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In His Capacity as Foreign Representative

UNITED STATES BANKRUPTCY COURT

SOUTHERN DISTRICT OF NEW YORK

In re:	)	
	)	Chapter 15
JTI-MACDONALD CORP.,	)	Case No. 25-11530 (JPM)
	)	
Debtor in a Foreign Proceeding.	)	

MEMORANDUM OF LAW
IN SUPPORT OF VERIFIED PETITION FOR
RECOGNITION OF FOREIGN MAIN PROCEEDING AND RELATED RELIEF

William E. Aziz of Bluetree Advisors Inc., in his capacity as the duly authorized foreign representative (the "Foreign Representative") of JTI-Macdonald Corp. (the "Debtor"), in a proceeding (the "Canadian Proceeding") under Canada's *Companies' Creditors Arrangement Act*, R.S.C. 1985, c. C-36, as amended ("CCAA"), pending before the Ontario Superior Court of Justice (Commercial List) in Toronto (the "Canadian Court"), by his undersigned counsel, hereby submits

this memorandum of law in support of the Verified Petition for Recognition of Foreign Main Proceeding Under 11 U.S.C. §§ 1515 and 1517, and for Related Relief Pursuant To 11 U.S.C. §§ 105(a), 1507(a), 1520, and 1521, Giving Full Force and Effect To Canadian Plan Of Compromise and Arrangement (the "Verified Petition")[1] filed contemporaneously herewith.

PRELIMINARY STATEMENT

1. The purpose of this Chapter 15 case is to obtain recognition of the Canadian Proceeding and the CCAA Plan and the entry of an order of this Court granting full force and effect to the Sanction Order[2] and sanctioning the CCAA Plan, so that the Debtor may enforce it in the United States. As discussed more fully below, the Verified Petition, the Sanction Order and the CCAA Plan satisfy all of the requirements under Chapter 15 for recognition of the Canadian Proceeding as a foreign main proceeding and also for the entry of an order giving full force and effect to the Sanction Order and the CCAA Plan in the United States.

2. As set forth herein, the requested relief is appropriate because, among other reasons: (i) the Canadian Proceeding is a foreign proceeding; (ii) the Debtor's center of main interests is located in Canada; and (iii) the Foreign Representative is a proper foreign representative because, among other reasons, the appointment has been confirmed by the Canadian Court. Finally, the Canadian Proceeding provides substantial due process rights to the Debtor's affected creditors. Such due process rights sufficiently protect their interests and are consistent with (and not manifestly contrary to) United States public policy.

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[1] Any capitalized term used herein but not defined herein shall have the meaning ascribed to such term in the Verified Petition or the CCAA Plan.

[2] A copy of the Sanction Order, including the CCAA Plan, is annexed to the Verified Petition as Exhibit B.

3. The CCAA Plan and the Sanction Order provides for the Release of the "Released Parties."[3] The Released Parties includes, among others, R.J. Reynolds Tobacco Company, R.J. Reynolds Tobacco International Inc. and RJR Nabisco, Inc. (now known as R.J. Reynolds Tobacco Holdings, Inc.) (collectively, the "RJR Group"). The RJR Group owned the Debtor from 1974 until the execution of the Purchase Agreement (as defined below) in May of 1999. Approval by this Court of the Releases in favor of the Released Parties is appropriate based on several recent and relevant legal precedents in the Chapter 15 context, as set forth more fully below. Moreover, all the Releases were consensual and approved by all the Claimants.

4. The entry of an order of this Court is a condition precedent to the implementation of the CCAA Plan, *see* CCAA Plan, Section 19.3(f). This particular condition precedent is not permitted to be waived. It is vital to the global settlement agreed to by the Debtor and the success of the CCAA Plan that the Releases in favor of the Released Parties be respected and effective in the United States in the event that any claimants file suit in the United States for Tobacco Claims. The CCAA Plan, including the Releases, received support from 100% of the Claimants voting on the CCAA Plan including all thirteen Provinces and Territories in Canada.

