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

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.

MOTION RECORD

FISHMAN FLANZ MELAND PAQUIN LLP
1250 René-Levesque Blvd. West, Suite 4100
Montreal, Quebec H3B 4W8

Avram Fishman
Email: afishman@ffmp.ca

Mark E. Meland
Email: mmeland@ffmp.ca

Tel: 514-932-4100
Fax: 514-932-4170

CHAITONS LLP
5000 Yonge St., 10th floor
Toronto, Ontario M2N 7E9

Harvey Chaiton
Tel: 416-218-1129
Email: harvey@chaitons.com

George Benchetrit
Tel: (416) 218-1141
Email: george@chaitons.com

Lawyers for the Quebec Class Action Plaintiffs

TO: The Service List

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

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.

INDEX

Tab	Document
1	Notice of Motion
2	Affidavit of Casella
A	Initial Order of Justice Hainey dated March 8, 2019
B	Extracts from Judgment of Justice Riordan dated May 27, 2015
C	Extracts of Judgment of Court of Appeal of Quebec (Unofficial Translation)
D	Affidavit of Robert McMaster sworn March 8, 2019 (without exhibits)
E	Initial Order of Justice Farley dated August 24, 2004
F	TM Debenture Amending Agreement dated August 3, 2017

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

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

SERVICE LIST
(as at March 13, 2019)

TO:	**THORNTON GROUT FINNIGAN LLP** 100 Wellington Street West Suite 3200 TD West Tower, Toronto-Dominion Centre Toronto, ON M5K 1K7 Fax: 416-304-1313 **Robert I. Thornton** Tel: 416-304-0560 Email: rthornton@tgf.ca **Leanne M. Williams** Tel: 416-304-0060 Email: lwilliams@tgf.ca **Rebecca L. Kennedy** Tel: 416-304-0603 Email: rkennedy@tgf.ca **Rachel A. Bengino** Tel: 416-304-1153 Email: rbengino@tgf.ca **Mitchell W. Grossell** Tel: 416-3047978 Email: mgrossell@tgf.ca Lawyers for the Applicant

AND TO:	**DELOITTE RESTRUCTURING INC.** Bay Adelaide East 8 Adelaide Street West Suite 200 Toronto, Ontario M5H 0A9 Fax: 416-601-6690 **Paul Casey** Tel: 416-775-7172 Email: paucasey@deloitte.ca **Warren Leung** Tel: 416-874-4461 Email: waleung@deloitte.ca The Monitor
AND TO:	**BLAKE, CASSELS & GRAYDON LLP** 199 Bay Street Suite 4000, Commerce Court West Toronto, ON M5L 1A9 Fax: 416-863-2653 **Pamela Huff** Tel: 416-863-2958 Email: pamela.huff@blakes.com **Linc Rogers** Tel: 416-863-4168 Email: linc.rogers@blakes.com **Chris Burr** Tel: 416-863-3261 Email: chris.burr@blakes.com **Aryo Shalviri** Tel: 416-863-2962 Email: aryo.shalviri@blakes.com **Caitlin McIntyre** Tel: 416-863-4174 Email: caitlin.mcintyre@blakes.com **Nancy Thompson**, Law Clerk Tel: 416-863-2437 Email: nancy.thompson@blakes.com Counsel to the Monitor

AND TO:	**BLUETREE ADVISORS INC.** First Canada Place 100 King Street West Suite 5600 Toronto, ON M5X 1C9 **William E. Aziz** Tel: 416-640-7122 Email: baziz@bluetreeadvisors.com
AND TO:	**STIKEMAN ELLIOTT LLP** Commerce Court West 199 Bay Street Suite 5300 Toronto, ON M5L 1B9 Fax: 416-947-0866 **David Byers** Tel: 416-869-5697 Email: dbyers@stikeman.com **Maria Konyukhova** Tel: 416-869-5230 Email: mkonyukhova@stikeman.com Lawyers for British American Tobacco p.l.c.
AND TO:	**OSLER, HOSKIN & HARCOURT LLP** 100 King Street West 1 First Canadian Place Suite 6100, P.O. Box 50 Toronto, ON M5X 1B8 Fax: 416-862-6666 **Deborah Glendinning** Tel: 416-862-4714 Email: dglendinning@osler.com **Marc Wasserman** Tel: 416-862-4908 Email: mwasserman@osler.com **John A. MacDonald** Tel: 416-862-5672 Email: jmacdonald@osler.com

	Michael De Lellis Tel: 416-862-5997 Email: mdelellis@osler.com Lawyers for Imperial Tobacco Canada Limited
AND TO:	**MCCARTHY TÉTRAULT LLP** 66 Wellington Street West Suite 5300 TD Bank Tower, Box 48 Toronto, ON M5K 1E6 Fax: 416-868-0673 **James Gage** Tel: 416-601-7539 Email: jgage@mccarthy.ca **Heather Meredith** Tel: 416-601-8342 Email: hmeredith@mccarthy.ca **Paul Steep** Tel: 416-601-7998 Email: psteep@mccarthy.ca Lawyers for Rothmans, Benson & Hedges, Inc.
AND TO:	**TORYS LLP** 79 Wellington St. West, Suite 3000 Box 270, TD Centre Toronto, ON M5K 1N2 Fax: 416-865-7380 **Scott Bomhof** Tel: 416-865-7370 Email: sbomhof@torys.com **Adam Slavens** Tel: 416-865-7333 Email: aslavens@torys.com Lawyers for JT Canada LLC Inc. and PricewaterhouseCoopers Inc., in its capacity as receiver of JTI-Macdonald TM Corp.

AND TO:	**PRICEWATERHOUSECOOPERS** PwC Tower 18 York St., Suite 2600 Toronto, ON M5J 0B2 Fax: 416-814-3210 **Mica Arlette** Tel: 416-814-5834 Email: mica.arlette@ca.pwc.com Receiver and Manager of JTI-Macdonald TM Corp.
AND TO:	**BENNETT JONES** 100 King Street West Suite 3400 Toronto, ON M5X 1A4 Fax: 416-863-1716 **Jeff Leon** Tel: 416-777-7472 Email: leonj@bennettjones.com **Mike Eizenga** Tel: 416-777-4879 Email: eizengam@bennettjones.com **Sean Zweig** Tel: 416-777-6254 Email: zweigs@bennettjones.com Lawyers for the Provinces of British Columbia, Manitoba, New Brunswick, Nova Scotia, Prince Edward Island and Saskatchewan, in their capacities as plaintiffs in the HCCR Legislation claims
AND TO:	**MINISTRY OF THE ATTORNEY GENERAL** Crown Law Office - Civil 720 Bay Street, 8th Floor Toronto, ON M7A 2S9 Fax: 416-326-4181 **Jacqueline Wall** Tel: 416-325-8435 Email: jacqueline.wall@ontario.ca

AND TO:	**FISHMAN FLANZ MELAND PAQUIN LLP** 4100 – 1250 René-Lévesque Blvd. West Montreal, Quebec H3A 3H3 **Avram Fishman** Email: afishman@ffmp.ca **Mark E. Meland** Tel: 514-932-4100 Email: mmeland@ffmp.ca **CHAITONS LLP** 5000 Yonge Street 10th Floor Toronto, ON M2N 7E9 **Harvey Chaiton** Tel: 416-218-1129 Email: harvey@chaitons.com Lawyers for Conseil québécois sur le tabac et la santé, Jean-Yves Blais and Cécilia Létourneau (Quebec Class Action Plaintiffs)

Email Service List

rthornton@tgf.ca; lwilliams@tgf.ca; rkennedy@tgf.ca; rbengino@tgf.ca; mgrossell@tgf.ca; paucasey@deloitte.ca; waleung@deloitte.ca; pamela.huff@blakes.com; linc.rogers@blakes.com; chris.burr@blakes.com; aryo.shalviri@blakes.com; caitlin.mcintyre@blakes.com; ilia.kravtsov@blakes.com; nancy.thompson@blakes.com; baziz@bluetreeadvisors.com; dbyers@stikeman.com; mkonyukhova@stikeman.com; dglendinning@osler.com; mwasserman@osler.com; jmacdonald@osler.com; mdelellis@osler.com; jgage@mccarthy.ca; hmeredith@mccarthy.ca; psteep@mccarthy.ca; sbomhof@torys.com; aslavens@torys.com; mica.arlette@ca.pwc.com; leonj@bennettjones.com; eizengam@bennettjones.com; zweigs@bennettjones.com; jacqueline.wall@ontario.ca; afishman@ffmp.ca; mmeland@ffmp.ca; harvey@chaitons.com;

TAB 1

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

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.

NOTICE OF MOTION

The Quebec Class Action Plaintiffs[1] will make a motion to Justice McEwen presiding over the Commercial List on Monday, March 18, 2019 at 10:00 a.m., or as soon thereafter as the motion can be heard, at 330 University Avenue, Toronto, Ontario.

PROPOSED METHOD OF HEARING: The motion is to be heard orally.

THE MOTION IS FOR:

1. an order, if necessary, abridging the time for service and filing of this Notice of Motion and the Motion Record of the Quebec Class Action Plaintiffs, and dispensing with service on any person other than those served;

2. an order suspending the operation of paragraphs 8(c) and 8(d) of the Initial Order of Justice Hainey dated March 8, 2019 (the "**Initial Order**") by prohibiting payments of principal,

[1] The plaintiffs in the two class action lawsuits instituted in Quebec in 1998 on behalf of approximately 1.1 million members known as *Blais* and *Letourneau*.

interest and royalties to JTI-Macdonald TM Corp. ("**TM**") pending further order of the Court;

3. an order reserving the rights of the Quebec Class Action Plaintiffs to oppose or seek a variation of the Initial Order at the hearing of the Comeback Motion[2] scheduled for April 4, 2019; and

4. such further and other relief as this Court may deem just.

THE GROUNDS FOR THE MOTION ARE:

1. At an *ex parte* hearing before Justice Hainey on March 8, 2019 on an application by the Applicant under the CCAA, the Applicant was granted various extraordinary relief, including but not limited to, the power to make principal and interest payments to its related entity TM, under certain debentures described in the McMaster Affidavit[3], on the grounds that "there would be potential adverse tax consequences to its senior secured creditor if such payments were suspended for a significant period of time." Similarly, the Applicant was authorized to make royalty payments to TM on the grounds that the failure to make such payments, if it led to the termination of the Trade Mark Agreement as defined in the McMaster Affidavit, would likely cause the cessation of the Applicant's business.

2. The event triggering the application for the Initial Order was the unanimous judgment of a bench of five justices of the Court of Appeal of Quebec (the "**Quebec CA**") released on March 1, 2019 (the "**Appeal Judgment**") upholding, with very minor exceptions, the

[2] All capitalized terms not defined herein are used as defined in the Initial Order.
[3] Affidavit of Robert McMaster sworn March 8, 2019.

decision of the lower court rendered on May 27, 2015 (the "**Riordan Judgment**")[4] which ordered the Applicant, together with Imperial Tobacco Canada Limited ("**ITL**") and Rothmans, Benson & Hedges Inc. ("**RBH**") to pay damages to the Quebec Class Action Plaintiffs that, with interest and the additional indemnity provided by law, exceed $13.5 billion in the aggregate.

3. In the Riordan Judgment, Justice Riordan characterized "the tangled web" of JTIM's interco contracts as "a creditor proofing exercise". Those contracts include the debentures and trade mark agreements pursuant to which the Applicant proposes to continue to make payments to its related entity during the pendency of this CCAA proceeding. All of these contracts are subject to review and challenge.

4. There is no reason why the Applicant should be empowered and authorized to make any payments of principal, interest or royalties due to related parties absent a full hearing on all issues arising from the Initial Order, currently scheduled for April 4, 2019. Among other things, no evidence has been submitted by the Applicant to suggest that these payments are required to be made in order to preserve or carry on its business while operating under the protection of this Court.

5. Furthermore, when the Applicant obtained an Initial Order from Justice Farley on its previous CCAA filing on August 24, 2004[5], these same payments to TM were not permitted.

[4] Only the Conclusions of the Riordan Judgment were filed as Exhibit X to the McMaster Affidavit, but the reasons of the trial judge were not included.
[5] The Initial Order of Justice Farley was filed as Exhibit FF to the McMaster Affidavit.

6. As appears from the Riordan Judgment, the purpose of the interco transactions was to eliminate the Applicant's average annual earnings through the payment of interest and royalties to related parties in transactions characterized by Justice Riordan, as a "sham".

7. As further appears from the Riordan Judgment, after it sought protection under the CCAA in 2004, and in respect of essentially the same obligations:

   (a) the Applicant made no interest or royalty payments in 2004 and 2005;

   (b) in 2006, the Applicant paid interest and royalties after furnishing the CCAA Monitor with letters of credit issued on the strength of a related party;

   (c) no interest or royalty payments were paid by the Applicant in 2007 and 2008;

   (d) from 2009 through 2012, the interest rate on the debentures due to TM was reduced from 7% to zero;

   (e) in 2009, TM "amended" the Trade Mark Agreement to reduce the rate of royalty payments by 50%; and

   (f) in 2012, TM once again "amended" its debentures to increase the rate of interest from zero to 7%, thereby reinstating an obligation on the part of the Applicant to pay approximately $100 million per annum starting in 2013.

8. In a 2017 Debenture Amending Agreement[6] dated August 3, 2017, the interest rate payable by the Applicant to TM on the debentures was fixed at the rate of 7.75% per annum.

[6] Filed as Exhibit N to the McMaster Affidavit.

9. The present motion is urgent as the next interest payment to TM in the amount of $7.648 million is to be paid by the Applicant during the week of March 18, 2019 according to the Applicant's 13-week cash flow statement.

10. Rules 37.14(1) and 39.01(6) of the Rules of Civil Procedure (Ontario).

11. Such further grounds as counsel may advise and this Honourable Court may permit.

THE FOLLOWING DOCUMENTARY EVIDENCE will be used at the hearing of the motion:

1. The Affidavit of Amy Casella sworn on March 15, 2019 and the documents attached thereto; and

2. Such further and other materials as counsel may advise and this Honorable Court may permit.

March 15, 2019

Fishman Flanz Meland Paquin LLP
1250 René-Levesque Blvd. West
Suite 4100
Montreal, Quebec H3B 4W8

Avram Fishman
Email: afishman@ffmp.ca

Mark E. Meland
Email: mmeland@ffmp.ca

Tel: 514-932-4100
Fax: 514-932-4170

CHAITONS LLP
5000 Yonge St., 10th floor
Toronto, Ontario M2N 7E9

Harvey Chaiton
Tel: 416-218-1129
Email: harvey@chaitons.com

George Benchetrit
Tel: 416-218-1141
Email: george@chaitons.com

Lawyers for the Quebec Class Action Plaintiffs

TAB 2

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

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.

AFFIDAVIT OF AMY CASELLA

I, Amy Casella, of the City of Toronto, in the Province of Ontario, **MAKE OATH AND SAY AS FOLLOWS:**

1. I am a Legal Secretary in the law firm of Chaitons LLP, lawyers for the Quebec Class Action Plaintiffs, and as such have knowledge of the matters hereinafter deposed.

2. Attached hereto and marked are copies of the following exhibits

Exhibit "A"	Initial Order of Justice Hainey dated March 8, 2019
Exhibit "B"	Extracts from Judgment of Justice Riordan dated May 27, 2015
Exhibit "C"	Extracts of Judgment of Court of Appeal of Quebec (Unofficial Translation)
Exhibit "D"	Affidavit of Robert McMaster sworn March 8, 2019 (without exhibits)
Exhibit "E"	Initial Order of Justice Farley dated August 24, 2004
Exhibit "F"	TM Debenture Amending Agreement dated August 3, 2017

SWORN before me at the City of Toronto, Province of Ontario, this 15th day of March, 2019

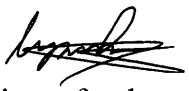
A Commissioner, Etc.

Amy Casella

Doc#4424257v1

TAB A

This is Exhibit "A" to the Affidavit of Amy Casella
sworn on March 15, 2019



A Commissioner for the taking of affidavits, etc.

Court File No. 19-CV- 615462-00CL

ONTARIO
SUPERIOR COURT OF JUSTICE
(COMMERCIAL LIST)

THE HONOURABLE	)	FRIDAY, THE 8TH
	)	
JUSTICE HAINEY	)	DAY OF MARCH, 2019
	)	

IN THE MATTER OF THE *COMPANIES' CREDITORS ARRANGEMENT ACT*, R.S.C. 1985, c. C-36, AS AMENDED

AND IN THE MATTER OF A PLAN OF COMPROMISE OR ARRANGEMENT OF **JTI-MACDONALD CORP.**

INITIAL ORDER

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

ON READING (i) the affidavit of Robert McMaster sworn March 8, 2019 and the exhibits thereto (the "**McMaster Affidavit**") and (ii) the pre-filing report dated March 8, 2019 (the "**Pre-Filing Report**") of Deloitte Restructuring Inc. ("**Deloitte**") in its capacity as the proposed Monitor of the Applicant (the "**Monitor**") and on being advised that JTI-Macdonald TM Corp. and JT Canada LLC Inc., the secured creditors who are likely to be affected by the charges created herein (the "**Secured Creditors**") were given notice, and on hearing the submissions of counsel for the Applicant, the Secured Creditors, Deloitte and on reading the consent of Deloitte to act as the Monitor,

SERVICE

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

APPLICATION

2. **THIS COURT ORDERS AND DECLARES** that the Applicant is a company to which the CCAA applies.

PLAN OF ARRANGEMENT

3. **THIS COURT ORDERS** that the Applicant shall have the authority to file and may, subject to further order of this Court, file with this Court a plan of compromise or arrangement (hereinafter referred to as the "**Plan**").

