

**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.**

Applicant

**MOTION RECORD
(Returnable February 3, 2021)**

January 26, 2021

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2	Affidavit of William E. Aziz sworn January 26, 2021
Exhibit "A"	Lift Stay Order dated May 14, 2019
Exhibit "B"	Proposed Statement of Claim in action to be commenced against Groupe Robert Inc.
3	Draft Lift of Stay of Proceedings Order

TAB 1

**ONTARIO
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Applicant

**NOTICE OF MOTION
(Returnable on February 3, 2021)**

JTI-McDonald Corp. (the “**Applicant**”) will make a motion to the Honourable Mr. Justice McEwan on Wednesday, February 3, 2021, at 2:00 p.m., or as soon after that time as the motion can be heard, by judicial video conference via Zoom at Toronto, Ontario. Please refer to the conference details attached as Schedule “A” hereto in order to attend the motion and advise if you intend to join the motion by emailing Leanne Williams at lwilliams@tgf.ca.

PROPOSED METHOD OF HEARING: This motion is to be heard orally by video conference.

THE MOTION IS FOR:

1. An Order, substantially in the form attached at Tab 3 of this Motion Record, *inter alia*:
 - (a) amending and replacing paragraph 3 of the order of Justice McEwan dated May 14, 2019 in this proceeding (the “**Lift Stay Order**”) as follows:

3. **THIS COURT ORDERS** that the stay of proceedings provided for in the Amended and Restated Initial Order dated March 8, 2019 (the “**Stay of Proceedings**”) be and is hereby lifted to permit the action in Court File No. CV-16-559813 (the “**Swann Action**”) to continue in the ordinary course and directs that any recovery in respect of the Swann Action as against the Applicant only be and is hereby limited to the recovery of proceeds from available and collectible insurance.

- (b) authorizing that the Stay of Proceedings be lifted to permit the commencement of an action by Allianz Global Corporate & Specialty, pursuant to its right of subrogation under a policy of insurance with the Applicant, against Groupe Robert Inc. for the recovery of damages resulting from the theft of the Applicant’s product that was in the possession of Groupe; and
- (c) such further and other relief as this Court deems just.

THE GROUNDS FOR THE MOTION ARE:

A. Overview

- 1. All capitalized terms not herein defined shall have the meanings set out in the Affidavit of William E. Aziz dated January 26, 2021 (the “**Aziz Affidavit**”);
- 2. Pursuant to the terms of the Initial Order, no proceeding or enforcement process in any court or tribunal may be commenced, continued or take place by or against the Applicant, except with leave of the Court;

B. Swann Action

3. Prior to the Initial Order, an action was commenced against the Applicant, one of its employees, Midfield and an employee of Midfield seeking damages as a result of a personal injury which is alleged to have occurred during an incentive trip arranged by Midfield on behalf of the Applicant;
4. Pursuant to the terms of the Lift Stay Order, the Stay of Proceedings was partially lifted to permit the continuation of the Swann Action in the ordinary course and limiting the recovery to the proceeds of Midfield's insurance;
5. The Swann Plaintiff is seeking to amend the claim to increase the amount claimed to an amount in excess of Midfield's insurance relating to the incident. As the Applicant's insurance would be required to respond to any increased claim amount and the fact that the Lift Stay Order erroneously limited recovery to Midfield's insurance, a further order is required to allow a potential recovery to the proceeds of the Applicant's insurance policy and to allow recovery against Midfield;
6. As a condition to the relief proposed, the Swann Plaintiff has agreed to the dismissal of the Swann Action against Christopher Chaulk and Carlos Sousa;
7. As the Swann Plaintiff's claim will be limited to recovery of available insurance, there will be no material economic impact on the Applicant or its stakeholders. The Monitor consents to the relief sought in respect of the Swann Action;

C. Allianz Action

8. The Applicant recovered under a policy of insurance with Allianz as a result of a theft of its product that was in the possession of Groupe. Allianz, pursuant to its right of subrogation, wishes to commence an action against Groupe in JTIM's name for the recovery of its damages resulting from the theft;
9. Allianz has requested that the Stay of Proceedings be lifted to permit it to commence and continue the proposed proceeding in the ordinary course in the name of the Applicant. As there is no economic impact on the Applicant or its stakeholders, the Applicant requests and the Monitor consents to the relief sought in respect of the Allianz Action; and
10. The Applicant also relies on:
 - (a) the provisions of the CCAA and the statutory, inherent and equitable jurisdiction of this Court; and
 - (b) 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 application:

1. the Aziz Affidavit; and
2. such further and other evidence as counsel may advise and this Court may permit.