BACKGROUND

5. As set forth in greater detail in the Verified Petition, the Foreign Representative seeks recognition of the Canadian Proceeding, the Sanction Order and the CCAA Plan under

[3] "Released Parties," collectively, means: (a) Imperial Tobacco Canada Limited, (b) Imperial Tobacco Company Limited, (c) RBH, (d) JTIM, (e) British American Tobacco p.l.c., (f) Philip Morris International Inc., (g) JT International Holding B.V., (h) the ITCAN Subsidiaries, (i) B.A.T. Investment Finance p.l.c., (j) B.A.T Industries p.l.c., (k) British American Tobacco (Investments) Limited, (l) Carreras Rothmans Limited, (m) Philip Morris U.S.A. Inc., (n) Philip Morris Incorporated, (o) Philip Morris Global Brands Inc., (p) Philip Morris S.A., (q) Rothmans Inc., (r) Ryesekks p.l.c., (s) Altria Group, Inc., (t) R.J. Reynolds Tobacco Company, (u) R.J. Reynolds Tobacco International Inc., (v) RJR Nabisco, Inc. (now known as R.J. Reynolds Tobacco Holdings, Inc.), (w) JT International SA, (x) JT Canada LLC Inc., (y) Japan Tobacco Inc., (z) JTIM TM, (aa) the Canadian Tobacco Manufacturers' Council, and (bb) every other current or former Affiliate of any of the companies listed in subparagraphs (a) to (z) herein, and each of their respective indemnitees and their respective Representatives.

Chapter 15 of the Bankruptcy Code in aid of the Debtor's restructuring efforts in Canada. The background concerning the Debtor's CCAA Plan and the facts supporting the relief requested in the Verified Petition are set forth at length in the Verified Petition and the Aziz Declaration filed in support of the Verified Petition. The facts set forth in the Verified Petition and the Aziz Declaration are incorporated herein by reference as if fully set forth herein.

6. The Debtor is one of the largest tobacco companies in Canada. Starting in 1998, the Tobacco Litigation was brought against the Debtor and the other Tobacco Companies. The amount of damages associated with the Tobacco Litigation against the Debtor greatly exceeds the Debtor's total assets. The Debtor is otherwise an economically viable company.

7. The background relating to the Releases of the RJR Group is as follows. On March 9, 1999, it was announced that Japan Tobacco had reached an agreement (the "Purchase Agreement") to purchase the international (non-U.S.) tobacco assets of R.J. Reynolds Tobacco Company and RJR Nabisco, Inc. (now known as R.J. Reynolds Tobacco Holdings, Inc.) (the "RJR Sellers"). The aggregate purchase price as set out in the Purchase Agreement was USD$7,832,539,000 in cash. Pursuant to the terms of the Purchase Agreement, Japan Tobacco agreed to indemnify, among others, each member of the RJR Sellers and agreed to hold each of them harmless from any and all damages incurred or suffered by, among others, any member of the RJR Sellers arising out of any liabilities relating to or arising out of, in whole or in part, the RJR Group's business outside of the U.S. (the "RJR Liabilities"). To the extent the liability alleged in the Tobacco Claim is not covered or is not wholly covered by the terms of the indemnity then the RJR Group would remain responsible to defend and, if proven, meet that liability.

8. Under the terms of the Purchase Agreement, if the claim is covered by the terms of the indemnity, the RJR Group must first pursue reimbursement from the Debtor for any damages

award for any RJR Liabilities. Then, if the Debtor cannot cover the damages, the RJR Group could seek reimbursement from Japan Tobacco pursuant to its indemnification obligation in the Purchase Agreement. Two members of the RJR Group, R.J. Reynolds Tobacco Company and R.J. Reynolds Tobacco International, Inc. (together, "Reynolds") are named as defendants in the Provincial HCCR Claims and the Other Class Actions (as defined below), which include claims related to Reynolds allegedly conspiring with the Debtor during the period in which the Debtor was owned by the RJR Group. Some claims also include allegations against the Debtor in respect of the period that Japan Tobacco owned the Debtor. The stay implemented in the Canadian Proceeding was extended to any other defendant or respondent in the Pending Litigation (as defined in the Canadian Order for Relief) (the "Canadian Stay"), including the Provincial HCCR Claims and the Other Class Actions, to ensure that steps were not taken in the Pending Litigation that may have interfered with the Debtor's ability to reach a collective solution. Canadian Order for Relief, ¶ 19. Thus, the Canadian Stay extended to Reynolds because it is named as a defendant in the Provincial HCCR Claims and the Other Class Actions.

9. Accordingly, due to the indemnity provided in the Purchase Agreement and Reynolds' involvement in the Provincial HCCR Claims and the Other Class Actions, and given the interrelationship of the alleged liabilities between the Released Parties and that some Claims are made in respect of the period in which Japan Tobacco owned the Debtor, the RJR Group and Japan Tobacco are also included under the definition of "Released Parties" in the CCAA Plan.

