

**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
Returnable May 14, 2019**

May 9, 2019

THORNTON GROUT FINNIGAN LLP
100 Wellington Street West, Suite 3200
TD West Tower, Toronto-Dominion Centre
Toronto, ON M5K 1K7
Fax: 416-304-1313

Robert I. Thornton
Tel: 416-304-0560
Email: rthornton@tgf.ca

Leanne M. Williams
Tel: 416-304-0060
Email: lwilliams@tgf.ca

Rebecca L. Kennedy
Tel: 416-304-0603
Email: rkennedy@tgf.ca

Lawyers for the Applicant

**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

INDEX

Tab	Document
1	Notice of Motion returnable May 14, 2019
2	Affidavit of William E. Aziz sworn May 9, 2019
A	Statement of Claim issued in the Swann Action dated September 11, 2016
B	Statement of Claim issued in the Montero-Pomar Action dated July 15, 2016
3	Draft Lift of Stay of Proceedings Order

TAB 1

**ONTARIO
SUPERIOR COURT OF JUSTICE
COMMERCIAL LIST**

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

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

Applicant

**NOTICE OF MOTION
(Re: Lift Stay)
(Returnable on May 14, 2019)**

The Applicant will make a motion before a Judge of the Ontario Superior Court of Justice (Commercial List) on Tuesday, May 14, 2019 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 substantially in the form attached to the Motion Record at Tab 3 (the “**Lift Stay Order**”):
 - i. if necessary, abridging the time for service of the Notice of Motion and the Motion Record herein and dispensing with further service thereof; and

ii. lifting the stay of proceedings provided for in the Second Amended and Restated Initial Order dated March 8, 2019 (the “**Initial Order**”) to allow certain proceedings to continue or be commenced in the ordinary course.

(b) Such further and other relief as this Court deems just.

THE GROUNDS FOR THE MOTION ARE:

Background of CCAA Proceedings

(c) The Applicant obtained the Initial Order pursuant to the Companies’ Creditors Arrangement Act (“CCAA”). Pursuant to the terms of the Initial Order, no proceeding or enforcement process in any court or tribunal may be commenced, continued or take place by or against the Applicant, except with leave of the Court.

Ongoing Proceedings

(d) In accordance with the terms of the Initial Order, the Applicant is operating in the ordinary course of business for the benefit of its stakeholders. Due to the size and complexity of the business, as at the date of the Initial Order, the Applicant was the subject of certain proceedings that are not related to any tobacco claims.

Swann Action

(e) The Applicant, an employee of the Applicant, Midfield Interactive Corporation (“Midfield”), and an employee of Midfield are defendants in an action commenced by Eric and Marissa Swann on September 11, 2016 as Court File No. CV-16-559813, seeking damages in the amount of \$5 million against the defendants (the “Swann Action”). The Swann Action relates to a personal injury allegedly occurred during an incentive trip arranged by Midfield on behalf of the Applicant.

(f) In the event that the Swann Action is successful, any monetary award would be covered by Midfield’s insurance. The Swann Action is being dismissed against one of the

plaintiffs and the remaining plaintiff's examination for discovery is currently scheduled for May 29, 2019. Mediation is scheduled for August 13, 2019.

- (g) The Applicant seeks to lift the stay of proceedings to allow the Swann Action to continue because there is no economic impact due to Midfield's insurance coverage and because an employee of the Applicant is personally named as a defendant.

Montero-Pomar Action

- (h) The Applicant, an employee of the Applicant, and ARI Financial Services Inc. ("**ARI**") are defendants in an action commenced on July 15, 2016 as Court File No. 16/58094 seeking damages in the amount of \$1,500,000, plus interest and costs (the "**Montero-Pomar Action**"). The Montero-Pomar Action relates to a motor vehicle accident that occurred on August 8, 2014, involving a vehicle leased by the Applicant from ARI and driven by an employee of the Applicant.
- (i) The parties reached a settlement of the Montero-Pomar Action, which terms require a payment of \$97,500 (inclusive of all claims for damages, pre-judgment interest, HST, costs and disbursements) by the Applicant. Since this amount is less than its insurance deductible of \$250,000, the Applicant is self-insured and this amount has already been accrued for financial accounting purposes. The Applicant believes that the proposed settlement is in the best interests of the defendants to the Montero-Pomar Action, including the Applicant.
- (j) The Applicant seeks to lift the stay of proceedings to allow the Montero-Pomar Action to continue because the settlement provides for an immaterial financial impact on the Applicant and because an employee of the Applicant is also named as a defendant.

Labour and Employment Matters

- (k) The Applicant has approximately 500 full time employees, approximately 20% of which are unionized. From the outset of the CCAA proceedings, it is the intention of the Applicant to maintain the *status quo* and not affect its dealings with its union, employees and retirees.

- (l) The Applicant seeks an order permitting the commencement or continuance of labour and employment matters, either with the consent of the Monitor or an order of the Court, in order to minimize any disruption to the business of the Applicant.
- (m) As of May 7, 2019, there are two ongoing matters between the Applicant and its union. One matter is a grievance challenging a staffing decision and the other alleges the Applicant interfered with the union's right to association.
- (n) The union has requested that its grievances be allowed to continue and that new grievances or claims be permitted to be commenced in the ordinary course where appropriate. The Applicant is of the view that allowing the grievances to continue or be commenced would preserve the integrity of the Applicant's collective agreement.
- (o) The Applicant is involved in three occupational health and safety claims initiated by employees of the Applicant. If these matters proceed and the Applicant's defence is unsuccessful, there would be an impact on the overall annual occupational health and safety contribution required to be paid by the Applicant. The Applicant is committed to provide a safe and positive work environment and a fair dispute resolution process in respect thereof.
- (p) The Applicant also relies on:
 - i. the provisions of the CCAA and the statutory, inherent and equitable jurisdiction of this Court; and
 - ii. 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:

- (q) the Affidavit of William E. Aziz, sworn May 9, 2019;
- (r) the Third Report of the Monitor, to be filed; and
- (s) such further and other evidence as counsel may advise and this Court may permit.

