

ONTARIO
SUPERIOR COURT OF JUSTICE
(COMMERCIAL LIST)

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

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

Applicant

NINETEENTH REPORT OF THE MONITOR
OCTOBER 25, 2024

INTRODUCTION

1. On March 22, 2019, Rothmans, Benson & Hedges Inc. applied for and obtained an initial order (the “**Initial Order**”) under the *Companies’ Creditors Arrangement Act* (“**CCAA**”) that, amongst other things, (i) granted a stay of proceedings in favour of the Applicant and a limited stay of proceedings in favour of members of the PMI Group (as defined in the Initial Order) in relation to certain proceedings, and (ii) appointed EYI as Monitor of the Applicant in this CCAA proceeding.
2. On April 25, 2019, this Court issued a further amended and restated Initial Order (the “**Second Amended and Restated Initial Order**”) that, amongst other things, extended a limited stay of proceedings to the Other Defendants (as defined in the Second Amended and Restated Initial Order).
3. Pursuant to an Order dated October 1, 2024, the Stay Period was extended to October 31, 2024.

PURPOSE

4. The purpose of this nineteenth report of the Monitor (the “**Nineteenth Report**”) is to provide information to this Court with respect to:
 - i) an Order in respect of each Applicant (each a “**Meeting Order**” or collectively the “**Meeting Orders**”), *inter alia*:

- a) accepting the filing of the plan of compromise and arrangement developed by the Court-Appointed Mediator and each Monitor in respect of each of the Applicants under the CCAA (each a “**CCAA Plan**” and collectively, the “**CCAA Plans**”) in the form attached to each Monitor’s Motion Record dated October 17, 2024;
 - b) authorizing and directing each respective Monitor to call, hold and conduct a meeting of Eligible Voting Creditors to vote on the Plan Resolution (as defined below) (each a “**Meeting**” and collectively, the “**Meetings**”);
 - c) authorizing, pursuant to section 22 of the CCAA, the classification of creditors into a single class for the purposes of the Meetings and voting on the CCAA Plans;
 - d) approving the procedures to be followed at the Meetings, including voting procedures;
 - e) authorizing, approving and directing the distribution of certain Meeting Materials and other procedures to be followed to provide notice of the Meetings; and
 - f) subject to approval of the CCAA Plans by the requisite majorities of Eligible Voting Creditors, authorizing the Monitors to make a motion for the sanction hearing (the “**Sanction Hearing**”) where the CCAA Court will decide whether to grant an order approving one or more of the CCAA Plans (the “**Sanction Order**”).
- ii) an Order in respect of the Applicant (each a “**Claims Procedure Order**” and collectively, the “**Claims Procedure Orders**”), substantially in the form included at Tab 3 of the Monitor’s Motion Record dated October 17, 2024, *inter alia*, establishing a claims procedure (the “**Claims Procedure**”) for disputing the value and number of votes attributed to the Claims of the Claimants and the identification of Miscellaneous Claims, for voting purposes only, against the Applicant.

5. The Monitor has issued the Eighteenth Report of the Monitor, dated October 25, 2024 to provide its recommendations in connection with the Claims Procedure Orders (the “**Claims Procedure Report**”).
6. For the reasons below, the Monitor seeks the relief described above.

TERMS OF REFERENCE

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

9. Unless otherwise indicated, the Monitor’s understanding of factual matters expressed in this Nineteenth Report concerning the Applicant and its business is based on the Information, and not independent factual determinations made by the Monitor.
10. Unless otherwise stated, all monetary amounts contained herein are expressed in Canadian Dollars.
11. Unless otherwise defined or specified, all capitalized terms used herein shall have the meaning ascribed to them in the CCAA Plans and, with respect to any particular reference to any particular Tobacco Company, shall have the meaning ascribed to them in the corresponding CCAA Plan.
12. Copies of the Monitor’s Reports, including a copy of this Nineteenth Report, and all motion records and Orders in the CCAA Proceeding are available on the Monitor’s website at www.ey.com/ca/rbh. The Monitor has also established a toll-free phone number that is referenced on the Monitor’s website so that parties may contact the Monitor if they have questions with respect to the CCAA Proceeding.

BACKGROUND

13. On June 9, 2015, Mr. Justice Riordan of the Quebec Superior Court (Class Action Division) released a judgment (the “**QCAP Trial Judgment**”) awarding compensatory and punitive damages against RBH, Imperial and JTIM. The Applicants appealed the QCAP Trial Judgment. On March 1, 2019, the Quebec Court of Appeal released its judgment (the “**QCA Judgment**”) which substantially upheld the QCAP Trial Judgment. The QCA Judgment ordered JTIM, Imperial and RBH to pay damages to the QCAPs in the approximate amount of \$13.5 billion¹ (including interest and an additional indemnity). In accordance with the QCAP Trial Judgment and prior to the appeal of that QCAP Trial Judgment, Imperial and RBH collectively deposited \$984 million (the “**Cash Security Deposits**”) with the Quebec Court of Appeal. None of the Applicants appealed the QCA Judgment to the Supreme Court of Canada

¹ All amounts are denominated in Canadian dollars.

prior to filing for CCAA protection and each Applicant's ability to do so, including the associated limitation period, has been stayed pursuant to its respective Initial Order.

