

**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 THE MONITOR

**Motion for Sanction Order and
CCAA Plan Administrator Appointment Order
(Returnable commencing January 29, 2025)**

January 22, 2025

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PART I – OVERVIEW

1. This Factum¹ is filed in support of a motion (the “**Motion**”) by Deloitte Restructuring Inc., in its capacity as court-appointed monitor (the “**Monitor**”) of JTI-Macdonald Corp. (“**JTIM**”) for:

- (i) an order (the “**Sanction Order**”) under the *Companies’ Creditors Arrangement Act*, R.S.C. 1985, c. C-36, as amended (the “**CCAA**”) that, among other things, sanctions the First Amended and Restated Plan of Compromise and Arrangement dated December 5, 2024 in respect of JTIM (the “**JTIM CCAA Plan**”); and
- (ii) an order under the CCAA (the “**CCAA Plan Administrator Appointment Order**”) that, among other things, provides for the appointment of the CCAA Plan Administrator, as contemplated by the JTIM CCAA Plan.

2. This Motion represents the culmination of the CCAA Proceedings of JTIM and the other Tobacco Companies that were commenced in March of 2019 with the objective of effecting a global resolution of the Tobacco Claims against each of them.

3. The issues addressed by the JTIM CCAA Plan are complex and, in some instances, are without precedent. JTIM itself, and its secured creditor and related party entity, JTI-Macdonald TM Corp. (“**JTI-TM**”) object to the sanctioning of the JTIM CCAA Plan. They assert, among other things, (i) the issue of allocation of the Global Settlement Amount remains unresolved and if the existing allocation scheme as set out in the CCAA Plans is not followed and later revised, this could result in unfairness to JTIM and the Affected Creditors; and (ii) the JTIM CCAA Plan

¹ Capitalized terms used herein and not otherwise defined have the meanings set forth in the Twenty-Second Report or the JTIM CCAA Plan. Unless otherwise stated, all monetary amounts noted herein are expressed in Canadian dollars.

treats JTI-TM unfairly, including because it confiscates cash collateral subject to JTI-TM's security.²

4. These unresolved issues will be before the Court for adjudication at the Sanction Hearing. The Monitor, like the monitors of the other Tobacco Companies, has taken no position on these issues at this time; however, the Monitor welcomes, and will of course follow, any direction that the Court chooses to provide following a full consideration by the Court of these matters.

5. Further, the Monitor submits that, subject to any direction that the Court may provide with respect to these unresolved issues, the JTIM CCAA Plan is capable of sanction based on the consistently applied legal test established by previous CCAA courts. That test requires the Court to balance the interests of all the parties affected by the JTIM CCAA Plan and determine whether the Plan is fair and reasonable in the totality of the circumstances.³

6. The Affected Creditors have voted unanimously in favour of the JTIM CCAA Plan.⁴ Moreover, there is no viable alternative to the JTIM CCAA Plan that is acceptable to the Affected Creditors and that is before the Court at this time.⁵ The parties have engaged in the Mediation for five years to resolve the multitude of claims against the Tobacco Companies and, if the JTIM CCAA Plan is not sanctioned, there may be further significant delays for the recoveries of the Affected Creditors.⁶

² Affidavit of William E. Aziz ("**Aziz Affidavit**") sworn January 20, 2025 at para 19.

³ *Canadian Airlines Corp. (Re)*, [2000 ABQB 442 \(CanLII\)](#) ("**Canadian Airlines**") at para [3](#); *Muscletech Research and Development Inc (Re)*, [2007 CanLII 5146 \(ONSC\)](#) ("**Muscletech**") at para [21](#); *AbitibiBowater inc (Arrangement relatif à)*, [2010 QCCS 4450](#) ("**AbitibiBowater**") at para [33](#).

⁴ Twenty-Second Report of the Monitor dated January 15, 2025 (the "**Twenty-Second Report**") at para 56(a).

⁵ Twenty-Second Report, *supra* note 4 at para 62.

⁶ Twenty-Second Report, *supra* note 4 at para 56(e).

7. For these reasons, the Monitor believes that, on balance, sanctioning of the JTIM CCAA Plan is in the best interests of all stakeholders considered as a whole.⁷

PART II – FACTS

8. The facts with respect to this Motion are briefly summarized below and more fully set out in the Twenty-Second Report of the Monitor dated January 15, 2025 (the “**Twenty-Second Report**”) and the Eighteenth Report of the Monitor dated October 26, 2024 (the “**Eighteenth Report**”).

A. Background

9. In early 2019, JTIM, Imperial Tobacco Canada Limited and Imperial Tobacco Company Limited (collectively, “**Imperial**”), and Rothmans, Benson & Hedges Inc. (“**RBH**”, together with JTIM and Imperial, the “**Tobacco Companies**”) filed for and obtained protection under the CCAA.⁸

10. The parallel, unconsolidated proceedings commenced by the Tobacco Companies under the CCAA are referred to herein as the “**CCAA Proceedings**” and each a “**CCAA Proceeding**”.⁹ The stated objective of these CCAA Proceedings is to provide the Tobacco Companies with an opportunity to settle, through a structured process, the almost \$1 trillion dollars of claims alleged against them.¹⁰ These claims include claims advanced by individuals (through representative

⁷ Twenty-Second Report, *supra* note 4 at para 67.

⁸ Eighteenth Report of the Monitor dated October 26, 2024 (the “**Eighteenth Report**”) at Appendix B, para 1.

⁹ Eighteenth Report, *supra* note 8 at Appendix B, para 1.

