

CITATION: Imperial Tobacco Canada Limited, 2023 ONSC 5449
COURT FILE NO.: CV-19-615862-00CL, CV-19-616077-00CL and CV-19-616779-00CL
DATE: 2023-10-05

SUPERIOR COURT OF JUSTICE - ONTARIO

RE: 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

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

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

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

BEFORE: Chief Justice Geoffrey B. Morawetz

COUNSEL: *John MacDonald, Deborah Glendinning, Craig Lockwood, Marc Wasserman and Marleigh Dick*, for Imperial Tobacco Canada Limited and Imperial Tobacco Company Limited

Paul Steep, Heather Meredith and Trevor Courtis, for Rothmans, Benson & Hedges Inc.

Robert Thornton and Leanne Williams, for JTI-MacDonald Corp.

Natasha MacParland, Chanakya Sethi, Benjamin Jarvis and Mehak Suri, for FTI Consulting Canada Inc. in its capacity as court-appointed Monitor of Imperial Tobacco Canada Limited and Imperial Tobacco Company Limited

Jane Dietrich, for Ernst & Young Inc. in its capacity as court appointed Monitor of Rothmans, Benson & Hedges Inc.

Pamela Huff, Linc Rogers and Jake Harris, for Deloitte Restructuring Inc. in its capacity as Monitor of JTI-Macdonald Corp.

Robert Cunningham, for The Canadian Cancer Society

Avram Fishman and Mark E. Meland, for Conseil Québécois sur le tabac et la santé, Jean-Yves Blais and Cécilia Létourneau (Quebec Class Action Plaintiffs)

Amanda McInnis and Steven Weisz, for Grand River Enterprises Six Nations Ltd.

Jacqueline Wall, for His Majesty the King in Right of Ontario

Adam Slavens, for JTI Canada LLC Inc. and PricewaterhouseCoopers Inc., in its capacity as Receiver of JTI-Macdonald TM Corp.

David Ullmann, for La Nordique Compagnie D'Assurance du Canada

Raymond Wagner, Madeleine Carter and Lauren Harper, Representative Counsel for the Pan-Canadian Claimants

Clifton Prophet and Nichols Kluge, for Philip Morris International Inc.

Andre Michael and Michael Eizenga, for the Provinces of British Columbia, Manitoba, New Brunswick, Nova Scotia, Prince Edward Island and Saskatchewan, in their capacities as Plaintiffs in the HCCR Legislation claims

Peter R. Lawless, for Legal Services Branch, British Columbia

Edward R. Gores, for the Ministry of the Attorney General of Nova Scotia

Bryan McLeese, for R.J. Reynolds Tobacco Company and R.J. Reynolds Tobacco International Inc.

Douglas Lennox, for Representative Plaintiff, Kenneth Knight, in the certified British Columbia Class Action, *Knight v. Imperial Tobacco Canada Ltd.*, Supreme Court of British Columbia, Vancouver Registry No. L031300

William V. Sasso and Harvey T. Strosberg, for The Ontario Flue-Cured Tobacco Growers' Marketing Board

Nadia Campion, for Court-Appointed Mediator, The Honourable Warren K. Winkler

Brett Harrison, for the Province of Quebec

**HEARD and
DETERMINED:** September 27, 2023

RELEASED: October 5, 2023

ENDORSEMENT

[1] This endorsement relates to all three Applicants, JTI-MacDonald Corp., (“JTI”) Imperial Tobacco Canada Limited and Imperial Tobacco Company Limited (collectively “Imperial”) and Rothmans, Benson & Hedges Inc. (“RBH”).

[2] At the conclusion of the hearing, a Stay Extension was granted to all Applicants up to and including March 29, 2024, with reasons to follow. Oral directions were provided and these directions are set out at paragraphs [11] - [21].

[3] The evidence in support of the requested relief is set out in the 16th Report of FTI Consulting Canada Inc. as Monitor of Imperial, the 14th Report of Ernst & Young Inc., as Monitor of RBH and the 15th Report of Deloitte Restructuring Inc., Monitor of JTI (collectively, the "Reports").

