

**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 March 30, 2021)**

March 22, 2021

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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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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.**

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

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

Applicants

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AND TO:	PELLETIER D'AMOURS 1, Complexe Desjardins Tour Sud, 12e étage Montreal, QC H5B 1B1 David Robinson Email: david.robinson@dgag.ca Lawyers for Desjardins Assurances

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INDEX

**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

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1	Notice of Motion dated March 22, 2021
2	Affidavit of William E. Aziz sworn March 22, 2021
A	Statement of Claim
B	Consent Order
3	Draft Stay Extension 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: Stay Extension)
(Returnable on March 30, 2021)**

The Applicant will make a motion before a Judge of the Ontario Superior Court of Justice (Commercial List) on March 30, 2021, at 2:00 p.m., or as soon after that time as the motion can be heard, by judicial video conference via Zoom at Toronto, Ontario. Please refer to the Virtual Hearing Protocol attached as Schedule "A" hereto for details on attending the motion.

PROPOSED METHOD OF HEARING: The motion is to be heard orally.

THE MOTION IS FOR:

- (a) An Order extending the Stay Period (as defined in the Initial Order granted in these proceedings on March 8, 2019 (as amended and restated, the "**Initial Order**"), which is currently set to expire on March 31, 2021, up to and including September 30, 2021;
- (b) lifting the stay of proceedings provided for in the Initial Order to allow the Applicant to execute the Consent Order (as defined herein); and
- (c) Such further and other relief as this Court deems just.

THE GROUNDS FOR THE MOTION ARE:

A. Background of CCAA Proceedings

1. All capitalized terms not otherwise defined herein shall have the meanings set forth in the Initial Order.
2. The Applicant is: (i) a defendant in significant healthcare cost recovery litigation commenced by each of the ten provinces, alleging over \$600 billion in claims against JTIM and the other defendants in the HCCR Actions, (ii) subject to the judgment in the Quebec Class Actions up to the approximate amount of \$13.5 billion plus accruing interest, and (iii) a named defendant in certain class actions that have been commenced, but not certified, in six provinces.
3. The Applicant sought the protections afforded under the CCAA in order to maintain the *status quo* of its operations, preserve going concern value, and provide the Applicant with a period of stability within which to find a collective resolution to the Tobacco Claims made against the Applicant.
4. On March 8, 2019, the Applicant was granted protection from its creditors under the CCAA pursuant to the Initial Order. Deloitte Restructuring Inc. was appointed as monitor of the Applicant (in such capacity, the “**Monitor**”). On April 5, 2019, pursuant to the Amended and Restated Initial Order, the Honourable Warren K. Winkler, Q.C. (the “**Court-Appointed Mediator**”) was appointed to mediate a global settlement of the Tobacco Claims against the Applicant and the other defendants.

5. The Initial Order granted a stay of proceedings until April 5, 2019, which stay of proceedings has been subsequently extended most recently up to and including March 31, 2021.
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, 2021.
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.

C. Lift Stay

10. The Applicant seeks to lift the Stay of Proceedings to allow it to execute a consent order requiring JTIM to pay \$10,800 in respect of a life insurance policy issued by its insurer relating to a now deceased employee of JTIM.

11. 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. The Monitor supports the relief sought.
12. The Applicant also relies on:
 - (a) the provisions of the CCAA and the statutory, inherent and equitable jurisdiction of this Court;
 - (b) Rules 1.04, 1.05, 2.03, 3.02, 16, 37 and 39 of the Ontario *Rules of Civil Procedure*, R.R.O. 1990, Reg 194, as amended and Section 106 of the *Courts of Justice Act*, R.S.O. 1990, c. C.43 as amended; and
 - (c) such further and other grounds as counsel may advise and this Court may permit.

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

- (a) the Affidavit of William E. Aziz, sworn March 22, 2021;
- (b) the Ninth Report of the Monitor, to be filed; and
- (c) such further and other evidence as counsel may advise and this Court may permit.