10. The background relating to the Release of Japan Tobacco is that, since 1999, it has been the group parent company of the Debtor and, absent such Release, might face future Tobacco Claims relating to the operation of the Debtor's business; further, and as stated, it might in some

circumstances have indemnification obligations in relation to RJR Liabilities under the Purchase Agreement.

11. The Releases contained within the CCAA Plan and granted in the Sanction Order, including in favor of Reynolds and Japan Tobacco, are the cornerstone of the global settlement among the Tobacco Companies and the Claimants. Without the Releases, the global settlement fails.

12. On March 8, 2019, the Debtor initiated the Canadian Proceeding and obtained protection under the CCAA. The two other major Tobacco Companies in Canada also filed CCAA Proceedings. The stated objective of the parallel unconsolidated CCAA Proceedings was to provide the debtors in the CCAA Proceedings with the opportunity to settle the hundreds of billions of dollars of claims alleged against each of them through a structured process. The Canadian Court-appointed Mediator oversaw and coordinated a multi-party, comprehensive mediation among the Tobacco Companies, their key stakeholders, and the CCAA Monitors, resulting in the filing of CCAA Plans for each of the Tobacco Companies.

13. The CCAA Plan for the Debtor is the culmination of dedicated efforts over the course of six years to achieve a global settlement of the Tobacco Litigation. The CCAA Plan was unanimously approved by 100% of the votes cast by the Claimants either in-person or by proxy.

14. The CCAA Plan was sanctioned by the Canadian Court on March 6, 2025. Although the CCAA Plans are rather complicated, they are based on two central premises which are quite straightforward. First, the Tobacco Companies will pay to the Claimants all but C$750 million of their aggregate cash on hand upfront, estimated at the time of the vote on the CCAA Plan to be approximately C$12.5 billion, and the majority of their future Net After-Tax Income, until the Global Settlement Amount of C$32.5 billion is paid in full. Second, in view of this

massive Global Settlement Amount, the CCAA Plans include Releases in favor of all the "Released Parties." The primary objectives of the CCAA Plan for the Debtor to maintain the *status quo* of its operations and to implement a collective solution for the benefit of all stakeholders in respect of the class action judgments and other multi-billion dollar claims being pursued against it.

15. The Debtor's center of main interests is in Canada; its principal asset in the United States is in New York. The Debtor has an interest in an undrawn retainer with Freshfields, the Foreign Representative's United States counsel, in New York, New York.

JURISDICTION AND VENUE

16. This Court has jurisdiction to hear and determine cases commenced under the Bankruptcy Code and all core proceedings arising thereunder pursuant to 28 U.S.C. §§ 157 and 1334, and 11 U.S.C. § 1501. Recognition of foreign proceedings and other matters under Chapter 15 of the Bankruptcy Code have expressly been designated as core proceedings pursuant to 28 U.S.C. § 157(b)(2)(P). Venue is proper in this District pursuant to 28 U.S.C. § 1410 as the Debtor's principal asset in the United States is in New York.

ARGUMENT

I. The Debtor Satisfies Bankruptcy Code Section 109(a)

17. The Second Circuit Court of Appeals has ruled that section 109(a) applies to a debtor in a foreign main proceeding under Chapter 15. *See Drawbridge Special Opportunities Fund LP v. Barnet (In re Barnet)*, 737 F.3d 238, 250 (2d Cir. 2013). Section 109(a) of the Bankruptcy Code requires that a debtor have a residence, domicile, a place of business or property in the United States. *See* 11 U.S.C. § 109(a). Here, the Debtor satisfies section 109(a) because it has property in the United States. The Debtor has an interest in an undrawn retainer with Freshfields, the Foreign Representative's United States counsel, located in New York. Thus, the Debtor satisfies section 109(a) of the Bankruptcy Code.

II. This Case has Been Properly Commenced Under Chapter 15

18. Section 1504 of the Bankruptcy Code provides that a case under Chapter 15 is "commenced by the filing of a petition for recognition of a foreign proceeding under section 1515." 11 U.S.C. § 1504. Section 1515, in turn, requires that the Foreign Representative satisfy two principal requirements: (a) the Canadian Proceeding must qualify as a "foreign proceeding" and (b) the Foreign Representative must qualify as a "foreign representative." Both requirements are satisfied here.

