

**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.

**MOTION RECORD
(CCAA Plan Administrator Report Order)
Returnable December 15, 2025**

December 8, 2025

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TO: COMMON SERVICE LIST

Court File No. 19-CV-615862-00CL
Court File No. 19-CV-616077-00CL
Court File No. 19-CV-616779-00CL

**ONTARIO
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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.**

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.**

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**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.

MOTION RECORD

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TAB 1

Court File No. CV-19-00615862-00CL

**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 OF
JTI-MACDONALD CORP.

Applicant

**NOTICE OF MOTION
(CCAA Plan Administrator Report Order)**

Deloitte Restructuring Inc. (“**Deloitte Restructuring**”), the CCAA Plan Administrator (in such capacity, the “**CCAA Plan Administrator**”) in respect of JTI-Macdonald Corp. (“**JTIM**”), will make a motion before Chief Justice Morawetz of the Ontario Superior Court of Justice (Commercial List) on December 15, 2025 at 9:00 a.m., or as soon after that time as the motion can be heard.

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

- ☐ In writing under subrule 37.12.1(1) because it is (*insert one of* on consent, unopposed *or* made without notice);
- ☐ In writing as an opposed motion under subrule 37.12.1(4);
- ☐ In person;
- ☐ By telephone conference;
- ☒ By video conference.

at the following location:

Zoom meeting link, meeting ID and passcode to be created and posted to Case Center by court staff.

Please advise of your attendance by sending a message to Nancy Thompson, at nancy.thompson@blakes.com.

THE MOTION IS FOR:¹

1. An Order (the “**CCAA Plan Administrator Report Order**”), substantially in the form included at Tab 3 of the Motion Record, which, among other things, approves the Second Report of the CCAA Plan Administrator dated December 8, 2025 (the “**Second Report**”) and the activities (the “**Activities**”) described therein; and
2. Such further and other relief as counsel may advise and this Court may permit.

THE GROUNDS FOR THE MOTION ARE

CCAA Proceeding and Appointment of CCAA Plan Administrator

3. On March 8, 2019, JTIM applied for and obtained an initial order (the “**Initial Order**”) under the *Companies’ Creditors Arrangement Act* (Canada) (the “**CCAA**”) that, amongst other things, (i) granted a stay of proceedings in favour of JTIM and a limited stay of proceedings in favour of certain affiliates of JTIM in relation to certain proceedings, and (ii) appointed Deloitte Restructuring as monitor (in such capacity, the “**Monitor**”) of JTIM in this CCAA proceeding (the “**CCAA Proceeding**”).
4. On April 25, 2019, this Court issued a further amended and restated Initial Order (the “**Second Amended and Restated Initial Order**”) that, amongst other things, extended a limited stay of proceedings to the Other Defendants (as defined in the Second Amended and Restated Initial Order).

¹ All capitalized terms used but not defined herein have the meanings given to them in the Fourth Amended and Restated Court-Appointed Mediator’s and Monitor’s CCAA Plan of Compromise and Arrangement in respect of JTIM dated August 27, 2025 (the “**Fourth A&R JTIM Plan**”).

5. In the fall of 2024, a plan of compromise or arrangement in respect of JTIM dated October 17, 2024 (the “**JTIM Plan**”), developed by the Court-Appointed Mediator and the Monitor, was accepted for filing and approved by the requisite majorities of voting creditors.

6. The JTIM Plan was amended and restated on December 5, 2024 and then further amended and restated on January 27, 2025, February 27, 2025 (such amended and restated version, the “**Third A&R JTIM Plan**”) and August 27, 2025 (such amended and restated version, the Fourth A&R JTIM Plan).

7. On March 6, 2025, pursuant to the Sanction Order, this Court approved and sanctioned the Third A&R JTIM Plan and appointed Deloitte as the CCAA Plan Administrator pursuant to the CCAA Plan Administrator Appointment Order. The Fourth A&R JTIM Plan was implemented on August 29, 2025.

Deloitte Restructuring’s Appointment as Monitor

8. Prior to its appointment as Monitor, Deloitte Restructuring filed a Report of the Proposed Monitor dated March 8, 2019 (the “**Pre-Filing Report**”) to assist the Court in considering JTIM’s application for the Initial Order.

9. Among other things, the Pre-Filing Report confirmed Deloitte Restructuring was not subject to any statutory restrictions in connection with its proposed appointment as Monitor. In furtherance of full transparency, however, the Pre-Filing Report disclosed material points of contact between the Deloitte global network (the “**Deloitte Global Network**”) and JTIM’s affiliates (the “**Global Japan Tobacco Group**”).

10. In connection therewith, it was noted that Deloitte Touche Tohmatsu LLC (“**DTT**”) audits Japan Tobacco Inc. (“**Japan Tobacco**”), JTIM’s ultimate parent. DTT most recently audited Japan Tobacco for fiscal year 2024 and performed quarterly reviews for the current fiscal year. Deloitte LLP (“**Deloitte Audit**”), a Canadian member firm, historically assisted DTT with group reporting but had not done so since 2011.

11. The connections between the Deloitte Global Network and the Global Japan Tobacco Group disclosed in the Pre-Filing Report prompted a motion by the QCAPs (the “**QCAP Motion**”) and an objection from several of the provinces (the “**Consortium Objection**”). The QCAP Motion was later withdrawn and the Consortium Objection was resolved.

JTIM Plan Administration and Requirements

12. The JTIM Plan contemplates that, following the Plan Implementation Date, the Monitor will assume the role of the CCAA Plan Administrator, as an independent officer of the Court, to facilitate the coordinated administration of the CCAA Plans.

13. Under the JTIM Plan, JTIM is required to provide comprehensive and ongoing financial reporting during the Contribution Period, which the CCAA Plan Administrator is tasked with reviewing.

Preliminary Work by Deloitte Audit

14. Since JTIM was acquired by Japan Tobacco in 1998, JTIM has not been required to have audited financial statements as the Global Japan Tobacco Group was audited as a whole and JTIM never made up a large enough percentage of revenue to trigger a requirement for a local Canadian audit. However, in order to comply with the financial reporting requirements under the JTIM Plan,

JTIM's annual financial statements must be audited. JTIM determined that Deloitte Audit was best positioned to perform the required audit function for JTIM because of its familiarity with the global audit practice of DTT, who audits Japan Tobacco and its multinational tobacco business.

15. Accordingly, in anticipation of JTIM's first audit year under the JTIM Plan, JTIM engaged Deloitte Audit in December 2024 to begin performing preliminary work in respect of JTIM's opening balances for 2025, including confirming inventory balances as of January 1, 2025.

Role of CCAA Plan Administrator

16. The duties and responsibilities of the CCAA Plan Administrator are set out in Section 14.4 of the JTIM Plan (with mirror provisions set out in the plans of the other Tobacco Companies). Notably, the concluding paragraph of Section 14.4 provides that audit functions are out of scope for the CCAA Plan Administrators

17. Accordingly, the roles played by Deloitte Restructuring as CCAA Plan Administrator and Deloitte Audit as JTIM's auditor will be separate and distinct. The CCAA Plan Administrator does not verify the work of the auditor.

Activities Undertaken by the CCAA Plan Administrator

18. Upon learning of JTIM's intention to formally engage Deloitte Audit, the CCAA Plan Administrator considered any potential concerns under the CCAA, the JTIM Plan and/or the PA Appointment Order. The CCAA Plan Administrator determined Deloitte Audit could perform the requested preliminary work and accept a future appointment as auditor, with appropriate safeguards.

19. In that regard, an ethical wall was established to maintain the confidentiality and objectivity of both engagements, including preventing unauthorized sharing of information between the personnel involved in the administration of the JTIM Plan and the personnel involved in the preliminary audit work.

20. Further, independent of the requirements of the ethical wall, the CCAA Plan Administrator team members do not discuss or otherwise communicate about the plan administration and any other related sensitive and confidential information with any practitioners from Deloitte Audit, other than the “Above the Wall” person or those individuals specifically charged with governance, compliance or legal duties on behalf of Deloitte Audit or Deloitte Restructuring, who are not part of the Deloitte Audit team or CCAA Plan Administrator team. In addition, the audit will not encroach on any of the confidentiality protections, including relating to fees and disbursements, afforded to the Monitors/CCAA Plan Administrators and the Court-Appointed Mediator and their respective counsel by the Endorsement dated May 24, 2019 and all subsequent Court Orders, including the Direction dated June 26, 2025.

21. Prior to Deloitte Audit accepting a formal appointment as auditor, the views of all Claimants were solicited. None of the representatives for the Claimants communicated any objections or concerns with Deloitte Audit being the auditor of JTIM. The Superintendent of Bankruptcy is aware of Deloitte Audit being the proposed auditor of JTIM and has not expressed any concern.

Request for Approval

22. The CCAA Plan Administrator is seeking the Court’s approval of the Activities as described in the Second Report, including its implementation of safeguards to preserve

independence between the CCAA Plan Administrator and the applicable Deloitte Audit team members.

Additional Grounds

23. Section 11 of the CCAA and the inherent and equitable jurisdiction of this Court.
24. Rules 1.04, 1.05, 2.03, 3.02, 10.01, 16, 37 and 59 of the *Rules of Civil Procedure*, R.R.O. 1990, Reg. 194, as amended and the *Courts of Justice Act*, R.S.O. 1990, c. C.43 as amended.
25. 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 the motion:

- (a) The Second Report of the CCAA Plan Administrator; and
- (b) Such further and other evidence as the lawyers may advise and this Court may permit.

December 8, 2025

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TO: THE COMMON SERVICE 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.**

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

Proceeding commenced at Toronto

**NOTICE OF MOTION
(CCAA Plan Administrator Report Order)
Returnable December 15, 2025**

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in its capacity as CCAA Plan Administrator of
JTI-Macdonald Corp.

TAB 2

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

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 AND ARRANGEMENT OF
JTI-MACDONALD CORP.

Applicant

SECOND REPORT OF THE CCAA PLAN ADMINISTRATOR
December 8, 2025

INTRODUCTION¹

1. On March 8, 2019, JTI-Macdonald Corp. (“**JTIM**”, the “**Company**” or the “**Applicant**”) applied for and obtained an initial order (the “**Initial Order**”) under the *Companies' Creditors Arrangement Act* (Canada) (the “**CCAA**”) that, amongst other things, (i) granted a stay of proceedings in favour of the Applicant and a limited stay of proceedings in favour of certain affiliates of the Applicant in relation to certain proceedings, and (ii) appointed Deloitte Restructuring Inc. (“**Deloitte Restructuring**”) as monitor (in such capacity, the “**Monitor**”) of the Applicant in this CCAA proceeding (the “**CCAA Proceeding**”).
2. On April 25, 2019, this Court issued a further amended and restated Initial Order (the “**Second Amended and Restated Initial Order**”) that, amongst other things, extended a limited stay of proceedings to the Other Defendants (as defined in the Second Amended and Restated Initial Order).
3. Pursuant to Orders dated October 31, 2024, this Court among other things, approved the filing of a plan of compromise or arrangement dated October 17, 2024 (as subsequently amended and restated, the “**JTIM Plan**”) in respect of the Applicant, set the meeting of creditors for December 12, 2024 (the “**JTIM Meeting**”) for affected creditors to vote on the JTIM Plan (such creditors, the “**Eligible Voting Creditors**”), and approved a claims

¹ Capitalized terms used but not otherwise defined have the meanings ascribed to them in the Court-Appointed Mediator's and Monitor's Fourth Amended and Restated Plan of Compromise and Arrangement in respect of the Applicant dated August 27, 2025 (the “**Fourth A&R JTIM Plan**”).

procedure to identify affected claims against the Applicant for purposes of voting on the JTIM Plan.

4. The JTIM Meeting took place virtually on December 12, 2024 and the JTIM Plan was unanimously approved by the Eligible Voting Creditors. On March 6, 2025, the CCAA Court issued an Order (the “**Sanction Order**”) and endorsement sanctioning the JTIM Plan. On the same day, the Court issued an Order appointing Deloitte Restructuring Inc. as the CCAA Plan Administrator in respect of JTIM (in such capacity, the “**CCAA Plan Administrator**”).
5. The JTIM Plan was implemented on August 29, 2025.

PURPOSE

6. The purpose of this second report of the CCAA Plan Administrator (the “**Second Report**”) is to provide information to this Court with respect to the activities of JTIM and the CCAA Plan Administrator, including with respect to the implementation of certain safeguards to preserve independence between the Deloitte Audit (as defined below) team and the CCAA Plan Administrator team.

TERMS OF REFERENCE

7. Unless otherwise stated, all monetary amounts noted herein are expressed in Canadian dollars.
8. Copies of the Monitor and CCAA Plan Administrator’s prior reports and all motion records and Orders in the CCAA Proceeding are available on the Monitor/CCAA Plan Administrator’s website at www.insolvencies.deloitte.ca/en-ca/JTIM.

