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*Attorneys for FTI Consulting Canada Inc., in its Capacity as Court Appointed Monitor and
Authorized Foreign Representative for the Debtor*

**UNITED STATES BANKRUPTCY COURT
SOUTHERN DISTRICT OF NEW YORK**

In re:

IMPERIAL TOBACCO CANADA LIMITED,

Debtor in a Foreign Proceeding.¹

Chapter 15

Case No. 19-10771 (SCC)

RE: Docket No. 70

DECLARATION OF PAUL BISHOP IN SUPPORT OF MONITOR'S STATUS REPORT

I, Paul Bishop, pursuant to 28 U.S.C. § 1746, hereby declare under penalty of perjury as follows:

1. I hereby submit this declaration (the "Declaration"), made in my capacity as a Senior Managing Director of FTI Consulting Canada Inc., the authorized foreign representative of Imperial Tobacco Canada Limited (the "Debtor") and the Court appointed monitor (the "Monitor") of the Debtor and Imperial Tobacco Company Limited ("ITCO") in a proceeding (the "Canadian Proceeding") under Canada's *Companies' Creditors Arrangement Act*, R.S.C. 1985 c. C-36, as amended, pending before the Ontario Superior Court of Justice (Commercial List) in Toronto, Ontario (the "Canadian Court"), to apprise the Court of recent, notable developments in the Canadian Proceeding since the filing of the Monitor's Second Status Report² on May 3, 2021 [Dkt.

¹ The last four digits of the Debtor's taxpayer identification number are 4374. The Debtor's registered office is located at 30 Pedigree Court, Brampton (Ontario) Canada L6T 5T8.

² Capitalized terms not defined herein shall have the meanings ascribed to them in the *Verified Chapter 15 Petition for Recognition of Foreign Main Proceeding and Related Relief* or the Third Status Report, as applicable.

No. 67] and in support of the *Third Status Report* filed contemporaneously herewith. A complete list of the orders issued to date in the Canadian Proceeding is attached hereto as **Exhibit A**.

Extensions of the Stay by the Canadian Court

2. On May 3, 2021, the Monitor reported to the Court that the Canadian Court extended the Stay to September 30, 2021, and that the Debtor, with the support of the BAT operation network, continues to expand its business contingency plans to mitigate supply chain disruptions in the future. *See* Dkt. Nos. 67 and 68.

3. On September 27, 2021, the Canadian Court extended the Stay to March 31, 2022. Among other things, the Canadian Court found that the Debtor, along with its affiliate ITCO, had sufficient liquidity to operate within the extended Stay period. *See* Endorsement at 2.

4. On March 22, 2022, the Canadian Court further extended the Stay to September 30, 2022. *See* September 2022 Stay Extension Order at 3. Copies of the Stay Extension Orders, the Endorsement, the New Excise Security Order³, and the Monitor's reports filed in support thereof are attached hereto as **Exhibit B**.

Legal and Operational Update

5. In April 2019, the Canadian Court, with the consent of the stakeholders, appointed the Hon. Warren K. Winkler Q.C. as mediator in respect of certain case issues, including a global resolution of the Tobacco Claims.

6. As set forth in the Second Status Report, the Debtor has continued to engage in the Mediation with its principal creditor constituencies. Although the Mediation remains highly

³ As set forth in the Third Status Report, on July 11, 2022, the Canadian Court entered the New Excise Security Order authorizing the Debtor to post a security with the Canada Revenue Agency to ensure compliance with recent amendments to the Excise Act.

confidential, I can report that the parties are continuing to work towards a pan-Canadian global settlement of the Tobacco Claims.

7. From a business perspective, since the Second Status Report, the Debtor, with the assistance of its parent, British American Tobacco, has continued to invest in contingency planning to prevent or mitigate future supply disruptions and modernize its offices to account for hybrid work arrangements. Among other things, the Debtor has invested in upgrades to its technology infrastructure and increased, and in some cases, reallocated, manufacturing and packaging equipment to the United States and Chile. Installation of the additional equipment in the United States was completed in April 2022 and is expected to be completed in Chile by September 2022.

8. The Debtor's cash position continues to remain positive, resulting in a cash balance as of June 30, 2022 of \$2,785 million.

9. In accordance with 11 U.S.C. § 1518, the Monitor will continue to keep the Court apprised of substantial developments in the Canadian Proceeding. The Monitor is also available for a telephonic or in person status conference at the Court's convenience.

[Remainder of page intentionally left blank]

I declare under penalty of perjury under the laws of the United States of America that the forgoing is true and correct to the best of my knowledge, information and belief.

Dated: July 15, 2022
Toronto, Canada

/s/ Paul Bishop
Paul Bishop, LIT
Senior Managing Director
FTI Consulting Canada Inc.

EXHIBIT A

ORDERS

Please see below for a description of the orders issued by the Canadian Court in the Canadian Proceeding. Capitalized terms not defined herein shall have the meanings ascribed to them in the Eleventh and Twelfth Reports of the Monitor attached to the Bishop Declaration as Exhibit B.

Initial Order

The Initial Order of the Ontario Superior Court of Justice (Commercial List) made on March 12, 2019, as amended and restated as of April 5, 2019 and further amended and restated as of April 25, 2019, pursuant to which:

- (a) Imperial was granted an initial stay of proceedings under the CCAA until April 11, 2019; and
- (b) FTI was appointed as the Monitor.

Comeback Motion

The Comeback Motion was heard on April 4 and 5, 2019. Following the Comeback Motion:

- (a) the Court extended the Stay of Proceedings to June 28, 2019, pursuant to the June Stay Extension Order;
- (b) the Hon. Warren K. Winkler, Q.C. was appointed as the Court-Appointed Mediator; and
- (c) the Court issued the First Amended and Restated Initial Order.

Second Amended and Restated Initial Order

The Second Amended and Restated Initial Order was issued following the continuation of the Comeback Motion on April 25 and 26, 2019.

Notice Procedure Order

The Notice Procedure Order was issued on May 14, 2019.

Professional Fee Disclosure Order

The Professional Fee Disclosure Order was issued on May 14, 2019.

Clarification of Insurance Lift-Stay Order

The Clarification of Insurance Lift-Stay Order was issued on May 14, 2019.

Communication and Confidentiality Protocol Endorsement

The Communication and Confidentiality Protocol Endorsement was released on May 24, 2019, pursuant to which the Court approved the Communication and Confidentiality Protocol as between the Court and the Court-Appointed Mediator.

October Stay Extension Order

The October Stay Extension Order was issued on June 26, 2019 and extended the Stay of Proceedings to October 4, 2019.

Genstar Settlement Approval Order

The Genstar Settlement Approval Order was issued on June 26, 2019.

Order Appointing a Financial Advisor to the Court-Appointed Mediator

The Order Appointing a Financial Advisor to the Court-Appointed Mediator was issued on June 27, 2019.

Court-to-Court Communications Order

The Court-to-Court Communications Order was issued on July 9, 2019.

March Stay Extension Order

The March Stay Extension Order was issued on October 2, 2019 and extended the Stay of Proceedings to March 12, 2020.

Representative Counsel Order

The Representative Counsel Order was issued on December 9, 2019 and appointed Wagners as representative counsel to the TRW Claimants.

February Stay Extension Order

The February Stay Extension Order was issued on February 20, 2020 and extended the Stay of Proceedings to September 20, 2020.

Notice Protocol Endorsement

The Notice Protocol Endorsement was issued on March 6, 2020 and further amended the Second Amended and Restated Initial Order by adding paragraphs to govern the notice protocol for moving and responding parties in the CCAA Proceedings.

Limited Lift of Stay Order

The Limited Lift of Stay Order was issued on March 16, 2020 and partially lifted the Stay of Proceedings to allow Imperial Tobacco Canada Limited to be added as a respondent to the application brought by the City of Ottawa bearing Court File No. 19-81809.

Consultant Order

The Consultant Order was issued on September 15, 2020 and appointed Shapiro as consultant to the Court-Appointed Mediator.

March 2021 Stay Extension Order

The March 2021 Stay Extension Order was issued on September 29, 2020, extending the Stay of Proceedings to March 31, 2021.

September 2021 Stay Extension Order

On March 30, 2021, the Court extended the Stay of Proceedings to September 30, 2021.

March 2022 Stay Extension Order

On September 27, 2021 the Court extended the Stay of Proceedings to March 31, 2022.

September 2022 Stay Extension Order

On March 22, 2022, the Court extended the Stay of Proceedings to September 30, 2022.

New Excise Act Security Order

On July 11, 2022, the Court entered an order authorizing the Debtor to post a security no more than \$5 million with the Canada Revenue Agency to ensure compliance with recent amendments to the Excise Act.

EXHIBIT B

Court File No. CV-19-616077-00CL

**ONTARIO
SUPERIOR COURT OF JUSTICE
COMMERCIAL LIST**

THE HONOURABLE) MONDAY, THE 27th
)
JUSTICE MCEWEN) DAY OF SEPTEMBER, 2021
)



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 IMPERIAL TOBACCO CANADA
LIMITED AND IMPERIAL TOBACCO COMPANY LIMITED

APPLICANTS

**ORDER
(Stay Extension to March 31, 2022)**

THIS MOTION, made by the Applicants pursuant to the *Companies' Creditors Arrangement Act*, R.S.C. 1985, c. C-36, as amended, for an order extending the Stay Period (defined below), was heard this day by judicial video conference in Toronto, Ontario due to the COVID-19 pandemic.

ON READING the Notice of Motion of the Applicants, the Affidavit of Eric Thauvette sworn September 17, 2021, the Tenth Report of the Monitor, and on hearing the submissions of respective counsel for the Applicants, the Monitor, and such other counsel as were present, no one else appearing although duly served as appears from the Affidavit of Service of Pina Macri affirmed September 17, 2021, filed:

SERVICE

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

EXTENSION OF THE STAY PERIOD

2. **THIS COURT ORDERS** that the Stay Period as defined in paragraph 18 of the Second Amended and Restated Initial Order dated March 12, 2019 is hereby extended until and including March 31, 2022.

GENERAL

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

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

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

A handwritten signature in black ink, appearing to read 'McE T.', is positioned above a horizontal line.

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 IMPERIAL TOBACCO CANADA LIMITED AND
IMPERIAL TOBACCO COMPANY LIMITED

Court File No: CV-19-616077-00CL

ONTARIO
SUPERIOR COURT OF JUSTICE
(Commercial List)

Proceeding Commenced at Toronto

ORDER
(Stay Extension to March 31, 2022)

OSLER, HOSKIN & HARCOURT LLP

Box 50, 1 First Canadian Place
Toronto ON M5X 1B8

Deborah Glendinning (LSO# 31070N)
Marc Wasserman (LSO# 44066M)
John A. MacDonald (LSO# 25884R)
Craig Lockwood (LSO# 46668M)

Tel: 416.362.2111
Fax: 416.862.6666

Lawyers for the Applicants, Imperial Tobacco Canada
Limited and Imperial Tobacco Company Limited

Court File Number:

19-CV-615862-00CL

Superior Court of Justice
Commercial List

19-CV-616077-00CL

19-CV-616779-00CL

FILE/DIRECTION/ORDER

In the Matter of ITII (Imperial/Rothmans) Plaintiff(s)

AND

Defendant(s)

Case Management Yes No by Judge: McEwain

Counsel	Telephone No:	Facsimile No:
<u>(as per attached counsel slip)</u>		

- Order Direction for Registrar (No formal order need be taken out)
- Above action transferred to the Commercial List at Toronto (No formal order need be taken out)
- Adjourned to: _____
- Time Table approved (as follows):

These matters returned before me again today to seek further stay extensions, and related relief.

There is no opposition to the relief sought, and the Monitors support the Applicants.

I agree with the Applicants that the orders sought ought to be granted.

27 Sept 21

Date

McEwain

Judge's Signature

Additional Pages two

Court File Number: _____

**Superior Court of Justice
Commercial List**

FILE/DIRECTION/ORDER

Judges Endorsment Continued

The mediation is ongoing and, overall, the Applicants continue to act in good faith and with due diligence - as required.

The reports of the Monitors show that the Applicants have sufficient liquidity to operate during the extension period - up to March 31/22.

I further agree that the proposed stay extension will not cause material prejudice to the creditors, nor is any alleged.

The draft orders filed in each Application shall go as per the drafts filed and signed today

M. E. T.

Court File No. CV-19-616077-00CL

**ONTARIO
SUPERIOR COURT OF JUSTICE
COMMERCIAL LIST**

THE HONOURABLE) TUESDAY, THE 22nd
)
JUSTICE MCEWEN) DAY OF MARCH, 2022
)

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 IMPERIAL TOBACCO CANADA
LIMITED AND IMPERIAL TOBACCO COMPANY LIMITED

APPLICANTS

ORDER

(Stay Extension to September 30, 2022)

THIS MOTION, made by the Applicants pursuant to the *Companies' Creditors Arrangement Act*, R.S.C. 1985, c. C-36, as amended, for an order extending the Stay Period (defined below), was heard this day by judicial video conference in Toronto, Ontario due to the COVID-19 pandemic.

ON READING the Notice of Motion of the Applicants, the Affidavit of Eric Thauvette sworn March 9, 2022, the Eleventh Report of the Monitor, and on hearing the submissions of respective counsel for the Applicants, the Monitor, and such other counsel as were present, no one else appearing although duly served as appears from the Affidavit of Service of Pina Macri affirmed March 10, 2022, filed:

SERVICE

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

EXTENSION OF THE STAY PERIOD

2. **THIS COURT ORDERS** that the Stay Period as defined in paragraph 18 of the Second Amended and Restated Initial Order dated March 12, 2019 is hereby extended until and including September 30, 2022.

GENERAL

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

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

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



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 IMPERIAL TOBACCO CANADA LIMITED AND IMPERIAL TOBACCO COMPANY LIMITED

Court File No: CV-19-616077-00CL

22 March 22

Order to go as per the draft filed and signed.
The motion is unopposed and the Monitor supports the relief sought.
I am satisfied that the Applicant is acting in good faith and with due diligence.
The outstanding Orders are being complied with and the complex mediation continues.
There is also sufficient liquidity during the stay period.



**ONTARIO
SUPERIOR COURT OF JUSTICE
(Commercial List)**

Proceeding Commenced at Toronto

ORDER

(Stay Extension to September 30, 2022)

OSLER, HOSKIN & HARCOURT LLP

Box 50, 1 First Canadian Place
Toronto ON M5X 1B8

Deborah Glendinning (LSO# 31070N)
Marc Wasserman (LSO# 44066M)
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Lawyers for the Applicants, Imperial Tobacco Canada Limited and Imperial Tobacco Company Limited

Superior Court of Justice
Commercial List

19-CV-616077-00CL
19-CV-616779-00CL

FILE/DIRECTION/ORDER

In the Matter of ITII (Imperial/Rothmans) Plaintiff(s)
AND

Defendant(s)

Case Management Yes No by Judge: McEwain J

Counsel	Telephone No:	Facsimile No:
<u>(as per attached counsel slip)</u>		

- Order Direction for Registrar (No formal order need be taken out)
- Above action transferred to the Commercial List at Toronto (No formal order need be taken out)
- Adjourned to: _____
- Time Table approved (as follows):

These matters returned before me again today to seek further stay extensions, and related relief.

There is no opposition to the relief sought, and the Monitors support the Applicants.

I agree with the Applicants that the orders sought ought to be granted.

27 Sept 21
Date

McEwain
Judge's Signature

Additional Pages two

Court File Number: _____

Superior Court of Justice
Commercial List

FILE/DIRECTION/ORDER

Judges Endorsment Continued

The mediation is ongoing and, overall, the Applicants continue to act in good faith and with due diligence - act required.

The reports of the Monitors show that the Applicants have sufficient liquidity to operate during the extension period - up to March 31/22.

I further agree that the proposed stay extension will not cause material prejudice to the creditors, nor is any alleged.

The draft orders filed in each Application shall go as per the drafts filed and signed today

M. J. T.

Court File No. CV-19-616077-00CL

ONTARIO
SUPERIOR COURT OF JUSTICE
(COMMERCIAL LIST)

THE HONOURABLE) MONDAY, THE 11th
)
MR. JUSTICE MCEWEN) DAY OF JULY, 2022

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 IMPERIAL TOBACCO CANADA LIMITED AND IMPERIAL TOBACCO
COMPANY LIMITED

APPLICANTS

ORDER

(New Excise Act Security)

THIS MOTION, made by Imperial Tobacco Canada Limited and Imperial Tobacco Company Limited (the "**Applicants**"), pursuant to the *Companies' Creditors Arrangement Act* (Canada), as amended, for an order, among other things, authorizing the Applicants to post the New Excise Act Security (defined below), notwithstanding any restrictions that may be contained in the initial order as amended and restated, including by a second amended and restated initial order dated April 26, 2019 (the "**Initial Order**"), was heard this day by judicial videoconference via Zoom in Toronto, Ontario due to the COVID-19 pandemic.

ON READING the Notice of Motion of the Applicants dated July 7, 2022, the Affidavit of George Rokas sworn July 7, 2022 (the "**Rokas Affidavit**"), the Twelfth Report of FTI Consulting Canada Inc. in its capacity as Monitor of the Applicants (the "**Monitor**"), and on hearing the submissions of counsel for the Applicants, the Monitor, and such other counsel as were present as listed on the participant sheet, no one else appearing although duly served as appears from the affidavit of service, filed:

SERVICE

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

NEW EXCISE ACT SECURITY AUTHORIZATION

2. **THIS COURT ORDERS** that Imperial Tobacco Canada Limited is authorized to post security as required by the Excise Act Amendments (defined in the Rokas Affidavit) in an aggregate amount not exceeding \$5 million (the “**New Excise Act Security**”), and to take any steps necessary to otherwise comply with the requirements of the New Excise Act Security, notwithstanding any restrictions that might otherwise arise under the terms of the Initial Order.

3. **THIS COURT ORDERS** that except as specifically revised herein or in another order of this Court, the Initial Order continues in full force and effect.

