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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.<sup>1</sup>

Chapter 15

Case No. 19-10771 (SCC)

**STATUS REPORT REGARDING CANADIAN PROCEEDING**

1. 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 in a proceeding (the “Canadian Proceeding”) under Canada’s *Companies’ Creditors Arrangement Act*, R.S.C. 1985 c. C-36, as amended (“CCAA”), pending before the Ontario Superior Court of Justice (Commercial List) in Toronto, Ontario (the “Canadian Court”), by its undersigned United States counsel, respectfully advises the Court, pursuant to 11 U.S.C. § 1518, of the following recent developments in the Canadian Proceeding (the “Status Report”). Filed contemporaneously herewith, is the Monitor’s declaration in support of the Status Report (the “Bishop Declaration”).

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<sup>1</sup> 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.

## I. Background

2. The Debtor is primarily a tobacco importer. It purchases, among other things, finished tobacco products from its Mexican affiliate British American Tobacco S.A. de C.V. and imports them, through the United States, for sale in Canada.<sup>2</sup> The Debtor's tobacco products account for approximately 48% of all legal Canadian tobacco sales.<sup>3</sup>

3. On March 13, 2019, the Monitor filed the Verified Petition<sup>4</sup> seeking recognition of the Canadian Proceeding and related relief for the Debtor to protect the Debtor's supply-chain running through the United States while the Debtor pursues a comprehensive restructuring in Canada. The Debtor commenced the Canadian Proceeding to address overwhelming claims and ongoing product liability and consumer litigation across Canada (the "Tobacco Claims"). On March 12, 2019, the Canadian Court issued the Canadian Order for Relief (as amended), which, among other things, stayed the Tobacco Litigation against the Debtor and its subsidiary, Imperial Tobacco Company Limited (the "Stay").

4. On April 17, 2019, this Court recognized the Canadian Proceeding as a foreign main proceeding, *see* Dkt. No. 40, and recognized and implemented the Court-to-Court Communications Order<sup>5</sup> with the Canadian Court, *see* Dkt. No. 61. This Court has also recognized and implemented the order of the Canadian Court approving the settlement between the Debtor and the beneficiaries of the Genstar executive pension and deferred compensation plans. *See* Dkt. No. 52. A complete list of the orders issued to date in the Canadian Proceeding is attached to the Bishop Declaration as Exhibit A.

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<sup>2</sup> *See Verified Chapter 15 Petition for Recognition of Foreign Main Proceeding and Related Relief* (the "Verified Petition," Dkt. No. 2), at 4.

<sup>3</sup> *Id.*

<sup>4</sup> Capitalized terms not defined herein shall have the meanings ascribed to them in the Verified Petition.

<sup>5</sup> As defined in the *Monitor's Motion for Order Recognizing Canadian Court's Court-to-Court Communications Order* [Dkt. No. 54].

## **II. Update on Canadian Proceeding and Extension of the Stay**

5. In the Canadian Proceeding, the Debtor continues to engage in a court ordered mediation with the goal of facilitating a pan-Canadian global settlement of the Tobacco Claims (the “Mediation”). On March 12, 2019, pursuant to the Canadian Order for Relief (as amended), the Canadian Court appointed retired Chief Justice of Ontario, the Honourable Warren K. Winkler Q.C. as the Mediator (the “Mediator”).

6. On October 2, 2019, the Canadian Court extended the Stay to March 12, 2020, holding that the extension of the Stay was reasonable, because progress had been made in the Mediation, and the Debtor, along with its related Canadian debtors, had sufficient liquidity to operate within the Stay period. A copy of the Fifth Report of the Monitor filed in support of the September 23, 2019 motion to extend the Stay is attached to the Bishop Declaration as Exhibit B.

7. On February 20, 2020, the Canadian Court issued the Stay Extension Order, and its Endorsement of the Stay Extension Order (the “Stay Order Endorsement”), extending the Stay to September 30, 2020. The Canadian Court found that “it is sensible to maintain the status quo during the mediation process” because, in part, the Mediation “is progressing in a meaningful fashion.” Stay Order Endorsement at 1. A copy of the Stay Extension Order, the Stay Order Endorsement, and the Seventh Report of the Monitor filed in support of the February 13, 2020 motion to extend the Stay is attached to the Bishop Declaration as Exhibit C.

## **III. Appointment of Representative Counsel for Tobacco Claimants**

8. As described in the Verified Petition, the Tobacco Claims “do not represent all of the potential claims brought or that could be brought under applicable law in relation to [the Debtor’s] tobacco products . . . .” Verified Petition at 7. In order to ensure that all Tobacco Claims are properly represented and therefore capable of being resolved in the Canadian

Proceeding, the Canadian Court entered the Appointment of Representative Counsel Order on December 9, 2019. Such order appointed The Law Practice of Wagner & Associates, Inc. (the “Representative Counsel”) as counsel to all interested individuals with non-commercial Tobacco Claims to the extent that they are not represented in previously certified class actions (the “Tobacco Claimants”)<sup>6</sup>. A copy of the Appointment of Representative Counsel Order (the “Representative Counsel Order”), the Endorsement of December 9, 2019 (the “Representative Counsel Endorsement”), the Reasons for Decision, and the Sixth Report of the Monitor filed in support of the motion to appoint the Representative Counsel is attached to the Bishop Declaration as Exhibit D.

9. The appointment of Representative Counsel is a significant step in the Debtor's restructuring process. As a result of the Representative Counsel Order, the Tobacco Claimants who may have claims against the Debtor will now be able to participate meaningfully in the Canadian Proceeding. The Tobacco Claimants’ participation, in turn, will allow the Debtor to address such claims through its restructuring process, which is a necessary component to any global settlement of the claims against the Debtor and the Debtor’s successful emergence from the Canadian Proceeding.

10. 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 status conference at the Court’s convenience should the Court prefer.

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<sup>6</sup> At the hearing on the motion to appoint the Representative Counsel, The Merchant Law Group (proposed counsel in several putative class actions) and Rochon Genova LLP (collectively, “Moving Counsel”), sought an adjournment, or in the alternative, permission to appear as co-counsel with the Representative Counsel. Both of Moving Counsel’s requests were denied.

Dated: April 8, 2020

**MORGAN, LEWIS & BOCKIUS LLP**

By: /s/ Jennifer Feldsher

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**UNITED STATES BANKRUPTCY COURT  
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In re:

IMPERIAL TOBACCO CANADA LIMITED,

Debtor in a Foreign Proceeding.<sup>1</sup>

Chapter 15

Case No. 19-10771 (SCC)

**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 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 and in support of the *Monitor's Status Report Regarding Canadian*

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<sup>1</sup> 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.

*Proceeding* (the “Status Report,” Dkt. No. 64). A complete list of the orders issued to date in the Canadian Proceeding is attached hereto as Exhibit A.

2. With the Mediation<sup>2</sup> continuing constructively, on October 2, 2019, the Canadian Court extended the Stay to March 12, 2020, holding that the extension of the Stay was reasonable. A copy of the Fifth Report of the Monitor filed in support of the September 23, 2019 motion to extend the Stay is attached hereto as Exhibit B.

3. On February 20, 2020, the Court further extended the Stay to September 30, 2020, finding that the Mediation “is progressing in a meaningful fashion.” *See* Stay Order Endorsement at 1. A copy of the Stay Extension Order, the Stay Order Endorsement, and the Seventh Report of the Monitor filed in support of the February 13, 2020 motion to extend the Stay is attached hereto as Exhibit C.

4. In another significant development in the case, the Monitor sought and obtained the appointment of The Law Practice of Wagner & Associates, Inc., an experienced class action litigation firm based in Halifax, Nova Scotia, as the Representative Counsel for all Tobacco Claimants. A copy of the Representative Counsel Order, the Representative Counsel Endorsement, the Reasons for Decision and the Sixth Report of the Monitor filed in support of the motion to appoint the Representative Counsel is attached hereto as Exhibit D.

5. The Monitor respectfully submits this Declaration in support of the Status Report.

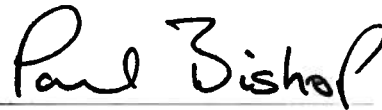
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<sup>2</sup> Capitalized terms not defined herein shall have the meanings ascribed to them in the *Verified Chapter 15 Petition for Recognition of Foreign Main Proceeding and Related Relief* or the Status Report, as applicable.

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.

Date: April 8, 2020  
Toronto, Canada

A handwritten signature in black ink that reads "Paul Bishop". The signature is written in a cursive style with a horizontal line underneath it.

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 Seventh Report of the Monitor attached to the Declaration as Exhibit C.

### **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.

# EXHIBIT B

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

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

**FIFTH REPORT OF THE MONITOR**

**September 25, 2019**

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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

**FIFTH 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". Each capitalized term throughout this Report, if defined in the glossary, is hyperlinked to its respective definition in the glossary.

**B. INTRODUCTION**

2. Pursuant to 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:
  - (a) Imperial was granted an initial stay of proceedings under the CCAA until April 11, 2019; and
  - (b) FTI was appointed as the Monitor.
3. 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.
4. 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, a copy of which can be found here.
  5. On April 17, 2019, the US Bankruptcy Court granted the Foreign Recognition Order, which recognizes these CCAA Proceedings. The Foreign Recognition Order can be found here.
  6. The Comeback Motion continued on April 25 and 26, 2019 and the Court issued the Second Amended and Restated Initial Order, a copy of which can be found here.
  7. Following a further hearing on May 14, 2019, the Court issued the following Orders: (a) the Notice Procedure Order, which can be found here; (b) the Professional Fee Disclosure Order, which can be found here; and (c) the Clarification of Insurance Lift-Stay Order, which can be found here. Additionally, on May 24, 2019, by way of endorsement, the Court approved the Communication and Confidentiality Protocol as between the Court and the Court-Appointed Mediator. The endorsement can be found here.
  8. On June 26, 2019, the Court heard a motion seeking, among other things, the extension of the Stay of Proceedings and made the following orders:

- (a) the October Stay Extension Order, which extended the Stay of Proceedings to October 4, 2019. A copy of the October Stay Extension Order can be found here; and
  - (b) the Genstar Settlement Approval Order, a copy of which can be found here.
9. On June 27, 2019, the Court issued the Order Appointing a Financial Advisor to the Court-Appointed Mediator, a copy of which can be found here.
  10. On July 9, 2019, the Court issued the Court-to-Court Communications Order, a copy of which can be found here.
  11. On July 18, 2019, the US Bankruptcy Court granted an order recognizing the Genstar Settlement Approval Order, which can be found here.
  12. On September 5, 2019, the US Bankruptcy Court granted an order recognizing the Court-to-Court Communications Order, which can be found here.

#### **TERMS OF REFERENCE AND DISCLAIMER**

13. In preparing this Report, the Monitor has relied upon unaudited financial information of Imperial and affiliates of Imperial, the books and records of Imperial, certain financial information prepared by Imperial, and discussions with Imperial's management. The Monitor has not audited, reviewed or otherwise attempted to verify the accuracy or completeness of the 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.

#### **PURPOSE OF THIS REPORT**

14. The purpose of this Report is to provide the Court with information regarding:

- (a) Imperial's business activities, industry developments and trends impacting Imperial's business;
- (b) Imperial's budget to actual cash flow results for the 14-week period ending September 15, 2019;
- (c) the Cash Flow Forecast for the 25-week period commencing the week beginning September 16, 2019 through the week of March 2, 2020;
- (d) certain cash management agreements with BNS;
- (e) Imperial's payment obligations to BAT Mexico in connection with the BAT MX Agreement;
- (f) the BAT global simplification program;
- (g) the Reassessments issued to Imperial by the CRA in respect of its 2011 and 2014 taxation years;
- (h) the Settlement reached in respect of the cessation of payments by Imperial under the Genstar Retirement Plans;
- (i) the status of the issues being mediated by the Court-Appointed Mediator;
- (j) the Data Rooms established in connection with the Mediation;
- (k) Imperial's request for an Order extending the Stay of Proceedings to March 6, 2020;
- (l) the Monitor's comments and recommendations in respect of the foregoing matters; and
- (m) the activities of the Monitor and its counsel since June 24, 2019, the date of the Fourth Report.

15. Unless otherwise stated, all monetary amounts contained herein are expressed in Canadian Dollars.

16. This Report should be read in conjunction with the September Thauvette Affidavit which can be found here.

### **C. BACKGROUND**

17. 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, as well as, Vapour Products. The logistics business distributes Tobacco Products and Vapour Products for tobacco manufacturers, as well as certain non-tobacco products and services.
18. 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.
19. In preparing this Report, the Monitor has relied upon the audited and unaudited financial information of Imperial based on its books and records, certain financial information and forecasts prepared by Imperial, and discussions and correspondence with, among others, the senior management and advisors to Imperial.
20. Further information regarding these CCAA Proceedings and Imperial's background is provided in the Monitor's Reports.
21. All Court materials filed in these CCAA Proceedings are available on the Monitor's website at: <http://cfcanada.fticonsulting.com/imperialtobacco/>

### **D. IMPERIAL'S BUSINESS ACTIVITIES, INDUSTRY DEVELOPMENTS AND TRENDS IMPACTING IMPERIAL'S BUSINESS**

22. A number of developing trends are impacting the tobacco industry as a whole. The tobacco industry in Canada appears to be experiencing a higher than historic downward trend in the volume of cigarettes sold.

23. Vapour products are also coming under increased scrutiny globally. As a result, vapour products are being regulated, and in some cases, banned, in numerous jurisdictions. For example, Brazil, Singapore and India have banned certain vapour products. In the US, on September 19, 2019, Senators Mitt Romney and Jeff Merkley introduced a bill titled the *Ending New Nicotine Dependencies (ENND) Act*, that would tax the vaping industry and ban flavoured e-cigarettes. Many US states are taking a similar approach. In Canada, the Heart and Stroke Foundation of Canada, the Canadian Medical Association and the Canadian Cancer Society have urged the government to regulate vaping. On September 19, 2019, Imperial issued a press release outlining its position regarding the regulation of vapour products. A copy of this press release can be found [here](#).

**E. RECEIPTS AND DISBURSEMENTS FOR THE FOURTEEN-WEEK PERIOD ENDING SEPTEMBER 15, 2019**

24. Imperial's cash balance as of the week ended September 15, 2019 was \$825.9 million, an increase over the fourteen-week period from the beginning cash balance of \$577.5 million as of June 9, 2019.
25. Imperial's actual net cash inflow for the fourteen-week period ending September 15, 2019, was approximately \$245.8 million. This is compared to the forecasted net cash inflow of \$262.2 million, resulting in a negative variance of approximately \$16.4 million, as summarized below:

(CAD\$ in thousands)

VARIANCE REPORT	Actuals	Forecast	Variance
<b>For the 14-week period ending Sep 15, 2019</b>			
<b>RECEIPTS</b>			
Trade Receipts	1,453,230	1,610,146	(156,916)
<b>DISBURSEMENTS</b>			
<i>Operating Disbursements</i>			
Taxes and Levies	(978,131)	(1,092,837)	114,706
Operations	(228,180)	(247,246)	19,066
<i>Total Operating Disbursements</i>	(1,206,311)	(1,340,082)	133,771
<b>OPERATING CASH FLOWS</b>	<b>246,919</b>	<b>270,064</b>	<b>(23,145)</b>
<i>Financing Disbursements</i>			
Interest and Related Fees on Existing Facilities	3,452	3,576	(123)
<i>Restructuring Disbursements</i>			
Professional Fees	(4,621)	(11,451)	6,830
<b>NET CASH FLOWS</b>	<b>245,750</b>	<b>262,189</b>	<b>(16,438)</b>
<b>CASH</b>			
Beginning Balance	577,494	577,494	-
Net Cash Inflows / (Outflows)	245,750	262,189	(16,438)
Other (FX)	2,699	-	2,699
<b>ENDING CASH</b>	<b>825,943</b>	<b>839,682</b>	<b>(13,739)</b>

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

- (a) *trade receipts*: negative permanent variance of \$156.9 million or 9.7% against the forecast, primarily driven by lower than forecast volumes and lower than planned price increases. The volume decline experienced during the fourteen-week reporting period was higher than the decline in previous years. This industry-wide trend is also consistent with declining cigarette volume trends recently observed in the US market;
- (b) *taxes and levies*: positive permanent variance of \$114.7 million that corresponds to the lower trade receipts described above and is driven by

lower sales volumes due to industry-wide trends, resulting in lower than forecast taxes and levies payable;

- (c) *operating disbursements*: positive timing variance of \$19.1 million that is expected to reverse in future periods, primarily driven by certain disbursements that are expected to be processed after the reporting period; and
- (d) *professional fees*: positive variance of \$6.8 million that consists of a positive permanent variance of \$4.7 million due to lower than forecast fees incurred and a positive timing variance of approximately \$2.1 million, which is expected to reverse in future forecast periods as outstanding invoices are paid.

#### **F. CASH FLOW FORECAST**

- 27. Imperial, with the assistance of the Monitor, has prepared an updated Cash Flow Forecast for the 25-week period commencing the week beginning September 16, 2019 through the week of March 2, 2020. The Cash Flow Forecast is attached as Appendix “B” to this Report.
- 28. During the Forecast Period, total operating receipts are forecast to be approximately \$2,289 million and total operating disbursements are forecast to be approximately \$2,160 million, resulting in net positive operating cash flow of approximately \$129 million. This includes intercompany payments that are discussed in paragraphs 38-40 below. In addition, Imperial forecasts interest income of approximately \$9 million in respect of cash balances on deposit in Canada and professional fees disbursements of approximately \$14 million, such that net cash flow is forecast to be approximately \$124 million. Although net cash flows are positive during the Forecast Period, there are ten 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. As such, cash flows in the weeks that fall on or around

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

29. 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.
30. 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.
31. Based on the Monitor's review, nothing has come to its attention that causes it to believe, in all material aspects, that:
  - (a) the assumptions are not consistent with the purpose of the Cash Flow Forecast;
  - (b) 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
  - (c) the Cash Flow Forecast does not reflect the assumptions.
32. 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.

33. 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.

#### **G. CASH MANAGEMENT**

34. Following the commencement of these CCAA Proceedings, Imperial, in consultation with the Monitor, entered into discussions with BNS to amend the terms of certain cash management agreements. As disclosed in the Fourth Report, on May 22, 2019, Imperial entered into a Letter Agreement with BNS relating to the cash management services provided to Imperial by BNS and letters of credit issued by BNS to secure certain of Imperial's pension and tax obligations.<sup>1</sup>
35. On July 29, 2019, Imperial entered into an amended and restated Letter Agreement with BNS. The amended and restated Letter Agreement incorporates amendments relating to (a) the amount of the minimum cash balance that must be maintained by Imperial in their accounts with BNS, (b) BNS agreeing (at its discretion) to issue additional letters of credit, and (c) Imperial, at the request of BNS, obtaining an order for a charge in favour of BNS to secure the obligations under the outstanding letters of credit. No such order has been sought to date.

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<sup>1</sup> See paragraphs 51-52 and 84-85 of the Initial Affidavit.

