

Division of: Ontario
Division No.: 07-Hamilton
Estate Number: 32-158744
Court Number: 31-OR-207816-T

**ONTARIO
SUPERIOR COURT OF JUSTICE
(IN BANKRUPTCY AND INSOLVENCY)**

**IN THE MATTER OF THE BANKRUPTCY OF
CANADA TOBACCO & GLOBAL INC.
OF THE CITY OF HAMILTON,
IN THE PROVINCE OF ONTARIO**

**TRUSTEE'S FIRST REPORT TO COURT
DATED JANUARY 8, 2016**

INTRODUCTION

1. On July 30, 2014 an application was made by Mr. Myungsu You for an order that Canada Tobacco & Global Inc. (“**CT&G**” or the “**Company**”) be adjudged bankrupt. Attached to this report and marked as **Appendix “A”** is a copy of the bankruptcy application.
2. On August 19, 2014 the Superior Court of Justice (the “**Court**”) made a bankruptcy order (“**Bankruptcy Order**”) against CT&G and Dodick Landau Inc. was appointed by the Court as trustee (the “**Trustee**”) of the bankruptcy estate of CT&G (the “**Estate**”). Attached to this report and marked as **Appendix “B”** is a copy of the Bankruptcy Order.
3. On September 8, 2014 the first meeting of the creditors of CT&G (“**Creditors’ Meeting**”) took place at which the appointment of the Trustee was affirmed, and three inspectors were appointed (the “**Inspectors**”), by the creditors of CT&G (the “**Estate**”). Attached to this report and marked as **Appendix “C”** is a copy of the minutes of the Creditor’s Meeting.
4. This first report (the “**Report**”) of the Trustee is being filed with the court in connection with:
 - i. the appeal of Canada Heritage Tobacco Ltd. (“**CHTL**”) with respect to its claim for \$19.3 million and the Trustee’s request that an order be granted dismissing that

appeal on the basis that CHTL has missed the Court's deadline for providing its motion material with regards thereto;

- ii. the appeal of Mr. Kang with respect to his claim for \$160,722.68 and the Trustee's request that an order be granted fixing Mr. Kang's claim at the amounts and with the priority determined in NORD #5 (as hereinafter defined);
- iii. the motion of Mr. Kang for, *inter alia*, the substitution and discharge of the Trustee and the Inspectors of the Estate and the Trustee's request that an order be granted dismissing that motion in its entirety; and
- iv. the Trustee's request that an order be granted:
 - a. requiring Mr. Kang to deliver to the Trustee all CT&G books and records in his possession; and
 - b. declaring that Mr. Kang may not submit any further claims in the Estate.

Disclaimer

5. In preparing this Report, the Trustee has relied upon certain unaudited, draft and/or internal financial information, CT&G's books and records, discussions with Mr. Kang, the President and a director of the Company, discussions with former directors and shareholders of the Company and information from other third-party sources (collectively, the "**Information**"). Except as described in this Report:
- i. the Trustee has not audited, reviewed or otherwise attempted to verify the accuracy or completeness of the Information in a manner that would wholly or partially comply with Generally Accepted Assurance Standards pursuant to the Canadian Institute of Chartered Accountants Handbook and, accordingly, the Trustee expresses no opinion or other form of assurance in respect of the Information; and
 - ii. the Trustee has prepared this Report in its capacity as a Court appointed officer and has made a copy of this Report available on the Trustee's website at www.dodick.ca for purposes of the court hearing on (and to be scheduled on) January 14, 2016. Parties

using this Report, other than for the purpose of the aforementioned court hearing, are cautioned that it may not be appropriate for their purposes.

6. All monetary amounts referred to herein are in Canadian dollars.

COMPANY BACKGROUND

7. CT&G was a wholesaler of tobacco products which operated from leased facilities at 1040 South Service Road, Suite 101, Hamilton, Ontario. The Company held a wholesaler's tobacco permit governed by the Ontario *Tobacco Tax Act*. With its wholesaler's tobacco permit, the Company was permitted to buy tobacco products from a registered manufacturer and sell its tobacco products to retailers that hold a valid tobacco retail sales tax vendor's permit. The Company sold its tobacco products, which consisted of several brands of cigarettes, to retailers throughout Ontario.
8. The Company was incorporated on April 28, 2012 and originally operated under the name Korean Tobacco Import & Wholesale Inc. The initial directors of the Company were Mr. Kang and Mr. Yang-Pyung Kim. Mr. Kang was a director, a shareholder and a customer of the Company from its inception in 2012 until February 2014.
9. The Company changed its name to Canada Tobacco & Global Inc. in 2012 and at that time received equity investments totalling approximately \$1 million from 38 investors, the majority of whom are individuals that own convenience stores in Ontario. 7 of the investors were appointed as additional directors of CT&G in May 2012.
10. On November 12, 2012, the Company entered into an agency agreement (the "**Agency Agreement**") with Canada Heritage Tobacco Ltd. ("**CHTL**") which provided for CHTL acting as agent for CT&G to, among other things, source the manufacture of CT&G's tobacco products. Paul Embury was President, and Terry Kim was Vice President, of CHTL.

