

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

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

**FOURTH REPORT OF THE MONITOR**

**June 24, 2019**

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**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

**FOURTH 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 Consulting Canada Inc. was appointed as the Monitor.
3. 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 [Stay Extension Order](#);
  - (b) the Hon. Warren K. Winker, Q.C. was appointed as the [Court-Appointed Mediator](#); and
  - (c) the Court issued the [Amended and Restated Initial Order](#), a copy of which can be found [here](#).
4. 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](#).
  5. A further [Comeback Motion](#) was heard 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](#).
  6. Following an additional hearing on May 14, 2019, the Court issued the following Orders: i) the Notice Procedure Order, which can be found [here](#); ii) the Professional Fee Disclosure Order, which can be found [here](#); and iii) 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](#).
  7. 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](#).

### **Purpose of this Report**

8. The purpose of this Report is to provide the [Court](#) with information regarding:
  - (a) the activities of the Monitor and its counsel since May 13, 2019, the date

of the [Third Report](#);

- (b) procedural directions from the Court in these CCAA Proceedings;
  - (c) Imperial's budget to actual cash flow results for the eight-week period ending June 9, 2019;
  - (d) the Cash Flow Forecast for the period commencing the week beginning June 10, 2019 through the week beginning December 16, 2019;
  - (e) certain cash management agreements with [BNS](#);
  - (f) the new federal tobacco regulations;
  - (g) the settlement reached between Imperial and the [Retiree Group's Representative Counsel](#);
  - (h) the status of the issues being mediated by the [Court-Appointed Mediator](#), in respect of Imperial;
  - (i) Imperial's request for an Order extending the [Stay of Proceedings](#) to December 16, 2019; and
  - (j) the [Monitor](#)'s comments and recommendations in respect of the foregoing matters.
9. Unless otherwise stated, all monetary amounts contained herein are expressed in Canadian Dollars.
10. This Report should be read in conjunction with the [June Thauvette Affidavit](#), which can be found [here](#).

## C. BACKGROUND

11. [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](#). The logistics business distributes [Tobacco Products](#) for tobacco manufacturers, as well as certain non-[Tobacco Products](#) and services.
12. [Imperial](#) is highly integrated with [BAT](#) and its affiliates. [Imperial](#) benefits from a wide range of services, licenses 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.
  13. 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.
  14. Further information regarding these [CCAA Proceedings](#) and [Imperial](#)'s background is provided in the [Monitor's Reports](#).
  15. All [Court](#) materials filed in these [CCAA Proceedings](#) are available on the [Monitor](#)'s website at: <http://cfcanada.fticonsulting.com/imperialtobacco/>

#### **D. OVERVIEW OF THE MONITOR'S ACTIVITIES**

16. Since the date of the [Third Report](#), the [Monitor](#) and its counsel have held meetings and/or discussions with a number of parties to: i) provide information regarding these [CCAA Proceedings](#); ii) gain an understanding of each party's concerns; and iii) where appropriate, attempt to resolve differences between parties.
17. On April 19, 2019, the Monitor received a letter from the [PBGC](#) requesting certain information relating to the defined benefit plan sponsored by Imasco Holdings Group, Inc., a largely dormant foreign subsidiary of [ITCAN](#), and the effect of these [CCAA Proceedings](#) on such plan. At the Monitor's request, King & Spalding LLP, as U.S. counsel to Imperial, prepared the responses to [PBGC](#)'s information request which were reviewed by the Monitor. On May 15, 2019, King

& Spalding LLP provided answers to the [PBGC](#)'s information request by email. A further information request was received by the Monitor from the PBGC on May 28, 2019. Again, King & Spalding LLP prepared the responses to the [PBGC](#)'s information request, which were reviewed by the Monitor, and sent to the PBGC by email on June 3, 2019.

18. The Monitor and counsel to the Monitor engaged in correspondence with the Ontario Superior Court of Justice and the Supreme Court of Newfoundland and Labrador regarding the effect of the Stay of Proceedings on the Ontario [HCCR Action](#) and the Newfoundland and Labrador [HCCR Action](#), respectively. Counsel to the Monitor also appeared telephonically before the Supreme Court of Newfoundland and Labrador on May 27, 2019, on this matter. Counsel to the Monitor advised each of the foregoing courts that Imperial would request an extension of the [Stay of Proceedings](#) before this Court on June 26, 2019.

