dispenses with further service thereof.

APPLICATION

2. **THIS COURT ORDERS AND DECLARES** that the Applicant is a company to which the CCAA applies.

PLAN OF ARRANGEMENT

3. **THIS COURT ORDERS** that the Applicant shall have the authority to file and may, subject to further order of this Court, file with this Court a plan of compromise or arrangement (hereinafter referred to as the "**Plan**").

DEFINITIONS

4. **THIS COURT ORDERS** that for purposes of this Order:
- (a) "**Deposit Posting Order**" means the order of the Court of Appeal of Quebec granted October 27, 2015 and any other Order requiring the posting of security or the payment of a deposit in respect of the Quebec Class Actions;
 - (b) "**Pending Litigation**" means any and all actions, applications and other lawsuits existing at the time of this Order in which the Applicant is a named defendant or respondent (either individually or with other Persons (as defined below)) relating in any way whatsoever to a Tobacco Claim, including, without limitation, the Quebec Class Actions, the Class Actions, the Health Care Actions, the Tobacco Growers' Action and the Individual Actions (as each of those terms is defined in the Luongo Affidavit);

- (c) **“PMI Group”** means Philip Morris International Inc. and all entities related to or affiliated with it, other than the Applicant;
- (d) **“Quebec Class Actions”** means the proceedings in the Quebec Superior Court and the Court of Appeal of Quebec in (i) *Cécilia Létourneau et al. v. JTI-Macdonald Corp., Imperial Tobacco Canada Limited and Rothmans, Benson & Hedges Inc.* and (ii) *Conseil Québécois sur le Tabac et la Santé and Jean-Yves Blais v. JTI-Macdonald Corp., Imperial Tobacco Canada Limited and Rothmans, Benson & Hedges Inc.* and all decisions and orders in such proceedings, including, without limitation, the Deposit Posting Order;
- (e) **“Sales & Excise Taxes”** means all goods and services, harmonized sales or other applicable federal, provincial or territorial sales taxes, and all federal excise taxes and customs and import duties and all federal, provincial and territorial tobacco taxes;
- (f) **“Tobacco Claim”** means any right or claim (including, without limitation, a claim for contribution or indemnity) of any Person against or in respect of the Applicant or any member of the PMI Group that has been advanced (including, without limitation, in the Pending Litigation), that could have been advanced or that could be advanced, and whether such right or claim is on such Person’s own account, on behalf of another Person, as a dependent of another Person or on behalf of a certified or proposed class or made or advanced as a government body or agency, insurer, employer or otherwise, under or in connection with:
- (i) applicable law, to recover damages in respect of the development, manufacture, production, marketing, advertising, distribution, purchase or sale of Tobacco Products, the use of or exposure to Tobacco Products or any representation in respect of Tobacco Products, in Canada or, in the case of the Applicant, anywhere else in the world; or
 - (ii) the HCCR Legislation (as defined in the Luongo Affidavit),

excluding any right or claim of a supplier relating to goods or services supplied to, or the use of leased or licensed property by, the Applicant or any member of the PMI Group; and

- (g) **“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, electronic cigarettes, vaping liquids and devices, heat-not-burn 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.

POSSESSION OF PROPERTY AND OPERATIONS

5. **THIS COURT ORDERS** that the Applicant shall remain in possession and control of its current and future assets, undertakings and properties of every nature and kind whatsoever, and wherever situate including all proceeds thereof (the **“Property”**). Subject to further Order of this Court, the Applicant shall continue to carry on business in a manner consistent with the preservation of its business (the **“Business”**) and Property. The Applicant is authorized and empowered to continue to retain and employ the employees, independent contractors, consultants, agents, experts, accountants, counsel and such other persons (collectively **“Assistants”**) currently retained or employed by it, with liberty to retain such further Assistants as it deems reasonably necessary or desirable in the ordinary course of business, to preserve the value of the Property or the Business, or for the carrying out of the terms of this Order.

6. **THIS COURT ORDERS** that the Applicant shall be entitled to continue to utilize the bank accounts currently used by it as described in the Luongo Affidavit and to use or replace them with other accounts from time to time for similar purposes (the **“Bank Accounts”**) and that any present or future bank providing the Bank Accounts and related services (**“Banking Services”**) shall not be under any obligation whatsoever to inquire into the propriety, validity or legality of any transfer, payment, collection or other action taken to, from or with the Bank Accounts, or as to the use or application by the Applicant of funds transferred, paid, collected or

otherwise dealt with in or to the Bank Accounts, shall be entitled to provide Banking Services without any liability in respect thereof to any Person other than the Applicant, pursuant to the terms of the documentation applicable to the Bank Accounts and Banking Services, and shall be, in its capacity as provider of the Bank Accounts and Banking Services, an unaffected creditor under the Plan with regard to any claims or expenses it may suffer or incur in connection with the provision of the Bank Accounts and Banking Services.

7. **THIS COURT ORDERS** that the Applicant shall be entitled but not required to pay the following expenses whether incurred prior to, on or after the date of this Order:

- (a) all outstanding and future wages, salaries, commissions, compensation, vacation pay, bonuses, incentive plan payments, employee and retiree pension and other benefits and related contributions and payments (including, without limitation, expenses related to employee and retiree medical, dental, disability, life insurance and similar benefit plans or arrangements, employee assistance programs and contributions to or any payments in respect of the Registered Pension Plans, the Non-Registered Pension Plans and the RRSP (each as defined in the Luongo Affidavit)), reimbursement expenses (including, without limitation, amounts charged to corporate credit cards), termination pay, salary continuance and severance pay, all of which is payable to or in respect of employees, independent contractors and other personnel, in each case incurred in the ordinary course of business and consistent with existing compensation policies and arrangements or with Monitor approval;
- (b) the fees and disbursements of any Assistants retained or employed by the Applicant at their standard rates and charges;
- (c) any payment under or in respect of any Trade Program (as defined in the Luongo Affidavit) operated by the Applicant; and
- (d) any expense that was incurred during or that pertains to the period prior to the date of this Order if, in the opinion of the Applicant and with the consent of the Monitor, the applicable payee or the payment of such expense is necessary or desirable for the

preservation of the Business or the Property or the ongoing operations of the Applicant.

8. **THIS COURT ORDERS** that, except as otherwise provided to the contrary herein, the Applicant shall be entitled but not required to pay all reasonable expenses incurred by the Applicant in carrying on the Business in the ordinary course after this Order, and in carrying out the provisions of this Order, which expenses shall include, without limitation:

- (a) all expenses and capital expenditures reasonably necessary for the preservation of the Property or the Business including, without limitation, payments on account of insurance (including directors and officers insurance), maintenance and security services;
- (b) capital expenditures other than as permitted in clause (a) above to replace or supplement the Property or that are otherwise of benefit to the Business, provided that Monitor approval is obtained for any single such expenditure in excess of \$1,000,000 or an aggregate of such expenditures in a calendar year in excess of \$10,000,000; and
- (c) payment for goods or services supplied or to be supplied to the Applicant on or after the date of this Order (including the payment of any royalties or shared services).

9. **THIS COURT ORDERS** that the Applicant is authorized to complete outstanding transactions and engage in new transactions with the members of the PMI Group and to continue, on and after the date hereof, to buy and sell goods and services and to allocate, collect and pay costs, expenses and other amounts from and to the members of the PMI Group, including without limitation in relation to finished, unfinished and semi-finished materials, personnel, administrative, technical and professional services, and royalties and fees in respect of trademark licences (collectively, all transactions and all inter-company policies and procedures between the Applicant and any member of the PMI Group, the “**Intercompany Transactions**”) in the ordinary course of business or as otherwise approved by the Monitor. All Intercompany Transactions in the ordinary course of business between the Applicant and any member of the PMI Group, including the provision of goods and services from any member of the PMI Group

to the Applicant, shall continue on terms consistent with existing arrangements or past practice or as otherwise approved by the Monitor.