DEFINITIONS

4. **THIS COURT ORDERS** that for purposes of this Order:

(a) "**JTI Group**" means entities related to or affiliated with the Applicant;

(b) "**Pending Litigation**" means any and all actions, applications and other lawsuits existing at the time of this Order in which the Applicant is a named defendant or respondent (either individually or with other Persons (as defined below)), relating in any way whatsoever to a Tobacco Claim (as defined below), including, without limitation, the Quebec Class Actions (as defined below), the Additional Class Actions and the HCCR Actions (as each of those terms is defined in the McMaster Affidavit);

(c) **"Quebec Class Actions"** means the proceedings in the Quebec Superior Court and the Quebec Court of Appeal in (i) *Cécilia Létourneau et al. v. JTI-Macdonald*

Corp., Imperial Tobacco Canada Limited and Rothmans, Benson & Hedges Inc. and (ii) *Conseil Québécois sur le Tabac et la Santé and Jean-Yves Blais v. JTI-Macdonald Corp., Imperial Tobacco Canada Limited and Rothmans, Benson & Hedges Inc.* and all decisions and orders in such proceedings;

(d) "**Sales & Excise Taxes**" means all goods and services, harmonized sales or other applicable federal, provincial or territorial sales taxes, and all federal excise taxes and customs and import duties and all federal, provincial and territorial tobacco taxes;

(e) "**Tobacco Claim**" means any right or claim (including, without limitation, a claim for contribution or indemnity) of any Person against or in respect of the Applicant or any member of the JTI Group that has been advanced (including without limitation, in the Pending Litigation), that could have been advanced or that could be advanced, and whether such right or claim is on such Person's own account, on behalf of another Person, as a dependent of another Person or on behalf of a certified or proposed class or made or advanced as a government body or agency, insurer, employer or otherwise under or in connection with:

(i) applicable law, to recover damages in respect of the development, manufacture, production, marketing, advertising, distribution, purchase or sale of Tobacco Products (as defined below), the use of or exposure to Tobacco Products or any representation in respect of Tobacco Products in Canada or, in the case of the Applicant, anywhere else in the world; or

(ii) the HCCR Legislation (as defined in the McMaster Affidavit),

excluding any right or claim of a supplier relating to goods or services supplied to, or the use of leased or licensed property by, the Applicant or any member of the JTI Group; and

(f) "**Tobacco Products**" means tobacco or any product made or derived from tobacco or containing nicotine that is intended for human consumption, including any component, part, or accessory of or used in connection with a tobacco product, including cigarettes, cigarette tobacco, roll your own tobacco, smokeless tobacco, electronic cigarettes, vaping liquids and devices, heat-not-burn tobacco, and any other tobacco or nicotine delivery systems and shall include materials, products and by-products derived from or resulting from the use of any tobacco products.

POSSESSION OF PROPERTY AND OPERATIONS

5. **THIS COURT ORDERS** that the Applicant shall remain in possession and control of its current and future assets, undertakings and properties of every nature and kind whatsoever, and wherever situate including all proceeds thereof (the "**Property**"). Subject to further Order of this Court, the Applicant shall continue to carry on business in a manner consistent with the preservation of its business (the "**Business**") and Property. The Applicant is authorized and empowered to continue to retain and employ the employees, independent contractors, consultants, agents, experts, accountants, counsel and such other persons (collectively "**Assistants**") currently retained or employed by it, with liberty to retain such further Assistants as it deems reasonably necessary or desirable in the ordinary course of business, to preserve the value of the Property or the Business, or for the carrying out of the terms of this Order.

6. **THIS COURT ORDERS** that the Applicant shall be entitled to continue to utilize the central cash management system currently in place as described in the McMaster Affidavit or replace it with another substantially similar central cash management system (the "**Cash Management System**") and that any present or future bank providing the Cash Management System shall not be under any obligation whatsoever to inquire into the propriety, validity or legality of any transfer, payment, collection or other action taken under the Cash Management System, or as to the use or application by the Applicant of funds transferred, paid, collected or otherwise dealt with in the Cash Management System, shall be entitled to provide the Cash Management System without any liability in respect thereof to any Person (as hereinafter defined) other than the Applicant, pursuant to the terms of the documentation applicable to the Cash Management System, and shall be, in its capacity as provider of the Cash Management System, an unaffected creditor under the Plan with regard to any claims or expenses it may suffer or incur in connection with the provision of the Cash Management System.

7. **THIS COURT ORDERS** that the Applicant shall be entitled but not required to pay the following expenses whether incurred prior to, on or after the date of this Order:

(a) all outstanding and future wages, salaries, commissions, compensation, vacation pay, bonuses, incentive plan payments, employee and retiree pension and other benefits and related contributions and payments (including, without limitation, expenses related to employee and retiree medical, dental, disability, life insurance and similar benefit plans or arrangements, employee assistance programs and contributions to or any payments in respect of the Pension Plans (as defined in the McMaster Affidavit), reimbursement expenses (including, without limitation, amounts charged to corporate credit cards), termination pay, salary continuance

and severance pay, all of which is payable to or in respect of employees, independent contractors and other personnel, in each case incurred in the ordinary course of business and consistent with existing compensation policies and arrangements or with Monitor approval; and

(b) the fees and disbursements of any Assistants retained or employed by the Applicant at their standard rates and charges.

8. **THIS COURT ORDERS** that, except as otherwise provided to the contrary herein, the Applicant shall be entitled but not required to pay all reasonable expenses incurred by the Applicant in carrying on the Business in the ordinary course prior to, on or after the making of this Order, and in carrying out the provisions of this Order, which expenses shall include, without limitation:

(a) all expenses and capital expenditures reasonably necessary for the preservation of the Property or the Business including, without limitation, payments on account of insurance (including directors and officers insurance), maintenance and security services;

(b) capital expenditures other than as permitted in clause (a) above to replace or supplement the Property or that are otherwise of benefit to the Business, provided that Monitor approval is obtained for any single such expenditure in excess of $1 million or an aggregate of such expenditures in a calendar year in excess of $10 million;

(c) all interest due and payable on the Applicant's secured obligations; and

(d) payment for goods or services supplied or to be supplied to the Applicant (including the payment of any royalties or shared services).

9. **THIS COURT ORDERS** that the Applicant is authorized to complete outstanding transactions and engage in new transactions with the members of the JTI Group and to continue, on and after the date hereof, to buy and sell goods and services, and to allocate, collect and pay costs, expenses and other amounts from and to the members of the JTI Group, including without limitation in relation to finished, unfinished and semi-finished materials, personnel, administrative, technical and professional services, and royalties and fees in respect of trademark licences (collectively, all transactions and all inter-company policies and procedures between the Applicant and any member of the JTI Group, the "**Intercompany Transactions**") in the ordinary course of business or as otherwise approved by the Monitor. All Intercompany Transactions in the ordinary course of business between the Applicant and any member of the JTI Group, including the provision of goods and services from any member of the JTI Group to the Applicant, shall continue on terms consistent with existing arrangements or past practice or as otherwise approved by the Monitor.

10. **THIS COURT ORDERS** that the Applicant shall remit, in accordance with legal requirements, or pay (whether levied, accrued or collected before, on or after the date of this Order):

(a) any statutory deemed trust amounts in favour of the Crown in right of Canada or of any Province thereof or any other taxation authority which are required to be deducted from employees' wages, including, without limitation, amounts in respect of (i) employment insurance, (ii) Canada Pension Plan, (iii) Quebec Pension Plan, and (iv) income taxes;

(b) all Sales & Excise Taxes required to be remitted by the Applicant in connection with the Business; and

(c) any amount payable to the Crown in right of Canada or of any Province thereof or any political subdivision thereof or any other taxation authority in respect of municipal realty, municipal business or other taxes, assessments or levies of any nature or kind which are entitled at law to be paid in priority to claims of secured creditors and which are attributable to or in respect of the carrying on of the Business by the Applicant.

11. **THIS COURT ORDERS** that the Applicant is authorized to post and to continue to have posted cash collateral, letters of credit, performance bonds, payment bonds, surety bonds, guarantees and other forms of security from time to time, in an aggregate amount not exceeding $18 million (the "**Bonding Collateral**"), to satisfy regulatory or administrative requirements to provide security that have been imposed on it in the ordinary course and consistent with past practice in relation to the collection and remittance of federal excise taxes and customs and import duties and federal, provincial and territorial tobacco taxes, whether the Bonding Collateral is provided directly or indirectly by the Applicant as such security, and the Applicant is authorized to post and to continue to have posted surety bonds with Chubb Insurance Company of Canada (f/k/a ACE INA Insurance) and any other issuers of Bonding Collateral as security therefor.

12. **THIS COURT ORDERS** that the Canadian federal, provincial and territorial authorities entitled to receive payments or collect monies from the Applicant in respect of Sales & Excise Taxes are hereby stayed during the Stay Period (as defined below) from requiring that any additional bonding or other security be posted by or on behalf of the Applicant in connection with Sales & Excise Taxes or any other matters for which such bonding or security may otherwise be required.

13. **THIS COURT ORDERS** that until a real property lease is disclaimed or resiliated in accordance with the CCAA, the Applicant shall pay all amounts constituting rent or payable as rent under real property leases (including, for greater certainty, common area maintenance charges, utilities and realty taxes and any other amounts payable to the landlord under the lease) or as otherwise may be negotiated between the Applicant and the landlord from time to time ("**Rent**"), for the period commencing from and including the date of this Order, at such intervals as such Rent is usually paid in the ordinary course of business. On the date of the first of such payments, any Rent relating to the period commencing from and including the date of this Order shall also be paid.

14. **THIS COURT ORDERS** that, except as specifically 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 or claims to which it is subject to any of its creditors as of this date and to post no security in respect of any such amounts or claims, including pursuant to any order or judgment; (b) to grant no security interests, trust, liens, charges or encumbrances upon or in respect of any of its Property; and (c) to not grant credit or incur liabilities except in the ordinary course of the Business.

RESTRUCTURING

15. **THIS COURT ORDERS** that the Applicant shall, subject to such requirements as are imposed by the CCAA, have the right to:

(a) permanently or temporarily cease, downsize or shut down any of its business or operations, and to dispose of redundant or non-material assets not exceeding $5 million in any one transaction or $10 million in the aggregate;

(b) terminate the employment of such of its employees or temporarily lay off such of its employees as it deems appropriate;

(c) pursue all avenues of refinancing of the Business or Property, in whole or part, subject to prior approval of this Court being obtained before any material refinancing; and

(d) pursue all avenues to resolve any of the Tobacco Claims, in whole or in part,

all of the foregoing to permit the Applicant to proceed with an orderly restructuring of the Business.

16. **THIS COURT ORDERS** that the Applicant shall provide each of the relevant landlords with notice of the Applicant's intention to remove any fixtures from any leased premises at least seven (7) days prior to the date of the intended removal. The relevant landlord shall be entitled to have a representative present in the leased premises to observe such removal and, if the landlord disputes the Applicant's entitlement to remove any such fixture under the provisions of the lease, such fixture shall remain on the premises and shall be dealt with as agreed between any applicable secured creditors, such landlord and the Applicant, or by further Order of this Court upon application by the Applicant on at least two (2) days' notice to such landlord and any such secured creditors. If the Applicant disclaims or resiliates the lease governing such leased premises in accordance with Section 32 of the CCAA, it shall not be required to pay Rent under such lease pending resolution of any such dispute (other than Rent payable for the notice period provided for in Section 32(5) of the CCAA), and the disclaimer or resiliation of the lease shall be without prejudice to the Applicant's claim to the fixtures in dispute.

17. **THIS COURT ORDERS** that if a notice of disclaimer or resiliation is delivered pursuant to Section 32 of the CCAA, then (a) during the notice period prior to the effective time

of the disclaimer or resiliation, the landlord may show the affected leased premises to prospective tenants during normal business hours, on giving the Applicant and the Monitor 24 hours' prior written notice, and (b) at the effective time of the disclaimer or resiliation, the relevant landlord shall be entitled to take possession of any such leased premises without waiver of or prejudice to any claims or rights such landlord may have against the Applicant in respect of such lease or leased premises, provided that nothing herein shall relieve such landlord of its obligation to mitigate any damages claimed in connection therewith.

STAY OF PROCEEDINGS

18. **THIS COURT ORDERS** that until and including April 5, 2019, or such later date as this Court may order (the "**Stay Period**"), no proceeding or enforcement process in any court or tribunal (each, a "**Proceeding**"), including but not limited to the Pending Litigation and any other Proceeding in relation to a Tobacco Claim, shall be commenced, continued or take place against or in respect of the Applicant or the Monitor, or affecting the Business or the Property, except with the written consent of the Applicant and the Monitor, or with leave of this Court, and any and all Proceedings currently under way or directed to take place against or in respect of the Applicant or affecting the Business or the Property are hereby stayed and suspended pending further Order of this Court. All counterclaims, cross-claims and third party claims of the Applicant in the Pending Litigation are likewise subject to this stay of Proceedings during the Stay Period.

19. **THIS COURT ORDERS** that during the Stay Period, (i) none of the Pending Litigation or any Proceeding in relation thereto shall be commenced, continued or take place against or in respect of any Person named as a defendant or respondent in any of the Pending Litigation (such Persons, the "**Other Defendants**"); and (ii) no Proceeding in Canada that relates in any way to a

Tobacco Claim or to the Applicant, the Business or the Property shall be commenced, continued or take place against or in respect of any member of the JTI Group or R. J. Reynolds Tobacco Company or R. J. Reynolds Tobacco International, Inc.; except, in either case, with the written consent of the Applicant and the Monitor, or with leave of this Court, and any and all such Proceedings currently underway or directed to take place against or in respect of any of the Other Defendants or any member of the JTI Group, or affecting the Business or the Property are hereby stayed and suspended pending further Order of this Court.

20. **THIS COURT ORDERS** that, notwithstanding anything to the contrary in this Order, the Applicant is authorized to continue, and the applicable Other Defendants are not stayed from continuing, to contest the Quebec Class Actions during the Stay Period (the "**Further Quebec Class Action Proceedings**"), including without limitation by way of an application for leave to appeal to the Supreme Court of Canada and an appeal on the merits to the Supreme Court of Canada if leave is granted. Nothing in this Order shall prevent any Person from responding to the Further Quebec Class Action Proceedings, provided that during the Stay Period this paragraph does not, without further order of this Court, permit the Applicant to post security or grant any security interest, or permit any Person to seek security from the Applicant in relation to the Further Quebec Class Action Proceedings.

21. **THIS COURT ORDERS** that, to the extent any prescription, time or limitation period relating to any Proceeding against or in respect of the Applicant, any of the Other Defendants or any member of the JTI Group that is stayed pursuant to this Order may expire, the term of such prescription, time or limitation period shall hereby be deemed to be extended by a period equal to the Stay Period.

NO EXERCISE OF RIGHTS OR REMEDIES

22. **THIS COURT ORDERS** that during the Stay Period, all rights and remedies of any individual, firm, corporation, governmental body or agency, or any other entities (all of the foregoing, collectively being "**Persons**" and each being a "**Person**") against or in respect of the Applicant or the Monitor, or affecting the Business or the Property (including for greater certainty, any enforcement process or steps or other rights and remedies under or relating to the Quebec Class Actions or any enforcement process or other steps in respect of the Applicant or the JTI Group's trademarks or other intellectual property used by the Applicant), are hereby stayed and suspended except with the written consent of the Applicant and the Monitor, or leave of this Court, provided that nothing in this Order shall (i) empower the Applicant to carry on any business which the Applicant is not lawfully entitled to carry on, (ii) affect such investigations, actions, suits or proceedings by a regulatory body as are permitted by Section 11.1 of the CCAA, (iii) prevent the filing of any registration to preserve or perfect a security interest, or (iv) prevent the registration of a claim for lien.

NO INTERFERENCE WITH RIGHTS

23. **THIS COURT ORDERS** that during the Stay Period, no Person shall discontinue, fail to honour, alter, interfere with, repudiate, terminate or cease to perform any right, renewal right, contract, agreement, licence or permit in favour of or held by the Applicant, except with the written consent of the Applicant and the Monitor, or leave of this Court.

CONTINUATION OF SERVICES

24. **THIS COURT ORDERS** that 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 all computer software, communication and other data services, centralized banking services, payroll services, insurance, transportation services, utility, customs clearing, warehouse or logistical services, or other services to the Business or the Applicant, are hereby restrained until further Order of this Court from discontinuing, 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 its current premises, 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 accordance with normal payment practices of the Applicant or such other practices as may be agreed upon by the supplier or service provider and each of the Applicant and the Monitor, or as may be ordered by this Court.

NON-DEROGATION OF RIGHTS

25. **THIS COURT ORDERS** that, notwithstanding anything else in this Order, no Person shall be prohibited from requiring immediate payment for goods, services, use of leased or licensed property or other valuable consideration provided on or after the date of this Order, nor shall any Person be under any obligation on or after the date of this Order to advance or re-advance any monies or otherwise extend any credit to the Applicant. Nothing in this Order shall derogate from the rights conferred and obligations imposed by the CCAA.

SALES AND EXCISE TAX CHARGE

26. **THIS COURT ORDERS** that the Canadian federal, provincial and territorial authorities that are entitled to receive payments or collect monies from the Applicant in respect of Sales & Excise Taxes shall be entitled to the benefit of and are hereby granted a charge (the "**Sales and Excise Tax Charge**") on the Property, which charge shall not exceed an aggregate amount of

$127 million, as security for all amounts owing by the Applicant in respect of Sales & Excise Taxes. The Sales and Excise Tax Charge shall have the priority set out in paragraphs 41 and 43 herein.

PROCEEDINGS AGAINST DIRECTORS AND OFFICERS

27. **THIS COURT ORDERS** that during the Stay Period, and except as permitted by subsection 11.03(2) of the CCAA, no Proceeding may be commenced or continued against any of the former, current or future directors or officers of the Applicant with respect to any claim against the directors or officers that arose before the date hereof and that relates to any obligations of the Applicant whereby the directors or officers are alleged under any law to be liable in their capacity as directors or officers for the payment or performance of such obligations.

DIRECTORS' AND OFFICERS' INDEMNIFICATION AND CHARGE

28. **THIS COURT ORDERS** that the Applicant shall indemnify its directors and officers against obligations and liabilities that they may incur as directors or officers of the Applicant after the commencement of the within proceedings, except to the extent that, with respect to any officer or director, the obligation or liability was incurred as a result of the director's or officer's gross negligence or wilful misconduct.

29. **THIS COURT ORDERS** that the directors and officers of the Applicant shall be entitled to the benefit of and are hereby granted a charge (the "**Directors' Charge**") on the Property, which charge shall not exceed an aggregate amount of $4.1 million, as security for the indemnity provided in paragraph 28 of this Order. The Directors' Charge shall have the priority set out in paragraphs 41 and 43 herein.

30. **THIS COURT ORDERS** that, notwithstanding any language in any applicable insurance policy to the contrary, (a) no insurer shall be entitled to be subrogated to or claim the benefit of the Directors' Charge, and (b) the Applicant's directors and officers shall only be entitled to the benefit of the Directors' Charge to the extent that they do not have coverage under any directors' and officers' insurance policy, or to the extent that such coverage is insufficient to pay amounts indemnified in accordance with paragraph 28 of this Order.

CRO APPOINTMENT

31. **THIS COURT ORDERS** that

(a) the agreement dated as of April 23, 2018 pursuant to which the Applicant has engaged BlueTree Advisors Inc. ("**BlueTree**") to provide the services of William E. Aziz to act as chief restructuring officer to the Applicant (the "**CRO**"), a copy of which is attached as Confidential Exhibit "1" to the McMaster Affidavit (the "**CRO Engagement Letter**"), and the appointment of the CRO pursuant to the terms thereof is hereby approved, including, without limitation, the payment of the fees and expenses contemplated thereby;

(b) the CRO shall not be or be deemed to be a director or employee of the Applicant;

(c) neither BlueTree nor the CRO shall, as a result of the performance of their respective obligations and services in accordance with the terms of the CRO Engagement Letter, be deemed to be in Possession (as defined below) of any of the Property within the meaning of any Environmental Legislation (as defined below);

(d) BlueTree and the CRO shall not have any liability with respect to any losses, claims, damages or liabilities, of any nature or kind, to any Person from and after the date of this Order except to the extent such losses, claims, damages or liabilities result from the negligence or wilful misconduct on the part of BlueTree or the CRO;

(e) no action or other proceeding shall be commenced directly, or by way of counterclaim, third party claim or otherwise, against or in respect of BlueTree and the CRO, and all rights and remedies of any Person against or in respect of them are hereby stayed and suspended, except with the written consent of the CRO or with leave of this Court on notice to the Applicant, the Monitor and the CRO. Notice of any such motion seeking leave of this Court shall be served upon the Applicant, the Monitor and the CRO at least seven (7) days prior to the return date of any such motion for leave; and

(f) the obligations of the Applicant to BlueTree and the CRO pursuant to the CRO Engagement Letter shall be treated as unaffected and may not be compromised in any Plan or proposal filed under the *Bankruptcy and Insolvency Act*, R.S.C, 1985, c. B-3, as amended (the "**BIA**") in respect of the Applicant.