## **H. NEW TOBACCO REGULATIONS**

36. As described in the Fourth Report, the Regulations are coming into force on November 9, 2019 and require that manufacturers of Tobacco Products use plain, unbranded packaging. Under the Regulations, Imperial is required to cease selling branded Tobacco Products to wholesalers and retailers by November 9, 2019 and retailers must cease selling branded Tobacco Products by February 7, 2020. If the retailers cannot sell the products by February 7, 2020 they are permitted to return the branded Tobacco Products to Imperial for destruction.

### **IMPACT ON RECEIPTS AND DISBURSEMENTS**

37. The Monitor has been advised by Imperial that, in light of the Regulations, Imperial expects accelerated sales of certain branded Tobacco Products to their wholesale and retail customer base, which will result in inventory fluctuations into early 2020. As a result, the Monitor understands that Imperial anticipates variations from historic levels and timings of receipts and disbursements in the short term. Imperial expects the timing of receipts and disbursements to return to historic norms once the transition to plain packaging is complete.

### **PAYMENT TO BAT MEXICO UNDER THE BAT MX AGREEMENT**

38. ITCAN purchases 99% of its cigarettes by volume from BAT Mexico. At ITCAN's request and in order to comply with the Regulations, BAT Mexico has agreed to implement changes to its manufacturing and packaging of Tobacco Products.
39. ITCAN's purchases of Tobacco Products from BAT Mexico are governed by the BAT MX Agreement. The Monitor has been advised by ITCAN that BAT Mexico will be required to write off the undepreciated cost of manufacturing equipment used to package and wrap Tobacco Products for ITCAN that has been rendered obsolete by the Regulations, as well as some wrapping materials that can no longer be used for packaging due to the Regulations.

40. ITCAN has advised the Monitor that, under the terms of the BAT MX Agreement, approximately £5.4 million (\$8.9 million) will be due to BAT Mexico in respect of obsolete branded wrapping material purchased by BAT Mexico and £27.8 million (\$45.8 million) will be due to BAT Mexico in respect of the undepreciated cost of the obsolete manufacturing equipment. These amounts are currently reflected in the Cash Flow Forecast in December 2019 and January 2020, respectively. The Monitor is reviewing these payments and will report to the Court prior to any payment being made.

#### **I. BAT GLOBAL SIMPLIFICATION PROGRAM**

41. On September 12, 2019, BAT announced a global program to simplify its organization through, among other things, the reduction of business units and the number of layers of management. The program is intended to drive the growth of its new categories such as vapour, tobacco heating products and oral tobacco. Imperial has advised the Monitor that it is their understanding that the program is planned to be substantially complete by January 2020 and will have minimal impact on the Canadian operations, as Imperial has for some time been reducing headcount where possible, primarily by attrition.

#### **J. ITA REASSESSMENTS**

42. The Monitor was advised that on June 10, 2019, CRA issued Reassessments under the ITA to Imperial for its taxation years ended December 31, 2011 and December 31, 2014 in the aggregate amount of \$152,230,369.60.
43. Imperial's counsel sent a notice of objection to CRA on September 5, 2019, objecting to the Reassessments.

#### **K. SETTLEMENT WITH THE GENSTAR RETIREE GROUP**

44. On April 25, 2019, Imperial, the Monitor and Representative Counsel for the Genstar Retiree Group reached agreement on a Settlement in respect of the

cessation of payments by Imperial under the Retirement Plans. The details of the Settlement are outlined in paragraph 17 of the Third Report.

45. On June 26, 2019, the Court issued the Settlement Approval Order which gave effect to the Settlement.
46. On July 18, 2019, the US Bankruptcy Court granted the “Order Granting Motion for Recognition and Enforcement of the Order of the Canadian Court Approving Settlement with the Retiree Group”, which recognized the Settlement Approval Order and can be found here.

#### **SETTLEMENT OVERPAYMENT**

47. Following the approval and recognition of the Settlement, Imperial, through the plan administrator for the Retirement Plans, made the required Settlement payments to the beneficiaries of such plans. The Monitor was advised that due to processing errors, the plan administrator inadvertently overpaid two beneficiaries of the Retirement Plans. The aggregate amount of the overpayment was US\$81,980.33. Following correspondence between the two beneficiaries and counsel to Imperial and Morgan Lewis, US counsel<sup>2</sup> to the Monitor in the Chapter 15 Proceedings, each of the beneficiaries returned their respective share of the overpayment to the plan administrator.

#### **L. THE COURT-APPOINTED MEDIATOR**

##### **ISSUES REFERRED TO THE COURT-APPOINTED MEDIATOR**

48. Since the date of the Fourth Report, the Monitor has held a number of discussions with the Court-Appointed Mediator and his counsel to attempt to resolve certain issues that have been referred to him by this Court, as set out below.

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<sup>2</sup>

Bracewell LLP was previously counsel to the Monitor in the Chapter 15 Proceedings. The counsel at Bracewell LLP that had carriage of this matter moved their practice to Morgan Lewis.

***Professional Fee Disclosure***

49. As described in the Fourth Report, an agreement was reached between the Tobacco Monitors, counsel to each of Imperial, JTI, and Rothmans, and the Quebec Litigation Plaintiffs, regarding professional fee disclosure. Pursuant to the Fee Disclosure Order, which can be found here, the Tobacco Monitors agreed to provide the Quebec Litigation Plaintiffs, and to such other parties on Imperial's service list who request this information in writing, on or before the 15th day of each month commencing with the month of June 2019, the fees and disbursements paid to each of the CCAA Professionals, broken down by firm, for the prior month.
50. On July 15, 2019, August 14, 2019 and September 13, 2019, and pursuant to the Fee Disclosure Order, the Monitor provided to the Quebec Litigation Plaintiffs, and to other parties who had requested such information, a summary, by firm, of the restructuring fees incurred on or after March 12, 2019 and paid to the CCAA Professionals during the months of June, July and August 2019, respectively.

**MEDIATING A GLOBAL SETTLEMENT OF TOBACCO CLAIMS**

***Details Regarding the Mediation***

51. The Court-Appointed Mediator's main purpose in these CCAA Proceedings, as described in the Initial Order, is to mediate a global settlement of the Tobacco Claims.
52. On August 1, 2019, counsel to each of the Mediation Participants delivered mediation briefs to the Court-Appointed Mediator and each of the Tobacco Monitors. On September 12, 2019, counsel for the Consortium of Provinces and the Provinces of Quebec, Ontario, Alberta, Newfoundland and Labrador submitted reply briefs. The Court-Appointed Mediator has scheduled a Plenary Session with each of the Mediation Participants, the Tobacco Monitors and their counsel. Counsel to each of the Mediation Participants will be given an opportunity to present at the Plenary Session.

***Non-Disclosure Agreements and the Imperial Data Room***

53. Since the commencement of these CCAA Proceedings, the Monitor has received a number of requests for information concerning Imperial's financial status and forecast activities from the Mediation Participants. The Monitor understands that similar requests were made of the other Tobacco Monitors.
54. On June 27, 2019, counsel to the Court-Appointed Mediator circulated a "Next Steps" memorandum in connection with the Mediation. Among other things, this memorandum instructed each of the Tobacco Monitors to establish and administer a Data Room for each of the Applicants.
55. The Tobacco Monitors, under the auspices of the Court-Appointed Mediator, developed consensual, common categories of information to be included in Data Rooms for each of the Applicants, which are responsive to requests submitted by Mediation Participants, and as well as other information, which the Tobacco Monitors considered relevant.
56. During the months of June and July 2019, the Monitor worked with Imperial and its counsel to establish the Imperial Data Room. During this time the Tobacco Monitors also met regularly and reviewed information to be included in the Data Rooms to ensure, to the extent possible, consistency as to content and quality of information across the three estates.
57. The Imperial Data Room, which went live on August 16, 2019, is controlled by the Monitor and is limited to those Mediation Participants and their advisors who have signed a non-disclosure agreement. The Court-Appointed Mediator and his counsel and advisors have access to the Imperial Data Room. The Tobacco Monitors and their counsel also have access to each of the Data Rooms.
58. At the date of this Report, Imperial has entered into a non-disclosure agreement with the counsel and financial advisor for the Consortium of Provinces, the financial advisor to the Province of Ontario and counsel for the Provinces of Alberta and Newfoundland and Labrador. The Monitor is advised that Imperial

and the Consortium of Provinces, the Provinces of Alberta, Newfoundland and Labrador and Ontario are continuing to negotiate the terms of a non-disclosure agreement for signature by those provinces.

**M. OVERVIEW OF THE MONITOR'S ACTIVITIES**

59. Since the date of the Fourth Report, the Monitor and its counsel have held numerous meetings and/or discussions with Imperial and its counsel to:  
(a) monitor Imperial's business activities; (b) monitor Imperial's receipts and disbursement; (c) gather Information to be included in the Imperial Data Room; and (d) further their understanding of Imperial's business environment and factors expected to impact its future business prospects.
60. The Monitor has worked with its Canadian and US counsel to facilitate the approval and implementation of the Genstar Settlement in these CCAA Proceedings and its recognition in the Chapter 15 Proceedings.
61. Following the issuance of the October Stay Extension Order, counsel to the Monitor provided the Order to the Consolidated Service List, Justice Riordan of the Superior Court of Quebec, Justice Boone of the Supreme Court of Newfoundland and Labrador and either the seized judge or registrar for all other courts in Canada where there is active litigation involving Imperial.
62. The Monitor's counsel engaged with counsel to various parties in respect of the Court-to-Court Communications Order. In July 2019, counsel for the Monitor provided the Court-to-Court Communications Order to the Consolidated Service List, Justice Riordan of the Superior Court of Quebec, Justice Boone of the Supreme Court of Newfoundland and Labrador and either the seized judge or registrar for all other courts in Canada where there is active litigation involving Imperial. The Monitor also obtained an order of the US Bankruptcy Court recognizing the Court-to-Court Communications Order.
63. The Monitor is currently working with Imperial to prepare a five-year financial forecast. As with the historic Information currently in the Data Rooms, the

Tobacco Monitors will review the forecast prepared by each of the Applicants to ensure consistency as to the framework and underlying industry assumptions used in each forecast. These forecasts are anticipated to be available in the Imperial Data Room by the end of November 2019.

**N. STAY OF PROCEEDINGS**

64. Imperial is seeking an extension to the Stay of Proceedings to March 6, 2020. The Monitor understands that such extension is necessary for Imperial to operate the business in the ordinary course as it continues to participate in the Mediation and work towards developing a plan of compromise or arrangement for the resolution of the Tobacco Claims.
65. 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 in the early stages of Mediation with the Court-Appointed Mediator in an effort to reach a global settlement of the Tobacco Claims;
  - (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; and
  - (d) no creditor will be materially prejudiced if the extension is granted.

The Monitor respectfully submits to the Court this Report.

Dated this 25<sup>th</sup> day of September, 2019.

*FTI Consulting Canada Inc.*

**FTI Consulting Canada Inc.**

in its capacity as Monitor of Imperial Tobacco Canada Limited and Imperial Tobacco Company Limited



## APPENDIX A

### GLOSSARY

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

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

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

“**BAT MX Agreement**” means the BAT MX Agreement dated July 2, 2015 between BAT Mexico and ITCAN.

“**BIA**” means the *Bankruptcy and Insolvency Act*, R.S.C. 1985, c. B-3, as amended.

“**BNS**” means the Bank of Nova Scotia.

“**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.

“**Cash Flow Forecast**” means the consolidated cash flow projection of Imperial’s receipts and disbursements for the period beginning the week of September 16, 2019 and through the week of March 2, 2020.

“**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.

“**Consolidated Service List**” means the consolidated service list for all of the Tobacco CCAA Proceedings.

“**Consortium of Provinces**” means, collectively, the Province of British Columbia, Province of Manitoba, Province of New Brunswick, Province of Nova Scotia, Province of Prince Edward Island and 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 global settlement of the Tobacco Claims, in the context of these CCAA Proceedings.

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

“**Data Room**” means a data room containing the Information.

“**EY**” means Ernst & Young Inc.

“**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 15<sup>th</sup> of every month, beginning with June 2019.

“**First Amended and Restated Initial Order**” means the Initial Order, as amended and restated as of April 5, 2019.

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

“**Forecast Period**” means the period beginning the week of September 16, 2019 and through the week of March 2, 2020.

“**Foreign Recognition Order**” means an order of the US Bankruptcy Court recognizing the CCAA Proceedings as the main proceedings and staying proceedings against ITCAN in the US.

“**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 of Canada 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, Imperial Tobacco Canada Limited 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, and as well as other information, which the Tobacco Monitors considered relevant.

“**Initial Affidavit**” means the Affidavit of Eric Thauvette sworn March 12, 2019.

“**Initial Order**” means the initial order granted on March 12, 2019, by this Court which authorized, among other things, the Stay of Proceedings and FTI’s appointment as Monitor of Imperial’s CCAA Proceedings.

“**ITA**” means *Income Tax Act* (Canada).

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

“**JTI**” means JTI-Macdonald Corp.

“**JTI CCAA Proceedings**” means the insolvency proceedings commenced by JTI under the CCAA.

“**June Stay Extension Order**” means an order of the Court, dated April 5, 2019, extending the length of the Stay of Proceedings to June 28, 2019.

“**Letter Agreement**” means an agreement entered into between BNS and Imperial on May 22, 2019, relating to the cash management services provided to Imperial by BNS and letters of credit issued by BNS to secure certain of Imperial’s pension and tax obligations.

“**March Thauvette Affidavit**” means the affidavit of Eric Thauvette, Vice President and Chief Financial Officer of Imperial, 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 “personal injury class action plaintiffs” represented by the Merchant Group, the “tobacco light class action plaintiffs”, and the Ontario Flue-Cured Tobacco Growers Marketing Board.

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

“**Monitor’s Reports**” means collectively, the Pre-Filing Report, the First Report, the Second Report, the Third Report and the Fourth Report.

“**Morgan Lewis**” means Morgan, Lewis & Bockius LLP, in its capacity as US counsel to the Monitor in the Chapter 15 Proceedings.

“**Notice Procedure Order**” means an order of the Court approving the form and manner of notice of the Settlement Approval Hearing to the Represented Parties, among other things.

“**October Stay Extension Order**” means an order of the Court, dated June 26, 2019, extending the length of the Stay of Proceedings to October 4, 2019.

“**Plenary Session**” means a meeting scheduled by the Court-Appointed Mediator to be attended by each of the Mediation Participants, the Tobacco Monitors and their counsel.

**“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.

**“Quebec Appeal Judgment”** means the Quebec Court of Appeal 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 by approximately \$3 billion. Imperial’s share of the liability stands at \$9.2 billion with interest and additional indemnity for moral damages and punitive damages.

**“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 plaintiff and the certified class of plaintiffs in each of the “Letourneau action” and the “Blais action”, as described in the March Thauvette Affidavit.

**“Reassessments”** means reassessments under the ITA issued to Imperial for its taxation years ended December 31, 2011 and December 31, 2014 in the aggregate amount of \$152,230,369.60.

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

**“Representation Order”** means an order of the Court dated April 25, 2019, appointing Ari Kaplan of Kaplan Law as Representative Counsel.

**“Representatives”** means Vivian Brennan-Dolezar, Robert M. Brown and George A. Foster, the court-appointed representatives of the Represented Parties.

**“Representative Counsel”** means Ari Kaplan of Kaplan Law, in his capacity as representative counsel to the Retiree Group, pursuant to the Representation Order.

**“Represented Parties”** means all persons with entitlements under the Retirement Plans, including survivors and beneficiaries of such persons and any other person under the Representation Order.

**“Retiree Group”** means a steering committee formed to represent the interests of former officers, executives, and management employees of Genstar.

**“Retirement Plans”** means, collectively, the following pension plans: (a) a deferred income plan for approximately 53 individuals who are either former senior management employees of Genstar or their surviving spouses; (b) supplemental executive retirement plan for approximately 14 individuals who were either former Genstar employees or their

surviving spouses; and (c) a supplementary pension plan for 3 individuals who were either former Genstar employees or their surviving spouses.

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

“**Rothmans CCAA Proceedings**” means the insolvency proceedings commenced by Rothmans under the CCAA.

“**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 Thauvette Affidavit**” means the affidavit of Eric Thauvette, Vice President and Chief Financial Officer of Imperial, sworn September 20, 2019.

“**Settlement**” means the settlement entered into on April 25, 2019 between ITCAN and the Representatives in respect of the Retirement Plans.

“**Settlement Approval Hearing**” means the motion heard on June 26, 2019 for the approval of the Settlement.

“**Settlement Approval Order**” means an Order of this Court, approving the Settlement and the distribution of the Settlement among the Represented Parties, among other things.

“**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 October 4, 2019, and if so approved by the Court on October 2, 2019, to March 6, 2020.

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

“**Tobacco CCAA Proceedings**” means, collectively, the CCAA proceedings of ITCAN, Rothmans, and JTI.

“**Tobacco Claims**” means all claims brought or that could be brought under applicable law against Imperial 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 and Vapour Products.

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

“**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, heat-not-burn 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 Vapour Products.

“**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.

“**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.

**APPENDIX B**

See attached.

# Imperial Tobacco Canada Limited

CCAA Cash Flow Forecast

(CAD\$ in thousands)

Week Beginning (Monday)	16-Sep-19	23-Sep-19	30-Sep-19	7-Oct-19	14-Oct-19	21-Oct-19	28-Oct-19	4-Nov-19	11-Nov-19	18-Nov-19	25-Nov-19	2-Dec-19	9-Dec-19	
Forecast Week	1	2	3	4	5	6	7	8	9	10	11	12	13	
<b>RECEIPTS</b>														
Trade Receipts	[2]	93,824	101,968	98,119	98,689	94,923	94,328	126,731	147,227	118,799	89,001	115,567	88,677	112,776
<b>DISBURSEMENTS</b>														
<i>Operating Disbursements</i>														
Taxes and Levies	[3]	(105,374)	(5,187)	(248,078)	(46,211)	(60,497)	(52,082)	(199,376)	-	(132,980)	(77,721)	(53,928)	(117,319)	(41,534)
Operations	[4]	(3,511)	(57,041)	(9,795)	(14,164)	(3,412)	(14,576)	(44,939)	(10,928)	(13,235)	(5,340)	(38,090)	(8,970)	(14,259)
<i>Total Operating Disbursements</i>		(108,885)	(62,228)	(257,872)	(60,375)	(63,910)	(66,658)	(244,315)	(10,928)	(146,215)	(83,031)	(92,019)	(126,289)	(55,792)
<b>OPERATING CASH FLOWS</b>														
		(15,061)	39,740	(159,753)	38,314	31,013	27,670	(117,583)	136,298	(27,416)	5,977	23,549	(37,612)	56,984
<i>Financing Disbursements</i>														
Interest and Related Fees	[5]	-	1,332	-	-	-	-	1,368	-	-	-	1,432	-	-
<i>Restructuring Disbursements</i>														
Professional Fees	[6]	(2,652)	(509)	(509)	(488)	(488)	(488)	(488)	(488)	(488)	(488)	(488)	(483)	(483)
<b>NET CASH FLOWS</b>														
		(17,713)	40,563	(160,263)	37,826	30,525	27,182	(116,704)	135,810	(27,904)	5,481	24,492	(38,095)	56,501
<b>CASH</b>														
Beginning Balance		825,943	808,230	848,793	688,530	726,356	756,881	784,063	667,359	803,169	775,265	780,747	805,239	767,144
Net Cash Inflows / (Outflows)		(17,713)	40,563	(160,263)	37,826	30,525	27,182	(116,704)	135,810	(27,904)	5,481	24,492	(38,095)	56,501
Other (FX)		-	-	-	-	-	-	-	-	-	-	-	-	-
<b>ENDING CASH</b>		808,230	848,793	688,530	726,356	756,881	784,063	667,359	803,169	775,265	780,747	805,239	767,144	823,645

**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 2020 price increases. The Company's ability to maintain the price increase is dependent on market conditions and is uncertain.
- [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 (\$9 million in December 2019 relating to wrapping material and \$46 million in January 2020 relating to equipment) that will become obsolete after the implementation of the Tobacco Products Regulations (Plain and Standardized Appearance), as detailed in paragraph 40 in the Monitor's Report.
- [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 and the Court-Appointed Mediator's Counsel.
- [7] Due to plain-pack regulations, the Company expects accelerated sales of certain branded Tobacco Products to their wholesale and retail customer base, which will result in inventory fluctuations into early 2020. As a result, the Monitor understands that the Company anticipates variations from historical levels and timings of receipts and disbursements in the short term. The Company expects the timing of receipts and disbursements to return to historic norms once the transition to plain packaging is complete.

