

**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 February 20, 2020)**

February 12, 2020

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# TAB 1

**ONTARIO  
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**Applicant**

**NOTICE OF MOTION  
(Re: Stay Extension)  
(Returnable on February 20, 2020)**

The Applicant will make a motion before a Judge of the Ontario Superior Court of Justice (Commercial List) on Thursday, February 20, 2020, at 10:00 a.m., or as soon after that time as the motion can be heard, at 330 University Avenue, in the City of Toronto.

**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**”) up to and including September 30, 2020; 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 subject to the QCA Judgment up to the approximate amount of \$13.5 billion plus accruing interest, and is 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.<sup>1</sup>
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. (the “**Monitor**”) was appointed as monitor of the Applicant. 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.

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<sup>1</sup> None of the three territories have commenced healthcare cost recovery litigation against the Applicant.

5. The Initial Order granted a stay of proceedings until April 5, 2019, which stay of proceedings has been subsequently extended most recently up to and including March 12, 2020.
6. Since the date of the Initial Order, Imperial Tobacco Company Limited and Imperial Tobacco Canada Limited (together, “**Imperial**”) and Rothmans, Benson & Hedges Inc. (“**RBH**”) have sought protection from their creditors under the CCAA.

**B. Stay Extension**

7. The Applicant seeks an extension of the Stay Period until September 30, 2020.
8. The projected cash flow forecast, as prepared by the Applicant, with the assistance of the Monitor, demonstrates that the Applicant has sufficient liquidity to operate its business and meet its obligations during the proposed extension of the Stay Period.
9. Extending the Stay Period is required to enable the Applicant to continue to operate in the ordinary course while participating in the mediation process in an effort to seek a collective resolution of the Tobacco Claims against the Applicant.
10. The Applicant has acted in good faith and with due diligence during the course of its CCAA proceedings since the date of the Initial Order.
11. The Applicant also relies on:
  - (a) the provisions of the CCAA and the statutory, inherent and equitable jurisdiction of this Court;

- (b) Rules 1.04, 1.05, 2.03, 3.02, 16, 37 and 39 of the Ontario *Rules of Civil Procedure*, R.R.O. 1990, Reg 194, as amended and Section 106 of the *Courts of Justice Act*, R.S.O. 1990, c. C.43 as amended; and
- (c) such further and other grounds as counsel may advise and this Honourable Court may permit.

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

- (a) the Affidavit of William E. Aziz, sworn February 12, 2020;
- (b) the Seventh Report of the Monitor, to be filed; and
- (c) such further and other evidence as counsel may advise and this Court may permit.

February 12, 2020

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**TO: THE ATTACHED 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.**

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

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

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

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

Proceedings commenced at Toronto

**NOTICE OF MOTION  
(Re: Stay Extension)  
(Returnable on February 20, 2020)**

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**ONTARIO  
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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.**

**Applicant**

**AFFIDAVIT OF WILLIAM E. AZIZ  
(Sworn February 12, 2020)**

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

1. I am the President of BlueTree Advisors Inc., which has been retained by JTI-Macdonald Corp. (the "**Applicant**" or "**JTIM**") to provide my services to JTIM as Chief Restructuring Officer ("**CRO**") of JTIM.
2. My appointment as CRO of JTIM was approved pursuant to the Initial Order (as amended and restated from time to time, the "**Initial Order**") granted by the Ontario Superior Court of Justice (Commercial List) (the "**Court**") on March 8, 2019 under the *Companies' Creditors Arrangement Act* ("**CCAA**").
3. As the CRO of JTIM, I have knowledge of the matters to which I herein depose, except where I have obtained information from others. Where I have obtained information from others, I have stated the source of the information and believe it to be true.

4. All capitalized terms used herein and not otherwise defined have the meanings set forth in the Initial Order.

## **I. INTRODUCTION**

5. This affidavit is sworn in support of a motion for an Order extending the Stay Period to September 30, 2020.

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 tobacco company subject to the Pending Litigation based on volume of sales in Canada.

