

**ONTARIO
SUPERIOR COURT OF JUSTICE
COMMERCIAL LIST**

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

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

Applicant

**MOTION RECORD
(Re: Stay Extension)
(Returnable on March 22, 2022)**

March 10, 2022

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

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

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Applicant

**NOTICE OF MOTION
(Re: Stay Extension)
(Returnable on March 22, 2022)**

The Applicant will make a motion to Justice McEwen of the Ontario Superior Court of Justice (Commercial List) on March 22, 2022, at 10:00 a.m., or as soon after that time as the motion can be heard, by judicial video conference via Zoom at Toronto, Ontario.

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

THE MOTION IS FOR:

- (a) An Order extending the Stay Period (as defined in the Initial Order granted in these proceedings on March 8, 2019 (as amended and restated, the “**Initial Order**”)), which is currently set to expire on March 31, 2022, up to and including September 30, 2022; and
- (b) Such further and other relief as this Court deems just.

THE GROUNDS FOR THE MOTION ARE:**A. Background of CCAA Proceedings**

1. All capitalized terms not otherwise defined herein shall have the meanings set forth in the Initial Order.
2. The Applicant is: (i) a defendant in significant healthcare cost recovery litigation commenced by each of the ten provinces, alleging over \$600 billion in claims against JTIM and the other defendants in the HCCR Actions, (ii) subject to the judgment in the Quebec Class Actions up to the approximate amount of \$13.5 billion plus accruing interest, and (iii) a named defendant in certain class actions that have been commenced, but not certified, in six provinces.
3. The Applicant sought the protections afforded under the CCAA in order to maintain the *status quo* of its operations, preserve going concern value, and provide the Applicant with a period of stability within which to find a collective resolution to the Tobacco Claims made against the Applicant.
4. On March 8, 2019, the Applicant was granted protection from its creditors under the CCAA pursuant to the Initial Order. Deloitte Restructuring Inc. was appointed as monitor of the Applicant (in such capacity, the “**Monitor**”). On April 5, 2019, pursuant to the Amended and Restated Initial Order, the Honourable Warren K. Winkler, Q.C. (the “**Court-Appointed Mediator**”) was appointed to mediate a global settlement of the Tobacco Claims against the Applicant and the other defendants.

5. The Initial Order granted a stay of proceedings until April 5, 2019, which stay of proceedings has been subsequently extended most recently up to and including March 31, 2022.
6. Since the date of the Initial Order, Imperial Tobacco Company Limited and Imperial Tobacco Canada Limited (together, “**Imperial**”) and Rothmans, Benson & Hedges Inc. (“**RBH**”) have sought protection from their creditors under the CCAA.

B. Stay Extension

7. The Applicant seeks an extension of the Stay Period until September 30, 2022.
8. The projected cash flow forecast, as prepared by the Applicant, with the assistance of the Monitor, demonstrates that the Applicant has sufficient liquidity to operate its business and meet its obligations during the proposed extension of the Stay Period.
9. Extending the Stay Period is required to enable the Applicant to continue to operate in the ordinary course while participating in the mediation process in an effort to seek a collective resolution of the Tobacco Claims against the Applicant.
10. The Applicant also relies on:
 - (a) the provisions of the CCAA and the statutory, inherent and equitable jurisdiction of this Court;
 - (b) Rules 1.04, 1.05, 2.03, 3.02, 16, 37 and 39 of the Ontario *Rules of Civil Procedure*, R.R.O. 1990, Reg 194, as amended and Section 106 of the *Courts of Justice Act*, R.S.O. 1990, c. C.43 as amended; and

(c) such further and other grounds as counsel may advise and this Court may permit.

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

- (a) the Affidavit of William E. Aziz, sworn March 8, 2022;
- (b) the Eleventh Report of the Monitor, to be filed; and
- (c) such further and other evidence as counsel may advise and this Court may permit.