May 9, 2019

THORNTON GROUT FINNIGAN LLP
100 Wellington Street West, Suite 3200
TD West Tower, Toronto-Dominion Centre
Toronto, ON M5K 1K7
Fax: 416-304-1313

Robert I. Thornton
Tel: 416-304-0560
Email: rthornton@tgf.ca

Leanne M. Williams
Tel: 416-304-0060
Email: lwilliams@tgf.ca

Rebecca L. Kennedy
Tel: 416-304-0603
Email: rkennedy@tgf.ca

Lawyers for the Applicant

TO: THE ATTACHED SERVICE LIST

**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

**SERVICE LIST
(as at April 30, 2019)**

TO:	<p>THORNTON GROUT FINNIGAN LLP 100 Wellington Street West Suite 3200 TD West Tower, Toronto-Dominion Centre Toronto, ON M5K 1K7 Fax: 416-304-1313</p> <p>Robert I. Thornton Tel: 416-304-0560 Email: rthornton@tgf.ca</p> <p>Leanne M. Williams Tel: 416-304-0060 Email: lwilliams@tgf.ca</p> <p>Rebecca L. Kennedy Tel: 416-304-0603 Email: rkennedy@tgf.ca</p> <p>Rachel A. Bengino Tel: 416-304-1153 Email: rbengino@tgf.ca</p> <p>Mitchell W. Grossell Tel: 416-304-7978 Email: mgrossell@tgf.ca</p>
------------	--

	<p>John L. Finnigan Tel: 416-304-0558 Email: jfinnigan@tgf.ca</p> <p>Lawyers for the Applicant</p>
AND TO:	<p>DELOITTE RESTRUCTURING INC. Bay Adelaide East 8 Adelaide Street West Suite 200 Toronto, ON M5H 0A9 Fax: 416-601-6690</p> <p>Paul Casey Tel: 416-775-7172 Email: paucasey@deloitte.ca</p> <p>Warren Leung Tel: 416-874-4461 Email: waleung@deloitte.ca</p> <p>Jean-Francois Nadon Tel: 514-390-0059 Email: jnadon@deloitte.ca</p> <p>Phil Reynolds Tel: 416-956-9200 Email: philreynolds@deloitte.ca</p> <p>The Monitor</p>
AND TO:	<p>BLAKE, CASSELS & GRAYDON LLP 199 Bay Street Suite 4000, Commerce Court West Toronto, ON M5L 1A9 Fax: 416-863-2653</p> <p>Pamela Huff Tel: 416-863-2958 Email: pamela.huff@blakes.com</p> <p>Linc Rogers Tel: 416-863-4168 Email: linc.rogers@blakes.com</p> <p>Chris Burr Tel: 416-863-3261 Email: chris.burr@blakes.com</p>

	<p>Aryo Shalviri Tel: 416-863-2962 Email: aryo.shalviri@blakes.com</p> <p>Caitlin McIntyre Tel: 416-863-4174 Email: caitlin.mcintyre@blakes.com</p> <p>Nancy Thompson, Law Clerk Tel: 416-863-2437 Email: nancy.thompson@blakes.com</p> <p>Counsel to the Monitor</p>
AND TO:	<p>BLUETREE ADVISORS INC. First Canada Place 100 King Street West Suite 5600 Toronto, ON M5X 1C9</p> <p>William E. Aziz Tel: 416-640-7122 Email: baziz@bluetreadvisors.com</p>
AND TO:	<p>STIKEMAN ELLIOTT LLP Commerce Court West 199 Bay Street, Suite 5300 Toronto, ON M5L 1B9 Fax: 416-947-0866</p> <p>David R. Byers Tel: 416-869-5697 Email: dbyers@stikeman.com</p> <p>Maria Konyukhova Tel: 416-869-5230 Email: mkonyukhova@stikeman.com</p> <p>Lesley Mercer Tel: 416-869-6859 Email: lmercer@stikeman.com</p> <p>Sanja Sopic Tel: 416-869-6825 Email: ssopic@stikeman.com</p> <p>Lawyers for British American Tobacco p.l.c., B.A.T. Industries p.l.c. and British American Tobacco (Investments) Limited</p>

AND TO:	<p>OSLER, HOSKIN & HARCOURT LLP 100 King Street West 1 First Canadian Place Suite 6100, P.O. Box 50 Toronto, ON M5X 1B8 Fax: 416-862-6666</p> <p>Deborah Glendinning Tel: 416-862-4714 Email: dglendinning@osler.com</p> <p>Marc Wasserman Tel: 416-862-4908 Email: mwasserman@osler.com</p> <p>John A. MacDonald Tel: 416-862-5672 Email: jmacdonald@osler.com</p> <p>Michael De Lellis Tel: 416-862-5997 Email: mdelellis@osler.com</p> <p>Lawyers for Imperial Tobacco Canada Limited</p>
AND TO:	<p>DAVIES WARD PHILLIPS & VINDEBERG LLP 155 Wellington Street West Toronto, ON M5V 3J7</p> <p>Jay Swartz Tel: 416-863-5520 Email: jswartz@dwpv.com</p> <p>Robin Schwill Tel: 416-863-5502 Email: rschwill@dwpv.com</p> <p>Natasha MacParland Tel: 416-863-5567 Email: nmacparland@dwpv.com</p> <p>Lawyers to FTI Consulting Canada Inc., in its capacity as Monitor of Imperial Tobacco Canada Limited and Imperial Tobacco Company Limited</p>

AND TO:	<p>FTI CONSULTING CANADA INC. 79 Wellington Street West Suite 2010, P.O. Box 104 Toronto, ON M4K 1G8 Fax: 416-649-8101</p> <p>Greg Watson Tel: 416-649-8077 Email: greg.watson@fticonsulting.com</p> <p>Paul Bishop Tel: 416-649-8053 Email: paul.bishop@fticonsulting.com</p> <p>Jeffrey Rosenberg Tel: 416-649-8073 Email: jeffrey.rosenberg@fticonsulting.com</p> <p>Kamran Hamidi Tel: 416-649-8068 Email: kamran.hamidi@fticonsulting.com</p> <p>Daliwar Azhar Tel: 416-649-8133 Email: dilawar.azhar@fticonsulting.com</p> <p>Monitor of Imperial Tobacco Canada Limited and Imperial Tobacco Company Limited</p>
AND TO:	<p>MCCARTHY TÉTRAULT LLP 66 Wellington Street West Suite 5300 TD Bank Tower, Box 48 Toronto, ON M5K 1E6 Fax: 416-868-0673</p> <p>James Gage Tel: 416-601-7539 Email: jgage@mccarthy.ca</p> <p>Heather Meredith Tel: 416-601-8342 Email: hmeredith@mccarthy.ca</p> <p>Paul Steep Tel: 416-601-7998 Email: psteep@mccarthy.ca</p>

	<p>Trevor Courtis Tel: 416-601-7643 Email: tcourtis@mccarthy.ca</p> <p>Sharon Kour Tel: 416-601-8305 Email: skour@mccarthy.ca</p> <p>Lawyers for Rothmans, Benson & Hedges, Inc.</p>
AND TO:	<p>TORYS LLP 79 Wellington St. West, Suite 3000 Box 270, TD Centre Toronto, ON M5K 1N2 Fax: 416-865-7380</p> <p>Scott Bomhof Tel: 416-865-7370 Email: sbomhof@torys.com</p> <p>Adam Slavens 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>
AND TO:	<p>PRICEWATERHOUSECOOPERS PwC Tower 18 York St., Suite 2600 Toronto, ON M5J 0B2 Fax: 416-814-3210</p> <p>Mica Arlette Tel: 416-814-5834 Email: mica.arlette@ca.pwc.com</p> <p>Receiver and Manager of JTI-Macdonald TM Corp.</p>
AND TO:	<p>BENNETT JONES 100 King Street West Suite 3400 Toronto, ON M5X 1A4 Fax: 416-863-1716</p> <p>Jeff Leon Tel: 416-777-7472 Email: leonj@bennettjones.com</p>

