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**ONTARIO
SUPERIOR COURT OF JUSTICE
COMMERCIAL LIST**

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

AND IN THE MATTER OF A 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

JOINT FACTUM OF THE COURT-APPOINTED MEDIATOR & MONITORS

**Motions for Meeting Orders and Claims Procedure Orders
(Returnable October 31, 2024)**

October 28, 2024

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TO: COMMON SERVICE LIST

**ONTARIO
SUPERIOR COURT OF JUSTICE
COMMERCIAL LIST**

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

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PART I – INTRODUCTION¹

1. Over the five years since these CCAA Proceedings began, the Tobacco Companies, the Claimants, the Monitors, and the Court-Appointed Mediator have spent thousands of hours in hundreds of intensive Court-ordered mediation sessions. Now, following this Court’s direction made approximately a year ago, the Court-Appointed Mediator and Monitors—with the input of the Tobacco Companies and the Claimants—have developed a consolidated, comprehensive plan of compromise or arrangement that provides for a pan-Canadian global settlement of Tobacco Claims. The Monitors, acting in concert with the Court-Appointed Mediator, bring these motions seeking to schedule creditors’ meetings for December 12, 2024 to approve each of the three substantially identical individual plans proposed for each of the Tobacco Companies (the “**CCAA Plans**”) and to establish a claims procedure as a predicate to those creditors’ meetings.
2. Every creditor group with a Tobacco Claim was represented in the Court-ordered mediation. The CCAA Plans reflect the diligent efforts of the Court-Appointed Mediator and the Monitors, working in their capacity as neutral court officers, to consider and satisfy the broad range of divergent positions taken and interests held by the Mediation Parties.² The CCAA Plans are structured to permit the Tobacco Companies to exit the CCAA Proceedings as going concerns

¹ This Factum is jointly filed by (i) the Honourable Warren K. Winkler, K.C., in his capacity as the Court-Appointed Mediator (the “**Court-Appointed Mediator**”) in the above-captioned coordinated proceedings (the “**Proceedings**”) under the *Companies’ Creditors Arrangement Act*, R.S.C., 1985, c. C-36, as amended (“**CCAA**”); (ii) FTI Consulting Canada Inc. (“**FTI**”) in its capacity as Court-appointed monitor of Imperial Tobacco Canada Limited (“**ITCAN**”) and Imperial Tobacco Company Limited (collectively with ITCAN, “**Imperial**”); (iii) Ernst & Young Inc. (“**EY**”) in its capacity as monitor for Rothmans Benson & Hedges Inc. (“**RBH**”); and (iv) Deloitte Restructuring Inc. (“**Deloitte**”) in its capacity as monitor for JTI-Macdonald Corp. (“**JTIM**”) and, collectively with Imperial and RBH, the “**Tobacco Companies**” or “**Applicants**”). FTI, EY and Deloitte are hereinafter referred to as the “**Monitors**”. Capitalized terms not defined herein have the meanings given to them in the CCAA plan materials filed with the Court as part of the motion record.

² The Mediation Parties have included the Tobacco Companies, the Quebec Class Action Plaintiffs, the Pan-Canadian Claimants, the Knight Class Action Plaintiffs, the Province of Quebec, the Province of Ontario, the Province of Alberta, the Province of Newfoundland and Labrador, a consortium composed of the Provinces of British Columbia, Manitoba, New Brunswick, Nova Scotia, Prince Edward Island, Saskatchewan as well as the Territories of Northwest Territories, Nunavut, and the Yukon and the Ontario Flue-Cured Tobacco Growers’ Marketing Board.

while facilitating a pan-Canadian global settlement of Tobacco Claims to the benefit of all stakeholders in the CCAA Proceedings. If approved by the requisite double majority of Affected Creditors, sanctioned by the Court, and ultimately implemented, the CCAA Plans will, among other things, provide for a landmark Global Settlement Amount of \$32.5 billion and provide a full and final release to the Tobacco Companies.

3. The CCAA Plans are plans of compromise or arrangement. They accordingly reflect difficult, yet necessary compromises by a broad range of diverse stakeholders with the goal of achieving a just and workable result in these staggeringly complex circumstances. Whether the CCAA Plans strike the right balance and are ultimately fair and reasonable, however, is a question for another date, assuming the CCAA Plans are successful in obtaining the support of the required double majority of Affected Creditors at the creditors' meetings.

4. At this preliminary juncture, the question is simply whether the CCAA Plans are "doomed to fail". On the record before the Court, they are plainly not. Significantly, representatives for all of the individual victims and 10 of the 13 provinces and territories have signalled their support for the CCAA Plans. Accordingly, the Court-Appointed Mediator and Monitors respectfully ask the Court to grant the proposed Meeting Order and Claims Procedure Order being sought in each CCAA Proceeding, and to take this important procedural step toward bringing these lengthy CCAA Proceedings to a successful conclusion.

PART II – SUMMARY OF FACTS

A. These Are Some of the Most Complex CCAA Proceedings in Canadian History

5. As this Court has observed, these CCAA Proceedings are among the most complex insolvency proceedings in Canadian history.³

³ *In the Matter of a Plan of Compromise or Arrangement of JTI-Macdonald, Imperial Tobacco and Rothmans*, [2023 ONSC 2347](#), paras. 4, 7 and 14.

6. The Tobacco Companies—Imperial, RBH, and JTIM—are Canadian domestic tobacco companies, each a subsidiary of international parent companies, which effectively comprise the legal tax-paid tobacco industry in Canada.⁴

7. The CCAA Proceedings were precipitated by the Quebec Superior Court of Justice rendering a \$13.5 billion-plus judgment against the Tobacco Companies in 2015, affirmed by the Court of Appeal of Quebec in 2019 (the “**Quebec Judgment**”). The Quebec Judgment concerned two class actions brought on behalf of individual tobacco smokers.⁵ The Tobacco Companies’ inability to satisfy the Quebec Judgment led to their decision to seek protection from this Court under the CCAA.⁶

8. Beyond the Quebec Judgment, multiple other claims have been brought against the Tobacco Companies across Canada, totalling more than \$1 trillion (inclusive of the Quebec Judgment).⁷ These claims include:

- (a) healthcare costs recovery sought by the provincial and territorial governments;
- (b) putative class actions for tobacco-related harms;

⁴ [Imperial Pre-Filing Report of the Proposed Monitor](#) (March 12, 2019) (“**FTI Pre-Filing Report**”) at para. 36; [JTIM Report of the Proposed Monitor](#) (March 8, 2019) (“**Deloitte Pre-Filing Report**”) at para. 17; [RBH Report of the Proposed Monitor](#) (March 22, 2019) (“**EY Pre-Filing Report**”) at para. 14; Imperial Twentieth Report of the Monitor (October 25, 2024) (“**FTI 20th Report**”) at [para. 14](#); RBH Nineteenth Report of the Monitor (October 25, 2024) (“**EY 19th Report**”) at [para. 19](#).

⁵ [FTI Pre-Filing Report](#) at para. 53; [Deloitte Pre-Filing Report](#) at para. 20; [EY Pre-Filing Report](#) at para. 46.

⁶ [FTI Pre-Filing Report](#) at para. 53; [Deloitte Pre-Filing Report](#) at para. 25; [EY Pre-Filing Report](#) at para. 47.

⁷ FTI 20th Report at [para. 14](#); EY 19th Report at [paras. 13, 19](#); JTIM Eighteenth Report of the Monitor (October 26, 2024) (“**Deloitte 18th Report**”) at [para. 17](#). Details about specific claims can be found: in respect of Imperial at “Schedule A – Litigation” in the [Affidavit of Eric Thauvette](#) (sworn March 12, 2019), [Application Record of Imperial, Volume 1](#) (March 12, 2024); in respect of RBH in the [Affidavit of Peter Luongo](#) (sworn March 22, 2019), [Application Record of RBH](#) (March 22, 2019); and in respect of JTIM in the [Affidavit of Robert McMaster](#) (sworn March 8, 2019), [Application Record of JTIM, Volume 1](#) (March 8, 2019).

- (c) a deceptive trade practice class action related to marketing practices;
- (d) claims by Ontario tobacco farmers and growers related to the historical pricing of tobacco leaves; and
- (e) actions by individuals seeking damages for a variety of claims.⁸

9. Because of these many claims, any plan of compromise or arrangement concerning the Tobacco Companies requires taking into account the views of the Tobacco Companies and their multiple stakeholders with unique and sometimes conflicting interests. These stakeholders include (collectively, the below noted parties are referred to herein as the “**Claimants**”):

- (a) **The Quebec Class Action Plaintiffs:** Individuals who meet the criteria of the certified class definitions in the Quebec Class Actions;
- (b) **The Pan-Canadian Claimants:** Individuals, excluding the Quebec Class Action Plaintiffs in relation to QCAP Claims, who have asserted or may be entitled to assert a PCC Claim (a claim related to, among other things, the development, design, manufacture, production, marketing, advertising, distribution, purchase or sale of Tobacco Products);
- (c) **Knight Class Action Plaintiffs:** With respect to Imperial only, individuals asserting a product liability claim who meet the criteria of the certified class definition in the *Knight* Class Action started in British Columbia;
- (d) **The Provinces and Territories:** All of the Provinces and Territories of Canada, each of which seek recovery of tobacco-related healthcare costs; and

⁸ [FTI Pre-Filing Report](#) at para. 42; [Deloitte Pre-Filing Report](#) at para. 23; [EY Pre-Filing Report](#) at para. 49; EY 19th Report at [para. 19](#).

- (e) **Tobacco Producers:** Persons who have advanced uncertified class actions asserting a failure by the Tobacco Companies to make certain payments pursuant to agreements between the Ontario Flue-Cured Tobacco Growers' Marketing Board and the Tobacco Companies.