14. The QCA Judgment was the catalyst for the Applicants each filing for creditor protection. JTIM, Imperial and RBH each filed for protection pursuant to the CCAA on March 8, 2019, March 12, 2019, and March 22, 2019, respectively (collectively, the “**CCAA Proceedings**”).
15. On April 5, 2019, pursuant to Amended and Restated Initial Orders granted in each of the three CCAA Proceedings (the “**A&R Initial Orders**”), Warren K. Winkler was appointed as mediator (the “**Court-Appointed Mediator**”) to act as a neutral third party to mediate a global settlement of the Tobacco Claims (the “**Mediation**”). Pursuant to the Endorsement of Justice McEwen, dated May 24, 2019, the Mediation is confidential. For this reason, any information discussed herein regarding the Mediation process and the negotiating positions of the parties will be general in nature.
16. Pursuant to the A&R Initial Orders, the CCAA Court directed the parties to engage in the Mediation, in furtherance of a global settlement of the Tobacco Claims. The participants in the Mediation initially consisted of the Applicants and the Parent Companies on the one side, and the Canadian Provinces and Territories, the Quebec Class Action Plaintiffs, the *Knight* Class Action Plaintiffs and the Ontario Flue-Cured Tobacco Growers' Marketing Board on the other side. The Pan-Canadian Claimants' Representative was subsequently appointed on behalf of the remaining Canadian victims in December 2019 and was added as a party to the Mediation. The participants in the Mediation constitute a comprehensive representation of all stakeholders of the tax-paid tobacco industry in Canada.
17. The Mediation began in 2019, initially including the following parties:

Imperial Tobacco Canada Limited (“ITCAN”) and Imperial Tobacco Company Limited (collectively, “Imperial”)
Rothmans, Benson & Hedges Inc. (“RBH”)
JTI-MacDonald Corp. (“JTIM” and with Imperial and RBH, the “Applicants”)
The Consortium of Provinces and Territories²(the “Consortium”)
Province of Ontario (“Ontario”)
Province of Québec (“Quebec”)

² The Consortium of Provinces and Territories is comprised of British Columbia, Manitoba, Nova Scotia, New Brunswick, Prince Edward Island, Saskatchewan, Northwest Territories, Nunavut and Yukon.

*Province of Alberta (“**Alberta**”)*

*Province of Newfoundland and Labrador (“**Newfoundland and Labrador**”, and together with the Consortium, Ontario, Quebec and Alberta, the “**Provinces and Territories**”)*

*Quebec Class Action Plaintiffs (the “**QCAP**”)*

Certain personal injury class action plaintiffs³

*Tobacco Light Class Action Plaintiffs (“**Knight Class Action Plaintiffs**”)*

*Ontario Flue-Cured Tobacco Growers’ Marketing Board (the “**Tobacco Growers**”)*

18. On December 9, 2019, pursuant to an Order of the CCAA Court, The Law Practice of Wagner & Associates, Inc. (the “**Pan-Canadian Claimants’ Representative**” or “**PCCR**”) was appointed to represent the Pan-Canadian Claimants (as defined below). Concurrent with this appointment, the PCCR started participating in the Mediation. Since the PCCR began participating in the Mediation, the mediation parties have consisted of the Provinces and Territories, QCAP, PCCR, *Knight Class Action Plaintiffs*, Tobacco Growers (collectively, the “**Claimants**”) and the Applicants (the “**Mediation Parties**”).
19. The Applicants are Canadian domestic tobacco companies, each a subsidiary of international parent companies, which effectively comprise the legal tax-paid tobacco industry in Canada. The Canadian Provinces and Territories are the claimants with respect to health care recovery claims advanced under statutes created for this purpose. The QCAP claimants advanced claims for damages for personal injuries sustained as a result of consumption of tobacco products sold by the Applicants. The PCC Claims mirror the claims for damages for personal injuries of the QCAPs for victims across Canada not covered by the QCA Judgment. The Tobacco Growers’ claim is advanced on behalf of farmers who were suppliers of tobacco to the Applicants. The *Knight Class Action Plaintiffs* brought a products claim for damages relating to the sale of Imperial’s cigarettes bearing “light” and “mild” descriptors in British Columbia. The total amount of damages claimed exceeded \$1 trillion.
20. Since the Mediation commenced in 2019, the Court-Appointed Mediator and Monitors have participated in extensive discussions and numerous sessions with various combinations of the Mediation Parties. The progress of the Mediation was further complicated by the significant number of Claimants and varying positions held by stakeholders, including within groups of

³ These personal injury class action plaintiffs were later excused from the Mediation process and replaced by the Pan-Canadian Claimants’ Representative, as appointed by the Court on December 9, 2019.

stakeholders represented by certain of the Claimants. The Court-Appointed Mediator convened numerous formal and informal Mediation sessions over five years. These discussions led to a sequence of term sheets exchanged between the Claimants and Applicants, commencing in December 2019 through until July 2023. Ultimately, certain of the Mediation Parties took intractable positions on various issues and these discussions and term sheets failed to result in a consensual resolution that would lead to a global settlement.

21. In his endorsement dated October 5, 2023 (the “**October 5 Endorsement**”), Chief Justice Morawetz determined:

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.

....

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.

22. Since the October 5 Endorsement was released, the Court-Appointed Mediator and Monitors have worked diligently to develop a CCAA Plan, which was then personalized for each Applicant. As such, the three CCAA Plans are materially identical and all three contain substantially all of the same key terms and provisions. The CCAA Plans are the culmination of the many discussions held with the stakeholders since the start of the Mediation. In developing the CCAA Plans, the Court-Appointed Mediator and Monitors considered the range of positions taken by the Mediation Parties, who held highly divergent positions on the issues. The CCAA Plans have been formulated to satisfy, to the greatest extent reasonably possible, the broadest range of the Mediation Parties’ interests and positions.

23. The Court-Appointed Mediator and the Monitors have not prepared information circulars in connection with the CCAA Plans. The Mediation Parties have participated in the Mediation

since 2019, are well aware of the potential risks associated with the Applicants' businesses and have had access to extensive financial and other information via the confidential electronic data rooms populated and maintained by the Monitors. Furthermore, the Court-Appointed Mediator and Monitors would be unable to provide any certification with respect to the businesses and financial information of the Applicants. For these reasons, the Court-Appointed Mediator and Monitors are satisfied that no information circular is necessary or value additive in this circumstance.