#### **E. PROCEDURAL DIRECTIONS FROM THE COURT**

19. The Monitor was advised by its counsel that on June 6, 2019, counsel to each of the [Tobacco Monitors](#) met with the Honourable Mr. Justice McEwen regarding certain procedural matters in the [Tobacco CCAA Proceedings](#). The Monitor was further advised by its counsel that the Honourable Mr. Justice McEwen directed the following:
  - (a) that the [Tobacco Monitors](#) advise each of their respective service lists that any future written communications between any person and the Court in respect of the [Tobacco CCAA Proceedings](#) be coordinated through the respective [Tobacco Monitor](#). A notice to this effect was sent to Imperial's service list on June 11, 2019, and is attached to this Report as Appendix "B";
  - (b) that the Tobacco Monitors create a common and consolidated service list for the [Tobacco CCAA Proceedings](#) to avoid duplication and to ensure all stakeholders receive consistent information in regards to common issues.

At the time of writing this Report, the Tobacco Monitors and their counsel were in the process of establishing a “Common Service Protocol” to reflect the Court’s directions; and

- (c) that the Tobacco Monitors develop a court-to-court communications protocol to assist the Court in communicating with other courts where litigation related to the Tobacco CCAA Proceedings is pending and to promote efficiency in the Tobacco CCAA Proceedings.

**F. RECEIPTS AND DISBURSEMENTS FOR THE EIGHT-WEEK PERIOD ENDING JUNE 9, 2019**

20. Imperial’s actual net cash inflow for the eight-week period ending June 9, 2019, was approximately \$169.5 million. This is compared to the forecasted net cash inflow of \$144.4 million described in the [First Report](#), resulting in a positive variance of approximately \$25.1 million, as summarized below:

*(CAD\$ in thousands)*

<b>VARIANCE REPORT</b>	<b>Actuals</b>	<b>Forecast</b>	<b>Variance</b>
	<b>For the 8-week period ending Jun 09, 2019</b>		
<b>RECEIPTS</b>			
Trade Receipts	761,493	811,845	(50,352)
<b>DISBURSEMENTS</b>			
<i>Operating Disbursements</i>			
Taxes and Levies	(456,256)	(532,950)	76,694
Operations	(130,084)	(129,953)	(131)
<i>Total Operating Disbursements</i>	(586,340)	(662,903)	76,563
<b>OPERATING CASH FLOWS</b>	<b>175,153</b>	<b>148,942</b>	<b>26,211</b>
<i>Financing Disbursements</i>			
Interest and Related Fees on Existing Facilities	1,535	1,298	238
<i>Restructuring Disbursements</i>			
Professional Fees	(7,217)	(5,841)	(1,376)
<b>NET CASH FLOWS</b>	<b>169,471</b>	<b>144,399</b>	<b>25,073</b>
<b>CASH</b>			
Beginning Balance	405,489	397,408	8,081
Net Cash Inflows / (Outflows)	169,471	144,399	25,073
Other (FX)	2,533	-	2,533
<b>ENDING CASH</b>	<b>577,494</b>	<b>541,807</b>	<b>35,687</b>



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

- (a) trade receipts negative timing variance of \$50.4 million or 6% against the forecast is considered to be in the ordinary course of business and is primarily driven by volume changes that the tobacco industry occasionally experiences due to weather and other external factors;
- (b) taxes and levies positive variance of \$76.7 million that consists of a positive permanent variance of \$19.1 million and a positive variance of \$57.6 million. The positive permanent variance of \$19.1 million is due to a corporate income tax refund claimed by Imperial that was not included in the forecast due to Imperial expecting the refund beyond the forecast period. In addition, there is a positive variance relating to federal excise tax and provincial tobacco taxes, correlated with lower than forecast sales, as described above, and the corresponding reduced inventory imports into Canada, resulting in lower excise and tobacco tax payments;
- (c) professional fees negative timing variance of a total of \$1.4 million is primarily due to the reversal of the positive timing variance that was described in the [Second Report](#), as outstanding invoices relating to the previous period were paid during the current reporting period; and
- (d) opening cash balance variance of \$8.1 million has been previously discussed in the actual vs. budget cash flow reporting section of the [Second Report](#).

#### **G. CASH FLOW FORECAST**

22. Imperial, with the assistance of the Monitor, has prepared an updated [Cash Flow Forecast](#) for the 28-week period commencing the week beginning June 10, 2019 through the week beginning December 16, 2019. The [Cash Flow Forecast](#) is attached as Appendix “C” to this Report.

