

**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 September 28, 2022)**

September 20, 2022

**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](mailto:rthornton@tgf.ca)

**Leanne M. Williams** (LSO# 41877E)  
Email: [lwilliams@tgf.ca](mailto:lwilliams@tgf.ca)

**Rebecca L. Kennedy** (LSO# 61146S)  
Email: [rkennedy@tgf.ca](mailto:rkennedy@tgf.ca)

Tel: 416-304-1616

Fax: 416-304-1313

Lawyers for the Applicant

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<b>Tab</b>	<b>Document</b>
1.	Notice of Motion dated September 20, 2022
2.	Affidavit of William E. Aziz sworn September 16, 2022
3.	Draft Stay Extension Order

# TAB 1

**ONTARIO  
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**Applicant**

**NOTICE OF MOTION  
(Re: Stay Extension)  
(Returnable on September 28, 2022)**

The Applicant will make a motion to Justice McEwen of the Ontario Superior Court of Justice (Commercial List) on September 28, 2022, at 11:00 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 September 30, 2022, up to and including March 31, 2023; 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 September 30, 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 March 31, 2023.
8. 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.
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 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 September 16, 2022;
- (b) the Twelfth Report of the Monitor, to be filed; and
- (c) such further and other evidence as counsel may advise and this Court may permit.

September 20, 2022

**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](mailto:rthornton@tgf.ca)

**Leanne M. Williams** (LSO# 41877E)  
Email: [lwilliams@tgf.ca](mailto:lwilliams@tgf.ca)

**Rebecca L. Kennedy** (LSO# 61146S)  
Email: [rkennedy@tgf.ca](mailto:rkennedy@tgf.ca)

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

Lawyers for the Applicant

**TO: THE COMMON SERVICE LIST**

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

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

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

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

**Applicants**

**COMMON SERVICE LIST  
(as at September 8, 2022)**

<b>TO:</b>	<p><b>THORNTON GROUT FINNIGAN LLP</b> 100 Wellington Street West, Suite 3200 TD West Tower, Toronto-Dominion Centre Toronto, ON M5K 1K7 Fax: 416-304-1313</p> <p><b>Robert I. Thornton</b> Tel: 416-304-0560 Email: rthornton@tgf.ca</p> <p><b>Leanne M. Williams</b> Tel: 416-304-0060 Email: lwilliams@tgf.ca</p> <p><b>Rebecca L. Kennedy</b> Tel: 416-304-0603 Email: rkennedy@tgf.ca</p>
------------	---

\* For any additions or questions, please contact Nancy Thompson at [nancy.thompson@blakes.com](mailto:nancy.thompson@blakes.com)



	<p><b>Rachel A. Bengino</b> Tel: 416-304-1153 Email: rbengino@tgf.ca</p> <p><b>Mitchell W. Grossell</b> Tel: 416-304-7978 Email: mgrossell@tgf.ca</p> <p><b>John L. Finnigan</b> Tel: 416-304-0558 Email: jfinnigan@tgf.ca</p> <p>Lawyers for JTI-Macdonald Corp.</p>
<p><b>AND TO:</b></p>	<p><b>DELOITTE RESTRUCTURING INC.</b> Bay Adelaide East 8 Adelaide Street West Suite 200 Toronto, ON M5H 0A9 Fax: 416-601-6690</p> <p><b>Paul Casey</b> Tel: 416-775-7172 Email: paucasey@deloitte.ca</p> <p><b>Warren Leung</b> Tel: 416-874-4461 Email: waleung@deloitte.ca</p> <p><b>Jean-Francois Nadon</b> Tel: 514-390-0059 Email: jnadon@deloitte.ca</p> <p><b>Phil Reynolds</b> Tel: 416-956-9200 Email: philreynolds@deloitte.ca</p> <p>The Monitor of JTI-Macdonald Corp.</p>

<b>AND TO:</b>	<p><b>BLAKE, CASSELS &amp; GRAYDON LLP</b> 199 Bay Street Suite 4000, Commerce Court West Toronto, ON M5L 1A9 Fax: 416-863-2653</p> <p><b>Pamela Huff</b> Tel: 416-863-2958 Email: pamela.huff@blakes.com</p> <p><b>Linc Rogers</b> Tel: 416-863-4168 Email: linc.rogers@blakes.com</p> <p><b>Chris Burr</b> Tel: 416-863-3261 Email: chris.burr@blakes.com</p> <p><b>Aryo Shalviri</b> Tel: 416-863-2962 Email: aryo.shalviri@blakes.com</p> <p><b>Caitlin McIntyre</b> Tel: 416-863-4174 Email: caitlin.mcintyre@blakes.com</p> <p><b>Nancy Thompson, Law Clerk</b> Tel: 416-863-2437 Email: nancy.thompson@blakes.com</p> <p>Lawyers for Deloitte Restructuring Inc., in its capacity as Monitor of JTI-Macdonald Corp.</p>
<b>AND TO:</b>	<p><b>MILLER THOMSON LLP</b> Scotia Plaza 40 King Street West, Suite 5800 Toronto, ON M5H 3S1</p> <p><b>Craig A. Mills</b> Tel: 416-595-8596 Email: cmills@millerthomson.com</p> <p>Lawyers for North Atlantic Operating Company, Inc.</p>