	<p>Mike Eizenga Tel: 416-777-4879 Email: eizengam@bennettjones.com</p> <p>Sean Zweig Tel: 416-777-6254 Email: zweigs@bennettjones.com</p> <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</p>
AND TO:	<p>KSV ADVISORY INC. 150 King Street West Suite 2308, Box 42 Toronto, ON M5H 1J9 Fax: 416-932-6266</p> <p>Noah Goldstein Tel: 416-932-6207 Email: ngoldstein@ksvadvisory.com</p> <p>Bobby Kofman Email: bkofman@ksvadvisory.com</p> <p>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</p>
AND TO:	<p>MINISTRY OF THE ATTORNEY GENERAL Crown Law Office - Civil 720 Bay Street, 8th Floor Toronto, ON M7A 2S9 Fax: 416-326-4181</p> <p>Jacqueline Wall Tel: 416-325-8435 Email: jacqueline.wall@ontario.ca</p> <p>Shahana Kar Tel: 416-314-2080 Email: shahana.kar@ontario.ca</p> <p>Edmund Huang Tel: 416-326-4161 Email: Edmund.huang@ontario.ca</p>

AND TO:	<p>FISHMAN FLANZ MELAND PAQUIN LLP 4100 – 1250 René-Lévesque Blvd. West Montreal, Quebec H3A 3H3</p> <p>Avram Fishman Email: afishman@ffmp.ca</p> <p>Mark E. Meland Tel: 514-932-4100 Email: mmeland@ffmp.ca</p> <p>Margo R. Siminovitch Email: msiminovitch@ffmp.ca</p> <p>Jason Dolman Email: jdolman@ffmp.ca</p> <p>Nicolas Brochu Email: nbrochu@ffmp.ca</p> <p>CHAITONS LLP 5000 Yonge Street 10th Floor Toronto, ON M2N 7E9</p> <p>Harvey Chaiton Tel: 416-218-1129 Email: harvey@chaitons.com</p> <p>George Benchetrit Tel: 416-218-1141 Email: george@chaitons.com</p> <p>Lawyers for Conseil québécois sur le tabac et la santé, Jean-Yves Blais and Cécilia Létourneau (Quebec Class Action Plaintiffs)</p>
AND TO:	<p>JENSEN SHAWA SOLOMON DUGID HAWKES LLP 800, 304 – 8 Avenue SW Calgary, AB T2P 1C2 Fax: 403-571-1528</p> <p>Carsten Jensen, QC Tel: 403-571-1526 Email: jensenc@jssbarristers.ca</p> <p>Sabri Shawa, QC Tel: 403-571-1527 Email: shawas@jssbarristers.ca</p>

	<p>Stacy Petriuk Tel: 403-571-1523 Email: petriuks@jssbarristers.ca</p> <p>PALIARE ROLAND ROSENBERG ROTHSTEIN LLP 155 Wellington Street West, 35th Floor Toronto, ON M5V 3H1</p> <p>Kenneth T. Rosenberg Email: ken.rosenberg@paliareroland.com</p> <p>Lilly Harmer Email: lily.harmer@paliareroland.com</p> <p>Massimo (Max) Starnino Email: max.starnino@paliareroland.com</p> <p>Danielle Glatt Email: Danielle.glatt@paliareroland.com</p> <p>Elizabeth Rathbone Tel: 416-646-4300 Email: elizabeth.rathbone@paliareroland.com</p> <p>Lawyers for Her Majesty the Queen in Right of Alberta</p>
<p>AND TO:</p>	<p>STEWART MCKELVEY 1959 Upper Water Street, Suite 900 PO Box 997 Halifax, NS B3J 2X2 Fax: 902-420-1417</p> <p>Robert G. MacKeigan, Q.C. Tel: 902-444-1771 Email: robbie@stewartmckelvey.com</p> <p>Lawyers for Sobeys Capital Incorporated</p>
<p>AND TO:</p>	<p>CASSELS BROCK & BLACKWELL LLP 2100 Scotia Plaza 40 King Street West Toronto, ON M5H 3C2</p> <p>Shayne Kukulowicz Tel: 416-860-6463 Fax: 416-640-3176 Email: skukulowicz@casselsbrock.com</p>

	<p>Jane Dietrich Tel: 416-860-5223 Fax: 416-640-3144 Email: jdietrich@casselsbrock.com</p> <p>Joseph Bellissimo Tel: 416-860-6572 Fax: 416-642-7150 Email: jbellissimo@casselsbrock.com</p> <p>Monique Sassi Tel: 416-860-6886 Fax: 416-640-3005 Email: msassi@casselsbrock.com</p> <p>Lawyers for Ernst & Young Inc, in its capacity as court-appointed monitor of Rothmans, Benson & Hedges, Inc.</p>
AND TO:	<p>ERNST & YOUNG INC. Ernst & Young Tower 100 Adelaide Street West P.O. Box 1 Toronto, ON M5H 0B3</p> <p>Murray A. McDonald Tel: 416-943-3016 Email: murray.a.mcdonald@ca.ey.com</p> <p>Brent Beekenkamp Tel: 416-943-2652 Email: brent.r.beekenkamp@ca.ey.com</p> <p>Edmund Yau Tel: 416-943-2177 Email: edmund.yau@ca.ey.com</p> <p>Monitor of Rothmans, Benson & Hedges, Inc.</p>
AND TO:	<p>GOWLING WLG (CANADA) LLP 1 First Canadian Place 100 King Street West, Suite 1600 Toronto, ON M5X 1G5 Fax: 416-862-7661</p> <p>Derrick Tay Tel: 416-369-7330 Email: derrick.tay@gowlingwlg.com</p>

	<p>Clifton Prophet Tel: 416-862-3509 Email: clifton.prophet@gowlingwlg.com</p> <p>Steven Sofer Tel: 416-369-7240 Email: steven.sofer@gowlingwlg.com</p> <p>Lawyers for Philip Morris International Inc.</p>
AND TO:	<p>PALIARE ROLAD ROSENBERG ROTHSTEIN LLP 155 Wellington Street West, 35th Floor Toronto, ON M5V 3H1</p> <p>Kenneth T. Rosenberg Email: ken.rosenberg@paliareroland.com</p> <p>Lilly Harmer Email: lily.harmer@paliareroland.com</p> <p>Massimo (Max) Starnino Email: max.starnino@paliareroland.com</p> <p>Danielle Glatt Email: Danielle.glatt@paliareroland.com</p> <p>Elizabeth Rathbone Tel: 416-646-4300 Email: elizabeth.rathbone@paliareroland.com</p> <p>ROEBOTHAN MCKAY MARSHALL Paramount Building 35 Harvey Road, 5th Floor St. John's NL A1C 3Y7 Fax: 709-753-5221</p> <p>Glenda Best Tel: 705-576-2255 Email: gbest@wrmlaw.com</p> <p>Lawyers for Her Majesty the Queen in Right of Newfoundland</p>