EVENTS LEADING TO THE BANKRUPTCY OF CT&G

11. Based on the Trustee's discussions with management, directors and shareholders of CT&G, and other information reviewed by the Trustee, it appears that the Company's financial difficulties were caused by a number of factors, including:
 - i. insufficient capital investment, as management underestimated the amount of investment required to fund the cost of producing tobacco, including funding in advance the tobacco taxes payable by the Company;
 - ii. poor tobacco sales which resulted in CT&G not meeting the minimum sales targets in the Agency Agreement, and that agreement being terminated by CHTL;
 - iii. product quality issues resulting in high quantities of returned product;
 - iv. a trademark infringement allegation against CT&G which caused it to suffer losses and incur repackaging and remarketing expenses in relation to its "Midas" brand; and
 - v. packaging issues resulting in unsellable product and high product returns.
12. By early 2014, CT&G did not have sufficient liquidity to meet its financial obligations, including servicing its debt owed to Mr. Myungsu You, as described below.
13. In addition to CT&G's liquidity issues, it also was experiencing significant governance issues resulting from a dispute among its shareholders and directors. A court order was issued by Justice McEwen on January 21, 2014 which (among other things) precluded any further shareholder or director meetings from taking place without a further order from the Court. Attached to this report and marked as **Appendix "D"** is a copy of the Order dated January 21, 2014.
14. On January 24, 2014, Mr. You commenced legal proceedings against the Company for repayment of a loan totalling approximately \$600,000 which was in default. On March 18, 2014, Mr. You obtained default judgment against the Company. Attached to this report and marked as **Appendix "E"** is a copy of Mr. You's default judgement. Mr. You also issued a Notice of Garnishment (the "**Garnishment**") to the Company's bank. In April 2014, pursuant to the Garnishment, the Company's bank paid approximately \$6,000 to the sheriff's

office, after which time there were insufficient funds in the Company's bank account for any further garnishment payments.

15. According to Mr. Kang, in the months prior to the bankruptcy, he made attempts to find new investors for CT&G, however, the Trustee understands that no written offers of investment were received by Mr. Kang on behalf of CT&G. In addition, Mr. Kang made attempts to sell CT&G's wholesale tobacco permit. However, a wholesale tobacco permit is not transferable, and any change of ownership of a Company holding such permit requires the pre-approval of the Ontario Ministry of Finance (the "MOF") pursuant to the Ontario *Tobacco Tax Act*.
16. On July 30, 2014, Mr. You commenced an application for a bankruptcy order against the Company. On the same day, the Trustee attended at the Company's premises with Mr. You, his representatives and Mr. Kang and his wife to inspect the assets of CT&G. During that attendance, the Trustee was advised by Losani Homes ("Losani"), the landlord, that it had taken possession of the premises due to non-payment of rent and on July 27, 2014, had moved all the inventory of cigarettes (a regulated substance that requires a permit to handle), fixed assets and records of the Company (collectively, the "Property") to another nearby location controlled by Losani. Losani allowed the parties to inspect the Property at the alternate location on the same date.
17. Following the July 30, 2014 inspection, at Mr. Kang's instructions and with Losani's consent, the Property was moved to Platinum Liquidations' ("Platinum") storage facility in North York, Ontario, and Mr. Kang, on behalf of the Company, entered into a storage agreement with Platinum.

BANKRUPTCY ORDER AND THE CREDITORS' MEETING

18. On August 19, 2014, the Court granted the Bankruptcy Order. The application was unopposed and no party other than the Trustee, and counsel for Mr. You, attended the hearing.
19. Following its appointment, the Trustee distributed a Notice of Bankruptcy, a copy of the Statement of Affairs and a Proof of Claim form to all known creditors, as well as to the

Company's shareholders, and placed a Notice of Bankruptcy advertisement in The Globe and Mail newspaper (National Edition) on Wednesday, September 3, 2014.

20. On September 8, 2014, the Creditors' Meeting took place and the Official Receiver of the Office of the Superintendent of Bankruptcy acted as Chair of the meeting. A slate of 3 inspectors was appointed, being Mr. You, Mr. Jisung You and Mr. Dongkeon Yoon.
21. No subsequent meetings of creditors have been called by the Trustee, ordered by the Court or requested by a majority of inspectors, or by 25% of creditors holding 25% in value of proved claims as prescribed by s. 103(1) of the *Bankruptcy & Insolvency Act* ("BIA"). The administration of the CT&G bankruptcy has been carried out with the guidance of the appointed inspectors, one of which (Mr. You) is also a shareholder, a former director of CT&G and the largest proved creditor. Seven meetings of Inspectors have been held since the commencement of the bankruptcy proceeding.

BOOKS AND RECORDS

22. The Trustee observed at the inspection on July 31, 2014 that the Company's paper records were in disarray.
23. The books and records and the computers were delivered to the Trustee's office on or about August 20, 2014 to be inventoried and reviewed. The hard copy books and records were in poor physical condition and were incomplete. The Trustee determined over the course of its administration that the electronic accounting records also appeared to be incomplete. The electronic accounting records were recorded using two different accounting software systems during CT&G's operations. The first system was used for the period up to December 2013, and the second system was used from January 2014 to the cessation of the operations. Management did not adequately reconcile the two systems to each other, did not adequately track accounts receivable and related payments and credit memos, did not record all cash transactions which customers alleged had taken place, and did not prepare bank reconciliations.
24. The documents recovered from the Landlord's alternate location did not include any minutes of meetings of shareholders or directors (the Trustee does have a corporate minute

book but it does not contain any such minutes). However, Mr. Kang has included in motion material filed with the Court what he purports to be minutes of meetings of shareholders and directors in the Korean language.