March 22, 2021

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Lawyers for the Applicant

TO: THE COMMON SERVICE LIST

Schedule "A"

PROTOCOL FOR MOTION BY ZOOM VIDEO CONFERENCE

Scheduling and Specific Requirements

1. Any person on the Service List that wishes to appear virtually on the motion, ("Participants") must register by 4:00 p.m. three (3) business days in advance of the hearing (Thursday, March 25, 2021 for the motion scheduled Tuesday, March 30, 2021), by emailing Veritext Litigation Solutions Canada, Inc. (scheduling@neesonsreporting.com) and copying each Monitor's counsel (mpercy@dwpv.com, msassi@casselsbrock.com, nancy.thompson@blakes.com) and also advise if they intend to make submissions. All Participants will provide contact information, including a name, who they are acting for, an email address and phone number for the counsel slip.
2. Subject to the Court's overriding discretion over all matters, Monitors' counsel will coordinate with Participants and the Court to develop an agenda for the hearing.
3. Participants will appear by video. Monitors' counsel will distribute the Zoom link and the sync.com link to Participants. Participants are not permitted to forward or share either the Zoom link or the sync.com link. No person should have access to the hearing on Zoom other than Participants. If a Participant is unable to attend by video, they should contact Monitors' counsel.
4. Counsel is not required to gown for the hearing. Instead, business attire is required for all Participants appearing by video.
5. For access by the general public, a YouTube link will be posted on each of the Monitors' websites by 10:00 a.m. not less than two (2) business days prior to the hearing. The YouTube link will allow the general public to view a livestream of the hearing, but not participate in the hearing. For greater clarity, individuals viewing the livestream via YouTube will not be heard or seen by the Court, Judge or Participants.
6. No recording of any part of the hearing (including audio) may be made unless authorized in advance by the Court.
7. For greater certainty, notice and service requirements are set out in the Rules of Civil Procedure, and the various orders and endorsements in the proceedings. For ease of reference, we have included paragraphs 58-63 of the Second Amended and Restated Initial Order dated March 8, 2019 in the JTIM proceedings, attached as Appendix "A". It should be noted that similar notice and service requirements have been set out in various orders and endorsements in the

parallel proceedings of Imperial and RBH. Nothing in this protocol modifies or amends Orders of the Court related to service requirements, the Rules of Civil Procedure, any Commercial List Practice Direction or other applicable rules.

8. Participants will be placed into a virtual waiting room upon entering the Zoom meeting.

Technical Requirements

9. Participants will require a device with a working microphone and camera. The device can be a computer (desktop or laptop), tablet or smartphone. The device must be connected to an internet connection that is sufficient to send and receive video and audio.

10. Each Participant is responsible for ensuring that they have suitable equipment to participate in the hearing and that such equipment works properly. Participants must test such equipment well in advance of the scheduled hearing to ensure:

- (a) that they are familiar with how to use such equipment;
- (b) the compatibility and functioning of such equipment; and
- (c) that the remote location has adequate internet bandwidth to support the use of the Zoom without interruption.

11. Each Participant is also responsible for ensuring that they are familiar with the features and operation of Zoom. Participants must ensure that they have downloaded any necessary software, and practiced using Zoom, well in advance of the scheduled hearing.

12. Participants should log on using the Zoom link provided approximately 30 minutes before the hearing is scheduled to begin. During this time, Participants should speak to each other to determine if there are any audio/visual/connection issues.

13. It is suggested that Participants use the “gallery view” mode, rather than the “active speaker” mode, available on Zoom.

14. Should a Participant become disconnected from Zoom or experience technical difficulties during the hearing, they should immediately inform the Court by sending an email to Veritext Litigation Solutions Canada, Inc. (scheduling@neesonsreporting.com).

APPENDIX "A"

58. **THIS COURT ORDERS** that, subject to paragraph 59, all motions in this proceeding are to be brought on not less than seven (7) calendar days' notice to all persons on the Service List. Each Notice of Motion shall specify a date (the "**Return Date**") and time for the hearing.

59. **THIS COURT ORDERS** that motions for relief on an urgent basis need not comply with the notice protocol described herein.

