

**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.
(Returnable on April 29, 2025)**

April 24, 2025

THORNTON GROUT FINNIGAN LLP
100 Wellington Street West
Suite 3200, TD West Tower
Toronto ON M5K 1K7

Robert I. Thornton (LSO# 24266B)
Email: rthornton@tgf.ca

Leanne M. Williams (LSO# 41877E)
Email: lwilliams@tgf.ca

Mitchell W. Grossell (LSO#69993I)
Email: mgrossell@tgf.ca

Tel: 416-304-1616
Fax: 416-304-1313

Lawyers for the Applicant

TO: THE COMMON SERVICE LIST

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PART I - OVERVIEW

1. JTI-Macdonald Corp. (“**JTIM**” or the “**Applicant**”) files this factum in support of a motion to rectify paragraph 20 of the Initial Order (as amended and restated from time to time, the “**Initial Order**”) to, among other things, add the word “by”, which was inadvertently omitted from the drafting.
2. Rectification of paragraph 20 of the Initial Order will align the Initial Order with the McEwen Endorsement (as defined herein) and the initial orders granted in the parallel CCAA proceedings of Rothmans, Benson & Hedges Inc. (“**RBH**”) and Imperial Tobacco Company Limited and Imperial Tobacco Canada Limited (together, “**Imperial**”).

PART II - THE FACTS¹

Background

3. 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 the monitor of the Applicant (the “**Monitor**”) in these CCAA proceedings.²
4. On March 12, 2019, and March 22, 2019, respectively, Imperial and RBH (together with JTIM, the “**Tobacco Companies**”) each filed for creditor protection under the CCAA.

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 April 23, 2025 (the “**Aziz Affidavit**”), Motion Record of the Applicant dated April 23, 2025 at Tab 2.

² Aziz Affidavit at para 6.

Commencing shortly thereafter, due to the similar nature and objectives of the CCAA filings, the Tobacco Companies' CCAA proceedings were conducted in parallel. Accordingly, the initial orders of the Tobacco Companies were intended to be substantively similar to ensure that each of the Tobacco Companies was treated the same.³

Rectification of the Initial Order

5. Paragraph 20 of the Initial Order, as currently stated, tolls any prescription, time or limitation period relating to any proceeding “against or in respect” of the Applicant, among others, but it does not toll the prescription, time or limitation period relating to any proceedings commenced by the Applicant, which was also intended to be tolled.⁴
6. During the Tobacco Companies' comeback hearing, the tolling provision in paragraph 20, was specifically addressed in the endorsement by Justice McEwen dated April 17, 2019 (the “**McEwen Endorsement**”). The McEwen Endorsement explicitly states that “to the extent any prescription, time or limitation period relating to any proceeding *by* or against the Applicants that is stayed pursuant to this order may expire, the term of such prescription, time or limitation period shall be deemed to be extended by a period equal to the stay period.” (emphasis added) The McEwen Endorsement is applicable to the CCAA Proceedings of all three Tobacco Companies and demonstrates that the tolling language in

³ Aziz Affidavit at para 7.

⁴ Aziz Affidavit at paras 8 & 9.

paragraph 20 is intended to include proceedings commenced by the Tobacco Companies, including JTIM.⁵

7. The same provision in the initial orders of Imperial and RBH also toll any prescription, time or limitation period in respect of a proceeding that may be commenced by Imperial or RBH, respectively. Accordingly, there is an inadvertent discrepancy between JTIM's Initial Order and those of Imperial and RBH.⁶
8. JTIM seeks to rectify paragraph 20 of the Initial Order to include the word "by," to align with the McEwen Endorsement and the initial orders of Imperial and RBH, to ensure that any prescription, time or limitation period related to any proceeding commenced by the Applicant is tolled.
9. JTIM also seeks a clean-up rectification in the same paragraph 20, to remove the letter "P" from the defined term, which should be "QCA Leave Application" rather than "QCAP Leave Application."

PART III - THE ISSUE

10. The sole issue to be addressed before this Honourable Court is whether this Court should permit JTIM to rectify paragraph 20 of the Initial Order, which it should.

⁵Aziz Affidavit at para 10.