<b>AND TO:</b>	<b>MILLER THOMSON LLP</b> 1000, rue De La Gauchetière Ouest, bureau 3700 Montreal, QC H3B 4W5  <b>Hubert Sibre</b> Tel: 514-879-4088 Email: hsibre@millerthomson.com  Lawyers for AIG Insurance Canada
<b>AND TO:</b>	<b>BLUETREE ADVISORS INC.</b> First Canada Place 100 King Street West Suite 5600 Toronto, ON M5X 1C9  <b>William E. Aziz</b> Tel: 416-640-7122 Email: baziz@bluetreadvisors.com  Chief Restructuring Officer of JTI-Macdonald Corp.
<b>AND TO:</b>	<b>STIKEMAN ELLIOTT LLP</b> Commerce Court West 199 Bay Street, Suite 5300 Toronto, ON M5L 1B9 Fax: 416-947-0866  <b>David R. Byers</b> Tel: 416-869-5697 Email: dbyers@stikeman.com  <b>Maria Konyukhova</b> Tel: 416-869-5230 Email: mkonyukhova@stikeman.com  <b>Lesley Mercer</b> Tel: 416-869-6859 Email: lmercer@stikeman.com  <b>Sanja Sopic</b> Tel: 416-869-6825 Email: ssopic@stikeman.com  Lawyers for British American Tobacco p.l.c., B.A.T. Industries p.l.c. and British American Tobacco (Investments) Limited

<b>AND TO:</b>	<p><b>OSLER, HOSKIN &amp; HARCOURT LLP</b> 100 King Street West 1 First Canadian Place Suite 6200, P.O. Box 50 Toronto, ON M5X 1B8 Fax: 416-862-6666</p> <p><b>Deborah Glendinning</b> Tel: 416-862-4714 Email: dglendinning@osler.com</p> <p><b>Marc Wasserman</b> Tel: 416-862-4908 Email: mwasserman@osler.com</p> <p><b>John A. MacDonald</b> Tel: 416-862-5672 Email: jmacdonald@osler.com</p> <p><b>Michael De Lellis</b> Tel: 416-862-5997 Email: mdelellis@osler.com</p> <p><b>Craig Lockwood</b> Tel: 416-862-5988 Email: clockwood@osler.com</p> <p><b>Stephen Armstrong</b> Tel: 416-862-4880 Email: sarmstrong@osler.com</p> <p>Lawyers for Imperial Tobacco Canada Limited and Imperial Tobacco Company Limited</p>
<b>AND TO:</b>	<p><b>DAVIES WARD PHILLIPS &amp; VINEBERG LLP</b> 155 Wellington Street West Toronto, ON M5V 3J7</p> <p><b>Natasha MacParland</b> Tel: 416-863-5567 Email: nmacparland@dwpv.com</p> <p><b>Chanakya Sethi</b> Tel: 416-863-5516 Email: csethi@dwpv.com</p>

	<p><b>Jonathan Yantzi</b> Tel: 416-367-7544 Email: jyantzi@dwpv.com</p> <p>Lawyers for FTI Consulting Canada Inc., in its capacity as Monitor of Imperial Tobacco Canada Limited and Imperial Tobacco Company Limited</p>
<b>AND TO:</b>	<p><b>FTI CONSULTING CANADA INC.</b> 79 Wellington Street West Suite 2010, P.O. Box 104 Toronto, ON M4K 1G8 Fax: 416-649-8101</p> <p><b>Greg Watson</b> Tel: 416-649-8077 Email: greg.watson@fticonsulting.com</p> <p><b>Paul Bishop</b> Tel: 416-649-8053 Email: paul.bishop@fticonsulting.com</p> <p><b>Jeffrey Rosenberg</b> Tel: 416-649-8073 Email: jeffrey.rosenberg@fticonsulting.com</p> <p><b>Kamran Hamidi</b> Tel: 416-649-8068 Email: kamran.hamidi@fticonsulting.com</p> <p><b>Tyler Rivas-Perri</b> Tel: 416-649-8076 Email: tyler.rivas-perri@fticonsulting.com</p> <p>Monitor of Imperial Tobacco Canada Limited and Imperial Tobacco Company Limited</p>
<b>AND TO:</b>	<p><b>MCCARTHY TÉTRAULT LLP</b> 66 Wellington Street West Suite 5300 TD Bank Tower, Box 48 Toronto, ON M5K 1E6 Fax: 416-868-0673</p> <p><b>James Gage</b> Tel: 416-601-7539 Email: jgage@mccarthy.ca</p>

	<p><b>Heather Meredith</b> Tel: 416-601-8342 Email: hmeredith@mccarthy.ca</p> <p><b>Paul Steep</b> Tel: 416-601-7998 Email: psteep@mccarthy.ca</p> <p><b>Trevor Courtis</b> Tel: 416-601-7643 Email: tcourtis@mccarthy.ca</p> <p><b>Deborah Templer</b> Tel: 416-601-8421 Email: dtempler@mccarthy.ca</p> <p><b>Natasha Rambaran</b> Tel: 416-601-8110 Email: nrambaran@mccarthy.ca</p> <p>Lawyers for Rothmans, Benson &amp; Hedges, Inc.</p>
<b>AND TO:</b>	<p><b>BCF LLP</b> 1100, René-Lévesque Blvd., Suite 2500 Montreal, QC H3B 5C9</p> <p><b>Me Bertrand Giroux</b> Tel: 514-397-6935 Email: bertrand.giroux@bcf.ca</p> <p><b>Me Mireille Fontaine</b> Tel: 514-397-4561 Email: mireille.fontaine@bcf.ca</p> <p>Lawyers for the Top Tube Company</p>
<b>AND TO:</b>	<p><b>TORYS LLP</b> 79 Wellington St. West, Suite 3000 Box 270, TD Centre Toronto, ON M5K 1N2 Fax: 416-865-7380</p> <p><b>Scott Bomhof</b> Tel: 416-865-7370 Email: sbomhof@torys.com</p>