March 10, 2022

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

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.**

AND IN THE MATTER OF A PLAN OF COMPROMISE OR
 ARRANGEMENT OF **IMPERIAL TOBACCO CANADA LIMITED**
 AND **IMPERIAL TOBACCO COMPANY LIMITED**

AND IN THE MATTER OF A PLAN OF COMPROMISE OR
 ARRANGEMENT OF **ROTHMANS, BENSON & HEDGES INC.**

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

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

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

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

Proceedings commenced at Toronto

**NOTICE OF MOTION
(Re: Stay Extension)
(Returnable on March 22, 2022)**

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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.**

Applicant

**AFFIDAVIT OF WILLIAM E. AZIZ
(Sworn March 8, 2022)**

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

1. I am the President of BlueTree Advisors Inc., which has been retained by JTI-Macdonald Corp. (the "**Applicant**" or "**JTIM**") to provide my services to JTIM as Chief Restructuring Officer ("**CRO**") of JTIM.
2. My appointment as CRO of JTIM was approved pursuant to the Initial Order (as amended and restated from time to time, the "**Initial Order**") granted by the Ontario Superior Court of Justice (Commercial List) (the "**Court**") on March 8, 2019 under the *Companies' Creditors Arrangement Act* ("**CCAA**").
3. As the CRO of JTIM, I have knowledge of the matters to which I herein depose, except 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.
4. All capitalized terms used herein and not otherwise defined have the meanings set forth in the Initial Order.

I. INTRODUCTION

5. This affidavit is sworn in support of a motion for an Order extending the Stay Period to September 30, 2022.
6. The Applicant, through its predecessor corporations and other related business entities, has been a manufacturer and distributor of tobacco products in Canada since 1858. JTIM is a private company, headquartered in Mississauga, Ontario, and is the smallest Canadian tobacco company subject to the Pending Litigation based on volume of sales in Canada.
7. As described in previous affidavits sworn in these CCAA proceedings, JTIM is subject to: (i) HCCR Actions by each province in Canada seeking an aggregate of over \$600 billion relating to the recovery of alleged health care costs, (ii) the judgment in the Quebec Class Actions (the “**QCA Judgment**”) up to the approximate amount of \$13.5 billion plus accruing interest, on a joint and several basis with Imperial and RBH (each as defined below), and (iii) certain class action proceedings that have been commenced, but not certified, in six provinces in Canada (the “**Consumer Class Actions**”).
8. The Applicant sought the protections afforded under the CCAA in order to: (i) maintain the *status quo* of its operations, (ii) preserve going concern value, and (iii) provide the Applicant with a period of stability within which to attempt to find a collective resolution to all of the Tobacco Claims asserted against it. But for the QCA Judgment and the other contingent claims asserted in the Pending Litigation, the Applicant is a profitable and viable corporation.

9. On March 8, 2019, the Applicant was granted protection from its creditors under the CCAA pursuant to the Initial Order. Pursuant to the Initial Order, Deloitte Restructuring Inc. was appointed as the monitor (in such capacity, the “**Monitor**”) of the Applicant in these CCAA proceedings.
10. On April 5, 2019, pursuant to the Initial Order of the Honourable Mr. Justice McEwen, the Honourable Warren K. Winkler, Q.C., was appointed as an officer of the Court and a neutral third-party mediator (the “**Court-Appointed Mediator**”) to mediate a global settlement of the Tobacco Claims against the Applicant.
11. The Initial Order provides for a Court-ordered stay of proceedings, which is currently set to expire on March 31, 2022, pursuant to the Stay Extension Order issued on September 27, 2021 (the “**Stay Extension Order**”).
12. On March 12, 2019 and March 22, 2019, Imperial Tobacco Canada Limited and Imperial Tobacco Company Limited (together, “**Imperial**”) and Rothmans, Benson & Hedges Inc. (“**RBH**”) each filed for creditor protection under the CCAA, respectively. Imperial and RBH are defendants under each of the HCCR Actions, the QCA Judgment and the Consumer Class Actions. I understand that there is currently a similar stay of all proceedings in respect of all three of the tobacco defendants.