BACKGROUND

Pre-Filing Report and Appointment of Monitor

9. Prior to its appointment as Monitor, Deloitte Restructuring filed a Report of the Proposed Monitor dated March 8, 2019 (the “**Pre-Filing Report**”) to assist the Court in considering JTIM’s application for the Initial Order. A copy of the Pre-Filing Report (without exhibits) is attached hereto as Appendix “A”.

10. Among other things, the Pre-Filing Report confirmed Deloitte Restructuring was not subject to any statutory restrictions in connection with its proposed appointment as Monitor. In furtherance of full transparency, however, the Pre-Filing Report disclosed material points of contact between the Deloitte global network (the “**Deloitte Global Network**”) and JTIM’s affiliates (the “**Global Japan Tobacco Group**”).
11. In connection therewith, it was noted that Deloitte Touche Tohmatsu LLC (“**DTT**”) audits Japan Tobacco Inc. (“**Japan Tobacco**”), JTIM’s ultimate parent. DTT most recently audited Japan Tobacco for fiscal year 2024 and performed quarterly reviews for the current fiscal year. Deloitte LLP (“**Deloitte Audit**”), a Canadian member firm, historically assisted DTT with group reporting but had not done so since 2011.

Concerns Raised and Resolution

12. The connections between the Deloitte Global Network and the Global Japan Tobacco Group disclosed in the Pre-Filing Report prompted a motion by the QCAPs (the “**QCAP Motion**”) and an objection from several of the provinces (the “**Consortium Objection**”).
13. On April 1, 2019, the Monitor filed its Second Report of the Monitor (the “**Second Report**”) addressing these concerns and confirmed Deloitte Restructuring’s independence, noting that Deloitte Restructuring acts independently from other members of the Deloitte Global Network. A copy of the Second Report is attached hereto as Appendix “**B**”.
14. On April 24, 2019, the Monitors of each of the Tobacco Companies wrote to the Court to advise of the status of the outstanding matters to be heard at the return of the comeback hearing in respect of the Initial Order (the “**Comeback Hearing**”). In that letter, attached hereto as Appendix “**C**”, the Monitors informed the Court that the QCAP Motion had been withdrawn, and it was expected that the Consortium Objection would be resolved on a consensual basis with the assistance of the Court-Appointed Mediator.
15. On April 25, 2019, following the Comeback Hearing, the Court issued the Second Amended and Restated Initial Order continuing Deloitte Restructuring’s appointment as Monitor.

JTIM Plan Administration and Requirements

16. The JTIM Plan contemplates that, following the Plan Implementation Date, the Monitor will assume the role of the CCAA Plan Administrator, as an independent officer of the Court, to facilitate the coordinated administration of the CCAA Plans.
17. On March 6, 2025, the Court issued an Order approving and sanctioning the JTIM Plan. On that same day, the Court also issued an Order approving the appointment of Deloitte Restructuring as the CCAA Plan Administrator (the “**PA Appointment Order**”). A copy of the PA Appointment Order is attached hereto as Appendix “**D**”.
18. As set forth in the JTIM Plan, the Global Settlement Amount of \$32.5 billion, to be paid by the Tobacco Companies, is comprised of the Upfront Contributions, which were made on the Plan Implementation Date, and the Annual Contributions which will be paid annually until the Global Settlement Amount is fully paid (the “**Contribution Period**”). The Annual Contributions to be paid by the Tobacco Companies are calculated as a percentage of Net After-Tax Income generated from the Canadian operations of the Tobacco Companies.
19. Under the JTIM Plan, JTIM is required to provide comprehensive and ongoing financial reporting during the Contribution Period. As part of these obligations, JTIM is required to deliver audited financial statements by no later than March 31 of each fiscal year of the Contribution Period. JTIM’s annual audited financial statements, and particularly, the income statement, are the starting point for the calculation of the Annual Contributions to be made by JTIM under the JTIM Plan and therefore will be relied upon by the Claimants to confirm that the Annual Contributions have been calculated accurately.
20. Non-compliance with the financial reporting obligations under the JTIM Plan constitutes an event of default.

Preliminary Audit Work by Deloitte Audit

21. Since JTIM was acquired by Japan Tobacco in 1998, JTIM has not been required to have audited financial statements as the Global Japan Tobacco Group was audited as a whole and JTIM never made up a large enough percentage of revenue to trigger a requirement for a local Canadian audit. However, in order to comply with the financial reporting requirements

under the JTIM Plan, JTIM's annual financial statements must be audited. JTIM determined that Deloitte Audit was best positioned to perform the required audit function for JTIM because of its familiarity with the global audit practice of DTT, who audits Japan Tobacco and its multinational tobacco business. Deloitte Audit's familiarity with the global audit practice results in certain efficiencies and cost savings, since the software and audit policies, procedures and methodologies used in the global audit practice are either the same as or similar to those used by Deloitte Audit.

22. Accordingly, in anticipation of JTIM's first audit year under the JTIM Plan, JTIM engaged Deloitte Audit in December 2024 to begin performing preliminary work in respect of JTIM's opening balances for 2025, including confirming inventory balances as of January 1, 2025. Since fiscal year 2025 is the first audit year under the JTIM Plan, both JTIM's opening balances as of January 1, 2025, and its closing balances as of December 31, 2025, must be audited in order for JTIM to obtain an audited financial statement without a qualified opinion.

Role of CCAA Plan Administrator

23. The duties and responsibilities of the CCAA Plan Administrator are set out in Section 14.4 of the JTIM Plan (with mirror provisions set out in the plans of the other Tobacco Companies). Section 14.4 is reproduced at Appendix "E".
24. Notably, the concluding paragraph of Section 14.4 provides that audit functions are out of scope for the CCAA Plan Administrators: "For greater certainty, the CCAA Plan Administrators shall not conduct an audit or other assurance engagement, or otherwise attempt to verify the accuracy or completeness of the financial information" in, among other things, JTIM's annual audited financial statements.
25. Accordingly, the roles played by Deloitte Restructuring as CCAA Plan Administrator and Deloitte Audit as JTIM's auditor will be separate and distinct. The CCAA Plan Administrator does not verify the work of the auditor.

Activities Undertaken by the CCAA Plan Administrator

26. Upon learning of JTIM's intention to formally engage Deloitte Audit, the CCAA Plan Administrator considered any potential concerns under the CCAA, the JTIM Plan and/or

the PA Appointment Order. The CCAA Plan Administrator determined Deloitte Audit could perform the requested preliminary work and accept a future appointment as auditor, with appropriate safeguards.

27. In that regard, an ethical wall was established to maintain the confidentiality and objectivity of both engagements, including preventing unauthorized sharing of information between the personnel involved in the administration of the JTIM Plan and the personnel involved in the preliminary audit work. The key elements of the ethical wall process include, but are not limited to:
- i) Each team must be separate and distinct and there can be no overlapping of personnel between the two teams;
 - ii) Access to the files and data of each team are restricted and members of one team are prohibited from accessing the data and files of the other team – electronic safeguards are utilized to ensure compliance;
 - iii) Communication to and written confirmation from team members detailing their confidentiality obligations and acknowledging their understanding and compliance with relevant policies are required; and
 - iv) An “Above the Wall” person from Deloitte LLP’s quality control team has been designated to monitor compliance with the ethical wall.
28. Further, independent of the requirements of the ethical wall, the CCAA Plan Administrator team members do not discuss or otherwise communicate about the plan administration and any other related sensitive and confidential information with any practitioners from Deloitte Audit, other than the “Above the Wall” person or those individuals specifically charged with governance, compliance or legal duties on behalf of Deloitte Audit or Deloitte Restructuring, who are not part of the Deloitte Audit team or CCAA Plan Administrator team. In addition, the audit will not encroach on any of the confidentiality protections, including relating to fees and disbursements, afforded to the Monitors/CCAA Plan Administrators and the Court-Appointed Mediator and their respective counsel by the Endorsement dated May 24, 2019 and all subsequent Court Orders, including the Direction

dated June 26, 2025. The May 24, 2019 Endorsement is reproduced at Appendix “F” and the June 26, 2025 Direction is reproduced at Appendix “G”.

29. Prior to Deloitte Audit accepting a formal appointment as auditor, the CCAA Plan Administrator thought it appropriate to solicit the views of all Claimants. In that regard, the CCAA Plan Administrator has communicated with representatives of all the Claimants (other than the QCAPs, as discussed below). None of the representatives for the Claimants communicated any objections or concerns with Deloitte Audit being the auditor of JTIM. However, they were supportive of bringing this matter to the Court’s attention. The CCAA Plan Administrator concurred with this view.
30. With respect to the QCAPs, the CCAA Plan Administrator understands that counsel to JTIM confirmed that the QCAPs also have no issues with Deloitte Audit acting as auditor of JTIM. Further, the CCAA Plan Administrator was advised by counsel to JTIM that the Superintendent of Bankruptcy is aware of Deloitte Audit being the proposed auditor of JTIM and has not expressed any concern.

REQUEST FOR APPROVAL

31. The CCAA Plan Administrator is seeking this Court’s approval of its activities as described in this Second Report, including its implementation of safeguards to preserve independence between the CCAA Plan Administrator and the applicable Deloitte Audit team members.

All of which is respectfully submitted this 8th day of December, 2025.

Deloitte Restructuring Inc.
Solely in its capacity as CCAA Plan Administrator of
JTI-Macdonald Corp. and not in its personal capacity

Per:



Phil Reynolds, LIT
Senior Vice-President

APPENDIX “A”

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 PROPOSED PLAN OF
COMPROMISE OR ARRANGEMENT WITH RESPECT TO
JTI-MACDONALD CORP.**

**REPORT OF THE PROPOSED MONITOR
March 8, 2019**

INTRODUCTION

1. Deloitte Restructuring Inc. ("**Deloitte**" or the "**Proposed Monitor**") understands that JTI-Macdonald Corp. ("**JTIM**" or the "**Applicant**") will be bringing an application before the Ontario Superior Court of Justice (Commercial List) (the "**Court**") seeking, among other things, an initial order (the "**Proposed Initial Order**") under the *Companies' Creditors Arrangement Act* (the "**CCAA**"). The Applicant proposes that Deloitte be appointed as Monitor in the CCAA proceedings.
2. This report (the "**Report**") has been prepared by the Proposed Monitor prior to and in contemplation of its appointment as Monitor in the CCAA proceedings to provide information to the Court for its consideration on the Applicant's initial hearing seeking protection pursuant to the CCAA.

PURPOSE

3. The purpose of this Report is to provide information to the Court on:
 - i. Deloitte's qualifications to act as Monitor;
 - ii. Background information with respect to JTIM;
 - iii. An overview of arrangements in place regarding certain financing, operational and administrative services between JTIM and certain related-parties;
 - iv. The review by the Proposed Monitor's counsel of certain security granted by JTIM to JTI-Macdonald TM Corp. ("**TM**");
 - v. The review by the Proposed Monitor's counsel of other related party security;
 - vi. Deloitte's proposed monitoring procedures;
 - vii. An overview of JTIM's 13-week cash flow projection (the "**Cash Flow Statement**");
 - viii. The proposed Court-ordered charges; and
 - ix. The Proposed Monitor's comments on the Proposed Initial Order and conclusions.

TERMS OF REFERENCE AND DISCLAIMER

4. In preparing this Report and making the comments herein, the Proposed Monitor has been provided with, and has relied upon, unaudited financial information, books and records and financial information prepared by JTIM, and discussions with management of the Applicant ("**Management**") (collectively, the "**Information**").

5. The Proposed Monitor has reviewed the Information for reasonableness, internal consistency and use in the context in which it was provided. However, the Proposed Monitor has not audited or otherwise attempted to verify the accuracy or completeness of the Information in a manner that would wholly or partially comply with Canadian Generally Accepted Assurance Standards (“**Canadian GAAS**”) pursuant to the *Chartered Professional Accountants Canada Handbook* and, accordingly, the Proposed Monitor expresses no opinion or other form of assurance contemplated under Canadian GAAS in respect of the Information.
6. Some of the information referred to in this Report consists of forecasts and projections. An examination or review of the financial forecasts and projections, as outlined in the *Chartered Professional Accountants Canada Handbook*, has not been performed.
7. Future oriented financial information referred to in this Report was prepared based on Management’s estimates and assumptions. Readers are cautioned that since projections are based upon assumptions about future events and conditions that are not ascertainable, the actual results will vary from the projections, even if the assumptions materialize, and the variations could be significant.
8. Unless otherwise stated, all monetary amounts noted herein are expressed in Canadian dollars.

I. DELOITTE’S QUALIFICATIONS TO ACT AS MONITOR

9. Deloitte is a trustee within the meaning of subsection 2(1) of the *Bankruptcy and Insolvency Act* (Canada). The senior Deloitte professional personnel associated with this

matter have acquired knowledge of the Applicant and its business through discussions held with Management and other interested parties. Prior to the filing, Deloitte was engaged by JTIM for the limited purposes of assisting JTIM in preparation for a potential CCAA filing and providing financial consulting services in connection therewith. In preparation for the potential appointment as Monitor, Deloitte has spent time with Management to understand the Applicant's operations, debt structure and intercompany arrangements as more fully described in this Report for the assistance of the Court. This mandate also included consultation with independent legal advisors. Deloitte is, therefore, in a position to immediately assist the Applicant in its CCAA proceedings.