	<p><b>Adam Slavens</b> Tel: 416-865-7333 Email: aslavens@torys.com</p> <p>Lawyers for JT Canada LLC Inc. and PricewaterhouseCoopers Inc., in its capacity as receiver of JTI-Macdonald TM Corp.</p>
<b>AND TO:</b>	<p><b>PRICEWATERHOUSECOOPERS</b> PwC Tower 18 York St., Suite 2600 Toronto, ON M5J 0B2 Fax: 416-814-3210</p> <p><b>Mica Arlette</b> Tel: 416-814-5834 Email: mica.arlette@pwc.com</p> <p><b>Tyler Ray</b> Email: tyler.ray@pwc.com</p> <p>Receiver and Manager of JTI-Macdonald TM Corp.</p>
<b>AND TO:</b>	<p><b>BENNETT JONES</b> 100 King Street West Suite 3400 Toronto, ON M5X 1A4 Fax: 416-863-1716</p> <p><b>Jeff Leon</b> Tel: 416-777-7472 Email: leonj@bennettjones.com</p> <p><b>Mike Eizenga</b> Tel: 416-777-4879 Email: eizengam@bennettjones.com</p> <p><b>Sean Zweig</b> Tel: 416-777-6254 Email: zweigs@bennettjones.com</p> <p><b>SISKINDS</b> 275 Dundas Street, Unit 1 London, ON N6B 3L1</p> <p><b>Andre I.G. Michael</b> Tel: 519-660-7860 Email: andre.michael@siskinds.com</p>

	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
<b>AND TO:</b>	<b>MINISTRY OF THE ATTORNEY GENERAL</b> Legal Services Branch 1001 Douglas Street Victoria, BC V8W 2C5 Fax: 250-356-6730  <b>Peter R. Lawless</b> Tel: 250-356-8432 Email: peter.lawless@gov.bc.ca
<b>AND TO:</b>	<b>KSV ADVISORY INC.</b> 150 King Street West Suite 2308, Box 42 Toronto, ON M5H 1J9 Fax: 416-932-6266  <b>Noah Goldstein</b> Tel: 416-932-6207 Email: ngoldstein@ksvadvisory.com  <b>Bobby Kofman</b> Email: bkofman@ksvadvisory.com  Financial Advisory 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
<b>AND TO:</b>	<b>MINISTRY OF THE ATTORNEY GENERAL</b> Crown Law Office - Civil 720 Bay Street, 8th Floor Toronto, ON M7A 2S9 Fax: 416-326-4181  <b>Jacqueline Wall</b> Tel: 416-434-4454 Email: jacqueline.wall@ontario.ca  <b>Edmund Huang</b> Tel: 416-524-1654 Email: edmund.huang@ontario.ca



	<p><b>Peter Entecott</b> Tel: 647-467-7768 Email: peter.entecott@ontario.ca</p> <p>Lawyers for Her Majesty the Queen in Right of Ontario</p>
<b>AND TO:</b>	<p><b>FISHMAN FLANZ MELAND PAQUIN LLP</b> 4100 – 1250 René-Lévesque Blvd. West Montreal, QC H3A 3H3</p> <p><b>Avram Fishman</b> Email: afishman@ffmp.ca</p> <p><b>Mark E. Meland</b> Tel: 514-932-4100 Email: mmeland@ffmp.ca</p> <p><b>Margo R. Siminovitch</b> Email: msiminovitch@ffmp.ca</p> <p><b>Jason Dolman</b> Email: jdolman@ffmp.ca</p> <p><b>Nicolas Brochu</b> Email: nbrochu@ffmp.ca</p> <p><b>Tina Silverstein</b> Email: tsilverstein@ffmp.ca</p> <p><b>CHAITONS LLP</b> 5000 Yonge Street 10th Floor Toronto, ON M2N 7E9</p> <p><b>Harvey Chaiton</b> Tel: 416-218-1129 Email: harvey@chaitons.com</p> <p><b>George Benchetrit</b> Tel: 416-218-1141 Email: george@chaitons.com</p> <p><b>TRUDEL JOHNSTON &amp; LESPÉRANCE</b> 750, Cote de la Place d'Armes, Bureau 90 Montréal, QC H2Y 2X8 Fax: 514-871-8800</p>

	<p><b>Philippe Trudel</b> Tel: 514-871-0800 Email: philippe@tjl.quebec</p> <p><b>Bruce Johnston</b> Tel: 514-871-085 Email: bruce@tjl.quebec</p> <p><b>André Lespérance</b> Tel: 514-871-8385 x204 Email: andre@tjl.quebec</p> <p><b>Gabrielle Gagné</b> Tel: 514-871-8385 x207 Email: gabrielle@tjl.quebec</p> <p>Lawyers for Conseil québécois sur le tabac et la santé, Jean-Yves Blais and Cécilia Létourneau (Quebec Class Action Plaintiffs)</p>
<b>AND TO:</b>	<p><b>KLEIN LAWYERS LLP</b> 100 King Street West, Suite 5600 Toronto, ON M5X 1C9</p> <p><b>Douglas Lennox</b> Tel: 416-506-1944 Email: dlennox@callkleinlawyers.com</p> <p><b>KLEIN LAWYERS LLP</b> 400 – 1385 West 8<sup>th</sup> Avenue Vancouver, BC V6H 3V9</p> <p><b>David A. Klein</b> Tel: 604-874-7171 Email: dklein@callkleinlawyers.com</p> <p>Lawyers for the representative plaintiff, Kenneth Knight, in the certified British Columbia class action, <i>Knight v. Imperial Tobacco Canada Ltd.</i>, Supreme Court of British Columbia, Vancouver Registry No. L031300</p>
<b>AND TO:</b>	<p><b>JENSEN SHAWA SOLOMON DUGID HAWKES LLP</b> 800, 304 – 8 Avenue SW Calgary, AB T2P 1C2 Fax: 403-571-1528</p> <p><b>Carsten Jensen, QC</b> Tel: 403-571-1526 Email: jensenc@jssbarristers.ca</p>