APPOINTMENT OF MONITOR

32. **THIS COURT ORDERS** that Deloitte Restructuring Inc. is hereby appointed pursuant to the CCAA as the Monitor, an officer of this Court, to monitor the business and financial affairs of the Applicant with the powers and obligations set out in the CCAA or set forth herein and that the Applicant and its shareholders, officers, directors, and Assistants shall advise the Monitor of all material steps taken by the Applicant pursuant to this Order, and shall co-operate fully with the Monitor in the exercise of its powers and discharge of its obligations and provide the Monitor with the assistance that is necessary to enable the Monitor to adequately carry out the Monitor's functions.

33. **THIS COURT ORDERS** that the Monitor, in addition to its prescribed rights and obligations under the CCAA, is hereby directed and empowered to:

(a) monitor the Applicant's receipts and disbursements;

(b) report to this Court at such times and intervals as the Monitor may deem appropriate with respect to matters relating to the Property, the Business, and such other matters as may be relevant to the proceedings herein;

(c) advise the Applicant in its preparation of the Applicant's cash flow statements, which information shall be reviewed with the Monitor;

(d) advise the Applicant in its development of the Plan and any amendments to the Plan;

(e) assist the Applicant, to the extent required by the Applicant, with the holding and administering of creditors' or shareholders' meetings for voting on the Plan;

(f) have full and complete access to the Property, including the premises, books, records, data, including data in electronic form, and other financial documents of the Applicant, to the extent that is necessary to adequately assess the Applicant's business and financial affairs or to perform its duties arising under this Order;

(g) be at liberty to engage independent legal counsel or such other persons as the Monitor deems necessary or advisable respecting the exercise of its powers and performance of its obligations under this Order;

(h) assist the Applicant, to the extent required by the Applicant, in its efforts to explore the potential for a resolution of any of the Tobacco Claims; and

(i) perform such other duties as are required by this Order or by this Court from time to time.

34. **THIS COURT ORDERS** that the Monitor shall not take possession of the Property and shall take no part whatsoever in the management or supervision of the management of the Business and shall not, by fulfilling its obligations hereunder, be deemed to have taken or maintained possession or control of the Business or Property, or any part thereof.

35. **THIS COURT ORDERS** that nothing herein contained shall require the Monitor to occupy or to take control, care, charge, possession or management (separately and/or collectively, "**Possession**") of any of the Property that might be environmentally contaminated, might be a pollutant or a contaminant, or might cause or contribute to a spill, discharge, release or deposit of a substance contrary to any federal, provincial or other law respecting the protection, conservation, enhancement, remediation or rehabilitation of the environment or relating to the disposal of waste or other contamination including, without limitation, the *Canadian Environmental Protection Act*, the Ontario *Environmental Protection Act*, the *Ontario Water Resources Act*, the Ontario *Occupational Health and Safety Act* the Quebec *Environment Quality Act*, the Quebec *Act Respecting Occupational Health and Safety* and regulations thereunder (the "**Environmental Legislation**"), provided however that nothing herein shall exempt the Monitor from any duty to report or make disclosure imposed by applicable Environmental Legislation. The Monitor shall not, as a result of this Order or anything done in pursuance of the Monitor's duties and powers under this Order, be deemed to be in Possession of any of the Property within the meaning of any Environmental Legislation, unless it is actually in possession.

36. **THIS COURT ORDERS** that the Monitor shall provide any creditor of the Applicant with information provided by the Applicant in response to reasonable requests for information made in writing by such creditor addressed to the Monitor. The Monitor shall not have any

responsibility or liability with respect to the information disseminated by it pursuant to this paragraph. In the case of information that the Monitor has been advised by the Applicant is confidential, the Monitor shall not provide such information to creditors unless otherwise directed by this Court or on such terms as the Monitor and the Applicant may agree.

37. **THIS COURT ORDERS** that, in addition to the rights and protections afforded 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 carrying out of the provisions of this Order, save and except for any gross negligence or wilful misconduct on its part. Nothing in this Order shall derogate from the protections afforded the Monitor by the CCAA or any applicable legislation.

38. **THIS COURT ORDERS** that the Monitor, counsel to the Monitor and counsel to the Applicant shall be paid their reasonable fees and disbursements, in each case at their standard rates and charges, by the Applicant as part of the costs of these proceedings and the CRO shall be paid its fees and expenses pursuant to the CRO Engagement Letter. The Applicant is hereby authorized and directed to pay the accounts of the Monitor, counsel for the Monitor and counsel for the Applicant on a bi-weekly basis and the fees and expenses of the CRO pursuant to the CRO Engagement Letter.

39. **THIS COURT ORDERS** that the Monitor and its legal counsel shall pass their accounts from time to time, and for this purpose the accounts of the Monitor and its legal counsel are hereby referred to a judge of the Commercial List of the Ontario Superior Court of Justice.

40. **THIS COURT ORDERS** that the Monitor, counsel to the Monitor, the CRO and counsel to the Applicant shall be entitled to the benefit of and are hereby granted a charge (the "**Administration Charge**") on the Property, which charge shall not exceed an aggregate amount

of $3 million, as security for their professional fees and disbursements incurred at the standard rates and charges of the Monitor and such counsel, both before and after the making of this Order in respect of these proceedings and the CRO, other than in respect of any success fee provided for in the CRO Engagement Letter. The Administration Charge shall have the priority set out in paragraphs 41 and 43 hereof.

VALIDITY AND PRIORITY OF CHARGES CREATED BY THIS ORDER

41. **THIS COURT ORDERS** that the priorities of the Administration Charge, the Directors' Charge, and the Sales and Excise Tax Charge (collectively, the "**Charges**" and each individually, a "**Charge**"), as among them, shall be as follows:

First – Administration Charge (to the maximum amount of $3 million);

Second — Directors' Charge (to the maximum amount of $4.1 million); and

Third – Sales and Excise Tax Charge (to the maximum amount of $127 million).

42. **THIS COURT ORDERS** that the filing, registration or perfection of 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.

43. **THIS COURT ORDERS** that each of the Charges shall constitute a charge on the Property and such Charges shall rank in priority to all other security interests, trusts, liens, charges, encumbrances and claims of secured creditors, statutory or otherwise (collectively, the "**Encumbrances**") in favour of any Person in respect of such Property, save and except for

(a) purchase-money security interests or the equivalent security interests under various provincial legislation and financing leases (that, for greater certainty, shall not include trade payables);

(b) statutory super-priority deemed trusts and liens for unpaid employee source deductions;

(c) deemed trusts and liens for any unpaid pension contribution or deficit with respect to the Pension Plans, but only to the extent that any such deemed trusts and liens are statutory super-priority deemed trusts and liens afforded priority by statute over all pre-existing Encumbrances granted or created by contract;

(d) liens for unpaid municipal property taxes or utilities that are given first priority over other liens by statute; and

(e) cash collateral deposited with a financial institution as security for letters of credit or bank guarantees issued by the financial institution at the request of the Applicant.

44. **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 ranks in priority to, or *pari passu* with, any of the Charges, unless the Applicant also obtains the prior written consent of the Monitor and the beneficiaries of the Charges affected thereby (collectively, the "**Chargees**"), or further Order of this Court.

45. **THIS COURT ORDERS** that the Charges shall not be rendered invalid or unenforceable and the rights and remedies of the Chargees shall not otherwise be limited or impaired in any way by (a) the pendency of these proceedings and the declarations of insolvency

made herein; (b) any application(s) for bankruptcy order(s) issued pursuant to the BIA, or any bankruptcy order made pursuant to such applications; (c) the filing of any assignments for the general benefit of creditors made pursuant to the BIA; (d) the provisions of any federal or provincial statutes; or (e) any negative covenants, prohibitions or other similar provisions with respect to borrowings, incurring debt or the creation of Encumbrances, contained in any existing loan documents, lease, sublease, offer to lease or other agreement (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 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 preferences, fraudulent conveyances, transfers at undervalue, oppressive conduct, or other challengeable or voidable transactions under any applicable law.

46. **THIS COURT ORDERS** that any Charge created by this Order over leases of real property in Canada shall only be a Charge in the Applicant's interest in such real property leases.

SERVICE AND NOTICE

47. **THIS COURT ORDERS** that the Monitor shall (i) without delay, publish in The Globe and Mail (National Edition) and La Presse a notice containing the information prescribed under the CCAA as well as the date of the Comeback Motion (as defined below), (ii) within five days

after the date of this Order or as soon as reasonably practicable thereafter, (A) make this Order publicly available in the manner prescribed under the CCAA, (B) send, in the prescribed manner, a notice (which shall include the date of the Comeback Motion) to every known creditor, except employees, who has a claim (contingent, disputed or otherwise) against the Applicant of more than $5,000, except with respect to (I) plaintiffs in the Pending Litigation, in which cases the Monitor shall only send a notice to counsel of record as applicable, and (II) beneficiaries of the Pension Plans in which case the Monitor shall only send a notice to the trustees of each of the Pension Plans and the Financial Services Commission of Ontario and the Régie Des Rentes Du Québec as applicable, and (C) prepare a list showing the names and addresses of those creditors and the estimated amounts of those claims, and make it publicly available in the prescribed manner, all in accordance with Section 23(1)(a) of the CCAA and the regulations made thereunder. The list referenced at subparagraph (C) above shall not include the names, addresses, or estimated amounts of the claims of those creditors who are individuals or any personal information in respect of an individual.

48. **THIS COURT ORDERS** that the E-Service Guide of the Commercial List (the "**Guide**") is approved and adopted by reference herein and, in this proceeding, the service of documents made in accordance with the Guide (which can be found on the Commercial List website at: www.ontariocourts.ca//scj/practice/practice-directions/toronto/eservice-commercial/) shall be valid and effective service. Subject to Rule 17.05 this Order shall constitute an order for substituted service pursuant to Rule 16.04 of the Rules of Civil Procedure. Subject to Rule 3.01(d) of the Rules of Civil Procedure and paragraph 13 of the Guide, service of documents in accordance with the Guide will be effective on transmission. This Court further orders that a Case Website shall be established by the Monitor in accordance with the Guide with the following URL ' www.insolvencies.deloitte.ca/en-ca/JTIM'.

49. **THIS COURT ORDERS** that if the service or distribution of documents in accordance with the Guide is not practicable, the Applicant and the Monitor are at liberty to serve or distribute this Order, any other materials and orders in these proceedings and any notices or other correspondence, by forwarding true copies thereof by prepaid ordinary mail, courier, personal delivery, facsimile or other electronic transmission to the Applicant's creditors or other interested parties at their respective addresses as last shown on the records of the Applicant and that any such service or notice by courier, personal delivery or facsimile or other electronic transmission shall be deemed to be received on the date of forwarding thereof, or if sent by ordinary mail, on the third business day after mailing.

50. **THIS COURT ORDERS** that the Applicant is authorized to rely upon the notice provided in paragraph 47 to provide notice of the comeback motion to be heard on a date to be set by this Court upon the granting of this Order (the "**Comeback Motion**") and shall only be required to serve motion materials relating to the Comeback Motion, in accordance with the Guide, upon those parties who serve a Notice of Appearance in this proceeding prior to the date of the Comeback Motion.

51. **THIS COURT ORDERS** that the Monitor shall create, maintain and update as necessary a list of all Persons appearing in person or by counsel in this proceeding (the "**Service List**"). The Monitor shall post the Service List, as may be updated from time to time, on the case website as part of the public materials to be recorded thereon in relation to this proceeding. Notwithstanding the foregoing, the Monitor shall have no liability in respect of the accuracy of or the timeliness of making any changes to the Service List.

52. **THIS COURT ORDERS** that the Applicant and the Monitor and their counsel are at liberty to serve or distribute this Order, any other materials and orders as may be reasonably

required in these proceedings, including any notices, or other correspondence, by forwarding true copies thereof by electronic message to the Applicant's creditors or other interested parties and their advisors. For greater certainty, any such distribution or service shall be deemed to be in satisfaction of a legal or juridical obligation, and notice requirements within the meaning of clause 3(c) of the Electronic Commerce Protection Regulations, Reg. 8100-2-175 (SOR/DORS).

53. **THIS COURT ORDERS** that, subject to paragraph 54, all motions in this proceeding are to be brought on not less than seven (7) calendar days' notice to all persons on the Service List. Each Notice of Motion shall specify a date (the "**Return Date**") and time for the hearing.

54. **THIS COURT ORDERS** that motions for relief on an urgent basis need not comply with the notice protocol described herein.

55. **THIS COURT ORDERS** that any interested Person wishing to object to the relief sought in a motion must serve responding motion material or, if they do not intend to file material, a notice in all cases stating the objection to the motion and the grounds for such objection in writing (the "**Responding Material**") to the moving party, the Applicant and the Monitor, with a copy to all Persons on the Service List, no later than 5 p.m. on the date that is four (4) calendar days prior to the Return Date (the "**Objection Deadline**").

56. **THIS COURT ORDERS** that, if no Responding Materials are served by the Objection Deadline, the judge having carriage of the motion (the "**Presiding Judge**") may determine:

(a) whether a hearing is necessary;

(b) whether such hearing will be in person, by telephone or by written submissions only; and

(c) the parties from whom submissions are required

(collectively, the "**Hearing Details**"). In the absence of any such determination, a hearing will be held in the ordinary course.

57. **THIS COURT ORDERS** that, if no Responding Materials are served by the Objection Deadline, the Monitor shall communicate with the Presiding Judge regarding whether a determination has been made by the Presiding Judge concerning the Hearing Details. The Monitor shall thereafter advise the Service List of the Hearing Details and the Monitor shall report upon its dissemination of the Hearing Details to the Court in a timely manner, which may be contained in the Monitor's next report in the proceeding.

58. **THIS COURT ORDERS** that if any party objects to the motion proceeding on the Return Date or believes that the Objection Deadline does not provide sufficient time to respond to the motion, such objecting party shall, promptly upon receipt of the Notice of Motion and in any event prior to the Objection Deadline, contact the moving party and the Monitor (together with the objecting party and any other party who has served Responding Materials, the "**Interested Parties**") to advise of such objection and the reasons therefor. If the Interested Parties are unable to resolve the objection to the timing and schedule for the motion following good faith consultations, the Interested Parties may seek a scheduling appointment before the Presiding Judge to be held prior to the Return Date or on such other date as may be mutually agreed by the Interested Parties or as directed by the Presiding Judge to establish a schedule for the motion. At the scheduling appointment, the Presiding Judge may provide directions including a schedule for the delivery of any further materials and the hearing of the contested motion, and may address such other matters, including interim relief, as the Court may see fit. Notwithstanding the foregoing, the Presiding Judge may require the Interested Parties to proceed with the contested motion on the Return Date or on any other date as may be directed by the

Presiding Judge or as may be mutually agreed by the Interested Parties, if otherwise satisfactory to the Presiding Judge.

SEALING

59. **THIS COURT ORDERS** that the Confidential Exhibit "1" to the McMaster Affidavit be and is hereby sealed pending further Order of the Court and shall not form part of the public record.

GENERAL

60. **THIS COURT ORDERS** that the Applicant or the Monitor may from time to time apply to this Court to amend, vary, supplement or replace this Order or for advice and directions concerning the discharge of their respective powers and duties under this Order or the interpretation or application of this Order.

61. **THIS COURT ORDERS** that nothing in this Order shall prevent the Monitor from acting as an interim receiver, a receiver, a receiver and manager, or a trustee in bankruptcy of the Applicant, the Business or the Property.

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

63. **THIS COURT ORDERS** that each of the Applicant and the Monitor be at liberty and is hereby authorized and empowered to apply to any court, tribunal, regulatory or administrative body, wherever located, for the recognition of this Order and for assistance in carrying out the terms of this Order, and that the Monitor is authorized and empowered to act as a representative in respect of the within proceedings for the purpose of having these proceedings recognized in a jurisdiction outside Canada.

64. **THIS COURT ORDERS** that any interested party (including the Applicant and the Monitor) may apply to this Court to vary or amend this Order on not less than seven (7) days notice to any other party or parties likely to be affected by the order sought or upon such other notice, if any, as this Court may order.

65. **THIS COURT ORDERS** that this Order and all of its provisions are effective as of 12:01 a.m. Eastern Standard/Daylight Time on the date of this Order (the "**Effective Time**") and that from the Effective Time to the time of the granting of this Order any action taken or notice given by any creditor of the Applicant or by any other Person to commence or continue any enforcement, realization, execution or other remedy of any kind whatsoever against the Applicant, the Property or the Business shall be deemed not to have been taken or given, as the case may be.

Hainey J.

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

MAR 0 8 2019

PER / PAR:

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

INITIAL ORDER

Thornton Grout Finnigan LLP
100 Wellington Street West
Suite 3200
TD West Tower, Toronto-Dominion Centre
Toronto, ON M5K 1K7

Robert I. Thornton (LSO# 24266B)
Email: rthornton@tgf.ca
Leanne M. Williams (LSO# 41877E)
Email: lwilliams@tgf.ca
Rebecca L. Kennedy (LSO# 61146S)
Email: rkennedy@tgf.ca

Tel: 416-304-1616
Fax: 416-304-1313

Lawyers for the Applicant

TAB B

This is Exhibit "B" to the Affidavit of Amy Casella
sworn on March 15, 2019

A Commissioner for the taking of affidavits, etc.

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

JR1353

that it be dealt with in the same manner as the punitive damages payable in the Létourneau File.

IX.E RBH'S LIABILITY FOR PUNITIVE DAMAGES

[1090] Concerning RBH, the only element that appears to stand out is Rothmans' efforts to stifle the initiative of Mr. O'Neill-Dunne in 1958, as discussed in section IV.B.1.a. That type of behaviour is not exclusive to RBH. It typifies what all the Companies and their predecessors were doing and is part of the fundamental reason for awarding punitive damages in the first place. As such, we do not see that it warrants a condemnation beyond the base amount.

[1091] We shall condemn RBH to punitive damages equal to its average annual before-tax earnings, an amount of $460,000,000. The division of this amount between the two files shall be the same as for ITL: The 10% for Létourneau represents $46,000,000.