19. First, the Canadian Proceeding is a collective judicial proceeding within the meaning of Section 101(23) of the Bankruptcy Code under which the assets and affairs of the Debtor are subject to the supervision of the Canadian Court. The Canadian Proceeding was instituted by the Debtor for the purpose of implementing an orderly and equitable restructuring plan for the benefit of its creditor body as a whole. The Canadian Court has already exercised its authority and demonstrated its close supervision of the Debtor by issuing the Canadian Order for Relief and the Sanction Order. *See* Verified Petition, Ex. A, Ex. B. Thus it is clear that the Canadian Proceeding falls within the definition of "foreign proceeding" as set forth in section 101(23) of the Bankruptcy Code.[4]

20. Second, in accordance with Sections 1515(a) and 1517(a) of the Bankruptcy Code, this Chapter 15 case was commenced by the Foreign Representative, the duly appointed and

[4] Since Congress' enactment of Chapter 15 of the Bankruptcy Code, Canadian proceedings under the CCAA have been routinely recognized by this Court as foreign proceedings. *See, e.g.*, Order Granting Recognition of Foreign Main Proceedings and Related Relief at 2, *In re Li-Cycle Holdings Corp.* Case No. 25-10991 (PB) (ECF Doc. #59) (Bankr. S.D.N.Y. May 23, 2025); *In re Sino-Forest Corp.*, 501 B.R. 655, 666 (Bankr. S.D.N.Y. 2013); *In re Metcalfe & Mansfield Alt. Invs.*, 421 B.R. 685, 688 (Bankr. S.D.N.Y. 2010); Order Granting Recognition and Enforcement of Canadian Sanction Order and Related Relief at 2, *In re Quebecor World Inc.*, Case No. 08-13814 (JMP) (ECF Doc. # 12) (Bankr. S.D.N.Y. July 1, 2009); Order Granting Recognition and Relief in Aid of Foreign Main Proceedings at 1–3, *In re Canwest Global Commc'ns Corp.*, Case No. 09-15994 (MG) (ECF Doc. #34) (Bankr. S.D.N.Y. Nov. 3, 2009); Order Granting Recognition of Foreign Main Proceeding at 3, *In re Baronet U.S.A. Inc.*, No. 07-13821 (JMP) (ECF Doc. #15) (Bankr. S.D.N.Y. Jan. 10, 2008).

authorized "foreign representative" of the Debtor within the meaning of Section 101(24) of the Bankruptcy Code. The Sanction Order authorized the Foreign Representative to apply to this Court for recognition of the Canadian Proceeding and assistance in carrying out the terms of the CCAA Plan and the Sanction Order in the United States. Sanction Order ¶¶ 57—58.

21. The Foreign Representative commenced this Chapter 15 case by filing the Official Form 401 Petition for the Debtor and the Verified Petition, which includes, as an exhibit, a copy of the Canadian Order for Relief as well as the Sanction Order.[5] Accordingly, the Foreign Representative submits that this case has been properly commenced under 11 U.S.C. § 1515(b) and (c).

III. The Canadian Proceeding Should be Recognized as a Foreign Main Proceeding

22. The Bankruptcy Code provides that a foreign proceeding for which Chapter 15 recognition is sought must be recognized as a "foreign main proceeding" if it is pending in the country where the debtor has its center of main interests ("COMI"). 11 U.S.C. §§ 1517(b), 1502(4). Although "center of main interests" is not defined in the Bankruptcy Code, courts in the U.S. have generally found the COMI to be where the debtor conducts the administration of its interests on a regular basis and is, therefore, ascertainable by third parties. *See Morning Mist Holdings Ltd. v. Krys (In re Fairfield Sentry Ltd.)*, 714 F.3d 127, 130 (2d Cir. 2013) ("[t]he relevant principle … is that the COMI lies where the debtor conducts its regular business, so that the place is ascertainable by third parties"). In the absence of evidence to the contrary, the debtor's registered office is presumed to be the center of the debtor's main interests. 11 U.S.C. § 1516(c).

[5] Section 1516(b) of the Bankruptcy Code permits the Court to presume the authenticity of the Canadian Order for Relief and those documents and information included with the Verified Petition in conformance with 11 U.S.C. §§ 1515(b) and (c).