	<p><b>Sabri Shawa, QC</b> Tel: 403-571-1527 Email: shawas@jssbarristers.ca</p> <p><b>Stacy Petriuk</b> Tel: 403-571-1523 Email: petriuks@jssbarristers.ca</p> <p><b>PALIARE ROLAND ROSENBERG ROTHSTEIN LLP</b> 155 Wellington Street West, 35<sup>th</sup> Floor Toronto, ON M5V 3H1</p> <p><b>Kenneth T. Rosenberg</b> Email: ken.rosenberg@paliareroland.com</p> <p><b>Lilly Harmer</b> Email: lily.harmer@paliareroland.com</p> <p><b>Massimo (Max) Starnino</b> Email: max.starnino@paliareroland.com</p> <p><b>Danielle Glatt</b> Email: Danielle.glatt@paliareroland.com</p> <p>Lawyers for Her Majesty the Queen in Right of Alberta</p>
<p><b>AND TO:</b></p>	<p><b>STEWART MCKELVEY</b> 1959 Upper Water Street, Suite 900 PO Box 997 Halifax, NS B3J 2X2 Fax: 902-420-1417</p> <p><b>Robert G. MacKeigan, Q.C.</b> Tel: 902-444-1771 Email: robbie@stewartmckelvey.com</p> <p>Lawyers for Sobeys Capital Incorporated</p>
<p><b>AND TO:</b></p>	<p><b>CASSELS BROCK &amp; BLACKWELL LLP</b> 2100 Scotia Plaza 40 King Street West Toronto, ON M5H 3C2</p> <p><b>Shayne Kukulowicz</b> Tel: 416-860-6463 Fax: 416-640-3176 Email: skukulowicz@cassels.com</p>

	<p><b>Jane Dietrich</b> Tel: 416-860-5223 Fax: 416-640-3144 Email: <a href="mailto:jdietrich@cassels.com">jdietrich@cassels.com</a></p> <p><b>Joseph Bellissimo</b> Tel: 416-860-6572 Fax: 416-642-7150 Email: <a href="mailto:jbellissimo@cassels.com">jbellissimo@cassels.com</a></p> <p><b>Monique Sassi</b> Tel: 416-860-6886 Fax: 416-640-3005 Email: <a href="mailto:msassi@cassels.com">msassi@cassels.com</a></p> <p>Lawyers for Ernst &amp; Young Inc, in its capacity as court-appointed monitor of Rothmans, Benson &amp; Hedges, Inc.</p>
<p><b>AND TO:</b></p>	<p><b>ERNST &amp; YOUNG INC.</b> Ernst &amp; Young Tower 100 Adelaide Street West P.O. Box 1 Toronto, ON M5H 0B3</p> <p><b>Murray A. McDonald</b> Tel: 416-943-3016 Email: <a href="mailto:murray.a.mcdonald@ca.ey.com">murray.a.mcdonald@ca.ey.com</a></p> <p><b>Brent Beekenkamp</b> Tel: 416-943-2652 Email: <a href="mailto:brent.r.beekenkamp@ca.ey.com">brent.r.beekenkamp@ca.ey.com</a></p> <p><b>Edmund Yau</b> Tel: 416-943-2177 Email: <a href="mailto:edmund.yau@ca.ey.com">edmund.yau@ca.ey.com</a></p> <p><b>Matt Kaplan</b> Tel: 416-932-6155 Email: <a href="mailto:matt.kaplan@ca.ey.com">matt.kaplan@ca.ey.com</a></p> <p><b>Philip Kan</b> Email: <a href="mailto:philip.kan@ca.ey.com">philip.kan@ca.ey.com</a></p> <p>Monitor of Rothmans, Benson &amp; Hedges, Inc.</p>

<b>AND TO:</b>	<p><b>GOWLING WLG (CANADA) LLP</b> 1 First Canadian Place 100 King Street West, Suite 1600 Toronto, ON M5X 1G5 Fax: 416-862-7661</p> <p><b>Clifton Prophet</b> Tel: 416-862-3509 Email: <a href="mailto:clifton.prophet@gowlingwlg.com">clifton.prophet@gowlingwlg.com</a></p> <p><b>Steven Sofer</b> Tel: 416-369-7240 Email: <a href="mailto:steven.sofer@gowlingwlg.com">steven.sofer@gowlingwlg.com</a></p> <p><b>Nicholas Kluge</b> Tel: 416-369-4610 Email: <a href="mailto:nicholas.kluge@gowlingwlg.com">nicholas.kluge@gowlingwlg.com</a></p> <p>Lawyers for Philip Morris International Inc.</p>
<b>AND TO:</b>	<p><b>PALIARE ROLAND ROSENBERG ROTHSTEIN LLP</b> 155 Wellington Street West, 35<sup>th</sup> Floor Toronto, ON M5V 3H1</p> <p><b>Kenneth T. Rosenberg</b> Email: <a href="mailto:ken.rosenberg@paliareroland.com">ken.rosenberg@paliareroland.com</a></p> <p><b>Lilly Harmer</b> Email: <a href="mailto:lily.harmer@paliareroland.com">lily.harmer@paliareroland.com</a></p> <p><b>Massimo (Max) Starnino</b> Email: <a href="mailto:max.starnino@paliareroland.com">max.starnino@paliareroland.com</a></p> <p><b>Danielle Glatt</b> Email: <a href="mailto:Danielle.glatt@paliareroland.com">Danielle.glatt@paliareroland.com</a></p> <p><b>ROEBOTHAN MCKAY MARSHALL</b> Paramount Building 34 Harvey Road, 5<sup>th</sup> Floor St. John's NL A1C 3Y7 Fax: 709-753-5221</p> <p><b>Glenda Best</b> Tel: 705-576-2255 Email: <a href="mailto:gbest@wrmlaw.com">gbest@wrmlaw.com</a></p> <p>Lawyers for Her Majesty the Queen in Right of Newfoundland</p>