7. As described in previous affidavits sworn in these CCAA proceedings, JTIM is subject to the QCA Judgment up to the approximate amount of \$13.5 billion plus accruing interest, on a joint and several basis with Imperial and RBH (each as defined below), and HCCR Actions by each province in Canada seeking over \$600 billion in total relating to the recovery of alleged health care costs.

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 being made against it. But for the QCA Judgment and the other contingent tobacco-related litigation claims, 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 (the “**Monitor**”) of the Applicant in these CCAA proceedings.

10. On April 5, 2019, pursuant to the Amended and Restated Initial Order of the Honourable Mr. Justice McEwen, the Honourable Warren K. Winkler, Q.C. was appointed as an officer of the Court and a neutral third party mediator (the “**Court-Appointed Mediator**”) to mediate a global settlement of the Tobacco Claims against the Applicant.

11. The Initial Order provides for a Court-ordered stay of proceedings, which is currently set to expire on March 12, 2020, pursuant to the Stay Extension Order issued on October 2, 2019 (the “**Stay Extension Order**”).

12. On March 12, 2019 and March 22, 2019, Imperial Tobacco Canada Limited and Imperial Tobacco Company Limited (together, “**Imperial**”) and Rothmans, Benson & Hedges Inc. (“**RBH**”) each filed for creditor protection under the CCAA, respectively. Imperial and RBH are defendants under both the QCA Judgment and the HCCR Actions. I understand that there is currently a similar stay of proceedings in respect of all three tobacco defendants under the QCA Judgment, their affiliates and all of the defendants under the HCCR Actions.

## **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:

***Operational***

- (a) the Applicant continued to manage its relationships with customers, suppliers 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 plan, prepare for and implement transitional matters in connection with the *Tobacco Products Regulations (Plain and Standardized Appearance)* (the “**Plain Packaging Regulations**”), including the procurement and installation of new machinery and transitioning the production of products and packaging to comply with the Plain Packaging Regulations;
- (c) since it came into force on November 9, 2019, the Applicant has complied with the Plain Packaging Regulations, which has included transitioning all production of the Applicant’s tobacco products (except cigars) to plain and standardized packaging;
- (d) the Applicant made arrangements to sell its remaining branded inventory (excluding cigars) that did not comply with the Plain Packaging Regulations to its wholesale customers prior to the regulations coming into effect and retailers continued to sell branded inventory during a transitional period related to the Plain Packaging Regulations, which ended on February 8, 2020. Any branded products not sold during the transitional period will be returned to the Applicant and replaced with compliant product;
- (e) the Applicant continued to implement the global transformation project (the “**Global Transformation Project**”), as described in my affidavit sworn September 22, 2019;

***CCAA proceedings***

- (f) the Applicant's external counsel and I continued to provide regular updates and information to the Monitor and its counsel of material developments with respect to the business, the CCAA proceedings and the mediation, to the extent that the Monitor was not directly involved in such discussions;
  
- (g) 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;
  
- (h) 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;
  
- (i) the Applicant's advisors continued to negotiate and finalize forms of non-disclosure agreements ("NDAs") for stakeholders and their advisors to receive confidential information of the Applicant, and the Applicant has arranged for the execution of NDAs countersigned by the applicable stakeholder or advisor;
  
- (j) the Applicant's advisors and I engaged in discussions with the Monitor in respect of the appointment of representative counsel for potential claimants that might be able to assert claims against JTIM related to "tobacco related wrongs" to ensure that there is comprehensive representation for all potential claimants across Canada. Such representative counsel was appointed by the Court pursuant to the Appointment of Representative Counsel Order dated December 9, 2019;

(k) on November 6, 2019, litigation counsel to the Applicant delivered a letter to the provinces requesting the preservation of data relevant to the HCCR Actions, notwithstanding a reported request by Statistics Canada that such information be returned or removed. On December 20, 2019, the Province of Ontario and the Consortium separately delivered letters to external counsel to the Applicant. Both parties took the position that the issue was one of statute and contract between the respective province and Statistics Canada, and therefore outside the scope of the CCAA proceedings;