23. During the Forecast Period, total operating receipts are forecast to be approximately \$3.1 billion and total operating disbursements are forecast to be approximately \$2.7 billion, resulting in net positive operating cash flow of approximately \$0.4 billion. In addition, Imperial forecasts interest income of approximately \$8 million in respect of cash balances on deposit in Canada and professional fees disbursements of approximately \$21 million, such that net cash flow is forecast to be approximately \$359 million. Although net cash flows are positive during the Forecast Period, there are seven 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 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.

#### **H. CASH MANAGEMENT**

24. 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. An agreement as to the amended terms has been reached and accordingly, 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. Details regarding the [Letter Agreement](#) are outlined in paragraph 23 of the [June Thauvette Affidavit](#).
25. The Monitor understands that Imperial is currently in discussions with [BNS](#) regarding potential minor amendments to the Letter Agreement under which [BNS](#) would issue certain post-filing letters of credit to secure payment in respect of corporate credit cards.

## **I. NEW TOBACCO REGULATIONS**

26. On May 1, 2019, the Federal government published the *Tobacco Products Regulations (Plain and Standardization Appearance)*, SOR/2019-17. The [Regulations](#) will come into force on November 9, 2019.
27. The [Regulations](#) set out requirements that manufacturers of tobacco products must meet in respect of the plain and standardized packaging and content of tobacco products. The [Regulations](#) require tobacco manufacturers and distributors to cease selling branded tobacco products to wholesalers and retailers by November 9, 2019. In addition, retailers must cease selling branded tobacco products by February 7, 2020. Details of the regulations may be found at: <https://www.canada.ca/en/health-canada/news/2019/05/plain-and-standardized-appearance-for-tobacco-packaging-and-products.html>.
28. The Monitor has been advised by Imperial that, in light of the Regulations and leading up to November 9, 2019, Imperial expects accelerated sales of certain branded tobacco products to their wholesale and retail customer base, which will result in inventory fluctuations. As a result, the Monitor understands that Imperial anticipates timing differences in historical levels of receipts and disbursements in the short term and which will be regularized once the transition to plain packaging is complete.

## **J. SETTLEMENT WITH THE RETIREE GROUP IN THESE CCAA PROCEEDINGS**

29. On April 25, 2019, and on consent from Imperial and the Monitor, Ari Kaplan of Kaplan Law was appointed as [Representative Counsel](#) to the [Retiree Group](#) pursuant to the [Representation Order](#), which can be found [here](#).
30. On April 25, 2019, Imperial, the Monitor and [Representative Counsel](#) 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](#).

31. On May 14, 2019, this Court granted the [Notice Procedure Order](#), which approved the form of notice to the [Represented Parties](#) of the [Representation Order](#), the [Settlement](#), and the date of the hearing to approve the [Settlement](#). The Notice Procedure Order can be found [here](#). The Monitor has been advised that notices were sent to the [Represented Parties](#) on or before May 15, 2019, pursuant to the [Notice Procedure Order](#).
32. Together, the [Representation Order](#) and the [Notice Procedure Order](#) mandated the following two deadlines: i) opt-out notices were to be sent to the Monitor by 5:00 p.m. Eastern Time on June 17, 2019, if any of the [Represented Parties](#) chose to opt-out of representation by [Representative Counsel](#); and ii) objections to the [Settlement](#) were to be sent to the Monitor by 5:00 p.m. Eastern Time on June 17, 2019.
33. As of June 24, 2019, the Monitor had not received any objections or opt-out notices from the [Represented Parties](#).
34. The Monitor understands that Imperial will bring a motion on June 26, 2019, for a [Settlement Approval Order](#) which will give effect to the [Settlement](#). The Monitor supports the approval of the [Settlement](#) as contemplated in the [Settlement Approval Order](#).
35. The Monitor understands that, pending approval of the [Settlement Approval Order](#) by this Court, Bracewell LLP, as U.S. counsel to the Monitor, will bring a motion before the U.S. Bankruptcy Court to seek recognition of the Settlement, as contemplated in the [Settlement Approval Order](#).