25. In July 2014, Mr. Kang applied with the MOF for a change of CT&G's business address. The MOF is the government body that regulates the sale of tobacco in Ontario. At that time, Mr. Kang provided the address of newly rented space that, according to the inspectors, is owned Mr. Marvin Honggi Kim (a shareholder of CT&G), located at 2-6119 Main St., Niagara Falls as CT&G's new place of business. It appears that Mr. Kang made this application after having been notified by Mr. You that he intended to make the bankruptcy application. Once the application for the bankruptcy order was made, Mr. Kang did not advise the MOF of the cessation of operations and the bankruptcy application that was pending, as required by section 6 of the Ontario *Tobacco Tax Act*. The MOF was informed of the cessation of operations and the bankruptcy by the Trustee following its appointment in accordance with the Ontario *Tobacco Tax Act*. The MOF's permit renewal with an issue date of August 7, 2014 included with Mr. Kang's motion material shows Mr. Kang's personal business address as CT&G's new office address. It appears that Mr. Kang attempted to retain personal control over the wholesale tobacco permit issued to CT&G despite the bankruptcy of CT&G.
26. Following the date of bankruptcy, the Trustee discovered that Mr. Kang, in the weeks prior to the date of bankruptcy, forwarded CT&G's mail to his business address at 2-6119 Main St., Niagara Falls.
27. On September 8, 2014, the Trustee handed to Mr. Kang a Notice to Officer of Bankrupt Corporation of Duties, a copy of which is attached hereto and marked as Appendix "F".
28. The Trustee has asked Mr. Kang whether he was aware of the existence of any other books and records of CT&G that are not in the possession of the Trustee. Mr. Kang responded that he was not aware of the existence of any other books and records and that the Trustee has in its possession all the books and records of CT&G, which he repeated in his letter to the Trustee dated October 4, 2015.

29. It appears that, notwithstanding Mr. Kang's statements to the Trustee and his legal obligation to deliver to the Trustee all books and records relating to the Estate, Mr. Kang claims to have in his possession (as demonstrated by the contents of the motion material he has filed with the Court) various legal and other documents which are not included in the books and records of the Estate in the possession of the Trustee.
30. The Trustee requires that Mr. Kang deliver to the Trustee any and all books and records of CT&G in his possession whether in paper or electronic form in accordance with his obligations pursuant to the BIA.

ASSETS OF CT&G

Tobacco Tax Refunds

31. The vast majority of the tobacco in the possession of the Trustee on the date of bankruptcy, and stored at Platinum, was past its expiry dates and was not saleable. According to tobacco regulations, tobacco that is not saleable must be returned to the manufacturer to be destroyed. Following its destruction, tax refund claims may be filed by the manufacturer of the tobacco with both the Federal and Provincial taxing authorities to whom the manufacturer remitted tax. Only the manufacturer may claim the tax refunds since the manufacturer was the remitter of the tax.
32. On November 27, 2014, the Trustee entered into an agreement with Bastos du Canada Ltee ("**Bastos**"), the manufacturer of 100% of the CT&G tobacco inventory in the possession of the Trustee, to: (a) transport the tobacco from Ontario to Bastos' facility in Quebec; (b) inventory, warehouse and insure the tobacco; (c) destroy the tobacco; (d) obtain the necessary certificate of destruction; and (e) file tax refund claims with the Federal and Ontario governments.
33. By June 2015 these steps were completed and the Estate received from Bastos tax refunds totalling \$553,647. The tobacco tax refunds received by the Estate from Bastos represent 100% of the tax refunds claimed by Bastos on behalf of the Estate from the Federal and Ontario governments, less a 1.5% fee charged by Bastos to cover the costs of insurance, transportation and destruction incurred by Bastos.

34. In February and May 2014, there were increases to the Federal and Ontario tobacco tax rates by 24% and 13%, respectively. As a result, CT&G was required to remit the additional tax with respect to tobacco which existed in its inventory at the time. However, as a result of its liquidity constraints, it was unable to remit the additional tax to the governments. The tax refund claims made by Bastos was for the amounts that were actually remitted based on the lower tax rates.
35. Attached to this report and marked as **Appendix “G”** is a copy of the tobacco inventory in the Trustee’s possession at the date of bankruptcy and a calculation of the tax remitted with respect to that inventory reconciled to the tax refunds received from Bastos.
36. In Mr. Kang’s affidavit dated December 14, 2015, and in CT&G’s statement of affairs, he estimated the value of the tax refunds to total \$689,911 and \$700,000, respectively. His calculations are incorrect since in both cases he applies the new higher tax rates in calculating the refunds and he includes a 13% HST refund to be claimed on the entire amount of inventory on-hand. Specifically:
- i. CT&G never remitted tax at the higher rate. Mr. Kang is aware of that fact and advised the Trustee at the start of the bankruptcy administration that CT&G had insufficient liquidity to make those tax payments. Consequently, Bastos, on behalf of CT&G, is not able to claim a refund based on that higher rate. The use of the higher tobacco tax rates in Mr. Kang’s calculations overstates CT&G’s tax refunds by approximately \$98,000; and
 - ii. the Estate is not eligible to claim an HST refund of 13% of the value of the inventory on hand. As a standard procedure during a bankruptcy administration, CRA carries out a review of all HST filings for the period up to the date of bankruptcy. As a result of this review carried out by CRA in the case of CT&G, CRA confirmed that CT&G is not eligible to receive any additional HST refunds with regards to the destroyed tobacco and that such a claim would be improper and would be denied by CRA in its entirety.

