

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

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

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

Applicant

**FACTUM OF THE APPLICANT  
(Stay Extension)  
(Returnable January 29, 2025)**

January 22, 2025

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1. The Applicant, Rothmans, Benson & Hedges Inc. (“**RBH**” or the “**Applicant**”) brings this motion seeking an extension of the Stay Period until and including February 28, 2025.<sup>1</sup>

2. Section 11.02(2) of the *Companies' Creditors Arrangement Act* (“**CCAA**”) gives the court the discretion to grant or extend a stay of proceedings, “for any period that the court considers necessary.”<sup>2</sup> Pursuant to section 11.02(3) of the CCAA, to exercise its discretion to extend the stay of proceedings, the court must be satisfied that:

(a) circumstances exist that make the order appropriate; and

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<sup>1</sup> Capitalized terms used and not defined in this factum have the meanings given to them in the Affidavit of Milena Trentadue sworn January 15, 2025 (“**Trentadue Affidavit**”), Motion Record of the Applicant dated January 15, 2025 (“**Motion Record**”), Tab 2, CaseLines Master [A1163](#).

<sup>2</sup> *Companies' Creditors Arrangement Act*, RSC 1985, c. C-36, [s. 11.02\(2\)](#).

(b) the applicant has acted, and is acting, in good faith and with due diligence during the CCAA proceedings.<sup>3</sup>

3. The court will also consider, among other factors, whether the debtor company has sufficient available cash resources during the proposed extension of the Stay Period, and whether the Monitor supports the requested stay extension.<sup>4</sup>

4. On October 17, 2024, the Court-Appointed Mediator and Monitor filed a proposed plan of compromise and arrangement in relation to RBH (as amended and restated, the “**Proposed Plan**”). On December 5, 2024, the Court-Appointed Mediator, together with the Monitor, filed an amended and restated Proposed Plan.<sup>5</sup>

5. On October 31, 2024, on motion by the Court-Appointed Mediator and the Monitor, the Court granted a Claims Procedure Order and a Meeting Order.<sup>6</sup>

6. A meeting of Affected Creditors (as defined in the Proposed Plan) of RBH was held on December 12, 2024. The proposed CCAA Plan was approved by the requisite majorities of Affected Creditors.<sup>7</sup>

7. The sanction hearing in relation to the Proposed Plan has been scheduled for January 29-31, 2025, February 3-5, 2025 and February 11-13, 2025, if necessary.<sup>8</sup>

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<sup>3</sup> *U.S. Steel Canada Inc., Re*, [2016 ONSC 3106](#) at para. 2; *9354-9186 Québec Inc v Callidus Capital Corp*, [2020 SCC 10](#) at para. 49.

<sup>4</sup> *Canwest Global Communications Corp. (Re.)*, [2009 CanLII 63368](#) at para. 43 (SCJ).

<sup>5</sup> Trentadue Affidavit at para. 16, Motion Record, Tab 2, CaseLines Master [A1167](#).

<sup>6</sup> Trentadue Affidavit at para. 17, Motion Record, Tab 2, CaseLines Master [A1167](#).

<sup>7</sup> Trentadue Affidavit at para. 18, Motion Record, Tab 2, CaseLines Master [A1167](#).

<sup>8</sup> Trentadue Affidavit at paras. 19-20, Motion Record, Tab 2, CaseLines Master [A1167](#).

8. The Stay Period presently expires on January 31, 2025.<sup>9</sup>

9. At the hearing on October 31, 2024, RBH sought to extend the Stay Period to March 31, 2025.<sup>10</sup> In its endorsement, the Court indicated that extending the Stay Period past the anticipated timing of the sanction hearing “could create a degree of uncertainty”.<sup>11</sup> As the sanction hearing was expected to occur in January 2025, the Court extended the Stay Period to January 31, 2025.<sup>12</sup>

10. Given that dates for the sanction hearing have been scheduled, to the extent necessary, up to February 13, 2025, in these circumstances, it is necessary to extend the Stay Period for a short period to allow for the completion of the sanction hearing.<sup>13</sup>

11. RBH has been acting in good faith and with due diligence in these CCAA proceedings by, among other things:

- (a) continuing to operate its business in the normal course and in accordance with the Second Amended and Restated Initial Order;
- (b) attending the meeting of Affected Creditors (as defined in the Proposed Plan) of RBH on December 12, 2024;
- (c) obtaining the RBH Insurance Settlement and Bar Order on December 23, 2024 approving a settlement between RBH and certain insurers which

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<sup>9</sup> Trentadue Affidavit at para. 22, Motion Record, Tab 2, CaseLines Master [A1169](#).