GENERAL

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



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 IMPERIAL TOBACCO CANADA LIMITED
AND IMPERIAL TOBACCO COMPANY LIMITED

Court File No: CV-19-616077-00CL

**ONTARIO
SUPERIOR COURT OF JUSTICE
COMMERCIAL LIST**

PROCEEDING COMMENCED AT TORONTO

ORDER

OSLER, HOSKIN & HARCOURT LLP

100 King Street West
1 First Canadian Place
Suite 6200, P.O. Box 50
Toronto ON M5X 1B8

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Lawyers for the applicants, Imperial Tobacco Canada Limited and
Imperial Tobacco Company Limited

CV-19-61679-00CL

Superior Court of Justice
Commercial List

FILE/DIRECTION/ORDER

In the Matter of... RBH / Imperial
Plaintiff(s)

AND

Defendant(s)

Case Management Yes No by Judge: McEwen J.

Counsel	Telephone No:	Facsimile No:
(see counsel slip)		

- Order Direction for Registrar (No formal order need be taken out)
- Above action transferred to the Commercial List at Toronto (No formal order need be taken out)
- Adjourned to: _____
- Time Table approved (as follows):

The attached orders shall go as per the drafts filed + signed as attached to this endorsement.

The orders sought are unopposed and are supported by the Monitor.

I agree that the orders sought are reasonable and necessary so that the Applicants can comply with the Excise Tax Amendments.

11 July 22
Date

McEwen J.
Judge's Signature

Additional Pages two

Court File Number: _____

**Superior Court of Justice
Commercial List**

FILE/DIRECTION/ORDER

Judges Endorsment Continued

As noted in the orders the provisions
of the Initial Order (unless
revised by another subsequent order
of this Court) remain in full
force & effect.

McInt.

Court File No. CV-19-616077-00CL

**Imperial Tobacco Canada Limited and
Imperial Tobacco Company Limited**

TENTH REPORT OF THE MONITOR

September 20, 2021



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Court File No. CV-19-616077-00CL

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

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

AND IN THE MATTER OF A PLAN OF COMPROMISE OR ARRANGEMENT OF
IMPERIAL TOBACCO CANADA LIMITED AND IMPERIAL TOBACCO
COMPANY LIMITED

**TENTH REPORT TO THE COURT
SUBMITTED BY FTI CONSULTING CANADA INC.,
IN ITS CAPACITY AS MONITOR**

A. GENERAL

1. In this Report, unless otherwise defined, all capitalized terms shall have the respective meanings specified in the glossary attached to this Report as Appendix "A". The first instance of each capitalized term, if defined in the glossary, is hyperlinked to the glossary.

B. INTRODUCTION

2. The principal purpose of these CCAA Proceedings, and the related Chapter 15 Proceedings, is to restructure and compromise Imperial's liabilities, specifically the liabilities arising from the Tobacco Claims, including the Quebec Appeal Judgment.
3. The Initial Order in these CCAA Proceedings was issued by this Court on March 12, 2019, as amended and restated as of April 5, 2019, further amended and restated as of April 25, 2019, and updated by written endorsement on March 6, 2020.

4. A list of the orders issued by this Court and the US Bankruptcy Court in these CCAA Proceedings can be found in Appendix “B” to this Report.

C. BACKGROUND

5. Imperial is the largest distributor of Tobacco Products in Canada and operates two businesses: tobacco and logistics. The tobacco business includes the marketing and sale of Tobacco Products and Vapour Products. The logistics business distributes Tobacco Products and Vapour Products for tobacco manufacturers, as well as certain non-tobacco products and services.
6. Imperial is highly integrated with BAT and its affiliates. Imperial benefits from a wide range of services, licences and rights provided by certain of BAT’s affiliates. These services and functions have been and continue to be vital for preserving Imperial’s business and value.
7. Further information regarding these CCAA Proceedings and Imperial’s background is provided in the previous Monitor’s Reports.
8. All Court materials filed and orders issued in these CCAA Proceedings and the related Chapter 15 Proceedings are available on the Monitor’s website at:
<http://cfcanada.fticonsulting.com/imperialtobacco>.

D. TERMS OF REFERENCE AND DISCLAIMER

9. In preparing this Report, the Monitor has relied upon certain financial information and forecasts prepared by Imperial, and discussions and correspondence with, among others, the senior management and advisors to Imperial. The Monitor has not audited or otherwise attempted to verify the accuracy or completeness of this information. Accordingly, the Monitor expresses no opinion or other form of assurance on the information contained in this Report or relied on in its preparation. Future oriented financial information reported or relied on in preparing this Report is based on Imperial management’s assumptions regarding future events; actual results may vary from the forecast and such variations may be material.

10. Unless otherwise stated, all monetary amounts contained herein are expressed in Canadian Dollars.
11. This Report should be read in conjunction with the September 2021 Thauvette Affidavit which can be found here.

E. PURPOSE OF THIS REPORT

12. The purpose of this Report is to provide this Court with information regarding:
 - i. an update on the Court and US Bankruptcy Court proceedings;
 - ii. an update on the Mediation;
 - iii. an update on the continued impact of the COVID-19 Pandemic on Imperial's business, and steps taken to mitigate the effects of future business interruptions;
 - iv. Imperial's business activities, industry developments and trends impacting Imperial's business and Imperial's related business contingency plan;
 - v. Imperial's budget to actual cash flow results for the 26-week period ending September 5, 2021;
 - vi. the Cash Flow Forecast for the 30-week period commencing the week of September 6, 2021 through the week of March 28, 2022;
 - vii. the new Tobacco Regulations coming into force and regulations governing Vapour Products;
 - viii. the activities of the Monitor and its counsel since March 19, 2021, the date of the Ninth Report;
 - ix. Imperial's request for an order extending the Stay of Proceedings to March 31, 2022; and

- x. the Monitor's comments and recommendations in respect of the foregoing matters.

F. UPDATE ON COURT PROCEEDINGS

- 13. On March 30, 2021, this Court heard a motion seeking the extension of the Stay of Proceedings and issued the September 2021 Stay Extension Order which extended the Stay Period to September 30, 2021. A copy of the September 2021 Stay Extension Order can be found here.
- 14. At the motion seeking the September 2021 Stay Extension Order, the Tobacco Growers' Marketing Board sought to lift the Stay of Proceedings only as against themselves. By endorsement dated April 6, 2021, this Court refused to lift the Stay of Proceedings. Instead, the Tobacco Growers' Marketing Board was advised to file materials and encouraged to engage in the ongoing mediation process.
- 15. The Tobacco Growers' Marketing Board proceeded to file and serve its motion record and factum seeking, *inter alia*, to be treated in the same manner as other suppliers of goods or services and distinct from the TRW Claimants. Following discussions among the Tobacco Growers' Marketing Board and counsel for the Tobacco Monitors the motion was adjourned *sine die* on July 29, 2021.
- 16. On May 3, 2021, US Counsel to the Monitor filed a Second Status Report and Declaration in support of Monitor's Second Status Report with the US Bankruptcy Court to provide the US Bankruptcy Court with an update on these CCAA Proceedings since the date of the previous status update provided on April 8, 2020. There was no hearing associated with such filing. A copy of the materials filed can be found here.
- 17. Due to the continued impact of the COVID-19 Pandemic, this hearing on the motion to extend the Stay of Proceedings will proceed by Zoom Video Conference according to the protocol developed by counsel to the Tobacco Monitors. The general public will have access to the hearing via secure, dedicated YouTube

livestream. This protocol has been re-served on the consolidated service list, is posted to the Monitor's website and can be found at Appendix "C" to this Report.

G. UPDATE ON THE MEDIATION

18. The Monitor continues to work with Imperial to populate the Imperial Data Room with financial and other information relevant to these CCAA Proceedings and to respond to information requests. The Imperial Data Room is accessible only to those advisors of Mediation Participants who have executed NDAs.
19. Since the date of the Ninth Report, the Court-Appointed Mediator, with the assistance of the Tobacco Monitors, has continued to conduct the Mediation and engage in meaningful discussions with the Applicants and stakeholders. Although the Mediation is confidential, the Monitor can report that the parties are continuing to advance the Mediation with a view to facilitating a pan-Canadian global settlement of the Tobacco Claims.

H. COVID-19 PANDEMIC IMPACT UPDATE

20. Since the COVID-19 business impact analysis was provided by Imperial and posted to the Imperial Data Room (as discussed in the Ninth Report), Imperial has continued to take various steps to address the effects of the COVID-19 Pandemic.
21. As most recently described in the September 2021 Thauvette Affidavit, while Imperial experienced temporary supply chain disruptions and challenges and incurred certain additional costs as a result of the COVID-19 Pandemic, the supply chain disruptions had only a short-term impact on Imperial's business. Nonetheless, Imperial, with the assistance of BAT operations, continues to refine their business contingency plan to be better prepared for future disruptions.
22. As part of this contingency planning, the BAT Group intends to purchase and reallocate certain manufacturing and packaging equipment to be installed in the US and Chile for Imperial's use in the future. Such equipment is expected to cost \$29 million at book value. Certain of the purchased equipment will be purchased by

the BAT Group directly from the manufacturer, while other equipment will be reallocated from affiliates of BAT. This additional equipment is intended to ensure there will be no disruption to the supply chain process in the future. Imperial advised the Monitor that it expects to incur development costs of \$5.8 million between now and March 2022 in connection with these contingency arrangements.

23. Imperial typically bears the cost of equipment used in the production of products manufactured by affiliates for sale to Imperial. The depreciation of equipment used to produce such products is a cost of production and as such Imperial anticipates it will incur an annual charge for the depreciation of such equipment over its useful life. However, to the extent such equipment is used for products sold to other BAT affiliates, the depreciation will be pro-rated between the relevant affiliate and Imperial.
24. The COVID-19 Pandemic has also had an impact on the way in which employees of Imperial work. As a result, Imperial is undertaking certain head office renovations, including IT infrastructure upgrades, to ensure employees have more connectivity and flexibility to work from home. The total cost of these renovations is expected to be approximately \$3.5 million.

I. IMPERIAL'S BUSINESS ACTIVITIES, INDUSTRY DEVELOPMENTS AND TRENDS IMPACTING IMPERIAL'S BUSINESS

Tax Issues

25. As described in the September 2021 Thauvette Affidavit, in March of 2021, Imperial and its counsel engaged in discussions with the Department of Justice in respect of a variety of issues, including in respect of (a) certain amounts outstanding for unpaid deductions at source, and amounts outstanding for non-resident tax withholdings, (b) the status of the Comprehensive Agreement entered by ITCAN in 2008 and (c) the status of the ongoing dispute between the CRA and ITCAN in respect of the reassessment of ITCAN's 2011 and 2014 taxation years.

26. ITCAN continues to keep the Monitor apprised of all discussions with the CRA and the Department of Justice.

(a) Unpaid Source Deductions and Non-Resident Tax Withholdings

27. As of July 2021, Imperial owed approximately \$2.3 million in unpaid source deductions and non-resident employee tax withholdings, related to various taxation years, across the Imperial entities.
28. As amounts for unpaid deductions at source for residents and non-residents are expressly required to be paid pursuant to paragraph 10 of the Initial Order, the Monitor approved payment of such amounts which were remitted in July 2021.

(b) Comprehensive Agreement

29. Pursuant to the Comprehensive Agreement, starting in 2019, ITCAN was obliged to remit to the CRA 1% of its net sales revenue for the next five fiscal years or until a maximum of \$50 million is paid.
30. In March of 2021, the Department of Justice (“**DOJ**”) and ITCAN held discussions in respect of ITCAN’s obligations under the Comprehensive Agreement which continue to accrue and had not been paid when due.
31. ITCAN, by letter to the DOJ dated May 13, 2021, informed the DOJ that it considers all current and future remittances pursuant to the Comprehensive Agreement to be unsecured claims and as such are stayed by the Stay of Proceedings. To the date of this Report there has been no response from the DOJ to this letter.

(c) ITCAN Reassessment

32. ITCAN was first reassessed by the CRA for the 2014 taxation year on June 10, 2019. The effect of this reassessment was to deny ITCAN’s deduction of expenses relating to settlement payments paid by ITCAN in 2014 to resolve a lawsuit brought

against ITCAN in respect of certain distributions received by ITCAN from Flintkote (a previous indirect subsidiary of a predecessor of ITCAN) and legal expenses related to same (the “**Flintkote Issue**”). The result of such reassessment was a potential tax liability estimated to be approximately \$227 million.

33. ITCAN objected to the reassessment on September 5, 2019. CRA Appeals informed ITCAN of its intention to maintain the CRA’s assessment in respect of the Flintkote Issue on November 16, 2020. Following discussions between CRA Appeals and counsel to Imperial, CRA Appeals agreed to extend the date of the formal reassessment until May 21, 2021.
34. On May 13, 2021, counsel to Imperial delivered a responding letter to the DOJ suggesting that the most efficient method of dealing with the Flintkote Issue would be for CRA’s claim to be addressed in the CCAA Proceedings. As at the date of this Report there has been no response from the DOJ or CRA Appeals to this letter.

Slide and Shell Equipment

35. As described in the Eighth Report, Imperial advised the Monitor that in order to meet increased production needs for certain brands of cigarettes, Imperial would require additional equipment at an estimated cost of \$12.9 million, which included the \$2.7 million equipment purchase from BAT Mexico previously approved by the Monitor. The Monitor worked with Imperial to review the business case and financial analysis before approving the additional proposed capital expenditure. In connection with the proposed capital expenditure, in April 2021, Imperial entered into a transaction with BAT Chile to purchase slide and shell equipment at its depreciated net book value of \$3.5 million. Furthermore, in August 2021, Imperial advised the Monitor that, subject to Monitor approval, it intended to enter into a transaction with BAT Mexico and BAT Honduras to purchase additional slide and shell equipment at its depreciated net book value of \$6.0 million. This equipment will be used for production in Canada.

36. The Monitor has completed its review of the necessity and business rationale for the remaining purchases of additional slide and shell equipment from BAT affiliates, as well as the consideration to be paid by Imperial and has approved the transactions.

Canadian Distribution Centres Upgrade

37. The automated equipment in Imperial's Canadian distribution centres operated by Ryder is nearing the end of its useful life and will need to be replaced starting in 2022. The cost to replace such equipment is currently estimated to be approximately \$20 million. The replacement project is expected to be completed by March 2023. The Monitor continues to work with Imperial to review the potential transactions and business case for this automation upgrade.

Fine Cut Tobacco Sourcing

38. Imperial currently purchases fine cut tobacco from BAT Mexico. In August 2021, Imperial advised the Monitor that it was planning to source this product from BAT manufacturing facilities in Germany and Hungary. This migration is expected to occur in the first quarter of 2022 and is expected to generate cost savings of \$0.6 million over the next 5 years. The Monitor has reviewed and approved the business case for this sourcing change.

Vuse Store Openings

39. As part of Imperial's strategy to market its Vapour Products which are sold under the "Vuse" trademark, it has continued to open additional Vuse stores. As of the date of this Report, Imperial currently has four open and operating Vuse stores and anticipates opening five additional Vuse stores across Canada by the end of the year.
40. In connection with the execution of leases on four of the above-mentioned stores, Imperial was required to post cash deposits (associated with two leases) and letters

of credit (associated with two leases) totaling \$0.3 million. While the amounts required to be posted were not significant, Imperial sought the Monitor's approval.

41. The Monitor and its counsel reviewed the various lease terms and the underlying business case and concurred with the posting of cash deposits.

Nicoventures Update

42. In June 2021, ITCAN advised the Monitor that in connection with the Supply of Marketing Services Agreement between ITCAN and Nicoventures (the "MSA"), ITCAN is providing additional services to Nicoventures in respect of product marketing in Canada.
43. The Monitor and its counsel have reviewed the underlying agreements and documents. All costs associated with the provision of these services will be borne by Nicoventures. Accordingly, the Monitor concurred with the changes to the MSA.
44. In July 2021, ITCAN advised the Monitor that, pursuant to the MSA, ITCAN intended to assign its rights to an invention related to flavoured Vapour Products developed by an ITCAN employee. Pursuant to the MSA any intellectual property developed in connection with the provision of Nicoventures' services immediately vests in and is owned by Nicoventures.
45. The Monitor and its counsel reviewed the various underlying agreements and proposed assignment document and advised ITCAN that, based on the facts and information provided by ITCAN, the Monitor did not object to ITCAN complying with its contractual obligations pursuant to the MSA.

Update on Proposed BAT Mexico Payments

46. As described in previous Monitor's Reports, the Monitor was advised by Imperial that BAT Mexico will be required to write off the undepreciated cost of certain

manufacturing equipment used to package and wrap Tobacco Products for Imperial and the cost of certain wrapping materials and finished goods, all of which have been rendered obsolete by the Tobacco Regulations.

47. The total estimated amount of \$55 million was anticipated to be billed by BAT Mexico to ITCAN at the end of 2019 pursuant to the terms of the BAT MX Agreement. This anticipated payment was disputed by the Quebec Litigation Plaintiffs.
48. No payment has been made to date and the Monitor continues to work with Imperial to review these proposed payments and the underlying documents.