II. ACTIVITIES SINCE STAY EXTENSION ORDER

13. Since the Stay Extension Order, the Applicant has continued to operate in the ordinary course and participate in the CCAA proceedings and the mediation process. The following summarizes the Applicant’s activities since the Stay Extension Order:

Operations

- (a) the Applicant continued to manage its relationships with customers, suppliers, employees and other stakeholders to ensure there is no disruption to its operations during the CCAA proceedings and to maintain an uninterrupted supply of products and services;
- (b) the Applicant continued to navigate the COVID-19 pandemic in accordance with applicable regulations and bylaws, guidance from Health Canada, and the public health guidance in, among other provinces, Ontario and Quebec. During the pandemic, JTIM took steps to minimize disruption to the operation of its manufacturing facility. Notwithstanding the widespread disruption caused by the Omicron variant of COVID-19 between December 2021 and February 2022, JTIM's manufacturing facility did not experience any significant disruption;
- (c) the *Tobacco Products Regulations (Plain and Standardized Appearance)*, SOR/2019-107 required tobacco manufacturers to switch to "slide and shell" packaging on November 9, 2021. As a result of these new requirements, six packaging machines owned by JTIM became obsolete. Following discussions with the original supplier of the packaging machines, that supplier agreed to purchase three of the machines. In addition, JTIM sold a fourth machine to JTI Germany on the same economic terms as the sale to the original supplier. The Monitor approved this transaction in accordance with the Initial Order. JTIM continues to store the remaining two packaging machines while it determines whether the original supplier or another related party entity may be willing to purchase the machines;

Global Transformation Project

- (d) since the update in my affidavit sworn September 17, 2021 (the “**September Affidavit**”) regarding the global transformation project, the Applicant finalized the terms of the agreement between the Applicant and JTI’s Global Business Service Center in Warsaw, Poland (“**GBS Warsaw**”) with respect to GBS Warsaw’s human resources recruitment activities and certain legal and regulatory affairs support activities. That agreement has been approved by the Monitor in accordance with the Initial Order;
- (e) I am advised by senior management at JTIM that JTIM has completed the global transformation project. All changes in personnel at JTIM have been made. The only remaining cost to JTIM is with respect to salary continuance, which will be completed in 2023;

Russia

- (f) JTIM sources some of its leaf materials from a related party entity located in Russia. As a result of Russia’s recent actions, Canada removed Russia from the Most Favoured Nation Tariff treatment under the Customs Tariff, which increases the tariffs on imports from Russia. JTIM is currently seeking alternative arrangements to source leaf so as not to rely on supply from Russia. JTIM does not anticipate that the ongoing conflict will materially disrupt operations;

CCAA proceedings

- (g) the Applicant’s external counsel and I continued to provide regular updates and information to the Monitor and its counsel of material developments with respect

to the business, the CCAA proceedings and the mediation, to the extent that the Monitor was not directly involved in such discussions;

- (h) the Applicant's external counsel and I coordinated with counsel to Imperial and counsel to RBH from time to time in respect of common CCAA issues among the three tobacco companies;
- (i) in accordance with the Professional Fee Disclosure Order issued May 14, 2019, the Applicant consulted with the Monitor regarding the monthly fee disclosure summaries delivered to the stakeholders by the Monitor;

Mediation

- (j) the Applicant's external counsel and I have continued to communicate with and participate in the process established by the Court-Appointed Mediator in an effort to advance the ongoing mediation process;
- (k) the Applicant has complied with the timetable and steps of the mediation process that are established by the Court-Appointed Mediator;
- (l) in addition to responding to specific information requests, the Applicant continued to compile commercially sensitive and confidential information for inclusion in the VDR created by the Monitor, for the purposes of providing updated relevant information to certain stakeholders in respect of the Applicant's business, operations, finances and future prospects; and
- (m) the Applicant is participating in the mediation in good faith and as requested by the Mediator.

III. EXTENSION OF THE STAY PERIOD

14. The Applicant seeks an extension of the Stay Period until September 30, 2022. It is my understanding from counsel to JTIM that Imperial and RBH are also seeking an extension of their respective stay periods until the same date. The Applicant believes that continuing to coordinate the stay periods at this stage in the CCAA proceedings is efficient, cost-effective and in the best interests of the court-ordered mediation process that continues.
15. JTIM, with the assistance of the Monitor, has prepared a forecast of the projected cash flows (the “**Cash Flow Statement**”) of JTIM for the week commencing February 27, 2022 to the week ending October 1, 2022. I understand that the Cash Flow Statement will be appended to the Monitor’s Eleventh Report to the Court, to be filed. The Cash Flow Statement demonstrates that JTIM has sufficient liquidity to operate its business and meet its obligations during the proposed extension of the Stay Period.
16. Extending the Stay Period is required to enable the Applicant to continue to operate in the ordinary course while participating in the mediation process and continuing discussions to seek a collective resolution of the Tobacco Claims. The Applicant has acted in good faith and with due diligence during the course of its CCAA proceedings since the date of the Initial Order.