IX.F JTM'S LIABILITY FOR PUNITIVE DAMAGES

[1092] As further discussed in section XI.D, JTM's situation takes a different turn as a result of the Interco Contracts. The Plaintiffs' position is the same with respect to using before-tax earnings as a base, but JTM's case differs from that of the other Companies.

[1093] It argues that the payments due under the Interco Contracts, totalling some $110 million a year in capital, interest and royalties (the "**Interco Obligations**"), should be accepted at face value. The result would be to reduce JTM's annual earnings to a deficit, since its average before-tax earnings are "only" $103 million. This would also have the advantage of rendering the choice between before and after-tax figures moot, although JTM favours the latter.

[1094] As a result of our approving the Entente in Chapter XI below, paragraphs 2138-2145 of the Plaintiffs' Notes become public[481]. There we find many of the relevant facts around how the Interco Contracts work to impose, artificially in the Plaintiffs' view, the Interco Obligations on JTM.

[1095] For example, the Japan Tobacco group caused JTM to transfer its trade marks valued at $1.2 billion to a new, previously-empty subsidiary, JTI-TM, in return for the latter's shares. This "Newco" charges JTM an annual royalty of some $10 million for the use of those trade marks. It is hard to conceive of a more artificial expense.

[1096] There is also a loan of $1.2 billion from JTI-TM to JTM for which JTM is charged $92 million a year in interest. One of the curious aspects of this loan is that JTM appears never to have received any funds as a result of it[482], although we must admit that Mr. Poirier's clear answer in this regard at page 115 of the transcript[483] became less clear later in his testimony.

---

[481] Paragraphs 2138-2145 of the Plaintiffs' Notes are reproduced in Schedule J to the present judgment.

[482] Testimony of Michel Poirier, May 23, 2014, at page 115.

[483] 189Q-Is it not a fact, sir, that JTIM never received one dollar ($1) of a loan in respect of that one point two (1.2) billion dollars of debentures?
A- Yes, I think that's correct.

[1097] Our analysis of this matter leads us to agree with Mr. Poirier who, when reviewing some of the planning behind the Interco Contracts, was asked if "that sounds like creditor proofing to you". He candidly replied: "Yes".[484]

[1098] Shortly thereafter, the following exchange ensued in Mr. Poirier's cross examination:

> [172]Q." […]The modifications suggested will enhance our ability to protect our most valuable assets." Most valuable assets in this context are the trademarks valued at one point two (1.2) billion dollars?
>
> A- Yes. Yes.
>
> [173]Q-And it's to protect your most valuable assets from creditors, creditors like perhaps the plaintiffs in this lawsuit?
>
> A- Perhaps the plaintiffs. It's a tobacco company.
>
> [174]Q-It's a what?
>
> A- It's a tobacco company.[485]

[1099] To be clear, no one has attacked the validity or the legality of the tax planning behind the Interco Contracts, or the contracts themselves, for that matter. That is not necessary for the point the Plaintiffs wish to score. Because something might be technically legal for tax purposes, something on which we give no opinion, does not automatically mean that it cannot be one of "the appropriate circumstances" that article 1621 obliges us to consider.

[1100] The Interco Contracts affair is clearly an appropriate circumstance to consider when assessing punitive damages against JTM and we shall consider it, not once, but twice: quantitatively and qualitatively.

[1101] In the first, we cannot but conclude that this whole tangled web of interconnecting contracts is principally a creditor-proofing exercise undertaken after the institution of the present actions by a sophisticated parent company, Japan Tobacco Inc., operating in an industry that was deeply embroiled in product liability litigation. Even Mr. Poirier could not deny that. And on paper, the sham may well succeed.

[1102] Unless the Interco Contracts are overturned, something that is not the subject of the present files, JTM appears to be nothing more than a break-even operation. So be it, but that is an artificial state of affairs that does not reflect the company's true patrimonial situation. Absent these artifices, JTM is earning an average of $103,000,000 a year before taxes and that is the patrimonial situation that we will adopt for the purpose of assessing punitive damages.

[1103] Then there is the qualitative side. The Interco Contracts represent a cynical, bad-faith effort by JTM to avoid paying proper compensation to its customers whose health and well-being were ruined, and the word is not too strong, by its wilful conduct.

---

484 Testimony of Michel Poirier, May 23, 2014, at page 108.
485 *Ibidem*, at pages 108-109.

This deserves to be sanctioned and we shall do so by setting the condemnation for punitive damages above the base amount[486].

[1104] We shall thus condemn JTM to punitive damages equal to approximately 125% of its average annual before-tax earnings, an amount of $125,000,000.[487] The division of this amount between the two files shall be the same as for ITL: The 10% for Létourneau represents $12,500,000.

[1105] Before closing on JTM, the Court will deal with its argument that it never succeeded to the obligations of MTI, as set out in paragraphs 2863 and following of its Notes.

[1106] Summarily, it argues that, in light of the contracts signed when the RJRUS group acquired it in 1978 and of the dissolution of MTI in 1983, the provisions of the Quebec Companies Act and the applicable case law dictate that "Plaintiffs' right of action, assuming they have any, can only be directed at MTI's directors and not its successor".[488] This applies in its view to "any alleged wrongdoing that could have been committed on or before (October 27, 1978) by MTI".[489]

[1107] The Court does not see how this can assist JTM in avoiding liability under the present judgment, and this, for two reasons.

[1108] First, under a General Conveyancing Agreement of October 26, 1978 (Exhibit 40596), MTI "transfers, conveys, assigns and sets over" the essential parts of its business to an RJRUS-controlled company, RJR-MI. At page 4 of that agreement, RJR-MI "covenants and agrees to assume and discharge all liabilities and obligations now owing by MTI", which included specifically:

> (e) all claims, rights of action and causes of action, pending or available to anyone against MTI.

[1109] In connection with the phrase "now owing" in that contract, in 1983, both MTI and RJRUS had long known that MTI's customers were being poisoned by its products, as discussed at length above. As such, any reasonable executive of those companies had to realize that the other shoe would soon be dropping and lawsuits would start appearing in Canada, as had already happened in other countries. The future Canadian lawsuits can thus be seen to be part of the "claims, rights of action and causes of action … available to anyone against MTI" in 1978. These were assumed by RJR-MI.

[1110] Moreover, the General Conveyancing Agreement foresees the dissolution of MTI in its opening clause. The potential liability of the directors of a dissolved company would have been well known to MTI and its legal advisors. It could not have been the intention

---

[486] See Claude DALLAIRE and Lisa CHARMANDY, *Réparation à la suite d'une atteinte aux droits à l'honneur, à la dignité, à la réputation et à la vie privée*, op. cit., Note 462, at paragraph 97, referring to *Gillette v. Arthur* and G.C. v. L.H. (references omitted).

[487] The fact that the sum of the condemnations for the three Companies comes to a round number of $1.3 billion is pure coincidence.

[488] Paragraph 2889 of JTM's Notes.

[489] Paragraph 2890 of JTM's Notes.

of the very people who were approving the deal to transfer the risk of inevitable and onerous product liability litigation to themselves.

[1111] In any event, even if JTM could escape liability for MTI's obligations, it makes no similar assertion with respect to RJRM's liability as of 1978. All of the faults attributed to the Companies in the present judgment continued throughout most of the Class Period, including the years where JTM was operating as RJRM.

[1112] We reject JTM's submissions on this point.

X. DEPOSITS AND DISTRIBUTION PROCESS

[1113] Table 1113 incorporates the deposits for moral damages in Blais with the condemnations for punitive damages in both files[490] to show the amounts to be deposited by each Company by file and by head of damage.

TABLE 1113

1 COMPANY	2 MORAL DAMAGES BLAIS	3 PUNITIVE DAMAGES BLAIS	4 PUNITIVE DAMAGES LÉTOURNEAU
ITL	$670,000,000	$30,000	$72,500,000
RBH	$200,000,000	$30,000	$46,000,000
JTM	$130,000,000	$30,000	$12,500,000

[1114] On the issue of interest and the additional indemnity, for punitive damages they run only from the date of the present judgment. They must be added to the deposits indicated in columns 3 and 4 of the table when the deposits are made. For the Blais moral damages, although they run from the date of service of the action, they do not affect the amount of the deposits indicated in column 2 for reasons already explained.

[1115] A question remains as to the possible effect of prescription on these amounts. Since we assume that the TRDA applies, there is no prescription of claims for moral damages. We have also held that the Létourneau claims for punitive damages are not prescribed. We shall therefore analyze this issue only with respect to punitive damages in Blais.

[1116] From Table 910 we see that Blais claims for punitive damages that accrued before November 20, 1995 are prescribed. This effectively "wipes out" 45 years of

[490] A reminder: punitive damages do not vary by subclass in Blais and no moral damages are awarded in Létourneau.

SCHEDULE J – PARAGRAPHS 2138-2145 OF THE PLAINTIFFS' NOTES

2138. The Financial Statements of JTI-M do not tell (or purport to tell) the whole story and do not reflect the "patrimonial situation" of the company.

2139. The evidence before the Court revealed that JTI was able to manipulate its patrimonial situation in order to suits its interests. JTI has the capacity to pay a substantial amount even though such capacity is not reflected per se in their financial statements. The patrimonial situation of JTI-M is not affected nor diminished by the strategic movement of funds, trademarks, etc. within its family of companies.

2140. The amount of punitive damages sought is certainly justifiable "in light of all the appropriate circumstances including the patrimonial situation of JTI-M".[522]

2141. Here are some of the facts established at trial which support this point of view:

(a) Both class actions were filed in September/November 1998 against JTI-M's predecessor RJR-M;

(b) In March 1999, RJR-M was independently and professionally valued at $2.2 billion, of which its trademarks were independently valued at $1.2 billion; [523]

(c) The Company (RJR-M) which became JTI-M was and still is a manufacturer and distributor of cigarettes; its manufacturing facility was and still is located on Ontario Street East in Montreal;[524] its market share was and still is approximately 19.59%;[525] its annual earnings from operations were and still are in the $100 million range and it did not and still does not have any (significant) long-term debt owed to any party at arm's length;[526]

(d) JTI-TM is a wholly-owned subsidiary of JTI-M;[527] it was created for the sole purpose of holding the trademarks for creditor-proofing purposes;[528] its business address is the same as that of JTI-M;[529] all of its officers are employees of JTI-M and it does not carry on any business activities;[530]

(e) For tax and/or creditor-proofing purposes it has "parked" the trademarks in its wholly-owned subsidiary (JTI-TM), it has "loaded" JTI-M with debt

---

522 Article 1621 C.C.Q.
523 *Ibidem*, pp. 53-54, Qs. 23-25; pp. 64-64, Qs. 55-56.
524 *Ibidem*, p 82, Q. 109; Exhibit 1749-r-CONF.
525 Exhibit 1437A.
526 Testimony of Michel Poirier, May 23, 2014, p. 71, Q. 62; pp. 166, Q. 388.
527 *Ibidem*, p. 81, Qs. 103-105.
528 *Ibidem*, pp. 85-87, Qs. 121-127; p. 95, Q. 145; pp. 166-167, Qs. 389-394; Exhibit 1750-r-CONF.
529 *Ibidem*, p. 82, Qs. 108-109; Exhibit 1749-r-conf; Exhibit 1749.1-r-conf.
530 *Ibidem*, p. 165, Qs. 382-384.

through a circular exchange of cheques and complex inter-corporate transactions, etc.;[531]

(f) However the "patrimonial situation" of JTI-M remains the same – it was and still is a highly profitable $2 billion company with annual earnings from operations (well) in excess of $100 million.[532]

(g) The evidence has shown that notwithstanding the constantly changing inter-corporate structure, the transactions and the $200 Million (plus) deficit on JTI-M's 2003 – 2013 Financial Statements, JTI-M has been fully able of paying or not paying huge sums of money to its subsidiary JTI-TM, whenever it suits JTI-M:[533]

2004	JTI-M sought protection under CCAA and it requested the presiding judge in Ontario (Justice James Farley) to issue a Stay Order to prevent JTI-M from paying principal, interest, royalties and dividends (in excess of $100 Million per year) to its subsidiary (JTI-TM) and related companies;[534]
2005	No interest or royalty payments were made to JTI-TM;[535]
2006	JTI-M paid JTI-TM $186 Million in interest and royalties after furnishing the CCAA Monitor with Letters of Credit issued on the strength of a related company;[536]
2007 - 2008	No interest or royalty payments were made to JTI-TM;[537]
2009, 2010, 2011 & 2012	JTI-M "amended" the Debenture Agreement with JTI-TM to reduce the rate of interest on the "loan" of $1.2 billion from 7% to 0% (approximately) thereby reducing the interest payment from $100 Million (approximately) to zero (approximately);[538]
2009	JTI-M "amended" its Royalty Agreement with JTI-TM to reduce the rate of royalty payments by 50%;[539]
2010	JTI-M paid $150 million to the Quebec and Federal Governments as its contribution toward the settlement of the

[531] *Ibidem*, pp. 107-109, Qs. 168-176; pp. 114-115, Qs. 188-189; Exhibit 1751.2-r-conf (according to Plaintiffs) or 1751.1.8-r-CONF (according to Defendants).
[532] *Ibidem*, p. 166, Q.388; Exhibit 1731-1998-r-conf to Exhibit 1731-2013-r-conf.
[533] *Ibidem*, pp. 160-167, Qs. 362-394.
[534] *Ibidem*, pp. 128-129, Qs. 249-254; p. 131, Q.265.
[535] *Ibidem*, pp. 141-142, Q. 289.
[536] *Ibidem*, pp. 152-153, Qs. 318-321.
[537] *Ibidem*, pp. 153-154, Qs. 323-324.
[538] *Ibidem*, pp. 156-158, Qs. 340-352.
[539] *Ibidem*, pp. 155-156, Qs. 333-337.

	smuggling claims;[540]
Dec. 2012	JTI-M once again "amended" its Debenture Agreements with JTI-TM so as to increase the interest rate from 0% - 7% per annum, thereby resulting in an obligation to pay approximately $100 Million in "interest" to JTI-TM starting in 2013;[541]
2012	JTI-M "wiped out" a $410 million debt owed by JTI-TM.[542]

2142. In the case of JTI, the term "capacity" to pay punitive damages may be misleading; it would be more appropriate to talk of its "ability" to do so. While JTI may not have the "capacity" to pay punitive damages based on its financial statements and its obligations to its subsidiary, the evidence shows that it has the "ability" to pay notwithstanding its theoretical "incapacity" to do so. By way of example, in 2010, JTI did not have the "capacity" to pay $150 million to settle the smuggling claim based on its financial statements which showed a deficit and based on its "obligation" to pay JTI-M $100 million in "interest".[543] Nevertheless, the evidence showed that it had the "ability" to pay and did pay $150 million to settle the smuggling claim despite its theoretical "incapacity" to do so.

2143. Here, the Court is not being asked to "ignore" the inter-corporate transactions nor to pronounce on their legality, nor to annul them. On the contrary, the Court is invited to take those transactions and their stated purpose into account when assessing the award for punitive damages "in light of all the appropriate circumstances and, in particular, the patrimonial situation" of the company.

2144. For example, the following answers from Michel Poirier during his examination in chief need to be taken into account to conclude that an exemplary high amount of punitive damages is warranted against JTI here[544]:

> [172]Q." […]The modifications suggested will enhance our ability to protect our most valuable assets." Most valuable assets in this context are the trademarks valued at one point two (1.2) billion dollars?
>
> A- Yes. Yes.
>
> [173]Q-And it's to protect your most valuable assets from creditors, creditors like perhaps the plaintiffs in this lawsuit?
>
> A- Perhaps the plaintiffs. It's a tobacco company.
>
> [173]Q-It's a what?

---

540 *Ibidem*, pp. 159-160, Qs. 358-360.

541 *Ibidem*, pp. 162-163, Q. 374; pp. 165-166, Q.386; Exhibit 1752-r-conf (according to Plaintiffs) or Exhibit 1748.1-r-conf (according to Defendants).

542 *Ibidem*, p. 250, Qs. 602-603; Exhibit 1748.2-R-CONF, pdf 14.

543 *Ibidem*, p. 159, Q. 358.

544 Mr. Poirier was asked to comment on the stated purpose of those transactions as mentioned in Exhibit 1751.2-R-CONF (according to Plaintiffs) or Exhibit 1751.1.8-R-CONF (according to Defendants).

A- It's a tobacco company.[545]

2145. JTI-M will satisfy the judgment awarding punitive damages or it will file for bankruptcy (or, once again, seek CCAA protection). A Trustee (or Monitor) will be appointed and, if necessary, appropriate measures taken.

(Emphasis in the original)

[545] *Ibidem*, at pages 108-109.

TAB C

This is Exhibit "C" to the Affidavit of Amy Casella
sworn on March 15, 2019

A Commissioner for the taking of affidavits, etc.

COUR D'APPEL

CANADA
PROVINCE DE QUÉBEC
GREFFE DE MONTRÉAL

N° : 500-09-025385-154, 500-09-025386-152 et 500-09-025387-150
(500-06-000070-983 et 500-06-000076-980)

DATE : 1er mars 2019

CORAM : LES HONORABLES YVES-MARIE MORISSETTE, J.C.A.
ALLAN R. HILTON, J.C.A.
MARIE-FRANCE BICH, J.C.A.
NICHOLAS KASIRER, J.C.A.
ÉTIENNE PARENT, J.C.A.

Nº : 500-09-025385-154

IMPERIAL TOBACCO CANADA LTÉE
APPELANTE / INTIMÉE INCIDENTE – défenderesse
c.

CONSEIL QUÉBÉCOIS SUR LE TABAC ET LA SANTÉ
JEAN-YVES BLAIS
CÉCILIA LÉTOURNEAU
INTIMÉS / APPELANTS INCIDENTS – demandeurs
Et
JTI-MACDONALD CORP.
ROTHMANS, BENSON & HEDGES INC.
MISES EN CAUSE – défenderesses

Nº : 500-09-025386-152

JTI-MACDONALD CORP.
APPELANTE / INTIMÉE INCIDENTE – défenderesse
c.

CONSEIL QUÉBÉCOIS SUR LE TABAC ET LA SANTÉ
JEAN-YVES BLAIS
CÉCILIA LÉTOURNEAU
INTIMÉS / APPELANTS INCIDENTS – demandeurs
Et
IMPERIAL TOBACCO CANADA LTÉE
ROTHMANS, BENSON & HEDGES INC.
MISES EN CAUSE – défenderesses

Nº : 500-09-025387-150

ROTHMANS, BENSON & HEDGES INC.
APPELANTE / INTIMÉE INCIDENTE – défenderesse
c.