[4] In addition, the Affidavit of Philippe Trudell, one of the attorneys representing Conseil Québécois sur le tabac et la santé ("QCAPs") was also filed.

[5] All three motions for an extension of the Stay Period were not opposed.

[6] The Reports outline the current state of affairs.

[7] The Record establishes that all three Applicants have been and continue to work in good faith and with due diligence. The Record also establishes that much work remains outstanding and additional time is required until comprehensive plans of arrangement can be finalized.

[8] In addition, the Affidavit of Mr. Trudell outlines the situation facing a number of claimants and underscores the necessity for progress to be made in the development of plans of arrangement.

[9] The Reports confirm that all Applicants have sufficient liquidity to carry on operations during the period of the proposed extension of the Stay Period.

[10] I am satisfied that all three Applicants have established that circumstances exist that require an extension of the Stay Period up to and including March 29, 2024, and such order is granted.

[11] In granting such relief, I am mindful that all stakeholders have been involved in negotiating various issues for a period of approximately four and one-half years. There are a number of outstanding issues which remain to be addressed. I expect that these issues have been outstanding for a considerable period of time. It is now time for all stakeholders to focus on the finalization of comprehensive plans of arrangement. For this reason, I have determined that it is both necessary and appropriate to provide certain directions to the Monitors and to the Honourable Warren K. Winkler, Court-appointed Mediator. These directions were provided orally at the conclusion of the hearing on September 27, 2023 and are repeated below.

[12] The Record establishes that all parties continue to be engaged with the Court-appointed Mediator, the Honourable Warren K. Winkler.

[13] The Record also establishes, through the detailed reports of the Monitors, that each Monitor has a thorough understanding of the issues facing their respective Applicants.

[14] The Record also establishes that these CCAA proceedings are extremely complex.

[15] The dollar value of potential claims is astronomical and is clearly beyond the ability for any or all of the Applicants to satisfy these claims from their available assets.

[16] There is also an unresolved issue as to how the three Applicants will address the issue of allocation of responsibility for such issues.

[17] It would be a challenge for any one Applicant to address the outstanding issues – let alone for all three Applicants to address the issues in the context of a comprehensive Plan of Arrangement.

[18] In formulating an acceptable Plan of Arrangement, it has often been stated that no plan is perfect (See: *Sammi Atlas Inc. (Re)*, (1998) 3 C.B.R. (4th) 171 (Ont. Gen. Div.), at para. 4). The objective is to produce a plan or in this case plans, which will be acceptable to the required statutory majority of creditors and also be seen to be fair and reasonable.

[19] In my view, if a successful plan is to be forthcoming, the best chance for the development of such a plan will be achieved by directing neutral parties to collaborate and develop such a plan. In the circumstances, such neutrals are already in place. The three Court-appointed Monitors are well-positioned to collaborate with each other in conjunction with the Court-appointed Mediator to develop such plans.

[20] The existing structure of the mediation can be utilized to facilitate the development of such plans. The Monitors and the Mediator are obviously familiar with the issues and in view of their existing neutrality, it seems to me that they are in the best position to develop plans that, after due consideration by all three Applicants and the creditors, will have the best opportunity to be considered to be fair and reasonable to all three Applicants and to their creditors.

[21] The Applicants filed for CCAA protection four and one-half years ago. It is now time to move from observable activity to meaningful action.

[22] Accordingly, I am directing the three Monitors, to work in conjunction with the Honourable Warren K. Winkler, Court-appointed Mediator, to develop Plans of Compromise or Arrangement. The Monitors and the Court-appointed Mediator are also directed to keep this Court updated as to their progress.

[23] The motions of all three Applicants are granted, in accordance with the directions noted above.

[24] Three orders that reflect the foregoing have been signed.


Chief Justice Geoffrey B. Morawetz

Date: October 5, 2023