23. In the Debtor's case, as detailed in the Verified Petition, the Debtor is a corporation organized under the CBCA. Accordingly, in the absence of evidence to the contrary under the Bankruptcy Code, the Debtor's COMI is to be presumed to be in Canada. Even without the statutory presumption, however, it is clear that Canada is the Debtor's COMI. The Debtor generates its revenue through sales and distribution of the Debtor's product which predominantly takes place in Canada. The Debtor's products are produced at a manufacturing facility owned by the Debtor in Canada. The Debtor's registered head office is located in Mississauga, Ontario and nearly all of its employees are in Canada. In addition, the Debtor's central decision-making function, both long-range and day-to-day, takes place in Canada.

24. Based on the foregoing, the Foreign Representative submits that the Canadian Proceeding constitutes a "foreign main proceeding" as defined in section 1502(4) of the Bankruptcy Code. Accordingly, the Debtor is entitled to recognition (substantially in the form annexed to the Verified Petition) of the Canadian Proceeding as a foreign main proceeding pursuant to section 1517 of the Bankruptcy Code.

IV. Once Recognized, The Debtor Is Entitled to Certain Relief Under Section 1520

25. Upon recognition of the Canadian Proceeding as a foreign main proceeding, the Debtor is automatically entitled to certain relief under section 1520(a) of the Bankruptcy Code. Section 1520(a)(1) provides that, upon recognition "sections 361 and 362 apply with respect to the debtor and the property of the debtor that is within the territorial jurisdiction of the United States." The Foreign Representative requests that through the extension of the relief automatically available pursuant to section 1520(a) of the Bankruptcy Code, the Court expressly bar, enjoin, and stay, pursuant to section 1520(a) and under section 362 of the Bankruptcy Code, any action to interfere with the Debtor's assets and interests. As these benefits flow automatically from

recognition of the Canadian Proceeding, the Foreign Representative respectfully submits that no further showing is required.

V. Certain Additional Relief, Giving Full Force and Effect to the Sanction Order and the CCAA Plan in the United States, is Both Necessary and Appropriate

26. In addition to recognition of the Canadian Proceeding as a foreign main proceeding, the Debtor seeks the entry of an order of this Court enforcing and recognizing the Sanction Order and the CCAA Plan in the United States. As described above, the CCAA Plan provides for the resolution of claims held by the Debtor's creditors and facilitates the financial restructuring of the Debtor. As part of the restructuring, the Sanction Order and CCAA Plan provide Releases in order to effectuate the restructuring.

27. Upon recognition of a foreign proceeding, sections 1521 and 1507 of the Bankruptcy Code provide specific bases for additional relief. Section 1521 authorizes the Court to grant "any appropriate relief," including "any additional relief that may be available to a trustee" subject to certain limitations and provided that "the interests of creditors in the United States are sufficiently protected." 11 U.S.C. § 1521.

28. Section 1522(a) permits the Court to grant relief pursuant to section 1521 only if the interests of creditors, the debtor, and other interested entities are "sufficiently protected." "Sufficient protection" embodies "three basic principles: 'the just treatment of all holders of claims against the bankruptcy estate, the protection of U.S. claimants against prejudice and inconvenience in the processing of claims in the [foreign] proceeding, and the distribution of proceeds of the [foreign] estate substantially in accordance with the order prescribed by U.S. law.'" *In re Atlas Shipping A/S*, 404 B.R. 726, 740 (Bank. S.D.N.Y. 2009).

29. In the present case, the approval of the Releases for the benefit of the Released Parties, which is an unwaivable condition precedent to implementation of the CCAA Plan, will

allow for effectuation of the global settlement among the Tobacco Companies and the Claimants. Without the Releases, the global settlement fails. The global settlement enables the distribution of the foreign debtor's estate in the manner set forth in the CCAA Plan and allows for the just treatment of all claimants, substantially in accordance with U.S. law. The Debtor's creditors had a full and fair opportunity to be heard in the Canadian Proceeding in a manner consistent with U.S. due process standards. Under principles of comity, this Court should recognize and enforce the CCAA Plan *in toto* in connection with its recognition of the Canadian Proceeding. The granting of such relief is consistent with the goals of international cooperation and assistance to foreign courts embodied in Chapter 15 of the Bankruptcy Code, and is necessary to give effect to the Canadian Proceeding, the Sanction Order and the CCAA Plan.

30. A court may also act pursuant to section 1507 to provide "additional assistance" to a foreign representative under the Bankruptcy Code or other U.S. law beyond that permitted under section 1521, provided that such assistance is "consistent with the principles of comity[.]"[6] See 11 U.S.C. § 1507.