60. **THIS COURT ORDERS** that any interested Person wishing to object to the relief sought in a motion must serve responding motion material or, if they do not intend to file material, a notice in all cases stating the objection to the motion and the grounds for such objection in writing (the "**Responding Material**") to the moving party, the Applicant and the Monitor, with a copy to all Persons on the Service List, no later than 5 p.m. on the date that is four (4) calendar days prior to the Return Date (the "**Objection Deadline**").

61. **THIS COURT ORDERS** that, if no Responding Materials are served by the Objection Deadline, the judge having carriage of the motion (the "**Presiding Judge**") may determine:

- (a) whether a hearing is necessary;
- (b) whether such hearing will be in person, by telephone or by written submissions only; and
- (c) the parties from whom submissions are required

(collectively, the "**Hearing Details**"). In the absence of any such determination, a hearing will be held in the ordinary course.

62. **THIS COURT ORDERS** that, if no Responding Materials are served by the Objection Deadline, the Monitor shall communicate with the Presiding Judge regarding whether a determination has been made by the Presiding Judge concerning the Hearing Details. The Monitor shall thereafter advise the Service List of the Hearing Details and the Monitor shall report

upon its dissemination of the Hearing Details to the Court in a timely manner, which may be contained in the Monitor's next report in the proceeding.

63. **THIS COURT ORDERS** that if any party objects to the motion proceeding on the Return Date or believes that the Objection Deadline does not provide sufficient time to respond to the motion, such objecting party shall, promptly upon receipt of the Notice of Motion and in any event prior to the Objection Deadline, contact the moving party and the Monitor (together with the objecting party and any other party who has served Responding Materials, the "**Interested Parties**") to advise of such objection and the reasons therefor. If the Interested Parties are unable to resolve the objection to the timing and schedule for the motion following good faith consultations, the Interested Parties may seek a scheduling appointment before the Presiding Judge to be held prior to the Return Date or on such other date as may be mutually agreed by the Interested Parties or as directed by the Presiding Judge to establish a schedule for the motion. At the scheduling appointment, the Presiding Judge may provide directions including a schedule for the delivery of any further materials and the hearing of the contested motion, and may address such other matters, including interim relief, as the Court may see fit. Notwithstanding the foregoing, the Presiding Judge may require the Interested Parties to proceed with the contested motion on the Return Date or on any other date as may be directed by the Presiding Judge or as may be mutually agreed by the Interested Parties, if otherwise satisfactory to the Presiding Judge.

APPENDIX "B"

1. All Participants will have their microphones muted and may only unmute their own microphones when they are addressing the Court. When parties are not muted, they must avoid making extraneous noise (including for example, typing and shuffling papers) as these noises may interfere with the hearing.
2. Participants must ensure that they participate in the Zoom hearing from a well-lit room so that they are easily visible. Participants must also ensure that no filters are active that may distort or otherwise conceal their appearance.
3. Participants must ensure that they participate in the Zoom hearing from a quiet location where they (and the Court) will not be interrupted or disturbed during the hearing.
4. All mobile devices must be turned off or put on silent mode during the hearing.
5. Participants must refrain from speaking over other Participants.
6. Participants should make submissions in accordance with the order set out in the agenda. If there is a need to make submissions out of sequence, Participants should make a request in a manner directed by the Court. The Court may ask Participants to signal when they intend to address the Court by raising their hand (either by physically raising their hand or by using the virtual "raise hand" feature in Zoom).
7. Participants must state their name and who they represent before addressing the Court.
8. Upon entry into the virtual waiting room, each Participant joining by video should identify themselves, including any person off camera that may be viewing the video feed. This also allows any audio or visual issues to be identified. Each Participant is obligated to immediately notify the presiding judge if any additional person joins them in viewing the video feed.
9. If a Participant intends to rely on any documents, the materials you intend to rely on must be served and shared on the Monitors' sync.com link and all references during the hearing should reference the folder structure uploaded to sync.com.
10. If a party wishes to share certain documents during the hearing, the documents should be provided to the Monitors in advance so that it can be added to the agenda and a method for sharing can be set up.