<b>AND TO:</b>	<b>WESTROCK COMPANY OF CANADA CORP.</b> 15400 Sherbrooke Street East Montreal, QC H1A 3S2  <b>Dean Jones</b> Tel: 514-642-9251 Email: dean.jones@westrock.com
<b>AND TO</b>	<b>FINANCIAL SERVICES REGULATORY AUTHORITY OF ONTARIO (FSRA)</b> Legal and Enforcement Division 25 Sheppard Avenue West, Suite 100 Toronto, Ontario M2N 6S6  <b>Michael Spagnolo</b> Legal Counsel Tel: 416-226-7851 Email: michael.spagnolo@fsrao.ca
<b>AND TO:</b>	<b>KAPLAN LAW</b> 393 University Avenue, Suite 2000 Toronto, ON M5G 1E6  <b>Ari Kaplan</b> Tel: 416-565-4656 Email: ari@kaplanlaw.ca  Counsel to the Former Genstar U.S. Retiree Group Committee
<b>AND TO:</b>	<b>McMILLAN LLP</b> Brookfield Place 181 Bay Street, Suite 4400 Toronto, ON M5J 2T3  <b>Wael Rostom</b> Tel: 416-865-7790 Email: wael.rostom@mcmillan.ca  <b>Emile Catimel-Marchand</b> Tel: 514-987-5031 Email: emile.catimel-marchand@mcmillan.ca  Lawyers for The Bank of Nova Scotia

<b>AND TO</b>	<b>MERCHANT LAW GROUP LLP</b> c/o #400 – 333 Adelaide St. West Toronto, ON M5V 1R5 Fax: 613-366-2793  <b>Evatt Merchant, QC</b> Tel: 613-366-2795 Email: <a href="mailto:emerchant@merchantlaw.com">emerchant@merchantlaw.com</a>  <b>Chris Simoes</b> Email: <a href="mailto:csimoes@merchantlaw.com">csimoes@merchantlaw.com</a>  Lawyers for the Class Action Plaintiffs (MLG)
<b>AND TO:</b>	<b>LABSTAT INTERNATIONAL INC.</b> 262 Manitou Drive Kitchener, ON N2C 1L3  <b>Kimberly Stevenson Chow (CFO)</b> Tel: 519-748-5409 Email: <a href="mailto:kstevens@labstat.com">kstevens@labstat.com</a>
<b>AND TO:</b>	<b>CERNOS FLAHERTY SVONKIN LLP</b> 220 Bay Street, Suite 700 Toronto, ON M5J 2W4 Fax: 647-725-5440  <b>Patrick Flaherty</b> Tel: 416-855-0403 Email: <a href="mailto:pflaherty@cfscounsel.com">pflaherty@cfscounsel.com</a>  <b>Bryan D. McLeese</b> Tel: 416-855-0414 Email: <a href="mailto:bmcleese@cfscounsel.com">bmcleese@cfscounsel.com</a>  <b>STOCKWOODS LLP</b> 77 King Street West, Suite 4130 TD North Tower, P.O. Box 140, TD Centre Toronto, ON M5K 1H1 Fax: 416-593-9345  <b>Brian Gover</b> Tel: 416-593-2489 Email: <a href="mailto:briang@stockwoods.ca">briang@stockwoods.ca</a>

	<p><b>Justin Safayeni</b> Tel: 416-593-3494 Email: justins@stockwoods.ca</p> <p>Lawyers for R.J. Reynolds Tobacco Company and R.J. Reynolds Tobacco International Inc.</p>
<b>AND TO:</b>	<p><b>COZEN O'CONNOR LLP</b> Bay Adelaide Centre – West Tower 333 Bay Street, Suite 1100 Toronto, Ontario M5H 2R2</p> <p><b>Steven Weisz</b> Tel: 647-417-5334 Fax: 647-805-0519 Email: sweisz@cozen.com</p> <p><b>INCH HAMMOND PROFESSIONAL CORPORATION</b> 1 King Street West, Suite 500 Hamilton, ON L8P 4X8</p> <p><b>Amanda McInnis</b> Tel: 905-525-0031 Email: amcinnis@inchlaw.com</p> <p>Lawyer for Grand River Enterprises Six Nations Ltd.</p>
<b>AND TO:</b>	<p><b>STROSBERG SASSO SUTTS LLP</b> 1561 Ouellette Avenue Windsor, ON M8X 1K5 Fax: 866-316-5308</p> <p><b>William V. Sasso</b> Tel: 519-561-6222 Email: wvs@strosbergco.com</p> <p><b>David Robins</b> Tel: 519-561-6215 Email: drobins@strosbergco.com</p> <p>Lawyers for The Ontario Flue-Cured Tobacco Growers' Marketing Board, plaintiffs in Ontario Superior Court of Justice Court File No. 1056/10CP (Class Proceedings)</p>



<b>AND TO:</b>	<p><b>ATTORNEY GENERAL OF CANADA</b> Department of Justice Canada Ontario Regional Office, Tax Law Section 120 Adelaide Street West, Suite 400 Toronto, ON M5H 1T1 Fax: 416-973-0810</p> <p><b>Diane Winters, General Counsel</b> Tel: 647-256-7459 Email: diane.winters@justice.gc.ca</p> <p>Lawyers for the Minister of National Revenue</p>
<b>AND TO:</b>	<p><b>LAX O’SULLIVAN LISUS GOTTLIEB LLP</b> Suite 2750, 145 King Street West Toronto, ON M5H 1J8</p> <p><b>Jonathan Lisus</b> Tel: 416-598-7873 Email: jlisus@lolg.ca</p> <p><b>Matthew Gottlieb</b> Tel: 416-644-5353 Email: mgottlieb@lolg.ca</p> <p><b>Nadia Campion</b> Tel: 416-642-3134 Email: ncampion@lolg.ca</p> <p><b>Andrew Winton</b> Tel: 416-644-5342 Email: awinton@lolg.ca</p> <p>Lawyers for the Court-Appointed Mediator</p>
<b>AND TO:</b>	<p><b>FOGLER, RUBINOFF LLP</b> Suite 3000, P.O. Box 95 Toronto-Dominion Centre 77 King Street West Toronto, ON M5K 1G8 Fax: 416-941-8852</p> <p><b>Vern W. DaRe</b> Tel: 416-941-8842 Email: vdare@foglers.com</p>