STAKEHOLDER ANALYSIS

24. While the Mediation Parties have been known for over five years, have participated extensively in the Mediation and have appeared in motions before this Court, it is prudent to summarize these stakeholders herein.
25. While all three Applicants are involved in the business of distributing and selling cigarettes and other tobacco products, only JTIM and RBH manufacture cigarettes in Canada whereas Imperial imports substantially all of its cigarettes from its affiliates outside Canada. RBH and Imperial also sell certain alternative products, which includes items like vaping devices and other heated tobacco devices.
26. As described above, the QCA Judgment ordered JTIM, Imperial and RBH to pay joint and several damages to the QCAPs in the approximate amount of \$13.5 billion (including interest and an additional indemnity). These damages relate to two class action proceedings: (i) the *Blais* class action and (ii) the *Létourneau* class action (collectively, the “**QCAP Litigation**”). The *Blais* class is on behalf of tobacco smokers in the Province of Québec suffering from lung, larynx or throat cancer or emphysema for the purpose of claiming, for each proposed class member, compensatory and exemplary damages. The *Létourneau* class is on behalf of tobacco smokers in the Province of Québec for the purpose of claiming, for each proposed class member, moral damages resulting from an alleged addiction to nicotine, as well as punitive damages. Although there was \$131 million awarded for the *Létourneau* class, no individual compensation was contemplated.

27. In addition to the QCAP Litigation, the Applicants are also defendants in the following pending litigation:

- a) health care cost recovery actions or claims brought by all the provincial and territorial governments;
- b) certain putative class actions for tobacco-related harms;
- c) a putative class action brought by the Ontario Flue-Cured Tobacco Growers' Marketing Board; and
- d) in the case of Imperial, a class action on behalf of British Columbians who purchased ITCAN's cigarettes bearing "light" and "mild" descriptors on the packaging.

28. In addition to the health care cost recovery actions brought by the provincial governments, the three territories have either enacted or passed similar legislation providing the ability to bring their own commensurate litigation against the Applicants. Collectively, the ten provinces and three territories have asserted damages against the Applicants that are quantified by the Provinces and Territories at approximately \$944.5 billion. This litigation is all at a preliminary stage, with only New Brunswick's action having set a trial date at the time of the CCAA filings. The New Brunswick trial (which was stayed concurrent with the initiation of the CCAA Proceedings) was scheduled to begin on November 4, 2019.

29. As described above, on December 9, 2019, The Law Practice of Wagner and Associates, Inc. was appointed as representative counsel for all individuals (collectively, the "**Pan-Canadian Claimants**" or "**PCCs**") who assert or may be entitled to assert a claim or cause of action against one or more of the Applicants, including their Tobacco Company Groups, relating to harms in respect of:

- a) the development, manufacture, importation, production, marketing, advertising, distribution, purchase or sale of tobacco products;
- b) the historical or ongoing use of or exposure to tobacco products; or

- c) any representation in respect of tobacco products.
30. The PCCs include all individuals who claim to be part of any pre-existing putative class actions for tobacco-related harms, which were stayed pursuant to the applicable Initial Order for each Applicant, but specifically excluding the QCAPs and Tobacco Growers.
31. The Tobacco Growers' class action relates to allegations that the Applicants paid lower prices for tobacco leaf destined for duty-free products, as opposed to the higher domestic leaf price.
32. The *Knight* class action was filed and certified as against ITCAN only. It alleges ITCAN engaged in "deceptive trade practices" contrary to the British Columbia *Trade Practices Act* in the marketing of its cigarette brands with "light" and "mild" descriptors. After several preliminary motions and appeals, the action remains at a preliminary stage and no trial date has been set.
33. While there are certain areas of common interest among the Mediation Parties, there was also a diverse set of positions from the parties. In general, the following are some of the positions of the Mediation Parties which were considered during the development of the CCAA Plans:
- a) that there be a "global" resolution, encompassing all outstanding Tobacco Claims;
 - b) the Applicants' request that there be a global release of all Tobacco Claims for the Applicants and their affiliates and international parent companies (each a "**Parent Company**" and each with their affiliates and subsidiaries, "**Tobacco Company Group**");
 - c) the Parent Companies and Tobacco Company Groups continue to provide shared services and supply goods to the Applicants for the duration of the Contribution Period;
 - d) Annual Contributions are based on future profitability of the Applicants;
 - e) the Claimants are provided access to financial and operational information from the Applicants throughout the duration of the Contribution Period;
 - f) specify dispute resolution procedures;

- g) the scope of the resolution will not include any reference to Alternative Products;
 - h) future Annual Contributions be secured by a first-ranking charge on the assets of the businesses; and
 - i) following payment of the Upfront Contributions, the Applicants retain sufficient cash to fund working capital.
34. In addition to the Mediation Parties, the CCAA Plan also includes provision for potential Putative Miscellaneous Claimants who assert that they have claims which have not been released pursuant to the terms of the CCAA Plans, Claims Procedure Order, Sanction Order, Claimant Contractual Releases and/or any other orders made in the CCAA Proceedings. The existence of any such claims and claimants is not admitted but is expressly denied by the Applicants, their affiliates and the Claimants. For greater certainty, individuals who claim to have suffered tobacco-related harms are not Putative Miscellaneous Claimants, but may be either a QCAP or PCC-Claimant.
35. Notwithstanding the denial of the existence of any such claims, an allocation of funds will be reserved to compensate any proven and accepted Putative Miscellaneous Claimants. Subject to approval of the CCAA Court, notice and claims programs have been designed to provide notice to any as yet unidentified Putative Miscellaneous Claimants, and provide them the opportunity to vote at the Meetings. These notice and claims programs are discussed in greater detail in a separate monitor report. The Miscellaneous Claims Procedure will continue following the CCAA Plans implementation to determine the existence of any Miscellaneous Claims, as described in greater detail below.