B. This Court Directed the Court-Appointed Mediator and Monitors to Work Toward a Pan-Canadian Global Resolution

(i) ***The Court Determined a Court-Appointed Mediator Was Necessary***

10. In the early days of these CCAA Proceedings in April 2019, this Court (*per* McEwen J.) appointed the Honourable Warren K. Winkler, K.C. as the Court-Appointed Mediator. As the Court's order provides, Mr. Winkler serves as "an officer of the Court" and "neutral third party" "to mediate a global settlement of the Tobacco Claims".⁹

11. This Court authorized the Court-Appointed Mediator to, among other things, (i) adopt an appropriate process, in his discretion, to facilitate negotiation of a global settlement; (ii) consult all persons with Tobacco Claims, the Monitors, the Tobacco Companies, and other creditors or stakeholders as he considers appropriate; and (iii) apply to the Court for advice and directions.¹⁰

⁹ [Imperial Second Amended and Restated Initial Order of Justice McEwen](#) (April 25, 2019) ("Imperial 2nd A&R Initial Order") at para. 39; [RBH Second Amended and Restated Initial Order of Justice McEwen](#) (April 25, 2019) ("RBH 2nd A&R Initial Order") at para. 39; [JTIM Second Amended and Restated Initial Order of Justice McEwen](#) (April 25, 2019) ("JTIM 2nd A&R Initial Order") at para. 40. The Court-Appointed Mediator initially served as the Interim Tobacco Claim Coordinator but his role was expanded shortly after the commencement of these proceedings in March 2019. See [Imperial 2nd Report of the Monitor](#) (April 24, 2019) at para. 25; [JTIM 3rd Report of the Monitor](#) (May 10, 2019) at para. 2; [RBH 2nd Report of the Monitor](#) (June 24, 2019) at para. 14.

¹⁰ [Imperial 2nd A&R Initial Order](#) at paras. 40(a), (c) and (e); [RBH 2nd A&R Initial Order](#) at paras. 40(a), (c) and (e); [JTIM 2nd A&R Initial Order](#) at paras. 41(a), (c) and (e).

12. In turn, the Monitors were directed to “consult” with the Court-Appointed Mediator in connection with his mandate, including “in relation to any negotiations to settle the Tobacco Claims and the development of the [CCAA Plans]”.¹¹

(ii) ***During Five Years of Negotiations, The Parties Did Not Achieve a Consensual Global Resolution***

13. In accordance with the Court’s direction, since 2019, the Tobacco Companies and the Mediation Parties have participated in a consolidated, confidential, and comprehensive mediation before the Court-Appointed Mediator and the Monitors with the goal of arriving at a pan-Canadian global settlement of the Tobacco Claims (the “**Mediation**”).

14. Although the Mediation has remained confidential, the Court and the public have been provided with high-level updates regarding progress in the Mediation in connection with motions by the Tobacco Companies to extend the stays of proceedings against them.¹²

15. At one of the first stay extension hearings in October 2019, Justice McEwen, who was then presiding over these CCAA Proceedings, noted in an endorsement that “a number of positive steps had been taken” and that there was “progress” in the Mediation.¹³ Four months later, Justice McEwen similarly noted that the Mediation was “progressing in a meaningful fashion”.¹⁴

16. In the fall of 2020, however, roughly a year and a half after the Mediation began, a claimant group first raised its frustration with the pace of progress and consequently opposed the stay

¹¹ [Imperial 2nd A&R Initial Order](#) at para. 31(i); [RBH 2nd A&R Initial Order](#) at para. 31(i); [JTIM 2nd A&R Initial Order](#) at para. 32(i).

¹² The Mediation is confidential in accordance with the [Court-Appointed Mediator Communication and Confidentiality Protocol](#) (May 24, 2019). However, under Section 1 of the Confidentiality Protocol, the Court and the Court-Appointed Mediator may communicate directly to discuss, on an on-going basis, the conduct of the Mediation and how the Mediation will be coordinated with the Proceedings, including individual matters that the Court specifically refers to the Court-Appointed Mediator for resolution.

¹³ [Unofficial Transcript of Endorsement of Justice McEwen](#) (October 2, 2019), p. 2.

¹⁴ [Endorsement of Justice McEwen](#) (February 20, 2020).

extension, pointing to the fact that members of the claimant group were passing away. At the time, the Court concluded that a further stay extension was appropriate because the Tobacco Companies were continuing to meaningfully engage in the mediation process and an extension of the stay would not cause material prejudice to creditors. But the same claimant group again opposed the stay extension in March 2021, and the Court again approved the stay extension on the understanding that the mediation is progressing well.

17. By the fall of 2022—some three and half years into the Mediation—another claimant group began to voice concerns about progress in the Mediation. The Court noted during the hearing at the time that although the group’s concerns were legitimate, the Court-Appointed Mediator and the Monitors had worked tirelessly to make progress on what was an enormously complicated Mediation. Still, the Court urged all parties to redouble their efforts to achieve a sensible conclusion. In an accompanying endorsement, the Court directed the parties to remain “completely focused on resolution” and to provide the Court-Appointed Mediator and the Monitors with their “full cooperation”.¹⁵

18. Certain creditors repeated their concerns in March 2023. The Court again reminded the parties that momentum had to continue and that it was incumbent on all stakeholders to keep giving the Mediation their utmost attention and provide their assistance to keep negotiations progressing. In an endorsement issued after the hearing, the Court admonished the parties that “negotiations should not be approached without some sense of urgency”.¹⁶

¹⁵ [Endorsement of Justice McEwen](#) (September 29, 2022), p. 3.

¹⁶ [Unofficial Transcript of Endorsement of Justice McEwen](#) (March 28, 2023), p. 4.

(iii) ***In September 2023, The Court Directed the Court-Appointed Mediator and Monitors to Break the Impasse and ‘Develop’ CCAA Plans***

19. The tenth stay extension hearing in September 2023 was unopposed, but several creditors again voiced their concerns about the lack of progress toward the development of a plan. One claimant group noted that the end of the tenth stay extension would mark the five-year anniversary of these CCAA Proceedings, without any clear prospect that a plan would emerge in the near term.

20. At that hearing, Chief Justice Morawetz, who by then was presiding over these CCAA Proceedings, observed that the time had come for meaningful action. In particular, the Chief Justice noted that Court-appointed neutral parties were well-positioned to take a more active role in directing the process to bring the Mediation to a conclusion.

21. In an endorsement accompanying the tenth stay extension, the Court observed on October 5, 2023 that “much work remains outstanding” to finalize a potential plan of compromise and arrangement, and that it was “mindful” that “approximately four and one-half years” had passed since the CCAA Proceedings’ inception.¹⁷ Based on the history of the Mediation to date, the Court found that “the best chance” for the development of a successful plan was to “direct[] neutral parties to collaborate and develop such a plan”.¹⁸

22. Accordingly, the Court determined that it was “both necessary and appropriate” to provide certain directions to the Court-Appointed Mediator and Monitors.¹⁹ The Court ordered as follows:

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

¹⁷ [Endorsement of Chief Justice Morawetz](#) (October 5, 2023) at paras. 7, 11.

¹⁸ [Endorsement of Chief Justice Morawetz](#) (October 5, 2023) at para. 19.

¹⁹ [Endorsement of Chief Justice Morawetz](#) (October 5, 2023) at para. 11.

Arrangement. The Monitors and the Court-appointed Mediator are also directed to keep this Court updated as to their progress.²⁰

23. No objection was made to the Court's October 2023 direction nor was any appeal sought.

24. After the Court's October 2023 direction, the pace of progress improved. At the next stay extension hearing in March 2024, the Court noted that there had been significant progress in the Mediation, partly due to the directions that were provided six months prior to have the Monitors directly involved with the Court-Appointed Mediator. On that basis, the Court granted a further six-month stay extension.²¹

25. On October 1, 2024, the Monitors sought to adjourn the next stay extension hearing scheduled for that date to October 31, 2024. In permitting that request and ordering a short, one-month stay extension through October 31, 2024, the Court noted that it "has every expectation that matters will progress such that meetings of creditors can take place on or before December 12, 2024".²²

26. Shortly thereafter, these motions seeking approval of the Meeting Order and Claims Procedure Order in each CCAA Proceeding were served and filed on October 17, 2024.

C. The CCAA Plans Satisfy a Broad Range of Interests and Achieve a Pan-Canadian Global Resolution of Claims

27. Pursuant to the Court's direction, the Court-Appointed Mediator and the Monitors have developed a consolidated, comprehensive plan of compromise and arrangement which has been split into three separate but substantially identical (save for certain exceptions as elaborated in the motion materials) CCAA Plans for each Tobacco Company. The CCAA Plans were developed

²⁰ [Endorsement of Chief Justice Morawetz](#) (October 5, 2023) at para. 22.

²¹ [Endorsement of Justice McEwen](#) (March 30, 2023), pp. 2-3, 6.

²² [Endorsement of Chief Justice Morawetz](#) (October 1, 2024) at para. 5.

on an iterative basis with the Court-Appointed Mediator, Monitors, the Tobacco Companies, and the Claimants.

(i) \$32.5 Billion Global Settlement Amount

28. In consideration for the full and final settlement of the Affected Claims, the CCAA Plans contemplate that the Tobacco Companies will pay an aggregate Global Settlement Amount of \$32.5 billion into three separate Global Settlement Trust Accounts over multiple years. The Global Settlement Amount will consist of Upfront Contributions, Annual Contributions determined by a prescribed Metric (based on the Tobacco Companies' Net After-Tax Income) and any Tax Refunds (less any applicable withheld amounts). Based on current projections, it will take roughly 20 years for the Global Settlement Amount to be paid in full (although this period may be shorter or longer, depending on the quantum of the Tobacco Companies' Annual Contributions to be calculated based on the Metric).

