

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

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

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

Applicant

**FACTUM OF JTI-MACDONALD CORP.
(Re: Stay Extension)
(Returnable on October 31, 2024)**

October 29, 2024

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TO: THE COMMON SERVICE LIST

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PART I - OVERVIEW

1. This factum is filed in support of JTI-Macdonald Corp. (“**JTIM**” or the “**Applicant**”)’s motion for an extension of the stay of proceedings up to and including March 31, 2025 (the “**Extended Stay Period**”).

PART II - THE FACTS¹

Background

2. The Applicant is: (a) a defendant in significant healthcare cost recovery litigation commenced by each province and territory in Canada, alleging over \$600 billion in claims against JTIM and the other defendants in the HCCR Actions, (b) subject to the judgment in the Quebec Class Actions, and (c) a named defendant in certain class actions that have been commenced, but not certified, in six provinces in Canada.²
3. Pursuant to the Order of Mr. Justice Hainey dated March 8, 2019 (the “**Initial Order**”), JTIM was granted protection from its creditors under the *Companies’ Creditors Arrangement Act* (“**CCAA**”)³ that, among other things, granted a stay of proceedings in favour of JTIM, which is currently set to expire on October 31, 2024 (the “**Stay Period**”),

¹ Capitalized terms used herein and not otherwise defined have the meanings ascribed to them in the Initial Order, or in the [Affidavit of William E. Aziz sworn September 17, 2024](#) (the “**Aziz Affidavit**”), Motion Record of the Applicant dated September 17, 2024 at [Tab 2](#).

² Aziz Affidavit at para [7](#).

³ RSC 1985, c C-36, as amended [[CCAA](#)].

and appointed Deloitte Restructuring Inc. as the monitor of the Applicant (in such capacity, the “**Monitor**”).⁴

4. Since the date of the Initial Order, Imperial Tobacco Company Limited and Imperial Tobacco Canada Limited (together, “**Imperial**”) and Rothmans, Benson & Hedges Inc. (“**RBH**”, together with the Applicant and Imperial, the “**Tobacco Companies**”) have sought and been granted protection from their creditors under the CCAA.⁵
5. On April 5, 2019, the Initial Order was amended and restated to, among other things, appoint the Honourable Warren K. Winkler, K.C. as mediator (the “**Mediator**”), with a mandate to coordinate and mediate a global settlement of the Tobacco Claims against the Tobacco Companies.⁶
6. On September 17, 2024, JTIM brought a motion for the Extended Stay Period. At the request of the Monitor, JTIM’s stay extension motion was adjourned to October 31, 2024.⁷
7. On October 17, 2024, the Monitor served a motion record seeking, among other things, a Meeting Order to: (i) accept the filing of a Plan of Compromise and Arrangement dated October 17, 2024 in respect of JTIM (the “**M&M Plan**”), and (ii) scheduling a creditors’ meeting for Affected Creditors to consider and vote on the M&M Plan (the “**Meeting**”).⁸

⁴ Aziz Affidavit at para [9](#).

⁵ Aziz Affidavit at para [10](#).

⁶ Aziz Affidavit at para [11](#).

⁷ Deloitte Restructuring Inc., [Supplement to the Seventeenth Report of the Monitor dated October 25, 2024](#) at para [2](#) (“**Supplemental Report**”).

⁸ Supplemental Report at para [10\(a\)](#).

Extension of the Stay Period

8. The Applicant seeks an extension of the Stay Period up to and including March 31, 2025.⁹
9. The Applicant, with the assistance of the Monitor, has prepared a forecast of the projected cash flows (the “**Cash Flow Statement**”) for the Extended Stay Period, which demonstrates that JTIM has sufficient liquidity to operate its business and meet its obligations during the Extended Stay Period.¹⁰
10. 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 global resolution of the Tobacco Claims.¹¹

PART III - THE ISSUE

11. The sole issue to be addressed before this Honourable Court is whether this Court should grant the Extended Stay Period (it should).

⁹ Aziz Affidavit at para [14](#).

¹⁰ Supplemental Report at paras [16](#) and [18](#).

¹¹ Aziz Affidavit at para [16](#).

PART IV - THE LAW

The Extended Stay Period Should be Granted

12. A stay of proceedings is appropriate to provide a debtor with breathing room while it seeks to emerge from the CCAA.¹² Section 11.02(2)(a) of the CCAA gives this Court the authority to grant an extension of the Stay Period for any period “it considers necessary.”¹³ To do so, this Court must be satisfied that: (a) circumstances exist that make the order appropriate; and (b) the Applicant has acted, and is continuing to act, in good faith and with due diligence.¹⁴
13. When deciding to grant an extension to the Stay Period, the court will also consider whether the extension will further the purposes of the CCAA.¹⁵ In determining the appropriate length of time to grant a prior extension in these proceedings, Justice McEwen considered the complexity of the CCAA proceedings herein and how a short stay period would distract the stakeholders from the mediation process.¹⁶

¹² *Century Services Inc v Canada (Attorney General)*, [2010 SCC 60](#) at para [14](#).

¹³ CCAA, s [11.02\(2\)\(a\)](#).

¹⁴ CCAA, s [11.02\(3\)](#).

¹⁵ *Worldspan Marine Inc (Re)*, [2011 BCSC 1758](#) at [paras 12-15](#).

¹⁶ [JTI-Macdonald Corp \(Re\)](#), Court File No. CV-19-61582-00CL, Endorsement of Justice McEwen released October 18, 2019, at pages 3-6.