Filed 10/27/19 - SCC Doc 65-2  
 Filed 04/08/20 - SCC Doc 20-001  
 Filed 09/08/20 - SCC Doc 20-009:12:20  
 Exhibit E



# Imperial Tobacco Canada Limited

CCAA Cash Flow Forecast

(CAD\$ in thousands)

Week Beginning (Monday)	16-Dec-19	23-Dec-19	30-Dec-19	6-Jan-20	13-Jan-20	20-Jan-20	27-Jan-20	3-Feb-20	10-Feb-20	17-Feb-20	24-Feb-20	2-Mar-20	25-Week Total	
Forecast Week	14	15	16	17	18	19	20	21	22	23	24	25		
<b>RECEIPTS</b>														
Trade Receipts	[2]	115,804	104,557	133,648	27,084	27,800	48,204	62,183	74,389	78,353	76,434	78,801	81,372	2,289,258
<b>DISBURSEMENTS</b>														
<i>Operating Disbursements</i>														
Taxes and Levies	[3]	(44,558)	(4,919)	(121,716)	(29,896)	(26,392)	(25,510)	(119,231)	-	(20,464)	(28,574)	(37,991)	(77,584)	(1,677,122)
Operations	[4]	(58,444)	(13,712)	(4,164)	(17,363)	(6,054)	(14,292)	(60,273)	(4,791)	(13,266)	(3,126)	(44,838)	(4,256)	(482,809)
<i>Total Operating Disbursements</i>		(103,002)	(18,631)	(125,880)	(47,259)	(32,446)	(39,802)	(179,504)	(4,791)	(33,730)	(31,700)	(82,829)	(81,840)	(2,159,931)
<b>OPERATING CASH FLOWS</b>														
		12,803	85,926	7,768	(20,175)	(4,646)	8,402	(117,321)	69,598	44,623	44,734	(4,028)	(468)	129,327
<i>Financing Disbursements</i>														
Interest and Related Fees	[5]	-	-	1,395	-	-	-	1,759	-	-	-	1,540	-	8,826
<i>Restructuring Disbursements</i>														
Professional Fees	[6]	(483)	(318)	(368)	(488)	(488)	(488)	(488)	(488)	(488)	(488)	(488)	(483)	(14,100)
<b>NET CASH FLOWS</b>														
		12,320	85,608	8,796	(20,664)	(5,134)	7,914	(116,050)	69,110	44,135	44,245	(2,977)	(951)	124,054
<b>CASH</b>														
Beginning Balance		823,645	835,965	921,574	930,370	909,706	904,572	912,485	796,435	865,545	909,679	953,925	950,948	825,943
Net Cash Inflows / (Outflows)		12,320	85,608	8,796	(20,664)	(5,134)	7,914	(116,050)	69,110	44,135	44,245	(2,977)	(951)	124,054
Other (FX)		-	-	-	-	-	-	-	-	-	-	-	-	-
<b>ENDING CASH</b>		835,965	921,574	930,370	909,706	904,572	912,485	796,435	865,545	909,679	953,925	950,948	949,997	

**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 exclusive of sales taxes. The sales forecast is based on historical sales patterns, seasonality, and current management's expectations, including the estimated impact of the transition to plain-packaging regulations. The cash flow forecast includes certain 2020 price increases. The Company's ability to maintain the price increase is dependent on market conditions and is uncertain.
- [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 (\$9 million in December 2019 relating to wrapping material and \$46 million in January 2020 relating to equipment) that will become obsolete after the implementation of the Tobacco Products Regulations (Plain and Standardized Appearance) as detailed in paragraph 40 in the Monitor's Report.
- [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 and the Court-Appointed Mediator's Counsel.
- [7] Due to plain-pack regulations, the Company expects accelerated sales of certain branded Tobacco Products to their wholesale and retail customer base, which will result in inventory fluctuations into early 2020. As a result, the Monitor understands that the Company anticipates variations from historical levels and timings of receipts and disbursements in the short term. The Company expects the timing of receipts and disbursements to return to historic norms once the transition to plain packaging is complete.

Filed 19-10-20 Doc 65-2 Entered 04/08/20 09:12:20 Exhibit E

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

19-10771-scc

**FIFTH REPORT OF THE MONITOR  
SEPTEMBER 25, 2019**

Doc 45-2

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Filed 09/20/19 at 12:20 PM  
Filed 09/20/19 at 12:20 PM

Exhibit E

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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

**SEVENTH 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 throughout this Report, if defined in the glossary, is hyperlinked to its respective definition in 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 and further amended and restated as of April 25, 2019.

4. A full listing of the previous orders made by this Court and the US Bankruptcy Court in these CCAA Proceedings can be found in the schedule attached to this Report as Appendix “B”.

**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 as well as 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 Monitor’s Reports.
8. All Court materials filed and orders issued in these CCAA 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, reviewed or otherwise attempted to verify the accuracy or completeness of the 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’s 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 February 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 proceedings;
  - ii. an update on the Mediation;
  - iii. Imperial's business activities, industry developments and trends impacting Imperial's business;
  - iv. certain cash management agreements with BNS and HSBC;
  - v. Imperial's budget to actual cash flow results for the 20-week period ending February 2, 2020;
  - vi. the Cash Flow Forecast for the 35-week period commencing the week of February 3, 2020 through the week of September 28, 2020;
  - vii. the new Tobacco Regulations and regulations governing vapour products;
  - viii. the status of Imperial's payment obligations to BAT Mexico in connection with the BAT MX Agreement;
  - ix. the Ryder Settlement;

- x. the IHGI Plan funding shortfall payments;
- xi. the activities of the Monitor and its counsel since November 26, 2019, the date of the Sixth Report;
- xii. Imperial's request for an Order extending the Stay of Proceedings to September 30, 2020; and
- xiii. the Monitor's comments and recommendations in respect of the foregoing matters.

**F. UPDATE ON COURT PROCEEDINGS**

- 13. On December 6, 2019, the Court heard a joint motion of the Tobacco Monitors seeking the appointment of Wagners as representative counsel for the TRW Claimants. On December 9, 2019, the Court issued a Representative Counsel Order, which appointed Wagners as representative counsel. A copy of the Representative Counsel Order can be found here.
- 14. On January 3, 2020, the Court released the Representative Counsel Reasons, in which the Court held that it was appropriate to appoint Wagners as representative counsel in part because the TRW Claimants are vulnerable individuals requiring representation, and the most efficient and cost-effective way to provide this representation is the appointment of a single law firm.

**G. UPDATE ON THE MEDIATION**

- 15. The Applicants have continued to populate the Imperial Data Room with financial information to assist Mediation Participants in their due diligence with respect to the Mediation. The Data Rooms are accessible only to the advisors of Mediation Participants who have executed NDAs.
- 16. The Monitor continues to work with Imperial to populate the Imperial Data Room with financial and other information relevant to these proceedings and to respond to information requests.

17. Since the Sixth Report, the Court-Appointed Mediator, with the assistance of the Tobacco Monitors, has continued to conduct the Mediation and engage in 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. IMPERIAL'S BUSINESS ACTIVITIES, INDUSTRY DEVELOPMENTS AND TRENDS IMPACTING IMPERIAL'S BUSINESS**

18. As noted in the Monitor's Sixth Report, the tobacco industry in Canada appears to be experiencing a higher than historic downward trend in the volume of cigarettes sold. This trend has continued to the date of this Report.
19. The Monitor has been advised by Imperial that due to the implementation of the Tobacco Regulations described below and the accelerated sale of certain branded Tobacco Products, Imperial experienced temporary, short-term variations from historic levels and timings of receipts and disbursements. As required by the Tobacco Regulations, retailers ceased selling Tobacco Products in branded packages as of February 7, 2020. The retailers will return any unsold branded Tobacco Products to Imperial for destruction. The transition to plain packaging is largely complete and Imperial expects the timing of receipts and disbursements to return to historic levels in the coming weeks.
20. In the Sixth Report, the Monitor reported that Ms. Soraya Benchikh would assume the role of Chief Executive Officer at Imperial, effective May 2020. However, since the Sixth Report, the Monitor has been advised that Ms. Benchikh will be leaving the BAT Group, and Mr. Joe Fragnito will assume the role of Chief Executive Officer at Imperial, effective May 2020. Mr. Fragnito is currently the President and Chief Commercial Officer at R.J. Reynolds Tobacco Company, an affiliate of the BAT Group in the US.



21. In the fall of 2019, Imperial advised the Monitor that as a result of the implementation of the plain packaging Tobacco Regulations, Imperial would need to acquire additional equipment for the production of certain cigarettes. After considering various options, including purchasing new equipment at a price of approximately \$8.2 million, Imperial entered into a sale transaction with BAT Mexico to acquire used equipment at its depreciated net book value of \$6.7 million. The equipment is to be used for two years until the slide and shell packaging requirements under the Tobacco Regulations are implemented in 2021, at which time the equipment will be destroyed and replaced with equipment that complies with the slide and shell packaging requirements. The Monitor has reviewed the necessity and business rationale for this purchase, as well as the consideration paid by Imperial, and approves of the transaction. This transaction is reflected in the Cash Flow Forecast.

#### **I. CASH MANAGEMENT**

22. As previously disclosed in the Fifth Report, following the commencement of these CCAA Proceedings, on May 22, 2019, Imperial entered into a letter agreement with BNS to amend the terms of certain cash management services provided to Imperial by BNS and letters of credit issued by BNS to secure certain of Imperial's pension and tax obligations. On July 29, 2019, Imperial entered into an amended and restated letter agreement with BNS. Under the terms of the amended and restated letter agreement: (a) the parties will amend the minimum cash balance that Imperial must maintain in its accounts with BNS; (b) BNS will issue additional letters of credit at its discretion; and (c) Imperial, at the request of BNS, will obtain an order for a charge in favour of BNS to secure its obligations under its outstanding letters of credit. No such order has been sought to date.
23. Imperial also has cash management agreements with HSBC including letters of credit issued by HSBC to secure certain of Imperial's pension and tax obligations that need to be renewed or extended on an ongoing basis.

24. In the fall of 2019, Imperial, in consultation with the Monitor, entered into discussions with HSBC to amend the terms of certain cash management agreements. An agreement as to the amended terms was reached and accordingly, on November 19, 2019, Imperial entered into a letter agreement with HSBC relating to the cash management services provided to Imperial and letters of credit issued by HSBC to secure certain of Imperial's pension and tax obligations. Under the letter agreement, Imperial has agreed to the amount of minimum cash that must be maintained in its accounts with HSBC, and HSBC has agreed to renew or extend existing letters of credit, and may at its discretion, issue additional letters of credit. Details regarding the letter agreement are outlined in paragraph 10 of the February Thauvette Affidavit.

**J. RECEIPTS AND DISBURSEMENTS FOR THE 20-WEEK PERIOD ENDING FEBRUARY 2, 2020**

25. Imperial's cash balance as of the week ended February 2, 2020 was \$869.0 million, an increase over the 20-week period from the beginning cash balance of \$825.9 million as of September 16, 2019.
26. Imperial's actual net cash inflow for the 20-week period ending February 2, 2020 was approximately \$43.0 million. When compared to the forecasted net cash outflow of \$29.5 million, this results in a positive variance of approximately \$72.5 million, as summarized below:

(CAD\$ in thousands)

VARIANCE REPORT	Actuals	Forecast	Variance
<b>For the 20-week period ending Feb 2, 2020</b>			
<b>RECEIPTS</b>			
Trade Receipts	1,910,069	1,899,910	10,159
<b>DISBURSEMENTS</b>			
<i>Operating Disbursements</i>			
Taxes and Levies	(1,485,865)	(1,512,508)	26,643
Operations	(379,770)	(412,533)	32,763
<i>Total Operating Disbursements</i>	(1,865,634)	(1,925,041)	59,406
<b>OPERATING CASH FLOWS</b>	<b>44,435</b>	<b>(25,131)</b>	<b>69,565</b>
<i>Financing Disbursements</i>			
Interest and Related Fees on Existing Facilities	6,649	7,286	(637)
<i>Restructuring Disbursements</i>			
Professional Fees	(8,061)	(11,664)	3,603
<b>NET CASH FLOWS</b>	<b>43,023</b>	<b>(29,509)</b>	<b>72,531</b>
<b>CASH</b>			
Beginning Balance	825,943	825,943	-
Net Cash Inflows / (Outflows)	43,023	(29,509)	72,531
<b>ENDING CASH</b>	<b>868,966</b>	<b>796,435</b>	<b>72,531</b>

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

- i. *trade receipts*: positive timing variance of \$10.2 million or 0.5% against the forecast, as part of the ordinary course of business given the forecasted collections were approximately \$1,900 million over the current reporting period;
- ii. *taxes and levies*: positive timing variance of \$26.6 million, primarily driven by the timing of lower than forecasted corporate income tax instalments paid during the current reporting period;

- iii. *operating disbursements*: positive timing variance of \$32.8 million, primarily driven by the deferral of the \$55 million forecasted payment to BAT Mexico for the write-off of machinery and packaging rendered obsolete by new plain-packaging regulations, as discussed in paragraph 40 of this Report, which is then partially offset by a negative timing variance due to increased working capital requirements and short-term build-up of inventory as a result of the transition to plain-packaging regulations that is expected to return to historic levels in the future forecast period; and
- iv. *professional fees*: positive variance of \$3.6 million that consists of a positive permanent variance of \$2.6 million and a positive timing variance of approximately \$1.0 million, which is expected to reverse in the future forecast periods as outstanding invoices are paid.

#### **K. CASH FLOW FORECAST**

- 28. Imperial, with the assistance of the Monitor, has prepared a Cash Flow Forecast for the 35-week period commencing the week beginning February 3, 2020 through the week of September 28, 2020. The Cash Flow Forecast is attached as Appendix “C” to this Report.
- 29. During the Forecast Period, total operating receipts are forecast to be approximately \$3,245 million and total operating disbursements are forecast to be approximately \$2,724 million, resulting in a net positive operating cash flow of approximately \$521 million. This includes the potential intercompany payments that are discussed in paragraph 40 below. In addition, Imperial forecasts interest income of approximately \$15 million in respect of cash balances on deposit in Canada and professional fees disbursements of approximately \$15 million, such that net cash flow is forecast to be approximately \$521 million.
- 30. Although net cash flows are positive during the Forecast Period, there are 9 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. As such, cash flows in the weeks that fall on or around month-end tax payments are expected to be negative, which are then offset by the receipt of the positive cash flows during the remainder of the month.
31. 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.
  32. 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.
  33. Based on the Monitor's review, nothing has come to its attention that causes it to believe, in all material aspects, 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.

34. 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.
35. 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***

36. As noted in the Sixth Report, the Tobacco Regulations came into force on November 9, 2019. These regulations require manufacturers of Tobacco Products to use plain, unbranded packaging. In accordance with the Tobacco Regulations, Imperial ceased selling branded Tobacco Products to wholesalers and retailers on November 9, 2019. Retailers ceased selling Tobacco Products in branded packages on February 7, 2020. Any products not sold by February 7, 2020, will be returned to Imperial for destruction.

### ***The Regulation of Vapour Products***

37. As discussed in the Sixth Report, vapour products are coming under increased scrutiny globally resulting in stringent regulation and, in some cases, bans.
38. Appendix “D” to this Report summarizes the various regulatory changes that are being considered and implemented across Canada.
39. As noted in the Sixth Report, the Monitor has been advised by Imperial that, due to the new vaping regulations, well publicized health concerns and the increased

scrutiny of vapour products globally, there is a high level of uncertainty as to the level of future sale of vapour products.

**M. UPDATE ON PROPOSED BAT MEXICO PAYMENTS**

40. As described in the Sixth Report, the Monitor has been advised by Imperial that BAT Mexico will be required to write off the undepreciated cost of manufacturing equipment used to package and wrap Tobacco Products for Imperial that has been rendered obsolete by the Tobacco Regulations, as well as some wrapping materials that can no longer be used for packaging due to the Tobacco Regulations which will be billed to Imperial under the terms of the BAT MX Agreement. The estimated payment amount of \$55 million was reflected in the cash flow forecast that was submitted to the Court in the Monitor's Fifth Report on September 25, 2019 and forecasted to be paid in December 2019 and January 2020, respectively. No payment has been made to date and the payment amount is currently reflected in the Cash Flow Forecast and forecasted to be paid in September 2020.
41. The Monitor is continuing to work with Imperial to review these proposed payments and underlying documents and will report to the Court prior to any payment being made.

**N. RYDER SETTLEMENT**

42. Following the implementation of the Tobacco Regulations on November 9, 2019, Imperial experienced short-term inventory fluctuations as a result of increased volume and accelerated sales of certain branded Tobacco Products. This change from the normal volume and timing of deliveries resulted in an increase in the scale of services provided by Ryder. Subsequently, a payment dispute arose between Imperial and Ryder, the vendor responsible for the delivery and logistics of Imperial's Tobacco Products, as to the amount due to Ryder. This dispute has now been settled. The Monitor was informed of the dispute and concurs with the settlement.

**O. IHGI PENSION PLAN CONTRIBUTIONS**

43. IHGI is a foreign subsidiary of ITCAN and holds certain legacy obligations as a result of the historical acquisition and restructuring of various companies. IHGI also holds various liabilities, including the IHGI Plan. The IHGI Plan, further described in the March Thauvette Affidavit at Sections 25(a), 54, 64, and Exhibit “C” thereto, is a US tax-qualified, registered defined benefit pension plan covering approximately 1,556 former US employees of Genstar Company, Hardee’s Food Systems Inc. and Fast Food Merchandisers Inc.
44. ITCAN makes annual contributions to the IHGI Plan; the quantum of the required contributions (if any) is determined by an independent actuary. The contributions payable in 2020 were determined by the independent actuary to total \$3.4 million USD, for which the payment was made in January 2020.