CONSEIL QUÉBÉCOIS SUR LE TABAC ET LA SANTÉ
JEAN-YVES BLAIS
CÉCILIA LÉTOURNEAU
INTIMÉS / APPELANTS INCIDENTS – demandeurs
Et
JTI-MACDONALD CORP.
IMPERIAL TOBACCO CANADA LTÉE
MISES EN CAUSE – défenderesses

Unofficial English Translation from Judgment of Court of Appeal of Quebec

…

(1161) The judge retained the testimony of Mr. Poirier, who admitted unambiguously that the subject transactions were intended by JTM to make itself creditor proof:

> (1097) Our analysis of this matter leads us to agree with Mr. Poirier who, when reviewing some of the planning behind the Interco Contracts, was asked if "that sounds like creditor proofing to you". He candidly replied "Yes".

(1162) The judge therefore committed no error in taking into account the corporate planning of JTM. After reviewing the grounds of the judge and the proof in support thereof, which is subject to a confidentiality and sealing order, we specifically state that the judgment on appeal contains no error of fact as to that issue.

TAB D

This is Exhibit "D" to the Affidavit of Amy Casella
sworn on March 15, 2019

A Commissioner for the taking of affidavits, etc.

Court File No. 19-CV-_____

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 ARRANGEMENTOF **JTI-MACDONALD CORP.**

Applicant

AFFIDAVIT OF ROBERT MCMASTER
(sworn March 8, 2019)

I, **ROBERT MCMASTER**, of the Town of Whitby, in the Province of Ontario, MAKE OATH AND SAY:

I. INTRODUCTION

1. I am a Chartered Professional Accountant (CPA, CA) and the Director, Taxation and Treasury for JTI-Macdonald Corp. ("**JTIM**") and as such, have knowledge of the matters hereinafter deposed to, save where I have obtained information from others. Where I have obtained information from others I have stated the source of the information and believe it to be true.

2. This affidavit is sworn in support of an application by JTIM for an order (the "**Initial Order**") pursuant to the *Companies' Creditors Arrangement Act*, R.S.C. 1985, c. C-36, as amended (the "**CCAA**"), which application has been commenced as a result of the current financial circumstances of JTIM due to recent adverse developments in certain litigation in which JTIM is a defendant.

II. PRESSING NEED FOR RELIEF

3. JTIM, through its predecessor corporations and other related business entities, have been manufacturers of tobacco products in Canada since 1858.

4. As described more fully herein, Mr. Justice Riordan of the Quebec Superior Court rendered a judgment in the Class Actions (as defined herein) against JTIM and the other defendants (the "**Judgment**"), which was publicly released on June 1, 2015, and subsequently amended on June 9, 2015, that awarded a total of approximately $6.8 billion in damages on a collective and solidary basis against the defendants and punitive damages on an individual basis (all of which had an aggregate value of approximately $15.5 billion including interest and an additional indemnity as of the date of the Judgment).

5. JTIM was unsuccessful in overturning the Judgment at the Quebec Court of Appeal for the reasons described in the decision released on March 1, 2019 (the "**QCA Judgment**"). The QCA Judgment substantially upheld the Judgment and requires JTIM to pay an initial deposit of $145 million. There is uncertainty as to whether the QCA Judgment is immediately enforceable, or provides JTIM with a maximum of up to 60 days to make the payment of the initial deposit. The QCA Judgment is 422 pages and is in French only. The English conclusions of the QCA Judgment and an English summary prepared by the Quebec Court of Appeal is attached as Exhibit "**A**".

6. JTIM is an economically viable company that is able to meet its ordinary course obligations as they become due. However, if not stayed, the QCA Judgment will put JTIM out of business and destroy value for its approximately 500 full time employees, 1,300 suppliers and its customers. It would also impact approximately 28,000 retailers that sell JTIM's products and approximately 790,000 consumers of its products. Currently, the federal and provincial governments collect more

than $1.3 billion in taxes annually in relation to the sale of JTIM's products. If JTIM is forced out of business, those collections would stop.

7. JTIM is also the subject of significant health care cost recovery litigation (the "**HCCR Actions**"). The HCCR Actions commenced as a result of legislation passed in each of the ten provinces regarding the recovery of health care costs related to alleged "tobacco related wrongs", as defined in the applicable statutes. The total potential quantum of damages claimed against the defendants in the HCCR Actions, including JTIM on a joint and several basis together with other Canadian manufacturers and certain of their affiliates, is not yet known as some provincial plaintiffs have not specified the amount of their claim. However, to date, I am advised by counsel that over $500 billion has been claimed to be owing by all of the defendants in the five provinces where amounts have been specified in the claims or that have been detailed in expert reports. These claims are vastly in excess of the total book value of JTIM's assets (as disclosed herein) and are vastly in excess of the global asset value of the parent companies of the other defendant Canadian tobacco manufacturers as presented in their most recent Annual Reports.

8. JTIM requires the protections afforded under the CCAA in order to maintain the *status quo* of its operations, to allow for an application for leave and, if successful, to appeal the QCA Judgment to the Supreme Court of Canada and preserve going concern value for all of its stakeholders.

9. Notwithstanding that JTIM continues to assert that it has no liability in respect of the litigation claims asserted against it, in parallel with any appeal of the QCA Judgment, JTIM has decided to seek a collective solution for the benefit of all stakeholders in respect of the QCA

Judgment and the other multi-billion dollar claims currently being pursued against it. The requested stay under the CCAA will allow JTIM time and a platform to achieve such a solution.

III. OVERVIEW OF THE APPLICANT

A. *Corporate Structure*

10. JTIM is a private company that was continued as a corporation under the *Canada Business Corporations Act* in April 2012, and maintains its registered head office in Mississauga, Ontario (the "**Head Office**"). JTIM is owned indirectly by Japan Tobacco Inc. ("**Japan Tobacco**"), a publicly listed company in Japan.

11. A copy of an organization chart of the relevant related-party tobacco companies outside of Japan (such companies, collectively, "**JT International**") is attached as Exhibit "**B**".

12. On May 11, 1999, JTIM, then known as RJR-Macdonald Corp. was acquired by JT Nova Scotia Corporation, an indirectly wholly-owned subsidiary of Japan Tobacco.

13. Following an amalgamation and corporate reorganization in 2012, JTIM is now a direct wholly-owned subsidiary of JT Canada LLC Inc. ("**ParentCo**"), a Nova Scotia corporation and an indirect subsidiary of Japan Tobacco.

14. JTIM is the parent and sole shareholder of JTI-Macdonald TM Corp. ("**TM**"). TM owns many of the trademarks that JTIM uses in its business and is a secured creditor of JTIM. As a result of the Recapitalization Transactions (as defined herein), ParentCo is a secured creditor of TM.

15. On April 13, 2015, ParentCo demanded payment of the secured indebtedness owing from TM to ParentCo, then in the amount of approximately $1.0 billion. TM was unable to satisfy that

demand. Pursuant to the terms of the security agreements granted by TM in favour of ParentCo, on July 9, 2015, ParentCo privately appointed PricewaterhouseCoopers Inc. as the receiver and manager of TM (the "**TM Receiver**"). Subsequent to the appointment of the TM Receiver, each of the directors of TM resigned.

16. TM is not a party in any of the litigation involving JTIM. For that reason, TM is not a part of these proceedings.

B. *The Business*

17. Most of JTIM's senior management are located at the Head Office in Mississauga, Ontario. The Head Office is responsible for all functional areas regarding the sales and distribution of JTIM's products in Canada. Managerial responsibilities for the manufacturing of JTIM's products are carried out at a manufacturing facility located at 2455 Ontario Street East, in Montreal, Quebec (the "**Plant**").

18. JTIM employs approximately 500 full-time employees in Canada. In addition, JTIM leases offices and warehouse space and employs sales representatives and associates across Canada. JTIM has been on the Aon Hewitt Best Employers list for Canadian companies and was recently certified as a Top Employer in Canada by the Top Employers Institute.

19. JTIM is the third largest tobacco company defendant in the Class Actions (as defined herein) based on volume of sales in Canada. JTIM's products consist of cigarettes, fine-cut tobacco, cigars and accessories branded under various trademarks and brand names for distribution throughout Canada and for export. JTIM imports tobacco products for distribution in Canada mainly from JT International SA ("**JTI-SA**"), a foreign sister company to ParentCo.

20. JTIM purchases some processed tobacco from other related party entities, including JTI-SA, but most is purchased from third party suppliers.

21. JTIM's processed tobacco is stored at leased premises near Montreal, Quebec and is shipped to the Plant as needed. The Plant has been in operation since 1874 and is JTIM's only manufacturing facility.

22. JTIM's tobacco products are either manufactured at the Plant or imported by JTIM. Generally, JTIM sells to wholesalers who in turn sell to retailers who sell to consumers. On a lesser basis, JTIM sells tobacco products directly to retailers and consumers.

C. ***Pension Plans***

23. JTIM is the plan sponsor and administrator of the following four pension and post-retirement benefits plans: (i) the JTI-Macdonald Corp. Employees' Retirement Plan (the "**ERP**"), (ii) the JTI-Macdonald Corp. Management Employees' Pension Plan (the "**MEPP**"), (iii) the JTI-Macdonald Corp. Executive Supplemental Benefit Plan (the "**ESBP**"), and (iv) the JTI-Macdonald Corp. Supplemental Non-Registered DC Pension Plan (the "**Non-Registered DC Plan**" and collectively with the ERP, the MEPP and the ESBP, the "**Pension Plans**").

24. Based on the most recent actuarial valuations, the Pension Plans had the following degrees of solvency: (i) 99.5% for the ERP, representing a deficiency in the amount of approximately $2.0 million, (ii) 99% for the MEPP, representing a deficiency in the amount of approximately $0.3 million, and (iii) 100% for the ESBP. The concept of a solvency deficiency does not apply to the Non-Registered DC Plan.

25. All employee contributions and solvency deficiency payments are current in respect of each of the Pension Plans.

26. JTIM provides other post-employment benefits ("**OPEBs**") to former salaried and hourly employees (unionized and non-unionized) and their dependants, including drug, medical, dental and life insurance benefits. As of December 31, 2018, the total present value for future OPEB contingent liabilities is estimated at $109.2 million. It is contemplated that these CCAA proceedings will not affect any payments required to be made in respect of the Pension Plans or the OPEBs.

D. ***Material Contracts***

i) Trademark Agreement

27. JTIM's market share in Canada is largely attributed to the brands of tobacco products it exclusively sells in the Canadian market. JTIM licenses or has the right to use all of the trademarks with respect to such brands from related parties. If such arrangements were terminated, JTIM's business would effectively cease in its current form.

28. Many of the trademarks that JTIM is permitted to use in its operations are owned by TM. Pursuant to the Trademark License Agreement dated October 8, 1999, as amended from time to time (collectively, the "**Trademark Agreement**"), TM granted to JTIM a non-exclusive, world-wide license to use TM's trademarks in association with the manufacturing, distribution, advertising and sale of the licensed products for the remuneration set out therein.

29. In August 2017 and January 2018, after a default by JTIM under its secured facilities with TM as a result of the issuance of the Judgment (such default is discussed in more detail below), JTIM and TM negotiated amendments to the Trademark Agreement (the "**Trademark**

Amendments") as consideration for TM's agreement to forbear from exercising its enforcement rights against JTIM. The August 2017 amendment changed the frequency of royalty payments paid by JTIM to TM under the Trademark Agreement from semi-annual payments to monthly payments. The aggregate annual amounts payable under the Trademark Agreement remained unchanged. The January 2018 amendment to the Trademark Agreement, which was a condition of the extension of the forbearance arrangement, made the supply of goods and services under the Trademark Agreement solely in the discretion of TM, acting through the TM Receiver, and required JTIM to provide a deposit to TM in an amount equal to 1.5 times the average monthly payment under the Trademark Agreement against which outstanding liabilities could be set-off. JTIM provided TM with a deposit, which as of February 28, 2019 is $1,330,000, in satisfaction of this term of the January 2018 amendment. Attached as Exhibit "**C**" are copies of the Trademark Amendments.

30. The Trademark Amendments were required by ParentCo as part of a forbearance arrangement and in response to the possibility of liquidity constraints on JTIM in the event that the Judgment was upheld. ParentCo. is the senior secured creditor of TM and has enforced its security and appointed the TM Receiver over TM. As a result of the forbearance arrangement, the TM Receiver has agreed to forbear from enforcing on the loan and security granted by JTIM to TM.

31. JTIM is required to continue paying TM pursuant to the terms of the Trademark Agreement. Termination of the right to use the trademarks licensed pursuant to the Trademark Agreement (which license is provided on a discretionary basis) would likely cause the cessation of JTIM's business. Although not every aspect of the business is affected by the TM trademarks,

the remaining lines of business would likely not be viable on a stand-alone basis. These arrangements have allowed JTIM to continue operating in the ordinary course.

ii) Other Related Party Agreements

32. JTIM is a party to numerous services agreements and limited risk distribution agreements (the "**LRD Agreements**") with related parties, which are required for JTIM's continued operations.

33. JTIM also has related party contracts in respect of manufacturing, distribution, leaf sourcing and other miscellaneous agreements.

34. I have been advised by legal counsel that the Proposed Monitor (as defined below) in this proceeding has reviewed the material related party agreements, including the payment provisions thereunder. The service charges in place have also been audited by Canada Revenue Agency ("**CRA**") up to the 2013 taxation year and no adjustments have been required to date. CRA is currently in the process of auditing the 2014-2016 taxation years and, to date, no adjustments have been proposed.

iii) 2018 Amendments and Forbearance of Related Party Agreements

35. Against the backdrop of litigation and related credit risk, JTIM's related-party suppliers expressed concern about their potential exposure in the event that enforcement steps were taken by a judgment creditor resulting in JTIM's need to seek creditor protection. Under the intercompany arrangements then in place, such credit risk was viewed by the related parties as unacceptable. The related party suppliers advised JTIM that the intercompany supply agreements were at risk of termination. Given the unique nature of the goods and services provided, it would not be possible for JTIM to find satisfactory replacement supply arrangements. The agreements

reached with these suppliers were necessary to permit JTIM to continue operating in the ordinary course.

36. In order to maintain the necessary supply of goods and services and avoid a disruption to JTIM's business, JTIM negotiated forbearance agreements (the "**Forbearance Agreements**"), copies of which are attached as Exhibit "**D**", with five of its related party suppliers. Collectively, the Forbearance Agreements increased the frequency of payments (but not the total amount of payments) to monthly in advance (except for the LRD Agreements), required JTIM to provide a deposit capable of being set-off by the related party supplier against amounts owing by JTIM, and/or granted a security interest in all of JTIM's present and after acquired personal property in the form of a general security agreement or moveable hypothec. The following chart summarizes the changes implemented under the Forbearance Agreements:

Supplier	Frequency of Payment	Security	Right to Deposit
JTI-SA	Monthly in advance (save and except the LRD Agreements)	Yes*****	No
JT International Business Services Limited ("**JTI-BSL**")	Monthly in advance	Yes*****	Yes†
JT International Holding B.V. ("**JTIH-BV**")******	Monthly in advance	Yes*****	Yes†
JTI Services Switzerland SA	Monthly in advance	No	No
JTI (US) Holdings Inc.	Monthly in advance	No	No

* The security granted was in the form of a general security agreement and moveable hypothec.

**On its own behalf and on behalf of certain of its affiliates.

† A deposit was ultimately not required as payments were, and continue to be, made monthly in advance.

E. ***Cash Management***

37. JTIM is part of a globally-integrated business processes and information system known as SAP. The SAP system provides substantial operational benefits to JTIM, including the integration of the supply chain, research and development and finance/treasury information systems, real-time data availability, improved quality control and internal controls, and treasury-related benefits such as reducing the number of bank accounts, automating bank reconciliations, enhancing cash flow forecasting and improving liquidity management.

38. As a result of the SAP system, JTIM's information flows are consistent with its foreign affiliates. In addition, the management of JT International is provided with real-time visibility into JTIM's operational and financial information.

39. Citibank Canada is the banking service provider for those JT International entities operating in North America. JTIM maintains seven bank accounts with Citibank, N.A., Canada Branch ("**Citibank**"), one of which is denominated in USD. JTIM's accounts are comprised of single-purpose accounts for the receipt of tax refunds, for payment of employee benefits, for receipt of funds from direct sales to retailers, for payment of marketing and sales programs to retailers and to hold cash collateral, as further described below. The USD account and one CAD account are used for general operations transactions in those respective currencies.

40. Pursuant to agreements dated November 18, 2016 and February 24, 2017 between JTIM and Citibank, JTIM pledged $900,000 as cash collateral in respect of central travel account card

services and $8 million in respect of certain cash management services which require the extension of credit by Citibank, respectively, in each case as provided by Citibank to JTIM. Attached as Exhibits "**E**" and "**F**" are the two cash collateral agreements.

41. JTIM currently maintains two bank accounts at Royal Bank of Canada, one of which is a high interest savings account and the other is used for collecting sales proceeds from certain retail customers. JTIM also maintains term deposits at Sumitomo Mitsui Banking Corporation, Canada Branch.

IV. LIABILITIES OF THE APPLICANT

A. *Secured Creditors of JTIM*

i) TM Term Debentures

42. On March 9, 1999, it was announced that Japan Tobacco had reached an agreement to purchase the international (non-US) tobacco assets of RJR Nabisco, Inc., R. J. Reynolds Tobacco Company and their affiliates (collectively, the "**RJR Group**") pursuant to the terms of the Purchase Agreement (as defined below). The aggregate purchase price as set out in the Purchase Agreement was USD$7,832,539,000 in cash. The bid process was competitive and the major international tobacco groups participated in it. At the time, Japan Tobacco was a large company in Japan but only had a limited international presence.

43. From the outset, it was understood that, for tax-planning purposes, the acquisition of the Canadian assets would be a leveraged buyout leaving the Canadian operating company with debt and interest that would be deductible from its earnings. However, because of the extremely tight time frame to close the transaction, which ultimately occurred on May 11, 1999, the completion of many of the necessary planning and implementation steps required to integrate this worldwide

acquisition had to be postponed until after closing.

44. To effect a leveraged buyout structure, on November 23, 1999, JT International B.V. ("**JTI-BV**"), an affiliated entity incorporated under the laws of the Netherlands, borrowed $1.2 billion from ABN AMRO Bank N.V. ("**ABN AMRO**"), a third-party financial institution. On the same day, JTI-BV made a secured advance of $1.2 billion to ParentCo. ParentCo then made a secured advance of $1.2 billion to TM and TM made a secured advance of $1.2 billion to JT Nova Scotia Corporation (now JTIM through amalgamation). JTIM then returned capital of $1.2 billion to its then parent, JT Canada LLC II Inc. Through various intercompany transactions, the funds were eventually paid to JTI-BV, who repaid the loan to ABN AMRO (collectively, the "**Recapitalization Transactions**").

45. The Recapitalization Transactions were reviewed in detail during the CCAA proceedings commenced by the Applicant in 2004 as more particularly described herein. The Fourth Report to the Court of the 2004 Monitor (as defined herein) dated February 16, 2005 (the "**Fourth Report**"), a copy of which is attached without exhibits as Exhibit "**G**", provides a detailed overview of the Recapitalization Transactions. My comments on the Recapitalization Transactions are based on my personal knowledge of the Recapitalization Transactions and from my review of the Fourth Report.

