

**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

**APPLICATION RECORD
(Volume 4 of 4)**

March 8, 2019

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Lawyers for the Applicant

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EXHIBIT “T”

This is **Exhibit "T"**, referred to in the
Affidavit of Robert McMaster, sworn before me
this 8th day of March, 2019.



Notary Public

Mitchell Grossell
Barrister & Solicitor
LSO# 69993I

Montréal, February 27, 2019

Thornton Grout Finnigan LLP
c/o Mrs. Leanne Williams
100 Wellington Street West, Suite 3200
P.O. Box 329, TD Centre
Toronto, Ontario
M5K 1K7

Re: 2455-2457, Ontario Street East, Montréal, Québec
Lots numbers 1 424 154, 1 424 155, 1 424 211, 1 425 146,
1 425 148, 1 425 151, 1 425 257 and 1 425 280, Cadastre of
Québec, Registration Division of Montréal (the "Property")

Our File:

Dear Mrs. Williams,

As requested, we have conducted a subsearch at the Land Register of Quebec to identify the apparent registered owners of the Property and list the hypothecs and other encumbrances registered thereon during the Search Period (as such term is hereinafter defined).

We have reviewed the indexes of immovables of the Property (the "Index of Immovables") from April 3, 1979 (the "Start Date of our Search"), which corresponds to the date of the last transfer of the Property, up to and including February 26, 2019, as at 4:00 p.m. (as to the registration of rights) and to February 19, 2019 as at 9:02 a.m. (as to the cancellation of rights), being the dates and times of the certification of the Index of Immovables at the time of our last verification at the Land Register for the Registration Division of Montréal (the "Date of Certification") (the period between the Start Date of our Search and the Date of Certification being hereinafter referred to as the "Search Period").

We draw your attention to the fact that this report should not be considered as a title opinion since we have not conducted a full title examination and have not proceeded to the analysis of any documents as well as of any cadastral plans registered on the Land Register for the Registration Division of Montréal (hereinafter referred to as "Montréal"). Therefore, the hypothecs and other encumbrances affecting the Property, if any, have been strictly identified on the basis of a simple review of the Index of Immovables during the Search Period. Consequently, no opinion is expressed in this report neither as to any defect or other rights that may affect the Property nor as to the validity of the encumbrances reported herein.

LAVERY, DE BILLY, L.L.P. ► Lawyers ► Trade-mark Agents ► World Services Group Member ► lavery.ca

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TROIS-RIVIÈRES, QUEBEC G9A 6E6
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FAX: 819 373-0943

1. CADASTRAL DESCRIPTION OF THE PROPERTY

Based on the information provided to us by the City of Montréal and our review of the Index of Immovables, the Property appears to be known and described as:

An emplacement located in the City of Montréal, Province of Québec, known and described as lots numbers ONE MILLION FOUR HUNDRED TWENTY-FOUR THOUSAND ONE HUNDRED AND FIFTY-FOUR (1 424 154), ONE MILLION FOUR HUNDRED TWENTY-FOUR THOUSAND ONE HUNDRED AND FIFTY-FIVE (1 424 155), ONE MILLION FOUR HUNDRED TWENTY-FOUR THOUSAND TWO HUNDRED AND ELEVEN (1 424 211), ONE MILLION FOUR HUNDRED TWENTY-FIVE THOUSAND ONE HUNDRED AND FORTY-SIX (1 425 146), ONE MILLION FOUR HUNDRED TWENTY-FIVE THOUSAND ONE HUNDRED AND FORTY-EIGHT (1 425 148), ONE MILLION FOUR HUNDRED TWENTY-FIVE THOUSAND ONE HUNDRED AND FIFTY-ONE (1 425 151), ONE MILLION FOUR HUNDRED TWENTY-FIVE THOUSAND TWO HUNDRED AND FIFTY-SEVEN (1 425 257) and ONE MILLION FOUR HUNDRED TWENTY-FIVE THOUSAND TWO HUNDRED AND EIGHTY (1 425 280) of the Cadastre of Québec, Registration Division of Montréal.

With a building thereon erected bearing civic numbers 2455-2457 Ontario Street East, Montréal, Province of Québec.

However, please note that since we have not been provided with a certificate of location for the purpose of this report, and since we have not examined any cadastral plans mentioned on the Index of Immovables, we are unable to confirm whether or not said cadastral description is accurate and complete.

2. REGISTERED OWNER

On the Date of Certification, JTI MACDONALD CORP appears as the apparent registered owner of the Property, having acquired same from MacDonald Tobacco Inc., in virtue of a Deed of a Transfer registered at Montréal on April 3, 1979, under number 2 961 648 and from the City of Montréal, in virtue of a Deed of Exchange registered at Montréal on May 10, 1984, under number 3 472 346 (collectively the "Title Deed").

3. CERTIFICATE OF LOCATION

No certificate of location was provided for the purpose of this report. Therefore, we cannot express any opinion in respect of discrepancies regarding measurements, the sites of servitudes, the Property's status under municipal by-laws, the existence of encroachments or illegal views, whether the Property is affected by reserves for public purposes, whether it is included in a riparian protection area or in a flood zone, and whether it is affected by airport zoning or would be a vacant or built land.

4. COMMERCIAL LEASES

During the Search Period, no unexpired leases appear to have been registered against the Property, except for the following:

- 4.1 Notice of lease registered at Montréal by TM MOBILE INC. on February 13, 2014 under the number 20 560 155;
- 4.2 Lease registered at Montréal by VILLE DE MONTRÉAL on March 21, 2016 under the number 22 188 579 as modified by the registration of a modification on October 23, 2017 under the number 23 449 518.
- 4.3 Notice of lease registered at Montréal by Telus Communications Inc. on July 27, 2018 under the number 24 032 163 against lot number 1 425 280, of said Cadastre only.

5. SERVITUDES, RESTRICTIONS AND OTHER DISMEMBERMENTS OF THE RIGHT OF OWNERSHIP

During the Search Period, no servitudes, restrictions and other dismemberments of the right of ownership appear to have been registered against the Property, except for the following servitude:

- 5.1 Notice of reserve for public purposes registered at Montréal by the CITY OF MONTRÉAL on April 4, 2011 under the number 18 017 979; and notice of renewal registered on December 17, 2012 under the number 19 643 941;
- 5.2 Servitude in favour of GUY HAGGART *et al.* following the registration at Montréal of a deed on July 15, 1987 under the number 3 905 382;
- 5.3 Servitude in favour of SERVICES DE FOURNISSEURS CASTO LTEE following the registration at Montréal of a deed on October 6, 1986 under the number 3 779 411;
- 5.4 Permit from the CITY OF MONTRÉAL registered at Montréal on March 20, 1985 under the number 3 567 675;
- 5.5 Servitude in favour of VILLE DE MONTRÉAL following the registration at Montréal of a deed on May 10, 1984 under the number 3 472 346.

Please note that certain restrictions are not subject to registration and may affect the Property, such as the rights and uses of Hydro-Quebec in virtue of the *Conditions of Electricity Service* effective April 1, 2009 to install, on the Property, all equipment required for service, delivery, control and metering of electricity, including equipment forming part of the power line (as defined in the *Conditions of Electricity Service*) if any part of the power line is to be used to supply electricity to the Property. Hydro-Québec also has the right to use the subsoil for the installation, maintaining, connection, operation, modification and extension and use and maintenance of the

equipment forming part of Hydro-Québec's power line (as defined in the *Conditions of Electricity Service*) and the right to seal any point where a connection may be made on the line side of the metering equipment.

6. HYPOTHECS AND OTHER CHARGES

During the Search Period, on the Date of Certification, no hypothecs or other charges appear to have been registered on the Index of Immovables against the Property, save and except for the following:

- 6.1 Hypothec granted in favour of TRUST COMPANY OF BANK OF MONTREAL in the amount of \$2,000,000,000 following the registration at Montréal of a deed on December 3, 1999 under the number 5 138 944; as assigned to BNY TRUST COMPANY OF CANADA following the registration at Montréal of a deed on March 24, 2004 under the number 11 169 182.

Please note that, as to those encumbrances which are not subject to immediate registration and that may affect the Property such as legal hypothecs for construction or renovation work made on the Property and prior claims in favour of the Crown, we have no information and have made no investigation.

With respect to other hypothecs or other charges mentioned on the Index of Immovables during the Search Period, we have strictly relied, in accordance with our mandate, on mentions of cancellation recorded in the margins of said indices or of the deeds under the terms of which said rights were created.

7. REALTY TAXES

Municipal taxes and duties on transfers:

Based on our review of the tax statements provided by the municipal authority for the City of Montréal on February 22, 2019, for Fiscal Year 2019, the municipal taxes amount to \$409,986.90 will be due in two instalments, in the amount of \$204,993.45 each, on March 1st and June 3rd, 2019.

As per our said review, no transfer duties are presently due.

School taxes:

Based on our review of the tax statement provided by the Comité de gestion de la taxe scolaire de l'île de Montréal (French and English School Boards) on February 27, 2019, for Fiscal Year 2018-2019, the school taxes amount to \$19,545.77 and are entirely paid.

8. QUALIFICATIONS

Please note that servitudes, substitutions, resolatory clauses and other charges may have been created against the Property under the terms of deeds appearing on the Index of Immovables without having been registered as such at the Land Register. Since we have not performed a complete analysis of all of said registered deeds, we are not able to confirm whether such other rights and charges currently affect the Property or if they were validly created. Therefore, we express no opinion in this regard.

This report has been prepared for the sole benefit of the addressee hereof and shall not be used by any other person without our express written consent.

Yours truly,

havey. de boy LLP



EXHIBIT “U”

This is **Exhibit "U"**, referred to in the
Affidavit of Robert McMaster, sworn before me
this 8th day of March, 2019.



Notary Public

Mitchell Grossell
Barrister & Solicitor
LSO# 699931

LOAN AGREEMENT

THIS LOAN AGREEMENT is dated as of the 25th day of June, 2015.

B E T W E E N:

JTI-MACDONALD CORP., as Borrower

- and -

JT CANADA LLC INC., as Lender

RECITALS:

- A. The Borrower has requested that the Lender make available revolving loans to the Borrower in the aggregate principal amount of CAD\$70,000,000.
- C. The Lender has agreed to provide the Loan on the terms and subject to the conditions set forth herein.

ARTICLE 1 INTERPRETATION

1.1 Definitions

For the purposes of this Agreement:

“**Agreement**” means this agreement and all schedules attached to this agreement, in each case as they may be amended, restated or supplemented from time to time;

“**Applicable Law**” means, in respect of any person, property, transaction or event, all applicable laws, statutes, rules, by-laws and regulations, and all applicable official directives, orders, judgments and decrees of governmental bodies;

“**Business Day**” shall mean any day (other than Saturday or Sunday) in which banks are generally open for business in Toronto, Ontario;

“**Commitment**” shall mean the obligation of the Lender to make Loans pursuant to Section 2.1 hereof in an aggregate principal and stated amount at any one time outstanding up to CAD\$ 70,000,000.00.

“**Default**” means any event or condition which, upon notice, lapse of time, or both, would constitute an Event of Default;

“**Event of Default**” has the meaning attributed to such term in section 7.1;

“**Hypothec**” means the movable hypothec granted by the Borrower in favour of the Lender as security for the Obligations under this Agreement;

“**Interest Rate**” means a rate per annum equal to 2.25 percent;

“**JTI TM**” means JTI-Macdonald TM Corp.;

“**JTI TM Obligations**” means all indebtedness, liabilities and other obligations of the Borrower to JTI TM, whether actual or contingent, direct or indirect, matured or not, now existing or arising hereafter;

“**Loan**” shall mean each loan made by the Lender to the Borrower pursuant to Article 2 hereof, with any and all loans granted pursuant to Article 2 being referred to as “**Loans**”;

“**Loan Documents**” means this Agreement, the Hypothec and any other agreements, instruments and documents delivered from time to time (both before and after the date of this Agreement) to the Lender by the Borrower in connection with this Agreement, in each case as amended, supplemented, modified, restated or replaced from time to time;

“**Note**” shall mean a promissory note of the Borrower payable to the order of the Lender evidencing the Loans made by the Lender as provided for herein substantially in the form of Schedule A hereto, and any promissory note or notes of the Borrower issued in substitution thereof;

“**Permitted Liens**” means

- (a) liens for taxes not yet due or for which installments have been paid based on reasonable estimates pending final assessments, or if due, the validity of which is being contested diligently and in good faith by appropriate proceedings by the Borrower for which reasonable reserves are maintained;
- (b) liens created by judgment of a court of competent jurisdiction, as long as the judgment is being contested diligently and in good faith by appropriate proceedings by the Borrower;
- (c) liens securing the JTI TM Obligations;
- (d) capital and operating leases entered into in the ordinary course of business;
- (e) purchase money security interests and conditional sales agreements entered into in the ordinary course of business;
- (f) liens which are permitted pursuant to the documents evidencing and securing the JTI TM Obligations;
- (g) such other liens as agreed to in writing by the Lender from time to time;

“**Obligations**” means all indebtedness, liabilities and other obligations of the Borrower to the Lender hereunder or under any other Loan Documents, whether actual or contingent, direct or indirect, matured or not, now existing or arising hereafter.

1.2 Invalidation, etc.

Each of the provisions contained in this Agreement is distinct and severable and a declaration of invalidity, illegality or unenforceability of any such provision or part thereof by a court of competent jurisdiction shall not affect the validity or enforceability of any other provision hereof.

1.3 Currency

All monetary amounts in this Agreement are stated in Canadian dollars.

1.4 Governing Law

This Agreement shall be governed by and construed in accordance with the laws of the Province of Ontario and the federal laws of Canada applicable therein.

1.5 Interest Act

For the purposes of the *Interest Act* (Canada) and disclosure under such act, whenever interest to be paid under this Agreement is to be calculated on the basis of a year of 365 days or any other period of time that is less than a calendar year, the yearly rate of interest to which the rate determined pursuant to such calculation is equivalent is the rate so determined multiplied by the actual number of days in the calendar year in which the same is to be ascertained and divided by 365 or such other period of time, as the case may be. The principle of deemed reinvestment of interest does not apply to any interest calculation under this Agreement. The rates of interest stipulated in this Agreement are intended to be nominal rates and not effective rates or yields.

**ARTICLE 2
REVOLVING FACILITY**

2.1 Establishment of Loans

2.1.1 On the terms and subject to the conditions of this Agreement, the Lender shall make Loans to the Borrower, from time to time, in an aggregate principal amount at any one time outstanding up to but not exceeding the amount of its Commitment, provided that the aggregate principal amount of all outstanding Loans immediately after the making of each Loan and giving effect to the application of the proceeds thereof will not exceed the Commitment. Within such limit, the Borrower may borrow, prepay, repay and reborrow pursuant to this Section 2.1.

2.1.2 At least one Business Day prior to a requested Loan, the Borrower shall give the Lender a request for a Loan under this Agreement specifying: (1) the date of such Loan;

and (2) the amount of such Loan. On the date of such Loan and upon fulfillment of the applicable conditions set forth in Article 4 hereof, the Lender will, subject to the provisions of Section 2.1 hereof, make such Loan available to the Borrower in immediately available funds.

2.1.3 Each Loan is to be used for working capital purposes.

ARTICLE 3

PAYMENTS

3.1 Interest

3.1.1 Interest shall accrue at the Interest Rate.

3.1.2 Interest on the outstanding principal amount of each Loan shall accrue from day to day, both before and after demand, default or judgment, shall be calculated on the basis of the number of days elapsed and on the basis of a year of 365 or 366 days, as the case may be, and shall accrue and be payable in arrears on the date of any demand made by the Lender.

3.2 Evidence of Obligations and the Note

The Lender shall maintain an account evidencing the indebtedness and liabilities of the Borrower hereunder and the amounts of principal, interest and other amounts owing and paid from time to time hereunder. Such accounts maintained by the Lender shall, at all times and for all purposes, be conclusive evidence of the existence and amounts of the obligations of the Borrower therein recorded, absent manifest error.

The Loans shall be evidenced by a single Note payable to the order of the Lender. The amount of each Loan and each repayment or prepayment of principal shall be endorsed by the Lender on the schedule annexed to and constituting a part of such Note, provided that the failure to make or any error in making any such endorsement on such schedule shall not limit, extinguish or in any way modify the obligation of the Borrower to repay such Loan. Such endorsements shall be *prima facie* evidence of the aggregate unpaid principal amount of all Loans made by the Lender.

3.3 Repayment

3.3.1 The Borrower shall repay the principal amount of any Loan and all interest accrued thereto on demand by the Lender.

3.3.2 If at any time the aggregate principal amount of the Loans outstanding exceeds the Commitment, the Borrower shall forthwith prepay the Loans then outstanding in an amount equal to such excess, together with accrued interest thereon.

3.4 Prepayment

3.4.1 The Borrower may prepay any Loan in whole or in part at any time.

3.4.2 Any such prepayment shall be accompanied by payment of all interest accrued thereon to the date of prepayment as well as other amounts due and payable on the date of prepayment in respect of the principal amount being so prepaid.

3.5 Application of Payments

All amounts prepaid or repaid shall be applied firstly in reduction of the accrued and unpaid interest then outstanding in respect of the principal amount being prepaid or repaid and thereafter in reduction of the principal amount of the Loan then outstanding.

3.6 Indemnity

The Borrower shall indemnify the Lender for all losses, costs, expenses, damages and liabilities which the Lender may sustain or incur as a consequence of any default by the Borrower to repay any Obligations when required by the terms of this Agreement.

ARTICLE 4 REPRESENTATIONS AND WARRANTIES

4.1 Representations and Warranties

The Borrower represents and warrants to the Lender, acknowledging and confirming that the Lender is relying thereon without independent inquiry, that:

4.1.1 **Incorporation and Qualification.** The Borrower is a corporation duly incorporated, and validly existing under the laws of its jurisdiction of incorporation and is duly qualified, licensed or registered to carry on business under the laws applicable to it in all jurisdictions in which the nature of its assets or business makes such qualification necessary.

4.1.2 **Corporate Power.** The Borrower has all requisite corporate power and authority to (i) own and operate its properties and assets and to develop, own and operate its business; and (ii) to enter into and perform its obligations under this Agreement.

4.1.3 **Conflict With Other Instruments.** The execution and delivery of this Agreement by the Borrower and the performance by the Borrower of its obligations hereunder and compliance with the terms, conditions and provisions hereof, will not conflict with or result in a breach of any of the terms, conditions or provisions of (i) its constituting documents or by-laws, or (ii) any Applicable Law.

4.1.4 **Execution and Binding Obligation.** This Agreement has been duly executed and delivered by the Borrower and constitutes a legal, valid and binding obligation of the Borrower, enforceable against it in accordance with its terms, subject only to any limitation

under applicable laws relating to (i) bankruptcy, insolvency, reorganization, moratorium or creditors' rights generally; and (ii) the discretion that a court may exercise in the granting of equitable remedies.

4.1.5 **Security.** Upon registration of the Hypothec, all filings and other actions necessary to perfect and protect the security interest in the collateral created by the Hypothec have been duly made or taken and are in full force and effect and the Hypothec creates in favour of the Lender a valid and, together with such filings and other actions, perfected security interest in the collateral charged therein (subject only to Permitted Liens), securing the payment of the obligations secured thereby, and all filings and other actions necessary or desirable to protect and perfect such security interest have been duly taken.

4.2 **Survival of Representations and Warranties**

The Borrower covenants that the representations and warranties set out in section 4.1 shall be true and correct on each day that any of the Obligations are outstanding, with the same effect as if such representations and warranties had been made and given on and as of such day, notwithstanding any investigation made at any time by the Lender.

ARTICLE 5 COVENANTS

5.1 **Affirmative Covenants**

So long as any Obligations remain outstanding, the Borrower covenants and agrees that:

5.1.1 **Punctual Payment.** It shall pay all Obligations falling due hereunder on the dates and in the manner specified herein;

5.1.2 **Use of Proceeds.** It shall use the proceeds of the Loan solely for the purpose identified in Section 2.1.3.;

5.1.3 **Existence.** it shall do or cause to be done all things necessary or desirable to maintain its corporate existence and its corporate power and capacity to own its property and assets;

5.1.4 **Compliance with Applicable Law.** It shall comply in all material respects with the requirements of all Applicable Law;

5.1.5 **Payment of Taxes and Claims.** It shall cause to be paid and discharged all material taxes and claims payable by it;

5.1.6 **Information.** The Borrower shall promptly upon request, deliver such financial or other information of the Borrower as the Lender may request;

5.1.7 **Notice.** The Borrower shall provide the Lender with prompt notice of any Default or Event of Default.

5.2 Negative Covenants

So long as any Obligations remain outstanding, the Borrower covenants and agrees that it will not:

5.2.1 **Restriction on Indebtedness.** create, incur or permit to exist any indebtedness, liabilities or obligations other than (i) the Obligations; (ii) the JTI TM Obligations; (iii) trade payables, operating lease obligations and accrued liabilities incurred in the ordinary course of business; (iv) obligations pursuant to or secured pursuant to Permitted Liens; and (v) other indebtedness that the Lender has consented to in writing;

5.2.2 **Restrictions on Liens.** create, incur, assume or permit to exist any lien on any of its property, assets or undertaking charged by the Hypothec other than Permitted Liens;

5.2.3 **Restrictions on Investments.** make, directly or indirectly, (i) any investment or acquisition of any equity or other interests in any Person or (ii) make a loan or advance to any Person outside of the ordinary course of business; and

5.2.4 **Merger, Consolidation, etc.**

5.2.4.1 merge, consolidate or amalgamate with or into any other person;

5.2.4.2 dissolve, wind-up or liquidate; or

5.2.4.3 sell, lease, transfer or otherwise dispose of all or substantially all of its assets or properties whether in any single transaction or one or more transactions in the aggregate.

5.3 Lender Entitled to Perform Covenants

If the Borrower fails to perform any covenant contained in section 5.1 the Lender may, in its discretion, perform any such covenant capable of being performed by it and if any such covenant requires the payment of money the Lender may make such payments. All sums so expended by the Lender shall be deemed to form part of the Obligations, shall bear interest at the Interest Rate and shall be payable by the Borrower on demand.

ARTICLE 6 CONDITIONS PRECEDENT

6.1 Conditions Precedent

The obligation of the Lender to extend the initial Loan is subject to the fulfilment of the following conditions:

6.1.1 The Lender shall have received the following, each in form and substance satisfactory to the Lender:

6.1.1.1 This Agreement, duly executed by an authorized officer or director of the Borrower.

6.1.1.2 The Hypothec, duly executed by an authorized officer or director of the Borrower and evidence of registration.

6.1.1.3 A certificate of an authorized officer of the Borrower, certifying, among other things, as to (w) the organizational documents and by-laws of the Borrower, (x) resolutions of the board of directors of the Borrower authorizing the Borrower to execute, deliver and perform this Agreement and any other Loan Documents to which it is a party; and (y) the names and signatures of the officers of the Borrower authorized to execute this Agreement and the other Loan Documents to which it is a party.

6.1.1.4 Favourable opinions of counsel to the Borrower in the jurisdiction of formation and in each jurisdiction as is relevant to confirm corporate existence, good standing, due authorization, execution and enforceability of all Loan Documents and the validity and perfection of the lien created by the applicable Loan Documents.

6.1.1.5 Such other agreements, instruments, approvals, opinions and documents as the Lender may reasonably request.

6.1.2 No Default or Event of Default shall have occurred and be continuing or would result from the extension of credit contemplated herein.

6.1.3 The entering into of this Agreement and the extension of credit contemplated herein shall not contravene any Applicable Law.

6.2 Continuing Conditions

The obligation of the Lender to extend any Loan is subject to the fulfilment of the following conditions on the date of such Loan:

6.2.1 No Default or Event of Default shall have occurred and be continuing or would result from the extension of such Loan.

6.2.2 The representations and warranties contained in Article 4 hereof shall be true and correct with the same force and effect as though made on and as of such date.

ARTICLE 7
EVENTS OF DEFAULT AND REMEDIES

7.1 Events of Default

The occurrence of any of the following events shall constitute an Event of Default:

7.1.1 the Borrower fails to pay any principal amount of the Loan or interest or any other amounts owing under this Agreement, in each case when such amount becomes due and payable;

7.1.2 the Borrower fails to comply with any covenant, condition or obligation contained in this Agreement unless such failure, if capable of being remedied, is remedied within 5 days after notice thereof by the Lender to the Borrower;

7.1.3 any representation or warranty made or deemed to be made by the Borrower in this Agreement shall prove to have been incorrect in any material adverse respect when made or deemed to be made and if the circumstances giving rise to such inaccurate representation or warranty are capable of rectification (such that, thereafter, the representation or warranty would be correct) the representation or warranty remains uncorrected for 10 days; and

7.1.4 the Borrower ceases or threatens to cease to carry on its business.

7.2 Remedies Upon Default

Upon the occurrence of any Event of Default, the Lender may at its sole option:

7.2.1 declare all Obligations to be immediately due and payable, and

7.2.2 take such actions and commence such proceedings as may be permitted at law or in equity (whether or not provided for herein) at such times and in such manner as the Lender in its sole discretion may consider expedient,

all without, except as may be required by Applicable Law, any additional notice, presentment, demand, protest, notice of protest, dishonour or any other action. The rights and remedies of the Lender hereunder are cumulative and are in addition to and not in substitution for any other rights or remedies provided by Applicable Law.

**ARTICLE 8
GENERAL**

8.1 Amendment and Waiver

No amendment or waiver of any provision of this Agreement or consent to any departure by the Borrower from any provision thereof is effective unless it is in writing and signed by the Lender. Such amendment, waiver or consent shall be effective only in the specific instance and for the specific purpose for which it is given.

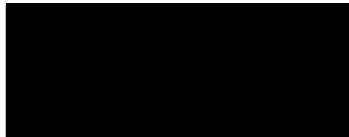
8.2 Notices

Any notice or other communication required or permitted to be given hereunder shall be in writing and shall be given by facsimile, email or by hand-delivery as hereinafter provided. Notices and other communications shall be addressed as follows:

8.2.1 if to the Borrower:

JTI-Macdonald Corp.
Suite 1601
1 Robert Speck Parkway
Mississauga ON L4Z 0A2

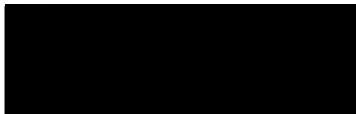
Attention:
Facsimile:
Email:



8.2.2 if to the Lender:

JT Canada LLC Inc.
Suite 1601
1 Robert Speck Parkway
Mississauga ON L4Z 0A2

Attention:
Facsimile:
Email:



8.3 Enurement and Assignment

This Agreement shall enure to the benefit of and be binding upon the parties hereto, their respective successors and any permitted assigns.

8.4 Further Assurances

Whether before or after the happening of an Event of Default, the Borrower shall at its own expense do, make, execute or deliver all such further acts, documents and things in connection with this Agreement and the Loan Documents as the Lender may reasonably require from time to time for the purpose of giving effect thereto, all promptly upon the request of the Lender.

[Remainder of this page intentionally left blank]

IN WITNESS WHEREOF the parties hereto have executed this Agreement as of the date written above.

JT CANADA LLC INC.

Per: 
Name: _____
Title: **DIRECTOR**

Per: 
Name: _____
Title: **VICE PRESIDENT**

JTI-MACDONALD CORP.

Per: 
Name: _____
Title: **CHIEF FINANCIAL OFFICER**

Per: 
Name: _____
Title: 
AMERICAS REGIONAL CFO

SCHEDULE A

DEMAND PROMISSORY NOTE

CAD\$70,000,000

June 25, 2015

FOR VALUE RECEIVED, JTI-MACDONALD CORP. (the “**Borrower**”) unconditionally promises to pay to the order of **JT CANADA LLC INC.** (the “**Lender**”), to and for any account designated by the Lender, the principal sum of up to SEVENTY MILLION CANADIAN DOLLARS (CAD\$70,000,000) or such lesser amount as may be outstanding from time to time hereunder and to pay interest thereon at such rates and according to such methods of calculation as are provided pursuant to the Credit Agreement dated as of June 25, 2015, between the Borrower and the Lender (as the same may be amended, supplemented, or otherwise modified from time to time, the “**Credit Agreement**”). The Borrower hereby authorizes the Lender to enter on the annex attached hereto the dates, amounts and denomination applicable to each borrowing and absent manifest error such notations shall be binding and conclusive upon the Borrower; provided, however, that failure by the Lender to make any notation on such schedule or any error in such notations shall in no way affect the Borrower’s obligation to repay outstanding amounts on this Note.

The outstanding principal of this Note and any accrued interest thereon shall be repaid on demand and as set forth in the Credit Agreement. The Interest Rate shall be 2.25% per annum.

All payments of principal and interest on this Note shall be payable in lawful money of Canada in immediately available funds without set-off, defense or counterclaim.

This Note is issued pursuant to the terms of the Credit Agreement and is subject to the terms and conditions and entitled to the benefits therein provided. Upon the occurrence of an Event of Default (as defined in the Credit Agreement), the principal of and the accrued interest on this Note may become due and payable in the manner and with the same effect as provided in the Credit Agreement, without presentment, demand, protest or notice of any kind unless otherwise expressly required therein.

Failure or delay of the holder of this Note to enforce any provision of this Note shall not be deemed a waiver of any such provision, nor shall the holder of this Note be estopped from enforcing any such provision at a later time. Any waiver of any provision hereof must be in writing. This Note shall be governed by and interpreted in accordance with the laws of the Province of Ontario and the federal laws of Canada applicable therein.

[Signature page follows]

JTI-MACDONALD CORP.

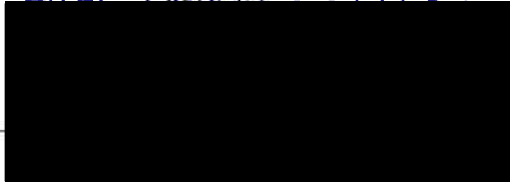
By:

Name:

Title:



CHIEF FINANCIAL OFFICER



By:

Name:

Title:

AMERICAS REGIONAL CFO

ANNEX TO THE NOTE

Date	Amount of Loan	Amount of Loan Repaid	Principal Balance	Notation Made By

EXHIBIT “V”

This is **Exhibit "V"**, referred to in the
Affidavit of Robert McMaster, sworn before me
this 8th day of March, 2019.



Notary Public

Mitchell Grossell
Barrister & Solicitor
LSO# 69993I

HYPOTHEC ON THE UNIVERSALITY OF MOVABLE PROPERTY

GRANTED BY: **JTI-MACDONALD CORP.**, a corporation governed by the *Canada Business Corporations Act*, having its registered office at 1 Robert Speck Parkway, Suite 1601, Mississauga, Ontario L4Z 0A2.

(the "**Grantor**")

IN FAVOUR OF: **JT CANADA LLC INC.**, a corporation governed by the laws of the Province of Nova Scotia, having its registered office at 1300-1969 Upper Water Street, Purdy's Wharf Tower II, Halifax, Nova Scotia B3J 3R7.

(the "**Creditor**")

1. HYPOTHEC: DESCRIPTION OF CHARGED PROPERTY

The Grantor hereby hypothecates in favour of the Creditor the universality of its moveable property, corporeal and incorporeal, present and future, of any nature whatsoever and wheresoever situated (hereinafter the "**Charged property**") and, with respect to incorporeal or intangible property, property located outside of the Province of Québec or used in more than one jurisdiction, creates a security interest in the Charged property (the hypothec and the security interest hereinafter collectively referred to as the "**Hypothec**"), the whole including without limitation the following universalities of present and future properties:

1.1 Inventory

All inventory of any nature and kind of the Grantor whether in its possession, in transit or held on its behalf, including raw materials or other materials, goods manufactured or transformed, or in the process of being so, by the Grantor or by others, packaging materials, property evidenced by bill of lading, animals, mineral substances, hydrocarbons and other products of the soil as well as all fruits thereof, from the time of their extraction (hereinafter the "**Inventory**").

The Inventory held by third parties pursuant to a lease agreement, a leasing contract, a franchise or license agreement, or any other agreement entered into with the Grantor or on its behalf, is also subject to this Hypothec.

Property having formed part of the Inventory which has been alienated by the Grantor in favour of a third person but in respect of which the Grantor has retained title pursuant to a reservation of ownership provision, shall remain charged by the Hypothec until title is transferred; any Inventory the ownership of which reverts to the Grantor pursuant to the resolution or resiliation of any agreement is also subject to the Hypothec.

1.2 Claims, Book Debts and Other Movable Property

1.2.1 Claims, Receivables and Book Debts

All of the Grantor's claims, debts, demands and choses in action, whatever their cause or nature, whether or not they are certain, liquid or exigible; whether or not evidenced by any title (and whether or not such title is negotiable), bill of exchange or draft; whether litigious or not; whether or not they have been previously or are to be invoiced; whether or not they constitute book debts. Hypothecated claims shall include: (i) indemnities payable to the Grantor under any contract of liability insurance, insurance of persons or subject to the rights of creditors holding hypothecs on the insured property, (ii) the sums owing to the Grantor in connection with interest or currency exchange contracts ("SWAPS") and other treasury or hedging instruments, management of risks instruments or derivative products existing in favour of the Grantor, and (iii) the Grantor's rights in the credit balance of accounts held for its benefit either by the Creditor or by any financial institution or any other person.

1.2.2 Rights of Action

The Grantor's rights under contract with third parties as well as the Grantor's rights of action and claims against third persons.

1.2.3 Accessories

All the securities, security agreements, guarantees, suretyships, notes and accessories to the claims and rights mentioned above and other rights relating thereto (including, without limitation, the rights of the Grantor in its capacity as seller under an instalment sale or a conditional sale, where the claims are the result of such sale).

1.2.4 Movable Property

All movable property owned by the Grantor and covered by the instalment or conditional sales mentioned in paragraph 1.2.3 hereof.

A right or a claim shall not be excluded from the Charged property by reason of the fact that: (i) the debtor thereof is domiciled outside the Province of Québec or (ii) the debtor thereof is an affiliate (as such term is defined in the *Canada Business Corporations Act*) of the Grantor (regardless of the law of the jurisdiction of its incorporation) or (iii) such right or claim is not related to the operation of the Grantor or (iv) such right or claim is not related to the ordinary course of business of the Grantor.

1.3 Securities, financial assets and security entitlements

All shares, limited partnership units, trust units, stock, warrants, bonds, debentures, debenture stock and other securities, financial assets and security entitlements (as such terms are defined in the *Act respecting the transfer of securities and the establishment of security entitlements* (Québec)) in which the Grantor now or hereafter has an interest, and any part thereof, together with any renewals thereof, substitutions therefor and additions thereto and all certificates and instruments evidencing or representing such securities and any and all other property that may at

any time be received or receivable by or otherwise distributed to or acquired by the Grantor in any manner in respect of, or in substitution for, or in addition to, or in exchange for, or on account of, any of the foregoing, including, without limitation, any shares or other securities or interests resulting from the subdivision, consolidation, change, conversion or reclassification of any of the securities, or the occurrence of any event which results in the substitution or exchange of such interests, as well as all those which are delivered by the Grantor to the Creditor or to a third party on its behalf from time to time and those listed in Schedule "A" hereto (collectively, the "**Hypothecated Securities**").

1.4 Equipment and Road Vehicles

All the equipment, office furniture, tools, machinery, rolling stock (including road vehicles), spare parts and additions.

1.5 Trade Marks and Other Intellectual Property Rights

All of the Grantor's rights in any trade mark, copyright, industrial design, patent, invention, trade secret, know-how, plant breeders' right, topography of integrated circuits and in any other intellectual property right (registered or not) including, if any, improvements and modifications thereto as well as rights in any action pertaining to the protection, in Canada or abroad, of any such intellectual property rights, including those listed in Schedule "A".

1.6 Fruits and Revenues

All fruits and revenues emanating from the above Charged property, including without limitation equipment, negotiable instruments, bills, commercial paper, securities, monies, compensation for expropriation given or paid following a sale, repurchase, distribution or any other operation concerning any property hereby charged in favour of the Creditor or which has been charged under any other deed.

1.7 Records and Others

All records, data, vouchers, invoices and other documents related to the Charged property described above, including without limitation computer programs, disks, tapes and other means of electronic communications as well as the rights of the Grantor to recover such property from third parties, receipts, client lists, directories and other similar property.

Where, under the terms of any of the above paragraphs, the Hypothec charges a universality of property, all property which is acquired, transformed or manufactured after the date of this agreement shall be charged by the Hypothec, whether or not such property has been acquired in replacement of other Charged property which may have been alienated by the Grantor in the ordinary course of business, whether or not such property results from a transformation, mixture or combination of any Charged property, and in the case of securities, whether or not they have been issued pursuant to the purchase, redemption, conversion or cancellation or any other transformation of the charged securities and without the Creditor being required to register or re-register any

notice whatsoever, the object of the Hypothec being a universality of present and future property.

2. AMOUNT OF THE HYPOTHEC

The amount for which the Hypothec is granted for a principal amount of \$84,000,000 with interest thereon from the date of this Agreement at the rate of twenty-five percent (25%) per annum.

3. SECURED OBLIGATIONS

The Hypothec secures the Obligations (as such term is defined in a loan agreement dated as of June 25, 2015 between the Grantor and the Creditor, as such agreement may be amended, restated, supplemented or replaced from time to time (the "**Loan Agreement**")). The Hypothec further secures the payment of all sums due or to become due pursuant to the present deed and the performance of all obligations provided for under the present deed.

Any future obligation hereby secured shall be deemed to be one in respect of which the Grantor has once again obligated itself hereunder according to the provisions of section 2797 of the *Civil Code of Québec*.

4. ADDITIONAL PROVISIONS TO THE HYPOTHEC ON CLAIMS

4.1 Recovery

The Creditor may recover all claims and other Charged property referred to in paragraph 1.2, in accordance with what is provided for by law; it may further exercise any rights regarding such property and more particularly, it may grant or refuse any consent which may be required from the Grantor in its capacity as owner of such property, and shall not, in the exercise of such right, be required to obtain the consent of the Grantor or serve the Grantor any notice thereof, nor shall it be under any obligation to establish that the Grantor has refused or neglected to exercise such rights, grant delays, take or abandon any security, transact with debtors of the hypothecated claims, make compromises, grant releases and generally deal at its discretion with matters concerning all Charged property referred to in paragraph 1.2 without the intervention or consent of the Grantor.

4.2 Authorization to Recover

Save and except for claims resulting from an expropriation and those referred to in Section 5 hereof and save for any other claims whose collection is otherwise dealt with pursuant to the Loan Agreement, the Creditor hereby authorizes the Grantor to collect the claims and other Charged property referred to in paragraph 1.2. Such authorization may be withdrawn at any time by the Creditor following the occurrence of an Event of Default (as such term is defined below) which is continuing with respect to all or any part of the hypothecated claims, and the Creditor may effect such collection and shall then

be entitled to any of the rights referred to in paragraph 4.1 above; the Grantor shall then remit to the Creditor all records, books, invoices, bills, contracts, titles, papers and other documents related to the claims. If, after such authorization is withdrawn (and even if such withdrawal is not yet registered or delivered to the holders of such claims), sums payable under such claims and property are paid to the Grantor, it shall receive same as mandatary of the Creditor and shall remit same to the Creditor promptly without the necessity of any demand to this effect.

5. ADDITIONAL PROVISIONS TO THE HYPOTHEC ON SECURITIES AND SECURITY ENTITLEMENTS

5.1 Delivery of Hypothecated Securities

The Grantor shall, as promptly as reasonably practicable and to the extent permitted by applicable law, and upon request of the Creditor following the occurrence of an Event of Default which is continuing, deliver and pledge to the Creditor, by delivering same to it or its then designated nominee, such share certificates and other instruments endorsed in blank or accompanied by appropriate powers of attorney for transfer in blank, duly executed, representing the Hypothecated Securities (the "**Pledged Shares**"), along with a certified copy of a resolution of the board of directors of each issuer of such Hypothecated Securities, or such other appropriate authority, in form and substance satisfactory to the Creditor having regard to the applicable constating documents of such issuer, approving the transfer(s) contemplated by this Agreement, including any prospective transfer of the Hypothecated Securities by the Creditor upon realization on the Hypothec.

Should the delivery and pledge of Hypothecated Securities described in the immediately preceding paragraph not be possible by reason of such Hypothecated Securities being uncertificated or for any other reason, the Grantor shall cause the issuer thereof, as promptly as reasonably practicable:

5.1.1 to register the Creditor, or its agent or nominee, as the Creditor may direct, as the registered owner of such Hypothecated Securities; or

5.1.2 cause to be delivered to the Creditor an irrevocable agreement of the issuer of such Hypothecated Securities satisfactory to the Creditor that the issuer will comply with instructions that are originated by the Creditor without the further consent of the Grantor and sufficient to provide the Creditor "control" of the securities and financial assets (within the meaning of the *Act respecting the transfer of securities and the establishment of security entitlements* (Québec)) and maintain first priority of the Hypothec on such securities and financial assets.

5.2 Registration in Name of Creditor

The Creditor may also request, after the occurrence of an Event of Default which is continuing, that the Grantor cause, and the Grantor shall then cause, such of the Hypothecated Securities to be registered in the name of the Creditor or its nominee and, if then requested by the Creditor, transfer such Hypothecated Securities into the name

of the Creditor or its nominee, so that the Creditor or its nominee may appear as the sole owner of record of such Hypothecated Securities or if any such Hypothecated Securities are at any time registered or recorded in records maintained by or on behalf of the issuer thereof in the name of a clearing agency or a custodian or of a nominee of either, the Grantor will cause an appropriate entry to be made in the records of the clearing agency or custodian to record the interest of the Creditor in such Hypothecated Securities or instruments created pursuant to this Agreement.

5.3 Notices and Other Communications in Respect of Hypothecated Securities

Until the occurrence of an Event of Default which is continuing, the Creditor shall deliver promptly to the Grantor all notices or other communications received by the Creditor in respect to any Hypothecated Securities. After the occurrence of an Event of Default which is continuing, the Grantor waives all rights to receive any notices or communications received by the Creditor or its nominee in respect of the Hypothecated Securities.

5.4 Voting and Other Rights

- 5.4.1** Until the occurrence of an Event of Default which is continuing, the Grantor shall be entitled to exercise all voting rights in respect of the Hypothecated Securities and to give consents, waivers, directions, notices and ratifications and to take other actions in respect thereof.
- 5.4.2** Until the occurrence of an Event of Default which if continuing, if any of the Hypothecated Securities are registered in the Creditor's, its agent's or nominee's name, the Creditor, on the Grantor's written request, shall execute and deliver or cause its agent or nominee to execute and deliver to the Grantor suitable proxies, voting powers or powers of attorney in favour of the Grantor or its nominee or nominees for voting, giving consents, waivers, directions, notices or ratifications or taking any other action the Grantor is permitted to take in respect of the Hypothecated Securities.
- 5.4.3** Until the occurrence of an Event of Default which is continuing, the Grantor shall be entitled to receive and deal with (except as restricted by this Agreement or the Loan Agreement) any distributions or dividends at any time payable on or with respect to the Hypothecated Securities, and the Creditor shall immediately deliver to the Grantor any distributions or dividends received by the Creditor.
- 5.4.4** Upon the occurrence of an Event of Default which if continuing, the Grantor's rights pursuant to Sections 5.4.1, 5.4.2 and 5.4.3 shall cease and the Creditor may enforce and exercise any of the Grantors' rights with respect to the Hypothecated Securities. Upon an Event of Default which is continuing, the Grantor shall and shall be deemed to hold all Hypothecated Securities not under the control of the Creditor as mandatary, separate and apart from other property and assets of the Grantor, for the benefit of the Creditor, until all obligations secured

hereunder have been paid in full, and shall forthwith transfer control of such Hypothecated Securities to the Creditor, or its nominee or agent, as the Creditor may direct. The Creditor and its nominee shall not have any duty of care with respect to the Hypothecated Securities other than to use the same care in the custody and preservation of the Hypothecated Securities as it would with its own property. The Creditor or its nominee may take no steps to defend or preserve the Grantor's rights against the claims or demands of others. The Creditor or its nominee, however, shall use its reasonable best efforts to give the Grantor notice of any claim or demand of which it becomes aware to permit such Grantor to have a reasonable opportunity to defend or contest the claim or demand.

Any and all money and other property paid over to or received by the Creditor pursuant to Section 5.4.4 shall be retained by the Creditor as additional Charged property hereunder and applied in accordance with the provisions hereof.

6. EVENTS OF DEFAULT

The Grantor shall be in default hereunder upon the occurrence, without notice or other formality, of any of the following events (each, an "**Event of Default**"):

- 6.1.1** An Event of Default (as such term is defined in the Loan Agreement) has occurred and is continuing; or
- 6.1.2** The Grantor fails to perform any covenant hereunder, unless such failure, if capable of being remedied, is remedied within five (5) days after notice thereof by the Creditor to the Grantor.

7. CREDITOR'S RECOURSES IN CASE OF DEFAULT

7.1 Creditor's rights

Upon the occurrence of an Event of Default which is continuing, the Creditor may exercise whichever rights or recourses the Creditor may have under the law or in equity, and the following provisions shall apply:

- 7.1.1** In order to protect or to realize the value of the Charged property, the Creditor may, at its entire discretion, at the Grantor's expense:
 - 7.1.1.1** pursue the transformation of the Charged property or any work in process or unfinished goods comprised in the Charged property and complete the manufacture or processing thereof or proceed with any operations to which such property are submitted by the Grantor in the ordinary course of its business and acquire property for such purposes;

- 7.1.1.2** alienate or dispose of any Charged property which may be obsolete, may perish or is likely to depreciate rapidly;
 - 7.1.1.3** use for its benefit all information obtained while exercising its rights;
 - 7.1.1.4** perform any of the Grantor's obligations;
 - 7.1.1.5** exercise any right attached to the Charged property;
 - 7.1.1.6** for the exercise any of its rights, use the premises in which the Grantor's property is located or the equipment, machinery, process, information, records, computer programs and intellectual property of the Grantor;
 - 7.1.1.7** borrow monies or lend monies and, in such cases the monies borrowed or lent by the Creditor shall bear interest at the rate then obtained by the Creditor in the case of monies borrowed or determined reasonably by the Creditor in the case of monies lent by it; these monies shall be reimbursed by the Grantor on demand and, until they have been repaid in full, such monies and interest thereon shall be secured by the present Hypothec and be paid in priority of any other sums secured hereby;
 - 7.1.1.8** ensure the maintenance or repair, restore or renovate, begin or terminate any construction work related to the Charged property, the whole at the Grantor's costs;
- 7.1.2** The Creditor shall exercise its rights in good faith, in order that, following the exercise thereof, the obligations secured by the Hypothec be reduced, in a reasonable manner, taking into account all circumstances;
- 7.1.3** The Creditor may, directly or indirectly, purchase or otherwise acquire the Charged property;
- 7.1.4** The Creditor, when exercising its rights, may waive any right of the Grantor, with or without consideration therefor;
- 7.1.5** The Creditor shall not be bound to make an inventory, to take out insurance or to grant any other security;
- 7.1.6** The Creditor shall not be bound to continue to carry on the Grantor's enterprise or to make the Charged property productive, or to maintain such property in operating condition;
- 7.1.7** The Grantor shall, upon request of the Creditor, move the Charged property and render it available to the Creditor unto premises

designated by the Creditor and which, in its opinion, shall be more suitable in the circumstances.

- 7.2** If the Grantor exercises its right to remedy the Event of Default mentioned in the prior notice of default, the Grantor shall, as the law requires it, pay all fees incurred by the Creditor by reason of the default; these fees shall include without limitation the administrative fees of the Creditor, the legal fees of its legal advisers and fees paid to experts.
- 7.3** If the Creditor elects to exercise its hypothecary right of taking in payment the Charged property and the Grantor requires instead that the Creditor sell itself or under judicial authority the Charged property on which such right is exercised, the Grantor hereby acknowledges that the Creditor shall not be bound to abandon its recourse of taking in payment unless, prior to the expiry of the time period allotted for surrender, the Creditor (i) has been granted a security which it considers satisfactory, guaranteeing that said Charged property will be sold at a sufficiently high price to enable its claim to be paid in full; (ii) has been reimbursed of all costs and expenses incurred, including all fees of consultants and legal counsel, (iii) has been advanced the necessary sums for the sale of said Charged property; the Grantor further acknowledges that the Creditor shall have the right to choose the type of sale it may carry out.
- 7.4** The Grantor will be deemed to have surrendered the Charged property held by the Creditor or on its behalf if the Creditor has not, within the delays determined by law or by a tribunal to surrender, received written notice from the Grantor to the effect that it is opposed to the exercise of the hypothecary recourse set forth in the prior notice.
- 7.5** Where the Creditor sells the Charged property itself, it shall not be required to obtain any prior assessment by a third party.
- 7.6** The Creditor may choose to sell the Charged property with legal warranty given by the Grantor or with complete or partial exclusion of such warranty; the sale may also be made cash or with a term or under such conditions determined by the Creditor; it can be cancelled in case of non-payment of the purchase price and such Charged property may then be resold.

8. GENERAL PROVISIONS

8.1 Additional Security

The Hypothec is hereby created in addition to and not in substitution of or in replacement for any other hypothec or security held by the Creditor and does not affect the Creditor's rights of compensation and set-off.

8.2 Investments

The Creditor may, at its entire discretion, invest any monies or instruments received or held by it in pursuance of this agreement or deposit them in a non-interest bearing account without having to comply with any legal provisions concerning the investment of property of others.