AND TO:	WESTROCK COMPANY OF CANADA CORP. 15400 Sherbrooke Street East Montreal, Quebec H1A 3S2 Dean Jones Tel: 514-642-9251 Email: dean.jones@westrock.com
AND TO	MINISTRY OF THE ATTORNEY GENERAL Civil Law Division, FSCO Branch 5160 Yonge Street, 17 th Floor Toronto, ON M2N 6L9 Fax: 416-590-7556 Michael Scott Tel: 416-226-7834 Email: michael.scott@fSCO.gov.on.ca Lawyers for the Superintendent of Financial Services
AND TO	MERCHANT LAW GROUP LLP c/o #400 – 333 Adelaide St. West Toronto, ON M5V 1R5 Fax: 613-366-2793 Evatt Merchant, QC Tel: 613-366-2795 Email: emerchant@merchantlaw.com Chris Simoes Email: csimoes@merchantlaw.com Lawyers for the Class Action Plaintiffs (MLG)
AND TO:	CERNOS FLAHERTY SVONKIN LLP 220 Bay Street, Suite 700 Toronto, ON M5J 2W4 Fax: 647-725-5440 Patrick Flaherty Tel: 416-855-0403 Email: pflaherty@cfscounsel.com Bryan D. McLeese Tel: 416-855-0414 Email: bmcleese@cfscounsel.com

	<p>STOCKWOODS LLP 77 King Street West, Suite 4130 TD North Tower, P.O. Box 140, TD Centre Toronto, ON M5K 1H1 Fax: 416-593-9345</p> <p>Brian Gover Tel: 416-593-2489 Email: briang@stockwoods.ca</p> <p>Justin Safayeni 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>
AND TO:	<p>BRAUTI THORNING LLP 161 Bay Street, Suite 2900 Toronto, ON M5J 2S1</p> <p>Steven Weisz Tel: 416-304-6522 Email: sweisz@btlegal.ca</p> <p>INCH HAMMOND PROFESSIONAL CORPORATION 1 King Street West, Suite 500 Hamilton, ON L8P 4X8</p> <p>Amanda McInnis Tel: 905-525-0031 Email: amcinnis@inchlaw.com</p> <p>Lawyer for Grand River Enterprises Six Nations Ltd.</p>
AND TO:	<p>STROSBERG SASSO SUTTS LLP 1561 Ouellette Avenue Windsor, ON M8X 1K5 Fax: 866-316-5308</p> <p>Harvey T. Strosberg Tel: 519-561-6228 Email: harvey@strosbergco.com</p>

	<p>William V. Sasso Tel: 519-561-6222 Email: wvs@strosbergco.com</p> <p>David Robins 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>
AND TO:	<p>ATTORNEY GENERAL OF CANADA 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>Diane Winters, General Counsel Tel: 647-256-7459 Email: diane.winters@justice.gc.ca</p> <p>Lawyers for the Minister of National Revenue</p>
AND TO:	<p>LAX O'SULLIVAN LISUS GOTTLIEB LLP Suite 2750, 145 King Street West Toronto, ON M5H 1J8</p> <p>Jonathan Lisus Tel: 416-598-7873 Email: jlisus@lolg.ca</p> <p>Matthew Gottlieb Tel: 416-644-5353 Email: mgottlieb@lolg.ca</p> <p>Nadia Campion Tel: 416-642-3134 Email: ncampion@lolg.ca</p> <p>Andrew Winton Tel: 416-644-5342 Email: awinton@lolg.ca</p> <p>Lawyers for the Court-Appointed Mediator</p>

AND TO:	<p>FOGLER, RUBINOFF LLP Suite 3000, P.O. Box 95 Toronto-Dominion Centre 77 King Street West Toronto, ON M5K 1G8 Fax: 416-941-8852</p> <p>Vern W. DaRe Tel: 416-941-8842 Email: vdare@foglers.com</p> <p>CANADIAN CANCER SOCIETY 116 Albert Street, Suite 500 Ottawa, ON K1P 5G3 Fax: 613-565-2278</p> <p>Robert Cunningham Tel: 613-565-2522 ext. 4981 Email: rcunning@cancer.ca</p> <p>Lawyers for Canadian Cancer Society</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; ilia.kravtsov@blakes.com; nancy.thompson@blakes.com;
baziz@bluetreadvisors.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; wmalik@osler.com;
jswartz@dwpv.com; rschwill@dwpv.com; nmacparland@dwpv.com; szafman@dwpv.com;
nrenner@dwpv.com; tbarbiero@dwpv.com; greg.watson@fticonsulting.com;
paul.bishop@fticonsulting.com; jeffrey.rosenberg@fticonsulting.com;
kamran.hamidi@fticonsulting.com; dilawar.azhar@fticonsulting.com; jgage@mccarthy.ca;
hmeredith@mccarthy.ca; psteep@mccarthy.ca; tcourtis@mccarthy.ca; skour@mccarthy.ca;
kfick@mccarthy.ca; sbomhof@torys.com; aslavens@torys.com; mica.arlette@ca.pwc.com;
leonj@bennettjones.com; eizengam@bennettjones.com; zweigs@bennettjones.com;
ngoldstein@ksvadvisory.com; bkofman@ksvadvisory.com; jacqueline.wall@ontario.ca;
shahana.kar@ontario.ca; edmund.huang@ontario.ca; afishman@ffmp.ca; mmeland@ffmp.ca;
msiminovitch@ffmp.ca; jdolman@ffmp.ca; nbrochu@ffmp.ca; harvey@chaitons.com;
george@chaitons.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;
elizabeth.rathbone@paliareroland.com; karen.lam@paliareroland.com;
sarita.sanasie@paliareroland.com; natalia.botelho@paliareroland.com;
robbie@stewartmckelvey.com; skukulowicz@casselsbrock.com; jdietrich@casselsbrock.com;
jbellissimo@casselsbrock.com; msassi@casselsbrock.com; murray.a.mcdonald@ca.ey.com;
brent.r.beekenkamp@ca.ey.com; edmund.yau@ca.ey.com; derrick.tay@gowlingwlg.com;
clifton.prophet@gowlingwlg.com; steven.sofer@gowlingwlg.com; gbest@wrmmlaw.com;
dean.jones@westrock.com; michael.scott@fsc.gov.on.ca; emerchant@merchantlaw.com;
csimoes@merchantlaw.com; jtim.ccaa@merchantlaw.com; pflaherty@cfscounsel.com;
bmclease@cfscounsel.com; briang@stockwoods.ca; justins@stockwoods.ca; sweisz@btlegal.ca;
amcinnis@inchlaw.com; harvey@strosbergco.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;

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: Lift Stay)
(Returnable on May 14, 2019)**

THORNTON GROUT FINNIGAN LLP
100 Wellington Street West, Suite 3200
TD West Tower, Toronto-Dominion Centre
Toronto, ON M5K 1K7
Fax: 416-304-1313

Robert I. Thornton
Tel: 416-304-0560
Email: rthornton@tgf.ca

Leanne M. Williams
Tel: 416-304-0060
Email: lwilliams@tgf.ca

Rebecca L. Kennedy
Tel: 416-304-0603
Email: rkennedy@tgf.ca

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 May 9, 2019)**

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

INTRODUCTION

1. I am the President of BlueTree Advisors Inc., Chief Restructuring Officer of JTI-Macdonald Corp. (the “**Applicant**” or “**JTIM**”). As such, I have personal knowledge of the matters to which I hereinafter depose, except where my knowledge is based on information and belief, in which case I believe such information to be true.