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

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

36. Since the date of the [Third 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.

*Professional Fee Taxation*

37. Prior to the [Comeback Motion](#), the [Quebec Litigation Plaintiffs](#) brought a motion seeking to have the [Tobacco Monitors](#)' fees and their legal fees taxed at regular intervals of no more than 90 days. The [Quebec Litigation Plaintiffs](#) also sought to have the fees of each [Applicant](#)'s counsel subject to taxation by the Court.
38. On April 23, 2019, the Monitor was advised by the [Court-Appointed Mediator](#) that counsel to the [Quebec Litigation Plaintiffs](#) had amended its initial request and instead sought the disclosure of professional fees on a monthly basis. The Monitor agreed to this approach, as outlined in paragraph 32 of the [Second Report](#). Subsequent to issuing the Second Report, certain other stakeholders in these CCAA Proceedings raised objections as to the nature and extent of the Monitor's proposed professional fee disclosure.
39. Following the issuance of the Monitor's [Third 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 (upon written request), 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 immediately prior month.
40. On May 15, 2019 and June 14, 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 April and May, 2019, respectively.

*Insurance Settlements*

41. Prior to the hearing on April 25, 2019, counsel to the [Quebec Litigation Plaintiffs](#) brought two motions related to the [Insurance Settlement Agreements](#): i) a motion seeking an order from the Superior Court of Quebec, approving the Insurance Settlement Agreements and authorizing the use of proceeds payable thereunder; and ii) a motion in these [CCA Proceedings](#), seeking an order modifying the [Insurance Settlement Order](#), which, if approved, would authorize the implementation of the [Insurance Settlement Agreements](#) and the use of the proceeds thereof.
42. On April 25, 2019, this Court, by way of endorsement, authorized counsel to the [Quebec Litigation Plaintiffs](#) to seek the approval of the Superior Court of Quebec of the [Insurance Settlement Agreements](#) and, if so approved, to pay the proceeds thereof into the trust account of either Fishman Flanz Meland Paquin LLP or Trudel Johnston & Lespérance. This Court then referred all other matters related to the use and/or distribution of the settlement funds to the [Court-Appointed Mediator](#). The endorsement can be found [here](#).
43. The Monitor has been advised that counsel to the Quebec Litigation Plaintiffs attended before the Superior Court of Quebec on May 14, 2019, seeking authorization of the [Insurance Settlement Agreements](#). The Superior Court of Quebec granted the relief sought, which did not extend to the use and/or distribution of the proceeds of the [Insurance Settlement Agreements](#).
44. On May 31, 2019, counsel to Imperial, the Monitor, counsel to the Monitor and counsel to the Quebec Litigation Plaintiffs, reached an agreement regarding the use and/or distribution of the proceeds of the [Insurance Settlement Agreements](#). The parties agreed to a limited lift of the Stay of Proceedings to allow counsel to the Quebec Litigation Plaintiffs to use the proceeds from the [Insurance Settlement Agreements](#) in the following ways:

- (a) Use no more than \$500,000 for any costs associated with communicating with affected class members and responding to their enquiries; and
  - (b) Use the balance of the proceeds to reimburse the *Fonds d'aide actions collectives* for the financial aid provided to the Quebec Litigation Plaintiffs in the “Blais” and “Letourneau” proceedings.
45. On May 31, 2019, this Court granted the Clarification of the Insurance Lift-Stay Order, which can be found [here](#), and which gave effect to the foregoing agreement.
46. The Monitor has been advised that on June 4, 2019, counsel to the Quebec Litigation Plaintiffs attended before the Superior Court of Quebec, seeking authorization to use the proceeds of the Insurance Settlement Agreements, as outlined in the Clarification of the Insurance Lift-Stay Order. The Superior Court of Quebec granted the requested relief.

#### **MEDIATING A GLOBAL SETTLEMENT OF TOBACCO CLAIMS**

##### *Details Regarding the Mediation Process*

47. 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](#).
48. The Monitor has been advised by its counsel that on June 6, 2019, counsel to the Court-Appointed Mediator circulated a brief procedural memorandum regarding the upcoming mediation to counsel to the various plaintiffs in the Pending Litigation (as defined in the Initial Order) and to counsel of each of Imperial, Rothmans, and JTI. The memorandum notified the foregoing parties that mediation briefs were to be delivered to the Court-Appointed Mediator by August 1, 2019.