**J. RECEIPTS AND DISBURSEMENTS FOR THE 26-WEEK PERIOD
ENDING SEPTEMBER 5, 2021**

49. Imperial's cash balance as of the week ended September 5, 2021 was \$2,269 million, an increase of approximately \$400 million, as compared to the forecasted net cash inflow of \$246 million over the 26-week period giving a positive variance of \$154 million as explained below:

VARIANCE REPORT	Actuals	Forecast	Variance
<i>CAD in thousands</i>	For the 26-week period ending Sep 05, 2021		
RECEIPTS			
Trade Receipts	2,533,765	2,495,699	38,066
DISBURSEMENTS			
<i>Operating Disbursements</i>			
Taxes and Levies	(1,657,402)	(1,722,797)	65,395
Operations	(478,380)	(526,628)	48,247
<i>Total Operating Disbursements</i>	(2,135,782)	(2,249,424)	113,642
OPERATING CASH FLOWS			
	397,983	246,275	151,708
<i>Financing Disbursements</i>			
Interest and Related Fees on Existing Facilities	5,345	5,535	(190)
<i>Restructuring Disbursements</i>			
Professional Fees	(3,506)	(6,145)	2,639
NET CASH FLOWS			
	399,822	245,664	154,158
CASH			
Beginning Balance	1,867,699	1,867,699	-
Net Cash Inflows / (Outflows)	399,822	245,664	154,158
Other (FX)	1,160	-	1,160
ENDING CASH	2,268,681	2,113,363	155,317

50. The significant budget to actual variances and corresponding explanations are as follows:

- i. *trade receipts*: positive permanent variance of \$38 million, or 2% against the forecast, primarily driven by higher-than-forecast pricing increases implemented by Imperial for its cigarettes and Vapour Products which was then partially offset by lower-than-forecast cigarette sales volumes;
- ii. *taxes and levies*: positive timing variance of \$65 million, primarily driven by lower-than-forecast cigarette sales volumes and as a result,

lower-than-forecast schedule of importation of cigarettes from US distribution centres that is expected to reverse in the future reporting period;

- iii. *operating disbursements*: positive timing variance of \$48 million, primarily driven by the lower-than-forecast purchase of cigarettes due to lower sales volumes and Vapour Products as a result of changes in the regulatory environment that is expected to reverse in the future reporting period;
- iv. *professional fees*: positive variance of \$2.6 million that consists of a positive permanent variance of \$2.3 million and a positive timing variance of \$0.3 million that is expected to reverse in the future reporting period.

K. CASH FLOW FORECAST

- 51. Imperial, with the assistance of the Monitor, has prepared a Cash Flow Forecast for the 30-week period ending the week of March 28, 2022. The Cash Flow Forecast is attached as Appendix “D” to this Report.
- 52. During the Forecast Period, total operating receipts are forecast to be approximately \$2,623 million and total operating disbursements are forecast to be approximately \$2,392 million, resulting in a net positive operating cash flow of approximately \$231 million. In addition, Imperial forecasts interest income of approximately \$7 million in respect of cash balances on deposit in Canada and professional fee disbursements of approximately \$7 million, such that net cash inflow is forecast to be approximately \$231 million.
- 53. Although net cash flows are positive during the Forecast Period, there are 8 weeks within this period which are forecasted to have negative operating cash flows. These are largely driven by the timing of the payment of taxes and government levies due at the end of each month. Cash flows in the weeks that fall on or around

month-end tax payments are expected to be negative and then offset by the receipt of the positive cash flows during the remainder of the month.

54. The Monitor has reviewed the Cash Flow Forecast to the standard required of a Court-appointed monitor by Section 23(1)(b) of the CCAA. Section 23(1)(b) requires a monitor to review the debtor's cash flow statement as to its reasonableness and to file a report with the court on the monitor's findings. The Canadian Association of Insolvency and Restructuring Professionals' Standards of Professional Practice include a standard for a monitor fulfilling its statutory responsibilities under the CCAA in respect of its report on the Cash Flow Forecast.
55. In accordance with the standard, the Monitor's review of the Cash Flow Forecast consisted of inquiries, analytical procedures and discussions related to the Cash Flow Forecast and its underlying assumptions. The Monitor's procedures with respect to the assumptions were limited to evaluating whether they were consistent with the purpose of the Cash Flow Forecast. The Monitor also reviewed the support provided by Imperial's management for the assumptions and the preparation and presentation of the Cash Flow Forecast.
56. Based on the Monitor's review, nothing has come to its attention that causes it to believe, in all material respects, that:
 - i. the assumptions are not consistent with the purpose of the Cash Flow Forecast;
 - ii. as at the date of this Report, the assumptions are not suitably supported and consistent with the plans of Imperial or do not provide a reasonable basis for the Cash Flow Forecast; or
 - iii. the Cash Flow Forecast does not reflect the assumptions.
57. As described in the Terms of Reference above, since the Cash Flow Forecast is based on assumptions regarding future events, actual results will vary from the

information presented even if the assumptions occur, and the variations could be material. Accordingly, the Monitor expresses no assurance as to whether the Cash Flow Forecast will be achieved. In addition, the Monitor expresses no opinion or other form of assurance with respect to the accuracy of the financial information presented in the Cash Flow Forecast or relied upon by the Monitor in preparing this Report.

58. The Cash Flow Forecast has been prepared solely for the purposes described above, and readers are cautioned that it may not be appropriate for other purposes.

L. NEW TOBACCO AND VAPOUR REGULATIONS

The Tobacco Regulations

59. As noted in previous Monitor's Reports, the majority of the Tobacco Regulations came into force on November 9, 2019. These regulations, *inter alia*, require manufacturers of Tobacco Products to use plain, unbranded packaging. The remaining Tobacco Regulations scheduled to come into force on November 9, 2021, are (i) the slide and shell packaging requirements, which require manufacturers of cigarettes to package such products using a slide and shell package of certain prescribed dimensions, and (ii) the appearance and filter requirements in respect of Tobacco Products that are made in whole or in part of tobacco and intended for use with a device. The Monitor continues to review the changes Imperial is implementing to meet such requirements.

The Regulation of Vapour Products

60. Vapour Products continue to come under increased global scrutiny resulting in stringent regulation and, in some cases, bans. As noted in previous Monitor's Reports, the Monitor has been advised by Imperial that, due to the new vaping regulations, there continues to be a high level of uncertainty surrounding the consumer demand for Vapour Products.

61. Appendix “E” to this Report summarizes the various regulatory changes related to Vapour Products that have been considered and implemented across Canada since the date of the Ninth Report.

M. OVERVIEW OF THE MONITOR’S ACTIVITIES

62. Since the date of the Ninth Report, the Monitor and its counsel have held numerous meetings and/or discussions with Imperial and its counsel to:

- i. monitor Imperial’s business activities;
- ii. monitor Imperial’s receipts and disbursements;
- iii. assist in the preparation of the Cash Flow Forecast;
- iv. prepare monthly professional fee disclosures;
- v. gather and review Information to be included in the Imperial Data Room;
- vi. address vendor and stakeholder inquiries;
- vii. evaluate a variety of legal and operational issues as they arise;
- viii. review proposed capital expenditures; and
- ix. further their understanding of Imperial’s business environment and the factors expected to impact its future business prospects.

63. As discussed above, the Monitor has continued to engage with Imperial to understand the supply chain disruptions to its operations caused by the COVID-19 Pandemic and review Imperial’s business contingency plan.

64. The Monitor has also regularly attended meetings with the Court-Appointed Mediator and stakeholders and has provided the Court-Appointed Mediator with information necessary to advance the Mediation.

65. The Tobacco Monitors and their counsel have met regularly to discuss ongoing matters including the Mediation, reviewing Information to be included in the Applicants' Data Rooms, procedural aspects of these CCAA Proceedings and the relief sought herein.

Professional Fee Disclosure

66. Pursuant to the Professional Fee Disclosure Order, the Monitor continues to provide to the Quebec Litigation Plaintiffs and other parties who requested such information, a summary, by firm, of the restructuring fees incurred on or after March 12, 2019 and paid to the CCAA Professionals each month.

N. STAY OF PROCEEDINGS

67. Imperial is seeking an extension of the Stay Period to March 31, 2022. The Monitor understands that such extension is necessary for Imperial to operate the business in the ordinary course as it continues to engage in the Mediation conducted by the Court-Appointed Mediator and to work towards developing a plan of compromise or arrangement for a pan-Canadian global settlement of the Tobacco Claims.

68. The Monitor supports an extension of the Stay of Proceedings for the following reasons:

- (a) Imperial is acting in good faith and with due diligence;
- (b) Imperial is continuing to engage meaningfully in the Mediation with the Court-Appointed Mediator in an effort to reach a pan-Canadian global settlement of the Tobacco Claims; and
- (c) the Cash Flow Forecast reflects that Imperial is projected to have sufficient funding to continue to operate in the normal course through the proposed extension to the Stay of Proceedings.

The Monitor respectfully submits this Report.

Dated this 20th day of September, 2021.

FTI Consulting Canada Inc.

FTI Consulting Canada Inc.

in its capacity as Monitor of Imperial Tobacco Canada Limited and Imperial Tobacco Company Limited and not in its personal capacity

APPENDIX “A” GLOSSARY

“**Applicants**” means, collectively, Imperial, JTIM and Rothmans.

“**BAT**” means British American Tobacco p.l.c., a public company listed on the London Stock Exchange.

“**BAT Chile**” means British American Tobacco Chile Operaciones S.A.

“**BAT Group**” means, collectively, British American Tobacco p.l.c., B.A.T. International Finance p.l.c., B.A.T Industries p.l.c., British American Tobacco (Investments) Limited, Carreras Rothmans Limited or entities related to or affiliated with them other than Imperial and the ITCAN Subsidiaries.

“**BAT Honduras**” means Tabacalera Hondurena S.A.

“**BAT Mexico**” means British American Tobacco Mexico S.A. de C.V.

“**Cash Flow Forecast**” means the cash flow forecast of Imperial’s receipts and disbursements for the 30-week period commencing the week of September 6, 2021 through the week of March 28, 2022.

“**CBSA**” means the Canada Border Services Agency.

“**CCAA**” means the *Companies’ Creditors Arrangement Act*, R.S.C. 1985, c. C-36, as amended.

“**CCAA Proceedings**” means Court File No. CV-19-616077-00CL commenced by Imperial under the CCAA.

“**CCAA Professionals**” means the Monitor, counsel to the Monitor, counsel to Imperial, and any financial advisor Imperial has retained in connection with these CCAA Proceedings, except for any financial advisor in respect of whose work Imperial properly asserts solicitor-client, settlement, litigation or other privilege.

“**Chapter 15 Proceedings**” means the proceedings commenced by ITCAN on March 13, 2019, for relief under Chapter 15 of the US Bankruptcy Code.

“**Comeback Motion**” means the Comeback Motion, as defined in the Initial Order, which was heard on April 4, 5, 25 and 26, 2019.

“**Consortium of Provinces**” means, collectively, the Province of British Columbia, the Province of Manitoba, the Province of New Brunswick, the Province of Nova Scotia, the Province of Prince Edward Island and the Province of Saskatchewan, in each province’s capacity as a plaintiff in the HCCR Claims.

“**Court**” means the Ontario Superior Court of Justice (Commercial List).

“**Court-Appointed Mediator**” means the Honourable Warren K. Winkler Q.C., acting as an officer of the Court and as a neutral third party to mediate a pan-Canadian global settlement in the context of these Tobacco CCAA Proceedings.

“**COVID-19 Pandemic**” means the global pandemic caused by the novel coronavirus.

“**CRA**” means the Canada Revenue Agency.

“**Data Rooms**” means data rooms containing Information in respect of the Applicants which are responsive to requests submitted by Mediation Participants, and as well as other information, which the Tobacco Monitors considered relevant.

“**Deloitte**” means Deloitte Restructuring Inc.

“**DOJ**” means the Department of Justice.

“**Eighth Report**” means the eighth report of the Monitor filed on September 22, 2020.

“**Excluded Claims**” means the claims excluded from the definition of TRW Claimants as described in paragraph 26 of Appendix “C” to the Sixth Report.

“**EY**” means Ernst & Young Inc.

“**Fifth Report**” means the report filed by the Monitor on September 25, 2019.

“**First Report**” means the report filed by the Monitor on April 3, 2019 in connection with the relief sought at the Comeback Motion.

“**Flintkote**” means the Flintkote Company.

“**Flintkote Issue**” has the definition ascribed to such term in paragraph 32 herein.

“**Forecast Period**” means the 30-week period commencing the week of September 6, 2021 through the week of March 28, 2022.

“**Fourth Report**” means the report filed by the Monitor on June 24, 2019.

“**FTI**” means FTI Consulting Canada Inc.

“**Genstar**” means Genstar Corporation, a subsidiary of ITCAN.

“**HCCR Claims**” means the claims started by each of the Provinces under each Province’s health care cost recovery legislation, to recover health care costs associated with smoking and the use of Tobacco Products.

“**Imperial**” means collectively, ITCAN and Imperial Tobacco Company Limited.

“**Imperial Data Room**” means a data room containing Information in respect of Imperial.

“**Information**” means common categories of information in respect of the Applicants which are responsive to requests submitted by Mediation Participants, as well as other information which the Tobacco Monitors considered relevant.

“**Initial Order**” means the initial order granted by this Court on March 12, 2019, as amended and restated as of April 5, 2019 and further amended and restated as of April 25, 2019 and updated by written endorsement on March 6, 2020, which authorized, among other things, the Stay of Proceedings and FTI’s appointment as Monitor of Imperial’s CCAA Proceedings.

“**ITCAN**” means Imperial Tobacco Canada Limited.

“**ITCAN Subsidiaries**” means Imperial Tobacco Services Inc., Imperial Tobacco Products Limited, Marlboro Canada Limited, Cameo Inc., Medallion Inc., Allan Ramsay and Company Limited, John Player & Sons Ltd., Imperial Brands Ltd., 2004969 Ontario Inc., Construction Romir Inc., Genstar, Imasco Holdings Group, Inc., ITL (USA) limited, Genstar Pacific Corporation, Imasco Holdings Inc., Southward Insurance Ltd., Liggett & Myers Tobacco Company of Canada Limited or entities related to or affiliated with them other than Imperial and the BAT Group.

“**JTIM**” means JTI-Macdonald Corp.

“**JTIM Group**” means the entities currently or formerly related to or affiliated with JTIM.

“**March 2021 Stay Extension Order**” means an order of the Court, dated September 29, 2020, extending the length of the Stay of Proceedings to March 31, 2021.

“**March Stay Extension Order**” means an order of the Court, dated October 8, 2019, extending the length of the Stay of Proceedings to March 12, 2020.

“**March Thauvette Affidavit**” means the affidavit of Eric Thauvette, Vice President and Chief Financial Officer of ITCAN, sworn March 12, 2019.

“**Mediation**” means the mediation process conducted by the Court-Appointed Mediator.

“**Mediation Participants**” means the Applicants, the Consortium of Provinces, the Provinces of Alberta, Newfoundland and Labrador, Ontario, and Quebec, the Quebec Litigation Plaintiffs, the TRW Claimants represented by Wagners, the “personal injury class action plaintiffs” represented by Merchant, the “tobacco light class action plaintiffs”, and the Tobacco Growers’ Marketing Board.

“**Merchant**” means Merchant Law Group LLP.

“**Monitor**” means FTI Consulting Canada Inc.

“**Monitor’s Reports**” means collectively, the Pre-Filing Report, the First Report, the Second Report, the Third Report, the Fourth Report, the Fifth Report, the Sixth Report, the Seventh Report, the Eighth Report, the Ninth Report and this Report.

“**MSA**” has the definition ascribed to such term in paragraph 42 herein.

“**NDA**” means a non-disclosure agreement for the purposes of gaining access to the Data Rooms.

“**Nicoventures**” means Nicoventures Trading Limited, a member of the BAT Group.

“**Ninth Report**” means the report filed by the Monitor on March 19, 2021.

“**October Endorsement**” means an endorsement of the Court, dated October 18, 2019, providing reasons for the March Stay Extension Order and the deferment of the issue of certain payments to BAT Mexico.

“**PMI Group**” means Philip Morris International Inc. and all entities related to or affiliated with it, other than Rothmans.

“**Pre-Filing Report**” means the report filed by the Monitor on March 12, 2019, in its capacity as proposed Monitor of Imperial, in connection with Imperial’s initial application for relief under the CCAA.

“**Professional Fee Disclosure Order**” means an order of this Court which authorized, among other things, the disclosure of the professional restructuring fees in these CCAA Proceedings by the Monitor on or before the 15th of every month, beginning with June 2019.

“**Provinces**” means all of the provinces of Canada.

“**Quebec Appeal Judgment**” means the Court of Appeal of Quebec’s decision on the appeal of the Quebec Judgment whereby the Court of Appeal substantially upheld the Quebec Judgment with two notable modifications: (i) the total claim amount was reduced by just over \$1 million; and (ii) the interest schedule was adjusted, reducing the interest payable on the total claim amount.

“**Quebec Judgment**” means the Quebec Superior Court’s judgment on the “Letourneau action” and the “Blais action” released on May 27, 2015 in which the trial judge found the co-defendants jointly liable for \$15.6 billion, with Imperial’s share being approximately \$10.6 billion.

“**Quebec Litigation Plaintiffs**” means, collectively, the representative plaintiffs and the certified class members in each of the “Letourneau action” and the “Blais action”, as described in the March Thauvette Affidavit.

“**Report**” means this tenth report of the Monitor filed on September 20, 2021.

“**Rothmans**” means Rothmans Benson & Hedges Inc.

“**Second Amended and Restated Initial Order**” means the Initial Order, as amended and restated as of April 25, 2019.

“**Second Report**” means the report filed by the Monitor on April 24, 2019.

“**September 2021 Stay Extension Order**” means an order of the Court, dated March 30, 2021, extending the length of the Stay of Proceedings to September 30, 2021

“**September 2021 Thauvette Affidavit**” means the affidavit of Eric Thauvette, Vice President and Chief Financial Officer of ITCAN, sworn September 17, 2021.

“**Seventh Report**” means the report filed by the Monitor on February 13, 2020.

“**Shapiro**” means Daniel Shapiro Legal Professional Corporation.

“**Sixth Report**” means the report filed by the Monitor on November 26, 2019.

“**Stay of Proceedings**” means the stay of proceedings during the Stay Period in favour of Imperial and their non-applicant subsidiaries, including Liggett & Meyers Tobacco Company of Canada Limited, as well as a limited stay in favour of BAT and certain BAT affiliates.

“**Stay Period**” means the term of the Stay of Proceedings, to September 30, 2021.

“**Third Report**” means the report filed by the Monitor on May 13, 2019.

“**Tobacco CCAA Proceedings**” means these CCAA Proceedings, Court File No. 19-CV-615862-00CL commenced by JTIM under the CCAA and Court File No. CV-19-616779-00CL commenced by Rothmans under the CCAA.