31. U.S. federal courts generally extend comity showing deference to a foreign court's judgment and relief therein when the foreign court has proper jurisdiction, the foreign court provides for a full and fair process and enforcement does not contravene the laws or public policy

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[6] In determining whether to provide additional assistance, section 1507 directs a court to consider whether such additional assistance, consistent with the principles of comity, will reasonably assure:

(1) just treatment of all holders of claims against or interests in the debtor's property;
(2) protection of claim holders in the United States against prejudice and inconvenience in the processing of claims in such foreign proceeding;
(3) prevention of preferential or fraudulent dispositions of property of the debtor;
(4) distribution of proceeds of the debtor's property substantially in accordance with the order prescribed by this title; and
(5) if appropriate, the provision of an opportunity for a fresh start for the individual that such foreign proceeding concerns.

See 11 U.S.C. § 1507(b).

of the United States. *See, e.g.*, *Hilton v. Guyot*, 159 U.S. 113, 202–03 (1895); *In re Bd. of Dirs. of Hopewell Int'l Ins., Ltd.*, 238 B.R. 25, 56–61 (Bankr. S.D.N.Y. 1999), *aff'd*, 275 B.R. 699 (S.D.N.Y. 2002) (barring objections not raised before the foreign insolvency court and stating, "[a]s long as the manner in which the scheme acquired statutory effect comports with our notions of procedural fairness, comity should be extended to it.") (citations omitted); *In re Gee*, 53 B.R. 891, 902, 904 (Bankr. S.D.N.Y. 1985) (stating that "[f]or comity to be extended, it is necessary only that the foreign court abide by fundamental standards of procedural fairness" and noting that the ancillary court, if satisfied with the procedural fairness of the foreign proceeding, "should not sit as an appellate court over the foreign proceedings.").

32. Thus, the enforcement of a foreign court's orders based on principles of comity under section 1507, may be warranted even if the same result would not be reached in a plenary Chapter 11 case before the same court. *See Sino-Forest*, 501 B.R. at 664 (holding that "[o]nce a case is recognized as a foreign main proceeding, chapter 15 specifically contemplates that the court will exercise its discretion consistent with principles of comity" (quoting *In re Atlas Shipping A/S*, 404 B.R. 726, 738 (Bankr. S.D.N.Y. 2009))); *Metcalfe*, 421 B.R. at 700 (Bankr. S.D.N.Y. 2010) ("Principles of comity in chapter 15 cases support enforcement of the Canadian Orders in the United States whether or not the same relief could be ordered in a plenary case under chapter 11.").

33. Such exercise of comity has commonly led courts to find that recognizing and enforcing a foreign restructuring plan is appropriate under sections 1521 and 1507 of the Bankruptcy Code. *See, e.g.*, *In re Avanti Commc'ns Grp. PLC*, 582 B.R. 603, 616 (Bankr. S.D.N.Y. 2018) ("Cases have held that in the exercise of comity that appropriate relief under section 1521 or additional assistance under section 1507 may include recognizing and enforcing a

foreign plan confirmation order.").[7] Accordingly, recognizing and enforcing the Sanction Order and CCAA Plan *in toto* is appropriate relief pursuant to sections 1521, 1507, and 1522 of the Bankruptcy Code.

VI. The Entry of an Order Giving Full Force and Effect in the United States to the Sanction Order, the CCAA Plan and the Releases in Favor of the Released Parties is Necessary and Appropriate

34. Here, the Sanction Order and the CCAA Plan, including the Releases, are entitled to full force and effect in the United States because such result is (a) warranted under the applicable judicial authorities and (b) a condition precedent to the implementation of the CCAA Plan (and such condition cannot be waived), which CCAA Plan was the product of extensive good faith negotiations involving the CCAA Debtors, the CCAA Monitors and the Canadian Court-appointed Mediator, in consultation with the Claimants. The Releases in favor of the Released Parties were carefully crafted as part of a broader compromise that balances the interests of all stakeholders and maximizes the value of the Debtor's estate so that it can continue to contribute to the Global Settlement Amount.