10. **THIS COURT ORDERS** that the Applicant shall remit, in accordance with legal requirements, or pay (whether levied, accrued or collected before, on or after the date of this Order):

- (a) any statutory deemed trust amounts in favour of the Crown in right of Canada or of any Province thereof or any other taxation authority which are required to be deducted from employees' wages, including, without limitation, amounts in respect of (i) employment insurance, (ii) Canada Pension Plan, (iii) Quebec Pension Plan, and (iv) income taxes;
- (b) all Sales & Excise Taxes required to be remitted by the Applicant in connection with the Business; and
- (c) any amount payable to the Crown in right of Canada or of any Province thereof or any political subdivision thereof or any other taxation authority in respect of municipal realty, municipal business or other taxes, assessments or levies of any nature or kind which are entitled at law to be paid in priority to claims of secured creditors and which are attributable to or in respect of the carrying on of the Business by the Applicant.

11. **THIS COURT ORDERS** that the Applicant is authorized to post and to continue to have posted cash collateral, letters of credit, performance bonds, payment bonds, guarantees and other forms of security from time to time, in an aggregate amount not exceeding \$31,100,000 (the "**Bonding Collateral**"), to satisfy regulatory or administrative requirements to provide security that have been imposed on it in the ordinary course and consistent with past practice in relation to the collection and remittance of federal excise taxes and customs and import duties and federal, provincial and territorial tobacco taxes, whether the Bonding Collateral is provided directly or indirectly by the Applicant as such security and the Applicant is authorized to post

and to continue to have posted cash collateral with Citibank Canada and any other issuers of Bonding Collateral as security therefor.

12. **THIS COURT ORDERS** that the Canadian federal, provincial and territorial authorities entitled to receive payments or collect monies from the Applicant in respect of Sales & Excise Taxes are hereby stayed during the Stay Period from requiring that any additional bonding or other security be posted by or on behalf of the Applicant in connection with Sales & Excise Taxes or any other matters for which such bonding or security may otherwise be required.

13. **THIS COURT ORDERS** that until a real property lease is disclaimed or resiliated in accordance with the CCAA, the Applicant shall pay all amounts constituting rent or payable as rent under real property leases (including, for greater certainty, common area maintenance charges, utilities and realty taxes and any other amounts payable to the landlord under the lease) or as otherwise may be negotiated between the Applicant and the landlord from time to time ("**Rent**"), for the period commencing from and including the date of this Order, at such intervals as such Rent is usually paid in the ordinary course of business. On the date of the first of such payments, any Rent relating to the period commencing from and including the date of this Order shall also be paid.

14. **THIS COURT ORDERS** that, except as specifically permitted herein, the Applicant is hereby directed, until further Order of this Court: (a) to make no payments of principal, interest thereon or otherwise on account of amounts owing by the Applicant or claims to which it is subject to any of its creditors as of this date and to post no security in respect of any such amounts or claims, including pursuant to any order or judgment; (b) to grant no security interests, trust, liens, charges or encumbrances upon or in respect of any of its Property; and (c) to not grant credit or incur liabilities except in the ordinary course of the Business.

RESTRUCTURING

15. **THIS COURT ORDERS** that the Applicant shall, subject to such requirements as are imposed by the CCAA, have the right to:

- (a) permanently or temporarily cease, downsize or shut down any of its business or operations, and to dispose of redundant or non-material assets not exceeding \$5,000,000 in any one transaction or \$10,000,000 in any calendar year in the aggregate;
- (b) terminate the employment of such of its employees or temporarily lay off such of its employees as it deems appropriate;
- (c) pursue all avenues of refinancing of the Business or Property, in whole or part, subject to prior approval of this Court being obtained before any material refinancing; and
- (d) pursue all avenues to resolve any of the Tobacco Claims, in whole or in part,

all of the foregoing to permit the Applicant to proceed with an orderly restructuring of the Business (the “**Restructuring**”).

16. **THIS COURT ORDERS** that the Applicant shall provide each of the relevant landlords with notice of the Applicant’s intention to remove any fixtures from any leased premises at least seven (7) days prior to the date of the intended removal. The relevant landlord shall be entitled to have a representative present in the leased premises to observe such removal and, if the landlord disputes the Applicant’s entitlement to remove any such fixture under the provisions of the lease, such fixture shall remain on the premises and shall be dealt with as agreed between any applicable secured creditors, such landlord and the Applicant, or by further Order of this Court upon application by the Applicant on at least two (2) days’ notice to such landlord and any such secured creditors. If the Applicant disclaims or resiliates the lease governing such leased premises in accordance with Section 32 of the CCAA, it shall not be required to pay Rent under such lease pending resolution of any such dispute (other than Rent payable for the notice period provided for in Section 32(5) of the CCAA), and the disclaimer or resiliation of the lease shall be without prejudice to the Applicant’s claim to the fixtures in dispute.

17. **THIS COURT ORDERS** that if a notice of disclaimer or resiliation is delivered pursuant to Section 32 of the CCAA, then (a) during the notice period prior to the effective time of the disclaimer or resiliation, the landlord may show the affected leased premises to prospective tenants during normal business hours, on giving the Applicant and the Monitor 24 hours' prior written notice, and (b) at the effective time of the disclaimer or resiliation, the relevant landlord shall be entitled to take possession of any such leased premises without waiver of or prejudice to any claims or rights such landlord may have against the Applicant in respect of such lease or leased premises, provided that nothing herein shall relieve such landlord of its obligation to mitigate any damages claimed in connection therewith.

STAY OF PROCEEDINGS

18. **THIS COURT ORDERS** that until and including June 28, 2019, or such later date as this Court may order (the "**Stay Period**"), no proceeding or enforcement process in any court or tribunal (each, a "**Proceeding**"), including but not limited to an application for leave to appeal to the Supreme Court of Canada in the Quebec Class Actions (a "**QCA Leave Application**"), the Pending Litigation and any other Proceeding in relation to a Tobacco Claim, shall be commenced, continued or take place by, against or in respect of the Applicant, the Monitor or the Court-Appointed Mediator (defined below), or affecting the Business or the Property or the funds deposited pursuant to the Deposit Posting Order, except with leave of this Court, and any and all Proceedings currently under way or directed to take place by, against or in respect of the Applicant or affecting the Business or the Property or the funds deposited pursuant to the Deposit Posting Order are hereby stayed and suspended pending further Order of this Court. All counterclaims, cross-claims and third party claims of the Applicant in the Pending Litigation are likewise subject to this stay of Proceedings during the Stay Period. *by the Applicant*

19. **THIS COURT ORDERS** that during the Stay Period, (i) none of the Pending Litigation or any Proceeding in relation thereto shall be commenced, continued or take place against or in respect of any Person named as a defendant or respondent (other than Imperial Tobacco Canada Limited, Imperial Tobacco Company Limited or JTI-Macdonald Corp.) in any of the Pending Litigation (such Persons, the "**Other Defendants**"); and (ii) no Proceeding in Canada that relates

in any way to a Tobacco Claim or to the Applicant, the Business or the Property shall be commenced, continued or take place against or in respect of any member of the PMI Group; except with leave of this Court, and any and all such Proceedings currently underway or directed to take place against or in respect of any of the Other Defendants or any member of the PMI Group, or affecting the Business or the Property or the funds deposited pursuant to the Deposit Posting Order are hereby stayed and suspended pending further Order of this Court.

20. **THIS COURT ORDERS** that, to the extent any prescription, time or limitation period relating to any Proceeding by, against or in respect of the Applicant, any of the Other Defendants or any member of the PMI Group that is stayed pursuant to this Order may expire, including but not limited to any prescription of time whereby the Applicant would be required to commence the QCA Leave Application, the term of such prescription, time or limitation period shall hereby be deemed to be extended by a period equal to the Stay Period.

NO EXERCISE OF RIGHTS OR REMEDIES

21. **THIS COURT ORDERS** that during the Stay Period, all rights and remedies of any individual, firm, corporation, governmental body or agency, or any other entities (all of the foregoing, collectively being “**Persons**” and each being a “**Person**”), against or in respect of the Applicant or the Monitor, or affecting the Business or the Property or to obtain the funds deposited pursuant to the Deposit Posting Order (including, for greater certainty, any enforcement process or steps or other rights and remedies under or relating to the Quebec Class Actions against the Applicant or the Property), are hereby stayed and suspended except with the written consent of the Applicant and the Monitor, or leave of this Court, provided that nothing in this Order shall (i) empower the Applicant to carry on any business which the Applicant is not lawfully entitled to carry on, (ii) affect such investigations, actions, suits or proceedings by a regulatory body as are permitted by Section 11.1 of the CCAA, (iii) prevent the filing of any registration to preserve or perfect a security interest, or (iv) prevent the registration of a claim for lien.