2. All capitalized terms not herein defined shall have the meanings set out in the Initial Order (as defined below).

PURPOSE

3. The purpose of this Affidavit is to support the motion seeking a lift of the stay of proceedings provided for in the Second Amended and Restated Initial Order dated March 8, 2019

(the “**Initial Order**”) to allow certain proceedings in which JTIM is involved to continue or be commenced in the ordinary course.

STAY OF PROCEEDINGS

4. Pursuant to the terms of the Initial Order, no proceeding or enforcement process in any court or tribunal may be commenced, continued or take place by or against the Applicant except with leave of the Court (the “**Stay of Proceedings**”).

ON GOING PROCEEDINGS

5. Pursuant to the terms of the Initial Order, JTIM is operating in the ordinary course of business for the benefit of its stakeholders. Due to the size and complexity of the Business, as at the date of the Initial Order, the Applicant was the subject of certain Proceedings that are not related to a Tobacco Claim. The Applicant seeks to the lift the stay of proceedings to allow certain of these matters to continue.

Swann Action

6. I am advised by legal counsel to the Applicant that it is a defendant, together with one of its employees (Christopher Chaulk), Midfield Interactive Corporation (“**Midfield**”) and Carlos Sousa (an employee of Midfield), in an action commenced by Eric and Marissa Swann on September 11, 2016 as Court File No. CV-16-559813 seeking damages in the amount of \$5 million (the “**Swann Action**”). The action relates to a personal injury which is alleged to have occurred during an incentive trip arranged by Midfield on behalf of JTIM. A copy of the statement of claim issued in the Swann Action is attached as **Exhibit “A”**.

7. I have been advised by legal counsel to Midfield and JTIM that, in the event that the Swann Action is successful, any monetary award would be covered by Midfield's insurance. The Swann Action is being dismissed against one of the plaintiffs and the remaining plaintiff's examination for discovery is currently scheduled for May 29, 2019. A mediation in this matter is scheduled for August 13, 2019.

8. As there is no economic impact on the Applicant as a result of this Proceeding and because one of JTIM's employees is also named as a defendant, JTIM is seeking to lift the stay of proceedings to allow this Proceeding to continue.

Montero-Pomar Action

9. I am advised by legal counsel to the Applicant that it is a defendant, together with one of its employees, Craig Smith, and ARI Financial Services Inc. ("**ARI**") in an action commenced by Rosa Montero-Pomar on July 15, 2016 as Court File No. 16/58094 seeking damages in the amount of \$1,500,000, plus interest and cost (the "**Montero-Pomar Action**"). The action relates to a motor vehicle accident that occurred on August 8, 2014 involving a vehicle leased by JTIM from ARI and driven by Mr. Smith. A copy of the statement of claim issued in the Montero-Pomar Action is attached as **Exhibit "B"**.

10. I have been advised that the parties reached a settlement of the Montero-Pomar Action which requires a payment of \$97,500, inclusive of all claims for damages, pre-judgment interest, HST, costs and disbursements, by JTIM as this amount is less than its insurance deductible of \$250,000. The Applicant is self-insured and thus, this amount has already been accrued for financial accounting purposes. The Applicant believes that the proposed settlement is in the best interests of the defendants, including JTIM.

11. As a settlement has been reached which provides for a immaterial financial impact on the Applicant and because one of JTIM's employees is also named as a defendant, JTIM is seeking to lift the stay of proceedings to allow this Proceeding to continue to effect the settlement.

Labour and Employment Matters

12. JTIM has approximately 500 full time employees, approximately 20% of which are unionized. As outlined in the Affidavit of Robert McMaster dated March 8, 2019 sworn in support of the initial application, it is the intention of the Applicant to maintain the status quo and not affect its dealings with its union, employees and retirees. The Applicant is committed to provide a safe and positive work environment and a fair dispute resolution process in respect thereof. To this end, JTIM is seeking an order permitting the commencement or continuance of labour and employment matters with the consent of the Monitor or an order of the Court in order to minimize any disruption to the Business.

13. As of May 7, 2019, there are two ongoing matters between the Applicant and its union:

(a) A grievance filed by the union challenging JTIM's staffing decision regarding a machine operator in the plant. The grievance is scheduled for arbitration commencing on March 31, 2020. In the event that JTIM loses the arbitration, it is likely that the Applicant would be required to pay the difference in salary of the employee currently under dispute; and

(b) The union served the Applicant with a motion dated April 26, 2019 alleging that JTIM interfered with its right to association. A tentative hearing date was initially set for May 31, 2019. JTIM takes the position that such claim is without

merit. However, if it were to succeed, JTIM has received advice from its legal counsel that that the amount of damages that may be awarded are likely not to be material.


14. The Applicant is also involved in three occupational health and safety claims initiated by employees of JTIM who allege having been injured during the course of their employment (two matters involve tendinitis and one claim relates to hearing impairment). JTIM has disputed these claims which are before the Administrative Labour Tribunal of Quebec. If these matters were to proceed and JTIM's defence was unsuccessful, there would be an impact on the overall annual occupational health and safety contribution required to be paid by the Applicant.

15. Currently, the Initial Order stays all Proceedings and prevents new Proceedings from being commenced by or against the Applicant. The union has requested that its grievances be allowed to continue and that new grievances or claims be permitted to be commenced in the ordinary course where appropriate. It is the Applicant's position that allowing such matters to proceed with the consent of the Monitor or further Order of the Court would preserve the integrity of JTIM's collective agreement and protect the rights of all parties thereto.


CONCLUSION

16. The Applicant requests that the stay of proceedings be lifted in the specific circumstances noted above to allow JTIM to carry on its business operations in the ordinary course for the benefit of its stakeholders.

SWORN BEFORE ME at the City of Toronto, Province of Ontario, on May 9th, 2019.



Commissioner for Taking Affidavits
Mitchell W. Grossell



William E. Aziz

Exhibit "A"

Court File No. CV-16-559813

**ONTARIO
SUPERIOR COURT OF JUSTICE**

BETWEEN:

ERIC SWANN and MARISSA SWANN

Plaintiffs

- and -

**MIDFIELD INTERACTIVE CORP., CARLOS SOUSA, JTI-MACDONALD CORP.
and CHRISTOPHER CHAULK**

Defendants

STATEMENT OF CLAIM

TO: THE DEFENDANTS

A LEGAL PROCEEDING HAS BEEN COMMENCED AGAINST YOU by the plaintiffs. The claim made against you is set out in the following pages.