January 26, 2021

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TO: THE ATTACHED *COMMON SERVICE LIST*

AND TO: THE ADDITIONAL PARTIES LISTED ON SCHEDULE “B” HERETO

Schedule “A”
Conference Details to Join Motion via Zoom

Join Zoom Meeting:

<https://tgf-ca.zoom.us/j/85769187373?pwd=RXIyT0pKOWV6VFJQbHRGSFRTL2xYdz09>

Meeting ID: 857 6918 7373

Passcode: 402288

Participant one tap mobile

+16473744685,,85769187373#,# Canada (Toronto)

Dial by your location

- +1 587 328 1099 Canada (Calgary)
- +1 613 209 3054 Canada (Ottawa)
- +1 647 374 4685 Canada (Toronto)
- +1 778 907 2071 Canada (Vancouver)
- +1 204 272 7920 Canada (Winnipeg)
- +1 438 809 7799 Canada (Montreal)
- +1 786 635 1003 US (Miami)
- +1 206 337 9723 US (Seattle)
- +1 213 338 8477 US (Los Angeles)
- +1 267 831 0333 US (Philadelphia)
- +1 312 626 6799 US (Chicago)
- +1 646 518 9805 US (New York)

Meeting ID: 857 6918 7373

Find your local number: <https://tgf-ca.zoom.us/u/kdLI6CKcam>

Schedule “B”

ADDITIONAL PARTIES TO BE SERVED

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

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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

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(as at October 20, 2020)**

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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
(COMMERCIAL LIST)**

Proceedings commenced at Toronto

**NOTICE OF MOTION
(Returnable on February 3, 2021)**

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TAB 2

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.**

Applicant

AFFIDAVIT OF WILLIAM E. AZIZ
(sworn January 26, 2021)

I, **WILLIAM E. AZIZ**, of the Town of Oakville, in the Province of Ontario, MAKE
OATH AND SAY:

INTRODUCTION

1. I am the President of BlueTree Advisors Inc., Chief Restructuring Officer of JTI-Macdonald Corp. (the “**Applicant**” or “**JTIM**”). As such, I have personal knowledge of the matters to which I hereinafter depose, except where my knowledge is based on information and belief, in which case I believe such information to be true.

2. All capitalized terms not herein defined shall have the meanings set out in the Initial Order (as defined below).

PURPOSE

3. The purpose of this Affidavit is to support the motion seeking a lift of the stay of proceedings provided for in the Second Amended and Restated Initial Order dated March 8, 2019

(the “**Initial Order**”) to allow certain proceedings in which JTIM is involved to continue or be commenced in the ordinary course.

STAY OF PROCEEDINGS

4. Pursuant to the terms of the Initial Order, no proceeding or enforcement process in any court or tribunal may be commenced, continued or take place by or against the Applicant except with leave of the Court (the “**Stay of Proceedings**”).

5. Pursuant to the terms of the Initial Order, JTIM is operating in the ordinary course of business for the benefit of its stakeholders. Due to the size and complexity of the Business, the Applicant is periodically the subject of certain Proceedings that are not related to a Tobacco Claim. The Applicant seeks to (i) amend the Order of Mr. Justice McEwen dated May 14, 2019 in respect of the Swann Action (as defined below); and (ii) lift the Stay of Proceedings to permit the commencement of one such matter against a third party by one of JTIM’s insurers.