29. Distributions from the Global Settlement Trust Accounts will be made to the Quebec Class Action Plaintiffs ("**QCAPs**"); Pan-Canadian Claimants ("**PCCs**"); Provinces and Territories; a public charitable foundation ("**Cy-près Foundation**"); Tobacco Producers; and, in the case of Imperial only, *Knight* Class Action Plaintiffs.²³ Payments from the Global Settlement Trust Accounts to eligible QCAPs and PCCs will be made via a Quebec Class Action Administration Plan and Pan-Canadian Claimants' Compensation Plan, respectively.²⁴

30. Each of the Monitors will be appointed as a CCAA Plan Administrator to administer and oversee the implementation of their respective Tobacco Company's CCAA Plan.²⁵ The CCAA

²³ See [Imperial CCAA Plan, Motion Record of FTI](#) (October 17, 2024) ("**FTI Record**"), [Tab 1B](#); [RBH CCAA Plan, Motion Record of EY](#) (October 17, 2024) ("**EY Record**"), [Tab 1B](#); [JTIM CCAA Plan, Motion Record of Deloitte](#) (October 17, 2024) ("**Deloitte Record**") (collectively, the "**CCAA Plans**"), s. [6.1](#).

²⁴ See CCAA Plans, ss. [7.1](#), [8.1](#).

²⁵ See CCAA Plans, s. [14.1](#).

Plan Administrators will be Court-appointed officers that are neutral and independent of the Tobacco Companies, the Tobacco Company Groups, and the Claimants. In this capacity, the CCAA Plan Administrators shall report to the CCAA Court on an ongoing basis.²⁶

(ii) *Miscellaneous Claims*

31. A one-time sum of \$25 million (plus an additional \$35 million) shall be transferred to and deposited into a designated trust account from the Upfront Contributions to create the Miscellaneous Claims Fund, from which all proven Miscellaneous Claims of Putative Miscellaneous Claimants shall be paid.²⁷

(iii) *Cy-près Foundation*

32. The CCAA Plans will also establish the Cy-près Fund in the amount of \$1 billion to be funded out of the Global Settlement Amount. The Cy-près Fund will be administered by a public charitable foundation to be named “The Foundation for Improved Diagnosis and Treatment of Tobacco-Related Disease”, or “FIORD”. The purpose of the Cy-près Foundation is to fund research focused on improving outcomes in Tobacco-related Diseases, thereby indirectly benefiting users of Tobacco Products who are not directly compensated through either the Quebec Class Action Administration Plan or the Pan-Canadian Claimants’ Compensation Plan.²⁸ In this way, the Cy-près Fund will provide consideration for: (i) the settlement and release of all claims and potential claims of PCCs who are not receiving direct compensation payments from the PCC Compensation Plan but will indirectly benefit by falling within the scope of the Cy-près

²⁶ See CCAA Plans, s. [14.2](#).

²⁷ See CCAA Plans, s. [1.1](#) “Miscellaneous Claim”; ss. [16.1.](#), [18.2.1](#); FTI 20th Report at [para. 32](#); EY 19th Report at paras. [37-38](#), [60](#); Deloitte 18th Report, Appendix A at [para. 2](#).

²⁸ See CCAA Plans, s. [9.3](#), Terms of Reference of the Cy-près Foundation.

Foundation; and (ii) the settlement and satisfaction of the *Létourneau* Judgment in one of the Quebec Class Actions by providing indirect benefits to the *Létourneau* Class Members.²⁹

(iv) *Dismissal of Pending Litigation*

33. As soon as possible after the Plan Implementation Date, all parties will dismiss with prejudice and without costs certain enumerated proceedings pending in courts in the Provinces and Territories against the Tobacco Companies, members of their respective Tobacco Company Groups, and the Canadian Tobacco Manufacturers' Council.³⁰ As for the Quebec Class Actions, the QCAPs and the Tobacco Companies will dismiss with prejudice and without costs any leave applications or appeals from the judgments in the Quebec Class Actions or any related motions pending in the Quebec Superior Court, the Court of Appeal of Quebec, or the Supreme Court of Canada.³¹

(v) *Alternative Products Business*

34. Under the CCAA Plans, Imperial and RBH shall transfer all assets, indebtedness, liabilities and business relating to their current and future Alternative Products to an unrelated company, a Canadian Affiliate of its Parent, or a Canadian Subsidiary of any other company within its Tobacco Company Group.³²

(vi) *Compromise of Claims & Related Releases*

35. The CCAA Plans will effect a full and final settlement of all Affected Claims and Released Claims against the Tobacco Companies and their respective Tobacco Company Groups, including claims related to the development, design, manufacture, production, marketing, advertising, purchase, sale or distribution of Tobacco Products, the use of or exposure (whether

²⁹ See CCAA Plans, s. [1.1](#) "Cy-près Fund"; ss. [7.5](#), [9.1](#), [9.2](#), [9.3](#).

³⁰ See CCAA Plans, s. [18.3.1](#).

³¹ See CCAA Plans, s. [18.3.2](#).

³² See CCAA Plans, s. [4.1](#).

directly or indirectly) to Tobacco Products or their emissions, or any representation about Tobacco Products, each existing or taking place at or before the Effective Time.³³

36. The CCAA Plans also provide for customary releases and limitations of liability in favour of the Monitors (both in their capacities as the Monitors and as the CCAA Plan Administrators), the Court-Appointed Mediator and the Administrative Coordinator, as well as, *inter alios*, their respective Affiliates and Representatives.³⁴ In addition, the CCAA Plans contemplate an indemnity by the Tobacco Companies in favour of the Monitors, CCAA Plan Administrators, Administrative Coordinator and Court-Appointed Mediator, along with, *inter alios*, their respective Affiliates and Representatives, with respect to their actions in the CCAA Proceedings and, with respect to Imperial only, the Chapter 15 Proceedings in the United States.³⁵

37. Additional information about the CCAA Plans can be found in FTI's 20th Report, EY's 19th Report, and Deloitte's 18th Report (the "**Monitors' Reports**").

D. The Meeting Orders Contemplate Creditors' Meetings on December 12, 2024, Consistent With the Court's Expectation

38. The Motions seek the issuance of separate, but substantially identical Meeting Orders for each of the Tobacco Companies: (i) accepting the filing of the CCAA Plans; and (ii) authorizing and directing the Monitors to convene the Meetings of a single class of the Claimants (and, if applicable, any Putative Miscellaneous Claimants) to consider and vote on a resolution to approve the CCAA Plans and the transactions contemplated therein. The Meetings will be held

³³ See CCAA Plans, s. [1.1](#) "Tobacco Claim" & "Released Claim".

³⁴ See CCAA Plans, s. [1.1](#) "Administrative Coordinator"; ss. [18.1.4](#), [18.1.5](#), [20.8](#).

³⁵ See CCAA Plans, s. [18.1.7](#).

sequentially and virtually by videoconference on December 12, 2024, consistent with the Court's expectation expressed in the October 1, 2024 endorsement.³⁶

39. The Meeting Materials will be published on each Monitor's website no later than November 29, 2024, to be made up of, in respect of each Meeting: (i) the Omnibus Notice; (ii) the Proxy and Proxy Instructions (in the form attached to the Meeting Order); (iii) the Meeting Order; (iv) the CCAA Plan; and (v) any other materials the Monitor may wish to include.³⁷

40. Representatives of certain Claimants will be appointed and authorized to vote as proxies at each Meeting, without the need to provide any Proxy or other document, as follows: (i) PCC Representative Counsel to vote the Voting Claims of all Pan-Canadian Claimants; (ii) Quebec Class Counsel to vote the Voting Claims of all Quebec Class Action Plaintiffs; (iii) Tobacco Producers Counsel to vote the Voting Claims of all Tobacco Producers; and (iv) *Knight* Class Counsel to vote the Voting Claims of all the *Knight* Class Action Plaintiffs.³⁸

41. The amount of a Voting Claim that may be voted (or is deemed to be voted) for (i) Claimants will be set out in the corresponding Statement of Negative Notice Claim (assuming this amount is not disputed prior to the Negative Notice Bar Date); and (ii) Putative Miscellaneous Claimants will be governed under the Claims Procedure Order.³⁹

³⁶ [Imperial Draft Meeting Order](#), FTI Record, Tab 2; [RBH Draft Meeting Order](#), EY Record, Tab 2; [JTIM Draft Meeting Order](#), Deloitte Record, Tab 2 at [paras. 2\(d\), 13](#); [FTI 20th Report](#) at [para. 73](#); [EY 19th Report](#) at [para. 78](#); [Deloitte 18th Report](#), Appendix A at [para. 41](#).

³⁷ Imperial Draft Meeting Order at [paras. 2\(e\), 14](#); RBH Draft Meeting Order at [paras. 2\(e\), 14](#); JTIM Draft Meeting Order at [paras. 2\(e\), 14](#); FTI 20th Report at [para. 74](#); EY 19th Report at [para. 79](#); Deloitte 18th Report, Appendix A at [para. 42](#).

³⁸ Imperial Draft Meeting Order at [paras. 2\(a\), 2\(b\), 10](#); [RBH Draft Meeting Order](#) at [paras. 2\(a\), 2\(b\), 10](#); JTIM Draft Meeting Order at [paras. 2\(a\), 2\(b\), 10](#); FTI 20th Report at [para. 79](#); EY 19th Report at [para. 84](#); Deloitte 18th Report, Appendix A at [para. 47](#).