NO INTERFERENCE WITH RIGHTS

22. **THIS COURT ORDERS** that during the Stay Period, no Person shall discontinue, fail to honour, alter, interfere with, repudiate, terminate or cease to perform any right, renewal right, contract, agreement, licence or permit in favour of or held by the Applicant, except with the written consent of the Applicant and the Monitor, or leave of this Court.

CONTINUATION OF SERVICES

23. **THIS COURT ORDERS** that during the Stay Period, all Persons having oral or written agreements with the Applicant or statutory or regulatory mandates for the supply of goods and/or services including, without limitation, all computer software, communication and other data services, centralized banking services, payroll services, insurance, transportation services, utility, customs clearing, warehouse or logistical services, or other services to the Business or the Applicant, are hereby restrained until further Order of this Court from discontinuing, altering, interfering with or terminating the supply of such goods or services as may be required by the Applicant, and that the Applicant shall be entitled to the continued use of its current premises, telephone numbers, facsimile numbers, internet addresses and domain names, provided in each case that the normal prices or charges for all such goods or services received after the date of this Order are paid by the Applicant in accordance with normal payment practices of the Applicant or such other practices as may be agreed upon by the supplier or service provider and each of the Applicant and the Monitor, or as may be ordered by this Court.

NON-DEROGATION OF RIGHTS

24. **THIS COURT ORDERS** that, notwithstanding anything else in this Order, no Person shall be prohibited from requiring immediate payment for goods, services, use of leased or licensed property or other valuable consideration provided on or after the date of this Order, nor shall any Person be under any obligation on or after the date of this Order to advance or re-advance any monies or otherwise extend any credit to the Applicant. Nothing in this Order shall derogate from the rights conferred and obligations imposed by the CCAA.

SALES AND EXCISE TAX CHARGE

25. **THIS COURT ORDERS** that the Canadian federal, provincial and territorial authorities that are entitled to receive payments or collect monies from the Applicant in respect of Sales & Excise Taxes shall be entitled to the benefit of and are hereby granted a charge (the “**Sales and Excise Tax Charge**”) on the Property, which charge shall not exceed an aggregate amount of \$270,000,000, as security for all amounts owing by the Applicant in respect of Sales & Excise Taxes, after taking into consideration any Bonding Collateral posted in respect thereof. The Sales and Excise Tax Charge shall have the priority set out in paragraphs 45 and 47 herein.

PROCEEDINGS AGAINST DIRECTORS AND OFFICERS

26. **THIS COURT ORDERS** that during the Stay Period, and except as permitted by subsection 11.03(2) of the CCAA, no Proceeding may be commenced or continued against any of the former, current or future directors or officers of the Applicant with respect to any claim against the directors or officers that arose before the date hereof and that relates to any obligations of the Applicant whereby the directors or officers are alleged under any law to be liable in their capacity as directors or officers for the payment or performance of such obligations.

DIRECTORS' AND OFFICERS' INDEMNIFICATION AND CHARGE

27. **THIS COURT ORDERS** that the Applicant shall indemnify its directors and officers against obligations and liabilities that they may incur as directors or officers of the Applicant after the commencement of the within proceedings, except to the extent that, with respect to any officer or director, the obligation or liability was incurred as a result of the director's or officer's gross negligence or wilful misconduct.

28. **THIS COURT ORDERS** that the directors and officers of the Applicant shall be entitled to the benefit of and are hereby granted a charge (the “**Directors' Charge**”) on the Property, which charge shall not exceed an aggregate amount of \$7,000,000, as security for the indemnity

provided in paragraph 27 of this Order. The Directors' Charge shall have the priority set out in paragraphs 45 and 47 herein.

29. **THIS COURT ORDERS** that, notwithstanding any language in any applicable insurance policy to the contrary, (a) no insurer shall be entitled to be subrogated to or claim the benefit of the Directors' Charge, and (b) the Applicant's directors and officers shall only be entitled to the benefit of the Directors' Charge to the extent that they do not have coverage under any directors' and officers' insurance policy, or to the extent that such coverage is insufficient to pay amounts indemnified in accordance with paragraph 27 of this Order.

APPOINTMENT OF MONITOR

30. **THIS COURT ORDERS** that EYI is hereby appointed pursuant to the CCAA as the Monitor, an officer of this Court, to monitor the business and financial affairs of the Applicant with the powers and obligations set out in the CCAA or set forth herein and that the Applicant and its shareholders, officers, directors, and Assistants shall advise the Monitor of all material steps taken by the Applicant pursuant to this Order, and shall co-operate fully with the Monitor in the exercise of its powers and discharge of its obligations and provide the Monitor with the assistance that is necessary to enable the Monitor to adequately carry out the Monitor's functions.

31. **THIS COURT ORDERS** that the Monitor, in addition to its prescribed rights and obligations under the CCAA, is hereby directed and empowered to:

- (a) monitor the Applicant's receipts and disbursements;
- (b) report to this Court at such times and intervals as the Monitor may deem appropriate with respect to matters relating to the Property, the Business, and such other matters as may be relevant to the proceedings herein;
- (c) advise the Applicant in its preparation of the Applicant's cash flow statements, which information shall be reviewed with the Monitor;

- (d) advise the Applicant in its development of the Plan and any amendments to the Plan;
- (e) assist the Applicant, to the extent required by the Applicant, with the holding and administering of creditors' or shareholders' meetings for voting on the Plan;
- (f) have full and complete access to the Property, including the premises, books, records, data, including data in electronic form, and other financial documents of the Applicant, to the extent that is necessary to adequately assess the Applicant's business and financial affairs or to perform its duties arising under this Order;
- (g) be at liberty to engage independent legal counsel or such other persons as the Monitor deems necessary or advisable respecting the exercise of its powers and performance of its obligations under this Order;
- (h) assist the Applicant, to the extent required by the Applicant, in its efforts to explore the potential for a resolution of any of the Tobacco Claims;
- (i) consult with the Court-Appointed Mediator in connection with the Court-Appointed Mediator's mandate, including in relation to any negotiations to settle any Tobacco Claims and the development of the Plan; and
- (j) perform such other duties as are required by this Order or by this Court from time to time.

32. **THIS COURT ORDERS** that the Monitor shall not take possession of the Property and shall take no part whatsoever in the management or supervision of the management of the Business and shall not, by fulfilling its obligations hereunder, be deemed to have taken or maintained possession or control of the Business or Property, or any part thereof.

33. **THIS COURT ORDERS** that nothing herein contained shall require the Monitor to occupy or to take control, care, charge, possession or management (separately and/or collectively, "**Possession**") of any of the Property that might be environmentally contaminated, might be a pollutant or a contaminant, or might cause or contribute to a spill, discharge, release

or deposit of a substance contrary to any federal, provincial or other law respecting the protection, conservation, enhancement, remediation or rehabilitation of the environment or relating to the disposal of waste or other contamination including, without limitation, the *Canadian Environmental Protection Act*, the *Ontario Environmental Protection Act*, the *Ontario Water Resources Act*, the *Ontario Occupational Health and Safety Act*, the *Quebec Environment Quality Act*, the *Quebec Act Respecting Occupational Health and Safety* and regulations thereunder (the “**Environmental Legislation**”), provided however that nothing herein shall exempt the Monitor from any duty to report or make disclosure imposed by applicable Environmental Legislation. The Monitor shall not, as a result of this Order or anything done in pursuance of the Monitor’s duties and powers under this Order, be deemed to be in Possession of any of the Property within the meaning of any Environmental Legislation, unless it is actually in possession.

34. **THIS COURT ORDERS** that the Monitor shall provide any creditor of the Applicant and the Court-Appointed Mediator with information provided by the Applicant in response to reasonable requests for information made in writing by such creditor addressed to the Monitor. The Monitor shall not have any responsibility or liability with respect to the information disseminated by it pursuant to this paragraph. In the case of information that the Monitor has been advised by the Applicant is confidential, the Monitor shall not provide such information to creditors unless otherwise directed by this Court or on such terms as the Monitor and the Applicant may agree.

35. **THIS COURT ORDERS** that, in addition to the rights and protections afforded the Monitor under the CCAA or as an officer of this Court, the Monitor shall incur no liability or obligation as a result of its appointment or the carrying out of the provisions of this Order, save and except for any gross negligence or wilful misconduct on its part. Nothing in this Order shall derogate from the protections afforded the Monitor by the CCAA or any applicable legislation.