Attached hereto and marked as **Appendix “H”** is the Statement of Affairs signed by Mr. Kang.

Accounts Receivable

37. To date, the Trustee has collected approximately \$15,000 of accounts receivable.
38. In CT&G's Statement of Affairs, the value of the accounts receivable was estimated to be \$270,000. All or substantially all of the trade accounts receivable debtors are independent convenience store operators located throughout Ontario.
39. The discrepancy in the recoveries to date appears to relate primarily, if not entirely, to the unreliable and incomplete accounting records of CT&G. Specifically:
 - i. some customers have responded to the Estate's collection efforts by alleging that payment has already been made in cash, even though CT&G's accounting records show the full amount to still be outstanding and don't show the cash collected. In such cases, if the Trustee was unable to find evidence of payment in the Company's bank account, then the Trustee has requested proof of payment from the customer (i.e. some form of payment receipt); and
 - ii. some customers have responded to the Estate's collection efforts by alleging that product was returned for which a credit memo was issued. In such cases, the Trustee has required that the customer provide, in addition to a copy of the credit memo, a copy of the product return slip that it obtained from the Company upon return of the product. This additional evidence was requested from customers even if a credit memo was recorded by the Company in the accounting records since, following its review of such credit memos, it appeared to the Trustee that a number of these credit memos may not be accurate. For this reason, the Trustee has requested additional evidence from the customer to prove that the product was actually returned to CT&G.

Other Assets

40. At the date of bankruptcy, Mr. Kang informed the Trustee that a Chrysler PT Cruiser was purchased by him personally on behalf of the Company as the Company did not have a good credit rating and was unable to finance the purchase of the vehicle. It is unclear whether this vehicle was in fact used for business purposes or solely for personal use by Mr. Kang.

Following the date of bankruptcy, Mr. Kang signed over the vehicle registration to the Estate and transferred the vehicle to Platinum to be stored. At that time, Mr. Kang did not inform the Estate that Royal Bank of Canada (“RBC”) held a security interest over the vehicle in connection with a loan having an outstanding balance of \$5,716.91 at October 17, 2014. As a result of the outstanding loan, there was no net realizable value in the vehicle for the Estate. Accordingly, the Estate did not complete the transfer of ownership of the vehicle from Mr. Kang and on February 18, 2015 the Trustee informed Mr. Kang that he should make arrangements to retrieve his vehicle at Platinum. Based on the Trustee’s later review of the accounting records, it became apparent that: (a) Mr. Kang received from the Company a monthly car allowance of approximately \$1,400; (b) CT&G paid the direct costs associated with the vehicle, including fuel and vehicle maintenance; and (c) Mr. Kang charged to the Company the monthly loan payments to RBC of \$272.35.

41. Other CT&G assets included a fork lift and furniture and trade fixtures which were transported to, and stored at, Platinum by CT&G prior to the bankruptcy. The Trustee understands that CT&G left some furniture and trade fixtures in the possession of Losani as the cost for the Company to transport these items to Platinum was greater than its estimated net realizable value. This included raking which the Trustee sold to Losani after the date of bankruptcy.

CLAIMS IN THE ESTATE

42. To date, the Estate has received proofs of claim totalling \$20.3 million, including the claim from CHTL for \$19.3 million. Excluding the CHTL claim, approximately \$1.0 million in claims were received from eight unique claimants, of which \$679,833 was accepted by the Trustee on an unsecured basis from six of these claimants.
43. Currently, only the CHTL claim and Kang Claim #5 (as hereinafter defined) remain under appeal. The Trustee has either been able to determine and settle previously contested claims with additional information provided by the claimants or the appeal periods have expired and the claimants are no longer eligible to pursue an appeal.
44. Attached and marked as **Appendix “I”** is a copy of the Estate’s claims register as at January 4, 2016 and a status summary of the claims revised and/or disallowed by the Trustee.

45. Attached hereto and marked as **Appendix “J”** is a copy of a Statement of Receipts and Disbursements for the Estate as of January 4, 2016, which shows that there is a total of \$469,716 in the Estate. In addition, currently, there are accrued fees and expenses of approximately \$40,000. The Trustee anticipates that the only other potential receipts in the estate, other than possible cost and litigation awards resulting from motions to be argued before the Court, are accounts receivable estimated to be in the total maximum gross amount of \$100,000.

CHTL’s Proof of Claim

46. CHTL filed its Proof of Claim in this estate in September 2014, a copy of which is attached hereto and marked as **Appendix “K”**.

47. In its Proof of Claim, CHTL asserts a claim for \$7,000,000 with a reservation of rights “to amend the proof of claim for the full amount of \$19,300,000 set out herein ... in the event the Trustee or any other creditor challenges the Proof of Claim”.

48. The Schedule to the Proof of Claim breaks down the \$19,300,000 claim as follows:

i. \$17,000,000 “owing under contract” for profits that would have allegedly been earned by CHTL under the Agency Agreement made as of November 12, 2012 between the Debtor and CHTL based on the purchase of a minimum of 480,000 cartons of cigarettes annually for 10 years, calculated as \$1.7 million for 10 years;

plus

ii. \$2,500,000 “owing for brand damage” based on a loss of reputation and “economic brand damage” allegedly suffered by CHTL as a result of the failure of CT&G;

less

iii. \$200,000 received by CHTL from CTGI as deposits under the Agency Agreement.