IF YOU WISH TO DEFEND THIS PROCEEDING, you or an Ontario lawyer acting for you must prepare a statement of defence in Form 18A prescribed by the Rules of Civil Procedure, serve it on the plaintiffs' lawyer or, where the plaintiffs do not have a lawyer, serve it on the plaintiffs, and file it, with proof of service, in this court office, **WITHIN TWENTY DAYS** after this statement of claim is served on you, if you are served in Ontario.

If you are served in another province or territory of Canada or in the United States of America, the period for serving and filing your statement of defence is forty days. If you are served outside Canada and the United States of America, the period is sixty days.

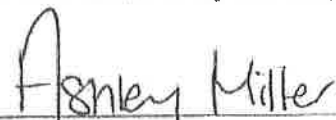
Instead of serving and filing a statement of defence, you may serve and file a notice of intent to defend in Form 18B prescribed by the Rules of Civil Procedure. This will entitle you to ten more days within which to serve and file your statement of defence.

IF YOU FAIL TO DEFEND THIS PROCEEDING, JUDGMENT MAY BE GIVEN AGAINST YOU IN YOUR ABSENCE AND WITHOUT FURTHER NOTICE TO YOU. IF YOU WISH TO DEFEND THIS PROCEEDING BUT ARE UNABLE TO PAY LEGAL FEES, LEGAL AID MAY BE AVAILABLE TO YOU BY CONTACTING A LOCAL LEGAL AID OFFICE.

TAKE NOTICE: THIS ACTION WILL AUTOMATICALLY BE DISMISSED if it has not been set down for trial or terminated by any means within five years after the action was commenced unless otherwise ordered by the court.

Date: September 18/2016

Issued by:


Local Registrar

Address of court office:

393 University Avenue
10th Floor
Toronto, Ontario
M5G 1E6

TO: **MIDFIELD INTERACTIVE CORP.**
64 Hatt Street
Dundas, Ontario
L9H 7T6

AND TO: **CARLOS SOUSA**
c/o Midfield Interactive Corp.
64 Hatt Street
Dundas, Ontario
L9H 7T6

AND TO: **JTI-MACDONALD CORP.**
1 Robert Speck Parkway
Suite 1601
Mississauga, Ontario
L4Z 0A2

AND TO: **CHRISTOPHER CHAULK**
35 Second Avenue
Lewisporte, Newfoundland
A0G 2A0

CLAIM

1. The plaintiffs claim:

- (a) The plaintiff Eric Swann, the sum of \$5,000,000.00;
- (b) The plaintiff Marissa Swann, the sum of \$100,000.00;
- (c) Interest on the amounts awarded;
- (d) The costs of this action; and
- (e) Such further and other relief as the nature of the case may require.

2. The plaintiffs reside at the Town of Stamford, in the State of Connecticut, U.S.A., and are husband and wife respectively.

3. The defendant Midfield Interactive Corp. is an incorporated company with an office at the City of Hamilton. The defendant Sousa resides at the City of Mississauga, in the Regional Municipality of Peel. The defendant JTI-MacDonald Corp. is an incorporated company with its head office at the said City of Mississauga. The defendant Chauk resides at the Town of Lewisporte, in the Province of Newfoundland.

4. At all material times, the defendant Midfield Interactive Corp. was a marketing agency with a business relationship with the defendant JTI-MacDonald Corp., a manufacturer and marketer of tobacco products, the defendant Sousa was the Creative

Director of the defendant Midfield Interactive Corp. and the defendant Chaulk was an employee of the defendant JTI-MacDonald Corp.

5. The defendant Midfield Interactive Corp. sponsored an event for the defendant JTI-MacDonald Corp. in The Bahamas. The defendant JTI-MacDonald Corp. selected the defendant Chaulk to attend that event as part of his employment.

6. As part of the event, the defendant Midfield Interactive Corp. chartered a party yacht in The Bahamas as part of the entertainment for its guests, including the defendant Chaulk. The yacht had on board various equipment, including jet ski motorized watercraft, which it described collectively as "water toys".

7. On or about November 13, 2015, the defendant Sousa on behalf of the defendant Midfield Interactive Corp. took possession of one of those jet skis on the representation that he would be the operator of the same. In doing so, he signed a waiver form which said "I recognize that use of water toys involves certain dangers, including equipment failure; adverse sea and weather conditions; and negligent acts of fellow users. I specifically assume all such risks."

8. The defendant Sousa allowed the defendant Chaulk to operate the jet ski.

9. The plaintiff Eric Swann was swimming off the shore of Green Cay, Rose Island in The Bahamas. The jet ski operated by the defendant Chaulk struck the said plaintiff.

10. As a result thereof, the plaintiff Eric Swann received injuries, bruises and lacerations to various parts of his head and body and, more particularly, he sustained a concussion and injury to his brain, lacerations to his head and injuries to his eyes, ears, neck, shoulders and back. He had aspiration pneumonia. He developed anxiety and depression. He sustained great pain and suffering, received a severe shock to his system and has been permanently injured and scarred. He was confined to hospital and to his home, he lost time from his work, his earning power and ability to work have been impaired and his enjoyment of life has been lessened. He has been put to expense for hospital and medical attention, medicines and otherwise.

11. As a result of the injuries sustained by her husband, the plaintiff Eric Swann, the plaintiff Marissa Swann has provided nursing, housekeeping and other services for the plaintiff Eric Swann and she has sustained the loss of his guidance, care and companionship. She has sustained pecuniary loss.

12. The plaintiffs allege that their injuries, loss and damage were caused by reason of the negligence of the defendants, such negligence consisting as follows:

A. AS AGAINST THE DEFENDANT SOUSA, FOR WHOSE NEGLIGENCE THE DEFENDANT MIDFIELD INTERACTIVE CORP. IS RESPONSIBLE:

- (a) Knowing that the jet ski was a dangerous instrumentality and had been given to him for his personal use, he gave it to the defendant Chaulk to use;
- (b) He did not give the defendant Chaulk adequate instructions for the safe operation of the jet ski and did not arrange for the defendant Chaulk to obtain such instructions from others;
- (c) Having possession of the jet ski, he allowed himself through the consumption of alcohol or drugs to be in a condition precluding him from exercising proper judgment as to its use;
- (d) He gave the defendant Chaulk the jet ski, which he knew to be a dangerous instrumentality, without first ensuring that the defendant Chaulk was sufficiently knowledgeable about operating the same safely;
- (e) He gave the jet ski, which he knew to be a dangerous instrumentality, to the defendant Chaulk to operate when he knew or ought to have known that the ability of the defendant Chaulk to operate the same safely was impaired by alcohol or drugs.

B. AS AGAINST THE DEFENDANT CHAULK, FOR WHOSE NEGLIGENCE THE DEFENDANT JTI-MACDONALD CORP. IS RESPONSIBLE:

- (a) He operated the jet ski without first obtaining instructions as to its safe operation;
- (b) He operated the jet ski when he knew or ought to have known that he was not qualified to do so;
- (c) He was not keeping a proper lookout;
- (d) He operated the jet ski at an excessive rate of speed;
- (e) He operated the jet ski when he knew or ought to have known that his ability to do so was impaired by alcohol or drugs;
- (f) He failed to obey warnings given to him to avoid entering the area where the plaintiff Eric Swann was swimming;

(g) He created an emergency and a situation of danger.