⁶Aziz Affidavit at paras 11 & 14.

PART IV - THE LAW

The Rectification of the Initial Order Should be Granted

11. The Applicant seeks to rectify and amend the Initial Order.
12. Rule 59.06(1) of the *Rules of Civil Procedure*⁷ provides for the amendment of an order that contains an error. The rule states:

59.06 (1) An order that contains an error arising from an accidental slip or omission or requires amendment in any particular on which the court did not adjudicate may be amended on a motion in the proceeding.⁸
13. Rule 59.06 (1) is designed to amend judgments containing a slip or error, errors which are clerical, mathematical or due to misadventure or oversight.⁹
14. Under rule 59.06 (1), the Court has the power to amend an order where there has been an error in expressing the manifest intention of the Court:¹⁰ “the rule permits amendments where the order obviously or indubitably does not reflect what the court intended to do, either by error or oversight.”¹¹

⁷ [RRO 1990, Reg 194](#) [Rules].

⁸ Rules, [r 59.06\(1\)](#).

⁹ *Trustees of the Millwright Regional Council of Ontario Pension Trust Fund v Celestica Inc*, [2013 ONSC 1502](#) [Celestica] at para [30](#).

¹⁰ *Ibid* at para [32](#).

¹¹ *Ibid* at para [33](#).

15. JTIM seeks to rectify the Initial Order by: (1) adding the word “by,” in paragraph 20 which was inadvertently omitted, resulting in a clerical error; and (2) removing the extraneous letter “P” that was mistakenly included in the defined term, resulting in “QCA Leave Application” being incorrectly stated as “QCAP Leave Application” in paragraph 20.
16. The rectification to the Initial Order would ensure that the Initial Order accurately reflects the Court’s intention, as explicitly indicated in the McEwen Endorsement.
17. In the case of *Celestica*, Justice Perell noted that the formal order did not accurately reflect what was decided, due to an oversight by the parties drafting the order, and held that in such circumstances, it is in the interests of justice to correct such mistakes.¹²
18. Given that the Initial Order does not accurately reflect the decision made and is not consistent with the initial orders of the other Tobacco Companies, it is in the interests of justice to correct the omission and rectify the Initial Order. The corrections would ensure alignment with the McEwen Endorsement and the initial orders of the other Tobacco Companies.

¹² *Ibid* at paras [36](#) & [37](#).

PART V - RELIEF REQUESTED

19. For all of the foregoing reasons, the Applicant respectfully requests this Honourable Court to grant the requested rectification to the Initial Order to align with the McEwen Endorsement and the initial orders of the other Tobacco Companies.

ALL OF WHICH IS RESPECTFULLY SUBMITTED this 24th day of April, 2025.

April 24, 2025

Thornton Grout Finnigan LLP

THORNTON GROUT FINNIGAN LLP

100 Wellington Street West
Suite 3200, TD West Tower
Toronto ON M5K 1K7

Lawyers for the Applicant

**SCHEDULE “A”
LIST OF AUTHORITIES**

1. *Trustees of the Millwright Regional Council of Ontario Pension Trust Fund v Celestica Inc*, [2013 ONSC 1502](#).

I certify that I am satisfied as to the authenticity of every authority.

Note: Under the Rules of Civil Procedure, an authority or other document or record that is published on a government website or otherwise by a government printer, in a scholarly journal or by a commercial publisher of research on the subject of the report is presumed to be authentic, absent evidence to the contrary (rule 4.06.1(2.2)).

Date: April 24, 2025



SCHEDULE “B” RELEVANT STATUTES

[Rules of Civil Procedure, RRO 1990, Reg 194.](#)

Amending, Setting Aside or Varying Order

Amending

59.06 (1) An order that contains an error arising from an accidental slip or omission or requires amendment in any particular on which the court did not adjudicate may be amended on a motion in the proceeding.

[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. — 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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Court File No. CV-19-615862-00CL

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Proceeding commenced at Toronto

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Robert I. Thornton (LSO# 24266B)

Email: rthornton@tgf.ca

Leanne M. Williams (LSO# 41877E)

Email: lwilliams@tgf.ca

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Email: mgrossell@tgf.ca

Tel: 416-304-1616

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