

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

**ONTARIO
SUPERIOR COURT OF JUSTICE
COMMERCIAL LIST**

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

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

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

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

Applicants

**JOINT NOTICE OF MOTION
(APPOINTMENT OF REPRESENTATIVE COUNSEL)
(Returnable December 6, 2019)**

The Tobacco Monitors (being Ernst & Young Inc. in its capacity as court-appointed Monitor of Rothmans, Benson & Hedges Inc. ("**RBH**"), Deloitte Restructuring Inc. in its capacity as court-appointed Monitor of JTI-Macdonald Corp. ("**JTIM**") and FTI Consulting Canada Inc. in its capacity as court-appointed Monitor of Imperial Tobacco Canada Limited and Imperial Tobacco Company Limited (collectively, the "**ITL Applicants**" and together with RBH and JTIM, the "**Applicants**")) will make a joint motion for advice and directions regarding orders appointing representative counsel in these proceedings, before Mr. Justice McEwen of the Ontario Superior Court of Justice (Commercial List) on December 6, 2019 at 10:00 a.m. or as soon after that time as the motion can be heard at 330 University Avenue, in Toronto.

PROPOSED METHOD OF HEARING: The motion is to be heard orally.

THE JOINT MOTION IS FOR:

1. Orders substantially in the forms attached hereto as Schedule “**A**”, Schedule “**B**” Schedule “**C**” in respect of RBH, JTIM and the ITL Applicants respectively (collectively the “**Representative Counsel Orders**”), among other things:
 - a. appointing The Law Practice of Wagner & Associates, Inc. (“**Wagners**”) as representative counsel (the “**Representative Counsel**”) for the TRW Claimants (as defined in the Representative Counsel Orders), which definition may be further amended following consultation among the Court-Appointed Mediator (as defined below), the Tobacco Monitors and Representative Counsel and as approved by further order of this Court; and
 - b. authorizing the Representative Counsel to take all steps and to perform all acts necessary or desirable in representing the TRW Claimants, including without limitation by:
 - i. participating in and negotiating on behalf of the TRW Claimants in the Mediation (as defined below);
 - ii. working with the Court-Appointed Mediator and the Tobacco Monitors to develop a process for the identification of valid and provable TRW Claims (as defined below) and as appropriate, addressing such claims in the Mediation or the Tobacco CCAA Proceedings (as defined below);
 - iii. responding to inquiries from TRW Claimants in the Tobacco CCAA Proceedings;

iv. performing such other actions as approved by the Court

(the “**Representative Counsel Mandate**”); and

2. Such further and other relief as counsel may advise and this Court may permit.

THE GROUNDS FOR THE MOTION ARE:

Background

3. On March 8, 2019, JTIM applied for and obtained an initial order, as amended on April 25, 2019 (the “**JTIM Initial Order**”) under the *Companies’ Creditors Arrangement Act* (the “**CCAA**”) which among other things, appointed Deloitte Restructuring Inc. as the court-appointed Monitor for JTIM.
4. On March 12, 2019, the ITL Applicants applied for and obtained an initial order, as amended on April 25, 2019 (the “**ITL Initial Order**”) under the CCAA which among other things, appointed FTI Consulting Canada Inc. as the court-appointed Monitor for the ITL Applicants.
5. On March 22, 2019, RBH applied for and obtained an initial order, as amended on April 25, 2019 (the “**RBH Initial Order**”) under the CCAA which among other things, appointed Ernst & Young Inc. as the court-appointed Monitor for RBH. The proceedings commenced by the Applicants under the CCAA are collectively referred to herein as the “**Tobacco CCAA Proceedings**”.
6. The Honourable Warren K. Winkler, Q.C. was appointed in each of the Tobacco CCAA Proceedings as mediator (the “**Court-Appointed Mediator**”), with a mandate to oversee and coordinate a multiparty, comprehensive mediation among the Applicants and their key stakeholders (the “**Mediation**”).