“**Tobacco Claims**” means all claims brought or that could be brought under applicable law against the Applicants in relation to the development, manufacturing, production, marketing, advertising of, any representations made in respect of, the purchase, sale, and use of, or exposure to, the Tobacco Products.

“**Tobacco Growers’ Marketing Board**” means The Ontario Flue-Cured Tobacco Growers’ Marketing Board.

“**Tobacco Monitors**” means, collectively, the Monitor, EY in its capacity as monitor for Rothmans, and Deloitte in its capacity as monitor for JTIM.

“**Tobacco Products**” means tobacco or any product made or derived from tobacco or containing nicotine that is intended for human consumption, including any component,

part, or accessory of or used in connection with a tobacco product, including cigarettes, cigarette tobacco, roll your own tobacco, smokeless tobacco, and any other tobacco or nicotine delivery systems and shall include materials, products and by-products derived from or resulting from the use of any tobacco products, but does not include heat-not-burn tobacco products or Vapour Products.

“Tobacco Regulations” means *The Tobacco Products Regulations (Plain and Standardization Appearance)*, SOR/2019-17.

“Tobacco-Related Wrongs” means all claims or causes of action in respect of: (i) the development, manufacture, production, importation, marketing, advertising, distribution, purchase or sale of Tobacco Products; (ii) the historical or ongoing use of or exposure to Tobacco Products; or (iii) any representation in respect of Tobacco Products, including, without limitation, claims for contribution or indemnity, personal injury or tort damages, restitutionary recovery, non-pecuniary damages or claims for recovery grounded in provincial consumer protection legislation, but does not include the Excluded Claims.

“TRW Claimants” means all individuals (including their respective successors, heirs, assigns, litigation guardians and designated representatives under applicable provincial family law legislation) who assert or may be entitled to assert a claim or cause of action as against one or more of the Applicants, the ITCAN subsidiaries, the BAT Group, the JTIM Group or the PMI Group, or persons indemnified by such entities, in respect of Tobacco-Related Wrongs in Canada, or in the case of the Applicants, anywhere else in the world.

“US” means the United States of America.

“US Bankruptcy Code” means title 11 of the United States Code.

“US Bankruptcy Court” means the United States Bankruptcy Court for the Southern District of New York.

“US Counsel” means Morgan, Lewis & Bockius LLP, US counsel to the Monitor.

“Vapour Products” means potential reduced risk, rechargeable, battery-powered devices that heat liquid formulations – e-liquids – to create a vapour which is inhaled, and which are sold under the tradename of Vype/Vuse.

“Wagners” means The Law Practice of Wagner & Associates, Inc.

APPENDIX "B" ORDERS

Please see below for a description of the orders issued by the Court and the US Bankruptcy Court in these CCAA Proceedings.

1. Initial Order:

The Initial Order of the Ontario Superior Court of Justice (Commercial List) made on March 12, 2019, as amended and restated as of April 5, 2019 and further amended and restated as of April 25, 2019, pursuant to which:

- (a) Imperial was granted an initial stay of proceedings under the CCAA until April 11, 2019; and
- (b) FTI was appointed as the Monitor.

A copy of the Initial Order can be found here.

2. Comeback Motion:

The Comeback Motion was heard on April 4 and 5, 2019. Following the Comeback Motion:

- (a) the Court issued an order dated April 5, 2019 extending the Stay of Proceedings to June 28, 2019, a copy of which can be found here;
- (b) the Court issued the Insurance Lift-Stay Order dated April 5, 2019, partially lifting the Stay of Proceedings to allow the Quebec Litigation Plaintiffs to seek the approval of certain insurance settlements, a copy of which can be found here; and
- (c) the Court issued an order dated April 5, 2019 amending and restating the Initial Order and appointing Hon. Warren K. Winkler, Q.C. as the Court-Appointed Mediator, a copy of which can be found here.

3. Foreign Recognition Order:

On April 17, 2019, the US Bankruptcy Court issued the Foreign Recognition Order recognizing the CCAA Proceedings as the main proceedings and staying proceedings against ITCAN in the US. The Foreign Recognition Order can be found here.

4. Second Amended and Restated Initial Order:

The Second Amended and Restated Initial Order was issued following the continuation of the Comeback Motion on April 25 and 26, 2019, a copy of which can be found here.

5. Representation Order

On April 25, 2019, the Court issued the Representation Order appointing Ari Kaplan of Kaplan Law as representative counsel to Robert M. Brown and George A. Foster, the court-appointed representatives of all persons with entitlements under certain retirements plans, including survivors and beneficiaries of such persons and any other person under the Representation Order. A copy of the Representation Order can be found [here](#).

6. Order to Amend the Ontario Claim

On April 29, 2019, the Court issued the Order to Amend the Ontario Claim, partially lifting the Stay of Proceedings to permit the Province of Ontario to seek leave to amend its Amended Fresh as Amended Statement of Claim in the proceedings related to Ontario's HCCR Claims. A copy of the Order to Amend the Ontario Claim can be found [here](#).

7. Notice Procedure Order:

On May 14, 2019, the Court issued the Notice Procedure Order, which among other things, appointed Vivian Bennan-Dolezar as an additional representative to the represented parties under the Representation Order and approved the form and manner of notice of the Settlement Approval Hearing to such represented parties. A copy of the Notice Procedure Order can be found [here](#).

8. Professional Fee Disclosure Order:

The Professional Fee Disclosure Order was issued on May 14, 2019 and can be found [here](#).

9. Communication and Confidentiality Protocol Endorsement

On May 24, 2019, the Court issued the Communication and Confidentiality Protocol Endorsement, pursuant to which the Court approved the communication and confidentiality protocol as between the Court and the Court-Appointed Mediator. A copy of the Communication and Confidentiality Protocol Endorsement can be found [here](#).

10. Clarification of Insurance Lift-Stay Order

On May 31, 2019, the Court issued the Clarification of Insurance Lift-Stay Order which clarified the scope of the Insurance Lift-Stay Order. A copy of the Clarification of Insurance Lift-Stay Order can be found [here](#).

11. October Stay Extension Order

The October Stay Extension Order was issued on June 26, 2019 and extended the Stay of Proceedings to October 4, 2019. A copy of the October Stay Extension Order can be found [here](#).

12. Genstar Settlement Approval Order

The Genstar Settlement Approval Order was issued on June 26, 2019, approving, among other things (i) the settlement entered into on April 25, 2019 between ITCAN and Robert M. Brown and George A. Foster, as representatives in respect of those certain retirement plans; and (ii) the distribution of the proceeds of such settlement among all persons with entitlements under certain retirements plans, including survivors and beneficiaries of such persons and any other person under the Representation Order. A copy of the Genstar Settlement Approval Order can be found here.

13. Order Appointing a Financial Advisor to the Court-Appointed Mediator

The Order Appointing a Financial Advisor to the Court-Appointed Mediator was issued on June 27, 2019, which appointed Alvarez & Marsal Canada Inc. as the financial advisor to the Court-Appointed Mediator. A copy of the Order Appointed a Financial Advisor to the Court-Appointed Mediator can be found here.

14. Court-to-Court Communications Order

On July 9, 2019, the Court issued the Court-to-Court Communications Order, approving court-to-court communications between the Court, the US Bankruptcy Court and any other court in any province or territory of Canada. A copy of the Court-to-Court Communications Order can be found here.

15. Order Recognizing the Genstar Settlement Approval Order

The US Bankruptcy Court granted an order recognizing the Genstar Settlement Approval Order on July 18, 2019. A copy of which can be found here.

16. Order Recognizing the Court-to-Court Communications Order

The US Bankruptcy Court granted an order recognizing the Court-to-Court Communications Order on September 5, 2019. A copy of which can be found here.

17. March Stay Extension Order and October Endorsement

The March Stay Extension Order was issued on October 2, 2019 and extended the Stay of Proceedings to March 12, 2020. A copy of the March Stay Extension Order can be found here. Justice McEwen released the October Endorsement on October 18, 2019 providing reasons for the March Stay Extension Order and the deferment of the issue of certain payments to BAT Mexico. A copy of the October Endorsement can be found here.

16. Representative Counsel Order

The Representative Counsel Order was issued on December 9, 2019 and appointed Wagners as representative counsel to the TRW Claimants. A copy of the Representative Counsel Order can be found here.

17. September Stay Extension Order

The September Stay Extension Order was issued on February 20, 2020 and extended the Stay of Proceedings to September 30, 2020. A copy of the September Stay Extension Order can be found [here](#).

18. Notice Protocol Endorsement

The Notice Protocol Endorsement was issued on March 6, 2020 and further amended the Second Amended and Restated Initial Order by adding paragraphs to govern the notice protocol for moving and responding parties in the CCAA Proceedings. A copy of the Notice Protocol Endorsement can be found [here](#).

19. Limited Lift of Stay Order

The Limited Lift of Stay Order was issued on March 16, 2020 and partially lifted the Stay of Proceedings to allow ITCAN to be added as a respondent to the application brought by the City of Ottawa bearing Court File No. 19-81809. A copy of the Limited Lift of Stay Order can be found [here](#).

20. Consultant Order

The Consultant Order was issued on September 15, 2020 and appointed Shapiro as consultant to the Court-Appointed Mediator. A copy of the Consultant Order can be found [here](#).

21. March 2021 Stay Extension Order

The March 2021 Stay Extension Order was issued on September 29, 2020, extending the Stay of Proceedings to March 31, 2021. A copy of the March 2021 Stay Extension Order can be found [here](#).

22. September 2021 Stay Extension Order

The September 2021 Stay Extension Order was issued on March 30, 2021, extending the Stay of Proceedings to September 30, 2021. A copy of the September 2021 Stay Extension Order can be found [here](#).

APPENDIX "C"
PROTOCOL FOR MOTION BY ZOOM VIDEO CONFERENCE

Please see attached.

PROTOCOL FOR MOTION BY ZOOM VIDEO CONFERENCE

Scheduling and Specific Requirements

1. Any person on the Service List that wishes to appear virtually on the motion, ("Participants") must register by 4:00 p.m. three (3) business days in advance of the hearing (Wednesday, September 22, 2021 for the motion scheduled Monday, September 27, 2021), by emailing Veritext Litigation Solutions Canada, Inc. (scheduling@neesonsreporting.com) and copying each Monitor's counsel (mpercy@dwpv.com, msassi@casselsbrock.com, nancy.thompson@blakes.com) and also advise if they intend to make submissions. All Participants will provide contact information, including a name, who they are acting for, an email address and phone number for the counsel slip.
2. Subject to the Court's overriding discretion over all matters, Monitors' counsel will coordinate with Participants and the Court to develop an agenda for the hearing.
3. Participants will appear by video. Monitors' counsel will distribute the Zoom link to Participants. Participants are not permitted to forward or share the Zoom link. No person should have access to the hearing on Zoom other than Participants. If a Participant is unable to attend by video, they should contact Monitors' counsel.
4. Counsel is not required to gown for the hearing. Instead, business attire is required for all Participants appearing by video.
5. For access by the general public, a YouTube link will be posted on each of the Monitors' websites by 10:00 a.m. not less than two (2) business days prior to the hearing. The YouTube link will allow the general public to view a livestream of the hearing, but not participate in the hearing. For greater clarity, individuals viewing the livestream via YouTube will not be heard or seen by the Court, Judge or Participants.
6. No recording of any part of the hearing (including audio) may be made unless authorized in advance by the Court.
7. For greater certainty, notice and service requirements are set out in the Rules of Civil Procedure, and the various orders and endorsements in the proceedings. For ease of reference, we have included paragraphs 58-63 of the Second Amended and Restated Initial Order dated March 8, 2019 in the JTIM proceedings, attached as Appendix "A". It should be noted that similar notice and service requirements have been set out in various orders and endorsements in the parallel proceedings of Imperial and RBH. Nothing in this protocol modifies or amends Orders of

the Court related to service requirements, the Rules of Civil Procedure, any Commercial List Practice Direction or other applicable rules.

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

Technical Requirements

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

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

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

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

12. Participants should log on using the Zoom link provided approximately 30 minutes before the hearing is scheduled to begin. During this time, Participants should speak to each other to determine if there are any audio/visual/connection issues.

13. It is suggested that Participants use the “gallery view” mode, rather than the “active speaker” mode, available on Zoom.

14. Should a Participant become disconnected from Zoom or experience technical difficulties during the hearing, they should immediately inform the Court by sending an email to Veritext Litigation Solutions Canada, Inc. (scheduling@neesonsreporting.com).

APPENDIX "A"

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

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

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

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

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

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

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

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

APPENDIX "B"

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

APPENDIX "D"
CASH FLOW FORECAST

Please see attached.

Imperial Tobacco Canada Limited

CCAA Cash Flow Forecast

(CAD\$ in thousands)

Week Beginning (Monday)	6-Sep-21	13-Sep-21	20-Sep-21	27-Sep-21	4-Oct-21	11-Oct-21	18-Oct-21	25-Oct-21	8-Nov-21	15-Nov-21	22-Nov-21	29-Nov-21	6-Dec-21	13-Dec-21	
RECEIPTS															
Trade Receipts	[2]	97,669	100,349	101,102	97,699	100,520	93,742	95,092	94,243	94,327	89,154	89,437	100,412	81,910	81,565
DISBURSEMENTS															
Operating Disbursements	[3]	(43,826)	(27,759)	(42,290)	(164,120)	-	(79,473)	(43,695)	(37,544)	(146,502)	(39,991)	(29,647)	(41,512)	(175,075)	(38,629)
Taxes and Levies	[4]	(20,613)	(4,695)	(17,602)	(15,160)	(12,886)	(10,968)	(18,792)	2,285	(14,374)	(6,858)	(16,331)	(41,488)	(13,938)	(8,506)
Operations		(64,439)	(32,454)	(59,892)	(179,281)	(12,886)	(90,441)	(62,487)	(35,259)	(160,876)	(46,849)	(45,978)	(82,999)	(189,013)	(47,135)
Total Operating Disbursements															
OPERATING CASH FLOWS															
		33,230	67,895	41,210	(81,582)	87,634	3,301	32,605	58,984	(66,548)	42,305	43,459	8,395	(88,601)	34,775
Financing Disbursements															
Interest and Related Fees	[5]	-	-	-	972	-	-	-	1,043	-	-	-	-	1,043	-
Restructuring Disbursements															
Professional Fees	[6]	(519)	(200)	(200)	(200)	(200)	(200)	(200)	(200)	(200)	(200)	(200)	(200)	(200)	(200)
NET CASH FLOWS															
		32,710	67,695	41,010	(80,809)	87,434	3,101	32,405	59,827	(66,748)	42,105	43,260	8,195	(87,758)	34,575
CASH															
Beginning Balance		2,268,681	2,301,391	2,369,086	2,410,096	2,329,287	2,416,721	2,419,823	2,452,228	2,512,055	2,445,308	2,487,413	2,530,672	2,538,868	2,451,110
Net Cash Inflows / (Outflows)		32,710	67,695	41,010	(80,809)	87,434	3,101	32,405	59,827	(66,748)	42,105	43,260	8,195	(87,758)	34,575
Other (FX)		-	-	-	-	-	-	-	-	-	-	-	-	-	-
ENDING CASH		2,301,391	2,369,086	2,410,096	2,329,287	2,416,721	2,419,823	2,452,228	2,512,055	2,445,308	2,487,413	2,530,672	2,538,868	2,451,110	2,485,685

Notes to the CCAA Forecast:

- [1] The purpose of this cash flow forecast is to estimate the liquidity requirements of the Company during the forecast period.
- [2] Forecast Trade Receipts include collections from the sale of tobacco-related products and other categories, net of returns, and inclusive of sales taxes. The sales forecast is based on historical sales patterns, seasonality, and current management's expectations, including the estimated impact of transition to plain-packaging regulations. The cash flow forecast includes certain price increases. The Company's ability to maintain the price increase is dependent on market conditions.
- [3] Forecast Taxes and Levies disbursements reflect the remittance of the federal excise tax, provincial tobacco taxes, sales taxes, and the Company's corporate income taxes.
- [4] Forecast Operations disbursements include employee-related costs, selling, general, administrative costs and intercompany costs. Intercompany costs include costs relating to the purchase of tobacco-related products and other categories, and services including: innovation fees, consulting and advisory fees, IT-related costs, product development and testing, accounting and human resources. Included in the intercompany costs is a disbursement of \$55 million to BAT Mexico for costs associated with the retirement of certain equipment and materials that are obsolete after the implementation of the Tobacco Products Regulations (Plain and Standardized Appearance).
- [5] Forecast Interest and Related Fees reflect interest income earned net of any sundry payments relating to existing facilities.
- [6] Forecast Professional Fees include fees for the Company's Counsel, the Monitor, the Monitor's Counsel, the Company's US Counsel, the Monitor's US Counsel, the Monitor's Agent, the Court-Appointed Mediator, the Court-Appointed Mediator's Counsel and the Representative Counsel for the TRW Claimants.