³⁹ Imperial Draft Meeting Order at [paras. 44-45](#); RBH Draft Meeting Order at [paras. 43-44](#); JTIM Draft Meeting Order at [paras. 43-44](#); FTI 20th Report at [para. 80](#); EY 19th Report at [para. 85](#); Deloitte 18th Report, Appendix A at [para. 48](#).

42. A representative of each Monitor will preside as the Chair of each Meeting and decide, subject to the Meeting Orders or any further order of this Court, all matters relating to the conduct of the Meetings including whether to appoint scrutineers or a secretary.⁴⁰

43. The only persons entitled to attend each Meeting are: (i) the applicable Tobacco Company and its legal counsel and advisors; (ii) the Directors and their legal counsel and advisors; (iii) the Monitors and their respective legal counsel; (iv) the Court-Appointed Mediator and his legal counsel; (v) Eligible Voting Creditors, including their Proxy holders, and their legal counsel and advisors; and (vi) any other person admitted on invitation of the applicable Monitor or the Chair.⁴¹

44. As soon as practicable following the Meetings, the Monitors will report to the Court on: (i) the voting results of the Claimants and Putative Miscellaneous Claimants with respect to the approval of the Plan Resolutions; and (ii) any other matter that the Monitors consider relevant for the Sanction Hearing. The Sanction Hearing will be scheduled before the CCAA Court if the CCAA Plans receive the affirmative vote from the Required Majority of Affected Creditors at each of the Meetings.⁴²

45. In the view of the Court-Appointed Mediator and the Monitors: (i) the Meeting Materials, the processes for providing notice of the Meetings, and the procedure for the Meetings, including the voting procedures, each as stated in the proposed Meeting Orders are reasonable and appropriate in the circumstances; and (ii) the timelines contained in the Meeting Orders are

⁴⁰ Imperial Draft Meeting Order at [paras. 27 and 29](#); RBH Draft Meeting Order at [para. 26](#); JTIM Draft Meeting Order at [para. 26](#); FTI 20th Report at [para. 75](#); EY 19th Report at [para. 80](#); Deloitte 18th Report, Appendix A at [para. 43](#).

⁴¹ Imperial Draft Meeting Order at [para. 30](#); RBH Draft Meeting Order at [para. 29](#); JTIM Draft Meeting Order at [para. 29](#); FTI 20th Report at [para. 78](#); EY 19th Report at [para. 83](#); Deloitte 18th Report, Appendix A at [para. 46](#).

⁴² Imperial Draft Meeting Order at [para. 47](#); RBH Draft Meeting Order at [para. 47](#); JTIM Draft Meeting Order at [para. 47](#); FTI 20th Report at [para. 86](#); EY 19th Report at [paras. 89, 91](#); Deloitte 18th Report, Appendix A at [para. 52](#).

necessary to allow the CCAA Plans to move forward in a timely manner for the benefit of all stakeholders, in accordance with the Court's direction.⁴³

E. The Claims Procedure Order Establishes an Orderly Procedure for the Identification of Claims

46. The Motions also seek the issuance of separate, but substantially identical, Claims Procedure Orders for each of the Tobacco Companies establishing a procedure for the identification of Affected Claims for purposes of voting on the CCAA Plans at the creditors' meeting on December 12, 2024.

47. The Monitors and the Court-Appointed Mediator, together with input from the Claimants and the Tobacco Companies, have developed a Claims Procedure to govern Affected Claims of the Claimants and Putative Miscellaneous Claimants. The Claims Procedure Orders contemplate an Omnibus Notice and Omnibus Notice Program to disseminate notice to the Claimants, Putative Miscellaneous Claimants and the public generally.⁴⁴

(i) Negative Notice Claims Procedure

48. The Claims Procedure Orders create a negative notice procedure for the determination and quantification of the Provincial HCCR Claims, Territorial HCCR Claims, QCAP Claims, PCC Claims, Tobacco Producer Claims and, only in the case of the Imperial Claims Procedure Order, the *Knight* Claims and the claims of Canada in respect of the reassessment by the Canada Revenue Agency of certain settlement payments made by ITCAN in its 2014 taxation year.⁴⁵

⁴³ FTI 20th Report at [para. 89](#); EY 19th Report at paras. [93, 94](#); Deloitte 18th Report at [para. 14](#); [Endorsement of Chief Justice Morawetz](#) (October 1, 2024) at para. 5.

⁴⁴ Imperial 21st Report of the Monitor, [Appendix A Report of the Monitors Claims Procedure](#) (October 25, 2024), RBH 18th Report of the Monitor, [Appendix A Report of the Monitors Claims Procedure](#) (October 25, 2024), Deloitte 18th Report, Appendix B at [para. 11](#) (collectively, "**Joint Appendix to the Monitors' Reports – Claims Procedure Order**") at [para. 38](#).

⁴⁵ [Joint Appendix to the Monitors' Reports](#) – Claims Procedure Order at [para. 26](#).

49. As soon as practicable after the Claims Procedure Order is granted, the Monitors will cause Negative Notice Claims Packages to be sent to each Claimant which will include the value (for voting purposes only) of the Affected Claim and the number of votes associated with such Affected Claim as follows⁴⁶:

Claimant	Number of Votes for Voting Purposes	Value of Claim for Voting Purposes
Quebec Class Action Plaintiffs (QCAPs)	99,958	\$ 13,706,891,279
Pan-Canadian Claimants (PCCs)	186,003	\$ 5,041,088,110
<i>Knight</i> Class Action Plaintiffs ⁴⁷	1	\$ 484,000,000
Tobacco Producers	3,930	\$ 29,043,876
British Columbia	1	\$ 136,681,344,490
Alberta	1	\$ 119,266,303,168
Saskatchewan	1	\$ 27,189,868,453
Manitoba	1	\$ 42,741,373,788
Ontario	1	\$ 271,795,731,959
Quebec	1	\$ 253,365,332,712
New Brunswick	1	\$ 22,778,964,723
Nova Scotia	1	\$ 29,979,033,060
Prince Edward Island	1	\$ 6,238,547,995
Newfoundland and Labrador	1	\$ 20,279,767,449
Yukon	1	\$ 3,752,573,987
Northwest Territories	1	\$ 6,865,708,611
Nunavut	1	\$ 3,584,449,605
Canada ⁴⁸	1	\$ 333,535,110

50. The negative notice claims procedure contemplated in the Claims Procedure Orders is as follows:

- (a) if a Claimant wishes to dispute the value and/or the number of votes allocated to its Affected Claim, the Claimant must deliver a Notice of Dispute of Negative Notice

⁴⁶ Joint Appendix to the Monitors' Reports – Claims Procedure Order at [para. 27](#).

⁴⁷ Only in respect of the Imperial CCAA Plan.

⁴⁸ Only in respect of the Imperial CCAA Plan.

Claim by the 21st day following the Negative Notice Issuance Date being the Negative Notice Bar Date⁴⁹;

- (b) should any Claimant deliver a Notice of Dispute of Negative Notice Claim by the Negative Notice Bar Date, the applicable Monitor, in consultation with the Court-Appointed Mediator will review and attempt to resolve such dispute. If the disputed claim cannot be resolved, the applicable Monitor will refer the disputed claim to the CCAA Court for resolution with timely notice to the disputing Claimant⁵⁰; and
- (c) if a Claimant does not file a Notice of Dispute of Negative Notice Claim by the Negative Notice Bar Date, such Claimant is deemed to have accepted the value and number of votes associated with its Affected Claim for voting purposes only.⁵¹

(ii) *Miscellaneous Claims Procedure*

51. The Claims Procedure Orders establish a process to allow unidentified Affected Creditors to file a proof of claim (a “**Miscellaneous Claimant Proof of Claim**”) in respect of a purported Miscellaneous Claim as Putative Miscellaneous Claimants.⁵²

52. The Monitors are unaware of the existence of any Miscellaneous Claims. But for completeness, the Claims Procedure has been formulated to ensure that any person (other than

⁴⁹ [Imperial Draft Claims Procedure Order](#), FTI Record, Tab 3; [RBH Claims Procedure Order](#), EY Record, Tab 3; [JTIM Draft Claims Procedure Order](#), Deloitte Record, Tab 3 at [para. 8](#); Joint Appendix to the Monitors’ Reports – Claims Procedure Order at [para. 28](#).

⁵⁰ Imperial Draft Claims Procedure Order at [para. 9](#); RBH Draft Claims Procedure Order at [para. 9](#); JTIM Draft Claims Procedure Order at [para. 9](#); Joint Appendix to the Monitors’ Reports – Claims Procedure Order at [para. 29](#).

⁵¹ Imperial Draft Claims Procedure Order at [para. 8](#); RBH Draft Claims Procedure Order at [para. 8](#); JTIM Draft Claims Procedure Order at [para. 8](#); Joint Appendix to the Monitors’ Reports – Claims Procedure Order at [para. 28](#).