¹⁰ Twenty-Second Report, *supra* note 4 at para 2.

and/or class counsel) regarding certain alleged tobacco related harms, as well as claims by all 13 Provinces and Territories of Canada, relating to certain health care recovery costs.¹¹

11. In furtherance of the collective goal of resolving these numerous, substantial and complicated claims against the Tobacco Companies, the Honourable Warren K. Winkler, K.C. was appointed as mediator (the “**Court-Appointed Mediator**”), with a mandate to oversee and coordinate a multiparty, confidential mediation among the Tobacco Companies and their key stakeholders (the “**Mediation**”).¹²

12. On October 5, 2023, Chief Justice Geoffrey B. Morawetz issued an endorsement (the “**October 5 Endorsement**”) directing the Monitor, along with the monitors of the other Tobacco Companies and the Court-Appointed Mediator, to develop Plans of Compromise or Arrangement in respect of the Tobacco Companies.¹³

B. Filing of the JTIM CCAA Plan and Meeting

13. As directed, on October 17, 2024, the Court-Appointed Mediator, the Monitor and the other Tobacco Monitors filed plans of compromise and arrangement in respect of each of the Tobacco Companies (collectively, the “**CCAA Plans**”).¹⁴

14. On October 31, 2024, the Court issued the following orders:

- (i) A claims procedure order which, *inter alia*, established the procedure pursuant to which Claimants, as well as Putative Miscellaneous Claimants obtained the right

¹¹ Affidavit of Robert McMaster (“**McMaster Affidavit**”) sworn March 8, 2019 at paras 4-7.

¹² Twenty-Second Report, *supra* note 4 at para 3.

¹³ Twenty-Second Report, *supra* note 4 at para 4.

¹⁴ Twenty-Second Report, *supra* note 4 at para 5.

to attend the meeting of Affected Creditors (the “**Meeting**”) and vote on the JTIM CCAA Plan; and

- (ii) A meeting order that, *inter alia*, accepted the filing of the JTIM CCAA Plan, approved the meeting materials, and directed the Monitor as to the conduct of the Meeting (the “**Meeting Order**”).¹⁵

15. JTIM and JTI-TM objected to the motion for the Meeting Order and the filing of the JTIM CCAA Plan.¹⁶ JTI-TM asserts a security interest in JTIM, pursuant to security provided under ten secured convertible debentures (the “**TM Debentures**”) in the principal sum of \$1.2 billion.¹⁷ JTI-TM also licenses certain trademarks to JTIM pursuant to a license agreement between the parties (the “**License Agreement**”).¹⁸ On March 19, 2019, the Court issued an endorsement suspending payments of principal, interest and royalties from JTIM to JTI-TM owed under the TM Debentures and License Agreement.¹⁹

16. The Court approved the Meeting Order, but in its endorsement dated November 4, 2024, the Court deferred JTIM and JTI-TM’s objections to the Sanction Hearing for consideration, and the issues they raised remained unresolved as of the date of the Twenty-Second Report.²⁰

17. On December 12, 2024, the Monitor held the Meeting, and the Affected Creditors voted for the approval of the JTIM CCAA Plan by the Required Majority in both number and value.²¹

¹⁵ Twenty-Second Report, *supra* note 4 at para 6.

¹⁶ Twenty-Second Report, *supra* note 4 at para 7.

¹⁷ Twenty-Second Report, *supra* note 4 at para 15.

¹⁸ Aziz Affidavit, *supra* note 2 at para 29.

¹⁹ Aziz Affidavit, *supra* note 2 at para 31.

²⁰ Twenty-Second Report, *supra* note 4 at paras 38-40.

²¹ Twenty-Second Report, *supra* note 4 at para 8.

C. Overview of the JTIM CCAA Plan

18. The Monitor has provided a detailed summary of the JTIM CCAA Plan in the Eighteenth Report and the Twenty-Second Report.²² An abbreviated summary of key terms of the JTIM CCAA Plan and the other CCAA Plans follows.

19. The CCAA Plans provide for a comprehensive and final resolution and compromise of all Tobacco Claims, primarily by way of the payment by the Tobacco Companies of the Global Settlement Amount of \$32.5 billion, which includes an estimated \$12.456 billion in Upfront Contributions.²³ Following the payment of the Upfront Contributions, the Annual Contributions of the Tobacco Companies will be calculated as a percentage of their Net After-Tax Income pursuant to the Metric.²⁴ There is no fixed Contribution Period, and the payments by the Tobacco Companies will cease when the aggregated Contributions reach \$32.5 billion.²⁵

20. Until the Global Settlement Amount has been paid, the payment and performance of the Tobacco Companies' obligations under the CCAA Plans and other Definitive Documents will be secured by a first ranking security interest in favour of the Claimants on the assets of each of the Tobacco Companies.²⁶ In that regard, the JTIM CCAA Plan contemplates that its existing secured creditor, JTI-TM, will enter into a subordination agreement, subordinating its security in favour of the security granted to the Claimants.²⁷

²² Twenty-Second Report, *supra* note 4 at paras 24-37.

²³ Twenty-Second Report, *supra* note 4 at paras 26-27.

²⁴ Twenty-Second Report, *supra* note 4 at para 28.

²⁵ Twenty-Second Report, *supra* note 4 at para 29.

²⁶ Twenty-Second Report, *supra* note 4 at para 29.

²⁷ Twenty-Second Report, *supra* note 4 at para 29.