8.3 Set-off

Provided the obligations secured hereby are due and exigible or that the Creditor is entitled to declare them owing and exigible, the Creditor may compensate and set-off these obligations with any and all amounts due by it to the Grantor, on any account whatsoever, may this amount be exigible or not, and the Creditor shall then be deemed to have exercised such right to compensate and set-off as at the time the decision was taken by it even though the appropriate entries have not yet been made in its records.

8.4 Imputation of Payments

The Creditor may, at its entire discretion, impute and apply any amounts collected in the exercise of its rights or received by it prior to or after an Event of Default in any manner as it may choose, without having to comply with legal provisions concerning the imputation of payments. The Creditor may also, at its entire discretion, hold such amounts as Charged property or choose not to impute them and keep them in a collateral account until such time as any contingent obligation to pay prior claims has ceased to exist.

8.5 Delays

The Creditor may grant delays, take or abandon any security, make compromises, grant acquittances and releases and generally deal, at its entire discretion, with any matters related to the Charged property, the whole without limiting the rights of the Creditor and without limiting the liability of the Grantor.

8.6 Continuing Security

The Hypothec shall be a continuing security and shall remain in full force and effect despite the repayment from time to time, of the whole or of any part of the obligations secured hereunder; it shall remain in full force until the execution of a final release by the Creditor.

8.7 Notice of Default

The mere lapse of time provided for the Grantor to perform its obligations or the arrival of the term shall automatically create a default, without any obligation for the Creditor to serve any notice or prior notice to the Grantor.

8.8 Cumulative Rights

The exercise by the Creditor of any of its rights shall not preclude it from exercising any other right under this agreement or the law; the rights of the Creditor

shall be cumulative and not alternative. The non-exercise by the Creditor of one of its rights shall not constitute a waiver of any subsequent exercise of such right. The Creditor may exercise its rights under this agreement without any obligation to exercise any right against any other person liable for payment of the obligations secured hereunder and without having to realize any other security which secures such obligations.

8.9 Irrevocable power of attorney

The Creditor is hereby appointed as the irrevocable attorney of the Grantor with full powers of substitution for the purpose of paragraph 8.10 or for the purpose of carrying out any and all acts and execute any and all deeds, proxies or other documents which it may deem useful in order to exercise its rights or any rights which the Grantor neglects or refuses to execute or to carry out.

8.10 Performance

The Creditor may, at its entire discretion, perform any of the Grantor's liabilities under this Agreement. It may then immediately request payment of any expense incurred in doing so, and such repayment is secured by the Hypothec.

8.11 Delegation

The Creditor may, at its entire discretion, appoint any person or persons for the purpose of exercising any of its rights or actions or for the performance of any of its obligations resulting from this agreement or under the law or in equity; in such case, the Creditor may provide such person with any information relating to the Grantor or the Charged property.

8.12 Liability

The Creditor shall not be liable for material injuries or damages resulting from its fault, unless such fault is gross or intentional.

8.13 Successors

The rights hereby conferred upon the Creditor shall benefit all its successors, including any entity resulting from the merger of the Creditor with any other person or persons.

8.14 Notices

Any notice to be given hereunder to either party shall be delivered in accordance with the provisions of the Loan Agreement.

8.15 Governing Law

This Agreement shall be governed by and construed in accordance with the laws of the Province of Québec, including the rules related to conflicts of laws provided for thereunder.

9. ENGLISH LANGUAGE

The parties hereto confirm that the present agreement has been drawn up in the English language at their request. *Les parties aux présentes confirment que la présente convention a été rédigée en langue anglaise à leur demande.*

SIGNED this 26th day of June, 2015.

JTI-MACDONALD CORP.
per : 
Name: 
Title: **CHIEF FINANCIAL OFFICER**

JT CANADA LLC INC.
per : 
Name: 
Title: **DIRECTOR**

SCHEDULE "A"

1. Hypothecated Securities

Shares of JTI-Macdonald TM Corp.

2. Trade Marks and Other Intellectual Property Rights

NIL

EXHIBIT “W”

This is **Exhibit "W"**, referred to in the
Affidavit of Robert McMaster, sworn before me
this 8th day of March, 2019.



Notary Public

Mitchell Grossell
Barrister & Solicitor
LSO# 699931

Norton Rose Fulbright Canada LLP
1800 - 510 West Georgia Street
Vancouver, BC V6B 0M3 Canada

F: +1 604.641.4949
nortonrosefulbright.com

Richard Sarabando
+1 604.641.4924
richard.sarabando@nortonrosefulbright.com

Paralegal
+1 604.641.4557
amanda.kollman@nortonrosefulbright.com

Our reference
12-2380

January 30, 2018

Sent By Registered Mail

JTI-Macdonald TM Corp.
1300 - 1969 Upper Water Street
Halifax, NS B3J 2V1

Dear Sirs/Mesdames:

JT International SA (the "Secured Party") and JTI-Macdonald Corp. (the "Debtor")

We act for the Secured Party in connection with a security agreement granted by the Debtor in favour of the Secured Party. We enclose a Purchase Money Security Interest Notice with respect to the inventory as described therein, in which the Secured Party expects to acquire a purchase money security interest.

Yours very truly,



Richard Sarabando

RIS/amk

Enclosure

PURCHASE MONEY SECURITY INTEREST NOTICE

Addressed to:

JTI-Macdonald TM Corp.
1300 – 1969 Upper Water Street
Halifax, NS B3J 2V1

(the "Creditor")

- and to -

JTI-Macdonald Corp.
1 Robert Speck Parkway, #1601
Mississauga, ON L4Z 0A2

(the "Debtor")

TAKE NOTICE THAT JT International SA (the "**Secured Party**") expects to acquire, pursuant to a security agreement entered into between the Secured Party and the Debtor, a Purchase Money Security Interest in inventory of the Debtor and its proceeds which inventory and its proceeds is described as follows:

All present and after-acquired inventory of the Debtor delivered by the Secured Party to the Debtor, and in the proceeds of such inventory, which inventory is comprised of products sold or delivered from time to time by the Secured Party to the Debtor, including, without limitation, flue cured virginia strip and by-products tobacco and international tobacco brands including Camel family, Winston family, More international family, LD family and NAS family (American Spirit in Canada), wherever situate, and all deeds, documents, writings, papers and books relating to or being records of inventory or its proceeds or by which inventory or its proceeds are or may hereafter be secured, made payable, evidenced or acknowledged, including securities, chattel paper, instruments, and documents of title, and all contractual rights, insurance claims, patents, trademarks, copyrights and other industrial property relating to inventory or its proceeds.

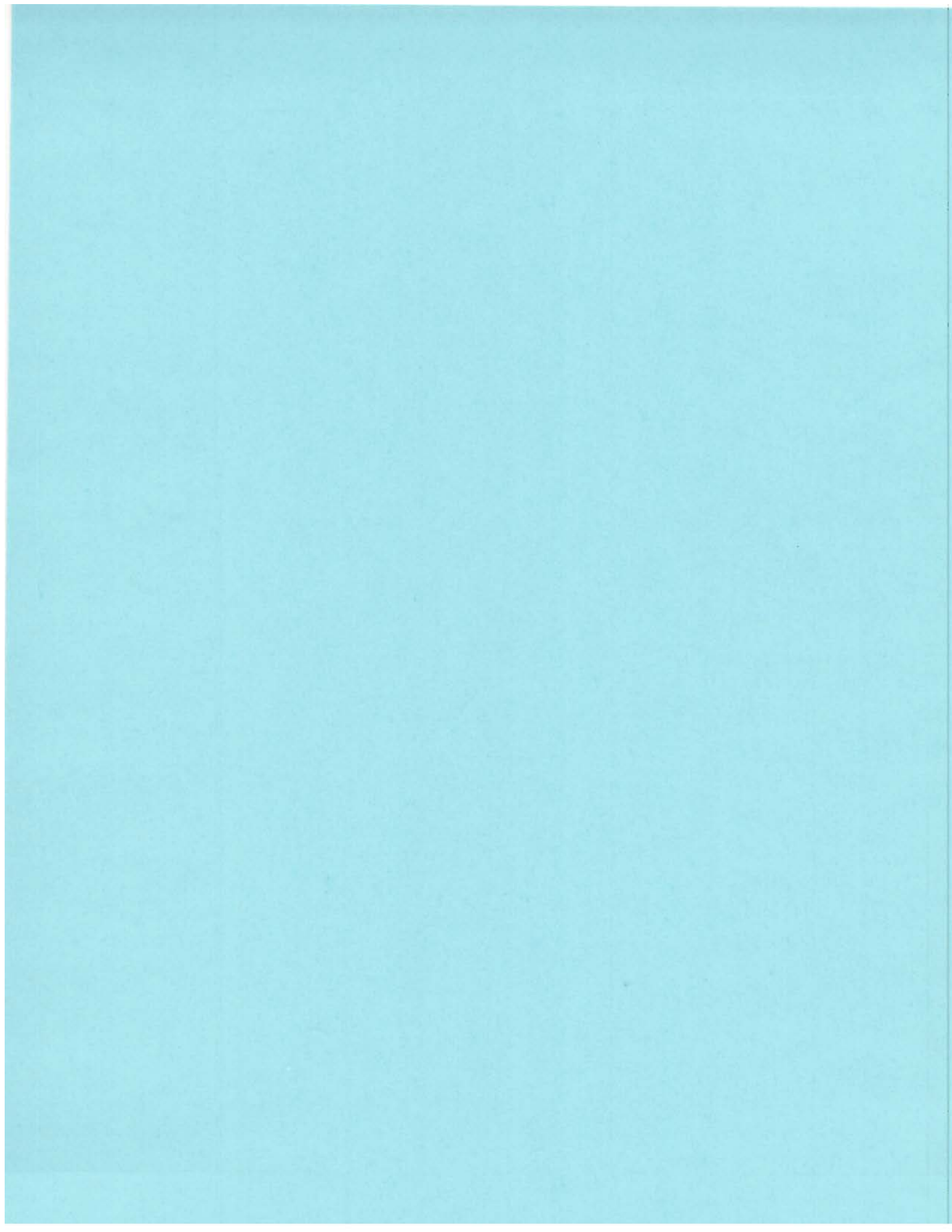
Proceeds: All proceeds including, without limitation, money, chattel paper, intangibles, goods, documents of title, instruments and investment property and financial assets.

DATED at Vancouver, British Columbia this 30th day of January, 2018.

JT INTERNATIONAL SA., by its agent
NORTON ROSE FULBRIGHT CANADA LLP



Richard Sarabando



January 29, 2018

VIA REGISTERED MAIL

JTI CANADA TECH INC.
1601-1 ROBERT SPECK PARKWAY
MISSISSAUGA, ON L4Z 0A2

Dear Sirs/Mesdames:

RE: Notice Pursuant to Section 34(3)(b) of the *Personal Property Security Act* (Alberta)

We write as counsel for JT International SA (the "**Secured Party**").

Please take notice that the Secured Party has or expects to acquire a Purchase Money Security Interest in the inventory of JTI-Macdonald Corp. (the "**Debtor**") delivered by the Secured Party to the Debtor, and in the proceeds of such inventory, which inventory is comprised of products sold or delivered from time to time by the Secured Party to the Debtor, including, without limitation, flue cured Virginia strip and by-products tobacco and international tobacco brands including Camel family, Winston family, More international family, LD family and NAS family (American Spirit in Canada).

Yours truly,

Tyrel Henderson

January 29, 2018

VIA REGISTERED MAIL

ARI FINANCIAL SERVICES INC.
600-1270 CENTRAL PARKWAY WEST
MISSISSAUGA, ON L5C 4P4

Dear Sirs/Mesdames:

RE: Notice Pursuant to Section 34(3)(b) of the *Personal Property Security Act* (Alberta)

We write as counsel for JT International SA (the “**Secured Party**”).

Please take notice that the Secured Party has or expects to acquire a Purchase Money Security Interest in the inventory of JTI-Macdonald Corp. (the “**Debtor**”) delivered by the Secured Party to the Debtor, and in the proceeds of such inventory, which inventory is comprised of products sold or delivered from time to time by the Secured Party to the Debtor, including, without limitation, flue cured Virginia strip and by-products tobacco and international tobacco brands including Camel family, Winston family, More international family, LD family and NAS family (American Spirit in Canada).

Yours truly,

Tyrel Henderson

January 29, 2018

VIA REGISTERED MAIL

JTI-MACDONALD TM CORP.
1300 - 1969 UPPER WATER STREET
HALIFAX, NS B3J 2V1

Dear Sirs/Mesdames:

RE: Notice Pursuant to Section 34(3)(b) of the *Personal Property Security Act* (Alberta)

We write as counsel for JT International SA (the “**Secured Party**”).

Please take notice that the Secured Party has or expects to acquire a Purchase Money Security Interest in the inventory of JTI-Macdonald Corp. (the “**Debtor**”) delivered by the Secured Party to the Debtor, and in the proceeds of such inventory, which inventory is comprised of products sold or delivered from time to time by the Secured Party to the Debtor, including, without limitation, flue cured Virginia strip and by-products tobacco and international tobacco brands including Camel family, Winston family, More international family, LD family and NAS family (American Spirit in Canada).

Yours truly,

Tyrel Henderson

Registered Mail Tracking Sheet

Lawyer: Tyrel Henderson
Client/Matter: 33323-2011



**REGISTERED
DOMESTIC**
CUSTOMER RECEIPT

**RECOMMANDÉ
RÉGIME INTÉRIEUR**
REÇU DU CLIENT



To / Destinataire
Name / Nom: JTI Canada Tech Inc.
Address / Adresse: 1601-1 Robert Speck Parkway
City / Prov. / Postal Code / Ville / Prov. / Code postal: Mississauga ON

9.84 4325
1344
MAY 29 2018
CALGARY, AB

FOR DELIVERY CONFIRMATION / CONFIRMATION DE LA LIVRAISON
www.canadapost.ca / www.postescanada.ca
1888 550-6333
CPC Tracking Number / Numéro de repérage de la BCP: RN 265 291 325 CA

Declared Value / Valeur déclarée: \$
33-086-584 (14-06)



**REGISTERED
DOMESTIC**
CUSTOMER RECEIPT

**RECOMMANDÉ
RÉGIME INTÉRIEUR**
REÇU DU CLIENT



To / Destinataire
Name / Nom: ARI Financial Services
Address / Adresse: 600-1270 Central Parkway W
City / Prov. / Postal Code / Ville / Prov. / Code postal: Mississauga ON

9.84 4325
2018
CALGARY, AB

FOR DELIVERY CONFIRMATION / CONFIRMATION DE LA LIVRAISON
www.canadapost.ca / www.postescanada.ca
1888 550-6333
CPC Tracking Number / Numéro de repérage de la BCP: RN 265 291 311 CA

Declared Value / Valeur déclarée: \$
33-086-584 (14-06)



**REGISTERED
DOMESTIC**
CUSTOMER RECEIPT

**RECOMMANDÉ
RÉGIME INTÉRIEUR**
REÇU DU CLIENT

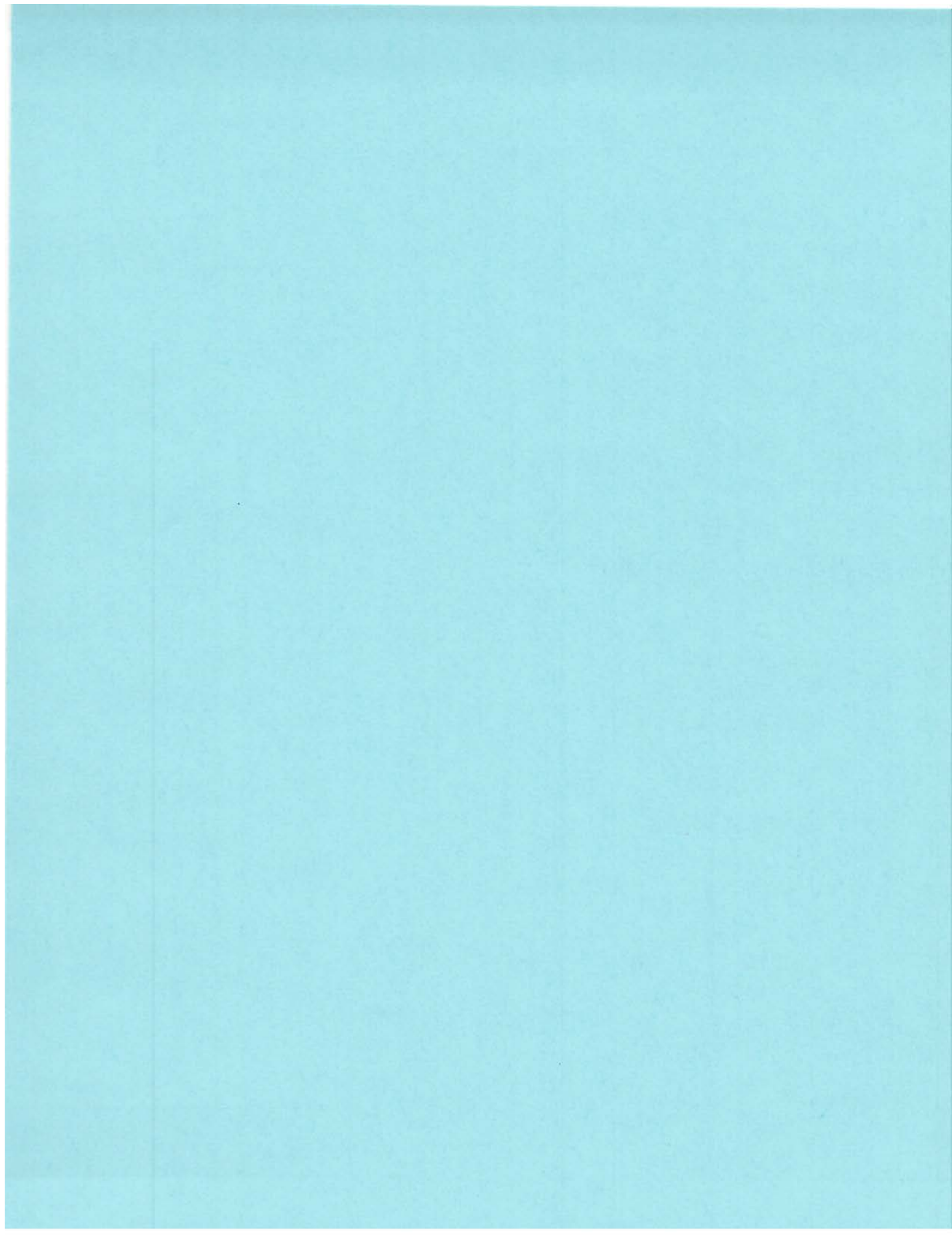


To / Destinataire
Name / Nom: JTI-MACDONALD TM CORP
Address / Adresse: 1300-1469 Upper Water St.
City / Prov. / Postal Code / Ville / Prov. / Code postal: Halifax NS

9.84
MAY 29 2018
CALGARY, AB

FOR DELIVERY CONFIRMATION / CONFIRMATION DE LA LIVRAISON
www.canadapost.ca / www.postescanada.ca
1888 550-6333
CPC Tracking Number / Numéro de repérage de la BCP: RN 265 291 299 CA

Declared Value / Valeur déclarée: \$
33-086-584 (14-06)



PMSI (INVENTORY) NOTICE
pursuant to Section 34 of
The Personal Property Security Act (Manitoba) [the "PPSA"]

January 31, 2018

JTI-Macdonald TM Corp.
1300 - 1969 Upper Water Street
Purdy's Wharf Tower II
Halifax, NS B3J 3R7

Dear Sirs:

Re: JTI-Macdonald Corp. (the "Debtor")
PPSA Registration No. 201801744503

TAKE NOTICE that JT International SA (the "Secured Party") has registered or is in the process of registering a financing statement under the PPSA against the Debtor and has or expects to acquire a purchase money security interest in inventory of the Debtor having the following description (by item or type):

Inventory of the Debtor delivered by the Secured Party to the Debtor, and in the proceeds of such inventory, which inventory is comprised of products sold or delivered from time to time by the Secured Party to the Debtor, including, without limitation, flue cured virginia strip and by-products tobacco and international tobacco brands including Camel family, Winston family, More international family, LD family and NAS family (American Spirit in Canada).

(hereinafter referred to as the "Collateral") hereafter delivered to or acquired by the Debtor.

PURSUANT to Section 34 of the PPSA you are hereby notified that the Secured Party claims priority to your security interest in the Collateral or its proceeds.

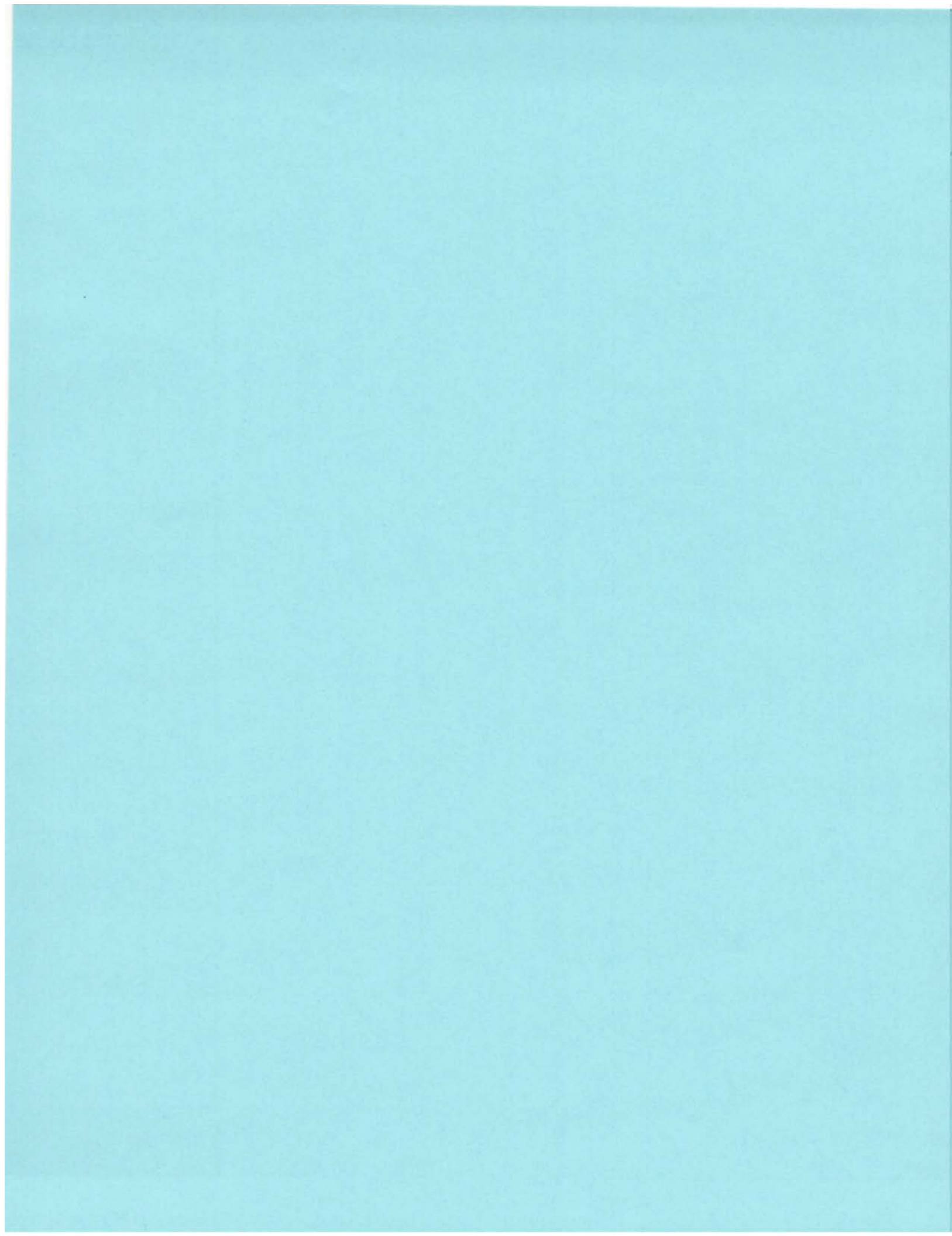
THIS NOTICE is served on you because you appear to have a security interest in inventory of the Debtor.

DATED this 18th day of January, 2018.

JT INTERNATIONAL SA,
By its Solicitor and Agent

Per: _____


J. Douglas Sigurdson



January 29, 2018

REGISTERED MAIL

JTI Canada Tech Inc.
1 Robert Speck Parkway
Mississauga, Ontario
L4Z 0A2

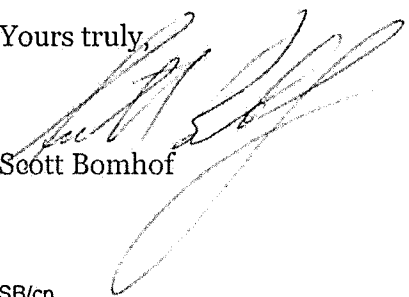
Dear Sirs/Mesdames:

Re: Notice Pursuant to Section 33(1)(b) of the *Personal Property Security Act* (Ontario)

We write as counsel for JT International SA (the "Secured Party").

Please take notice that the Secured Party has or expects to acquire a Purchase Money Security Interest in the inventory of JTI-Macdonald Corp. (the "Debtor") delivered by the Secured Party to the Debtor, and in the proceeds of such inventory, which inventory is comprised of products sold or delivered from time to time by the Secured Party to the Debtor, including, without limitation, flue cured Virginia strip and by-products tobacco and international tobacco brands including Camel family, Winston family, More international family, LD family and NAS family (American Spirit in Canada).

Yours truly,


Scott Bomhof

SB/cp

January 29, 2018

REGISTERED MAIL

ARI Financial Services Inc.
Suite 600
1270 Central Parkway West
Mississauga, Ontario
L5C 4P4

Dear Sirs/Mesdames:

Re: Notice Pursuant to Section 33(1)(b) of the *Personal Property Security Act* (Ontario)

We write as counsel for JT International SA (the "Secured Party").

Please take notice that the Secured Party has or expects to acquire a Purchase Money Security Interest in the inventory of JTI-Macdonald Corp. (the "Debtor") delivered by the Secured Party to the Debtor, and in the proceeds of such inventory, which inventory is comprised of products sold or delivered from time to time by the Secured Party to the Debtor, including, without limitation, flue cured Virginia strip and by-products tobacco and international tobacco brands including Camel family, Winston family, More international family, LD family and NAS family (American Spirit in Canada).

Yours truly,


Scott Bomhof

SB/cp

January 29, 2018

REGISTERED MAIL

JT Canada LLC Inc.
2455 Ontario Street East
Montreal, Quebec
H2K 1W3

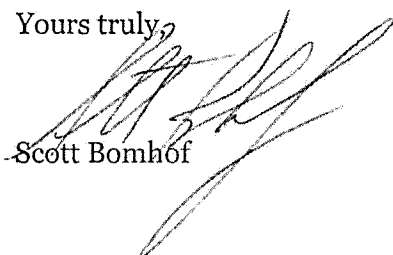
Dear Sirs/Mesdames:

Re: Notice Pursuant to Section 33(1)(b) of the *Personal Property Security Act* (Ontario)

We write as counsel for JT International SA (the "Secured Party").

Please take notice that the Secured Party has or expects to acquire a Purchase Money Security Interest in the inventory of JTI-Macdonald Corp. (the "Debtor") delivered by the Secured Party to the Debtor, and in the proceeds of such inventory, which inventory is comprised of products sold or delivered from time to time by the Secured Party to the Debtor, including, without limitation, flue cured Virginia strip and by-products tobacco and international tobacco brands including Camel family, Winston family, More international family, LD family and NAS family (American Spirit in Canada).

Yours truly,


Scott Bomhof

SB/cp

January 29, 2018

REGISTERED MAIL

JTI-Macdonald TM Corp.
2455 Ontario Street
Montreal, Quebec
H2K 1W3

Dear Sirs/Mesdames:

Re: Notice Pursuant to Section 33(1)(b) of the *Personal Property Security Act* (Ontario)

We write as counsel for JT International SA (the "Secured Party").

Please take notice that the Secured Party has or expects to acquire a Purchase Money Security Interest in the inventory of JTI-Macdonald Corp. (the "Debtor") delivered by the Secured Party to the Debtor, and in the proceeds of such inventory, which inventory is comprised of products sold or delivered from time to time by the Secured Party to the Debtor, including, without limitation, flue cured Virginia strip and by-products tobacco and international tobacco brands including Camel family, Winston family, More international family, LD family and NAS family (American Spirit in Canada).

Yours truly,


Scott Bomhof

SB/cp

January 29, 2018

REGISTERED MAIL

The Trust Company of Bank of Montreal
1 First Canadian Place
100 King Street
Toronto, Ontario
M5X 1A1

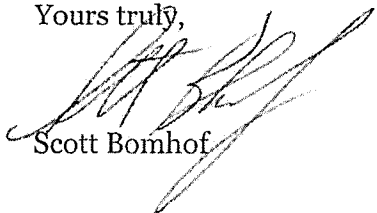
Dear Sirs/Mesdames:

Re: Notice Pursuant to Section 33(1)(b) of the *Personal Property Security Act* (Ontario)

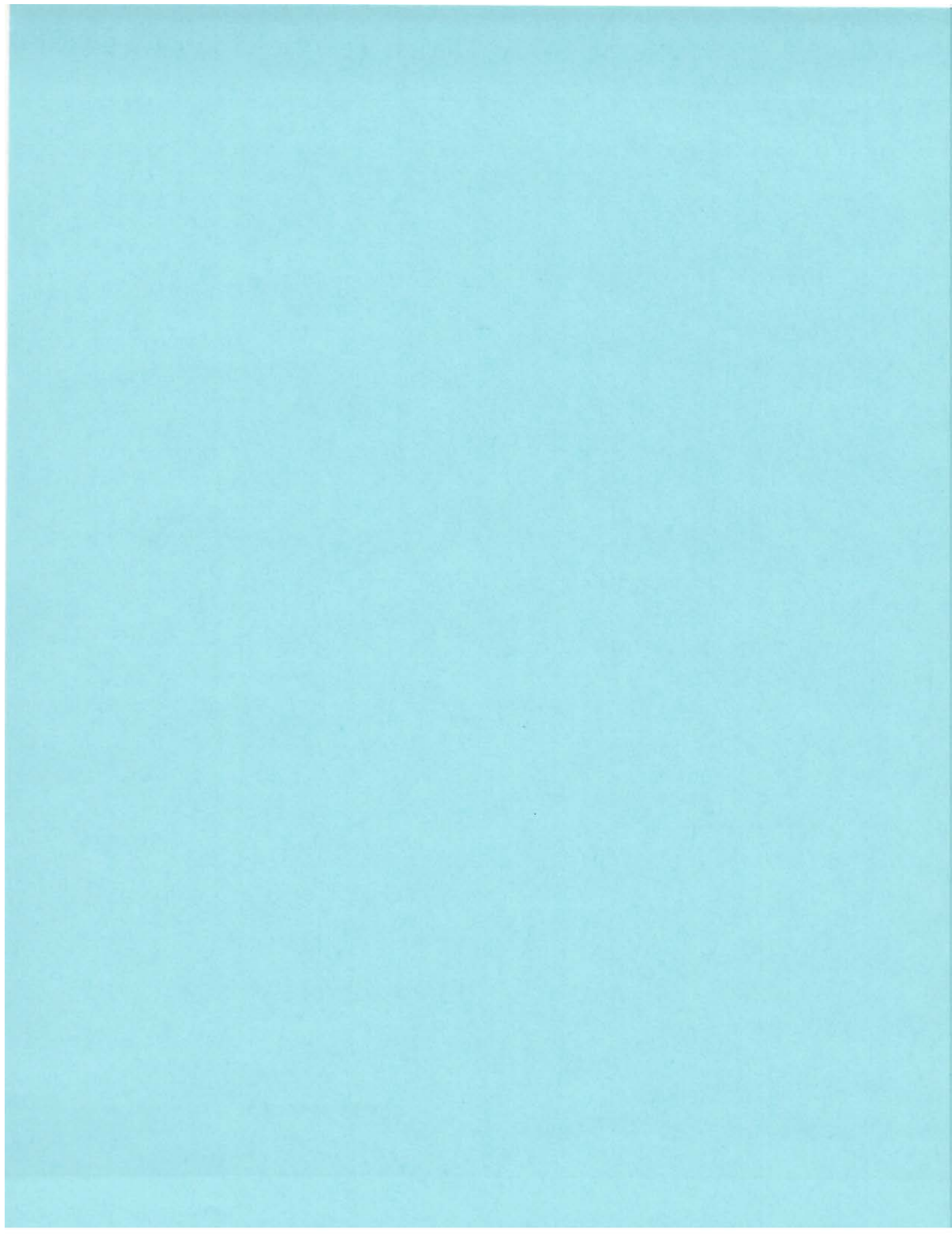
We write as counsel for JT International SA (the "Secured Party").

Please take notice that the Secured Party has or expects to acquire a Purchase Money Security Interest in the inventory of JTI-Macdonald Corp. (the "Debtor") delivered by the Secured Party to the Debtor, and in the proceeds of such inventory, which inventory is comprised of products sold or delivered from time to time by the Secured Party to the Debtor, including, without limitation, flue cured Virginia strip and by-products tobacco and international tobacco brands including Camel family, Winston family, More international family, LD family and NAS family (American Spirit in Canada).

Yours truly,


Scott Bomhof

SB/cp





Purdy's Wharf Tower One, 900 – 1959 Upper Water Street, P.O. Box 997
Halifax NS B3J 2X2 Canada tel: 902.420.3200 fax: 902.420.1417 stewartmckelvey.com

File Reference: SM4579-523

Kimberly Bungay
Direct Dial: 902.420.3366
kbungay@stewartmckelvey.com

February 2, 2018

Via Registered Mail

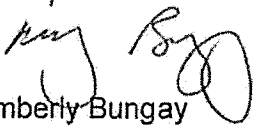
JTI-MacDonald TM Corp.
2455 rue Ontario est
Montreal, PQ H2K 1W3

Dear Sir/Madam:

Re: JTI-MacDonald Corp.

We have acted on behalf of JT International SA in connection with the registration of financing statements under Personal Property Security Act (New Brunswick), the Personal Property Security Act (Newfoundland and Labrador), the Personal Property Security Act (Nova Scotia) and the Personal Property Security Act (Prince Edward Island) with respect to the above company. A search of the Nova Scotia Personal Property Registry indicates that you may have an interest in the inventory or other assets of the above company. Accordingly, we are enclosing a Purchase Money Security Interest Notice in accordance with the provisions of the said Acts.

Yours truly,



Kimberly Bungay

KAB/

NOTICE OF PURCHASE MONEY SECURITY INTEREST IN INVENTORY

TO: JTI-MacDonald TM Corp.

RE: JTI-MacDonald Corp.
(the "Debtor")

TAKE NOTICE THAT THE UNDERSIGNED has or expects to acquire a purchase money security interest in the following collateral (collectively, the "Collateral"):

INVENTORY OF THE DEBTOR DELIVERED BY THE SECURED PARTY TO THE DEBTOR, AND IN THE PROCEEDS OF SUCH INVENTORY, WHICH INVENTORY IS COMPRISED OF PRODUCTS SOLD OR DELIVERED FROM TIME TO TIME BY THE SECURED PARTY TO THE DEBTOR, INCLUDING, WITHOUT LIMITATION, FLUE CURED VIRGINIA STRIP AND BY-PRODUCTS TOBACCO AND INTERNATIONAL TOBACCO BRANDS INCLUDING CAMEL FAMILY, WINSTON FAMILY, MORE INTERNATIONAL FAMILY, LD FAMILY AND NAS FAMILY (AMERICAN SPIRIT IN CANADA)

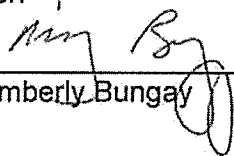
Pursuant to the Personal Property Security Act (New Brunswick), the Personal Property Security Act (Newfoundland and Labrador), the Personal Property Security Act (Nova Scotia) and the Personal Property Security Act (Prince Edward Island) you are hereby notified that the Secured Party claims priority interest to any security interest which you have in the Collateral.

This notice is served on you because you appear to have a security interest in the Collateral.

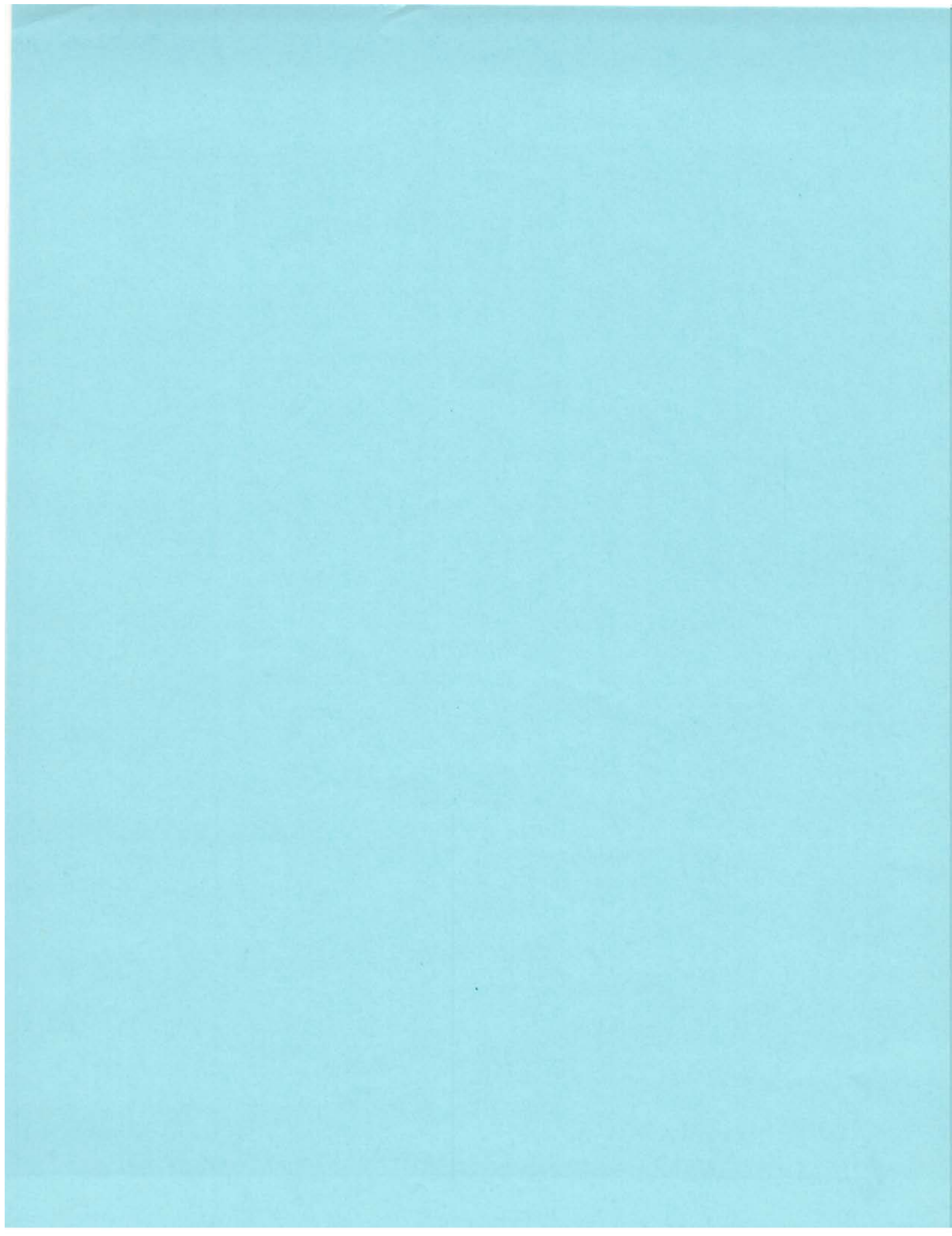
DATED at Halifax, Nova Scotia this 2nd day of February, 2018.

JT International SA
Rue Kazem Radjavi 8, 1202
Geneva, Switzerland

Stewart McKelvey
Per:



Kimberly Bungay



INVENTORY NOTICE

Via Registered Mail

ARI Financial Services Inc.
600 – 1270 Central Parkway West
Mississauga, Ontario
L5C 4P4

Dear Sirs and Mesdames:

Re: JTI-MACDONALD CORP. (the "Debtor")

TAKE NOTICE that pursuant to Section 34 of *The Personal Property Security Act, 1993* of Saskatchewan, JT INTERNATIONAL SA has acquired, or expects to acquire, a purchase-money security interest in inventory of the Debtor, and in the proceeds of such inventory.

A description of the inventory according to type or kind is as follows:

GENERAL SECURITY AGREEMENT COVERING ALL ASSETS OF THE DEBTOR AND PROCEEDS THEREOF AND CREATING A PMSI INTEREST IN:

INVENTORY OF THE DEBTOR DELIVERED BY THE SECURED PARTY TO THE DEBTOR, AND IN THE PROCEEDS OF SUCH INVENTORY, WHICH INVENTORY IS COMPRISED OF PRODUCTS SOLD OR DELIVERED FROM TIME TO TIME BY THE SECURED PARTY TO THE DEBTOR, INCLUDING, WITHOUT LIMITATION, FLUE CURED VIRGINIA STRIP AND BY-PRODUCTS TOBACCO AND INTERNATIONAL TOBACCO BRANDS INCLUDING CAMEL FAMILY, WINSTON FAMILY, MORE INTERNATIONAL FAMILY, LD FAMILY AND NAS FAMILY (AMERICAN SPIRIT IN CANADA).

DATED this 30th day of January, 2018.

MLT Aikins LLP
solicitors for JT INTERNATIONAL SA

Per: _____

EXHIBIT “X”

This is **Exhibit "X"**, referred to in the
Affidavit of Robert McMaster, sworn before me
this 8th day of March, 2019.



Notary Public

Mitchell Grossell
Barrister & Solicitor
LSO# 699931

**SUPERIOR COURT
(Class Action Division)**

CANADA
PROVINCE OF QUÉBEC
DISTRICT OF MONTREAL

N° : 500-06-000076-980
500-06-000070-983

DATE : May 27, 2015

PRESIDING: THE HONORABLE BRIAN RIORDAN, J.S.C.

N° 500-06-000070-983

CÉCILIA LÉTOURNEAU
Plaintiff

v.

JTI-MACDONALD CORP. ("JTM")
and
IMPERIAL TOBACCO CANADA LIMITED. ("ITL")
and
ROTHMANS, BENSON & HEDGES INC. ("RBH")
Defendants (collectively: the "**Companies**")

AND

N° 500-06-000076-980

CONSEIL QUÉBÉCOIS SUR LE TABAC ET LA SANTÉ
and
JEAN-YVES BLAIS
Plaintiffs

v.

JTI-MACDONALD CORP.
and
IMPERIAL TOBACCO CANADA LIMITED.
and
ROTHMANS, BENSON & HEDGES INC.
Defendants

JUDGMENT

include suggestions for dealing with that amount pending final judgment, a question that will be decided after hearing the parties at a later date. The Companies may also provide written representations on this question within thirty (30) days of receiving the Plaintiffs' proposal.

XIV. CONCLUDING REMARKS

[1205] It is customary for our court to draft its judgments in the language of what is colloquially called "the losing party". Although the Companies succeeded on several of their principal arguments in these files, it seemed reasonable to draft in English, being the language that they clearly prefer. The Court will request a French translation of this judgment in the days following its publication.

[1206] Finally, the Court wishes to thank those lawyers whose professionalism, coupled with their sense of practicality and cooperation, made it possible ultimately to complete this journey in spite of the many obstacles cluttering its path.

IN COURT FILE #06-000076-980 (THE BLAIS FILE) THE COURT:

[1207] **GRANTS** the Plaintiffs' action in part;

[1208] **AMENDS** the class description as follows:

All persons residing in Quebec who satisfy the following criteria:

1) To have smoked, before November 20, 1998, a minimum of 12 pack/years of cigarettes manufactured by the defendants (that is, the equivalent of a minimum of 87,600 cigarettes, namely any combination of the number of cigarettes smoked in a day multiplied by the number of days of consumption insofar as the total is equal to or greater than 87,600 cigarettes).

For example, 12 pack/years equals:

20 cigarettes a day for 12 years (20 X 365 X 12 = 87,600) or

30 cigarettes a day for 8 years (30 X 365 X 8 = 87,600) or

10 cigarettes a day for 24 years (10 X 365 X 24 = 87,600);

2) To have been diagnosed before March 12, 2012 with:

- a) Lung cancer or
- b) Cancer (squamous cell carcinoma) of the throat, that is to say of the larynx, the oropharynx or the hypopharynx or
- c) Emphysema.

Toutes les personnes résidant au Québec qui satisfont aux critères suivants:

1) Avoir fumé, avant le 20 novembre 1998, au minimum 12 paquets/année de cigarettes fabriquées par les défenderesses (soit l'équivalent d'un minimum de 87 600 cigarettes, c'est-à-dire toute combinaison du nombre de cigarettes fumées dans une journée multiplié par le nombre de jours de consommation dans la mesure où le total est égal ou supérieur à 87 600 cigarettes).

Par exemple, 12 paquets/année égale:

20 cigarettes par jour pendant 12 ans (20 X 365 X 12 = 87 600) ou

30 cigarettes par jour pendant 8 ans (30 X 365 X 8 = 87 600) ou

10 cigarettes par jour pendant 24 ans (10 X 365 X 24 = 36 500);

2) Avoir été diagnostiquées avant le 12 mars 2012 avec:

- a) Un cancer du poumon ou*
- b) Un cancer (carcinome épidermoïde) de la gorge, à savoir du larynx, de l'oropharynx ou de l'hypopharynx ou*
- c) de l'emphysème.*

The group also includes the heirs of the persons deceased after November 20, 1998 who satisfied the criteria mentioned herein.

Le groupe comprend également les héritiers des personnes décédées après le 20 novembre 1998 qui satisfont aux critères décrits ci-haut.

- [1209] **CONDEMNNS** the Defendants solidarily to pay as moral damages an amount of \$6,858,864,000 plus interest and the additional indemnity from the date of service of the action;
- [1210] **CONDEMNNS** the Defendants solidarily to pay the amount of \$100,000 as moral damages to each class member diagnosed with cancer of the lung, the larynx, the oropharynx or the hypopharynx who started to smoke before January 1, 1976, plus interest and the additional indemnity from the date of service of the action;
- [1211] **CONDEMNNS** the Defendants solidarily to pay the amount of \$80,000 as moral damages to each class member diagnosed with cancer of the lung, the larynx, the oropharynx or the hypopharynx who started to smoke as of January 1, 1976, plus interest and the additional indemnity from the date of service of the action;
- [1212] **CONDEMNNS** the Defendants solidarily to pay the amount of \$30,000 as moral damages to each member diagnosed with emphysema who started to smoke before January 1, 1976, plus interest and the additional indemnity from the date of service of the action;
- [1213] **CONDEMNNS** the Defendants solidarily to pay the amount of \$24,000 as moral damages to each member diagnosed with emphysema who started to smoke as of January 1, 1976, plus interest and the additional indemnity from the date of service of the action;
- [1214] **DECLARES** that, as among the Defendants, ITL shall be responsible for 67% of the solidary condemnations for moral damages pronounced in the present judgment, including all costs; RBH shall be responsible for 20% thereof and JTM shall be responsible for 13% thereof;
- [1215] **ORDERS** Defendant Imperial Tobacco Canada Ltd. to make an initial deposit for compensatory damages of \$670,000,000 into its attorney's trust account within sixty (60) days of the date of the present judgment;
- [1216] **ORDERS** Defendant Rothmans, Benson & Hedges Inc. to make an initial deposit for compensatory damages of \$200,000,000 into its attorney's trust account within sixty (60) days of the date of the present judgment;
- [1217] **ORDERS** Defendant JTI Macdonald Corp. to make an initial deposit for compensatory damages of \$130,000,000 into its attorney's trust account within sixty (60) days of the date of the present judgment;
- [1218] **RESERVES** the Plaintiffs' right to request orders for additional deposits should the above initial deposits prove insufficient to cover all claims made by eligible Members of the Class;

- [1219] **CONDEMNNS** Defendant Imperial Tobacco Canada Ltd. to pay a total of \$30,000 as punitive damages for the entire class, plus interest and the additional indemnity from the date of the present judgment;
- [1220] **ORDERS** Defendant Imperial Tobacco Canada Ltd. to deposit the amount of the condemnation for punitive damages into its attorney's trust account within sixty (60) days of the date of the present judgment;
- [1221] **CONDEMNNS** Defendant Rothmans, Benson & Hedges Inc. to pay a total of \$30,000 as punitive damages for the entire class, plus interest and the additional indemnity from the date of the present judgment;
- [1222] **ORDERS** Defendant Rothmans, Benson & Hedges Inc. to deposit the amount of the condemnation for punitive damages into its attorney's trust account within sixty (60) days of the date of the present judgment;
- [1223] **CONDEMNNS** Defendant JTI Macdonald Corp. to pay a total of \$30,000 as punitive damages for the entire class, plus interest and the additional indemnity from the date of the present judgment;
- [1224] **ORDERS** Defendant JTI Macdonald Corp. to deposit the amount of the condemnation for punitive damages into its attorney's trust account within sixty (60) days of the date of the present judgment;
- [1225] **WITH COSTS**, including, with respect to the Plaintiffs' experts, the costs related to the drafting of all reports, to the preparation of testimony, both on discovery and in trial, and to the remuneration for the time spent testifying and attending trial;
- [1226] **ORDERS** that the fees of the representative's attorneys be paid in full out of the amounts deposited, subject to the rights of Le Fonds d'aide aux recours collectifs;
- [1227] **DISMISSES** the Plaintiffs' request for an order permitting individual claims against the Defendants;
- [1228] **GRANTS** the Plaintiffs' request for provisional execution notwithstanding appeal with respect to the initial deposits of each Defendant for moral damages plus the full amount of punitive damages;
- [1229] **DECLARES** that, with respect to any balance of the amounts recovered collectively after the distribution process is completed, the Court will invite the parties to make representations as to its disposition;

IN COURT FILE #06-000070-983 (THE LÉTOURNEAU FILE) THE COURT:

- [1230] **GRANTS** the Plaintiff's action in part;
- [1231] **GRANTS** the portion of the Plaintiff's action seeking punitive damages;
- [1232] **DISMISSES** the portion of the Plaintiffs' action seeking moral damages;
- [1233] **AMENDS** the Class description to read as follows:

All persons residing in Quebec who, as of September 30, 1998, were addicted to the nicotine contained in the cigarettes made by the defendants and who otherwise satisfy the following criteria:

1) They started to smoke before September 30, 1994 and since that date have smoked principally cigarettes manufactured by the defendants;

2) Between September 1 and September 30, 1998, they smoked on a daily basis an average of at least 15 cigarettes manufactured by the defendants; and

3) On February 21, 2005, or until their death if it occurred before that date, they were still smoking on a daily basis an average of at least 15 cigarettes manufactured by the defendants.