⁵² Imperial Draft Claims Procedure Order at [paras. 12-13](#); RBH Draft Claims Procedure Order at [paras. 12-13](#); JTIM Draft Claims Procedure Order at [paras. 12-13](#); Joint Appendix to the Monitors’ Reports – Claims Procedure Order at [para. 30](#).

a Claimant or an Individual Claimant) who may have a Miscellaneous Claim has the ability to assert its Miscellaneous Claim and vote on the CCAA Plans at the Meetings.⁵³

53. Under the Claims Procedure Orders, a Putative Miscellaneous Claimant must file a Miscellaneous Claimant Proof of Claim with the applicable Monitor prior to 5:00 p.m. (Eastern Time) on December 5, 2024 (the “**Miscellaneous Claims Bar Date**”) to be entitled to vote on the applicable CCAA Plan at the applicable Meeting.⁵⁴

54. The Claims Procedure only establishes the value and number of votes of a Putative Miscellaneous Claimant for voting purposes. The Monitors are not obligated, upon receipt of a Miscellaneous Claimant Proof of Claim, to make any inquiry or assessment of the validity or value assigned to the Miscellaneous Claimant Proof of Claim. That said, the Monitors may at their sole discretion seek direction from the Court with respect to the validity or quantification of a Miscellaneous Claimant Proof of Claim.⁵⁵

55. The establishment of the value of a Miscellaneous Claim for distribution purposes will be conducted through the process set out in the CCAA Plans, which is a separate process from the Claims Procedure (the “**Miscellaneous Claims Procedure**”). Under the Miscellaneous Claims Procedure, leave must be sought by a Putative Miscellaneous Claimant from the Court to prove

⁵³ Imperial Draft Claims Procedure Order at [paras. 18-19](#); RBH Draft Claims Procedure Order at [paras. 18-19](#); JTIM Draft Claims Procedure Order at [paras. 18-19](#); Joint Appendix to the Monitors’ Reports – Claims Procedure Order at [para. 31](#).

⁵⁴ Imperial Draft Claims Procedure Order at [paras. 3](#) “Miscellaneous Claims Bar Date”, [18](#); RBH Draft Claims Procedure Order at [paras. 3](#) “Miscellaneous Claims Bar Date”, [18](#); JTIM Draft Claims Procedure Order at [paras. 3](#) “Miscellaneous Claims Bar Date”, [18](#); Joint Appendix to the Monitors’ Reports – Claims Procedure Order at [para. 32](#).

⁵⁵ Imperial Draft Claims Procedure Order at [para. 27](#); RBH Draft Claims Procedure Order at [para. 27](#); JTIM Draft Claims Procedure Order at [para. 27](#); Joint Appendix to the Monitors’ Reports – Claims Procedure Order at [paras. 33, 34](#).

a Miscellaneous Claim and, if such leave is granted, the Court may determine the merits of the purported Miscellaneous Claim.⁵⁶

56. In accordance with the CCAA Plans, any Putative Miscellaneous Claimant that fails to file a Miscellaneous Claimant Proof of Claim by the Miscellaneous Claims Bar Date shall be forever barred from asserting such a Miscellaneous Claim.⁵⁷

57. The Monitors will keep a record of all Miscellaneous Claimant Proofs of Claim received to prepare a list of Persons eligible to vote at the Meetings and the purported value associated with their respective votes.⁵⁸

(iii) Omnibus Notice and the Omnibus Notice Program

58. The Claims Procedure Orders also establish the Omnibus Notice Program, under which the Omnibus Notice will be disseminated to the Claimants, Putative Miscellaneous Claimants, and the public generally, to explain the CCAA Plans, the Claims Procedure, and the Meetings.⁵⁹

59. The Omnibus Notice Program calls for a condensed version of the Omnibus Notice to be published in English and French in *The Globe and Mail* (National Edition), *National Post* (National Edition), and *Le Devoir* within five Business Days of the issuance of the Claims Procedure Orders (or as soon as practicable thereafter) and again one week after the first publication. The same condensed version of the Omnibus Meeting Notice will be published in 36 regional newspapers

⁵⁶ Imperial Draft Claims Procedure Order, [Schedule “C”](#) Omnibus Notice for Non-Individual Claimants; RBH Draft Claims Procedure Order, [Schedule “C”](#) Omnibus Notice for Non-Individual Claimants; JTIM Draft Claims Procedure Order, [Schedule “C”](#) Omnibus Notice for Non-Individual Claimants; Joint Appendix to the Monitors’ Reports – Claims Procedure Order at [para. 35](#).

⁵⁷ See CCAA Plans, [s.3.1.3.2](#); Joint Appendix to the Monitors’ Reports – Claims Procedure Order at [para. 36](#).

⁵⁸ Imperial Draft Claims Procedure Order at [para. 27](#); RBH Draft Claims Procedure Order at [para. 27](#); JTIM Draft Claims Procedure Order at [para. 27](#); Joint Appendix to the Monitors’ Reports – Claims Procedure Order at [para. 37](#).

⁵⁹ Joint Appendix to the Monitors’ Reports – Claims Procedure Order at [para. 38](#); A copy of the Omnibus Notice is attached to each of the Claims Procedure Orders as [Schedule “C”](#).

in each Province and Territory within 10 Business Days of the issuance of the Claims Procedure Orders (or as soon as practicable thereafter).⁶⁰

60. The information provided in the Omnibus Notice is comprehensive and will provide good and sufficient notice to any Person that may have an Affected Claim. The Omnibus Notice:

- (a) explains the CCAA Plans and the Orders and directs persons to the websites of the Monitors where they can find copies of those documents;
- (b) sets out important dates, including the Negative Notice Bar Date, the Miscellaneous Claims Bar Date, and the date of the Meetings;
- (c) explains to Individual Claimants that they are already represented in the CCAA Proceedings by Quebec Class Counsel in the case of QCAPs and PCC Representative Counsel in the case of Pan-Canadian Claimants; and
- (d) summarizes the Miscellaneous Claims Procedure and explains to potential Putative Miscellaneous Claimants: (i) how to submit a Miscellaneous Claimant Proof of Claim and the deadline to do so; and (ii) that the Claims Procedure is being conducted to determine the number of votes of Putative Miscellaneous Claimants and the associated value of such votes (solely for voting purposes at the Meetings and not for distribution purposes under the CCAA Plans).⁶¹

⁶⁰ Imperial Draft Claims Procedure Order, [Schedule "D"](#) Omnibus Notice Program at [para. 7, Appendix "B"](#); RBH Draft Claims Procedure Order, [Schedule "D"](#) Omnibus Notice Program at para. 7, [Appendix "B"](#); JTIM Draft Claims Procedure Order, [Schedule "D"](#) Omnibus Notice Program at para. 7, [Appendix "B"](#); Joint Appendix to the Monitors' Reports – Claims Procedure Order at [para. 46](#).

⁶¹ Imperial Draft Claims Procedure Order, [Schedule "D"](#) Omnibus Notice Program; RBH Draft Claims Procedure Order, [Schedule "D"](#) Omnibus Notice Program; JTIM Draft Claims Procedure Order, [Schedule "D"](#) Omnibus Notice Program; Joint Appendix to the Monitors' Reports – Claims Procedure Order at paras. [40-42](#).

PART III – STATEMENT OF ISSUES, LAW & ARGUMENT

61. There are three principal issues on these motions:
- (a) whether the Court has the discretion to grant the Claims Procedure Orders and Meeting Orders on motions brought by the Monitors;
 - (b) whether the Court should accept the CCAA Plans for filing, approve the classification of the Affected Creditors as a single class for voting purposes, and grant the Meeting Orders; and
 - (c) whether the Court should approve the Claims Procedure and grant the Claims Procedure Orders.

62. For the reasons developed below, the answer to each question is “yes”.

A. The Monitors May Move For Approval of the Meeting Orders and Claims Procedure Orders

63. In a typical CCAA proceeding, it is the debtor company or one of its creditors that, pursuant to section 4 or 5 of the CCAA, brings a motion before the court for approval to schedule a meeting of creditors. These cases, however, are not a typical CCAA proceeding.

64. After five years of intensive Mediation without any clear prospect of a plan emerging, the Court determined that it was “necessary and appropriate” in the circumstances to direct the Monitor and Court-Appointed Mediator to “develop” the CCAA Plans.⁶² As the Court correctly predicted, empowering the Court-Appointed Mediator and Monitors in this way was likely to offer the “best chance” of developing the CCAA Plans.⁶³

⁶² [Endorsement of Chief Justice Morawetz](#) (October 5, 2023), para. 22.

⁶³ [Endorsement of Chief Justice Morawetz](#) (October 5, 2023), para. 22.

65. The Court's decision to empower the Monitors and Court-Appointed Mediator in its October 2023 endorsement is a familiar exercise of the discretion conferred to the Court under sections 11 and 23(1)(k) of the CCAA.

66. The latter provision specifically concerns the powers of monitors. Section 23(1)(k) of the statute provides that the monitor shall “carry out any other functions in relation to the company that the court may direct”. Under that provision, “the court has broad discretion to empower the Monitor to take steps to facilitate the restructuring or to advance the goals of the CCAA.”⁶⁴ As one appellate court has explained, supervising judges have used section 23(1)(k) “liberally to assign additional functions to monitors that go beyond investigating and reporting to the court”.⁶⁵ The appropriateness of such orders is gauged against “what is needed in the circumstances, when considering the objectives of the CCAA”.⁶⁶

67. Section 11 similarly sets out the Court's broad discretionary authority under the CCAA:

11 Despite anything in the *Bankruptcy and Insolvency Act* or the *Winding-up and Restructuring Act*, if an application is made under this Act in respect of a debtor company, **the court**, on the application of any person interested in the matter, **may, subject to the restrictions set out in this Act**, on notice to any other person or without notice as it may see fit, **make any order that it considers appropriate in the circumstances**.

68. As the Supreme Court has explained, the “vast” power conferred by section 11 “is constrained only by restrictions set out in the CCAA itself, and the requirement that the order made be ‘appropriate in the circumstances’.”⁶⁷ The Supreme Court has thus cautioned that the substantial discretion afforded to supervising judges under section 11 “should not be read as

⁶⁴ *Urbancorp Cumberland 2 GP Inc., (Re)*, [2017 ONSC 7649](#), at [para. 20](#).

⁶⁵ *8640025 Canada Inc. (Re)*, [2018 BCCA 93](#), at [para. 49](#).

⁶⁶ *Inca One Gold Corp. (Re)*, [2024 BCSC 1478](#), at [para. 36](#).

