

**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 25, 2024)**

March 11, 2024

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

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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.**

Applicants

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**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 25, 2024)**

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2	Affidavit of William E. Aziz, sworn March 11, 2024
3	Draft Order

Tab 1

**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

**NOTICE OF MOTION
(Re: Stay Extension)
(Returnable on March 25, 2024)**

The Applicant will make a motion to Chief Justice Morawetz of the Ontario Superior Court of Justice (Commercial List) on March 25, 2024, at 9:00 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 paragraph 18 of 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 29, 2024, up to and including September 30, 2024; 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: (a) a defendant in significant healthcare cost recovery litigation commenced by each province and territory in Canada, alleging over \$600 billion in claims against JTIM and the other defendants in the HCCR Actions, (b) subject to the judgment in the Quebec Class Actions, and (c) a named defendant in certain class actions that have been commenced, but not certified, in six provinces in Canada.
3. The Applicant sought the protections available under the CCAA to maintain the *status quo* of its operations, preserve going concern value, and provide the Applicant with a period of stability while attempting 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, K.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 29, 2024.
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 up to and including September 30, 2024.
8. The Applicant has acted in good faith and with due diligence during the CCAA proceedings since the date of the Initial Order. Furthermore, the Applicant has actively participated in the ongoing mediation process established by the Mediator.
9. The projected cash flow forecast, as prepared by the Applicant, with the assistance of the Monitor, demonstrates that the Applicant has enough liquidity to operate its business and meet its obligations during the proposed extension of the Stay Period.
10. Extending the Stay Period is required to enable the Applicant to continue to operate in the ordinary course while participating in the mediation process to seek a collective resolution of the Tobacco Claims against the Applicant.
11. 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 11, 2024;
- (b) the Sixteenth Report of the Monitor, to be filed; and
- (c) such further and other evidence as counsel may advise and this Court may permit.

March 11, 2024

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TO: THE COMMON SERVICE 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.**

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 25, 2024)**

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Tab 2

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

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

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

Applicant

**AFFIDAVIT OF WILLIAM E. AZIZ
(Sworn March 11, 2024)**

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 as the Chief Restructuring Officer (“**CRO**”) of JTIM.
2. My appointment as the 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. In preparing this affidavit, I have reviewed previous affidavits sworn in JTIM's CCAA proceeding and mentioned herein, consulted with other members of JTIM's senior management team, legal advisors, and representatives of Deloitte Restructuring Inc. (the “**Monitor**”). 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 up to and including September 30, 2024.
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 it is the smallest tobacco company subject to the Pending Litigation based on annual volume 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**”) 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 global resolution to all of the Tobacco Claims being asserted against it and provide the Applicant with a fresh

start. But for the QCA Judgment and 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. Deloitte Restructuring Inc. was appointed as the Monitor of the Applicant in these CCAA proceedings.
10. On March 12, 2019, and March 22, 2019, respectively, 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. 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 JTIM, Imperial and RBH.
11. On April 5, 2019, pursuant to the Amended and Restated Initial Order, the Honourable Warren K. Winkler, K.C., was appointed as an officer of the Court and a third-party mediator (the “**Court-Appointed Mediator**”) to mediate a global settlement of the Tobacco Claims against the Applicant, Imperial and RBH.
12. The Initial Order provides for a Court-ordered stay of proceedings, which is currently set to expire on March 29, 2024, pursuant to the Stay Extension Order issued on September 27, 2023 (the “**Stay Extension Order**”).

II. ACTIVITIES SINCE THE STAY EXTENSION ORDER

13. Since the Stay Extension Order, the Applicant has continued to operate in the ordinary course and actively 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) effective January 1, 2024, Mr. Paul Hennessy assumed the role of General Manager of JTIM;
- (c) as part of the JTI group's global implementation of an integrated work system, the Applicant eliminated the night shift at its Montreal factory, effective as of June 1, 2024, which is in response to a decline in historical cigarette sales volumes, which is expected to continue into the future. As a result, the Applicant will reduce its headcount by 17, which employees will receive severance packages in accordance with the terms of the collective agreement between the Applicant and the union;
- (d) on August 1, 2023, the *Tobacco Products Appearance, Packaging and Labelling Regulations* (the "**Regulations**") came into force, requiring health warnings to be printed directly on individual cigarettes, as well as other packaging and label changes. In compliance with the Regulations, the Applicant has ceased sale and distribution of tobacco products that do not meet the new labelling requirements of