IV. PURPOSE

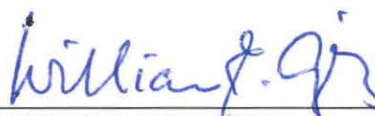
17. This affidavit is sworn in support of JTIM's motion for the extension of the Stay Period to September 30, 2022 and for no other or improper purpose.

SWORN BEFORE ME BY VIDEO CONFERENCE by William E. Aziz on March 8, 2022 in accordance with *O. Reg. 431/20, Administering Oath or Declaration Remotely*. The affiant was in the Town of Oakville, in the Province of Ontario and the commissioner was in the City of Toronto, in the Province of Ontario.



Commissioner for Taking Affidavits

LSO# 699931
Mitchell W. Grossell



WILLIAM E. AZIZ

IN THE MATTER OF THE *COMPANIES' CREDITORS ARRANGEMENT ACT*, R.S.C. 1985, c. C-36, AS AMENDED
AND IN THE MATTER OF A PLAN OF COMPROMISE OR ARRANGEMENT OF **JTI-MACDONALD CORP.**

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

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

Proceedings commenced at Toronto

**AFFIDAVIT OF WILLIAM E. AZIZ
(Sworn March 8, 2022)**

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TAB 3

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

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

THE HONOURABLE)	TUESDAY, THE 22ND
)	
JUSTICE MCEWEN)	DAY OF MARCH, 2022
)	

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.**

STAY EXTENSION ORDER

THIS MOTION, made by JTI-Macdonald Corp. (the “**Applicant**”), pursuant to the *Companies' Creditors Arrangement Act*, R.S.C. 1985, c. C-36, as amended (the “**CCAA**”) was heard this day by way of judicial video conference in Toronto, Ontario due to the COVID-19 pandemic.

ON READING the affidavit of William E. Aziz sworn March 8, 2022 and the exhibits thereto, and the Eleventh Report of the Monitor, as filed by Deloitte Restructuring Inc. in its capacity as Monitor of the Applicant (the “**Monitor**”), and on hearing the submissions of counsel for the Applicant, counsel for the Monitor and such other counsel as were present, no one else appearing although duly served as appears from the affidavit of service of Khadija Waqqas sworn on March 1, 2022, filed:

SERVICE

1. **THIS COURT ORDERS** that the time for service and filing of the Notice of Motion and the Motion Record is hereby validated so that this Motion was properly returnable on March 22, 2022, and hereby dispenses with further service thereof.

STAY EXTENSION

2. **THIS COURT ORDERS** that the Stay Period, as ordered and defined in paragraph 18 of the Initial Order granted March 8, 2019 (as amended and restated from time to time) (the “**Initial Order**”) is hereby extended until and including September 30, 2022.

GENERAL

3. **THIS COURT ORDERS** that this Order is effective from the date that it is made and is enforceable without any need for entry and filing.

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

IN THE MATTER OF THE *COMPANIES' CREDITORS ARRANGEMENT ACT*, R.S.C. 1985, c. C-36, AS AMENDED
AND IN THE MATTER OF A PLAN OF COMPROMISE OR ARRANGEMENT OF **JTI-MACDONALD CORP.**

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

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

Proceedings commenced at Toronto

STAY EXTENSION ORDER

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Lawyers for the Applicant

IN THE MATTER OF THE *COMPANIES' CREDITORS ARRANGEMENT ACT*, R.S.C. 1985, c. C-36, AS AMENDED
AND IN THE MATTER OF A PLAN OF COMPROMISE OR ARRANGEMENT OF **JTI-MACDONALD CORP.**

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

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

Proceedings commenced at Toronto

**MOTION RECORD
(Re: Stay Extension)
(Returnable on March 22, 2022)**

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