Imperial Tobacco Canada Limited

CCAA Cash Flow Forecast

(CAD\$ in thousands)

Week Beginning (Monday)	20-Dec-21	27-Dec-21	3-Jan-22	10-Jan-22	17-Jan-22	24-Jan-22	31-Jan-22	7-Feb-22	14-Feb-22	21-Feb-22	28-Feb-22	7-Mar-22	14-Mar-22	21-Mar-22	28-Mar-22	30-Mar-22	30-Week Total
RECEIPTS																	
Trade Receipts	102,010	60,313	73,794	74,229	75,271	76,096	77,732	79,158	81,773	78,895	81,571	86,329	87,839	88,765	90,297		2,622,686
DISBURSEMENTS																	
Operating Disbursements	(37,335)	(49,478)	(97,795)	(41,785)	(64,155)	(27,321)	(110,677)	(29,937)	(19,672)	(30,632)	(169,147)	(31,889)	(24,268)	(36,045)	(128,593)		(1,838,422)
Taxes and Levies	(49,567)	(8,616)	(9,455)	(14,316)	(6,982)	(25,466)	(12,561)	(15,526)	(8,667)	(53,814)	(10,890)	(14,135)	(7,387)	(16,577)	(87,261)		(553,551)
Operations	(86,902)	(58,094)	(107,250)	(56,101)	(71,137)	(52,787)	(123,238)	(45,464)	(28,339)	(84,446)	(180,037)	(46,024)	(31,655)	(52,622)	(215,853)		(2,391,674)
Total Operating Disbursements																	
OPERATING CASH FLOWS	15,108	2,219	(33,456)	18,127	4,134	23,309	(45,506)	33,694	53,434	(5,551)	(98,465)	40,305	56,184	36,143	(125,556)		230,333
Financing Disbursements																	
Interest and Related Fees	-	1,158	-	-	-	1,004	-	-	-	964	-	-	-	-	1,094		7,278
Restructuring Disbursements	(200)	(200)	(230)	(230)	(230)	(230)	(230)	(230)	(230)	(230)	(230)	(230)	(230)	(230)	(230)		(6,090)
Professional Fees																	
NET CASH FLOWS	14,908	3,177	(33,686)	17,898	3,904	24,083	(45,735)	33,465	53,204	(4,816)	(98,695)	40,076	55,954	35,913	(124,692)		231,722
CASH																	
Beginning Balance	2,525,014	2,539,923	2,543,100	2,509,414	2,527,312	2,531,216	2,555,300	2,509,564	2,543,029	2,596,233	2,591,417	2,492,722	2,532,798	2,588,752	2,624,665		2,268,381
Net Cash Inflows / (Outflows)	14,908	3,177	(33,686)	17,898	3,904	24,083	(45,735)	33,465	53,204	(4,816)	(98,695)	40,076	55,954	35,913	(124,692)		231,722
Other (FX)	-	-	-	-	-	-	-	-	-	-	-	-	-	-	-		-
ENDING CASH	2,539,923	2,543,100	2,509,414	2,527,312	2,531,216	2,555,300	2,509,564	2,543,029	2,596,233	2,591,417	2,492,722	2,532,798	2,588,752	2,624,665	2,499,973		2,499,973

Notes to the CCAA Forecast:

- [1] The purpose of this cash flow forecast is to estimate the liquidity requirements of the Company during the forecast period.
- [2] Forecast Trade Receipts include collections from the sale of tobacco-related products and other categories, net of returns, and inclusive of sales taxes. The sales forecast is based on historical sales patterns, seasonality, and current management's expectations, including the estimated impact of transition to plain-packaging regulations. The cash flow forecast includes certain price increases. The Company's ability to maintain the price increase is dependent on market conditions.
- [3] Forecast Taxes and Levies disbursements reflect the remittance of the federal excise tax, provincial tobacco taxes, sales taxes, and the Company's corporate income taxes.
- [4] Forecast Operations disbursements include employee-related costs, selling, general, administrative costs and intercompany costs. Intercompany costs include costs relating to the purchase of tobacco-related products and other categories, and services including: innovation fees, consulting and advisory fees, IT-related costs, product development and testing, accounting and human resources. Included in the intercompany costs is a disbursement of \$55 million to BAT Mexico for costs associated with the retirement of certain equipment and materials that are obsolete after the implementation of the Tobacco Products Regulations (Plain and Standardized Appearance).
- [5] Forecast Interest and Related Fees reflect interest income earned net of any sundry payments relating to existing facilities.
- [6] Forecast Professional Fees include fees for the Company's Counsel, the Monitor, the Monitor's Counsel, the Company's US Counsel, the Monitor's US Counsel, the US Noticing Agent, the Court-Appointed Mediator, the Court-Appointed Mediator's Counsel and the Representative Counsel for the TRW Claimants.

APPENDIX “E” REGULATION OF VAPOUR PRODUCTS

Please see below for a summary of the vaping regulations that are being considered and implemented across Canada since the date of the Ninth Report.

1. *Federal:*
 - i. On July 8, 2021 the new *Nicotine Concentration in Vaping Products Regulations* came into force, which (i) establish a maximum nicotine concentration of 20 mg/mL for Vapour Products marketed in Canada, (ii) prohibit the packaging and sale of Vapour Products if the nicotine concentration displayed on the package exceeds 20 mg/mL and (iii) amend the *Vaping Products Labelling and Packaging Regulations* to align this limit for Vapour Products intended for the domestic market. Retailers had until July 23, 2021 to comply with these regulations.
 - ii. On June 19, 2021 the federal government published a consultation on a potential ban of flavoured vaping products, including a draft *Order Amending Schedules 2 and 3 to the Tobacco and Vaping Products Act* and the draft *Standards for Vaping Products’ Sensory Attributes Regulations*. The proposed measures include (i) restricting the promotion of flavours of Vapour Products to tobacco, mint, menthol or a combination of mint and menthol, (ii) prohibiting all sugars and sweeteners as well as most flavouring ingredients from Vapour Products and (iii) prescribing sensory attributes standards to prevent a sensory perception other than one that is typical of tobacco or mint/menthol. The proposed measures were open for consultation until September 2, 2021.
2. *Alberta* – By Order in Council issued on June 24, 2021, Alberta proclaimed the *Tobacco and Smoking Reduction Amendment Act, 2020* to come into force on July 31, 2021. On the same date, Alberta also enacted the *Tobacco, Smoking and Vaping Reduction Amendment Regulation*, also to come into force on July 31, 2021. The

combined effect of both pieces of legislation is to regulate Vapour Products for the first time in Alberta, with restrictions on sale, promotion and public use of Vapour Products mostly aligned with those in effect for Tobacco Products. Among other new provisions, the sale of both Tobacco Products and Vapour Products from temporary or mobile sales premises is also banned.

3. *New Brunswick* – On June 11, 2021 two bills received royal assent, both of which amended the *Tobacco and Electronic Cigarette Sales Act*. Bill 55 comes into force on January 4, 2022 and will require any person operating a vapour shop on or after April 1, 2022 to hold a license. Bill 63 came into force on September 1, 2021 and banned the sale of Vapour Products that have a noticeable flavour (including mint and menthol) other than tobacco.
4. *Saskatchewan* – On April 14, 2021 *The Tobacco and Vapour Products Control Amendment Regulations, 2021* received royal assent. These regulations prohibit the sale of flavoured Vapour Products other than those that are tobacco, mint or menthol flavoured, other than in speciality vapour product stores in which those under the age of 18 are not permitted. These regulations came into force on September 1, 2021. On the same date the Vapour Products Tax became effective which applies a 20% sales tax to the sale of Vapour Products. Provincial Sales Tax of 6% no longer apply to such sales. Vendors of Vapour Products are also now required to register with the Ministry of Finance as a Vapour Products tax licensed vendor.
5. *Nunavut* - On June 8, 2021, Bill 57, *the Tobacco and Smoking Act* received Royal Assent. This Act regulates the sale of Vapour Products for the first time in the Territory. Amongst other things, the Act (i) prohibits the sale of flavoured Vapour Products (other than tobacco) in all retail, (ii) regulates the promotion of Vapour Products aligned with Tobacco Product restrictions, and (iii) prohibits same-day delivery of Vapour Products ordered online. The date this Act comes into force has yet to be published.

<p>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 IMPERIAL TOBACCO CANADA LIMITED AND IMPERIAL TOBACCO COMPANY LIMITED</p>			
<p>Court File No. CV-19-616077-00CL</p>		<p>ONTARIO SUPERIOR COURT OF JUSTICE (COMMERCIAL LIST)</p> <p>Proceeding commenced at Toronto</p>	<p>TENTH REPORT OF THE MONITOR SEPTEMBER 20, 2021</p>
			<p>DAVIES WARD PHILLIPS & VINEBERG LLP 155 Wellington Street West Toronto, ON M5V 3J7</p> <p>Natasha MacParland (LSO #42383G) Tel: 416.863.5567</p> <p>Robert Nicholls (LSO #75180A) Tel: 416.367.7484</p> <p>Fax: 416.863.0871</p> <p>Lawyers for the Monitor</p>

Court File No. CV-19-616077-00CL

**Imperial Tobacco Canada Limited and
Imperial Tobacco Company Limited**

ELEVENTH REPORT OF THE MONITOR

March 15, 2022



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APPENDIX “A” GLOSSARY

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APPENDIX “D” CASH FLOW FORECAST

APPENDIX “E” REGULATION OF VAPOUR PRODUCTS

Court File No. CV-19-616077-00CL

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

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

AND IN THE MATTER OF A PLAN OF COMPROMISE OR ARRANGEMENT OF
IMPERIAL TOBACCO CANADA LIMITED AND IMPERIAL TOBACCO
COMPANY LIMITED

**ELEVENTH REPORT TO THE COURT
SUBMITTED BY FTI CONSULTING CANADA INC.,
IN ITS CAPACITY AS MONITOR**

A. GENERAL

1. In this Report, unless otherwise defined, all capitalized terms shall have the respective meanings specified in the glossary attached to this Report as Appendix "A". The first instance of each capitalized term, if defined in the glossary, is hyperlinked to the glossary.

B. INTRODUCTION

2. The principal purpose of these CCAA Proceedings, and the related Chapter 15 Proceedings, is to restructure and compromise Imperial's liabilities, specifically the liabilities arising from the Tobacco Claims, including the Quebec Appeal Judgment.
3. The Initial Order in these CCAA Proceedings was issued by this Court on March 12, 2019, as amended and restated as of April 5, 2019, further amended and restated as of April 25, 2019, and updated by written endorsement on March 6, 2020.

4. A list of the Orders issued by this Court and the U.S. Bankruptcy Court in these CCAA Proceedings can be found in Appendix “B” to this Report.

C. BACKGROUND

5. Imperial is the largest distributor of Tobacco Products in Canada and operates two businesses: tobacco and logistics. The tobacco business includes the marketing and sale of Tobacco Products and Vapour Products. The logistics business distributes Tobacco Products and Vapour Products for tobacco manufacturers, as well as certain non-tobacco products and services.
6. Imperial is highly integrated with BAT and its affiliates. Imperial benefits from a wide range of services, licences and rights provided by certain of BAT’s affiliates. These services and functions have been and continue to be vital for preserving Imperial’s business and value.
7. Further information regarding these CCAA Proceedings and Imperial’s background is provided in the previous Monitor’s Reports.
8. All Court materials filed and orders issued in these CCAA Proceedings and the related Chapter 15 Proceedings are available on the Monitor’s website at:
<http://cfcanada.fticonsulting.com/imperialtobacco>.

D. TERMS OF REFERENCE AND DISCLAIMER

9. In preparing this Report, the Monitor has relied upon certain financial information and forecasts prepared by Imperial, and discussions and correspondence with, among others, the senior management and advisors to Imperial. The Monitor has not audited or otherwise attempted to verify the accuracy or completeness of this information. Accordingly, the Monitor expresses no opinion or other form of assurance on the information contained in this Report or relied on in its preparation. Future oriented financial information reported or relied on in preparing this Report is based on Imperial management’s assumptions regarding future events; actual results may vary from the forecast and such variations may be material.

10. Unless otherwise stated, all monetary amounts contained herein are expressed in Canadian Dollars.
11. This Report should be read in conjunction with the March 9, 2022 Thauvette Affidavit which can be found [here](#).

E. PURPOSE OF THIS REPORT

12. The purpose of this Report is to provide this Court with information regarding:
 - i. an update on the Mediation;
 - ii. an update on the continued impact of the COVID-19 Pandemic on Imperial's business, and steps taken to mitigate the effects of future business interruptions;
 - iii. Imperial's business activities, industry developments and trends impacting Imperial's business and Imperial's related business contingency plan;
 - iv. Imperial's budget to actual cash flow results for the 25-week period ending February 27, 2022;
 - v. the Cash Flow Forecast for the 31-week period commencing the week of February 28, 2022 through the week of September 30, 2022;
 - vi. the new Tobacco Regulations coming into force and regulations governing Vapour Products;
 - vii. the activities of the Monitor and its counsel since September 20, 2021, the date of the Tenth Report;
 - viii. Imperial's request for an order extending the Stay of Proceedings up to and including September 30, 2022; and
 - ix. the Monitor's comments and recommendations in respect of the foregoing matters.

F. UPDATE ON COURT PROCEEDINGS

13. On September 27, 2021, this Court heard a motion seeking the extension of the Stay of Proceedings and issued the March 2022 Stay Extension Order which extended the Stay Period to March 31, 2022. A copy of the March 2022 Stay Extension Order can be found [here](#).
14. Due to the continued impact of the COVID-19 Pandemic, this hearing on the motion to extend the Stay of Proceedings will proceed by Zoom Video Conference according to the protocol developed by counsel to the Tobacco Monitors. The general public will have access to the hearing via secure, dedicated YouTube livestream. This protocol has been re-served on the consolidated service list, is posted to the Monitor's website and can be found at Appendix "C" to this Report.

G. UPDATE ON THE MEDIATION

15. The Monitor continues to work with Imperial to populate the Imperial Data Room with financial and other information relevant to these CCAA Proceedings and to respond to information requests. The Imperial Data Room is accessible only to those advisors of Mediation Participants who have executed NDAs.
16. Since the date of the Tenth Report, the Court-Appointed Mediator, with the assistance of the Tobacco Monitors, has continued to conduct the Mediation and engage in meaningful discussions with the Applicants and stakeholders. Although the Mediation is confidential, the Monitor can report that the parties are continuing to advance the Mediation with a view to facilitating a pan-Canadian global settlement of the Tobacco Claims.

H. COVID-19 PANDEMIC IMPACT UPDATE

17. As most recently described in the September 2021 Thauvette Affidavit, while Imperial experienced temporary supply chain disruptions and challenges and incurred certain additional costs as a result of the COVID-19 Pandemic, the supply chain disruptions had only a short-term impact on Imperial's business. Nonetheless, Imperial, with the assistance of BAT operations, continues to refine their business contingency plan to be better prepared for future disruptions.

18. As described in the Monitor's Tenth Report and as part of this contingency planning, the BAT Group intends to purchase and reallocate certain manufacturing and packaging equipment to be installed in the United States and Chile for Imperial's use to prevent supply chain disruption in the future. Certain of the purchased equipment will be purchased by the BAT Group directly from the manufacturer, while other equipment will be reallocated from affiliates of BAT. The total cost of the equipment is expected to be approximately \$29 million and ownership will be retained by the BAT Group. Imperial has advised the Monitor that it expects to incur development costs of \$5.8 million in connection with these contingency arrangements, although no payments have been made to date and the disbursement timeline has not yet been determined. Imperial has advised the Monitor that it expects that the equipment will be installed in the United States by April 2022 and in Chile by September 2022. Imperial will continue to maintain increased inventory levels until the equipment is installed.
19. The COVID-19 Pandemic has also had an impact on the way in which employees of Imperial work. As a result, since the date of the Tenth Report, Imperial completed certain head office renovations, including IT infrastructure upgrades, to ensure employees have more connectivity and flexibility to work from home. The total cost of these renovations was approximately \$3.7 million, in line with Imperial's estimate. The head office has officially reopened as of February 28, 2022 with plans to gradually transition to a hybrid-work model, as public health restrictions permit.

I. IMPERIAL'S BUSINESS ACTIVITIES, INDUSTRY DEVELOPMENTS AND TRENDS IMPACTING IMPERIAL'S BUSINESS

(i) Tax Issues

20. As described in the September 2021 Thauvette Affidavit, in March 2021, Imperial and its counsel engaged in discussions with DOJ in respect of a variety of issues described in the Monitor's previous reports. ITCAN continues to keep the Monitor apprised of ongoing discussions with CRA and DOJ regarding the outstanding issues.

21. With respect to the Flintkote Issue set forth in greater detail in the Tenth Report, DOJ responded by email on September 22, 2021 to ITCAN's letter of May 13, 2021 in which ITCAN suggested that the most efficient method of dealing with the Flintkote Issue would be for CRA's claim to be addressed in the CCAA Proceedings. In its response letter, DOJ reaffirmed its position that the taxpayer objection and Tax Court of Canada appeal procedures set out in the Income Tax Act would be the most appropriate method for resolving the Flintkote Issue. Nevertheless, DOJ advised that CRA Appeals will continue to hold the objections in abeyance until further notice.

(ii) Canadian Distribution Centres Upgrade

22. As discussed in the Tenth Report, the automated equipment in Imperial's Canadian distribution centres operated by Ryder is nearing the end of its useful life and will be replaced starting in 2022.
23. Following a request for proposals, Imperial selected the most favourable bid based on the terms of the proposal and technical feasibility. The Monitor reviewed the selected proposal and, based on the terms of agreement proposed therein and discussions with Imperial, approved the capital expenditure of approximately \$20 million in October 2021. As of the date of this Report, ITCAN has paid approximately \$9.5 million. It is expected that the project will be completed by March 2023.

(iii) Fine Cut Tobacco Sourcing

24. As stated in the Tenth Report, Imperial advised the Monitor that it was planning to change the source for purchasing fine cut tobacco from BAT Mexico to BAT manufacturing facilities in Germany and Hungary. As of the date of this Report, the migration is ongoing and is expected to generate cost savings of \$0.6 million over the next five years. The Monitor has reviewed and approved the business case for this sourcing change.

(iv) Vuse Store Openings

25. As part of Imperial's strategy to market its Vapour Products which are sold under the "Vuse" trademark, it has continued to open additional Vuse stores. As of the date of this Report, Imperial currently has four Vuse stores and anticipates opening eight additional Vuse stores across Canada by the end of the year.
26. In connection with the execution of leases on six of the above-mentioned stores, Imperial was required to post cash deposits (associated with four leases) and letters of credit (associated with two leases) totaling approximately \$0.6 million.
27. While the amounts required to be posted were not significant, Imperial sought the Monitor's approval. The Monitor and its counsel reviewed the various lease terms and the underlying business case and concurred with the posting of such deposits.