The group also includes the heirs of the members who satisfy the criteria described herein.

Toutes les personnes résidant au Québec qui, en date du 30 septembre 1998, étaient dépendantes à la nicotine contenue dans les cigarettes fabriquées par les défenderesses et qui satisfont par ailleurs aux trois critères suivants:

1) Elles ont commencé à fumer avant le 30 septembre 1994 et depuis cette date fumaient principalement les cigarettes fabriquées par les défenderesses;

2) Entre le 1^{er} et le 30 septembre 1998, elles fumaient en moyenne au moins quinze cigarettes fabriquées par les défenderesses par jour; et

3) En date du 21 février 2005, ou jusqu'à leur décès si celui-ci est survenu avant cette date, elles fumaient toujours en moyenne au moins quinze cigarettes fabriquées par les défenderesses par jour.

Le groupe comprend également les héritiers des membres qui satisfont aux critères décrits ci-haut.

[1234] **CONDEMNNS** Defendant Imperial Tobacco Canada Ltd. to pay the amount of \$72,500,000 as punitive damages, with interest and the additional indemnity from the date of the present judgment, in accordance with the following orders;

[1235] **ORDERS** Defendant Imperial Tobacco Canada Ltd. to deposit the amount of the condemnation for punitive damages into its attorney's trust account within sixty (60) days of the date of the present judgment;

[1236] **CONDEMNNS** Defendant Rothmans, Benson & Hedges Inc. to pay the amount of \$46,000,000 as punitive damages, with interest and the additional indemnity from the date of the present judgment, in accordance with the following orders;

[1237] **ORDERS** Defendant Rothmans, Benson & Hedges Inc. to deposit the amount of the condemnation for punitive damages into its attorney's trust account within sixty (60) days of the date of the present judgment;

[1238] **CONDEMNNS** Defendant JTI Macdonald Corp. to pay the amount of \$12,500,000 as punitive damages, with interest and the additional indemnity from the date of the present judgment, in accordance with the following orders;

[1239] **ORDERS** Defendant JTI Macdonald Corp. to deposit the amount of the condemnation for punitive damages into its attorney's trust account within sixty (60) days of the date of the present judgment;

- [1240] **WITH COSTS**, including, with respect to the Plaintiffs' experts, the costs related to the drafting of all reports, to the preparation of testimony, both on discovery and in trial, and to the remuneration for the time spent testifying and attending trial;
- [1241] **REFUSES** to proceed with the distribution of punitive damages to each of the Class Members;
- [1242] **ORDERS** that the fees of the representative's attorneys be paid in full out of the amounts deposited as punitive damages, subject to the rights of Le Fonds d'aide aux recours collectifs;
- [1243] **ORDERS** that the balance of punitive damages awarded hereunder in both files be distributed according to the procedure to be established at a later hearing;
- [1244] **DISMISSES** the Plaintiff's request for an order permitting individual claims against the Defendants;
- [1245] **GRANTS** the Plaintiffs' request for provisional execution notwithstanding appeal with respect to the full amount of punitive damages;
- [1246] **DECLARES** that, with respect to any balance of the amounts recovered collectively after the distribution process is completed, the Court will invite the parties to make representations as to its disposition;

WITH RESPECT TO BOTH FILES, THE COURT:

- [1247] **ORDERS** the Plaintiffs to submit to the Court within sixty (60) days of the date of the present judgment, with copy to the Companies, a detailed proposal for the distribution of all amounts awarded herein, both with respect to punitive damages and to moral damages for Blais Class Members, including provisions for the publication of notices, for time limits to file claims, for adjudication mechanisms and any other relevant issues, as well as with respect to the treatment of any amounts resulting from provisional execution;
- [1248] **STRIKES** the following exhibits from the court record:
- 454-R;
 - 454A-R;
 - 613A-R;
 - 623A-R;
 - 1571-R; plus
 - All other "R" exhibits for which no subsequent authorization for filing was obtained, subject to the others provisions of the present judgment confirming the confidential status of an "R" exhibit, and **RESERVES** the parties rights to obtain a further judgment from this Court specifying the struck exhibits, should that be required;

[1249] **DISMISSES** the requests for confidentiality orders with respect to Exhibits 1730A-CONF and 1732A-CONF and **DECLARES** that those exhibits are no longer under seal and **RENUMBERS** them as Exhibits 1730A and 1732A;

[1250] **DISMISSES** JTM's objection based on professional secrecy with respect to Exhibit 1702R and **RENUMBERS** it as Exhibit 1702;

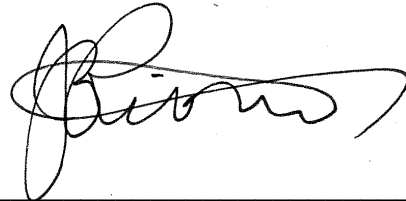
[1251] **DISMISSES** JTM's objection based on relevance for the evidence relating to the Interco Contracts;

[1252] **RATIFIES** the "*Entente sur la confidentialité de certaines informations entre les demandeurs et JTIM*" filed as Exhibit 1747.1;

[1253] **DECLARES** that the following exhibits and transcripts are confidential and shall remain under seal unless and until a further order changes their status:

- 361-CONF;
- 529-CONF;
- 530C-CONF;
- 530E-CONF;
- 532-CONF;
- 992-CONF;
- 999-CONF;
- 1000-CONF;
- 1225-CONF;
- 1730-CONF;
- 1730B-CONF;
- 1732-CONF;
- 1732B-CONF;
- 20186-CONF;
- 1731-1998-R-CONF through 1731-2012-R-CONF;
- 1748.1-R-CONF;
- 1748.1.1-R-CONF;
- 1748.1.3-R-CONF through 1748.1.6-R-CONF;
- 1748.2-R-CONF;
- 1748.4-R-CONF;
- 1750.1-R-CONF;
- 1751.1-R-CONF;
- 1751.1.1-R-CONF through; 1751.1.10-R-CONF;
- 1751.2-R-CONF;
- 1755.2-R-CONF;
- 1753.1-CONF through 1753.81-CONF;
- 1754.1-CONF through 1754.60-CONF;

- The documents listed in Annex B of Exhibit 1747.1, including any mentioned above.
- Annex D of Exhibit 1747.1
- Transcript of the testimony of Michel Poirier on May, 23, 2014;

A handwritten signature in black ink, appearing to read "Briordan", written over a horizontal line.

BRIAN RIORDAN, J.S.C.

Hearing Dates: 251 days of hearing between March 12, 2012 and December 11, 2014

EXHIBIT “Y”

This is **Exhibit "Y"**, referred to in the
Affidavit of Robert McMaster, sworn before me
this 8th day of March, 2019.



Notary Public

Mitchell Grossell
Barrister & Solicitor
LSO# 699931

COURT OF APPEAL

CANADA
PROVINCE OF QUEBEC
REGISTRY OF MONTREAL

No: 500-09-025385-154, 500-09-025386-152, 500-09-025387-150
(500-06-000070-983, 500-06-000076-980)

DATE: July 23, 2015

**CORAM: THE HONOURABLE MARIE-FRANCE BICH, J.A.
PAUL VÉZINA, J.A.
MARK SCHRAGER, J.A.**

No: 500-09-025385-154

IMPERIAL TOBACCO CANADA LTD.
APPELLANT/INCIDENTAL RESPONDENT – Defendant

v.

**CONSEIL QUÉBÉCOIS SUR LE TABAC ET LA SANTÉ
JEAN-YVES BLAIS
CÉCILIA LÉTOURNEAU**
RESPONDENTS/INCIDENTAL APPELLANTS – Plaintiffs

and

**JTI-MACDONALD CORP.
ROTHMANS, BENSON & HEDGES INC.**
IMPLEADED PARTIES – Defendants

No: 500-09-025386-152

JTI-MACDONALD CORP.
APPELLANT/INCIDENTAL RESPONDENT – Defendant

v.

CONSEIL QUÉBÉCOIS SUR LE TABAC ET LA SANTÉ

JEAN-YVES BLAIS

CÉCILIA LÉTOURNEAU

RESPONDENTS/INCIDENTAL APPELLANTS – Plaintiffs

and

IMPERIAL TOBACCO CANADA LTD.

ROTHMANS, BENSON & HEDGES INC.

IMPLEADED PARTIES – Defendants

No: 500-09-025387-150

ROTHMANS, BENSON & HEDGES INC.

APPELLANT/INCIDENTAL RESPONDENT – Defendant

v.

CONSEIL QUÉBÉCOIS SUR LE TABAC ET LA SANTÉ

JEAN-YVES BLAIS

CÉCILIA LÉTOURNEAU

RESPONDENTS/INCIDENTAL APPELLANTS – Plaintiffs

and

JTI-MACDONALD CORP.

IMPERIAL TOBACCO CANADA LTD.

IMPLEADED PARTIES – Defendants

JUDGMENT

[1] Each of the Appellants in the three appeals before us seeks the cancellation of orders of provisional execution contained in the judgment of May 27, 2015 (corrected on June 8) of the Superior Court, District of Montreal (the Honourable Justice Brian Riordan).¹

¹ *Létourneau v. JTI-MacDonald Corp.*, 2015 QCCS 2382 [“the judgment”].

[2] Appellants, Imperial Tobacco Canada Ltd. ("ITL") and Rothmans, Benson & Hedges Inc. ("RBH") also seek confidentiality and sealing orders regarding certain information and documentation filed in support of their motions to cancel provisional execution. At the beginning of the hearing, this Court issued a safeguard order to such effect to stay in force until signature of this judgment.

[3] The 237 page judgment in first instance culminates two class actions commenced in 1998 against the Appellants who are cigarette manufacturers. The class actions were authorized in 2005; the joint trial commenced on March 12, 2012 and terminated on December 11, 2014. More than 70 witnesses, including 27 experts were heard over a total of 251 hearing days. In excess of 20,000 exhibits were filed in evidence.

[4] The judgment is prefaced by the following summary of its contents:

The two class actions² against the Canadian cigarette companies³ are maintained in part.

In both actions, the claim for common or collective damages was limited to moral damages and punitive damages, with both classes of plaintiffs renouncing their potential right to make individual claims for compensatory damages, such as loss of income.

In the Blais File, taken in the name of a class of persons with lung cancer, throat cancer or emphysema, the Court finds the defendants liable for both moral and punitive damages. It holds that they committed four separate faults, including under the general duty not to cause injury to another person, under the duty of a manufacturer to inform its customers of the risks and dangers of its products, under the Quebec Charter of Human Rights and Freedoms⁴ and under the Quebec Consumer Protection Act.⁵

In Blais, the Court awards moral damages in the amount of \$6,858,864,000 solidarily among the defendants. Since this action was instituted in 1998, this sum translates to approximately \$15,500,000,000 once interest and the additional indemnity are added. The respective liability of the defendants among themselves is as follows:

ITL - 67%, RBH - 20% and JTM - 13%.

² The "Blais" file and the "Létourneau" file, both named for the Plaintiffs / class representatives.

³ Imperial Tobacco Canada Ltd. ("ITL"), Rothmans, Benson & Hedges Inc. ("RBH") and JTI-Macdonald Corp. ("JTM"), the Appellants.

⁴ CQLR, c. C-12.

⁵ CQLR, c. P-40.1.

Recognizing that it is unlikely that the defendants could pay that amount all at once, the Court exercises its discretion with respect to the execution of the judgment. It thus orders an initial aggregate deposit of \$1,000,000,000, divided among the defendants in accordance with their share of liability and reserves the plaintiffs' right to request further deposits, if necessary.

In the *Létourneau* File, taken in the name of persons who were dependent on nicotine, the Court finds the defendants liable for both heads of damage with respect to the same four faults. In spite of such liability, the Court refuses to order the payment of moral damages because the evidence does not establish with sufficient accuracy the total amount of the claims of the members.

The faults under the *Quebec Charter* and the *Consumer Protection Act* allow for the awarding of punitive damages. The Court sets the base for their calculation at one year's before-tax profits of each defendant, this covering both files. Taking into account the particularly unacceptable behaviour of ITL over the Class Period and, to a lesser extent, JTM, the Court increases the sums attributed to them above the base amount to arrive at an aggregate of \$1,310,000,000, divided as follows:

ITL - \$725,000,000, RBH - \$460,000,000 and JTM - \$125,000,000.

It is necessary to divide this amount between the two files. For that, the Court takes account of the significantly higher impact of the defendants' faults on the Blais Class compared to *Létourneau*. It thus attributes 90% of the total to Blais and 10% to the *Létourneau* Class.

Nevertheless, in light of the size of the award for moral damages in Blais, the Court feels obliged to limit punitive damages there to the symbolic amount of \$30,000 for each defendant. This represents one dollar for each Canadian death the tobacco industry causes in Canada every year, as stated in a 1995 Supreme Court judgment.

In *Létourneau*, therefore, the aggregate award for punitive damages, at 10% of the total, is \$131,000,000. That will be divided among the defendants as follows:

ITL - \$72,500,000, RBH - \$46,000,000 and JTM - \$12,500,000

Since there are nearly one million people in the *Létourneau* Class, this represents only about \$130 for each member. In light of that, and of the fact that there is no condemnation for moral damages in this file, the Court refuses distribution of an amount to each of the members on the ground that it is not possible or would be too expensive to do so.

Finally, the Court orders the provisional execution of the judgment notwithstanding appeal with respect to the initial deposit of one billion dollars of moral damages, plus all punitive damages awarded. The Defendants must deposit these sums in trust with their respective attorneys within sixty days of the

date of the judgment. The Court will decide how those amounts are to be disbursed at a later hearing.

[Footnotes added]

[5] Though Respondents originally indicated that they would seek an order of provisional execution based on the assertion that Appellants were guilty of improper use of procedure, in the end, they argued for the application of the penultimate paragraph of article 547 *C.C.P.* as the grounds for an order of provisional execution:

547. (...)

In addition, the court may, upon application, order provisional execution in case of exceptional urgency or for any other reason deemed sufficient in particular where the fact of bringing the case to appeal is likely to cause serious or irreparable injury, for the whole or for part only of a judgment.

(...)

547. [...]

De plus, le tribunal peut, sur demande, ordonner l'exécution provisoire dans les cas d'urgence exceptionnelle ou pour quelque autre raison jugée suffisante notamment lorsque le fait de porter l'affaire en appel risque de causer un préjudice sérieux ou irréparable, pour la totalité ou pour une partie seulement du jugement.

[...]

[6] In the conclusions of the judgment, the judge ordered an initial deposit towards partial satisfaction of the two awards within 60 days of \$1,131,090,000 broken down as follows:

	<u>BLAIS</u>		<u>LÉTOURNEAU</u>	
ITL	\$670,000,000	(compensatory)	\$72,500,000	(punitive)
	\$30,000	(punitive)		
RBH	\$200,000,000	(compensatory)	\$46,000,000	(punitive)
	\$30,000	(punitive)		
JTM	\$130,000,000	(compensatory)	\$12,500,000	(punitive)
	\$30,000	(punitive)		
TOTAL	\$1,000,090,000		\$131,000,000	

[7] The judge ordered provisional execution “with respect to the initial deposit of one billion dollars of moral damages, plus all punitive damages”.

[8] The condemnation for moral damages in the Blais file (excluding interest and special indemnity) is \$6,858,864,000 plus additional amounts per members of sub-classes. In the Létourneau file, there is no condemnation for compensatory damages.

[9] The judge’s reasons for ordering provisional execution were that the actions had been pending for over 17 years and he found that Respondents’ estimate of 6 years for the appeal process was optimistic. He viewed as serious and irreparable injury that class members would die during those 6 years, in many instances as a result of Appellants’ faults.

[10] He also deemed it “critical in the interest of justice” that Plaintiffs, including the Fond d’aide aux recours collectifs be given some relief from the cost of litigation accumulated over the years.

[11] The judge ordered provisional execution for moral and punitive damages with “full knowledge of the Court of Appeal’s statement to the effect that provisional execution of moral and punitive damages is very exceptional”.⁶

[12] He ordered that the monies be deposited in the trust accounts of the respective attorneys of Appellants and indicated his openness to the “possibility of distributing certain amounts immediately”.⁷

[13] As a general rule, execution is suspended by the bringing of an appeal⁸ but article 547 *C.C.P.* provides, by way of exception that provisional execution may apply because of the nature of the case or in exceptional circumstances, by order of the trial judge. Article 550 *C.C.P.* permits a judge of the Court of Appeal to “cancel or suspend” orders of provisional execution issued in first instance. The matter may be referred to the Court as is presently the case.

[14] To obtain the suspension or cancellation of an order of provisional execution, Appellants must demonstrate:

⁶ Para. 1202 of the judgment, referring to *Hollinger v. Hollinger*, 2007 QCCA 1051, para. 3 per Dalphond, J.A.; see also *Immeubles H.T.H. Inc. v. Plaza Chevrolet Buick GMC Cadillac Inc.*, 2012 QCCA 2302, para. 4 (Morissette, J.A.).

⁷ Para. 1203 of the judgment.

⁸ Article 497 *C.C.P.*

- i) an apparent weakness in the judgment of first instance;
- ii) a risk of serious prejudice if provisional execution is maintained; and
- iii) that the balance of inconvenience favours the cancellation.⁹

[15] In support of their motions, each Appellant has filed an affidavit (and in the case of ITL, documentation as well) to indicate the prejudice they suffer as a result of the orders of provisional execution. Each affiant was deposed by Respondents' attorneys who requested the production of certain documents.

[16] ITL seeks a sealing order to protect the confidentiality of some of this information found at paragraphs 6, 7, 16 (iii), 20-27, 29-30 and 33 of the affidavit of its officer as well as the documents comprising its exhibit A.

[17] Summarily, this information includes wage and pension obligations and financial data including earnings and availability of cash and credit facilities to pay the awards. Also ITL has filed its consolidated financial statements for the year ending December 31, 2014.

[18] During the deposition of the affiant, Respondents requested RBH's 2014 financial statement and cash flow projections. RBH then also filed a motion to seal documents and the portion of the testimony referring to them.

[19] ITL and RBH invoke the judgment of the Supreme Court of Canada in the matter of *Sierra Club*¹⁰ where the test for a court to issue a confidentiality order was set down as follows:

53 (...)

(a) such an order is necessary in order to prevent a serious risk to an important interest, including a commercial interest, in the context of litigation because reasonably alternative measures will not prevent

53 [...]

a) elle est nécessaire pour écarter un risque sérieux pour un intérêt important, y compris un intérêt commercial, dans le contexte d'un litige, en l'absence d'autres options raisonnables pour écarter ce risque;

⁹ André Rochon (with the collab. of Frédérique Le Colletter), *Guide des requêtes devant le juge unique de la Cour d'appel*, Cowansville, Éditions Yvon Blais, 2013, p. 145.

¹⁰ *Sierra Club of Canada v. Canada (Minister of Finance)*, [2002] 2 S.C.R. 522, 2002 SCC 41 [*Sierra Club*].

the risk; and

(b) the salutary effects of the confidentiality order, including the effects on the right of civil litigants to a fair trial, outweigh its deleterious effects, including the effects on the right to free expression, which in this context includes the public interest in open and accessible court proceedings.

b) ses effets bénéfiques, y compris ses effets sur le droit des justiciables civils à un procès équitable, l'emportent sur ses effets préjudiciables, y compris ses effets sur la liberté d'expression qui, dans ce contexte, comprend l'intérêt du public dans la publicité des débats judiciaires.

[20] The Court added:

55 In addition, the phrase "important commercial interest" is in need of some clarification. In order to qualify as an "important commercial interest", the interest in question cannot merely be specific to the party requesting the order; the interest must be one which can be expressed in terms of a public interest in confidentiality. For example, a private company could not argue simply that the existence of a particular contract should not be made public because to do so would cause the company to lose business, thus harming its commercial interests. However, if, as in this case, exposure of information would cause a breach of a confidentiality agreement, then the commercial interest affected can be characterized more broadly as the general commercial interest of preserving confidential information. Simply put, if there is no general principle at stake, there can be no "important commercial interest" for the purposes of this test. Or, in the words of Binnie J. in *F.N. (Re)*, [2000] 1 S.C.R. 880, 2000 SCC 35, at para. 10, the open court rule only yields "where the public interest in confidentiality outweighs the public interest in openness".

55 De plus, l'expression « intérêt commercial important » exige une clarification. Pour être qualifié d'« intérêt commercial important », l'intérêt en question ne doit pas se rapporter uniquement et spécifiquement à la partie qui demande l'ordonnance de confidentialité; il doit s'agir d'un intérêt qui peut se définir en termes d'intérêt public à la confidentialité. Par exemple, une entreprise privée ne pourrait simplement prétendre que l'existence d'un contrat donné ne devrait pas être divulguée parce que cela lui ferait perdre des occasions d'affaires, et que cela nuirait à ses intérêts commerciaux. Si toutefois, comme en l'espèce, la divulgation de renseignements doit entraîner un manquement à une entente de non divulgation, on peut alors parler plus largement de l'intérêt commercial général dans la protection des renseignements confidentiels. Simplement, si aucun principe général n'entre en jeu, il ne peut y avoir d'« intérêt commercial important » pour les besoins de l'analyse. Ou, pour citer le juge Binnie dans *F.N. (Re)*, [2000] 1 R.C.S. 880, 2000 CSC 35, par. 10, la règle de la publicité des débats judiciaires ne cède le pas que « dans les cas où le droit du public à

la confidentialité l'emporte sur le droit
du public à l'accessibilité ».

(Emphasis added)

[21] On application of this test, the motions to seal and keep confidential the information proposed by ITL and RBH must fail. The information does not appear significant nor confidential even if the parties may consider it sensitive.

[22] Assuming that the issue of confidentiality raised by ITL and RBH merits application of the criteria in *Sierra Club*, an appreciation of the context of the requests is necessary. It should be remembered that in *Sierra Club*, Atomic Energy of Canada Ltd., the party seeking confidentiality, was contractually bound to a third party (i.e. a branch of the Chinese government with which it had contracted to build nuclear reactors) not to disclose the information in question. However, for purposes of its litigation with Sierra Club, the Atomic Energy Commission required the documents as part of its defence. In the case before us, ITL and RBH are in no such conflict between maintaining a confidence imposed by contract and having at their disposal the appropriate evidence in order that they may benefit from a full defence and fair trial of the issue. In this case, the issue is the applicability of provisional execution and more specifically the prejudice allegedly suffered by ITL and RBH due to the trial judge's order. The information which ITL and RBH seek to have sealed is information belonging to them which they filed in evidence with a view to establishing the prejudice they suffer from the order of provisional execution.

[23] Regarding the first branch of the test in *Sierra Club*, there is no general principle at play in this case in maintaining the confidentiality of the information filed by ITL and RBH. Therefore, there is no "important commercial interest" in issue. The present case is that of private parties not wishing to reveal financial information that they submit as evidence in support of their position before this Court. The reason invoked is the competitive nature of the industry and particularly that the other co-defendants are competitors. However, in ITL's motion, no explanation is attempted as to how the information affects ITL's ability to compete in the market place. Will the consumer's decision to buy its cigarettes over that of its competitors be affected by its balance sheet or availability of cash and credit? The prejudice invoked by ITL is vague. It makes reference to trade secrets and competitive disadvantages without specifically setting out how those interests are negatively affected by the disclosure. ITL has not satisfied its burden to demonstrate that this Court should issue the requested sealing order. ITL certainly does not define any general principle in the public interest to maintaining the confidentiality of the information in question.

[24] RBH has set out in greater detail its case for commercial sensitivity. It maintains that even though the data in its financial statements is ultimately reflected in the

consolidated financial statements of its parent company which is public, the information in its financial statements and projections regarding costing and profit margins could be used by competitors to their advantage (and RBH's detriment) in the market place. It adds that the manner it treats its financial statements internally demonstrates the confidential nature of those documents. Lastly, it refers to the fact that by consent in first instance the judge permitted the Appellants to file limited financial data.

[25] However more detailed may be RBH's description of the potential consequences for it of the disclosure of its financial statements, it does not define any general principle compelling a confidentiality order. Judges of our Court, in applying the principles in *Sierra Club* to commercial situations have underlined the necessity of demonstrating an interest which is not purely private in nature.¹¹ Indeed, as the Ontario Court of Appeal has stated:

Where the interest in confidentiality engages no public component, the inquiry is at an end.¹²

The right of a litigant to privacy does not give rise to court ordered confidentiality each time information of a financial nature is put in evidence where the party prefers not to reveal that information.

[26] Neither of ITL or RBH's submissions on confidentiality raise a public component; nor do their positions pertain to their ability to enjoy a fair hearing.

[27] While the analysis could end here as indicated by the Ontario Court of Appeal, we would add the following regarding the second branch of the test in *Sierra Club*. The "open court and public access" principles are related to the fundamental right of free speech outlined by the Supreme Court in *Sierra Club*.¹³ These principles are reflected in article 13 *C.C.P.* and article 23 of the *Charter of Human Rights and Freedoms*.¹⁴ In the present case, regarding the issue of the prejudice caused by the order of provisional execution, these principles of openness weigh heavier in the balance than any private interest pleaded by ITL and RBH to seal the information in question. Accordingly, the motions of ITL and RBH for sealing orders will be dismissed.

¹¹ 7999267 *Canada inc. v. 9109-8657 Québec inc.*, 2012 QCCA 1649, paras. 14-15 (Gascon, J.A.); 3834310 *Canada inc. v. R.C.*, REJB 2004-68462, 2004 CanLII 4122 (C.A.), para. 24.

¹² See also *Out-Of-Home Marketing Association of Canada v. Toronto (City of)*, 2012 ONCA 212, para. 55 (see also para. 45ff.) where a sealing order to protect a commercial party's information from competitors and suppliers was refused absent the demonstration of a public interest in such confidentiality.

¹³ *Sierra Club*, *supra*, note 10, para. 52.

¹⁴ CQRL, c. C-12.

[28] However and despite the deference due to the trial judge,¹⁵ we are of the view that the Appellants have satisfied the criteria so that the order of provisional execution should be cancelled.

[29] We believe that the part of the judgment addressing the order of provisional execution contains an apparent weakness which justifies our intervention.¹⁶ We make no comment whatsoever on the strengths or weaknesses of any of the other parts of the judgment. The presumption of validity of the judgment on the merits¹⁷ forms no part of our reasoning which is restricted to that part of the judgment addressing provisional execution.

[30] Delay as a justification for ordering provisional execution does not stand up to scrutiny. If the 17 years experienced in bringing the case to trial and judgment is due to an abuse of procedure by Appellants then this could potentially justify provisional execution pursuant to article 547 (1) (j) *C.C.P.*, but we note from the judgment¹⁸ that this issue was “put over” until after judgment and that Respondents, in argument, relied on the penultimate paragraph of article 547 *C.C.P.* to seek provisional execution.

[31] As for the 6 years in appeal referred to by the judge, there is no evidentiary basis for this assumption. We take judicial cognizance of the statistics published by this Court on its website and specifically that the delays in civil cases such as those at bar for a hearing date is 12 months from the filing of factums. The legal delays for the filings of the factums’ aggregate 7 months reckoned from the inscription.¹⁹ We will not speak to potential delays before the Supreme Court of Canada where an appeal does not automatically suspend execution.²⁰ Suffice it to say that the 6 years referred to by the judge seems somewhat exaggerated particularly if we consider the possibility of an expedited process.²¹ In any event, if delays in appeal were in themselves sufficient to satisfy the criteria of article 547 *C.C.P.* then provisional execution would become the

¹⁵ A. Rochon, *supra*, note 9; citing Pelletier, J.A., *Québec (Ministre de l’agriculture, des pêcheries et de l’alimentation au Québec) v. Produits de l’érable Bolduc & Fils Itée*, J.E. 2002-1239.

¹⁶ *Gestion Denis Chesnel Inc. v. Syndicat des copropriétaires du domaine de l’Éden Phase I*, 2015 QCCA 292 (Schrager, J.A.).

¹⁷ *Québec (Ministre de l’agriculture, des pêcheries et de l’alimentation au Québec) v. Produits de l’érable Bolduc & Fils Itée*, *supra*, note 15; *Soft Informatique Inc. v. Gestion Gérald Bluteau Inc.*, 2012 QCCA 2018 (Dalphond, J.A.).

¹⁸ Paras. 1196 and 1197.

¹⁹ Articles 503 and 504.1 *C.C.P.*

²⁰ *Supreme Court Act*, R.S.C., 1985, c. S-26, s. 65(1)(d).

²¹ Appellants have indicated that they have no objection to an accelerated date for the hearing of the appeal.

rule instead of the exception as Chief Justice Duval Hesler in her then capacity as a trial judge remarked.²²

[32] The judge found that this case is exceptional, which there is no denying with regard to its magnitude by measure of quantum of condemnation and potential number of class members. However, there must be some link between the exceptional circumstances and the provisional execution. We do not agree that the exceptional circumstances of this case warrant provisional execution. The award subject to provisional execution is for moral and punitive damages only. The quantum of damages and even scale of impact on the class members (let alone Quebec society at large) speak equally to allowing the appeal to be decided before any execution. Moreover, the bringing of an appeal in itself will not cause serious or irreparable injury to Respondents. Injury that has been suffered is not due to nor does it appear that it will be aggravated at this point by the judicial process, particularly if that process is adequately managed.

[33] We are certainly not without empathy for potential class members who may die of a tobacco related illness prior to receiving any compensation. The judge may have a point that this state of affairs represents serious prejudice measured against the time to bring the case to an end. Unfortunately, the law relating to class actions makes it such that the order of provisional execution is of questionable benefit to potential class members.

[34] On a strict legal basis one may wonder whether provisional execution is simply incompatible with class actions so that articles 547 to 551 *C.C.P.* would be inapplicable altogether in virtue of article 1051 *C.C.P.* Article 1030 *C.C.P.* provides that it is only upon the judgment acquiring “the authority of *res judicata*” (“l’*autorité de la chose jugée*”) that the process to have class members file claims is commenced. Whether the legislator meant to require that the judgment becomes final²³ (“*passé en force de chose jugée*”) in the sense that the appeal process is exhausted, or merely binding upon the parties (“*autorité de la chose jugée*”) need not be decided in this case because the appeal suspends the effect of the “*autorité de la chose jugée*” and prevents the judgment from acquiring the “force” of the “*chose jugée*”.²⁴ Furthermore, it is certainly a challenge to execute a judgment when its beneficiaries have yet to be appropriately identified although article 1031 *C.C.P.* provides that the court may determine the amount due by the judgment debtor “even if the identity of each of the class members”

²² *Société nationale d’assurance inc. – Les Clairvoyants Compagnie d’assurance générale et al. v. Gaz Métropolitain inc. et al.*, [2001] R.R.R. 757, 764, AZ-01021615, p. 11 (Duval Hesler, J.S.C.).

²³ See article 591, para. 2 *Code of Civil Procedure*, S.Q. 2014, c. 1 to come into force January 1, 2016, and see also Quebec, National Assembly, *Journal des débats de la Commission permanente de la justice*, 31st legislature, 3rd session, vol. 20, no 102 (June 1, 1978), p. B-3906.

²⁴ Léo Ducharme, *Précis de la preuve*, 6th ed., 2005, Montreal, Wilson & Lafleur, para. 602; Jean-Claude Le Royer et Sophie Lavallée, *La preuve civile*, 4th ed., 2008, Cowansville, Éditions Yvon Blais, para. 816.

is not established. Deposit of the appropriate amount appears in law to be the first step of or at least towards the execution of a class action judgment as provided in article 1032 *C.C.P.*

[35] With one possible exception no judgment awarding provisional execution in a class action has been shown to us. The possible exception is the case of *Comartin v. Bordet*²⁵ relied upon by the trial judge. However, in that case the provisional execution was an order to deposit a portion of the damage award (\$50,000) with the prothonotary pending appeal without any discussion of the availability in law of provisional execution. Since there was no appeal, this Court did not examine the question. Again, the order in the circumstances of that case resembles security more than provisional execution. In the present case, the impact of articles 1030 and 1051 *C.C.P.* raise a serious question which does not appear to have been considered by the trial judge but need not be decided by us in order to dispose of the issue given the other reasons expressed in this judgment.

[36] In view of the foregoing, there are legal and practical difficulties with distribution to class members on a provisional basis. Moreover, article 1035 *C.C.P.* provides that law costs are paid first in a class action but provisional execution cannot be ordered for costs (article 548 *C.C.P.*).

[37] Fees of Respondents' attorneys would be collocated second after law costs and before class member entitlements. However, provisional payment of legal fees is not justified by the judge's desire to direct some compensation to class members during their lifetime. Provisional execution as relief from litigation costs and to provide the ability to see the file through the appeal process has no evidentiary basis on the record before us. The judge refers to support made available by Fonds d'aide aux recours collectifs. Has other financing been made available in the past? Is financing available for the appeal process? What are the fee arrangements with the professionals? There is no indication of any element of response to these queries in the judgment nor in the file as constituted before us. We therefore view as a weakness in the judgment an award of provisional execution of over 1 billion dollars, in consideration of the ability to support the litigation going forward, without any evidentiary basis for such consideration. Specific evidence is required as a foundation for an order of provisional execution.²⁶

²⁵ *Comartin v. Bordet*, [1984] C.S. 584.

²⁶ *Banque Nationale du Canada v. Bédard*, 2007 QCCA 1796, para. 6 (Giroux, J.A.) citing *Lebeuf v. Groupe SNC Lavalin inc.*, [1995] R.D.J. 366, p. 370 (Gendreau, J.A.); *Tonetti v. Entreprises Gaétan Brunette & Fils*, 2015 QCCA 87, para. 3 (Savard, J.A.); *Gaudet v. Judand Itée*, 2012 QCCA 1124, para. 5 (Léger, J.A.).

[38] Another significant weakness in the judge's order of provisional execution is the unaddressed question of "what happens if Appellants are successful in appeal?". We are hardly in a position to say that the inscriptions in appeal raise questions that have no chance of success. Accordingly, it is essential to examine the hypothesis of a successful appeal against an order of provisional execution of over 1 billion dollars.

[39] The judge ordered the initial deposit to be paid over to counsel of Appellants in trust, stating that he is "open to the possibility of distributing certain amounts immediately". Certainly, if nothing is distributed there will be no benefit derived by class members. In such event, the deposits will serve, in effect, as security for such execution but security is not in issue before us. Unless accompanied by some guarantee from or for Respondents, the possibility of reimbursement makes it such that the order of provisional execution suffers from an apparent weakness. Given the amount of the provisional execution in this case it would take specific proof of the capacity to provide such security for us to entertain such an order. While judges of our Court have issued orders of provisional execution of awards of (material) damages in exceptional circumstances, such orders have been made where a need for funds was demonstrated and when the provisional execution was accompanied by the giving of security for reimbursement.²⁷ All of these instances involve the examination of individual particular cases; none were class actions.

[40] Regarding any potential distribution that the judge may have envisaged, we note that the entire amount of the judgment in the Létourneau case is for punitive damages. The judge stated that none of this will ever be distributed to class members because of the disproportion between the amount due per class member and the costs of distribution.²⁸ Where no distribution will ever take place, there is no basis to consider provisional distribution or execution. Though not mentioned by the judge, this logic could apply to the \$30,000 punitive award against each Appellant in Blais. In such circumstance, the only justification for the order of provisional execution, as the judge himself stated, is that "it is high time that the Companies started to pay for their sins".²⁹ However, there is no benefit directly to the opposing party litigants (i.e. class members) and the existence of those "sins" is *sub judice* before the Court of Appeal. We find that this weakness in the order behooves our intervention.

[41] Similarly, the provisional deposit of the condemnation in the Blais case, though comprised of moral in addition to punitive damages is nevertheless not destined to compensate material loss. The tangible benefit to class members is negligible. There

²⁷ *St-Cyr v. Fisch*, J.E. 2003-1244, AZ-50179198 (Morin, J.A.); *Financière Banque Nationale v. Cannone*, 2007 QCCA 1453 (Morin, J.A.); *Manoir Montpellier Ltd v. Simitian*, [1985] R.D.J. 435, AZ-85011124 (Bisson, J.A.).

²⁸ Judgment summary and paras. 951 and 954 of the judgment.

²⁹ Para. 1200 of the judgment.

remains the nagging issue of reimbursement if Appellants succeed on appeal. We see in this a serious prejudice *per se* for the Appellants.³⁰ The potential necessity of seeking reimbursement of \$10,000 from each of 100,000 class members is by any objective standard a prejudice that cannot be ignored.

[42] The affidavits filed by ITL and RBH in support of their motions to cancel provisional execution indicate that payment within 60 days of judgment causes serious financial prejudice to them. The evidence filed discloses a significant impact for Appellants despite that they are profitable and sizeable. In the case of JTM, its portion of \$142,530,000 exceeds its annual earnings before interest, taxes and other expenses and well exceeds cash on hand of approximately \$5.1 million. RBH's \$246,030,000 exceeds its projected cash on hand at the end of July by approximately \$125 million. ITL's provisional execution amount of \$742,530,000 is approximately double its annual profit (before extraordinary items) and greatly exceeds current cash and credit availability to pay such sum.

[43] Serious prejudice has been held sufficient to cancel provisional execution where the effect is to negate the right of appeal.³¹ At least, in the case of JTM and ITL, based on the affidavits, this appears to be the case. The judge based his calculations of Appellants' ability to pay on historical earnings and balance sheet worth. He obviously did not analyze current cash and credit availability as set forth in the affidavits submitted to us. Respondents have pointed to numerous facts put in evidence in the lower court where Appellants have transferred profits and assets to related companies. Respondents assert that if Appellants are today unable to pay, this is their own doing and that of corporations related to them. However, these arguments are not helpful to Respondents given the other considerations germane to provisional execution and elicited above. This is not to say however that such facts and arguments could not give rise to other recourses or orders.

[44] Given the absence of or negligible benefit for class members from the order of provisional execution and the prejudice for the Appellants in paying those amounts, the balance of convenience on the issue of provisional execution favours the Appellants.

[45] In summary, assuming that provisional execution is possible in law for a class action judgment, we consider the justification for the provisional execution weak, the

³⁰ *HSBC Bank Canada v. Aliments Infiniti inc.*, 2010 QCCA 717, para. 22 (Bich, J.A.).

³¹ *Roussel v. Gosselin*, 2015 QCCA 710, para. 11 (Giroux, J.A.); *Kornarski v. Gornitsky*, 2010 QCCA 1291, para. 10 (Rochon, J.A.); *Lutfy Ltd v. Lutfy*, [1996] R.D.J. 317, p. 318, AZ-96011470, p. 4 (Chamberland, J.A.); see also *Berthiaume v. Carignan*, 2013 QCCA 1436, [2013] R.J.Q. 1369 (Dalphond, J.A.).

prejudice for Appellants serious and that the balance of convenience weighs in their favour. Accordingly, the order of provisional execution will be cancelled.

[46] **FOR ALL THE FOREGOING REASONS, THE COURT:**



[47] **DISMISSES** the motion by Appellant Imperial Tobacco Canada Ltd. for a sealing order, with costs;

[48] **DISMISSES** the motion by Appellant Rothmans, Benson & Hedges Inc. for a sealing order, with costs;

[49] **GRANTS** the motion of Appellant Imperial Tobacco Canada Ltd. to cancel the order of provisional execution in the judgment of the Superior Court affecting it, and **CANCELS** the order of provisional execution contained therein, costs to follow.

[50] **GRANTS** the motion of Appellant Rothmans, Benson & Hedges Inc. to cancel the order of provisional execution in the judgment of the Superior Court affecting it, and **CANCELS** the order of provisional execution contained therein, costs to follow.

[51] **GRANTS** the motion of Appellant JTI-MacDonald Corp. to cancel the order of provisional execution in the judgment of the Superior Court affecting it, and **CANCELS** the order of provisional execution contained therein, costs to follow.


MARIE-FRANCE BICH, J.A.
 AU NOM DU
JUGE PAUL VÉZINA ET AVEC SON AUTORISATION
PAUL VÉZINA, J.A.


MARK SCHRAGER, J.A.

Mtre Éric Préfontaine
Mtre Deborah Glendinning
Mtre Mahmud Jamal
OSLER, HOSKIN & HARCOURT
For Imperial Tobacco Canada Ltd.

Mtre Guy Pratte
Mtre François Grondin
BORDEN LADNER GERVAIS
For JTI-MacDonald Corp.

Mtre Simon V. Potter
Mtre Pierre-Jérôme Bouchard
McCARTHY TÉTRAULT
For Rothmans, Benson & Hedges Inc.

Mtre Gordon Kugler
KUGLER, KANDESTIN
Mtre André Lespérance
Mtre Bruce Johnston
TRUDEL, JOHNSTON & LESPÉRANCE
Mtre Marc Beauchemin (absent)
DE GRANDPRÉ CHAIT
For Conseil québécois sur le tabac et la santé, Jean-Yves Blais et Cécilia Létourneau

Date of hearing: July 9, 2015

EXHIBIT “Z”

This is **Exhibit "Z"**, referred to in the
Affidavit of Robert McMaster, sworn before me
this 8th day of March, 2019.



Notary Public

Mitchell Grossell
Barrister & Solicitor
LSO# 699931

COURT OF APPEAL

CANADA
PROVINCE OF QUEBEC
REGISTRY OF MONTREAL

No: 500-09-025385-154, 500-09-025387-150
(500-06-000070-983, 500-06-000076-980)

DATE: October 27, 2015

PRESIDING: THE HONOURABLE MARK SCHRAGER, J.A.

**IMPERIAL TOBACCO CANADA LTD.
ROTHMANS, BENSON & HEDGES INC.**
APPELLANTS – Defendants

v.

**CONSEIL QUÉBÉCOIS SUR LE TABAC ET LA SANTÉ
JEAN-YVES BLAIS
CÉCILIA LÉTOURNEAU**
RESPONDENTS – Plaintiffs

JUDGMENT

[1] Respondents have filed identical motions in each of the three appeals seeking orders against Appellants, jointly, to furnish security.

[2] At the commencement of the hearing, the motion against JTI-Macdonald Corp (“JTM”).¹ was withdrawn because attorneys were unavailable due to health issues. Hence, reference in this judgment to the “Appellants” should be read as referring to Imperial Tobacco Canada Ltd (“ITL”) and Rothmans, Benson & Hedges Inc. (“RBH”), unless the context indicates otherwise.

¹ Record no: 500-09-025386-152.

[3] On May 27, 2015, the Superior Court, District of Montreal (the Honourable Brian Riordan) condemned the three Appellants to pay moral and punitive damages aggregating in excess of \$8 billion, which today would exceed \$15 billion with interest and additional indemnity.

[4] The 237 page judgment in first instance culminated two class actions commenced in 1998 against the three Appellant cigarette companies. The class actions were authorized in 2005; the joint trial commenced on March 12, 2012 and terminated on December 11, 2014. More than 70 witnesses, including 27 experts, were heard over a total of 251 hearing days. In excess of 20,000 exhibits were filed in evidence. The judgment found that Appellants were liable under the *Charter of Human Rights and Freedoms*,² the *Consumer Protection Act*³ and under the *Civil Code of Quebec*⁴ (C.C.Q.) for faults causing injury to others and for failure to properly inform consumers of the risks and dangers associated with the products manufactured by Appellants.

[5] In the conclusions of the judgment, the judge ordered an initial deposit of \$1,131,090,000 in partial satisfaction of the two awards within 60 days broken down as follows:

	<u>BLAIS</u>		<u>LÉTOURNEAU</u>	
ITL	\$670,000,000	(compensatory)	\$72,500,000	(punitive)
	\$30,000	(punitive)		
RBH	\$200,000,000	(compensatory)	\$46,000,000	(punitive)
	\$30,000	(punitive)		
JTM	\$130,000,000	(compensatory)	\$12,500,000	(punitive)
	\$30,000	(punitive)		
TOTAL	\$1,000,090,000		\$131,000,000	

[6] The judge also ordered provisional execution “with respect to the initial deposit of one billion dollars of moral damages, plus all punitive damages”.

[7] Applying the proportions of liability found by the trial judge (JTM 13%, ITL 67% and RBH 20%), provisional execution payments amounted to:

² *Charter of Human Rights and Freedoms*, CQLR, c. C-12.

³ *Consumer Protection Act*, CQLR, c. P-40.1.

⁴ *Civil Code of Quebec*, CQLR c C-25.

- i) JTM \$130 million
- ii) ITL \$670 million
- iii) RBH \$200 million

[8] All Appellants petitioned this Court to cancel the order for provisional execution. In support of their motions, Appellants filed affidavits and financial information to support their claims that, on a cash basis, they could not pay their respective amounts of the provisional execution orders within the sixty day period imposed by the judgment. RBH stated explicitly that the obligation to pay rendered it insolvent on a cash basis and ITL alluded to the possibility of filing proceedings under the *Companies' Creditors Arrangement Act* ("C.C.A.A.").⁵

[9] By judgment of July 23, 2015,⁶ this Court granted Appellants' motions and cancelled the provisional execution after identifying a weakness in that part of the judgment ordering provisional execution and the existence of a prejudice for the Appellants arising from the order of provisional execution.

[10] The Court pointed out that provisional execution may be incompatible with class actions because it is only upon final judgment that class members are definitively determined. Moreover, the Court observed that unless funds were provisionally distributed to class members, there would be no benefit to them but added that distribution on a provisional basis raised the problem of obtaining reimbursement should Appellants ultimately succeed in their appeals.

[11] On the issue of prejudice the Court said the following:

[42] The affidavits filed by ITL and RBH in support of their motions to cancel provisional execution indicate that payment within 60 days of judgment causes serious financial prejudice to them. The evidence filed discloses a significant impact for Appellants despite that they are profitable and sizeable. In the case of JTM, its portion of \$142,530,000 exceeds its annual earnings before interest, taxes and other expenses and well exceeds cash on hand of approximately \$5.1 million. RBH's \$246,030,000 exceeds its projected cash on hand at the end of July by approximately \$125 million. ITL's provisional execution amount of \$742,530,000 is approximately double its annual profit (before extraordinary items) and greatly exceeds current cash and credit availability to pay such sum.

[43] Serious prejudice has been held sufficient to cancel provisional execution where the effect is to negate the right of appeal. At least, in the case of JTM and ITL, based on the affidavits, this appears to be the case. The judge based his

⁵ *Companies' Creditors Arrangement Act*, R.S.C. 1985, c. C-36.

⁶ *Imperial Tobacco Canada Ltd. v. Conseil québécois sur le tabac et la santé*, 2015 QCCA 1224.

calculations of Appellants' ability to pay on historical earnings and balance sheet worth. He obviously did not analyze current cash and credit availability as set forth in the affidavits submitted to us. Respondents have pointed to numerous facts put in evidence in the lower court where Appellants have transferred profits and assets to related companies. Respondents assert that if Appellants are today unable to pay, this is their own doing and that of corporations related to them. However, these arguments are not helpful to Respondents given the other considerations germane to provisional execution and elicited above. This is not to say however that such facts and arguments could not give rise to other recourses or orders.

[12] In virtue of the instant motions, Respondents seek security from Appellants in the aforementioned proportions, aggregating \$5 billion, within 30 days of judgment or, subsidiarily that such security be provided by way of quarterly instalments of \$250 million each commencing as at June 26, 2015. The proposed form of the security requested is irrevocable letters of credit issued by a Canadian bank listed in Schedule I of the *Bank Act*.⁷

[13] Other than facts found by the judge, the Respondents rely on the affidavits filed by Appellants in support of their motions to cancel provisional execution as well as the depositions of the affiants. Respondents submit that Appellants have arranged their affairs so as to be, in effect, judgment proof for any substantial condemnation and that there is every indication that, pending appeal, Appellants will continue to direct their earnings to related entities located out of jurisdiction so that they will be unable to pay any significant condemnation that may be maintained in appeal.