The Need for Representative Counsel

7. In support of the joint motion for an order appointing Representative Counsel, the Tobacco Monitors have filed a joint submission (the “**Joint Submission**”) which is attached as an appendix to each of the Fourth Report of Ernst & Young Inc., the Sixth Report of FTI Consulting Canada Inc. and the Sixth Report of Deloitte Restructuring Inc. all to be filed (collectively, the “**Tobacco Monitors’ Reports**”).
8. 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 large number of potential claims currently unasserted or unascertained.
9. 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 the claims that could be asserted by the TRW Claimants (the “**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.
10. 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) individuals with TRW Claims in New Brunswick, Newfoundland and Labrador, Prince Edward Island or any of the Territories where no class actions have been commenced; and (ii) individuals with TRW Claims in all other

provinces including Alberta, Manitoba, Nova Scotia, Saskatchewan, Ontario and British Columbia, where class actions have been commenced but remain uncertified.

11. 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.
12. The appointment of proposed Representative Counsel would assist in ensuring that all TRW Claimants are treated consistently and able to participate meaningfully and effectively in the Tobacco CCAA Proceedings absent which, the TRW Claimants would be unduly prejudiced. As proposed, Representative Counsel would act as a single point of contact to receive and distribute pertinent information and coordinate communication with the TRW Claimants. This will increase stakeholder participation in the Tobacco CCAA Proceedings thereby facilitating meaningful negotiation toward a pan Canadian global settlement.
13. The appointment of 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 since the TRW Claimants are vulnerable stakeholders.

Representative Counsel Mandate

14. The proposed Representative Counsel would be authorized to undertake the Representative Counsel Mandate as well as to take all steps and to perform all acts that are necessary or desirable in representing the TRW Claimants.

15. The proposed Representative Counsel would 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.
16. While a significant number of TRW Claimants would benefit from representation by the Representative Counsel, there are legal defences and arguments that may preclude some TRW Claimants from receiving a distribution in these Tobacco CCAA Proceedings. As proposed, it is contemplated that Representative Counsel would work with the Tobacco Monitors and the Court-Appointed Mediator to classify and define the valid TRW Claims entitled to a distribution in these Tobacco CCAA Proceedings.

Proposed Representative Counsel

17. A number of experienced and qualified firms with expertise representing class action plaintiffs were considered, including existing counsel in the tobacco-related litigation generally, before the proposed Representative Counsel was selected. Although these Tobacco CCAA Proceedings are not class actions, given the nature of the TRW Claims that may be asserted by the Representative Counsel, such experience would be beneficial.
18. Due to the number of counsel involved in the tobacco-related litigation and these Tobacco CCAA Proceedings, many otherwise qualified counsel were conflicted and unable to act. The Tobacco Monitors are of the view that independence of the proposed Representative Counsel is critical.

19. Wagners has demonstrated expertise in class action matters and has the requisite knowledge, support staff, capacity 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.
20. Wagners is not and has not been involved in any tobacco-related litigation or in the Tobacco CCAA Proceedings and is free from conflicts.

Additional Grounds

21. Paragraph 65 of the JTIM Initial Order, paragraph 59 of the ITL Initial Order and paragraph 63 of the RBH Initial Order.
22. The provisions of the CCAA and the inherent and equitable jurisdiction of this Court.
23. Rules 1.04, 1.05, 2.03, 3.02, 10.01, 16 and 37 of the *Ontario Rules of Civil Procedure*, R.R.O. 1990, Reg. 194, as amended and section 106 of the *Ontario Courts of Justice Act*, R.S.O. 1990, c. C.43 as amended.
24. Such further and other grounds as counsel may advise and this Court may permit.

THE FOLLOWING DOCUMENTARY EVIDENCE will be used at the hearing of this motion:

25. Tobacco Monitors' Reports; and
26. Such further and other evidence as counsel may advise and this Court may permit.

November 25, 2019

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TO: COMMON SERVICE LIST
AND TO: SUPPLEMENTAL SERVICE LIST

SCHEDULE "A"