49. The Trustee performed a thorough review of CHTL’s claim. Among other things, the Trustee:

- i. reviewed the Debtor's books and records, including all contracts, transactions and other relevant information with respect to CHTL and its contract manufacturer (Bastos);
 - ii. requested additional information from CHTL, and reviewed all such information provided by CHTL;
 - iii. met with the CT&G's former President, Mr. Kang, to review and discuss CHTL's claim;
 - iv. met with CHTL's representatives and lawyer to review and discuss its claim;
 - v. met with a shareholder, who is also a former director of the Company, to review and discuss CHTL's claim; and
 - vi. sought legal advice from its lawyers, Chaitons LLP ("**Chaitons**"), in connection with CHTL's claim.
50. After a full review and consideration of CHTL's claim, the Trustee issued a Notice of Disallowance of Claim on August 13, 2015, a copy of which is attached hereto and marked as **Appendix "L"** (the "**CHTL Disallowance**").
51. It appears that CHTL filed a Notice of Motion with the Toronto Bankruptcy Office on September 11, 2015 to appeal the CHTL Disallowance. Attached hereto and marked as **Appendix "M"** is a copy of the Notice of Motion sent to Chaitons on September 10, 2015 by CHTL's lawyer, John Vamvakidis.
52. Starting on September 11, 2015 and continuing until October 21, 2015, George Benchetrit, a partner with Chaitons, communicated repeatedly with Mr. Vamvakidis to set a schedule for the hearing of CHTL's motion. Mr. Vamvakidis did not complete the necessary Bankruptcy Court scheduling forms until October 21, 2015. In the Special Appointment Request Form signed by Mr. Vamvakidis on October 21, 2015 and a prior email message, Mr. Vamvakidis confirmed that CHTL's motion record would be served by October 31, 2015. Attached hereto and marked as **Appendix "N"** is a copy of the email string between Mr. Benchetrit and Vamvakidis over that time period.

53. By letter dated October 29, 2015, a copy of which is attached hereto and marked as **Appendix “O”**, Mr. Benchetrit notified Mr. Vamvakidis that the Trustee would seek to have CHTL’s motion dismissed unless, before the end of the day on October 30, 2015:
- i. he submitted the necessary forms to have the motion scheduled (Mr. Benchetrit had already provided dates on which he was available and notified Mr. Vamvakidis that the Trustee reserved the right to argue that this should not be a hearing *de novo*); and
 - ii. he delivered his material in support of CHTL’s motion.
54. On October 29, 2015, Mr. Vamvakidis signed a revised Special Appointment Request Form, a copy of which is attached hereto and marked as **Appendix “P”**, in which he confirmed that CHTL’s motion record would be served by November 13, 2015.
55. On November 13 and again on November 15, 2015, Mr. Vamvakidis indicated that CHTL’s motion record would be delivered by November 16, 2015. On November 18, 2015, Mr. Vamvakidis sent an email to Mr. Benchetrit in which he did not commit to any new date for the delivery of CHTL’s motion material and confirmed that CHTL had not yet retained an expert. Attached hereto and marked as **Appendix “Q”** is a copy of the email string between Mr. Benchetrit and Vamvakidis over that time period.
56. As part of the email communications mentioned above, CHTL was also asked to indicate who its intended expert was, as well as the nature of the evidence he/she intended to provide. CHTL has never provided that information.
57. The parties attended before Master Jean on November 19, 2015. At that hearing, Mr. Vamvakidis committed to the delivery of CHTL’s motion record by November 30, 2015 and the delivery of CHTL’s expert evidence by December 15, 2015. Master Jean endorsed the record with an order as follows:
- Canadian Heritage appeal: The motion record and expert report shall be delivered by Dec. 15/15.*
58. To date, CHTL has failed to deliver any affidavit evidence or expert report in support of its appeal from the Disallowance. Nor has CHTL or its counsel contacted the Trustee or its

counsel since the November 19, 2015 court date to explain its failure to abide by the court-ordered deadlines for delivery of its material.

59. Accordingly, the Trustee is respectfully requesting that CHTL's appeal be dismissed.

Claims by Mr. Kang

60. To date, Mr. Kang has filed 5 claims in the Estate and has sent numerous letters and e-mails to the Trustee with documents in both English and Korean, including:

- i. September 8, 2014 – Mr. Kang requested by e-mail that the Trustee release to him certain furniture and records that he claims the Trustee has in its possession, but did not provide evidence that he is the owner of these items. Attached hereto and marked as **Appendix “R”** is Mr. Kang's e-mail. The Trustee advised Mr. Kang verbally that it requires a detailed description of what he is seeking and evidence that it is not the property of the Estate. As Mr. Kang entered into the storage agreement (included in Kang's Claim #5, hereinafter defined) with, and transferred CT&G's assets to, Platinum, the Trustee's view is that Mr. Kang should have identified items owned by him or others at that time, if any.
- ii. October 8, 2014 – Mr. Kang submitted a proof of claim for \$30,000.00 for wages with no evidence attached to the claim (“**Claim #1**”). Attached hereto and marked as **Appendix “S”** is Claim #1.
- iii. February 19, 2015 – Mr. Kang submitted a proof of claim for \$4,629.95 with no evidence attached to the claim (“**Claim #2**”). A notation on the claim indicates that it relates to payments towards his RBC loan secured against the Chrysler PT Cruiser calculated as \$272.35 per month for the period of October 2013 to February 2015, which includes six months after the date of bankruptcy and twelve months after the date the Trustee informed Mr. Kang that he should make arrangements to retrieve his vehicle, as described above. Attached hereto and marked as **Appendix “T”** is Claim #2.
- iv. September 29, 2015 – Mr. Kang sent a letter to the Trustee asking whether any subsequent meetings of creditors had taken place and asked whether two

additional inspectors can be appointed. He also requested information about the administration of the Estate and for the Inspectors contact information. The Trustee responded to this letter on November 4, 2015 explaining to Mr. Kang the procedures under the BIA for calling a second meeting of creditors. Attached hereto collectively and marked as **Appendix “U”** are Mr. Kang’s letter and the Trustee’s response.