[14] Appellants have argued for the dismissal of the motions. Following are summaries of their submissions.

POSITION OF ITL

[15] ITL pleads that there are no grounds upon which to order it furnish security. The facts which Respondents invoke in support of their motion are not current. The transfer of trademarks to a subsidiary, which hypothecated them in favour of a related out-of-jurisdiction company occurred in the year 2000. The payment out of earnings as dividends to the out-of-jurisdiction parent, stopped in 2014, but in any event these payments merely reflect "business as usual". Thus, because there are no relevant facts occurring after judgment which might jeopardize the satisfaction of that judgment, there is no "special reason" to justify the ordering of security pursuant to article 497 of the *Code of Civil Procedure* ("C.C.P").⁸

⁷ *Bank Act*, S.C. 1991, c. 46.

⁸ *Code of Civil Procedure*, CQLR c. C-25.

[16] ITL adds that should I rule that there are grounds justifying security, the amounts requested are such as to drain all pre-tax earnings and put the going concern viability of ITL in peril. Moreover, ITL is unable to grant security in order to obtain borrowed funds because of its covenant to a related corporation. The latter currently provides credit facilities to ITL. Furthermore, an order of security payable in quarterly instalments would not alleviate this inability to pay.

POSITION OF RBH

[17] RBH submits that because of the magnitude of the judgment, Respondents are in effect seeking an appeal bond. However, the quantum of the judgment is an insufficient ground under article 497 *C.C.P.* The courts have stated that security will only be ordered where indicated by clear and precise facts; hypotheses based on subjective fear of Respondents that a judgment will not be satisfied does not suffice.

[18] RBH has been paying dividends in amounts less than net earnings throughout the litigation, so that Respondents' position once and if they obtain judgment from the Court of Appeal will be the same as it was at the outset of proceedings. Security should not be ordered for a situation existing prior to judgment; Respondents must demonstrate that their position has worsened and that their ability to obtain satisfaction of an eventual judgment will be in jeopardy. Respondents will simply have to obtain satisfaction out of the companies' revenues.⁹ Counsel conceded that RBH's tangible or hard assets were of no value upon which to execute a judgment since plant and machinery were only appropriate to the manufacture and sale of cigarettes and inventory required government licensing to sell.

[19] Although RBH maintained in July 2015 before this Court that it could not pay its share of the provisional execution order, this only meant that it could not pay during the 60 day period provided in the judgment and should not be taken as a general admission of insolvency. The cancellation by RBH's parent of its credit facility within 2 days following the Superior Court judgment made it clear that it could not pay the provisional execution order, but is not a justification to order RBH to furnish security. In other words, the inability to satisfy the order of provisional execution should not be projected or be understood as an inability to satisfy a final judgment.

[20] RBH joined ITL by declaring that any security (particularly a letter of credit) cannot be ordered payable following the institution of proceedings (as Respondents seek) under either the *Bankruptcy and Insolvency Act* ("*B.I.A.*")¹⁰ or *C.C.A.A.* That would be a "fraud on the bankruptcy". Moreover, as to the furnishing of security, RBH objects

⁹ This appeared to contradict counsel's assertion that there was no proof that RBH would continue to pay dividends notwithstanding the judgment since its representative was not directly asked the question during the examination on the affidavit supporting the motion to cancel provisional execution.

¹⁰ *Bankruptcy and Insolvency Act*, R.S.C. 1985, c. B-3, s. 2.

to a letter of credit arguing that this would potentially give Respondents priority over other creditors should RBH become subject to any of the insolvency legislation. Should security be ordered, RBH would prefer that it be in the form of cash deposited in a lawyer's trust account.

[21] RBH points out that security for court costs was not requested in the motion originally filed and of which the undersigned is seized and, in any event, in a class action, costs are paid out of first proceeds of recovery.

[22] Lastly, RBH pleaded that the security requested requires the equivalent of an order not to declare any further dividends which, in essence, is a seizure before judgment under article 733 *C.C.P.* or a safeguard order, both of which are within the jurisdiction of the Court but not of a judge sitting alone.

DISCUSSION

[23] Article 497 *C.C.P.* provides that:

497. Sauf les cas où l'exécution provisoire est ordonnée et ceux où la loi y pourvoit, l'appel régulièrement formé suspend l'exécution du jugement.

Toutefois, un juge de la Cour d'appel peut, sur requête, pour une raison spéciale [...], ordonner à l'appelant de fournir, dans le délai fixé dans cette ordonnance, un cautionnement pour une somme déterminée, destiné à garantir, en totalité ou en partie, le paiement des frais d'appel et du montant de la condamnation, au cas où le jugement serait confirmé.

Si l'appelant ne fournit pas le cautionnement dans le délai fixé, un juge de la Cour d'appel peut, sur requête, rejeter l'appel.

497. Saving the cases where provisional execution is ordered and where so provided by law, an appeal regularly brought suspends the execution of judgment.

However, a judge of the Court of Appeal may, on a motion, for a special reason (...), order the appellant to furnish, within the time fixed in the order, security in a specified amount to guarantee in whole or in part the payment of the costs of appeal and the amount of the condemnation, if the judgment is upheld.

If the appellant does not furnish security within the fixed time, a judge of the Court of Appeal may, upon motion, dismiss the appeal.

[24] The granting of security is a matter of discretion. It is an exceptional remedy and as such, Respondents must indicate facts upon which I may draw the conclusion that

there is a danger that the judgment, if maintained in appeal, may not be susceptible of execution.¹¹ Clear and precise facts are required; mere hypotheses will not suffice.¹²

[25] The judgment of Baudouin, J.A., in *Blue Bonnets* is the oft quoted starting point in considering a motion for security. The condemnation in that case of wrongful dismissal amounted to \$412,956 plus interest and additional indemnity. This sum corresponded to 36 months of salary. Just prior to the presentation of the motion for security, the appellant deposited the equivalent of 12 months of salary which it recognized owing. Baudouin, J.A., summarized the then existing decisions of judges of this Court applying article 497 *C.C.P.* to state that given the change in the law (in 1966) to make security on appeal the exception instead of the rule, it is insufficient to merely allege fear to be unable to execute the eventual judgment or that appellant will become insolvent. He continued that to justify the granting of security a moving party must:

[...] présenter une preuve claire, précise et articulée basée sur des faits et non sur de simples hypothèses ou conjectures de circonstances particulières à l'espèce qui montrent que, sans l'octroi de ce cautionnement, ses droits reconnus par le jugement de première instance seront effectivement mis en péril.

[26] Baudouin, J.A., in applying these criteria to the facts before him dismissed the motion for security because even though the appellant distributed its earnings as dividends, it did so net of expenses, so that it was not in a “permanent state of insolvency” and that the “heavy” hypothecation of its assets in the absence of fraud was not sufficient as a “special reason” to order security under article 497 *C.C.P.* The report does not disclose the quantum of the appellant’s earnings so that there is no means of comparison with the liability in virtue of the judgment appealed.

[27] Several years later, in *Europaper S.A. v. Avenor inc.*¹³ Baudouin, J.A., again sitting on a motion¹⁴ seeking security for a costs award of \$92,694 found that recovery was in jeopardy because of the appellant’s “insolvabilité complète” reflected by the fact that it had ceased activity, and had no place of business, no employees or assets of value. He concluded:

Il y a donc là une importante différence factuelle avec l'arrêt *Blue Bonnets* [...], où le moyen invoqué était la simple crainte éventuelle de difficultés financières d'une des principales parties du litige.

[28] The decided cases on point have considered a variety of factual circumstances as potentially constituting special reasons and, as such, have refined our understanding

¹¹ *Brouillette v. Grégoire*, 2011 QCCA 376 (Kasirer, J.A.); *Sodexin Financement mercantile inc. v. Aly*, 2009 QCCA 1860 (Pelletier, J.A.) [*Sodexin*]; *Nadeau v. Nadeau*, 2008 QCCA 300; *Hippodrome Blue Bonnets inc. v. Jolicoeur*, [1990] R.D.J. 458 (Baudouin, J.A.) [*Blue Bonnets*].

¹² *Blue Bonnets*, *supra*, note 11.

¹³ *Europaper S.A. v. Avenor inc.*, AZ-97011392, 1997 CanLII 10448 (Baudouin, J.A.).

¹⁴ *Ibid.*, p. 2.

of the test. An accounting firm subject to a multi-million dollar judgment amalgamated with another firm, which asserted that it was not liable for the delictual acts of the partners of the judgment debtor firm. It was ordered to furnish security of \$16.9 million.¹⁵ The sale of a company's principal assets has been held sufficient grounds to order security,¹⁶ just as the funnelling of all revenues to a related company has been deemed a special reason.¹⁷ While the apparent insolvency of the judgment debtor continues to be a justification for the furnishing of security, at the end of the day, the correct criterion for the exercise of the discretion, is whether in the absence of security, the execution of the judgment would be in jeopardy.¹⁸ The interpretation of "special reason" in article 497 C.C.P. has gone beyond restricting it to cases akin to those where a seizure before judgment could be issued.¹⁹ Naturally, insolvency may constitute a special reason as may fraudulent behaviour, but neither is the criterion *per se*. Moreover, the insolvency discussed by Appellants and seemingly in many of the judgments, is insolvency on a cash basis. The *B.I.A.* defines an insolvent person in a threefold manner including a definition based on the value of assets on a forced sale being less than liabilities (or, a balance sheet test).²⁰

[29] I do not subscribe to Appellants' theory that the clear and precise facts underlying an order of security, in appeal, must have occurred since judgment was rendered in first instance. While the existence prior to judgment of the facts invoked may have been noted in certain decisions of my colleagues,²¹ no judgment has asserted the existence of such a hard and fast rule. Indeed, in *Widdrington* (which is the highest award of security in appeal of which I am aware), the most salient fact alluded to is the amalgamation of the two accounting firms, which occurred in July, 1998 i.e. after the institution of proceedings in first instance but years before the appeal.

[30] Appellants have submitted a judgment of Mongeon, J.S.C., of 2013,²² dismissing an application for a safeguard order against JTM because it had transferred its trademarks valued at \$1.2 billion to an "offshore" subsidiary in 1999, the year following the institution of proceedings in the Superior Court. The transferee then pledged the trademark to secure an indebtedness. JTM pays substantial royalties to the transferee in consideration of the use by it of the trademark. Its president agreed that the purpose

¹⁵ *Wightman v. Widdrington (Succession de)*, 2011 QCCA 1393 [*Widdrington*].

¹⁶ *Gagné v. Québec (Commission des droits de la personne et des droits de la jeunesse)*, 2003 CanLII 55068, J.E. 2003-497 (Dalphond, J.A.).

¹⁷ *Entreprise Enapex inc. v. Recouvrements métalliques Bussières Itée*, 2008 QCCA 261 (Rochette, J.A.).

¹⁸ *Pothitos v. Demers*, 2013 QCCA 603, para. 15 (St-Pierre, J.A.); *Shama Textiles inc. v. Certain Underwriters at Lloyd's*, 2012 QCCA 473, paras. 13-14 (Dalphond, J.A.).

¹⁹ André Rochon, *Guide des requêtes devant le juge unique de la Cour d'appel*, Cowansville, Éditions Yvon Blais, 2013, pp. 158-159.

²⁰ *B.I.A.*, *supra*, note 10, s. 2, "insolvent person".

²¹ *Sodexin*, *supra*, note 11.

²² *Conseil québécois sur le tabac et la santé v. JTI-MacDonald Corp.*, 2013 QCCS 6085; leave to appeal denied in *Conseil québécois sur le tabac et la santé v. JTI-MacDonald Corp.*, 2014 QCCA 520 (Savard, J.A.).

of the transaction was “creditor proofing” and Riordan, J.S.C., also characterized “the tangled web of interconnecting contracts” as a creditor proofing exercise.²³ The judgment of Mongeon, J.S.C., however is of no assistance to Appellants as it did not address any point before me for adjudication. It did not support the contention that facts pre-appeal cannot be relied upon. Mongeon, J.S.C., faced with a demand to enjoin JTM from continuing the royalty payments, concluded that he could not do so because the other party to the royalty contract was not a party to the litigation. Mongeon, J.S.C., held that all parties to the contract should be parties to the litigation, in order that he alter their contractual rights.

[31] As a final argument, counsel for RBH likened the motions before me to applications for a seizure before judgment under article 733 *C.C.P.* or a safeguard order and in any event beyond the jurisdiction of a judge in chambers and within the jurisdiction of the Court. The argument is clearly wrong as it flies in the face of the clear wording of article 497 *C.C.P.* according jurisdiction over the motions before me to a “judge of the Court of Appeal”.

[32] From 2008 to 2013, RBH’s average annual earnings from operations was approximately \$450 million. It paid \$300 million annually on average to its parent, Phillip Morris International (“PMI”). RBH had benefited from a credit facility with PMI but as indicated, that was cancelled the day following the judgment in first instance. Historically, RBH’s short term credit comes from the PMI cash pool, so given the cancellation, it appears to have little short term availability of cash. In June, RBH’s representative confirmed its inability to pay its share of the provisional execution (\$200 million) within sixty days, but projected that it could pay the amount by March 2016. At the time of the judgment, its available cash was \$70 million.

[33] Despite RBH’s assertion that it does not pay out all of its earnings, its financial statements clearly show negative shareholder equity for 2013 and 2014. Counsel’s attempts to qualify its insolvency on a cash basis by stating that it only said it could not pay the provisional execution within 60 days does not change the conclusion that it was insolvent if it was obliged to pay. The *B.I.A.* measures insolvency by the ability to pay debts when due.²⁴ In answer to my questioning how Respondents would obtain satisfaction upon receipt of a favourable judgment on the merits, counsel stated that they would have to wait to be paid out of cash flow. By way of illustration, if RBH owed \$1 billion (including interest and additional indemnity) upon judgment of the Court on the merits, it would require more than two years, at least, to satisfy that judgment. This is not payment when due.

[34] RBH confirms that its real estate and equipment being appropriate for tobacco production only are not readily marketable. Counsel informed me that the sale of tobacco products requires special government permits so that inventory could be

²³ *Létourneau v. JTI-MacDonald Corp.*, 2015 QCCS 2382, para. 1101.

²⁴ *B.I.A.*, *supra*, note 10, s. 2, “insolvent person”.

difficult if not impossible to seize and sell in execution of a judgment. Also, the trademarks are not owned by RBH. Thus, it appears that the only real "assets" on the balance sheet against which a creditor might execute judgment are the accounts receivable which is the cash flow and which is substantially and regularly paid out in dividends to PMI.

[35] Irrespective of whether RBH is technically insolvent, it is certainly unable to satisfy the judgment of the Superior Court even if the quantum was reduced. That fact and the on-going practice of distributing earnings leads the undersigned to conclude that Respondents are in jeopardy of not being able to execute any substantial award that this Court may uphold.

[36] ITL earned \$535 million from operations in 2014 and paid \$334 million in dividends to its out of jurisdiction parent, British American Tobacco Corp. ("BAT").

[37] Not only has ITL never set aside funds for a condemnation in this matter, it has still not done so even after the judgment of first instance herein because it does not consider the outcome unfavourable according to its representative during the deposition. I understand that he meant that the outcome would not be unfavourable until all appeals have been exhausted.

[38] Similar statements could be made concerning ITL's tangible assets as those of RBH. The trademarks are also encumbered.

[39] ITL is indebted to BAT under various financing agreements. The credit facilities are fully drawn upon. BAT was not willing to fund the provisional execution award and I am given to understand that BAT makes no commitment to fund a final judgment.

[40] Though counsel asserted that payments of dividends stopped at the end of 2014, this results from payments made to BAT for the repayment of the loan made to finance the settlement of other litigation (*i.e.* the Flinkote matter). In other words, the funds were not available to pay a dividend. Though there is equity for the shareholders on the balance sheet of 2014, there is no liquidity to pay a judgment.

[41] I am also of the opinion that Respondents are in jeopardy of not being able to satisfy any substantial judgment against ITL.

[42] The depositions conducted by Respondents' attorneys of the affiants upon the motions to cancel the provisional execution make it clear that the Appellants intend to continue payments (dividends and otherwise) to their out-of-jurisdiction related entities while the appeal is pending. That practice caused them to protest their inability to satisfy the order of provisional execution. It is reasonable to deduce that should their appeals fail completely or merely reduce the condemnation marginally, leaving a substantial condemnation, the Appellants will be unable to pay just as they were unable to pay the provisional execution in a timely fashion. This state of affairs is not due to any cause

extraneous to the will of Appellants such as an unsuccessful business. Rather, their businesses are profitable. The situation is the result of the ongoing business practice continued consistently during the litigation of paying out surplus earnings. This was not illegal. However, there is now and has been since May 27, 2015, a judgment, which includes a condemnation with interest and additional indemnity aggregating approximately \$15.5 billion at today's value. Interest and additional indemnity run at approximately \$1 million per day. This changes the equation radically. Even if the grounds of appeal are not frivolous, in the circumstances Appellants cannot be allowed to continue on a course of conduct where they will not be able to satisfy the judgment.

[43] A judgment pending appeal benefits from a presumption of validity.²⁵ Findings of fact of the trial judge are compelling as only a palpable error of fact justifies a reversal by an appellate court. It is not an answer for the Appellants to state that they are not behaving differently now than they were prior to the judgment of the Superior Court. That judgment, in the circumstances, and despite the appeal requires that they do behave differently given the circumstances presented to me. It is in my opinion far too cynical to adopt the position that we were so foresightful and efficient in ordering our affairs so as not to have the liquidity to satisfy the judgment, that there is no special reason existing to re-balance the situation. Counsel for Respondents characterized the situation as "heads I win, tails you lose". Sometimes, the vernacular is pointedly apt.

[44] Both Appellants have structured their affairs in a manner that drastically, if not completely, reduces their exposure to satisfy any substantial condemnation that might be made against them in this litigation. Of course, the companies are not empty shells because it is in their obvious interest and that of their parent companies that they continue to operate so as to continue to generate profits. The structure and *modus operandi* was put in place years ago because no doubt Appellants could observe the seriousness of the case and resolve of the Respondents to conclude that a substantial award was possible, even perhaps likely. In these circumstances, now that there is a judgment condemning them to pay \$8 billion (\$15.5 billion at today's value) and nothing to suggest that the practice (of distributing virtually all earnings) will not continue and notwithstanding that the transfer and encumbrance of trademarks may have occurred long ago, I am faced with a situation where on balance I conclude that the Respondents are in jeopardy of not obtaining satisfaction of any substantial amount confirmed in appeal. I am mindful that Appellants stated clearly that they could not pay the provisional execution award as ordered. Positive action is necessary to convince me that the reaction to a final judgment would not be the same. These circumstances taken together are a "special reason". I will order that security be furnished.

²⁵ *Épiciers unis Métro-Richelieu inc. v. Syndicat des travailleuses et des travailleurs des épiciers unis Métro-Richelieu (C.S.N.)*, 1997 CanLII 10141 (Baudouin, J.A.); *Québec (Ministre de l'Agriculture, des Pêcheries et de l'Alimentation du Québec) v. Produits de l'érable Bolduc & Fils ltée*, AZ-50134137, J.E. 2002-1239, para. 6 (Pelletier, J.A.); *Droit de la famille — 102409*, 2010 QCCA 1725, para. 2 (Rochon, J.A.); *Soft Informatique Inc. v. Gestion Gérald Bluteau Inc.*, 2012 QCCA 2018, para. 12 (Dalphond, J.A.); *Droit de la famille — 151906*, 2015 QCCA 1309, para. 6 (Kasirer, J.A.).

[45] What amount of security is appropriate? The initial deposit required in the class action as awarded by Justice Riordan was \$1.131 billion on the rationale that 80% of the estimated compensatory damages might be enough to satisfy claims:

[927] In nearly every class action, especially ones with a large number of class members, only a small portion of the eligible members actually make claims. Thus, the remaining balance, or "reliquat", could often be greater than the amount actually paid out. Hence, it is not unreasonable to proceed on the basis that the full amount of the initial deposits might not be claimed.

[928] We thus feel comfortable in ordering the Companies initially to deposit only 80% of the estimated total compensatory damages, i.e., before any reduction based on the smoking dates. If that proves insufficient to cover all claims eventually made, it will be possible to order additional deposits later, unless something unforeseen occurs and all three Companies disappear. The Court is willing to assume that this will not happen. We shall thus reserve the Plaintiffs' rights with respect to such additional deposits.

[46] Counsel for Respondents noted that Justice Riordan's reasoning here may be strained because lower "take up rates" in class actions are prevalent where the amount distributed to each member is minimal which will not be the case here. However, I have no evidence of these assertions. I prefer to rely on the judgment.

[47] Also, as the Court noted in cancelling the provisional execution, it cannot be said that the grounds of appeal are frivolous, so that the \$5 billion of security requested being nearly the capital amount of the judgment and given Justice Riordan's reasoning above, is not an appropriate amount of security. An amount of security approaching the entire amount of the judgment in first instance is to be avoided as too closely equivalent to provisional execution.²⁶

[48] No amount of security for legal costs was requested in the motions as filed so that consideration does not enter into the calculation. Moreover, article 1035 *C.C.P.* provides that first proceeds of collection of class action judgments are directed towards the payment of costs.

[49] Considering the foregoing, the security will be calculated on the basis of the initial deposit of \$1.131 billion or, based on the proportions of liability determined by the judge (ITL 67% and RBH 20%), the order against ITL will be \$758 million and against RBH \$226 million. Both figures are rounded.

²⁶ *Bell v. Molson*, 2013 QCCA 377 [*Bell*]; *Agaisse v. Duranceau*, 2015 QCCA 1320, para. 7; *Laforest v. Côté*, 2015 QCCA 119 (G. Gagnon, J.A.), para. 17.

[50] I am mindful of judgments holding that the amount of security ordered should not, in effect, negate an Appellant's right to appeal.²⁷

[51] This Court considered a similar principle in cancelling the provisional execution where Appellants pleaded their inability (or at least inability within 60 days following judgment) to pay the amount of the provisional execution as set forth in the extract quoted above.

[52] I see the current situation as somewhat different. The Appellants chose not to reserve funds to satisfy an eventual condemnation as was their right. However, now that there is a judgment, which I have stated, benefits from a presumption of validity, the situation is changed. Given my conclusions based on the facts in the record, it is not acceptable that Appellants merely say that they have no funds to satisfy the judgment or an order to furnish security and continue to distribute earnings because that is "business as usual". A strategic decision is required by Appellants in caucus with their parent companies and related entities who have received the benefit of the profitable operations over the years and who continue to do so. Are they willing to do the necessary to help fund security to allow Appellants to continue their appeal? I do not question Appellants' right to appeal but neither can I stand idly by while Appellants pursue an appeal which will benefit them if they win but which will not operate to their detriment if they lose. Continuing the practice of distributing earnings out-of-jurisdiction at this point is at best disingenuous and at worst, bad faith.

[53] That being said, in fixing the mode of payment, I am willing to make some compromise to the cash requirements of Appellants. As Justice Riordan said, the object of the exercise is not to bankrupt the Appellants,²⁸ nor should Appellants appeal rights be defeated by the amount of security.²⁹

[54] Accordingly, I will order that the security be provided in quarterly instalments as Respondents concluded, subsidiarily, in their motions. I am unaware of any legal impediment to so ordering. In this manner, each instalment of security will not exceed quarterly earnings.

[55] The trial judge found that the average annual net earnings before tax of Appellants was as follows:

ITL – \$483 million

RBH – \$460 million

²⁷ *Bell, supra*, note 26, para. 10; *Camirand v. Gagnon*, 2013 QCCA 375; *Inversiones Beltrim, s.a. v. Guzzler Manufacturing inc.*, 2009 QCCA 1685 (Dalphond, J.A.); *Inversiones Beltrim, s.a. v. Guzzler Manufacturing Inc.*, 2009 QCCA 550 (Dufresne, J.A.); *Sharma Textiles inc. v. Certain Underwriters at Lloyd's*, 2007 QCCA 771 (Bich, J.A.).

²⁸ *Létourneau v. JTI-MacDonald Corp.*, 2015 QCCS 2382, para. 1068.

²⁹ *Labene v. Paquette*, 2015 QCCA 962 (Mainville, J.A.), para. 6, and *supra*, note 27.

On a quarterly basis, this computes to:

ITL – \$121 million (rounded up)

RBH – \$115 million

[56] I have financial statements for 2014 of ITL and RBH, which were filed in the record of this Court with the affidavits in support of the motions to cancel provisional execution. For 2014, RBH's net pre-tax earnings were \$495 million. ITL shows a loss due to the pay out of the settlement of the Flinkote litigation. For consistency, I will use the averages determined by the judge for the period 2008 to 2013 as quoted above.

[57] Respondents concluded in the alternative for security to be deposited by way of quarterly instalments of \$250 million each in the aggregate. As indicated, I have decided to award security equal to the initial deposit of \$1.131 billion or \$758 million for ITL and \$226 million for RBH. The RBH security will be payable by way of six quarterly instalments and that of ITL in seven quarterly instalments so that the amount of each instalment does not exceed average quarterly earnings. In both cases, payments will commence at the end of December, 2015. In addition to the six months since the judgment, this allows 60 days before the first instalment as requested at the hearing by counsel of RBH.

[58] Accordingly, the Appellants will be ordered to furnish security as follows:

Payable on or before last juridical day of	ITL (\$758 million)	RBH (\$226 million)
December, 2015	\$108,285,000	\$37,666,000
March, 2016	\$108,285,000	\$37,666,000
June, 2016	\$108,285,000	\$37,666,000
September, 2016	\$108,285,000	\$37,666,000
December, 2016	\$108,285,000	\$37,666,000
March, 2017	\$108,285,000	\$37,666,000
June, 2017	\$108,285,000	

The instalments bring us to March 2017 and June 2017. A hearing for the appeal has been tentatively scheduled before this Court during the autumn of 2016. I think it safe to assume that given the projected volume of the joint record, a lengthy advisement can be anticipated. If judgment is rendered before June or even March 2017, the remaining instalments of security will not be payable.

[59] The above amounts are less than average quarterly revenue. They are far easier to manage financially than a single lump sum. Again, according to the figures that we have, I am fully cognizant that Appellants may require some infusion or assistance of their related entities on a short or medium term basis in order to furnish the security. However, the amounts compared to earnings are such that it cannot be said, in my view, that the security ordered has negated the right to appeal.

[60] The security will be in the form of cash or irrevocable letters of credit issued by a Schedule I Canadian bank to remain in force until final judgment of this Court, or further order of this Court.

[61] As to the form of security, an argument was attempted by counsel for Appellants concerning the legality or appropriateness of letters of credit as security.

[62] This Court has held that an irrevocable letter of credit of a Canadian bank could constitute valid security in lieu of the deposit of cash.³⁰

[63] A letter of credit of a bank is an undertaking by that bank. The latter is not a party to the litigation. The Appellants voiced concerns that this undertaking would remain despite any insolvency proceedings initiated by the Appellants. However, the deposit of cash at the office of the Court (in effect with the *Ministre des Finances*)³¹ is also security in the sense that a litigant has, conditionally, a right exercisable in respect of the deposit.³² This is not as Appellants seem to suppose a “fraud on the bankruptcy” or the granting of a “super priority”. Valid security, consensual or court ordered, is supposed to offer priority to its beneficiaries in an insolvency and is so recognized in the *B.I.A.*³³ The effect of such security in the event of an insolvency may be the subject of a decision by a judge or court having jurisdiction but at present the question is hypothetical. In any event, Appellants will have the option of depositing the cash or furnishing letters of credit.

[64] Counsel for RBH suggested that any security take the form of a deposit in one of the lawyer’s trust accounts. This is a matter for consent if any, by the parties but should not, in my view, form part of a court order.

[65] Accordingly, I will order security and allow letters of credit to be provided to Respondents’ counsel instead of cash deposits in court at each Appellants’ option.

[66] The security becomes payable upon a final judgment of this Court maintaining in whole or in part the judgment of first instance. It cannot be payable, as suggested by Respondents on a *B.I.A.* or *C.C.A.A.* filing. Any applicable stay of proceedings arising from such a filing would have to be respected; any exception should be court ordered at

³⁰ *Droit de la famille – 2054*, AZ-97011711, 1997 CanLII 10660 (C.A.); see also article 1574 *C.C.Q.*

³¹ *Deposit Act*, CQLR, c. D-5, s. 8.

³² *Basille v. 9159-1503 Québec inc.*, 2014 QCCA 1653 (Kasirer, J.A.).

³³ Ss. 69(2), 69.1(2), 69.3 (2), 71 and 136 *B.I.A.*, *supra*, note 10.

the appropriate time by the court having jurisdiction. The undersigned cannot order now that a letter of credit be payable following an insolvency filing which may impose a suspension of such recourse.

[67] The letter of credit will be payable upon receipt by the issuing bank of a sworn statement by one of Respondents' attorneys certifying that the Court of Appeal has rendered judgment in this matter and specifying the amounts due by Appellants. A copy of the judgment will be annexed to the sworn statement. Since an appeal to the Supreme Court does not automatically operate a stay, I need not include that possibility in the conditions of payment of the letters of credit. In the alternative, the letters of credit will be payable subject to further order of the Court. Any letter of credit must of course be issued by a Canadian bank listed in Schedule I of the *Bank Act* and be irrevocable, payable in whole or in part and remain in force until final judgment either by renewal or replacement prior to expiry.

CONCLUSIONS:

[68] **IN RECORD FILE NO: 500-09-025385-154**

FOR ALL THE FOREGOING REASONS, THE UNDERSIGNED:

[69] **GRANTS** in part Respondents' motion to order Appellants to furnish security;

[70] **ORDERS** Appellant, Imperial Tobacco Canada Ltd, to furnish security in accordance with article 497 *C.C.P.* in an amount of \$758 million, which security may at Appellant's option, be in the form of cash or letter of credit and shall be furnished in equal consecutive quarterly instalments of \$108,285,000 each, on or before the last juridical day of the following months: December, 2015, March, 2016, June, 2016, September, 2016, December, 2016, March, 2017 and June, 2017.

[71] **DECLARES** that security in the form of cash shall be deposited at the Registry of the Court of Appeal, Montreal, and that security by way of letter of credit be delivered to one of the attorneys of Respondents and comply with the following:

- i) be issued by a Canadian bank listed in Schedule I of the *Bank Act*;
- ii) make reference to the record number of the Court of Appeal;
- iii) be irrevocable;
- iv) remain in force until: a) judgment on the merits in this Court record either by renewal or replacement prior to expiry or b) further order of the Court of Appeal;
- v) be payable: a) upon receipt by the issuing bank of a sworn statement of one of Respondents' attorneys declaring that judgment has been rendered

and stating the amount owing by the Appellant pursuant to the judgment on the merits, a copy of such judgment to be annexed to such sworn statement or b) upon further order of the Court of Appeal.

[72] **DECLARES** that any and all costs or expenses incurred to furnish the said security will be for the account of Appellant, Imperial Tobacco Canada Ltd.

[73] **THE WHOLE** with costs to follow suit.

[74] **IN RECORD FILE NO: 500-09-025387-150**

FOR ALL THE FOREGOING REASONS, THE UNDERSIGNED:

[75] **GRANTS** in part Respondents' motion to order Appellants to furnish security;

[76] **ORDERS** Appellant, Rothmans, Benson & Hedges Inc., to furnish security in accordance with article 497 *C.C.P.* in an amount of \$226 million, which security may at Appellant's option, be in the form of cash or letter of credit and shall be furnished in equal consecutive quarterly instalments of \$37,666,000.00 each on or before the last juridical day of the following months: December, 2015, March, 2016, June, 2016, September, 2016, December, 2016 and March, 2017.

[77] **DECLARES** that security in the form of cash shall be deposited at the Registry of the Court of Appeal, Montreal, and that security by way of letter of credit be delivered to one of the attorneys of Respondents and comply with the following:

- i) be issued by a Canadian bank listed in Schedule I of the *Bank Act*;
- ii) make reference to the record number of the Court of Appeal;
- iii) be irrevocable;
- iv) remain in force until: a) judgment on the merits in this Court record either by renewal or replacement prior to expiry or b) further order of the Court of Appeal;
- v) be payable: a) upon receipt by the issuing bank of a sworn statement of one of Respondents' attorneys declaring that judgment has been rendered and stating the amount owing by the Appellant pursuant to the judgment on the merits, a copy of such judgment to be annexed to such sworn statement or b) upon further order of the Court of Appeal.

[78] **DECLARES** that any and all costs or expenses incurred to furnish the said security will be for the account of Appellant, Rothmans, Benson & Hedges Inc.

[79] **THE WHOLE** with costs to follow suit.



MARK SCHRAGER, J.A.

Mtre Deborah Glendinning
Mtre Éric Préfontaine
OSLER, HOSKIN & HARCOURT
For Imperial Tobacco Canada Ltd.

Mtre Simon V. Potter
Mtre Pierre-Jérôme Bouchard
McCARTHY TÉTRAULT
For Rothmans, Benson & Hedges Inc.

Mtre Gordon Kugler
KUGLER, KANDESTIN
Mtre Philippe Trudel
TRUDEL, JOHNSTON & LESPÉRANCE
For Conseil québécois sur le tabac et la santé, Jean-Yves Blais et Cécilia Létourneau

Date of hearing: October 6, 2015

EXHIBIT “AA”

This is **Exhibit “AA”**, referred to in the
Affidavit of Robert McMaster, sworn before me
this 8th day of March, 2019.



Notary Public

Mitchell Grossell
Barrister & Solicitor
LSO# 699931

PURCHASE AGREEMENT

dated as of

March 9, 1999,

AS AMENDED AND RESTATED

as of

May 11, 1999,

among

R. J. REYNOLDS TOBACCO COMPANY

RJR NABISCO, INC.

and

JAPAN TOBACCO INC.

(NY) 17560/199/JAPANT/pa.amended1.wpd

52628 1984

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ARTICLE 4
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PURCHASE AGREEMENT

PURCHASE AGREEMENT dated as of March 9, 1999, as amended and restated as of May 11, 1999, among JAPAN TOBACCO INC., a Japanese corporation ("**Buyer**"), R. J. REYNOLDS TOBACCO COMPANY, a New Jersey corporation ("**RJRT**"), and RJR NABISCO, INC., a Delaware corporation ("**RJRN**" and, together with RJRT, the "**Sellers**").

W I T N E S S E T H :

WHEREAS, Buyer and Sellers entered into a Purchase Agreement dated as of March 9, 1999 (the "**Purchase Agreement**");

WHEREAS, the parties hereto desire to amend and restate the Purchase Agreement as of May 11, 1999, as set forth herein;

WHEREAS, Sellers (and certain of their direct or indirect subsidiaries) are the record and beneficial owners of the Shares (as defined below) of each of the RJRI Companies (as defined below) and desire to sell the Shares and the Purchased Assets (as defined below) to Buyer, and Buyer desires to (or to have one or more of its direct or indirect subsidiaries) purchase the Shares of each of the RJRI Companies and the Purchased Assets from Sellers (or their direct or indirect subsidiaries), upon the terms and subject to the conditions set forth below;

WHEREAS, Sellers and Buyer (and/or their Affiliates, as appropriate) will enter into agreements on and as of the Closing Date providing for the sale, conveyance, transfer, assignment and delivery of (i) the Purchased IPRs (as defined below), pursuant to the Intellectual Property Agreement attached hereto as Exhibit A (the "**IPR Agreement**") and (ii) the Puerto Rico Plant (as defined below) pursuant to the Puerto Rico Transfer Agreement attached hereto as Exhibit B (the "**Transfer Agreement**") providing for the transfer of all of the assets and assumption of all of the liabilities, in each case relating to the Puerto Rico Plant on the Closing Date (as defined below);

WHEREAS, the RJRI Companies conduct an international business involving (i) the manufacture, marketing, sale and distribution of tobacco products for sale outside of the United States (as defined below), (ii) the manufacture of tobacco products in Puerto Rico for export outside of the United States and (iii) a brand diversification business outside the United States (collectively, the "**Business**");

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WHEREAS, Buyer and Sellers (and/or their Affiliates, as appropriate) on and as of the Closing Date will enter into (i) the Production Agreement attached as Exhibit C hereto (the "**Production Agreement**") for the supply of tobacco products by Sellers' Group (as defined below) to Buyer, its Affiliates (as defined below) or the RJRI Group (as defined below) for use in the Business following the Closing, (ii) the Puerto Rico Production Agreement attached hereto as Exhibit D hereto (the "**Puerto Rico Production Agreement**") for the supply of tobacco products by the Puerto Rico Plant to Sellers' Group after the Closing and (iii) the Cast Sheet Agreement attached as Exhibit E hereto (the "**Cast Sheet Agreement**") for the supply of Cast Sheet by the RJRI Group to Sellers' Group after the Closing; and

WHEREAS, Buyer and Sellers (and/or their Affiliates, as appropriate) on and as of the Closing Date will enter into (i) the Transitional Services Agreement attached as Exhibit F hereto (the "**Transitional Services Agreement**") relating to certain services to be performed by members of Sellers' Group for the benefit of Buyer, its Affiliates or the RJRI Group following the Closing to permit an orderly transition of ownership of the Business and (ii) the Puerto Rico Transitional Services Agreement attached as Exhibit G hereto (the "**Puerto Rico Transitional Services Agreement**") relating to services to be performed by the RJRI Group for the benefit of Sellers' Group following the Closing and (iii) the Document Preservation and Access Agreement and the Defense Cooperation Agreement attached as Exhibit H hereto (the "**Litigation Agreements**").

The parties hereto agree as follows:

ARTICLE 1 DEFINITIONS

SECTION 1.01. *Definitions.* (a) The following terms, as used herein, have the following meanings:

"**Affiliate**" means, with respect to any Person, any other Person directly or indirectly controlling, controlled by, or under common control with such Person; *provided* that none of the RJRI Companies or any Subsidiary shall be considered an Affiliate of Sellers or Buyer, but shall be considered an Affiliate of Buyer immediately after the Closing Date and *further provided* that the Government of Japan shall not be considered an Affiliate of Buyer. For purposes of this definition, the term "**control**" (including the correlative terms "**controlling**", "**controlled by**" and "**under common control with**") means the possession,

direct or indirect, of the power to direct or cause the direction of the management and policies of a Person, whether through the ownership of voting securities, by contract, or otherwise.

"Balance Sheet" means the audited combined balance sheet of the RJRI Group as of December 31, 1998.

"Balance Sheet Date" means December 31, 1998.

"Business Day" means any day other than a Saturday, Sunday or one on which banks are authorized or required by law to close in New York, New York or in Tokyo, Japan.

"Capital Stock" means the capital stock of each of the RJRI Companies set forth on Exhibit I hereto.

"CERCLA" means the Comprehensive Environmental Response, Compensation and Liability Act of 1980.

"Closing Date" means the date of the Closing.

"Code" means the Internal Revenue Code of 1986.

"Confidentiality Agreement" means the confidentiality agreement between RJRN and Buyer dated December 14, 1998.

"Disclosure Letter" means the letter from Sellers to Buyer that is identified as the disclosure letter and that is dated the date of this Agreement.

"Environmental Laws" means any federal, state, local or foreign law (including, without limitation, common law), treaty, judicial decision, regulation, rule, judgment, order, decree, injunction, permit or governmental restriction or any agreement with any Governmental Entity relating to the environment, the effect of the environment on human health and safety or to pollutants, contaminants, wastes or chemicals or any toxic, radioactive, ignitable, corrosive, reactive or otherwise hazardous substances, wastes or materials.

"Environmental Liabilities" means any and all liabilities arising in connection with or in any way relating to the Business (as currently or previously conducted), the RJRI Group or any activities or operations occurring or conducted at the real property used or held for use in the conduct of the Business (together with all buildings, fixtures and improvements thereon and, also including, without limitation, offsite disposal), whether accrued, contingent, absolute, determined,

determinable or otherwise, which arise under or relate to any Environmental Law, whether now or hereinafter in effect, (including, without limitation, any matter disclosed or required to be disclosed in the Disclosure Letter pursuant to Section 3.18).

“Excluded Liabilities” means any and all liabilities, whether accrued, contingent, absolute, determined, determinable or otherwise, arising out of or related to the matters described in paragraphs 22, 23 or 24 of Section 3.13 of the Disclosure Letter or otherwise arising out of or related to activities of Northern Brands International, Inc. or its employees.

“GAAP” means generally accepted accounting principles in the United States.

“Governmental Entity” means any government or any state, department or other political subdivision thereof, or any governmental body, agency, authority (including, without limitation, any central bank or taxing authority) or instrumentality (including, without limitation, any court or tribunal) in any jurisdiction exercising executive, legislative, judicial, regulatory or administrative functions of or pertaining to government.

“Hazardous Substances” means any pollutant, contaminant or any toxic, radioactive or otherwise hazardous substance, as such terms are defined in, or identified pursuant to, any Environmental Law.

“HSR Act” means the Hart-Scott-Rodino Antitrust Improvements Act of 1976.

“Intellectual Property Right” means any trademark, service mark, trade name, trade dress, invention, patent, trade secret, copyright, rights in designs, know-how (including any registrations or applications for registration of any of the foregoing) or any other similar type of proprietary intellectual property right.

“knowledge of Sellers”, “Sellers’ knowledge” or any other similar knowledge qualification in this Agreement means to the actual knowledge of any senior vice president or more senior executive officer of R. J. Reynolds International B.V. (Hilversum), Geneva branch.

“Lien” means, with respect to any property or asset, any mortgage, lien, pledge, charge, security interest or encumbrance in respect of such property or asset.

"Material Adverse Effect" means a material adverse effect on the financial condition, business, assets, liabilities or results of operations of the Business taken as a whole, except any such effect resulting from or arising in connection with (i) any of the Transaction Documents, the transactions contemplated by the Transaction Documents or the announcement thereof, (ii) changes or conditions (including changes in GAAP, law, regulation or judicial or other interpretation) affecting the tobacco industry generally or any particular markets in which the Business is operated, (iii) changes in economic, financial market, regulatory or political conditions generally or in particular markets in which the Business is operated or (iv) any matters disclosed in the Disclosure Letter.

"1934 Act" means the Securities Exchange Act of 1934.

"Person" means an individual, corporation, partnership, limited liability company, association, trust or other entity or organization, including a government or political subdivision or an agency or instrumentality thereof (or any equivalent in any jurisdiction).

"Puerto Rico Plant" means the real property, and personal property appurtenant thereto, located in Puerto Rico currently used in the operation of the Business primarily in connection with (i) the manufacture of tobacco products and (ii) the sale, marketing and distribution of tobacco products outside the United States, but shall exclude the real property, and personal property appurtenant thereto, located in Puerto Rico currently used by the Sellers' Group or the RJRI Group exclusively in connection with the sale, marketing and distribution of tobacco products in the United States, as more particularly defined in the Transfer Agreement.

"Purchased Assets" means the Purchased IPRs and the Puerto Rico Plant.

"Purchased IPRs" means the Intellectual Property Rights identified on Schedule 1.01(a).

"RJRI Companies" means the companies listed on Exhibit I hereto.

"RJRI Group" means the RJRI Companies and their Subsidiaries.

"RJRI Liabilities" means all debts, obligations, contracts and liabilities of any member of either the RJRI Group or the Sellers' Group (or any predecessor of any member of either the RJRI Group or the Sellers' Group or any prior owner of all or part of their businesses or assets) of any kind, character or description (whether known or unknown, accrued, absolute, contingent, indirect or derivative,

or otherwise) in any way relating to or arising out of the conduct of the Business, in whole or in part, including without limitation, (i) all liabilities set forth on the April 30 Balance Sheet; (ii) all liabilities relating to any Sellers' Group Guarantee remaining outstanding after the Closing; (iii) all liabilities of any member of the Sellers' Group arising on or after the Closing Date under the contracts and agreements listed on Exhibit M or to any other contracts, agreements, licenses, permits or approvals relating to the Business that are assigned or otherwise transferred by any member of the Sellers' Group to, and assumed by, any member of the RJRI Group, (iv) all Environmental Liabilities; (v) all liabilities and obligations arising out of any action, suit, investigation or proceeding before any arbitrator or Governmental Entity listed in the Disclosure Letter; (vi) all liabilities and obligations arising out of any action, suit, investigation or proceedings before any arbitrator or Governmental Entity which may at any time (whether past, present or future) be made, commenced, asserted or pursued that in any way are based upon or arise from tobacco products of any description consumed or intended to be consumed outside of the United States, including, without limitation, all such liabilities and obligations relating to or arising in any way from (A) the manufacture, marketing, development, advertising, research, distribution or sale of such products on or before the Closing Date and (B) any statement or other actions or omissions of any member of either the RJRI Group or the Sellers' Group (or any predecessor of any member of either the RJRI Group or the Sellers' Group or any prior owner of all or part of their businesses or assets) made or occurring on or before the Closing Date relating to such products, (vii) all liabilities and obligations relating to any products manufactured or sold by the Business at any time, including without limitation all warranty obligations and product liabilities and any liability or obligation relating to the health effects of, or exposure to, any products manufactured or sold by the Business at any time and (viii) except as expressly provided in Article 9, all liabilities or obligations relating to employee benefits or compensation arrangements existing on or prior to the Closing Date with respect to any employee or former employee of the Business. Notwithstanding the foregoing, "RJRI Liabilities" shall exclude the liabilities for which Buyer or its Affiliates are expressly indemnified by Sellers pursuant to this Agreement.

"Sellers' Group" means Sellers and their respective Affiliates (exclusive of any member of the RJRI Group).

"Sellers' Group Guarantees" means the guarantees by members of Sellers' Group of indebtedness of any member of the RJRI Group listed on Schedule 6.03.

"Sellers Product Liabilities" means all liabilities and obligations of any member of either the RJRI Group or the Sellers' Group (or any predecessor of any

member of either the RJRI Group or the Sellers' Group or any prior owner of all or part of their businesses or assets) of any kind, character or description (whether known or unknown, accrued, absolute, contingent, indirect or derivative, or otherwise) arising out of any action, suit, investigation or proceeding before any arbitrator or Governmental Entity which may at any time (whether past, present or future) be made, commenced, asserted or pursued that are in any way based upon or arise from tobacco products of any description consumed or intended to be consumed in the United States (exclusive of any such liabilities and obligations in any way based upon or arising from the manufacture, marketing, development, advertising, research, distribution or sale of tobacco products by Buyer or its Affiliates on or before the Closing Date), including, without limitation, all such liabilities and obligations relating to or arising in any way from (A) the manufacture, marketing, development, advertising, research, distribution or sale of such products on or before the Closing Date and (B) any statement or other actions or omissions of any member of either the RJRI Group or the Sellers' Group (or any predecessor of any member of either the RJRI Group or the Sellers' Group or any prior owner of all or part of their businesses or assets) made or occurring on or before the Closing Date.

"Shares" means the shares of Capital Stock referred to in Exhibit I hereto.

"Special Purpose Accounting Basis" means the basis of accounting and reporting for special purpose financial presentations. The Special Purpose Accounting Basis shall conform with GAAP, applied on a basis consistent with those used in preparing the Pro Forma Balance Sheet (except as may be indicated in the notes thereto), except that: (i) accounting standards which become effective after December 31, 1998 will not be adopted; (ii) intangible assets (including, without limitation, goodwill, patents, trademarks, deferred expenses and unamortized debt discount) will not be amortized or otherwise adjusted subsequent to December 31, 1998 and (iii) any currency translation adjustments recorded on the Pro Forma Balance Sheet will not be adjusted subsequent to December 31, 1998.

"Subsidiary" means any entity of which securities or other ownership interests having ordinary voting power to elect a majority of the board of directors or other persons performing similar functions are at the time directly or indirectly owned by any of the RJRI Companies.

"Transaction Documents" means this Agreement, the Production Agreement, the Transitional Services Agreement, the IPR Agreement, the Transfer Agreement, the Puerto Rico Production Agreement, the Cast Sheet Agreement, the Puerto Rico Transitional Services Agreement, the Litigation

Agreements and the documents referred to in Sections 2.03(b) and (c) and 2.04(a)(ii), 2.04(b)(ii), (d), (e) and (f).

“United States” means the United States of America and each of its territories, commonwealths and possessions (including, without limitation, Puerto Rico) but shall not include U.S. embassies and consulates, U.S. military installations located outside the United States and worldwide duty-free sales.

Any reference in this Agreement to a statute shall be to such statute, as in effect on the date of this Agreement, and to the rules and regulations promulgated thereunder.