10. Deloitte is not subject to any of the restrictions on who may be appointed as Monitor pursuant to section 11.7(2) of the CCAA.
11. For completeness, the Proposed Monitor notes the following regarding other members of the Deloitte global group, for the Court's information:
 - i. In Canada, Deloitte LLP ("**Deloitte Canada**"), an affiliate of the Proposed Monitor, provides audit services to the trustees of the Applicant's pension plans. Deloitte Canada is retained directly by the trustees, although paid by JTIM;
 - ii. Deloitte Canada provides personal tax compliance services for JTIM in respect of its internationally assigned employees. This work forms a part of a global engagement between Deloitte SA in Switzerland and JT International SA ("**JTI-SA**") in respect of internationally assigned employees of Japan Tobacco Inc. ("**Japan Tobacco**");

- iii. Previously, Deloitte Canada provided certain administrative functions to certain litigation defendants, including JTIM by hosting data productions received from provincial governments for counsel's review and assembly relating to health care cost litigation in Quebec. This mandate finished in April 2013. Deloitte Canada currently provides such administrative hosting functions for health care cost litigation in New Brunswick. No advocacy, analysis, review or reporting functions were or are currently performed by Deloitte Canada in respect of such hosting services;
- iv. Globally, Deloitte Touche Tohmatsu LLC ("**DTT**") is the independent auditor of Japan Tobacco. DTT most recently conducted an audit for fiscal 2017 and quarterly reviews for the current year out of its offices in Tokyo, Japan. There is no common ownership between the Proposed Monitor and DTT and neither entity has control or oversight over the other. Deloitte Canada does not provide audit services to JTIM or any of the Canadian affiliates or subsidiaries of JTIM. For fiscal years ended 2011 and prior, Deloitte Canada assisted DTT with group reporting, but no longer does so;
- v. In 1999, Deloitte & Touche LLP (the predecessor firm name for Deloitte Canada) was retained by RJR Nabisco, Inc. to provide an independent valuation of the assets of RJR Nabisco, Inc. in connection with the purchase by Japan Tobacco of the world-wide tobacco operations of R.J. Reynolds Tobacco Company. Also in 1999, Deloitte & Touche LLP provided an independent valuation of the brand equity of RJR-Macdonald Corp. for the purposes of supporting the fair market value transfer

of RJR Macdonald Corp.'s beneficial ownership of its trademarks and the associated rights to sell goods bearing the trademarks to TM. These matters were described in the Fourth Report of Ernst & Young Inc. in its capacity as Monitor in JTIM's 2004 CCAA proceedings, which is attached as Exhibit "G" to the McMaster Affidavit (as defined below); and

- vi. Deloitte & Touche LLP previously provided specialized tax services (not audit functions) to JTIM and its Canadian affiliates but has not provided such services for at least five years.
- 12. None of the Proposed Monitor's team members have had any prior involvement with the matters set out above. Only the Proposed Monitor's team members will have access to confidential information and internal documents relating to the CCAA proceedings.
- 13. Deloitte has consented to act as Monitor, should the Court grant the Applicant's request for the Proposed Initial Order.
- 14. The Proposed Monitor has retained Blake, Cassels & Graydon LLP ("**Monitor's Counsel**") to act as its independent counsel.

II. BACKGROUND INFORMATION WITH RESPECT TO JTIM

- 15. This Report should be read in conjunction with the Affidavit of Robert McMaster sworn March 8, 2019 (the "**McMaster Affidavit**") for additional background information with respect to JTIM, upon which the Proposed Monitor relies.

Background

16. Japan Tobacco, together with its subsidiaries, manufactures and sells tobacco products, primarily cigarettes, in Japan and internationally. It also distributes imported tobacco products. Japan Tobacco is based in Tokyo, Japan.
17. In Canada, JTIM is a wholly owned subsidiary of JT Canada LLC Inc. (“**ParentCo**”) which is an indirect subsidiary of Japan Tobacco. Originally founded in 1858 as McDonald Brothers and Co., the company’s name was changed to JTI-Macdonald Corp. in 1999 when Japan Tobacco bought the non-US tobacco operations of RJR Nabisco Inc., R.J. Reynolds Tobacco Co. and their respective affiliates (collectively, the “**RJR Group**”). JTIM is the third largest tobacco company based on volume of sales in Canada.
18. JTIM manufactures and imports a variety of cigarettes – its Canadian manufactured brands include Export A, Macdonald Special, Liggett Ducat and Winston. Besides standard cigarettes, the company also produces two lines of fine-cut products, under the brand names Export A and Macdonald Special, and Century Sam cigars.
19. The Applicant’s sales, net of taxes, for fiscal 2018 were approximately \$598.5 million. The vast majority of the Applicant’s customers are tobacco wholesalers who then distribute the products to their retail customers. In limited circumstances, the Applicant sells products directly to retailers and consumers in Ontario.

Class Actions and Health-Care Cost Recovery Litigation

20. As discussed in the McMaster Affidavit, a judgment (the “**Judgment**”) was rendered by the Quebec Superior Court against JTIM in two class action lawsuits (the “**Quebec Class**

Actions”) commenced in the Province of Quebec. The Judgment was appealed to the Quebec Court of Appeal by JTIM and the other defendants in the proceedings, also Canadian tobacco companies.

21. As discussed in the McMaster Affidavit, the Quebec Court of Appeal substantially upheld the Judgment for the reasons described in the decision released on March 1, 2019 (the “**QCA Judgment**”). The QCA Judgment is 422 pages and is in French only. The English conclusions of the QCA Judgment and an English summary prepared by the Quebec Court of Appeal is attached as Exhibit “A” to the McMaster Affidavit.
22. As discussed in the McMaster Affidavit, JTIM is also the subject of lawsuits filed by each of the ten provinces against tobacco industry members relating to the potential recovery of health-care costs resulting from alleged “tobacco related wrongs” (the “**HCCR Actions**”). The defendants in such actions include R.J. Reynolds Tobacco Co. and R.J. Reynolds Tobacco International, Inc. (collectively, “**Reynolds**”), which parties benefit from an indemnity arising from the purchase agreement between the RJR Group and Japan Tobacco. As stated in the McMaster Affidavit, JTIM may have liability for the indemnification claims should a judgment be rendered against Reynolds. The total potential quantum of damages claimed is not yet known. The amount of claims, where quantified or estimated based on plaintiffs’ expert reports, against Canadian tobacco industry members are as follows:

| Provinces | Estimated Amount of Claims ('000s) |
|---------------------------|---|
| British Columbia | 120,000,000 |
| Alberta | 10,000,000 |
| Saskatchewan | Unspecified |
| Manitoba | Unspecified |
| Ontario | 330,000,000 |
| Quebec | 61,000,000 |
| New Brunswick | 18,000,000 |
| Nova Scotia | Unspecified |
| Prince Edward Island | Unspecified |
| Newfoundland and Labrador | Unspecified |
| | 539,000,000 plus unspecified amounts |

23. In addition to the Quebec Class Actions lawsuits and the HCCR Actions, the McMaster Affidavit also describes the following other outstanding litigation:

| Provinces | Name of Class Action | Status | Estimated Value of Claims ('000s) |
|------------------|-----------------------------|-----------------|--|
| British Columbia | Bourassa | Dormant/Expired | Unspecified |
| British Columbia | McDermid | Dormant/Expired | Unspecified |
| Alberta | Dorian | Dormant/Expired | Unspecified |
| Saskatchewan | Adams | Dormant/Expired | Unspecified |
| Manitoba | Kunta | Dormant/Expired | Unspecified |
| Ontario | Jacklin | Dormant | Unspecified |
| Ontario | Tobacco Growers | Ongoing | \$50.0 million (plus interest and costs) |
| Nova Scotia | Semple | Dormant/Expired | Unspecified |

24. Based on the financial position of JTIM as set out in the McMaster Affidavit, JTIM does not have available funds to satisfy the QCA Judgment.
25. The Applicant requires the protections afforded under the CCAA in order to maintain the *status quo* of its operations and preserve going concern value for all of its stakeholders. If JTIM is forced to cease operations as a result of enforcement steps taken pursuant to the QCA Judgment, significant value of the business could be lost, employees will lose their

jobs, and trade creditors who rely on JTIM will be harmed. The stay of proceedings will provide an opportunity for JTIM to engage in discussions with its creditors, assess its strategic options, and seek a collective solution for the benefit of all stakeholders.

III. OVERVIEW OF ARRANGEMENTS WITH RELATED PARTIES

26. An organization chart with the relevant Canadian entities related to JTIM is attached as Exhibit “B” to the McMaster Affidavit.
27. As part of the Japan Tobacco global group, the Applicant benefits from group purchasing, financing, management expertise, information technology and licensing agreements. A description of certain related parties and the nature of their arrangements with the Applicant are outlined in detail in the McMaster Affidavit. The following table summarizes the material receivables and payables (gross annual transactions greater than \$1.0 million) between the related parties as at December 31, 2018:

| Amounts in '000s | | | | Balance as at December 31, 2018 | |
|---|--|--|----------------------------------|------------------------------------|------------------|
| Related Party | Description | Frequency | 2018 Annual Receipt (Payment) | Due to JTIM | Due from JTIM |
| TM | Convertible debenture ¹ | Monthly | (93,634) | - | 1,187,674 |
| TM | Royalty payments ¹ | Monthly | (10,640) | 429 | - |
| ParentCo | Revolving Line of Credit* | On demand | - | - | - |
| ParentCo | Demand note | On demand | - | - | 8,989 |
| JTI-SA | Tobacco purchases, payments related to contract manufacturing and distribution of certain brands | Monthly in advance except Vantage royalties and distribution of certain brands which are 60 or 90 days | (262,594) | - | 54,537 |
| JTI-SA | Contract manufacturing for JTI-SA | Monthly | 199,051 | 23,252 | - |
| JTI-SA | Global IT services from JTI-SA | Monthly in advance | (4,140) | - | - |
| JTI-SA | Global function services for JTI-SA | Quarterly | 4,691 | 34 | - |
| JTI-SA | Regional IT services | Quarterly | 4,475 | 416 | - |
| JTI-SA | Global human resources services | Monthly | 5,058 | 207 | - |
| JTIH-BV ² | Global administrative services | Monthly in advance | (6,688) | - | - |
| JTI Services ³ | Global human resources services | Monthly in advance | (1,203) | 34 | - |
| JTI-US ⁴ | Regional services provided for JTI-US | Quarterly | 3,075 | 26 | - |
| JTI-US ⁴ | Regional services provided by JTI-US | Monthly in advance | (632) | - | - |
| LLC-Cres ⁵ | Tobacco purchases | Monthly in advance | (2,229) | - | 70 |
| JTI-USA ⁶ | Distribution of brands in USA | Two to three times annually | 4,428 | 1,890 | - |
| JTI-USA ⁶ | Master Settlement Agreement for distribution of brands in USA | Monthly in advance | (578) | - | - |
| JTI-BusServ ⁷ | Global administrative services | Monthly in advance | (1,052) | - | - |
| JTI CTI ⁸ | Administrative services | Monthly | 174 | 933 | - |
| Logic ⁹ | Scientific & regulatory affairs services | Quarterly | 1,184 | - | - |
| | | | | 27,221 | 1,251,270 |
| <p>*ParentCo Loan Agreement was entered into on June 25, 2015 to replace the facility with Citibank; the principal balance outstanding is nil as at February 28, 2019.</p> <p>¹Amounts include both principal and interest accrual and payments. The Forbearance Letter dated August 3, 2017 (as amended on January 26, 2018, April 10, 2018, July 31, 2018, September 28, 2018 and January 8, 2019) between TM and JTIM amended the royalty and interest payment frequency from semi-annually to monthly. The amount owing with respect to royalty payments is net of a deposit of \$1.3 million provided to TM, in satisfaction of the terms of the January 26, 2018 amendment.</p> <p>²JT International Holding B.V.</p> <p>³JTI Services Switzerland SA</p> <p>⁴JTI (US) Holdings Inc.</p> <p>⁵LLC Cres Neva</p> <p>⁶Japan Tobacco International USA Inc.</p> <p>⁷JTI Business Services Ltd.</p> <p>⁸JTI Canada Tech Inc.</p> <p>⁹Logic Technology Development LLC</p> | | | | | |

IV. REVIEW OF TM SECURITY

28. The monies owed by the Applicant to TM are evidenced by debentures (the “**TM Term Debentures**”) governed by the laws in the Province of Nova Scotia that are due November 18, 2024. The TM Term Debentures are redeemable at the option of the Applicant and convertible into special preference shares of JTIM at the option of TM. As part of an agreement by JTIM’s secured creditors to forbear from exercising their enforcement rights against JTIM, the TM Term Debentures were amended by an agreement dated August 3, 2017, which amendment changed the interest payment dates (but not the amounts) from bi-annually to monthly; monthly interest payments are approximately \$7.6 million and principal payments, due every May and November, are approximately \$950,000.
29. The Proposed Monitor has requested that Monitor’s Counsel review and opine on the security granted by JTIM to TM to secure obligations owing by JTIM to TM (the “**TM Security**”). The Proposed Monitor understands that JTIM owns real and personal (i.e: moveable and immovable) property in the Province of Quebec, and personal property in the other nine provinces.
30. Subject to the assumptions and qualifications as more particularly described in the opinions of the Monitor’s Counsel, TM holds a valid security interest in the personal property of JTIM located in Nova Scotia, Ontario, Alberta and British Columbia and in the personal property and real property of JTIM located in Quebec. Copies of the Monitor’s Counsel’s legal opinions will be made available to the Court at the hearing of this matter and to stakeholders on appropriate arrangements regarding confidentiality, reliance and privilege.