- v. October 2, 2015 – Mr. Kang filed two additional proofs of claim. The first was labeled “revised” but it was unclear whether he was replacing a claim previously submitted or submitting a new claim. This claim was for a loan of \$22,000 allegedly made to the Company and \$8,642.13 of wages for a total claim amount of \$30,642.03, accompanied by some supporting evidence (“**Claim #3**”). The second proof of claim was for \$11,132.47 with no evidence attached (“**Claim #4**”). On Claim #4 there were notations which indicated that \$1,906.52 was related to auto finance payments and \$9,225.95 was for wages. Attached hereto collectively and marked as **Appendix “V”** are Mr. Kang’s Claims #3 and #4. On this day, Mr. Kang also re-submitted Claims #1 and #2 and again didn’t provide any evidence to support these claims.
- vi. October 4, 2015 – Mr. Kang sent a letter to the Trustee repeating his requests in his letter dated September 8, 2014. In this letter he again does not provide the Trustee with a description of the assets and records he claims the Trustee has in its possession or evidence that it is third party property. In addition, in this letter he requests that the Trustee provide him with a copy of his loan agreement with CT&G. The Trustee responded to this letter on November 4, 2015. Attached hereto collectively and marked as **Appendix “W”** are Mr. Kang’s letter and the Trustee’s response.
- vii. November 18, 2015 – Mr. Kang submitted a claim in the Estate labeled “amended” totaling \$160,722.68 (“**Claim #5**”) which, according to Mr. Kang, replaced Claims #1, 2, 3 and 4 and includes additional amounts being claimed by Mr. Kang which were not included in his previous claims. On November 27, 2015, the Trustee issued a Notice of Revision and Disallowance of Mr. Kang’s

Claim #5 (“**NORD #5**”) which replaces the Trustee’s previous NORDs issued with respect to Claims # 1- 4. Attached hereto collectively and marked as **Appendix “X”** are Claim #5 and NORD #5.

- viii. November 20, 2015 and December 5, 2015 – Mr. Kang sent a letter and an e-mail, respectively, to the Trustee requesting to receive the Inspectors’ contact information and information on the “current assets” of the Estate. On December 7, 2015, the Trustee responded to Mr. Kang by letter informing him that the Trustee asked the Inspectors at a meeting of the Inspectors whether he can release their contact information to Mr. Kang and they refused. The Trustee also provided Mr. Kang with a copy of the interim statement of receipts and disbursements of CT&G dated December 7, 2015. On December 11, 2015, Chaitons also responded to Mr. Kang’s request for this information. Attached hereto collectively and marked as **Appendix “Y”** are copies of Mr. Kang’s letter and responses from the Trustee and Chaitons.
- ix. December 18, 2015 – The Trustee was informed by the Office of the Superintendent of Bankruptcy (“**OSB**”) that Mr. Kang had filed a complaint with the OSB with regards to the Estate. On January 7, 2016, the Trustee was notified by the OSB that it had sent a letter to Mr. Kang indicating, among other things, that the Bankruptcy Court is the appropriate forum for the review of his complaints and that no further action will be taken by the OSB at this time. Attached hereto and marked as **Appendix “Z”** is a copy of the letter from the OSB.
61. Based on a full review of Claim #5, the Trustee has accepted a portion thereof, as described in NORD #5, totalling \$27,718.13, of which \$8,992.14 is unsecured and \$18,725.99 is postponed. The acceptance of these claim amounts was made subject to any set-off claims which may be asserted by the Estate against Mr. Kang for amounts Mr. Kang may owe the Estate.
62. Early in the bankruptcy administration, with the pre-approval of the inspectors, the Trustee commenced an investigation of certain amounts transacted by CT&G while Mr. Kang acted

as director and Chief Executive Officer of CT&G. The Trustee issued a detailed letter to Mr. Kang listing the transactions and asking him a series of questions regarding these transactions. A number of these transactions were between Mr. Kang personally and CT&G. The Trustee has not completed its investigation. Attached hereto collectively and marked as **Appendix “AA”** is a copy of the letter issued to Mr. Kang on October 3, 2014, as well as Mr. Kang’s response to this letter.

Appeal by Mr. Kang

63. On December 15, 2015, Mr. Kang served material on the Trustee for a motion returnable January 14, 2016, in which he requests the Court to make an order:
 - i. granting all ‘Proof of Claim’ made by the Applicant; and
 - ii. that the Estate pay the applicant’s priority claim of \$139,961.91.