CCAA PLANS

36. Certain key terms of the CCAA Plans are summarized in this Nineteenth Report. However, the summary provided does not purport to be exhaustive nor address each and every provision of the CCAA Plans. For greater detail, reference should be made to the CCAA Plans. The summary provided and all references to the CCAA Plans herein are qualified by reference to the text of the CCAA Plans and, in the event of any discrepancy between the summary provided herein and the CCAA Plans, the CCAA Plans shall govern.

Contributions Under the CCAA Plans

37. The primary consideration for the global releases of the Applicants, their affiliates, Parent Companies and Tobacco Company Groups is \$32.5 billion (the “**Global Settlement Amount**”) plus \$35.0 million in addition to the Global Settlement Amount designated to the Miscellaneous Claims Fund. This additional \$35.0 million can be contributed at the unanimous discretion of the Applicants and will not otherwise affect the economics of the CCAA Plans from the perspective of the Claimants. The Global Settlement Amount is made up of funds contributed upfront (“**Upfront Contributions**”) at the time of implementation (the “**Plan Implementation Date**”), and funds to be paid in future years (“**Downstream Contributions**”) until the Global Settlement Amount is fully paid. The Downstream Contributions are made up of payments to be calculated as a percentage of after-tax net income (the “**Annual Contributions**”) and certain tax related refunds and savings in respect of the Contributions.
38. The Upfront Contributions will be equal to (i) the cash on hand of each Applicant as at the month end prior to the Plan Implementation Date, plus (ii) the Cash Security Deposits, less (iii) \$750 million. As such, the exact sum of the Upfront Contributions will not be known until prior to the Plan Implementation Date, however it is currently estimated to be \$12.456 billion as at December 31, 2024 plus \$35.0 million designated to the Miscellaneous Claims Fund. The approximate Upfront Contributions will be allocated among the Claimants as follows:

| Claimant | Amount (billions) |
|---------------------------------------|--------------------------|
| Provinces and Territories | \$6.202 |
| QCAPs | \$3.869 |
| PCCs | \$1.750 |
| Cy-près Foundation | \$0.500 |
| Tobacco Producers | \$0.015 |
| <i>Knight</i> Class Action Plaintiffs | \$0.015 |

| Claimant | Amount (billions) |
|----------------------------------|---|
| Miscellaneous Claims Fund | \$0.025 (plus \$35.0 million additional funds designated to this Miscellaneous Claims Fund) |
| CCAA Plan Administration Reserve | \$0.075 |
| PCC Compensation Plan Reserve | \$0.005 |

39. Because the amount of the Upfront Contributions is not fixed, the Provinces and Territories' share of the Upfront Contributions will be equal to the difference between the total Upfront Contributions less those paid to the other Claimants and to the reserves and Miscellaneous Claims Fund.
40. The Annual Contributions will be calculated as a percentage of Net After-Tax Income subject to certain adjustments, as described in the CCAA Plans (the "**Metric**"). For the first five years following implementation, 85.0% of the Metric will be paid to the Claimants. Subject to the Applicants having made all prior Annual Contributions, the percentage of the Metric to be paid to the Claimants will decrease by increments of 5.0% every five years, until a terminal level of 70.0%, which shall persist until the Global Settlement Amount is paid in full.
41. The Metric is intended to capture the profits of the Canadian operating businesses of each Applicant and the one-time realization of assets, excluding any non-operational transactions. It shall:
- a) be based on the amount generated from all sources by each Applicant, excluding alternative products;
 - b) include interest income;
 - c) include the proceeds of any disposition of any assets, including capital assets and intangible assets;

- d) include the net tax savings realized by each Applicant during the Contribution Period;
 - e) exclude one-time accounting adjustments that are non-operational in nature;
 - f) exclude one-time restructuring and global settlement related adjustments that are non-operational in nature;
 - g) exclude interest expense to related parties; and
 - h) exclude any penalties and fines imposed by taxing and/or regulatory authorities.
42. As any potential claims related to alternative products are not being released pursuant to the CCAA Plans, the financial impact from these alternative products is excluded from the calculation of the Metric. Furthermore, the CCAA Plans require RBH and Imperial to split these business lines into separate corporations (JTIM does not sell Alternative Products in Canada).
43. Due to the uncertain nature of the Applicants' future profits, there is no fixed contribution period. Payments will cease when the aggregate contributions (inclusive of the Upfront Contributions, Annual Contributions and Tax Refund Cash Payments) reach \$32.5 billion. Until the Global Settlement Amount has been paid, the unpaid portion of the contributions will be secured by a first ranking charge on the assets of each of the Applicants, for the benefit of those Claimants to whom amounts remain outstanding (the "**Impacted Claimants**").
44. Including the Upfront Contributions, the Global Settlement Amount will be allocated between the Claimants as follows:

| Period | Upfront Contribution | Annual Contributions | | | | | Remainder to end of Contribution | Total |
|---------------------------------------|----------------------|----------------------|--------------|--------------|--------------|--------------|----------------------------------|---------------|
| | | Year 1 (2025) | Year 2 ('26) | Year 3 ('27) | Year 4 ('28) | Year 5 ('29) | | |
| Amount Available | 12.456 | 1.111 | 1.078 | 1.067 | 1.037 | 1.037 | 14.714 | 32.500 |
| Provinces & Territories | 6.202 | 0.361 | 0.682 | 0.942 | 0.912 | 0.912 | 14.714 | 24.725 |
| QCAPs | 3.869 | 0.250 | | | | | | 4.119 |
| PCCs | 1.750 | 0.500 | 0.271 | | | | | 2.521 |
| Cy-près Foundation | 0.500 | | 0.125 | 0.125 | 0.125 | 0.125 | | 1.000 |
| Tobacco Producers | 0.015 | | | | | | | 0.015 |
| <i>Knight</i> Class Action Plaintiffs | 0.015 | | | | | | | 0.015 |
| Miscellaneous Claims Fund | 0.025 | | | | | | | 0.025 |
| CCAA Plan Administration Reserve | 0.075 | | | | | | | 0.075 |
| PCC Compensation Plan Reserve | 0.005 | | | | | | | 0.005 |
| Total allocated⁴ | 12.456 | 1.111 | 1.078 | 1.067 | 1.037 | 1.037 | 14.714 | 32.500 |

45. The CCAA Plans contain the following statement regarding allocation of the Global Settlement Amount amongst the Applicants:

5.2 The issue of allocation of the Global Settlement Amount as between the Tobacco Companies in the three CCAA Proceedings remains unresolved.

Global Releases of the Applicants, Parent Companies and Tobacco Company Groups

46. In exchange for the Upfront Contributions, the promise to pay the Downstream Contributions and the agreement for the Parent Companies and relevant affiliates to provide shared services

⁴ This allocation table should be read with the notes to it in the CCAA Plans.

and other operational support to the Applicants, each CCAA Plan provides for broad and comprehensive releases to be granted to the Applicants, their Parent Companies and their Tobacco Company Groups for all Tobacco Claims. Broadly speaking, the Claim of any person, organization or party that may have an Affected Claim or Released Claim is being released. In addition, all Claimants will provide a contractual release to each of the Applicants which shall release all possible claims pursuant to subsections 5(2) and 19(2) of the CCAA (the “**Claimant Contractual Releases**”). The full execution of these Claimant Contractual Releases is a condition precedent to the implementation of each CCAA Plan.

47. In connection with these broad releases being granted, the Released Parties and the Provinces and Territories recognize that a legislature’s sovereign power to enact, amend and repeal legislation cannot be fettered. However, in the event that any legislation (including any regulations promulgated thereunder) similar or analogous to the HCCR Legislation may be enacted or amended by a Province or Territory at any time after the Plan Implementation Date, the Released Parties and the Provinces and Territories are in agreement that the enactment of such future legislation shall not render unenforceable or otherwise make ineffective any of the terms of the Claimant Contractual Releases or releases granted pursuant to the CCAA Plans.

Treatment of Stakeholders and Administration of the CCAA Plans

48. The Provinces and Territories are forecast to receive \$24.725 billion. This allocation will be paid from the Upfront Contributions, the Annual Contributions and the Tax Refund Cash Payments. The Provinces and Territories have agreed to apportion their allocation of the Global Settlement Amount as among themselves in the following percentages:

| Province/Territory | Per Cent Share |
|--------------------|----------------|
| Alberta | 12.627% |
| British Columbia | 14.471% |
| Manitoba | 4.525% |
| New Brunswick | 2.412% |

| Province/Territory | Per Cent Share |
|---------------------------|-----------------------|
| Newfoundland and Labrador | 2.147% |
| Northwest Territories | 0.727% |
| Nova Scotia | 3.174% |
| Nunavut | 0.379% |
| Ontario | 28.777% |
| Prince Edward Island | 0.660% |
| Québec | 26.825% |
| Saskatchewan | 2.879% |
| Yukon | 0.397% |
| Total: | 100.000% |

49. The QCAPs will receive an aggregate of \$4.25 billion, of which \$131.0 million will be designated to the Cy-près Foundation. This amount, net of legal fees⁵, will be provided to those QCAPs who suffered from tobacco related lung cancer, throat cancer or emphysema/COPD and submit a valid claim pursuant to the Quebec Administration Plan. Depending on the number of valid claims received, a successful claimant could receive up to \$100,000 for lung and throat cancer and up to \$30,000 for emphysema/COPD. If there are any funds left over after completing the Quebec Administration Plan, those funds will be paid to the Provinces and Territories.

50. Amounts payable to the PCCs will consist of direct compensation and indirect compensation in the form of the Cy-près Foundation.

51. Extensive analytical work was completed to determine the amount to be allocated to the PCC Compensation Plan and individual claims filed pursuant to the PCC Compensation Plan.

⁵ The legal fees of the QCAP counsel, *Knight Class Counsel* and the Tobacco Growers' counsel are subject to approval by the CCAA Court.

52. A detailed statistical analysis was completed based on direct compensation to persons who suffered from lung cancer, throat cancer or emphysema/COPD GOLD Grade III or IV and the number of claims that were anticipated to be received. The amounts of compensation for each category was calculated using the amounts of compensation in the QCA Judgment adjusted to take into account differences between those cases and those in the PCC group. As a result of this analysis the amount of funding required for the PCC Compensation Plan is approximately \$2.521 billion. If there are residual funds after paying all accepted claims pursuant to the PCC Compensation Plan, those funds will be paid to the Provinces and Territories. If a successful PCC-Claimant has passed away since March 8, 2019, their estate may make a claim on their behalf.
53. Both the Quebec Administration Plan and PCC Compensation Plan will be administered by Epiq Class Actions Services Canada, Inc. (the “**Claims Administrator**”), a leader in class action administration in Canada and internationally. In order to make the claims processes for QCAPs and PCC-Claimants more easily accessed, a service provider has been retained to assist these QCAPs and PCC-Claimants in preparing and submitting their claims.
54. In addition, an Administrative Coordinator has been designated, to coordinate the administration of the QCAP and PCC claims processes. This will render these complex claims processes more efficient and simplify them so that claims can be more easily processed and finalized in a shorter time. Daniel Shapiro, K.C. will be appointed as “Administrative Coordinator”.
55. A public charitable foundation (the “**Cy-près Foundation**”) will be established as part of the implementation of each of the CCAA Plans. The Cy-près Foundation is designed to provide indirect compensation to benefit those individuals who would not otherwise be entitled to direct compensation in accordance with the terms of the QCAP and PCC Compensation Plans. The Cy-près Foundation will be funded in the amount of \$1.0 billion allocated from the Global Settlement Amount, which amount is inclusive of the \$131 million contributed from the QCAPs’ compensation.