*Non-Disclosure Agreements with the Provinces*

49. Counsel to Imperial, in consultation with the Monitor, has engaged with the following parties to negotiate terms on which the parties may exchange information (confidential, or otherwise): i) counsel to the [Consortium of Provinces](#); ii) counsel to the Province of Alberta; iii) counsel to the Province of Newfoundland and Labrador; and iv) counsel to the Province of Ontario.
50. At the date of this Report, Imperial and the Monitor have agreed to a form of non-disclosure agreement with the [Consortium of Provinces](#), the Province of Alberta and the Province of Newfoundland and Labrador. However, no agreement as to the terms of a non-disclosure has been reached, as yet, with the Province of Ontario.

**L. STAY OF PROCEEDINGS**

51. Imperial is seeking an extension to the Stay of Proceedings to December 16, 2019. The Monitor understands that such extension is necessary for Imperial to operate the business in the ordinary course as it commences engagement in the mediation process conducted by the [Court-Appointed Mediator](#) and as it continues to work towards developing a plan of compromise or arrangement for the resolution of the Tobacco Claims.
52. At the date of this Report, the following parties have filed materials in response to, and in rejection of, Imperial's motion to extend the Stay of Proceedings to December 16, 2019: i) counsel to the Quebec Litigation Plaintiffs; ii) counsel to the provinces of Alberta and Newfoundland and Labrador, on behalf of the [Consortium of Provinces](#) and the Province of Quebec; and iii) counsel to the Canadian Cancer Society. Each of the foregoing parties has submitted that the extension to the Stay of Proceedings should be shorter than as requested by Imperial.
53. The Monitor understands that Imperial is contemplating a shorter extension to the Stay of Proceedings, in light of the foregoing objections.



54. 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 24th day of June, 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

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

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

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

“**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 the insolvency proceedings 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 June 10, 2019 and through the week of December 16, 2019.

“**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.

“**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.

“**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.

“**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 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 June 10, 2019 and through the week of December 16, 2019.

“**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 United States.

“**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.

“**Insurance Settlement Agreements**” means the settlement agreements in respect of insurance policies issued by Kansa General International Insurance Company Ltd. and Northumberland General Insurance Company to ITCAN and/or its predecessor entities.

“**Insurance Settlement Order**” means an order of this Court dated April 25, 2019, partially lifting the Stay of Proceedings solely to allow the Quebec Litigation Plaintiffs to seek the approval of the Insurance Settlement Agreements from Justice Riordan of the Superior Court of Quebec.

“**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.

“**JTI**” means JTI-Macdonald Corp.

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

“**June Thauvette Affidavit**” means the affidavit of Eric Thauvette, Vice President and Chief Financial Officer of Imperial, sworn June 17, 2019.

“**KCC**” means Kurtzman Carson Consultants.

“**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.

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

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

“**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.

“**PBGC**” means the Pension Benefit Guaranty Corporation.

“**PMI**” means Phillip Morris International.

“**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 to this Court for relief under the CCAA.

“**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 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 \$9,153,565,094.80 with interest and additional indemnity for moral damages and punitive damages.

“**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 Thauvette Affidavit.

“**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 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 a Representative Order dated April 25, 2019.

“**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: i) a deferred income plan for approximately 53 individuals who are either former senior management employees of Genstar or their surviving spouses; ii) supplemental executive retirement plan for approximately 14 individuals who were either former Genstar employees or their surviving spouses; and iii) 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.

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

“**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 Period**” means the term of the Stay of Proceedings, to June 28, 2019, and if so approved by the Court on June 26, 2019, to December 16, 2019.

“**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.

“**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.

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

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

“**Tobacco CCAA Proceedings**” means, collectively, the CCAA proceedings of ITCN, 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.

“**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, electronic cigarettes, vaping liquids and devices, 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.

“**Tobacco Taxes**” means the federal excise taxes, import duties, and provincial tobacco taxes on all tobacco products imported into Canada and sold in a province.

“**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 the Southern District of New York.

## **APPENDIX B**

See attached.

June 11, 2019

Service List

Dear Sirs/Mesdams:

**RE: Rothmans, Benson & Hedges Inc. (“RBH”) proceedings under the *Companies’ Creditors Arrangement Act* (the “CCAA”) in the Ontario Superior Court of Justice (Commercial List) (the “Court”) bearing Court File No.: CV-19-616779-00CL**

**AND RE: JTI-Macdonald Corp. (“JTI”) proceedings under the CCAA bearing Court File No.: CV-19-615862-00CL**

**AND RE: Imperial Tobacco Canada Limited and Imperially Tobacco Company Limited (collectively “Imperial”) bearing Court File No. CV-19-616077-00CL**  
**(collectively, the “CCAA Proceedings”)**

We write on behalf of each of the Court-appointed monitors (the “**Monitors**”) in the above noted CCAA Proceedings.