(b) Each of the following terms is defined in the Section set forth opposite such term:

Term	Section
April 30 Balance Sheet	2.05(a)
April 30 Stockholder's Equity	2.05(a)
Alternative Sale	12.01
Base Stockholder's Equity	2.05
Business	Recitals
Business IPRs	3.15(a)
Buyer	Preamble
Cast Sheet Agreement	Recitals
Claim	11.03
Closing	2.03
Closing Stockholder's Equity	2.04
Condition	2.04(b)
Damages	11.02
Exhibit K Companies	2.03
Exhibit K Company Closing	2.04(b)
Fair Market Value	2.04(b)
Final Stockholder's Equity	2.05
Indemnified Party	11.03
Indemnifying Party	11.03
IPR Agreement	Recitals
Litigation Agreements	Recitals
Loss	8.05
May 31 Balance Sheet	2.05(b)
May 31 Stockholder's Equity	2.05
Net May Financing	2.05
Post-Closing Tax Period	8.01

ARTICLE 11
SURVIVAL; INDEMNIFICATION

SECTION 11.01. *Survival.* The covenants, agreements, representations and warranties contained in Articles 8 and 9 shall survive until expiration of the statute of limitations applicable to the matters covered thereby (giving effect to any waiver, mitigation or extension thereof). The representations and warranties in Sections 3.01, 3.02, 3.06, 3.07, 3.15, 3.18, 3.20 and 4.09 shall survive for three years after the Closing Date, and all other representations and warranties contained herein (except for those contained in Articles 8 and 9) shall survive for one year after the Closing Date. The covenants and agreements contained herein (except for those contained in Articles 8 and 9) shall survive for the period indicated therein or, if not so indicated, indefinitely. Notwithstanding the foregoing, any covenant, agreement, representation or warranty in respect of which indemnity may be sought under this Agreement shall survive the time at which it would otherwise terminate pursuant to the foregoing, if *bona fide* notice of such inaccuracy or breach giving rise to such right of indemnity specifying with particularity (x) the covenant, agreement, representation or warranty in this Agreement in respect of which indemnity may be sought and (y) the facts and circumstances giving rise to such right shall have been given to the party against whom such indemnity may be sought prior to such time.

SECTION 11.02. *Indemnification.* (a) Sellers hereby jointly and severally indemnify Buyer, its Affiliates and the members of the RJRI Group and, if applicable, their respective directors, officers, agents, employees, successors and assigns against and agree to hold each of them harmless from any and all assessments, penalties, fines, damages, losses, liabilities and expenses (including, without limitation, reasonable expenses of investigation and reasonable attorneys' fees and expenses in connection with any action, suit or proceeding) ("**Damages**") incurred or suffered by Buyer, any of its Affiliates or any member of the RJRI Group or their respective directors, officers, agents, employees, successors and assigns arising out of:

(i) any misrepresentation or breach of warranty made by the Sellers' Group to Buyer or any of its Affiliates pursuant to the Transaction Documents, or breach of warranty, made by the Sellers' Group pursuant to the Transaction Documents (other than pursuant to Article 8 of this Agreement), *provided* that, with respect to any Damages incurred or suffered by Buyer or any of its Affiliates or any member of the RJRI Group arising out of any misrepresentation or breach of warranty, Sellers shall not be liable under this Section 11.02(a)(i) unless the aggregate

amount of Damages exceeds \$50,000,000 (and then only to the extent of such excess);

(ii) any breach of covenant or agreement made or to be performed by the Sellers' Group pursuant to the Transaction Documents (other than pursuant to Article 8 of this Agreement);

(iii) Sellers Product Liabilities; or

(iv) Excluded Liabilities.

(b) Buyer hereby indemnifies each member of the Sellers' Group and, if applicable, their respective directors, officers, agents, employees, successors and assigns against and agrees to hold each of them harmless from any and all Damages incurred or suffered by any member of the Sellers' Group or their respective directors, officers, agents, employees, successors and assigns arising out of:

(i) any misrepresentation or breach of warranty made or to be performed by Buyer or its Affiliates pursuant to the Transaction Documents (other than pursuant to Article 8 of this Agreement), *provided* that, with respect to any Damages incurred or suffered by the Sellers' Group arising out of any misrepresentations or breach of warranty, Buyer shall not be liable under this Section 11.02(b)(i) unless the aggregate amount of Damages exceeds \$50,000,000 (and then only to the extent of such excess);

(ii) any breach of covenant or agreement made or to be performed by Buyer or its Affiliates pursuant to the Transaction Documents (other than pursuant to Article 8 of this Agreement); or

(iii) any RJRI Liabilities;

provided that it is understood that Sellers will first pursue any claims under this Section 11.02(b) against members of the RJRI Group before making claims against Buyer, and that Buyer will only be secondarily liable for such claims.

(c) The monetary thresholds set forth in this Section 11.02 have been negotiated for the special purpose of the provision to which they relate and are not to be taken as evidence of the level of "materiality" for purposes of any statutory or common law which may be applicable to the transactions contemplated by this Agreement under which a level of materiality might be an issue.

SECTION 11.03. *Procedures.* (a) The party seeking indemnification under Article 8 or 9 or Section 11.02 (the “**Indemnified Party**”) agrees to give prompt notice to the party against whom indemnity is sought (the “**Indemnifying Party**”) of the assertion of any claim, or the commencement of any suit, action or proceeding (“**Claim**”) in respect of which indemnity may be sought under such Section or Article and will provide the Indemnifying Party such information with respect thereto as the Indemnifying Party may reasonably request. The failure so to notify the Indemnifying Party shall not relieve the Indemnifying Party of its obligations hereunder, except to the extent such failure shall have materially prejudiced the Indemnifying Party.

(b) The Indemnifying Party shall be entitled to participate in the defense of any Claim asserted by any third party (“**Third Party Claim**”) and, subject to the limitations set forth in this Section, shall be entitled to (and at the request of the Indemnifying Party shall) control and appoint lead counsel for such defense, in each case at its expense. The Indemnified Party shall obtain the written consent of the Indemnifying Party before entering into any settlement of any Third Party Claim.

(c) If the Indemnifying Party shall assume the control of the defense of any Third Party Claim in accordance with the provisions of this Section 11.03, the Indemnifying Party shall obtain the prior written consent of the Indemnified Party before entering into any settlement of such Third Party Claim, if the settlement does not release the Indemnified Party from all liabilities and obligations with respect to such Third Party Claim or the settlement imposes injunctive or other equitable relief against the Indemnified Party and the Indemnified Party shall be entitled to participate in the defense of such Third Party Claim and to employ separate counsel of its choice for such purpose. The fees and expenses of such separate counsel shall be paid by the Indemnified Party.

(d) Each party shall cooperate, and cause their respective Affiliates to cooperate, in the defense or prosecution of any Third Party Claim (and any Excluded Liability) and shall furnish or cause to be furnished such records, information and testimony, and attend such conferences, discovery proceedings, hearings, trials or appeals, as may be reasonably requested in connection therewith to the same extent as if no indemnification were provided hereunder. The Indemnifying Party shall bear the reasonable out-of-pocket expenses of such cooperation.

SECTION 11.04. *Calculation of Damages.* (a) The amount of any Damages payable under Article 8 or 9 or Section 11.02 by the Indemnifying Party shall be net of any amounts recovered or recoverable by the Indemnified Party under applicable insurance policies and any Tax Benefit realized by the

Indemnified Party arising from the incurrence or payment of any such Damages. In computing the amount of any such Tax Benefit, the Indemnified Party shall be deemed fully to utilize, at the highest marginal tax rate then in effect, all Tax items arising from the incurrence or payment of any indemnified Damages.

(b) The Indemnifying Party shall not be liable under Article 8 or 9 or Section 11.02 for any (i) Damages relating to any matter to the extent that (A) there is included in the April 30 Balance Sheet a specific liability or reserve relating to such matter or the Indemnified Party has otherwise been compensated for such matter pursuant to the Purchase Price adjustment under Section 2.05, consequential Damages or Damages for lost profits. For the purposes of this Agreement, Damages shall not be determined through any multiple of earnings approach or variant thereof and shall take account of the time value of money.

(c) Notwithstanding any other provision of this Agreement to the contrary, if on the Closing Date the Indemnified Party knows of any information that would cause one or more of the representations and warranties made by the Indemnifying Party to be inaccurate, the Indemnified Party shall have no right or remedy after the Closing with respect to such inaccuracy and shall be deemed to have waived its rights to indemnification in respect thereof.

SECTION 11.05. *Assignment of Claims.* If the Indemnified Party receives any payment from an Indemnifying Party in respect of any Damages pursuant to Section 11.02 and the Indemnified Party could have recovered all or a part of such Damages from a third party (a "Potential Contributor") based on the underlying Claim asserted against the Indemnifying Party, the Indemnified Party shall assign such of its rights to proceed against the Potential Contributor as are necessary to permit the Indemnifying Party to recover from the Potential Contributor the amount of such payment.

SECTION 11.06. *Exclusivity of Remedies.* Except as specifically set forth in this Agreement, effective as of the Closing, each party (on behalf of itself and its Affiliates) waives any rights and claims it (or its Affiliates) may have against the other party or its Affiliates, whether in law or in equity, relating to the Business or the Shares or the transactions contemplated by the Transaction Documents. The rights and claims waived include, without limitation, claims for contribution or other rights of recovery arising out of or relating to any Environmental Law, claims for breach of contract, breach of representation or warranty, negligent misrepresentation and all other claims for breach of duty. After the Closing, Articles 8 and 9 and Section 11.02 will provide the exclusive remedy for any misrepresentation, breach of warranty, covenant or other agreement or other claim arising out of the Transaction Documents or the transactions contemplated thereby.

IN WITNESS WHEREOF, the parties hereto have caused this Agreement to be duly executed by their respective authorized officers as of the day and year first above written.

JAPAN TOBACCO INC.

By: 

Name 

Title: Senior Executive Vice President

RJR NABISCO, INC.

By: 

Name 

Title: SENIOR VICE PRESIDENT AND
GENERAL COUNSEL

R. J. REYNOLDS TOBACCO COMPANY

By: 

Name 

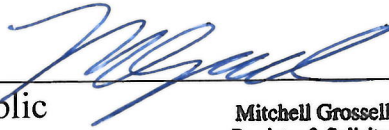
Title: ATTORNEY-IN-FACT

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EXHIBIT “BB”

This is **Exhibit “BB”**, referred to in the
Affidavit of Robert McMaster, sworn before me
this 8th day of March, 2019.



Notary Public

Mitchell Grossell
Barrister & Solicitor
LSO# 699931

JTI-Macdonald Corp.
Non-consolidated Financial Statements
Unaudited
December 31, 2017
(In thousands of dollars)

JTI-Macdonald Corp.
Non-consolidated Balance Sheet
Unaudited
December 31, 2017
(In thousands of dollars)

	<u>December 31, 2017</u>	<u>December 31, 2016</u>
ASSETS		
Current		
Cash and short-term investments	\$ 85,028	\$ 98,809
Accounts receivable	25,538	10,669
Inventories (Note 3)	125,700	117,357
Prepaid expenses	1,272	3,333
	<u>237,538</u>	<u>230,168</u>
Properties, plant and equipment (Note 4)	43,211	42,141
Investment in subsidiary companies (Note 5)	1,200,000	1,200,000
Other Assets	8,900	-
Goodwill	304,328	304,328
Future income taxes (Note 12)	25,803	34,832
	<u>\$ 1,819,780</u>	<u>\$ 1,811,469</u>
LIABILITIES		
Current		
Accounts payable and accrued liabilities	\$ 54,251	\$ 59,971
Due to related parties (Note 6)	5,368	3,202
Income taxes	5,671	13,819
Excise taxes	77,667	82,416
Interest payable to related party (Note 7 i, iii)	3,421	11,096
Demand loan payable to related party (Note 7 iii)	-	-
Demand promissory notes payable to related party (Note 7 ii)	8,989	8,989
Current portion of convertible debentures payable to subsidiary (Note 7 i)	1,764	1,634
Current portion of obligations under capital leases (Note 8)	405	349
	<u>157,536</u>	<u>181,476</u>
Convertible debentures payable to subsidiary (Note 7 i)	1,184,258	1,186,021
Obligations under capital leases (Note 8)	1,052	1,234
Other liabilities	4,414	5,543
Employee future benefits (Note 11)	98,915	101,440
	<u>1,446,175</u>	<u>1,475,714</u>
SHAREHOLDER'S EQUITY		
Accumulated other comprehensive income (loss) (Note 14)	(39,065)	(41,344)
Share capital (Note 9)	535,021	535,021
Contributed surplus	9,192	9,192
Deficit	(131,543)	(167,114)
	<u>373,605</u>	<u>335,755</u>
	<u>\$ 1,819,780</u>	<u>\$ 1,811,469</u>

JTI-Macdonald Corp.
Non-consolidated Statements of Income
Unaudited
For the Year Ended December 31, 2017
(In thousands of dollars)

	<u>December 31, 2017</u>	<u>December 31, 2016</u>
Net sales (Note 10)	\$ 540,631	\$ 500,334
Operating costs	(383,872)	(363,113)
Earnings from operations	156,759	137,221
Interest expense	(92,073)	(92,280)
Other expense	(5,087)	(12,306)
Income (loss) before provision for income taxes	59,599	32,635
Provision for income taxes (Note 12)	(24,028)	(12,130)
Net gain (loss)	35,571	20,505
Deficit, beginning of year	(167,114)	(187,619)
Deficit, end of year	\$ (131,543)	\$ (167,114)

JTI-Macdonald Corp.
Non-consolidated Statements of Cash Flows
Unaudited
For the Year Ended December 31, 2017
(In thousands of dollars)

	December 31, 2017	December 31, 2016
OPERATING ACTIVITIES		
Net gain	\$ 35,571	\$ 20,505
Items not involving cash		
Net loss on disposal of properties, plant and equipment	898	801
Depreciation Expense	7,836	7,463
Future income taxes	9,028	(12,499)
Increase (Decrease) in other liabilities	(1,129)	2,300
(Increase) in other assets	(8,900)	-
Increase (Decrease) in employee future benefits included AOCI	(246)	6,729
Decrease (Increase) in non-cash working capital items (Note 13)	(37,601)	106,271
Cash used in operating activities	5,457	131,570
FINANCING ACTIVITIES		
Decrease in interest payable to related party	(7,675)	(17)
Decrease in principal payable to related party	(1,634)	(1,514)
(Decrease) in principal demand loan payable to related party	-	(30,000)
Increase in obligations under capital leases	(125)	50
Cash provided by (used in) financing activities	(9,434)	(31,481)
INVESTING ACTIVITIES		
Purchase of properties, plant and equipment	(9,247)	(11,784)
Loss from sale of properties, plant and equipment	(557)	(189)
Cash used in investing activities	(9,804)	(11,973)
Increase in cash and short-term investments	(13,781)	88,116
Cash and short-term investments, beginning of year	98,809	10,693
Cash and short-term investments, end of year	\$ 85,028	\$ 98,809

JTI-MACDONALD CORP.
Notes to the Non-consolidated Financial Statements
Unaudited
December 31, 2017
(in thousands of dollars)

1. BASIS OF PRESENTATION AND STATEMENT OF COMPLIANCE

JTI-Macdonald Corp. (the “Company”) has been continued under the Canadian Business Corporations Act and is a wholly-owned subsidiary of JT Canada LLC Inc.

The accompanying non-consolidated financial statements have been prepared in accordance with International Financial Reporting Standards (“IFRS”) as issued by the International Accounting Standards Board, except as noted in (a) below. These financial statements have been prepared for the purpose of calculating the Company’s annual tax return. As these financial statements have not been prepared for general purposes, some users may require further information.

2. SUMMARY OF SIGNIFICANT ACCOUNTING POLICIES

a. Separate financial statements

The Company has elected not to prepare consolidated financial statements using the exemption from consolidation, and instead prepare separate financial statements in accordance with IAS 27 *Separate financial statements*. IAS 27 prescribes the accounting and disclosure requirements for investments in subsidiaries, joint ventures and associates. Consolidated financial statements produced for public use are prepared by Japan Tobacco Inc. and are obtainable at 2-1, Toranomon 2- chome, Minato-ku, Tokyo 105-8422, Japan.

These financial statements have been prepared for the purpose of calculating the Company’s annual tax return, and as a result do not include the assets and liabilities of the Company’s subsidiaries. Separate financial statements are also prepared for the Company’s subsidiaries for the purpose of calculating their respective tax returns.

b. Use of estimates

In preparing the Company’s financial statements, management is required to make estimates and assumptions that affect the reported amounts of assets and liabilities, the disclosure of contingent assets and liabilities at the date of the financial statements and the reported amounts of revenue and expenses during the reporting period. Actual results could differ from those estimates.

On an ongoing basis estimates are evaluated using historical experience, consultation with experts and other methods that are considered reasonable in the particular circumstances to comply with IFRS. Actual results could differ from those estimates, the effect of which is recognized in the period in which the facts that give rise to the revision become known.

JTI-MACDONALD CORP.
Notes to the Non-consolidated Financial Statements
Unaudited
December 31, 2017
(in thousands of dollars)

c. Cash and short term investments

Cash and short term investments include cash on hand, balances with banks and short-term deposits with original maturities of three months or less, net of bank overdrafts.

d. Inventories

The leaf tobacco inventories are stated at the lower of average cost by grade and net realizable value. Net realizable value is the estimated replacement cost in the ordinary course of business. Finished goods inventories are carried at the lower of cost on the first in, first out method and net realizable value. Net realizable value is the estimated selling price in the ordinary course of business less costs of selling. All other inventories are carried at the lower of cost on the first in, first out method and replacement cost.

e. Properties, plant and equipment

Properties, plant and equipment are recorded at historical cost or deemed cost less accumulated depreciation and accumulated impairment losses, if any.

Property, plant and equipment, excluding land and assets under construction, is depreciated using the straight-line method, over their estimated useful lives or over the terms of the respective leases. The estimated useful lives and depreciation method are reviewed at the end of each reporting period. The major categories are as follows:

Buildings	40 years
Machinery and equipment	3 - 20 years
Furniture and fixtures	10 years
Leasehold improvements	Term of lease
Vehicles	3 – 5 years
Equipment under capital lease	Term of lease

f. Intangibles

An internally-generated intangible asset arising from development (or from the development phase of an internal project) is recognized if, and only if, all of the following have been demonstrated:

- the technical feasibility of completing the intangible asset so that it will be available for use or sale;
- the intention to complete the intangible asset and use or sell it;
- the ability to use or sell the intangible asset;
- how the intangible asset will generate probable future economic benefits;
- the availability of adequate technical, financial and other resources to complete the development and to use or sell the intangible asset; and
- the ability to measure reliably the expenditure attributable to the intangible asset during its development.

JTI-MACDONALD CORP.
Notes to the Non-consolidated Financial Statements
Unaudited
December 31, 2017
(in thousands of dollars)

f. Intangibles (continued)

Subsequent to initial recognition, internally-generated intangible assets are reported at cost less accumulated amortization and accumulated impairment losses, on the same basis as intangible assets that are acquired separately

Intangible assets acquired separately are carried at cost less accumulated amortization and accumulated impairment losses. Amortization is recognized on a straight-line basis over their estimated useful lives, which are as follows:

Software	5 years
----------	---------

Under IAS 38, software costs previously recorded in property, plant & equipment (“PP&E”), should now be classified as intangible assets. To be consistent with prior year presentation, the Company has decided to include software costs in PP&E on the non-consolidated balance sheet, and have separately identified software costs in note 4, *Property, Plant & Equipment*.

g. Goodwill

Goodwill is the excess of the cost of a business acquisition over the fair value assigned to the assets acquired and liabilities assumed.

The Company has elected to test the goodwill for impairment only when events or changes in circumstances indicate that they might be impaired rather than on an annual basis. The recoverable amount is determined as the higher of fair value less cost to sell and value-in-use. If the recoverable amount is less than its carrying amount, the impairment loss is allocated to reduce the carrying amount of any goodwill. Any impairment loss for goodwill is recognized directly in income in the statement of income. An impairment loss recognized for goodwill is not reversed in subsequent periods.

h. Investment in subsidiary companies

Investment in subsidiary companies has been accounted for using the cost method as permitted under IAS 27 *Separate financial statements*.

i. Income taxes

The Company uses the liability method of tax allocation for accounting for income taxes. Future income tax assets and liabilities are recorded on the difference between the accounting carrying values of assets and liabilities and the tax cost basis of these assets and liabilities based on substantively enacted tax laws and rates.

j. Employee benefits

Contributions to defined contribution retirement benefit plans are recognized as an expense when employees have rendered service entitling them to the contributions.

Certain employees are covered by defined benefit pension plans and certain former employees are entitled to other post-employment benefits such as medical, dental and life insurance. The cost of pension and post-employment benefits related to employees’ current service is charged to income annually. The cost of the pension plan is computed on an actuarial basis using the projected unit credit

JTI-MACDONALD CORP.
Notes to the Non-consolidated Financial Statements
Unaudited
December 31, 2017
(in thousands of dollars)

j. Employee benefits (continued)

method and management's best estimates of investment yields, the discount rate to measure obligations, the projected age of employees upon retirement, salary escalation and other factors. Pension plan assets are valued at fair value for purposes of calculating the expected return on plan assets. The asset or liability disclosed in note 11 represents the present value of the defined benefit obligation as adjusted for unrecognized actuarial gains and losses and unrecognized past service costs and is reduced by the fair value of the plans assets. The present value of the defined benefit obligation is determined by discounting the estimated future cash outflows using interest rates of high quality bonds that have terms to maturity approximating the terms of the related pension liability. All actuarial gains and losses that arise in calculating the present value of the defined benefit obligation and the fair value of plan assets are recognized immediately in other comprehensive income (loss), either at the group level or locally.

Current employee wages and benefits are expensed as incurred.

k. Leases

A finance lease is a lease which transfers substantially all the benefits and inherent risks related to the ownership of the property leased to the Company. Assets held under finance lease are initially recognized as assets of the Company at the commencement of the lease term at the lower of (i) fair value and (ii) the present value of the minimum lease payments. The corresponding liability is recognized as a finance lease obligation. Any initial direct costs of the Company are added to the amount recognized as an asset. Lease payments are apportioned between interest expense and reduction of the lease obligation to achieve a constant rate of interest on the remaining liability. The leased asset is depreciated in accordance with the Company's policy described above.

Rentals payable under operating leases are expensed over the term of the lease.

l. Revenue recognition

Revenue primarily consists of sales generated from cigarettes and other tobacco products. Revenue is measured at the fair value of the consideration received or receivable. Revenue is reduced for actual customer returns and other allowances.

Revenue from the sale of goods is recognized when all the following conditions are satisfied:

- the Company has transferred to the buyer the significant risks and rewards of ownership of the goods;
- the Company retains neither continuing managerial involvement to the degree usually associated with ownership nor effective control over the goods sold;
- the amount of revenue can be measured reliably;
- it is probable that the economic benefits associated with the transaction will flow to the entity; and
- the costs incurred or to be incurred in respect of the transaction can be measured reliably.

JTI-MACDONALD CORP.
Notes to the Non-consolidated Financial Statements
Unaudited
December 31, 2017
(in thousands of dollars)

m. Provisions

Provisions are recognized when the Company has a present obligation (legal or constructive) as a result of a past event, it is probable that the Company will be required to settle the obligation, and a reliable estimate can be made of the amount of the obligation.

The amount recognised as a provision is the best estimate of the consideration required to settle the present obligation at the end of the reporting period, taking into account the risks and uncertainties surrounding the obligation. Where a provision is measured using the cash flows estimated to settle the present obligation, its carrying amount is the present value of those cash flows.

Provisions are made for warranty costs (dry stock provision) based on past performance and experience.

When some or all of the economic benefits required to settle a provision are expected to be recovered from a third party, a receivable is recognised as an asset if it is virtually certain that reimbursement will be received and the amount of the receivable can be measured reliably.

Present obligations arising under onerous contracts are recognised and measured as provisions. An onerous contract is considered to exist where the Company has a contract under which the unavoidable costs of meeting the obligations under the contract exceed the economic benefits expected to be received under it.

n. Other comprehensive income (loss)

Other comprehensive income (loss) includes items that would not normally be included in net income, such as recognized actuarial gains and losses relating to post employment benefit obligations and currency translation adjustments.

o. Financial Assets and Liabilities

Financial Assets

The Company has classified its financial assets as follows:

<u>Instrument</u>	<u>Classification</u>
Cash	Loans and receivables
Accounts receivable	Loans and receivables
Receivable from related parties	Loans and receivables

Accounts receivable are measured at amortized cost less impairments, which approximates fair value given the short term nature of these assets. An assessment of whether a financial asset is impaired is made at least at each reporting date. Receivables are non-derivative financial assets with fixed or determinable payments that are not quoted in an active market. Accounts receivables are classified as impaired when there is objective evidence as to the ultimate timing or collectability of the receivable. The Company maintains an allowance for credit losses sufficient to provide adequate protection against losses. The allowance is based on management's assessment of the risks associated with each receivable, including loss and recovery experience, performance and the impact of current economic conditions.

JTI-MACDONALD CORP.
Notes to the Non-consolidated Financial Statements
Unaudited
December 31, 2017
(in thousands of dollars)

o. Financial Assets and Liabilities (continued)

Financial Liabilities

The Company has classified its financial liabilities as follows:

<u>Instrument</u>	<u>Classification</u>
Accounts payable and accrued	Other financial liabilities
Due to related parties	Other financial liabilities
Interest payable to related parties	Other financial liabilities
Demand Loan Payable	Other financial liabilities
Demand promissory notes	Other financial liabilities
Convertible debentures	Other financial liabilities

Other financial liabilities are initially measured at fair value, net of transactions costs. The fair value of due to related parties, accounts payable and accrued liabilities is approximately equal to their carrying values due to their short term to maturity. The fair value of interest payable to related parties, demand promissory notes and convertible debentures is approximately equal to their carrying value which have been recorded at the exchange amounts, due to the Company's affiliation with the lending parties (ie. either a wholly-owned subsidiary or commonly controlled corporation).

p. Presentation and functional currency including foreign currency translation

The Company's functional and presentation currency is the Canadian dollar ("C\$").

Transactions in foreign currencies have been stated in Canadian currency at the daily rate of exchange on the day in which they occurred. Monetary assets and liabilities denominated in foreign currencies are translated to the functional currency at the rates of exchange in effect at the balance sheet date. Non-monetary assets and liabilities are translated using the historical rate on the date of the transaction. All gains or losses on foreign exchange are included in income in the year incurred.

3. INVENTORIES

Inventories consist of the following:

	<u>2017</u>	<u>2016</u>
Finished goods	\$ 93,462	\$ 88,024
Leaf tobacco	31,266	27,499
Raw materials and supplies	972	1,834
	<u>\$ 125,700</u>	<u>\$ 117,357</u>

Inventories recognized and included in operating costs as cost of sales during the year ended December 31, 2017 were \$157,177 (\$129,960 in 2016).

JTI-MACDONALD CORP.
Notes to the Non-consolidated Financial Statements
Unaudited

December 31, 2017

(in thousands of dollars)

4. PROPERTIES, PLANT AND EQUIPMENT

Properties, plant and equipment consist of the following for 2017:

	Cost beginning of the year	Additions / (Closures)	Disposals	Cost end of the year
Land	\$ 211	\$ -	\$ -	\$ 211
Buildings	36,023	18	-	36,041
Machinery & Equipment	155,937	6,667	(197)	162,407
Leasehold Improvement	1,377	1	-	1,378
Furniture & Fixtures	8,412	722	(88)	9,046
Vehicles	2,287	652	(677)	2,262
Construction in process	4,795	505	-	5,300
Software	5,099	508	-	5,607
CIP - software	45	259	-	304
	<u>\$ 214,186</u>	<u>\$ 9,332</u>	<u>\$ (962)</u>	<u>\$ 222,556</u>

	Accumulated depreciation beginning of year	Additions/ (Closures)	Disposals	Depreciation expense	Accumulated depreciation end of year	Net book value
Land	\$ -	\$ -	\$ -	\$ -	\$ -	\$ 211
Buildings	27,017	-	-	835	27,852	8,189
Machinery & Equipment	134,229	83	(195)	5,281	139,398	23,009
Leasehold Improvement	223	-	-	124	347	1,031
Furniture & Fixtures	6,027	-	(70)	572	6,529	2,517
Vehicles	787	-	(355)	462	894	1,368
Construction in process	-	-	-	-	-	5,300
Software	3,762	-	-	564	4,326	1,281
CIP - software	-	-	-	-	-	304
	<u>\$ 172,045</u>	<u>\$ 83</u>	<u>\$ (620)</u>	<u>\$ 7,838</u>	<u>\$ 179,346</u>	<u>\$ 43,210</u>

JTI-MACDONALD CORP.
Notes to the Non-consolidated Financial Statements
Unaudited
December 31, 2017
(in thousands of dollars)

4. PROPERTIES, PLANT AND EQUIPMENT (continued)

Properties, plant and equipment consist of the following for 2016:

	<u>Cost beginning of the year</u>	<u>Additions / (Closures)</u>	<u>Disposals</u>	<u>Cost end of the year</u>
Land	\$ 211	\$ -	\$ -	\$ 211
Buildings	35,743	346	(66)	36,023
Machinery & Equipment	156,876	3,886	(4,825)	155,937
Leasehold Improvement	2,436	1,201	(2,260)	1,377
Furniture & Fixtures	7,629	1,079	(296)	8,412
Vehicles	2,422	802	(937)	2,287
Construction in process	672	4,123	-	4,795
Software	4,679	431	(11)	5,099
CIP - software	129	(84)	-	45
	<u>210,797</u>	<u>11,784</u>	<u>(8,395)</u>	<u>214,186</u>

	<u>Accumulated depreciation beginning of year</u>	<u>Disposals</u>	<u>Depreciation expense</u>	<u>Accumulated depreciation end of year</u>	<u>Net book value</u>
Land	\$ -	\$ -	\$ -	\$ -	211
Buildings	26,258	(66)	825	27,017	9,006
Machinery & Equipment	134,036	(4,596)	4,789	134,229	21,708
Leasehold Improvement	2,266	(2,258)	215	223	1,154
Furniture & Fixtures	5,601	(158)	584	6,027	2,385
Vehicles	974	(692)	505	787	1,500
Construction in process	-	-	-	-	4,795
Software	3,228	(11)	545	3,762	1,337
CIP - software	-	-	-	-	45
	<u>172,363</u>	<u>(7,781)</u>	<u>7,463</u>	<u>172,045</u>	<u>42,141</u>

JTI-MACDONALD CORP.
Notes to the Non-consolidated Financial Statements
Unaudited
December 31, 2017
(in thousands of dollars)

5. INVESTMENT IN SUBSIDIARY COMPANIES

At December 31, the Company holds investments in the following wholly-owned subsidiaries:

	<u>2017</u>	<u>2016</u>
JTI-Macdonald TM Corp.	\$ 1,200,000	\$ 1,200,000
	<u>\$ 1,200,000</u>	<u>\$ 1,200,000</u>

During July 2015, JTI-Macdonald Corp.'s Parent Company, JT Canada LLC Inc., appointed a private receiver of all the properties, assets and undertakings of JTI-Macdonald TM Corp., a subsidiary of JTI-Macdonald Corp. At this time, there is reasonable expectation that JTI-Macdonald TM Corp. will continue as a going concern and as such the investment in JTI-Macdonald TM Corp. is appropriately valued.

6. RELATED PARTY TRANSACTIONS AND BALANCES

The Company in its normal course of business had various transactions recorded at exchange amounts with its subsidiaries and corporations commonly controlled by the Company's ultimate parent, Japan Tobacco Inc., as follows:

	<u>2017</u>	<u>2016</u>
Subsidiaries		
Interest expense	\$ 91,999	\$ 92,195
Royalty expense	9,956	9,934
Commonly controlled corporations		
Sales of tobacco products	34,218	30,641
Purchases of tobacco products	70,545	48,402
Service charge revenue	19,936	21,598
Service charge expense	18,549	15,477
Others	3,414	5
Royalty expense	11	192

At December 31, the amounts due to related parties, excluding loans disclosed in note 7, consist of the following:

	<u>2017</u>	<u>2016</u>
Due to subsidiaries	\$ 1,615	\$ 5,223
Due to (from) commonly controlled corporations	3,753	(2,021)
	<u>\$ 5,368</u>	<u>\$ 3,202</u>

JTI-MACDONALD CORP.
Notes to the Non-consolidated Financial Statements
Unaudited
December 31, 2017
(in thousands of dollars)

7. LOANS

	2017		2016	
	Principal Payable	Interest Payable	Principal Payable	Interest Payable
(i) Convertible debentures issued by the Company to JTI-Macdonald TM Corp., a wholly-owned subsidiary.	\$ (1,186,021)	\$ (3,421)	\$ (1,187,655)	\$ (11,096)
(ii) Non-interest bearing demand promissory note issued by the Company to JT Canada LLC Inc., a commonly controlled corporation.	(8,989)	-	(8,989)	-
(iii) Demand loan payable issued by the Company to JT Canada LLC Inc., a commonly controlled corporation. Interest rate on the loan was set at 2.25%.	-	-	-	-
	\$ (1,195,010)	\$ (3,421)	\$ (1,196,644)	\$ (11,096)

- i. The outstanding debentures of \$1,186,021 are convertible in whole or part into special preference shares of the Company at the option of the holder.

For the period ending December 31, 2017, outstanding interest of \$99,672 (\$92,132 in 2016) was paid, and \$91,997 (\$92,118 in 2016) of interest was expensed. Principal payments made during 2017 equaled \$1,634 (\$1,514 in 2016). Interest rate on these debentures for 2017 was 7.75% (7.75% in 2016).

- ii. No principal payments were made in 2017 (\$nil in 2016).
- iii. The demand loan payable was repaid in full during fiscal 2016.

JTI-MACDONALD CORP.
Notes to the Non-consolidated Financial Statements
Unaudited
December 31, 2017
(in thousands of dollars)

8. COMMITMENTS

Finance leases

Payments under finance lease liabilities consist of lease commitments for vehicles the following:

	<u>2017</u>	<u>2016</u>
2017	\$ -	\$ 500
2018	534	499
2019	459	428
2020	381	275
2021	182	32
2022	30	-
	<u>1,586</u>	<u>1,734</u>
Less: Interest and executory costs	129	151
	<u>1,457</u>	<u>1,583</u>
Less: Current portion	405	349
	<u>\$ 1,052</u>	<u>\$ 1,234</u>

Operating leases

The Company has operating lease commitments for buildings, equipment and vehicles. Approximate minimum future payments on operating leases in effect at December 31, 2017 are as follows:

	<u>2017</u>	<u>2016</u>
2016	\$ -	\$ 1,681
2017	1,833	1,622
2018	1,695	1,462
2019	1,654	1,414
2020	1,086	874
2021	879	3,528
Over 5 Years	2,976	
	<u>\$ 10,123</u>	<u>\$ 10,581</u>

JTI-MACDONALD CORP.
Notes to the Non-consolidated Financial Statements
Unaudited
December 31, 2017
(in thousands of dollars)

9. SHARE CAPITAL

The Company's authorized share capital at December 31, consist of the following:

	<u>2017</u>	<u>2016</u>
Common shares	2,000,000	2,000,000
Preference shares	9,591,777,088	9,591,777,088
Special preference shares	2,000,000,000	2,000,000,000

The holder of the preference shares is entitled to receive non-cumulative dividends. These preference shares cannot be redeemed at the option of the holder. The holder of the special preferences shares is entitled to receive non-cumulative dividends. These special shares are redeemable by both the issuer and the holder.

The Company's issued share capital at December 31, consist of the following:

	<u>2017</u>		<u>2016</u>	
Common shares	1,000,001	\$ 411,029	1,000,001	\$ 411,029
Preference shares	123,454,656	123,992	123,454,656	123,992
	<u>\$ 535,021</u>		<u>\$ 535,021</u>	

10. NET SALES

Net sales are net of excise and sales taxes which amounted to \$485,229 in 2017 (2016 – \$497,537).

JTI-MACDONALD CORP.
Notes to the Non-consolidated Financial Statements
Unaudited
December 31, 2017
(in thousands of dollars)

11. EMPLOYEE FUTURE BENEFITS

The Company sponsors various pension and post-retirement benefit plans. The following table provides components of these employee future benefits plan for the year ended December 31, 2017:

	Retirement Plan	Supplemental Plan	Executive Plan	Other Benefit Plans
Accrued benefit asset (liability)				
at beginning of year	\$ 10,547	\$ (54)	\$ (335)	\$ (111,598)
Pension expense	\$ (5,455)	\$ (1,212)	\$ (644)	\$ (7,254)
Total actuarial gains/(losses)	\$ (4,075)	\$ (357)	\$ (34)	\$ 7,689
Employer contributions	\$ 8,007	\$ 810	\$ 1,049	\$ 4,001
Accrued benefit asset (liability)				
at end of year	\$ 9,024	\$ (813)	\$ 36	\$ (107,162)

	Retirement Plan	Supplemental Plan	Executive Plan	Other Benefit Plans
Accrued benefit obligation	\$ (385,575)	\$ (55,541)	\$ (15,739)	\$ (107,162)
Fair value of Plan assets	\$ 394,599	\$ 54,728	\$ 15,775	\$ -
Funded status, end of year	\$ 9,024	\$ (813)	\$ 36	\$ (107,162)
Unrecognized past service cost	\$ -	\$ -	\$ -	\$ -
Accrued benefit asset (liability), end of year	\$ 9,024	\$ (813)	\$ 36	\$ (107,162)

Plan assets

	Retirement Plan	Supplemental Plan	Executive Plan	Other Benefit Plans
Fair value of Plan assets, beginning of year	\$ 408,448	\$ 51,494	\$ 14,176	\$ -
Employer contributions	\$ 8,737	\$ 810	\$ 1,049	\$ -
Return on plan assets	\$ 14,385	\$ 1,911	\$ 517	\$ -
Benefits paid	\$ (51,769)	\$ (1,049)	\$ (344)	\$ -
Actuarial gains (losses)	\$ 14,798	\$ 1,562	\$ 377	\$ -
Fair value of Plan assets, end of year	\$ 394,599	\$ 54,728	\$ 15,775	\$ -

JTI-MACDONALD CORP.
Notes to the Non-consolidated Financial Statements
Unaudited
December 31, 2017
(in thousands of dollars)

11. EMPLOYEE FUTURE BENEFITS (continued)

<u>Accrued benefit obligation</u>	<u>Retirement Plan</u>	<u>Supplemental Plan</u>	<u>Executive Plan</u>	<u>Other Benefit Plans</u>
Accrued benefit obligation, beginning of year	\$ 397,901	\$ 51,548	\$ 14,511	\$ 111,598
Current service cost	\$ 5,752	\$ 1,525	\$ 623	\$ 2,815
Interest cost	\$ 14,088	\$ 1,884	\$ 538	\$ 3,926
Expected employee contributions	\$ 730	\$ -	\$ -	\$ -
Benefits paid	\$ (51,769)	\$ (1,049)	\$ (344)	\$ (4,001)
Plan Amendments	\$ -	\$ (286)	\$ -	\$ 513
Actuarial (gains) losses	\$ 18,873	\$ 1,919	\$ 411	\$ (7,689)
Accrued benefit obligation, end of year	<u>\$ 385,575</u>	<u>\$ 55,541</u>	<u>\$ 15,739</u>	<u>\$ 107,162</u>

The Company's net benefit plan expense is as follows:

	<u>Retirement Plan</u>	<u>Supplemental Plan</u>	<u>Executive Plan</u>	<u>Other Benefit Plans</u>
Current service cost	\$ 6,482	\$ 1,525	\$ 623	\$ 2,815
Interest cost	\$ 14,088	\$ 1,884	\$ 538	\$ 3,926
Expected return on plan assets	\$ (14,385)	\$ (1,911)	\$ (517)	\$ -
Unamortized prior service cost	\$ -	\$ -	\$ -	\$ -
Plan amendments	\$ -	\$ (286)	\$ -	\$ 513
Employee contributions	\$ (730)	\$ -	\$ -	\$ -
Net periodic pension costs	<u>\$ 5,455</u>	<u>\$ 1,212</u>	<u>\$ 644</u>	<u>\$ 7,254</u>

JTI-MACDONALD CORP.
Notes to the Non-consolidated Financial Statements
Unaudited
December 31, 2017
(in thousands of dollars)

11. EMPLOYEE FUTURE BENEFITS (continued)

The significant actuarial assumptions adopted in measuring the Company's accrued benefit obligations in 2017 are as follows:

	Retirement Plan	Supplemental Plan	Executive Plan	Other Benefit Plans
Weighted average assumptions for expense				
Discount rate	3.30%	3.30%	3.30%	3.30%
Rate of compensation increase	3.00%	3.50%	3.50%	3.00%
Cost of Living Increase	2.00%	2.00%	2.00%	2.00%

The Company's plans' assets by asset category are as follows:

	Retirement Plan	Supplemental Plan	Executive Plan
Equity securities	9.50%	48.40%	9.40%
Debt securities	77.70%	12.70%	77.20%
Hedge Funds	12.20%	0.00%	12.10%
Other	0.60%	38.90%	1.30%
Total	100.00%	100.00%	100.00%

Employer contributions were made in accordance with the Report on the Actuarial Valuation for Funding Purposes as at December 31, 2016. The next actuarial valuation for funding purposes must be as of a date no later than December 31, 2017. The measurement date used to measure the plan assets and the accrued benefit obligation was December 31, 2017.

JTI-MACDONALD CORP.
Notes to the Non-consolidated Financial Statements
Unaudited
December 31, 2017
(in thousands of dollars)

11. EMPLOYEE FUTURE BENEFITS (continued)

The Company sponsors various pension and post-retirement benefit plans. The following table provides components of these employee future benefits plan for the year ended December 31, 2016:

	Retirement Plan	Supplemental Plan	Executive Plan	Other Benefit Plans
Accrued benefit asset (liability)				
at beginning of year	\$ 29,123	\$ (2,318)	\$ 397	\$ (103,785)
Pension expense	\$ (4,791)	\$ (1,597)	\$ (586)	\$ (6,570)
Total actuarial gains/(losses)	\$ (18,990)	\$ (2,073)	\$ (728)	\$ (4,936)
Employer contributions	\$ 5,205	\$ 5,934	\$ 582	\$ 3,693
Accrued benefit asset (liability)				
at end of year	\$ 10,547	\$ (54)	\$ (335)	\$ (111,598)

	Retirement Plan	Supplemental Plan	Executive Plan	Other Benefit Plans
Accrued benefit obligation	\$ (397,901)	\$ (51,548)	\$ (14,511)	\$ (111,598)
Fair value of Plan assets	\$ 408,448	\$ 51,494	\$ 14,176	\$ -
Funded status, end of year	\$ 10,547	\$ (54)	\$ (335)	\$ (111,598)
Unrecognized past service cost	\$ -	\$ -	\$ -	\$ -
Accrued benefit asset (liability), end of year	\$ 10,547	\$ (54)	\$ (335)	\$ (111,598)

JTI-MACDONALD CORP.
Notes to the Non-consolidated Financial Statements
Unaudited
December 31, 2017
(in thousands of dollars)

11. EMPLOYEE FUTURE BENEFITS (continued)

<u>Plan assets</u>	<u>Retirement Plan</u>	<u>Supplemental Plan</u>	<u>Executive Plan</u>	<u>Other Benefit Plans</u>
Fair value of Plan assets, beginning of year	\$ 435,666	\$ 45,396	\$ 13,755	\$ -
Employer contributions	\$ 5,921	\$ 5,934	\$ 582	\$ -
Return on plan assets	\$ 16,225	\$ 1,776	\$ 527	\$ -
Benefits paid	\$ (38,424)	\$ (890)	\$ (299)	\$ -
Actuarial gains (losses)	\$ (10,940)	\$ (722)	\$ (389)	\$ -
Fair value of Plan assets, end of year	\$ 408,448	\$ 51,494	\$ 14,176	\$ -

<u>Accrued benefit obligation</u>	<u>Retirement Plan</u>	<u>Supplemental Plan</u>	<u>Executive Plan</u>	<u>Other Benefit Plans</u>
Accrued benefit obligation, beginning of year	\$ 406,543	\$ 47,714	\$ 13,358	\$ 103,785
Current service cost	\$ 5,810	\$ 1,534	\$ 590	\$ 2,508
Interest cost	\$ 15,206	\$ 1,839	\$ 523	\$ 4,062
Expected employee contributions	\$ 716			
Benefits paid	\$ (38,424)	\$ (890)	\$ (299)	\$ (3,693)
Plan Amendments	\$ -	\$ -	\$ -	\$ -
Actuarial (gains) losses	\$ 8,050	\$ 1,351	\$ 339	\$ 4,936
Accrued benefit obligation, end of year	\$ 397,901	\$ 51,548	\$ 14,511	\$ 111,598

The Company's net benefit plan expense is as follows:

	<u>Retirement Plan</u>	<u>Supplemental Plan</u>	<u>Executive Plan</u>	<u>Other Benefit Plans</u>
Current service cost	\$ 6,526	\$ 1,534	\$ 590	\$ 2,508
Interest cost	\$ 15,206	\$ 1,839	\$ 523	\$ 4,062
Expected return on plan assets	\$ (16,225)	\$ (1,776)	\$ (527)	\$ -
Unamortized prior service cost	\$ -	\$ -	\$ -	\$ -
Employee contributions	\$ (716)			
Net periodic pension costs	\$ 4,791	\$ 1,597	\$ 586	\$ 6,570

JTI-MACDONALD CORP.
Notes to the Non-consolidated Financial Statements
Unaudited
December 31, 2017
(in thousands of dollars)

11. EMPLOYEE FUTURE BENEFITS (continued)

The significant actuarial assumptions adopted in measuring the Company's accrued benefit obligations in 2016 are as follows:

	Retirement Plan	Supplemental Plan	Executive Plan	Other Benefit Plans
Weighted average assumptions for expense				
Discount rate	3.60%	3.60%	3.60%	3.50%
Rate of compensation increase	3.00%	3.50%	3.50%	3.00%
Cost of Living Increase	2.00%	2.00%	2.00%	2.00%

The Company's plans' assets by asset category are as follows:

	Retirement Plan	Supplemental Plan	Executive Plan
Equity securities	9.80%	44.90%	9.70%
Debt securities	78.50%	11.70%	77.90%
Hedge Funds	11.60%	0.00%	11.50%
Other	0.10%	43.40%	0.90%
Total	100.00%	100.00%	100.00%

Employer contributions were made in accordance with the Report on the Actuarial Valuation for Funding Purposes as at December 31, 2015. The next actuarial valuation for funding purposes must be as of a date no later than December 31, 2016. The measurement date used to measure the plan assets and the accrued benefit obligation was December 31, 2016.

JTI-MACDONALD CORP.
Notes to the Non-consolidated Financial Statements
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(in thousands of dollars)

12. INCOME TAXES

The Company's income taxes consist of the following:

	<u>2017</u>	<u>2016</u>
Taxes included in Income		
Current	\$ 15,878	\$ 15,900
Future	8,150	(3,770)
	<u>\$ 24,028</u>	<u>\$ 12,130</u>
Taxes included in Other Comprehensive Income		
Current	\$ -	\$ -
Future	(7,850)	(8,729)
	<u>\$ (7,850)</u>	<u>\$ (8,729)</u>

The provision for income taxes is different from the amount computed by applying the combined statutory Canadian federal and provincial tax rates to earnings before provision for income taxes. A reconciliation of income taxes at Canadian statutory rates with reported income taxes is as follows for the years ended December 31:

	<u>2017</u>	<u>2016</u>
Income before income taxes	\$ 59,599	\$ 32,635
Combined Canadian federal and provincial income tax rate	27.83%	32.46%
Expected income taxes payable at statutory rates	<u>16,586</u>	<u>10,593</u>
Items affecting income tax provision:		
Other non-deductible expenses	1,561	1,384
Temporary timing differences	34	(59)
Change in tax rates	5,291	-
Other	556	212
Provision for income taxes	<u>\$ 24,028</u>	<u>\$ 12,130</u>

JTI-MACDONALD CORP.
Notes to the Non-consolidated Financial Statements
Unaudited
December 31, 2017
(in thousands of dollars)

12. INCOME TAXES (continued)

Components of future income tax liabilities and assets as at December 31 are as follows:

	<u>2017</u>	<u>2016</u>
Loss carry forward benefits	\$ 12,678	\$ 12,693
Employee future benefits	27,015	35,443
Contingent accruals	2,083	3,870
Other	80	128
	<u>41,856</u>	<u>52,134</u>
Less valuation allowance	(12,678)	(12,693)
Total future income tax assets	<u>29,178</u>	<u>39,441</u>
Other	(406)	(516)
Property, plant and equipment	(2,969)	(4,093)
Total future income tax liabilities	<u>(3,375)</u>	<u>(4,609)</u>
Net future income tax assets (liabilities)	<u>\$ 25,803</u>	<u>\$ 34,832</u>

13. CASH FLOW INFORMATION

Change in non-cash operating working capital items:

	<u>2017</u>	<u>2016</u>
Cash Provided by (used for):		
Accounts receivable	\$ (14,869)	\$ (1,324)
Inventory	(8,343)	26,980
Prepaid expenses	2,061	(1,690)
Accounts payable and accrued liabilities	(5,719)	22,205
Due to related parties	2,166	(308)
Excise taxes	(4,749)	52,367
Income taxes	(8,148)	8,041
	<u>\$ (37,601)</u>	<u>\$ 106,271</u>

JTI-MACDONALD CORP.
Notes to the Non-consolidated Financial Statements
Unaudited
December 31, 2017
(in thousands of dollars)

14. ACCUMULATED OTHER COMPREHENSIVE INCOME (LOSS)

Components of accumulated other comprehensive income (loss) as at December 31 are as follows:

	2017	2016
Actuarial losses on defined benefit retirement plan	\$ (56,343)	\$ (59,501)
Tax Effects	17,278	18,157
	<u>\$ (39,065)</u>	<u>\$ (41,344)</u>

15. FINANCIAL INSTRUMENTS

Fair value

Management believes its cash and short-term investments, accounts receivables, inventories, prepaids, accounts payable and accrued liabilities are indicative of fair values because of their short maturity. The fair value of other financial instruments is not determinable due to the related party nature of these instruments.

Credit risk

The Company's financial assets that are exposed to credit risk consist primarily of cash and short-term investments and accounts receivable.