	<p><b>CANADIAN CANCER SOCIETY</b> 116 Albert Street, Suite 500 Ottawa, ON K1P 5G3 Fax: 613-565-2278</p> <p><b>Robert Cunningham</b> Tel: 613-565-2522 ext. 4981 Email: rcunning@cancer.ca</p> <p>Lawyers for Canadian Cancer Society</p>
<b>AND TO:</b>	<p><b>BLANEY MCMURTRY LLP</b> 2 Queen Street East, Suite 1500 Toronto, ON M5C 3G5</p> <p><b>David Ullmann</b> Tel: 416-596-4289 Email: dullmann@blaney.com</p> <p><b>Dominic T. Clarke</b> Tel: 416-593-3968 Email: dclarke@blaney.com</p> <p><b>Alexandra Teodorescu</b> Tel: 416-596-4279 Email: ateodorescu@blaney.com</p> <p><b>Alex Fernet Brochu</b> Tel: 416-593-3937 Email: afernetbrochu@blaney.com</p> <p>Lawyers for La Nordique Compagnie D'Assurance du Canada</p>
<b>AND TO:</b>	<p><b>LAROCHE ST-PIERRE</b> 2600, boulevard Laurier, porte760 Quebec, QC G1V 4T3</p> <p><b>Mélanie Létourneau</b> Tel: 418-657-8702, ext. 3793 Email: melanie.letourneau@retraitequebec.gouv.qc.ca</p> <p>Lawyers for Retraite Québec</p>

<b>AND TO:</b>	<b>LECKER &amp; ASSOCIATES</b> 4789 Yonge Street, Suite 514 Toronto, ON M2N 0G3  <b>Jared Lecker</b> Email: jlecker@leckerslaw.com  Lawyer for Imperial Tobacco claimant
<b>AND TO:</b>	<b>McMILLAN LLP</b> 181 Bay Street, Suite 4400 Toronto, ON M5J 2T3 Fax: 416-865-7048  <b>Brett Harrison</b> Tel: 416-865-7932 Email: brett.harrison@mcmillan.ca  Lawyers for the Province of Quebec
<b>AND TO:</b>	<b>ATTORNEY GENERAL OF CANADA</b> Department of Justice Canada Ontario Regional Office, L.E.A.D. 120 Adelaide Street West, Suite 400 Toronto, ON M5H 1T1  <b>John C. Spencer</b> Tel: 647-256-0557 Email: john.spencer@justice.gc.ca  <b>Victor Paolone</b> Tel: 647-256-7548 Email: victor.paolone@justice.gc.ca
<b>AND TO:</b>	<b>McMILLAN LLP</b> Brookfield Place 181 Bay Street, Suite 4400 Toronto, ON M5J 2T3 Fax: 416-865-7048  <b>Stephen Brown-Okruhlik</b> Tel: 416-865-7043 Email: stephen.brown-okruhlik@mcmillan.ca  Lawyers for Citibank Canada

<b>AND TO:</b>	<p><b>BORDEN LADNER GERVAIS LLP</b> Bay Adelaide Centre, East Tower 22 Adelaide Street West, Suite 3400 Toronto, ON M5H 4E3 Fax: 416-367-6749</p> <p><b>Alex MacFarlane</b> Tel: 416-367-6305 Email: amacfarlane@blg.com</p> <p><b>James W. MacLellan</b> Tel: 416-367-6592 Email: jmaclellan@blg.com</p> <p><b>Bevan Brooksbank</b> Tel: 416-367-6604 Email: bbrooksbank@blg.com</p> <p>Lawyers for Chubb Insurance Company of Canada</p>
<b>AND TO:</b>	<p><b>INDUSTRY CANADA, LEGAL SERVICES</b> 235 Queen Street, 8<sup>th</sup> Floor, East Tower Ottawa, ON K1A 0H5</p> <p><b>Adrian Scotchmer</b> Email: adrian.scotchmer@canada.ca</p> <p><b>Michel Ohayon</b> Email: michel.ohayon@canada.ca</p>
<b>AND TO:</b>	<p><b>ROCHON GENOVA LLP</b> Barristers • Avocats 121 Richmond Street West, Suite 900 Toronto, ON M5H 2K1 Fax: 416-363-0263</p> <p><b>Joel P. Rochon</b> Tel: 416-363-1867 x222 Email: jrochon@rochongenova.com</p>

	<p><b>Ronald Podolny</b> Tel: 416-363-1867 x288 Email: rpodolny@rochongenova.com</p> <p>Lawyers for Suzanne Jacklin, Barbara Bourassa on behalf of the Estate of Mitchell David Bourassa, Roderick Dennis McDermid, Linda Dorion, Thelma Adams, Ben Sample and Deborah Kunta, in their capacity as Representative Plaintiffs in certain proposed class proceedings</p>
<b>AND TO:</b>	<p><b>WAGNERS</b> 1869 Upper Water Street, Suite PH301 3<sup>rd</sup> Floor, Pontac House, Historic Properties Halifax, NS B3J 1S9 Fax: 902-422-1233</p> <p><b>Raymond F. Wagner, Q.C.</b> Tel: 902-425-7330 Email: raywagner@wagners.co</p> <p><b>Kate Boyle</b> Tel: 902-425-7330 Email: kboyle@wagners.co</p> <p>Representative Counsel</p>
<b>AND TO:</b>	<p><b>REVENU QUÉBEC</b> 1600, boul. René-Lévesque Ouest Secteur R23DGR Montréal, QC H3H 2V2</p> <p><b>Alain Casavant</b> Email: alain.casavant@revenuquebec.ca</p>
<b>AND TO:</b>	<p><b>PELLETIER D'AMOURS</b> 1, Complexe Desjardins Tour Sud, 12e étage Montreal, QC H5B 1B1</p> <p><b>Amy Bowen</b> Email: amy.bowen@dgag.ca</p> <p>Lawyers for Desjardins Assurances</p>

