

Superior Court of Justice  
Commercial List

FILE/DIRECTION/ORDER

In the Matter of the Companies' Creditors Arrangement Act  
Plaintiff(s)

AND

AND IN THE Matter of a Plan of Compromise or Arrangement  
of Rothmans, Benson & Hedges Inc. Defendant(s)  
(Applicant)

Case Management  Yes  No by Judge: \_\_\_\_\_

Counsel	Telephone No:	Facsimile No:
See attached		

- Order  Direction for Registrar (No formal order need be taken out)
- Above action transferred to the Commercial List at Toronto (No formal order need be taken out)
- Adjourned to: \_\_\_\_\_
- Time Table approved (as follows): \_\_\_\_\_

Rothmans, Benson and Hedges Inc. (the "Applicant") seeks an Initial Order pursuant to the Companies Creditors Arrangement Act ("CCAA") providing for, among other things, a stay of all existing and prospective proceedings against or in respect of any member of the Philip Morris International Inc. group of companies (the PMI Group) that relate to or involve RBLT or a Tobacco Claim as that term is defined in the material.

The application is precipitated by the judgment of the Quebec Court of Appeal dated March 1, 2019 upholding

March 23, 2019  
Date

[Signature]  
Judge's Signature

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in most respects the judgment of the Quebec Superior Court and awarding compensatory and punitive damages against RBT and its co-defendants Imperial Tobacco Canada Limited (ITCAN) and dTI-Macdonald Corp. (DTIM) of approximately \$13.529 million.

This application follows earlier CCAA applications by both ITCAN and DTIM and is similar in most respects. On March 8, 2019, Hainey J. issued an initial Order in respect of DTIM and on March 12, 2019, McEwen J. issued an initial Order in respect of ITCAN.

Based on the material <sup>\* including the First Report of Ernst & Young</sup> filed and the submissions of counsel, I am satisfied that the draft initial Order provided at Tab 3 of the Application Record should issue.

RBT is incorporated under the Canada Business Corporations Act <sup>\* carries on business in Ontario \*</sup> and has its head office in Ontario. Based on the Quebec Court of Appeal judgment as well as other pending litigation against it involving tobacco, RBT is insolvent under the balance sheet test - that is the realizable value of its assets is less than its obligations due and accruing due, including contingent liabilities.

The Monitor dated March 27, 2019 is  
H.P.

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Further, RBH's liabilities clearly exceed \$5 million. Accordingly, the court has jurisdiction under the CCAA to grant the relief requested.

RBH requires CCAA relief to enable it to pursue a CCAA plan of arrangement while continuing to operate its business and keep creditors and contingent creditors on an equal footing to allow it to deal fairly with the claims against it, with a view to a global settlement. As a result I am satisfied a stay pursuant to s. 11.02 of the CCAA is appropriate to maintain the status quo and prevent prejudice to creditors. Leave is granted to allow RBH to file its leave application to the Supreme Court in respect of the Quebec Court of Appeal judgment. At the same time I am satisfied that a stay of proceedings in Canada as against other members of the PMI Group that relate to RBH, the Business or Property or a Tobacco Claim as defined in the material, <sup>+ shows also issue. \*</sup> I have considered the factors set out in Pacific Exploration & Production Corp. Re, 2016 ONSC 5429 at para. 26 in respect of extending the stay to non-applicant third parties. In the circumstances, the balance of

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convenience favours granting the stay to enable a global resolution to the claims.

I am also satisfied that the requested administration change should be granted. The costs of the CCAP proceedings will be significant. Similarly I am satisfied ~~with~~ that

the charges for Sales & Excise Taxes and indemnification of directors and officers are appropriate. Further the cash collateral <sup>\* in the amount of \$31.1 million \*</sup> <sup>\* and bank guarantees \*</sup> provided

to the provincial and federal government in respect of Excise Taxes is approved. It maintains the status quo.

RBH is also permitted to engage in the normal course intercompany transactions within the PMT Group.

The service and notice provisions in the draft order are approved. Ernst & Young is appointed as the Monitor.

In addition to the above, I agree with and adopt the reasons of my colleagues, Huxley J. in *ATI - McDonald Corp.* 2019 ONSC 1675 and McEwen J. in *Imperial Tobacco Canada Limited*, 2019 ONSC 1684 in respect of the issues herein.

The Comeback Motion referred to in para. 49 of the Initial Order will take place on April 4 and 5, 2019. Order signed by me.