21. In exchange for, among other considerations, the Upfront Contributions, the promise to pay the Annual Contributions, the subordination by JTI-TM of its security interests in the assets, each of the CCAA Plans provide for broad and comprehensive releases to be granted to the Tobacco Companies and their Tobacco Company Groups for all Tobacco Claims.²⁸

22. The CCAA Plans also contemplate the creation of a Cy-près Fund of \$1 billion from the Global Settlement Amount, which will be administered by a Cy-près Foundation to fund research focused on improving outcomes in Tobacco-related Diseases.²⁹

23. The JTIM CCAA Plan contemplates that, subject to court approval of the CCAA Plan Administrator Appointment Order, Deloitte will be appointed as CCAA Plan Administrator to administer the implementation of the JTIM CCAA Plan.³⁰ In this capacity, the CCAA Plan Administrator would be neutral and independent from the Tobacco Companies, the Tobacco Company Groups and the Claimants and shall report to the CCAA Court until the JTIM CCAA Plan is fully implemented.³¹ The role of the CCAA Plan Administrator is set out in detail in the Eighteenth Report and in the JTIM CCAA Plan.³²

D. Key Unresolved Issues

24. The Monitor has set out in detail in the Twenty-Second Report the key outstanding issues with respect to the JTIM CCAA Plan, which issues are summarized below:³³

²⁸ Twenty-Second Report, *supra* note 4 at para 32.

²⁹ Twenty-Second Report, *supra* note 4 at para 56(g)

³⁰ Twenty-Second Report, *supra* note 4 at para 37.

³¹ Twenty-Second Report, *supra* note 4 at para 68.

³² Twenty-Second Report, *supra* note 4 at para 69.

³³ Twenty-Second Report, *supra* note 4 at paras 38-55.

- (i) Allocation Issue: Section 5.2 of the Plan states: “The issue of allocation of the Global Settlement Amount as between the Tobacco Companies in the three CCAA Proceedings remains unresolved.”³⁴ As at the date of the Twenty-Second Report, the allocation issue remains unresolved.³⁵ As a result, JTIM advised the Monitor that JTIM and its Tobacco Company Group do not support the JTIM CCAA Plan in its current form.³⁶ This creates an implementation risk given the Contribution Period may extend for 15 to 20 years or more.³⁷ In the Monitor’s view, however, the existing allocation mechanism set out in the CCAA Plans is affordable for each of the Tobacco Companies.³⁸
- (ii) Treatment of JTI-TM: The JTIM CCAA Plan treats JTI-TM as an Unaffected Creditor.³⁹ It is a condition precedent to the implementation of the JTIM CCAA Plan that JTI-TM subordinate its security interest to the security interest to be granted in favour of the Claimants, through a subordination agreement.⁴⁰ The condition precedent may be waived.⁴¹

Under the terms of the JTIM CCAA Plan, JTIM may pay to JTI-TM principal and interest payable under the TM Debentures and unpaid post-filing royalties under the License Agreement out of Net After-Tax Income, after Annual Contributions

³⁴ Twenty-Second Report, *supra* note 4 at para 41.

³⁵ Twenty-Second Report, *supra* note 4 at para 41.

³⁶ Twenty-Second Report, *supra* note 4 at para 42.

³⁷ Twenty-Second Report, *supra* note 4 at paras 61-63.

³⁸ Twenty-Second Report, *supra* note 4 at para 64.

³⁹ Twenty-Second Report, *supra* note 4 at para 52.

⁴⁰ Twenty-Second Report, *supra* note 4 at para 52.

⁴¹ Twenty-Second Report, *supra* note 4 at para 52.

are made towards the Global Settlement Amount.⁴² The Monitor's analysis indicates that the amounts owed to JTI-TM cannot be paid out of JTIM's share of the Net After-Tax Income in the Ordinary Course of Business without accommodations from JTI-TM.⁴³ JTI-TM opposes its treatment under the JTIM CCAA Plan.⁴⁴

E. Sanction Order

25. The Monitor seeks the issuance of the Sanction Order, which, among other things:

- (i) approves and sanctions the JTIM CCAA Plan, including the Quebec Administration Plan and the PCC Compensation Plan;
- (ii) authorizes and directs the CCAA Plan Administrator and the Monitor to take all steps and actions, and to do all things, necessary or appropriate to implement the JTIM CCAA Plan, including the Restructuring Steps;
- (iii) approves the CCAA Plan Administration Reserve and the PCC Compensation Plan Reserve;
- (iv) authorizes and empowers the Court-Appointed Mediator to continue to provide ongoing services with respect to the implementation of the JTIM CCAA Plan;
- (v) releases the Released Claims against the Released Parties, which includes the Tobacco Company Groups, the Monitors, CCAA Plan Administrators, the Court-Appointed Mediator, their Representatives and the other Released Parties;

⁴² Twenty-Second Report, *supra* note 4 at para 53.

⁴³ Twenty-Second Report, *supra* note 4 at para 53.

⁴⁴ Aziz Affidavit, *supra* note 2 at para 15.

- (vi) terminates the Initial Order, save for certain provisions granted in respect of the Monitor and the Court-Appointed Mediator and their respective Representatives;
- (vii) terminates, as at the Effective Time, the (i) the Administration Charge, (ii) the Court-Appointed Mediator Charge, (iii) the Sales and Excise Tax Charge and (iv) the Director's Charge; and
- (viii) extends the Stay Period until the Effective Time.

F. The CCAA Plan Administrator Appointment Order

26. The Monitor also seeks the issuance of the CCAA Plan Administrator Appointment Order, which authorizes the CCAA Plan Administrator to perform functions to facilitate the implementation of the JTIM CCAA Plan, including to (i) retain advisors; (ii) establish certain segregated, interest bearing trust accounts (the “**Trust Accounts**”), oversee and direct deposits into the Trust Accounts and direct disbursements from the Trust Accounts, each in accordance with the JTIM CCAA Plan; (iii) engage a Trustee or Trustees in respect of the Trust Accounts; (iv) review the Business Plans of the Tobacco Companies and propose revisions; (v) request the services of the Court-Appointed Mediator; and (vi) seek Court approval of proposals for Cy-près Foundation funding.

