

**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

**FACTUM OF JTI-MACDONALD CORP.
(Re: Stay Extension)
(Returnable on January 31, 2025)**

January 22, 2025

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TO: THE COMMON SERVICE LIST

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PART I - OVERVIEW

1. JTI-Macdonald Corp. (“**JTIM**” or the “**Applicant**”) files this factum in support of a motion for an extension of the stay of proceedings up to and including March 31, 2025 (the “**Extended Stay Period**”).

PART II - THE FACTS¹

Background

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.²
3. Pursuant to the Order of Mr. Justice Hainey dated March 8, 2019 (the “**Initial Order**”), JTIM was granted protection from its creditors under the *Companies’ Creditors Arrangement Act* (“**CCAA**”)³ that, among other things, granted a stay of proceedings in favour of JTIM and appointed Deloitte Restructuring Inc. as the monitor of the Applicant

¹ Capitalized terms used herein and not otherwise defined have the meanings ascribed to them in the Initial Order, or in the Affidavit of William E. Aziz sworn January 15, 2025 (the “**Aziz Affidavit**”), Motion Record of the Applicant dated January 15, 2025 at Tab 2.

² Aziz Affidavit at para 7.

³ RSC 1985, c C-36, as amended [[CCAA](#)].

(in such capacity, the “**Monitor**”).⁴ The stay of proceedings has been extended many times during this CCAA proceeding and is currently set to expire on January 31, 2025 (the “**Stay Period**”).⁵

4. Since the date of the Initial Order, Imperial Tobacco Company Limited and Imperial Tobacco Canada Limited (together, “**Imperial**”) and Rothmans, Benson & Hedges Inc. (“**RBH**”, and together with the Applicant and Imperial, the “**Tobacco Companies**”) have sought and were granted protection from their creditors under the CCAA.⁶
5. On April 5, 2019, the Initial Order was amended and restated to, among other things, appoint the Honourable Warren K. Winkler, K.C. as mediator (the “**Mediator**”), with a mandate to coordinate and mediate a global settlement of the Tobacco Claims against the Tobacco Companies.⁷
6. On October 31, 2024, the Court granted the Meeting Order (the “**Meeting Order**”) that, among other things: (a) accepted for filing the Court-Appointed Mediator’s and Monitor’s CCAA Plan of Compromise and Arrangement in respect of JTIM (the “**JTIM M&M Plan**”), and (b) authorized the Monitor to call, hold and conduct a virtual meeting of claimants to vote on the JTIM M&M Plan (the “**Meeting**”).⁸

⁴ Aziz Affidavit at para 9.

⁵ Aziz Affidavit at para 12.

⁶ Aziz Affidavit at para 10.

⁷ Aziz Affidavit at para 11.

⁸ Aziz Affidavit at para 13.

7. The Meeting Order was granted over the objection of JTIM. On December 12, 2024, the Monitor held the Meeting. The claimants who were eligible to participate and vote on the JTIM M&M Plan voted to approve the JTIM M&M Plan at the Meeting.⁹
8. On January 7, 2025, counsel to FTI Consulting Canada Inc., the monitor of Imperial, advised the Common Service List that the Court reserved January 29 to 31, 2025, as well as February 3 to 5, 2025, and February 11 to 13, 2025 for the Sanction Hearing, to the extent such further dates are necessary, as determined by the Court in its discretion. Accordingly, JTIM requires a stay extension beyond January 31, 2025.¹⁰

Extension of the Stay Period

9. The Applicant, with the assistance of the Monitor, has prepared a forecast of the projected cash flows (the “**Cash Flow Statement**”) for the Extended Stay Period, which demonstrates that JTIM has sufficient liquidity to operate its business and meet its obligations during the Extended Stay Period.¹¹
10. The Applicant seeks an extension of the Stay Period up to and including March 31, 2025. An extension of the Stay Period is necessary because the Sanction Hearing is anticipated

⁹ Aziz Affidavit at para 15.

¹⁰ Aziz Affidavit at para 16; Deloitte Restructuring Inc., Twenty-Third Report of the Monitor dated January 22, 2025 (the “**Report**”) at para 37.

¹¹ Aziz Affidavit at para 19.

to extend beyond January 31, 2025, and more time is required to either amend the JTIM M&M Plan or propose an alternative CCAA plan.¹²

PART III - THE ISSUE

11. The sole issue to be addressed before this Honourable Court is whether this Court should grant the Extended Stay Period, which it should.

PART IV - THE LAW

The Extended Stay Period Should be Granted

12. A stay of proceedings is appropriate to provide a debtor with breathing room while it seeks to emerge from the CCAA.¹³ Section 11.02(2)(a) of the CCAA gives this Court the authority to grant an extension of the Stay Period for any period “it considers necessary.”¹⁴ To do so, this Court must be satisfied that: (a) circumstances exist that make the order appropriate; and (b) the Applicant has acted, and is continuing to act, in good faith and with due diligence.¹⁵
13. When deciding to grant an extension to the Stay Period, the court will also consider whether the extension will further the purposes of the CCAA.¹⁶ In determining the appropriate

¹²Aziz Affidavit at para 18.

¹³ *Century Services Inc v Canada (Attorney General)*, [2010 SCC 60](#) at para [14](#).

¹⁴ CCAA, s [11.02\(2\)\(a\)](#).

¹⁵ CCAA, s [11.02\(3\)](#).

