

Court File No. CV-19-615862-00CL
Court File No. CV-19-616077-00CL
Court File No. CV-19-616779-00CL

**ONTARIO
SUPERIOR COURT OF JUSTICE
COMMERCIAL LIST**

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

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

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

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

Applicants

AFFIDAVIT OF RONALD PODOLNY

I, Ronald Podolny, at the City of Toronto, in the Province of Ontario, MAKE OATH AND SAY:

1. Rochon Genova LLP (“**RG**”) has been very recently retained by putative class counsel for the tobacco victims in six provinces¹ (“**Class Members**”) for the purpose of these CCAA proceedings. RG has retained James Grout as insolvency counsel to assist in navigating this CCAA proceeding and the mediation process being conducted by the Honourable Warren Winkler.
2. RG has communicated with the monitors and their counsel and requested an opportunity to meet and discuss this matter prior to the court’s consideration of a pending motion to appoint representative counsel.

¹ Alberta, Manitoba, Nova Scotia, Saskatchewan, Ontario and British Columbia.

3. RG has an extensive history in representing the interests of class members in certified and proposed class proceedings in Canada with national scope and which deal with subject matter spanning from securities to pharmaceutical and medical devices, consumer protection, institutional abuse, mass torts, train derailments and plane crashes, some of which proceeded in part in the context of CCAA restructuring.

4. Most significantly, members of RG have had roles in CCAA proceedings dealing with class action claims. Most notably was the representation as class counsel for the victims of the Lac Mégantic residents, who were victims of the train derailment tragedy, in the cross border CCAA/US bankruptcy proceedings involving the MMA railway. RG took a very active role in structuring the litigation and developing the theory of the case and in negotiating important aspects of the settlement on behalf of the class members and achieving a settlement in the multi-party CCAA/U.S. insolvency proceedings. RG lawyers were also involved in the Portus insolvency proceedings on behalf of a class of investors who had initiated a class proceeding. RG has also had involvement acting for equity investors in the Stelco CCAA proceedings. I was personally involved in the Nortel bankruptcy litigation while working at another firm.

5. RG is a litigation law firm of 15 lawyers which was founded by managing partner Joel P. Rochon and Vincent Genova in 1999. In 2018, International Shareholder Services ranked RG 15th among securities class action firms worldwide, and second among Canadian firms.

6. RG has an extensive history in representing the interests of class members in certified and proposed class proceedings in Canada with national scope and which deal with subject matter spanning from securities to pharmaceutical and medical devices, consumer protection, institutional

abuse, mass torts, train derailments and aviation, some of which proceeded in part in the context of CCAA restructuring.

7. RG has a proven track record of navigating complex settlement processes including multi party proceedings. Recently RG participated in a consortium of counsel which successfully negotiated a \$110 million class action settlement in mediation proceedings with the Honourable Warren Winkler Q.C. RG has participated in many mediated settlements of significant class proceedings and other complex matters presided over by leading mediators such as the Honourable Frank Iacobucci Q.C., the Honourable George Adams, the Honourable Frank Newbould and others.

8. In 2006, RG acted for the Canadian shareholders of Nortel Networks Inc. in a multi jurisdiction class action settlement for \$2.8 billion, which was supervised and approved in Canada by Winkler J (as he then was). This settlement was in the context of the pending insolvency of Nortel and involved significant interaction with US counsel and meetings with Nortel's New York investment bankers to review and undertake due diligence analysis of Nortel's financial condition.

9. As mentioned, RG currently represents the victims of the Lac Mégantic derailment against CP Rail. In that context, Mr. Rochon and Mr. Jervis have been intimately involved in the proceedings arising from the insolvency of the Montreal, Maine and Atlantic Railway ("MMA"), in both Quebec and Maine, USA. Through this process, RG has furthered its institutional knowledge and experience necessary to represent class members within a complex, CCAA cross-border insolvency proceeding.

10. In particular, in 2014, the Quebec Superior Court appointed the plaintiffs as representatives, and thereby Mr. Rochon as representative counsel, in the context of the CCAA proceeding. The class action was certified subsequent to this CCAA order.

11. In addition, RG was putative class counsel in a tobacco-related proceeding (*Jasmine Ragoonanan et al v Imperial Tobacco Canada Limited*, Court File No: 002-CV-183165) involving fire-safe cigarettes. Certification in that proceeding was denied. The action was converted into an individual action, arising from injuries and deaths associated with a house fire. We are taking steps to establish an ethical wall in respect of this litigation, which is stayed pursuant to the Order of this Court. Through this litigation, we obtained extensive knowledge and understanding of the tobacco industry generally.