27. The CCAA Plan Administrator Appointment Order also: (i) establishes a communication framework to coordinate the administration of the JTIM CCAA Plan amongst the CCAA Plan Administrator and its counterparts and representatives of certain Claimants, including requiring joint consultation, information sharing, and unanimous consent for specific actions; and (ii) empowers the CCAA Plan Administrator to report to the Court and certain Claimants from time to time on various matters related to the implementation of the CCAA Plans.

PART III – ISSUES

28. The principal issues on this Motion are whether:

- (i) the Sanction Order should be issued, including the following relief:
 - (a) the sanctioning of the JTIM CCAA Plan;
 - (b) the approval of the third-party releases contained in the JTIM CCAA Plan;
and
 - (c) an extension of the Stay Period; and
- (ii) the CCAA Plan Administrator Appointment Order should be issued.

PART IV – THE LAW AND DISCUSSION

A. Basic Requirements for Plan Sanction Have Been Met

29. Section 6 of the CCAA provides that, where a compromise or arrangement is approved by each class of affected creditors, by a majority in number representing two-thirds in value of creditors present and voting at a meeting of creditors, the court may then sanction that compromise or arrangement.⁴⁵ If the court exercises its discretion to sanction the compromise or arrangement, then section 6 provides that it is binding on all creditors affected by the plan.⁴⁶

30. All of the Affected Creditors voted in favour of the JTIM CCAA Plan at the Meeting, thus satisfying the first requirement set out in section 6 of the CCAA.⁴⁷

⁴⁵ *Companies' Creditors Arrangement Act*, [R.S.C. 1985, c C 36](#), s 6(1) ("CCAA").

⁴⁶ CCAA, *supra* note 44, s 6(1).

⁴⁷ Twenty-Second Report, *supra* note 4 at para 56.

31. With the voting criteria satisfied, it is within the Court's discretion to decide whether to sanction the JTIM CCAA Plan.

B. Test for Plan Sanction

32. In determining whether to exercise its discretion to sanction a plan of compromise or arrangement, the moving party must establish that three well-established criteria are satisfied:

- (i) there must be strict compliance with all statutory requirements;
- (ii) nothing has been done or purported to be done that is not authorized by the CCAA and prior orders of the Court in the CCAA Proceedings; and
- (iii) the plan must be fair and reasonable.⁴⁸

(i) Strict Compliance with Statutory Requirements

33. The Monitor submits that all requirements typically considered by the Court in determining whether there has been strict compliance with the CCAA are satisfied. In particular:

- (i) Definition of 'Debtor Company': in granting the Initial Order, the Court found that JTIM qualified as a "debtor company" under the CCAA and that JTIM's liabilities exceeded the C\$5 million threshold to qualify for protection under the CCAA.⁴⁹
- (ii) Notice Requirements: The Monitor has complied with all of the requirements under the Meeting Order to deliver the prescribed materials concerning the JTIM

⁴⁸ *Laurentian University of Sudbury*, [2022 ONSC 5645](#) ("*Laurentian*"); *Nordstrom Canada Retail Inc.*, [2024 ONSC 1622](#) ("*Nordstrom*").

⁴⁹ *JTI-Macdonald Corp. Re.*, [2019 ONSC 1625](#) at para 11.

CCAA Plan and the Meeting to Eligible Voting Creditors (as such term is defined in the Meeting Order) within the timeframes and within the manner set out in the Meeting Order.⁵⁰

- (iii) Classification: The Eligible Voting Creditors, including all the Affected Creditors, voted as a single class, in accordance with the classification approved by this Court when it granted the Meeting Order.⁵¹
- (iv) Voting: The Meeting was carried out in accordance with the Meeting Order, and the JTIM CCAA Plan was approved by the required double majority of Eligible Voting Creditors.⁵²
- (v) No Prohibited Compromise of Claims: Subsections 6(3)-(6) of the CCAA contain restrictions that prevent amounts being paid in priority to certain claims. All of those provisions are satisfied in this case as none of the following claims are being compromised:
 - (a) any Claim of any Government against JTIM in respect of any amounts that are outstanding, as provided for in subsection 6(3) of the CCAA;
 - (b) any Claim for accrued and unpaid wages and vacation pay owing to an employee of JTIM whose employment was terminated between the Filing Date and the Plan Implementation Date; and

⁵⁰ Twenty-First Report of the Monitor dated December 13, 2024 (the “**Twenty-First Report**”) at para 15.

⁵¹ Twenty-Second Report, *supra* note 4 at para 56(a).

⁵² Twenty-First Report, *supra* note 49 at paras 16-20.

- (c) any Claim for unpaid amounts provided for in subsections 6(5)(a) and 6(6)(a) of the CCAA.⁵³

Subsection 6(8) prohibits the sanction of a compromise or arrangement that provides payment for equity claims before all other claims are paid in full. The JTIM CCAA Plan contains no payment of equity claims.

(ii) **Steps Unauthorized by the CCAA**

34. In determining whether any steps were taken during the CCAA Proceeding that were unauthorized by the CCAA, the Court should rely on the submissions of the parties and their stakeholders and the reports of the Monitor.⁵⁴

35. The Monitor has filed twenty-three reports in this CCAA Proceeding that have detailed the activities of JTIM during the CCAA Proceeding.⁵⁵ The Monitor has not identified any instances of JTIM not complying with orders granted by this Court and is not aware at this time of any actions taken or purported to have been taken by JTIM that are not authorized by the CCAA.⁵⁶ To the best of the knowledge of the Monitor, JTIM has acted in good faith and with due diligence during this CCAA Proceeding.⁵⁷

⁵³ Twenty-Second Report, *supra* note 4 at para 56(c).

⁵⁴ *Canadian Airlines*, *supra* note 3 at para 64.