46. As a result of the Recapitalization Transactions, the amounts owed by JTIM to TM are: (i) evidenced by ten (10) convertible debentures, governed by the laws of the Province of Quebec, in the total aggregate principal amount of $1.2 billion (the "**TM Term Debentures**"), as amended from time to time, (ii) subscribed for under the Convertible Debenture Subscription Agreement dated November 23, 1999, as amended by the Amending Agreement dated December 23, 2014

(collectively, the "**Subscription Agreement**"), (iii) due on November 18, 2024, and (iv) redeemable at the option of JTIM and convertible into special preference shares of JTIM at the option of the holder. On December 2, 1999, JTIM also delivered a demand debenture to TM (the "**Demand Debenture**"), governed by the laws of the Province of Nova Scotia, granting TM a general and continuing security interest in JTIM's business, undertakings and all of its property and assets, real and personal, movable and immovable of whatsoever kind and nature, both present and future. Copies of one of the TM Term Debentures, the Subscription Agreement and the Demand Debenture are attached as Exhibits "**H**", "**I**" and "**J**".

47. The Judgment triggered an event of default pursuant to section 13.9 of the Subscription Agreement, making the security granted thereunder enforceable by the TM Receiver against JTIM. On August 3, 2017, the TM Receiver and JTIM agreed to the terms of a forbearance letter (the "**TM Forbearance Letter**"). Pursuant to the terms of the TM Forbearance Letter, the TM Receiver agreed, among other things, to forbear from enforcing its rights and remedies against JTIM in consideration of changes to the frequency of royalty payments owing pursuant to the Trademark Agreement, as described above. A copy of the TM Forbearance Letter (without schedules because these schedules are separately attached hereto as Exhibit "**C**") is attached as Exhibit "**K**".

48. The forbearance was extended pursuant to several letter agreements (collectively, the "**Forbearance Extensions**"). Copies of the Forbearance Extensions are attached as Exhibit "**L**".

49. The Forbearance Extensions expired on February 28, 2019. On February 28, 2019, by way of letter, the TM Receiver informed JTIM that in light of the pending QCA Judgment, the TM Receiver was not prepared to formally extend the forbearance period further. However, the TM

Receiver would agree to a day-to-day extension under the same terms and conditions of the TM Forbearance Letter, which day-to-day extension may be terminated at the TM Receiver's sole and absolute discretion. A copy of the letter from TM's counsel is attached as Exhibit "**M**".

50. In accordance with the terms of the TM Forbearance Letter, the TM Term Debentures were amended by an agreement dated August 3, 2017 (the "**TM Debenture Amending Agreement**" and collectively with the TM Term Debentures, the "**Revised TM Term Debentures**") to change the interest payment frequency (but not total amount) from bi-annually to monthly. Currently, JTIM makes interest payments to TM on account of its secured indebtedness in the approximate amount of $7.6 million monthly on the 18th and principal payments of approximately $950,000 in May and November annually. As at February 28, 2019, the amount outstanding under the TM Term Debentures (including accrued interest) was approximately $1.18 billion. A copy of the TM Debenture Amending Agreement is attached as Exhibit "**N**".

51. The Revised TM Term Debentures are secured by, among other things, the Demand Debenture, a Deed of Hypothec dated November 23, 1999, a Supplemental Deed of Hypothec dated December 2, 1999, a Deed of Moveable Hypothec and Pledge of Shares dated December 12, 2000 and a Deed of Confirmation dated May 14, 2015, each as amended (collectively, the "**Hypothecs**") now held by BNY Trust Company of Canada (and in certain cases, formerly held by the Trust Company of Bank of Montreal) ("**TrustCo**") as the attorney for TM. Copies of the Hypothecs are attached as Exhibits "**O**", "**P**", and "**Q**" and "**R**", respectively.

52. I am advised by legal counsel that:

(a) TM directly registered its security interest against the personal property of JTIM in the following jurisdictions and on the following dates:

Registration Number	Jurisdiction	Registration Date	Collateral
856928601	Ontario	November 22, 1999	All classes except "consumer goods".
2399489 / 2417398	Nova Scotia		All present and after-acquired personal property.
681989I	British Columbia	June 23, 2015	
15062337351	Alberta		
301355169	Saskatchewan	June 24, 2015	
201511679902	Manitoba		
26022244	New Brunswick		
3707279	Prince Edward Island		
13031521	Newfoundland		

(b) pursuant to the security interest granted by the Hypothecs, TrustCo registered its security interest, as attorney for TM, in Ontario and Nova Scotia on December 11, 2000 under the Ontario *Personal Property Security Act* and Nova Scotia *Personal Property Security Act*. Copies of the personal property registry searches in each province as at February 28, 2019, are attached as Exhibit "**S**";

(c) as holder of the TM Term Debentures, TrustCo also registered its security interest in Quebec on December 13, 2000 and May 14, 2015 in the Registrar of Personal and Moveable Real Rights (Quebec) (the "**Quebec RPMRR**") in respect of all of JTIM's present and future property, moveable and immovable, real and personal, corporeal and incorporeal, tangible and intangible;

(d) TrustCo also registered a charge against the Plant in the Land Register for the registration division of Montreal on December 3, 1999 under registration number 5 138 944 (the "**Charge**"). There are no registrations against title to the Plant other than the Charge. A copy of the real property subsearch report prepared by Quebec counsel to JTIM relating to the Plant as at February 27, 2019 is attached as Exhibit "**T**".

ii) JTIM Secured Debt to ParentCo

53. Prior to the issuance of the Judgment, Citibank had granted an unsecured credit facility to JTIM, TM and ParentCo as joint borrowers in the principal amount of $60 million (the "**Citibank Loan**"). The Citibank Loan was used as a "smoothing" facility that was necessary as a result of the timing of the payments of substantial monthly federal excise duty and other obligations, such as interest payments, royalty payments and payroll, versus the timing of the collection of the receivables generated by the sale of inventory.

54. On June 25, 2015, after the delivery of the Judgment, Citibank advised that JTIM was no longer authorized to borrow under its credit facility. To ensure necessary cash flow for continued operations, ParentCo agreed to provide a secured borrowing facility to JTIM in the principal amount of $70 million (the "**Cash Flow Loan**") on the terms outlined in the loan agreement dated June 25, 2015 (the "**ParentCo Loan Agreement**"), attached as Exhibit "**U**". Among other things, the ParentCo Loan Agreement allows JTIM to pay the required excise duty as such obligations become due and payable, while also paying trade and employee obligations in the ordinary course.

55. As security for the amounts advanced under the Cash Flow Loan, JTIM granted a hypothec to ParentCo in respect of, among other things, its moveable property located in the Province of Quebec (the "**ParentCo Hypothec**"). The ParentCo Hypothec is attached as Exhibit "**V**". I am advised by legal counsel that ParentCo registered its security interest against JTIM pursuant to the Quebec RPMRR on June 26, 2015.

56. As of February 28, 2019, there are no amounts outstanding under the ParentCo Loan Agreement.

iii) Related Party Security Agreements

57. As noted above, as a result of the uncertainty caused by the Judgment, certain related party suppliers required JTIM to grant security to them in respect of goods and services that are delivered on credit. As at the quarter ended December 31, 2018, the gross amount outstanding to these related party suppliers is approximately $54.6 million and such amount relates almost entirely to JTIM's LRD Agreement with JTI-SA to distribute JTI-SA's tobacco products in Canada. This related party security is described in more detail below.

58. I am advised by legal counsel that,

(a) *JTI-SA Security:* in accordance with the terms of its forbearance arrangement, JTI-SA registered a purchase money security interest ("**PMSI**") against JTIM in all of the provinces (except Quebec) in Canada and a hypothec in Quebec, being the jurisdictions in which the products sold thereunder are located. A copy of the notices issued to effect the PMSI priority and hypothec are attached as Exhibit "**W**";

(b) *JTI-BSL Security:* in accordance with the terms of its forbearance arrangement, JTI-BSL registered its security interest against JTIM in all of the provinces (except Quebec) in Canada and a hypothec in Quebec, being the jurisdictions in which the services may be provided thereunder; and

(c) *JTIH-BV Security:* in accordance with the terms of its forbearance arrangement, JTIH-BV registered its security interest against JTIM in all of the provinces (except

Quebec) in Canada and a hypothec in Quebec, being the jurisdictions in which the services may be provided thereunder.

B. ***Litigation***

i) Quebec Class Actions

59. I am advised by our litigation counsel, François Grondin of Borden Ladner Gervais LLP, that:

(a) on February 21, 2005, a class action was certified against JTIM, Imperial Tobacco Canada Limited ("**Imperial**") and Rothmans, Benson & Hedges Inc. ("**Rothmans**" and collectively, with JTIM and Imperial, the "**Defendants**") in *Cécilia Létourneau* v. *Imperial Tobacco Limitée, Rothmans, Benson & Hedges Inc. and JTI-Macdonald Corp.* on behalf of tobacco smokers in the Province of Quebec for the purpose of claiming, for each proposed class member, moral damages resulting from an alleged addiction to nicotine, as well as punitive damages (the "**Létourneau Class Action**");

(b) on February 21, 2005, a class action was certified against the Defendants in *Conseil québécois sur le tabac et la santé and Jean-Yves Blais* v. *Imperial Tobacco Limitée, Rothmans, Benson & Hedges Inc. and JTI-Macdonald Corp.*, on behalf of tobacco smokers in the Province of Quebec suffering from lung, larynx or throat cancer or emphysema for the purpose of claiming, for each proposed class member, compensatory and exemplary damages (the "**Blais Class Action**");

(c) all of the alleged wrong-doings in the Létourneau Class Action and the Blais Class Action (collectively, the "**Class Actions**") occurred prior to the acquisition of JTIM by Japan Tobacco;

(d) the Class Actions were tried together and concluded on December 11, 2014. The Defendants were found liable for "moral damages" (i.e. non-pecuniary damages including pain and suffering, loss of enjoyment of life, etc.) in the Blais Class Action in the aggregate amount of approximately $6.8 billion ($15.5 billion with interest and the additional indemnity described below) of which JTIM was specifically liable for 13% of that amount totalling approximately $2 billion. However, as all of the Defendants were found "solidarily liable", each Defendant is liable for the full amount of the moral damages awarded and the Judgment can therefore be enforced against each Defendant for the full amount of the said moral damages awarded against all three Defendants. Each Defendant would have a "contribution" claim against the other Defendants for the part of the Judgment owing by them that was paid by such Defendant;

(e) the Defendants were found liable for punitive damages in the Létourneau Class Action in the amount of $131 million, of which JTIM was specifically liable for $12.5 million**.** JTIM was also found to be liable for punitive damages in the Blais Class Action in the amount of $30,000. The "condemnations" in punitive damages were awarded on an individual basis against each Defendant, including JTIM. Attached hereto as Exhibit "**X**" is an excerpt of the conclusions of the Judgment;

(f) the Defendants appealed the Judgment to the Quebec Court of Appeal (the "**QCA**") and brought a motion to strike provisions in the Judgment authorizing the plaintiffs in the Class Actions (the "**Class Action Plaintiffs**") to provisionally execute the Judgment. On July 23, 2015, the QCA released a decision that cancelled those provisions. Attached hereto as Exhibit "**Y**" is a copy of the judgment cancelling provisional execution of the Judgment;

(g) in response, the plaintiffs in the Class Actions filed a motion seeking an order that the Defendants furnish security for the Judgment, which motion was heard by the QCA on October 6, 2015. Prior to the commencement of the hearing, the motion against JTIM was withdrawn by the Class Action Plaintiffs due to the inability of counsel for JTIM and counsel for the Class Action Plaintiffs to find a mutually agreeable hearing date;

(h) a judgment was granted against Imperial and Rothmans only on October 26, 2015, which was later modified on December 9, 2015, ordering Imperial and Rothmans to furnish security to the Class Action Plaintiffs. Security was ordered in the amount of $758 million with respect to Imperial and in the amount of $226 million in respect to Rothmans, each payable by way of equal quarterly instalments until September 30, 2017. Attached hereto as Exhibit "**Z**" is a copy of the judgment ordering Imperial and Rothmans to furnish security;

(i) between November 21 and 30, 2016, the QCA heard the appeal of the Judgment. On March 1, 2019, the QCA released its judgment with respect to the appeal. The QCA Judgment confirmed the Judgment in all respects, but revised certain dates

related to the calculation of interest. The result is that the Defendants remained liable for damages in the aggregate amount of approximately $6.8 billion (approximately $13.5 billion with the revised interest dates and additional indemnity). JTIM remained specifically liable for 13% of that amount, totalling approximately $1.75 billion. Each of the Defendants remained "solidarily liable" for the full amount of the damages awarded to the Class Action Plaintiffs; and

(j) the Defendants remained liable for punitive damages in the Létourneau Class Action in the amount of $131 million, of which JTIM was specifically liable for $12.5 million. JTIM also remained liable for punitive damages in the Blais Class Action in the amount of $30,000. JTIM has up to a maximum of 60 days from the date of the QCA Judgment to pay an initial deposit of $145 million.

ii. HCCR Actions

60. I am advised by internal legal counsel that JTIM is also subject to ten distinct HCCR Actions brought by each province. The HCCR Actions were commenced as a result of legislation enacted in each of the ten provinces exclusively to allow the provinces to recoup the health care costs allegedly incurred, and that will be incurred, resulting from alleged "tobacco related wrongs", as defined in the applicable statutes. The HCCR Actions were commenced against numerous parties, including Imperial, Rothmans and certain of their affiliates, and JTIM.

61. The HCCR Actions have also been brought against R. J. Reynolds Tobacco Company and R. J. Reynolds Tobacco International, Inc. (collectively, "**Reynolds**"). Pursuant to a Purchase Agreement dated as of March 9, 1999 as amended and restated as of May 11, 1999 (the "**Purchase Agreement**"), Japan Tobacco agreed to indemnify the RJR Group as a former parent of JTIM, for

any Damages (as defined therein) incurred by the RJR Group for liabilities or obligations relating to the health effects of any products manufactured or sold by the RJR Group at any time that were consumed or intended to be consumed outside the United States, including products that were sold prior to the purchase of the business by Japan Tobacco. JTIM may have liability for certain claims being made against Reynolds. In order to effect a CCAA stay for JTIM and allow for a collective solution to the HCCR Actions, it is also beneficial to have those claims stayed against Reynolds. A copy of the relevant portions of the Purchase Agreement are attached as Exhibit "**AA**".

62. I am advised by internal legal counsel to JTIM that the status of the HCCR Actions in each of the provinces is:

Location	Status	Defendants
British Columbia	It was commenced in January 2001 against tobacco industry members including JTIM. The claim amount is unspecified. An expert report served by the Province of British Columbia in the proceeding states the value of the claim to be $120 billion. The action remains pending. The pre-trial process is ongoing and a trial date is not yet scheduled.	JTIM, Reynolds, Imperial, Rothmans, B.A.T Industries p.l.c., British American Tobacco (Investments) Limited, Carreras Rothmans Limited, Philip Morris Incorporated, Philip Morris International, Inc., Rothmans International Research Division and Ryesekks p.l.c.and Canadian Tobacco Manufacturers Council (the "**CTMC**")
Alberta	It was commenced in June 2012 against tobacco industry members, including JTIM. The statement of claim contains allegations of joint and several liabilities among all the defendants but does not specify any individual amount or percentages. The total amount claimed is at least $10 billion. The pre-trial process is ongoing and a trial date is not yet scheduled.	JTIM, Reynolds, Imperial, Rothmans, CTMC, Altria Group, Inc., B.A.T Industries p.l.c., British American Tobacco (Investments) Limited, British American Tobacco p.l.c., Carreras Rothmans Limited; Philip Morris International, Inc., Philip Morris USA, Inc., and Rothmans Inc.

Saskatchewan	It was commenced in June 2012 against tobacco industry members, including JTIM. The claim amount is unspecified. The pre-trial process is ongoing and a trial date is not yet scheduled.	JTIM, Reynolds, Imperial, Rothmans, CTMC, Rothmans Inc., Altria Group, Inc., Philip Morris International, Inc., British American Tobacco p.l.c., B.A.T Industries p.l.c., British American Tobacco (Investments) Limited, and Carreras Rothmans Limited
Manitoba	It was commenced in May 2012 against tobacco industry members including JTIM. The claim amount is unspecified. The pre-trial process is ongoing and a trial date is not yet scheduled.	JTIM, Reynolds, Imperial, Rothmans, CTMC, Rothmans, Inc., Altria Group, Inc., Philip Morris U.S.A. Inc., Philip Morris International, Inc., British American Tobacco p.l.c., B.A.T Industries p.l.c., British American Tobacco (Investments) Limited and Carreras Rothmans Limited
Ontario	It was commenced in September 2009 against tobacco industry members, including JTIM. 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 $330[1] billion. The pre-trial process is ongoing and a trial date is not yet scheduled.	JTIM, Reynolds, Imperial, Rothmans, CTMC, Carreras Rothmans Limited, Altria Group, Inc., Phillip Morris U.S.A. Inc., Phillip Morris International Inc., British American Tobacco p.l.c., B.A.T Industries p.l.c., and British American Tobacco (Investments) Limited
Quebec	It was commenced in June 2012 against tobacco industry members, including JTIM. The statement of claim contains allegations of joint and several liabilities among all the defendants but does not specify any individual amount or percentages. The total amount claimed is approximately $61 billion.	JTIM, Reynolds, Imperial, Rothmans, CTMC, B.A.T Industries p.l.c., British American Tobacco (Investments) Limited, Carreras Rothmans Limited, Philip Morris USA Inc., and Philip Morris International Inc.

[1] On May 31, 2018, the Province of Ontario indicated to the defendants that it intends to amend its Statement of Claim to increase the amount claimed to $330 billion from $50 billion.