Swann Action

6. As outlined in my affidavit dated May 9, 2019, JTIM is a defendant, together with one of its employees (Christopher Chaulk), Midfield Interactive Corporation (“**Midfield**”) and Carlos Sousa (an employee of Midfield) (collectively, the “**Swann Defendants**”), in an action commenced by Eric and Marissa Swann and subsequently only pursued by Eric Swann (the “**Swann Plaintiff**”) in 2016 seeking damages as a result of a personal injury which is alleged to have occurred during an incentive trip arranged by Midfield on behalf of JTIM (the “**Swann Action**”). By Order dated May 14, 2019 (the “**Lift Stay Order**”), the Stay of Proceedings was lifted to permit the continuation of the Swann Action in the ordinary course and limiting the

recovery to proceeds of Midfield's insurance. A copy of the Lift Stay Order is attached as **Exhibit "A"**.

7. I have been advised by legal counsel to JTIM that the Swann Plaintiff is seeking to amend the claim to increase the amount claimed from \$5 million to \$40 million. As the amount of Midfield's insurance relating to the incident is limited to \$5 million, JTIM's insurance (issued through Chubb Insurance) would be required to respond to any increased claim amount. In addition, as Midfield is not the beneficiary of any court ordered or other protection, the Lift Stay Order mistakenly restricted the Swann Plaintiffs' claims against Midfield. As the Lift Stay Order limits the recovery of the Swann Plaintiffs to Midfield's insurance, a further order is required to permit the proposed amendment to the Swann Action and to allow a potential recovery to the proceeds of JTIM's insurance policy in the event of a monetary award in excess of \$5 million, and to allow recovery against Midfield.

8. I have been advised by legal counsel to JTIM that the Swann Plaintiff has agreed to the proposed relief and in connection therewith has agreed to the dismissal of the Swann Action against Christopher Chaulk and Carlos Sousa.

9. JTIM consents to the Swann Action being amended to increase the amount claimed, provided that the Swann Action is discontinued with prejudice against Chaulk and Sousa and requests that the Lift Stay Order be amended to permit recovery against the insurance available to JTIM. As the Swann Plaintiff's claim will be limited to recovery of available insurance, there will be no material economic impact on the Applicant or its stakeholders. As a result, I have been advised by counsel to the Monitor that it consents to the relief sought in respect of the Swann Action.

Allianz Action

10. I am advised by legal counsel to JTIM that JTIM recovered under a policy of insurance with Allianz Global Corporate & Speciality (“**Allianz**”) as a result of a theft of JTIM’s product that was in the possession of its carrier, Groupe Robert Inc. (“**Groupe**”). I am advised by legal counsel to Allianz that, pursuant to its right of subrogation, wishes to commence an action against Groupe in JTIM’s name for the recovery of its damages resulting from the theft (the “**Allianz Action**”). A copy of the proposed statement of claim is attached as **Exhibit “B”**.

11. Currently, the Initial Order stays all Proceedings and prevents new Proceedings from being commenced by or against the Applicant. Allianz has requested that the Stay of Proceedings be lifted to permit it to commence and continue the proposed proceeding in the ordinary course in the name of the Applicant. As there is no economic impact on the Applicant or its stakeholders as a result of the proposed litigation, JTIM requests the lifting of the Stay of Proceedings to allow the proposed litigation to proceed. I have been advised by counsel to the Monitor that it consents to the relief sought in respect of the Allianz Action.

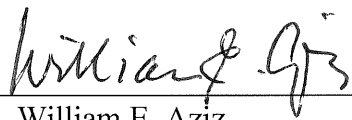
CONCLUSION

12. The Applicant requests that the Lift Stay Order be amended and that the Stay of Proceedings be lifted in the specific circumstances noted above to allow (i) JTIM to carry on its business operations in the ordinary course for the benefit of its stakeholders, and (ii) Allianz to pursue its action against Groupe.

SWORN BEFORE ME by video conference at the City of Toronto, Province of Ontario, on January 26, 2021.

A stylized, circular signature in dark ink, consisting of several overlapping loops.

Commissioner for Taking Affidavits

A handwritten signature in dark ink, appearing to read 'William E. Aziz' with a stylized flourish at the end.

William E. Aziz

This is **Exhibit “A”**, referred to in the

Affidavit of William E. Aziz,
sworn before me via videoconference
this 26th day of January, 2021.



A Commissioner for taking Affidavits, etc.