⁵⁵ Twenty-Second Report, *supra* note 4 at para 19.

⁵⁶ Twenty-Second Report, *supra* note 4 at para 21.

⁵⁷ Twenty-Second Report, *supra* note 4 at para 20.

(iii) **Fair and Reasonable**

36. The court's role at a sanction hearing is to broadly consider whether the plan fairly and reasonably balances the interests of all the stakeholders and any prejudices to them.⁵⁸ The interests to be considered include those of creditors, the company, employees and the public.⁵⁹ A plan does not have to be perfect to be sanctioned, as courts recognize that, to be viable, all plans must involve sacrifices and compromises from their various stakeholders.⁶⁰

37. Consideration of any plan presented for sanction is a contextual exercise that depends on the circumstances of each case.⁶¹ Subject to any direction to be provided by the Court on the unresolved issues that will be before it for adjudication, the Monitor submits that, in the circumstances of this case, the following factors support the conclusion that the JTIM CCAA Plan strikes a fair balance between the competing interests of various stakeholders.⁶²

(a) **Unanimous Support of Affected Creditors**

38. An affirmative vote from the creditors at the meeting of creditors creates an inference that a plan is fair and reasonable.⁶³ Accordingly, the Court should place significant weight on the unanimous vote of the Affected Creditors in favour of the JTIM CCAA Plan.

⁵⁸ *Canadian Airlines*, *supra* note 3 at para [3](#); *Muscletech*, *supra* note 3 at para [21](#); *AbitibiBowater*, *supra* note 3 at para [33](#).

⁵⁹ *Canadian Airlines*, *supra* note 3 at para [144](#).

⁶⁰ *Canadian Airlines*, *supra* note 3 at para [178](#); *AbitibiBowater*, *supra* note 3 at para [38](#).

⁶¹ *Canadian Airlines*, *supra* note 3 at para [94](#).

⁶² Twenty-Second Report, *supra* note 4 at para 67.

⁶³ *Canadian Airlines*, *supra* note 3 at para [97](#).

(b) There Are No Viable Alternatives to the JTIM CCAA Plan Before the Court

39. Included as part of the Court's balancing exercise is whether there are any alternatives to a plan of arrangement and what recoveries such alternatives may provide to creditors.⁶⁴ The Court should consider any realistic commercial alternatives and not the hopes or aspirations of an objecting party.⁶⁵

40. Currently, there is no alternative compromise or arrangement to the JTIM CCAA Plan that is before that Court that is acceptable to Affected Creditors.⁶⁶ The Monitor is of the view that the JTIM CCAA Plan is the best available option presented at this time to achieve the following objectives:

- (i) implementing the resolution of significant claims of creditors;
- (ii) providing certainty of distributions to Affected Creditors, especially individual claimants, in the near term; and
- (iii) bringing an end to this lengthy and complex CCAA Proceeding.⁶⁷

41. A likely outcome if the JTIM CCAA Plan is not approved is a resumption of litigation against the Tobacco Companies by certain of the Claimants that would involve significant delay.⁶⁸ Individual Affected Creditors would have to continue to wait for recoveries on their claims despite

⁶⁴ *Canadian Airlines*, *supra* note 3 at para [137](#).

⁶⁵ *Canadian Airlines*, *supra* note 3 at para [137](#);

⁶⁶ Twenty-Second Report, *supra* note 4 at para 62.

⁶⁷ Twenty-Second Report, *supra* note 4 at para 56(e).

⁶⁸ Twenty-Second Report, *supra* note 4 at para 56.

unanimously voting in favour of the JTIM CCAA Plan.⁶⁹ The CCAA Proceeding was commenced almost six years ago for the primary purpose of resolving such claims.⁷⁰

(c) The JTIM CCAA Plan Provides Benefits to the Public and to Other Stakeholders

42. When balancing the interests of the various stakeholders of the debtor, a central consideration for the court is whether the plan gives the debtor the ability “to continue as a going concern for the benefit of all stakeholders”.⁷¹

43. The JTIM CCAA Plan meets this criterion. The JTIM CCAA Plan will allow for JTIM to continue as a going concern, which provides benefits for the company, its employees, suppliers and the governments that rely on tax revenue that JTIM generates.⁷² This significant accomplishment must be front and centre in the consideration of sanctioning the JTIM CCAA Plan.⁷³

44. The JTIM CCAA Plan is designed to address substantial and complicated claims against the Tobacco Companies for numerous asserted tobacco-related wrongs held by myriad individual and governmental claimants. The Monitor submits that there is a benefit to the public to the resolution of these Tobacco Claims and the CCAA Proceedings.⁷⁴ The public interest is a factor courts consider at the “fair and reasonable” stage, and this Court has previously found that “the

⁶⁹ Twenty-Second Report, *supra* note 4 at para 56(e).

⁷⁰ Twenty-Second Report, *supra* note 4 at paras 1-2.

⁷¹ *Sino-Forest Corporation (Re)*, [2012 ONSC 7050](#) at para 64 (“Sino-Forest”).

⁷² Twenty-Second Report, *supra* note 4 at para 60.

⁷³ Twenty-Second Report, *supra* note 4 at para 59.