The Honourable Mr. Justice McEwen has directed the Monitors to advise the Service Lists in the CCAA Proceedings that any future written communication between any person and the Court in respect of the CCAA Proceedings be coordinated through the Monitors. No person should directly write to Justice McEwen, rather all future written communications with the Court should be directed to the Monitors’ counsel as follows:

- a. with respect to the RBH CCAA proceeding, by email to both Shayne Kukulowicz at [skukulowicz@casselsbrock.com](mailto:skukulowicz@casselsbrock.com) and Jane Dietrich at [jdietrich@casselsbrock.com](mailto:jdietrich@casselsbrock.com);
- b. with respect to the JTI CCAA proceeding, by email to both Pamela Huff at [pam.huff@blakes.com](mailto:pam.huff@blakes.com) and Linc Rogers at [linc.rogers@blakes.com](mailto:linc.rogers@blakes.com);
- c. with respect to the Imperial CCAA proceeding, by email to Jay Swartz at [JSwartz@dwpv.com](mailto:JSwartz@dwpv.com) and Natasha MacParland at [nmacparland@dwpv.com](mailto:nmacparland@dwpv.com).

To the extent the communication impacts all three CCAA Proceedings, please direct the communication to all persons listed above.

Justice McEwen has also requested that the Monitors work together to (i) create a common service list to avoid duplication and to ensure all stakeholders receive all information in these proceedings; and (ii) create a court-to-court communication protocol to assist the Court in communicating with other courts where litigation related to the CCAA proceedings is pending.



The Monitors are in the process of creating a consolidated service list and related service protocol as well as drafting the requested court-to-court communication protocol.

To the extent you have any questions about the above, please contact the undersigned.

*"Cassels Brock &  
Blackwell LLP"*

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Cassels Brock &  
Blackwell LLP

*"Blake, Cassels &  
Graydon LLP"*

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Blake, Cassels &  
Graydon LLP

*"Davies Ward Phillips &  
Vineberg LLP"*

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Davies Ward Phillips &  
Vineberg LLP

## **APPENDIX C**

See attached.

## Imperial Tobacco Canada Limited

CCA Cash Flow Forecast

(CAD\$ in thousands)

Week Beginning (Monday)	10-Jun-19	17-Jun-19	24-Jun-19	1-Jul-19	8-Jul-19	15-Jul-19	22-Jul-19	29-Jul-19	5-Aug-19	12-Aug-19	19-Aug-19	26-Aug-19	2-Sep-19	9-Sep-19	
Forecast Week	1	2	3	4	5	6	7	8	9	10	11	12	13	14	
<b>RECEIPTS</b>															
Trade Receipts	[2]	93,000	149,096	127,308	127,404	119,372	109,125	103,946	117,170	112,013	112,738	111,505	112,399	107,175	107,895
<b>DISBURSEMENTS</b>															
<i>Operating Disbursements</i>															
Taxes and Levies	[3]	(49,779)	(79,894)	(27,489)	(184,421)	(57,868)	(47,596)	(60,724)	(206,986)	-	(91,594)	(44,981)	(38,323)	(152,546)	(50,635)
Operations	[4]	(18,150)	(7,476)	(45,687)	(8,606)	(17,234)	(5,322)	(22,122)	(25,414)	(8,771)	(13,017)	(4,793)	(49,199)	(7,992)	(13,463)
<i>Total Operating Disbursements</i>		(67,930)	(87,369)	(73,176)	(193,028)	(75,102)	(52,917)	(82,846)	(232,400)	(8,771)	(104,611)	(49,773)	(87,522)	(160,538)	(64,099)
<b>OPERATING CASH FLOWS</b>															
		25,070	61,727	54,132	(65,624)	44,270	56,208	21,100	(115,230)	103,242	8,127	61,732	24,877	(53,363)	43,796
<i>Financing Disbursements</i>															
Interest and Related Fees	[5]	-	-	947	-	-	(2)	-	1,265	-	-	-	1,366	-	-
<i>Restructuring Disbursements</i>															
Professional Fees	[6]	(2,260)	(693)	(693)	(702)	(702)	(702)	(702)	(702)	(723)	(723)	(723)	(723)	(702)	(702)
<b>NET CASH FLOWS</b>															
		22,810	61,033	54,386	(66,326)	43,568	55,504	20,398	(114,667)	102,520	7,404	61,009	25,520	(54,065)	43,094
<b>CASH</b>															
Beginning Balance		577,494	600,304	661,337	715,723	649,397	692,965	748,469	768,867	654,200	756,720	764,124	825,133	850,653	796,588
Net Cash Inflows / (Outflows)		22,810	61,033	54,386	(66,326)	43,568	55,504	20,398	(114,667)	102,520	7,404	61,009	25,520	(54,065)	43,094
Other (FX)		-	-	-	-	-	-	-	-	-	-	-	-	-	-
<b>ENDING CASH</b>		600,304	661,337	715,723	649,397	692,965	748,469	768,867	654,200	756,720	764,124	825,133	850,653	796,588	839,682