64. Regarding Mr. Kang’s appeal, the Trustee has the following comments:
 - i. At the November 19, 2015 hearing, Mr. Kang orally advised the Court that his Claim #5 was a replacement of Claims #1- 4. On his motion, Mr. Kang requests an order “granting all Proof of Claim”. If Mr. Kang intends on asserting any additional claims other than Claim #5, then he should make that clear in his Notice of Motion.
 - ii. Mr. Kang claimed wages of \$30,000 for the period of April - December 21, 2011. The shareholder meeting minutes included with the proof of claim as support for this amount was written in Korean and was not signed. The Trustee requested that an official translation be provided along with the signed original minutes of this shareholder meeting. Included with Mr. Kang’s motion material (but not as a properly commissioned exhibit to an affidavit) is an unofficial translation of minutes of a shareholder meeting purported to have taken place on May 26, 2012 signed by three individuals on December 7, 2015, approximately 3.5 years after the alleged shareholder meeting, and approximately 15 months after the date of bankruptcy. The Trustee did not find minutes for this meeting in CT&G’s minute book.

- iii. Mr. Kang claimed wages of \$84,000.00 as salary and bonus for 2012. The Trustee determined in NORD #5 that Mr. Kang must provide either a signed directors' resolution approving the "Payroll Plan" permitting him to draw salary of \$80,000, plus bonus, or an employment agreement approved by the directors entitling him to the amounts he has claimed for 2012. Neither document appears to exist based on the Trustee's review of CT&G's records. Mr. Kang did not provide as part of his motion materials the information described by the Trustee in NORD #5. Instead, Mr. Kang describes meetings of the board of directors and shareholders which allegedly took place in June 2013, a year later. Mr. Kang has included in his material a number of documents in Korean with no translation, and he has not included any signed minutes of these meetings. He has included (but not as a properly commissioned exhibit to an affidavit) a document titled "Payroll Plan" signed by four individuals between November 28, 2015 and December 7, 2015, approximately 2.5 years after the meetings purportedly took place and 15 months after the date of bankruptcy.
- iv. The individuals who have signed the documents many months after the purported meetings took place, as described above, are Mr. Kang, Hong Gi Kim, Suk Hoon Lee and Yong Sul Kim. These individuals are shareholders of CT&G. Of the nine members of the board of directors appointed on May 26, 2012, as described in section 4.2 of the Unanimous Shareholder Agreement (the "**Shareholder Agreement**") submitted by Mr. Kang, only Mr. Kang and Mr. Suk Hoon Lee were appointed to the board of directors of CT&G on May 26, 2012. According to the Shareholder Agreement, motions must be passed at a duly constituted meeting of the directors at which at least 4 members of the board must be present for there to be a quorum.
- v. It is the Trustee's view, based on the documentary evidence provided by Mr. Kang, that he has not demonstrated that a duly constituted meeting of the board of directors or shareholders had taken place at which the requisite approvals were obtained to approve Mr. Kang's compensation for the period prior to December 2012.
- vi. Mr. Kang's claim of \$6,808.75 is based on twenty-four monthly personal loan payments of \$272.35 for the period of November 14, 2013 to November 13, 2015. Therefore, this claim consists of two parts; a pre-bankruptcy claim for \$2,451.15 and

a post-bankruptcy claim for \$4,357.60. In his motion material, Mr. Kang does not provide any additional information that would change the Trustee's position with regards to this claim amount. As such, the Trustee continues to disallow this amount in its entirety for the reasons described in NORD #5.

KANG MOTION #3

65. On December 22, 2015, Mr. Kang served material on the Trustee for a motion returnable January 14, 2016 (“**Kang Motion #3**”)¹ in which he requests the Court to make an order, *inter alia*:
- i. discharging the Trustee and the three inspectors of the Estate;
 - ii. appointing a “Court-designated Trustee or appointing a trustee of the Estate by a new Inspectors Meeting”;
 - iii. appointing Mr. Kang, Mr. Yong Sul Kim and Honggi Kim as inspectors in the Estate;
 - iv. transferring the assets of the Estate to the substitute Trustee and the new inspectors;
 - v. that Mr. You pay all professional fees incurred to date;
 - vi. that the Trustee pay to the creditors and shareholders costs of motions and expenses for “improper/fraudulent/wrongful conduct”; and
 - vii. granting the substitute Trustee and the inspectors a charge on the assets of the Estate in order that they have security for their costs.
66. In Kang Motion #3, Mr. Kang describes the Trustee's collection efforts from several customers, who are also shareholders of CT&G, as being improper and includes this as

¹ Earlier in December 2015, Mr. Kang served material on the Trustee for the following two other motions: (1) a motion to obtaining the personal contact information of the inspectors; and (2) a motion to (among other things) appeal Kang Claim #5.

grounds for Kang Motion #3. These individuals are: Mr. Kang (\$3,963.36 receivable), Mr. Yong Sul Kim (\$5,053.38 receivable) and Yang Pyung Kim (\$3,373.53 receivable).