31. Monitor's Counsel has also conducted searches of the personal property security registries against JTIM in Saskatchewan, Manitoba, New Brunswick, Prince Edward Island and Newfoundland & Labrador (the "**Additional Provinces**"). The searches disclose registrations in favour of TM, which on the face of the search have not expired. The Monitor's Counsel is not licenced to practice law in these jurisdictions, and no legal opinion has been given in respect of the validity or perfection of the TM Security in the Additional Provinces. The Proposed Monitor has been advised that JTIM's collateral in these jurisdictions is limited to non-material amounts of inventory compared to the total indebtedness owing to TM (i.e. \$1.2 billion). As a result, the Monitor did not engage counsel in the Additional Provinces to provide security opinions.
32. As noted in the McMaster Affidavit, ParentCo privately appointed PricewaterhouseCoopers Inc. as receiver of TM on July 9, 2015 pursuant to the security granted by TM to ParentCo. Accordingly, references hereinafter to TM are to TM, in receivership.

V. OTHER RELATED PARTY SECURITY

33. In addition to the TM Security, JTIM has granted security to ParentCo to secure JTIM's obligations under a revolving line of credit. The Monitor understands there are currently no amounts owing under that credit facility.
34. JTIM has also granted security to secure ordinary course trade terms in favour of certain related party suppliers. Such trade terms and related security are discussed in greater detail in the McMaster Affidavit.

35. The Applicant is not seeking any specific relief in connection with these secured arrangements at this time. Monitor's Counsel is in a position to review and opine on such security, if and when required.

VI. PROPOSED MONITORING PROCEDURES

36. As part of its monitoring procedures, the Proposed Monitor would monitor and report on the following to ensure compliance with the Proposed Initial Order:
- i. material disbursements by the Applicant to third parties in compliance with the terms of the Proposed Initial Order;
 - ii. receipts and disbursements as may be authorized by the Court, in respect of the Applicant's bank accounts, and weekly receipts and disbursements on a summary basis for comparison to the 13-week Cash Flow Statement (as may be updated in the future);
 - iii. receipts from related parties in respect of goods and services provided in accordance with existing contracts;
 - iv. fees paid by the Applicant to any of its related parties in respect of goods supplied and services performed to test that they are reasonable and supportable, in accordance with existing contracts including:
 - (a) terms and payments with respect to related party tobacco leaf purchases;

- (b) fees paid by the Applicant to related parties in respect of the global information technology services provided, the sale of tobacco brands under the distribution agreement and the use of trademarks through licensing agreements, to test that they are reasonable and supportable, in accordance with existing contracts;
- (c) fees paid by the Applicant to related parties in respect of the global functions provided, to test that they are reasonable and supportable, in accordance with existing contracts;
- (d) fees paid by the Applicant to related parties in respect of staffing support, to test that they are reasonable and supportable, in accordance with existing contracts; and
- (e) royalty payments made to TM in respect of the use of licensed trademarks and interest service payments made to TM in connection with the TM Term Debentures.

37. The Proposed Monitor believes that appropriate monitoring of the delivery of and payment for third party and intercompany services will provide the necessary oversight of the Applicant's operations during the CCAA proceedings. The Applicant and the Proposed Monitor have discussed these procedures with which the Applicant concurs.

VII. APPLICANT'S CASH FLOW STATEMENT

38. The Applicant, with the assistance of the Proposed Monitor, has prepared the Cash Flow Statement for the period from February 25 to May 24, 2019 (the “**Cash Flow Period**”) for the purposes of projecting the estimated results of the Applicant’s planned operations and other activities during the Cash Flow Period. A copy of the Cash Flow Statement is attached as Appendix “A” hereto, and summarized below:

| Summary of Cash Flow Statement | Amount ('000s) |
|--|-----------------------|
| Receipts | |
| Sales and other | 261,379 |
| Intercompany | 75,959 |
| Total Receipts | 337,338 |
| Disbursements | |
| Payroll and Benefits | 17,085 |
| Pension | 2,301 |
| Taxes | 184,153 |
| Intercompany – Debenture | 23,878 |
| Intercompany – Royalties | 2,284 |
| Intercompany – Other | 70,766 |
| Professional Fees | 4,194 |
| Restructuring Costs | 2,430 |
| Other | 62,036 |
| Total Disbursements | 369,127 |
| Cash Flow Surplus / (Deficit) | (31,789) |
| Opening Cash | 161,196 |
| Closing Cash | 129,407 |
| Cash Collateral pledged to Citibank | 8,900 |
| Closing Cash net of Cash Collateral | 120,507 |

39. The Cash Flow Statement is presented on a weekly basis during the Cash Flow Period and represents the best estimate of Management of the projected cash flow during the Cash Flow Period. The Cash Flow Statement has been prepared by Management, using the probable and hypothetical assumptions set out in the notes to the Cash Flow Statement (the “Assumptions”).
40. The Proposed Monitor has reviewed the Cash Flow Statement to the standard required of a Court-appointed monitor by section 23(1)(b) of the CCAA. Section 23(1)(b) requires a monitor to review the debtor’s cash flow statement as to its reasonableness and to file a report with the Court on the monitor’s findings. The Canadian Association of Insolvency and Restructuring Professionals’ Standards of Professional Practice include a standard for monitors fulfilling their statutory responsibilities under the CCAA in respect of a monitor’s report on a cash flow statement.
41. In accordance with the standard, the Proposed Monitor’s review of the Cash Flow Statement consisted of inquiries, analytical procedures and discussions related to the Information. Since the Assumptions need not be supported, the Proposed Monitor’s procedures with respect to them were limited to evaluating whether they were consistent with the purpose of the Cash Flow Statement. The Proposed Monitor also reviewed the support provided by Management for the Assumptions and the preparation and presentation of the Cash Flow Statement.

42. Based on the Proposed Monitor's review, nothing has come to its attention that causes it to believe, in all material aspects, that:
- i. the Assumptions are not consistent with the purpose of the Cash Flow Statement;
 - ii. as at the date of this Report, the Assumptions are not suitably supported and consistent with the plans of the Applicant or do not provide a reasonable basis for the Cash Flow Statement, given the Assumptions; or
 - iii. the Cash Flow Statement does not reflect the Assumptions.
43. Since the Cash Flow Statement is based on Assumptions regarding future events, actual results will vary from the information presented even if the Assumptions occur, and the variations could be material. Accordingly, the Proposed Monitor expresses no assurance as to whether the Cash Flow Statement will be achieved. In addition, the Proposed Monitor expresses no opinion or other form of assurance with respect to the accuracy of the financial information presented in the Cash Flow Statement, or relied upon by the Proposed Monitor in preparing this Report.
44. The Cash Flow Statement has been prepared solely for the purposes described above, and readers are cautioned that it may not be appropriate for other purposes.

VIII. OTHER COURT ORDERED CHARGES

45. The Proposed Initial Order provides for an Administration Charge (as defined below), a Directors' Charge (as defined below) and a Sales and Excise Tax Charge (as defined below) (collectively, the "**Charges**").

46. If the Proposed Initial Order is granted, the Charges shall constitute a charge on the Property (as defined in the Proposed Initial Order) and such Charges shall rank in priority to all other security interests, trusts, liens, charges and encumbrances, claims of secured creditors, statutory or otherwise in favour of any person, except for (i) purchase money security interests, (ii) statutory superpriority deemed trusts and liens for unpaid employee source deductions, (iii) statutory superpriority deemed trusts and liens for any pension obligations with respect to the Applicant's pension plans, (iv) liens for unpaid municipal property taxes or utilities that are given first priority over other liens by statute, and (v) cash collateral securing letters of credit or bank guarantees (the "**Permitted Priority Liens**").

Administration Charge

47. The Proposed Initial Order provides for a charge (the "**Administration Charge**") in favour of counsel to the Applicant, the Monitor, Monitor's Counsel and the proposed Chief Restructuring Officer (the "**CRO**"), other than any success fee in respect of the CRO. The Administration Charge shall not exceed an aggregate amount of \$3.0 million, as security for professional fees and disbursements incurred at the standard rates and charges of the CRO, the Monitor and such counsel, both before and after the issuance of the Proposed Initial Order in respect of these CCAA proceedings.

Directors' Charge

48. The Proposed Initial Order provides for a charge in the amount of \$4.1 million (the "**Directors' Charge**") in favour of the Applicant's directors and officers as security for any obligations or liabilities that may arise after the commencement of the CCAA

proceedings, except to the extent that such obligation or liability is incurred as a result of such director's or officer's gross negligence or wilful misconduct and to the extent that such directors do not have coverage under any directors' and officers' insurance policy.

Sales and Excise Tax Charge

49. The Proposed Initial Order provides for a charge in favour of the provincial, territorial and federal taxing authorities (the “**Sales and Excise Tax Charge**”) to secure the Applicant's obligations to remit harmonized and provincial sales or excise tax or duties, import or customs duties and provincial and territorial tobacco tax (collectively, the “**Sales and Excise Taxes**”). The Sales and Excise Tax Charge shall not exceed an aggregate amount of \$127.0 million.

IX. PROPOSED MONITOR'S COMMENTS ON THE PROPOSED INITIAL ORDER

50. In addition to the matters described above, the Proposed Monitor has set out its observations with respect to the following certain matters relating to the Proposed Initial Order or referenced in the McMaster Affidavit:
- i. the Charges and their priority;
 - ii. the appointment of the CRO;
 - iii. payment of trade creditors, taxes, pension and other disbursements;
 - iv. scope of stay;
 - v. sealing Order; and
 - vi. notice to creditors.

i. Charges

51. The Charges, as set out in the Proposed Initial Order, would have the following priority:

- i. Administration Charge;
- ii. Directors' Charge;
- iii. Sales and Excise Tax Charge.

52. The Proposed Monitor is of the view that the proposed Administration Charge is reasonable and appropriate in the circumstances, having regard to, among other things, the complexity of these CCAA proceedings, and the potential professional work involved at peak times.

53. The Proposed Monitor reviewed the proposed amount of the Directors' Charge, taking into consideration the amount of the Applicant's payroll and vacation pay and pension liabilities. The quantum of the Directors' Charge, however, does not include amounts owed by JTIM in respect of taxes that may also be personal liabilities of the directors and/or officers if not paid by JTIM. JTIM's obligations in connection with such tax liabilities are to be secured by the Sales and Excise Tax Charge.

54. The table below is derived from the Cash Flow Statement and discussions with Management and estimates the maximum liability associated with potential directors' and officers' obligations in the ordinary course of business:

| Potential Directors & Officers Liabilities | Payment Frequency | Max Liability | Amount ('000s) |
|--|-------------------|---------------|----------------|
| Payroll | Weekly/Bi-weekly | 2 weeks | 2,100 |
| Pension | Monthly | 1 month | 982 |
| Vacation and other | Monthly | 1 month | 557 |
| | | | 3,639 |
| Proposed Director's Charge | | | 4,100 |

55. The Applicant maintains directors' and officers' liability insurance ("**D&O Insurance**") for the directors and officers of the Applicant. The Proposed Monitor understands that the current D&O Insurance provides a total of \$12.9 million in coverage and a retention amount (akin to a deductible) is applicable for certain claims in the amount of \$45,178.
56. The proposed Directors' Charge of \$4.1 million is approximately the maximum estimated liability associated with directors' and officers' non-tax related obligations at peak times. The Proposed Initial Order provides that the Directors' Charge will only be available to the extent the D&O Insurance is not available, in the event a claim is made. The Proposed Monitor is of the view that the Directors' Charge is reasonable and appropriate under the circumstances.
57. The Proposed Monitor reviewed the proposed amount of the Sales and Excise Tax Charge, taking into consideration the amount of the Applicant's tax liabilities and surety bonds or other security posted as security for such unremitted taxes. As mentioned in the McMaster Affidavit, the Applicant remits more than \$500 million in taxes and duties annually to the

federal and provincial governments in relation to the sale of JTIM's products; directors and officers potentially face significant liability if those taxes were not remitted. The Sales and Excise Tax Charge ensures this risk is mitigated and provides the directors and officers comfort that they will not expose themselves to personal liability by remaining with JTIM. The table below estimates the maximum liability the directors and/or officers may be personally liable for if not paid by JTIM:

| Potential Directors & Officers Liabilities | Payment Frequency | Max Liability | Amount ('000s) |
|---|-------------------|---------------|----------------|
| Domestic and Import Duty | Monthly | 2 months | 116,796 |
| GST/HST/QST | Monthly | 2 months | 14,217 |
| Income Tax | Monthly | 1 month | 1,685 |
| Provincial Tobacco Tax | Monthly | 2 months | 3,393 |
| | | | 136,091 |
| Less: Amounts provided for by surety bonds | | | (8,916) |
| | | | 127,175 |
| Proposed Sales and Excise Tax Charge | | | 127,000 |

58. As noted above, these tax liabilities have not been taken into consideration in determining the quantum of the Directors' Charge. The Proposed Monitor is of the view that the Sales and Excise Tax Charge is reasonable and appropriate under the circumstances.

ii. CRO Appointment

59. The Applicant seeks the approval and confirmation of the Court of the retention of an experienced CRO to oversee and direct the stakeholder engagement and negotiation process and the approval of the terms of the CRO's engagement letter. The Proposed Monitor understands that the engagement of a CRO is requested in order to minimize the

disruption to the business and the distraction of senior executives away from the task of managing the business.