RG's Experience in Defective Drug and Medical Device Proceedings

12. RG's class action practice is also heavily involved in pharmaceutical, medical device and other consumer products liability cases, with its first-class action being the landmark case of *Wilson v. Servier et al.* which involved diet drugs associated with serious adverse pulmonary and cardiac events. Since then, RG's class action group has acted as lead or co-lead counsel in many class actions which have advanced and protected the interests of otherwise vulnerable Canadian patients, relating to such products as Baycol (cholesterol-lowering agent associated with rhabdomyolysis), Serzone (anti-depressant associated with liver failure), Prepulsid (gastroprokinetic agent associated with heart arrhythmias), Vioxx, Bextra and Celebrex (cox-2 inhibiting NSAIDs associated with cardiovascular adverse events), Hydroxycut (natural health product associated with liver failure), Tylenol3 (associated with morphine intoxication in neonates breastfed by mothers taking Tylenol3), Oxycontin (opioid pain reliever associated with addiction),

ACTOS® and generic versions of pioglitazone (diabetes medication associated with bladder cancer), AMO® Complete® All-In-One Moisture Plus™ contact lens care solution (associated with serious infections leading to blindness), talcum powder associated with ovarian cancer, various defective pacemakers and defibrillators and their components, various defective hip and knee prostheses as well as transvaginal mesh products from several different manufacturers.

RG's Experience in Securities Proceedings

13. RG has extensive experience prosecuting securities class actions. Included among the securities class actions in which members of the RG team served as lead or co-lead counsel are: SNC-Lavalin Group Inc. (misrepresentations regarding compliance with anti-bribery laws, GAAP/IFRS and related misleading ICFR and DC&P certificates), Barrick Gold Corporation (failure to disclose regulatory and environmental risk in respect of South American gold and silver mine); CIBC (failure to disclose material risk of exposure to sub-prime risk during financial crisis), CI Mutual Funds, AIC Limited (mutual fund market timing); Valeant Pharmaceuticals (misrepresentations in offering documents and continuous disclosure of large Canadian pharmaceutical company listed on TSX and NYSE); Baffinland Iron Mines Corp. (circular misrepresentation in context of take-over bid); Zungui Haixi Corporation (misrepresentations regarding Chinese manufacturing operations of Ontario issuer in context of RTO); Donnybrook Energy Inc. (circular misrepresentation and oppression in context of oil patch asset spin-off plan of arrangement); Home Capital Group Inc. (misleading disclosure of large sub-prime lender regarding mortgage origination practices); Canadian Solar Inc. (misrepresentations regarding

GAAP compliance of financial statements of Canadian manufacturer based in China and listed on NASDAQ); Danier Leather Inc. (misrepresentations in offering documents).

RG's Experience in Personal Injury Litigation

14. RG lawyers have decades of experience in prosecuting personal injury cases, including disputes involving occupier's liability, serious accidents, including vehicular and aviation accidents, head and brain injuries and other cases involving catastrophic injury and wrongful death.

RG's Access to Specialized Insolvency Counsel

15. RG has retained James Grout to act as insolvency counsel for this CCAA process. Mr. Grout has a long history as a preeminent insolvency counsel in Ontario and Canada, and was a founding partner of Thornton Grout Finnigan LLP, a leading insolvency firm.

RG's Proposed Representation of the Class Action TRW Claimants

16. I am informed by Evatt Merchant, counsel to Class Members ("Class Counsel") that he participated in an unsuccessful mediation in this matter on October 8, 2019 in Toronto.

17. I am informed by Class Counsel that he was contacted by counsel for one of the Monitors appointed in this proceeding, in mid-November, to advise him that a motion for the appointment of a Representative Counsel would be brought by this proceeding. Class Counsel had no prior notice that such an Order would be sought, and no particulars of the proposed motion were provided.

18. Class Counsel was served with a Notice of Motion (Motion for the Advice and Direction Regarding Appointment of Representative Counsel, Returnable December 6) on November 25, 2019.

19. Class Counsel contacted Mr. Rochon very recently. Class Counsel expressed concern that the proposed appointment of Wagners LLP as a Representative of the TRW Claimants would prejudice his clients, the Class Members. Class Counsel requested RG to enter into a co-counsel agreement as class counsel and to take the lead role in the CCAA proceedings and the related mediation process on behalf of the TRW Claimants in six provinces.

20. As set out in the Monitors' joint submission, the mandate of the proposed Representative Counsel is intended to include participating in and negotiating at the mediation, to work with the mediator and Monitors to identify valid and provable claims, to respond to inquiries from TRW Claimants, to retain and consult with relevant experts as needed and any other tasks as approved by the Court.