**P. OVERVIEW OF THE MONITOR’S ACTIVITIES**

45. Since the date of the Sixth Report, the Monitor and its counsel have held numerous meetings and/or discussions with Imperial and its counsel to: (a) monitor Imperial’s business activities; (b) monitor Imperial’s receipts and disbursements; (c) gather and review Information to be included in the Imperial Data Room; (d) address vendor and stakeholder inquiries; (e) review proposed capital expenditures; and (f) further their understanding of Imperial’s business environment and the factors expected to impact its future business prospects.
46. The Monitor has assisted Imperial in preparing the five-year financial forecast and responding to information requests from stakeholders.
47. The Monitor has also regularly attended meetings with the Mediator and stakeholders and has provided the Mediator with information necessary to advance the Mediation.
48. The Tobacco Monitors and their counsel have met regularly to discuss ongoing matters including the relief sought herein.



*Statistics Canada Communications*

49. As described in the Sixth Report, the Monitor understands that in response to a *Globe & Mail* article published on October 8, 2019, counsel to Phillip Morris International Inc. and Rothmans each sent a letter to counsel to the Consortium of Provinces: (a) confirming that the Provinces will not return or remove any data that is potentially relevant to the Provinces' actions against the Applicants and the Provinces' claims asserted in the Tobacco CCAA Proceedings; and (b) requesting the ability to review communications between Statistics Canada and the Provinces with respect to this issue.
50. In a letter dated December 20, 2019 the Province of Ontario denied the request to produce the Statistics Canada communications, and directed counsel to make such a request to the Ministry of Health. In this regard, the Province asserted that any communications between Ontario and Statistics Canada are matters of contract and fall outside the scope of the Tobacco CCAA Proceedings. Moreover, the Province advised that it has not made any changes to its data retention policies.
51. Similarly, in a letter dated December 20, 2019 the Consortium of Provinces denied the request and asserted that communications between members of the Consortium of Provinces and Statistics Canada are outside the scope of the Tobacco CCAA Proceedings. The Consortium of Provinces stated that they currently intend to rely solely on the report of Dr. Glenn Harrison (which was appended to the reply mediation brief of the Consortium of Provinces) and various other public information.

*Professional Fee Disclosure*

52. As described in the Fourth Report, an agreement was reached between the Tobacco Monitors, counsel to each of Imperial, JTIM and Rothmans, and the Quebec Litigation Plaintiffs regarding professional fee disclosure. Pursuant to the Professional Fee Disclosure Order, which can be found here, the Tobacco Monitors

agreed to provide the Quebec Litigation Plaintiffs and such other parties on Imperial's service list who request this information in writing, on or before the 15<sup>th</sup> day of each month commencing with the month of June 2019, the fees and disbursements paid to each of the CCAA Professionals, broken down by firm, for the prior month.

53. On December 11, 2019, January 14, 2020, and February 10, 2020, pursuant to the Professional Fee Disclosure Order, the Monitor provided 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 during the months of November 2019, December 2019 and January 2020, respectively.

**Q. STAY OF PROCEEDINGS**

54. Imperial is seeking an extension of the Stay Period to September 30, 2020. 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 as it continues to work towards developing a plan of compromise or arrangement for the pan-Canadian global settlement of the Tobacco Claims.
55. 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;

- (b) 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; and
- (d) no creditor will be materially prejudiced if the extension is granted.

The Monitor respectfully submits to the Court this Report.

Dated this 13<sup>th</sup> day of February, 2020.

*FTI Consulting Canada Inc.*

**FTI Consulting Canada Inc.**

in its capacity as Monitor of Imperial Tobacco Canada Limited and Imperial Tobacco Company Limited

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

“**BAT MX Agreement**” means the BAT MX Agreement dated July 2, 2015 between BAT Mexico and ITCAN.

“**BNS**” means The Bank of Nova Scotia.

“**Cash Flow Forecast**” means the cash flow forecast of Imperial’s receipts and disbursements for the 35-week period commencing the week of February 3, 2020 through the week of September 28, 2020.

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

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

“**CCA Professionals**” means the Monitor, counsel to the Monitor, counsel to Imperial, and any financial advisor Imperial has retained in connection with these CCA 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.

“**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.

“**Excluded Claims**” means the claims excluded from the definition of TRW Claimants for the purposes of the relief sought herein 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 Amended and Restated Initial Order**” means the Initial Order, as amended and restated as of April 5, 2019.

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

“**February Thauvette Affidavit**” means the affidavit of Eric Thauvette, Vice President and Chief Financial Officer of Imperial, sworn February 13, 2020.

“**Forecast Period**” means the 35-week period commencing the week of February 3, 2020 through the week of September 28, 2020.

“**Foreign Recognition Order**” means an order of the US Bankruptcy Court recognizing the CCAA Proceedings as the main proceedings and staying proceedings against ITCAN in the US.

“**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.

“**HSBC**” means HSBC Bank Canada.

“**IHGI**” means Imasco Holdings Group Inc.

“**IHGI Plan**” means the US tax qualified, registered defined benefit pension plan covering approximately 1,556 former US employees of certain of Imperial’s predecessor companies, which was terminated effective as of December 31, 2018.

“**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, 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 Corporation, 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.

“**June Stay Extension Order**” means an order of the Court, dated April 5, 2019, extending the length of the Stay of Proceedings to June 28, 2019.

“**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 Imperial, 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 “personal injury class action plaintiffs” represented by Merchant, the “tobacco light class action plaintiffs”, and the Ontario Flue-Cured 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 and the Sixth Report.

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

“**Notice Procedure Order**” means an order of the Court, dated May 14, 2019, approving the form and manner of notice of the Settlement Approval Hearing to the Represented Parties, among other things.

“**October Stay Extension Order**” means an order of the Court, dated June 26, 2019, extending the length of the Stay of Proceedings to October 4, 2019.

“**PEI**” means Prince Edward Island.

“**PMI Group**” means Phillip 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 15<sup>th</sup> 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 seventh report of the Monitor filed on February 13, 2019.

“**Representative Counsel Order**” means the order issued by this Court on December 9, 2019, appointing Wagners as representative counsel to the TRW Claimants.

“**Representative Counsel Reasons**” means this Court’s Reasons for the Representative Counsel Order, released on January 3, 2020.

“**Representatives**” means Vivian Brennan-Dolezar, Robert M. Brown and George A. Foster, the court-appointed representatives of the Represented Parties.

“**Represented Parties**” means all persons with entitlements under the Retirement Plans, including survivors and beneficiaries of such persons and any other person under the Representation Order.

“**Retirement Plans**” means, collectively, the following pension plans: (a) a deferred income plan for approximately 53 individuals who are either former senior management employees of Genstar or their surviving spouses; (b) a supplemental executive retirement plan for approximately 14 individuals who were either former Genstar employees or their surviving spouses; and (c) a supplementary pension plan for 3 individuals who were either former Genstar employees or their surviving spouses.

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

“**Ryder**” means Ryder Truck Rental Canada Ltd.

“**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.

“**Settlement**” means the settlement entered into on April 25, 2019 between ITCAN and the Representatives in respect of the Retirement Plans.

“**Settlement Approval Hearing**” means the motion heard on June 26, 2019 for the approval of the Settlement.

“**Settlement Approval Order**” means an Order of this Court, approving the Settlement and the distribution of the Settlement among the Represented Parties, among other things.

“**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 12, 2020.



“**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 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.

**“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.

**“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.

**2. 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, a copy of which can be found here.

**3. Foreign Recognition Order:**

The Foreign Recognition Order was granted by the US Bankruptcy Court on April 17, 2019, which recognizes these CCAA Proceedings. 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. Notice Procedure Order:**

The Notice Procedure Order was issued on May 14, 2019 and can be found here.

**6. Professional Fee Disclosure Order:**

The Professional Fee Disclosure Order was issued on May 14, 2019 and can be found here.

**7. Clarification of Insurance Lift-Stay Order**

The Clarification of Insurance Lift-Stay Order was issued on May 14, 2019 and can be found here.

**8. 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. The endorsement can be found here.

**9. 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.

**10. Genstar Settlement Approval Order**

The Genstar Settlement Approval Order was issued on June 26, 2019. A copy of which can be found here.

**11. 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. A copy of which can be found here.

**12. Court-to-Court Communications Order**

The Court-to-Court Communications Order was issued on July 9, 2019. A copy of which can be found here.

**13. 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.

**14. 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.

**15. 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. A copy of the March Stay Extension Order 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](#).

**APPENDIX "C"**  
**CASH FLOW FORECAST**

Please see attached.

**Imperial Tobacco Canada Limited**

CCAA Cash Flow Forecast

(CAD\$ in thousands)

Week Beginning (Monday)	3-Feb-20	10-Feb-20	17-Feb-20	24-Feb-20	2-Mar-20	9-Mar-20	16-Mar-20	23-Mar-20	30-Mar-20	6-Apr-20	13-Apr-20	20-Apr-20	27-Apr-20	4-May-20	11-May-20	18-May-20	25-May-20	1-Jun-20	
Forecast Week	1	2	3	4	5	6	7	8	9	10	11	12	13	14	15	16	17	18	
<b>RECEIPTS</b>																			
Trade Receipts	[2]	50,060	69,293	67,518	70,502	72,710	75,130	79,448	88,615	90,934	90,215	87,244	90,897	92,144	93,425	97,043	95,033	97,574	100,420
<b>DISBURSEMENTS</b>																			
<i>Operating Disbursements</i>																			
Taxes and Levies	[3]	-	(20,453)	(25,469)	(22,327)	(102,842)	(31,180)	(39,773)	(3,149)	(109,433)	-	(63,880)	(37,982)	(141,944)	-	(78,098)	(38,781)	(33,826)	(120,811)
Operations	[4]	(2,890)	(23,581)	(3,154)	(51,470)	(6,846)	(21,426)	(3,525)	(48,730)	(6,766)	(17,593)	(12,853)	(12,466)	(39,170)	(9,325)	(17,496)	(3,416)	(29,153)	(4,828)
<b>Total Operating Disbursements</b>		<b>(2,890)</b>	<b>(44,033)</b>	<b>(28,623)</b>	<b>(73,797)</b>	<b>(109,688)</b>	<b>(52,606)</b>	<b>(43,297)</b>	<b>(51,879)</b>	<b>(116,199)</b>	<b>(17,593)</b>	<b>(76,733)</b>	<b>(50,448)</b>	<b>(181,114)</b>	<b>(9,325)</b>	<b>(95,594)</b>	<b>(42,197)</b>	<b>(62,979)</b>	<b>(125,640)</b>
<b>OPERATING CASH FLOWS</b>																			
		<b>47,170</b>	<b>25,260</b>	<b>38,895</b>	<b>(3,295)</b>	<b>(36,978)</b>	<b>22,524</b>	<b>36,151</b>	<b>36,736</b>	<b>(25,265)</b>	<b>72,622</b>	<b>10,512</b>	<b>40,449</b>	<b>(88,969)</b>	<b>84,100</b>	<b>1,449</b>	<b>52,836</b>	<b>34,595</b>	<b>(25,220)</b>
<i>Financing Disbursements</i>																			
Interest and Related Fees	[5]	-	-	-	1,442	-	-	-	1,608	-	-	-	1,770	-	-	-	-	1,940	-
<i>Restructuring Disbursements</i>																			
Professional Fees	[6]	(1,332)	(408)	(408)	(408)	(402)	(402)	(402)	(402)	(402)	(408)	(408)	(408)	(408)	(408)	(408)	(408)	(408)	(402)
<b>NET CASH FLOWS</b>																			
		<b>45,838</b>	<b>24,852</b>	<b>38,487</b>	<b>(2,261)</b>	<b>(37,381)</b>	<b>22,122</b>	<b>35,749</b>	<b>36,334</b>	<b>(24,059)</b>	<b>72,214</b>	<b>10,104</b>	<b>40,041</b>	<b>(87,607)</b>	<b>83,692</b>	<b>1,041</b>	<b>52,428</b>	<b>36,127</b>	<b>(25,622)</b>
<b>CASH</b>																			
Beginning Balance		868,966	914,804	939,656	978,143	975,882	938,501	960,623	996,372	1,032,706	1,008,647	1,080,861	1,090,965	1,131,006	1,043,399	1,127,091	1,128,133	1,180,561	1,216,688
Net Cash Inflows / (Outflows)		45,838	24,852	38,487	(2,261)	(37,381)	22,122	35,749	36,334	(24,059)	72,214	10,104	40,041	(87,607)	83,692	1,041	52,428	36,127	(25,622)
Other (FX)		-	-	-	-	-	-	-	-	-	-	-	-	-	-	-	-	-	-
<b>ENDING CASH</b>		<b>914,804</b>	<b>939,656</b>	<b>978,143</b>	<b>975,882</b>	<b>938,501</b>	<b>960,623</b>	<b>996,372</b>	<b>1,032,706</b>	<b>1,008,647</b>	<b>1,080,861</b>	<b>1,090,965</b>	<b>1,131,006</b>	<b>1,043,399</b>	<b>1,127,091</b>	<b>1,128,133</b>	<b>1,180,561</b>	<b>1,216,688</b>	<b>1,191,066</b>

**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 2020 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 related 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 Working Agent, the Court-Appointed Mediator, the Court-Appointed Mediator's Counsel and the Representative Counsel for the TRW Claimants.
- [7] Due to the transition to plain-pack regulations, the Company may experience return of certain branded tobacco products by retail customers that can no longer be sold after February 7, 2020. As a result, the Monitor understands that the Company anticipates variations from historical levels and timings of receipts and disbursements in the short term. The Company expects the timing of receipts and disbursements to return to historic norms once the transition to plain packaging is complete.

Filed Pursuant to Court Order 10-10771-1-CC Filed 04/08/20 Entered 04/08/20 09:12:20 Exhibit C Page 9 of 40

# Imperial Tobacco Canada Limited

CCAA Cash Flow Forecast

(CAD\$ in thousands)

Week Beginning (Monday)	8-Jun-20	15-Jun-20	22-Jun-20	29-Jun-20	6-Jul-20	13-Jul-20	20-Jul-20	27-Jul-20	3-Aug-20	10-Aug-20	17-Aug-20	24-Aug-20	31-Aug-20	7-Sep-20	14-Sep-20	21-Sep-20	28-Sep-20	35-Week Total	
Forecast Week	19	20	21	22	23	24	25	26	27	28	29	30	31	32	33	34	35		
<b>RECEIPTS</b>																			
Trade Receipts	[2]	101,612	108,131	117,597	77,751	106,412	106,504	105,616	106,375	102,304	103,043	101,912	100,671	101,516	99,191	100,180	99,401	98,286	3,244,710
<b>DISBURSEMENTS</b>																			
<i>Operating Disbursements</i>																			
Taxes and Levies	[3]	(49,332)	(36,682)	(46,025)	(193,581)	(55,652)	(46,132)	(55,522)	(173,758)	-	(54,973)	(59,651)	(30,028)	(124,198)	(46,086)	(32,154)	(46,457)	(160,613)	(2,080,792)
Operations	[4]	(18,061)	(1,808)	(37,290)	(4,215)	(18,207)	(8,647)	(15,120)	(34,304)	(4,570)	(17,991)	(2,903)	(55,254)	(3,710)	(20,117)	(1,388)	(27,310)	(57,642)	(643,225)
<i>Total Operating Disbursements</i>		(67,393)	(38,490)	(83,315)	(197,796)	(73,859)	(54,779)	(70,642)	(208,063)	(4,570)	(72,964)	(62,554)	(85,282)	(127,908)	(66,203)	(33,542)	(73,768)	(218,255)	(2,724,017)
<b>OPERATING CASH FLOWS</b>																			
		34,220	69,641	34,282	(120,045)	32,553	51,725	34,975	(101,688)	97,734	30,080	39,358	15,389	(26,392)	2,988	66,638	25,634	(119,969)	520,693
<i>Financing Disbursements</i>																			
Interest and Related Fees	[5]	-	-	-	1,918	-	-	-	2,160	-	-	-	-	2,035	-	-	-	2,236	15,109
<i>Restructuring Disbursements</i>																			
Professional Fees	[6]	(402)	(402)	(402)	(402)	(408)	(408)	(408)	(408)	(402)	(402)	(402)	(402)	(402)	(408)	(408)	(408)	(408)	(15,114)
<b>NET CASH FLOWS</b>																			
		33,817	69,239	33,880	(118,529)	32,145	51,317	34,567	(99,936)	97,332	29,677	38,956	14,987	(24,759)	2,580	66,230	25,226	(118,141)	520,688
<b>CASH</b>																			
Beginning Balance		1,191,066	1,224,883	1,294,122	1,328,002	1,209,473	1,241,618	1,292,935	1,327,502	1,227,566	1,324,898	1,354,575	1,393,531	1,408,518	1,383,759	1,416,339	1,482,569	1,507,795	868,966
Net Cash Inflows / (Outflows)		33,817	69,239	33,880	(118,529)	32,145	51,317	34,567	(99,936)	97,332	29,677	38,956	14,987	(24,759)	2,580	66,230	25,226	(118,141)	520,688
Other (FX)		-	-	-	-	-	-	-	-	-	-	-	-	-	-	-	-	-	-
<b>ENDING CASH</b>		<b>1,224,883</b>	<b>1,294,122</b>	<b>1,328,002</b>	<b>1,209,473</b>	<b>1,241,618</b>	<b>1,292,935</b>	<b>1,327,502</b>	<b>1,227,566</b>	<b>1,324,898</b>	<b>1,354,575</b>	<b>1,393,531</b>	<b>1,408,518</b>	<b>1,383,759</b>	<b>1,416,339</b>	<b>1,482,569</b>	<b>1,507,795</b>	<b>1,389,654</b>	<b>1,389,654</b>

**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 2020 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.
- [7] Due to the transition to plain-pack regulations, the Company may experience return of certain branded tobacco products by retail customers that can no longer be sold after February 7, 2020. As a result, the Monitor understands that the Company anticipates variations from historical levels and timings of receipts and disbursements in the short term. The Company expects the timing of receipts and disbursements to return to historic norms once the transition to plain packaging is complete.