***Mediation***

(l) the Applicant's external counsel and I have continued to communicate with the Court-Appointed Mediator from time to time, in an effort to advance the ongoing mediation process;

(m) the Applicant has complied with the timetable and procedure of the mediation process that has been established by the Court-Appointed Mediator;

(n) the Applicant and I, with external legal counsel, reviewed information requests from financial advisors to certain stakeholders and coordinated with the Monitor to populate the virtual data room ("VDR") with information relevant to the Applicant and that was available to and controlled by the Applicant; and

(o) the Applicant continued to compile commercially sensitive and confidential information for inclusion in the VDR created by the Monitor, for the purposes of providing relevant information to certain stakeholders in respect of the Applicant's business, operations, finances and future prospects.

*JTI Group Global Transformation Project*

14. As described in my affidavit sworn September 20, 2019, the Applicant expected to terminate 12 employees (out of approximately 500 JTIM employees) by March 6, 2020, in accordance with the Global Transformation Project. As of today's date, 11 of those 12 employees have been terminated. Four additional terminations, that were previously announced, will take effect in 2020.

**III. EXTENSION OF THE STAY PERIOD**

15. The Applicant seeks an extension of the Stay Period until September 30, 2020. It is my understanding from counsel to JTIM that Imperial and RBH are also seeking an extension of their respective stay periods until the same date. The Applicant believes that coordinating the stay periods at this stage in the proceedings is efficient and cost-effective.

16. JTIM, with the assistance of the Monitor, has prepared a forecast of the projected cash flows (the "**Cash Flow Statement**") of JTIM for the week commencing February 3, 2020 to the week ending October 2, 2020. I understand that the Cash Flow Statement will be appended to the Monitor's Seventh Report to the Court, to be filed. The Cash Flow Statement demonstrates that JTIM has sufficient liquidity to operate its business and meet its obligations during the proposed extension of the Stay Period.

17. Extending the Stay Period is required to enable the Applicant to continue to operate in the ordinary course while participating in the mediation process and continuing discussions to seek a collective resolution of the Tobacco Claims. The Applicant has acted in good faith and with due diligence during the course of its CCAA proceedings since the date of the Initial Order.

**IV. PURPOSE**

18. This affidavit is sworn in support of JTIM's motion for the extension of the Stay Period to September 30, 2020, and for no other or improper purpose.

**SWORN BEFORE ME** at the Town of  
Oakville, Ontario, on February 12, 2020.

Waleed Malik  
Commissioner for Taking Affidavits  
WALEED MALIK  
LSO # 678460

William E. Aziz  
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 February 12, 2020)**

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Lawyers for the Applicant

## **TAB 3**

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

THE HONOURABLE ) THURSDAY, THE 20TH  
 )  
JUSTICE MCEWEN ) DAY OF FEBRUARY, 2020  
 )  
 )

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 on October 2, 2019 at 330 University Avenue, Toronto, Ontario.

**ON READING** the affidavit of William E. Aziz sworn February 12, 2020 and the exhibits thereto, and the Seventh Report of the Monitor dated ►, 2020, 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 ► sworn on ►, 2020, filed:

## **SERVICE**

1. **THIS COURT ORDERS** that the time for service and filing of the Notice of Motion and the Motion Record is hereby validated so that this Motion was properly returnable on February 20, 2020, and hereby dispenses with further service thereof.

## **STAY EXTENSION**

2. **THIS COURT ORDERS** that the Stay Period, as ordered and defined in paragraph 18 of the Initial Order granted March 8, 2019 (as amended and restated from time to time) is hereby extended until and including September 30, 2020.

## **GENERAL**

3. **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**

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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

**MOTION RECORD  
(Re: Stay Extension)  
(Returnable on February 20, 2020)**

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