⁷⁴ Twenty-Second Report, *supra* note 4 at para 56(g).

impacts of a plan on the public interest, particularly where the plan provides funding for the activities of a reputable charity, are also an important consideration for the court.”⁷⁵

45. The JTIM CCAA Plan furthers the public interest. It provides for the establishment of the Cy-près Foundation, a \$1 billion public charitable foundation designed to provide indirect benefits to the public in the form of research into methods for earlier diagnosis and better treatment of tobacco-related cancers and Emphysema/COPD and/or other tobacco-related harms.⁷⁶

C. Third-Party Releases Contained in JTIM CCAA Plan Are Fair and Reasonable

46. The JTIM CCAA Plan and the proposed Sanction Order provide for releases of third parties, namely the members of the Tobacco Company Group of JTIM, including JTI-TM.⁷⁷

47. It is well established that this Court has the jurisdiction, in appropriate circumstances, to sanction plans containing releases in favour of third parties. Furthermore, this Court has previously approved plans that contained third-party releases for the affiliates of a debtor company who contributed to the plan.⁷⁸

48. In determining whether to approve a third-party release, courts will take into account the particular circumstances of the case and the objectives of the CCAA, and will consider the following non-determinative factors:

- (i) whether the parties to be released from claims are necessary and essential to the restructuring of the debtor;

⁷⁵ *Canadian Airlines*, *supra* note 3 at paras 173-174; *Re: Canwest Global Communications Corp*, 2010 ONSC 4209 at para 26; *Canadian Red Cross Society / Société Canadienne de la Croix Rouge, Re*, 2000 CanLII 22488 (ONSC) at para 28.

⁷⁶ Twenty-Second Report, *supra* note 4 at para 56.

⁷⁷ Twenty-Second Report, *supra* note 4 at para 33.

⁷⁸ *Nordstrom*, *supra* note 48; *Sino-Forest*, *supra* note 71; *Target Canada Co, Re*, 2016 ONSC 3651.

- (ii) whether the claims to be released are rationally connected to the purpose of the plan and necessary for it;
- (iii) whether the plan could succeed without the releases;
- (iv) whether the parties being released are contributing to the plan;
- (v) whether the release benefits the debtors as well as the creditors generally;
- (vi) whether the creditors who voted on the plan had knowledge of the nature and effect of the releases; and
- (vii) whether the releases are fair and reasonable and not overly broad or offensive to public policy.⁷⁹

49. The Monitor submits that all the above factors are met. In order to get the benefit of the releases, the relevant third parties must provide the contributions contemplated by Article 5 of the JTIM CCAA Plan, including the subordination of the JTI-TM security and the continued support of shared services of the JTIM Tobacco Company Group.⁸⁰ These contributions would help ensure JTIM's continuation as a going concern, which would also benefit the Affected Creditors.⁸¹

50. The Eligible Voting Creditors⁸² were provided with the JTIM CCAA Plan and associated materials before the Meeting, all of which outlined the nature and effect of the releases contained in the Plan in favour of third parties.⁸³

⁷⁹ *Nordstrom*, *supra* note 48 at para 29; *Laurentian*, *supra* note 48 at para 40.

⁸⁰ Twenty-Second Report, *supra* note 4 at paras 32-33.

⁸¹ Twenty-Second Report, *supra* note 4 at para 33.

⁸² As defined in the Meeting Order.

⁸³ Twenty-Second Report, *supra* note 4 at para 33.

51. Lastly, the Monitor is of the view that the proposed releases in the JTIM CCAA Plan are fair and reasonable.⁸⁴

D. The Court Should Extend the Stay Period

52. JTIM has requested an extension of the stay of proceedings granted in the Initial Order (as subsequently extended by further orders of the Court, the “**Stay Period**”) up to and including March 31, 2025. The proposed Sanction Order contains a provision for the extension of the Stay Period up to the Effective Time.⁸⁵

53. The Monitor is of the view that an extension of the Stay Period up to and including March 31, 2025 or up to the Effective Time is appropriate in the circumstances and will abide by the Court’s direction in this regard.⁸⁶

E. The Court Should Grant the CCAA Plan Administrator Appointment Order

54. The implementation of the CCAA Plans is expected to be lengthy and complex. The JTIM CCAA Plan is dependent on the implementation of the other two CCAA Plans to ensure the global settlement of all Tobacco Claims. The CCAA Plan Administrator Appointment Order is therefore designed to facilitate the implementation of the coordinated CCAA Plans.⁸⁷

55. As a neutral third party, the CCAA Plan Administrator will give comfort and stability to the Court and Affected Creditors by overseeing the implementation of the JTIM CCAA Plan and reporting as necessary.⁸⁸ The Monitor submits that the Court has the jurisdiction pursuant to

⁸⁴ Twenty-Second Report, *supra* note 4 at para 65.

⁸⁵ Twenty-Third Report of the Monitor dated January 22, 2025 (the “**Twenty-Third Report**”) at para 38.

⁸⁶ Twenty-Third Report, *supra* note 85 at para 39.

⁸⁷ Twenty-Second Report, *supra* note 4 at para 68.

⁸⁸ Eighteenth Report, *supra* note 8 at Appendix A, paras 33-34.

section 11 of the CCAA to grant the CCAA Plan Administrator Appointment Order and it should be granted to facilitate the restructuring of the Tobacco Companies.

F. Conclusion

56. After almost six years, the Court has an opportunity to bring an end to this CCAA Proceeding and its stated goal of resolving the Tobacco Claims against JTIM. The JTIM CCAA Plan has the unanimous support of the Affected Creditors and contains elements of substantial benefit to the public interest.⁸⁹ There are no alternatives to the JTIM CCAA Plan before the Court at this time that are acceptable to the Affected Creditors.⁹⁰

57. Based on the above, the Monitor believes that the JTIM CCAA Plan should be sanctioned in accordance with the Sanction Order, subject to the Court's consideration of outstanding issues related to:

- (i) Section 5.2 of the JTIM CCAA Plan (i.e. allocation)
- (ii) JTI-TM's treatment as an Unaffected Creditor; and
- (iii) The continued deferral of amounts owing under the TM Debentures and License Agreement.