67. The Trustee has reviewed the Company's Quickbooks accounting software, which pertains to transactions commenced in January 2014. None of the transactions described by Mr. Kang with respect to himself and Mr. Yong Sul Kim, or their respective businesses, were recorded in the Quickbooks accounting system. These customers were not even set up as customers in the system.
68. The Trustee relied on information from the Company's prior accounting system, which shows the aforesaid amounts as still outstanding, as well as paper records in its possession. It appears that when the accounting system was changed in January 2014, customer transactions, or opening balances, in the old accounting system were not carried forward to the new accounting system.
69. On April 20, 2015, the Estate demanded that Mr. Kang, on behalf of his former business, E-Z go Beststore Inc., pay \$3,963.36 to the Estate, which includes (i) \$1,010.67 for purchases made on November 30, 2013; and (ii) \$2,952.69 for tobacco the Estate claims he removed from inventory in June 2014, prior to the date of bankruptcy, which has not been invoiced by CT&G as the business was closed by then, or paid by Mr. Kang or his business. Mr. Kang has not acknowledged the later amount of \$2,952.69 in any of his correspondence with the Trustee, and claims that \$1,010.67 was paid in cash and provided a receipt marked in pen "cash paid". The Trustee also has an original copy of the identical receipt that does not say "cash paid", a copy of which is attached hereto and marked as **Appendix "BB"**.
70. On October 31, 2014, the Estate demanded that Mr. Yong Sul Kim, on behalf of his business, Mount Pleasant Convenience, pay \$5,053.38 to the Estate. On December 20, 2014, Mr. Kim responded with a hand written credit note for product returns for \$4,119.05 dated January 10, 2014 and a money order to CT&G for payment of the balance of \$934.33 dated April 23, 2014. The Trustee was able to confirm that \$934.33 was received in CT&G's bank account but, to date, due to CT&G's incomplete records, has not been able to corroborate that the product was in fact returned.

71. On October 31, 2014, the Estate demanded that Mr. Yang Pyung Kim, on behalf of his business, K&K Super Save, pay \$3,373.53 to the Estate. After receipt of additional information from Mr. Kim, the Estate issued a revised letter to him dated June 9, 2015 reducing the amount owing to the Estate to \$2,487.28. Attached hereto and marked as **Appendix “CC”** is the Estate’s letter dated June 9, 2015.
72. Mr. Kang also comments in Kang Motion #3 on the claim of Mr. Seunghyu Lee. Following receipt of additional information from Mr. Lee in November 2015, the Estate has accepted Mr. Lee’s claim at a value of \$26,544.61. The Trustee did not receive a Notice of Motion to appeal from Mr. Lee in the 30 days following the issuance of the Trustee’s claim determination.
73. Mr. Kang claims that the Trustee informed the creditors at the Creditors’ Meeting that two more inspectors would be appointed at the next creditors’ meeting. It appears that Mr. Kang has misunderstood the procedures under the BIA for calling a second meeting of creditors and for appointing inspectors, despite the explanations provided at the Creditors’ Meeting by the Official Receiver, who acted as Chair of the Creditors’ Meeting, and the Trustee. The Chair and the Trustee explained to the attendees at the meeting, including Mr. Kang, that only at a meeting of the creditors could additional inspectors be appointed, and there is a maximum of five inspectors which can be appointed. At no time did the Chair or the Trustee advise Mr. Kang that there would be a second meeting of the creditors and that additional inspectors would be appointed.
74. Despite having received notice of the Creditors’ Meeting and having attended in person, Mr. Kang did not submit any of his five claims in advance of the Creditors’ Meeting and, therefore, he did not have the right to vote at the Creditors’ Meeting.
75. As described above, the Estate has begun an investigation into past transactions which include transactions between CT&G and Mr. Kang. While this investigation remains ongoing, it appears likely at this time that Mr. Kang may become involved in a contested action by the Estate and, therefore, would be ineligible to act as an inspector pursuant to s. 116 (2) of the BIA, even if elected by the creditors of the Estate.

76. Currently, Mr. You's claim represents \$627,657.26, or 92% of the total value of the allowed claims in the Estate to date. Should a second meeting of the creditors be held, it is unlikely that the choice of Trustee or inspectors would be different. To date, except for Mr. Kang, part of whose claim remains in dispute, none of the proved creditors, nor any of the inspectors, have requested that the Trustee call a second meeting of creditors. For these reasons, the Trustee does not believe that it is worthwhile for the Court to order that a second meeting of the creditors take place.

CONDUCT OF MR. KANG

77. The Trustee is of the view that Mr. Kang has been conducting himself in an irresponsible and offensive manner by, among other things, willfully making incorrect and misleading comments in his motion material and in his five claims in order to disparage the Trustee, the inspectors and the administration of the Estate.

78. Mr. Kang's actions have also caused the Estate to incur substantial costs in having to respond to his five claims, multiple duplicative correspondence, numerous motions and unsupported complaints.

79. Mr. Kang was informed of his duties and of bankruptcy offences when he attended the Creditors' Meeting as the Company's representative.

80. Mr. Kang has failed to comply with his statutory duties under Section 158, including his duties to remit to the Trustee all information and documents in any way relating to the Company's property and affairs.

81. The Trustee is compiling any additional relevant information to report to the Court pursuant to Section 205 of the BIA.

82. The Trustee is also reserving its right to bring a motion for security for costs against Mr. Kang to protect the Estate's ability to recover costs against Mr. Kang with respect to the various motions that he has brought or intends to bring in this proceeding.

CONCLUSIONS

83. Based on the facts set out above, the Trustee respectfully submits that the following relief is appropriate and should be ordered by the Court:


- i. the appeal by CHTL of the CHTL Disallowance should be dismissed;
- ii. the appeal of Mr. Kang from NORD #5 should be dismissed, and an order should be issued declaring that he may not file any new claims in the Estate;
- iii. Kang Motion #3 should be dismissed; and
- iv. Mr. Kang should be ordered to deliver to the Trustee all CT&G books and records in his possession.

Dated at Toronto, this 8th day of January, 2016

DODICK LANDAU INC.

Trustee of the Estate of
Canada Tobacco & Global Inc.
and not in its personal capacity.

Per:



Rahn Dodick CA, CPA, CIRP, LIT
President