**ONTARIO
SUPERIOR COURT OF JUSTICE
COMMERCIAL LIST**

THE HONOURABLE) FRIDAY, THE 6th
)
MR. JUSTICE MCEWEN) DAY OF DECEMBER, 2019

**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 ROTHMANS, BENSON & HEDGES INC.**

Applicant

**ORDER
(APPOINTMENT OF REPRESENTATIVE COUNSEL)**

THIS JOINT MOTION made by the "Tobacco Monitors" being Ernst & Young Inc. in its capacity as court-appointed Monitor (the "**RBH Monitor**") of Rothmans, Benson & Hedges Inc. ("**RBH**"), Deloitte Restructuring Inc. in its capacity as court-appointed Monitor of JTI-Macdonald Corp. ("**JTIM**") and FTI Consulting Canada Inc. in its capacity as court-appointed Monitor of Imperial Tobacco Canada Limited and Imperial Tobacco Company Limited (collectively, the "**ITL Applicants**" and together with RBH and JTIM, the "**Applicants**") for advice and directions regarding an order appointing representative counsel in these proceedings was heard this day at 330 University Avenue, Toronto, Ontario,

ON READING the Joint Notice of Motion of the Tobacco Monitors dated November 25, 2019 including the Fourth Report to Court of the RBH Monitor dated November ●, 2019 (the "**Fourth Report**") filed, and on hearing the submissions of counsel for each of the Tobacco

Monitors, the Applicants and such other counsel as were present, no one else appearing although duly served as appears from the affidavit of service of ● sworn ●, 2019.

1. **THIS COURT ORDERS** that the timing and method of service and filing of this motion is hereby abridged and validated such that the motion is properly returnable today and hereby dispenses with further service thereof.

2. **THIS COURT ORDERS** that capitalized terms not otherwise defined in this Order shall have the meaning given to them in the Fourth Report.

3. **THIS COURT ORDERS** that The Law Practice of Wagner & Associates, Inc. (the “**Representative Counsel**”) be and is hereby appointed to represent in these proceedings the TRW Claimants as defined in Schedule “A” hereto, which definition may be amended following consultation among the Court-Appointed Mediator, the Tobacco Monitors and Representative Counsel and as approved by further order of this Court.

4. **THIS COURT ORDERS** that, subject to further order of this Court, Representative Counsel shall represent the interests of the TRW Claimants as set out in paragraph 5 below without any obligation to consult with or seek individual instructions from those on whose behalf they have been appointed to represent, provided however, that Representative Counsel is hereby authorized, but not obligated, to establish a committee (the “**Representative Committee**”) on such terms as may be agreed to by the Court-Appointed Mediator and the Tobacco Monitors or established by further order of this Court.

5. **THIS COURT ORDERS** that Representative Counsel be and is hereby authorized to take all steps and to perform all acts necessary or desirable to carry out the terms of this Order, 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 claims of TRW Claimants and as appropriate, addressing such claims in the Mediation or the CCAA Proceedings;
- (c) responding to inquiries from TRW Claimants in the CCAA Proceedings; and
- (d) performing such other actions as approved by this Court.

6. **THIS COURT ORDERS** that Representative Counsel be and is hereby 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 this Court to retain and consult with subject area experts and other professional and financial advisors as the Representative Counsel may consider necessary to assist it with the discharge of its mandate.

7. **THIS COURT ORDERS** that paragraphs 36 and 38 of the RBH Initial Order are hereby amended and are deemed from and after the date hereof to include Representative Counsel as appointed herein among the parties who shall be paid their reasonable professional fees and disbursements in each case on an hourly basis, from and after the date of this Order and among those who benefit from the Administration Charge as defined therein and shall be paid by the Applicants in accordance with an agreement among the Applicants.

8. **THIS COURT ORDERS** that Representative Counsel shall not be liable for any act or omission in respect of their appointment or the fulfillment of their duties in carrying out the provisions of this Order, other than for gross negligence or willful misconduct. No action or other proceedings shall be commenced against Representative Counsel in respect of alleged gross negligence or willful misconduct, except with prior leave of this Court on at least 7 days' notice to Representative Counsel and upon further order in respect of security for costs, to be

given by the plaintiff for the costs, on a substantial indemnity basis, of the Representative Counsel in connection with any such action or proceeding.

9. **THIS COURT ORDERS** that the Representative Counsel may from time to time apply to this Court for advice and directions in respect of their appointment or the fulfillment of their duties in carrying out the provisions of this Order, upon notice to the Applicants and the Tobacco Monitors and to other interested parties, unless otherwise ordered by this Court.