J. RECEIPTS AND DISBURSEMENTS FOR THE 25-WEEK PERIOD ENDING FEBRUARY 27, 2022

28. Imperial's cash balance as of the week ended February 27, 2022 was \$2,573 million, an increase of approximately \$304 million, as compared to the forecasted net cash inflow of \$323 million over the 25-week period giving a negative variance of \$19 million as explained below:

VARIANCE REPORT	Actuals	Forecast	Variance
<i>CAD in thousands</i>	For the 25-week period ending Feb 27, 2022		
RECEIPTS			
Trade Receipts	2,190,076	2,187,885	2,191
DISBURSEMENTS			
<i>Operating Disbursements</i>			
Taxes and Levies	(1,416,214)	(1,448,481)	32,267
Operations	(473,428)	(417,302)	(56,126)
<i>Total Operating Disbursements</i>	(1,889,642)	(1,865,783)	(23,859)
OPERATING CASH FLOWS	300,434	322,102	(21,668)
<i>Financing Disbursements</i>			
Interest and Related Fees on Existing Facilities	5,539	6,184	(645)
<i>Restructuring Disbursements</i>			
Professional Fees	(3,373)	(5,550)	2,178
NET CASH FLOWS	302,600	322,736	(20,136)
CASH			
Beginning Balance	2,268,681	2,268,681	-
Net Cash Inflows / (Outflows)	302,600	322,736	(20,136)
Other (FX)	1,223	-	1,223
ENDING CASH	2,572,504	2,591,417	(18,913)

29. The significant budget to actual variances and corresponding explanations are as follows:

- i. *trade receipts*: positive permanent variance of \$2 million, or 0.1% against the forecast, as part of the ordinary course of business given the forecasted collections were approximately \$2,188 million over the current reporting period;
- ii. *taxes and levies*: positive timing variance of \$32 million, primarily driven by the schedule of importation of cigarettes into Canada that is expected to reverse in the future reporting period;

- iii. *operating disbursements*: negative timing variance of \$56 million, primarily driven by higher-than-forecast inventory purchases for Vapour Products of approximately \$34 million and lower-than-forecast reimbursement of expenses relating to the Vapour Products that is expected to reverse in the future reporting period. The lower-than-forecast reimbursement relating to the Vapour Products business is the result of the 2021 year-end accounting true up, driven by the reconciliation of the actual operating profit for the Vapour Product business against the target operating profit based on the limited risk distribution (LRD) model.
- iv. *professional fees*: positive variance of \$2.2 million that consists of a positive permanent variance of \$1.9 million and a positive timing variance of \$0.3 million that is expected to reverse in the future reporting period.

K. CASH FLOW FORECAST

- 30. Imperial, with the assistance of the Monitor, has prepared a Cash Flow Forecast for the 31-week period ending the week of September 30, 2022. The Cash Flow Forecast is attached as Appendix “D” to this Report.
- 31. During the Forecast Period, total operating receipts are forecast to be approximately \$2,930 million and total operating disbursements are forecast to be approximately \$2,402 million, resulting in a net positive operating cash flow of approximately \$528 million. In addition, Imperial forecasts interest income of approximately \$8 million in respect of cash balances on deposit in Canada and professional fee disbursements of approximately \$6 million, such that net cash inflow is forecast to be approximately \$530 million.
- 32. Although net cash flows are positive during the Forecast Period, there are nine weeks within this period which are forecasted to have negative operating cash flows. These are largely driven by the timing of the payment of taxes and government levies due at the end of each month. Cash flows in the weeks that fall

on or around month-end tax payments are expected to be negative and then offset by the receipt of the positive cash flows during the remainder of the month.

33. The Monitor has reviewed the Cash Flow Forecast to the standard required of a Court-appointed monitor by Section 23(1)(b) of the CCAA. Section 23(1)(b) requires a monitor to review the debtor's cash flow statement as to its reasonableness and to file a report with the court on the monitor's findings. The Canadian Association of Insolvency and Restructuring Professionals' Standards of Professional Practice include a standard for a monitor fulfilling its statutory responsibilities under the CCAA in respect of its report on the Cash Flow Forecast.
34. In accordance with the standard, the Monitor's review of the Cash Flow Forecast consisted of inquiries, analytical procedures and discussions related to the Cash Flow Forecast and its underlying assumptions. The Monitor's procedures with respect to the assumptions were limited to evaluating whether they were consistent with the purpose of the Cash Flow Forecast. The Monitor also reviewed the support provided by Imperial's management for the assumptions and the preparation and presentation of the Cash Flow Forecast.
35. Based on the Monitor's review, nothing has come to its attention that causes it to believe, in all material respects, that:
 - i. the assumptions are not consistent with the purpose of the Cash Flow Forecast;
 - ii. as at the date of this Report, the assumptions are not suitably supported and consistent with the plans of Imperial or do not provide a reasonable basis for the Cash Flow Forecast; or
 - iii. the Cash Flow Forecast does not reflect the assumptions.
36. As described in the Terms of Reference above, since the Cash Flow Forecast is based on assumptions regarding future events, actual results will vary from the information presented even if the assumptions occur, and the variations could be material. Accordingly, the Monitor expresses no assurance as to whether the Cash

Flow Forecast will be achieved. In addition, the Monitor expresses no opinion or other form of assurance with respect to the accuracy of the financial information presented in the Cash Flow Forecast or relied upon by the Monitor in preparing this Report.

37. The Cash Flow Forecast has been prepared solely for the purposes described above, and readers are cautioned that it may not be appropriate for other purposes.

L. NEW TOBACCO AND VAPOUR REGULATIONS

(i) The Tobacco Regulations

38. As noted in previous Monitor's Reports, the majority of the Tobacco Regulations came into force on November 9, 2019. These regulations, *inter alia*, require manufacturers of Tobacco Products to use plain, unbranded packaging. The remaining Tobacco Regulations came into force on November 9, 2021, requiring manufacturers of cigarettes to package such products using a slide and shell package. The Monitor noted that the transition to slide and shell packaging has been completed with no material disruptions to Imperial's business.

(ii) The Regulation of Vapour Products

39. Vapour Products continue to come under increased global scrutiny resulting in stringent regulation and, in some cases, bans. As noted in previous Monitor's Reports, the Monitor has been advised by Imperial that, due to the new vaping regulations, there continues to be a high level of uncertainty surrounding the consumer demand for Vapour Products.
40. Appendix "E" to this Report summarizes the various regulatory changes related to Vapour Products that have been considered and implemented across Canada since the date of the Tenth Report.

M. OVERVIEW OF THE MONITOR'S ACTIVITIES

41. Since the date of the Tenth Report, the Monitor and its counsel have held numerous meetings and/or discussions with Imperial and its counsel to:

- i. monitor Imperial's business activities;
 - ii. monitor Imperial's receipts and disbursements;
 - iii. assist in the preparation of the Cash Flow Forecast;
 - iv. prepare monthly professional fee disclosures;
 - v. gather and review Information to be included in the Imperial Data Room;
 - vi. address vendor and stakeholder inquiries;
 - vii. evaluate a variety of legal and operational issues as they arise;
 - viii. attend monthly board meetings;
 - ix. review proposed capital expenditures; and
 - x. further their understanding of Imperial's business environment and the factors expected to impact its future business prospects.
42. As discussed above, the Monitor has continued to engage with Imperial to understand the supply chain disruptions to its operations caused by the COVID-19 Pandemic and review Imperial's business contingency plan.
43. The Monitor has also regularly attended meetings with the Court-Appointed Mediator and stakeholders and has provided the Court-Appointed Mediator with information necessary to advance the Mediation.
44. The Tobacco Monitors and their counsel have met regularly to discuss ongoing matters including the Mediation, reviewing Information to be included in the Applicants' Data Rooms, procedural aspects of these CCAA Proceedings and the relief sought herein.

(i) Litigation Update

45. The Monitor is aware of and has been monitoring various ancillary litigation matters involving, and information requests posed to, Imperial following the

initiation of the CCAA Proceedings and the implementation of the Stay of Proceedings. The Monitor believes Imperial has been acting in good faith with respect to such matters, addressing the litigations on a case-by-case basis and apprising the Monitor of the action it intends to take ahead of time. The amounts at issue have been largely immaterial.

(ii) Professional Fee Disclosure

46. Pursuant to the Professional Fee Disclosure Order, the Monitor continues to provide to the Quebec Litigation Plaintiffs and other parties who requested such information, a summary, by firm, of the restructuring fees incurred on or after March 12, 2019 and paid to the CCAA Professionals each month.

N. STAY OF PROCEEDINGS

47. Imperial is seeking an extension of the Stay Period up to and including September 30, 2022. The Monitor understands that such extension is necessary for Imperial to operate the business in the ordinary course as it continues to engage in the Mediation conducted by the Court-Appointed Mediator and to work towards developing a plan of compromise or arrangement for a pan-Canadian global settlement of the Tobacco Claims.
48. The Monitor supports an extension of the Stay of Proceedings for the following reasons:
- (a) Imperial is acting in good faith and with due diligence;
 - (b) Imperial is continuing to engage meaningfully in the Mediation with the Court-Appointed Mediator in an effort to reach a pan-Canadian global settlement of the Tobacco Claims; and
 - (c) the Cash Flow Forecast reflects that Imperial is projected to have sufficient funding to continue to operate in the normal course through the proposed extension to the Stay of Proceedings.

The Monitor respectfully submits this Report.

Dated this 15th day of March 2022.

FTI Consulting Canada Inc.

in its capacity as Monitor of Imperial Tobacco Canada Limited and Imperial Tobacco Company Limited and not in its personal capacity

**APPENDIX “A”
GLOSSARY**

“**Applicants**” means, collectively, Imperial, JTIM and Rothmans.

“**BAT**” means British American Tobacco p.l.c., a public company listed on the London Stock Exchange.

“**BAT Chile**” means British American Tobacco Chile Operaciones S.A.

“**BAT Group**” means, collectively, British American Tobacco p.l.c., B.A.T. International Finance p.l.c., B.A.T Industries p.l.c., British American Tobacco (Investments) Limited, Carreras Rothmans Limited or entities related to or affiliated with them other than Imperial and the ITCAN Subsidiaries.

“**BAT Honduras**” means Tabacalera Hondurena S.A.

“**BAT Mexico**” means British American Tobacco Mexico S.A. de C.V.

“**Cash Flow Forecast**” means the cash flow forecast of Imperial’s receipts and disbursements for the 31-week period commencing the week of February 28, 2022 through the week of September 30, 2022.

“**CCAA**” means the *Companies’ Creditors Arrangement Act*, R.S.C., 1985, c. C-36, as amended.

“**CCAA Proceedings**” means Court File No. CV-19-616077-00CL commenced by Imperial under the CCAA.

“**CCAA Professionals**” means the Monitor, counsel to the Monitor, counsel to Imperial, and any financial advisor Imperial has retained in connection with these CCAA Proceedings, except for any financial advisor in respect of whose work Imperial properly asserts solicitor-client, settlement, litigation or other privilege.

“**Chapter 15 Proceedings**” means the proceedings commenced by ITCAN on March 13, 2019, for relief under Chapter 15 of the U.S. Bankruptcy Code.

“**Comeback Motion**” means the Comeback Motion, as defined in the Initial Order, which was heard on April 4, 5, 25 and 26, 2019.

“**Consortium of Provinces**” means, collectively, the Province of British Columbia, the Province of Manitoba, the Province of New Brunswick, the Province of Nova Scotia, the Province of Prince Edward Island and the Province of Saskatchewan, in each province’s capacity as a plaintiff in the HCCR Claims.

“**Court**” means the Ontario Superior Court of Justice (Commercial List).

“**Court-Appointed Mediator**” means the Honourable Warren K. Winkler Q.C., acting as an officer of the Court and as a neutral third party to mediate a pan-Canadian global settlement in the context of these Tobacco CCAA Proceedings.

“**COVID-19 Pandemic**” means the global pandemic caused by the novel coronavirus.

“**CRA**” means the Canada Revenue Agency.

“**Data Rooms**” means data rooms containing Information in respect of the Applicants which are responsive to requests submitted by Mediation Participants, and as well as other information, which the Tobacco Monitors considered relevant.

“**Deloitte**” means Deloitte Restructuring Inc.

“**DOJ**” means the Department of Justice Canada.

“**Eighth Report**” means the eighth report of the Monitor filed on September 22, 2020.

“**Excluded Claims**” means the claims excluded from the definition of TRW Claimants as described in paragraph 26 of Appendix “C” to the Sixth Report.

“**EY**” means Ernst & Young Inc.

“**Fifth Report**” means the report filed by the Monitor on September 25, 2019.

“**First Report**” means the report filed by the Monitor on April 3, 2019 in connection with the relief sought at the Comeback Motion.

“**Flintkote**” means the Flintkote Company.

“**Flintkote Issue**” means the lawsuit brought against ITCAN in respect of certain distributions received by ITCAN from Flintkote (a previous indirect subsidiary of a predecessor of ITCAN) and legal expenses related to same, as more fully described in the Tenth Report.

“**Forecast Period**” means the 31-week period commencing the week of February 28, 2022 through the week of September 30, 2022.

“**Fourth Report**” means the report filed by the Monitor on June 24, 2019.

“**FTI**” means FTI Consulting Canada Inc.

“**Genstar**” means Genstar Corporation, a subsidiary of ITCAN.

“**HCCR Claims**” means the claims started by each of the Provinces under each Province’s health care cost recovery legislation, to recover health care costs associated with smoking and the use of Tobacco Products.

“**Imperial**” means collectively, ITCAN and Imperial Tobacco Company Limited.

“**Imperial Data Room**” means a data room containing Information in respect of Imperial.

“**Income Tax Act**” means the *Income Tax Act*, R.S.C., 1985, c. 1 (5th Supp.), as amended.

“**Information**” means common categories of information in respect of the Applicants which are responsive to requests submitted by Mediation Participants, as well as other information which the Tobacco Monitors considered relevant.

“**Initial Order**” means the initial order granted by this Court on March 12, 2019, as amended and restated as of April 5, 2019 and further amended and restated as of April 25, 2019 and updated by written endorsement on March 6, 2020, which authorized, among other things, the Stay of Proceedings and FTI’s appointment as Monitor of Imperial’s CCAA Proceedings.

“**ITCAN**” means Imperial Tobacco Canada Limited.

“**ITCAN Subsidiaries**” means Imperial Tobacco Services Inc., Imperial Tobacco Products Limited, Marlboro Canada Limited, Cameo Inc., Medallion Inc., Allan Ramsay and Company Limited, John Player & Sons Ltd., Imperial Brands Ltd., 2004969 Ontario Inc., Construction Romir Inc., Genstar, Imasco Holdings Group, Inc., ITL (USA) limited, Genstar Pacific Corporation, Imasco Holdings Inc., Southward Insurance Ltd., Liggett & Myers Tobacco Company of Canada Limited or entities related to or affiliated with them other than Imperial and the BAT Group.

“**JTIM**” means JTI-Macdonald Corp.

“**JTIM Group**” means the entities currently or formerly related to or affiliated with JTIM.

“**March 2021 Stay Extension Order**” means an Order of the Court, dated September 29, 2020, extending the length of the Stay of Proceedings to March 31, 2021.

“**March 2022 Stay Extension Order**” means an Order of the Court, dated September 27, 2021, extending the length of the Stay of Proceedings to March 31, 2022.

“**March 2022 Thauvette Affidavit**” means the Affidavit of Eric Thauvette, Vice President and Chief Financial Officer of ITCAN, sworn March 9, 2022.

“**March Stay Extension Order**” means an Order of the Court, dated October 8, 2019, extending the length of the Stay of Proceedings to March 12, 2020.

“**March Thauvette Affidavit**” means the Affidavit of Eric Thauvette, Vice President and Chief Financial Officer of ITCAN, sworn March 12, 2019.

“**Mediation**” means the mediation process conducted by the Court-Appointed Mediator.

“**Mediation Participants**” means the Applicants, the Consortium of Provinces, the Provinces of Alberta, Newfoundland and Labrador, Ontario, and Quebec, the Quebec

Litigation Plaintiffs, the TRW Claimants represented by Wagners, the “personal injury class action plaintiffs” represented by Merchant, the “tobacco light class action plaintiffs”, and the Tobacco Growers’ Marketing Board.

“**Merchant**” means Merchant Law Group LLP.

“**Monitor**” means FTI Consulting Canada Inc.

“**Monitor’s Reports**” means collectively, the Pre-Filing Report, the First Report, the Second Report, the Third Report, the Fourth Report, the Fifth Report, the Sixth Report, the Seventh Report, the Eighth Report, the Ninth Report, the Tenth Report and this Report.

“**MSA**” means the Supply of Marketing Services Agreement between ITCAN and Nicoventures.

“**NDA**” means a non-disclosure agreement for the purposes of gaining access to the Data Rooms.

“**Nicoventures**” means Nicoventures Trading Limited, a member of the BAT Group.

“**Ninth Report**” means the report filed by the Monitor on March 19, 2021.

“**October Endorsement**” means an Endorsement of the Court, dated October 18, 2019, providing reasons for the March Stay Extension Order and the deferment of the issue of certain payments to BAT Mexico.

“**PMI Group**” means Philip Morris International Inc. and all entities related to or affiliated with it, other than Rothmans.

“**Pre-Filing Report**” means the report filed by the Monitor on March 12, 2019, in its capacity as proposed Monitor of Imperial, in connection with Imperial’s initial application for relief under the CCAA.

“**Professional Fee Disclosure Order**” means an order of this Court which authorized, among other things, the disclosure of the professional restructuring fees in these CCAA Proceedings by the Monitor on or before the 15th of every month, beginning with June 2019.

“**Provinces**” means all of the provinces of Canada.

“**Quebec Appeal Judgment**” means the Court of Appeal of Quebec’s decision on the appeal of the Quebec Judgment whereby the Court of Appeal substantially upheld the Quebec Judgment with two notable modifications: (i) the total claim amount was reduced by just over \$1 million; and (ii) the interest schedule was adjusted, reducing the interest payable on the total claim amount.