The Company, in the normal course of business, is exposed to credit risk from its customers.

Interest rate risk

Interest rate risk is the risk that the value of a financial instrument will fluctuate due to changes in market interest rates.

16. CONTINGENCIES

a. Class Actions

Quebec

In February 2005, a Quebec trial court authorized two class actions against the Company. The first class (*Blais/Conseil Quebecois*), comprising Quebec residents allegedly suffering from certain diseases, initially sought collective recovery of approximately CAD 5 billion from all defendants (which include two competing cigarette manufacturers) in addition to damages for individual members and punitive damages. The second class (*Letourneau*), composed of allegedly addicted smokers in Quebec, initially sought collective recovery of approximately CAD 18 billion from all defendants (which include two competing cigarette manufacturers) in addition to individual and punitive damages. In July 2013, the Court changed the class definitions, which allowed an increase of the amounts

JTI-MACDONALD CORP.
Notes to the Non-consolidated Financial Statements
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(in thousands of dollars)

claimed in *Blais/Conseil Quebecois* from CAD 5 billion to CAD 13 billion, but a decrease of the amounts claimed in *Letourneau* from CAD 18 billion to CAD 9 billion. The joint trial began in March 2012 and ended in December 2014. In June 2015, the Quebec Superior Court released a first instance judgment ordering the payment jointly and severally by defendants of CAD 6.9 billion (CAD 16.3 billion with interest as at December 31, 2017) in relation to the *Blais/Conseil Quebecois* class; and CAD 131 million (CAD 151.2 million with interests) in relation to the *Letourneau* class. The Company's total share of the damages awarded is approximately CAD 2.1 billion with interest as at December 31, 2017 (CAD 2.1 billion in *Blais/Conseil Quebecois* class and CAD 14.4 million in the *Letourneau* class). The defendants' appeal on the merits was heard in November 2016 and the decision of the Court of Appeal is pending.

No provision has been recorded for these two actions as the Company vigorously defends itself and believes that there are good grounds to defeat them.

Merchant Class Actions

Tony Merchant, a Saskatchewan lawyer has filed seven class actions.

In July 2009, four class actions seeking unquantified damages were filed in Saskatchewan (Adams), Manitoba (Kunta), Alberta (Dorian) and Nova Scotia (Semple) against the Company as well as a number of other manufacturers participating in the Canadian cigarette market. The claim in Alberta expired, while the Manitoba, Saskatchewan and Nova Scotia class actions are currently dormant.

In July 2010, two class actions (*Bourassa* and *McDermid*) seeking unquantified damages were filed and served in British Columbia against the Company as well as a number of other manufacturers participating in the Canadian cigarette market. The *Bourassa* and *McDermid* class actions are currently dormant.

In June 2012, a class action (Jacklin) seeking unquantified damages was filed in Ontario against the Company as well as a number of other manufacturers participating in the Canadian cigarette market. It was served on the Company in November 2012, but is currently dormant.

b. Health Care Costs Recovery

There are ten ongoing health-care cost recovery cases in Canada pending against the Company brought by the Provinces of British Columbia, New Brunswick, Ontario, Newfoundland and Labrador, Manitoba, Quebec, Alberta, Saskatchewan, Prince Edward Island and Nova Scotia. These provinces filed lawsuits under their own provincial legislation which was enacted exclusively for the purpose of authorizing the provincial government to file a direct action against tobacco manufacturers to recoup the health-care costs the government allegedly incurred and will incur, resulting from "tobacco related wrongs."

b. Health Care Costs Recovery (continued)

British Columbia (BC)

This health-care cost recovery litigation was filed by the Province of British Columbia in January 2001 against tobacco industry members including the Company based on its provincial legislation, the "Tobacco Damages and Health-Care Costs Recovery Act." The claim amount is unspecified. In 2001,

JTI-MACDONALD CORP.
Notes to the Non-consolidated Financial Statements
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several defendants challenged the legislation's constitutionality which was ultimately rejected by the Supreme Court of Canada in September 2005. The action remains pending in the first instance. The pre-trial process is ongoing. A trial date is not yet scheduled.

New Brunswick (NB)

This health-care cost recovery litigation was filed by the Province of New Brunswick in March 2008 against tobacco industry members including the Company based on legislation similar to that introduced in the Province of British Columbia. The claim amount is unspecified. The pre-trial process is ongoing. The trial is set to begin in November 2019.

Ontario (ON)

This health-care cost recovery litigation was filed by the Province of Ontario in September 2009 against tobacco industry members including the Company based on legislation similar to that introduced in the Province of British Columbia. The statement of claim contains allegations of joint and several liabilities among all the defendants but does not specify any individual amount or percentages within the total claimed amount of CAD 50 billion. The pre-trial process is ongoing. A trial date is not yet scheduled.

Newfoundland and Labrador (NFL)

This health-care cost recovery litigation was filed by the Province of Newfoundland and Labrador in February 2011 against tobacco industry members including the Company based on legislation similar to that introduced in the Province of British Columbia. The claim amount is unspecified. The pre-trial process is ongoing. A trial date is not yet scheduled.

JTI-MACDONALD CORP.
Notes to the Non-consolidated Financial Statements
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December 31, 2017
(in thousands of dollars)

b. Health Care Costs Recovery (continued)

Manitoba (MB)

This health-care cost recovery litigation was filed by the Province of Manitoba in May 2012 against tobacco industry members including the Company based on legislation similar to that introduced in the Province of British Columbia. The claim amount is unspecified. The pre-trial process is ongoing. A trial date is not yet scheduled.

Quebec (QC)

This health-care cost recovery litigation was filed by the Province of Quebec in June 2012 against tobacco industry members including the Company based on legislation similar to that introduced in the Province of British Columbia. The statement of claim contains allegations of joint and several liabilities among all the defendants but does not specify any individual amount or percentages, within the total amount of the claim approximately CAD 61 billion. The pre-trial process is ongoing. A trial date is not yet scheduled.

Saskatchewan (SK)

This health-care cost recovery litigation was filed by the Province of Saskatchewan in June 2012 against tobacco industry members including the Company based on legislation similar to that introduced in the Province of British Columbia. The claim amount is unspecified. The pre-trial process is ongoing. A trial date is not yet scheduled.

Alberta (AB)

This health-care cost recovery litigation was filed by the Province of Alberta in June 2012 against tobacco industry members including the Company based on legislation similar to that introduced in the Province of British Columbia. The statement of claim contains allegations of joint and several liabilities among all the defendants but does not specify any individual amount or percentages, within the total claimed amount of at least CAD 10 billion. The pre-trial process is ongoing. A trial date is not yet scheduled.

Prince Edward Island (PEI)

This health-care cost recovery litigation was filed by the Province of Prince Edward Island in September 2012 against tobacco industry members including the Company based on legislation similar to that introduced in the Province of British Columbia. The claim amount is unspecified. The pre-trial process is ongoing. A trial date is not yet scheduled.

JTI-MACDONALD CORP.
Notes to the Non-consolidated Financial Statements
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(in thousands of dollars)

b. Health Care Costs Recovery (continued)

Nova Scotia

This health-care cost recovery litigation was filed by the Province of Nova Scotia in January 2015 against tobacco industry members including the Company based on legislation similar to that introduced in the Province of British Columbia. The statement of claim was served on the Company and the Company's indemnitees. The claim amount is unspecified. The pre-trial process is ongoing. A trial date is not yet scheduled.

c. Other Tobacco-Related Litigation

Tobacco Growers

In April 2010, a class action (Ontario Tobacco Growers) was served against the Company seeking USD 37 million (CAD 50 million) for an alleged breach of contract between the Ontario Flue-Cured Tobacco Growers Marketing Board and the Company. Similar proceedings were issued separately against two other manufacturers participating in the Canadian cigarette market. In June 2014, the Court dismissed Defendants' Motion for Summary Judgment to dismiss the claim. The defendants' appeal was dismissed by the Divisional Court in July 2016. The Company's subsequent motion for leave to appeal was dismissed by the Ontario Court of Appeal in November 2016. The proceedings are on-going.

EXHIBIT “CC”

This is **Exhibit “CC”**, referred to in the
Affidavit of Robert McMaster, sworn before me
this 8th day of March, 2019.



Notary Public

Mitchell Grossell
Barrister & Solicitor
LSO# 69993I

JTI-Macdonald Corp.
Non-consolidated Financial Statements
Unaudited
December 31, 2018
(In thousands of dollars)

JTI-Macdonald Corp.
Non-consolidated Balance Sheet
Unaudited
December 31, 2018
(In thousands of dollars)

ASSETS	<u>December 31, 2018</u>	<u>December 31, 2017</u>
Current		
Cash and short-term investments	\$ 139,195	\$ 85,028
Accounts receivable	9,643	25,538
Inventories	152,528	125,700
Prepaid expenses	5,928	1,272
	<u>307,294</u>	<u>237,538</u>
Properties, plant and equipment	40,886	43,211
Investment in subsidiary companies	1,200,000	1,200,000
Other Assets	8,900	8,900
Goodwill	304,328	304,328
Future income taxes	29,153	25,803
	<u>\$ 1,890,561</u>	<u>\$ 1,819,780</u>
LIABILITIES		
Current		
Accounts payable and accrued liabilities	\$ 48,781	\$ 54,251
Due to related parties	26,594	5,368
Income taxes	13,365	5,671
Excise taxes	41,250	77,667
Interest payable to related party	3,416	3,421
Demand promissory notes payable to related party	8,989	8,989
Current portion of convertible debentures payable to subsidiary	933	1,764
Current portion of obligations under capital leases	323	405
	<u>143,651</u>	<u>157,536</u>
Convertible debentures payable to subsidiary	1,183,326	1,184,258
Obligations under capital leases	624	1,052
Other liabilities	3,770	4,414
Employee future benefits	102,553	98,915
	<u>1,433,924</u>	<u>1,446,175</u>
SHAREHOLDER'S EQUITY		
Accumulated other comprehensive income (loss)	(39,065)	(39,065)
Share capital	535,021	535,021
Contributed surplus	9,192	9,192
Deficit	(48,511)	(131,543)
	<u>456,637</u>	<u>373,605</u>
	<u>\$ 1,890,561</u>	<u>\$ 1,819,780</u>

JTI-Macdonald Corp.
Non-consolidated Statements of Income
Unaudited
For the Period Ended December 31, 2018
(In thousands of dollars)

	December 31, 2018	December 31, 2017
Net sales	\$ 598,471	\$ 540,631
Operating costs	(391,359)	(383,872)
Earnings from operations	207,112	156,759
Interest expense	(91,923)	(92,073)
Other expense	(2,707)	(5,087)
Income (loss) before provision for income taxes	112,482	59,599
Provision for income taxes	(29,450)	(24,028)
Net gain (loss)	83,032	35,571
Deficit, beginning of year	(131,543)	(167,114)
Deficit, end of year	\$ (48,511)	\$ (131,543)

JTI-Macdonald Corp.
Non-consolidated Statements of Cash Flows
Unaudited
For the Period Ended December 31, 2018
(In thousands of dollars)

	December 31, 2018	December 31, 2017
OPERATING ACTIVITIES		
Net gain	\$ 83,032	\$ 35,571
Items not involving cash		
Net loss on disposal of properties, plant and equipment	978	898
Depreciation Expense	9,295	7,836
Future income taxes	(3,350)	9,028
(Decrease) Increase in other liabilities	(644)	(1,129)
(Increase) in other assets	-	(8,900)
(Decrease) Increase in employee future benefits included AOCI	3,638	(246)
Decrease (Increase) in non-cash working capital items	(28,554)	(37,601)
Cash used in operating activities	64,395	5,457
FINANCING ACTIVITIES		
Decrease in interest payable to related party	(5)	(7,675)
Decrease in principal payable to related party	(1,763)	(1,634)
(Decrease) in principal demand loan payable to related party	-	-
Increase in obligations under capital leases	(510)	(125)
Cash provided by (used in) financing activities	(2,278)	(9,434)
INVESTING ACTIVITIES		
Purchase of properties, plant and equipment	(7,517)	(9,247)
Loss from sale of properties, plant and equipment	(431)	(557)
Cash used in investing activities	(7,948)	(9,804)
Increase in cash and short-term investments	54,169	(13,781)
Cash and short-term investments, beginning of year	85,026	98,809
Cash and short-term investments, end of year	\$ 139,195	\$ 85,028

EXHIBIT “DD”

This is **Exhibit “DD”**, referred to in the
Affidavit of Robert McMaster, sworn before me
this 8th day of March, 2019.



Notary Public

Mitchell Grossell
Barrister & Solicitor
LSO# 699931

JTI-Macdonald Corp.
13-week Cash Flow Statement
SCAD '000, unaudited

	For the week beginning													13 weeks Total
Notes	25-Feb-19	4-Mar-19	11-Mar-19	18-Mar-19	25-Mar-19	1-Apr-19	8-Apr-19	15-Apr-19	22-Apr-19	29-Apr-19	6-May-19	13-May-19	20-May-19	
Receipts														
Sales	17,657	17,941	18,165	18,418	18,680	18,960	20,644	17,244	20,077	20,838	22,137	23,340	23,305	257,407
Intercompany Receipts	4,064	6,349	4,664	7,840	8,417	4,992	4,992	8,128	4,992	5,101	5,173	5,173	6,074	75,959
Tax Refunds	972	-	1,000	-	-	-	-	1,000	-	-	-	1,000	-	3,972
	22,694	24,290	23,830	26,258	27,097	23,952	25,635	26,372	25,069	25,939	27,310	29,513	29,380	337,338
Disbursement														
General Expenses	2,276	2,381	2,381	2,281	2,381	2,273	2,273	2,173	2,273	2,083	1,957	1,957	1,857	28,543
Payroll and Benefits	1,845	445	1,845	945	1,845	445	1,845	445	2,345	445	1,845	445	2,345	17,085
Pension	-	-	-	767	-	-	-	767	-	-	-	767	-	2,301
Promotions and Marketing	878	1,610	1,610	1,610	1,610	2,562	2,562	2,405	2,562	2,004	1,632	1,632	1,632	24,464
Leaf	-	-	2,688	-	-	-	-	-	-	-	-	-	-	5,093
Capital Expenditures and Leases	249	-	1,689	-	241	-	-	-	-	1,757	-	-	-	3,936
Professional Fees	305	305	305	305	305	437	437	437	437	229	229	229	229	4,194
Restructuring Costs	264	168	168	168	249	153	153	153	249	153	153	153	249	2,430
Domestic and Import Duty	48,500	-	-	-	2,000	36,057	-	-	-	57,085	-	-	-	143,642
GST and HST	5,000	-	-	-	-	3,804	-	-	-	5,707	-	-	-	14,511
Intercompany Disbursements	2,258	350	4,538	10,456	5,258	5,811	5,811	6,665	5,811	6,779	5,468	5,468	6,093	70,766
Intercompany Royalties	828	-	-	7,648	707	-	-	7,648	-	749	-	-	-	2,284
Intercompany Interest	-	-	-	-	-	-	-	-	-	-	-	-	-	22,945
Intercompany Principal	-	-	-	-	-	-	-	-	-	-	-	-	-	933
Income Tax Instalments and PTT	16,180	1,500	-	-	-	2,660	1,500	-	-	2,660	1,500	-	-	26,000
	78,583	6,760	15,225	24,180	14,597	54,202	14,580	23,254	13,677	79,650	12,783	10,650	20,986	369,127
Total Disbursements	(55,889)	17,530	8,605	2,078	12,500	(30,250)	11,055	3,118	11,391	(53,711)	14,527	18,863	8,394	(31,789)
Cashflow Surplus/Deficit (-)	161,196	105,306	122,837	131,442	133,520	146,020	115,770	126,825	129,943	141,334	87,623	102,150	121,013	161,196
Opening Cash Balance	105,306	122,837	131,442	133,520	146,020	115,770	126,825	129,943	141,334	87,623	102,150	121,013	129,407	
Closing Cash Balance	8,900	8,900	8,900	8,900	8,900	8,900	8,900	8,900	8,900	8,900	8,900	8,900	8,900	8,900
Cash Collateral	-	-	-	-	-	-	-	-	-	-	-	-	-	-
Opening Balance	8,900	8,900	8,900	8,900	8,900	8,900	8,900	8,900	8,900	8,900	8,900	8,900	8,900	8,900
Cash Collateral Withdrawal/(deposit)	-	-	-	-	-	-	-	-	-	-	-	-	-	-
Closing Balance	8,900	8,900	8,900	8,900	8,900	8,900	8,900	8,900	8,900	8,900	8,900	8,900	8,900	8,900
Closing Cash net of Cash Collateral	96,406	113,937	122,542	124,620	137,120	106,870	117,925	121,043	132,434	78,723	93,250	112,113	120,507	

**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.**

("JTIM" or the "Applicant")

Notes to the Applicant's Unaudited Cash Flow Statement

Disclaimer

In preparing this cash flow projection (the "**Cash Flow Statement**"), the Applicant has relied upon unaudited interim financial information and the major assumptions listed below. The Cash Flow Statement includes estimates concerning the operations of the Applicant with consideration to the impact of a filing under the *Companies' Creditors Arrangement Act*, as amended (the "**CCAA**"). The Cash Flow Statement is based on assumptions about future events and the actual results achieved during the forecast period will vary from the Cash Flow Statement, even if the assumptions materialize, and such variations may be material. There is no representation, warranty or other assurance that any of the estimates, forecasts or projections will be realized. Parties using the Cash Flow Statement for reasons other than to assess the cash flows of the Applicant during the forecast period are cautioned that it may not be appropriate for their purposes.

Overview

The Cash Flow Statement reflects cash flows from JTIM. The Applicant, with the assistance of the Monitor, has prepared the Cash Flow Statement based primarily on historical results and JTIM's current expectations derived from their annual budgeting process. Consistent with the Applicant's budgeting process, the Cash Flow Statement is presented in thousands of Canadian Dollars. Receipts and disbursements denominated in U.S. Dollars have been converted into Canadian Dollars using an exchange rate of **CDN\$1.29 = USD\$1.00**.

Major Assumptions

RECEIPTS

1. Opening cash balance

This is the opening cash balance at the start of the cash flow projection.

2. Sales

Receipts from JTIM's trade sales are estimated based on a weekly forecast of collections from existing accounts. The projected sales are derived from JTIM's annual budget, which includes assumptions surrounding industry wide price fluctuations. JTIM collects payment from its customers via direct debit once product is shipped. The vast majority of JTIM's customers are tobacco wholesalers. In limited circumstances, JTIM sells directly to retail accounts.

3. Intercompany Receipts

JTIM is owned indirectly by Japan Tobacco Inc. ("**Japan Tobacco**"), a publicly listed company in Japan. Certain employees of JTIM, located at either the Mississauga head office or Montreal factory locations, perform services for non-Canadian entities. A charge for time spent is applied to the related party corporation benefiting from the services. The charge is based on time spent by the employees based on an annual submission that the employee provides. The fee rate is based on the cost of each employee to JTIM, plus a 5% mark-up.

JTIM provides other related-party international tobacco companies outside of Japan ("**JT International**") with skilled personnel (i.e. expatriates working abroad), and is reimbursed the costs of such employees.

There are three JT International Global Service Desks ("**GSDs**") located across the world in Canada, Russia and Malaysia. The GSDs handle information and technology queries from JT International employees and corporations on a twenty-four hour basis. The GSDs are managed out of the international headquarters of Japan Tobacco in Geneva, Switzerland. The costs of the Canadian GSD, located in Montreal, are initially paid by JTIM, but fully cross-charged to JT International S.A. ("**JTI-SA**") to be included in the global IT cost base for allocation across Japan Tobacco.

JTIM performs contract manufacturing for non-Canadian branded cigarettes at the Montreal manufacturing facility for JTI-SA.

JTIM also provides services to another JT International entity in Canada with respect to that entity's distribution of potentially reduced risk products in Canada.

JTIM exports Canadian brand cigarettes to other JT International entities for sale.

4. Tax Refunds

The projected tax refunds relate to the collection of QST refunds in Quebec, excise tax refunds for product that require rework or destruction and customs duty refunds for imported product that require destruction.

DISBURSEMENTS

5. General Expenses

These projected disbursements include payments related to non-tobacco materials, travel, service related activities, utilities and rent.

6. Payroll and Benefits

These projected disbursements include payroll and benefit costs for all salaried and hourly plant employees. The forecast amounts are based on historic run rates. Hourly plant employees are paid weekly and salaried employees are paid bi-weekly. Payroll disbursements include all employee source deductions, employee and employer portions of CPP/QPP and EI, and other payroll-related taxes.

7. Pension

These projected disbursements represent payments to JTIM's registered employees plan, registered executive employees plan and the executive supplemental benefit plan. The pension amounts forecast in the cash flow include all current and special obligation amounts.

8. Promotions and Marketing

These projected disbursements relate to the various marketing and promotional initiatives, such as inventory support programs and brand support programs. Initiatives are generally paid 30 days in arrears or via quarterly installments.

9. Leaf

These projected disbursements represent payments to third party suppliers of tobacco leaf. Third party purchases are used in circumstances where JTI-SA does not have a specific grade of tobacco available at the time required to meet the plant's tobacco blend requirements to reduce disruptions in the production process.

10. Capital Expenditures and Leases

These projected disbursements relate to capital expenditures for plant and equipment purchases at the Montreal production facility. These capital expenditures primarily relate to new plain packaging machinery for statutory compliance, machine upgrades, new product flow control systems and environmental health and safety. Additional expenditures are forecast for regional sales office leases, vehicles used by marketing representatives and miscellaneous information technology requirements.

11. Professional Fees

These projected disbursements include payments to JTIM's legal advisors for corporate litigation matters.

12. Restructuring Costs

These projected disbursements include payments to JTIM's legal advisors for specialist restructuring advice, the fees and costs of the Monitor and its counsel and the fees and costs of the Chief Restructuring Officer.

13. Domestic and Import Duty

These projected disbursements relate to payments to the Canada Revenue Agency (“CRA”) with respect to tobacco products produced under the *Excise Act*, 2001 and duty on imported tobacco products. Excise duty returns and payments are due on the last day of the month following the reporting period (e.g. a return for a period ending February 28 is due by March 31). Import duty payments are paid once a month on a rolling basis with the 21st being the end of the month.

14. GST and HST

These projected disbursements represent payments to the CRA with respect to GST and HST. Historically, JTIM has always been in a monthly net payable position.

15. Intercompany Disbursements

These projected disbursements represent: (i) payments for goods and services provided by JT International entities such as tobacco products from JTI-SA, LLC Cres Neva, JTI (US) Holdings Inc., and Japan Tobacco International USA Inc., (ii) IT services provided by JTI-SA, (iii) global administrative services provided by JTI Business Services Ltd., (iv) employee arrangements provided by JTI Services Switzerland SA, and (v) global headquarter services provided by JT International Holdings B.V.

16. Intercompany Royalties

JTI-Macdonald TM Corp. (“TM”) provides licenses to JTIM to use the trademarks to manufacture and sell goods bearing the trademarks in exchange for a monthly royalty payment.

17. Intercompany Interest and Principal

This disbursement represents the semi-annual principal and monthly interest payments on the \$1.2 billion secured convertible debentures by JTIM to TM. Principal payments on the debentures are made in May and November.

18. Income Tax Instalments and Provincial Tobacco Taxes

These projected disbursements represent corporate income tax instalments and payments of Provincial Tobacco Taxes (“**PTT**”) on direct retail sales. The Cash Flow Statement includes a top-up payment for 2018 corporate income tax on February 28, 2019.

19. Cash Collateral

Cash Collateral of \$8.9 million was pledged to Citibank pursuant to two agreements dated in 2016 and 2017 to allow for continued central travel account card services and cash management services provided by Citibank.

EXHIBIT “EE”

This is **Exhibit “EE”**, referred to in the
Affidavit of Robert McMaster, sworn before me
this 8th day of March, 2019.



Notary Public

Mitchell Grossell
Barrister & Solicitor
LSO# 699931

Court File No.:

**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.

CONSENT

DELOITTE RESTRUCTURING INC. hereby consents to act as Court-appointed Monitor of JTI-Macdonald Corp., the Applicant in these proceedings, should the Initial Order be granted as requested.

Dated at Toronto this 1st day of March, 2019.

DELOITTE RESTRUCTURING INC.

Per: _____

Name: Paul M. Casey

Title: Senior Vice-President

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.:

ONTARIO
SUPERIOR COURT OF JUSTICE
(COMMERCIAL LIST)

Proceedings commenced at Toronto

CONSENT

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Lawyers for the Applicant

EXHIBIT “FF”

This is **Exhibit “FF”**, referred to in the
Affidavit of Robert McMaster, sworn before me
this 8th day of March, 2019.



Notary Public

Mitchell Grossell
Barrister & Solicitor
LSO# 699931

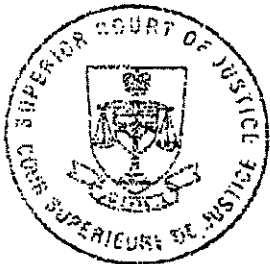
Court File No. 04 CL 5530



ONTARIO
SUPERIOR COURT OF JUSTICE
(COMMERCIAL LIST)

THE HONOURABLE MR.)
JUSTICE FARLEY)

TUESDAY, THE 24TH
DAY OF AUGUST, 2004



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

AND IN THE MATTER OF JTI - MACDONALD CORP.

Applicant

INITIAL ORDER

THIS APPLICATION made by JTI-MACDONALD CORP. (the "Applicant"), for an Order substantially in the form attached to the Notice of Application herein was heard this day, at 393 University Avenue, Toronto, Ontario.

ON READING the Notice of Application, the Affidavit of Michel Poirier sworn August 24, 2004 and the Exhibits thereto (the "Poirier Affidavit"), and the consent of Ernst & Young Inc. as proposed Monitor, and on hearing the submissions of counsel for the Applicant and counsel to the proposed Monitor and counsel to JTI Canada LLC Inc., but that no other person was served with the Application Record:

SERVICE

1. **THIS COURT ORDERS** that the time for service of the Notice of Application and Application Record is abridged and that this Application is properly returnable today and further that service thereof upon any interested party not served is hereby dispensed with.

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APPLICATION

2. **THIS COURT ORDERS AND DECLARES** that the Applicant is a company to which the *Companies' Creditors Arrangement Act*, R.S.C. 1985, c. C-36, as amended (the "CCAA") applies.

STAY OF PROCEEDINGS

3. **THIS COURT ORDERS** that the Applicant shall remain in possession and control of its property, assets and undertaking, including without limitation any present or future property, rights, assets or undertaking of the Applicant wheresoever located, and whether held by the Applicant in whole or in part, directly or indirectly, as principal or nominee, beneficially or otherwise, whether in the possession of the Applicant, or subleased to another entity, any and all real property, personal property and intellectual property of the Applicant, and any and all securities, instruments, debentures, notes or bonds issued to, or held by or on behalf of the Applicant (the "Property"), and shall continue to carry on business in the ordinary course and in a manner consistent with the preservation of the Applicant's business (the "Business") and Property.

4. **THIS COURT ORDERS** that, until and including September 22, 2004, or such later date as the Court may Order (the "Stay Period"),

- (a) Except as otherwise provided in this paragraph no suit, action, enforcement process, extra-judicial proceeding or other proceeding (including a proceeding in any court, statutory or otherwise), right or remedy (judicial or extra-judicial, statutory or non-statutory) (a "Proceeding") shall be commenced by any person, firm, corporation, government, administrative or regulatory body or other entity or organization (including, without limitation, creditors, customers, suppliers, employees, pensioners, unions, regulators, contracting parties, lessors, licensors, co-venturers or partners of the Applicant) (collectively, "Persons" and individually a "Person") against or in respect of the Applicant or the Property, and any and all Proceedings against or in respect of the Applicant or the Property

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already commenced be and are hereby stayed and suspended and the continuation thereof is restrained unless the prior written consent of the Applicant and the Monitor is obtained or leave of this Court is granted, and

- (b) unless the prior written consent of the Applicant and the Monitor is obtained or leave of this Court is granted, all Persons are enjoined and restrained from:
- (i) commencing or continuing realization steps or Proceedings in respect of any security interest, encumbrance, lien, charge, mortgage or other security held in relation to, or any trust attaching to, any of the Property (including, without limitation, the right of any Person to take any step in asserting or perfecting any right or interest therein or to exercise any right of registration of securities, distress, seizure, repossession, revendication, stoppage in transit, foreclosure or sale); and
 - (ii) asserting, enforcing or exercising any right, option or remedy available to it arising by law, under any agreement or otherwise (including, without limitation, any right under section 224 (1.2) of the Income Tax Act (Canada) or substantially similar provision under provincial law (subject to section 11.4 of the CCAA) any right of dilution, buy-out, divestiture, forced sale, demand, acceleration, termination, suspension, modification, cancellation, set-off or consolidation of accounts; any right of first refusal; any right to give notice of assignment of a claim; or any right to revoke any qualification or registration), against or in respect of any of the Applicant or any of the Property or arising out of, relating to or triggered by the occurrence of any default or non-performance by or the insolvency of any of the Applicant, the making or filing of these proceedings or any allegation, admission or evidence in these proceedings (for greater certainty, rights under the *Loi sur le ministère du Revenu* of Quebec including the right to make demand for payment on third parties pursuant to section 15 thereof and similar remedies under the statutes of any province, and any such demands are, from the Effective Time, of no effect),

provided that nothing in this Order shall have the effect of staying, impairing or delaying the conduct of criminal proceedings commenced against the Applicant in the Province of Ontario on February 27, 2003, charging JTI-Macdonald Corp. and others with fraud, conspiring to commit the indictable offence of fraud contrary to section 380(1)(a) of the Criminal Code of Canada, and with the possession of property and/or proceeds of crime contrary to sections 354(1) and 355(a) (the "Criminal Proceedings"), however the taking of any Proceedings to enforce or collect any fines, restitution orders or other claims or awards resulting from such Criminal Proceedings shall be stayed as set out in paragraphs 4(a) and (b) above.

5. **THIS COURT ORDERS** that during the Stay Period, no ~~Person, firm, corporation, governmental authority, or other entity shall~~, without leave of this Court, ~~discontinue, fail to renew, renew on terms more onerous to those existing prior to the Effective Time, alter, suspend, modify, cancel, or interfere with or terminate any right, contract, arrangement, agreement, licence or permit in favour of the Applicant or the Property or held by or on behalf of the Applicant, including as a result of any default or non-performance by the Applicant prior to the making of this Order, the making or filing of these proceedings or any allegation contained in these proceedings or the making of this Order.~~

6. **THIS COURT ORDERS** that, subject to the provisions of s.11.3 of the CCAA, during the Stay Period, all Persons having oral or written agreements with the Applicant or statutory or regulatory mandates for the supply of goods and/or services, including without limitation, the sale of inventory, all computer software, communication and other data services, centralized banking services, payroll services, insurance, transportation services, utility or other services to the Applicant or any of the Property are hereby restrained until further Order of this Court from discontinuing, failing to renew on reasonable terms, altering, interfering with or terminating the supply of such goods or services as may be required by the Applicant, and that the Applicant shall be entitled to the continued use of their current telephone numbers, facsimile numbers, internet addresses and domain names, provided in each case that the normal prices or charges for all such goods or services received after the date of this Order are paid by the Applicant in

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accordance with their current payment practices or such other practices as may be agreed upon by the supplier or service provider and the Applicant.

7. **THIS COURT ORDERS** that, notwithstanding anything else contained in this Order, any persons who provided letters of credit, standby letters of credit, performance bonds or guarantees (the "Issuing Party") at the request of the Applicant (whether provided for the payment of suppliers of goods or services or otherwise) shall be required to continue honouring, in accordance with the terms thereof, any and all such letters of credit, standby letters of credit, performance bonds, payment bonds and/or guarantees, issued on or before the date of this Order subject to the Issuing Party being entitled to retain the bills of lading and/or shipping or other documents relating thereto until paid therefore. For greater certainty, the Issuing Party shall be prohibited from terminating, suspending, modifying, determining, refusing to honour (otherwise than in accordance with their terms) or cancelling any such letters of credit, standby letters of credit, performance bonds, payment bonds or guarantees, and the beneficiaries of such letters of credit, standby letters of credit, performance bonds, payment bonds or guarantees for the supply and delivery of goods shall be entitled to draw on such letters of credit, standby letters of credit, performance bonds, payment bonds or guarantees, as the case may be, in accordance with their respective terms and conditions, without the prior written consent of the Applicant or leave of this Court.

8. **THIS COURT ORDERS** that Persons may exercise only such rights of set-off as are permitted under Section 18.1 of the CCAA.

9. **THIS COURT ORDERS** that, *subject to s. 11.3 of the CCAA, and* without limiting the generality of paragraph 8 hereof, all banks and financial institutions at which the Applicant maintains a bank account are hereby restrained from stopping, withholding, redirecting, consolidating, combining accounts or otherwise interfering with any amount in such account(s) against any indebtedness owing to that bank or financial institution by the Applicant, or from discontinuing, failing to renew on terms no more onerous than those existing prior to these proceedings, altering, interfering with or terminating such banking arrangements. *JL*

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10. **THIS COURT ORDERS** that during the Stay Period, and except as permitted by Subsection 11(2) of the CCAA, no action may be commenced or continued against any of the former, current or future directors of the Applicant with respect to any claim against the directors that arose before the date hereof and that relates to any obligations of the Applicant whereby the directors are alleged under any law to be liable in their capacity as directors for the payment or performance of such obligations.

11. **THIS COURT ORDERS** that no person shall commence or continue any proceeding against the Applicant's directors, officers, employees, legal counsel or financial advisors, without first obtaining leave of this Court, upon (7) seven days' written notice to the Applicant's counsel of record and to all those referred to in this paragraph whom it is proposed be named in such proceedings.

12. **THIS COURT ORDERS** that, for greater certainty, no person shall withhold or refuse to make all required payments as they become due to the Applicant in respect of Agreements with the Applicant, whether written or oral, solely by virtue of the Applicant's insolvency or the commencement of these proceedings.

13. **THIS COURT ORDERS** that, notwithstanding anything else contained herein, the Applicant with the consent of the Monitor may, by written consent of its counsel of record herein, agree to waive any of the protections provided to it herein.

EFFECTIVE TIME

14. **THIS COURT ORDERS** that, from 12:01 a.m. (Toronto time) on the date of this Order (the "Effective Time") to the time of the granting of this Order, any act or action taken or notice given by the Applicant's creditors or other persons in furtherance of their rights to commence or continue realization or to take or enforce any other step or remedy will be deemed not to have been taken or given, as the case may be, subject to the right of any such person to further apply to this Court on seven days' notice to the Applicant and the Monitor in respect of such step, act, action or notice given.

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POSSESSION OF PROPERTY AND OPERATIONS

15. **THIS COURT ORDERS** that the Applicant shall be authorized and empowered to continue to retain and employ, and terminate the retention and employment of, the agents, advisors, contractors, employees, solicitors and other assistants, consultants and valuers currently in its employ, with liberty to retain such further agents, advisors, contractors, employees, solicitors, assistants, consultants and valuers including, without limitation, those who were formerly, are now or may in the future be retained, employed or paid by the Applicant or any person, firm, corporation or other entity related to or affiliated with the Applicant, as they deem reasonably necessary or desirable in the ordinary course of business or the carrying out of the terms of this Order.

16. **THIS COURT ORDERS** that, after the date hereof and except as otherwise provided to the contrary herein the Applicant shall be entitled to pay all reasonable expenses incurred by the Applicant in carrying on the Business in the ordinary course both prior to and after the Effective Time and in carrying out the provisions of this Order, operating the Business or preserving the Property, and which expenses, pending any further Order of this Court, include, without limitation, payment:

- (a) of all expenses reasonably necessary for the operation and preservation of the Property or the Business including, without limitation, payments on account of insurance (including directors and officers insurance), maintenance, security, and normal course individual capital expenditures of \$2.5 million or less, and, with the Monitor's prior approval, individual capital expenditures exceeding \$2.5 million;
- (b) of all outstanding and future wages, salaries, employee, retirement and pension benefits, vacation pay, bonuses and expenses, in each case incurred in the ordinary course of business and consistent with existing compensation policies and arrangements, and retention and severance payments accruing due to employees, provided that any such retention or severance payments to be paid to

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officers and directors of the Applicant may only be made upon further Order of this Court;

- (c) of all rent payable under any lease (or as otherwise may be negotiated by the Applicant from time to time) including, for greater certainty, common area maintenance charges, utilities and realty taxes and any other amounts payable to the landlord;
- (d) of the reasonable fees and disbursements of the Monitor, including the reasonable fees and disbursements of any counsel retained by the Monitor;
- (e) of the reasonable fees and disbursements of any auditor, financial advisor or other professional retained by the Applicant in respect of these proceedings, the operation of the Business or the preservation of the Property;
- (f) of all of the reasonable fees and disbursements, of counsel retained by the Applicant in respect of these or any other proceedings (including the Criminal Proceedings), the operation of the Business, or the preservation of the Property;
- (g) of all outstanding and future amounts due from any Applicant under any credit card arrangements; and
- (h) of expenses incurred in relation to goods or services actually supplied to the Applicant either before or following the date of this Order, including payments in respect of outstanding documentary credits or deposits.

17. THIS COURT ORDERS that the Applicant shall remit, in accordance with legal requirements, or pay:

- (a) any statutory deemed trust amounts in favour of the Crown in right of Canada or of any Province or Territory thereof or any other taxation authority which are required to be deducted from employees' wages, including, without limitation,

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amounts in respect of employment insurance, Canada Pension Plan, and income taxes;

- (b) amounts accruing and payable by the Applicant in respect of employment insurance, Canada Pension Plan, and any other public or private pension plans, workers compensation, employer health taxes and similar obligations of any jurisdiction with respect to employees; and
- (c) all goods and services or other applicable duties or taxes payable or required to be paid by the Applicant on or in connection with the ordinary course manufacture and/or sale of goods and services by the Applicant, incurred or arising from and after the Effective Time.

18. THIS COURT ORDERS that, except as otherwise permitted herein, the Applicant is hereby directed, until further Order of this Court: (a) to make no payments of principal, interest thereon, or otherwise on account of amounts owing by the Applicant to any of their creditors as of this date; (b) to grant no mortgages, charges, hypothecs, liens or other security upon or in respect of any of their present or future Property; and pending further order of this Court no payments of principal, interest, royalties or dividends to related parties shall be made, however payments in relation to transactions described in paragraph 20(d) of this Order are permitted.

19. THIS COURT ORDERS that nothing herein shall be construed as in any way limiting the terms and conditions of any licence, permit or approval granted to the Applicant.

20. THIS COURT ORDERS that the Applicant shall have the right, with the consent of the Monitor to:

- (a) permanently or temporarily cease, downsize or shut down any of their businesses or operations;
- (b) sell or otherwise dispose of redundant or non-material assets with an individual value of more than \$1 million; and

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- (c) terminate or suspend such of its arrangements or agreements of any nature whatsoever, whether oral or written, as the Applicant deems appropriate; and
- (d) engage in usual and ordinary course transactions with other related parties.

DIRECTORS' AND OFFICERS' INDEMNIFICATION AND CHARGE

21. **THIS COURT ORDERS** that, in addition to any existing indemnities, the Applicant shall indemnify each of its directors and each Person who was or in the future is requested by the Applicant to act, and who is acting or did or does act or is deemed or treated by applicable legislation to be acting or to have acted, as a director, officer or person of a similar position (a "Responsible Person") of another entity in which the Applicant has a direct or indirect interest (an "Associated Entity") from and against the following:

- (a) all costs (including, without limitation, full defence costs), charges, expenses, claims, liabilities and obligations of any nature whatsoever which may arise as a result of his or her association with the Applicant or Associated Entity as a director or Responsible Person in each case on or after the date hereof (including, without limitation, an amount paid to settle an action or satisfy a judgment in a civil, criminal, administrative or investigative action or proceeding to which such director or Responsible Person may be made a party by reason of being or having been a director or Responsible Person (as the case may be), provided that such director or Responsible Person (i) acted honestly and in good faith with a view to the best interests of the Applicant or Associated Entity (as the case may be) and (ii) in the case of a criminal or administrative action or proceeding that is enforced by monetary penalty, such director or Responsible Person had reasonable grounds for believing his or her conduct was lawful) except to the extent that such director or Responsible Person has actively participated in the breach of any related fiduciary duties or has been grossly negligent or guilty of wilful misconduct; and
- (b) all costs (including without limitation, full defence costs), charges, expenses, claims, liabilities and obligations relating to the failure of the Applicant or an

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Associated Entity at any time to make payments of the nature referred to in paragraphs 16 or 17 of this Order or to pay amounts in respect of employee or former employee entitlements to wages, vacation pay, termination pay, severance pay, pension or other benefits or any other amount for services performed, whether incurred or accruing prior to, on or after the date of this Order and that he or she sustains or incurs by reason of or in relation to his or her association with the Applicant or Associated Entity as a director or Responsible Person (as the case may be), except to the extent that such director or Responsible Person has actively participated in the breach of any related fiduciary duties or has been grossly negligent or guilty of wilful misconduct,

(collectively, "D&O Claims") provided that the foregoing shall not constitute a contract of insurance and shall not constitute other valid and collectible insurance as such term may be used in any existing policy of insurance issued in favour of the Applicant or Associated Entities or any of the directors or Responsible Persons. For greater certainty, no person shall be entitled by way of subrogation to enforce the indemnity contained in this paragraph.

22. THIS COURT ORDERS that as security for the obligation of the Applicant to indemnify the directors and Responsible Persons pursuant to paragraph 21, the directors and Responsible Persons be and they are hereby granted a fixed lien on, mortgage and hypothec of, and security interest in the Property (the "Directors' Charge"), having the priority established by paragraphs 32 and 35. Such Directors' Charge, notwithstanding any language in any applicable policy of insurance to the contrary, shall only apply to the extent that the directors and Responsible Persons do not have coverage under the provisions of any applicable directors' and officers' insurance which shall not be excess insurance to the Directors' Charge. In respect of any D&O Claim that is asserted against any of the directors and Responsible Persons, if the directors and Responsible Persons against whom the D&O Claim is asserted (collectively, the "Respondent Directors") do not receive satisfactory confirmation from the applicable insurer within 21 days of delivery of notice of the D&O Claim to the applicable insurer confirming that the applicable insurer will provide coverage for and indemnify the Respondent Directors against the D&O Claim then, without prejudice to the subrogation rights hereinafter referred to, the

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Applicant shall pay the amount of the D&O Claim as it becomes payable by the Respondent Directors and, failing such payment, the Respondent Directors shall be entitled to enforce the Directors' Charge; provided that the Respondent Directors shall reimburse the Applicant to the extent that they subsequently receive insurance proceeds in respect of the D&O Claim paid by the Applicant, and provided further that the Applicant shall, in the event of such payment being made, be subrogated to the rights of the Respondent Directors to pursue recovery thereof from the applicable insurer as if no such payment had been made.

23. **THIS COURT ORDERS** that the Applicant shall and does hereby indemnify the Monitor and the legal counsel and the financial advisors to the Applicant and the Monitor, of and from all claims, liabilities and obligations of any nature whatsoever, including, without limitation, legal fees and disbursements, which may arise out of their involvement with the Applicant from and after the date hereof, save and except such as may arise from wilful misconduct or gross negligence on the part of any of them.

APPOINTMENT OF MONITOR

24. **THIS COURT ORDERS** that Ernst & Young Inc. be and is hereby appointed pursuant to the CCAA as the Monitor and an officer of this Court, to monitor the Property and Business and the Applicant's conduct of the Business and affairs of the Applicant with the powers and obligations set forth in the CCAA and hereinafter set forth and that the Applicant and its shareholders, officers, directors, advisors, employees, servants, agents and representatives shall co-operate fully with the Monitor in the exercise of its power and discharge of its obligations, subject to the limitations contained in this Order.

25. **THIS COURT ORDERS** that the Monitor, in addition to its prescribed rights and obligations under the CCAA, is hereby directed and empowered to:

- (a) deliver to the Applicant and file with this Court, such reports as the Monitor considers appropriate or relevant to these proceedings or as the Court directs;
- (b) monitor the Applicant's receipts and disbursements;

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- (c) have full and complete access to the books and records, management, employees, agents, and advisors of the Applicant and to the Property to the extent required to perform its duties arising under this Order, subject to the limitations contained in this Order;
- (d) be at liberty to engage independent legal counsel to advise and to represent the Monitor in relation to the exercise of its powers and discharge of its obligations under this Order;
- (e) be at liberty to retain, engage, and utilize the services of such other persons as the Monitor deems necessary to perform its duties and obligations under this Order; and
- (f) perform such other duties as are required by this Order or by this Court from time to time.

26. **THIS COURT ORDERS** that, in response to any reasonable request for information made in writing by the Applicant's creditors addressed to the Monitor, the Monitor shall request such information from the Applicant and shall provide such creditor with such information as may be supplied by the Applicant in response to the request. In the case of information which the Monitor has been advised by the Applicant is or may be confidential (whether because it is subject to formal confidentiality obligations, because it represents sensitive business information, or otherwise), is privileged, or, whether or not confidential or privileged has been collected or assembled in relation to the defence of the Criminal Proceedings currently outstanding against the Applicant, the Monitor shall not provide such information to the requesting creditor unless otherwise directed by this Court or consented to by the Applicant.

27. **THIS COURT ORDERS** that the Monitor is not empowered to take possession of the Property or to manage any part of the Business and shall not, by fulfilling its obligations hereunder, be deemed to have taken or maintained possession or control of the Property, or any part thereof. In addition, and notwithstanding anything else in this Order, the Monitor shall not, without leave of this Court seek or obtain access to any information, documents or material in

subject to further order of this Court, JG

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the possession of the Applicant or counsel for the Applicant which relate to the Criminal Proceedings, including individual docket entries in such counsel's accounts.

28. THIS COURT ORDERS that the Monitor and counsel to the Monitor shall be paid their reasonable fees and disbursements by the Applicant as part of the cost of these proceedings, whether incurred before or after the making of this Order.

29. THIS COURT ORDERS that, in addition to the rights and protections afforded to the Monitor under the CCAA or as an officer of this Court, the Monitor shall incur no liability or obligation as a result of its appointment or the fulfilment of its duties in the carrying out of the provisions of this Order, save and except where it has been grossly negligent or wilfully misconducted itself, and no action or other proceeding shall be commenced against the Monitor in any Court or other tribunal as a result of or relating in any way to its appointment as Monitor, the fulfilment of its duties as Monitor or the carrying out of any of the Orders of this Court, unless the leave of this Court is first obtained on motion on at least seven (7) days' notice to the Monitor and the Applicant. Related entities of the Monitor shall also be entitled to the protections, benefits and privileges of this paragraph 29, *mutatis mutandis*.

30. THIS COURT ORDERS that the appointment of the Monitor shall not constitute the Monitor to be an employer, successor employer, sponsor or payor within the meaning of any agreement or other contract between the Applicant and any of its present or former employees or any legislation governing employment or labour standards or pension benefits or health and safety or any other statute, regulation or rule of law or equity for any purpose whatsoever and, further, that the Monitor shall be deemed not to be an owner or in possession, care, control, or management of the Property of the Applicant or of the Business and affairs of the Applicant, whether pursuant to any legislation enacted for the protection of the environment, health and safety, the regulations thereunder, or any other statute, regulation or rule of law or equity under any federal, provincial or other jurisdiction for any purpose whatsoever.

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ADMINISTRATIVE CHARGE

31. **THIS COURT ORDERS** that the Monitor, counsel to the Monitor, and counsel to the Applicant, shall be paid their fees and disbursements by the Applicant as part of the costs of these proceedings. The Applicant are hereby authorized and directed to pay the Monitor, any counsel to the Monitor and the Applicant's own counsel on a weekly basis and to pay retainers to the Monitor and to the Applicant's own counsel in the amount of up to \$1 million each as security for payment of their fees and disbursements from time to time. The indemnity provided in paragraph 23 of this Order and the fees and disbursements of the Monitor, counsel to the Monitor and counsel to the Applicant shall be secured by a charge on the Property (the "Administrative Charge"), without the requirement to file, register, record or perfect the charge.

PRIORITY OF CHARGES

32. **THIS COURT ORDERS** that the Administrative Charge and the Directors' Charge shall have priority over all present and future charges, encumbrances and security in the Property, in the following priority:

- (a) first, the Administrative Charge up to a maximum of \$3 million; and
- (b) second, the Directors' Charge up to a maximum of \$10 million.

33. **THIS COURT ORDERS** that the filing, registration or perfection of the Directors' Charge or the Administrative Charge (collectively, the "Charges") shall not be required, and that the Charges shall be valid and enforceable for all purposes, including as against any right, title or interest filed, registered, recorded or perfected subsequent to the Charges coming into existence, notwithstanding any such failure to file, register, record or perfect.

34. **THIS COURT ORDERS** that except as otherwise expressly provided for herein, or as may be approved by this Court, the Applicant shall not grant any encumbrances over any Property that rank in priority to, or *pari passu* with, either of the Directors' Charge or the Administrative Charge, unless the Applicant obtains the prior written consent of the directors and the Monitor.

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35. **THIS COURT ORDERS** that each of the Directors' Charge and the Administrative Charge (as constituted and defined herein) shall constitute a fixed and floating charge, mortgage, hypothec, lien and security interest in all of the Property and such Charges shall rank in priority to any and all other charges, mortgages, hypothecs, liens, security interests, encumbrances or security of whatever nature or kind affecting any of the Property.