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 March 30, 2021)**

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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 March 22, 2021)**

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:
 - (a) extending the Stay Period to September 30, 2021; and
 - (b) lifting the stay of proceedings provided for in the Initial Order to allow the Applicant to execute the Consent Order (as defined herein).

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 Canadian 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:
 - (i) HCCR Actions by each province in Canada seeking over \$600 billion in total relating to the recovery of alleged health care costs, (ii) the judgment in the Quebec Class Actions (the “**QCA Judgment**”) up to the approximate amount of \$13.5 billion plus accruing interest, on a joint and several basis with Imperial and RBH (each as defined below), and (iii) certain class action proceedings that have been commenced, but not certified, in six provinces in Canada (the “**Consumer Class Actions**”).

8. The Applicant sought the protections afforded under the CCAA in order to: (i) maintain the *status quo* of its operations, (ii) preserve going concern value, and (iii) provide the Applicant with a period of stability within which to attempt to find a collective resolution to all of the Tobacco Claims asserted against it. But for the QCA Judgment and the other

contingent 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 (in such capacity, the “**Monitor**”) of the Applicant in these CCAA proceedings.
10. On April 5, 2019, pursuant to the 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 31, 2021, pursuant to the Stay Extension Order issued on September 29, 2020 (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 the HCCR Actions, the QCA Judgment and the Consumer Class Actions. I understand that there is currently a similar stay of all proceedings in respect of all three of the tobacco defendants.

II. ACTIVITIES SINCE STAY EXTENSION ORDER

13. Since the Stay Extension Order, the Applicant has continued to operate in the ordinary course and participate in the CCAA proceedings and the mediation process. The following summarizes the Applicant's activities since the Stay Extension Order:

Operational

- (a) the Applicant continued to manage its relationships with customers, suppliers, employees and other stakeholders to ensure there is no disruption to its operations during the CCAA proceedings and to maintain an uninterrupted supply of products and services;
- (b) the Applicant continued to implement the global transformation project, as described in my affidavit sworn September 22, 2019;
- (c) the Applicant entered into an agreement with a related party for the reimbursement of charges incurred in the development of a new global SAP platform totalling USD\$740,000. The new platform allowed the Applicant to remain integrated with the global network in respect of certain essential services, including financial reporting and human resources. The Monitor did not object to the reimbursement agreement as it was satisfied that such SAP upgrades were in the normal course of business and consistent with existing and past practices;
- (d) the Applicant navigated the COVID-19 pandemic in accordance with guidance from Health Canada and the provincial health ministries in Ontario and Quebec and took steps to minimize disruption to the operation of the manufacturing facility;

Japan Tobacco New Operating Model

- (e) On February 9, 2021, Japan Tobacco Inc. (“**JT**”), the indirect publicly held Japanese parent of the Applicant, announced changes to its operating model to strengthen the competitiveness and profitability of its tobacco business. The changes include the consolidation of JT’s current international and Japanese-domestic tobacco businesses into one tobacco business to enable JT to fully leverage its company-wide resources. It is not anticipated that the changes made by JT to the international organization will have any negative impact on the Applicant.

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;

Mediation

- (i) the Applicant’s external counsel and I have continued to communicate with and participate in the process established by the Court-Appointed Mediator in an effort to advance the ongoing mediation process;

- (j) the Applicant has complied with the timetable and steps of the mediation process that has been established by the Court-Appointed Mediator;
- (k) 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;
- (l) in addition to responding to specific information requests, the Applicant continued to compile commercially sensitive and confidential information for inclusion in the VDR created by the Monitor, for the purposes of providing relevant information to certain stakeholders in respect of the Applicant’s business, operations, finances and future prospects; and
- (m) the Applicant is participating in the mediation in good faith and as requested by the Mediator.