36. **THIS COURT ORDERS** that the Monitor, counsel to the Monitor and counsel to the Applicant shall be paid their reasonable fees and disbursements, in each case at their standard rates and charges, by the Applicant as part of the costs of these proceedings. The Applicant is

hereby authorized and directed to pay the accounts of the Monitor, counsel for the Monitor and counsel for the Applicant on a bi-weekly basis and, in addition, the Applicant is hereby authorized to pay the Monitor and counsel to the Monitor, retainers in the amount of \$250,000 and \$50,000 respectively to be held by them as security for payment of their respective fees and disbursements outstanding from time to time.

37. **THIS COURT ORDERS** that the Monitor and its legal counsel shall pass their accounts from time to time, and for this purpose the accounts of the Monitor and its legal counsel are hereby referred to a judge of the Commercial List of the Ontario Superior Court of Justice.

38. **THIS COURT ORDERS** that the Monitor, counsel to the Monitor and counsel to the Applicant shall be entitled to the benefit of and are hereby granted a charge (the **“Administration Charge”**) on the Property, which charge shall not exceed an aggregate amount of \$3,000,000, as security for their professional fees and disbursements incurred at the standard rates and charges of the Monitor and such counsel, both before and after the making of this Order in respect of these proceedings. The Administration Charge shall have the priority set out in paragraphs 45 and 47 hereof.

COURT-APPOINTED MEDIATOR

39. **THIS COURT ORDERS** that the Hon. Warren K. Winkler, Q.C. is hereby appointed, as an officer of the Court and shall act as a neutral third party (the **“Court-Appointed Mediator”**) to mediate a global settlement of the Tobacco Claims.

40. **THIS COURT ORDERS** that in carrying out his mandate, the Court-Appointed Mediator may, among other things:

- (a) Adopt processes which, in his discretion, he considers appropriate to facilitate negotiation of a global settlement;
- (b) Retain independent legal counsel and such other advisors and persons as the Court-Appointed Mediator considers necessary or desirable to assist him in carrying out his mandate;

- (c) Consult with all Persons with Tobacco Claims (“**Tobacco Claimants**”), the Monitor, the Applicant, the Co-Defendants (as defined in the Luongo Affidavit), other creditors and stakeholders of the Applicant and/or the Co-Defendants and any other persons the Court-Appointed Mediator considers appropriate;
- (d) Accept a court appointment of similar nature in any proceedings under the CCAA commenced by a company that is a co-defendant or respondent with the Applicant or the Co-Defendants in any action brought by one or more Tobacco Claimants, including the Pending Litigation; and,
- (e) Apply to this Court for advice and directions as, in his discretion, the Court-Appointed Mediator deems necessary.

41. **THIS COURT ORDERS** that, subject to an agreement between the Applicant and the Court-Appointed Mediator, all reasonable fees and disbursements of the Court-Appointed Mediator and his legal counsel and financial and other advisors as may have been incurred by them prior to the date of this Order or which shall be incurred by them in relation to carrying out his mandate shall be paid by the Applicant and the Co-Defendants on a monthly basis, forthwith upon the rendering of accounts to the Applicant and the Co-Defendants.

42. **THIS COURT ORDERS** that the Court-Appointed Mediator shall be entitled to the benefit of and is hereby granted a charge (the “**Court-Appointed Mediator Charge**”) on the Property, which charge shall not exceed an aggregate amount of \$1 million, as security for his fees and disbursements and for the fees and disbursements of his legal counsel and financial and other advisors, in each case incurred at their standard rates and charges, both before and after the making of this Order in respect of these proceedings. The Court-Appointed Mediator Charge shall have the priority set out in paragraphs 45 and 47 hereof.

43. **THIS COURT ORDERS** that the Court-Appointed Mediator is authorized to take all steps and to do all acts necessary or desirable to carry out the terms of this Order, including dealing with any Court, regulatory body or other government ministry, department or agency, and to take all such steps as are necessary or incidental thereto.

44. **THIS COURT ORDERS** that, in addition to the rights and protections afforded as an officer of this Court, the Court-Appointed Mediator shall incur no liability or obligation as a result of his appointment or the carrying out of the provisions of this Order, save and except for any gross negligence or wilful misconduct on his part. Nothing in this Order shall derogate from the protections afforded a person pursuant to Section 142 of the *Courts of Justice Act* (Ontario).

VALIDITY AND PRIORITY OF CHARGES CREATED BY THIS ORDER

45. **THIS COURT ORDERS** that the priorities of the Administration Charge, the Court-Appointed Mediator Charge, the Directors' Charge and the Sales and Excise Tax Charge (collectively, the "**Charges**"), as among them, shall be as follows:

First – Administration Charge (to the maximum amount of \$3,000,000) and the Court-Appointed Mediator Charge (to the maximum amount of \$1,000,000), *pari passu*;

Second – Directors' Charge (to the maximum amount of \$7,000,000); and

Third – Sales and Excise Tax Charge (to the maximum amount of \$270,000,000).

46. **THIS COURT ORDERS** that the filing, registration or perfection of the Charges shall not be required, and that the Charges shall be valid and enforceable for all purposes, including as against any right, title or interest filed, registered, recorded or perfected subsequent to the Charges coming into existence, notwithstanding any such failure to file, register, record or perfect.

47. **THIS COURT ORDERS** that each of the Charges shall constitute a charge on the Property and such Charges shall rank in priority to all other security interests, trusts, liens, charges, encumbrances and claims of secured creditors, statutory or otherwise (collectively, the "**Encumbrances**") in favour of any Person in respect of such Property, save and except for:

- (a) purchase-money security interests or the equivalent security interests under various provincial legislation and financing leases (that, for greater certainty, shall not include trade payables);

- (b) statutory super-priority deemed trusts and liens for unpaid employee source deductions;
- (c) deemed trusts and liens for any unpaid pension contribution or deficit with respect to the Registered Pension Plans, but only to the extent that any such deemed trusts and liens are statutory super-priority deemed trusts and liens afforded priority by statute over all pre-existing Encumbrances granted or created by contract;
- (d) liens for unpaid municipal property taxes or utilities that are given first priority over other liens by statute; and
- (e) cash collateral deposited with a financial institution as security for letters of credit or bank guarantees issued by the financial institution at the request of the Applicant.

48. **THIS COURT ORDERS** that except as otherwise expressly provided for herein, or as may be approved by this Court, the Applicant shall not grant any Encumbrances over any Property that rank in priority to, or *pari passu* with, any of the Charges, unless the Applicant also obtains the prior written consent of the Monitor and the beneficiaries of the Charges affected thereby (collectively, the “**Chargees**”), or further Order of this Court.

49. **THIS COURT ORDERS** that the Charges shall not be rendered invalid or unenforceable and the rights and remedies of the Chargees shall not otherwise be limited or impaired in any way by (a) the pendency of these proceedings and the declarations of insolvency made herein; (b) any application(s) for bankruptcy order(s) issued pursuant to the *Bankruptcy and Insolvency Act* of Canada (the “**BIA**”), or any bankruptcy order made pursuant to such applications; (c) the filing of any assignments for the general benefit of creditors made pursuant to the BIA; (d) the provisions of any federal or provincial statutes; or (e) any negative covenants, prohibitions or other similar provisions with respect to borrowings, incurring debt or the creation of Encumbrances, contained in any existing loan documents, lease, sublease, offer to lease or other agreement (collectively, an “**Agreement**”) which binds the Applicant, and notwithstanding any provision to the contrary in any Agreement:

- (a) the creation of the Charges shall not create or be deemed to constitute a breach by the Applicant of any Agreement to which it is a party;
- (b) none of the Chargees shall have any liability to any Person whatsoever as a result of any breach of any Agreement caused by or resulting from the creation of the Charges; and
- (c) the payments made by the Applicant pursuant to this Order and the granting of the Charges do not and will not constitute preferences, fraudulent conveyances, transfers at undervalue, oppressive conduct, or other challengeable or voidable transactions under any applicable law.

50. **THIS COURT ORDERS** that any Charge created by this Order over leases of real property in Canada shall only be a Charge in the Applicant's interest in such real property leases.