36. **THIS COURT ORDERS** that the Directors' Charge and the Administrative Charge shall not be rendered invalid or unenforceable and the rights and remedies of the chargees entitled to the benefit of the Charges (collectively, the "Chargees") thereunder shall not otherwise be limited or impaired in any way by (i) the pendency of these proceedings and the declarations of insolvency made herein; (ii) any petitions for receiving orders issued pursuant to the *Bankruptcy and Insolvency Act* (the "BIA"), or any receiving orders made pursuant to such petitions; (iii) the filing of any assignments for the general benefit of creditors made pursuant to the BIA; (iv) the provisions of any federal or provincial statutes; or (v) any negative covenants, prohibitions or other similar provisions with respect to borrowings, incurring debt or the creation of encumbrances, contained in any existing agreement, lease, sublease, offer to lease or other arrangement (collectively, an "Agreement") which binds the Applicant, and notwithstanding any provision to the contrary in any Agreement:

- (a) the creation of the Charges shall not create or be deemed to constitute a breach by the Applicant of any Agreement or to which it is a party;
- (b) none of the Chargees shall have any liability to any Person whatsoever as a result of any breach of any Agreement caused by or resulting from the creation of the Charges; and
- (c) the payments made by the Applicant pursuant to this Order and the granting of the Charges, do not and will not constitute fraudulent preferences, fraudulent conveyances, oppressive conduct, settlements or other challengeable, voidable or reviewable transactions under any applicable law.

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SERVICE AND NOTICE

37. **THIS COURT ORDERS** that the Monitor shall, within ten (10) business days of the date of entry of this Order post the Order on a publicly available website and send notice of this Order to any known creditor or other party advancing a claim (contingent, disputed or otherwise) which will not be paid in the ordinary course pursuant to the terms of this Order, and the amount of whose claim might, in the reasonable estimation of the Applicant, exceed \$10,000, at their addresses as they appear on the Applicant's records, and shall promptly send a copy of this Order (a) to all parties filing a Notice of Appearance in respect of this Application, and (b) to any other interested Person requesting a copy of this Order, and the Monitor is relieved of its obligation under Section 11(5) of the CCAA to provide similar notice, other than to supervise this process.

38. **THIS COURT ORDERS** that, in addition to the right to serve documents pursuant to the *Rules of Civil Procedure*, the Applicant shall be at liberty to serve all materials in these proceedings (including, without limitation, application records, motion material, and facts,) on all represented parties electronically, by e-mailing a PDF copy (other than any Book of Authorities) to counsel's e-mail addresses as recorded on the service list maintained by the Monitor and by posting a copy of the materials to its website as soon as practicable; and provided that the Applicant shall deliver hard copies of such material to any party requesting same as soon as practicable thereafter.

39. **THIS COURT ORDERS** that, in addition to the right to serve documents pursuant to the *Rules of Civil Procedure*, any party in these proceedings (other than the Applicant) may serve all materials (including, without limitation, application records, motion material, facts and orders) electronically, by e-mailing a PDF copy (other than a Book of Authorities) to counsels' e-mail addresses as recorded on the service list maintained by the Monitor; provided that such party deliver both PDF and hard copies of full material to counsel of the Applicant and the Monitor and any other party requesting same and the Applicant shall post a copy on the website, all as soon as practicable thereafter.

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MISCELLANEOUS

40. **THIS COURT ORDERS** that, notwithstanding any other provision of this Order, the Applicant or the Monitor may, from time to time, apply to this Court for advice and directions in the discharge of its powers and duties hereunder or to seek any further relief.

41. **THIS COURT ORDERS** that, notwithstanding any provision of this Order, the Applicant may apply at any time to this Court to vary this Order or seek further relief including, without limitation, directions in respect of the proper execution of this Order.

42. **THIS COURT ORDERS** that, notwithstanding any other provision of this Order any interested party may apply to this Court to vary or amend this Order or seek other relief on seven (7) days' notice to the Applicant and the Monitor and to any other party likely to be affected by the Order sought or upon such other notice, if any, as this Court may Order.

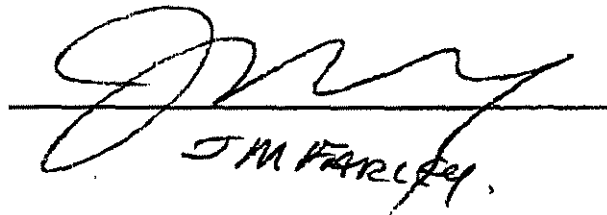
43. **THIS COURT ORDERS** that the Applicant and the Monitor be at liberty and are hereby authorized and empowered to apply to any judicial, regulatory or administrative body or any other Court in any other jurisdiction, whether in Canada or elsewhere, for an Order recognizing this Order or these proceedings in such other forums and in such other jurisdictions or to take such steps, actions or proceedings as may be necessary or desirable for the receipt, preservation, protection and maintenance of the Property, including the seeking of an Order recognizing the Monitor as foreign representative of the Applicant. All Courts of other jurisdictions and all judicial, regulatory or administrative bodies are hereby respectfully requested to make such Orders and provide such other aid and assistance to the Applicant or to the Monitor, as an officer of this Court, as they may deem necessary or appropriate in furtherance of this Order.

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

AUG 24 2004

PER/PAR:

544281/1



J.M. Farley

Court File No: 04-CL-5530

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

**ONTARIO
SUPERIOR COURT OF JUSTICE
(COMMERCIAL LIST)

PROCEEDINGS COMMENCED AT TORONTO**

INITIAL ORDER

BORDEN LADNER GERVAIS LLP
Barristers and Solicitors
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40 King Street West
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M5H 3Y4

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LSUC# 31888K

Solicitors for the Applicant

EXHIBIT “GG”

This is **Exhibit “GG”**, referred to in the
Affidavit of Robert McMaster, sworn before me
this 8th day of March, 2019.



Notary Public

Mitchell Grossell
Barrister & Solicitor
LSO# 699931

JT INTERNATIONAL HOLDING B.V., AMSTERDAM

Annual report 2017

Chamber of Commerce:	32073749
Statutory seat:	Amsterdam
Address:	Bella Donna 4 1181 RM Amstelveen

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MANAGING BOARD REPORT

General

JT International Holding B.V. (*Company* or *JTIH*) and its subsidiaries (collectively referred to as *JTI Group* or *JTI*) are a leading international tobacco business. JTI manufactures and markets a portfolio of internationally recognized tobacco brands.

JTIH is a wholly-owned subsidiary of Japan Tobacco Inc. (JT). The activities of the Company consist of holding, financing and treasury activities for the JTI Group.

Pursuant to an amendment of Dutch law effective January 1, 2013, the Company shall pursue a policy of having at least 30% of the seats on the Supervisory and Managing Boards held by men and at least 30% of the seats held by women. The Supervisory Board of the Company did not meet the abovementioned gender criterion in 2017. The requirements of the law regarding the Managing Board were fulfilled in 2017. In April 2018, due to the resignation of the female Managing Board member the gender criterion was no longer met. The JTI Group will strive for an adequate and balanced composition of its Supervisory and Managing Boards in future appointments, taking into account all relevant selection criteria, including but not limited to gender balance and executive experience.

1 Developments in the year ended December 31, 2017

The Company continued its holding and financing activities on behalf of the JTI Group.

On October 19, 2017, the Company acquired an additional 3% of the outstanding share capital of Megapolis Distribution B.V. and its subsidiaries (collectively referred to as “Megapolis”). As a result, the Company’s share of ownership in Megapolis increased from 20% (acquired in 2013) to 23%. Megapolis is Russia’s leading tobacco distributor, accounting for approximately 70% of the Russian cigarette distribution market. Additionally, the principal activity of the associate includes distribution of beer and certain other products within the Russian Federation.

On October 31, 2017, the Company acquired 100% ownership of PT Karyadibya Mahardhika (“KDM”) and PT Surya Mustika Nusantara (“SMN”), a group of tobacco companies based in Indonesia.

On December 21, 2017, JTI acquired 30.95% of National Tobacco Enterprise Share Company (“NTE”) from the Ethiopian Government. As a result, JTI’s share of ownership in NTE increased from 40% (acquired in 2016) to 70.95%. NTE is Ethiopia’s leading tobacco manufacturer, with NTE brands accounting for approximately 98% of the Ethiopian duty paid market. The principal activity of the entity is the manufacturing and distribution of cigarettes within Ethiopia. Acquisition of a controlling stake in NTE will enable JTI to invest in the promising Ethiopian market and take NTE to a new level of growth. In addition to enhancing equity of NTE’s local brand, Nyala, and further strengthening the overall manufacturing and distribution capabilities, the Company plans to explore opportunities for JTI brands in this vibrant market.

2 Financial position at year end 2017

The balance sheet includes participations in group companies for an amount of USD 27.3 billion (2016: USD 25.3 billion). Total assets amount to USD 31.5 billion (2016: USD 29.9 billion). Total equity of the Company amounts to USD 28.0 billion (2016: USD 25.8 billion). Current liabilities amount to USD 3.4 billion (2016: USD 4.1 billion).

3 Result analysis

Net dividends increased in 2017 and amounted to USD 3,522 million (2016: USD 2,264 million), an increase of USD 1,258 million in comparison to last year. Net profit for 2017 is USD 3,266 million, in comparison to a net profit of USD 2,113 million in 2016, which is mainly due to variances in dividend income.

4 Risk exposure

Country risks

JTI has consistently expanded its earnings base to secure long term growth by making acquisitions, entering new markets and increasing share in markets where JTI had limited presence. Such a geographical expansion increases the Group's exposure to country risks. In any market where the JTI Group operates, we may face economic, political or social turmoil which may lead to lower volume, revenue and profits in the markets. As such, this may negatively affect the Company's ability to repatriate cash, impacting the dividend income line of our financial statements. Whilst it is not possible to eliminate this risk, the JTI Group aims to avoid overdependence on a small number of markets as sources of profit by expanding the pool of highly profitable markets.

Foreign exchange risk

The Company conducts a significant portion of its business in currencies other than USD, such as the Russian Ruble, Euro, British pound, and several other currencies. Transactions in currencies other than USD are typically related to intercompany financing and cash repatriation from JTI group companies. Currency fluctuations may, therefore, adversely affect the Company's dividend income and operating results.

The Company has a low risk appetite to foreign exchange transaction risk and monitors these risks closely. The Company mitigates foreign exchange transaction risks through hedging activities such as derivative contracts and back-to-back intercompany financing. However, it is not possible to completely eliminate foreign exchange transaction risk.

Interest rate risk

As the Company is engaged in significant intercompany financing transactions across JTI Group companies, the Company is exposed to interest rate risk. A significant portion of the Company's financing transactions are back-to-back with JT International SA, earning a margin which is at arm's length. In addition, the majority of the interest income of the Company results from intercompany financing bearing a fixed interest rate. Hence, the interest rate risk for the Company is limited.

Counterparty risk

The Company is exposed to the risk that financial institutions where cash is deposited will fail to meet their contractual obligations. To mitigate the counterparty credit risk, JTI has a policy of only entering into

contracts with carefully selected major financial institutions based upon their credit ratings and other financial indicators, within strict individually allocated limits.

The Company's Corporate Policies and Procedures for mitigating credit risk on principal transactions include reviewing and establishing limits for credit exposure and continually assessing the creditworthiness of counterparties. ISDA agreements with counterparties give JTI the option to net amounts due from JTI to a counterparty with amounts due to JTI from a counterparty reducing the maximum loss from credit risk in the event of counterparty default. At December 31, 2017, there were no significant concentrations of credit risk with any individual counterparty.

Litigation risk

The Company itself is no named party to any litigation as of December 31, 2017. However, certain JTI subsidiaries are defendants in lawsuits filed by plaintiffs seeking damages for harm allegedly caused by smoking. For further information, we refer to the consolidated financial statements of JT Inc. (<http://www.jt.com>). An unfavorable decision regarding current litigation in Canada could materially affect the valuation of our Canadian subsidiary as well as the recoverability of an intercompany loan provided to this subsidiary. The maximum risk to the financial statements of the Company would be a full write down of our investment in Canada as well as the intercompany loan provided to the Canadian subsidiary (December 31, 2017: USD 1.1 billion).

5 Research and development

As a holding and financing entity, the Company does not carry out any research and development activities.

6 Employee information

The Company employed an average number of 64 employees during 2017 (2016: 58).

7 Distribution of earnings

The distribution of the earnings of the Company is at the disposal of the General Meeting of Shareholders.

The Managing Board proposes to add the result of the year to the retained earnings. The financial statements do not yet reflect this proposal.

8 Future outlook

The Company intends to continue to provide holding and financing activities on behalf of the JTI Group. The Company's income is mainly driven by the level of financing provided to other group companies, the level of external debt and interest rate developments, as well as by the performance of the JTI Group as a whole.

Management expects that the cash generated by the operating activities of the JTI Group will continue to cover its expenditures and repayment of debt.

In 2018, the Company will continue to support the JTI Group to secure long term growth by making acquisitions, entering new markets and increasing share in markets where JTI had limited presence.

The Company is continuously adapting its resource requirements to future business needs. For 2018, headcount is expected to remain stable.

The Company does not plan to engage in activities in the field of research and development.


Amsterdam, May 7, 2018

Managing Board

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M.P.M. Ramaekers

DocuSigned by:

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Financial statements

Balance sheet as at December 31, 2017

(Before appropriation of result)

Assets		December 31, 2017		December 31, 2016	
	Note	USD '000	USD '000	USD '000	USD '000
<i>Fixed assets</i>					
Participations in group companies	6.				
Participations in affiliated companies	7.	27,333,699		25,326,859	
Loans to group companies	7.	901,841		855,693	
Others	8.	1,214,110		935,403	
	9.	88,058		80,139	
			29,537,708		27,198,094
<i>Current assets</i>					
Short term loans to group companies		638,987		2,044,563	
Current portion of loans to group companies		36,677		404,514	
Current portion of other receivables		-		-	
Other receivables from group and affiliated companies		1,171,210		167,887	
Accounts receivable third parties		15		22	
Other receivables and accrued income	10.	20,623		25,290	
			1,867,512		2,642,276
<i>Cash and cash equivalents</i>	11.		96,488		72,969
			31,501,708		29,913,339

Balance sheet as at December 31, 2017

(Before appropriation of result)

Equity and Liabilities		December 31, 2017		December 31, 2016	
		USD '000	USD '000	USD '000	USD '000
	Note				
Shareholder's equity	12.				
Share capital		1,800,372		1,800,372	
Share premium		10,516,127		11,621,869	
Retained earnings		12,882,425		10,765,410	
Currency translation adjustment		(416,259)		(461,069)	
Unappropriated result		3,265,773		2,113,489	
			28,048,438		25,840,071
Provisions					
Deferred income taxes	13.		613		616
Long term liabilities	14.				
Debts to group companies		-		-	
Other Long term liabilities		65,968		3,780	
			65,968		3,780
Current liabilities	16.				
Short term loans to group and affiliated companies		3,121,154		3,160,204	
Other payables to group companies		240,328		370,093	
Current portion of debts to group companies		-		-	
Current portion of other long term liabilities		-		-	
Current portion of long term liabilities		-		500,198	
Taxes and social security charges		283		223	
Accounts payable and accrued liabilities		24,924		38,154	
			3,386,689		4,068,872
			31,501,708		29,913,339

Income statement for the year ended December 31, 2017

		2017		2016	
	Note	USD '000	USD '000	USD '000	USD '000
Dividend income		3,525,561		2,271,600	
Withholding taxes		(3,637)		(7,613)	
<i>Net dividend income</i>			3,521,924		2,263,987
Interest income	19.	84,717		86,372	
Interest expenses	19.	(45,310)		(33,127)	
<i>Net interest</i>			39,407		53,245
General and administrative expenses	20.	(229,196)		(192,145)	
<i>Operating expenses</i>			(229,196)		(192,145)
<i>Result from operations</i>			3,332,135		2,125,087
Foreign exchange result		(871)		(3,860)	
Other financial (expense)/income	22.	(57,762)		(1,276)	
<i>Total financial income and expense</i>			(58,633)		(5,136)
<i>Result before taxation</i>			3,273,502		2,119,951
Income taxes	23.		(7,729)		(6,462)
<i>Result after taxation</i>			3,265,773		2,113,489

Notes to the balance sheet and income statement

1. General notes

1.1 Activities and registered office

JT International Holding B.V. (***Company*** or ***JTIH***), having its statutory seat in Amsterdam, the Netherlands and offices in Amstelveen, the Netherlands, is a wholly-owned subsidiary of JT International Group Holding B.V., having its statutory seat in Amsterdam, which in turn is a wholly-owned subsidiary of Japan Tobacco Inc. (***JT***), Japan. The activities of the Company consist of holding, financing and treasury activities for the JTI Group. The latter entail both internal and external financing activities to meet the funding needs for future growth of JTI entities.

1.2 Operations/Group structure

JTIH and its subsidiaries (referred to as JTI Group or JTI) are a leading multinational tobacco business with a strong portfolio of brands deployed across numerous markets around the world. JTI has a license agreement with JT, granting JTI the exclusive rights to use certain JT trademarks outside the United States, Japan and China.

For further information about JTI Group and its operations, we refer to the website of JT Inc. (<http://www.jt.com>).

The list of directly and indirectly held investments of the Company is filed with the Trade Register in line with article 2:379 sub 5 of the Dutch Civil Code.

1.3 Related parties

All legal entities that can be controlled, jointly controlled or significantly influenced are considered to be a related party. Also, entities which can control the Company are considered to be a related party. In addition, statutory directors, other key management of JTIH or the ultimate parent company and close relatives are regarded as related parties.

Transactions with related parties are disclosed in the notes insofar as they are not transacted under normal market conditions. The nature, extent and other information is disclosed if this is necessary in order to provide the required insight.

2. General policies

2.1 General

The financial statements are prepared in accordance with accounting principles generally accepted in the Netherlands and with the financial reporting requirements included in Part 9 of Book 2 of the Dutch Civil Code and the firm pronouncements in the Dutch Accounting Standards, as published by the Dutch Accounting Standards Board ('Raad voor de Jaarverslaggeving').

Valuation of the assets and liabilities and determination of the result takes place under the historical cost convention, unless stated otherwise. An asset is recognized in the balance sheet when it is probable that the expected future economic benefits that are attributable to the asset will flow to the entity and the cost of the asset can be measured reliably. A liability is recognized in the balance sheet when it is expected to result in an outflow from the entity of resources embodying economic benefits and the amount of the obligation can be measured with sufficient reliability.

Income is recognized in the income statement when an increase in future economic potential related to an increase in an asset or a decrease of a liability has arisen, the size of which can be measured reliably.

Expense is recognized when a decrease in the economic potential related to a decrease in an asset or an increase of a liability has arisen, the size of which can be measured with sufficient reliability. Losses originating before the end of the financial year are taken into account if they have become known before the date of the financial statements.

If a transaction results in a transfer of future economic benefits and/or when all risks relating to assets or liabilities transfer to a third party, the asset or liability is no longer included in the balance sheet. Assets and liabilities are not included in the balance sheet if economic benefits are not probable and/or cannot be measured with sufficient reliability.

In the balance sheet and income statement, references are made to the notes.

2.2 Comparison with previous year

The valuation principles and method of determining the result are the same as those used in the previous year.

2.3 Foreign currency

2.3.1 Functional currency

The Company belongs to a multinational, which operates on a worldwide basis. Therefore, the Company has elected the US dollar as its functional currency. Consequently, in accordance with Article 2:362, Section 7 of the Dutch Civil Code, the financial statements are presented in US dollars.

All amounts have been rounded to the nearest thousand, unless otherwise indicated.

2.3.2 *Transactions, receivables and liabilities*

Transactions in foreign currencies are stated in the financial statements at the exchange rate of the functional currency on the transaction date.

Monetary assets and liabilities in foreign currencies are converted at the closing rate of the functional currency on the balance sheet date. The translation differences resulting from settlement and conversion are credited or charged to the income statement, unless hedge accounting is applied.

Non-monetary assets valued at historical cost in a foreign currency are converted at the exchange rate on the transaction date.

Non-monetary assets valued at fair value in a foreign currency are converted at the exchange rate on the date on which the fair value was determined.

Translation differences on intragroup long term loans that effectively constitute an increase or decrease in net investments in a foreign operation are directly recognized in equity as a component of the legal reserve for translation differences.

2.4 *Consolidation*

As the financial information of the Company and its subsidiary companies is included in the consolidated financial statements of Japan Tobacco Inc. ('JT'), Tokyo, Japan, the Company has elected to apply Article 2:408, Section 1 of the Dutch Civil Code. As a result, 1) the annual report does not include a consolidated balance sheet nor a consolidated income statement, 2) the Company does not disclose litigation related to participations in group companies in which the Company is no named party, unless an unfavorable decision regarding such litigation could materially affect the valuation of the related participating interest or loan provided to such group company.

We refer to the website of JT (<http://www.jt.com>) for the consolidated financial statements. Furthermore, the consolidated statements of JT are also available at the Chamber of Commerce.

2.5 *Use of estimates*

The preparation of the financial statements in conformity with accounting principles generally accepted in the Netherlands requires management to make estimates and assumptions that affect the reported amounts of assets and liabilities and disclosure of contingent assets and liabilities at the date of the financial statements and the reported amounts of revenues and expenses during the reporting period. Actual results could differ from these estimates. The estimates and the underlying assumptions are constantly assessed. Revisions of estimates are recognized in the period in which the estimate is revised and in future periods for which the revision has consequences.

3. *Accounting policies applied to the valuation of assets and liabilities*

3.1 *Financial fixed assets*

3.1.1 *General*

Financial fixed assets include participations in group companies and affiliated companies, loans to group companies and deferred tax assets. Following the international structure of the JTI Group and the decision to apply for Article 2:408, the Company elected to apply Article 2:389 Section 9 of the Dutch Civil Code. As such, participations in group companies are valued at the lower of cost and fair market value. Dividends are accounted for in the period in which they are declared.

The Company applies a collective approach to impairment testing of participations in group companies, affiliated companies and loans to group companies. The Company aggregates the underlying assets of the participations in group companies and affiliated companies and loans to group companies into a single cash generating unit, aligned with the highly integrated operating model of the international tobacco business of the JT Group.

3.1.2. *Loans to group companies*

Upon initial recognition, the loans to group companies are valued at fair value and then valued at amortized cost, which equals the face value, less impairment for doubtful debts. Interest income is recognized in the income statement as it accrues.

3.1.3 *Deferred tax assets*

Deferred tax assets are reported within financial fixed assets if and to the extent it is probable that the tax claim can be realized in due course. These deferred tax assets are valued at nominal value and have a predominantly long term character.

3.2 *Impairment of non-current assets*

At each balance sheet date, the Company assesses whether there are any indications that a fixed asset may be subject to impairment. If there are such indications, the realizable value of the asset is determined.

3.3 *Receivables*

Upon initial recognition receivables on and loans to group companies are valued at fair value, including any directly attributable transaction costs, and then valued at amortized cost, after deduction of any provisions. These provisions are determined by individual assessment of the receivables.

3.4 *Cash and cash equivalents*

Cash equivalents include all short term, highly liquid investments that are readily convertible to known amounts of cash that have contractual maturities of three months or less at the date of purchase. Cash at banks and in hand is carried at nominal value.

3.5 Provisions

3.5.1 General

Provisions are valued at the nominal value of the expenses expected to be incurred in settling the liabilities and losses. A provision is recognized if the following applies:

- the Company has a legal or constructive obligation, arising from a past event; and
- the amount can be estimated reliably; and
- it is probable that an outflow of economic benefits will be required to settle the obligation.

3.5.2 Deferred income tax

Provisions consist of deferred income tax liabilities regarding withholding tax on accrued interest, which become due at the moment that the interest is paid in cash.

3.5.3 Retirement benefits

The Company has various pension plans. The Dutch plans are financed through contributions to the pension provider. The foreign pension plans can be compared to how the Dutch pension system has been designed and functions. The pension obligations of both the Dutch and the foreign plans are valued according to the 'valuation to pension fund approach'. This approach accounts for the contribution payable to the pension provider as an expense in the profit and loss account.

Based on the administration agreement it is assessed whether and, if so, which obligations exist in addition to the payment of the annual contribution due to the pension provider as at balance sheet date. These additional obligations, including any obligations from recovery plans of the pension provider, lead to expenses for the Company and are included in a provision on the balance sheet. With final salary pension plans an obligation (provision) for (upcoming) past service is included if future salary increases have already been defined as at balance sheet date. The valuation of the obligation is the best estimate of the amounts required to settle this as at balance sheet date. If the effect of the time value of money is material, the obligation is valued at the present value. Discounting is based on interest rates of high-quality corporate bonds. Additions to and release of the obligations are recognized in the profit and loss account.

A pension receivable is included in the balance sheet when the group has the right of disposal over the pension receivable and it is probable that the future economic benefits which the pension receivable holds will accrue to the group, and the pension receivable can be reliably established.

As of year-end 2017 (and 2016) no pension receivables and no obligations existed for the Company in addition to the payment of the annual contribution due to the pension provider.

3.6 Long term liabilities

Interest-bearing loans and liabilities are valued at fair value upon initial recognition and then valued at amortized cost.

3.7 Taxation

A deferred tax asset is recognized only to the extent that it is probable that future taxable profits will be available against which the temporary difference can be utilized. Deferred tax assets are reviewed at each reporting date and reduced to the extent that it is no longer probable that the related tax benefit will be realized.

3.8 *Cash flow statement*

No cash flow statement is presented as this information is included in the consolidated financial statements of Japan Tobacco Inc. ('JT'), Tokyo, Japan.

4. ***Principles for the determination of the result***

4.1 *Dividends*

Dividends are accounted for in the period in which they are declared.

4.2 *Taxation*

The corporate income tax is calculated at the applicable tax rate on the result for the financial year, taking into account permanent differences between profit calculated according to the financial statements and profit calculated for taxation purposes.

The nominal tax rate for the Netherlands is 25% for 2017 and for 2016. The tax rate for future years, which is used for the calculation of the deferred tax assets, is 25%.

5. ***Financial instruments and risk management***

5.1 *Financial instruments*

Financial instruments include investments in shares and bonds, trade and other receivables, cash items, loans and other financing commitments, and trade and other payables. Financial instruments are initially recognized at fair value, including any directly attributable transaction costs.

A significant portion of the Company's financing transactions are back-to-back with the same tenor, earning a margin which is at arm's length. In addition, the majority of the interest income of the Company results from intercompany financing bearing a fixed interest rate. Hence, the interest rate risk for the Company is limited.

After initial recognition, financial instruments are valued in the manner described below.

5.2 *Derivatives*

The Company uses derivative and non-derivative financial instruments to mitigate its foreign exchange currency risk and not for speculative or trading purposes. The derivatives might represent assets and liabilities, which are valued at fair value and included in other receivables from and / or payables to group and affiliated companies on the balance sheet. Changes in the fair value are included in the foreign exchange results of the income statement

5.3 *Receivables*

Accounts receivable are stated at amortized cost less impairment for doubtful debts. The impairment is determined on the basis of individual assessment of the collectability of the receivables.

5.4 *Cash and cash equivalents*

Cash equivalents include all short term, highly liquid investments that are readily convertible to known amounts of cash that have contractual maturities of three months or less at the date of purchase.

5.5 *Long term liabilities*

Interest-bearing loans and liabilities are valued at fair value upon initial recognition and then valued at amortized cost.

6. Financial fixed assets

The movements in financial fixed assets are as follows:

	Participations in group companies	Participations in affiliated companies	Loans to group companies	Other	Total
	USD '000	USD '000	USD '000	USD '000	USD '000
<i>Balance as at December 31, 2015</i>	24,472,174	855,693	2,495,811	21,052	27,844,730
Additions	871,943	-	-	62,953	934,896
Disposals and repayments	(17,258)	-	(1,084,230)	(3,866)	(1,105,354)
Currency exchange differences	-	-	(52,945)	-	(52,945)
<i>Balance as at December 31, 2016</i>	25,326,859	855,693	1,358,636	80,139	27,621,327
Additions	2,064,451	46,148	257,077	11,662	2,379,338
Disposals and repayments	(57,611)	-	(525,395)	(3,743)	(586,749)
Currency exchange differences	-	-	160,469	-	160,469
	27,333,699	901,841	1,250,787	88,058	29,574,385
Reclassification of current portion as current assets	-	-	(36,677)	-	(36,677)
<i>Balance as at December 31, 2017</i>	27,333,699	901,841	1,214,110	88,058	29,537,708

Additions to participations in group companies mainly relate to external acquisitions and capital contributions into group companies.

At balance sheet date, the accumulated amortization and impairments on financial fixed assets amounted to nil (2016: nil).

7. Participations in group and affiliated companies

In accordance with article 2:379 sub 5 of the Dutch Civil Code, the list of directly and indirectly held participations in group companies is filed with the Trade Register.

8. Loans to group companies

A loan receivable from JT Canada LLC, denominated in CAD is classified as 'loans to group companies', bearing a fixed interest rate of 7.51%. Given the maturity date and other conditions to this loan, the currency exchange differences are recorded in the currency translation adjustment account as part of the Company's equity, if and insofar repayment is not expected in the foreseeable future.

The Company itself is no named party to any litigation as of December 31, 2017. However, certain JTI subsidiaries are defendants in lawsuits filed by plaintiffs seeking damages for harm allegedly caused by smoking. For further information, we refer to the consolidated financial statements of JT Inc. (<http://www.jt.com>). An unfavorable decision regarding current litigation in Canada could materially affect the valuation of our Canadian subsidiary as well as the recoverability of an intercompany loan provided to this subsidiary. The maximum risk to the financial statements of the Company would be a full write down of our investment in Canada as well as an intercompany loan provided to the Canadian subsidiary (December 31, 2017: USD 1.1 billion).

9. Other financial fixed assets

Other financial fixed assets consist of:

	December 31, 2017	December 31, 2016
	USD '000	USD '000
Third party receivable	74,289	62,942
Loans to affiliated companies	12,875	16,375
Deferred income tax assets	-	-
Other	894	822
	<u>88,058</u>	<u>80,139</u>

The deferred income tax assets are as follows:

	December 31, 2017	December 31, 2016
	USD '000	USD '000
Temporary differences	18,403	12,557
Tax credits and carry forward losses	42,563	39,080
	<u>60,966</u>	<u>51,637</u>
Valuation allowances	(60,966)	(51,637)
	<u>-</u>	<u>-</u>

The deferred income tax assets are predominantly of a long term character and are reported at historical cost.

10. Other receivables and accrued income

The other receivables from group and affiliated companies mainly consist of interest bearing current account positions, bearing overnight Libor rates per currency, with a margin which is at arm's length.

11. Cash and cash equivalents

The cash and bank balances are at free disposal of the Company.

12. Shareholder's equity

	Share capital	Share premium	Retained earnings	Currency translation adjustment	Unappropriated result	Total
	USD '000	USD '000	USD '000	USD '000	USD '000	USD '000
Balance as at December 31, 2015	1,800,372	13,307,869	9,684,491	(478,696)	1,082,885	25,396,921
Appropriation of result	-	-	1,082,885	-	(1,082,885)	-
Result for the year	-	-	-	-	2,113,489	2,113,489
Cash repatriation	-	(1,686,000)	-	-	-	(1,686,000)
Currency translation adjustments	-	-	(1,966)	17,627	-	15,661
Balance as at December 31, 2016	1,800,372	11,621,869	10,765,410	(461,069)	2,113,489	25,840,071
Appropriation of result	-	-	2,113,489	-	(2,113,489)	-
Result for the year	-	-	-	-	3,265,773	3,265,773
Cash repatriation	-	(1,105,742)	-	-	-	(1,105,742)
Currency translation adjustments	-	-	3,526	44,810	-	48,336
Balance as at December 31, 2017	1,800,372	10,516,127	12,882,425	(416,259)	3,265,773	28,048,438

12.1 Share capital issued

As of December 31, 2017, issued share capital amounts to USD 1,800,372,005 and consists of 1,800,372,005 shares of USD 1 each.

12.2 Share premium

The share premium of USD 10.5 billion is considered to be capital for tax purposes.

12.3 *Appropriation of result for the financial year 2016*

The annual report 2016 was adopted by means of a shareholder's resolution on May 8, 2017. The General Meeting of Shareholders determined the appropriation of the result in accordance with the proposal being made to that end.

12.4 *Appropriation of result for the financial year 2017*

Pending the decision of the General Meeting of Shareholders, the net result for the year 2017 is presented as unappropriated result in equity. The Managing Board proposes to add the result of the year to the retained earnings.

The financial statements do not yet reflect this proposal.

13. Provisions

The provisions consist of a deferred tax liability. The movements are as follows:

	December 31, 2017	December 31, 2016
	USD '000	USD '000
Opening balance	616	617
Net additions and withdrawals	(3)	(1)
Closing balance	613	616

The deferred tax liability is of a short term nature.

14. Long term liabilities

The movements are as follows:

	December 31, 2017	December 31, 2016
	USD '000	USD '000
Opening balance including current liabilities	6,211	24,467
Additions	65,768	3,780
Repayments	(2,431)	(22,036)
	<hr/>	<hr/>
Reclassification as current liabilities	69,548	6,211
	(3,580)	(2,431)
	<hr/>	<hr/>
Closing balance	65,968	3,780
	<hr/>	<hr/>

Long term liabilities mature within five years and bear no interest.

Additions in 2017 represent a long term deferred consideration for an acquisition made in the year with a due date at April 30, 2019.

15. Credit facilities

At December 31, 2017, the Company had access to a committed syndicated credit facility of EUR 1.3 billion (2016: EUR 1 billion). The facility was unused as of year-end 2017. Together with its ultimate parent company Japan Tobacco Inc., the Company also had access to an uncommitted revolving credit facility of USD 3 billion, each draw down to be guaranteed by Japan Tobacco Inc. The facility was also unused as of year-end 2017.

In 2017, the Company entered into a multi-currency credit facility agreement of JPY 700 billion with Japan Tobacco Inc. USD 1.4 billion of the credit facility was used as of year-end 2017 and is due within 12 months after the balance sheet date.

16. Current liabilities

The other payables to group and affiliated companies mainly consist of interest bearing current account positions, bearing overnight Libor rates per currency with a margin, which is at arm's length.

At December 31, 2017, the Company had a social insurance contributions payable outstanding of USD 283 (2016: USD 223).

Current liabilities do not include pension premiums due (2016: nil).

17. Financial instruments

The Company uses derivatives to reduce its foreign exchange balance sheet exposure. At December 31, 2017 the amount outstanding was nil (2016: USD -10).

The fair value of all derivatives contracts as of year-end 2017 amounts to nil (2016: USD -10).

In 2017, the result on currency forward transactions was a loss of USD 2,845 (2016: USD 1,703 loss) and is recorded under foreign exchange result in the income statement.

18. Assets and liabilities not recognized in the balance sheet

18.1 Operational leasing

Annual lease obligations to third parties in respect of vehicles were USD 480 as of year-end 2017 (2016: USD 468). The maximum term of the lease contracts was 4 years.

18.2 Fiscal unity

JT International Holding B.V. is part of a fiscal unity for corporate income tax and VAT. The head of the fiscal unity is its parent company, JT International Group Holding B.V.. Each of the companies in the fiscal unity is severally liable for corporate income tax and VAT to be paid by the fiscal unity.

Up and until 2016, the Company charged the other members in the fiscal unity based on their commercial result. As from the year 2017, the Company bears the tax charges of the entire fiscal unity. This change was made to simplify the corporate income tax reporting in the small holding companies in the fiscal unity for efficiency purposes.

18.3 Commitments

On December 14, 2007, the JTI Group, the European Commission (EC) and 26 of its member states signed a 15-year cooperation agreement (EC agreement) to combat contraband and counterfeit of cigarettes in the European Union. The agreement calls for a payment of USD 400 million over 15 years, which will be used by the EC and the participating Member States to support anti-contraband and anti-counterfeit initiatives. The Group shall pay USD 50 million annually for the first five years and USD 15 million in each of the following ten years. These payments are guaranteed by the Company.

The Company also issued payment guarantees in favor of third parties for the total amount of USD 32,424 (2016: USD 139,777).

18.4 *Contingent liabilities*

The Company provided support letters to the following JTI entities to enable them to meet their obligations:

- Emerging Products Holding B.V., Netherlands
- JTI Hungary Dohányértékesítő Zrt., Hungary
- JTI Leaf Malawi Limited, Malawi
- JT International A.D. Senta, Serbia
- JTI Cigarettes & Tobacco Factory Limited, South Sudan
- BIS Overseas Bolivia S.R.L., Bolivia
- JT International (Thailand) Limited, Thailand
- Japan Tobacco International Bulgaria EOOD, Bulgaria

The support letters were issued in connection with the 2016 statutory audit of these entities and are valid up to 12 months after the approval of the entity's 2016 financial statements by its board of directors. As of December 31, 2017, the financial impact of these support letters cannot be reasonably estimated.

19. **Interest income and interest expense**

The interest income is as follows:

	2017	2016
	USD '000	USD '000
Interest income from group and affiliated companies	83,028	81,322
Interest income from third parties and other affiliated companies	1,689	5,050
	<u>84,717</u>	<u>86,372</u>

The interest expenses are as follows:

	2017	2016
	USD '000	USD '000
Interest expenses to group and affiliated companies	42,571	28,154
Interest expenses to banks and other third parties	2,739	4,973
	<u>45,310</u>	<u>33,127</u>

20. General and administrative expenses

General and administrative expenses consist of:

	2017	2016
	USD '000	USD '000
Salary and salary related expenses	11,219	10,125
Net charges from / to group and affiliated companies	207,710	167,997
Other expenses	10,267	14,023
	<u>229,196</u>	<u>192,145</u>

Salary and salary related expenses are as follows:

	2017	2016
	USD '000	USD '000
Salaries	9,036	7,727
Social security charges	1,345	1,384
Pension cost	838	1,014
	<u>11,219</u>	<u>10,125</u>

21. Audit fees

The fees associated with the audit of the 2017 financial statements amounted to USD 90 (2016: USD 80). No other (audit related) services were used from Deloitte Accountants B.V. or their other network.

22. Other financial (expenses)/income

Other financial expenses and income include liquidation losses, bank charges and other items of a financial nature. In 2017, the Company wrote off an intercompany loan of USD 49.7 million based on the assessment of the collectability of the loan.

23. Income taxes

Income taxes are as follows:

	<u>2017</u>	<u>2016</u>
	USD '000	USD '000
Current income tax	7,729	6,462
Deferred income taxes	-	-
	<u>7,729</u>	<u>6,462</u>

The current income tax primarily relates to withholding tax paid related to foreign interest and services.

The available tax credits, which can be offset against future corporate income tax payables, are estimated at USD 42.6 million as of year-end 2017 (2016: USD 39.1 million).

The nominal tax rate for the Netherlands is 25% for 2017 and for 2016. The tax rate for future years, which is used for the calculation of the deferred tax assets, is 25%. The difference between the nominal and effective tax rate primarily reflects dividend income, which is tax exempted.

24. Employee information

During the 2017 financial year, the average number of staff employed in the group, converted into full-time equivalents, amounted to 64 (2016: 58).

In 2017, the Managing Board of the Company received remuneration for their services to the Company and its subsidiaries amounting to USD 1,355 (2016: USD 1,192). The emoluments charged in the financial year to the Company for the Supervisory Board amounted to nil (2016: nil).

25. Subsequent events

On March 28, 2018, Mrs. M. Franke resigned as statutory director of the Company.

Signing of the annual report

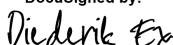
Amsterdam, May 7, 2018

Managing Board

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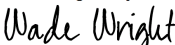
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Supervisory Board

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OTHER INFORMATION

Independent auditor's report

Reference is made to the independent auditor's report on the next page.

Statutory rules in respect of result appropriation

In accordance with Article 26 of the Company's statutes, the net result is at the disposal of the General Meeting of Shareholders. Dutch law stipulates that distributions may only be made to the extent the company's equity is in excess of the reserves it is required to maintain by law and its Articles of Association. Moreover, no distributions may be made if the Managing Board is of the opinion that, by such distribution, the Company will not be able to fulfill its financial obligations in the foreseeable future.

EXHIBIT “HH”

This is **Exhibit “HH”**, referred to in the
Affidavit of Robert McMaster, sworn before me
this 8th day of March, 2019.



Notary Public

Mitchell Grossell
Barrister & Solicitor
LSO# 699931

REPAYMENT AGREEMENT

THIS AGREEMENT (this “**Agreement**”) is made as of the 1st day of March, 2019.

BETWEEN:

JTI-MACDONALD CORP., a corporation existing under the laws of Canada

(hereinafter referred to as “**JTIM**”)

-and-

JT INTERNATIONAL HOLDING B.V., an entity existing under the laws of the Netherlands

(hereinafter referred to as “**JTIH**”, and together with JTIM, the “**Parties**”, and each, a “**Party**”)

WHEREAS:

- A. As part of the acquisition transactions (the “**Integrated Transactions**”) resulting in the purchase of the non-US tobacco assets of RJR Nabisco, Inc., R. J. Reynolds Tobacco Company and their affiliates, JTIM is indebted to JTI-Macdonald TM Corp. (“**TM**”) and granted security to TM in respect thereof, including but not limited to the following:
1. Convertible Debenture Subscription Agreement dated November 23, 1999 (as such agreement has been amended from time to time);
 2. Debenture Delivery Agreement dated November 23, 1999 (as such agreement has been amended from time to time);
 3. Convertible Debenture No. 1 dated November 23, 1999 (as such agreement has been amended from time to time);
 4. Convertible Debenture No. 2 dated November 23, 1999 (as such agreement has been amended from time to time);
 5. Convertible Debenture No. 3 dated November 23, 1999 (as such agreement has been amended from time to time);
 6. Convertible Debenture No. 4 dated November 23, 1999 (as such agreement has been amended from time to time);
 7. Convertible Debenture No. 5 dated November 23, 1999 (as such agreement has been amended from time to time);

8. Convertible Debenture No. 6 dated November 23, 1999 (as such agreement has been amended from time to time);
 9. Convertible Debenture No. 7 dated November 23, 1999 (as such agreement has been amended from time to time);
 10. Convertible Debenture No. 8 dated November 23, 1999 (as such agreement has been amended from time to time);
 11. Convertible Debenture No. 9 dated November 23, 1999 (as such agreement has been amended from time to time);
 12. Convertible Debenture No. 10 dated November 23, 1999 (as such agreement has been amended from time to time);
 13. Convertible Debenture No. 11 dated November 23, 1999 (as such agreement has been amended from time to time);
 14. Convertible Debenture No. 12 dated November 23, 1999 (as such agreement has been amended from time to time);
 15. Deed of Hypothec dated November 23, 1999;
 16. Supplemental Deed of Hypothec dated December 2, 1999;
 17. Deed of Movable Hypothec and Pledge of Shares dated December 12, 2000;
 18. Deed of Assignment dated March 24, 2004;
 19. Deed of Confirmation dated May 14, 2015,
collectively, the “**JTIM Security**”.
- B. Also as part of the Integrated Transactions, TM granted certain security to JT Canada LLC Inc. (“**JT LLC**”) to secure the payment and performance of TM’s obligations to LLC under certain loan agreements (the “**TM Security**”).
- C. Also as part of the Integrated Transactions, JT LLC granted certain security to JTIH to secure the payment and performance of LLC’s obligations to JTIH under certain loan agreements.
- D. JTIM may commence proceedings under the *Companies’ Creditors Arrangement Act* (the “**Proceedings**”) before the Ontario Superior Court of Justice (the “**Court**”). In the event that Proceedings are commenced, JTIM will use its best efforts to seek to continue to make all interest payments due and owing on its secured obligations, including, without limitation, payments to TM for interest on the indebtedness secured by the JTIM Security (the “**TM Secured Payments**”), in such Proceedings for the duration of such Proceedings.

NOW, THEREFORE, for the consideration received and for other good and valuable consideration, the receipt and sufficiency of which hereby are acknowledged, and upon the Court granting JTIM the authority to continue to make the TM Secured Payments, the Parties covenant and agree as follows:

1. The Parties acknowledge and confirm the accuracy and validity of all the above Recitals, and further acknowledge that they are each relying upon same in entering into this Agreement.
2. In the event that the Court makes an order in the Proceedings providing that all of the JTIM Security is invalid and unenforceable such that TM is not entitled to the TM Secured Payments on a priority basis (the “**Order**”) and such Order becomes a Final Order, JTIH hereby agrees that it will pay to JTIM, or cause TM and/or JT LLC to pay to JTIM, an amount equal to the aggregate of any TM Secured Payments received by TM from JTIM (the “**Repayment Amount**”), from the date of commencement of the Proceedings until the date on which the Order becomes a Final Order; provided, however, that the Repayment Amount shall only be with respect to amounts paid by JTIM to TM as a result of the Integrated Transactions and the Repayment Amount shall not include any amounts paid by JTIM to TM in relation to the use of any of TM’s intellectual property under any royalty or licencing agreements and such amounts shall not be repaid by either the undersigned or TM as part of this agreement. A “Final Order” means an order: (a) as to which no appeal, leave to appeal, notice of appeal, motion to amend or make additional findings of fact, motion to alter or amend judgment, motion for rehearing or reconsideration or motion for new trial has been timely filed (in cases in which there is a date by which such filing is required to occur, it being understood that with respect to an order issued by the Court, the time period for seeking leave to appeal shall be deemed to have elapsed on the date that is 22 days after the rendering of such order unless a motion has been made to extend such time period) or, if any of the foregoing has been timely filed, it has been disposed of in a manner that upholds and affirms the subject order in all material respects without the possibility for further appeal thereon; (b) in respect of which the time period for instituting or filing an appeal, leave to appeal, motion for rehearing or reconsideration or motion for new trial shall have expired (in cases in which such time period is capable of expiring, it being understood that with respect to an order issued by the Court, the time period for seeking leave to appeal shall be deemed to have elapsed on the date that is 22 days after the rendering of such order unless a motion has been made to extend such time period); and (c) as to which no stay is in effect.
3. This Agreement shall terminate upon the termination or conversion of the Proceedings.
4. All dollar amounts payable under this Agreement shall be payable in lawful money of Canada.
5. Neither this Agreement nor the rights, interests or obligations hereunder may be assigned by either Party without the prior written consent of the other Party.

6. This Agreement may be executed by the Parties in separate counterparts which when so executed and delivered will be an original, but all such counterparts will together constitute one and the same instrument. A faxed or electronic copy will be considered an original.
7. This Agreement will be interpreted in accordance with the laws of the Province of Ontario (and the laws of Canada applicable therein).

[Remainder of page intentionally left blank. Signature pages to follow.]

IN WITNESS WHEREOF the Parties hereto have caused this Agreement to be executed as of the date first set forth above.

JTI-MACDONALD CORP.

Per: _____ c/s
Name: ▶
Title: ▶

Per: _____ c/s
Name: ▶
Title: ▶

We have the authority to bind the Corporation.

JT INTERNATIONAL HOLDING B.V.

Per: _____
Name: ▶
Title: ▶

Per: _____ c/s
Name: _____
Title: _____

We hav _____ l.

IN WITNESS WHEREOF the Parties hereto have caused this Agreement to be executed as of the date first set forth above.

JTI-MACDONALD CORP.

Per: _____ c/s
Name: ▶ 
Title: ▶ *Chief Financial Officer*

Per: _____ c/s
Name: ▶ 
Title: ▶ *Treasurer*

We have the authority to bind the Corporation.

JT INTERNATIONAL HOLDING B.V.

Per: _____ c/s
Name: ▶ _____
Title: ▶ _____

Per: _____ c/s
Name: ▶ _____
Title: ▶ _____

We have the authority to bind the Corporation.

EXHIBIT “II”

This is **Exhibit "II"**, referred to in the
Affidavit of Robert McMaster, sworn before me
this 8th day of March, 2019.



Notary Public

Mitchell Grossell
Barrister & Solicitor
LSO# 69993I



PRIVATE AND CONFIDENTIAL

April 23, 2018

Mr. Peter Ogden
General Counsel, VP Canada
JTI-Macdonald Corp.
1 Robert Speck Parkway
Suite 1601
Mississauga, Ontario
L4Z OA2

Re: Engagement of BlueTree Advisors Inc.

This letter agreement (“**Agreement**”) sets out the terms and conditions upon which JTI-Macdonald Corp. (“**JTI-M**” or the “**Company**”) agrees to engage BlueTree Advisors Inc. (“**BlueTree**”) to provide the services of William E. Aziz (“**Aziz**”) as an independent contractor to perform the duties set out herein as Chief Restructuring Officer of JTI-M effective if and when JTI-M commences proceedings pursuant to the *Companies’ Creditors Arrangement Act* (Canada) (“**CCAA**”).

It is my understanding that JTI-M will require advice in connection with its CCAA proceedings. If JTI-M decides it is in the best interest of the Company to file for protection under the CCAA, the Company agrees to seek an order in its CCAA proceedings limiting the liability of BlueTree and Aziz from all claims, damages and losses, including any class action claims and any claims regarding matters for which a director of JTI-M may be personally liable, including, without limiting the foregoing, any environmental claims.