III. LIFT STAY

14. I am advised by legal counsel to the Applicant that litigation has been commenced in respect of the entitlement to the proceeds of a life insurance policy issued to JTIM by its insurer, Sun Life Assurance Company of Canada Inc. (“Sun Life”) in respect of a now deceased employee of JTIM. JTIM is not a party to the litigation, but the terms of the life insurance policy require the Applicant to pay the first \$10,000 (plus interest) of the life insurance benefits to the appropriate beneficiary (“JTIM’s Payment”), with the balance payable by Sun Life. A copy of the statement of claim is attached as **Exhibit “A”**.

15. Currently, the Initial Order stays all Proceedings and prevents new Proceedings from being commenced by or against the Applicant. I have been advised by counsel to JTIM that the parties to the litigation have requested that the Applicant execute a consent order requiring the Applicant to pay JTIM's Payment into court pending a determination of the litigation (the "**Consent Order**"). I have been advised by counsel to the Monitor that it consents to the execution of the Consent Order by the Applicant. A copy of the current draft of the Consent Order is attached as **Exhibit "B"**.

IV. EXTENSION OF THE STAY PERIOD

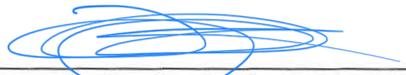
16. The Applicant seeks an extension of the Stay Period until September 30, 2021. It is my understanding from counsel to JTIM that Imperial and RBH are also seeking an extension of their respective stay periods until the same date. The Applicant believes that continuing to coordinate the stay periods at this stage in the proceedings is efficient and cost-effective.
17. 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 March 8, 2021 to the week ending October 1, 2021. I understand that the Cash Flow Statement will be appended to the Monitor's Ninth 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.
18. 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.

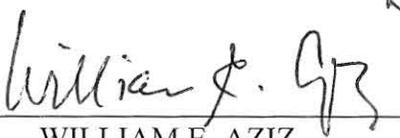
IV. PURPOSE

19. This affidavit is sworn in support of JTIM's motion for the extension of the Stay Period to September 30, 2021 and to lift the stay of proceedings provided for in the Initial Order to permit the Applicant to execute the Consent Order, and for no other or improper purpose.

SWORN BEFORE ME BY VIDEO CONFERENCE by William E. Aziz on March 22, 2021 in accordance with *O. Reg. 431/20, Administering Oath or Declaration Remotely*. The affiant was in the Town of Oakville, in the Province of Ontario and the commissioner was in the City of Toronto, in the Province of Ontario.



Commissioner for Taking Affidavits



WILLIAM E. AZIZ

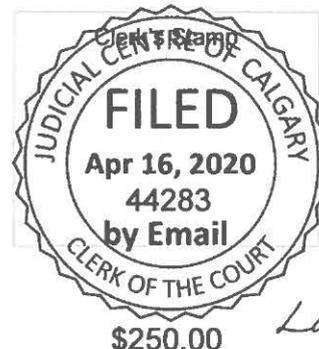
This is Exhibit "A" referred to in the
Affidavit of William E. Aziz sworn before me
this 22nd day of March, 2021 in accordance with *O. Reg.*
431/20, Administering Oath or Declaration Remotely. The
affiant was in the Town of Oakville, in the Province of
Ontario and the commissioner was in the City of Toronto,
in the Province of Ontario.



A Commissioner for taking affidavits

Form 7
[Rule 3.8]

COURT FILE NUMBER FL01-33123
 COURT COURT OF QUEEN'S BENCH OF ALBERTA
 JUDICIAL CENTRE CALGARY
 APPLICANT(S) MARIE MONIQUE LEBLANC-ISBELL
 RESPONDENT(S) SANDRA HEWITT and
 SUN LIFE ASSURANCE COMPANY OF CANADA
 DOCUMENT ORIGINATING APPLICATION



ADDRESS FOR SERVICE AND CONTACT INFORMATION OF PARTY FILING THIS DOCUMENT Southern Alberta Law Offices
 184 North Railway Street
 PO Box 1197
 Okotoks, AB T1S 1B2
 Attention: Gleb Malinovsky
 Phone: (403) 995-1410
 Fax: (403) 995-1412

NOTICE TO THE RESPONDENT(S)

This application is made against you. You are a respondent.

