

News Release

*Tobacco litigation: A thirteenth stay??*

## Tobacco control groups highlight industry statements pointing to a potential industry-friendly settlement

**Edmonton, Montréal, Ottawa, September 27, 2024** – Three tobacco-specific health organizations are sounding the alarm regarding a potential final settlement between **Big Tobacco** and provincial governments (and other creditors) under the **Companies' Creditors Arrangement Act (CCAA)**. The health organizations are concerned that a weak settlement would allow companies to survive indefinitely despite their lethal past behavior and continue to launch new products, cause more addiction and create further harm.

*Does the industry have a veto?*

**Action on Smoking & Health (ASH Canada), Physicians for a Smoke-Free Canada (PSC)** and the **Quebec Coalition for Tobacco Control (CQCT)** are pointing to several statements in the court motions tabled by the three biggest Canadian tobacco manufacturers (see [appendix below](#)) which reinforce [previously expressed fears](#) that provinces have agreed to an industry-friendly process. If so, this process would favour corporate interests, ignores public health objectives to end the harms which are the subject of the lawsuits, and require provinces to cover the healthcare and social costs of future victims.

*“Not only has this insolvency process allowed the tobacco industry to continue ‘to operate its business in the normal course’ for five and a half years, but it also seems to have granted tobacco manufacturers a veto on any final deal,”* warns **Cynthia Callard, PSC Executive Director**. Indeed, *“Several passages in the companies’ motions, including references to a ‘consensual’ settlement, suggest Big Tobacco is holding the big end of the stick – not the creditors, including provincial governments and class action lawyers.”*

*“These companies are facing bankruptcy for pushing addictive and dangerous products that have cost the lives of countless Canadians through their lies and manipulations. They should have no say in an outcome that seeks justice and compensation, and aims to prevent future harm,”* adds **Les Hagen, Executive Director of ASH Canada**. *“These companies should not be able to escape justice by sheltering under the Companies’ Creditor Arrangement Act. Provincial governments have a unique opportunity to hold this ruthless industry to account and should not agree to a deal that allows tobacco companies to escape justice and cause more harm to future generations. Twenty-plus years of court time and public funds should end with a victory for public health, not the tobacco industry.”*

*Delays allow companies to addict new customers and avoid paying a single cent to victims.*

The groups are also lamenting the **thirteenth stay** requested by the tobacco companies, which would prolong the already unacceptable delays, preventing even more tobacco victims and [their successors](#) from

ever seeing a single penny – despite winning a 20-year legal battle for financial compensation.

*“Every stay means some additional 75 class action members<sup>1</sup> will never see justice for themselves, as they continue to die from the very diseases caused by these predatory companies,”* explains **Flory Doucas, CQCT Spokesperson and Codirector**. *“From court documents, we learn that companies are still investing in their future and looking to expand their product range. Will the courts and governments attempt to sell a deal that would allow these companies to market new products in what should be groundbreaking historical settlement? Alongside financial compensation, ancillary or token measures that do not alter the core addiction-based business model of the tobacco industry are simply unacceptable.”*

***A settlement should prevent future harm.***

The groups are calling on the provinces – the creditors with the largest combined claim – to use their established veto power to guarantee that the ultimate public health objective is directly embedded in any final settlement, that is, an accelerated phase-out of combustible cigarettes and other addictive products marketed by these same companies. This would ensure future payments do not depend on the future sales of such products.

*“Guided mostly by private law firms and finance officials, provinces have made the unfortunate decision of engaging in a process that allows tobacco manufacturers to addict new customers and cause more harm during the proceedings. We hope they change course and reject any settlement that perpetuates the harms at the core of the lawsuits they seek to resolve,”* concludes **Ms. Callard**.

Provinces can collect considerably higher sums from forcing a court-supervised phase-out of combustible cigarettes through reduced healthcare costs than from splitting up the funds that are currently available. Indeed, an [economic analysis](#) by **H. Krueger and Associates Inc.** shows that the savings to the healthcare system resulting from a significant contraction in the tobacco market would far exceed any realistic compensation amounts for the provinces. According to this study, **Quebec** and **Ontario** would generate health savings of \$22.2 billion and \$26.1 billion, respectively, if smoking prevalence fell to less than 5% by 2035. Such a reduction would represent 641,000 fewer smokers in **Quebec** and 990,000 fewer smokers in **Ontario**.

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<sup>1</sup> In September 2022, Quebec class action lawyers [revealed](#) that in the 4½ years since the companies placed themselves under bankruptcy protection, 670 class action members have died, at a rate of about 75 every six months.

## APPENDIX: MOTION EXCERPTS [Our underlines]:

### Passages referring to a “consensual” settlement”:

**Rothmans, Benson & Hedges (RBH):** [Page 11:] “RBH commenced these proceedings ... to enable it to explore a consensual global resolution of these litigation claims.” [Page 16:] “RBH has attempted to work collaboratively ... to attempt to solve the myriad complex and multi-faceted issues that must be worked out before a consensual global resolution of Tobacco Claims can be implemented. ... RBH believes that progress on a number of these issues has been made. However, there are some major remaining issues which RBH views as vital to any consensual global settlement of Tobacco Claims. ... RBH believes that a global settlement that addresses all pending and potential Tobacco Claims in a manner acceptable to RBH and the requisite majorities of claimants remains the best outcome” [Page 20:] “additional time is required to agree upon and finalize a consensual plan of compromise and arrangement between RBH and its creditors, and the associated documents to implement the consensual plan. »

**JTI-Macdonald (JTI):** [Page 11:] “(this) Applicant has conveyed to the Court-Appointed Mediator its view on certain key issues that are outstanding and must be resolved to achieve a consensual CCAA plan.”

### Passages indicating companies predicting no settlement before six months:

**Rothmans, Benson & Hedges (RBH):** [Page 20:] “RBH anticipates that not less than six months (and perhaps more time) will be required.”

**JTI-Macdonald (JTI):** [Page 8:] “the Applicant estimates the parties will require at least six months to complete the remaining steps, including the negotiation of a consensual CCAA plan”

### Passages showing companies predicting future business, including expansion:

**Imperial Tobacco (ITCAN) :** [Page 48:] “ITCAN has also continued, alone or in concert with BAT, with certain initiatives to improve or streamline business operations and expand its product offering including: ... (the launching of) Zonnice nicotine pouches ... as a nicotine replacement therapy product in traditional retail stores, pharmacies and online,”

**Rothmans, Benson & Hedges (RBH):** [Page 17:] “RBH investments in the Quebec Facility are expected to continue at a similar level in future years.” ... RBH has expanded their portfolio of smoke-free products, with the introduction of the IQOS ILUMA heated tobacco system in November 2023, as well as the distribution of a new 5mL VEEV NOW disposable vaping product in December, 2023.”

**JTI-Macdonald (JTI):** [Page 4:] “the Applicant plans to gradually convert its fleet to green vehicles starting in 2025 to reduce emissions and advance a carbon-neutral goal by 2030.” [Page 5:] “The Applicant is investing in and testing machinery and equipment with a cost of approximately USD \$1.1 million,” [\*Note that while this passage is part of the paragraph related to new plain packaging requirement, it does not specify that new machinery or equipment is required to comply with them.]