35. Approval of the Releases for the Released Parties as provided for in the CCAA Plan, is appropriate for at least two reasons. First, the Releases were overwhelmingly consensual having been approved by 100% of the Claimants, but even if they can somehow be seen as non-consensual, they are still entitled to enforcement in the United States based on recent legal

[7] In *Avanti*, the court granted recognition of the debtor's proceedings in England as foreign main proceedings. The *Avanti* debtor also sought enforcement of releases given in favor of certain of the debtor's non-debtor subsidiaries. This court ultimately held that it could, and would, enforce the guarantee discharge, noting that enforcement was consistent with the principles of comity. The court also stated that the "failure of a United States bankruptcy court to enforce the [third-party releases] could result in prejudicial treatment of creditors to the detriment of the [Avanti debtor's] reorganization efforts and prevent the fair and efficient administration [of the overall restructuring]." *Avanti*, 582 B.R. at 619.

precedent in the Chapter 15 context. Second, the Releases in favor of the Released Parties are necessary because approval of the Sanction Order and the CCAA Plan by this Court is a condition precedent to the implementation of the CCAA Plan and such condition cannot be waived.

1. The Releases are Consensual and Permissible in Any Event Under Recent Precedent

36. The CCAA Plan, including the Releases, **received support from 100% of the Claimants voting on the CCAA Plan**, after sufficient notice being given to all interested persons, which noticing was satisfactory to the Canadian Court and pursuant to orders granted by the Canadian Court. Furthermore, the CCAA Monitor provided notice to all interested parties in a manner that was agreed to be sufficient by the Canadian Court.

37. Even if the Releases are somehow seen as nonconsensual (which the Debtor would dispute), this Court has recently declined to apply the holding of *Purdue* in the Chapter 15 context, instead determining that it is appropriate to grant recognition to a foreign debtor's plan that includes non-consensual third-party releases. *See In re Harrington v. Purdue Pharma, L.P.*, 204, 206 (2024); *In re Engenharia* No. 25-10482 (MG) (ECF No. #21), 2025 Bankr. LEXIS 990 (Bankr. S.D.N.Y. 2025) (Glenn, J.) (granting full force and effect to Brazilian plan, including non-consensual third-party releases). *See also In re Credito Real, S.A.B. de C.V., SOFOM, E.N.R.*, No. 25-10208 (TMH) (ECF No. #65), 2025 Bankr. LEXIS 751 (Bankr. Del. Mar. 11, 2025), (Horan, J.) (granting full force and effect to Mexican *concurso* that included non-consensual third-party releases and rejecting application of holding in *Purdue* to releases in a Chapter 15 case); *In re Nexii Bldg. Sols. Inc.*, No. 24-10026 (Bankr. D. Del. July 22, 2024) (Stickles, J.), ECF No. 66 (granting recognition of a CCAA proceeding and approving a plan that included non-consensual third-party releases for certain claims against Nexii's directors and officers, DIP lenders and prepetition secured lenders); *In re Mega NewCo Limited*, No. 24-12031 (MEW), 2025 WL 601463,

at *2 (Bankr. S.D.N.Y. Feb. 24, 2025) (Wiles, J.) (granting recognition of a Scheme of Arrangement that included non-consensual third-party releases).

38. In *Engenharia*, notwithstanding the U.S. Trustee's objection, this Court determined that the releases approved by the Brazilian court were entitled to full force and effect in the United States. Judge Glenn was persuaded by "Judge Horan's recent opinion in *Credito Real* [which] provide[d] a lucid explanation why courts can enforce nonconsensual third-party releases found in foreign plans of reorganization." *Engenharia.* (ECF No. #23). "Judge Horan walked through the differences in language between section 1123(b) and, in turn, 1521 and 1507, to find that courts wield significantly more power under the latter two sections." *Id.* Like Judge Horan, Judge Glenn held that the "Supreme Court's holding [in Purdue] was narrow: Chapter 11 of title 11 does not provide bankruptcy courts, in Chapter 11 cases, with the authority to authorize such releases. It cannot be read to hold that nonconsensual third-party releases are 'manifestly contrary to' U.S. public policy such that they would be barred by section 1506." *Id.*

39. The *Credito Real* Court analyzed the decision to approve non-consensual third-party releases under section 1507(b) of the Bankruptcy Code, quote at footnote 5 above. These Section 1507(b) factors confirm that the Sanction Order and the CCAA Plan, including the Releases, are entitled to be given full force and effect in the United States. The CCAA Plan not only aligns with the principles of comity, but also ensures that the restructuring process adheres to fundamental standards of fairness and justice. Claimants had an opportunity to object to the Releases, consistent with U.S. procedures but, in fact, the Releases were overwhelmingly consensual having been approved by 100% of the Claimants entitled to vote at the creditor's meeting. By extending the Releases to the Released Parties, the CCAA Plan prevents indirect claims that could affect the Debtor's financial standing, thus ensuring equitable treatment for all

stakeholders. The CCAA Plan offers a clear path for a fresh start, which is a crucial element of Chapter 15. By recognizing the Sanction Order, and the CCAA Plan and Releases, the Debtor can move forward without the burden of past liabilities.