13. The defendant Sousa was at all material times acting within the course and scope of his employment with the defendant Midfield Interactive Corp.

14. The defendant Chauk was at all material times acting within the course and scope of his employment with the defendant JTI-MacDonald Corp.

15. This document is being served on the defendant Chauk pursuant to rule 17.02(q) of the Rules of Civil Procedure.

16. The plaintiffs propose that this action be tried at the City of Toronto.

Date of Issue:

September 1st / 2016

RACHLIN & WOLFSON LLP
1500-390 Bay Street
Toronto, Ontario
M5H 2Y2

T. H. Rachlin, Q.C.
Law Society Reg. #089431
tel. (416) 367-0202
fax: (416) 367-1820

Lawyers for the plaintiffs

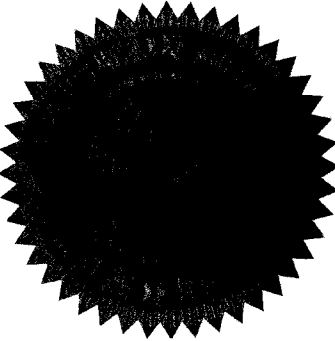
Exhibit "B"

Court File No.

16/58094

**ONTARIO
SUPERIOR COURT OF JUSTICE**

BETWEEN:



ROSA MONTERO-POMAR

PLAINTIFF

and

**CRAIG SMITH; JTI-MACDONALD CORP.;
and ARI FINANCIAL SERVICES INC.**

DEFENDANTS

STATEMENT OF CLAIM

TO THE DEFENDANT(S):

A LEGAL PROCEEDING HAS BEEN COMMENCED AGAINST YOU by the Plaintiff(s). The claim made against you is set out in the following pages.

IF YOU WISH TO DEFEND THIS PROCEEDING, you or an Ontario lawyer acting for you must prepare a statement of defence in Form 18A prescribed by the Rules of Civil Procedure, serve it on the Plaintiff(s) lawyer or, where the Plaintiff(s) do(es) not have a lawyer, serve it on the Plaintiff(s), and file it, with proof of service, in this court office, WITHIN TWENTY DAYS after this statement of claim is served on you, if you are served in Ontario.

If you are served in another province or territory of Canada or in the United States of America, the period for serving and filing your statement of defence is forty days. If you are served outside Canada and the United States of America, the period is sixty days.

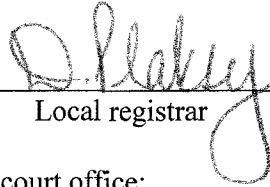
Instead of serving and filing a statement of defence, you may serve and file a notice of intent to defend in Form 18B prescribed by the Rules of Civil Procedure. This will entitle you to ten more days within which to serve and file your statement of defence.

IF YOU FAIL TO DEFEND THIS PROCEEDING, JUDGMENT MAY BE GIVEN AGAINST YOU IN YOUR ABSENCE AND WITHOUT FURTHER NOTICE TO YOU. IF YOU WISH TO DEFEND THIS PROCEEDING BUT ARE UNABLE TO PAY LEGAL FEES, LEGAL AID MAY BE AVAILABLE TO YOU BY CONTACTING A LOCAL LEGAL AID OFFICE.

TAKE NOTICE: THIS ACTION WILL AUTOMATICALLY BE DISMISSED if it has not been set down for trial or terminated by any means within five years after the action was commenced unless otherwise ordered by the court.

Date: JUL 15 2016

Issued by


Local registrar

Address of court office:

45 Main Street East
Suite 110
Hamilton, Ontario
L8N 2B7

TO: **CRAIG SMITH**
1553 Evans Terrace
Milton, Ontario
L9T 5J4

AND TO: **JTI-MACDONALD CORP.**
1 Robert Speck Parkway
Suite 1601
Mississauga, Ontario
L4Z 0A2

AND TO: **ARI FINANCIAL SERVICES INC.**
1270 Central Parkway West
Suite 600
Mississauga, Ontario
L5C 4P4

CLAIM

1. The Plaintiff, Rosa Montero-Pomar, claims:
 - (a) general damages in the sum of \$500,000.00;
 - (b) special damages in the sum of \$1,000,000.00;
 - (c) interest on special damages and general damages pursuant to the provisions of the *Courts of Justice Act*;
 - (d) her costs of this action; and
 - (e) such further and other relief as this Honourable Court may deem just.

2. The Plaintiff, Rosa Montero-Pomar, is a resident of the City of Mississauga, in the Province of Ontario, and was at all material times the operator of a 2012 Hyundai vehicle, bearing Ontario permit number BNKK453 for the year 2014 (“Plaintiff’s motor vehicle”).

3. The Defendant, Craig Smith, is a resident of the City of Milton, in the Province of Ontario, and was at all material times the operator of a 2014 Ford motor vehicle, bearing Ontario permit number BTMK676 for the year 2014 (“Defendant motor vehicle”).

4. The Defendants, JTI-Macdonald Corp. and ARI Financial Services Inc., are duly incorporated companies carrying on business in the City of Mississauga and elsewhere, in the Province of Ontario, and were at all material times the owners of the Defendant motor vehicle.

5. On August 8, 2014, the Plaintiff was proceeding in a careful and prudent manner in an southeast direction in the left lane on Thompson Road South, just south of its intersection with the Derry Road, in the City of Milton. At or about the same time the Defendant was proceeding in a careless and reckless manner in the left lane immediately behind the Plaintiff's motor vehicle. The Plaintiff began to slow down with the intention of turning left at the intersection when suddenly and without warning she was struck from behind by the Defendant motor vehicle. As a result of the collision the Plaintiff has sustained serious personal injuries.

6. The Plaintiff states that the aforesaid collision was caused or contributed to solely by the negligence of the Defendant, Craig Smith, for whose negligence the Defendants JTI-Macdonald Corp. and ARI Financial Services Inc. is in law responsible, in that:

- (a) he was following the Plaintiff's motor vehicle more closely than was reasonable and prudent having due regard for the speed of the vehicle and the traffic on and the conditions of the roadway, contrary to Section 158 (1) of the *Highway Traffic Act*, R.S.O 1990, c. H. 8, as amended;

- (b) he operated his motor vehicle on a Highway without due care and attention, and without reasonable consideration for other persons using the Highway, contrary to Section 130 of the *Highway Traffic Act*, R.S.O 1990, c. H. 8, as amended;
- (c) he was following the Plaintiff's motor vehicle at an unreasonably close and unsafe distance;
- (d) he was driving a motor vehicle while his ability to do so was impaired by alcohol and/or drugs and/or fatigue;
- (e) he was not keeping a proper lookout;
- (f) he failed to have his motor vehicle under proper care and control;
- (g) he had the last clear chance to avoid the collision and failed to do so;
- (h) he created an emergency situation;
- (i) he failed to take any or sufficient precautions to avoid a collision when he knew, or ought to have known, that a collision was likely to occur;
- (j) he failed to exercise a degree of caution;

(k) he was operating a mechanically defective motor vehicle; and

(l) he was an incompetent driver.