⁶⁷ *Canada v. Canada North Group Inc.*, [2021 SCC 30](#) at [para. 21](#), *per* Côté J., for the plurality; *9354-9186 Québec inc. v. Callidus Capital Corp.*, [2020 SCC 10](#) [*Callidus*] at [para. 67](#).

being restricted by the availability of more specific orders”.⁶⁸ In this way, the wide scope of discretion afforded under section 11 “is the engine that drives [the] broad and flexible statutory scheme” reflected in the CCAA.⁶⁹

69. The appropriateness of a section 11 order, like an order under section 23(1)(k), is assessed in relation to its grounding in the well-established remedial objectives of the CCAA, including facilitating the reorganization of a debtor company;⁷⁰ providing for timely, efficient, and impartial resolution of a debtor’s insolvency;⁷¹ and ensuring the fair and equitable treatment of the claims against a debtor.⁷²

70. The Court’s decision to empower the Monitors and Court-Appointed Mediator to develop the CCAA Plans fits comfortably within the compass of its discretion under sections 11 and 23(1)(k) of the CCAA. As a threshold matter, no provision in the CCAA restricts the Court from empowering the Court-Appointed Mediator and Monitors to seek the relief in these motions or from otherwise granting the Meeting Orders and Claims Procedure Orders. Although sections 4 and 5 of the CCAA empower a debtor company or creditor (among others) to seek a meeting order, those provisions do not contain any prohibitory language concerning other parties taking such steps or suggesting that the listed parties are an exclusive list.⁷³

71. Furthermore, in the unique context of these unusually complex and challenging CCAA Proceedings, permitting the Court-Appointed Mediator and Monitor to seek approval of the Meeting Orders and the Claims Procedure Orders has helped advance the remedial objectives of

⁶⁸ *Century Services Inc. v. Canada (Attorney General)*, [2010 SCC 60](#) at [para. 70](#).

⁶⁹ *Stelco Inc.* (2005), [75 O.R. \(3d\) 5 \(CA\)](#) [*Stelco* March 2005 ONCA] at [para. 36](#).

⁷⁰ *Canadian Airlines Corp. (Re)*, [2000 ABQB 442](#) at [para. 95](#).

⁷¹ *Callidus*, *supra* at [para. 40](#).

⁷² *Callidus*, *supra* at [para. 40](#).

⁷³ CCAA, ss. [4](#), [5](#). Likewise, s. [22\(1\)](#) empowers a debtor company to apply to the Court for approval of the division of its creditors into classes for the purpose of a meeting, but that provision does not prohibit other parties from doing so.

the CCAA. Most significantly, empowering the Court-Appointed Mediator and Monitors has facilitated a critical step in the reorganization of the Tobacco Companies to benefit their creditors, shareholders, employees, and the broad group of stakeholders that will benefit from the CCAA Plans—all of whom have been patiently waiting for a resolution for nearly five years.

72. Notably, no party objected to, sought to vary, or sought to appeal the Court's October 2023 direction. Rather, for the last 12 months, all Mediation Parties—including the Tobacco Companies—have operated on the understanding expressed in the Court's direction—namely, that the Court-Appointed Mediator and the Monitors would develop the CCAA Plans.

73. Empowering a CCAA monitor to develop a plan is not unprecedented. For example, the Quebec Superior Court has empowered a monitor to develop a plan and ultimately approved a plan submitted by the monitor.⁷⁴ Similarly, this Court has approved of an interim receiver advancing a plan over an objection that the CCAA did not permit an interim receiver to file a plan of arrangement.⁷⁵

74. Even if the empowering of a monitor to develop a plan were unprecedented, however, that does not bar the Court's invocation of its discretion under the CCAA. New and unique orders are routinely granted based on the statutory authority provided under the CCAA "if the circumstances are appropriate and the orders can be made within the framework and in the spirit of the CCAA legislation."⁷⁶

75. As the Court of Appeal for Ontario has observed, under section 11 in particular, "the court is called upon to play a kind of supervisory role to preserve the *status quo* and to move the process

⁷⁴ *Arrangement relatif à 9323-7055 Québec inc.*, [2019 QCCS 5904](#), aff'd [2020 QCCA 659](#).

⁷⁵ *Anvil Range Mining Corp., Re*, [2001 CanLII 28449](#) (ONSC) at [para. 9](#), per Farley J, aff'd [2002 CanLII 42003](#) (ONCA).

⁷⁶ *Canadian Red Cross Society/Société canadienne de la Croix-Rouge, Re*, [1998 CanLII 14907 \(ONSC\)](#) at [para. 45](#).

along to the point where a compromise or arrangement is approved or it is evident that the attempt is doomed to failure.”⁷⁷ The Court’s decision to empower the Court-Appointed Mediator and Monitors to develop the CCAA Plans is an apt illustration of how a supervising judge may “move the process along” in service of the CCAA’s remedial objectives.

76. With respect to the Monitors’ motions for the Claims Procedure Orders, the CCAA does not provide that such motion should be brought by any particular party, and such motions are regularly brought by court-appointed monitors.⁷⁸

B. The Meeting Orders Should Be Granted

(i) *The Test for a Meeting Order*

77. Section 4 of the CCAA provides that the Court may order a meeting of unsecured creditors, or a class of creditors, to vote on a compromise or arrangement.

78. “[T]he threshold for granting a Meetings Order is rather low.”⁷⁹ The applicable test is simply whether the “plan is doomed” to fail at either the creditor or Court approval stage; if the plan is not doomed to fail at either stage, it may be presented at a creditors’ meeting.⁸⁰ It is a “matter of judgment” for the supervising judge to determine whether a plan is doomed to fail.⁸¹ As Professor Sarra has explained, the Court’s role at this preliminary stage is to guard against “unnecessary

⁷⁷ *Stelco Inc., Re* (2005), [78 O.R. \(3d\) 254 \(CA\)](#) [*Stelco November 4, 2005 ONCA*] at [para. 18](#) (emphasis omitted), citing *Chef Ready Foods Ltd. v. Hongkong Bank of Canada*, [1990 CanLII 529 \(BCCA\)](#).

⁷⁸ CCAA, s. [12](#); see, e.g., *Target Canada Co.*, Court File No. CV-15-10832-00CL (ONSC [Commercial List]), [Claims Procedure Order](#) (June 11, 2015); *Urbancorp Cumberland 2 GP Inc.*, Court File No. CV-16-11541-00CL (ONSC [Commercial List]), [Claims Procedure Order](#) (December 16, 2016).

⁷⁹ *Just Energy Group Inc. et. al. v. Morgan Stanley Capital Group Inc. et. al.*, [2022 ONSC 3698](#) at [para. 7](#); see also *Arrangement relative à Bloom Lake*, [2018 QCCS 1657](#) [*Bloom Lake*] at [para. 19](#). (“The standard for issuing a meeting order is low”)(collecting cases).

⁸⁰ *U.S. Steel Canada Inc., Re*, [2017 ONSC 1967](#) at [para. 12](#) [*US Steel ONSC*]; *Bloom Lake*, *supra* at [para. 19](#); *Quest University Canada (Re)*, [2020 BCSC 1845](#) [*Quest*] at [para. 32](#).

⁸¹ *Stelco November 4, 2005 ONCA*, *supra* at [para. 24](#).

costs being expended in calling and conducting a vote where it is evident at the outset that there is not yet sufficient support by creditors to vote in favour of the plan”.⁸²

79. “It is not the role of the Court at this stage to consider or rule on the fairness or reasonableness of the Plan.”⁸³ For this reason, this Court has characterized the issuance of a meeting order as a “procedural step”, which does not detail the fairness and reasonableness of the CCAA Plans.⁸⁴ Instead, issues of fairness are properly addressed during the sanction hearing, assuming each CCAA Plan receives approval from the required double majority of creditors at their respective Meeting.⁸⁵

(ii) The CCAA Plans Are Not Doomed to Fail

80. No evidence suggests that the CCAA Plans are doomed to fail.

81. The CCAA Plans are the result of extensive discussions in the Mediation with the Claimants and the Tobacco Companies, facilitated by the Court-Appointed Mediator and the Monitors. The CCAA Plans have been formulated to satisfy, to the greatest extent reasonably possible, the broadest range of the Mediation Parties’ interests and positions.⁸⁶ The CCAA Plans will facilitate a global settlement of the Tobacco Claims and various other Affected Claims to the benefit of all stakeholders in these CCAA Proceedings.⁸⁷

⁸² Dr. Janis P. Sarra, *Rescue! The Companies Creditors Arrangement Act*, 2d ed. [*Rescue!*], p. 524.

⁸³ *Quest*, *supra* at [para. 32](#); see also *Nova Metal Products Inc. v. Comiskey (Trustee of)*, [1990 CarswellOnt 139 \(CA\)](#) at para. 90.

⁸⁴ *Jaguar Mining (Re)*, [2014 ONSC 494](#) at [para. 48](#) [*Jaguar Mining*]; *Quest*, *supra* at [para. 32](#); *ScoZinc Ltd. (Re)*, [2009 NSSC 163](#) at [para. 7](#).

⁸⁵ *Stelco Inc., Re*, [2005 CanLII 41379](#) (ONSC) [*Stelco 2005 ONSC*] at [para. 15](#), *aff'd* [2005 CanLII 42247 \(ONCA\)](#) [*Stelco November 17, 2005 ONCA*]; *Jaguar Mining*, *supra* at [para. 48](#).

⁸⁶ Joint Appendix to the Monitors’ Reports – Claims Procedure Order at [paras. 50, 53](#).

⁸⁷ Joint Appendix to the Monitors’ Reports – Claims Procedure Order at [para. 5](#).