### 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 May 2019 price increases by the Company. 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, purchase of tobacco-related products and other categories, innovation fees, IT-related costs, selling, general, and administrative costs.
- [5] Forecast Interest and Related Fees reflect interest income earned net of any 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.

## 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	16-Dec-19	28-Week Total	
Forecast Week	15	16	17	18	19	20	21	22	23	24	25	26	27	28		
<b>RECEIPTS</b>																
Trade Receipts	[2]	112,088	105,896	106,675	105,053	99,940	100,516	111,306	111,307	110,297	111,783	111,039	103,613	113,115	107,320	<b>3,120,093</b>
<b>DISBURSEMENTS</b>																
<i>Operating Disbursements</i>																
Taxes and Levies	[3]	(105,690)	(6,086)	(216,730)	(50,098)	(60,368)	(59,065)	(208,515)	-	(126,335)	(76,754)	(56,520)	(113,237)	(34,952)	(28,753)	<b>(2,235,938)</b>
Operations	[4]	(5,656)	(45,411)	(11,289)	(13,772)	(5,408)	(13,498)	(40,490)	(11,418)	(12,200)	(6,604)	(32,368)	(8,704)	(12,282)	(45,909)	<b>(512,256)</b>
<i>Total Operating Disbursements</i>		(111,346)	(51,497)	(228,019)	(63,870)	(65,776)	(72,563)	(249,005)	(11,418)	(138,535)	(83,358)	(88,888)	(121,940)	(47,234)	(74,662)	<b>(2,748,194)</b>
<b>OPERATING CASH FLOWS</b>		743	54,399	(121,344)	41,183	34,164	27,953	(137,700)	99,890	(28,239)	28,425	22,151	(18,328)	65,881	32,657	<b>371,899</b>
<i>Financing Disbursements</i>																
Interest and Related Fees	[5]	(2)	-	1,294	-	-	-	1,511	-	-	-	1,706	-	-	-	<b>8,085</b>
<i>Restructuring Disbursements</i>																
Professional Fees	[6]	(702)	(702)	(702)	(673)	(673)	(673)	(673)	(673)	(673)	(673)	(673)	(637)	(637)	(637)	<b>(20,848)</b>
<b>NET CASH FLOWS</b>		39	53,697	(120,752)	40,510	33,491	27,281	(136,861)	99,217	(28,911)	27,753	23,184	(18,965)	65,244	32,020	<b>359,136</b>
<b>CASH</b>																
Beginning Balance		839,682	839,721	893,418	772,666	813,176	846,667	873,948	737,087	836,304	807,393	835,145	858,330	839,365	904,609	<b>577,494</b>
Net Cash Inflows / (Outflows)		39	53,697	(120,752)	40,510	33,491	27,281	(136,861)	99,217	(28,911)	27,753	23,184	(18,965)	65,244	32,020	<b>359,136</b>
Other (FX)		-	-	-	-	-	-	-	-	-	-	-	-	-	-	<b>-</b>
<b>ENDING CASH</b>		839,721	893,418	772,666	813,176	846,667	873,948	737,087	836,304	807,393	835,145	858,330	839,365	904,609	936,630	<b>936,630</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 May 2019 price increases by the Company. The Company's ability to maintain the price increase is dependent on market conditions and is uncertain.
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- [5] Forecast Interest and Related Fees reflect interest income earned net of any 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.

**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

**FOURTH REPORT OF THE MONITOR  
JUNE 24, 2019**

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