ONTARIO
SUPERIOR COURT OF JUSTICE
(COMMERCIAL LIST)

THE HONOURABLE

JUSTICE HANEY

McGowan
)
)
)

TUESDAY, THE 14TH

DAY OF MAY, 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.**



ORDER

(Lift of Stay of Proceedings)

THIS MOTION, made by JTI-Macdonald Corp. (the "**Applicant**"), pursuant to the *Companies' Creditors Arrangement Act*, R.S.C. 1985, c. C-36, as amended (the "**CCAA**") was heard this day at 330 University Avenue, Toronto, Ontario.

ON READING (i) the affidavit of William E. Aziz sworn May 9, 2019 and the exhibits thereto (the "**Aziz Affidavit**") and (ii) the third report of Deloitte Restructuring Inc. in its capacity as the Monitor of the Applicant (the "**Monitor**") and on hearing the submissions of counsel for the Applicant, the Monitor and any other party appearing for any other person on the service list, properly served as appears from the affidavit of Mitch Grossell sworn May 10, 2019,

DEFINITIONS

1. **THIS COURT ORDERS** that all capitalized terms not defined herein shall have the meanings set out in the affidavit of William E. Aziz sworn May 9, 2019 (the "**Aziz Affidavit**").

SERVICE

2. **THIS COURT ORDERS** that, if necessary, the time for service and filing of the Notice of Motion and the Motion Record is hereby abridged and validated so that this Motion is properly returnable today and hereby dispenses with further service thereof.

STAY OF PROCEEDINGS

3. **THIS COURT ORDERS** that the stay of proceedings provided for in the Amended and Restated Initial Order dated March 8, 2018 (the “**Stay of Proceedings**”) be and is hereby lifted to permit the Swann Action to continue in the ordinary course and directs that any recovery in respect of the Swann Action be and is hereby limited to the recovery of proceeds from the insurance held by Midfield.

4. **THIS COURT ORDERS** that the Stay of Proceedings be and is hereby lifted to permit the Montero-Pomar Action to continue in the ordinary course.

5. **THIS COURT ORDERS** that the Stay of Proceedings be and is hereby lifted to permit the continuation or commencement of proceedings by or against the Applicant related to labour and employment matters with the consent of the Monitor or further order of this Court.

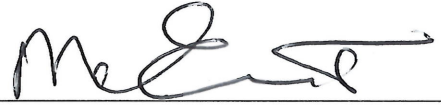
GENERAL

6. **THIS COURT HEREBY REQUESTS** the aid and recognition of any court, tribunal, regulatory or administrative body having jurisdiction in Canada or outside of Canada, to give effect to this Order and to assist the Applicant, the Monitor and their respective agents in carrying out the terms of this Order. All courts, tribunals and regulatory and administrative bodies are hereby respectfully requested to make such orders and to provide such assistance to the Applicant and to the Monitor, as an officer of this Court, as may be necessary or desirable to

give effect to this Order, to grant representative status to the Monitor in any foreign proceeding, or to assist the Applicant and the Monitor and their respective agents in carrying out the terms of this Order.

ENTERED AT / INSCRIT À TORONTO
ON / BOOK NO:
LE / DANS LE REGISTRE NO:

MAY 14 2019

A handwritten signature in dark ink, appearing to be 'M. J. St.', written over a horizontal line.

PER / PAR: UM

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
(COMMERCIAL LIST)**

Proceedings commenced at Toronto

ORDER
(Lift of Stay of Proceedings)

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Lawyers for the Applicant

This is **Exhibit “B”**, referred to in the

Affidavit of William E. Aziz,
sworn before me via videoconference
this 26th day of January, 2021.

A handwritten signature in dark ink, consisting of several overlapping loops and a horizontal stroke, positioned above a horizontal line.

A Commissioner for taking Affidavits, etc.

Court File No.

**ONTARIO
SUPERIOR COURT OF JUSTICE**

B E T W E E N:

JTI-MACDONALD CORP.

Plaintiff

-and-

GROUPE ROBERT INC.

Defendant

STATEMENT OF CLAIM

TO THE DEFENDANT(S):

A LEGAL PROCEEDING HAS BEEN COMMENCED AGAINST YOU by the plaintiff. The claim made against you is set out in the following pages.