“**Quebec Judgment**” means the Quebec Superior Court’s judgment on the “Letourneau action” and the “Blais action” released on May 27, 2015 in which the trial judge found the

co-defendants jointly liable for \$15.6 billion, with Imperial's share being approximately \$10.6 billion.

"Quebec Litigation Plaintiffs" means, collectively, the representative plaintiffs and the certified class members in each of the "Letourneau action" and the "Blais action", as described in the March 12, 2019 Thauvette Affidavit.

"Report" means this eleventh report of the Monitor filed on March 15, 2022.

"Rothmans" means Rothmans Benson & Hedges Inc.

"Second Amended and Restated Initial Order" means the Initial Order, as amended and restated as of April 25, 2019.

"Second Report" means the report filed by the Monitor on April 24, 2019.

"September 2021 Stay Extension Order" means an order of the Court, dated March 30, 2021, extending the length of the Stay of Proceedings to September 30, 2021

"September 2021 Thauvette Affidavit" means the Affidavit of Eric Thauvette, Vice President and Chief Financial Officer of ITCAN, sworn September 17, 2021.

"Seventh Report" means the report filed by the Monitor on February 13, 2020.

"Shapiro" means Daniel Shapiro Legal Professional Corporation.

"Sixth Report" means the report filed by the Monitor on November 26, 2019.

"Stay of Proceedings" means the stay of proceedings during the Stay Period in favour of Imperial and their non-applicant subsidiaries, including Liggett & Meyers Tobacco Company of Canada Limited, as well as a limited stay in favour of BAT and certain BAT affiliates.

"Stay Period" means the term of the Stay of Proceedings, to March 31, 2022.

"Tenth Report" means the report filed by the Monitor on September 20, 2021.

"Third Report" means the report filed by the Monitor on May 13, 2019.

"Tobacco CCAA Proceedings" means these CCAA Proceedings, Court File No. 19-CV-615862-00CL commenced by JTIM under the CCAA and Court File No. CV-19-616779-00CL commenced by Rothmans under the CCAA.

"Tobacco Claims" means all claims brought or that could be brought under applicable law against the Applicants in relation to the development, manufacturing, production, marketing, advertising of, any representations made in respect of, the purchase, sale, and use of, or exposure to, the Tobacco Products.

“**Tobacco Growers’ Marketing Board**” means The Ontario Flue-Cured Tobacco Growers’ Marketing Board.

“**Tobacco Monitors**” means, collectively, the Monitor, EY in its capacity as monitor for Rothmans, and Deloitte in its capacity as monitor for JTIM.

“**Tobacco Products**” means tobacco or any product made or derived from tobacco or containing nicotine that is intended for human consumption, including any component, part, or accessory of or used in connection with a tobacco product, including cigarettes, cigarette tobacco, roll your own tobacco, smokeless tobacco, and any other tobacco or nicotine delivery systems and shall include materials, products and by-products derived from or resulting from the use of any tobacco products, but does not include heat-not-burn tobacco products or Vapour Products.

“**Tobacco Regulations**” means *The Tobacco Products Regulations (Plain and Standardization Appearance)*, SOR/2019-107.

“**Tobacco-Related Wrongs**” means all claims or causes of action in respect of: (i) the development, manufacture, production, importation, marketing, advertising, distribution, purchase or sale of Tobacco Products; (ii) the historical or ongoing use of or exposure to Tobacco Products; or (iii) any representation in respect of Tobacco Products, including, without limitation, claims for contribution or indemnity, personal injury or tort damages, restitutionary recovery, non-pecuniary damages or claims for recovery grounded in provincial consumer protection legislation, but does not include the Excluded Claims.

“**TRW Claimants**” means all individuals (including their respective successors, heirs, assigns, litigation guardians and designated representatives under applicable provincial family law legislation) who assert or may be entitled to assert a claim or cause of action as against one or more of the Applicants, the ITCAN subsidiaries, the BAT Group, the JTIM Group or the PMI Group, or persons indemnified by such entities, in respect of Tobacco-Related Wrongs in Canada, or in the case of the Applicants, anywhere else in the world.

“**U.S.**” means the United States of America.

“**U.S. Bankruptcy Code**” means title 11 of the United States Code.

“**U.S. Bankruptcy Court**” means the United States Bankruptcy Court for the Southern District of New York.

“**U.S. Counsel**” means Morgan, Lewis & Bockius LLP, U.S. counsel to the Monitor.

“**Vapour Products**” means potential reduced risk, rechargeable, battery-powered devices that heat liquid formulations – e-liquids – to create a vapour which is inhaled, and which are sold under the tradename of Vype/Vuse.

“**Wagners**” means The Law Practice of Wagner & Associates, Inc.

APPENDIX “B” ORDERS

Please see below for a description of the orders issued by the Court and the U.S. Bankruptcy Court in these CCAA Proceedings.

1. Initial Order:

The Initial Order of the Ontario Superior Court of Justice (Commercial List) made on March 12, 2019, as amended and restated as of April 5, 2019 and further amended and restated as of April 25, 2019, pursuant to which:

- (a) Imperial was granted an initial stay of proceedings under the CCAA until April 11, 2019; and
- (b) FTI was appointed as the Monitor.

A copy of the Initial Order can be found [here](#).

2. Comeback Motion:

The Comeback Motion was heard on April 4 and 5, 2019. Following the Comeback Motion:

- (a) the Court issued an order dated April 5, 2019 extending the Stay of Proceedings to June 28, 2019, a copy of which can be found [here](#);
- (b) the Court issued the Insurance Lift-Stay Order dated April 5, 2019, partially lifting the Stay of Proceedings to allow the Quebec Litigation Plaintiffs to seek the approval of certain insurance settlements, a copy of which can be found [here](#); and
- (c) the Court issued an order dated April 5, 2019 amending and restating the Initial Order and appointing Hon. Warren K. Winkler, Q.C. as the Court-Appointed Mediator, a copy of which can be found [here](#).

3. Foreign Recognition Order:

On April 17, 2019, the U.S. Bankruptcy Court issued the Foreign Recognition Order recognizing the CCAA Proceedings as the main proceedings and staying proceedings against ITCAN in the United States. The Foreign Recognition Order can be found [here](#).

4. Second Amended and Restated Initial Order:

The Second Amended and Restated Initial Order was issued following the continuation of the Comeback Motion on April 25 and 26, 2019, a copy of which can be found [here](#).

5. Representation Order

On April 25, 2019, the Court issued the Representation Order appointing Ari Kaplan of Kaplan Law as representative counsel to Robert M. Brown and George A. Foster, the court-appointed representatives of all persons with entitlements under certain retirements plans, including survivors and beneficiaries of such persons and any other person under the Representation Order. A copy of the Representation Order can be found [here](#).

6. Order to Amend the Ontario Claim

On April 29, 2019, the Court issued the Order to Amend the Ontario Claim, partially lifting the Stay of Proceedings to permit the Province of Ontario to seek leave to amend its Amended Fresh as Amended Statement of Claim in the proceedings related to Ontario's HCCR Claims. A copy of the Order to Amend the Ontario Claim can be found [here](#).

7. Notice Procedure Order:

On May 14, 2019, the Court issued the Notice Procedure Order, which among other things, appointed Vivian Bennan-Dolezar as an additional representative to the represented parties under the Representation Order and approved the form and manner of notice of the Settlement Approval Hearing to such represented parties. A copy of the Notice Procedure Order can be found [here](#).

8. Professional Fee Disclosure Order:

The Professional Fee Disclosure Order was issued on May 14, 2019 and can be found [here](#).

9. Communication and Confidentiality Protocol Endorsement

On May 24, 2019, the Court issued the Communication and Confidentiality Protocol Endorsement, pursuant to which the Court approved the communication and confidentiality protocol as between the Court and the Court-Appointed Mediator. A copy of the Communication and Confidentiality Protocol Endorsement can be found [here](#).

10. Clarification of Insurance Lift-Stay Order

On May 31, 2019, the Court issued the Clarification of Insurance Lift-Stay Order which clarified the scope of the Insurance Lift-Stay Order. A copy of the Clarification of Insurance Lift-Stay Order can be found [here](#).

11. October Stay Extension Order

The October Stay Extension Order was issued on June 26, 2019 and extended the Stay of Proceedings to October 4, 2019. A copy of the October Stay Extension Order can be found [here](#).

12. Genstar Settlement Approval Order

The Genstar Settlement Approval Order was issued on June 26, 2019, approving, among other things (i) the settlement entered into on April 25, 2019 between ITCAN and Robert M. Brown and George A. Foster, as representatives in respect of those certain retirement plans; and (ii) the distribution of the proceeds of such settlement among all persons with entitlements under certain retirements plans, including survivors and beneficiaries of such persons and any other person under the Representation Order. A copy of the Genstar Settlement Approval Order can be found [here](#).

13. Order Appointing a Financial Advisor to the Court-Appointed Mediator

The Order Appointing a Financial Advisor to the Court-Appointed Mediator was issued on June 27, 2019, which appointed Alvarez & Marsal Canada Inc. as the financial advisor to the Court-Appointed Mediator. A copy of the Order Appointed a Financial Advisor to the Court-Appointed Mediator can be found [here](#).

14. Court-to-Court Communications Order

On July 9, 2019, the Court issued the Court-to-Court Communications Order, approving court-to-court communications between the Court, the U.S. Bankruptcy Court and any other court in any province or territory of Canada. A copy of the Court-to-Court Communications Order can be found [here](#).

15. Order Recognizing the Genstar Settlement Approval Order

The U.S. Bankruptcy Court granted an order recognizing the Genstar Settlement Approval Order on July 18, 2019. A copy of which can be found [here](#).

16. Order Recognizing the Court-to-Court Communications Order

The U.S. Bankruptcy Court granted an order recognizing the Court-to-Court Communications Order on September 5, 2019. A copy of which can be found [here](#).

17. March Stay Extension Order and October Endorsement

The March Stay Extension Order was issued on October 2, 2019 and extended the Stay of Proceedings to March 12, 2020. A copy of the March Stay Extension Order can be found here. Justice McEwen released the October Endorsement on October 18, 2019 providing reasons for the March Stay Extension Order and the deferment of the issue of certain payments to BAT Mexico. A copy of the October Endorsement can be found [here](#).

16. Representative Counsel Order

The Representative Counsel Order was issued on December 9, 2019 and appointed Wagners as representative counsel to the TRW Claimants. A copy of the Representative Counsel Order can be found [here](#).

17. September Stay Extension Order

The September Stay Extension Order was issued on February 20, 2020 and extended the Stay of Proceedings to September 30, 2020. A copy of the September Stay Extension Order can be found [here](#).

18. Notice Protocol Endorsement

The Notice Protocol Endorsement was issued on March 6, 2020 and further amended the Second Amended and Restated Initial Order by adding paragraphs to govern the notice protocol for moving and responding parties in the CCAA Proceedings. A copy of the Notice Protocol Endorsement can be found [here](#).

19. Limited Lift of Stay Order

The Limited Lift of Stay Order was issued on March 16, 2020 and partially lifted the Stay of Proceedings to allow ITCAN to be added as a respondent to the application brought by the City of Ottawa bearing Court File No. 19-81809. A copy of the Limited Lift of Stay Order can be found [here](#).

20. Consultant Order

The Consultant Order was issued on September 15, 2020 and appointed Shapiro as consultant to the Court-Appointed Mediator. A copy of the Consultant Order can be found [here](#).

21. March 2021 Stay Extension Order

The March 2021 Stay Extension Order was issued on September 29, 2020, extending the Stay of Proceedings to March 31, 2021. A copy of the March 2021 Stay Extension Order can be found [here](#).

22. September 2021 Stay Extension Order

The September 2021 Stay Extension Order was issued on March 30, 2021, extending the Stay of Proceedings to September 30, 2021. A copy of the September 2021 Stay Extension Order can be found [here](#).

23. March 2022 Stay Extension Order

The March 2022 Stay Extension Order was issued on September 27, 2021, extending the Stay of Proceedings to March 31, 2022. A copy of the March Stay Extension Order can be found [here](#).

APPENDIX "C"
PROTOCOL FOR MOTION BY ZOOM VIDEO CONFERENCE

Please see attached.

PROTOCOL FOR MOTION BY ZOOM VIDEO CONFERENCE

Scheduling and Specific Requirements

1. Any person on the Service List that wishes to appear virtually on the motion (“**Participants**”) must register by 4:00 p.m. three (3) business days in advance of the hearing (Thursday, March 17, 2022 for the motion scheduled Monday, March 22, 2022), by emailing Veritext Litigation Solutions Canada, Inc. (scheduling@neesonsreporting.com) and copying each Monitor’s counsel (tbarbiero@dwpv.com, msassi@casselsbrock.com, nancy.thompson@blakes.com). In their email, Participants should provide contact information, including a name, who they are acting for, an email address and phone number for the counsel slip, along with a statement regarding whether they intend to make submissions.
2. Subject to the Court’s overriding discretion over all matters, Monitors’ counsel will coordinate with Participants and the Court to develop an agenda for the hearing.
3. All material for use on the motion is to be posted on CaseLines, as more fully described in Appendix “B”.
4. Participants will appear by video. Monitors’ counsel will distribute the Zoom link to Participants. Participants are not permitted to forward or share the Zoom link. No person should have access to the hearing on Zoom other than Participants. If a Participant is unable to attend by video, they should contact Monitors’ counsel. Participants should carefully review the technical requirements below.
5. Counsel is not required to gown for the hearing. Instead, business attire is required for all Participants appearing by video.
6. For access by the general public, a YouTube link will be posted on each of the Monitors’ websites by 10:00 a.m. not less than two (2) business days prior to the hearing. The YouTube link will allow the general public to view a livestream of the hearing, but not participate in the hearing. For greater clarity, individuals viewing the livestream via YouTube will not be heard or seen by the Court, Judge or Participants.
7. No recording of any part of the hearing (including audio) may be made unless authorized in advance by the Court.
8. For greater certainty, notice and service requirements are set out in the Rules of Civil Procedure, and the various orders and endorsements in the proceedings. For ease of reference, we have included paragraphs 58-63 of the Second Amended and Restated Initial Order dated

March 8, 2019 in the JTIM proceedings, attached as Appendix “A”. It should be noted that similar notice and service requirements have been set out in various orders and endorsements in the parallel proceedings of Imperial and RBH. Nothing in this protocol modifies or amends Orders of the Court related to service requirements, the Rules of Civil Procedure, any Commercial List Practice Direction or other applicable rules.

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

Technical Requirements for Zoom Participants

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

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

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

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

13. Counsel on Zoom should identify their display name in the following format: [First Name] [Last name], for [Client].

14. Participants should log on using the Zoom link provided approximately 30 minutes before the hearing is scheduled to begin. During this time, Participants should speak to each other to determine if there are any audio/visual/connection issues.

15. It is suggested that Participants use the “gallery view” mode, rather than the “active speaker” mode, available on Zoom.

16. It is suggested that only counsel who are making submissions turn on their cameras during the hearing.

17. Should a Participant become disconnected from Zoom or experience technical difficulties during the hearing, they should immediately inform the Court by sending an email to Veritext Litigation Solutions Canada, Inc. (scheduling@neesonsreporting.com).
18. Further participant information is included in Appendix "B."

APPENDIX "A"

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

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

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

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

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

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

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

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

APPENDIX "B"

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

APPENDIX "D"
CASH FLOW FORECAST

Please see attached.

Imperial Tobacco Canada Limited

CCAA Cash Flow Forecast

(CAD\$ in thousands)

Week Beginning (Monday)

Forecast Week

	1	2	3	4	5	6	7	8	9	10	11	12	13	14	15
	28-Feb-22	7-Mar-22	14-Mar-22	21-Mar-22	28-Mar-22	4-Apr-22	11-Apr-22	18-Apr-22	25-Apr-22	2-May-22	9-May-22	16-May-22	23-May-22	30-May-22	6-Jun-22
RECEIPTS															
Trade Receipts	75,336	77,491	79,176	81,793	81,470	84,590	86,206	83,605	87,224	87,542	89,767	94,326	91,470	105,374	106,081
DISBURSEMENTS															
Operating Disbursements	(147,246)	(23,392)	(17,867)	(22,475)	(96,656)	-	(29,797)	(20,494)	(24,474)	(138,592)	(40,619)	(62,233)	(3,559)	(157,226)	(39,146)
Taxes and Levies	(10,272)	(20,168)	(4,245)	(22,488)	(14,694)	(17,824)	(10,750)	(10,817)	2,006	(12,012)	(14,492)	(8,290)	(63,279)	(11,454)	(16,123)
Operations	(157,518)	(43,500)	(22,113)	(44,962)	(111,351)	(17,824)	(40,548)	(31,310)	(22,468)	(150,604)	(55,111)	(70,522)	(56,838)	(168,680)	(55,269)
Total Operating Disbursements	(82,182)	33,931	57,063	36,831	(29,880)	66,766	45,658	52,295	64,757	(63,062)	34,656	23,803	34,632	(63,307)	50,812
OPERATING CASH FLOWS															
Financing Disbursements															
Interest and Related Fees					1,094				1,328						1,118
Restructuring Disbursements															
Professional Fees	(300)	(200)	(200)	(200)	(200)	(200)	(200)	(200)	(200)	(200)	(200)	(200)	(200)	(200)	(200)
NET CASH FLOWS															
	(82,482)	33,731	56,864	36,631	(28,986)	66,566	45,458	52,095	65,885	(63,261)	34,456	23,604	34,433	(62,388)	50,612
CASH															
Beginning Balance	2,572,504	2,490,022	2,523,753	2,617,248	2,588,262	2,654,827	2,700,286	2,752,381	2,818,266	2,755,005	2,789,461	2,813,065	2,847,497	2,785,109	2,785,109
Net Cash Inflows / (Outflows)	(82,482)	33,731	56,864	36,631	(28,986)	66,566	45,458	52,095	65,885	(63,261)	34,456	23,604	34,433	(62,388)	50,612
Other (FX)	-	-	-	-	-	-	-	-	-	-	-	-	-	-	-
ENDING CASH	2,490,022	2,523,753	2,580,617	2,617,248	2,588,262	2,654,827	2,700,286	2,752,381	2,818,266	2,755,005	2,789,461	2,813,065	2,847,497	2,785,109	2,835,721

Notes to the CCAA Forecast:

- [1] The purpose of this cash flow forecast is to estimate the liquidity requirements of the Company during the forecast period.
- [2] Forecast Trade Receipts include collections from the sale of tobacco-related products and other categories, net of returns, and inclusive of sales taxes. The sales forecast is based on historical sales patterns, seasonality, and current management's expectations, including the estimated impact of transition to plain-packaging regulations. The cash flow forecast includes certain price increases. The Company's ability to maintain the price increase is dependent on market conditions.
- [3] Forecast Taxes and Levies disbursements reflect the remittance of the federal excise tax, provincial tobacco taxes, sales taxes, and the Company's corporate income taxes. Due to a bank holiday on September 30, 2022, the cash flow forecast does not reflect approximately \$135 million of government levies and taxes due at the end of September which are now payable outside of the forecast period on October 3, 2022.
- [4] Forecast Operations disbursements include employee-related costs, selling, general, administrative costs and intercompany costs. Intercompany costs include costs relating to the purchase of tobacco-related products and other categories; and services including: innovation fees, consulting and advisory fees, IT-related costs, product development and testing, accounting and human resources. Included in the intercompany costs is a disbursement of \$55 million to BAT Mexico for costs associated with the retirement of certain equipment and materials that are obsolete after the implementation of the Tobacco Products Regulations (Plain and Standardized Appearance).
- [5] Forecast Interest and Related Fees reflect interest income earned net of any sundry payments relating to existing facilities.
- [6] Forecast Professional Fees include fees for the Company's Counsel, the Monitor, the Monitor's Counsel, the Company's US Counsel, the Monitor's US Counsel, the US Noticing Agent, the Court-Appointed Mediator, the Court-Appointed Mediator's Counsel and the Representative Counsel for the TRW Claimants.