40. Furthermore, the Release of the RJR Group is not a third-party release. In May of 1999, the Debtor, then known as RJR Macdonald Corp. was acquired by JT Nova Scotia Corporation, an indirectly wholly-owned subsidiary of Japan Tobacco Inc. The RJR Group owned the Debtor from 1974 to 1999, during the 25 year time period that is relevant to the Tobacco Claims. The Release is designed to be a release of the Debtor's conduct, including that of its predecessor owner. Thus, the release of the RJR Group is not a release of a third-party, but rather a release of an entity that has a unity of interest with the Debtor. Furthermore, the Debtor is primarily liable for damages arising out of any RJR Liabilities. If the Debtor cannot cover the damages, the RJR Group can seek reimbursement from Japan Tobacco pursuant to its indemnification obligation in the Purchase Agreement. Consequently, both the Debtor and Japan Tobacco will be adversely affected if the Tobacco Claims are permitted to proceed against the RJR Group. Without a release of the Released Parties, including the RJR Group, the Release of the Debtor could be rendered meaningless, as claims against the Released Parties, including the RJR Group, could affect the Debtor's financial and legal standing.

2. Recognition of the Sanction Order and CCAA Plan, Including the Releases, is Necessary Because the Entry of an Order of this Court, Enforcing the CCAA Plan (and the Releases) in the United States is a Prerequisite to Consummation of the CCAA Plan

41. Section 19.3 of the CCAA Plan provides that the "implementation of the CCAA Plan shall be conditional upon the satisfaction… of [several] conditions precedent, [including that t]he Sanction Recognition [Order] shall have been entered by the US Bankruptcy Court and will have become a final order…" Furthermore, extending the CCAA Plan's Releases to the Released

Parties, including the RJR Group, is necessary to prevent the Debtor and Japan Tobacco from facing either direct or indirect or derivative liability via its indemnification obligation under the Purchase Agreement. Failing to grant the Releases to the Released Parties would undermine the global settlement agreed to by the Debtor and jeopardize implementation of the CCAA Plan. This could de-rail the entirety of the CCAA Proceedings.

VII. Recognition of the Canadian Proceeding, and Enforcement of the CCAA Plan and the Releases, Would Not be Manifestly Contrary to United States Public Policy

42. While a bankruptcy court may decline to grant relief requested in a Chapter 15 case if the action would be "manifestly contrary to the public policy of the United States," 11 U.S.C. §§ 1506, courts that have addressed this "public policy exception" have noted that the exception is narrow, its application is restricted to the most fundamental policies of the U.S., and a foreign judgment should generally be accorded comity if the foreign jurisdiction's proceedings meet fundamental standard of fairness. *See, e.g., Credito Real* (ECF No. #36); *Collins v. Oilsands Quest Inc.*, 484 B.R. 593, 597 (Bankr. S.D.N.Y. 2012); *see also Metcalfe*, 421 B.R. at 697 (holding that a U.S. bankruptcy court is not required to make an independent determination about the propriety of the acts of a foreign court, but only whether their procedures meet U.S. standards of fundamental fairness). *Purdue* U.S. at 204 did not hold that nonconsensual third-party releases are contrary to the public policy of the U.S. In fact, the majority expressly stated that "[b]oth sides of this policy debate may have their points." *Purdue*, 603 U.S. at 226. It cannot be read to hold that nonconsensual third-party releases are "manifestly contrary to" U.S. public policy such that they would be barred by section 1506. As such, even if the Releases, despite the fact that they were overwhelmingly consensual having been approved by 100% of voting creditors including all 13 Canadian Provinces and Territories, were somehow seen as non-consensual, they would not be manifestly contract to United States Public policy.

CONCLUSION

For the foregoing reasons, the Foreign Representative respectfully requests that the Court grant the Verified Petition and enter an order substantially in the form submitted as **Exhibit C** to the Verified Petition, granting the relief requested therein and any such other and further relief as may be just and proper.

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Dated: July 9, 2025

New York, New York

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