	The pre-trial process is ongoing and a trial date is not yet scheduled.	
New Brunswick	It was commenced in March 2008 against tobacco industry members, including JTIM. The claim amount is unspecified. The documents filed by the Province of New Brunswick in the proceeding valued its claim at approximately $18 billion. The pre-trial process is ongoing and the trial is scheduled to begin in November 2019.	JTIM, Reynolds, Imperial, Rothmans, CTMC, Carreras Rothmans Limited, Altria Group, Inc., Phillip Morris U.S.A. Inc., Phillip Morris International Inc., British American Tobacco p.l.c., B.A.T Industries p.l.c., and British American Tobacco (Investments) Limited
Nova Scotia	It was commenced in January 2015 against tobacco industry members, including JTIM. The claim amount is unspecified. JTIM filed a defence on July 2, 2015. The parties entered into a "standstill" agreement whereby all parties agreed to take no further steps in the litigation. Although the standstill has expired, the proceeding continues to be on hold and no significant document production has occurred.	JTIM, Reynolds, Imperial, Rothmans, CTMC, Rothmans Inc., Altria Group, Inc., Philip Morris U.S.A. Inc, Philip Morris International Inc., British American Tobacco p.l.c., B.A.T Industries p.l.c., British American Tobacco (Investments) Limited and Carreras Rothmans Limited
Prince Edward Island	It was commenced in September 2012 against tobacco industry members, including JTIM. The claim amount is unspecified. The pre-trial process is ongoing and a trial date is not yet scheduled.	JTIM, Reynolds, Imperial, Rothmans, CTMC, Rothmans, Inc., Altria Group, Inc., Philip Morris U.S.A. Inc., Philip Morris International, Inc., British American Tobacco p.l.c., B.A.T Industries p.l.c., British American Tobacco (Investments) Limited and Carreras Rothmans Limited
Newfoundland and Labrador	It was commenced in February 2011 against tobacco industry members, including JTIM. The claim amount is unspecified. The proceedings are ongoing and a trial date is not yet scheduled.	JTIM, Reynolds, Imperial, Rothmans, CTMC, Carreras Rothmans Limited, Altria Group, Inc., Philip Morris USA Inc, Philip Morris International Inc., British American Tobacco p.l.c., B.A.T Industries p.l.c, and British America Tobacco (Investments) Limited

iii) Other Ongoing Litigation

63. I am advised by internal legal counsel that JTIM is also subject to the following other unresolved class actions (the "**Additional Class Actions**"):

Action	Brief Description	Defendants
Tobacco Growers Class Action	On April 23, 2010, a class action was commenced on behalf of Ontario flue-cured tobacco growers and producers against JTIM for the alleged failure of JTIM to appropriately pay for tobacco purchased for sale in the Canadian market in the amount of $50 million (plus interest and costs). The proceedings are ongoing.	JTIM, to be heard together with similar class actions filed against Imperial and Rothmans
Adams, Kunta, Dorian and Semple Class Actions	In July 2009, four class actions seeking unquantified damages were filed in Saskatchewan, Manitoba, Alberta and Nova Scotia against JTIM as well as a number of other manufacturers participating in the Canadian cigarette market alleging that cigarettes are a defective product with the potential to cause harm. Apart from the initial exchange of pleadings, no further steps have been taken to advance the claims and are thus, each either expired or dormant.	JTIM, Reynolds, Imperial, B.A.T Industries p.l.c, British American Tobacco (Investments) Limited, British American Tobacco p.l.c, Rothmans, Altria Group Inc., Phillip Morris Incorporated, Phillip International, Inc. and Phillip Morris U.S.A. Inc., Carreras Rothman, Carreras Rothmans Limited, Rothmans Inc., Ryesekks p.l.c. and the CTMC
Bourassa and McDermid Class Actions	In July 2010, two class actions seeking unquantified damages were filed and served in British Columbia against JTIM as well as a number of other manufacturers participating in the Canadian cigarette market. In the class actions, the plantiffs' claim for health related damages on behalf of individuals who smoked a minimum of 25,000 cigarettes designed, manufactured, imported, marketed or distributed by the defendants. Apart from the initial	JTIM, Reynolds, Imperial, B.A.T Industries p.l.c, British American Tobacco (Investments) Limited, British American Tobacco p.l.c., Rothmans, Rothmans, Altria Group Inc., Phillip Morris Incorporated, Phillip International, Inc. and Phillip Morris U.S.A. Inc., Carreras Rothman, Carreras Rothmans

	exchange of pleadings, no further steps have been taken to advance the claims and are thus, each either expired or dormant.	Limited, Rothmans Inc., Ryesekks p.l.c and the CTMC
Jacklin Class Action	In June 2012, a class action seeking unquantified damages was filed in Ontario against JTIM as well as a number of other manufacturers participating in the Canadian cigarette market. In the class action, the plantiffs' claim for health related damages on behalf of individuals who smoked a minimum of 25,000 cigarettes designed, manufactured, imported, marketed or distributed by the defendants. The claims were served on JTIM in November 2012, but no further steps have been taken and are currently dormant.	JTIM, Reynolds, Imperial, B.A.T Industries p.l.c, British American Tobacco (Investments) Limited, British American Tobacco p.l.c., Rothmans, Rothmans, Altria Group Inc., Phillip Morris Incorporated, Phillip International, Inc. and Phillip Morris U.S.A. Inc., Carreras Rothman, Carreras Rothmans Limited, Rothmans Inc., Ryesekks p.l.c and the CTMC

C. *Ordinary Course Obligations*

64. JTIM has approximately 1,300 suppliers and other normal course creditors. All of JTIM's trade, tax and employment obligations are current in accordance with agreed or required payment terms. As at December 31, 2018, the total outstanding pre-filing indebtedness for these ordinary course obligations, excluding related party trade debt, is approximately $108.1 million. Of that amount, approximately $54.6 million relates to outstanding taxes and duties, $12 million is in respect of payroll and benefits (including pension payments), $5 million relates to arm's length trade creditors and $36.5 million relates to accruals and other liabilities including accruals for goods received before invoices in respect thereof are received. JTIM pays its outstanding taxes and duties one month in arrears in accordance with the law and is current on its payments.

65. JTIM proposes to continue to pay its suppliers in the ordinary course and to treat them as unaffected creditors in the CCAA proceeding.

66. Any damage to the ongoing operations of the business would negatively affect JTIM's stakeholders. In the majority of cases, it would be difficult to quickly replace a trade creditor that stopped supply as a result of JTIM's failure to pay its outstanding obligations. The cost of any potential disruption to JTIM's business and the costs that would be associated with any claim identification and determination process involving a multitude of trade creditors for relatively minor amounts as compared to the stated litigation claims would be uneconomical and unnecessary. JTIM's total third party ordinary course trade liabilities represent less than 0.30% of the total liabilities of JTIM as at December 31, 2018, including the QCA Judgment but excluding any other litigation claims. Preservation of going concern value, including by minimizing supply disruption, is in the best interests of all stakeholders.

67. JTIM's employees are paid periodically, usually in arrears through a payroll provider. All payments to employees are being made, and are proposed to continue to be paid, in the ordinary course.

68. JTIM proposes to pay all Pension Plan obligations, including OPEBs, in accordance with applicable requirements and in the ordinary course.

69. JTIM pays substantial amounts in taxes and duties to the various provincial and federal governments. All obligations are current in accordance with required terms and are proposed to continue to be paid in the ordinary course.

70. Pursuant to the Trademark Agreement, the next monthly royalty payment to TM is due, and is proposed to be paid, on April 1, 2019, in the ordinary course. The amount of the royalty payment varies with sales, but has historically been approximately $1 million per month.

V. Financial Situation and Cash Flow Forecast

A. *Financial Statements*

71. As at the close of business on February 28, 2019, JTIM had approximately $90 million in net available cash on hand, after allowing for known payments that were due on that day. As the operations of JTIM have been, and are expected to remain, cash flow positive, JTIM will have sufficient cash to fund its projected operating costs until the end of the proposed stay period. A copy of JTIM's annual financial statements for the year ended December 31, 2017, are attached as Exhibit "**BB**". A copy of JTIM's interim quarterly financial statements for the quarter ended December 31, 2018, are attached as Exhibit "**CC**".

72. As at December 31, 2018, JTIM's assets had a book value of approximately $1.9 billion and JTIM's liabilities, other than the QCA Judgment and the litigation related contingent liabilities, were valued as follows:

	December 31, 2018
ASSETS (CDN$000s)	
Current	
Cash and short term investments	139,195
Accounts receivable	9,643
Inventories	152,528
Other current assets	5,928
	307,294
Non-current	
Properties, plant and equipment	40,886
Investment in subsidiary companies	1,200,000
Other Assets	8,900
Goodwill	304,328
Future income taxes	29,153
Total assets	1,890,561

	December 31, 2018
LIABILITIES (CDN$000s)	
Current	
Short Term Borrowing	-
Accounts payable and accrued liabilities	103,719
Due to related parties – current	39,932
	143,651
Non-current	
Secured convertible debenture payable to subsidiary	1,183,326
Employee future benefits	102,553
Other liabilities and capital leases	4,394
Total liabilities	1,433,924

73. A majority of JTIM's approximately $1.9 billion book value of assets on its balance sheet relates to JTIM's $1.2 billion equity investment in its subsidiary, TM. This equity interest ranks behind the secured debt owing by TM to ParentCo of approximately $1.0 billion. TM is in receivership and the value of JTIM's equity investment is questionable at best. The remaining assets of JTIM cannot satisfy the secured claims against JTIM, much less the unsecured litigation claims including the QCA Judgment.

74. As at December 31, 2018, JTIM had non-contingent liabilities totalling approximately $1.4 billion, of which approximately $144 million consist of current liabilities, such as accounts payable and accrued liabilities. The majority of JTIM's liabilities consist of the $1.18 billion of secured debt owed to TM, now under the control of the TM Receiver appointed by ParentCo.

75. As described above, JTIM is able to meet its ordinary course obligations as they become due. JTIM is seeking relief, however, because it does not have the financial resources to pay its share of the QCA Judgment, let alone the full amount for which it is solidarily liable. JTIM therefore requires the protections offered under the CCAA to obtain a stay and a period of stability within which to attempt to find a collective resolution.

76. I am advised by legal counsel that it is uncertain whether steps can be taken immediately to enforce the QCA Judgment and that counsel to the Class Action Plaintiffs have refused to confirm that the QCA Judgment is not immediately enforceable, notwithstanding that the QCA Judgment provides for up to a maximum of 60 days for JTIM to provide the initial deposit. Therefore, JTIM is facing the potential for the immediate enforcement of a significant judgment and is also the subject of the pending HCCR Actions, which claims are far in excess of the book value of the assets of JTIM (as discussed above). The total secured and unsecured obligations of JTIM, including the QCA Judgment, greatly exceed my expectation of the realizable value of the assets on a going concern basis**.** I have been advised by external legal counsel that JTIM is therefore insolvent, as that term is understood in the restructuring context.

B. *Cash Flow Forecast*

77. Attached as Exhibit "**DD**" is a statement of the projected 13-week cash flow forecast (the "**Cash Flow Statement**") of JTIM for the week commencing February 25, 2019 to the week ending May 24, 2019. The Cash Flow Statement was prepared by JTIM with the assistance of Deloitte Restructuring Inc. ("**Deloitte**"), the proposed Monitor (in such capacity, the "**Proposed Monitor**"). The Cash Flow Statement demonstrates that if the relief requested is granted, including the staying of the QCA Judgment, JTIM has sufficient liquidity to meet its obligations during the initial 13 week period of a CCAA filing.

VI. RELIEF BEING SOUGHT IN THE CCAA

A. *The Monitor*

78. Deloitte has consented to act as the Court-appointed Monitor of JTIM, subject to Court approval. A copy of Deloitte's consent is attached as Exhibit "**EE**". I am advised by external counsel that Deloitte is a trustee within the meaning of section 2 of the *Bankruptcy and Insolvency*

Act, R.S.C. 1985, c. B-3, as amended, and is not subject to any of the restrictions on who may be appointed as monitor set out in section 11.7(2) of the CCAA.

B. *Treatment of Ordinary Creditors*

i) The 2004 CCAA Proceedings

79. JTIM was in CCAA from 2004 to 2010 (the "**2004 CCAA Proceedings**"). During the 2004 CCAA Proceedings, JTIM was allowed to pay all of its trade creditors in the ordinary course. JTIM seeks the same result in this proceeding. As was the case in the 2004 CCAA Proceedings, the continued payment of all trade liabilities remains an essential part of preserving the value of JTIM's business.

80. By way of background, in response to enforcement and seizure actions taken by the Minister of Revenue for the Province of Quebec (the "**MRQ**") in respect of allegedly unpaid taxes from allegedly contraband activities (the "**MRQ Assessment**"), JTIM obtained protection pursuant to the CCAA by Order of Mr. Justice Farley of the Ontario Superior Court of Justice on August 24, 2004 (the "**2004 Initial Order**"), a copy of which is attached as Exhibit "**FF**". Ernst & Young Inc. was appointed as Monitor (the "**2004 Monitor**").

81. The critical events precipitating JTIM's filing for CCAA protection in 2004 were the issuance of the MRQ Assessment and the related immediate measures taken to collect on the MRQ Assessment by the MRQ. The result of the service of third-party demands for payment issued by the MRQ on all of JTIM's Quebec customers would have diverted approximately 40% of JTIM's revenue. If the collection action had not been stayed by the 2004 CCAA Proceedings, JTIM would likely have been forced to cease operations and its business likely would have been destroyed.

82. At the time of the 2004 Initial Order, many of the litigation claims that are discussed herein were being pursued against JTIM, which posed the threat of enormous judgments against JTIM, among others. However, no claimant, with the exception of the MRQ, had the ability to disrupt JTIM from carrying on business in the ordinary course until a judgment was rendered and execution steps were taken. As discussed herein, the Class Action Plaintiffs have the same ability to prevent JTIM from carrying on business in the ordinary course as the MRQ did in 2004, through enforcement of the QCA Judgment.

83. On April 13, 2010, a global settlement was reached with all government authorities (the "**Global Settlement**") for the resolution of all alleged contraband claims that precipitated the 2004 CCAA Proceedings, and those proceedings were terminated on April 16, 2010. Similar settlements were also previously entered into by the other major Canadian tobacco manufacturers. JTIM has continued operations in the ordinary course since the termination of the 2004 CCAA Proceedings. The Class Actions and the HCCR Actions have also continued in the ordinary course.

ii) Proposed Treatment

84. Consistent with the approach authorized by Mr. Justice Farley in the 2004 CCAA Proceedings, JTIM is of the opinion that certain pre-filing amounts should be paid following the date of the Initial Order as non-payment of these amounts may have a significant detrimental impact on JTIM's business and going concern value. JTIM intends to treat all of its trade creditors equally and fairly.

85. JTIM proposes to pay its suppliers, trade creditors (including intercompany trade payables and monthly royalty payments), taxes, duties and employees (including outstanding and future pension plan contributions, OPEBs and severance packages) in the ordinary course of

business for current amounts owing both before and after JTIM's application to the Court for protection under the CCAA in order to minimize any disruption of its business. Maintaining JTIM's operations as a going concern and avoiding any unnecessary disruption to its business operations is in the best interests of all of JTIM's stakeholders, including the Class Action Plaintiffs.

86. I am advised by legal counsel that it is JTIM's current expectation that its trade creditors and employees would be unaffected by any plan of arrangement that it may file in this proceeding. I have been further advised by internal legal counsel that not paying the outstanding ordinary course payments would significantly and unnecessarily complicate the restructuring proceedings. I am advised by counsel that the Proposed Monitor supports this relief and will provide further comment on this issue in its report to the Court in connection with this application.

C. ***Stay of Proceedings***

87. In addition to the stay of proceedings in respect of JTIM, JTIM is requesting a stay of proceedings in respect of: (i) any person named as a defendant or respondent in any of the Class Actions, HCCR Actions and the Additional Class Actions (collectively, the "**Pending Litigation**"), and (ii) any proceeding in Canada relating to a tobacco claim against or in respect of any member of JT International or the RJR Group. In both cases, JTIM and the Monitor may provide their written consent to allow the stay to be temporarily lifted.

88. I am advised by legal counsel that JTIM requires the extension of the stay of proceedings to any other defendant or respondent in the Pending Litigation to ensure that steps are not taken in the Pending Litigation without JTIM's participation, which may prevent JTIM's ability to reach a collective solution. Further, the RJR Group is named as a defendant in the HCCR Actions. Since

the defence of the RJR Group and JTIM are connected, it would be potentially disadvantageous to JTIM to allow such actions to continue against the RJR Group alone.

D. ***Interest on TM Term Debentures***

89. It is the current expectation that JTIM will continue paying the secured monthly interest payments to TM under the TM Term Debentures. The TM Term Debentures have been in place since 1999. There would be potential adverse tax consequences to its senior secured creditor if such payments were suspended for a significant period of time. Further, I have been advised by legal counsel that the Proposed Monitor does not object to this relief.

90. JTIH-BV, a credit-worthy entity related to JTIM, has provided an undertaking to repay any post-filing interest received during these CCAA proceedings (the "**Repayment Undertaking**") in the event this Court (or any applicable appellate court) finally determines that TM was not entitled to receive the post-filing interest payments. As evidence of its credit-worthiness, a copy of the 2017 Annual Report of JTIH-BV is attached as Exhibit "**GG**". A copy of the Repayment Undertaking of JTIH-BV is attached as Exhibit "**HH**".

E. ***Administration Charge***

91. JTIM seeks a first-ranking charge (the "**Administration Charge**") on the Property (as defined in the proposed form of Initial Order) in the maximum amount of $3 million to secure the fees and disbursements incurred in connection with services rendered to JTIM both before and after the commencement of the CCAA proceedings by counsel to JTIM, the Proposed Monitor, counsel to the Proposed Monitor and the proposed Chief Restructuring Officer (the "**CRO**"), other than any success fee in respect of the CRO.

92. It is contemplated that each of the aforementioned parties will have extensive involvement

during the CCAA proceedings, have contributed and will continue to contribute to the restructuring of the Applicant, and there will be no unnecessary duplication of roles among the parties.

93. I am advised by legal counsel that the Proposed Monitor believes that the proposed quantum of the Administration Charge to be reasonable and appropriate in view of JTIM's CCAA proceedings and the services provided and to be provided by the beneficiaries of the Administration Charge. I am further advised by legal counsel that the only secured creditors that will be affected by the Administration Charge are ParentCo, TM and certain other secured related party suppliers, each of which support the Administration Charge.

F. ***Directors' Charge***

94. To ensure the ongoing stability of JTIM's business during the CCAA proceedings, JTIM requires the continued participation of its directors and officers who manage the business and commercial activities of JTIM. The directors and officers of JTIM have considerable institutional knowledge and valuable experience.

95. There is a concern that the directors and officers of JTIM may discontinue their services during this restructuring unless the Initial Order grants the Directors' Charge (as defined below) to secure JTIM's indemnity obligations to the directors and officers that arise post-filing in respect of potential personal statutory liabilities.

96. JTIM maintains directors' and officers' liability insurance (the "**D&O Insurance**") for the directors and officers of JTIM. The current D&O Insurance policies provide a total of $12.908 million in coverage. In addition, under the D&O Insurance, a retention amount, akin to a deductible, is applicable for certain claims in the amount of $45,178.

97. The proposed Initial Order contemplates the establishment of a second-ranking charge on the Property in the amount of $4.1 million (the "**Directors' Charge**") to protect the directors and officers against obligations and liabilities they may incur as directors and officers of JTIM after the commencement of the CCAA proceedings, except to the extent that the obligation or liability is incurred as a result of the director's or officer's gross negligence or wilful misconduct. The Directors' Charge was calculated by reference to the monthly payroll, withholding and pension obligations of JTIM totalling approximately $4 million. The payroll obligations of JTIM are paid primarily in arrears which increases the potential director and officer liability.