19-10771-1-3cc Doc 65-5 Filed 04/08/20 Entered 04/08/20 09:12:20 Pg 9 of 40 Exhibit C



**APPENDIX “D”  
REGULATION OF VAPOUR PRODUCTS**

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

1. *British Columbia* - On November 14, 2019, the Health Minister of British Columbia also announced new regulations on vapour products. These regulations: (1) restrict where the vapour products can be sold; (2) define nicotine as a “public health hazard” under the *Public Health Act*, giving the Province the power to limit the amount of nicotine used in vapour products to 20 milligrams per millilitre; and (3) require plain packaging with health warnings. The government plans to enact these regulations by April 1, 2020. The Province has also introduced legislation that made it the first province in Canada to have a specific tax rate of 20% for vapour products. This legislation came into effect on January 1, 2020.
2. *Yukon and Northwest Territories* - On November 27, 2019, the Yukon Legislative Assembly passed *the Tobacco and Vaping Products Control and Regulation Act*, which among other things, prohibits the sale of vapour products to young persons, and places general restrictions on the use, promotion and sale of vapour products. The Legislative Assembly of the Northwest Territories passed a substantially similar bill on February 27, 2019. The legislation in the Yukon and Northwest Territories will come into force on a day fixed by the Commissioner in Executive Council in those territories.
3. *PEI* - On November 28, 2019, PEI’s Bill 122 (previously discussed in the Sixth Report) received Royal Assent. This will amend PEI’s legislation to prohibit the sale of vapour products in retail locations other than tobacconist shops or vape shops and will raise the legal age to buy tobacco and vapour products from 19 to 21. The Bill will come into force no later than March 27, 2020, at which point PEI will have the highest age restriction on vaping in Canada.
4. *Saskatchewan* - On December 4, 2019, the government of Saskatchewan passed a law that, effective February 1, 2020, will restrict the sale, promotion and use of

- vapour products to align vaping regulations with those currently in place for tobacco in that province.
5. *Nova Scotia* - On December 4, 2019, the government of Nova Scotia issued an Order in Council to amend its tobacco and vaping regulations to prohibit the sale of all flavoured vapour products, except tobacco flavours. This amendment will come into force on April 1, 2020.
  6. *Federal* - On December 19, 2019, the federal government of Canada registered the *Vaping Products Labelling and Packaging Regulations* pursuant to the *Tobacco and Vaping Products Act* and the *Canada Consumer Product Safety Act*. The regulations, which come into force on July 1, 2020, restrict the level of nicotine concentration in any vapour product to 65 milligrams per millilitre and impose various packaging and labelling requirements for vapour products. Moreover, on December 21, 2019, the federal government published draft *Vaping Product Promotion Regulations*. If enacted, these regulations would prohibit the promotion of vapour products in any location where the promotion could be seen by young people and will require all other promotions to carry prescribed health warnings.
  7. *Ontario* - On January 1, 2020 the Province banned the promotion of vapour products in convenience stores and gas stations. Under the new vaping regulations, the promotion of vapour products is only permitted in speciality retail stores where individuals must be 19 years or older to enter. In February 2020, the Ontario government announced its intention to: (a) ban most flavoured vapour products from convenience stores and gas stations; and (b) limit the nicotine content of vapour products sold by those retailers to 20 milligrams a millilitre, which is the same level the B.C. government has proposed.
  8. *Alberta and Quebec* - Both Provinces have announced a review of their tobacco legislation to address the use and sale of vapour products, with developments expected in the spring of 2020.
  9. *Nunavut* – The Territory has announced that changes to the *Tobacco Control Act* in respect of vapour products are being considered for 2020.

10. *New Brunswick* – The Province has committed to introduce new measures to address youth vaping.

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

**SEVENTH REPORT OF THE MONITOR  
FEBRUARY 13, 2019**

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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

**SIXTH 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". Each capitalized term throughout this Report, if defined in the glossary, is hyperlinked to its respective definition in 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 the Court on March 12, 2019, as amended and restated as of April 5, 2019 and further amended and restated as of April 25, 2019.

4. A full listing of the previous orders made by the Court and the US Bankruptcy Court in these CCAA Proceedings can be found in the schedule attached to this Report as Appendix “B”.

### **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 as well as 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 Monitor’s Reports.
8. All Court materials filed and orders issued in these CCAA 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 also relied upon Imperial and its counsel for information on the tobacco-related litigation discussed in this Report. The Monitor has not audited, reviewed or otherwise attempted to verify the accuracy or completeness of the 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's 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.

**E. PURPOSE OF THIS REPORT**

11. The purpose of this Report is to provide the Court with information regarding:
  - i. the need for and mandate of the Proposed Representative Counsel;
  - ii. the status of the Court proceedings;
  - iii. the status of the Mediation;
  - iv. Imperial's business activities, industry developments and trends impacting Imperial's business;
  - v. the five-year financial forecast for Imperial;
  - vi. the new Tobacco Regulations and Vapour Regulations;
  - vii. the status of Imperial's payment obligations to BAT Mexico in connection with the BAT MX Agreement; and
  - viii. the activities of the Monitor and its counsel since September 25, 2019, the date of the Fifth Report, including the status of the Data Rooms established in connection with the Mediation and the NDAs executed in connection therewith.

**F. THE NEED FOR REPRESENTATIVE COUNSEL IN THESE CCAA PROCEEDINGS**

12. Attached as Appendix "C" to this Report are joint submissions prepared by the Tobacco Monitors and counsel to the Tobacco Monitors which discuss the need



for and mandate of the Proposed Representative Counsel in these CCAA Proceedings.

#### **G. UPDATE ON COURT PROCEEDINGS**

13. Most recently, on October 2, 2019, the Court heard a motion seeking the extension of the Stay of Proceedings and made the March Stay Extension Order which extended the Stay Period to March 12, 2020. A copy of the March Stay Extension Order can be found here.
14. After granting the March Stay Extension Order, the Court released the October Reasons pursuant to which the Court held that extending the Stay of Proceedings to March 12, 2020 was reasonable because (i) much had been accomplished since the October Stay Extension Order when the enormous complexity of the CCAA Proceedings were considered, (ii) progress had been made in the Mediation; and (iii) the Applicants have sufficient liquidity to operate within the Stay Period.
15. In addition, in the October Reasons, the Court dealt with a motion brought by the Canadian Cancer Society seeking orders allowing it to continue to participate in the CCAA Proceedings and in the Mediation. The Court held that the Canadian Cancer Society may continue to participate in the CCAA Proceedings and is free to file materials in response to filings made by other stakeholders but will require leave if it wishes to initiate its own motions. Finally, the Court did not allow the Canadian Cancer Society to participate in the Mediation as it is neither a creditor nor a debtor in the CCAA Proceedings. A copy of the October Reasons can be found here.

#### **H. UPDATE ON THE MEDIATION**

16. In October 2019, the Mediation Participants, the Tobacco Monitors, counsel to the Tobacco Monitors, and the Court-Appointed Mediator met in a Plenary Session with approximately 90 attendees. Since the Plenary Session, the Court-Appointed

Mediator has held numerous meetings with stakeholders, the Applicants and the Tobacco Monitors to advance the Mediation.

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

17. As discussed in the Fifth Report, the tobacco industry in Canada appears to be experiencing a higher than historic downward trend in the volume of cigarettes sold. This trend has continued to the date of this Report.
18. The Monitor has been advised that, effective May 2020, Soraya Benchikh will assume the role of Chief Executive Officer. Ms. Benchikh was most recently the Chief Executive Officer of BAT Southern Africa Area.

**J. FIVE-YEAR FINANCIAL FORECAST**

19. Imperial, with the assistance of the Monitor, has prepared a five-year financial forecast. The Tobacco Monitors are currently reviewing the forecasts prepared by each of the Applicants to gain an understanding of the framework and underlying industry assumptions used in each forecast.
20. The five-year financial forecast is anticipated to be made available in the Imperial Data Room by the end of November 2019.

**K. NEW TOBACCO AND VAPOUR REGULATIONS**

21. As noted in the Fifth Report, the Tobacco Regulations came into force on November 9, 2019. These regulations require that manufacturers of Tobacco Products use plain, unbranded packaging. As prescribed in the Tobacco Regulations, Imperial ceased selling branded Tobacco Products to wholesalers and retailers on November 9, 2019. Retailers must cease selling Tobacco Products in branded packages by February 7, 2020. If the retailers cannot sell the products by February 7, 2020, they are permitted to return the branded Tobacco Products to Imperial for destruction.

22. The Monitor has been advised by Imperial that, due to accelerated sales of certain branded Tobacco Products, Imperial anticipates temporary, short term variations from historic levels and timings of receipts and disbursements. Imperial expects the timing of receipts and disbursements to return to historic norms once the transition to plain packaging is complete in early 2020.
23. As further discussed in the Fifth Report, Vapour Products are coming under increased scrutiny globally resulting in stringent regulation and in some cases bans.
24. On October 25, 2019 the Health Minister of Ontario announced the province's intention to ban the promotion of Vapour Products in convenience stores and gas stations, effective January 1, 2020. Under the new vaping regulations, the promotion of Vapour Products will only be permitted in speciality Vapour Products and cannabis retail stores where only individuals who are 19 years or older are permitted to enter.
25. On November 14, 2019, the Health Minister of British Columbia also announced new regulations on Vapour Products. These regulations include restrictions on where the Vapour Products can be sold and define nicotine as a "public health hazard" under the *Public Health Act*, giving the government the power to limit the amount used in Vapour Products to 20 mg. per ml., and requiring plain packaging with health warnings. The British Columbia government is also planning to introduce legislation that would make it the first province in Canada to have a specific tax rate of 20% for Vapour Products, effective January 1, 2020.
26. On November 19, 2019, a bill passed its second reading in Prince Edward Island (P.E.I) Legislature that would restrict where vaping products can be sold in the province, ban certain flavours and raise the legal age to buy tobacco and e-cigarettes from 19 to 21. If the bill passes third reading and becomes law, P.E.I. would have the highest age restriction on vaping in Canada.

27. The Monitor has been advised by Imperial that, due to the new Vaping Regulations, well publicized health concerns and the increased scrutiny of Vapour Products globally, there is a high level of uncertainty as to the level of future Vapour Product sales.

**L. UPDATE ON PROPOSED BAT MEXICO PAYMENTS**

28. As described in the Fifth Report, the Monitor has been advised by ITCAN that BAT Mexico will be required to write off the undepreciated cost of manufacturing equipment used to package and wrap Tobacco Products for ITCAN that has been rendered obsolete by the Tobacco Regulations, as well as some wrapping materials that can no longer be used for packaging due to the Tobacco Regulations which will be billed to ITCAN under the terms of the BAT MX Agreement.
29. The Monitor is working with Imperial to document and review these proposed payments and will report to the Court prior to any payment being made.

**M. OVERVIEW OF THE MONITOR'S ACTIVITIES**

30. Since the date of the Fifth Report the Monitor and its counsel have held numerous meetings and/or discussions with Imperial and its counsel to: (a) monitor Imperial's business activities; (b) monitor Imperial's receipts and disbursements; (c) gather and review Information to be included in the Imperial Data Room; (d) determine which parties will have access to the Imperial Data Room and to what extent; and (e) further their understanding of Imperial's business environment and factors expected to impact its future business prospects.
31. The Monitor has assisted Imperial in its preparation of the five-year financial forecast. As described in paragraph 19 above, the Tobacco Monitors are in the process of reviewing the forecast prepared by each of the Applicants before they are made available in each of the respective Applicants' Data Room.

32. In October 2019, counsel to the Monitor provided the March Stay Extension Order to Justice Riordan of the Superior Court of Quebec, Justice Boone of the Supreme Court of Newfoundland and Labrador and the seized judge or registrar for all other courts in Canada where there is active litigation involving Imperial.
33. Counsel to the Tobacco Monitors and the Tobacco Monitors have met regularly to discuss ongoing matters including the relief sought herein.
34. The Monitor and counsel to the Monitor have also worked with the other Tobacco Monitors and their counsel to take the steps necessary to appoint the Proposed Representative Counsel, including (i) preparing joint motion materials and (ii) consulting with the stakeholders in the Tobacco CCAA Proceedings, the Proposed Representative Counsel and the Court-Appointed Mediator.

***Non-Disclosure Agreements and the Imperial Data Room***

35. The Monitor is continuing to work with parties to provide access to the Imperial Data Room. To that end, as of the date of this Report, the following parties are in receipt of fully executed NDAs with Imperial:
  - i. Chaitons LLP, Fishman Flanz Meland Paquin LLP and Trudel Johnston & Lepérance – counsel to the Quebec Litigation Plaintiffs;
  - ii. Consultation BG (3350495 Canada Inc.) – financial advisors to the Quebec Litigation Plaintiffs;
  - iii. Paliare Roland Rosenberg Rothstein LLP - counsel to the Provinces of Alberta and Newfoundland & Labrador;
  - iv. Jensen Shawa Solomon Diguide Hawkes LLP and Cuming & Gillespie - counsel to the Province of Alberta;
  - v. Roebathan McKay Marshall and Humphrey, Farrington & McClain – counsel to the Province of Newfoundland;

- vi. KSV Advisory Inc. - financial advisors to the Provinces of British Columbia, Manitoba, New Brunswick, Nova Scotia, Prince Edward Island and Saskatchewan;
  - vii. Bennett Jones LLP and Siskinds LLP – counsel to the Provinces of British Columbia, Manitoba, New Brunswick, Nova Scotia, Prince Edward Island and Saskatchewan;
  - viii. the Province of Quebec on its own behalf;
  - ix. McMillan LLP – counsel to the Province of Quebec;
  - x. Groupe D’Analyse Ltee. – financial advisor to the Province of Quebec;
  - xi. Robert Low Financial Advisory Inc., Vine Valuations Inc. and Capital Assist (Valuations) Inc. – financial advisors to the Province of Ontario; and
  - xii. the Province of Ontario on its own behalf.
36. As at the date of this Report the following parties have access to the Imperial Data Room: the Monitor, counsel to the Monitor, Imperial, counsel to Imperial, the other Tobacco Monitors, and such other Tobacco Monitors’ counsel, the Court-Appointed Mediator, counsel to the Court-Appointed Mediator, financial advisor to the Court-Appointed Mediator, legal counsel and financial advisors to the Provinces, and parties consisting of legal counsel and financial advisors to the Quebec Litigation Plaintiffs.
37. The Monitor understands that certain additional parties have either requested, been provided with, or provided their own copies of, draft NDAs. Imperial and the Monitor continue to consider requests for access to the Imperial Data Room as they are received, to review draft NDAs and, together with the Monitor, following execution of those NDAs, continues to coordinate access for representatives of NDA counterparties. The Monitor has also responded to a number of requests for

additional information, or further explanation of information included in the Imperial Data Room.

***Statistics Canada Communications***

38. The Monitor has become aware of a *Globe & Mail* article published on October 8, 2019 that suggests that Statistics Canada has demanded that all Provinces return or remove survey data relevant to the estimation of tobacco-related health-care costs so as to avoid its production in litigation brought by the Provinces against the Applicants. It also suggests that Alberta, Ontario and Manitoba have acceded to Statistics Canada's demands by destroying some survey data.
39. The Monitor understands that in response to such *Globe and Mail* article, on November 4, 2019, counsel to Phillip Morris International Inc. sent a letter to counsel to the Consortium of Provinces to confirm that the Provinces will not return or remove any data that is potentially relevant to the Provinces' litigation against the Applicants and now asserted by the Provinces in the Tobacco CCAA Proceedings. Counsel to Phillip Morris International Inc. also requested the ability to review the communications between Statistics Canada and the Provinces with respect to this issue.
40. On November 6, 2019, counsel to Rothmans sent a letter to counsel to the Consortium of Provinces which echoed the concerns expressed in the above-noted letter sent by counsel to Phillip Morris International Inc. To the date of this Report, the Monitor has yet to receive details on any response received from the Provinces.

***Professional Fee Disclosure***

41. As described in the Fourth Report, an agreement was reached between the Tobacco Monitors, counsel to each of Imperial, JTIM and Rothmans, and the Quebec Litigation Plaintiffs regarding professional fee disclosure. Pursuant to the Professional Fee Disclosure Order, which can be found here, the Tobacco

Monitors agreed to provide the Quebec Litigation Plaintiffs and such other parties on Imperial's service list who request this information in writing, on or before the 15<sup>th</sup> day of each month commencing with the month of June 2019, the fees and disbursements paid to each of the CCAA Professionals, broken down by firm, for the prior month.

42. On October 10, 2019 and November 12, 2019 and pursuant to the Professional Fee Disclosure Order, the Monitor provided 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 during the months of September and October 2019, respectively.

**N. RELIEF SOUGHT**

43. The Monitor requests an order:
  - (a) appointing The Law Practice of Wagner & Associates, Inc. as representative counsel for the TRW Claimants, which definition may be further amended following consultation among the Court-Appointed Mediator, the Tobacco Monitors and the Proposed Representative Counsel and as approved by further order of this Court;
  - (b) authorizing Wagners to undertake the Proposed Representative Counsel mandate; and
  - (c) such further and other relief as counsel may advise and this Court may permit.



The Monitor respectfully submits to the Court this Report.

Dated this 26th day of November, 2019.

*FTI Consulting Canada Inc.*

**FTI Consulting Canada Inc.**

in its capacity as Monitor of Imperial Tobacco Canada Limited and Imperial Tobacco Company Limited

## APPENDIX A

### GLOSSARY

“**Administration Charges**” means the charges on the property of the Applicants granted to the Tobacco Monitors and counsel to the Applicants as security for their professional fees and disbursements.

“**Amended and Restated Initial Orders**” means (i) the Second Amended and Restated Initial Order; (ii) the initial order of JTIM granted on March 8, 2019, as amended and restated as of April 5, 2019 and further amended on April 25, 2019; and (iii) the initial order of Rothmans granted on March 22, 2019, as amended and restated as of April 5, 2019 and further amended on April 26, 2019.

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

“**BAT MX Agreement**” means the BAT MX Agreement dated July 2, 2015 between BAT Mexico and ITCAN.

“**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, Province of Manitoba, Province of New Brunswick, Province of Nova Scotia, Province

of Prince Edward Island and 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.

“**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.

“**Draft Order**” means the draft orders prepared in connection with the notice of motion served by the Tobacco Monitors on November 25, 2019, moving for the appointment of the Proposed Representative Counsel.

“**Excluded Claims**” means the claims excluded from the definition of TRW Claimants for the purposes of the relief sought herein as described in paragraph 26 of Appendix “C” to this Report.

“**EY**” means Ernst & Young Inc.

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

“**First Amended and Restated Initial Order**” means the Initial Order, as amended and restated as of April 5, 2019.

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

“**Foreign Recognition Order**” means an order of the US Bankruptcy Court recognizing the CCAA Proceedings as the main proceedings and staying proceedings against ITCAN in the US.

“**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 of Canada 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, and as well as other information, which the Tobacco Monitors considered relevant.

“**Initial Order**” means the initial order granted on March 12, 2019, by this Court 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 Corporation, 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.

“**June Stay Extension Order**” means an order of the Court, dated April 5, 2019, extending the length of the Stay of Proceedings to June 28, 2019.

“**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 Imperial, 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 “personal injury class action plaintiffs” represented by Merchant, the “tobacco light class action plaintiffs”, and the Ontario Flue-Cured 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 and the Fifth Report.

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

“**Notice Procedure Order**” means an order of the Court approving the form and manner of notice of the Settlement Approval Hearing to the Represented Parties, among other things.

“**October Reasons**” means the reasons given by the Court in granting the March Extension Order.

“**October Stay Extension Order**” means an order of the Court, dated June 26 2019, extending the length of the Stay of Proceedings to October 4, 2019.

“**Plenary Session**” means a meeting scheduled by the Court-Appointed Mediator to be attended by each of the Mediation Participants, the Tobacco Monitors and their counsel.

“**PMI Group**” means Phillip 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 15<sup>th</sup> of every month, beginning with June 2019.

“**Proposed Representative Counsel**” means Wagners.

“**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 sixth report of the Monitor filed on November 25, 2019.

“**Representative Counsel Mandate**” has the meaning ascribed to it in paragraph 52 of Appendix “C” to this Report.

“**Representatives**” means Vivian Brennan-Dolezar, Robert M. Brown and George A. Foster, the court-appointed representatives of the Represented Parties.

“**Represented Parties**” means all persons with entitlements under the Retirement Plans, including survivors and beneficiaries of such persons and any other person under the Representation Order.