56. The mission of the Cy-près Foundation is to provide these indirect benefits in the form of research into methods for earlier diagnosis and better treatment of tobacco-related cancers and Emphysema/COPD and/or other tobacco-related harms.
57. The Cy-près Foundation will be chaired by Dr. Robert Bell, an internationally recognized Orthopaedic Surgeon, Clinician-Scientist and Educator with over 40 years of health care experience including as Deputy Minister of Health for Ontario and President and Chief Executive Officer of the University Health Network in Toronto. Dr. Bell's appointment is subject to CCAA Court affirmation.
58. To ensure the Cy-près Foundation is meeting its stated objectives it will be required to report at regular intervals to the CCAA Court. These reports will cover the financial status of the Cy-près Foundation and a description of its activities.
59. The Tobacco Growers and *Knight* Class Action Plaintiffs will each receive \$15.0 million in full consideration for their claims.
60. As described above, the Miscellaneous Claims Fund has \$25.0 million allocated from the Global Settlement Amount, plus an additional \$35.0 million from the Applicants specifically designated to this fund for Putative Miscellaneous Claimants who assert that they have claims which have not been released pursuant to the terms of the CCAA Plans, Claims Procedure Order, Sanction Order, Claimant Contractual Releases and/or any other orders made in the CCAA Proceedings.
61. Any claims existing pursuant to CCAA s. 19(2) and 5.1(2) are being settled by the CCAA Plans releases and Claimant Contractual Releases provided by the Claimants, the execution of which is a condition precedent to implementation of the CCAA Plans.
62. While the Parent Companies and Tobacco Company Groups are not making any direct monetary contributions, they are required to continue supplying intercompany goods, services and licensing arrangements. The Applicants are each highly integrated with their affiliates and Tobacco Company Groups, and without these shared services, would either cease to function, or would function significantly less efficiently. The continued provision of these goods and

services is required for the Applicants to continue operating in the normal course and will meaningfully contribute to their ability to pay the Global Settlement Amount.

Support Amongst the Claimants for the CCAA Plans

63. The QCAP and PCCs, who represent individual victims, and the Tobacco Growers are unanimous in their support of the CCAA Plans. Amongst the Provinces and Territories, ten of the thirteen jurisdictions, support the CCAA Plans.

Oversight, Reporting Requirements and Covenants

64. As described above, the payment of the Global Settlement Amount is divided into two tranches, first the Upfront Contributions which will be paid out upon the Plan Implementation Date, and secondly the Annual Contributions which will be made annually until the total amount of the Global Settlement Amount has been paid. This second tranche could span a period of up to 20 years and by and large is paid to the credit of the Provinces and Territories. Therefore, during the pendency of the second tranche, the Applicants will be required to provide comprehensive and ongoing financial reporting to the Provinces, Territories and any other Impacted Claimants as these Claimants will not yet have received their full allocation of the Global Settlement Amount. These Impacted Claimants will be relying upon this information to determine that the Annual Contributions are appropriate and to inform their expectations as to the Applicants' future performance. To this end, the CCAA Plans provide that the Monitors will continue after the Plan Implementation Date as "CCAA Plan Administrators" to facilitate the administration of the CCAA Plans and the exchange of information between the Applicants and the Impacted Claimants. As such, the CCAA Plan Administrators will play a key role in the continuing relationship between the Applicants and Impacted Claimants which will span the duration of the Contribution Period. Each of the Tobacco Companies must provide each year:

- a) by May 15: Q1 financial statements;
- b) by August 15: Q2 financial statements;

c) by November 15: Q3 financial statements; and

d) by March 15: Q4 financial statements.

65. In addition, by March 31 of every year, the Tobacco Companies will be required to provide audited annual financial statements, including notes. On an annual basis, by May 15, the Tobacco Companies will also be required to provide 5 year business plans. These business plans will include sufficiently detailed information (which is described in more detail in the CCAA Plans) to allow the Provinces, Territories and Impacted Claimants to understand the financial and operational outlook of each Tobacco Company and estimate the Annual Contributions to be made in the succeeding years. Similar 5 year business plans have been provided to those Claimants who executed non-disclosure agreements during the pendency of the CCAA Proceedings.
66. The Applicants will also be subject to covenants requiring continued operations in a manner consistent with the business plan and restricting non-operational changes to the businesses. Non-compliance with these covenants may result in a breach or event of default, depending on the severity of the infraction. Events of default, such as a failure to pay an Annual Contribution, result in an Aggrieved Party being immediately entitled to exercise all rights and remedies available pursuant to the CCAA Plan and other relevant documents and laws.
67. If a breach, which are less serious events, cannot be resolved between the respective Applicant and the Aggrieved Parties, it shall proceed to binding arbitration, or the CCAA Court, if the CCAA Court chooses to hear the dispute, for a final resolution.
68. To aid in efficient communication following the Plan Implementation Date, the Provinces and Territories have created a liaison committee (the “**Provincial and Territorial Liaison Committee**” or “**PTLC**”) to centralize decision making among their jurisdictions. The comprehensive terms of the PTLC are attached as Schedule “AA” to the RBH CCAA Plan. The CCAA Plan Administrators will only interact with the PTLC Chair, and not every Province and Territory. Furthermore, under no circumstances shall a PTLC Member, other public servant of, or a financial, legal or other advisor to, any Province or Territory contact an Applicant or a member of a Tobacco Company Group to make an Information Request and thereby bypass the PTLC Chair or the CCAA Plan Administrators.