IF YOU WISH TO DEFEND THIS PROCEEDING, you or an Ontario lawyer acting for you must prepare a statement of defence in Form 18A prescribed by the *Rules of Civil Procedure*, serve it on the plaintiff's lawyer or, where the plaintiff does not have a lawyer, serve it on the plaintiff, and file it, with proof of service, in this court office, **WITHIN TWENTY DAYS** after this statement of claim is served on you, if you are served in Ontario.

If you are served in another province or territory of Canada or in the United States of America, the period for serving and filing your statement of defence is forty days. If you are served outside Canada and the United States of America, the period is sixty days.

Instead of serving and filing a statement of defence you may serve and file a notice of intent to defend in Form 18B prescribed by the *Rules of Civil Procedure*. This will entitle you to ten more days within which to serve and file your statement of defence.

IF YOU FAIL TO DEFEND THIS PROCEEDING, JUDGMENT MAY BE GIVEN AGAINST YOU IN YOUR ABSENCE AND WITHOUT FURTHER NOTICE TO YOU. IF YOU WISH TO DEFEND THIS PROCEEDING BUT ARE UNABLE TO PAY LEGAL FEES, LEGAL AID MAY BE AVAILABLE TO YOU BY CONTACTING A LOCAL LEGAL AID OFFICE.

IF YOU PAY THE PLAINTIFF'S CLAIM, and \$1,000 for costs, within the time for serving and filing your statement of defence you may move to have this proceeding dismissed by the court. If you believe the amount claimed for costs is excessive, you may pay the plaintiff's claim and \$400 for costs and have the costs assessed by the court.

TAKE NOTICE: THIS ACTION WILL AUTOMATICALLY BE DISMISSED if it has not been set down for trial or terminated by any means within five years after the action was commenced unless otherwise ordered by the court.

Date: _____

Issued by _____
Local registrar

Address of court
office:

330 University Avenue,
Toronto, Ontario
M5G 1R7

TO: GROUPE ROBERT INC.
20, boulevard Marie-Victorin,
Boucherville, QC
J4B 1V5

Defendant

THIS ACTION IS BROUGHT AGAINST YOU UNDER THE SIMPLIFIED PROCEDURE PROVIDED IN RULE 76 OF THE RULES OF CIVIL PROCEDURE.

CLAIM

1. The plaintiff, JTI-Macdonald Corp. (“**JTI**”) claims against the defendant, Groupe Robert Inc. (“**Groupe Robert**”) for:

- (a) damages in the amount of \$131,375.43, or such other amount as may be proven at trial;
- (b) pre-judgment interest in accordance with section 128 of the *Courts of Justice Act*, R.S.O. 1990, c. C43, as amended;
- (c) post-judgment interest in accordance with section 129 of the *Courts of Justice Act*, R.S.O. 1990, c. C43, as amended;
- (d) costs of this action; and
- (e) such further and other relief as this Court may permit.

2. JTI is a corporation incorporated pursuant to the laws of Canada. JTI carries on business as a manufacturer of tobacco products.

3. At all material times, JTI was the owner of the Cargo, as described below.

4. Groupe Robert is a corporation incorporated pursuant to the laws of the Province of Quebec. Groupe Robert carries on business as a trucking company.

5. In or around December 2018, JTI engaged Groupe Robert to haul a load, which consisted of 50 cases of fine blended strips of tobacco leaf product, from the Port of Montreal in Quebec, to a location in Saint-Hyacinthe, Quebec (the “**Cargo**”).

6. Groupe Robert picked up the Cargo in good order and condition from the Port of Montreal.

7. On or about December 17, 2018, prior to the Cargo being delivered as mandated, and while in the possession, care and/or control of Groupe Robert, the Cargo was reported stolen from Groupe Robert’s yard in Boucherville, Quebec. The stolen Cargo has not been recovered.

8. Groupe Robert had an obligation to JTI to deliver the Cargo to Saint-Hyacinthe, Quebec in the same good order and condition in which it was received. As a result of Groupe Robert’s failure to deliver the Cargo, JTI has suffered a total loss of the Cargo and associated costs including shipping and customs duties.