“**Retirement Plans**” means, collectively, the following pension plans: (a) a deferred income plan for approximately 53 individuals who are either former senior management employees of Genstar or their surviving spouses; (b) supplemental executive retirement plan for approximately 14 individuals who were either former Genstar employees or their surviving spouses; and (c) a supplementary pension plan for 3 individuals who were either former Genstar employees or their surviving spouses.

“**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.

“**Settlement**” means the settlement entered into on April 25, 2019 between ITCAN and the Representatives in respect of the Retirement Plans.

“**Settlement Approval Hearing**” means the motion heard on June 26, 2019 for the approval of the Settlement.

“**Settlement Approval Order**” means an Order of this Court, approving the Settlement and the distribution of the Settlement among the Represented Parties, among other things.

“**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 12, 2020.

“**Territories**” means the territories of Canada, being the Yukon, Northwest Territories and Nunavut.

“**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 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 Claims**” means any claim asserted or which may be asserted by a TRW Claimant.

“**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.

“**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.

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



## **APPENDIX B**

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.

### **2. Comeback Motion:**

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

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

### **3. Foreign Recognition Order:**

The Foreign Recognition Order was granted by the US Bankruptcy Court on April 17, 2019, which recognizes these CCAA Proceedings. 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. Notice Procedure Order:**

The Notice Procedure Order was issued on May 14, 2019, and can be found here.

### **6. Professional Fee Disclosure Order:**

The Professional Fee Disclosure Order was issued on May 14, 2019 and can be found here.

**7. Clarification of Insurance Lift-Stay Order**

The Clarification of Insurance Lift-Stay Order was issued on May 14, 2019 and can be found here.

**8. 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. The endorsement can be found here.

**9. 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.

**10. Genstar Settlement Approval Order**

The Genstar Settlement Approval Order was issued on June 26, 2019. A copy of which can be found here.

**11. 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. A copy of which can be found here.

**12. Court-to-Court Communications Order**

The Court-to-Court Communications Order was issued on July 9, 2019. A copy of which can be found here.

**13. 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.

**14. 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.

**15. 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. A copy of the March Stay Extension Order can be found here.

**APPENDIX C**

**APPENDIX C**

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**A. GENERAL**

1. In this Appendix, unless otherwise defined, all capitalized terms shall have the respective meanings specified in the glossary attached to this Report as Appendix “A”.

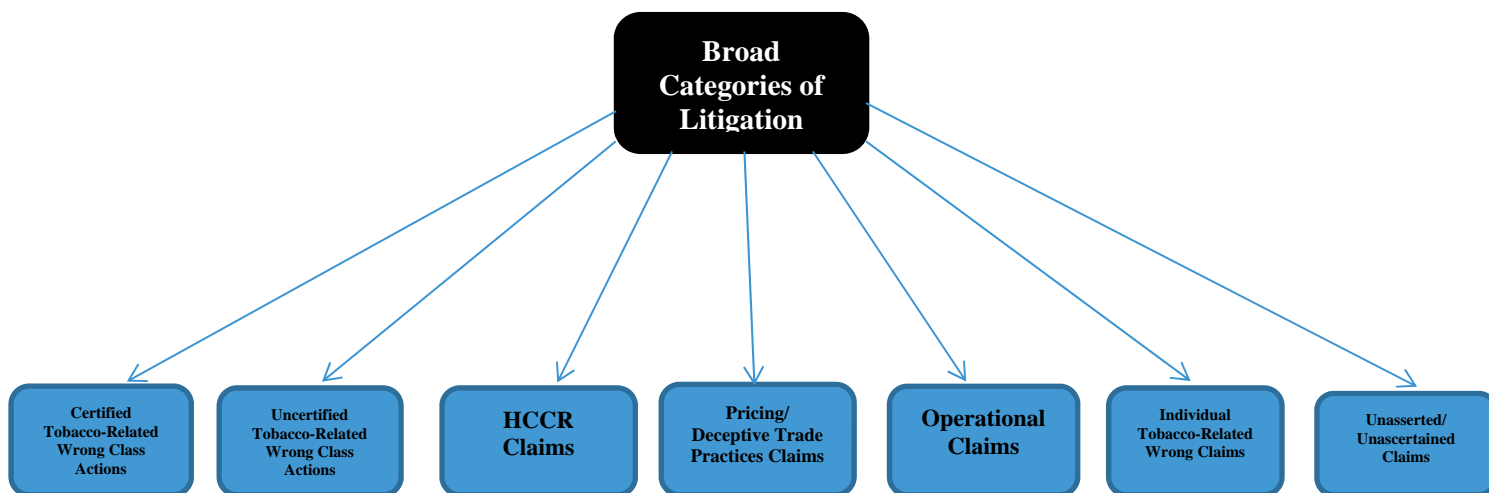
**B. INTRODUCTION**

2. This Appendix supports a joint motion brought by the Tobacco Monitors in each of their respective Tobacco CCAA Proceedings for the appointment of Wagners, an experienced class action litigation firm based in Halifax, Nova Scotia, as representative counsel for TRW Claimants.
3. These Tobacco CCAA Proceedings are some of the most complex in the history of the CCAA due in large part to the number of tobacco-related legal actions, including uncertified class actions, currently brought against the Applicants and the number of potential claims currently unasserted or unascertained.
4. The current multiplicity of class actions commenced against the Applicants across Canada, most of which are uncertified, do not provide comprehensive representation for all TRW Claimants in these Tobacco CCAA Proceedings. The appointment of the Proposed Representative Counsel will allow for all TRW Claims to be addressed in an efficient, timely and consistent manner under the exclusive jurisdiction of this Court. The efficient treatment of the TRW Claims is necessary to fulfill the chief purpose of these Tobacco CCAA Proceedings: a pan Canadian global settlement.
5. This appointment will provide representation of the interests of individuals with TRW Claims, to the extent they are not currently represented in the certified Quebec and British Columbia class actions, which includes: (i) various residual tobacco-related disease claims that fall outside a previously certified class definition; (ii) various tobacco-related disease claims that are currently the subject of uncertified class actions; and (iii) various tobacco-related disease claims for which no individual or class proceedings have been commenced.

6. Unless otherwise addressed, the number, complexity and interplay among the proceedings in which TRW Claims have been asserted would make the task of dealing with each proceeding individually, overly burdensome on the Applicants, the Tobacco Monitors, the Court-Appointed Mediator and this Court.
7. The appointment of the Proposed Representative Counsel will also increase the TRW Claimants' access to justice in these Tobacco CCAA Proceedings to the benefit of all TRW Claimants, the Applicants and the Applicants' stakeholders, as more fully discussed in the balance of this Appendix.
8. The purpose of this Appendix is to provide the Court with information regarding:
  - a. the existing litigation facing the Applicants;
  - b. the need for, and mandate of, the Proposed Representative Counsel in these Tobacco CCAA Proceedings;
  - c. the qualifications of the Proposed Representative Counsel;
  - d. the Tobacco Monitors' consultations with stakeholders on the appointment of the Proposed Representative Counsel; and
  - e. the Tobacco Monitors' comments and recommendations in respect of the foregoing matters.

### C. OVERVIEW OF THE LITIGATION FACING THE APPLICANTS

The following graphic provides an overview of the categories of pending tobacco-related litigation against the Applicants:



9. The litigation against the Applicants, currently stayed by their respective Amended and Restated Initial Orders, consists of a patchwork of claims which have been advanced on behalf of various plaintiffs since as early as 1997.
10. The Applicants are currently facing actions in every Province (but none of the Territories) arising from the enactment of special purpose provincial legislation creating a statutory claim in favour of the provincial governments to permit the recovery of health care costs incurred in connection with tobacco-related diseases. The alleged damages in the HCCR Claims are estimated by the Provinces to be in the hundreds of billions of dollars in the aggregate. Attached as Schedule “A” is an overview of the HCCR Claims. The HCCR Claims are not TRW Claims and are not included in the Proposed Representative Counsel’s mandate.
11. The Applicants are also currently facing individual and class actions with respect to tobacco-related disease claims. Attached as Schedule “B1” is an overview of all the certified and uncertified class actions brought against the Applicants across Canada. Attached as Schedule “B2” is a chart which provides a more detailed summary of the certified and uncertified non-commercial tobacco-related class



actions brought against the Applicants across Canada. In addition, attached as Schedule “B3” is a chart which also provides a summary of the individual actions brought against the Applicants for tobacco-related diseases.

12. Three further class actions have been commenced, but not certified, in Ontario alleging that the Applicants improperly paid lower prices for tobacco leaf destined for exported duty-free products, as opposed to the higher domestic leaf price. The proposed class members are growers and producers in Ontario who sold tobacco through the Ontario Flue-Cured Tobacco Growers’ Marketing Board pursuant to the terms of certain agreements during the period from January 1, 1986 to December 31, 1996 and are seeking damages for breach of contract. The Tobacco Monitors understand that plaintiff counsel in these actions has most recently taken the position with the Applicants that certification is not required; however, the Applicants dispute this position. No similar claims have been commenced in any of the other provinces. As these class actions are commercial in nature, they are Excluded Claims and are not proposed to be represented by the Proposed Representative Counsel.

**(I) Certified Class Actions**

13. The Applicants are currently facing the following three certified class actions: (a) two Quebec class actions commenced in 1998, and (b) one British Columbia class action commenced in 2003 against Imperial. In the two Quebec proceedings, the Quebec Litigation Plaintiffs have received judgments against the Applicants.
14. Pursuant to the Quebec Judgment, the Applicants were found to be liable to the Quebec Litigation Plaintiffs for (i) causing throat cancer, lung cancer or emphysema in persons residing in Quebec who smoked at least 87,600 cigarettes before November 20, 1998 and were diagnosed with lung cancer, throat cancer or emphysema before March 12, 2012, and for (ii) causing persons residing in Quebec who smoked upwards of 15 cigarettes a day during the period from September 30, 1998 to February 21, 2005 to become addicted to cigarettes.

15. The Applicants appealed the Quebec Judgment and on March 1, 2019, the Court of Appeal of Quebec issued the Quebec Appeal Judgment, upholding the lower court's decision and finding the Applicants liable to pay up to approximately \$14 billion to the Quebec Litigation Plaintiffs for damages including interest.
16. The Quebec Litigation Plaintiffs comprise two certified classes which do not include all potential TRW Claims which could be asserted in Quebec. It is proposed that TRW Claimants in Quebec, to the extent not covered by the Quebec Judgment, would be represented by the Proposed Representative Counsel.
17. A class action has also been certified in British Columbia asserting a claim with respect to the improper marketing of "light" and "mild" branded products by Imperial. Such claim is currently limited to residents of British Columbia and others who have opted into such British Columbian proceeding. No similar claims have been commenced against any of the other Applicants, or in any of the other provinces (other than Newfoundland and Labrador, where certification of a similar class was denied). It is proposed that TRW Claimants in British Columbia to the extent not covered by this certified British Columbia class action would be represented by the Proposed Representative Counsel.
18. Individuals participating in certified class actions may have other tobacco-related disease claims which are not included in the certified class definitions. These claims are TRW Claims which are proposed to be included in the Proposed Representative Counsel's mandate.

## **(II) Uncertified Class Actions**

19. Class actions have been commenced, but not certified, in Alberta, Manitoba, Nova Scotia and Saskatchewan seeking damages for tobacco-related diseases and a disgorgement of revenues or profits, among other things, but do not include all potential tobacco-related claims which could be asserted in such provinces.
20. Class proceedings have also been commenced, but not certified, in Ontario, seeking damages for tobacco-related diseases. Such claims are more

circumscribed than the uncertified proceedings commenced in the above-noted provinces, as the proposed class is limited to smokers who have been diagnosed with chronic obstructive pulmonary disease, heart disease or cancer. No other tobacco-related disease claims have been asserted in this uncertified Ontario class action.

21. Similarly, two class actions have been commenced, but not certified, in British Columbia seeking damages in respect of heart disease and chronic respiratory disease, respectively. No other tobacco-related disease claims have been asserted in these uncertified British Columbia class actions. The claims brought in Ontario and British Columbia do not include all the potential tobacco-related claims which could be brought in such provinces.
22. Notably, all of the above-noted uncertified class actions are at a preliminary stage; no substantive steps have been taken to advance the litigation, including with respect to certification of the classes. More information with respect to such actions can be found in Schedule “B2”. It is contemplated that the Proposed Representative Counsel would represent TRW Claimants in Alberta, Manitoba, Nova Scotia, Saskatchewan, Ontario and British Columbia, which includes those who may fall within the proposed class definitions in the above-noted uncertified class actions.

**(III) No Class Actions Commenced**

23. No class proceedings or individual proceedings have been commenced in New Brunswick, Newfoundland and Labrador, Prince Edward Island or any of the Territories with respect to any of the above-noted categories of potential claims.
24. It is contemplated that the Proposed Representative Counsel would represent all TRW Claimants in such provinces and Territories.

**D. THE NEED FOR REPRESENTATIVE COUNSEL IN THESE CCAA PROCEEDINGS**

**(I) Definition of TRW Claimants**

25. The Tobacco Monitors propose that the TRW Claimants for which the Proposed Representative Counsel will be appointed to represent be defined as: 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.
26. Excluded from the definition of TRW Claimants for the purposes of the relief sought herein, are any claims:
- (a) in any person's capacity as a trade supplier, contract counterparty, employee, pensioner, or retiree;
  - (b) captured by any of the following commercial class actions:
    - i. *The Ontario Flue-Cured Tobacco Growers' Marketing Board v. JTI-Macdonald Corp.*, Court File No. 64462 CP (London, Ontario);
    - ii. *The Ontario Flue-Cured Tobacco Growers' Marketing Board v. Rothmans, Benson & Hedges Inc.*, Court File No. 1056/10CP (London, Ontario); and
    - iii. *The Ontario Flue-Cured Tobacco Growers' Marketing Board v. Imperial Tobacco Canada Ltd.*, Court File No. 64757 CP (London, Ontario); or
  - (c) captured by the following certified Quebec and British Columbia class actions:

- i. *Conseil québécois sur le tabac et la santé et al. v. JTI-Macdonald Corp. et al.*, Court File No. 500-06-000076-980 (Montreal, Quebec);
  - ii. *Cécilia Létourneau et al. v. Imperial Tobacco Canada Ltd., et al.*, Court File No. 500-06-000070-983 (Montreal, Quebec); or
  - iii. *Kenneth Knight v. Imperial Tobacco Canada Ltd.*, Court File No. L031300 (Vancouver, British Columbia).
  
27. There is a need for the Proposed Representative Counsel to represent the interests of the TRW Claimants for the following reasons, discussed in greater detail below: (a) the TRW Claimants would benefit from the appointment of the Proposed Representative Counsel; (b) the Applicants and their stakeholders would benefit from the appointment of the Proposed Representative Counsel; (c) the appointment of the Proposed Representative Counsel will improve access to justice; and (d) the appointment of the Proposed Representative Counsel is fair and convenient.  
  

**(II) The TRW Claimants Would Benefit from the Appointment of the Proposed Representative Counsel**
  
28. The TRW Claimants are a vulnerable group which may be unduly prejudiced in the absence of representation. The appointment of the Proposed Representative Counsel will benefit the TRW Claimants by ensuring that:
  - a. all TRW Claimants are represented under the exclusive jurisdiction of this Court;
  - b. all TRW Claimants are treated consistently;
  - c. all TRW Claimants are able to participate effectively in these Tobacco CCAA Proceedings; and
  - d. there will be a single point of contact for the TRW Claimants.

**(a) All TRW Claimants Represented**

29. The definition of TRW Claimants includes all individuals who assert or may be entitled to assert a TRW Claim against the Applicants, the ITCAN subsidiaries, the BAT Group, the JTIM Group or the PMI Group, or persons indemnified by such entities in Canada, or in the case of the Applicants, anywhere else in the world. Such TRW Claims include but are not limited to: (i) various residual tobacco-related disease claims that fall outside a previously certified class definition, (ii) various tobacco-related disease claims that are currently the subject of uncertified class actions, and (iii) various tobacco-related disease claims for which no individual or class proceedings have been commenced.
30. Further, as discussed above, many of the TRW Claims are unascertained and unasserted and as such, many of the TRW Claimants may be unaware of these Tobacco CCAA Proceedings and/or the extent to which their rights may be compromised or altered in the Applicants' restructurings. The Proposed Representative Counsel will represent all TRW Claimants, including those with claims that are unascertained and unasserted.

**(b) Consistent Treatment**

31. The appointment of the Proposed Representative Counsel will ensure all of the TRW Claimants are treated consistently in these Tobacco CCAA Proceedings, preventing the prejudice which would otherwise be suffered by such parties.

**(c) Effective Participation**

32. These Tobacco CCAA Proceedings are particularly complex, as three separate tobacco companies, which comprise almost the entire legal tobacco industry in Canada, filed for CCAA protection at virtually the same time. Additionally, Imperial has sought relief in the US under Chapter 15 of the US Bankruptcy Code. Many of the TRW Claimants may lack the financial means or ability to engage meaningfully in these Tobacco CCAA Proceedings without the assistance of the Proposed Representative Counsel.

**(d) Single Point of Contact**

33. The TRW Claimants are comprised of a large number of individual stakeholders. It would therefore be particularly difficult for the TRW Claimants to have a cohesive voice in these Tobacco CCAA Proceedings in the absence of the appointment of the Proposed Representative Counsel.
34. The Proposed Representative Counsel will communicate with the TRW Claimants, all three Applicants, the Tobacco Monitors, the Court-Appointed Mediator and this Court. As the single point of contact among such parties, the Proposed Representative Counsel will avoid confusion among the TRW Claimants, increase their access to information, ensure their position is being advanced and keep them apprised of developments in these Tobacco CCAA Proceedings.

**(III) The Applicants and their Stakeholders Would Benefit from the Appointment of the Proposed Representative Counsel**

35. The Applicants and their stakeholders would benefit from the appointment of the Proposed Representative Counsel in two significant ways: (a) the Proposed Representative Counsel will provide consistency and increased stakeholder participation in the Applicants' restructurings, and (b) representation of all TRW Claimants will lead to efficiencies and cost-savings in the administration of these Tobacco CCAA Proceedings.

**(a) Consistency and Increased Stakeholder Participation**

36. The Applicants have commenced these Tobacco CCAA Proceedings for the primary purpose of effecting a pan Canadian global settlement.
37. To date, certain represented parties have actively participated in these Tobacco CCAA Proceedings through Court attendances, participation in the Mediation and gaining access to confidential information in respect of the Applicants' financial status and forecast activities through the Data Rooms. As discussed above, however, there are a large number of stakeholder claims that are unascertained or

unasserted and many class actions which remain uncertified in these Tobacco CCAA Proceedings. Indeed, many of the TRW Claimants may not be aware that such proceedings are underway.