Schedule "A"

Definition of TRW Claimants

"**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, each as defined below, or persons indemnified by such entities, in respect of:

- (i) the development, manufacture, importation, production, marketing, advertising, distribution, purchase or sale of Tobacco Products (defined below),
- (ii) the historical or ongoing use of or exposure to Tobacco Products; or
- (iii) any representation in respect of Tobacco Products,

in Canada or in the case of the Applicants, anywhere else in the world, 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 specifically excluding claims:

- (i) in any person's capacity as a trade supplier, contract counterparty, employee, pensioner, or retiree;
- (ii) captured by any of the following commercial class actions:
 - (A) *The Ontario Flue-Cured Tobacco Growers' Marketing Board v. JTI-Macdonald Corp.*, Court File No. 64462 CP (London, Ontario);
 - (B) *The Ontario Flue-Cured Tobacco Growers' Marketing Board v. Rothmans, Benson & Hedges Inc.*, Court File No. 1056/10CP (London, Ontario);
 - (C) *The Ontario Flue-Cured Tobacco Growers' Marketing Board v. Imperial Tobacco Canada Ltd.*, Court File No. 64757 CP (London, Ontario);
- (iii) captured by any of the following class actions:
 - (A) *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);
 - (B) *Cécilia Létourneau et al. v. Imperial Tobacco Canada Ltd., et al.*, Court File No. 500-06-000070-983 (Montreal, Quebec);

(C) *Kenneth Knight v. Imperial Tobacco*, Court File No. L031300
(Vancouver, British Columbia).

“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 the ITL Applicants and the ITCAN Subsidiaries.

“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 the ITL Applicants and the BAT Group.

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

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

“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 vapour products or heat-not-burn tobacco products.

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 **ROTHMANS, BENSON & HEDGES INC.**

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

**ONTARIO
SUPERIOR COURT OF JUSTICE**

PROCEEDING COMMENCED AT
TORONTO

**ORDER
(RE APPOINTMENT OF REPRESENTATIVE COUNSEL)**

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Lawyers for the RBH Monitor

SCHEDULE "B"

**ONTARIO
SUPERIOR COURT OF JUSTICE
COMMERCIAL LIST**

THE HONOURABLE) FRIDAY, THE 6th
)
MR. JUSTICE MCEWEN) DAY OF DECEMBER, 2019

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

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

Applicant

**ORDER
(APPOINTMENT OF REPRESENTATIVE COUNSEL)**

THIS JOINT MOTION made by the “**Tobacco Monitors**”, being Deloitte Restructuring Inc. in its capacity as court-appointed Monitor (the “**JTIM Monitor**”) of JTI-Macdonald Corp. (“**JTIM**”), Ernst & Young Inc. in its capacity as court-appointed Monitor of Rothmans, Benson & Hedges Inc. (“**RBH**”) and FTI Consulting Canada Inc. in its capacity as court-appointed Monitor of Imperial Tobacco Canada Limited and Imperial Tobacco Company Limited (collectively, the “**ITL Applicants**” and together with JTIM and RBH, the “**Applicants**”) for advice and directions regarding an order appointing representative counsel in these proceedings was heard this day at 330 University Avenue, Toronto, Ontario,

ON READING the Joint Notice of Motion of the Tobacco Monitors dated November 25, 2019 including the Sixth Report of the JTIM Monitor dated November ●, 2019 (the “**Sixth Report**”) filed, and on hearing the submissions of counsel for each of the Tobacco Monitors, the Applicants and such other counsel as were present, no one else appearing although duly served as appears from the affidavit of service of ● sworn ●, 2019.

1. **THIS COURT ORDERS** that the timing and method of service and filing of this motion is hereby abridged and validated such that the motion is properly returnable today and hereby dispenses with further service thereof.

2. **THIS COURT ORDERS** that capitalized terms not otherwise defined in this Order shall have the meaning given to them in the Sixth Report.

3. **THIS COURT ORDERS** that The Law Practice of Wagner & Associates, Inc. (the "**Representative Counsel**") be and is hereby appointed to represent in these proceedings the TRW Claimants as defined in Schedule "A" hereto, which definition may be amended following consultation among the Court-Appointed Mediator, the Tobacco Monitors and Representative Counsel and as approved by further order of this Court.