9. JTI pleads that Groupe Robert is liable for breach of its contractual obligations as a common carrier for failure to deliver the Cargo.

10. Further, and in any event, JTI pleads that Groupe Robert was a common carrier and a bailee for hire with respect to the Cargo, and that it owed JTI a duty of care to carry the Cargo with due care, and take such care of the Cargo as would a reasonable and prudent owner. JTI pleads that Groupe Robert failed to do so and is thus liable for breach of its duties as a common carrier and/or a bailee of the Cargo.

11. JTI pleads that its losses and damages are a result of the negligence and gross negligence of Groupe Robert and its employees, servants and agents, the particulars of which include but are not limited to:

- a) they failed to keep the Cargo secure;
- b) they failed to have adequate security measures in place;
- c) they failed to follow the security measures that were in place;
- d) they failed to hire adequate and competent security personnel;
- e) they failed to properly screen the employees who were working as security guards;
- f) they failed to hire adequate and competent employees, servants and agents;
- g) they failed to adequately supervise their employees, servants and agents;
- h) they failed to have checks and balances in place to prevent theft;
- i) they failed to have adequate security cameras in place;
- j) they left the Cargo unattended;
- k) they failed to exercise due care and diligence in the handling and care of the Cargo;
- l) they failed to ensure that the Cargo was secure; and,
- m) such further and other grounds as counsel may advise and this Court may permit.

12. In the alternative, JTI pleads that Groupe Robert was, at the time the Cargo was stolen, a warehouseman or storer of the Cargo. As a storer of the Cargo, Groupe Robert was obligated to safely and securely keep and store the Cargo and it is liable for the loss resulting therefrom. JTI pleads and relies upon the *Warehouse Receipts Act*, R.S.O. 1990, c. W.3, as amended.

13. As a result of Groupe Robert's breach of contract, breach of duty as bailee and/or as common carrier and/or negligence, the Cargo was lost and has not been recovered. Accordingly, JTI claims the value of the Cargo and associated costs including shipping and customs duties from Groupe Robert, along with such other amounts as may be proven at trial.

14. JTI pleads and relies upon the following:

- a) The *Negligence Act*, R.S.O. 1990, c.N.1, as amended;
- b) The *Courts of Justice Act*, R.S.O. 1990, c.43, as amended; and,
- c) The *Warehouse Receipts Act*, R.S.O. 1990, c. W.3, as amended.

15. JTI proposes that this action be tried in Toronto, Ontario.

January 20, 2021

Fernandes Hearn LLP
Barristers & Solicitors
155 University Avenue, Suite 700
Toronto, Ontario M5H 3B7

James Manson (LSO# 22015K)
Janice C. Pereira (LSO# 77776N)

Tel.: (416) 203-9500
Fax: (416) 203-9444

Lawyers for the plaintiff

JTI-MACDONALD CORP.
Plaintiff

- and -

GROUPE ROBERT INC.
Defendant

Court File No.:

ONTARIO
SUPERIOR COURT OF JUSTICE
Proceeding commenced at Toronto

STATEMENT OF CLAIM

FERNANDES HEARN LLP
Barristers and Solicitors
700-155 University Avenue
Toronto ON M5H 3B7

James Manson (LSO# 22015K)
Janice C. Pereira (LSO# 77776N)

Tel: 416-203-9500
Fax: 416-203-9444

Lawyers for the Plaintiff

Our File No.: 9100-040

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
(COMMERCIAL LIST)**

Proceedings commenced at Toronto

AFFIDAVIT OF WILLIAM E. AZIZ

THORNTON GROUT FINNIGAN LLP
100 Wellington Street West, Suite 3200
TD West Tower, Toronto-Dominion Centre
Toronto, ON M5K 1K7
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Leanne M. Williams
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Email: lwilliams@tgf.ca

Rebecca L. Kennedy
Tel: 416-304-0603
Email: rkennedy@tgf.ca

Lawyers for the Applicant

TAB 3

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

THE HONOURABLE)	WEDNESDAY, THE 3 RD
)	
JUSTICE MCEWEN)	DAY OF FEBRUARY, 2021
)	

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.**

**ORDER
(Lift of Stay of Proceedings)**

THIS MOTION, made by JTI-Macdonald Corp. (the “**Applicant**”), pursuant to the *Companies' Creditors Arrangement Act*, R.S.C. 1985, c. C-36, as amended (the “**CCAA**”) was heard in writing this day at 330 University Avenue, Toronto, Ontario.