If the Court directs, the JTIM CCAA Plan provides a mechanism for its amendment.⁹¹

PART V – ORDERS REQUESTED

58. Subject to the above, the Monitor respectfully requests that the Court grant: (i) the Sanction Order substantially in the form at Tab 3 of the Monitor's Motion Record dated January 15, 2025;

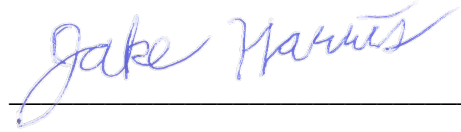
⁸⁹ Twenty-Second Report, *supra* note 4 at paras 59-60.

⁹⁰ Twenty-Second Report, *supra* note 4 at para 62.

⁹¹ Twenty-Second Report, *supra* note 4 at para 66.

and (ii) the CCAA Plan Administrator Appointment Order substantially in the form at Tab 4 to the Monitor's Motion Record.

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



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in its capacity as Monitor of JTI-Macdonald Corp.*

SCHEDULE “A”

LIST OF AUTHORITIES

<u>Case</u>	
1.	<i>Canadian Airlines Corp. (Re)</i> , 2000 ABQB 442 (CanLII)
2.	<i>Muscletech Research and Development Inc (Re)</i> , 2007 CanLII 5146 (ONSC)
3.	<i>AbitibiBowater inc (Arrangement relatif à)</i> , 2010 QCCS 4450
4.	<i>Laurentian University of Sudbury</i> , 2022 ONSC 5645
5.	<i>Nordstrom Canada Retail Inc</i> , 2024 ONSC 1622
6.	<i>JTI-Macdonald Corp, Re</i> , 2019 ONSC 1625
7.	<i>Sino-Forest Corporation (Re)</i> , 2012 ONSC 7050
8.	<i>Re: Canwest Global Communications Corp</i> , 2010 ONSC 4209
9.	<i>Canadian Red Cross Society / Société Canadienne de la Croix Rouge, Re</i> , 2000 CanLII 22488 (ONSC)
10.	<i>Target Canada Co, Re</i> , 2016 ONSC 3651

SCHEDULE “B”

RELEVANT STATUTES

[Companies’ Creditors Arrangement Act](#), R.S.C. 1985, c. C-36¹

Compromise with unsecured creditors

4 Where a compromise or an arrangement is proposed between a debtor company and its unsecured creditors or any class of them, the court may, on the application in a summary way of the company, of any such creditor or of the trustee in bankruptcy or liquidator of the company, order a meeting of the creditors or class of creditors, and, if the court so determines, of the shareholders of the company, to be summoned in such manner as the court directs.

Compromises to be sanctioned by court

6 (1) If a majority in number representing two thirds in value of the creditors, or the class of creditors, as the case may be — other than, unless the court orders otherwise, a class of creditors having equity claims, — present and voting either in person or by proxy at the meeting or meetings of creditors respectively held under [sections 4](#) and [5](#), or either of those sections, agree to any compromise or arrangement either as proposed or as altered or modified at the meeting or meetings, the compromise or arrangement may be sanctioned by the court and, if so sanctioned, is binding

(a) on all the creditors or the class of creditors, as the case may be, and on any trustee for that class of creditors, whether secured or unsecured, as the case may be, and on the company; and

(b) in the case of a company that has made an authorized assignment or against which a bankruptcy order has been made under the [Bankruptcy and Insolvency Act](#) or is in the course of being wound up under the [Winding-up and Restructuring Act](#), on the trustee in bankruptcy or liquidator and contributories of the company.

Court may order amendment

(2) If a court sanctions a compromise or arrangement, it may order that the debtor’s constating instrument be amended in accordance with the compromise or arrangement to reflect any change that may lawfully be made under federal or provincial law.

Restriction — certain Crown claims

(3) Unless Her Majesty agrees otherwise, the court may sanction a compromise or arrangement only if the compromise or arrangement provides for the payment in full to Her Majesty in right of Canada or a province, within six months after court sanction of the compromise or arrangement,

¹ CCAA, ss 4, 6, 11.02(1), 11.2.

of all amounts that were outstanding at the time of the application for an order under [section 11](#) or [11.02](#) and that are of a kind that could be subject to a demand under

(a) subsection 224(1.2) of the *Income Tax Act*;

(b) any provision of the [Canada Pension Plan](#) or of the [Employment Insurance Act](#) that refers to subsection 224(1.2) of the *Income Tax Act* and provides for the collection of a contribution, as defined in the *Canada Pension Plan*, an employee's premium, or employer's premium, as defined in the *Employment Insurance Act*, or a premium under Part VII.1 of that Act, and of any related interest, penalties or other amounts; or

(c) any provision of provincial legislation that has a purpose similar to subsection 224(1.2) of the *Income Tax Act*, or that refers to that subsection, to the extent that it provides for the collection of a sum, and of any related interest, penalties or other amounts, and the sum

(i) has been withheld or deducted by a person from a payment to another person and is in respect of a tax similar in nature to the income tax imposed on individuals under the *Income Tax Act*, or

(ii) is of the same nature as a contribution under the [Canada Pension Plan](#) if the province is a province providing a comprehensive pension plan as defined in [subsection 3\(1\)](#) of the *Canada Pension Plan* and the provincial legislation establishes a provincial pension plan as defined in that subsection.

Restriction — default of remittance to Crown

(4) If an order contains a provision authorized by [section 11.09](#), no compromise or arrangement is to be sanctioned by the court if, at the time the court hears the application for sanction, Her Majesty in right of Canada or a province satisfies the court that the company is in default on any remittance of an amount referred to in subsection (3) that became due after the time of the application for an order under [section 11.02](#).

Restriction — employees, etc.