4. **THIS COURT ORDERS** that, subject to further order of this Court, Representative Counsel shall represent the interests of the TRW Claimants as set out in paragraph 5 below without any obligation to consult with or seek individual instructions from those on whose behalf they have been appointed to represent, provided however, that Representative Counsel is hereby authorized, but not obligated, to establish a committee (the "**Representative Committee**") on such terms as may be agreed to by the Court-Appointed Mediator and the Tobacco Monitors or established by further order of this Court.

5. **THIS COURT ORDERS** that Representative Counsel be and is hereby authorized to take all steps and to perform all acts necessary or desirable to carry out the terms of this Order, 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 claims of TRW Claimants and as appropriate, addressing such claims in the Mediation or the CCAA Proceedings;

- (c) responding to inquiries from TRW Claimants in the CCAA Proceedings; and
- (d) performing such other actions as approved by this Court.

6. **THIS COURT ORDERS** that Representative Counsel be and is hereby 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 this Court to retain and consult with subject area experts and other professional and financial advisors as the Representative Counsel may consider necessary to assist it with the discharge of its mandate.

7. **THIS COURT ORDERS** that paragraphs 38 and 40 of the JTIM Initial Order are hereby amended and are deemed from and after the date hereof to include Representative Counsel as appointed herein among the parties who shall be paid their reasonable professional fees and disbursements in each case on an hourly basis, from and after the date of this Order and among those who benefit from the Administration Charge as defined therein and shall be paid by the Applicants in accordance with an agreement among the Applicants.

8. **THIS COURT ORDERS** that Representative Counsel shall not be liable for any act or omission in respect of their appointment or the fulfillment of their duties in carrying out the provisions of this Order, other than for gross negligence or willful misconduct. No action or other proceedings shall be commenced against Representative Counsel in respect of alleged gross negligence or willful misconduct, except with prior leave of this Court, on at least 7 days' notice to Representative Counsel, and upon further order in respect of security for costs, to be given by the plaintiff for the costs, on a substantial indemnity basis, of the Representative Counsel in connection with any such action or proceeding.

9. **THIS COURT ORDERS** that the Representative Counsel may from time to time apply to this Court for advice and directions in respect of their appointment or the fulfillment of their duties

in carrying out the provisions of this Order, upon notice to the Applicants and the Tobacco Monitors and to other interested parties, unless otherwise ordered by this Court.

Schedule "A"

Definition of TRW Claimants

"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, each as defined below, or persons indemnified by such entities, in respect of:

- (i) the development, manufacture, importation, production, marketing, advertising, distribution, purchase or sale of Tobacco Products (defined below),
- (ii) the historical or ongoing use of or exposure to Tobacco Products; or
- (iii) any representation in respect of Tobacco Products,

in Canada or in the case of the Applicants, anywhere else in the world, 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 specifically excluding claims:

- (i) in any person's capacity as a trade supplier, contract counterparty, employee, pensioner, or retiree;
- (ii) captured by any of the following commercial class actions:
 - (A) *The Ontario Flue-Cured Tobacco Growers' Marketing Board v. JTI-Macdonald Corp.*, Court File No. 64462 CP (London, Ontario);
 - (B) *The Ontario Flue-Cured Tobacco Growers' Marketing Board v. Rothmans, Benson & Hedges Inc.*, Court File No. 1056/10CP (London, Ontario);
 - (C) *The Ontario Flue-Cured Tobacco Growers' Marketing Board v. Imperial Tobacco Canada Ltd.*, Court File No. 64757 CP (London, Ontario);
- (iii) captured by any of the following class actions:
 - (A) *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);
 - (B) *Cécilia Létourneau et al. v. Imperial Tobacco Canada Ltd., et al.*, Court File No. 500-06-000070-983 (Montreal, Quebec);
 - (C) *Kenneth Knight v. Imperial Tobacco*, Court File No. L031300 (Vancouver, British Columbia).

“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 the ITL Applicants and the ITCAN Subsidiaries.

“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 the ITL Applicants and the BAT Group.

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

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

“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 vapour products or heat-not-burn tobacco products.