ON READING the Notice of Motion and the affidavit of William E. Aziz sworn January 26, 2021 and the exhibits thereto (the “**Aziz Affidavit**”),

DEFINITIONS

1. **THIS COURT ORDERS** that all capitalized terms not defined herein shall have the meanings set out in the Aziz Affidavit.

STAY OF PROCEEDINGS

2. **THIS COURT ORDERS** that the Order in this proceeding dated May 14, 2019 be and is hereby amended by replacing paragraph 3 as follows:

3. **THIS COURT ORDERS** that the stay of proceedings provided for in the Amended and Restated Initial Order dated March 8, 2019 (the “**Stay of Proceedings**”) be and is hereby lifted to permit the action in Court File No. CV-16-559813 (the “**Swann Action**”) to continue in the ordinary course and directs that any recovery in respect of the Swann Action as against the Applicant only be and is hereby limited to the recovery of proceeds from available and collectible insurance.

4. **THIS COURT ORDERS** that the Stay of Proceedings be and is hereby lifted to permit the commencement of the Allianz Action by Allianz in the name of the Applicant, in the form attached to this Order as Schedule “A”, and the continuation of such action in the ordinary course.

GENERAL

5. **THIS COURT HEREBY REQUESTS** the aid and recognition of any court, tribunal, regulatory or administrative body having jurisdiction in Canada or outside of Canada, to give effect to this Order and to assist the Applicant, the Monitor and their respective agents in carrying out the terms of this Order. All courts, tribunals and regulatory and administrative bodies are hereby respectfully requested to make such orders and to provide such assistance to the Applicant and to the Monitor, as an officer of this Court, as may be necessary or desirable to give effect to this Order, to grant representative status to the Monitor in any foreign proceeding,

or to assist the Applicant and the Monitor and their respective agents in carrying out the terms of this Order.

SCHEDULE "A"

Court File No.

ONTARIO SUPERIOR COURT OF JUSTICE

B E T W E E N:

JTI-MACDONALD CORP.

Plaintiff

-and-

GROUPE ROBERT INC.

Defendant

STATEMENT OF CLAIM

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Date: _____

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TO: GROUPE ROBERT INC.
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January 20, 2021

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James Manson (LSO# 22015K)
Janice C. Pereira (LSO# 77776N)

Tel.: (416) 203-9500
Fax: (416) 203-9444

Lawyers for the plaintiff

JTI-MACDONALD CORP.
Plaintiff

- and -

GROUPE ROBERT INC.
Defendant

Court File No.:

ONTARIO
SUPERIOR COURT OF JUSTICE
Proceeding commenced at Toronto

STATEMENT OF CLAIM

FERNANDES HEARN LLP
Barristers and Solicitors
700-155 University Avenue
Toronto ON M5H 3B7

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Lawyers for the Plaintiff

Our File No.: 9100-040

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
(COMMERCIAL LIST)
Proceedings commenced at Toronto

ORDER
(Lift of Stay of Proceedings)

THORNTON GROUT FINNIGAN LLP
100 Wellington Street West, Suite 3200
TD West Tower, Toronto-Dominion Centre
Toronto, ON M5K 1K7
Fax: 416-304-1313

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Rebecca L. Kennedy
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Lawyers for the Applicant

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
(COMMERCIAL LIST)**

Proceedings commenced at Toronto

**MOTION RECORD
(Returnable February 3, 2021)**

THORNTON GROUT FINNIGAN LLP
100 Wellington Street West, Suite 3200
TD West Tower, Toronto-Dominion Centre
Toronto, ON M5K 1K7
Fax: 416-304-1313

Robert I. Thornton (LSO# 24266B)
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Rebecca L. Kennedy (LSO# 61146S)
Tel: 416-304-0603
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Lawyers for the Applicant