¹⁶ *Worldspan Marine Inc (Re)*, [2011 BCSC 1758](#) at [paras 12-15](#).

length of time to grant a prior extension in these proceedings, Justice McEwen considered the complexity of the CCAA proceedings herein and how a short stay period would distract the stakeholders from the mediation process.¹⁷

14. In the present case, since the granting of the Initial Order, the Applicant has acted, and is continuing to act, in good faith and with due diligence.¹⁸ The Monitor also believes the Applicant is working diligently and in good faith.¹⁹
15. The Applicant believes the Extended Stay Period is reasonable in the circumstances. The Monitor also believes the Extended Stay Period is appropriate and will allow JTIM and the Monitor to take all actions that may be necessary following the Sanction Hearing to further the CCAA Proceedings.²⁰
16. The Cash Flow Statement demonstrates that the Applicant will continue to have sufficient liquidity to continue its operations and meet its obligations during the Extended Stay Period.²¹
17. The Extended Stay Period is in the best interests of the Applicant and all of its stakeholders.²²

¹⁷ [*JTI-Macdonald Corp \(Re\)*](#), Court File No. CV-19-61582-00CL, Endorsement of Justice McEwen released October 18, 2019, at pages 3-6.

¹⁸ Aziz Affidavit at para 20.

¹⁹ Report at para 40.

²⁰ Report at para 37.

²¹ Aziz Affidavit at para 19; Report at para 40.

²² Aziz Affidavit at para 18.

18. The Monitor recommends the granting of the Extended Stay Period.²³

PART V - RELIEF REQUESTED

19. For all of the foregoing reasons, the Applicant respectfully requests that this Honourable Court to grant the requested stay extension to March 31, 2025.

20. The undersigned certifies that they are satisfied as to the authenticity of every authority cited in this factum.

ALL OF WHICH IS RESPECTFULLY SUBMITTED this 22nd day of January, 2025.

January 22, 2025

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²³ Report at para 41.

**SCHEDULE “A”
LIST OF AUTHORITIES**

1. *Century Services Inc v Canada (Attorney General)*, [2010 SCC 60](#).
2. *JTI-Macdonald Corp (Re)*, Court File No. CV-19-61582-00CL, [Endorsement of Justice McEwen released October 18, 2019](#).
3. *Worldspan Marine Inc (Re)*, [2011 BCSC 1758](#).

**SCHEDULE “B”
RELEVANT STATUTES**

[Companies’ Creditors Arrangement Act, RSC 1985, c C-36.](#)

General power of court

11 Despite anything in the *Bankruptcy and Insolvency Act* or the *Winding-up and Restructuring Act*, if an application is made under this Act in respect of a debtor company, the court, on the application of any person interested in the matter, may, subject to the restrictions set out in this Act, on notice to any other person or without notice as it may see fit, make any order that it considers appropriate in the circumstances.

Relief reasonably necessary

11.001 An order made under section 11 at the same time as an order made under subsection 11.02(1) or during the period referred to in an order made under that subsection with respect to an initial application shall be limited to relief that is reasonably necessary for the continued operations of the debtor company in the ordinary course of business during that period.

Stays, etc. — initial application

11.02 (1) A court may, on an initial application in respect of a debtor company, make an order on any terms that it may impose, effective for the period that the court considers necessary, which period may not be more than 10 days,

(a) staying, until otherwise ordered by the court, all proceedings taken or that might be taken in respect of the company under the [Bankruptcy and Insolvency Act](#) or the [Winding-up and Restructuring Act](#);

(b) restraining, until otherwise ordered by the court, further proceedings in any action, suit or proceeding against the company; and

(c) prohibiting, until otherwise ordered by the court, the commencement of any action, suit or proceeding against the company.

Stays, etc. — other than initial application

11.01 (2) A court may, on an application in respect of a debtor company other than an initial application, make an order, on any terms that it may impose,

(a) staying, until otherwise ordered by the court, for any period that the court considers necessary, all proceedings taken or that might be taken in respect of the company under an Act referred to in paragraph (1)(a);

(b) restraining, until otherwise ordered by the court, further proceedings in any action, suit or proceeding against the company; and

(c) prohibiting, until otherwise ordered by the court, the commencement of any action, suit or proceeding against the company.

Burden of proof on application

(3) The court shall not make the order unless

(a) the applicant satisfies the court that circumstances exist that make the order appropriate; and

(b) in the case of an order under subsection (2), the applicant also satisfies the court that the applicant has acted, and is acting, in good faith and with due diligence.

Restriction

(4) Orders doing anything referred to in subsection (1) or (2) may only be made under this section.

Stays — directors

11.03 (1) An order made under section 11.02 may provide that no person may commence or continue any action against a director of the company on any claim against directors that arose before the commencement of proceedings under this Act and that relates to obligations of the company if directors are under any law liable in their capacity as directors for the payment of those obligations, until a compromise or an arrangement in respect of the company, if one is filed, is sanctioned by the court or is refused by the creditors or the court.

Exception

(2) Subsection (1) does not apply in respect of an action against a director on a guarantee given by the director relating to the company's obligations or an action seeking injunctive relief against a director in relation to the company.

Persons deemed to be directors

(3) If all of the directors have resigned or have been removed by the shareholders without replacement, any person who manages or supervises the management of the business and affairs of the company is deemed to be a director for the purposes of this section.

Good faith

18.6 (1) Any interested person in any proceedings under this Act shall act in good faith with respect to those proceedings.

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

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Proceeding commenced at Toronto

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