82. 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, 10 of the 13 jurisdictions support the CCAA Plans.⁸⁸

(iii) *A Single Class of Creditors Is Appropriate*

83. If the Meeting Orders are granted, the Court-Appointed Mediator and Monitors propose that all Affected Creditors will be classified into one class—the unsecured creditors class—for purposes of voting on the CCAA Plans.⁸⁹ That classification is appropriate in the circumstances.

84. Subsection 22(2) of the CCAA provides that creditors may be included in the same class if “their interests or rights are sufficiently similar to give them a commonality of interest” having regard to:

- (a) the nature of the debts, liabilities, or obligations giving rise to their claims;
- (b) the nature and rank of any security in respect of their claims;
- (c) the remedies available to the creditors in the absence of the compromise or arrangement being sanctioned, and the extent to which the creditors would recover their claims by exercising those remedies; and
- (d) any further criteria, consistent with those set out above.

85. The above factors, which were added to the CCAA by amendment in 2009, codified the principles applicable to the classification of creditors summarized in *Canadian Airlines*:

⁸⁸ FTI 20th Report at [para. 58](#); EY 19th Report at [para. 63](#); Deloitte 18th Report at [para. 13](#).

⁸⁹ Draft Meeting Orders at [para. 20](#).

- (a) commonality of interest should be viewed based on the non-fragmentation test, not identity of interest test;
- (b) the interests that are considered are the legal interests that a creditor holds in relation to the debtor company prior to and under the plan;
- (c) commonality of interest should be viewed purposively, keeping in mind the goals of the CCAA, namely to facilitate reorganization;
- (d) courts should be careful to resist classification approaches that could jeopardize a viable plan;
- (e) absent bad faith, the motives of creditors to approve or disapprove a plan are not relevant; and
- (f) the requirement of creditors consulting together means assessing their legal entitlement as creditors before or after the plan in a similar manner.⁹⁰

86. Courts have held that classification is fact-driven, dependent on the circumstances of each case, and must be approached with the flexible and remedial nature of the CCAA in mind.⁹¹

87. One of the key goals of classification is to prevent unnecessary fragmentation. As Farley J. noted in *Stelco*, “[u]nless more than one class is necessary, fragmentation would start at two classes. Fragmentation if necessary, but not necessarily fragmentation.”⁹²

⁹⁰ *Stelco* November 17, 2005 ONCA, *supra* at [para. 23](#); *Canadian Airlines Corp. (Re)*, [2000 CanLII 28185 \(ABQB\)](#) [*Canadian Airlines* 2000] at [para. 31](#).

⁹¹ *Stelco* November 17, 2005 ONCA, *supra* at [para. 22](#); *Canadian Airlines* 2000, *supra* at [para. 18](#).

⁹² *Stelco* 2005 ONSC, *supra* at [para. 13](#).

88. Here, including the Affected Creditors in a single class is appropriate, having regard to the factors enumerated by s. 22(2) of the CCAA:

- (a) the claims of the Affected Creditors share a common characteristic: they are all Tobacco Claims against the Applicants;
- (b) all Affected Creditors are unsecured creditors who would need to pursue their remedies through judicial processes if the CCAA Plans were not in place;
- (c) the grouping of the Affected Creditors into a single class was carried out with the main goals of the CCAA in mind, specifically to aid in the reorganization of the Applicants through the CCAA Plans. As Paperny J. noted in *Canadian Airlines*, “the Court should be careful to resist classification approaches that would potentially jeopardize viable plans”;⁹³ and
- (d) if the Affected Creditors were fragmented into separate classes, it would be difficult, if not impossible, to obtain approval of the CCAA Plans.⁹⁴

C. The Claims Procedure Orders Should Be Granted

(i) *The Court has Jurisdiction to Approve the Claims Procedure Orders*

89. “Establishing a claims process toward determining claims to be advanced under the CCAA is a recognized step in proceedings across Canada”.⁹⁵ Courts have typically looked to sections 11 and 12 of the CCAA for their authority to make an order approving the process for the solicitation and determination of claims against a debtor company and its directors and officers.⁹⁶

⁹³ *Canadian Airlines* 2000, *supra* at [para. 31](#).

⁹⁴ *Norcen Energy Resources Ltd. v. Oakwood Petroleums Ltd.*, [1988 CanLII 3570 \(ABQB\)](#) at [para. 27](#).

⁹⁵ *Quest*, *supra* at [para. 21](#).

⁹⁶ CCAA, ss. [11](#) and [12](#); *US Steel* ONSC, *supra* at [para. 5](#).

90. The process provided by a claims procedure order is essential to any plan⁹⁷ and a practical means of streamlining the resolution of the “multitude of claims against an insolvent debtor” in the most timely and cost effective manner.⁹⁸ Claims procedure orders must be drafted to ensure that the procedure for determining claims furthers the remedial purposes of the CCAA and is both fair and reasonable to all stakeholders.⁹⁹

91. Courts have shunned a rigid approach to claims procedure orders. Rather, “[c]reative” procedures “are encouraged” and “[w]hat works in one case may be wholly inapt in another.”¹⁰⁰ The common thread in all cases, however, is a judicial goal “to make efforts to increase efficiency, affordability, and certainty”.¹⁰¹

92. Courts have approved claims procedure orders featuring “negative notice” claims procedures, where creditors are informed of their claims and allowed to dispute them.¹⁰² This Court has endorsed negative claims processes, noting that they “streamline claims processes, make it easier for all known creditor claims to be recognized and counted, and save significant time and money.”¹⁰³ A negative notice claims process can also “ameliorate[] any concerns” regarding a “relatively short” schedule.¹⁰⁴

⁹⁷ *Laurentian University of Sudbury*, [2021 ONSC 3885](#) at [para. 31](#) [*Laurentian*].

⁹⁸ *Canwest Global Communications Corp.*, [2011 ONSC 2215](#) at [para. 40](#).

⁹⁹ *Laurentian*, *supra* at [para. 32](#), citing *Steels Industrial Products Ltd.*, [2012 BCSC 1501](#) at [para. 38](#).

¹⁰⁰ *Re Toys “R” Us (Canada) Ltd.*, [2018 ONSC 609](#) [*Toys “R” Us*] at [para. 14](#).

¹⁰¹ *Toys “R” Us*, *supra* at [para. 14](#).

¹⁰² *Re Toys “R” Us*, *supra* at [paras. 11-14](#); *US Steel ONSC*, *supra* at [para. 6](#); *Payless Shoesource Canada Inc. et al.*, Court File No. CV-19-00614629-00CL (ONSC [Commercial List]), [Order \(Claims Procedure Order\)](#) (April 24, 2019); *Forever XXI ULC*, Court File No. CV-19-00628233-00CL (ONSC [Commercial List]), [Claims Procedure Order](#) (May 28, 2020) [*Forever 21 Claims Procedure Order*]; *Yatsen Group of Companies Inc.*, Court File No. CV-21-00655505-00CL (ONSC [Commercial List]), [Claims Procedure Order](#) (August 4, 2021) [*Yatsen Claims Procedure Order*].

¹⁰³ *Toys “R” Us*, *supra* at [para. 14](#).

¹⁰⁴ *Quest*, *supra* at [para. 26](#).

(ii) *The Court Should Approve the Claims Procedure Orders*

93. As addressed above, the Claims Procedure Orders establish: (i) a negative notice claims procedure for disputing the value and number of votes attributed to the Affected Claims of the Claimants;¹⁰⁵ and (ii) a Miscellaneous Claims Procedure for identifying claims of Putative Miscellaneous Claimants for the purpose of, among other things, voting on the CCAA Plans.¹⁰⁶

94. The Claims Procedure is structured to thoroughly identify and quantify all known claims against the Applicants for voting purposes. The Claims Procedure will aid in the implementation of the CCAA Plans and facilitate a restructuring of the Applicants, ultimately benefiting the stakeholders of the Applicants and furthering the remedial purposes of the CCAA.

95. The Claims Procedure is a fair and reasonable process for determining the claims of Affected Creditors and will not prejudice the Applicants' stakeholders for, among others, the following reasons:

- (a) the Miscellaneous Claims Procedure prescribes an appropriate process to notify Putative Miscellaneous Claimants of the Claims Procedure Order;¹⁰⁷
- (b) the Miscellaneous Claims Bar Date provides the Putative Miscellaneous Claimants with almost 30 days to review the Claims Package and submit a Proof of Claim (if the Court issues the Claims Procedure Orders on October 31, 2024);¹⁰⁸

¹⁰⁵ Joint Appendix to the Monitors' Reports – Claims Procedure Order at [paras. 26-29](#); Imperial Draft Claims Procedure Order at [para. 8](#); RBH Draft Claims Procedure Order at [para. 8](#); JTIM Draft Claims Procedure Order at [para. 8](#).

¹⁰⁶ Joint Appendix to the Monitors' Reports – Claims Procedure Order at [paras. 30-34](#); Imperial Draft Claims Procedure Order at [para. 12](#); RBH Draft Claims Procedure Order at [para. 12](#); JTIM Draft Claims Procedure Order at [para. 12](#).

¹⁰⁷ Joint Appendix to the Monitors' Reports – Claims Procedure Order at [paras. 46-49](#).

¹⁰⁸ Joint Appendix to the Monitors' Reports – Claims Procedure Order at [paras. 32, 40](#).