69. Under certain circumstances, Impacted Claimants may participate in Interface Meetings with the PTLC and CCAA Plan Administrators.

Role of the CCAA Plan Administrators

70. Subject to Order of the CCAA Court, following the Plan Implementation Date the Monitors will each assume the role of CCAA Plan Administrator. In this role, the CCAA Plan Administrators will be neutral and independent and serve as a conduit between the Applicants, the Claimants, the CCAA Court, the Claims Administrator and the Administrative Coordinator. The CCAA Plan Administrators will not be or be deemed to be the representatives of the Claimants, Tobacco Companies or Tobacco Company Groups for the purposes of implementing and administering the CCAA Plans, nor will they have the authority to bind any of the Claimants, Tobacco Companies or Tobacco Company Groups.

71. Among other things, the CCAA Plan Administrators shall:

- a) on an annual basis, receive and review the respective business plan which each Applicant will provide;
- b) on a quarterly basis, receive and review the respective financial statements of each Applicant;
- c) on an annual basis, receive and review the respective financial statements with notes of each Applicant;
- d) receive and review the information provided by each respective Applicant regarding the calculation of the Annual Contributions and Tax Refund Cash Payments, and reporting to the Provinces, Territories and any Impacted Claimants regarding the same;
- e) receive and review the information that each respective Applicant shall provide in response to the ad hoc information requests made from time to time by the CCAA Plan Administrators;

- f) report to the Provinces, Territories and any Impacted Claimants regarding any issue, event or condition pertaining to an Applicant which is disclosed to the CCAA Plan Administrators and causes or would reasonably be expected to cause a Material Adverse Effect on the Applicant, or constitutes a breach or event of default;
- g) administer the distribution to the Claimants of the Upfront Contributions, Annual Contributions and Tax Refund Cash Payments;
- h) oversee the administration of the PCC Compensation Plan and Quebec Administration Plan, and reporting to the CCAA Court regarding the same;
- i) certain oversight activities regarding the Cy-près Foundation; and
- j) report to the CCAA Court on an annual basis, or at any other times in their discretion, or as the CCAA Court directs.

72. For greater certainty, the CCAA Plan Administrators shall not conduct an audit or other assurance engagement, or otherwise attempt to verify the accuracy or completeness of the Applicant's financial information and any information produced by an Applicant in response to an ad hoc request from the CCAA Plan Administrators.

73. Also for greater certainty, the duties and responsibilities of the CCAA Plan Administrators shall be fully described in orders of the CCAA Court appointing the CCAA Plan Administrators.

74. In completing their tasks, the CCAA Plan Administrators shall communicate with:

- a) the Chair of the Provincial and Territorial Liaison Committee representing the Provinces and Territories;
- b) the Administrative Coordinator in regard to the Quebec Administration Plan and the Quebec Class Counsel representing the Quebec Class Action Plaintiffs;
- c) the Administrative Coordinator in regard to the PCC Compensation Plan and the PCCR for the Pan-Canadian Claimants;

- d) Dr. Robert Bell, the Chair of the Cy-près Foundation;
- e) *Knight* Class Counsel;
- f) counsel for the Tobacco Growers; and
- g) the Applicants.

75. Notwithstanding the foregoing, in the performance of their duties and responsibilities under the CCAA Plan, the CCAA Plan Administrators may, in their discretion, communicate with any individuals as necessary or desirable.

76. The CCAA Court will retain jurisdiction and provide ongoing supervision until the entirety of the Global Settlement Amount has been paid. The CCAA Plan Administrators, the Court-Appointed Mediator, the Claims Administrator (for the PCC Compensation Plan) and the Administrative Coordinator will all be paid by the Applicants on an ongoing basis. The Claims Administrator fees in relation to the Quebec Administration Plan will be paid from the allocation to the QCAPs. There will be a reserve established for the CCAA Plan Administrators and Claims Administrator, which will be released to the unpaid claimants when their respective engagements are complete.

MEETING ORDERS⁶

Background

77. Certain key terms of the Meeting Orders are summarized below. The summary does not address each and every provision of the Meeting Orders and, accordingly, reference should be made to the Meeting Orders in their entirety.

78. The proposed Meeting Orders authorizes and directs each Monitor to convene the Meetings to be held virtually by videoconference, for the purpose of considering and, if deemed advisable, voting on a resolution to approve the CCAA Plans and the transactions contemplated therein

⁶ Terms used and not otherwise defined herein shall have the meaning ascribed thereto in the Meeting Orders.

(the “**Plan Resolution**”). The proposed Meeting Orders set out the following schedule for the Meetings:

| Applicant | Time and Date |
|-----------|---------------------------------|
| Imperial | December 12, 2024 at 11:00 a.m. |
| RBH | December 12, 2024 at 1:00 p.m. |
| JTIM | December 12, 2024 at 3:00 p.m. |

79. Pursuant to the Meeting Orders, the Monitors are required to publish on each Monitor’s website, no later than November 29, 2024, the applicable Meeting Materials, which will be comprised of: (i) the Omnibus Notice; (ii) the Proxy and Proxy Instructions (in the form attached to the Meeting Order); (iii) the applicable Meeting Order; (iv) the applicable CCAA Plan; and (v) the Monitor’s Report (the “**Meeting Materials**”).
80. The Meeting Orders provide that the Chair of each Meeting, as a representative of the applicable Monitor, will conduct and chair the Meetings, subject to any further order of the CCAA Court, and shall decide all matters relating to the conduct of each Meeting, including whether to appoint scrutineers or a secretary.