60. A copy of the unredacted CRO engagement letter is attached to the McMaster Affidavit as Confidential Exhibit “1” (the “**CRO Engagement Letter**”).
61. The CRO Engagement Letter provides for both a monthly work fee as well as a success fee. The Proposed Monitor is of the view that the work fee is reasonable and consistent with fees approved in other recent CCAA proceedings.
62. The success fee is only payable if the Quebec Class Actions are settled contractually or compromised pursuant to a CCAA plan or if all claims filed against the Applicant in the CCAA proceedings (including the Quebec Class Actions, the HCCR Actions and the other tobacco related claims) are contractually settled or compromised in a CCAA plan. The success fee is not payable where the assets of JTIM are sold.
63. The Proposed Monitor is of the view that that success fee is reasonable in light of (i) the nature and complexity of the Quebec Class Actions, the HCCR Actions and other tobacco related litigation that has been commenced against JTIM; (ii) the quantum of the QCA Judgment and the amounts asserted in other tobacco related litigation (including the HCCR Actions) against JTIM relative to the success fee; (iii) the enterprise value of JTIM that would be preserved in a successful resolution of such claims relative to the success fee; and (iv) the fact that the success fee is not payable in a liquidation or sale of JTIM’s business or assets but only payable in circumstances where a consensual resolution has

been achieved, either by way of a contractual settlement or a CCAA plan that receives requisite creditor support and court approval and is implemented.

64. The Proposed Monitor is of the view that the relief sought in the Proposed Initial Order with respect to the CRO, including with respect to limitations of liability of the CRO, are appropriate in the circumstances and consistent with established precedent.

iii. Payment of employees, trade creditors, taxes, pension obligations and other disbursements

65. As described in the McMaster Affidavit, the Applicant proposes to pay its employees, trade creditors, taxes, pension obligations and other disbursements in the ordinary course of business for amounts owing both before and after JTIM's application to the Court for protection under the CCAA.

66. The McMaster Affidavit states that there are approximately 1,300 suppliers and normal course creditors to the Applicant, with approximately 15% being resident in foreign jurisdictions. All such trade suppliers are current at this time, with standard payment terms not typically exceeding 30 days. Management advises the Proposed Monitor that as at December 31, 2018 approximately \$108.1 million is owed to non-related third parties. The third party amounts are comprised of taxes and duties, trade creditors, accruals and other liabilities. Further amounts are owed for pension and post-retirement benefits. Additionally, as at December 31, 2018, the current portion of liabilities owed to related parties is approximately \$40.0 million.

67. The current portion of related party amounts pertain to trade related payables, demand promissory notes payable to ParentCo, royalty payments due in respect of the license of

trademarks from TM, and interest payable to TM under the TM Term Debentures. Further, the Applicant owes approximately \$1.2 billion to TM under the TM Term Debentures.

68. While pre-filing claims could be stayed pursuant to the CCAA, the Proposed Monitor does not object to the Applicant's intention to make the proposed pre-filing payments for the reasons set out below.
69. Employees, Pension Obligations, Taxes and Duties: The Proposed Monitor is supportive of paying pre-filing amounts in relation to payroll and benefits including normal course pension payments and special payments, and taxes and duties, many of which amounts have priority status and/or will give rise to director liability if not paid. In the Proposed Monitor's experience, it is common to pay both pre-filing and post-filing obligations to employees in the normal course, including to ensure continued and uninterrupted service by employees. To the extent that cash flows support the ability to do so, in the Proposed Monitor's experience, it is also common to pay both normal course and special payments pension obligations. Based on the Proposed Monitor's discussions with Management, the Applicant has the cash resources to make the required payments.
70. Third Party Trade Creditors: The Proposed Monitor supports the Applicant's proposal to pay third party trade creditors for the following reasons:
 - i. As noted in the McMaster Affidavit, related party suppliers have amended their contractual terms to provide for at will supply and do not have long term supply obligations. It is JTIM's intention to treat all categories of suppliers equally and not advantage those that may be better placed to exert commercial pressure because

of their geographic location or supply terms. The incremental cost of paying the pre-filing amounts of those third party suppliers situated in Canada that also have committed supply obligations is not material relative to the value of the Applicant's business, the Applicant's cash resources or the QCA Judgment.

- ii. Paying these creditors their pre-filing debt in the ordinary course avoids significant administrative time expenditure of Management and the Proposed Monitor communicating, negotiating future payment terms, and calculating pre- and post-filing cut-off with this large number of parties.
- iii. The Applicant's production facility operates on a near-continuous basis. There is significant risk that an unpaid supplier could temporarily disrupt production by withholding supply until such communication and arrangements have been put in place or orders of the Court are enforced. This risk is avoided by paying such suppliers their current invoices in the ordinary course for pre-filing obligations.
- iv. The proposed CCAA proceeding is not intended to be an operational restructuring and the Applicant does not seek CCAA protection in response to any liquidity constraints arising from any inability to service its pre-filing trade credit. To the contrary, the Applicant has the cash resources to continue to make such payments in the normal course and minimize any deleterious effects of the proposed CCAA proceedings on the supply chain.

71. Related Party Payments: As noted above, the Applicant's related party suppliers supply on an at will basis. Like third party trade creditors, the Applicant's related party suppliers

provide needed supplies and services pursuant to previously agreed upon trade terms. Making the requested payments in accordance with ordinary terms does not appear to place any undue burden on the cash resources of the Applicant and allows similarly situated trade creditors to be treated rateably. The Proposed Monitor does not see any basis for asymmetrical treatment of suppliers. The Proposed Monitor notes that the Applicant does not owe any amounts to TM in respect of pre-filing royalty payments.

72. Interest Service Payment: In light of the Monitor's Counsel's conclusions about the validity of the TM Security, the Proposed Monitor does not object to ordinary course interest payments under the TM Term Debentures being made. As noted in the McMaster Affidavit, JTIH-BV has provided an undertaking to repay any post-filing interest received during the CCAA proceedings in the event that this Court (or any applicable appellate court) should finally determine that TM was not entitled to such post-filing interest payments.

iv. Scope of the Stay

73. In addition to the standard stay of proceedings contemplated by the CCAA Model Order, under the Proposed Initial Order, the Applicant seeks to stay the Pending Litigation related to a Tobacco Claim (defined terms as defined in the Proposed Initial Order) including the HCCR Actions against all parties thereto, including Reynolds.
74. As noted above, Reynolds benefits from an indemnity for which JTIM could have liability should a judgment be rendered against Reynolds in the HCCR Actions.

75. The Proposed Monitor is of the view that the scope of the stay is appropriate as it affords the parties the opportunity to reach a global settlement to address the potential liability of JTIM as both principal and potential indemnitor.

v. *Sealing Order*

76. As described in the McMaster Affidavit, the Applicant is seeking a sealing order in respect of the unredacted CRO engagement letter. The CRO engagement letter contains commercially sensitive information regarding the terms of the engagement of the CRO that the CRO has advised may have a detrimental impact on its ability to negotiate compensation on future engagements.

77. The Monitor is of the view that the sealing of the unredacted CRO engagement letter should not materially prejudice any third parties and supports such sealing.

vi. *Notice to creditors*

78. The Proposed Monitor will fulfill the statutory requirement to send a notice of the CCAA proceedings to every known creditor who has a claim against the Applicant of more than \$5,000. Subject to the Court approving this increased threshold, the Proposed Monitor believes this is reasonable notice considering that JTIM proposes to pay its employees, trade creditors, taxes, pension obligations and other disbursements in the ordinary course of business for amounts owing both before and after the CCAA filing. It is the Proposed Monitor's intention to publish two notices of the CCAA filing in each of the national edition of the *Globe and Mail* and *La Presse*. Stakeholder communications and the Initial

Order will be published on the Proposed Monitor's dedicated website in English and French.

CONCLUSION

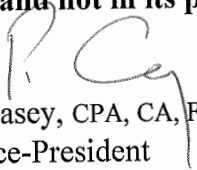
79. Based on the circumstances and analysis set out above, the Proposed Monitor is supportive of the Applicant's request for relief pursuant to the CCAA and the terms of the Proposed Initial Order.

All of which is respectfully submitted this 8 th day of March, 2019.

Deloitte Restructuring Inc.

**Solely in its proposed role as Court-appointed Monitor
of JTIM, and not in its personal capacity**

Per:


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

APPENDIX “B”

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 OF
JTI-MACDONALD CORP.**

**SECOND REPORT OF THE MONITOR
APRIL 1, 2019**

INTRODUCTION

1. On March 8, 2019, 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 (the "**Court**") granted on March 8, 2019 (the "**Initial Order**"), Deloitte Restructuring Inc. ("**Deloitte Restructuring**") was appointed as the Monitor in these proceedings (in such capacity, the "**Monitor**"). The Initial Order provided for a stay of proceedings with respect to the Applicant until and including April 5, 2019 (the "**Stay Period**"). These proceedings commenced by the Applicant will be referred to herein as the "**CCAA Proceedings**".
2. Imperial Tobacco Canada Limited, Imperial Tobacco Company Limited (together, "**ITL**") and Rothmans, Benson and Hedges Inc. ("**RBH**") have also each filed for CCAA protection. ITL, RBH and JTIM are collectively referred to herein as the "**Co-Defendants**". The comeback motion in respect of the Initial Order and the initial orders

granted in respect of the other Co-Defendants has been scheduled for April 4 and 5, 2019 (the “**Comeback Motion**”), at which the Applicant will, among other things, seek to extend the Stay Period to June 28, 2019.

3. In connection with JTIM’s application under the CCAA, Deloitte Restructuring filed a report (the “**Pre-Filing Report**”) of the proposed monitor (the “**Proposed Monitor**”) dated March 8, 2019. The Monitor served and filed the First Report of the Monitor dated March 28, 2019 (the “**First Report**”) which, among other things, described the activities of the Monitor and JTIM since the granting of the Initial Order, disclosed JTIM’s cash receipts and disbursements for the three-week period ended March 22, 2019, provided a cash flow projection for the 27-week period from March 25, 2019 to September 27, 2019 and set out the Monitor’s support for the extension of the Stay Period to June 28, 2019.
4. On March 28, 2019, Conseil Québécois sur le tabac et la santé, Jean-Yves Blais and Cécilia Létourneau (the “**Quebec Class Action Plaintiffs**”) filed a motion in the CCAA Proceedings returnable at the Comeback Motion seeking variations of the Initial Order and other relief in connection with these CCAA Proceedings (the “**Quebec Class Action Motion**”). The heads of relief in the Quebec Class Action Motion listed below are those to which the Monitor believes it is appropriate to provide further information for the Court’s consideration, namely, the Quebec Class Action Plaintiffs’ request to:
 - A. Rescind the appointment of Deloitte Restructuring as Monitor;
 - B. Prohibit the payment of principal and interest by JTIM to JTI-Macdonald TM Corp. (“**TM**”) in respect of certain debentures granted in favour of TM by JTIM (the “**TM**

Term Debentures”) and the security granted in respect thereof (the “**TM Security**”);

- C. Prohibit the payment by JTIM of royalties in respect of certain licensed trademarks from related parties;
 - D. Prohibit the payment to related parties in respect of services provided by those related parties; and
 - E. Rescind the appointment of the JTIM chief restructuring officer (the “**CRO**”) or in the alternative, have the fees of the CRO paid by a company that is not party to these CCAA Proceedings.
5. Also on March 28, 2019, the Provinces of British Columbia, Manitoba, New Brunswick, Nova Scotia, Prince Edward Island and Saskatchewan, in their capacities as plaintiffs in the health care cost recovery legislation claims (collectively, the “**Consortium of Provinces**”) filed a notice of objection (the “**Consortium Objection**”, and together with the Quebec Class Action Motion, the “**Objections**”) in the CCAA Proceedings raising concerns about, among other things, “the ability of Deloitte Restructuring to fulfill the neutral and independent role required of a court-appointed monitor”.¹

¹ On March 29, 2019, the Ministry of the Attorney General for Ontario filed a motion in the CCAA Proceedings seeking a lifting of the stay of proceedings, as provided for in the Initial Order, in order to proceed with Action No. CV-09-387984 bearing the title of proceedings *Her Majesty the Queen in right of Ontario v. Rothmans Inc. et al.* The Monitor understands that the Applicant will be opposing such relief so as to maintain the status quo while it seeks a resolution of all creditor and litigation claims against it.