1. The Services

- 1.1. The services to be provided by BlueTree shall include the following (which are subject to ongoing supervision and direction from the JTI-M Board of Directors (the "**Board**") including in particular Mr. Peter Ogden ("**Ogden**"), and subject to the terms of any Court order in the CCAA proceedings):
 - (a) consulting with the stakeholders of JTI-M with a view to the development of a Settlement or Plan (both terms as defined in paragraph 3.1(b) below);
 - (b) assisting JTI-M with a view to successfully implementing a Settlement or Plan;
 - (c) communicating and negotiating with all stakeholder groups of JTI-M with a view to successfully implementing a Settlement or Plan; and
 - (d) such other or incidental matters as may be thought necessary or advisable by BlueTree in consultation with Ogden and the stakeholders of JTI-M, while at all times acting with respect to the fiduciary duties required of an officer of JTI-M.
- 1.2. BlueTree may not provide the services of any person other than Aziz without the prior written approval of JTI-M. The services of BlueTree do not include any authority for, or charge, management or control of, any sites or facilities at or on which JTI-M operates (including, without limitation, the manufacturing plant located in Montreal, Quebec) or for any day-to-day operations or operating activities of any of JTI-M's business, including, without limitation, any responsibility for environmental matters.
- 1.3. BlueTree shall provide the services with all due care, skill and ability and use its best commercial efforts to promote the interests of JTI-M.
- 1.4. For the avoidance of doubt, BlueTree shall not, and shall ensure that Aziz does not, enter into any binding agreement or commitment on behalf of JTI-M with any third party in relation to the services without the prior written consent of JTI-M in accordance herewith.

2. Information

- 2.1. JTI-M represents and warrants to BlueTree, and will use its best efforts to ensure, that all information provided to BlueTree, directly or indirectly, orally or in writing, in connection with the BlueTree engagement hereunder will be accurate and complete in all material respects, will not be misleading in any material way and will not omit to state any fact or information which might reasonably be considered material to BlueTree performing its services hereunder. BlueTree shall be under no obligation to verify independently any such information provided to or otherwise obtained by it. BlueTree shall also be under no obligation to determine whether there have been any changes in such information or to investigate any change in such information occurring after the date any of the same were provided to or obtained by BlueTree.

2.2. BlueTree agrees that, in consideration of the compensation to be paid to BlueTree by JTI-M, JTI-M is the owner of all right, title and interest in and to all materials, including but not limited to writings, reports, documents, abstracts and summaries, or any other work product created by BlueTree or by Aziz (collectively, the "Work Product"). The Work Product shall be and remain the sole and exclusive property of JTI-M. To the extent that the Work Product does not belong to JTI-M by operation of law, BlueTree irrevocably transfers, assigns and conveys the exclusive ownership of the Work Product to JTI-M, free and clear of any liens, claims or other such encumbrances, to the fullest extent permitted by law PROVIDED HOWEVER that BlueTree shall have the right to possess and use the Work Product until requested in writing by JTI-M to be delivered to JTI-M. Upon such request by JTI-M, BlueTree shall deliver, as soon as reasonably practical, all original Work Product to or at the direction of JTI-M (the "Delivery") but may keep copies of all Work Product for its own purposes. In addition, after Delivery, JTI-M agrees to allow BlueTree to have access to all original Work Product upon reasonable notice for whatever purpose deemed appropriate by BlueTree, including without limitation, for the defence of any claims against BlueTree or Aziz.

3. Fees and Expenses

3.1. BlueTree's compensation for services referred to above will be as follows:

- (a) a work fee (the "Work Fee") of ██████████ per month plus applicable taxes, payable monthly in advance commencing in the month the Company files its application for protection under the CCAA (the "Appointment Month"), which Work Fee shall be paid by wire on the fifth day of each month, or, when the fifth day falls on a non-business day, on the first business day thereafter. The payment of the Work Fee for the Appointment Month shall be made on the business day following the Company's filing of the application for protection under the CCAA. The Work Fee for the Appointment Month will be paid pro rata at a rate of ██████████ per day for each remaining day in that calendar month;
- (b) a fee (the "Success Fee") of ██████████ payable on the occurrence of (i) a settlement of the Quebec class action law suits listed in Schedule "A" hereto (the "Quebec Class Actions"); (ii) a court sanctioned plan of compromise or arrangement under the CCAA that compromises the Quebec Class Actions as against JTI-M; or (iii) a Triggering Event.

For the purposes of this agreement, the term "Triggering Event" shall mean any one or more of the following:

- (x) the closing or implementation of any global settlement of all or substantially all (in the opinion of JTI-M acting reasonably) claims filed or being pursued against JTI-M, including for greater certainty, all of the health care cost recovery litigation with the Provinces and the other tobacco litigation more completely described in Schedule "B" as well as any other claims filed in the CCAA (the "Other Tobacco Litigation") and the

Quebec Class Actions (the Other Tobacco Litigation and the Quebec Class Actions, collectively, the "CCAA Claims") (a "Settlement"); and

- (y) the implementation of any court sanctioned plan of compromise or arrangement under the CCAA with respect to JTI-M that compromises all or substantially all (in the opinion of JTI-M acting reasonably) the CCAA Claims (a "Plan");

but, for greater certainty, a sale of the assets of JTI-M, whether under a credit bid scenario or otherwise, is not a Triggering Event; and

- (c) BlueTree shall be entitled to a Work Fee for a minimum period of (2) months at a rate of USD\$75,000 plus applicable taxes if this Agreement is terminated by JTI-M (other than as a result of a default by BlueTree hereunder) before a Triggering Event.
- 3.2. The Success Fee will be payable if the events in paragraph 3.1(b) are completed or implemented (as the case may be) during the term of this engagement or within a period of six (6) months following: (i) the termination of this engagement by JTI-M other than as a result of a breach of this Agreement by BlueTree or (ii) the termination of the Agreement by BlueTree as a result of the breach of this Agreement by JTI-M. However, the Success Fee will not be payable if BlueTree terminates this Agreement in accordance with Section 6.
 - 3.3. In addition to the foregoing, JTI-M shall reimburse BlueTree for its reasonable out-of-pocket expenses in accordance with JTI-M's outside counsel policy as set out in the attached Appendix including, but not limited to, legal fees (provided the retention and identity of counsel are pre-approved by JTI-M, acting reasonably), travel and communications expenses, courier charges and accommodation expenses, any of which may be incurred by BlueTree without prior written consent. Such reimbursable expenses will be payable within 5 business days of receipt of BlueTree's invoices by JTI-M.
 - 3.4. There shall be no additional charges from BlueTree for office supplies, use of equipment, secretarial support, overtime or holiday pay, insurance, overhead or otherwise. Additionally, JTI-M shall not be liable in any way to BlueTree for any tax or other levy charged on amounts paid pursuant to this Agreement (except as provided for below), and BlueTree undertakes to indemnify JTI-M in respect of any and all such claims for payment.
 - 3.5. If Aziz is unable to provide the services due to illness or injury, BlueTree shall advise JTI-M of that fact as soon as reasonably practicable. For the avoidance of doubt, no fee shall be payable in respect of any period during which the services are not provided.
 - 3.6. JTI-M shall pay all amounts due in respect of fees and taxes thereon to BlueTree in [United States Dollars] and all amounts due in respect of expenses and taxes thereon in Canadian Dollars, each by wire transfer to BlueTree's bank accounts, after receipt by JTI-M of a written invoice in compliance with JTI-M's standard payment processing requirements. No payments shall be made in cash or bearer instruments, nor shall any

payments owed to BlueTree be made to a third party instead. Payment shall be deemed to have been made upon receipt by BlueTree of confirmation of payment to BlueTree's bank from JTI-M's bank.

- 3.7. By accepting any payment from JTI-M under this Agreement, BlueTree shall be deemed to have restated, and confirmed continued compliance with, the representations in this Agreement, as of the date of such acceptance of payment. JTI-M shall not be obligated under this Agreement to take any action or omit to take any action (including making any payment hereunder) that they believe, in good faith, would cause it or its Affiliates to be in violation of the laws of (i) any country where services are rendered, (ii) the countries where JTI-M and BlueTree are organized, or (iii) any other applicable jurisdiction.
- 3.8. All or part of the foregoing may be subject to federal Goods and Services Tax, Harmonized Sales Tax or other taxes ("GST/HST"). Where such tax is applicable, an additional amount equal to the amount of tax owing thereon will be charged to and payable by JTI-M, in addition to the fees and expenses of BlueTree. BlueTree shall provide its GST/HST registration number to JTI-M upon execution of this Agreement. BlueTree shall ensure that such taxes are detailed separately from the Work Fee and/or expenses on any invoices.

4. Other Services

- 4.1. If BlueTree is required to perform services in addition to those described above or to provide services of individuals other than Aziz, then the terms and conditions relating to such services will be outlined in a separate agreement and the fees for such services will be in addition to the fees payable hereunder and will be negotiated separately and in good faith.

5. Indemnity

- 5.1. JTI-M agrees to indemnify BlueTree (the "**Indemnity**"). The Indemnity shall be in addition to and not in substitution for any other liability which JTI-M or any other person may have to BlueTree or any other persons indemnified pursuant to indemnities apart from such Indemnity PROVIDED that BlueTree shall be limited to a single recovery of any indemnified Claim (as herein defined) and, upon payment of such Claim in full by JTI-M under the Indemnity, JTI-M shall be subrogated to the position of BlueTree and/or Aziz in respect of any other indemnities held by them.
- 5.2. JTI-M has represented that JTI-M and/or its parent company currently maintains director and officer insurance coverage for its subsidiaries, including JTI-M. JTI-M will continue to benefit from, to the extent possible or practicable, and provided same is at a cost acceptable to JTI-M, acting reasonably, the director and officer insurance coverage that was in place as at the date of execution of this Agreement, or coverage substantially comparable to that insurance, that includes confirmation from the underwriters that Aziz is fully covered by the insurance as an "Insured Person" within the meaning of any such policy.

- 5.3. In connection with this Agreement, JTI-M agrees to indemnify and hold harmless BlueTree and Aziz from and against any and all losses, expenses, claims, actions, damages and liabilities, joint or several, including the aggregate amount paid in reasonable settlement of any actions, suits, proceedings, investigations or claims and the reasonable fees and expenses of legal counsel on a solicitor and its or his own client basis that may be incurred in advising with respect to and/or defending any action, suit, proceeding, investigation or claim that may be made or threatened against either of BlueTree or Aziz or in enforcing this indemnity (collectively, the "Claims") to which BlueTree and/or Aziz may become subject to or otherwise involved in any capacity insofar as the Claims relate to, are caused by, result from, arise in respect of or are based upon, directly or indirectly, this engagement; provided however that JTI-M shall not be required to indemnify BlueTree or Aziz for such Claims to the extent that any such Claims are determined by a court of competent jurisdiction in a final judgment that has become non-appealable to have resulted from the negligence or willful misconduct of BlueTree or Aziz.
- 5.4. JTI-M also agrees that BlueTree and Aziz shall not have any liability (whether directly or indirectly in contract or tort or otherwise) to JTI-M or any person asserting claims on behalf of or in right of JTI-M for or in connection with this engagement except to the extent any losses, expenses, claims, actions, damages or liabilities incurred by JTI-M are determined by a court of competent jurisdiction in a final judgment that has become non-appealable to have resulted from the negligence or wilful misconduct of BlueTree or Aziz.
- 5.5. Neither JTI-M, on the one hand, nor BlueTree and Aziz, on the other hand, shall, without the written consent of the other acting reasonably, settle, compromise, consent to the entry of any judgment in or otherwise seek to terminate any action, suit, proceeding, investigation or claim in respect of which indemnification may be sought hereunder (whether or not JTI-M or BlueTree and/or Aziz is a party thereto) unless such settlement, compromise, consent or termination includes a release of JTI-M, BlueTree and Aziz from any liabilities arising out of such action, suit, proceeding, investigation or claim. This indemnity can only be varied by the mutual agreement of JTI-M, BlueTree and Aziz. So long as JTI-M has not denied liability under the Indemnity, JTI-M shall have the sole right, acting reasonably and at its cost, to conduct the defence of all Claims, including any and all litigation arising in respect thereof.
- 5.6. Promptly after receiving notice of any action, suit, proceeding or claim against either of BlueTree or Aziz or receipt of notice of the commencement of any investigation which is based, directly or indirectly, upon any matter in respect of which indemnification may be sought in accordance with the terms of this Agreement from JTI-M, BlueTree and/or Aziz will notify JTI-M in writing of the particulars thereof. The omission to notify JTI-M shall not relieve JTI-M of any liability that JTI-M may have to either of BlueTree and/or Aziz except to the extent such failure materially prejudices JTI-M's rights. For the avoidance of doubt, should such omission result in JTI-M being unable to recover from any insurance provider that would otherwise have been on risk this will be deemed a material prejudice.

5.7. JTI-M also agrees to reimburse BlueTree for the time reasonably spent by Aziz in connection with any claim at any time following the end of the engagement at the hourly rate of USD\$1,000.00 plus applicable taxes. BlueTree and Aziz may retain counsel to separately represent it or him in the defence of a claim, which shall be at the expense of JTI-M on a solicitor and its or his own client basis if (i) JTI-M does not assume the defence of a claim, (ii) JTI-M acting reasonably agrees to separate representation or (iii) BlueTree and/or Aziz is advised by legal counsel (pre-approved by JTI-M, acting reasonably, for the purpose of such opinion) that there is an actual or potential conflict in JTI-M's, BlueTree's and/or Aziz's respective interests or additional defences are available to BlueTree and/or Aziz which make representation by the same counsel inappropriate.

6. Survival of Terms and Termination

6.1. This engagement shall take effect upon the filing by the Company of a CCAA proceeding and shall terminate on the implementation of a binding Settlement or Plan.

6.2. In addition, this engagement may be terminated by a written notice to that effect:

(a) by JTI-M; or

(b) by BlueTree;

in each case upon not less than ten (10) days' written notice to that effect to the other persons mentioned in this section provided that the obligations of JTI-M to indemnify BlueTree, to pay any amounts due to BlueTree pursuant to this Agreement as at the date of termination, including fees, expenses and tax, and the representations and warranties provided by JTI-M in connection with this Agreement shall survive the completion of the BlueTree engagement hereunder or other termination of this Agreement.

7. Confidentiality and Privilege

7.1. It is BlueTree's policy to hold in confidence the affairs of its clients. BlueTree will not use and will procure that Aziz does not use confidential information obtained from JTI-M and any of its representatives except as required in connection with the services to be provided hereunder and will not disclose such confidential information to any third party or to any of its affiliates, employees or advisors except as required in connection with the services to be provided hereunder or as may be required by law, in which latter case, BlueTree shall provide as much notice as may be practicable in the circumstances in order to allow JTI-M a reasonable opportunity to resist such disclosure. BlueTree will not use or make available to JTI-M or any of its representatives confidential information that BlueTree has obtained from any other client or that BlueTree may have developed or obtained in connection with its other activities.

7.2. BlueTree and Aziz shall sign and comply with the Privilege Protocol in effect from time to time with respect to JTI-M in order to maintain as privileged all communications to which any form of privilege does or should apply.

[BA1]

7.3. The provisions of this Clause 7 shall survive the termination of this Agreement.

8. Other Activities

- 8.1. JTI-M acknowledges that Aziz serves as a director of a number of other corporations which are not directly competitive with JTI-M or its affiliates and that BlueTree provides services to other clients, including in the role as chief restructuring officer. BlueTree confirms that it shall, and it shall procure that Aziz shall, give priority to the provision of services to JTI-M over any business activities undertaken by it during the course of the engagement.
- 8.2. BlueTree represents that it does not have, and shall not have during the term of this Agreement, any conflict (or appearance of conflict) of interest that would compromise BlueTree's ability to provide the services or would create an appearance of impropriety in regard to BlueTree's performance of the services. BlueTree further represents and warrants that neither it nor Aziz, any owner, partner, officer, director or employee associated with BlueTree is or shall become an officer or employee of a government or government-controlled entity or a person acting in an official capacity for or on behalf of any of the foregoing, or an official of a political party, or candidate for political office, during the term of this Agreement without the prior written consent of JTI-M.
- 8.3. During the term of this Agreement and for a period of 1 (one) year thereafter, neither BlueTree nor any of its employees, agents or representatives shall, without the prior written consent of JTI-M, engage in consulting or similar activities on behalf of any company, entity or person whose business competes with the tobacco products businesses of JTI-M or its affiliates or who has interests adverse to the interests of JTI-M or any of its affiliates, unless this Agreement is terminated by JTI-M in accordance with paragraph 6.2(a), in which cases the restriction shall be limited to not dealing with any Settlement, Plan or other compromise or arrangement involving any other defendant in the Quebec Class Actions or the Other Tobacco Litigation.

9. Anti-bribery and Corruption ("ABC")

- 9.1. BlueTree and Aziz acknowledge that JTI-M will not tolerate any form of bribery or corruption¹ in any of its business activities. BlueTree and Aziz will comply fully with this position as a condition of doing business with JTI-M. BlueTree and Aziz warrant to JTI-M that throughout the term of this Agreement they:

¹ Bribery is the giving or receiving of anything of value (including but not limited to cash, gifts or entertainment) in return for a business advantage or to reward or to induce improper performance. Corruption is the abuse of power for personal gain.

- (a) shall not engage in any activity, practice or conduct which may constitute a breach of any anti-bribery and corruption laws applicable to BlueTree and Aziz or JTI-M in performing this Agreement (“applicable ABC laws”);
- (b) shall not use any payments received from JTI-M in order to procure, directly or indirectly, an improper benefit from any public official or other person on behalf of JTI-M or for any other purpose that would be in violation of any applicable ABC laws;
- (c) shall ensure that each of their directors, employees, representatives or subcontractors acting on behalf of JTI-M under this Agreement review and comply with the standards of conduct set out in this Agreement;
- (d) shall establish, maintain and enforce appropriate policies, procedures and training to prevent acts of bribery and corruption by their directors and employees;
- (e) shall immediately notify JTI-M of any act of bribery and corruption, committed in the course of performing this Agreement.

9.2. The parties agree that any involvement in bribery or corruption by either of them could be considered by the other as a material breach of this Agreement and that the other may terminate this Agreement with immediate effect if it determines that the counterparty has been involved in bribery or corruption.

10. Other Matters

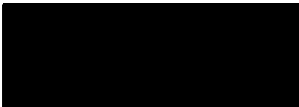

- 10.1. BlueTree shall not initiate or participate in any action or conduct tending to injure, bring into disrepute, ridicule, damage or destroy the goodwill of JTI-M or any of its affiliates or businesses.
- 10.2. BlueTree shall fully comply and shall ensure that Aziz fully complies with the JTI’s Code of Conduct, available at jti.com. JTI-M will advise Aziz/BlueTree of any changes to the Code of Conduct, as they occur.
- 10.3. BlueTree shall not, without the prior express written approval of JTI-M, (i) advertise or otherwise publicize the existence or terms of this Agreement or any other aspect of the relationship between BlueTree and JTI-M, or (ii) use JTI-M’s name or that of any of its affiliates or any trade name, trademark or service mark or brand imagery belonging to JTI-M or any of its affiliates in any press release, any form of advertising, or any of its business communications (internal or external) except those necessary to provide the services.
- 10.4. If at any time BlueTree or Aziz is contacted by a third party, including any news organization, concerning BlueTree’s activities on behalf of JTI-M, BlueTree shall make no comment and shall procure that Aziz makes no comment without the prior consent of JTI-M (unless required by law), and shall immediately notify JTI-M of the third party contact.

10.5. This Agreement will enure to the benefit of and be binding upon the parties hereto and their respective permitted successors and assigns. This Agreement constitutes the entire agreement between the parties hereto with respect to the subject matter hereof and supersedes all prior written or oral negotiations, representations, agreements, commitments, contracts or understandings with respect thereto. This Agreement shall be governed by and construed in accordance the laws of the Province of Ontario and the parties hereby irrevocably attorn to the jurisdiction of the courts of the Province of Ontario. If any provision hereof shall be determined to be invalid or unenforceable in any respect, such determination shall not affect such provision in any other respect or any other provision hereof. Headings are used for convenience of reference only and shall not affect the interpretation hereof. No modification, alteration or amendment to this Agreement may be made or shall be effective unless the same shall be in writing and signed by the parties hereto. The failure to exercise any right under this Agreement by either party shall not be considered a renunciation of that right by that party. This Agreement may be executed in any number of counterparts and by different parties on separate counterparts, each of which, when executed and delivered, shall be deemed to be an original, and all of which, when taken together, shall constitute but one and the same agreement. Delivery of an executed counterpart of this Agreement by fax or by electronic means (including PDF formats attached to an email) shall be equally as effective as delivery of a manually executed counterpart of this Agreement.

11. Notices

11.1. All notices or other communications under this letter shall be in writing and e-mailed or faxed or delivered by personal delivery, if to JTI-M or the Company at:

General Counsel
JTI-Macdonald Corp.
1 Robert Speck Parkway
Suite 1601
Mississauga, Ontario
L4Z OA2

Attention: 
Email: 

And if to BlueTree:

BlueTree Advisors Inc.
32 Shorewood Place
Oakville, ON L6K 3Y4

Attention: William E. Aziz
Fax: 905-849-4248
Email: baziz@bluetreeadvisors.com

or as each party may specify in written notice to the other party. Its notices and communications shall be effective when faxed, e-mailed or delivered as the case may be or, if such day is not a business day, on the first business day thereafter.

Please confirm that the foregoing is in accordance with your understanding by signing and returning the attached duplicate copy of the letter which will thereupon become a binding agreement. This Agreement may be executed in counterparts and delivered by email or telecopy.

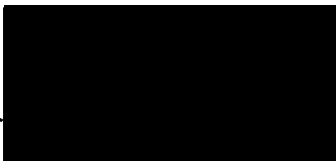
Yours very truly,

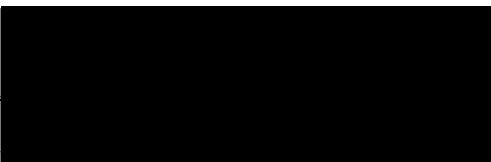
BLUETREE ADVISORS INC.

by William E. Aziz
William E. Aziz

For consideration received, the above terms and conditions are accepted and agreed to on behalf of JTI-M as of MAY 11, 2018.

JTI-MACDONALD CORP.

by  _____

by  _____

I/We have the authority to bind the Company

SCHEDULE "A"
Quebec Class Actions

- A) Cécilia Létourneau v. JTI-Macdonald Corp. And Imperial Tobacco Canada Limited and Rothmans, Benson & Hedges Inc.

- B) Conseil Québécois Sur Le Tabac et La Santé and Jean-Yves Blais v. JTI-Macdonald Corp. And Imperial Tobacco Canada Limited and Rothmans, Benson & Hedges Inc.

SCHEDULE "B"
Other Tobacco Litigation

A) Health Care Cost Recovery (HCCR) Claims

Jurisdiction	Plaintiffs	Defendants
BC	Her Majesty The Queen in Right of British Columbia	Imperial Tobacco Canada Limited; Rothmans, Benson & Hedges Inc.; Rothmans Inc.; JTI-Macdonald Corp.; Canadian Tobacco Manufacturers' Council; BAT Industries PLC; British American Tobacco (Investments) Limited; Carreras Rothmans Limited; Philip Morris Incorporated; Philip Morris International, Inc.; RJ Reynolds Tobacco Company; RJ Reynolds Tobacco International, Inc.; Rothmans International Research Division; Ryesekks PLC
NB	Her Majesty The Queen in Right of The Province of New Brunswick	Rothmans Inc.; Rothmans, Benson & Hedges Inc.; Carreras Rothmans Limited; Altria Group, Inc.; Philip Morris USA Inc.; Philip Morris International, Inc.; JTI-Macdonald Corp.; RJ Reynolds Tobacco Company; RJ Reynolds Tobacco International, Inc.; Imperial Tobacco Canada Limited; British American Tobacco PLC.; BAT Industries PLC; British American Tobacco (Investments) Limited; Canadian Tobacco Manufacturers' Council
QC	Attorney General of Quebec	Imperial Tobacco Canada Limited; BAT Industries PLC; British American Tobacco (Investments) Limited; Carreras Rothmans Limited; Rothmans, Benson & Hedges Inc.; Philip Morris USA Inc.; Philip Morris International, Inc.; JTI-Macdonald Corp.; RJ Reynolds Tobacco Company; RJ Reynolds Tobacco International, Inc.; Canadian Tobacco Manufacturers' Council
AB	Her Majesty in Right of Alberta	Altria Group, Inc.; BAT Industries PLC; British American Tobacco (Investments) Limited; British American Tobacco PLC; Canadian Tobacco Manufacturers' Council; Carreras Rothmans Limited; Imperial Tobacco Canada Limited; JTI-Macdonald Corp.; Philip Morris International, Inc.; Philip Morris USA, Inc.; RJ Reynolds Tobacco Company; RJ Reynolds Tobacco International, Inc.; Rothmans, Benson & Hedges Inc.; Rothmans Inc.
NS	Her Majesty The Queen in Right of The Province of Nova Scotia	Rothmans, Benson & Hedges Inc.; Rothmans Inc.; Altria Group, Inc.; Philip Morris USA Inc.; Philip Morris International, Inc.; JTI-Macdonald Corp.; RJ Reynolds Tobacco Company; RJ Reynolds Tobacco International, Inc.; Imperial Tobacco Canada Limited; British American Tobacco PLC.; BAT Industries PLC; British American Tobacco (Investments) Limited; Carreras Rothmans Limited; Canadian Tobacco Manufacturers' Council
SK	The Government of Saskatchewan	Rothmans, Benson & Hedges Inc.; Rothmans Inc.; Altria Group, Inc.; Philip Morris USA Inc.; Philip Morris International, Inc.; JTI-Macdonald Corp.; RJ Reynolds Tobacco Company; RJ Reynolds Tobacco International, Inc.; Imperial Tobacco Canada Limited; British American Tobacco PLC.; BAT Industries PLC; British American Tobacco (Investments) Limited; Carreras Rothmans Limited; Canadian Tobacco Manufacturers' Council
MB	Her Majesty The Queen in Right of The Province of	Rothmans, Benson & Hedges Inc.; Rothmans Inc.; Altria Group, Inc.; Philip Morris USA Inc.; Philip Morris International, Inc.; JTI-Macdonald Corp.; RJ Reynolds Tobacco Company; RJ Reynolds Tobacco

	Manitoba	International, Inc.; Imperial Tobacco Canada Limited; British American Tobacco PLC.; BAT Industries PLC; British American Tobacco (Investments) Limited; Carreras Rothmans Limited; Canadian Tobacco Manufacturers' Council
ON	Her Majesty The Queen in Right of Ontario	Rothmans Inc.; Rothmans, Benson & Hedges Inc.; Carreras Rothmans Limited; Altria Group, Inc.; Philip Morris USA Inc.; Philip Morris International, Inc.; JTI-Macdonald Corp.; RJ Reynolds Tobacco Company; RJ Reynolds Tobacco International, Inc.; Imperial Tobacco Canada Limited; British American Tobacco PLC.; BAT Industries PLC; British American Tobacco (Investments) Limited; Canadian Tobacco Manufacturers' Council
NL	Attorney General of Newfoundland & Labrador	Rothmans Inc.; Rothmans, Benson & Hedges Inc.; Carreras Rothmans Limited; Altria Group, Inc.; Philip Morris USA Inc.; Philip Morris International, Inc.; JTI-Macdonald Corp.; RJ Reynolds Tobacco Company; RJ Reynolds Tobacco International, Inc.; Imperial Tobacco Canada Limited; British American Tobacco PLC.; BAT Industries PLC; British American Tobacco (Investments) Limited; Canadian Tobacco Manufacturers' Council
PE	Her Majesty The Queen in Right of The Province of Prince Edward Island	Rothmans, Benson & Hedges Inc.; Rothmans Inc.; Altria Group, Inc.; Philip Morris USA Inc.; Philip Morris International, Inc.; JTI-Macdonald Corp.; RJ Reynolds Tobacco Company; RJ Reynolds Tobacco International, Inc.; Imperial Tobacco Canada Limited; British American Tobacco PLC.; BAT Industries PLC; British American Tobacco (Investments) Limited; Carreras Rothmans Limited; Canadian Tobacco Manufacturers' Council

B) Other tobacco related claims

BC	Barbara Bourassa on behalf of The Estate of Mitchell David Bourassa	Imperial Tobacco Canada Limited; BAT Industries PLC; British American Tobacco (Investments) Limited; Altria Group, Inc.; Philip Morris International, Inc.; Philip Morris USA Inc.; RJ Reynolds Tobacco Company; RJ Reynolds Tobacco International, Inc.; Carreras Rothmans Limited; JTI-Macdonald Corp.; Rothmans, Benson & Hedges Inc.; Rothmans Inc.; Rysesekks PLC; Canadian Tobacco Manufacturers' Council
BC	Roderick Dennis McDermid	Imperial Tobacco Canada Limited; BAT Industries PLC; British American Tobacco (Investments) Limited; Altria Group, Inc.; Philip Morris International, Inc.; Philip Morris USA Inc.; RJ Reynolds Tobacco Company; RJ Reynolds Tobacco International, Inc.; Carreras Rothmans Limited; JTI-Macdonald Corp.; Rothmans, Benson & Hedges Inc.; Rothmans Inc.; Rysesekks PLC; Canadian Tobacco Manufacturers' Council
MB	Deborah Kunta	Altria Group, Inc., B.A.T Industries p.l.c., British American Tobacco (Investments) Limited, British American Tobacco, p.l.c., Canadian Tobacco Manufacturers' Council, Carreras Rothmans Limited, Imperial Tobacco Canada Limited, JTI-Macdonald Corp., Philip Morris Incorporated, Philip Morris International, Inc., Phillip Morris USA Inc., R. J. Reynolds Tobacco Company, R.J. Reynolds Tobacco, International, Inc., Rothmans Benson & Hedges Inc., Rothmans Inc., Rysesekks p.l.c.
NS	Semple	Altria Group, Inc., B.A.T Industries p.l.c., British American Tobacco (Investments) Limited, British American Tobacco, p.l.c., Canadian Tobacco Manufacturers' Council, Carreras Rothmans Limited, Imperial Tobacco Canada Limited, JTI-Macdonald Corp., Philip Morris Incorporated, Philip Morris International, Inc., Phillip Morris USA Inc., R. J. Reynolds Tobacco Company, R.J. Reynolds Tobacco,

		International, Inc., Rothmans Benson & Hedges Inc., Rothmans Inc., Ryesekks p.l.c.
ON	Suzanne Jacklin	Altria Group, Inc., B.A.T Industries p.l.c., British American Tobacco (Investments) Limited, British American Tobacco, p.l.c., Canadian Tobacco Manufacturers' Council, Carreras Rothmans Limited, Imperial Tobacco Canada Limited, JTI-Macdonald Corp., Philip Morris Incorporated, Philip Morris International, Inc., Phillip Morris USA Inc., R. J. Reynolds Tobacco Company, R.J. Reynolds Tobacco, International, Inc., Rothmans Benson & Hedges Inc., Rothmans Inc., Ryesekks p.l.c.
ON	The Ontario Flue-Cured Tobacco Growers' Marketing Board, Andy J. Jacko, Brian Baswick, Ron Kichler and Arpad Dobrentey	Rothmans, Benson & Hedges Inc., Imperial Tobacco Canada Limited, JTI-Macdonald Corp.

Appendix – Expenses

Photocopies

The Company will not pay more than a reasonable amount, based on local market conditions, per page for photocopying. The invoice must show the number of copies made. Where appropriate, and commensurate with outside counsel's confidentiality obligations to the Company, the firm shall consider using an outside copying service and attach receipts. Copies for internal distribution or firm convenience may not be charged to the Company. The Company will not pay a percentage mark-up on invoices to cover photocopies or other administrative overhead expenses.

Non-Chargeable Expenses

The Company will not pay for the following items: computer expenses, word processing, e-mail and all other electronic communication/technology charges (other than long distance), rent, conference room charges, supplies, library staff, library use and materials, secretarial staff, proofreaders, meals, taxis and limousines for employees to get to and from the office (including at night), and support staff salaries and overtime, nor will the Company pay a percentage mark-up on invoices to cover any of these expenses either. The Company will also not pay any charges for preparing invoices, correcting mistakes or addressing billing irregularities.

TRAVEL EXPENSES

1. Travel Generally

Outside counsel are expected to neither gain nor lose financially as a result of undertaking business travel. JTI will reimburse all expenses, as described in this Policy, which are necessarily incurred while undertaking business travel.

While meeting people face-to-face and physically attending meetings might be the most appropriate and preferred way of achieving results, outside counsel must look into other forms of communication such as conference calls, video conferences, etc., before considering travel.

If outside counsel is traveling on business for more than one client, travel-related expenses must be apportioned fairly and appropriately between clients. The Company ordinarily should not be charged fees for time spent traveling or away from the office unless work is being performed for the Company during that time or other arrangements have been approved in advance by Lead In-House Counsel. The Company recognizes a limited exception to this Policy for travel time occurring during normal business hours. Outside counsel should perform work for JTI while traveling ONLY if all reasonable measures to protect the confidentiality of the work have been taken.

2. Air Travel

Air travel must be replaced by ground transportation when the length of the published transit time by ground does not exceed three hours. If rail is used as an alternative, outside counsel is entitled to travel first class.

Outside counsel shall travel in economy class or equivalent at the lowest logical fare when the total of the published transit time is less than three hours for a one-way segment and may travel in business class or the equivalent at the lowest logical fare for all other trips. Under no circumstances will JTI pay for first-class air travel or its equivalent.

3. Car Rental

Outside counsel are entitled to rent a car at the destination when it is less expensive than other transportation modes such as taxis, airport limousines, and airport shuttles, and when public

transportation is unavailable or inadequate. The entitled car rental category is Compact Car, category B. All car rental expenses including parking, tolls, petrol, etc. must be paid by the outside counsel and reimbursement sought from JTI. Outside counsel must refuel car rentals prior to drop-off. Car rental companies' fuel surcharges are not reimbursed by JTI.

4. Hotel

Outside counsel must select reasonable business-style hotels when staying overnight on JTI business travel. If travel plans change, all rooms reserved must be cancelled. "No show" billings are the responsibility of outside counsel and will not be reimbursed by JTI unless the Company was responsible for the late cancellation.

5. Meals

Outside counsel are responsible for keeping accurate and detailed meal expense records including tips. Personal meals will be reimbursed at actual cost and must be confined to what is adequate and customary for the market. Hotel room service is not reimbursed by JTI unless it is the only reasonable option available due to late arrival or other similar circumstances. Reasonable judgment must be used regarding tipping where service is not included in the meal cost. Typically 10% to 15% (ten to fifteen per cent) of a pre-tax meal is considered reasonable, and should be included with the cost of the meal.

6. Reimbursement of Travel Expenses

Original receipts are required for any single expense claimed. If special situations arise where receipts are not provided, a written explanation must be provided with the invoice.

For illustrative purposes only, the following are examples of non-reimbursable travel expenses: Private limousine services (does not include "comfortable taxi ride", also called "limo" in certain countries); magazines and newspapers; laundry or dry cleaning for trips shorter than three days; hairdresser; clothing purchases; health club facilities, saunas, massages; traffic tickets; parking fees and highway tolls on weekends and vacation days; expenses related to vacation or personal days while on business trip; expenses for travel companions/family members; fees related to personal credit cards; in-room videos and movies; hotel room service; and city tours/excursions/theatre.

EXHIBIT “JJ”

This is **Exhibit “JJ”**, referred to in the
Affidavit of Robert McMaster, sworn before me
this 8th day of March, 2019.



Notary Public

Mitchell Grossell
Barrister & Solicitor
LSO# 699931

WILLIAM E. AZIZ

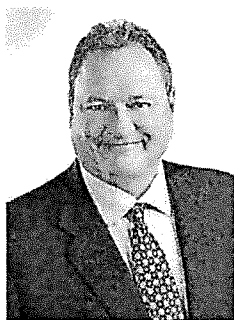
32 Shorewood Place
Oakville, Ontario
Canada
L6K 3Y4

Bus: (905) 849-4332
Bus: (416) 640-7122
Cell: (416) 575-2200
Fax : (905) 849-4248

E-Mail: baziz@bluetreeadvisors.com

PROFILE

I am a senior executive and experienced director. I am a value-oriented executive with the experience to enhance profitability. I lead by building strong management teams focused on profitability, while promoting strong and flexible strategic thinking to create solutions. I have extensive, domestic and international experience in multi-party negotiations, strategic partnerships, mergers, acquisitions and divestitures. I have experience with all aspects of balance sheet and operational restructurings, in environments with and without unions.



BUSINESS EXPERIENCE

BLUETREE ADVISORS
President and CEO

2002 to Present

BlueTree Advisors Inc. is my advisory firm focused on improving the performance of client companies, by providing expertise to manage operational, financial and organizational challenges. I view the principal objective of my work as the restoration and realization of value for stakeholders.

Services include business recovery, strategic planning, operational execution, and financial remediation-including balance sheet transformation. BlueTree is focused on improving stakeholder value in the face of the most significant challenges. My focus is the development of strategic and tactical plans where situations involve uncertainty, rapidly changing dynamics, real option back-up strategies, and negotiation strategies. I work to assist companies in making the changes that are necessary to ensure long-term viability.

As President of BlueTree Advisors I have more than 30 years of advisory, turnaround and corporate restructuring experience. I have extensive domestic and international experience in multi-party negotiations, strategic partnerships, and M+A activities. I have led restructurings as an executive or board member involving all aspects of balance sheet and operational restructurings in diverse industries including financial services, telecom, steel manufacturing, coal mining, professional service firms, alternative financing, softwood lumber, refrigerated warehousing, transportation, retail, manufacturing, and media. I have extensive experience with large unions in collective bargaining situations related to restructurings.

I have recently been the Chief Restructuring Officer of U.S. Steel Canada, Walter Energy Canada Holdings, and Hollinger. I am the Litigation Trustee for The Cash Stores Financial in respect of litigation stemming from the CCAA proceedings of that company.

I have acted as an advisor to Boards of Directors and management in both formal and informal transformations of businesses. I have played significant roles in many major Canadian restructurings. I have become recognized as one of Canada's experts in financial and operational restructurings since leaving Ernst & Young in 1988.

My work encompasses formal proceedings under the CCAA and the Bankruptcy and Insolvency Act but is broader in scope. I have been retained in the course of binding arbitration and mediation processes. I have also been involved in consensual, out-of-court restructurings, advising executive committees, and refinancings of both public and private companies.

I have dealt with all types of commercial disputes and have led complex, multi-party negotiations to resolve labour, litigation, and intellectual property disputes. I have extensive expertise in cost reduction, organizational transformation, mergers & acquisitions, and refinancing initiatives.

OTHER INFORMATION

Director

Current Boards

Ivey's Leadership Council-(September 2012 to present)

Formed to represent and support the Ian O. Ihnatowycz Institute for Leadership at the Ivey School of Business, Western University in leadership thought

OMERS-(January 2014 to Present-see below for prior)

Chair of the Investment Committee (\$94 billion capital pool)
Member Human Resources and Compensation Committee

Maple Leaf Foods Inc. – TSE Listed (May 2014 to Present)

Chair of the Audit Committee
Member Human Resources and Compensation Committee

Fengate Real Assets (November 2014 to present)

Member of the Advisory Board for all funds in public private partnerships

Prior Boards

Canada Bread Company Limited – TSE Listed (April 2005 to March 2014)
Chair of the Audit Committee and Member Governance Committee

OMERS-(February 2009 to December 2012)
Chair of the Investment Committee
Member Human Resources and Compensation Committee and Joint
Council for Governance

Tecumseh Products Company-NASDAQ Listed (August 2007 to August 2009)
Chair of Governance and Nominating Committee
Chair of Independent Committee for two proxy fights
Member of Audit Committee

Sun-Times Media Group, Inc.-NYSE Listed (August 2007 to July 2008)

Doman Industries Limited -TSE Listed (2003 to 2004)
Member of Restructuring Committee and Chair of Audit and Governance
Committees

Algoma Steel Inc.-TSE Listed (2002)

Others-

Co-Chair, Leadership Gifts Critical Support Campaign- Oakville Hospital
White Rose Crafts and Nursery Sales Limited - TSE Listed (1998 and 1999)
Photon Technology International Inc.-NASDAQ Listed (1997 and 1998)
Agnew Group Inc. (1994 to 1996)
Trustee-Sole Trustee of the SkyDome Employees' Trust (1997 to 1999)

Member Canadian and Ontario Institutes of Chartered Accountants-CPA, CA
Institute of Corporate Directors
Insolvency Institute of Canada
Toronto Club
London Hunt and Country Club
Hamilton Golf and Country Club
Young Presidents Organization, Western Ontario Chapter

Education Osgoode Hall Pension Law Program
Institute of Corporate Directors ICD.D Certification
Executive Media Training with Jeff Ansell of Siren Communications
Harvard Law School: Program on Negotiation for Senior Executives
Harvard Law School: Dealing with Difficult People and Difficult Situations
Chartered Accountant (Ontario) - 1982
Ivey School of Business at Western University: Honors Business Administration – 1979

Interests Golf, fly fishing, and skiing.

EXHIBIT “KK”

This is **Exhibit “KK”**, referred to in the
Affidavit of Robert McMaster, sworn before me
this 8th day of March, 2019.



Notary Public

Mitchell Grossell
Barrister & Solicitor
LSO# 699931

FISHMAN FLANZ MELAND PAQUIN

S.E.N.C.R.L./LLP
AVOCATS ET PROCUREURS
BARRISTERS AND SOLICITORS



de succès juridique
of legal excellence

LEONARD W. FLANZ
AVRAM FISHMAN
GILLES PAQUIN
MARK E. MELAND
NICOLAS BEAUDIN
SUZANNE VILLENEUVE
MARGO R. SIMINOVITCH
JASON DOLMAN
NICOLAS BROCHU
TINA SILVERSTEIN
BETLEHEM L. ENDALE
NOAH ZUCKER
GABRIEL FAURE

July 6, 2015

BY EMAIL: martin.castonguay@judex.qc.ca

Mr. Justice Martin Castonguay, J.C.S.
Court House of Montreal
1 Notre-Dame Street East
Montreal QC H2Y 1B6

BY EMAIL: frank.newbould@scj-csj.ca

Mr. Justice Frank Newbould
Superior Court of Justice
Osgoode Hall, 130 Queen Street West
Toronto, Ontario
M5H 2N5

Re: Cécilia Létourneau v. JTI-Macdonald Corp. et al
S.C.M.: 500-06-000070-983

Conseil québécois sur le tabac et la santé et al
v. JTI-Macdonald Corp. et al
S.C.M.: 500-06-000076-980

Dear Justices Castonguay and Newbould,

We write to you in your respective capacities as Justices responsible for the Commercial divisions of your Courts in Montreal and Toronto.

Following seventeen years of litigation, including a trial which lasted more than two years, Justice Brian Riordan of Quebec Superior Court rendered a 276 page decision on May 27, 2015, condemning Imperial Tobacco Canada Limited ("ITL"), Rothmans, Benson & Hedges Inc.

1250 BOULEVARD RENE-LEVESQUE OUEST, SUITE 4100, MONTREAL (QUEBEC) H3B 4W8
TÉLÉPHONE: 514.932.4100 TÉLÉCOPIEUR: 514.932.4170

FISHMAN FLANZ MELAND PAQUIN
S.E.N.C.R.L./LLP

Page 2

("RBH") and JTI-Macdonald Corp. ("JTI") solidarily to pay billions of dollars in damages to the class members in the above-captioned two class actions (the "**Judgment**").

The Judgment also ordered provisional execution of part of the award and ordered the Defendants to deposit \$1,133,000,000 in the trust accounts of their attorneys, within 60 days of the Judgment, notwithstanding appeal ("**Order of Provisional Execution**"). All three Defendants have filed Motions to Suspend the Order of Provisional Execution. The Motions will be heard by a panel of three judges of the Quebec Court of Appeal on July 9, 2015.

The ITL Motion states, in part, that unless the Court of Appeal suspends the Provisional Execution Order, it "may" have to file under the CCAA. Since ITL has its head office in Quebec, it is reasonable to believe that it will file under CCAA in Quebec.

JTI, however, has its head office in Ontario and if it chooses to file under CCAA, it is likely to do so in Ontario, as it did in 2004.

Whether there is an Application for an Initial Order under a CCAA filing in Quebec or in Ontario, we would like not less than seven (7) days prior notice, in order to make representations on behalf of the 100,000 (approximately) class members, suffering from lung cancer, throat cancer and emphysema who will be affected by the Initial Order.

Unless counsel for the Defendants provide written confirmation that they will give us at least seven (7) days prior notice of any Application for an Initial Order under CCAA, whether in Quebec or in Ontario, we hereby request a 9:30 a.m. meeting at your convenience for directives as to notice.

Respectfully yours,

FISHMAN FLANZ MELAND PAQUIN, LLP



Avram Fishman

AF:eb

cc: Deborah Glendinning (dglendinning@osler.com)
cc: Me Guy Pratte, Ad.E. (GPratte@blg.com)
cc: Me Simon Potter, Ad.E (spotter@mccarthy.ca)
cc: Me Gordon Kugler (gkugler@kklex.com)

EXHIBIT “LL”

This is **Exhibit “LL”**, referred to in the
Affidavit of Robert McMaster, sworn before me
this 8th day of March, 2019.



Notary Public

Mitchell Grossell
Barrister & Solicitor
LSO# 69993I



Jeffrey S. Leon

Partner

Direct Line: 416.777.7472

e-mail: leonj@bennettjones.com

March 6, 2019

By Email: rthornton@tgf.ca

Robert Thornton

THORNTON GROUT FINNIGAN LLP

Suite 3200, 100 Wellington Street West

P.O. Box 329

Toronto-Dominion Centre

Toronto, ON M5K 1K7 Canada

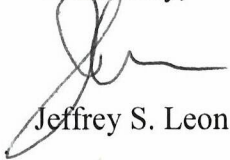
Dear Mr. Thornton:

Re: Health Care Cost Recovery Litigation

We write to you in your capacity as counsel to JTI-MacDonald Corp. (the "Company"). As you know, we are counsel to the Provinces of British Columbia, Manitoba, New Brunswick, Nova Scotia, Prince Edward Island and Saskatchewan in connection with their statutory claims for the recovery of health care costs against, among others, the Company. As such, our clients have very significant claims against the Company.

In light of the March 1, 2019 decision of the Quebec Court of Appeal with respect to the Quebec class action, we assume that the Company is considering various options. We would be pleased to engage with you in that regard. But to the extent the Company intends to seek relief under any insolvency statute, including making an application for an Order under the *Companies' Creditors Arrangement Act*, we request that we receive advance notice of such an application. We recognize that any such application may be required to be made on an urgent basis. Nevertheless, we still request that we receive as much notice as is practicable in the circumstances. There is no need for an application to proceed on an *ex parte* basis.

Yours truly,



Jeffrey S. Leon

JSL:mdlr

EXHIBIT “MM”

This is **Exhibit “MM”**, referred to in the
Affidavit of Robert McMaster, sworn before me
this 8th day of March, 2019.



Notary Public

Mitchell Grossell
Barrister & Solicitor
LSO# 699931

Ministry of the
Attorney General
Crown Law Office
Civil Law
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Jacqueline L. Wall
Tel: (416) 325-8435
Fax: (416) 326-4181

Ministère du
Procureur générale
Bureau des avocats
de la Couronne Droit civil
720 rue Bay
8^e étage
Toronto ON M7A 2S9

Please refer to File
S.V.P. Se Référer au dossier
No. 30653



March 7, 2019

BY EMAIL

Guy J. Pratte
Borden Ladner Gervais LLP
East Tower, Bay Adelaide Centre
22 Adelaide Street West, Suite 3400
Toronto, ON M5H 4E3

Dear Mr. Pratte:

Re: *Her Majesty the Queen in right of Ontario v. Rothmans Inc. et al.*
Court File No.: CV-09-387984

As you are aware, we are counsel to the plaintiff, Her Majesty the Queen in right of Ontario (“**Ontario**”), in the above captioned action. Pursuant to the *Tobacco Damages and Health Care Costs Recovery Act, 2009*, Ontario is advancing a claim against your client, JTI-Macdonald Corp. (“**JTI**”), and other defendants to recover costs of approximately \$330 billion incurred to provide health care required by persons in Ontario as a result of tobacco related disease or the risk of tobacco related disease.

In a press release posted on March 1, 2019, JTI advised that it is assessing the potential implications of the decision of the Court of Appeal of Quebec in *Imperial Tobacco Canada et al. v. Conseil Québécois sur le tabac et la santé et al.* and considering its options, including an application for leave to appeal to the Supreme Court of Canada.

If, at some point in the future, JTI decides to bring an application seeking protection under the *Companies’ Creditors Arrangement Act* or any other applicable statute, we request that JTI provide Ontario with reasonable notice of the hearing date and serve its application materials on Ontario in advance of the initial hearing. We thank you for this consideration.

Yours very truly,

A handwritten signature in cursive script that reads "Jacqueline Wall".

Jacqueline L. Wall
Counsel

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.: 19-CV-615862-00CL

ONTARIO
SUPERIOR COURT OF JUSTICE
(COMMERCIAL LIST)

Proceedings commenced at Toronto

AFFIDAVIT OF ROBERT MCMASTER

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Fax: 416-304-1313

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.: 19-CV-615862-00CL

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

Proceedings commenced at Toronto

**APPLICATION RECORD
(Volume 4 of 4)**

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Lawyers for the Applicant