IN THE MATTER OF THE *COMPANIES' CREDITORS ARRANGEMENT ACT*, R.S.C. 1985, c. C-36, AS AMENDED
AND IN THE MATTER OF A PLAN OF COMPROMISE OR ARRANGEMENT OF **JTI-MACDONALD CORP.**

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

**ONTARIO
SUPERIOR COURT OF JUSTICE**

PROCEEDING COMMENCED AT
TORONTO

**ORDER
(RE APPOINTMENT OF REPRESENTATIVE COUNSEL)**

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SCHEDULE "C"

**ONTARIO
SUPERIOR COURT OF JUSTICE
COMMERCIAL LIST**

THE HONOURABLE

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FRIDAY, THE 6TH

MR. JUSTICE MCEWEN

DAY OF DECEMBER, 2019

**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**

Applicant

**ORDER
(APPOINTMENT OF REPRESENTATIVE COUNSEL)**

THIS JOINT MOTION made by the Tobacco Monitors being FTI Consulting Canada Inc. in its capacity as court-appointed Monitor (the "**Imperial Monitor**") of Imperial Tobacco Canada Limited and Imperial Tobacco Company Limited (collectively, "**Imperial**"), Ernst & Young Inc. in its capacity as court-appointed Monitor of Rothmans, Benson & Hedges Inc. ("**RBH**") and Deloitte Restructuring Inc. in its capacity as court-appointed Monitor of JTI-Macdonald Corp. ("**JTIM**" and together with Imperial and RBH, the "**Applicants**") for advice and directions regarding an order appointing representative counsel in these proceedings was heard this day at 330 University Avenue, Toronto, Ontario,

ON READING the Joint Notice of Motion of the Tobacco Monitors dated November 25, 2019 including the Sixth Report to Court of the Imperial Monitor dated November ●, 2019 (the "**Sixth Report**") filed, and on hearing the submissions of counsel for each of the Tobacco Monitors, the Applicants and such other counsel as were present, no one else appearing although duly served as appears from the affidavit of service of ● sworn ●, 2019.

1. **THIS COURT ORDERS** that the timing and method of service and filing of this motion is hereby abridged and validated such that the motion is properly returnable today and hereby dispenses with further service thereof.
2. **THIS COURT ORDERS** that capitalized terms not otherwise defined in this Order shall have the meaning given to them in the Sixth Report.
3. **THIS COURT ORDERS** that The Law Practice of Wagner & Associates, Inc. (the “**Representative Counsel**”) be and is hereby appointed to represent in these proceedings the TRW Claimants as defined in Schedule “A” hereto, which definition may be amended following consultation among the Court-Appointed Mediator, the Tobacco Monitors and Representative Counsel and as approved by further order of this Court.
4. **THIS COURT ORDERS** that, subject to further order of this Court, Representative Counsel shall represent the interests of the TRW Claimants as set out in paragraph 5 below without any obligation to consult with or seek individual instructions from those on whose behalf they have been appointed to represent, provided however, that Representative Counsel is hereby authorized, but not obligated, to establish a committee (the “**Representative Committee**”) on such terms as may be agreed to by the Court-Appointed Mediator and the Tobacco Monitors or established by further order of this Court.
5. **THIS COURT ORDERS** that Representative Counsel be and is hereby authorized to take all steps and to perform all acts necessary or desirable to carry out the terms of this Order, 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 claims of TRW Claimants,

and as appropriate, addressing such claims in the Mediation or the CCAA Proceedings;

- (c) responding to inquiries from TRW Claimants in the CCAA Proceedings; and
- (d) performing such other actions as approved by this Court.

6. **THIS COURT ORDERS** that Representative Counsel be and is hereby 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 this Court to retain and consult with subject area experts and other professional and financial advisors as the Representative Counsel may consider necessary to assist it with the discharge of its mandate.

7. **THIS COURT ORDERS** that paragraphs 36 and 38 of the Second Amended and Restated Initial Order are hereby amended and are deemed from and after the date hereof to include Representative Counsel as appointed herein among the parties who shall be paid their reasonable professional fees and disbursements in each case on an hourly basis, from and after the date of this Order and among those who benefit from the Administration Charge as defined therein and shall be paid by the Applicants in accordance with an agreement among the Applicants.