SERVICE AND NOTICE

51. **THIS COURT ORDERS** that the Monitor shall (i) without delay, publish in The Globe and Mail (National Edition) and La Presse a notice containing the information prescribed under the CCAA as well as the date of the Comeback Motion (as defined below), (ii) within five days after the date of this Order or as soon as reasonably practicable thereafter, (A) make this Order publicly available in the manner prescribed under the CCAA, (B) send, in the prescribed manner, a notice (which shall include the date of the Comeback Motion) to every known creditor who has a claim (contingent, disputed or otherwise) against the Applicant of more than \$1,000, except with respect to (I) plaintiffs in the Pending Litigation, in which cases the Monitor shall only send a notice to counsel of record, as applicable, (II) beneficiaries of the Registered Pension Plans (as that term is defined in the Luongo Affidavit), in which case the Monitor shall only send a notice to the trustees of each of the Registered Pension Plans and the Financial Services Commission of Ontario and the Régie Des Rentes Du Québec, as applicable, and (III) current and former employees of the Applicant; and (C) prepare a list showing the names and addresses of those creditors and the estimated amounts of those claims, and make it publicly available in the prescribed manner, all in accordance with Section 23(1)(a) of the CCAA and the regulations

made thereunder. The list referenced at subparagraph (C) above shall not include the names, addresses, or estimated amounts of the claims of those creditors who are individuals or any personal information in respect of an individual.

52. **THIS COURT ORDERS** that the E-Service Guide of the Commercial List (the “**Guide**”) is approved and adopted by reference herein and, in this proceeding, the service of documents made in accordance with the Guide (which can be found on the Commercial List website at <http://www.ontariocourts.ca/scj/practice/practice-directions/toronto/eservice-commercial/>) shall be valid and effective service. Subject to Rule 17.05, this Order shall constitute an order for substituted service pursuant to Rule 16.04 of the Rules of Civil Procedure. Subject to Rule 3.01(d) of the Rules of Civil Procedure and paragraph 13 of the Guide, service of documents in accordance with the Guide will be effective on transmission. This Court further orders that a Case Website shall be established by the Monitor in accordance with the Guide with the following URL: www.ey.com/ca/rbh (the “**Case Website**”).

53. **THIS COURT ORDERS** that if the service or distribution of documents in accordance with the Guide is not practicable, the Applicant and the Monitor are at liberty to serve or distribute this Order, any other materials and orders in these proceedings and any notices or other correspondence, by forwarding true copies thereof by prepaid ordinary mail, courier, personal delivery, facsimile or other electronic transmission to the Applicant’s creditors or other interested parties at their respective addresses as last shown on the records of the Applicant and that any such service or notice by courier, personal delivery, facsimile or other electronic transmission shall be deemed to be received on the date of forwarding thereof, or if sent by ordinary mail, on the third business day after mailing.

54. **THIS COURT ORDERS** that the Applicant is authorized to rely upon the notice provided in paragraph 51 to provide notice of the comeback motion to be heard on a date to be set by this Court upon the granting of this Order (the “**Comeback Motion**”) and shall only be required to serve motion materials relating to the Comeback Motion, in accordance with the Guide, upon those parties who serve a Notice of Appearance in this proceeding prior to the date of the Comeback Motion.

55. **THIS COURT ORDERS** that the Monitor shall create, maintain and update as necessary a list of all Persons appearing in person or by counsel in this proceeding (the “**Service List**”). The Monitor shall post the Service List, as may be updated from time to time, on the Case Website as part of the public materials to be recorded thereon in relation to this proceeding. Notwithstanding the foregoing, the Monitor shall have no liability in respect of the accuracy of or the timeliness of making any changes to the Service List.

56. **THIS COURT ORDERS** that the Applicant and the Monitor and their counsel are at liberty to serve or distribute this Order, any other materials and orders as may be reasonably required in these proceedings, including any notices, or other correspondence, by forwarding true copies thereof by electronic message to the Applicant’s creditors or other interested parties and their advisors. For greater certainty, any such distribution or service shall be deemed to be in satisfaction of a legal or juridical obligation, and notice requirements within the meaning of clause 3(c) of the Electronic Commerce Protection Regulations, Reg. 8100 2-175 (SOR/DORS).

57. **THIS COURT ORDERS** that, subject to paragraph 58, all motions in this proceeding are to be brought on not less than seven (7) calendar days' notice to all persons on the Service List. Each Notice of Motion shall specify a date (the “**Return Date**”) and time for the hearing.

58. **THIS COURT ORDERS** that motions for relief on an urgent basis need not comply with the notice protocol described herein.

59. **THIS COURT ORDERS** that any interested Person wishing to object to the relief sought in a motion must serve responding motion material or, if they do not intend to file material, a notice in all cases stating the objection to the motion and the grounds for such objection in writing (the “**Responding Material**”) to the moving party, the Applicant and the Monitor, with a copy to all Persons on the Service List, no later than 5 p.m. on the date that is four (4) calendar days prior to the Return Date (the “**Objection Deadline**”).

60. **THIS COURT ORDERS** that, if no Responding Materials are served by the Objection Deadline, the judge having carriage of the motion (the “**Presiding Judge**”) may determine:

- (a) whether a hearing is necessary;
- (b) whether such hearing will be in person, by telephone or by written submissions only;
and
- (c) the parties from whom submissions are required

(collectively, the “**Hearing Details**”). In the absence of any such determination, a hearing will be held in the ordinary course.

61. **THIS COURT ORDERS** that, if no Responding Materials are served by the Objection Deadline, the Monitor shall communicate with the Presiding Judge regarding whether a determination has been made by the Presiding Judge concerning the Hearing Details. The Monitor shall thereafter advise the Service List of the Hearing Details and the Monitor shall report upon its dissemination of the Hearing Details to the Court in a timely manner, which may be contained in the Monitor's next report in the proceeding.

62. **THIS COURT ORDERS** that if any party objects to the motion proceeding on the Return Date or believes that the Objection Deadline does not provide sufficient time to respond to the motion, such objecting party shall, promptly upon receipt of the Notice of Motion and in any event prior to the Objection Deadline, contact the moving party and the Monitor (together with the objecting party and any other party who has served Responding Materials, the “**Interested Parties**”) to advise of such objection and the reasons therefor. If the Interested Parties are unable to resolve the objection to the timing and schedule for the motion following good faith consultations, the Interested Parties may seek a scheduling appointment before the Presiding Judge to be held prior to the Return Date or on such other date as may be mutually agreed by the Interested Parties or as directed by the Presiding Judge to establish a schedule for the motion. At the scheduling appointment, the Presiding Judge may provide directions including a schedule for the delivery of any further materials and the hearing of the contested motion, and may address such other matters, including interim relief, as the Court may see fit. Notwithstanding the foregoing, the Presiding Judge may require the Interested Parties to proceed with the contested motion on the Return Date or on any other date as may be directed by the

Presiding Judge or as may be mutually agreed by the Interested Parties, if otherwise satisfactory to the Presiding Judge.

GENERAL

63. **THIS COURT ORDERS** that the Applicant or the Monitor may from time to time apply to this Court to amend, vary, supplement or replace this Order or for advice and directions concerning the discharge of their respective powers and duties under this Order or the interpretation or application of this Order.

64. **THIS COURT ORDERS** that nothing in this Order shall prevent the Monitor from acting as an interim receiver, a receiver, a receiver and manager, or a trustee in bankruptcy of the Applicant, the Business or the Property.

65. **THIS COURT HEREBY REQUESTS** the aid and recognition of any court, tribunal, regulatory or administrative body having jurisdiction in Canada or outside of Canada, to give effect to this Order and to assist the Applicant, the Monitor and their respective agents in carrying out the terms of this Order. All courts, tribunals and regulatory and administrative bodies are hereby respectfully requested to make such orders and to provide such assistance to the Applicant and to the Monitor, as an officer of this Court, as may be necessary or desirable to give effect to this Order, to grant representative status to the Monitor in any foreign proceeding, or to assist the Applicant and the Monitor and their respective agents in carrying out the terms of this Order.

66. **THIS COURT ORDERS** that each of the Applicant and the Monitor be at liberty and is hereby authorized and empowered to apply to any court, tribunal, regulatory or administrative body, wherever located, for the recognition of this Order and for assistance in carrying out the terms of this Order, and that the Monitor is authorized and empowered to act as a representative in respect of the within proceedings for the purpose of having these proceedings recognized in a jurisdiction outside Canada.