Attending and Voting at the Meetings

81. The quorum required at each Meeting is one Eligible Voting Creditor (as defined below), present in person or by Proxy (in each case by electronic means), who is entitled to vote at the applicable Meeting. If the requisite quorum is not present at the applicable Meeting, the applicable Chair will adjourn the Meeting to such date and time as such Chair determines appropriate in their sole discretion.
82. The Chair shall direct a vote with respect to the Plan Resolution to approve the applicable CCAA Plan.
83. Pursuant to the proposed Meeting Orders, the only Persons entitled to attend the Meetings are: (a) the applicable Applicant and their legal counsel and advisors; (b) the applicable Directors

and their legal counsel and advisors; (c) the Monitors and their legal counsel; (d) the Court-Appointed Mediator and his legal counsel; (e) the Claimants, and if applicable, any Putative Miscellaneous Claimants that have filed a Miscellaneous Claimant Proof of Claim by the Miscellaneous Claims Bar Date, and their respective legal counsel (together, the “**Eligible Voting Creditors**”); and (f) any other Person admitted on invitation of the Chair.

84. For the purposes of attending and voting at the Meetings, the Meeting Orders appoint the following representatives of certain Claimants and authorizes them to vote all of the Voting Claims of their respective Claimants as proxies, without the need to provide any Proxy or other document:

- a) PCCR on behalf of all Pan-Canadian Claimants;
- b) Quebec Class Counsel on behalf of all Quebec Class Action Plaintiffs;
- c) counsel to the Tobacco Growers on behalf of all Tobacco Growers; and
- d) *Knight* Class Counsel on behalf of all the *Knight* Class Action Plaintiffs.

85. The amount of a Voting Claim will be as set out in the Claims Procedure Orders and the Statement of Negative Notice Claim or Miscellaneous Claimant Proof of Claim, subject to the Claims Procedure, as set out more fully in the Claims Procedure Report. Each Putative Miscellaneous Claimant will have one vote as set out in the applicable CCAA Plan and the value attributed to such vote shall be equal to the aggregate CAD value of such Putative Miscellaneous Claimant’s Voting Claim.

86. The Meeting Orders provide that individuals that have asserted or may be entitled to assert a Tobacco Claim shall not be permitted to file a Miscellaneous Claimant Proof of Claim, attend the Meetings or vote on the CCAA Plans as they are represented by the PCCR or Quebec Class Counsel.

Approval of the CCAA Plans, Voting Tabulation and Reporting

87. The vote on the Plan Resolution to approve the applicable CCAA Plan must receive an affirmative vote by a majority in number and two-thirds majority in dollar value of the Eligible

Voting Creditors present and voting at the applicable Meeting in person or by proxy (the “**Required Majority**”).

88. The Monitors, or the scrutineers if appointed, shall tabulate the votes cast at the Meetings and record, each on separate ledgers: (a) the votes of the Claimants; and (b) the votes of Putative Miscellaneous Claimants. Following tabulation of the votes, the Monitors shall determine whether the Plan Resolution has been approved by the Required Majority.
89. The Monitors, as soon as practicable following the Meetings, shall file a report with the Court with respect to the results of the votes on the separate ledgers of the Claimants and the Putative Miscellaneous Claimants with respect to approval of the Plan Resolution, including whether: (a) the CCAA Plans have been approved by the Required Majority, and (b) any other matters relating to the applicable Meeting or the application for the Sanction Hearing that the Monitor considers appropriate.
90. The result of any vote conducted at the Meetings shall be binding upon all Claimants, whether or not any such Claimant was present or voted at the Meetings.

Plan Sanction

91. The proposed Meeting Order also seeks to authorize the Monitor to bring a motion to establish a court date for the Sanction Hearing, at which the Monitor will seek a Sanction Order, sanctioning the RBH CCAA Plan if approved by the Required Majority in each case.

Monitor’s Recommendation

92. After over four years of intensive Court-ordered Mediation resulting in intractable positions taken by various participants, and no consensual resolution in sight, the CCAA Court directed the Court-Appointed Mediator and Monitors to prepare a CCAA Plan for each of the Applicants. The Court-Appointed Mediator and Monitors have fulfilled this mandate and are seeking approval to file the CCAA Plans and accompanying Orders.

93. The Monitor is of the view that the RBH CCAA Plan ought to be accepted for filing and presented to the creditors at the Meeting to be voted upon. Subject to a positive vote by the Required Majority at the Meeting, the Monitor intends to present the RBH CCAA Plan to the CCAA Court for approval at the Sanction Hearing. The Monitor submits that the RBH CCAA Plan is fair, reasonable and workable given the complexity, number of parties, the magnitude of the claims and the totality of the circumstances leading up to the formulation of the RBH CCAA Plan. The CCAA Plans represent a global resolution on an industry-wide basis as mandated by the CCAA Court at the inception of this process.

94. For these reasons, the Monitor recommends the proposed Meeting Order be granted, including accepting the RBH CCAA Plan for filing.

All of which is respectfully submitted this 25th day of October, 2024.

ERNST & YOUNG INC.
In its capacity as Monitor of
Rothmans, Benson & Hedges Inc.

Per:

A handwritten signature in black ink, appearing to be 'MK' or similar initials, written in a cursive style.

Matt Kaplan
Senior Vice President

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

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