You have the right to state your side of this matter before the Court.

To do so, you must be in Court when the application is heard as shown below:

Date: T B D
 Time: 10:00 a.m.
 Where: **Calgary Court Centre, 601 5th Street SW, Calgary, Alberta**
 Before: **A Judge in Motions Court**

Go to the end of this document to see what you can do and when you must do it.

Basis for this claim:

1. The Applicant, Marie Monique LeBlanc-Isbell is the daughter of Marcel LeBlanc ("Mr. LeBlanc").
2. Mr. LeBlanc was the spouse of the Respondent, Sandra Hewitt ("Ms. Hewitt"). They entered into a co-habitation agreement on January 21, 2011 (the "Agreement"). Ms. Hewitt received independent legal advice prior to signing the Agreement. They got married in or about February, 2014.

3. In the Agreement, they agreed that each of them would continue to own as separate property the property that each of them held in his or her respective name, including land, money in bank accounts, pension plans and property described in the schedules to the Agreement.
4. Schedule "B" to the Agreement contains Mr. LeBlanc's financial disclosure and lists among his other property the life insurance policy number 025281 (the "Policy") issued by the Respondent Sun Life Assurance Company of Canada ("Sun Life").
5. Since before his co-habitation with Ms. Hewitt, Mr. LeBlanc was the owner of the Policy which is valued at \$45,000.00.
6. Prior to Mr. LeBlanc's co-habitation with Ms. Hewitt, the Applicant had been the designated beneficiary under the Policy.
7. Since approximately 2003, the Applicant and her family resided at the property adjacent to Mr. LeBlanc's property. The Applicant was very close with her father, visited with him several times a week until such time when Ms. Hewitt disallowed those visits in her attempt to distant Mr. LeBlanc from his children.
8. Over the years, the Applicant provided the following assistance to Mr. LeBlanc:
 - a. Boarded and cared for his horses (he had up to three horses). Occasionally Mr. LeBlanc paid for the hay for his horses.
 - b. Mowed the lawn and trimming trees on his property.
 - c. Repair and painted the fence, did some repair and maintenance on his yard equipment, gate to his property and his motorcycle.
 - d. Shoveled and plowed Mr. LeBlanc's driveways until Ms. Hewitt banned the Applicant from coming to his property in or about 2016.
 - e. Socialized with Mr. LeBlanc and attended various events to make him company, e.g. attended horse trail rides together, transported him to and from these events.
 - f. Prior to Ms. Hewitt moving in with Mr. LeBlanc, the Applicant and her husband had Mr. LeBlanc over for meals at least 3 times per week.
9. The Applicant's brother Luc LeBlanc was the long-time attorney for Mr. LeBlanc and was the executor under Mr. LeBlanc's will. The Power of attorney was invoked on or about February 1, 2017.
10. Soon after the power of attorney had been invoked, Luc LeBlanc became aware that Ms. Hewitt was abusing Mr. LeBlanc's credit cards despite the fact that as per the Agreement the parties were to keep their finances separate. Mr. Leblanc became aware of Ms. Hewitt's spending and became very upset. However, he was sick at the time and complained to Luc LeBlanc that he was not able to withstand pressure and abuse from Ms. Hewitt. He feared her by that time and requested Luc LeBlanc to visit him every day.