67. **THIS COURT ORDERS** that any interested party (including the Applicant and the Monitor) may apply to this Court to vary or amend this Order on not less than seven (7) days' notice to any other party or parties likely to be affected by the order sought or upon such other notice, if any, as this Court may order.

68. **THIS COURT ORDERS** that this Order and all of its provisions are effective as of 12:01 a.m. Eastern Standard/Daylight Time on the date of this Order (the "**Effective Time**") and that from the Effective Time to the time of the granting of this Order any action taken or notice given by any creditor of the Applicant or by any other Person to commence or continue any enforcement, realization, execution or other remedy of any kind whatsoever against the Applicant, the Property, the Business or the funds deposited pursuant to the Deposit Posting Order shall be deemed not to have been taken or given, as the case may be.



**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.**

Court File No: CV-19-616779-0001

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

Proceeding commenced at Toronto

**AMENDED AND RESTATED
INITIAL ORDER**

McCarthy Tétrault LLP
Toronto Dominion Bank Tower
Toronto, ON M5K 1E6
Fax: (416) 868-0673

Paul Steep LSUC#: 21869L
Tel: (416) 601-7998
Email: psteep@mccarthy.ca

James Gage LSUC#: 34676I
Tel: (416) 601-7539
Email: jgage@mccarthy.ca

Heather Meredith LSUC#: 48354R
Tel: (416) 601-8342
Email: hmeredith@mccarthy.ca

Lawyers for the Applicant

19007942

**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.**

Court File No: CV-19-616779-00CL

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

Proceeding commenced at Toronto

ORDER

McCarthy Tétrault LLP
Toronto Dominion Bank Tower
Toronto, ON M5K 1E6
Fax: (416) 868-0673

Paul Steep LSUC#: 21869L
Tel: (416) 601-7998
Email: psteep@mccarthy.ca

James Gage LSUC#: 346761
Tel: (416) 601-7539
Email: jgage@mccarthy.ca

Heather Meredith LSUC#: 48354R
Tel: (416) 601-8342
Email: hmeredith@mccarthy.ca

Lawyers for the Applicant

DOC#19113279

TAB B

This is **Exhibit “B”** referred to in the
Affidavit of Milena Trentadue,
sworn before me on March 6, 2024

DocuSigned by:

Trevor Courtis

7ADE0128A1A64BC...

A Commissioner for taking Affidavits (or as may be)
Trevor Courtis (LSO# 67715A)

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

THE HONOURABLE) WEDNESDAY, THE 27th
)
CHIEF JUSTICE MORAWETZ) DAY OF SEPTEMBER 2023

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

**ORDER
(Stay Extension)**

THIS MOTION, made by Rothmans, Benson & Hedges Inc. (the "**Applicant**") pursuant to the *Companies' Creditors Arrangement Act* (Canada), as amended, for an order extending the Stay Period (defined below) until and including March 29, 2024, was heard this day by judicial videoconference via Zoom in Toronto, Ontario.

ON READING the Notice of Motion of the Applicant dated September 13, 2023, the Affidavit of Mindaugas Trumpaitis sworn September 13, 2023, the Fourteenth 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 as listed on the participant sheet, no one else appearing although duly served as appears from the affidavit of service, filed:

SERVICE

1. **THIS COURT ORDERS** that the time for service and filing of the Notice of Motion and the Motion Record of the Applicant herein and the Fourteenth Report is hereby abridged and validated such that this motion is properly returnable today and hereby dispenses with further service thereof.

DEFINITIONS AND INTERPRETATION

2. **THIS COURT ORDERS** that any capitalized term used and not defined herein shall have the meaning ascribed thereto in the Second Amended and Restated Initial Order in these proceedings made on April 25, 2019 or the endorsement of the Honourable Mr. Justice McEwen in these proceedings made on May 24, 2019.

EXTENSION OF STAY PERIOD

3. **THIS COURT ORDERS** that the Stay Period as defined in the Second Amended and Restated Initial Order of Justice McEwen dated April 25, 2019 is hereby extended until and including March 29, 2024.

PLAN OF ARRANGEMENT

4. **THIS COURT ORDERS AND DIRECTS** that, as part of the Mediation Process, (i) the Monitor work with the Court-Appointed Mediator to develop a Plan; and (ii) the Monitor and Court-Appointed Mediator keep the Court updated as to their progress in respect of the development of a Plan.

GENERAL

5. **THIS COURT ORDERS** that this Order is effective from the date that it is made and is enforceable without any need for entry and filing.

6. **THIS COURT ORDERS** that this Order shall have full force and effect in all provinces and territories in Canada.

7. **THIS COURT HEREBY REQUESTS** the aid and recognition of any court, tribunal, regulatory or administrative body having jurisdiction in Canada or in the United States to give effect to this Order and to assist the Applicant and the Monitor, and their respective agents in carrying out the terms of this Order. All courts, tribunals, regulatory and administrative bodies are hereby respectfully requested to make such orders and to provide such assistance to the Applicant and to the Monitor, as an officer of this Court, as may be necessary or desirable to give effect to this Order or to assist the Applicant and the Monitor, and their respective agents, in carrying out the terms of this Order.



Chief Justice Geoffrey B. Morawetz

Court File No: CV-19-616779-00CL

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 ROTHMANS, BENSON & HEDGES INC.

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

Proceeding commenced at Toronto

**ORDER
(Stay Extension)**

McCarthy Tétrault LLP
Suite 5300, TD Bank Tower
Toronto ON M5K 1E6

R. Paul Steep LSO#: 21869L
Tel: 416-601-7998

Email: psteep@mccarthy.ca

James D. Gage LSO#: 34676I
Tel: 416-601-7539

Email: jgage@mccarthy.ca

Heather Meredith LSO#: 48354R
Tel: 416-601-8342

Email: hmeredith@mccarthy.ca

Hannah Young LSO#: 85170N
Tel: 416-601-0618

Email: hyoung@mccarthy.ca

Lawyers for the Applicant

TAB C

This is **Exhibit “C”** referred to in the
Affidavit of Milena Trentadue,
sworn before me on March 6, 2024

DocuSigned by:
Trevor Courtis
7ADE0128A1A64BC...

A Commissioner for taking Affidavits (or as may be)
Trevor Courtis (LSO# 67715A)

CITATION: Imperial Tobacco Canada Limited, 2023 ONSC 5449
COURT FILE NO.: CV-19-615862-00CL, CV-19-616077-00CL and CV-19-616779-00CL
DATE: 2023-10-05

SUPERIOR COURT OF JUSTICE - ONTARIO

RE: 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

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 & HEDGGES INC.

BEFORE: Chief Justice Geoffrey B. Morawetz

COUNSEL: *John MacDonald, Deborah Glendinning, Craig Lockwood, Marc Wasserman and Marleigh Dick*, for Imperial Tobacco Canada Limited and Imperial Tobacco Company Limited

Paul Steep, Heather Meredith and Trevor Courtis, for Rothmans, Benson & Hedges Inc.

Robert Thornton and Leanne Williams, for JTI-MacDonald Corp.

Natasha MacParland, Chanakya Sethi, Benjamin Jarvis and Mehak Suri, for FTI Consulting Canada Inc. in its capacity as court-appointed Monitor of Imperial Tobacco Canada Limited and Imperial Tobacco Company Limited

Jane Dietrich, for Ernst & Young Inc. in its capacity as court appointed Monitor of Rothmans, Benson & Hedges Inc.

Pamela Huff, Linc Rogers and Jake Harris, for Deloitte Restructuring Inc. in its capacity as Monitor of JTI-Macdonald Corp.

Robert Cunningham, for The Canadian Cancer Society

Avram Fishman and Mark E. Meland, for Conseil Québécois sur le tabac et la santé, Jean-Yves Blais and Cécilia Létourneau (Quebec Class Action Plaintiffs)

Amanda McInnis and Steven Weisz, for Grand River Enterprises Six Nations Ltd.

Jacqueline Wall, for His Majesty the King in Right of Ontario

Adam Slavens, for JTI Canada LLC Inc. and PricewaterhouseCoopers Inc., in its capacity as Receiver of JTI-Macdonald TM Corp.

David Ullmann, for La Nordique Compagnie D'Assurance du Canada

Raymond Wagner, Madeleine Carter and Lauren Harper, Representative Counsel for the Pan-Canadian Claimants

Clifton Prophet and Nichols Kluge, for Philip Morris International Inc.