6. This Second Report of the Monitor (the “**Second Report**”) has been prepared to provide the Court with the Monitor’s views and recommendations on the relief sought in the Quebec Class Action Motion set out in paragraph 4 above and discussed below. The Second Report is intended to be read in conjunction with the Affidavit of Robert McMaster (the “**McMaster Affidavit**”) and the Affidavit of William E. Aziz (the “**Aziz Affidavit**”) both sworn on April 1, 2019, on behalf of the Applicant.

TERMS OF REFERENCE AND DISCLAIMER

7. This Second Report is subject to the terms of reference and qualifications set out in paragraphs 6 through 10 of the First Report, which terms of reference are hereby incorporated by reference.

RELIEF SOUGHT IN THE OBJECTIONS

Concerns About Deloitte Restructuring as Monitor

8. As noted in the Pre-Filing Report, Deloitte Restructuring is not subject to any restrictions on who may be appointed as monitor pursuant to section 11.7(2) of the CCAA in respect of these CCAA Proceedings, and no party has suggested otherwise.
9. Even when there is no statutory impediment to accepting a monitor appointment, Deloitte Restructuring as a matter of standard practice also considers whether there are any material connections with entities related to a CCAA debtor, as it did in this case. In the interest of full transparency, Deloitte Restructuring believes it is important to disclose such connections to the Court even though it has assessed that such connections do not impair

its ability to act in a neutral, impartial and independent manner. Accordingly, in the Pre-Filing Report, the Proposed Monitor disclosed material points of contact between the Deloitte Global Network (defined below) and the domestic and international affiliates and related parties of JTIM (the “**Global Japan Tobacco Group**”).

10. As a result of these points of contact between the Deloitte Global Network and the Global Japan Tobacco Group, the Objections express concerns with Deloitte Restructuring acting as Monitor. The Quebec Class Action Motion specifically seeks an order rescinding Deloitte Restructuring’s appointment as Monitor.
11. The Monitor notes the following to assist the Court in determining the ability of Deloitte Restructuring to continue its mandate as Monitor.

(i) Deloitte Global Network & Global Japan Tobacco Group

12. The global professional services network to which Deloitte Restructuring is a part is extensive, consisting of approximately 286,200 employees in more than 150 countries and territories around the world (the “**Deloitte Global Network**”) and provides audit, tax, enterprise risk and financial advisory services. Deloitte Restructuring, the entity that was appointed Monitor of JTIM by the Initial Order, is a discrete Canadian entity and wholly owned subsidiary of Deloitte LLP (“**Deloitte Canada**”) that undertakes domestic engagements involving financial advisory and insolvency services only.
13. Deloitte Canada is a member firm of Deloitte Touche Tohmatsu Limited (“**DTTL**”), a UK entity. The member firm structure reflects the fact that the member firms are not subsidiaries or branch offices of a global parent, but instead are separate and distinct legal

entities. Accordingly, Deloitte Canada's management protocols, including client and engagement acceptance, mandate and file management, as well as data and document retention are independent of other member firms of DTTL.

14. Deloitte Restructuring acts independently from the other entities in the Deloitte Global Network. Neither Deloitte Restructuring nor Deloitte Canada share or participate in the revenue generated by other members of the Deloitte Global Network.
15. Paragraph 11 of the Pre-Filing Report detailed all points of contact between the Deloitte Global Network and the Global Japan Tobacco Group that the Monitor determined were relevant for the Court's consideration, including the fact that a member of the Deloitte Global Network acted as auditor of Japan Tobacco Inc., JTIM's ultimate parent.
16. In consenting to act as Monitor, Deloitte Restructuring considered that no member of the Global Japan Tobacco Group other than JTIM was to be an applicant in these CCAA Proceedings and was advised by the Applicant's counsel that no member of the Global Japan Tobacco Group was included in any of the legal proceedings in Canada involving JTIM, including the HCCR Actions and the Quebec Class Actions (as defined in the Pre-Filing Report). Further, Deloitte Restructuring has not had contact with, advised, or been instructed by any member of the Global Japan Tobacco Group.
17. In accordance with its standard practice, Deloitte Restructuring has put in place confidentiality protocols with respect to its staff involved with the Monitor appointment in these CCAA Proceedings.

(ii) Disclosure of Relevant Facts

18. The Monitor notes the following for the Court's consideration in connection with concerns expressed by the Quebec Class Action Plaintiffs regarding appropriate disclosure in the Pre-Filing Report.
19. The Quebec Class Action Plaintiffs have expressed concern that the Pre-Filing Report fails to mention that certain intercompany transactions (the "**Integration Transactions**") undertaken almost twenty years ago² were set-up as a creditor proofing exercise. The Quebec Class Action Plaintiffs also state that the Monitor "rubber stamped" JTIM's request to continue to pay interest in respect of the TM Term Debentures resulting from the Integration Transactions.
20. In respect of the Integration Transactions, the Pre-Filing Report refers to the Fourth Report of Ernst & Young Inc. ("**EY**") in its capacity as Monitor in JTIM's 2004 CCAA proceedings (the "**EY Fourth Report**") at paragraph 11(v) and directs readers to the document as an exhibit to the affidavit of Robert McMaster sworn March 8, 2019 (the "**Initial McMaster Affidavit**"). The EY Fourth Report is a detailed report prepared by EY, in its capacity as monitor of JTIM in 2004, after extensive investigations and inquiries into the Integration Transactions. The nature and specifics of the Integration Transactions, the advisors involved, and the specific role of Deloitte & Touche LLP (a predecessor to Deloitte Canada) in providing a valuation of RJR Macdonald Corp's brand equity, is

² The Integration Transactions are the intercompany financing and related arrangements pursuant to which the TM Term Debentures were issued and the TM Security was granted.

discussed in the EY Fourth Report. Deloitte & Touche LLP's role in providing such valuations is disclosed at paragraph 11(v) of the Pre-Filing Report.

21. The Quebec Class Action Plaintiffs express concern that the Monitor did not disclose its relationship with entities related to ITL and RBH (who were not CCAA debtors at the time of JTIM's CCAA filing) or its alleged "long-time activities on behalf of the tobacco industry". As noted above, the Deloitte Global Network is an extensive one. Like many large global accounting networks, it is actively involved in providing its audit and advisory services to a variety of industries including mining, automotive, agriculture, oil and gas and tobacco among many others. Deloitte Restructuring's conflicts clearing practice and disclosure practices in connection with court-appointed mandates focusses on the debtor company and parties related to it and not exhaustive inquiries on broader industry mandates that do not directly involve the debtor. In the Monitor's view, this is consistent with accepted practice of proposed court officers.

Concerns about Interest Payments

22. At paragraph 72 of the Pre-Filing Report, the Monitor advised that it did not object to the authorization in the Initial Order for the ordinary course payment of interest by JTIM to TM under the TM Term Debentures for the reasons described therein which continue to apply. The Initial Order does not permit payment of principal.
23. In the course of evaluating the proposed payment of interest under the TM Term Debentures, the Monitor, with the assistance of its counsel, considered the validity of the TM Security. Legal opinions (collectively, the "**Security Opinion**") were provided to the

Monitor concluding that TM holds a valid security interest in the personal property of JTIM located in Nova Scotia, Ontario, Alberta and British Columbia and in the personal property and real property of JTIM located in Quebec, subject to the assumptions and qualifications set out in the Security Opinion. The Monitor understands that the foregoing provinces are where the material portion of the Applicant's assets are located.

24. The Security Opinion was in standard form resulting from a review of the loan and security documents and related filings in public registries and, as a result, expressly did not comment on the statements in respect of the Integration Transactions and the TM Term Debentures in the Judgment on Motion for a Safeguard Order of Mr. Justice Mongeon dated December 4, 2013 (the “**Mongeon Decision**”) and the Judgment of Mr. Justice Riordan publicly released on June 1, 2015 and subsequently amended on June 9, 2015 (the “**Riordan Decision**”). As noted in the Pre-Filing Report, the Security Opinion is available to interested parties upon request, provided appropriate arrangements are made in respect of confidentiality, privilege and reliance.
25. Although the Security Opinion did not discuss the Mongeon and Riordan Decisions, the Monitor, however, considered the statements made in those decisions about the Integration Transactions generally in advising the Court in the Pre-Filing Report that it did not object to interest payments being made in respect of the TM Term Debentures.
26. The Mongeon Decision was rendered in respect of the Quebec Class Action Plaintiffs' motion for an order under the *Quebec Civil Code* to enjoin payments by JTIM to TM. In

his reasons, Justice Mongeon stated that, unless a subsequent judgment invalidates the TM Security, the underlying secured obligation would be unaffected:

The only way the Plaintiffs could ever benefit from the safeguard order sought would be to amend their proceedings, implead the party (or parties) to whom these payments are due and attack the contracts pursuant to which these payments are due.

Unless and until those conclusions are sought, the Plaintiffs have no *right or appearance of right* to protect or safeguard.³**[emphasis in original]**

27. There is no doubt that the commentary in the Riordan Decision is critical of the Integration Transactions and that such criticism formed a basis for assessing punitive damages against JTIM. Justice Riordan, however, in making these critical comments, did not invalidate the TM Security. That security has been in place for almost twenty years and, after making inquiries of the Applicant, the Monitor is not aware of any outstanding proceeding seeking to challenge its validity. In fact, as noted in the McMaster Affidavit and referred to in the Aziz Affidavit, Justice Riordan noted at paragraph 1099 of the Riordan Decision that “no one has attacked the validity or the legality of the tax planning behind the Interco Contracts, or the contracts themselves”. Justice Riordan later noted at paragraph 1102 that the legality of such contracts was not before the Quebec Court. As noted in the McMaster Affidavit, the decision of the Quebec Court of Appeal upholding the Riordan Decision (the “**QCA Decision**”) also did not invalidate the Integration Transactions or the TM Security. Accordingly, in deciding not to object to the continued payment of interest on the secured

³ Safeguard decision at paras 82-83

debt, the Monitor took guidance from the Riordan Decision, the Mongeon Decision and the QCA Decision.

28. The Monitor's position was also informed by the Reimbursement Agreement (as defined in the McMaster Affidavit) provided by a credit-worthy party, which was put in place by the Applicant to provide comfort to the stakeholders that funds would be returned if judicial scrutiny resulted in a court determining that payments should not be made post-filing under the TM Term Debentures.
29. The Monitor further notes that both the McMaster Affidavit and the Aziz Affidavit describe tax and other consequences that will adversely impact JTIM and its stakeholders should interest payments be suspended for a lengthy period of time. The Monitor concurs that any erosion of value due to adverse tax consequences described therein could be detrimental to JTIM's stakeholders and its restructuring efforts.

Royalty Payments

30. The Monitor has reviewed the discussion of the royalty payments in the McMaster Affidavit wherein the affiant notes that trademarks licensed by JTIM from TM are critical to the operation of the business of JTIM and if such license arrangements were terminated that the operations of JTIM would cease in its current form. The Monitor notes that McMaster Affidavit and the Aziz Affidavit set out the commercial rationale for the transfer of the trademarks to TM by JTIM, which is essentially to achieve tax efficiencies. The Monitor understands that the CCAA requires CCAA debtors to make post-filing payments for the use of licensed property.

Related Party Payments for Services

31. The Monitor has carefully reviewed material related party contracts for ongoing services as described in the Pre-Filing Report, the material receivables and payables thereunder, the results of the 2013 CRA audit and the status of the ongoing CRA audit. The pricing terms included in material related party contracts entered into after 2013 are consistent with the pricing terms of material related party contracts in effect in 2013. The Monitor has also reviewed the analysis provided in the McMaster Affidavit and the Aziz Affidavit of the related party contracts for ongoing services. The Monitor has also reviewed their analysis of the consequences if such payments were withheld, which the Monitor believes are reasonable assessments. Accordingly, the Monitor supports the maintenance of the status quo and the continuation of the inter-company payments for services rendered to the Applicant to ensure that the Applicant can continue in business in the ordinary course as required by the Initial Order.