11. On Mr. LeBlanc's instructions, Luc LeBlanc arranged to cancel and re-issue two of Mr. LeBlanc's credit cards because Ms. Hewitt had refused to return the credit cards to Mr. LeBlanc or Luc LeBlanc.
12. On February 21, 2017 Mr. LeBlanc advised Luc LeBlanc that he wished to change beneficiary designation under the Policy back to the Applicant because Mr. LeBlanc no longer trusted Ms. Hewitt. She had been secretly spending his money and discouraging his contacts with his children.
13. On or about February 23, 2017, Mr. LeBlanc changed the beneficiary designation and named the Applicant again as sole beneficiary under the Policy. He spoke with the representative on the insurance company himself and then signed the requisite form to change the beneficiary designation.
14. At around the same time Mr. LeBlanc initiated the process to change his will to remove Ms. Hewitt from it. However, he was not able to complete this process.
15. On March 24, 2017, Mr. LeBlanc died.
16. The facts stated above establish Mr. LeBlanc's intention to make the Applicant the designated beneficiary under the Policy.
17. In or about April, 2017 Ms. Hewitt, filed with Sun Life a competing claim to have the proceeds of the Policy paid to her, contrary to the beneficiary designation signed by Mr. LeBlanc.
18. Despite repeated requests from the Applicant to substantiate her claim, Ms. Hewitt has failed to do so. Also, over two years have passed since Ms. Hewitt had filed her objection with Sun Life that proceeds of the Policy be paid out to the Applicant. During that time, Ms. Hewitt has not applied to court to challenge the beneficiary designation made by Mr. LeBlanc.

Remedy sought:

19. A declaration that the Applicant is the sole beneficiary of the Policy as set out in the beneficiary designation dated February 23, 2017;
20. An Order that the Respondent Sun Life, pay to the Applicant the proceeds of the Policy;
21. Costs against Respondent Sandra Hewitt.

Affidavit or other evidence to be used in support of this application:

22. Affidavit of Marie Monique LeBlanc-Isbell sworn on April 8, 2020.
23. Affidavit of Luc LeBlanc sworn on April 7, 2020.

Applicable Acts and regulations:

24. *The Insurance Act*, RSA 2000 c 1-3;
25. *The Limitations Act*, RSA 2000 c L-12;
26. *Alberta Rules of Court*

WARNING

You are named as a respondent because you have made or are expected to make an adverse claim in respect of this originating application. If you do not come to Court either in person or by your lawyer, the Court may make an order declaring you and all persons claiming under you to be barred from taking any further proceedings against the applicant(s) and against all persons claiming under the applicant(s). You will be bound by any order the Court makes, or another order might be given or other proceedings taken which the applicant(s) is/are entitled to make without any further notice to you. If you want to take part in the application, you or your lawyer must attend in Court on the date and at the time shown at the beginning of this form. If you intend to give evidence in response to the application, you must reply by filing an affidavit or other evidence with the Court and serving a copy of that affidavit or other evidence on the applicant(s) a reasonable time before the application is to be heard or considered.

This is Exhibit "B" referred to in the Affidavit of William E. Aziz sworn before me this 22nd day of March, 2021 in accordance with *O. Reg. 431/20, Administering Oath or Declaration Remotely*. The affiant was in the Town of Oakville, in the Province of Ontario and the commissioner was in the City of Toronto, in the Province of Ontario.



A Commissioner for taking affidavits

COURT FILE NUMBER **LF01-33123**
COURT COURT OF QUEEN'S BENCH OF ALBERTA
JUDICIAL CENTRE CALGARY
APPLICANT MARIE MONIQUE LEBLANC-ISBELL
RESPONDENTS SANDRA HEWITT, SUN LIFE ASSURANCE
 COMPANY OF CANADA.

DOCUMENT **CONSENT ORDER**

ADDRESS FOR SERVICE Cory Ryan
AND CONTACT Borden Ladner Gervais LLP
INFORMATION OF 1900, 520 3rd Ave. S.W.
PARTY FILING THIS Calgary, AB T2P 0R3
DOCUMENT Telephone: (403) 232-9423
 Facsimile: (403) 266-1395
 Email: cryan@blg.com
 File No. 200331-000781

DATE ON WHICH ORDER WAS PRONOUNCED:

LOCATION WHERE ORDER WAS PRONOUNCED:

Calgary, Alberta

NAME OF JUSTICE WHO MADE THIS ORDER:

UPON THE ORIGINATING APPLICATION of the Applicant seeking amongst other relief, that Sun Life Assurance Company and JTI-Macdonald Corp., pay the Applicant the insurance proceeds as a result of the death of Joseph Marcel LeBlanc under Group Policy 100264 issued by Sun Life to JTI-Macdonald Corp. (the "Policy"); AND UPON reading the Affidavit of the Applicant, filed; AND UPON reading the Affidavit of Dominique Dubuc, filed on behalf of the Respondent, Sun Life Assurance Company; AND UPON noting there is an Order in place staying any legal proceedings as against JTI-Macdonald Corp., in the Ontario Superior Court of Justice (Commercial List), dated March 8, 2019; AND UPON noting the consent of counsel for the Applicant, and the consent of counsel for Sun Life Assurance Company and JTI-Macdonald Corp.; AND UPON noting that there remains issues in dispute as between the Applicant and the Respondent, Sandra Hewitt.