14. In the present case, since the granting of the Initial Order, the Applicant has acted, and is continuing to act, in good faith and with due diligence.¹⁷ The Monitor also believes the Applicant is working diligently and in good faith.¹⁸
15. The Applicant believes the Extended Stay Period is reasonable in the circumstances. Given the complexity of the mediation, the Applicant estimates the parties will require at least five more months to complete the remaining steps, which includes but is not limited to, the negotiation of the remaining issues in the M&M Plan, the commencement and completion of a claims process, obtaining a sanction order (if a consensual plan of compromise or arrangement is supported by the Tobacco Companies and Claimants), and satisfying all pre-conditions for the implementation of a consensual CCAA plan,¹⁹ all of which will further the purposes of the CCAA.
16. Considering the proposed Meeting Order contemplates that the Meeting will be held on December 12, 2024,²⁰ the Monitor also believes the Extended Stay Period is appropriate and will allow JTIM an opportunity to address and resolve certain issues with the M&M Plan, while permitting JTIM to preserve the *status quo* and continue to maintain the stability of its operations.²¹

¹⁷ Aziz Affidavit at para [18](#).

¹⁸ Supplemental Report at para [28](#).

¹⁹ Aziz Affidavit at para [17](#); Supplemental Report at para [25](#).

²⁰ Supplemental Report at para [26](#).

²¹ Supplemental Report at para [24](#).

17. The Cash Flow Statement demonstrates that the Applicant will continue to have sufficient liquidity to continue its operations and meet its obligations during the Extended Stay Period.²²
18. The Extended Stay Period is in the best interests of the Applicant and all of its stakeholders.²³
19. The Monitor recommends the granting of the Extended Stay Period.²⁴

PART V - RELIEF REQUESTED

20. For all of the foregoing reasons, the Applicant respectfully requests that this Honourable Court to grant the requested stay extension to March 31, 2025.

ALL OF WHICH IS RESPECTFULLY SUBMITTED this 29th day of October, 2024.

October 29, 2024

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²² Supplemental Report at para [18](#).

²³ Aziz Affidavit at paras [14](#) & [16](#).

²⁴ Supplemental Report at para [29](#).

**SCHEDULE “A”
LIST OF AUTHORITIES**

1. *Century Services Inc v Canada (Attorney General)*, [2010 SCC 60](#).
2. *JTI-Macdonald Corp (Re)*, Court File No. CV-19-61582-00CL, [Endorsement of Justice McEwen released October 18, 2019](#).
3. *Worldspan Marine Inc (Re)*, [2011 BCSC 1758](#).

SCHEDULE “B” RELEVANT STATUTES

[Companies’ Creditors Arrangement Act, RSC 1985, c C-36.](#)

General power of court

11 Despite anything in the *Bankruptcy and Insolvency Act* or the *Winding-up and Restructuring Act*, if an application is made under this Act in respect of a debtor company, the court, on the application of any person interested in the matter, may, subject to the restrictions set out in this Act, on notice to any other person or without notice as it may see fit, make any order that it considers appropriate in the circumstances.

Relief reasonably necessary

11.001 An order made under section 11 at the same time as an order made under subsection 11.02(1) or during the period referred to in an order made under that subsection with respect to an initial application shall be limited to relief that is reasonably necessary for the continued operations of the debtor company in the ordinary course of business during that period.

Stays, etc. — initial application

11.02 (1) A court may, on an initial application in respect of a debtor company, make an order on any terms that it may impose, effective for the period that the court considers necessary, which period may not be more than 10 days,

(a) staying, until otherwise ordered by the court, all proceedings taken or that might be taken in respect of the company under the [Bankruptcy and Insolvency Act](#) or the [Winding-up and Restructuring Act](#);

(b) restraining, until otherwise ordered by the court, further proceedings in any action, suit or proceeding against the company; and

(c) prohibiting, until otherwise ordered by the court, the commencement of any action, suit or proceeding against the company.

Stays, etc. — other than initial application

11.01 (2) A court may, on an application in respect of a debtor company other than an initial application, make an order, on any terms that it may impose,

(a) staying, until otherwise ordered by the court, for any period that the court considers necessary, all proceedings taken or that might be taken in respect of the company under an Act referred to in paragraph (1)(a);

(b) restraining, until otherwise ordered by the court, further proceedings in any action, suit or proceeding against the company; and

(c) prohibiting, until otherwise ordered by the court, the commencement of any action, suit or proceeding against the company.

Burden of proof on application

(3) The court shall not make the order unless

(a) the applicant satisfies the court that circumstances exist that make the order appropriate; and

(b) in the case of an order under subsection (2), the applicant also satisfies the court that the applicant has acted, and is acting, in good faith and with due diligence.

Restriction

(4) Orders doing anything referred to in subsection (1) or (2) may only be made under this section.

Stays — directors

11.03 (1) An order made under section 11.02 may provide that no person may commence or continue any action against a director of the company on any claim against directors that arose before the commencement of proceedings under this Act and that relates to obligations of the company if directors are under any law liable in their capacity as directors for the payment of those obligations, until a compromise or an arrangement in respect of the company, if one is filed, is sanctioned by the court or is refused by the creditors or the court.

Exception

(2) Subsection (1) does not apply in respect of an action against a director on a guarantee given by the director relating to the company's obligations or an action seeking injunctive relief against a director in relation to the company.

Persons deemed to be directors

(3) If all of the directors have resigned or have been removed by the shareholders without replacement, any person who manages or supervises the management of the business and affairs of the company is deemed to be a director for the purposes of this section.

Good faith

18.6 (1) Any interested person in any proceedings under this Act shall act in good faith with respect to those proceedings.

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

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

**ONTARIO
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Proceeding commenced at Toronto

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