21. These are all tasks that RG can provide value-added assistance with, having extensive experience in negotiating national class settlements involving complicated medical issues (including determining the eligibility criteria for valid and provable claims as well as appropriate damage ranges for such claims). Further, as noted, RG was involved in negotiating and processing claims under the CCAA structure relating to thousands of claims arising from the tragic train derailment and explosion in Lac Mégantic.

22. RG is willing to lend its extensive expertise on behalf of the Class Members, to ensure that they receive the most effective, comprehensive and efficient representation possible. It is RG's

view that Class Counsel's existing contact with Class Members in the six provincial jurisdictions in question represents a valuable resource for the mediation process. RG is also willing, in this context, to work constructively, alongside all other counsel.

Lawyer Biographies

23. Joel P. Rochon is the managing partner of Rochon Genova LLP. Mr. Rochon was called to the Bar in Ontario in 1988. In addition to being class action counsel in the medical cases noted above, Mr. Rochon has appeared as counsel on the following securities class actions: *The Trustees of the Drywall Acoustic Lathing and Insulation Local 675 Pension Fund v. SNC-Lavalin Group Inc* ("SNC-Lavalin"); *Mancinelli v. Barrick Gold Corporation* ("Barrick Gold"); *Fischer v. IG Investment Management Ltd., CI Mutual Funds et al.* ("Market Timing") and *Green v. Canadian Imperial Bank of Commerce* ("CIBC"). Mr. Rochon has appeared before the Supreme Court of Canada on Market Timing, CIBC and *TELUS Communications Inc. v. Wellman*. Mr. Rochon is repeatedly recognized by the Canadian Lexpert Directory as a "Most Frequently Recommended" Practitioner in the area of class actions.

24. Vincent Genova is a founding partner of Rochon Genova LLP. His specialty is litigation, including catastrophic injuries and personal injury, class actions, long and short term disability, aviation, municipal, automobile and other insurance law litigation. Vincent's expertise in personal injury litigation ranges from fatalities and serious brain and spinal cord injuries to chronic pain cases.

25. Mr. Genova also heads up the firm's aviation law group at Rochon Genova LLP, where he works with a team of lawyers to help plane crash victims and their families. Apart from his involvement in plaintiff class actions, Mr. Genova has defended two national class actions

commenced in Ontario, one in British Columbia, and the other in Alberta, on behalf of the largest privately held payday loan company in Canada.

26. Mr. Genova is the past Vice-Chair of the Insurance Law Section of the CBA of Ontario, a member of the Canadian Italian Advocates Organization, the Advocates' Society, the American Association for Justice, and the Ontario Trial Lawyers Association. He was Chair of the CBAO Conference on Class Action Suits in 2000, and was an Instructor in Advocacy at the Bar Admissions Course, for a number of years.

27. Mr. Genova obtained the designation of Certified Specialist (Civil Litigation) in 2003. He was appointed as a Deputy Judge of the Ontario Superior Court of Justice, Small Claims Division, in February, 2005 until 2015. Vincent also taught civil procedure for 3 years beginning in January 2014 at Osgoode Hall Law School in Toronto as an adjunct professor.

28. Mr. Genova has presented papers on insurance issues to the Canadian Life and Health Insurance Association Claims Conference. He has participated in numerous radio programs and appeared on television programs such as Global News, Goldhawk Live and CBC's Newsworld to discuss various legal cases and issues.

29. Peter Jervis is a Partner at Rochon Genova and was called to the Bar in Ontario in 1983. In his more than 35 years of commercial and securities litigation practice, Mr. Jervis has extensive trial and appellate experience, including appearing as lead plaintiffs' counsel in the only securities class action ever tried in Canada: *Kerr v. Danier Leather Inc. et al*, [2004] OJ No 1916 (QL (SCO)); 77 O.R. (3d) 321 (CA); [2007] 3 S.C.R. 331 ("Danier Leather"). Other notable securities class actions where Mr. Jervis has appeared as counsel include: SNC-Lavalin; Valeant; Barrick

Gold; Market Timing; Telus and CIBC. Mr. Jervis has appeared before the Supreme Court of Canada on over ten occasions, including CIBC, Market Timing, Telus and numerous non-securities cases since 1984. Mr. Jervis is consistently recognized in Lexpert and other industry publications as a “Repeatedly Recommended” / “Consistently Recommended” lawyer in securities litigation, class actions and commercial litigation. He has appeared in trial and appellate courts across Canada and has been called to the bars of Ontario, Nunavut and the Cayman Islands.