The Role of the CRO

32. The Monitor advised in the Pre-Filing Report at paragraphs 59 through 64 that it supported the appointment of the CRO. The Monitor continues to support the assistance of the CRO in these CCAA Proceedings.
33. JTIM is in the business of manufacturing, marketing and selling tobacco products, not negotiating complicated, multi-party settlements. The Monitor accepts the Applicant's position that it requires additional professional assistance to represent its interests effectively in the impending complex settlement negotiations.

34. The CRO sets out his qualifications and relevant experience in the Aziz Affidavit. The CRO appears to be well qualified for the proposed role. Accordingly, in the Monitor's view, the central matter for its consideration is whether the CRO's fee structure is reasonable in light of all the circumstances.
35. The Monitor considered the unredacted CRO engagement letter (the "**CRO Engagement Letter**"), attached to the Initial McMaster Affidavit as Confidential Exhibit "1", and discussed it in the Pre-Filing Report. The Monitor notes that the success fee, which is not secured by the Administration Charge, is only payable in circumstances where a global settlement is reached with the Quebec Class Action Plaintiffs or a CCAA plan is implemented following requisite creditor and court approval. The Monitor investigated court approved fee structures for financial advisors that assisted in large, complex restructurings (some of which it had access to but are not publicly available). Many such fee structures employ formulas related to transaction value or the quantum of compromised debt, others provide for fixed fees and several have a combination of both. The Monitor was comfortable with the financial terms of the CRO Engagement Letter because (i) the monthly work fee and success fee were reasonable based on its analysis of similar, complex engagements; and, (ii) as noted above, the success fee would only be payable as part of a global settlement in which stakeholders would be participants.

CONCLUSIONS & RECOMMENDATIONS

36. The Monitor serves at the pleasure of the Court and seeks only to play a constructive role with the Applicant and its stakeholders as an independent court officer in the CCAA

Proceedings and will continue to do so should its appointment continue. In its view, it has made full disclosure of matters relevant to its suitability.

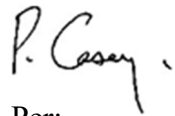
37. As noted above, for considered reasons, the Monitor:

- (i) does not object to the payment of interest on the TM Term Debentures, which have been suspended pending the Comeback Motion;
- (ii) supports the continued payment of royalties to TM, in accordance with the CCAA;
- (iii) supports the continued payment for services provided by related parties, in accordance with the CCAA; and
- (iv) supports the continued professional assistance of the CRO to assist the Applicant in the pursuit of a global resolution of claims facing the Applicant.

38. The Monitor supports the maintenance of the status quo, particularly in these early stages of the CCAA Proceedings, while the Applicant with the assistance of the CRO and the Monitor seeks to engage the stakeholders in a global resolution of the claims against the Applicant.

All of which is respectfully submitted this 1st day of April, 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

APPENDIX “C”



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April 24, 2019

VIA EMAIL

The Honourable Mr. Justice McEwen
Ontario Superior Court of Justice (Commercial List)
330 University Avenue, 7th Floor
Toronto, Ontario
M5G 1R7

Attention: Mr. Justice McEwen

- Re: In the Matter of a Plan of Compromise or Arrangement of JTI-Macdonald Corp. ("JTIM"), Court File no. CV-19-615862-00CL ("JTIM CCAA Proceeding")**
- Re: In the Matter of a Plan of Compromise or Arrangement of Imperial Tobacco Canada Limited and Imperial Tobacco Company Limited (collectively, "ITCAN"), Court File No. CV-19-616077-00CL ("ITCAN CCAA Proceeding")**
- Re: In the Matter of a Plan of Compromise or Arrangement of Rothmans, Benson & Hedges Inc. ("RBH" and together with ITCAN and JTIM, the "Applicants"), Court File No. CV-19-616779-00CL ("RBH CCAA Proceeding" and together with the ITCAN CCAA Proceeding and the JTIM CCAA Proceeding, the "Tobacco CCAA Proceedings")**
- Re: Second Portion of Combined Comeback Hearing in Tobacco CCAA Proceedings, originally scheduled for April 4, 2019 & April 5, 2019 and currently scheduled for April 25, 2019 and half a day on April 26, 2019 (the "April 25 & 26 Comeback Hearing")**

Dear Mr. Justice McEwen:

Since appearing before Your Honour in the Tobacco CCAA Proceedings on April 4 and April 5, 2019, The Honourable Warren K. Winkler, Q.C. (in his capacity Court-appointed mediator, the "Mediator") has assisted the parties in consensually resolving or otherwise limiting the issues to come before the Court at the April 25 & 26 Comeback Hearing. In that regard, we write, on behalf of the monitors in each of the Tobacco CCAA Proceedings (collectively, the "Monitors") to advise the Court of the status of outstanding matters to be heard by the Court at the April 25 & 26 Comeback Hearing.

Matters Resolved or Expected to be Resolved

With the assistance of the Mediator, the following matters have been, or are expected to be resolved on a consensual or otherwise unopposed basis.

- (i) Scope of Stay. The Motion by the Quebec Class Action Plaintiffs ("QCAP") to terminate the stay of proceedings provided for in the JTIM CCAA Proceeding in favour of the Applicants in the other Tobacco CCAA Proceedings is expected to be settled on a consensual basis. Efforts

are being made to resolve this matter on a consensual basis, but no resolution has yet been reached at this time.

- (ii) 90 Day Taxation. The Motion by QCAP to amend the Initial Order granted in each of the Tobacco CCAA Proceedings to provide that the fees and disbursements of professionals and consultants engaged by the Applicants (including counsel for the Applicants) be taxed by the Court at intervals of no more than 90 days has been withdrawn. To provide additional transparency in respect of fees incurred during these proceedings, the Monitors propose to make available, early each month, a summary of professional costs paid in the previous month by the applicable Applicant(s) in their Tobacco CCAA Proceedings, which summary will cover fees paid to counsel to such Applicant(s), the Monitor, counsel to the Monitor, the Mediator and counsel to the Mediator.
- (iii) Bankruptcy Application. The Motion by QCAP to partially lift the stay of proceedings provided for in each of the Tobacco CCAA Proceedings for the sole purpose of allowing QCAP to file an application for a bankruptcy order against the applicable Applicant(s) thereunder will not be pursued at this time.
- (iv) CRO in JTIM CCAA Proceeding. The Motion by QCAP in the JTIM CCAA Proceeding for an Order: (a) rescinding the appointment of William E. Aziz as chief restructuring officer of JTIM (in such capacity, the "**CRO**"), or alternatively, (b) directing that the fees and expenses payable to the CRO shall not be covered by the administration charge granted in the JTIM CCAA Proceeding and shall not be paid by JTIM or out of the property of JTIM, has been withdrawn.
- (v) Province of Ontario's Second Amended Fresh as Amended Statement of Claim. The Motion by Her Majesty the Queen in right of Ontario (the "**Province of Ontario**") for an Order partially lifting the stay of proceedings provided for in each of the Tobacco CCAA Proceedings for the sole purpose of authorizing and permitting: (a) the amendments to the Province of Ontario's Amended Fresh as Amended Statement of Claim as ordered by Master Short on March 8, 2019, and (b) the Province of Ontario to serve the Second Amended Fresh as Amended Statement of Claim on all defendants thereunder is expected to be resolved on a consensual basis. A form of Order in respect of this Motion has been circulated among the parties and is under discussion by counsel, with a view to having it settled prior to the April 25 & 26 Comeback Hearing.
- (vi) Deloitte Engagement in JTIM CCAA Proceeding. The Motion by QCAP in the JTIM CCAA Proceeding for an Order rescinding the appointment of Deloitte Restructuring Inc. (the "**JTIM Monitor**") has been withdrawn. Note: The Mediator continues to make efforts with the Consortium¹ to resolve the Consortium's objection to the appointment of the JTIM Monitor, on a consensual basis.

In addition to the foregoing, at the April 25 & 26 Comeback Hearing, each of the Applicants intend to seek an Amended & Restated Initial Order to reflect Your Honour's endorsement dated April 17, 2019 and the form of each such Amended & Restated Initial Order is under discussion by counsel.

¹ Being the Province of British Columbia, Province of Manitoba, Province of New Brunswick, Province of Nova Scotia, Province of Prince Edward Island and Province of Saskatchewan.

Opposed Matters

At this time, the following matters are expected to proceed on an opposed basis at the April 25 & 26 Comeback Hearing:

- (i) Ontario Lift Stay Motion. The Motion by the Province of Ontario to partially lift the stay of proceedings provided for in each of the Tobacco CCAA Proceedings, so as to permit the Province of Ontario to continue its health care cost recovery action against all defendants thereunder, including the Applicants.
- (ii) Kansa & Northumberland Settlement. The Motion by QCAP for an Order modifying the Order granted by Your Honour on April 5, 2019 in the ITCAN CCAA Proceeding and the RBH CCAA Proceeding in respect of the Kansa and Northumberland settlements.
- (iii) ITCAN Pension Matter. The Motion by the Former Genstar U.S. Retiree Group Committee in the ITCAN CCAA Proceeding.

The Monitors suggest that the above matters be heard in the order set out above so that those issues affecting all of the Applicants are heard first and those affecting a subset of the Applicants are heard next. This will allow parties who have no direct interest in a matter to excuse themselves if they so wish.

Finally, as a logistical matter, we understand that the Court was considering the appropriate courtroom for the April 25 & 26 Comeback Hearing. In that regard, to the extent Your Honour wishes for the Monitors to communicate any courtroom accommodations to the Service Lists in the Tobacco CCAA Proceedings, the Monitors would be pleased to do so.

Yours very truly,



Pamela L. J. Huff

Cc:

L. Rogers, C. Burr & A. Shalviri, counsel to the Monitor in the JTIM CCAA Proceeding
 J. Swartz, N. MacParland & S. Zaifman, counsel to the Monitor in the ITCAN CCAA Proceeding
 S. Kukulowicz, J. Dietrich & J. Bellissimo, counsel to the Monitor in the RBH CCAA Proceeding

APPENDIX “D”



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

**ONTARIO
SUPERIOR COURT OF JUSTICE
COMMERCIAL LIST**

THE HONOURABLE CHIEF

)

THURSDAY, THE 6TH

)

JUSTICE MORAWETZ

)

DAY OF MARCH, 2025

**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

CCAA PLAN ADMINISTRATOR APPOINTMENT ORDER

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

**ONTARIO
SUPERIOR COURT OF JUSTICE
COMMERCIAL LIST**

THE HONOURABLE CHIEF

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THURSDAY, THE 6TH

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DAY OF MARCH, 2025

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Applicant

CCAA PLAN ADMINISTRATOR APPOINTMENT ORDER

THIS MOTION made by Deloitte Restructuring Inc. ("**Deloitte**") in its capacity as court-appointed monitor (the "**Monitor**") of JTI-Macdonald Corp. ("**JTIM**") was heard this day at 330 University Avenue, Toronto, Ontario.

ON READING the Motion Record of the Monitor dated January 15, 2025, the Twenty-Second Report to the Court of the Monitor dated January 15, 2025, the Twenty-Fifth Report of the Monitor dated February 27, 2025, the materials filed by the parties listed on the Participant Information Form, and upon hearing the submissions of counsel to the Court-Appointed Mediator, counsel to the Monitor, counsel to the Applicant and those other parties listed on the Participant Information Form, no one appearing for any other person on the Common Service List, although properly served with the Monitor's Motion Record dated January 15, 2025, as appears from the Lawyer's Certificate of Service of Jake Harris, certified January 16, 2025;

A. DEFINITIONS

1. **THIS COURT ORDERS** that for the purposes of this Order, capitalized terms not otherwise defined in this Order shall have the meanings given to them in the third amended and restated Court-Appointed Mediator's and Monitor's plan of compromise and arrangement concerning, affecting and involving JTIM, dated February 27, 2025, including all Schedules thereto (the "**CCAA Plan**").

B. APPOINTMENT OF CCAA PLAN ADMINISTRATOR

2. **THIS COURT ORDERS** that Deloitte is hereby appointed as of the date hereof, pursuant to the CCAA Plan, as the CCAA Plan Administrator, a neutral and independent officer of this Court, to administer the CCAA Plan with the powers and obligations set out in the CCAA Plan, the Sanction Order or herein and JTIM, its employees, independent contractors, consultants, agents, experts, accountants, counsel and such other persons currently retained or employed by JTIM (collectively, "**Assistants**") and its shareholders, officers, and directors shall advise the CCAA Plan Administrator of all material steps taken by JTIM pursuant to this Order, the Sanction Order and the CCAA Plan, and shall co-operate fully with the CCAA Plan Administrator in the exercise of its powers and discharge of its obligations and provide the CCAA Plan Administrator with the assistance that is necessary to enable the CCAA Plan Administrator to carry out the CCAA Plan Administrator's functions.