7. As a result of the aforesaid collision, the Plaintiff suffered serious personal injuries, including injuries to her neck and back, frequent headaches, depression, driver anxiety, difficulties with concentration and memory, and social withdrawal. As a result of these injuries, the Plaintiff has suffered from a reduced activity tolerance, limited range of motion and her activities of daily living have been severely impacted. The Plaintiff has sustained a permanent serious impairment of an important physical, mental, or psychological function. The Plaintiff has suffered severe pain and continues to suffer pain at the present time. The Plaintiff has suffered from a loss of enjoyment of life and will continue to suffer from a loss of enjoyment of life in the future.

8. As a result of the aforesaid collision, the Plaintiff has incurred and will continue to incur medical, housekeeping and other expenses, full particulars of which will be made available prior to the trial of this action.

9. As a result of the aforesaid collision, the Plaintiff suffered an economic loss and will continue to suffer an economic loss in the future, full particulars of which will be made available prior to the trial of this action. Furthermore, her ability to earn a livelihood has been adversely affected and she has suffered a serious loss of employment flexibility. As a result, the Plaintiff has had her long-term future employment opportunities compromised.

10. As a result of her injuries the Plaintiff has lost her ability to perform the usual household tasks and chores that she was accustomed to performing prior to the accident and claims damages for loss of capacity to perform usual household tasks and chores.

11. The Plaintiff pleads and relies upon the provisions of the *Insurance Act*, R.S.O. 1990, Chapter 1.8, as amended; the *Negligence Act*, R.S.O. 1990, Chapter N.1, as amended; and the *Highway Traffic Act*, R.S.O. 1990, Chapter H.8.

FINDLAY LAW OFFICE
Barristers and Solicitors
510-20 Hughson Street South
Hamilton, Ontario
L8N 2A1

D. Robert Findlay
LSUC #16253L
Tel: (905) 522-9799
Fax: (905) 522-3098

Solicitors for the Plaintiff

ROSA MONTERO-POMAR

PLAINTIFF

and

CRAIG SMITH, et al.

DEFENDANTS

Court File No. 16/58094

**ONTARIO
SUPERIOR COURT OF JUSTICE**

Proceeding commenced at Hamilton

STATEMENT OF CLAIM

FINDLAY LAW OFFICE

Barristers and Solicitors

20 Hughson Street South

Suite 510

Hamilton, Ontario

L8N 2A1

D. ROBERT FINDLAY

LSUC #16253L

Tel: (905) 522-9799

Fax: (905) 522-3098

Solicitors for the Plaintiff

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

THORNTON GROUT FINNIGAN LLP
100 Wellington Street West, Suite 3200
TD West Tower, Toronto-Dominion Centre
Toronto, ON M5K 1K7
Fax: 416-304-1313

Robert I. Thornton
Tel: 416-304-0560
Email: rthornton@tgf.ca

Leanne M. Williams
Tel: 416-304-0060
Email: lwilliams@tgf.ca

Rebecca L. Kennedy
Tel: 416-304-0603
Email: rkennedy@tgf.ca

Lawyers for the Applicant

TAB 3

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

THE HONOURABLE) TUESDAY, THE 14TH
)
JUSTICE HAINEY) DAY OF MAY, 2019
)
)

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.**

**ORDER
(Lift of Stay of Proceedings)**

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 at 330 University Avenue, Toronto, Ontario.

ON READING (i) the affidavit of William E. Aziz sworn May 9, 2019 and the exhibits thereto (the “**Aziz Affidavit**”) and (ii) the third report of Deloitte Restructuring Inc. in its capacity as the Monitor of the Applicant (the “**Monitor**”) and on hearing the submissions of counsel for the Applicant, the Monitor and any other party appearing for any other person on the service list, properly served as appears from the affidavit of Mitch Grossell sworn May 10, 2019,

DEFINITIONS

1. **THIS COURT ORDERS** that all capitalized terms not defined herein shall have the meanings set out in the affidavit of William E. Aziz sworn May 9, 2019 (the “**Aziz Affidavit**”).

SERVICE

2. **THIS COURT ORDERS** that, if necessary, the time for service and filing of the Notice of Motion and the Motion Record is hereby abridged and validated so that this Motion is properly returnable today and hereby dispenses with further service thereof.

STAY OF PROCEEDINGS

3. **THIS COURT ORDERS** that the stay of proceedings provided for in the Amended and Restated Initial Order dated March 8, 2018 (the “**Stay of Proceedings**”) be and is hereby lifted to permit the Swann Action to continue in the ordinary course and directs that any recovery in respect of the Swann Action be and is hereby limited to the recovery of proceeds from the insurance held by Midfield.

4. **THIS COURT ORDERS** that the Stay of Proceedings be and is hereby lifted to permit the Montero-Pomar Action to continue in the ordinary course.

5. **THIS COURT ORDERS** that the Stay of Proceedings be and is hereby lifted to permit the continuation or commencement of proceedings by or against the Applicant related to labour and employment matters with the consent of the Monitor or further order of this Court.

GENERAL

6. **THIS COURT HEREBY REQUESTS** the aid and recognition of any court, tribunal, regulatory or administrative body having jurisdiction in Canada or outside of Canada, to give effect to this Order and to assist the Applicant, the Monitor and their respective agents in carrying out the terms of this Order. All courts, tribunals and regulatory and administrative bodies are hereby respectfully requested to make such orders and to provide such assistance to the Applicant and to the Monitor, as an officer of this Court, as may be necessary or desirable to

give effect to this Order, to grant representative status to the Monitor in any foreign proceeding, or to assist the Applicant and the Monitor and their respective agents in carrying out the terms of this Order.

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

ORDER
(Lift of Stay of Proceedings)

THORNTON GROUT FINNIGAN LLP
100 Wellington Street West, Suite 3200
TD West Tower, Toronto-Dominion Centre
Toronto, ON M5K 1K7
Fax: 416-304-1313

Robert I. Thornton
Tel: 416-304-0560
Email: rthornton@tgf.ca

Leanne M. Williams
Tel: 416-304-0060
Email: lwilliams@tgf.ca

Rebecca L. Kennedy
Tel: 416-304-0603
Email: rkennedy@tgf.ca

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
Returnable May 14, 2019

THORNTON GROUT FINNIGAN LLP
100 Wellington Street West, Suite 3200
TD West Tower, Toronto-Dominion Centre
Toronto, ON M5K 1K7
Fax: 416-304-1313

Robert I. Thornton
Tel: 416-304-0560
Email: rthornton@tgf.ca

Leanne M. Williams
Tel: 416-304-0060
Email: lwilliams@tgf.ca

Rebecca L. Kennedy
Tel: 416-304-0603
Email: rkennedy@tgf.ca

Lawyers for the Applicant