38. The Proposed Representative Counsel will seek to ensure that the TRW Claimants are treated consistently and have an opportunity to participate in these Tobacco CCAA Proceedings in the following ways:

- a. the Proposed Representative Counsel will receive and distribute (as appropriate), pertinent information relating to the Applicants and their financial circumstances, these Tobacco CCAA Proceedings and the Mediation;
- b. the Proposed Representative Counsel will coordinate communication among and between the TRW Claimants, the Tobacco Monitors, the Court-Appointed Mediator and the three Applicants;
- c. the Proposed Representative Counsel will represent the interests of the TRW Claimants for the purpose of all decisions which might affect their rights in the course of these Tobacco CCAA Proceedings and the Mediation, and if necessary, bring to the Court, the Court-Appointed Mediator or the Tobacco Monitors' attention any matters or legal arguments that need to be addressed; and
- d. the Proposed Representative Counsel will represent the TRW Claimants on matters related to any settlement or plan of compromise or arrangement put forth by the Applicants.

39. This will fulfill the primary purpose of these Tobacco CCAA Proceedings by allowing the Applicants to have greater confidence when negotiating a pan Canadian global settlement that affected interests have been adequately represented and to ensure consistency in the treatment of stakeholders with common interests.



**(b) Efficiencies**

40. The task of identifying and communicating with thousands of unrepresented claimants with varying levels of resources and legal sophistication would be costly and administratively burdensome on the Applicants.
41. The Proposed Representative Counsel will act as the single point of contact among the TRW Claimants, the Applicants, the Tobacco Monitors, the Court and the Court-Appointed Mediator for the purpose of service, communication and negotiating key steps in these Tobacco CCAA Proceedings and the Mediation, thereby reducing the administrative costs paid by the Applicants in connection therewith, to the benefit of the Applicants and their stakeholders.
42. The appointment of the Proposed Representative Counsel also avoids the need for a multiplicity of retainers. The TRW Claimants will not need to each engage counsel to advance individual claims. This will avoid fragmentation and duplication of efforts and resources, which further benefits the Applicants and their stakeholders.

**(IV) Improved Access to Justice**

43. The appointment of the Proposed Representative Counsel will promote access to justice. As discussed above, the TRW Claimants are a vulnerable group, some of whose individual interests would likely be unrepresented in these Tobacco CCAA Proceedings in the absence of representative counsel.
44. A representation order will give a strong and cohesive voice to the significant number of individuals affected by Tobacco-Related Wrongs who, following the Applicants' CCAA filings, are at risk of having limited recourse against the Applicants. The TRW Claimants, as stakeholders in the Applicants' insolvencies, are affected by these Tobacco CCAA Proceedings. Representation of their interests ensures that all stakeholders will have the opportunity to provide input during the course of these Tobacco CCAA Proceedings.

45. The appointment of the Proposed Representative Counsel will fulfil the objective of the CCAA: to facilitate restructurings. It is well recognized that the chance for a successful reorganization is enhanced where participants achieve common ground and all stakeholders are treated as fairly as the circumstances permit. This is an important objective that would be advanced by a representation order. The Proposed Representative Counsel will ensure that the TRW Claimants are represented at the negotiating table and that there is a level playing field with the various other claimants.

**(V) The Appointment of the Proposed Representative Counsel is Fair and Convenient**

46. While the TRW Claimants are broadly defined, all TRW Claimants have a common interest in that each alleges an individual claim against one or more of the Applicants and their related parties due to a Tobacco-Related Wrong.

47. In these circumstances, the TRW Claimants are a vulnerable group of stakeholders with sufficient commonality who would be prejudiced if the Proposed Representative Counsel was not appointed.

48. Further, the appointment of representative counsel has been used in many Canadian insolvency proceedings to enable stakeholder groups to navigate and actively participate in complex CCAA proceedings.

49. Given the unique circumstances of these Tobacco CCAA Proceedings discussed in detail herein - multiple jurisdictions, the large number of personal unasserted and unascertained claims, as well as the uncertified class actions - it is essential that the TRW Claimants are represented by a single point of contact within the exclusive jurisdiction of this Court seized of these Tobacco CCAA Proceedings.

50. The appointment of the Proposed Representative Counsel will benefit not only the TRW Claimants by improving their access to justice, but also other stakeholders by reducing the administrative burden associated with these Tobacco CCAA Proceedings. For these reasons, the appointment of the Proposed Representative

Counsel is fair and convenient and outweighs any potential prejudice to the Applicants' other creditors and stakeholders.

**E. THE PROPOSED MANDATE**

51. The Proposed Representative Counsel will represent the interests of the TRW Claimants without any obligation to consult with or seek individual instructions from the TRW Claimants, provided however, that the Proposed Representative Counsel will be authorized, but not obliged, to establish a committee of TRW Claimants on such terms as may be agreed to by the Court-Appointed Mediator and the Tobacco Monitors or established by Court order.
  
52. The Proposed Representative Counsel will be authorized to take all steps and perform all acts that are necessary or desirable in representing the TRW Claimants including, without limitation, by:
  - a. participating in and negotiating on behalf of the TRW Claimants in the Mediation;
  - b. working with the Court-Appointed Mediator and the Tobacco Monitors to develop a process for the identification of valid and provable TRW Claims, and as appropriate, addressing such claims in the Mediation or the Tobacco CCAA Proceedings;
  - c. responding to inquiries from TRW Claimants in the Tobacco CCAA Proceedings; and
  - d. performing such other actions as approved by the Court.
  
53. The Proposed Representative Counsel will also be authorized, at its discretion, on such terms as may be consented to by the Court-Appointed Mediator and the Tobacco Monitors or further order of the Court, to retain and consult with subject area experts and other professional and financial advisors as the Proposed

Representative Counsel may consider necessary to assist it with the discharge of its mandate.

54. While a significant number of TRW Claimants would benefit from representation by the Proposed Representative Counsel, there are legal defences and arguments that may preclude some TRW Claimants from receiving a distribution in these Tobacco CCAA Proceedings. After appointment, it is contemplated that the Proposed Representative Counsel will work with the Tobacco Monitors and the Court-Appointed Mediator to classify and define the valid TRW Claims the holders of which may be entitled to a distribution in these Tobacco CCAA Proceedings. The inclusion of an opt-out mechanism for TRW Claimants will also be considered at that time.

**F. THE PROPOSED REPRESENTATIVE COUNSEL**

55. Before the Proposed Representative Counsel was selected a number of experienced and qualified firms with expertise representing class action plaintiffs were considered, including existing counsel in the tobacco-related litigation generally. Although these Tobacco CCAA Proceedings are not class actions, the Tobacco Monitors are of the view that given the nature of the TRW Claims that may be asserted by the Proposed Representative Counsel, such experience would be beneficial.
56. The Proposed Representative Counsel has demonstrated expertise in class action matters and therefore has the requisite knowledge, support staff and infrastructure to advise multiple clients and facilitate effective communication and information sharing among the TRW Claimants, the Applicants, the Tobacco Monitors, the Court and the Court-Appointed Mediator.
57. The Tobacco Monitors are of the view that the independence of Proposed Representative Counsel is critical. Due to the number of counsel involved in the litigation described herein and these Tobacco CCAA Proceedings, many otherwise qualified counsel were conflicted. After weighing these factors, the

Proposed Representative Counsel was determined to be the best suited to represent the interests of the TRW Claimants.

**(I) Proposed Firm**

58. The Tobacco Monitors propose that Wagners be appointed as representative counsel on the terms provided for in the Draft Order.

**(II) Expertise and CV**

59. Wagners is based in Halifax, Nova Scotia and is known as one of Atlantic Canada's leading class action law firms. The nine lawyers at Wagners represent clients throughout Nova Scotia, New Brunswick, Prince Edward Island, Newfoundland and Labrador and across the country. Wagners has advised the Tobacco Monitors that it has the necessary support staff and infrastructure to fulfill the Representative Counsel's mandate.
60. Raymond F. Wagner, Q.C. is the founder of Wagners with a well-established, exemplary reputation. With almost 40 years' experience, Mr. Wagner's legal practice has a primary focus on class actions, mass tort litigation, medical negligence and product liability. His firm also represents victims of catastrophic motor vehicle accidents. He has been involved in class action litigation since 2003, and is known for litigating complex, technical and novel issues within this sphere. Attached as Schedule "C" is a copy of Mr. Wagner's *curriculum vitae*.
61. Mr. Wagner has achieved significant settlements for his clients, including a settlement concerning historical institutional abuse at a Nova Scotian institution with a resolution based on restorative justice principles. He is counsel to plaintiffs in a number of proposed and certified class actions including: pharmaceutical litigation on behalf of people who were prescribed the drugs OxyContin, Avandia and Levaquin; alleged historical institutional abuse arising out of deaf schools in Nova Scotia; alleged systemic sexual misconduct and discrimination in the Canadian Armed Forces; recipients of allegedly defective hip products; owners of certain motor vehicles that were subject to a recall; individuals who allegedly

- received flawed pathology and colposcopy assessments; airline passengers allegedly injured during landing; environmental contamination and flooding; customers who purchased medical marijuana that was allegedly contaminated with unauthorized pesticides; and patients whose private medical records were allegedly intruded upon.
62. Mr. Wagner's extensive practice in medical errors and complex litigation, although primarily focused in Nova Scotia, extends to New Brunswick, Prince Edward Island and Newfoundland and Labrador. He has acted as a member of consortiums of plaintiff counsel in a number of class actions which are national in scope. Mr. Wagner has appeared before numerous courts across the country, including in the Atlantic Provinces, Ontario, Quebec, Saskatchewan and at the Federal Court and the Supreme Court of Canada. Mr. Wagner has advised the Tobacco Monitors that Wagners has the capacity to act as representative counsel should it be appointed.
63. Wagners is not and has not been involved in any tobacco-related litigation. The Tobacco Monitors have been informed that a lawyer at Wagners was previously employed by the Nova Scotia Department of Justice, from September 2013 to March 2016. Wagners has advised the Tobacco Monitors that while at the Nova Scotia Department of Justice, this individual had no direct or indirect involvement in or knowledge of any tobacco-related litigation, other than bare knowledge of the existence of same. This individual also had no direct or indirect involvement in or knowledge of these Tobacco CCAA Proceedings. Wagners has advised that this lawyer will not be on the team engaged in this matter. Nonetheless, if appointed, an ethical wall will be established at Wagners to prevent this lawyer from accessing any file, information or material related to these Tobacco CCAA Proceedings. As a result, this does not interfere with the independence of Wagners as Proposed Representative Counsel.
64. The Proposed Representative Counsel has the requisite experience, expertise and independence to effectively represent the TRW Claimants.

**(III) Terms of Retainer/Compensation**

65. The Proposed Representative Counsel will be paid its reasonable professional fees and disbursements on an hourly basis and shall be paid by the Applicants in a timely manner and in accordance with an agreement among the Applicants.
66. The Proposed Representative Counsel will remit invoices bi-weekly to the Tobacco Monitors, subject to such redactions as are necessary to maintain solicitor-client privilege. No part of the Proposed Representative Counsel's compensation will be on a contingency basis.
67. The Applicants will each pay equal amounts of an initial retainer to the Proposed Representative Counsel in the aggregate amount of \$50,000 to be held by the Proposed Representative Counsel as security for payment of its fees and disbursements outstanding from time to time.
68. Due to the efficiencies and cost-savings attributable to the appointment of the Proposed Representative Counsel, there is sufficient justification to amend the Administration Charges provided for in the applicable Amended and Restated Initial Order in each of the Tobacco CCAA Proceedings, to include the reasonable fees, expenses and disbursements of the Proposed Representative Counsel.

**(IV) Lack of Legal Conflicts**

69. The Tobacco Monitors have been advised that the Proposed Representative Counsel is not conflicted and has agreed to the appointment.

**G. THE TOBACCO MONITORS' CONSULTATIONS WITH  
STAKEHOLDERS ON PROPOSED REPRESENTATIVE COUNSEL**

70. The Court-Appointed Mediator, the Tobacco Monitors and counsel to the Tobacco Monitors consulted with certain major stakeholders in these Tobacco CCAA Proceedings with respect to the relief being sought herein.

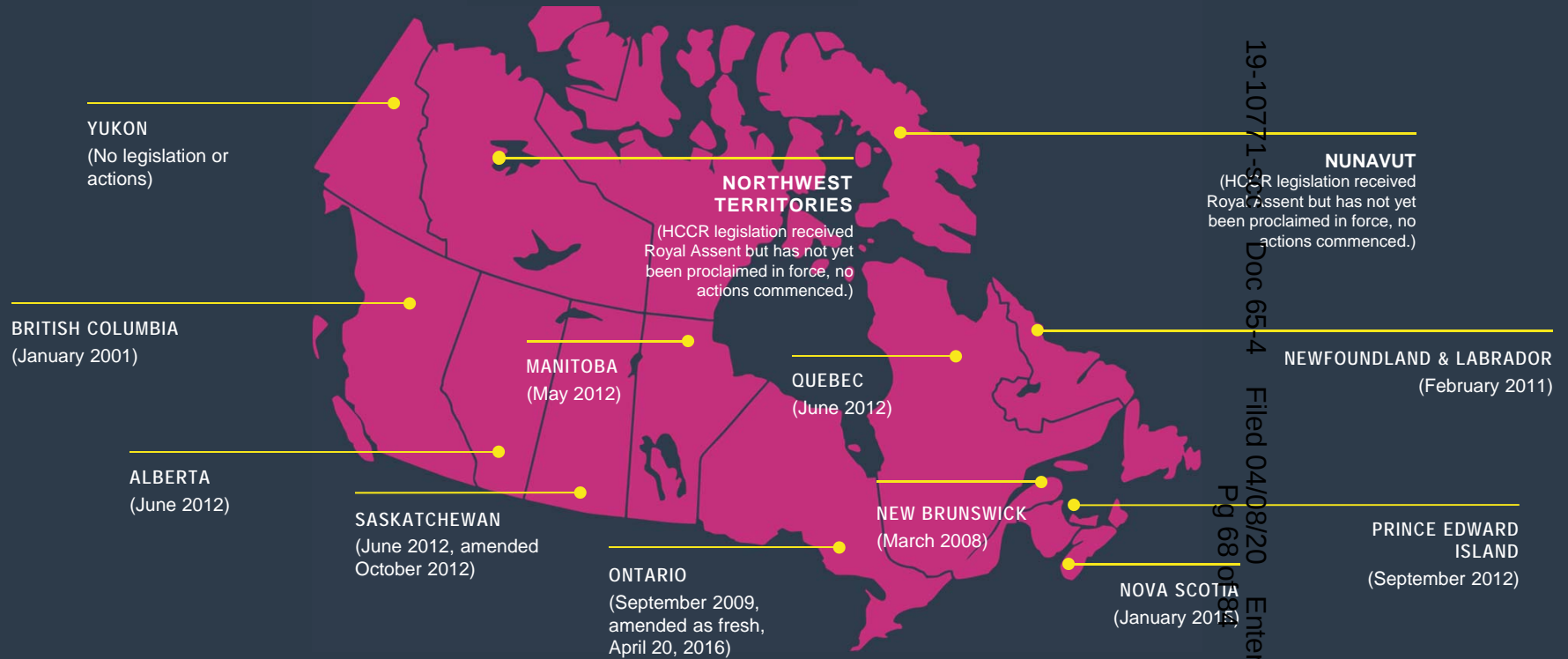
**H. MONITORS' RECOMMENDATION REGARDING REPRESENTATIVE COUNSEL**

71. For the reasons provided above, the Tobacco Monitors recommend the appointment of the Proposed Representative Counsel on the terms set out in the Draft Order.



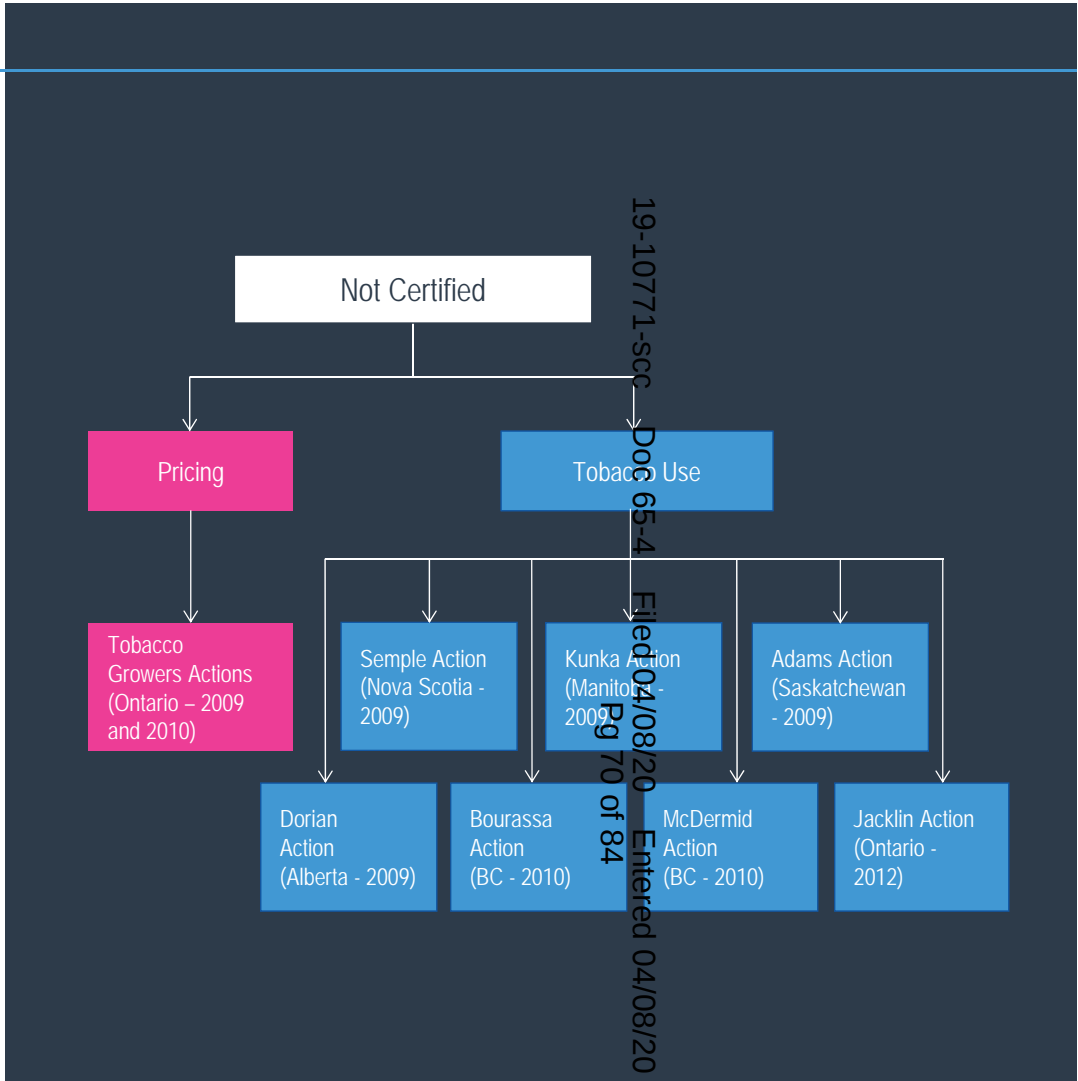
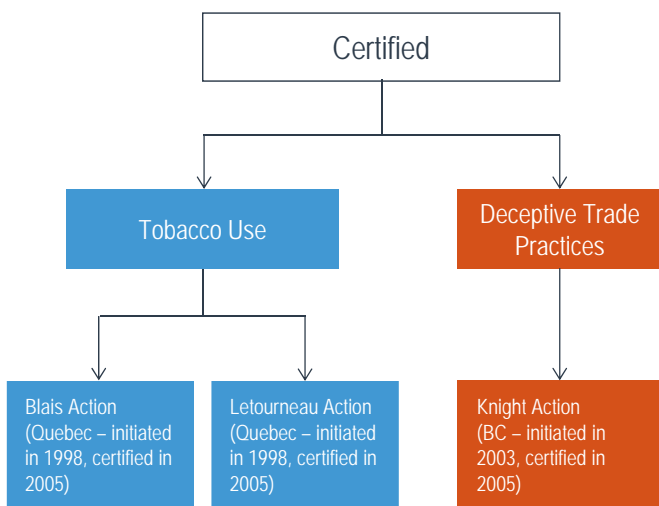
**SCHEDULE A**

# Overview of Provincial Health Care Cost Recovery Claims



**SCHEDULE B1**

# Overview of Class Actions



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**SCHEDULE B2**

**Chart of Certified and Uncertified Class Actions**

The charts contained in this Schedule B2 and in Schedule B3 below set out the outstanding Canadian litigation against the Applicants, as disclosed in their CCAA filing materials, in respect of non-commercial tobacco-related class actions and individual actions. The charts exclude direct actions by provinces to recover health care costs. All Applicants are defendants in each class action, except for one action in British Columbia, as noted below. The status of each of the actions is based on information provided to the Tobacco Monitors by the Applicants.