IT IS HEREBY ORDERED THAT:

1. The within Originating Application, as against the Respondent, Sun Life Assurance Company of Canada (“Sun Life”) is dismissed, without costs, pursuant to an agreement reached between the parties.
2. JTI-Macdonald Corp (“JTI”) will pay the amount of \$10,800 into Court, being its total portion of insurance proceeds payable under the Policy, inclusive of interest.
3. Sun Life will pay the amount of \$35,000 plus interest into Court, being its portion of insurance proceeds payable under the Policy.
4. Upon payment into Court of the funds outlined in paragraph 3 herein, Sun Life has discharged its obligations under section 684 of the Insurance Act, R.S.A. 2000, c. I-3, as amended; and
5. The Applicant may continue with its Application as against the Hewitt Respondent, with respect to how these funds are to be paid out from Court.
6. This Dismissal Order may be signed in counterpart and transmitted by electronic submission and/or facsimile.

Justice of Court of Queen’s Bench of Alberta

CONSENTED TO this ____ day of March,
2021.

Legal Counsel for the Plaintiffs.

CONSENTED TO this ____ day of March,
2021.

Legal Counsel for JTI-Macdonald Corp.

Gleb Malinovsky
Harmony Law

Cory Ryan
Borden Ladner Gervais LLP

CONSENTED TO this ____ day of March, 2021.

Legal Counsel for Sunlife Assurance Company.

Nancy Tran
Parlee McLaws LLP

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 March 22, 2021)**

Thornton Grout Finnigan LLP

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Suite 3200

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Lawyers for the Applicant

TAB 3

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

THE HONOURABLE) TUESDAY, THE 30TH
)
JUSTICE MCEWEN) DAY OF MARCH, 2021
)
)

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

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

STAY EXTENSION ORDER

THIS MOTION, made by JTI-Macdonald Corp. (the “**Applicant**”), pursuant to the *Companies' Creditors Arrangement Act*, R.S.C. 1985, c. C-36, as amended (the “**CCAA**”) was heard this day by way of judicial video conference in Toronto, Ontario due to the COVID-19 pandemic.

ON READING the affidavit of William E. Aziz sworn March 22, 2021 and the exhibits thereto, and the Ninth Report of the Monitor, as filed by Deloitte Restructuring Inc. in its capacity as Monitor of the Applicant (the “**Monitor**”), and on hearing the submissions of counsel for the Applicant, counsel for the Monitor and such other counsel as were present, no one else appearing although duly served as appears from the affidavit of service of [NAME] sworn on [DATE], 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 March 30, 2021, 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) (the “**Initial Order**”) is hereby extended until and including September 30, 2021.

LIFT STAY

3. **THIS COURT ORDERS** that the Stay of Proceedings (as defined in the Initial Order) be and is hereby lifted to permit the Applicant to execute the Consent Order, substantially in the form attached to this Order as Schedule “A”.

GENERAL

4. **THIS COURT ORDERS** that this Order is effective from the date that it is made and is enforceable without any need for entry and filing.

5. **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.

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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Lawyers for the Applicant

IN THE MATTER OF THE COMPANIES' CREDITORS ARRANGEMENT ACT, R.S.C. 1985, c. C-36, AS AMENDED
AND IN THE MATTER OF A PLAN OF COMPROMISE OR ARRANGEMENT OF **JTI-MACDONALD CORP.**

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

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

Proceedings commenced at Toronto

**MOTION RECORD
(Re: Stay Extension)
(Returnable on March 30, 2021)**

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