8. **THIS COURT ORDERS** that Representative Counsel shall not be liable for any act or omission in respect of their appointment or the fulfillment of their duties in carrying out the provisions of this Order, other than for gross negligence or willful misconduct. No action or other proceedings shall be commenced against Representative Counsel in respect of alleged gross negligence or willful misconduct, except with prior leave of this Court on at least 7 days' notice to Representative Counsel and upon further order in respect of security for costs, to be

given by the plaintiff for the costs, on a substantial indemnity basis, of the Representative Counsel in connection with any such action or proceeding.

9. **THIS COURT ORDERS** that the Representative Counsel may from time to time apply to this Court for advice and directions in respect of their appointment or the fulfillment of their duties in carrying out the provisions of this Order, upon notice to the Applicants and the Tobacco Monitors and to other interested parties, unless otherwise ordered by this Court.

Schedule "A"

Definition of TRW Claimants

"**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, each as defined below, or persons indemnified by such entities, in respect of:

- (i) the development, manufacture, importation, production, marketing, advertising, distribution, purchase or sale of Tobacco Products (defined below),
- (ii) the historical or ongoing use of or exposure to Tobacco Products; or
- (iii) any representation in respect of Tobacco Products,

in Canada or in the case of the Applicants, anywhere else in the world, 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 specifically excluding claims:

- (i) in any person's capacity as a trade supplier, contract counterparty, employee, pensioner, or retiree;
- (ii) captured by any of the following commercial class actions:
 - (A) *The Ontario Flue-Cured Tobacco Growers' Marketing Board v. JTI-Macdonald Corp.*, Court File No. 64462 CP (London, Ontario);
 - (B) *The Ontario Flue-Cured Tobacco Growers' Marketing Board v. Rothmans, Benson & Hedges Inc.*, Court File No. 1056/10CP (London, Ontario);
 - (C) *The Ontario Flue-Cured Tobacco Growers' Marketing Board v. Imperial Tobacco Canada Ltd.*, Court File No. 64757 CP (London, Ontario);
- (iii) captured by any of the following class actions:
 - (A) *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);
 - (B) *Cécilia Létourneau et al. v. Imperial Tobacco Canada Ltd., et al.*, Court File No. 500-06-000070-983 (Montreal, Quebec);

(C) *Kenneth Knight v. Imperial Tobacco*, Court File No. L031300
(Vancouver, British Columbia).

“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 the ITL Applicants and the ITCAN Subsidiaries.

“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 the ITL Applicants and the BAT Group.

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

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

“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 vapour products or heat-not-burn tobacco products.

IN THE MATTER OF *THE COMPANIES' CREDITORS ARRANGEMENT ACT*, R.S.C.1985, c. C-36,
AS AMENDED AND IN THE MATTER OF A PLAN OF COMPROMISE OR ARRANGEMENT OF
IMPERIAL TOBACCO CANADA LIMITED AND IMPERIAL TOBACCO COMPANY LIMITED

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

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

Proceeding commenced at Toronto

**ORDER
(RE APPOINTMENT OF
REPRESENTATIVE COUNSEL)**

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Lawyers for FTI Consulting Canada Inc.

IN THE MATTER OF THE *COMPANIES' CREDITORS ARRANGEMENT ACT*, R.S.C. 1985, c. C-36, AS AMENDED
AND IN THE MATTER OF A PLAN OF COMPROMISE OR ARRANGEMENT OF **JTI-MACDONALD CORP.**
AND IN THE MATTER OF A PLAN OF COMPROMISE OR ARRANGEMENT OF **IMPERIAL TOBACCO CANADA LIMITED** AND **IMPERIAL TOBACCO COMPANY LIMITED**
AND IN THE MATTER OF A PLAN OF COMPROMISE OR ARRANGEMENT OF **ROTHMANS, BENSON & HEDGES INC.**

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

**ONTARIO
SUPERIOR COURT OF JUSTICE**

PROCEEDING COMMENCED AT
TORONTO

**NOTICE OF MOTION
(RE APPOINTMENT OF REPRESENTATIVE COUNSEL)**

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