

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

*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 WITH RESPECT TO  
JTI-MACDONALD CORP.**

**THIRD REPORT OF THE MONITOR**

**MAY 10, 2019**

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**INTRODUCTION**

1. On March 8, 2019 (the “**Filing Date**”), JTI-Macdonald Corp. (“**JTIM**” or the “**Applicant**”) filed for and obtained protection under the *Companies' Creditors Arrangement Act* (the “**CCAA**”). Pursuant to the Order of this Court granted March 8, 2019 (the “**Original Initial Order**”), Deloitte Restructuring Inc. (“**Deloitte**”) was appointed as the Monitor in these proceedings (the “**Monitor**”). The Original Initial Order provided for a stay of proceedings (the “**Stay**”) in respect of, among other parties, the Applicant, until and including April 5, 2019 (the “**Stay Period**”).
2. On April 5, 2019, the Original Initial Order was amended and restated (the “**Amended Initial Order**”) to, among other things, address the application of certain Court-ordered charges to cash collateral of the Applicant held by third parties and appoint the Hon. Warren K. Winkler, Q.C. as mediator. The Stay Period was extended to June 28, 2019 by further Court order dated April 5, 2019.

3. Pursuant to the terms of the Original Initial Order and the Amended Initial Order, the Stay could be lifted either with the consent of both JTIM and the Monitor, or by further order of the Court.
4. On April 17, 2019, the Court issued an endorsement that the Stay could only be lifted with leave of the Court (the “**April 17 Endorsement**”).
5. On April 25, 2019, the Amended Initial Order was amended a second time (the “**Second Amended Initial Order**”), and the ability of JTIM and the Monitor to consent to a lifting of the Stay was removed, in accordance with the April 17 Endorsement.
6. Therefore, pursuant to the terms of the Second Amended Initial Order, the Stay prohibits any Proceeding (as defined in the Initial Order) from being commenced, continued or taking place by, against or in respect of the Applicant, or affecting the Business or the Property (each as defined in the Initial Order), except with leave of the Court.
7. As a result, on May 9, 2019, the Applicant brought a motion (the “**Lift Stay Motion**”) seeking an order:
  - a) lifting the Stay in respect of the action styled Eric Swann and Marissa Swann v. Midfield Interactive Corp, Carlos Sousa, JTI-Macdonald Corp. and Christopher Chaulk, bearing Court File number CV-16-559813 (the “**Swann Action**”);
  - b) lifting the Stay in respect of the action styled Rosa Montero-Pomar v. Craig Smith, JTI-Macdonald Corp. and ARI Financial Services Inc., bearing Court File number 16-58094 (the “**Montero-Pomar Action**”); and

- c) allowing for the lifting of the Stay in respect of current and future Proceedings by or against the Applicant related to certain labour and employment matters (“**Labour and Employment Actions**”) with either the consent of the Monitor or further order of the Court.

## **PURPOSE**

8. This Third Report of the Monitor (the “**Third Report**”) has been prepared to provide the Court with the Monitor’s views and recommendations on the relief sought by the Applicant in the Lift Stay Motion. The Third Report is intended to be read in conjunction with the affidavit of William E. Aziz, sworn May 9, 2019 (the “**Aziz Affidavit**”).

## **THE APPLICANT’S LIFT STAY MOTION**

9. The Monitor has considered the Lift Stay Motion in light of a variety of factors, including the potential economic impact of the pending actions on the Applicant or its stakeholders. The Monitor has reviewed the statements of claim filed in the Swann Action, the Montero-Pomar Action, and has consulted with the Applicant and its counsel regarding the Labour and Employment Actions.

### Swann Action

10. The Monitor understands that the Swann Action would not result in any economic loss to the Applicant because any potential liability is covered by a co-defendant’s insurance policy and the relief sought by the Lift Stay Motion limits the plaintiff’s recovery to such insurance policy.

Montero-Pomar Action

11. The Montero-Pomar Action has been settled by the parties, but the settlement cannot be consummated without the lifting of the Stay.
12. The Monitor notes that the financial amount of the settlement is not material, and is of the view that the Montero-Pomar Action would not result in any material economic loss to the Applicant.

Labour and Employment Actions

13. The Monitor understands based on the Aziz Affidavit that the Applicant is of the view that being able to deal with certain grievances as they arise will facilitate constructive relations and interactions with employees as well as maintain the Applicant's relationship with its union.
14. The requested relief provides that the commencement or continuation of certain Labour and Employment Actions will be subject to the consent of the Monitor or further order of the Court, and the Monitor will be able to review and consider on a case-by-case basis the impact of each Labour and Employment Action on the Applicant and its stakeholders.
15. The Monitor further notes that the economic impact on the Applicant from the current ongoing Labour and Employment Actions described in the Aziz Affidavit are not expected to be material even if an adverse finding is made.
16. Should the Court grant the order sought with respect to Labour and Employment Actions, the Monitor would consent to the continuation of the current ongoing matters described in

the Aziz Affidavit. The Monitor understands that the ongoing matters are illustrative of the types of grievances for which the Applicant may be seeking the Monitor's consent from time to time.

## **RECOMMENDATIONS**

17. Based on the Monitor's review of the relevant claim materials and its discussions with the Applicant, in the Monitor's view the granting of the Lift Stay Motion is in the best interests of the parties to the Swann Action and Montero-Pomar Action, and not detrimental or prejudicial to the Applicant or its stakeholders, including because the economic impact of lifting the Stay is not material. The Monitor furthermore understands that such actions are not related to the ongoing tobacco litigation, which was the catalyst to the commencement of these CCAA proceedings.
18. The Monitor considers that the relief sought with respect to the Labour and Employment Actions is appropriate, as it will contribute to judicial economy, the morale of the Applicant's employees and the Applicant's relationship with the union. The Monitor has considered the current, ongoing Labour and Employment Actions and has determined that it is appropriate for them to continue, and the Monitor will carefully consider any future Labour and Employment Actions that may arise in making a decision to grant or withhold consent to a lifting of the Stay in respect of those future actions.
19. As a result of the foregoing, the Monitor supports the Applicant's Lift Stay Motion and recommends that this Honourable Court grant the Lift Stay Motion on the terms sought by the Applicant.

All of which is respectfully submitted this 10<sup>th</sup> day of May, 2019.

**Deloitte Restructuring Inc.,  
Solely in its capacity as Court-appointed Monitor  
of JTIM and not in its personal capacity**



Per:

Paul M. Casey, CPA, CA, FCIRP, LIT  
Senior Vice-President

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Applicant

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COMMERCIAL LIST**

Proceeding Commenced at Toronto

**THIRD REPORT OF THE MONITOR  
Dated May 10, 2019**

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