Andre Michael and Michael Eizenga, 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

Peter R. Lawless, for Legal Services Branch, British Columbia

Edward R. Gores, for the Ministry of the Attorney General of Nova Scotia

Bryan McLeese, for R.J. Reynolds Tobacco Company and R.J. Reynolds Tobacco International Inc.

Douglas Lennox, for Representative Plaintiff, Kenneth Knight, in the certified British Columbia Class Action, *Knight v. Imperial Tobacco Canada Ltd.*, Supreme Court of British Columbia, Vancouver Registry No. L031300

William V. Sasso and Harvey T. Strosberg, for The Ontario Flue-Cured Tobacco Growers' Marketing Board

Nadia Campion, for Court-Appointed Mediator, The Honourable Warren K. Winkler

Brett Harrison, for the Province of Quebec

**HEARD and
DETERMINED:** September 27, 2023

RELEASED: October 5, 2023

ENDORSEMENT

[1] This endorsement relates to all three Applicants, JTI-MacDonald Corp., ("JTI") Imperial Tobacco Canada Limited and Imperial Tobacco Company Limited (collectively "Imperial") and Rothmans, Benson & Hedges Inc. ("RBH").

[2] At the conclusion of the hearing, a Stay Extension was granted to all Applicants up to and including March 29, 2024, with reasons to follow. Oral directions were provided and these directions are set out at paragraphs [11] - [21].

[3] The evidence in support of the requested relief is set out in the 16th Report of FTI Consulting Canada Inc. as Monitor of Imperial, the 14th Report of Ernst & Young Inc., as Monitor of RBH and the 15th Report of Deloitte Restructuring Inc., Monitor of JTI (collectively, the "Reports").

[4] In addition, the Affidavit of Philippe Trudell, one of the attorneys representing Conseil Québécois sur le tabac et la santé ("QCAPs") was also filed.

[5] All three motions for an extension of the Stay Period were not opposed.

[6] The Reports outline the current state of affairs.

[7] The Record establishes that all three Applicants have been and continue to work in good faith and with due diligence. The Record also establishes that much work remains outstanding and additional time is required until comprehensive plans of arrangement can be finalized.

[8] In addition, the Affidavit of Mr. Trudell outlines the situation facing a number of claimants and underscores the necessity for progress to be made in the development of plans of arrangement.

[9] The Reports confirm that all Applicants have sufficient liquidity to carry on operations during the period of the proposed extension of the Stay Period.

[10] I am satisfied that all three Applicants have established that circumstances exist that require an extension of the Stay Period up to and including March 29, 2024, and such order is granted.

[11] In granting such relief, I am mindful that all stakeholders have been involved in negotiating various issues for a period of approximately four and one-half years. There are a number of outstanding issues which remain to be addressed. I expect that these issues have been outstanding for a considerable period of time. It is now time for all stakeholders to focus on the finalization of comprehensive plans of arrangement. For this reason, I have determined that it is both necessary and appropriate to provide certain directions to the Monitors and to the Honourable Warren K. Winkler, Court-appointed Mediator. These directions were provided orally at the conclusion of the hearing on September 27, 2023 and are repeated below.

[12] The Record establishes that all parties continue to be engaged with the Court-appointed Mediator, the Honourable Warren K. Winkler.

[13] The Record also establishes, through the detailed reports of the Monitors, that each Monitor has a thorough understanding of the issues facing their respective Applicants.

[14] The Record also establishes that these CCAA proceedings are extremely complex.

[15] The dollar value of potential claims is astronomical and is clearly beyond the ability for any or all of the Applicants to satisfy these claims from their available assets.

[16] There is also an unresolved issue as to how the three Applicants will address the issue of allocation of responsibility for such issues.

[17] It would be a challenge for any one Applicant to address the outstanding issues – let alone for all three Applicants to address the issues in the context of a comprehensive Plan of Arrangement.

[18] In formulating an acceptable Plan of Arrangement, it has often been stated that no plan is perfect (See: *Sammi Atlas Inc. (Re)*, (1998) 3 C.B.R. (4th) 171 (Ont. Gen. Div.), at para. 4). The objective is to produce a plan or in this case plans, which will be acceptable to the required statutory majority of creditors and also be seen to be fair and reasonable.

[19] In my view, if a successful plan is to be forthcoming, the best chance for the development of such a plan will be achieved by directing neutral parties to collaborate and develop such a plan. In the circumstances, such neutrals are already in place. The three Court-appointed Monitors are well-positioned to collaborate with each other in conjunction with the Court-appointed Mediator to develop such plans.

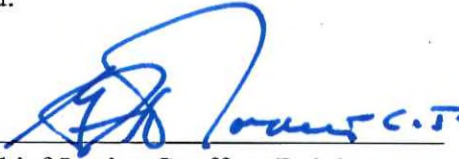
[20] The existing structure of the mediation can be utilized to facilitate the development of such plans. The Monitors and the Mediator are obviously familiar with the issues and in view of their existing neutrality, it seems to me that they are in the best position to develop plans that, after due consideration by all three Applicants and the creditors, will have the best opportunity to be considered to be fair and reasonable to all three Applicants and to their creditors.

[21] The Applicants filed for CCAA protection four and one-half years ago. It is now time to move from observable activity to meaningful action.

[22] Accordingly, I am directing the three Monitors, to work in conjunction with the Honourable Warren K. Winkler, Court-appointed Mediator, to develop Plans of Compromise or Arrangement. The Monitors and the Court-appointed Mediator are also directed to keep this Court updated as to their progress.

[23] The motions of all three Applicants are granted, in accordance with the directions noted above.

[24] Three orders that reflect the foregoing have been signed.



Chief Justice Geoffrey B. Morawetz

Date: October 5, 2023

TAB D

This is **Exhibit “D”** referred to in the
Affidavit of Milena Trentadue,
sworn before me on March 6, 2024

DocuSigned by:
Trevor Courtis
7ADE0128A1A64BC

A Commissioner for taking Affidavits (or as may be)
Trevor Courtis (LSO# 67715A)

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

ONTARIO
SUPERIOR COURT OF JUSTICE
COMMERCIAL LIST

menon ahm

THE HONOURABLE)
)
MR. JUSTICE MCEWEN)

~~FRIDAY, THE 6th~~

DAY OF DECEMBER, 2019

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

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

Applicant



ORDER

(APPOINTMENT OF REPRESENTATIVE COUNSEL)

THIS JOINT MOTION made by the "Tobacco Monitors" being Ernst & Young Inc. in its capacity as court-appointed Monitor (the "RBH Monitor") of Rothmans, Benson & Hedges Inc. ("RBH"), Deloitte Restructuring Inc. in its capacity as court-appointed Monitor of JTI-Macdonald Corp. ("JTIM") and FTI Consulting Canada Inc. in its capacity as court-appointed Monitor of Imperial Tobacco Canada Limited and Imperial Tobacco Company Limited (collectively, the "ITL Applicants" and together with RBH and JTIM, 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 Fourth Report to Court of the RBH Monitor dated November 26, 2019 (the "Fourth 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.

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 Fourth 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;

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

8. **THIS COURT ORDERS** that Representative Counsel shall not be liable for any act or omission in respect of their appointment or the fulfillment of their duties in carrying out the provisions of this Order, other than for gross negligence or willful misconduct. No action or other proceedings shall be commenced against Representative Counsel in respect of alleged gross negligence or willful misconduct, except with prior leave of this Court on at least 7 days'


notice to Representative Counsel and upon 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.

A handwritten signature in black ink, appearing to be 'm i s', written over a horizontal line.

ENTERED AT / INSCRIT A TORONTO
ON / BOOK NO:
LE / DANS LE REGISTRE NO:

DEC 10 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 ROTHMANS, BENSON & HEDGES INC.

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

ONTARIO
SUPERIOR COURT OF JUSTICE
PROCEEDING COMMENCED AT
TORONTO

ORDER
(RE APPOINTMENT OF REPRESENTATIVE COUNSEL)

Cassels Brock & Blackwell LLP
2100 Scotia Plaza
40 King Street West
Toronto, ON M5H 3C2

Shayne Kukulowicz LSO #: 30729S
Tel: 416.860.6463
Fax: 416.640.3176
skukulowicz@cassels.com

Jane Dietrich LSO #: 49301U
Tel: 416.860.5223
Fax: 416.640.3144
jdietrich@cassels.com

Lawyers for the RBH Monitor

TAB E

This is **Exhibit “E”** referred to in the
Affidavit of Milena Trentadue,
sworn before me on March 6, 2024

DocuSigned by:

Trevor Curtis

7ADE0128A1A64BC...