Jurisdiction	Action	Year Commenced	Class Definition	Certified	Plaintiff's Counsel	Amount Claimed	Status of Action
Quebec	Létourneau and Blais class actions	1998 (certified in 2005)	<p><u>Létourneau action</u>: All persons residing in Quebec who, as of September 30, 1998, were addicted to nicotine in cigarettes manufactured by the defendants and who: (i) started smoking before September 30, 1994 and since that date have smoked principally cigarettes manufactured by the defendants; (ii) between September 1 and September 30, 1998, they smoked on a daily basis an average of at least 15 cigarettes manufactured by the defendants; and (iii) on February 21, 2005, or until their death if it occurred before that date, they were still smoking on a daily basis an average of at least 15 cigarettes manufactured by the defendants. The group also includes the heirs of members who meet the above criteria.</p> <p><u>Blais action</u>: All persons residing in Quebec who: (i) smoked before November 20, 1998 at least 12 pack years of cigarettes manufactured by the defendants (the</p>	Yes	<p>Kugler Kandestin and Trudel Johnston &amp; Lespérance</p> <p>Fishman Flanz Meland Paquin LLP is counsel in these CCAA proceedings.</p>	In both class actions, the damages awarded total approx. \$14 billion, with interest and indemnity.	Actions instituted in 1998. Class action certified in 2005. Trial occurred 2012 to 2014. Superior Court judgment released in 2015. Court of Appeal decision released in 2019.

Jurisdiction	Action	Year Commenced	Class Definition	Certified	Plaintiff's Counsel	Amount Claimed	Status of Action
			equivalent of a minimum of 87,600 cigarettes); and (ii) have been diagnosed, before March 12, 2012 with: (a) lung cancer, (b) cancer (squamous cell carcinoma) of the throat, namely the larynx, oropharynx or hypophalanx, or (c) emphysema. The group also includes the heirs of persons deceased after November 20, 1998 who meet the above criteria.				
Newfoundland	N/A	N/A	N/A	N/A	N/A	N/A	N/A
Prince Edward Island	N/A	N/A	N/A	N/A	N/A	N/A	N/A
Nova Scotia	Ben Semple v. Canadian Tobacco Manufacturer's Council et al. HFX No. 312869	2009	<u>Proposed class definition:</u> All individuals, including their estates, their dependants and family members, who purchased or smoked cigarettes designed, manufactured, marketed, or distributed by the defendants, for the period January 1, 1954 to the expiry of the opt-out period set by the Court.	No	Merchant Law Group	Unquantified	The Statement of Claim was filed in 2009. No further steps have been taken to advance this action.
New Brunswick	N/A	N/A	N/A	N/A	N/A	N/A	N/A
Ontario	Suzanne Jacklin v Canadian Tobacco	2012	<u>Proposed class definition:</u> All individuals, including their estates, who were alive on	No	Merchant Law Group	Unquantified	The Statement of Claim was filed in 2012. No further steps

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Jurisdiction	Action	Year Commenced	Class Definition	Certified	Plaintiff's Counsel	Amount Claimed	Status of Action
	Manufacturers' Council et al., Court File No. 53794/12		June 12, 2007, and who suffered, or who currently suffer, from chronic pulmonary disease, heart disease or cancer, after having smoked a minimum of 25,000 cigarettes designed, manufactured, imported or distributed by the defendants.				have been taken to advance this action.
Manitoba	Deborah Kunta v Canadian Tobacco Manufacturers' Council et al., File No. CI09-01-61479	2009	<u>Proposed class definition:</u> All individuals, including their estates, and who purchased or smoked cigarettes manufactured by the defendants, and their dependants and family members.	No	Merchant Law Group	Unquantified	The Statement of Claim was filed in 2009. No further steps have been taken to advance this action.
Saskatchewan	Thelma Adams v Canadian Tobacco Manufacturers' Council et al., Q.B. No. 1036	2009	<u>Proposed class definition:</u> All individuals who were alive on July 10, 2009, and who have suffered, or who currently suffer, from chronic pulmonary disease, emphysema, heart disease, or cancer, after having smoked a minimum of 25,000 cigarettes designed, manufactured imported, marketed or distributed by the defendants.	No	Merchant Law Group	Unquantified	The Statement of Claim and a Notice of motion for certification were served in 2009. <sup>1</sup> Certain defendants brought motions challenging jurisdiction in January 2010. No steps have been taken to advance this action since 2010.
Saskatchewan	Thelma Adams v Canadian Tobacco Manufacturers' Council et al., Q.B.	2009	<u>Proposed class definition:</u> All individuals, including their estates, their dependants and family members, who purchased or smoked cigarettes designed, manufactured	No	Merchant Law Group	Unquantified	The Statement of Claim was filed in 2009. The plaintiff filed notices of discontinuance for certain defendants in 2010. No

<sup>1</sup> Phillip Morris' 2018 Annual Report states that, in September 2009, plaintiff's counsel informed the defendants that it did not anticipate taking any action in other cases while pursuing the class action filed in Saskatchewan.

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Jurisdiction	Action	Year Commenced	Class Definition	Certified	Plaintiff's Counsel	Amount Claimed	Status of Action
	No. 916		or distributed by the defendants, for the period July 1, 1954 to the expiry of the opt-out period set by the court.				further steps have been taken to advance the action.
Alberta	Linda Dorion v Canadian Tobacco Manufacturers' Council et al. Court File #0901-08964	2009	<u>Proposed class definition</u> : All individuals, including their estates, and who purchased or smoked cigarettes designed, manufactured, marketed or distributed by the defendants, and their dependants and family members.	No	Merchant Law Group	Unquantified	The Statement of Claim was filed in 2009. No further steps have been taken to advance the action.
British Columbia	Barbara Bourassa on behalf of the Estate of Mitchell David Bourassa v Imperial Tobacco Canada Limited et al., No 10-2780  Barbara Bourassa on behalf of the Estate of Mitchell David Bourassa v Imperial Tobacco Canada Limited et al., No 14-4722	2010	<u>Proposed class definition</u> : All individuals, including their estates, who were alive on June 12, 2007, and who have suffered, or who currently suffer, from chronic respiratory diseases, after having smoked a minimum of 25,000 cigarettes designed, manufactured, imported, marketed or distributed by the defendants.	No	Merchant Law Group	Unquantified	Statement of Claim (No 10-2780) filed in 2010. Certain defendants brought motions challenging jurisdiction in 2010. Plaintiff filed a new Statement of Claim (No 14-4722) on December 29, 2014. No further steps have been taken to advance these actions.

Jurisdiction	Action	Year Commenced	Class Definition	Certified	Plaintiff's Counsel	Amount Claimed	Status of Action
British Columbia	Roderick Dennis McDermid v Imperial Tobacco Canada Limited et al., No. 10-2769	2010	<u>Proposed class definition:</u> All individuals, including their estates, who were alive on June 12, 2007, and who have suffered, or who currently suffer, from heart disease, after having smoked a minimum of 25,000 cigarettes designed, manufactured, imported, marketed or distributed by the defendants.	No	Merchant Law Group	Unquantified	Statement of Claim filed in 2010. Certain defendants brought motions challenging jurisdiction in 2010. No further steps have been taken to advance this action.
British Columbia	Knight v Imperial Tobacco Canada Ltd.  [Note: Imperial Tobacco Canada Ltd. is the sole defendant in this action]	2003	<u>Certified class definition:</u> Persons who, during the Class Period, purchased the defendant's light or mild brands of cigarettes in British Columbia for personal, family or household use. The defendant's light and mild brands of cigarettes includes the following brands: Player's Light, Player's Light Smooth, Player's Extra Light, du Maurier Light, du Maurier Extra Light, du Maurier Ultra Light, du Maurier Special Mild, Matinée Extra Mild, Matinee Ultra Mild and Cameo Extra Mild. The Class Period is the period from May 9, 1997 up to July 31, 2007 [per 2006 BCCA 235, confirming certification, varying class period].	Yes  19-10771-scc Doc 65-4 Filed 04/08/20 Pg 76 of 84	Klein Lawyers LLP	Unquantified	Action commenced in May 2003. Defence filed in April 2004. Class action certified in February 2005 (and confirmed by Court of Appeal in 2006). The parties exchanged electronic productions in 2009, following a motion by the plaintiff to compel a list of documents. The plaintiff served a notice to admit documents on October 3, 2016. In 2017, the defendant brought an application to dismiss the class action for delay. The defendant's motion to dismiss for delay was dismissed on August 23, 2017 (2017 BCSC 1487). The Opt-out and Opt-in periods expired on May 15, 2018. No opt-out requests were received, and eight opt-in forms

Jurisdiction	Action	Year Commenced	Class Definition	Certified	Plaintiff's Counsel	Amount Claimed	Status of Action
							were received. Class membership is therefore now fixed. The parties concluded a Discovery Agreement on January 26, 2018, which provided for written interrogatories. The plaintiff delivered its written interrogatories on January 7, 2019.
Yukon	N/A	N/A	N/A	N/A	N/A	N/A	N/A
Northwest Territories	N/A	N/A	N/A	N/A	N/A	N/A	N/A
Nunavut	N/A	N/A	N/A	N/A	N/A	N/A	N/A

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**SCHEDULE B3**

Chart of Individual Actions

Jurisdiction	Commenced	Parties	Status
Nova Scotia (Halifax)	March 5, 2002, amended September 5, 2002, 177663	Peter Stright v. Imperial Tobacco Canada Limited	On April 19, 2002, the defendant was served with an individual product liability claim for unspecified damages alleging that the plaintiff, Peter Stright, is addicted to tobacco and developed Buerger's disease as a result of smoking. The defendant filed its Statement of Defence in 2004 and certain documents were subsequently produced by the plaintiff. In May 2017, the plaintiff sought a trial date. On June 9, 2017, pursuant to a motion brought by ITCAN, the Nova Scotia Supreme Court set aside the plaintiff's request, as the necessary conditions for setting a trial date had not been met. No trial date has been set.
Ontario (Toronto)	Amended September 8, 2014, 00-CV- 183165-CP00	Ragoonanan <i>et al.</i> v. Imperial Tobacco Canada Limited	In 2005, the plaintiff, Ragoonanan, was denied certification of a class proceeding on behalf of "all persons who suffered damage to persons and/or property as a result of fires occurring after October 1, 1987, due to cigarettes that did not automatically extinguish upon being dropped or left unattended." In 2011, the Court granted the plaintiff's request to continue as an individual action. The plaintiff's Statement of Claim does not specify the amount of pecuniary damages, but the amount claimed will be in excess of \$11 million. A defence has been filed. The case remains at a preliminary stage.
Ontario (Milton)	Mirjana Spasic v. BAT Industries p.l.c., C18187/97	Ljubisa Spasic, as Estate Trustee of the Estate of Mirjana Spasic v. B.A.T. Industries P.L.C.	On September 16, 1997, Mirjana Spasic filed an individual smoking and health action against B.A.T. Industries P.L.C. Mrs. Spasic sought \$1,000,000.00 in damages, reimbursement for moneys expended on purchasing cigarettes, aggravated, punitive, and exemplary damages, interest and costs. On March 10, 1998, an order was issued by the Milton court, continuing the action with Ljubisa Spasic as estate trustee of Mirjana Spasic. No further steps have been taken to advance the action.
Ontario (London)	June 30, 2003, 1442/03	Scott Landry v. Imperial Tobacco Canada Limited	On September 12, 2003, a suit was brought by Scott Landry before the London Ontario Small Claims Court. The plaintiff alleges negligence for failing to warn him that nicotine is addictive and dangerous and seeks an amount of \$10,000 to cover the costs of fighting his addiction. A Statement of Defence was filed on or about July 24, 2003. At a pre-trial conference on October 31, 2003, the plaintiff agreed to provide particulars regarding his claim. The case has been in abeyance since that time.

Ontario (North York)	June 12, 1997, 21513/97	Joseph Battaglia v. Imperial Tobacco Canada Limited	On June 12, 1997, a suit was brought by Joseph Battaglia before the North York Ontario Small Claims Court. The plaintiff alleged that he suffered from heart disease and that the defendant was negligent for failing to warn that nicotine is addictive and dangerous. He sought an amount of \$6,000. A Statement of Defence was filed on or about June 27, 1997. After a trial, a judgment was rendered on 1 June 1, 2001, dismissing the plaintiff's claim. On July 2, 2001 an appeal was filed by the plaintiff. The appeal was never heard and the plaintiff passed away on September 3, 2004. The case has been in abeyance since that time.
Quebec (Saint-Hyacinthe)	December 8, 2016, 750-32-700014-163	Roland Bergeron v. Imperial Tobacco Canada Limited	On December 12, 2016, a Statement of Claim filed by Roland Bergeron in the Small Claims Division of the Court of Québec in Saint-Hyacinthe. The plaintiff alleges that he was diagnosed with pulmonary emphysema in 2015 and is claiming \$15,000 in damages for harm to his health. On December 28, 2016, a contestation (defence) was filed, denying the allegations and arguing that the matter should be stayed pending the outcome of the Blais class action, as the legal issues raised in both proceedings are the same. On February 17, 2017, the plaintiff consented to the stay request and on February 22, 2017, the Court granted the stay request.
Quebec (Small Claims)	2010	Paradis, in personal capacity and on behalf of estate of Lorraine Trepanier v. Rothmans, Benson & Hedges Inc.	Stayed pending resolution of Letourneau/Blais class actions.
Quebec (Superior Court)	July 2017	Couture v. Rothmans, Benson & Hedges Inc.	Action was stayed until June 2019 (prior to CCAA filing).

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**SCHEDULE C**

# RAYMOND WAGNER, Q.C.

Wagners  
1869 Upper Water Street, Suite PH301  
Halifax, NS B3J 1S9  
Tel: 902 425 7330  
Email: raywagner@wagners.co

## EXPERIENCE

1982 – PRESENT

### **FOUNDER AND PRINCIPAL, THE LAW PRACTICE OF WAGNER & ASSOCIATES, INC.**

Plaintiff firm with a primary focus on class actions, mass tort litigation, medical negligence, product liability and catastrophic motor vehicle accidents.

Acts as counsel in a number of proposed, certified and resolved class actions, including:

- pharmaceutical litigation on behalf of individuals prescribed the drugs OxyContin, Avandia, Vioxx, Yasmin and Levaquin;
- historical institutional abuse arising out of the Nova Scotia Home for Colored Children;
- historical institutional abuse arising out of deaf schools in Nova Scotia;
- systemic sexual misconduct and discrimination in the Canadian Armed Forces;
- product liability regarding defective medical devices and implants;
- product liability arising from motor vehicle recalls and defective parts;
- individuals affected by the pathology and colposcopy errors at the Miramichi Hospital in New Brunswick;
- passengers injured during the landing of Air Canada flight AC624 from Toronto Pearson International Airport en route to Halifax Stanfield International Airport on March 28, 2015;
- property owners and victims of localized environmental contamination and flooding;
- borrowers who received loans with inflated interest;
- consumers affected by manufacturers' alleged price fixing;
- customers who purchased medical marijuana that was contaminated with unauthorized pesticides; and
- patients of the former South West Nova District Health Authority and Capital District Health Authority (now the Nova Scotia District Health Authority) whose private medical records were intruded upon by employees of the respective Health Authorities.

In the medical malpractice area, acts as counsel to patients catastrophically injured by medical negligence, with a special focus on complex birth trauma litigation.

## EDUCATION

1979

**BACHELOR OF LAWS DEGREE, DALHOUSIE LAW SCHOOL, DALHOUSIE UNIVERSITY**

## BAR ADMISSION

FEBRUARY, 1980

NOVA SCOTIA



## **PROFESSIONAL MEMBERSHIPS**

- Nova Scotia Barristers' Society
- Atlantic Provinces Trial Lawyers Association
- Ontario Trial Lawyers Association
- Canadian Bar Association
- American Association for Justice / Association of Trial Lawyers of America
- Canadian Caucus of the American Association of Justice

## **PROFESSIONAL ACHIEVEMENTS**

- Founder and inaugural President of the Atlantic Provinces Trial Lawyers Association
- Inaugural Chairperson of the Canadian Caucus to the American Association for Justice
- Organized and addressed first Nova Scotia Barristers' Society Class Action Conference
- Nova Scotia Statutory Costs and Fees Committee (Retired)
- Nova Scotia Barristers' Society Rules Committee (Retired)
- Nova Scotia Bench and Bar Civil Procedure Rules Committee
- Invited to speak at 2011 WeFree day conference in Italy about OxyContin
- 2012 Recipient of the Lorne Clarke, QC Access to Justice Award
- 2012 Received Queen's Counsel designation
- 2014 Recipient of Bruce T. Hillyer Award from Ontario Trial Lawyers Association
- 2015 One of five finalists for the Public Justice Trial Lawyer of the Year Award
- Appearances before the Courts in Nova Scotia, New Brunswick, Prince Edward Island, Newfoundland and Labrador, Ontario, and Saskatchewan;
- Appearances before the Supreme Court of Canada and the Federal Court

## **LECTURES & SPEAKING ENGAGEMENTS**

- Atlantic Provinces Trial Lawyers Association
- Dalhousie Law School
- Continuing Legal Education Society of Nova Scotia
- Public Legal Education Society
- Cape Breton Barristers' Society
- Barreau du Québec
- Ontario Trial Lawyers Association
- Osgoode Hall Law School – National Symposium on Class Actions
- Canadian Bar Association
- Canadian Pain Society
- Canadian Institute
- American Association of Justice
- Lexpert
- WeFree Day, San Patrignano, Italy, Italian National TV

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

**SIXTH REPORT OF THE MONITOR  
NOVEMBER 26, 2019**

**DAVIES WARD PHILLIPS & VINEBERG LLP**

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Doc 654

Filed 11/26/19

19:08:20

Entered 04/08/20

09:12:20

Exhibit E