## Email Service List

rthornton@tgf.ca; lwilliams@tgf.ca; rkennedy@tgf.ca; rbengino@tgf.ca; mgrossell@tgf.ca;  
jfinnigan@tgf.ca; rmanea@tgf.ca; paucasey@deloitte.ca; waleung@deloitte.ca;  
jnadon@deloitte.ca; philreynolds@deloitte.ca; pamela.huff@blakes.com;  
linc.rogers@blakes.com; chris.burr@blakes.com; aryo.shalviri@blakes.com;  
caitlin.mcintyre@blakes.com; emily.hazlett@blakes.com; nancy.thompson@blakes.com;  
cmills@millერთhompson.com; hsibre@millერთhompson.com; baziz@bluetreeadvisors.com;  
dbyers@stikeman.com; mkonyukhova@stikeman.com; lmercer@stikeman.com;  
ssopic@stikeman.com; dglendinning@osler.com; mwasserman@osler.com;  
jmacdonald@osler.com; mdelellis@osler.com; clockwood@osler.com; sarmstrong@osler.com;  
nmacparland@dwpv.com; csethi@dwpv.com; jyantzi@dwpv.com; tbarbiero@dwpv.com;  
greg.watson@fticonsulting.com; paul.bishop@fticonsulting.com;  
jeffrey.rosenberg@fticonsulting.com; kamran.hamidi@fticonsulting.com;  
tyler.rivas-perri@fticonsulting.com; jgage@mccarthy.ca; hmeredith@mccarthy.ca;  
psteep@mccarthy.ca; tcourtis@mccarthy.ca; dtempler@mccarthy.ca; nrambaran@mccarthy.ca;  
bertrand.giroux@bcf.ca; mireille.fontaine@bcf.ca; sbomhof@torys.com; aslavens@torys.com;  
mica.arlette@pwc.com; tyler.ray@pwc.com; leonj@bennettjones.com;  
eizengam@bennettjones.com; zweigs@bennettjones.com; andre.michael@siskinds.com;  
peter.lawless@gov.bc.ca; ngoldstein@ksvadvisory.com; bkofman@ksvadvisory.com;  
jacqueline.wall@ontario.ca; shahana.kar@ontario.ca; edmund.huang@ontario.ca;  
peter.entecott@ontario.ca; afishman@ffmp.ca; mmeland@ffmp.ca; msiminovitch@ffmp.ca;  
jdolman@ffmp.ca; nbrochu@ffmp.ca; tsilverstein@ffmp.ca; harvey@chaitons.com;  
george@chaitons.com; philippe@tjl.quebec; bruce@tjl.quebec; andre@tjl.quebec;  
gabrielle@tjl.quebec; dlennox@callkleinlawyers.com; dklein@callkleinlawyers.com;  
jensenc@jssbarristers.ca; shawas@jssbarristers.ca; petriuks@jssbarristers.ca;  
ken.rosenberg@paliareroland.com; lily.harmer@paliareroland.com;  
max.starnino@paliareroland.com; danielle.glatt@paliareroland.com;  
sarita.sanasie@paliareroland.com; natalia.botelho@paliareroland.com;  
michelle.jackson@paliareroland.com; robbie@stewartmckelvey.com;  
skukulowicz@cassels.com; jdietrich@cassels.com; jbellissimo@cassels.com;  
msassi@cassels.com; murray.a.mcdonald@ca.ey.com; brent.r.beekenkamp@ca.ey.com;  
edmund.yau@ca.ey.com; matt.kaplan@ca.ey.com; philip.kan@ca.ey.com;  
clifton.prophet@gowlingwlw.com; steven.sofer@gowlingwlw.com;  
nicholas.kluge@gowlingwlw.com; gbest@wrmmlaw.com; dean.jones@westrock.com;  
michael.spagnolo@fsrao.ca; ari@kaplanlaw.ca; wael.rostom@mcmillan.ca;  
emile.catimel-marchand@mcmillan.ca; emerchant@merchantlaw.com;  
csimoes@merchantlaw.com; jtim.ccaa@merchantlaw.com; rothmans.ccaa@merchantlaw.com;  
kstevens@labstat.com; pflaherty@cfscounsel.com; bmcleese@cfscounsel.com;  
briang@stockwoods.ca; justins@stockwoods.ca; sweisz@cozen.com; amcinnis@inchlaw.com;  
wvs@strosbergco.com; drobins@strosbergco.com; diane.winters@justice.gc.ca; jlisus@lolg.ca;  
mgottlieb@lolg.ca; ncampion@lolg.ca; awinton@lolg.ca; vdare@foglers.com;  
rcunning@cancer.ca; dullmann@blaney.com; dclarke@blaney.com; ateodorescu@blaney.com;  
afernetbrochu@blaney.com; melanie.letourneau@retraitequebec.gouv.qc.ca;  
jlecker@leckerslaw.com; john.bringardner@acuris.com; brett.harrison@mcmillan.ca;

\* For any additions or questions, please contact Nancy Thompson at nancy.thompson@blakes.com

john.spencer@justice.gc.ca; victor.paolone@justice.gc.ca;  
stephen.brown-okruhlik@mcmillan.ca; amacfarlane@blg.com; jmaclellan@blg.com;  
bbrooksbank@blg.com; adrian.scotchmer@canada.ca; michel.ohayon@canada.ca;  
jrochon@rochongenova.com; rpodolny@rochongenova.com; raywagner@wagners.co;  
kboyle@wagners.co; alain.casavant@revenuquebec.ca; amy.bowen@dgag.ca;

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 September 28, 2022)**

**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](mailto:rthornton@tgf.ca)

**Leanne M. Williams** (LSO# 41877E)

Email: [lwilliams@tgf.ca](mailto:lwilliams@tgf.ca)