<sup>10</sup> Trentadue Affidavit at para. 23, Motion Record, Tab 2, CaseLines Master [A1169](#).

<sup>11</sup> *Imperial Tobacco Limited*, [2024 ONSC 6061](#) at para. [55](#).

<sup>12</sup> *Ibid* at para. [59](#).

<sup>13</sup> Trentadue Affidavit at para. 24, Motion Record, Tab 2, CaseLines Master [A1169](#).

will result in payments of approximately \$32 million to be contributed by RBH towards its share of the Global Settlement Amount if the Proposed Plan is sanctioned and implemented, and be distributed to the Claimants in accordance with the Proposed Plan;

- (d) participating in case conferences and court hearings on November 18, 2024 (relating to the sanction hearing timeline), November 22, 2024 (related to amending and restating the Appointment of Representative Counsel Order), December 10, 2024 (related to injunctive relief sought by the QCAPs and PCCs) and December 23, 2024 (related to the Sanction Protocol Order);
- (e) meeting with and providing business updates and information to the Monitor at its request;
- (f) engaging in the mediation process on the basis directed by the Court-Appointed Mediator;
- (g) continuing to manage and populate the data room; and,
- (h) communicating with counsel for the Monitors and the other Tobacco Companies, when appropriate, to ensure the parties' respective CCAA proceedings are procedurally coordinated.<sup>14</sup>

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<sup>14</sup> Trentadue Affidavit, para. 21, Motion Record, Tab 2, CaseLines Master [A1168](#).

12. The cash flow forecast appended to the Twenty-Fourth Report of the Monitor shows that RBH has sufficient available cash resources during the proposed extension of the stay period.<sup>15</sup>

13. Accordingly, it is appropriate for the Court to grant the proposed extension of the Stay Period to February 28, 2025.

**ALL OF WHICH IS RESPECTFULLY SUBMITTED** this 22nd day of January, 2025.



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McCarthy Tétrault LLP  
Lawyers for the Applicant

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<sup>15</sup> Twenty-Fourth Report of Ernst & Young Inc. as Monitor of RBH dated January 22, 2025.

**SCHEDULE “A”  
LIST OF AUTHORITIES**

**Jurisprudence**

1. *U.S. Steel Canada Inc., Re*, [2016 ONSC 3106](#)
2. *9354-9186 Québec Inc v Callidus Capital Corp*, [2020 SCC 10](#)
3. *Canwest Global Communications Corp. (Re.)*, [2009 CanLII 63368](#) (SCJ)
4. *Imperial Tobacco Limited*, [2024 ONSC 6061](#)

**SCHEDULE “B”  
RELEVANT STATUTES**

**Companies' Creditors Arrangement Act, RSC 1985, c C-36**

**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.

**Stays, etc. — other than initial application**

**11.02 (2)** A court may, on an application in respect of a debtor company other than an initial application, make an order, on any terms that it may impose,

- (a) staying, until otherwise ordered by the court, for any period that the court considers necessary, all proceedings taken or that might be taken in respect of the company under an Act referred to in paragraph (1)(a);
- (b) restraining, until otherwise ordered by the court, further proceedings in any action, suit or proceeding against the company; and
- (c) prohibiting, until otherwise ordered by the court, the commencement of any action, suit or proceeding against the company.

**Burden of proof on application**

**(3)** The court shall not make the order unless

- (a) the applicant satisfies the court that circumstances exist that make the order appropriate; and
- (b) in the case of an order under subsection (2), the applicant also satisfies the court that the applicant has acted, and is acting, in good faith and with due diligence.



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

Proceeding commenced at Toronto

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