- (c) the Court-Appointed Mediator and Monitors have worked diligently to reach a consensual arrangement with the Claimants and mutually agree to the quantum of their Affected Claims for purposes of the Negative Notice Claims Procedure;
- (d) the Negative Notice Claims Procedure is designed to inform Claimants of their Negative Notice Claims and provides Claimants with 21 days after the issuance of the Statements of Negative Notice Claim to dispute such Claim;¹⁰⁹
- (e) the Negative Notice Claims Procedure will make it easier and more efficient for Claimants to participate in the Claims Procedure;¹¹⁰ and
- (f) the Monitors support the Claims Procedure and have agreed to administer the Claims Procedure.¹¹¹

96. The simultaneous request for the Claims Procedure Orders and Meeting Orders should not impact the relief being sought and does not derogate from the fairness and reasonableness of the Claims Procedure. The Court has in many cases found it appropriate to grant a claims procedure order and meeting order at the same hearing where a similar timeline was warranted or required.¹¹²

97. In this case, the concurrent approval of the Claims Procedure Orders and Meeting Orders will enable the sanction and implementation of the CCAA Plans on an efficient and cost-effective

¹⁰⁹ Joint Appendix to the Monitors' Reports – Claims Procedure Order at [para. 28](#).

¹¹⁰ Joint Appendix to the Monitors' Reports – Claims Procedure Order at [paras. 41-43, 49](#).

¹¹¹ Joint Appendix to the Monitors' Reports – Claims Procedure Order at [para. 54](#).

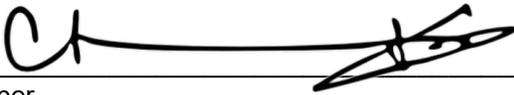
¹¹² *Jaguar Mining, supra* at paras. [1](#), [33](#), [48](#), [50](#); *Cline Mining Corporation (Re)*, [2014 ONSC 6998](#) [*Cline Mining*] at [para. 83](#); *US Steel ONSC, supra* at paras. [7](#) and [17](#); *Forever 21 Claims Procedure Order, supra*; *Forever XXI ULC*, Court File No. CV-19-00628233-00CL (ONSC [Commercial List]), [Meeting Order](#) (May 28, 2020).

basis. The majority of the Claimants—the Tobacco Companies' largest economic stakeholders—have agreed to the terms of the CCAA Plans and will benefit from the proposed timeline.¹¹³

PART IV – ORDERS REQUESTED

98. The Court-Appointed Mediator and the Monitors respectfully request that the Court grant the Meeting Orders and Claims Procedure Orders in the forms at Tabs 2 and 3 to the Motion Records dated October 17, 2024.

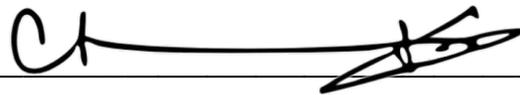
ALL OF WHICH IS RESPECTFULLY SUBMITTED this 28th day of October, 2024.



per
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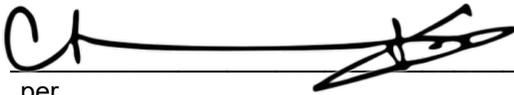
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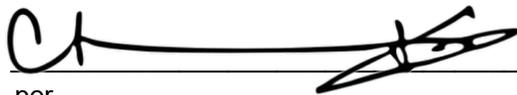
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¹¹³ *Cline Mining, supra* at [para. 61](#).

SCHEDULE “A”

LIST OF AUTHORITIES

1. *8640025 Canada Inc. (Re)*, [2018 BCCA 93](#).
2. *9354-9186 Québec inc. v. Callidus Capital Corp.*, [2020 SCC 10](#).
3. *Anvil Range Mining Corp., Re*, [2001 CanLII 28449](#) (ONSC), aff'd [2002 CanLII 42003](#) (ONCA).
4. *Arrangement relatif à 9323-7055 Québec inc.*, [2019 QCCS 5904](#), aff'd [2020 QCCA 659](#).
5. *Arrangement relative à Bloom Lake*, [2018 QCCS 1657](#).
6. *Canada v. Canada North Group Inc.*, [2021 SCC 30](#).
7. *Canadian Airlines Corp. (Re)*, [2000 ABQB 442](#).
8. *Canadian Airlines Corp. (Re)*, [2000 CanLII 28185 \(ABQB\)](#).
9. *Canadian Red Cross Society/Société canadienne de la Croix-Rouge, Re*, [1998 CanLII 14907 \(ONSC\)](#).
10. *Canwest Global Communications Corp.*, [2011 ONSC 2215](#).
11. *Century Services Inc. v. Canada (Attorney General)*, [2010 SCC 60](#).
12. *Chef Ready Foods Ltd. v. Hongkong Bank of Canada*, [1990 CanLII 529 \(BCCA\)](#).
13. *Cline Mining Corporation (Re)*, [2014 ONSC 6998](#).
14. *Forever XXI ULC*, Court File No. CV-19-00628233-00CL (ONSC [Commercial List]), [Claims Procedure Order](#) (May 28, 2020).
15. *Forever XXI ULC*, Court File No. CV-19-00628233-00CL (ONSC [Commercial List]), [Meeting Order](#) (May 28, 2020).
16. *Inca One Gold Corp. (Re)*, [2024 BCSC 1478](#).
17. *In the Matter of a Plan of Compromise or Arrangement of JTI-Macdonald, Imperial Tobacco and Rothmans*, [2023 ONSC 2347](#).
18. *Jaguar Mining (Re)*, [2014 ONSC 494](#).
19. *Just Energy Group Inc. et. al. v. Morgan Stanley Capital Group Inc. et. al.*, [2022 ONSC 3698](#).
20. *Laurentian University of Sudbury*, [2021 ONSC 3885](#).
21. *Norcen Energy Resources Ltd. v. Oakwood Petroleums Ltd.*, [1988 CanLII 3570 \(ABQB\)](#).

22. *Nova Metal Products Inc. v. Comiskey (Trustee of)*, [1990 CarswellOnt 139 \(CA\)](#).
23. *Payless Shoesource Canada Inc. et al.*, Court File No. CV-19-00614629-00CL (ONSC [Commercial List]), [Order \(Claims Procedure Order\)](#) (April 24, 2019).
24. *Quest University Canada (Re)*, [2020 BCSC 1845](#).
25. *Re Toys "R" Us (Canada) Ltd.*, [2018 ONSC 609](#).
26. *ScoZinc Ltd. (Re)*, [2009 NSSC 163](#).
27. *Steels Industrial Products Ltd.*, [2012 BCSC 1501](#).
28. *Stelco Inc. (2005)*, [75 O.R. \(3d\) 5 \(CA\)](#).
29. *Stelco Inc., Re (2005)*, [78 O.R. \(3d\) 254 \(CA\)](#).
30. *Stelco Inc., Re*, [2005 CanLII 41379](#) (ONSC), aff'd [2005 CanLII 42247 \(ONCA\)](#).
31. *Target Canada Co.*, Court File No. CV-15-10832-00CL (ONSC [Commercial List]), [Claims Procedure Order](#) (June 11, 2015).
32. *Urbancorp Cumberland 2 GP Inc.*, Court File No. CV-16-11541-00CL (ONSC [Commercial List]), [Claims Procedure Order](#) (December 16, 2016).
33. *Urbancorp Cumberland 2 GP Inc., (Re)*, [2017 ONSC 7649](#).
34. *U.S. Steel Canada Inc., Re*, [2017 ONSC 1967](#).
35. *Yatsen Group of Companies Inc.*, Court File No. CV-21-00655505-00CL (ONSC [Commercial List]), [Claims Procedure Order](#) (August 4, 2021).
36. Dr. Janis P. Sarra, *Rescue! The Companies Creditors Arrangement Act*, 2d ed.

SCHEDULE "B"

TEXT OF STATUTES, REGULATIONS & BY – LAWS

Companies' Creditors Arrangement Act (R.S.C., 1985, c. C-36)

Compromise with unsecured creditors

4 Where a compromise or an arrangement is proposed between a debtor company and its unsecured creditors or any class of them, the court may, on the application in a summary way of the company, of any such creditor or of the trustee in bankruptcy or liquidator of the company, order a meeting of the creditors or class of creditors, and, if the court so determines, of the shareholders of the company, to be summoned in such manner as the court directs.

Compromise with secured creditors

5 Where a compromise or an arrangement is proposed between a debtor company and its secured creditors or any class of them, the court may, on the application in a summary way of the company or of any such creditor or of the trustee in bankruptcy or liquidator of the company, order a meeting of the creditors or class of creditors, and, if the court so determines, of the shareholders of the company, to be summoned in such manner as the court directs.

[...]

General power of court

11 Despite anything in the *Bankruptcy and Insolvency Act* or the *Winding-up and Restructuring Act*, if an application is made under this Act in respect of a debtor company, the court, on the application of any person interested in the matter, may, subject to the restrictions set out in this Act, on notice to any other person or without notice as it may see fit, make any order that it considers appropriate in the circumstances.

Fixing deadlines

12 The court may fix deadlines for the purposes of voting and for the purposes of distributions under a compromise or arrangement.

[...]

Classes of Creditors

Company may establish classes

22 (1) A debtor company may divide its creditors into classes for the purpose of a meeting to be held under section 4 or 5 in respect of a compromise or arrangement relating to the company and, if it does so, it is to apply to the court for approval of the division before the meeting is held.

Factors

(2) For the purpose of subsection (1), creditors may be included in the same class if their interests or rights are sufficiently similar to give them a commonality of interest, taking into account

- (a)** the nature of the debts, liabilities or obligations giving rise to their claims;
- (b)** the nature and rank of any security in respect of their claims;
- (c)** the remedies available to the creditors in the absence of the compromise or arrangement being sanctioned, and the extent to which the creditors would recover their claims by exercising those remedies; and
- (d)** any further criteria, consistent with those set out in paragraphs (a) to (c), that are prescribed.

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.**

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**

PROCEEDING COMMENCED AT
TORONTO

**JOINT FACTUM OF THE COURT-APPOINTED MEDIATOR & MONITORS
Motions for Meeting Orders & Claims Procedure Orders
(Returnable October 31, 2024)**

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