A Commissioner for taking Affidavits (or as may be)
Trevor Curtis (LSO# 67715A)

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)**

THE HONOURABLE) FRIDAY, the 24th
)
MR. JUSTICE McEWEN) DAY of MAY, 2019

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

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

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

**ENDORSEMENT (COURT-APPOINTED MEDIATOR COMMUNICATION AND CONFIDENTIALITY
PROTOCOL)**

For ease of reference, the above proceedings will collectively be referred to as the "CCAA Proceedings".

The Honourable Warren K. Winkler, Q.C., former Chief Justice of Ontario, has been appointed as a neutral third party (the "**Court-Appointed Mediator**") to mediate a global settlement of the Tobacco Claims (the "**Mediation Process**"), as defined in each Applicant's Initial Order as amended and restated (the "**Initial Orders**"), in each CCAA Proceeding.

The Court has authorized the following communication and confidentiality protocol between the Court and the Court-Appointed Mediator:

1. The Court and the Court-Appointed Mediator may communicate between one another directly to discuss, on an on-going basis, the conduct of the Mediation Process and the manner in which it will be coordinated with the CCAA Proceedings, including but not

limited to individual matters referred specifically by the Court to the Court-Appointed Mediator for resolution.

2. The Court will not disclose to the Court-Appointed Mediator how they will decide any matter which may come before them for determination. The Court-Appointed Mediator will not disclose to the Court the negotiating positions or confidential information of any of the parties in the Mediation Process.
3. All statements, discussions, offers made and documents produced by any of the parties in the course of the Mediation Process shall not be subject to disclosure through discovery or any other process; shall be confidential; shall not be referred to in Court and shall not be admissible into evidence for any purpose, including impeaching credibility or to establish the meaning and/or validity of any settlement or alleged settlement arising from the Mediation Process.
4. Any notes, records, statements made, discussions had and recollections of the Court-Appointed Mediator and/or his legal counsel, Lax O'Sullivan Lisus Gottlieb LLP, in conducting the Mediation Process shall be confidential and without prejudice and protected from disclosure for all purposes in accordance with paragraph (3) above.
5. The Court-Appointed Mediator shall not be liable to any party or participant for any act or omission in connection with the Mediation Process and shall have the immunity of a Judge of a Superior Court in Canada.


Justice McEwen

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.

Court File No: CV-19-616779-00CL

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

Proceeding commenced at Toronto

**AFFIDAVIT OF MILENA TRENTADUE
(Sworn March 6, 2024)**

McCarthy Tétrault LLP
Suite 5300, TD Bank Tower
Toronto ON M5K 1E6

R. Paul Steep LSO#: 21869L
Tel: 416-601-7998
Email: psteep@mccarthy.ca

James D. Gage LSO#: 346761
Tel: 416-601-7539
Email: jgage@mccarthy.ca

Heather Meredith LSO#: 48354R
Tel: 416-601-8342
Email: hmeredith@mccarthy.ca

Trevor Courtis LSO#: 67715A
Tel: 416-601-7643
Email: tcourtis@mccarthy.ca

Lawyers for the Applicant

TAB 3

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

| | | |
|------------------------|---|-------------------|
| THE HONOURABLE |) | MONDAY, THE 25TH |
| |) | |
| CHIEF JUSTICE MORAWETZ |) | DAY OF MARCH 2024 |

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

AND IN THE MATTER OF A PROPOSED 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* (Canada), as amended, for an order extending the Stay Period (defined below) until and including September 30, 2024 and certain other relief, was heard this day by judicial videoconference via Zoom in Toronto, Ontario.

ON READING the Notice of Motion of the Applicant dated March 11, 2024, the Affidavit of Melina Trentadue sworn March 6, 2024, the Fifteenth 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 as listed on the participant sheet, no one else appearing although duly served as appears from the affidavit of service, filed:

SERVICE

1. **THIS COURT ORDERS** that the time for service and filing of the Notice of Motion and the Motion Record of the Applicant herein and the Fifteenth Report is hereby abridged and validated such that this motion is properly returnable today and hereby dispenses with further service thereof.

EXTENSION OF STAY PERIOD

2. **THIS COURT ORDERS** that the Stay Period as defined in the Second Amended and Restated Initial Order of Justice McEwen dated April 25, 2019 (“**Initial Order**”) is hereby extended until and including September 30, 2024.

INDIVIDUAL EMPLOYEE GRIEVANCE PROCEEDINGS

3. **THIS COURT ORDERS** that paragraph 18 of the Initial Order is hereby amended as follows:

18. **THIS COURT ORDERS** that until and including June 28, 2019, or such later date as this Court may order (the "**Stay Period**"), no proceeding or enforcement process in any court or tribunal (each, a "**Proceeding**"), including but not limited to an application for leave to appeal to the Supreme Court of Canada in the Quebec Class Actions (a "**QCA Leave Application**"), the Pending Litigation and any other Proceeding in relation to a Tobacco Claim, shall be commenced, continued or take place by, against or in respect of the Applicant, the Monitor or the Court-Appointed Mediator (defined below), or affecting the Business or the Property or the funds deposited by the Applicant pursuant to the Deposit Posting Order, except with leave of this Court, and any and all Proceedings currently under way or directed to take place by, against or in respect of the Applicant or affecting the Business or the Property or the funds deposited pursuant to the Deposit Posting Order are hereby stayed and suspended pending further Order of this Court. All counterclaims, cross-claims and third party claims of the Applicant in the Pending Litigation are likewise subject to this stay of Proceedings during the Stay Period. Notwithstanding the foregoing, a Proceeding that is an employee grievance brought against the Applicant may be commenced or continued with the prior written consent of the Applicant and Monitor provided that the monetary value or cost to the Applicant of such grievance does not exceed \$250,000.

GENERAL

4. **THIS COURT ORDERS** that this Order is effective from the date that it is made and is enforceable without any need for entry and filing.

5. **THIS COURT ORDERS** that this Order shall have full force and effect in all provinces and territories in Canada.

6. **THIS COURT HEREBY REQUESTS** the aid and recognition of any court, tribunal, regulatory or administrative body having jurisdiction in Canada or in the United States to give effect to this Order and to assist the Applicant and the Monitor, and their respective agents in

carrying out the terms of this Order. All courts, tribunals, regulatory and administrative bodies are hereby respectfully requested to make such orders and to provide such assistance to the Applicant and to the Monitor, as an officer of this Court, as may be necessary or desirable to give effect to this Order or to assist the Applicant and the Monitor, and their respective agents, in carrying out the terms of this Order.

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

Proceeding commenced at Toronto

**ORDER
(Stay Extension)**

McCarthy Tétrault LLP
Suite 5300, TD Bank Tower
Toronto ON M5K 1E6

R. Paul Steep LSO#: 21869L
Tel: 416-601-7998

Email: psteep@mccarthy.ca

James D. Gage LSO#: 34676I
Tel: 416-601-7539

Email: jgage@mccarthy.ca

Heather Meredith LSO#: 48354R
Tel: 416-601-8342

Email: hmeredith@mccarthy.ca

Trevor Courtis LSO#: 67715A
Tel: 416-601-7643

Email: tcourtis@mccarthy.ca

Lawyers for the Applicant

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

Proceeding commenced at Toronto

**MOTION RECORD
(Stay Extension and Other Relief)
(Returnable March 25, 2024)**

McCarthy Tétrault LLP
Suite 5300, TD Bank Tower
Toronto ON M5K 1E6

R. Paul Steep LSO#: 21869L
Tel: 416-601-7998
E-mail: psteep@mccarthy.ca

James D. Gage LSO#: 34676I
Tel: 416-601-7539
E-mail: jgage@mccarthy.ca

Heather Meredith LSO#: 48354R
Tel: 416-601-8342
E-mail: hmeredith@mccarthy.ca

Trevor Courtis LSO#: 67715A
Tel: 416-601-7643
E-mail: tcourtis@mccarthy.ca

Lawyers for the Applicants