**Rebecca L. Kennedy** (LSO# 61146S)

Email: [rkennedy@tgf.ca](mailto:rkennedy@tgf.ca)

Tel: 416-304-1616

Fax: 416-304-1313

Lawyers for the Applicant



# 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 September 16, 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 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 March 31, 2023.
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, based on volume of sales, Canadian tobacco company subject to the Pending Litigation.
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 accrued 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, 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, Imperial Tobacco Canada Limited and Imperial Tobacco Company Limited (together, “**Imperial**”) and Rothmans, Benson & Hedges Inc. (“**RBH**”).
11. The Initial Order provides for a Court-ordered stay of proceedings, which is currently set to expire on September 30, 2022, pursuant to the Stay Extension Order issued on March 22, 2022 (the “**Stay Extension Order**”).
12. On March 12, 2019 and March 22, 2019, Imperial and 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 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 monitor and follow applicable regulations and bylaws, guidance from Health Canada, and public health guidance in, among other provinces, Ontario and Quebec, as provincial authorities continued to lift restrictions in place as a result of the COVID-19 pandemic. As previously reported, JTIM's operations, including its manufacturing facility, did not experience any significant disruption due to the COVID-19 pandemic;
- (c) JTIM responded to a Health Canada consultation regarding proposed new packaging and labelling regulations on individual cigarette sticks, which will give rise to significant technical manufacturing challenges. In addition to a written response, JTIM met with Health Canada to discuss the proposed regulations. It remains uncertain when these proposed regulations may come into effect;

***Global Transformation Project***

- (d) as previously reported, JTIM completed the global transformation project. All changes in personnel at JTIM have been made. JTIM's only remaining cost of the global transformation project is regarding certain salary continuance obligations, which will be completed in 2023;

***Changes to Senior Leadership***

- (e) since my last affidavit, there have been several changes to the senior leadership of the Applicant. The former Head of Legal of JTIM has been transferred to a new legal position with Japan Tobacco International (“**JTI**”) and was replaced by a JTI colleague who transferred from another legal role within JTI’s global operations;
- (f) further, the former Chief Financial Officer of JTIM has been transferred to a new finance role with JTI’s global operations. He was replaced by a JTI colleague who transferred from another finance role within JTI’s global operations;
- (g) finally, JTIM’s Head of Corporate Affairs and Communications (“**CA&C**”) took on a new role as JTIM’s Head of Sales and a JTI colleague has transferred from another CA&C role within JTI’s global operations as the new JTIM Head of CA&C;

***War in Ukraine***

- (h) in response to the war in Ukraine, JTI created a Crisis Response Plan that provides financial assistance to employees of JTI Ukraine who have been displaced for three months or more due to the war in Ukraine. JTIM received the Monitor’s consent to provide such financial assistance as part of the Crisis Response Plan if necessary;
- (i) as previously disclosed in my last affidavit, JTIM sourced some of its leaf materials from a related party entity located in Russia. Since then, JTIM has resourced some of its leaf requirements with JT International SA pursuant to existing arrangements and expects to complete the resourcing of JTIM’s other leaf requirements within the next few months. JTIM does not expect this resourcing to have a material impact on its operations.

***CCAA proceedings***

- (j) 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 if the Monitor was not directly involved in such discussions;
- (k) 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;
- (l) 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***

- (m) the Applicant's external counsel and I have continued to communicate with and participate in the process established by the Court-Appointed Mediator to advance the ongoing mediation process;
- (n) the Applicant has complied with the timetable and steps of the mediation process as established by the Court-Appointed Mediator;
- (o) 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

- (p) 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 March 31, 2023. It is my understanding from the Monitor 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 September 5, 2022 to the week ending March 31, 2023. I understand that the Cash Flow Statement will be appended to the Monitor’s Twelfth 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 collective resolution of the Tobacco Claims. The Applicant has acted in good faith and with due diligence during 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 March 31, 2023 and for no other or improper purpose.

**SWORN BEFORE ME BY VIDEO CONFERENCE** by William E. Aziz on September 16, 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

Mitchell W. Grossell  
LSO # 699931

  
\_\_\_\_\_  
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 September 16, 2022)**

**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](mailto:rthornton@tgf.ca)

**Leanne M. Williams** (LSO# 41877E)  
Email: [lwilliams@tgf.ca](mailto:lwilliams@tgf.ca)

**Rebecca L. Kennedy** (LSO# 61146S)  
Email: [rkennedy@tgf.ca](mailto:rkennedy@tgf.ca)

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

Lawyers for the Applicant

# TAB 3

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

THE HONOURABLE ) WEDNESDAY, THE 28TH  
 )  
JUSTICE MCEWEN ) DAY OF SEPTEMBER, 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 in accordance with the Guidelines to Determine Mode of Proceeding in Civil.

**ON READING** the affidavit of William E. Aziz sworn September 16, 2022 and the exhibits thereto, the Twelfth 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 September \_\_\_, 2022, 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 March 31, 2023.

## **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.

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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

**STAY EXTENSION 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](mailto:rthornton@tgf.ca)

**Leanne M. Williams** (LSO# 41877E)  
Email: [lwilliams@tgf.ca](mailto:lwilliams@tgf.ca)

**Rebecca L. Kennedy** (LSO# 61146S)  
Email: [rkennedy@tgf.ca](mailto:rkennedy@tgf.ca)

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

Lawyers for the Applicant

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

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

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

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

Proceedings commenced at Toronto

**MOTION RECORD  
(Re: Stay Extension)  
(Returnable on September 28, 2022)**

**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](mailto:rthornton@tgf.ca)

**Leanne M. Williams** (LSO# 41877E)

Email: [lwilliams@tgf.ca](mailto:lwilliams@tgf.ca)

**Rebecca L. Kennedy** (LSO# 61146S)

Email: [rkennedy@tgf.ca](mailto:rkennedy@tgf.ca)

Tel: 416-304-1616

Fax: 416-304-1313

Lawyers for the Applicant