Imperial Tobacco Canada Limited

CCAA Cash Flow Forecast

(CAD\$ in thousands)

Week Beginning (Monday)

Forecast Week	13-Jun-22	20-Jun-22	27-Jun-22	4-Jul-22	11-Jul-22	18-Jul-22	25-Jul-22	1-Aug-22	8-Aug-22	15-Aug-22	22-Aug-22	29-Aug-22	5-Sep-22	12-Sep-22	19-Sep-22	26-Sep-22	31-Sep-22	31-Week Total	
RECEIPTS																			
Trade Receipts	104,426	111,463	100,380	101,494	100,803	120,346	101,633	97,829	103,485	113,656	96,644	97,494	92,171	93,273	92,441	90,882	90,882	2,929,874	
DISBURSEMENTS																			
Operating Disbursements	(26,602)	(29,586)	(183,339)	-	(72,384)	(33,054)	(31,171)	(107,084)	(51,350)	(35,866)	(43,567)	(216,360)	-	(74,966)	(34,665)	(55,699)	(55,699)	(1,819,470)	
Taxes and Levies	(7,190)	(11,295)	(37,725)	(15,179)	(8,823)	(3,157)	(39,376)	(10,289)	(16,719)	(4,596)	(57,923)	(8,028)	(14,498)	(7,931)	(8,521)	(106,147)	(106,147)	(582,301)	
Operations	(33,792)	(40,881)	(221,065)	(15,179)	(81,207)	(36,212)	(70,548)	(117,374)	(68,069)	(40,462)	(101,490)	(224,388)	(14,498)	(82,896)	(43,186)	(161,846)	(161,846)	(2,401,771)	
Total Operating Disbursements	70,634	70,582	(120,685)	86,315	19,595	84,135	31,085	(19,544)	35,416	73,194	(4,846)	(126,894)	77,673	10,377	49,256	(70,964)	(70,964)	528,103	
OPERATING CASH FLOWS																			
Financing Disbursements	-	-	-	-	-	-	-	-	-	-	-	-	-	-	-	-	-	-	8,410
Interest and Related Fees	(200)	(200)	(200)	(200)	(200)	(200)	(200)	(200)	(200)	(200)	(200)	(200)	(200)	(200)	(200)	(200)	(200)	(200)	(6,292)
Restructuring Disbursements																			
Professional Fees																			
NET CASH FLOWS																			
CASH																			
Beginning Balance	2,835,721	2,906,156	2,976,538	2,856,791	2,942,907	2,962,302	3,046,237	3,078,296	3,058,552	3,093,768	3,166,762	3,161,717	3,035,861	3,113,334	3,123,511	3,172,567	3,172,567	2,572,504	
Net Cash Inflows / (Outflows)	70,435	70,382	(119,747)	86,115	19,395	83,935	32,059	(19,744)	35,216	72,994	(5,045)	(125,856)	77,473	10,177	49,056	(69,842)	(69,842)	530,220	
Other (FX)	-	-	-	-	-	-	-	-	-	-	-	-	-	-	-	-	-	-	-
ENDING CASH	2,906,156	2,976,538	2,856,791	2,942,907	2,962,302	3,046,237	3,078,296	3,058,552	3,093,768	3,166,762	3,161,717	3,035,861	3,113,334	3,123,511	3,172,567	3,102,725	3,102,725	3,102,725	

Notes to the CCAA Forecast:

- [1] The purpose of this cash flow forecast is to estimate the liquidity requirements of the Company during the forecast period.
- [2] Forecast Trade Receipts include collections from the sale of tobacco-related products and other categories, net of returns, and inclusive of sales taxes. The sales forecast is based on historical sales patterns, seasonality, and current management's expectations, including the estimated impact of transition to plain-packaging regulations. The cash flow forecast includes certain price increases. The Company's ability to maintain the price increase is dependent on market conditions.
- [3] Forecast Taxes and Levies disbursements reflect the remittance of the federal excise tax, provincial tobacco taxes, sales taxes, and the Company's corporate income taxes. Due to a bank holiday on September 30, 2022, the cash flow forecast does not reflect approximately \$135 million of government levies and taxes due at the end of September which are now payable outside of the forecast period on October 3, 2022.
- [4] Forecast Operations disbursements include employee-related costs, selling, general, administrative costs and intercompany costs. Intercompany costs include costs relating to the purchase of tobacco-related products and other categories, and services including: innovation fees, consulting and advisory fees, IT-related costs, product development and testing, accounting and human resources. Included in the intercompany costs is a disbursement of \$55 million to BAT Mexico for costs associated with the retirement of certain equipment and materials that are obsolete after the implementation of the Tobacco Products Regulations (Plain and Standardized Appearance).
- [5] Forecast Interest and Related Fees reflect interest income earned net of any sundry payments relating to existing facilities.
- [6] Forecast Professional Fees include fees for the Company's Counsel, the Monitor, the Monitor's Counsel, the Company's US Counsel, the Monitor's US Counsel, the US Noticing Agent, the Court-Appointed Mediator, the Court-Appointed Mediator's Counsel and the Representative Counsel for the TRW Claimants.

APPENDIX “E” REGULATION OF VAPOUR PRODUCTS

Please see below for a summary of the vaping regulations that are being considered and implemented across Canada since the date of the Tenth Report.

1. **Federal:** On September 2, 2021, consultation closed on the federal government’s proposals for a potential ban of flavoured vaping products, with the exception of tobacco, mint or menthol flavours.
2. **New Brunswick:** On June 11, 2021, two bills to amend New Brunswick’s *Tobacco and Electronic Cigarette Sales Act* received royal assent. Bill 63 came into force on September 1, 2021 and amended the *Tobacco and Electronic Cigarette Sales Act* to ban the sale or offering for sale of Vapour Products that have a noticeable flavor (including mint and menthol), other than tobacco flavour. Bill 55 came into force on January 4, 2022 and amended the *Tobacco and Electronic Cigarette Sales Act* to impose a licensing requirement for the operation of vapour shops in the province on or after April 1, 2022.
3. **Saskatchewan:** On September 1, 2021, Saskatchewan’s *Tobacco and Vapour Product Control Amendment Regulations, 2021* and section 5.2 of the *Tobacco and Vapour Product Control Act* came into force. The combined effect of both enactments is to ban the sale of products with flavours other than tobacco, menthol and mint in general retail, while permitting other flavours to be sold in adult-only vapour product stores. Saskatchewan’s *Vapour Products Tax Act* also came into effect on September 1, 2021. This Act imposes a retail sales tax of 20% on all vaping products and requires retailers to hold a license.
4. **Northwest Territories:** On December 22, 2021, the Government of the Northwest Territories released draft regulations that would ban the sale of all flavoured vaping products, except tobacco-flavoured products, in all retail channels in the Territory,

effective March 25, 2022. Consultation on this proposal closed on January 22,
2022.

**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
IMPERIAL TOBACCO CANADA LIMITED AND IMPERIAL TOBACCO COMPANY LIMITED**

Court File No. CV-19-616077-00CL

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

Proceeding commenced at Toronto

**ELEVENTH REPORT OF THE MONITOR
MARCH 15, 2022**

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Court File No. CV-19-616077-00CL

**Imperial Tobacco Canada Limited and
Imperial Tobacco Company Limited**

TWELFTH REPORT OF THE MONITOR

July 8, 2022



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Court File No. CV-19-616077-00CL

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

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

AND IN THE MATTER OF A PLAN OF COMPROMISE OR ARRANGEMENT OF
Imperial TOBACCO CANADA LIMITED AND Imperial TOBACCO COMPANY LIMITED

**TWELFTH REPORT TO THE COURT
SUBMITTED BY FTI CONSULTING CANADA INC.,
IN ITS CAPACITY AS MONITOR**

A. GENERAL

1. In this Report, unless otherwise defined, all capitalized terms shall have the respective meanings specified in the glossary attached to this Report as Appendix "A". The first instance of each capitalized term, if defined in the glossary, is hyperlinked to the glossary.

B. INTRODUCTION

2. The principal purpose of these CCAA Proceedings, and the related Chapter 15 Proceedings, is to restructure and compromise Imperial's liabilities, specifically the liabilities arising from the Tobacco Claims, including the Quebec Appeal Judgment.
3. The Initial Order in these CCAA Proceedings was issued by this Court on March 12, 2019, as amended and restated as of April 5, 2019, further amended and restated as of April 25, 2019, and updated by written endorsement on March 6, 2020.

C. BACKGROUND

4. Imperial is the largest distributor of Tobacco Products in Canada and operates two businesses: tobacco and logistics. The tobacco business includes the marketing and sale of Tobacco Products and Vapour Products. The logistics business distributes Tobacco Products and Vapour Products for tobacco manufacturers, as well as certain non-tobacco products and services.

5. All Court materials filed and orders issued in these CCAA Proceedings and the related Chapter 15 Proceedings are available on the Monitor's website at <http://cfcanada.fticonsulting.com/imperialtobacco>.

D. TERMS OF REFERENCE AND DISCLAIMER

6. In preparing this Report, the Monitor has relied upon certain financial information and forecasts prepared by Imperial, and discussions and correspondence with, among others, the senior management and advisors to Imperial. The Monitor has not audited or otherwise attempted to verify the accuracy or completeness of this information. Accordingly, the Monitor expresses no opinion or other form of assurance on the information contained in this Report or relied on in its preparation.
7. This Report should be read in conjunction with the July 2022 Rokas Affidavit, which can be found [here](#).

E. PURPOSE OF THIS REPORT

8. The purpose of this Report is to provide this Court with information regarding the motion brought by Imperial seeking authorization for ITCAN to post other security of up to \$5 million with the CRA as required by recent amendments to the Excise Act concerning, among other things, the import of vaping products into Canada.

F. VAPOUR PRODUCTS SUBJECT TO NEW EXCISE DUTY

9. Imperial offers adult consumers a full range of vaping products under the "Vuse" trademark. As part of Imperial's strategy to market Vapour Products, among other things, it has opened Vuse stores. ITCAN currently has seven open and operating Vuse stores and anticipates opening four additional Vuse stores across Canada by the end of 2022.
10. The Canadian Federal government announced in its 2022 budget that it intended to impose an excise duty on vaping products. As a result of amendments to the Excise Act and accompanying regulations, this excise duty will require, effective October 1, 2022, all vaping products to be packaged with an excise stamp affixed to the product as evidence

that duties have been paid. ITCAN must apply to the CRA for a vaping product licence to obtain the necessary excise tax stamps.

11. The Monitor understands that the CRA will provide excise stamps to ITCAN only if it posts the New Excise Act Security. The amount of security ranges from \$5,000 to a maximum of \$5 million and is based on the estimated monthly duty payable in respect of the vaping products. The Monitor has been informed that ITCAN must post security of \$5 million.

G. NEW EXCISE ACT SECURITY IS NOT CURRENTLY AUTHORIZED

12. Paragraph 11 of the Initial Order authorizes Imperial to post Bonding Collateral in an aggregate amount not exceeding \$111 million to provide security “in the ordinary course and consistent with past practice” in relation to the collection and remittance of excise taxes and customs and import duties. Paragraph 14 of the Initial Order permits the Applicants to, among other things, post security, grant security interests and incur liabilities in the ordinary course of the Business (as defined in the Initial Order).
13. The New Excise Act Security is part of a new regulatory framework concerning vaping products. Thus, in the view of the Monitor, its posting by ITCAN would not be “consistent with past practice”. This also means that the posting of this security is not incurred “in the ordinary course of the Business” as contemplated by the Initial Order. No other authorization for the New Excise Act Security is apparent in the Initial Order. Accordingly, the Applicants are seeking the approval of this Court to post the security required under the Excise Act.

H. RECOMMENDATION

14. Because the New Excise Act Security is a condition of securing a vaping product licence and, therefore, of continuing to sell Vapour Products in the Canadian market, the Monitor supports the relief sought by Imperial in its motion and respectfully recommends that this Court grant an order authorizing ITCAN to post the New Excise Act Security of up to \$5 million in the form of order attached to the motion record of Imperial dated July 7, 2022 filed in these CCAA Proceedings.

The Monitor respectfully submits this Report.

Dated this 8th day of July 2022.

FTI Consulting Canada Inc.

FTI Consulting Canada Inc.

in its capacity as Monitor of Imperial Tobacco Canada Limited and Imperial Tobacco Company Limited and not in its personal capacity

**APPENDIX “A”
GLOSSARY**

“**CCAA**” means the *Companies’ Creditors Arrangement Act*, R.S.C., 1985, c. C-36, as amended.

“**CCAA Proceedings**” means Court File No. CV-19-616077-00CL commenced by Imperial under the CCAA.

“**Chapter 15 Proceedings**” means the proceedings commenced by ITCAN on March 13, 2019, for relief under Chapter 15 of the U.S. Bankruptcy Code.

“**Court**” means the Ontario Superior Court of Justice (Commercial List).

“**CRA**” means the Canada Revenue Agency.

“**FTI**” means FTI Consulting Canada Inc.

“**Imperial**” means collectively, ITCAN and Imperial Tobacco Company Limited.

“**Information**” means common categories of information in respect of the Applicants which are responsive to requests submitted by Mediation Participants, as well as other information which the Tobacco Monitors considered relevant.

“**Initial Order**” means the initial order granted by this Court on March 12, 2019, as amended and restated as of April 5, 2019 and further amended and restated as of April 25, 2019 and updated by written endorsement on March 6, 2020, which authorized, among other things, the Stay of Proceedings and FTI’s appointment as Monitor of Imperial’s CCAA Proceedings.

“**ITCAN**” means Imperial Tobacco Canada Limited.

“**July 2022 Rokas Affidavit**” means the Affidavit of George Rokas, Treasurer and Corporate Controller of ITCAN, sworn July 7, 2022.

“**Monitor**” means FTI Consulting Canada Inc.

“**New Excise Act Security**” means security of up to \$5 million to be posted with the CRA as required by recent amendments to the Excise Act concerning, among other things, the import of vaping products into Canada.

“**Quebec Appeal Judgment**” means the Court of Appeal of Quebec’s decision on the appeal of the Quebec Judgment whereby the Court of Appeal substantially upheld the Quebec Judgment with two notable modifications: (i) the total claim amount was reduced by just over \$1 million; and (ii) the interest schedule was adjusted, reducing the interest payable on the total claim amount.

“**Quebec Judgment**” means the Quebec Superior Court’s judgment on the “Letourneau action” and the “Blais action” released on May 27, 2015 in which the trial judge found the co-defendants jointly liable for \$15.6 billion, with Imperial’s share being approximately \$10.6 billion.

“**Report**” means this twelfth report of the Monitor filed on July 8, 2022.

“**Stay of Proceedings**” means the stay of proceedings during the Stay Period in favour of Imperial and their non-applicant subsidiaries, including Liggett & Meyers Tobacco Company of Canada Limited, as well as a limited stay in favour of BAT and certain BAT affiliates.

“**Stay Period**” means the term of the Stay of Proceedings, to September 30, 2022.

“**Vapour Products**” means potential reduced risk, rechargeable, battery-powered devices that heat liquid formulations – e-liquids – to create a vapour which is inhaled, and which are sold under the tradename of Vype/Vuse.

<p>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 Imperial TOBACCO CANADA LIMITED AND Imperial TOBACCO COMPANY LIMITED</p>	
	<p>ONTARIO SUPERIOR COURT OF JUSTICE (COMMERCIAL LIST)</p> <p>Proceeding commenced at Toronto</p> <p>TWELFTH REPORT OF THE MONITOR</p> <p>DAVIES WARD PHILLIPS & VINEBERG LLP 155 Wellington Street West Toronto, ON M5V 3J7</p> <p>Natasha MacParland (LSO #42383G) Tel: 416.863.5567 nmacparland@dwpv.com</p> <p>Chanakya Sethi (LSO #63492T) Tel: 416.863.5516 csethi@dwpv.com</p> <p>Jonathan Yantzi (LSO #77533A) Tel: 416.367.7544 jyantzi@dwpv.com</p> <p>Lawyers for the Monitor</p>