the Regulations as of January 31, 2024. The requirement for manufacturers to include warnings on each cigarette comes into force on April 30, 2024, for king size cigarettes and on January 31, 2025, for regular size cigarettes, little cigar with tipping paper, and tubes, with other packaging changes needing to be implemented by July 31, 2026. The Applicant is investing in machinery and equipment with a cost of approximately USD \$1.9 million of which approximately USD \$0.55 million was incurred in 2023. The Applicant is on target to be compliant with the new regulatory requirements in accordance with the timelines;

- (e) the Applicant has incurred capital expenditures related to a rainwater discharge system and certain improvements to the shipping areas in its Montreal factory to comply with new municipal storm water code requirements and improve the safety and reliability of its shipping operations. The total estimated expenditure is approximately \$2.1 million. These capital expenditures were reviewed and approved by the Monitor, and are expected to continue until 2025;
- (f) Wallace & Carey Inc. (“**W&C**”), one of JTIM’s distributors, filed for CCAA protection in June 2023. In December 2023, JTIM received notice that W&C’s Tobacco Tax Licence with the Ministry of Finance for Saskatchewan would be revoked on December 31, 2023. Subsequently, JTIM was advised by the monitor of W&C that the Saskatchewan Ministry of Finance withdrew the revocation, permitting W&C to continue distribution in the ordinary course;

Sheppard Claim

- (g) on October 27, 2023, a former employee of the Applicant commenced an action against the Applicant and Sun Life Assurance Company of Canada (“**Sun Life**”)

seeking damages related to Sun Life's decision to terminate the former employee's Salary Continuation and Long-Term Disability benefits. The plaintiff has requested to lift the stay of proceedings to continue the action, which consent has been provided by the Applicant and the Monitor.

CCAA proceedings

- (h) 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;
- (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 actively participate in the process established by the Court-Appointed Mediator to advance the ongoing mediation process;
- (k) 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 purpose of providing updated relevant information to certain stakeholders in respect of the Applicant's business, operations, finances and future prospects; and
- (l) the Applicant is participating in the mediation in good faith and as requested by the Court-Appointed Mediator.

III. EXTENSION OF THE STAY PERIOD

14. The Applicant seeks an extension of the Stay Period up to and including September 30, 2024. It is my understanding from the Monitor that Imperial and RBH also seek 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 continuation of the court-ordered mediation process.
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 March 4, 2024, to the week ending October 4, 2024. I understand that the Cash Flow Statement will be appended to the Monitor’s Sixteenth Report to the Court, to be filed. The Cash Flow Statement demonstrates that JTIM has enough 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 global resolution of the Tobacco Claims. The Applicant has acted in good faith and with due diligence during the course of the 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, 2024, and for no other or improper purpose.

SWORN BEFORE ME BY VIDEO CONFERENCE by William E. Aziz on March 11, 2024 in accordance with *O. Reg. 431/20, Administering Oath or Declaration Remotely*. The affiant was in the City of Naples, in the State of Florida and the commissioner was in the City of Toronto, in the Province of Ontario.



Commissioner for Taking Affidavits

Rebekah O'Hare
LSO #87983G



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 11, 2024)**

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Tab 3

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

THE HONOURABLE CHIEF)	MONDAY THE 25TH
)	
JUSTICE MORAWETZ)	DAY OF MARCH, 2024
)	

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 in accordance with the Guidelines to Determine Mode of Proceeding in Civil.

ON READING the affidavit of William E. Aziz sworn March 11, 2024 and the exhibits thereto, the Sixteenth 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 Victoria Mlynarczyk sworn on March 11, 2024, filed.

STAY EXTENSION

1. **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 up to and including September 30, 2024.

GENERAL

2. **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.

Chief Justice G.B. Morawetz

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

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ONTARIO
**SUPERIOR COURT OF JUSTICE
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Proceeding commenced at Toronto

MOTION RECORD

(Re: Stay Extension)

(Returnable on March 25, 2024)

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