98. JTIM worked with the Proposed Monitor in determining the proposed quantum of the Directors' Charge and believes that the Directors' Charge is reasonable and appropriate in the circumstances. The Directors' Charge is proposed to rank behind the Administration Charge, but ahead of the Tax Charge (as defined below) and the existing security granted by JTIM in favour of TM and ParentCo. I have been advised by counsel that the Proposed Monitor is of the view that the Directors' Charge is reasonable and appropriate in the circumstances.

99. Although the D&O Insurance is available, the directors and officers of JTIM do not know whether the insurance providers will seek to deny coverage on the basis that the D&O Insurance does not cover a particular claim or that coverage limits have been exhausted. JTIM may not have sufficient funds available to satisfy any contractual indemnities to the directors or officers should the directors or officers need to call upon those indemnities. It is proposed that the Directors' Charge will only be engaged if the D&O Insurance fails to respond to a claim.

G. *Tax Charge*

100. Of the $1.3 billion of annual taxes and duties payable in connection with its operations and products, JTIM directly pays, on its own behalf, more than $500 million each year to the various provincial and federal governments. The additional $800 million is paid by JTIM's customers and the consumers of JTIM's products.

101. The government agencies to whom JTIM remits its taxes currently hold surety bonds in the approximate amount of $18 million that have been posted as security for such unremitted taxes and duties (the "**Tax Bonds**"). The proposed Initial Order contemplates the establishment of a third-ranking charge on the Property in the amount of $127 million (the "**Tax Charge**") to secure the payment of any excise tax or duties, import or customs duties and provincial and territorial tobacco tax and any harmonized sales or provincial sales taxes (collectively, "**Taxes**") required to be remitted by JTIM to the applicable provincial, territorial or federal taxing authority in connection with the import, manufacture or sale of goods and services by JTIM after the commencement of the CCAA proceedings.

102. The Tax Charge was calculated by reference to the amount of monthly Taxes that JTIM must remit in a month where the highest exposure exists to directors, multiplied by two to reflect the liability that directors actually face (one month in arrears plus an ongoing "stub" period), totalling approximately $136 million, less the amount of such liabilities that would be covered by outstanding Tax Bonds. I have been advised by legal counsel that the Proposed Monitor is of the view that the Tax Charge is reasonable and appropriate in the circumstances.

H. ***CRO Appointment***

103. JTIM hopes to achieve a collective solution among its stakeholders. Based on past experience, JTIM believes that achieving such a result will be complicated and time consuming. In order to minimize disruption to the business and the distraction of senior executives away from the task of managing the business and maintaining positive cash flow, JTIM seeks (i) the approval and confirmation of the Court of the retention of an experienced CRO to oversee the stakeholder engagement and negotiation process and (ii) the approval of the terms of the CRO's engagement letter.

104. Pursuant to the CRO engagement letter dated April 23, 2018, JTIM agreed to apply to the Court for approval of: (i) the engagement letter, (ii) retention of the CRO, and (iii) the payment of the fees and expenses of the CRO. Compensation to the CRO includes both a monthly work fee component and a success fee component. A redacted copy of the CRO engagement letter is attached as Exhibit "**II**". An unredacted version of the CRO engagement letter is attached as Confidential Exhibit "**1**" to the Confidential Compendium.

105. JTIM proposes retaining BlueTree Advisors Inc. to provide the services of William E. Aziz as the CRO in accordance with the terms of the CRO engagement letter. Mr. Aziz is a well-known and experienced CRO as evidenced from his *curriculum vitae* attached as Exhibit "**JJ**". I have been advised by legal counsel that the Proposed Monitor is of the view that the relief sought with respect to the CRO is appropriate in the circumstances and consistent with established precedent.

I. ***Sealing Order***

106. JTIM will be seeking an order sealing the unredacted copy of the CRO engagement letter. I have been advised by the CRO that the engagement letter contains commercially sensitive terms

of the engagement of the CRO. The CRO has advised me that the disclosure of those commercial terms would have a detrimental impact on the CRO's ability to negotiate compensation on any future engagements.

107. I am advised by counsel that the sealing of the unredacted CRO engagement letter should not materially prejudice any third parties. I have been advised by counsel to JTIM that the Monitor supports the sealing of the unredacted CRO engagement letter.

VII. FORM OF ORDER

108. JTIM seeks an Initial Order under the CCAA substantially in the form of the Model Order adopted for proceedings commenced in Toronto, subject to certain changes all as reflected in the proposed form of order contained in the Motion Record, blacklined to the Model Order. The reasons for the material proposed changes are described herein.

109. By letter dated July 6, 2015, restructuring counsel to the Class Action Plaintiffs wrote to the Court House of Montreal and the Superior Court of Justice requesting seven (7) days prior notice of any CCAA filing in Quebec or Ontario. JTIM did not respond to this request. A copy the July 6, 2015 letter is attached as Exhibit "**KK**".

110. By letter to JTIM's counsel dated March 6, 2019, counsel to the Provinces of British Columbia, Manitoba, New Brunswick, Nova Scotia, Prince Edward Island and Saskatchewan in connection with the HCCR Actions requested advance notice prior to any CCAA filing. JTIM's counsel did not respond to this request. A copy of the March 6, 2019 letter is attached as Exhibit "**LL**".

111. By letter to JTIM's litigation counsel dated March 7, 2019, counsel to Her Majesty the Queen in right of Ontario requested advance notice prior to any CCAA filing. JTIM's counsel did not respond to this request. A copy of the March 7, 2019 letter is attached as Exhibit "**MM**".

112. As described above, Japan Tobacco is a publicly traded company on the Tokyo stock exchange. In order to manage market responses and prevent potentially opportunistic trading of Japan Tobacco and other tobacco stock, the approach to the application for CCAA relief, including the notice and timing of the filing, has to take into account public market considerations in Tokyo, New York and London. In this regard, a request for a hearing, and disclosure of that hearing, when none of these markets are open were considered to be appropriate steps in the circumstances.

113. This affidavit is sworn in support of JTIM's application for protection pursuant to the CCAA and for no improper purpose.

SWORN BEFORE ME at the City of Toronto, Province of Ontario, on March 8, 2019.

Commissioner for Taking Affidavits

Mitchell Grossell
Barrister & Solicitor
LSO# 69993I

ROBERT MCMASTER

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-

ONTARIO
SUPERIOR COURT OF JUSTICE
(COMMERCIAL LIST)

Proceedings commenced at Toronto

AFFIDAVIT OF ROBERT MCMASTER

Thornton Grout Finnigan LLP
100 Wellington Street West
Suite 3200
TD West Tower, Toronto-Dominion Centre
Toronto, ON M5K 1K7

Robert I. Thornton (LSO# 24266B)
Email: rthornton@tgf.ca
Leanne M. Williams (LSO# 41877E)
Email: lwilliams@tgf.ca
Rebecca L. Kennedy (LSO# 61146S)
Email: rkennedy@tgf.ca

Tel: 416-304-1616
Fax: 416-304-1313

Lawyers for the Applicant

TAB E

This is Exhibit "E" to the Affidavit of Amy Casella
sworn on March 15, 2019

A Commissioner for the taking of affidavits, etc.

Court File No. 04 CL 5530

ONTARIO

SUPERIOR COURT OF JUSTICE

(COMMERCIAL LIST)

THE HONOURABLE MR.	)	TUESDAY, THE 24TH
	)	
JUSTICE FARLEY	)	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.

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

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 by 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

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.

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.

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 valuators currently in its employ, with liberty to retain such further agents, advisors, contractors, employees, solicitors, assistants, consultants and valuators 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

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,

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

(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

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

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;

(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,

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.

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.

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.

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 facta,) 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, facta 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.

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:

J.M. FARLEY

544281/1

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
Scotia Plaza
40 King Street West
Toronto, Ontario
M5H 3Y4

FRANK J.C. NEWBOULD, Q.C.
Tel. (416) 367-6026
Fax (416) 361-2729
LSUC# 11398R

MICHAEL MACNAUGHTON
Tel: (416) 367-6646
Fax: (416) 682-2837
LSUC# 25889U

CRAIG HILL
Tel: (416) 367-6156
Fax: (416) 361-7301
LSUC# 31888K

Solicitors for the Applicant

:\ODMA\PCDOCS\CCT\5431611

TAB F

This is Exhibit "F" to the Affidavit of Amy Casella
sworn on March 15, 2019

A Commissioner for the taking of affidavits, etc.

Execution Version

THIS 2017 DEBENTURE AMENDING AGREEMENT dated as of the 3rd day of August, 2017.

BETWEEN:

JTI-MACDONALD CORP., a company existing under the laws of Canada

(hereinafter called the "**Corporation**")

OF THE FIRST PART

AND:

JTI-MACDONALD TM CORP., a company incorporated under the laws of the Province of Nova Scotia

(hereinafter called the "**Debentureholder**")

OF THE SECOND PART

WHEREAS JT Nova Scotia Corporation (the "**Predecessor Corporation**") and the Debentureholder entered into a certain Convertible Debenture Subscription Agreement dated November 23, 1999 providing for the subscription by the Debentureholder, and the issue by the Predecessor Corporation, of convertible debentures in the original aggregate principal amount of $1,200,000,000 in lawful money of Canada (the "**1999 Subscription Agreement**"), and the Predecessor Corporation issued to the Debentureholder ten (10) convertible debentures nos. 1 to 10, inclusively, each in the original principal amount of $120,000,000 in lawful money of Canada, dated November 23, 1999 bearing interest at the annual rate of 7.76% (as amended from time to time, collectively, the "**Debentures**").

AND WHEREAS on November 27, 1999 the Predecessor Corporation amalgamated with RJR-Macdonald Corp. under the *Companies Act* (Nova Scotia), the Corporation being the company continuing from such amalgamation, and the Corporation expressly assumed, among other things, all indebtedness, liabilities and other obligations of the Predecessor Corporation under and pursuant to the 1999 Convertible Debentures and 1999 Subscription Agreement.

AND WHEREAS on December 12, 2000, the Corporation and the Debentureholder amended the 1999 Subscription Agreement (the "**2000 Subscription Agreement Amendment**");

AND WHEREAS on December 30, 2008, the Corporation and the Debentureholder amended the Debentures pursuant to a debenture amendment agreement;

AND WHEREAS on December 16, 2009, the Corporation and the Debentureholder amended the Debentures pursuant to a debenture amendment agreement;

AND WHEREAS on December 14, 2010, the Corporation and the Debentureholder amended the Debentures pursuant to a debenture amendment agreement;

AND WHEREAS on December 20, 2011, the Corporation and the Debentureholder amended the Debentures pursuant to a debenture amendment agreement;

AND WHEREAS on December 23, 2014, the Corporation and the Debentureholder amended the Debentures pursuant to a debenture amendment agreement;

AND WHEREAS on July 9, 2015, PricewaterhouseCoopers Inc. (the "**Receiver**") was privately appointed by a secured creditor of the Debentureholder, JT Canada LLC INC. (the "**Appointing Creditor**"), as receiver and manager of all the properties, assets and undertakings of the Debentureholder;

AND WHEREAS as at July 28, 2017, the Corporation has committed a Default in accordance with Section 13 of the 1999 Subscription Agreement;

AND WHEREAS the Debentureholder is concerned that the Corporation could become exposed to enforcement steps by judgment creditors resulting in its need to file for creditor protection to preserve value for all stakeholders, including the Debentureholder;

AND WHEREAS if such steps were to occur prior to the payment accommodation contemplated herein, the Debentureholder would be exposed to a credit risk it now views as excessive and intolerable to the Debentureholder;

AND WHEREAS concurrent with the execution of this 2017 Debenture Amendment Agreement, the Debentureholder and the Corporation are entering into a forbearance agreement,

AND WHEREAS the Appointing Creditor has instructed the Receiver to execute this Agreement in its capacity as receiver and manager of all the properties, assets and undertakings of the Debentureholder;

AND WHEREAS each of the Corporation and the Debentureholder (through its Receiver) wish to further amend the terms of the Debentures on a commercially reasonable basis consistent with the Debentureholder's rights and interests and the current circumstances of the Corporation.

NOW, THEREFORE, in consideration of the premises, the terms and conditions of this 2017 Debenture Amending Agreement and for other good and valuable consideration, the receipt and sufficiency of which are acknowledged, the Corporation and the Debentureholder agree as follows:

ARTICLE I
INTERPRETATION

1.01 **Incorporation of Convertible Debenture.** This 2017 Debenture Amending Agreement is supplemental to and shall henceforth be read in conjunction with the Debentures (as amended from time to time), and this 2017 Debenture Amending Agreement and the

Debentures shall henceforth be read, interpreted, construed and have effect as, and shall constitute, one agreement with the same effect as if the amendments made by this 2017 Debenture Amending Agreement had been contained in the Debentures as of the date of this 2017 Debenture Amending Agreement.

1.02 **Defined Terms.** In this 2017 Debenture Amending Agreement (including the recitals), unless something in the subject matter or context is inconsistent:

(a) terms defined in the description of the parties or the recitals or other expressly incorporated from other agreements have the respective meanings given to them in the description or recitals or as expressly incorporated, as applicable; and

(b) all other capitalized terms have the respective meanings given to them in the Debentures, as amended by the debenture amendment agreements described in the recitals and this 2017 Debenture Amending Agreement.

1.03 **Headings:** The headings of the Articles and Sections of this 2017 Debenture Amending Agreement are inserted for convenience or reference only and shall not affect the construction or interpretation of this 2017 Debenture Amending Agreement.

ARTICLE II
AMENDMENTS

2.01 **Frequency of Interest and Repayments.** The following paragraph shall be added to each of the Debentures as Section 1F immediately following Section 1E:

"From and after August 3, 2017, the Corporation promises to pay interest on the outstanding principal amount hereunder at the rate of 7.75 % per annum calculated semi-annually not in advance and payable (after as well as before maturity, default and judgment, with interest on overdue interest and premium, if any, at the same rate) monthly. From and after August 3, 2017, the Corporation shall make separate interest payments (where applicable) and blended interest and principal payments (where applicable) in accordance with the 2017-2070 Repayment Schedule annexed hereto, as such repayment schedule is amended from time to time, to and including the Maturity Date, with any such separate interest payments to be applied first in payment of interest at the rate hereinbefore provided, calculated as aforesaid, on the principal from time to time unpaid, and any such blended instalment payments to be applied first in payment of interest at the rate hereinbefore provided, calculated as aforesaid, on the principal from time to time unpaid, and the balance to be applied in reduction of the principal sum.

From and after August 3, 2017, "Maturity Date" shall mean May 18, 2070, notwithstanding anything else contained in this Debenture."

2.02 **Addition of Repayment Schedule.** The 2017-2070 Repayment Schedule annexed hereto shall be deemed to be a schedule to each of the Debentures and shall supersede any prior repayment schedule in respect of the indicated period, including but not limited to the repayment schedule set out in the Debentures.

ARTICLE III
REPRESENTATIONS

3.01 **Representations.** Each of the parties hereby represents and warrants that (a) it has full power, authority and legal right to enter into and perform this 2017 Debenture Amending Agreement, and (b) each of this Debenture Amending Agreement and the Debentures are legal, valid and binding obligations, enforceable against it in accordance with its terms.

ARTICLE IV
GENERAL

4.01 **No Novation of Debt or Release of Security.** The parties expressly agree that nothing contained in this 2017 Debenture Amending Agreement shall (a) effect novation of the Debentures or of the debt represented thereby, or (b) release, discharge or diminish in any way any security held by or for the benefit of the Debentureholder or any other Person which may from time to time be or become the registered holder of any or all of the Debentures. Notwithstanding the foregoing, in the event that any court of competent jurisdiction determines that this Amending Agreement effects novation of the Debentures or the debt represented thereby, the Debentureholder expressly reserves, pursuant to and according to Article 1662 of the *Civil Code of Quebec*, all of its rights in any security for the repayment of the Debentures, held or to be held by or for the benefit of the Debentureholder or any other person which may from time to time be or become the registered holder of any or all of the Debentures, which security shall attach to the novated debt and shall secure all present and future obligations of the Corporation related thereto. The Corporation hereby acknowledges and consents to the said reservation.

4.02 **Governing Documents.** The Debentures as amended by this 2017 Debenture Amending Agreement and all other documents delivered pursuant to or referenced in the Debentures as amended by this 2017 Debenture Amending Agreement constitutes the complete agreement of the parties hereto with respect to the subject matter hereof and supersede any other agreements or understandings between the parties. Save as expressly amended by this 2017 Debenture Amending Agreement, all other terms and conditions of the Debentures and the Subscription Agreement remain in full force and effect unamended and the Debentures and the Subscription Agreement are hereby ratified and confirmed.

4.03 **Severability.** All provisions of this 2017 Debenture Amending Agreement are severable. Should any part of this 2017 Debenture Amending Agreement be invalid, illegal or unenforceable, the remainder of this 2017 Debenture Amending Agreement shall remain in full force and effect.

4.04 **Governing Law.** This 2017 Debenture Amending Agreement shall be governed by and construed in accordance with the laws of the Province of Quebec and the applicable federal laws of Canada.

4.05 **Counterparts and Electronic Execution.** This 2017 Debenture Amending Agreement may be executed in any number of counterparts and by different parties hereto in separate counterparts, each of which when so executed shall be deemed to be an original and all of which taken together shall constitute one and the same instrument. Delivery of an executed signature page to this 2017 Debenture Amending Agreement by any party by facsimile or any other form of electronic transmission (including.pdf form) shall be as effective as delivery of a manually executed copy of this 2017 Debenture Amending Agreement by such party.

4.06 **Language Clause.** The Corporation and the Debentureholder declare that it is their express wish that this 2017 Debenture Amending Agreement and any related documents be drawn up and executed in English. JTI-MACDONALD CORP. et JTI-MACDONALD TM CORP. déclarent qu'il est leur volonté expresse que cette convention et tous les documents s'y rattachant soient rédigés et signés en anglais.

[SIGNATURE PAGE TO FOLLOW]

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

JTI-MACDONALD CORP.

Per: [redacted]
Name: [redacted]
Title: Treasurer

JTI-MACDONALD TM CORP., by its receiver, PRICEWATERHOUSECOOPERS INC.

Per: [redacted]
Name:
Title: President

AND IN THE MATTER OF A PLAN OF COMPROMISE OR ARRANGEMENT OF JTI-MACDONALD CORP.

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

ONTARIO
SUPERIOR COURT OF JUSTICE
(COMMERCIAL LIST)
Proceedings commenced at TORONTO

MOTION RECORD

FISHMAN FLANZ MELAND PAQUIN LLP
1250 René-Levesque Blvd. West, Suite 4100
Montreal, Quebec H3B 4W8

Avram Fishman
Email: afishman@ffmp.ca

Mark E. Meland
Email: mmeland@ffmp.ca

Tel: 514-932-4100
Fax: 514-932-4170

CHAITONS LLP
5000 Yonge St., 10th floor
Toronto, Ontario M2N 7E9

Harvey Chaiton
Tel: 416-218-1129
Email: harvey@chaitons.com

George Benchetrit
Tel: (416) 218-1141
Email: george@chaitons.com

Lawyers for the Quebec Class Action Plaintiffs