(5) The court may sanction a compromise or an arrangement only if

(a) the compromise or arrangement provides for payment to the employees and former employees of the company, immediately after the court's sanction, of

(i) amounts at least equal to the amounts that they would have been qualified to receive under [paragraph 136\(1\)\(d\)](#) of the [Bankruptcy and Insolvency Act](#) if the company had become bankrupt on the day on which proceedings commenced under this Act, and

(ii) wages, salaries, commissions or compensation for services rendered after proceedings commence under this Act and before the court sanctions the compromise or arrangement, together with, in the case of travelling salespersons,

disbursements properly incurred by them in and about the company's business during the same period; and

(b) the court is satisfied that the company can and will make the payments as required under paragraph (a).

Restriction — pension plan

(6) If the company participates in a prescribed pension plan for the benefit of its employees, the court may sanction a compromise or an arrangement in respect of the company only if

(a) the compromise or arrangement provides for payment of the following amounts that are unpaid to the fund established for the purpose of the pension plan:

(i) an amount equal to the sum of all amounts that were deducted from the employees' remuneration for payment to the fund,

(ii) if the prescribed pension plan is regulated by an Act of Parliament,

(A) an amount equal to the normal cost, within the meaning of [subsection 2\(1\)](#) of the [Pension Benefits Standards Regulations, 1985](#), that was required to be paid by the employer to the fund, and

(A.1) an amount equal to the sum of all special payments, determined in accordance with [section 9](#) of the [Pension Benefits Standards Regulations, 1985](#), that were required to be paid by the employer to the fund referred to in [sections 81.5](#) and [81.6](#) of the [Bankruptcy and Insolvency Act](#) to liquidate an unfunded liability or a solvency deficiency,

(A.2) any amount required to liquidate any other unfunded liability or solvency deficiency of the fund as determined on the day on which proceedings commence under this Act,

(B) an amount equal to the sum of all amounts that were required to be paid by the employer to the fund under a defined contribution provision, within the meaning of [subsection 2\(1\)](#) of the [Pension Benefits Standards Act, 1985](#),

(C) an amount equal to the sum of all amounts that were required to be paid by the employer to the administrator of a pooled registered pension plan, as defined in subsection 2(1) of the *Pooled Registered Pension Plans Act*, and

(iii) in the case of any other prescribed pension plan,

(A) an amount equal to the amount that would be the normal cost, within the meaning of [subsection 2\(1\)](#) of the [Pension Benefits Standards Regulations, 1985](#), that the employer would be required to pay to the fund if the prescribed plan were regulated by an Act of Parliament, and

(A.1) an amount equal to the sum of all special payments, determined in accordance with [section 9](#) of the [Pension Benefits Standards Regulations, 1985](#), that would have been required to be paid by the employer to the fund referred to in [sections 81.5](#) and [81.6](#) of the [Bankruptcy and Insolvency Act](#) to liquidate an unfunded liability or a solvency deficiency if the prescribed plan were regulated by an Act of Parliament,

(A.2) any amount required to liquidate any other unfunded liability or solvency deficiency of the fund as determined on the day on which proceedings commence under this Act,

(B) an amount equal to the sum of all amounts that would have been required to be paid by the employer to the fund under a defined contribution provision, within the meaning of [subsection 2\(1\)](#) of the [Pension Benefits Standards Act, 1985](#), if the prescribed plan were regulated by an Act of Parliament,

(C) an amount equal to the sum of all amounts that would have been required to be paid by the employer in respect of a prescribed plan, if it were regulated by the *Pooled Registered Pension Plans Act*; and

(b) the court is satisfied that the company can and will make the payments as required under paragraph (a).

Non-application of subsection (6)

(7) Despite subsection (6), the court may sanction a compromise or arrangement that does not allow for the payment of the amounts referred to in that subsection if it is satisfied that the relevant parties have entered into an agreement, approved by the relevant pension regulator, respecting the payment of those amounts.

Payment — equity claims

(8) No compromise or arrangement that provides for the payment of an equity claim is to be sanctioned by the court unless it provides that all claims that are not equity claims are to be paid in full before the equity claim is to be paid.

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.

Interim financing

11.2 (1) On application by a debtor company and on notice to the secured creditors who are likely to be affected by the security or charge, a court may make an order declaring that all or part of the company's property is subject to a security or charge — in an amount that the court considers appropriate — in favour of a person specified in the order who agrees to lend to the company an amount approved by the court as being required by the company, having regard to its cash-flow statement. The security or charge may not secure an obligation that exists before the order is made.

Priority — secured creditors

(2) The court may order that the security or charge rank in priority over the claim of any secured creditor of the company.

Priority — other orders

(3) The court may order that the security or charge rank in priority over any security or charge arising from a previous order made under subsection (1) only with the consent of the person in whose favour the previous order was made.

Factors to be considered

(4) In deciding whether to make an order, the court is to consider, among other things,

(a) the period during which the company is expected to be subject to proceedings under this Act;

(b) how the company's business and financial affairs are to be managed during the proceedings;

(c) whether the company's management has the confidence of its major creditors;

(d) whether the loan would enhance the prospects of a viable compromise or arrangement being made in respect of the company;

(e) the nature and value of the company's property;

(f) whether any creditor would be materially prejudiced as a result of the security or charge; and

(g) the monitor's report referred to in paragraph 23(1)(b), if any.

Additional factor — initial application

(5) When an application is made under subsection (1) at the same time as an initial application referred to in subsection 11.02(1) or during the period referred to in an order made under that subsection, no order shall be made under subsection (1) unless the court is also satisfied that the terms of the loan are limited to what is reasonably necessary for the continued operations of the debtor company in the ordinary course of business during that period.

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.**

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

Proceeding Commenced at Toronto

**FACTUM OF THE MONITOR
Motion for Sanction Order and
CCAA Plan Administrator Appointment Order
(Returnable commencing January 29, 2025)**

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