30. Doug Worndl is a Partner at Rochon Genova and was called to the Bar in Ontario in 1989. In the 30 years since, he has practiced litigation in Toronto. From April 1989 to November 1991 he was Counsel and Director of Research to the Federal Commission of Inquiry into the Air Ontario Crash at Dryden Ontario (the “Moshansky Commission”) which involved more than 160 hearing days. From November 1991 to December 2010 he practiced commercial and aviation litigation at Borden Ladner Gervais LLP largely representing corporate and institutional defendants. He joined the Class Actions Group of Siskinds LLP as a partner in January 2011 where he worked mostly on securities class actions until joining Rochon Genova in January 2018. Notable securities class actions where Mr. Worndl has appeared as counsel include: *SNC-Lavalin*; *McDonald v. Home Capital Group* (“Home Capital”), *Rooney v. ArcelorMittal S.A* (“Baffinland”); *Tajdin Abdulla v. Canadian Solar Inc.* (“Canadian Solar”), *Zaniewicz v. Zungui Haixi Corporation* (“Zungui”) and *Wayne Philpott v. Donnybrook Energy et al.* (“Donnybrook”). In addition to litigating many securities class actions, Mr. Worndl and Mr. Podolny created and taught the course “Securities Litigation: The Public and Private Enforcement of Securities Law in Canada” at the University of Toronto Faculty of Law in the 2018-2019 Fall Semester. Mr. Worndl has appeared before the Supreme Court of Canada in *Celanese Canada Inc. v. Murray Demolition Corp.*, [2006] 2 SCR 189 (Anton Pillar orders and the protection of privilege).

31. Ronald Podolny is a Partner at Rochon Genova and was called to the Bar in Ontario in 2009 and in New York in 2010. Before joining Rochon Genova in 2018, he was an associate in the Class Actions Department at Siskinds LLP. Class actions where Mr. Podolny has appeared as counsel (with subject matter in parentheses) include: *Ouellet c. Montreal Maine & Atlantic Canada Company* (Lac Mégantic rail disaster); *SNC-Lavalin Group Inc.* (securities); *Hughes v. Liquor Control Board of Ontario* (competition); *Quenneville v. Audi AG* (price-fixing); *Mancinelli v. Royal Bank of Canada* (price-fixing/foreign exchange manipulation); *Batten v. Boehringer Ingelheim (Canada) Ltd.* (medical devices); *Fanshawe v. LG Phillips* (price-fixing); *Leslie v. Agnico-Eagle Mines* (securities). Mr. Podolny has been an adjunct professor at Osgoode Hall Law School since 2012 and at the University of Toronto, Faculty of Law since 2015. Mr. Podolny has appeared before the Supreme Court of Canada in *Saskatchewan Federation of Labour v. Saskatchewan*, 2015 SCC 4 (constitutional law) and *R v. Comeau*, 2018 SCC 15 (constitutional law). In 2018, Mr. Podolny was the recipient of the Precedent Setter Award, which recognizes Toronto lawyers called to the bar in the last 10 years who have shown excellence and leadership in their practice and their community. In 2019, Mr. Podolny was the recipient of the "Lexpert Rising Stars Award: Leading Lawyers Under 40."

32. Annelis Thorsen-Cavers is a partner at Rochon Genova. Since joining Rochon Genova, Annelis has been an integral member of the class action team involved in the litigation and settlement administration of such landmark cases as *Wilson v. Servier Canada Inc.* (diet drugs), *Coleman et al. v. Bayer et al.* (Baycol), *Boulanger v. Johnson & Johnson* (Prepulsid), *Ledyit v. Bristol-Myers Squibb et al.* (Serzone), *Bilodeau et al. v. Maple Leaf Foods Inc. et al.* (contaminated meat), *Voutour et al. v. Pfizer Canada Inc. et al.* (Bextra and Celebrex), *Mignacca et al. v. Merck*

Frosst Canada Ltd. et al. (Vioxx), among others. Ms. Thorsen-Cavers played a critical role in the Actos class action on behalf of victims of bladder cases across the country, including Quebec. She has been instrumental in advancing the transvaginal mesh series of cases across Canada and has participated in multiple meetings with defence counsel in New York to advance settlement discussions. Ms. Thorsen-Cavers was involved in the litigation arising from allegedly defective hip implants manufactured by Depuy Zimmer and others. Ms. Thorsen-Cavers was also instrumental in relation to the Lac Megantic claims administration process, and personally supervised the filing of many hundreds of personal injury claims on behalf of victims of the derailment and explosion.

SWORN before me at the City of)
Toronto, in the Province of Ontario,)
this 5th day of December, 2019.)
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A Commissioner for Taking Affidavits, etc.



RONALD PODOLNY

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AS AMENDED AND IN THE MATTER OF A PLAN OF COMPROMISE OR ARRANGEMENT OF
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PROCEEDING COMMENCED IN
TORONTO

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