3. **THIS COURT ORDERS** that Deloitte, in its capacity as CCAA Plan Administrator or the Monitor, as the case may be, is hereby authorized and empowered to take all steps and actions and to do all things required to facilitate the implementation of the CCAA Plan in accordance with its terms and, where necessary or appropriate to do so, to enter into, execute, deliver, implement and

consummate all of the steps, transactions, certificates and agreements contemplated by the CCAA Plan or otherwise set out herein.

4. **THIS COURT ORDERS** that following the granting of the Sanction Order, the Court-Appointed Mediator is hereby authorized and empowered to continue to provide services with respect to the implementation of the CCAA Plan as may be requested by the Monitors, the CCAA Plan Administrators or the Court or any other Party at the discretion of the Court-Appointed Mediator (the “**Court-Appointed Mediator’s Ongoing Services**”).

5. **THIS COURT ORDERS** that in the event that the Court-Appointed Mediator provides Court-Appointed Mediator’s Ongoing Services, the Court-Appointed Mediator shall:

- (a) have the benefit of all the protections given to him by the CCAA, any other applicable legislation including pursuant to Section 142 of the *Courts of Justice Act*, R.S.O. 1990, c. C.43, any orders in these CCAA Proceedings, including the Sanction Order, the CCAA Plan and as an officer of the Court; and
- (b) incur no liability in connection with any Court-Appointed Mediator’s Ongoing Services, and shall have the immunity of a Judge of a Superior Court in Canada.

6. **THIS COURT ORDERS AND DECLARES** that the protections afforded to the Court-Appointed Mediator and his heirs, successors, assigns, Representatives, advisors, legal counsel, consultants or agents pursuant to the terms of the Initial Order and the other Orders made in these CCAA Proceedings, as applicable, shall not expire or terminate and, subject to the terms hereof, shall remain in full force and effect.

7. **THIS COURT ORDERS** that the CCAA Plan Administrator may, in its discretion, retain any trustees or custodians, or advisors, including legal, financial, investment or other advisors, to advise and assist it to carry out its duties in relation to the administration of the CCAA Plan.

8. **THIS COURT ORDERS** that nothing herein contained shall derogate from the Monitor's role as the monitor of JTIM pursuant to (i) the Second Amended and Restated Initial Order of this Court dated March 8, 2019, (ii) all applicable orders of this Court including the Sanction Order, and (iii) the CCAA.

9. **THIS COURT ORDERS** that in no circumstances shall the CCAA Plan Administrator:

- (a) be or be deemed to be a representative of the Claimants, Tobacco Companies and/or Tobacco Company Groups;
- (b) have the authority to bind any of the Claimants; or
- (c) have the authority to bind any of the Tobacco Companies or members of the Tobacco Company Groups.

10. **THIS COURT ORDERS** that the CCAA Plan Administrator shall not take possession or control of JTIM's current or future assets, undertakings or properties of any nature or kind whatsoever and wherever situate including all proceeds thereof (the "**Property**") and shall take no part whatsoever in the management, oversight, supervision or control of JTIM's business (the "**Business**") and shall not, by fulfilling its obligations hereunder, be deemed to have taken or maintained possession or control of the Business or Property, or any part thereof.

C. DISTRIBUTIONS AND ADMINISTRATION

11. **THIS COURT ORDERS** that the CCAA Plan Administrator is authorized and empowered to establish the following segregated, interest bearing trust accounts (collectively, the

“Trust Accounts”), each to be held in Schedule I Chartered Banks or an affiliate thereof (each a **“Bank”**):

- (a) the Global Settlement Trust Account;
- (b) the Supplemental Trust Account;
- (c) the Miscellaneous Claims Fund Account;
- (d) the PCC Trust Account;
- (e) the QCAP Trust Account;
- (f) the CCAA Plan Administration Reserve Account;
- (g) the PCC Compensation Plan Reserve Account; and
- (h) the Cy-près Trust Account.

12. **THIS COURT ORDERS** that the CCAA Plan Administrator is authorized and empowered to engage any Person or Persons to act as trustee (collectively, the **“Trustee”**) of the Trust Accounts and enter into one or more deeds of trust or other agreement with such Trustee in form and substance satisfactory to the CCAA Plan Administrator, subject to approval of the Court.

13. **THIS COURT ORDERS** that the Claims Administrator shall report to the CCAA Plan Administrators at any time as requested by any CCAA Plan Administrator on the progress of the administration of the claims processes for the Quebec Administration Plan and the PCC Compensation Plan, including, without limitation (i) the budget for the administration of claims made to the PCC Compensation Plan and to the Quebec Administration Plan, (ii) the publication of notices, the PCC Claims Application Deadline to file claims, the *Blais* Claims Application Deadline to file claims, claims approved, claims rejected, claims under review, any delays in the

claims process, any fees, charges and disbursements made, and (iii) any Compensation Payments to Eligible *Blais* Class Members and Individual Payments to Eligible Pan-Canadian Claimants.

14. **THIS COURT ORDERS** that the CCAA Plan Administrator is authorized and empowered to oversee and direct the deposits into the Trust Accounts, including:

- (a) the Upfront Contributions (including the Cash Security Deposits) and the Annual Contributions (excluding any Reserved Amounts), which shall be deposited into the Global Settlement Trust Account;
- (b) the Reserved Amounts which shall be deposited into the Supplemental Trust Account; and
- (c) amounts to be deposited into the CCAA Plan Administration Reserve Account, the PCC Compensation Plan Reserve Account, the Miscellaneous Claims Fund Account, the PCC Trust Account, the QCAP Trust Account, and the Cy-près Trust Account.

15. **THIS COURT ORDERS** that the CCAA Plan Administrator is authorized and empowered to direct the Trustee to disburse funds from the Trust Accounts in accordance with the CCAA Plan, the Sanction Order and this Order, including:

- (a) disbursements from the Global Settlement Trust Account to the Claimants, the other applicable Trust Accounts or otherwise in accordance with the CCAA Plan;
- (b) disbursements of Reserved Amounts, including Tax Refund Cash Payments, from the Supplemental Trust Account to the Global Settlement Trust Account or a relevant Tax Authority on account of a notice of assessment or reassessment of Taxes, or to JTIM in accordance with the CCAA Plan;

- (c) disbursements from the Supplemental Trust Account to JTIM following the termination of the Contribution Period;
- (d) disbursements from the CCAA Plan Administration Reserve Account and PCC Compensation Plan Reserve Account to pay for costs which remain unpaid by JTIM, or to the Provinces and Territories in accordance with Section 15.1 or 15.2 of the CCAA Plan (as applicable);
- (e) disbursements from the PCC Trust Account and QCAP Trust Account to the Claims Administrator's trust accounts, to Quebec Class Counsel (from the QCAP Trust Account) to pay the Quebec Class Counsel Fee, or to the Provinces and Territories in accordance with Section 16.3 of the CCAA Plan, paragraph 55.1 of the Quebec Administration Plan and paragraph 54.1 of the PCC Compensation Plan;
- (f) disbursements from the Miscellaneous Claims Fund to Miscellaneous Claimants or to the Provinces and Territories in accordance with Section 18.2.5 of the CCAA Plan;
- (g) disbursements to the Tobacco Companies, as applicable, to return otherwise undistributed amounts provided by the Tobacco Companies to increase the Miscellaneous Claims Amount pursuant to Section 18.2.1 of the CCAA Plan; and
- (h) disbursements from the Cy-près Trust Account to the Cy-près Foundation.

16. **THIS COURT ORDERS** that the CCAA Plan Administrator is authorized and empowered to make distributions in accordance with Article 17 of the CCAA Plan, subject to paragraph 23 below.

17. **THIS COURT ORDERS** that the CCAA Plan Administrator is authorized and empowered to, and may instruct the Trustee to, deduct and withhold from any payment any

amounts as required by law and may remit amounts to the appropriate Governmental Authority in accordance with Section 17.8 of the CCAA Plan.

18. **THIS COURT ORDERS** that in the event of a dispute regarding a notice of assessment or reassessment of income taxes, interest or penalties in respect of a Tax Matter, the CCAA Plan Administrator is authorized and empowered, at the request of JTIM, to direct the Trustee of the Supplemental Trust Account to transfer the amount requested by JTIM (not to exceed the lesser of (i) 100% of the income taxes, interest and penalties assessed, and (ii) 100% of the Reserved Amount held in the Supplemental Trust Account at the relevant time) to the relevant Tax Authority pending final resolution of the dispute.

19. **THIS COURT ORDERS AND DECLARES** that any release of funds under the CCAA Plan, the Sanction Order or this Order made or assisted by the Monitors, CCAA Plan Administrators or the Court-Appointed Mediator shall not constitute a “distribution” and the Monitors, CCAA Plan Administrators and Court-Appointed Mediator shall not constitute a “legal representative” or “representative” of JTIM or an “other person” for the purposes of section 159 of the *Income Tax Act* (Canada), section 270 of the *Excise Tax Act* (Canada), section 46 of the *Employment Insurance Act* (Canada), section 22 of the *Retail Sales Tax Act* (Ontario), section 107 of the *Corporations Tax Act* (Ontario), or any other similar federal, provincial or territorial tax legislation (collectively, the “**Statutes**”), and none of the Monitors, CCAA Plan Administrators and Court-Appointed Mediator in making any such payments or deliveries of funds or assets in relation to the CCAA Plan is “distributing”, nor shall it be considered to have “distributed”, such funds or assets for the purposes of the Statutes, and the Monitors, CCAA Plan Administrators and Court-Appointed Mediator shall not incur any liability under the Statutes for making any payments or deliveries under the CCAA Plan or failing to withhold amounts, ordered or permitted hereunder,

and the Monitors, CCAA Plan Administrators and Court-Appointed Mediator shall not have any liability for any of JTIM's tax liabilities regardless of how or when such liabilities may have arisen.

D. CCAA PLAN ADMINISTRATORS' COMMUNICATION AND COORDINATION

20. THIS COURT ORDERS that:

- (a) the CCAA Plan Administrators shall consult with each other and act jointly and in concert to fulfill their duties and responsibilities pursuant to the Tobacco Companies' CCAA Plans (the "**Tobacco Plans**" and each a "**Tobacco Plan**");
- (b) each of the CCAA Plan Administrators shall have access to all documents and information provided by the Trustee of the Trust Accounts to each CCAA Plan Administrator until the completion of the administration of each Tobacco Plan; and
- (c) each CCAA Plan Administrator shall have (i) continuous access to each Tobacco Company's Virtual Data Room, and (ii) continuous administrator access to its respective Tobacco Company's Virtual Data Room, until the completion of the administration of each Tobacco Plan, provided that a CCAA Plan Administrator is not permitted to disclose any confidential information with respect to one Tobacco Company to any Representative of another Tobacco Company.

21. THIS COURT ORDERS that the CCAA Plan Administrators shall coordinate amongst each other in connection with their administration of each applicable Tobacco Plan in accordance with such Tobacco Plan and as set out in paragraphs 22 to 24 below.

22. THIS COURT ORDERS that to the extent the Tobacco Plans require a CCAA Plan Administrator to provide notice to, report to, or to otherwise communicate with any Person, notice

to, reports to or communications with the representatives of each following Person shall be sufficient for all purposes:

- (a) the Chair of the Provincial and Territorial Liaison Committee with respect to the Provinces and Territories;
- (b) the Administrative Coordinator with respect to the Quebec Administration Plan and Quebec Class Counsel with respect to the Quebec Class Action Plaintiffs;
- (c) the Administrative Coordinator with respect to the PCC Compensation Plan and PCC Representative Counsel with respect to the Pan-Canadian Claimants;
- (d) the Chair of the Cy-près Foundation (once appointed) with respect to the Cy-près Foundation;
- (e) *Knight* Class Counsel with respect to the *Knight* Class Action Plaintiffs;
- (f) counsel for the Tobacco Producers with respect to the Tobacco Producers; and
- (g) the respective Tobacco Company's counsel with respect to such Tobacco Company;

provided that, the CCAA Plan Administrators may, in their discretion, communicate with any other Person they view necessary or desirable in the performance of their duties and responsibilities under the Tobacco Plans or pursuant to this Order.

23. **THIS COURT ORDERS** that prior to taking one of the following actions the CCAA Plan Administrators must unanimously approve such action in writing:

- (a) the disbursement of any amounts from any Trust Account after the Effective Date and the timing of any disbursement of funds, including from (A) the QCAP Trust

Account or the PCC Trust Account to the Claims Administrator's trust accounts, or

(B) the Cy-près Trust Account to the Cy-près Foundation;

- (b) the movement of any Trust Account or any amounts held therein to an alternative Bank;
- (c) any decision by a CCAA Plan Administrator to waive an Event of Default or Breach by a Tobacco Company, prior to seeking the consent of the Provinces and Territories and any Impacted Claimants or approval of the Court; and
- (d) any extension of the period in which funds must be held in the Miscellaneous Claims Fund.

24. **THIS COURT ORDERS** that each CCAA Plan Administrator shall deliver a copy of any instructions to the Trustee to disburse funds from a Trust Account to each other CCAA Plan Administrator.

E. FEES AND EXPENSES

25. **THIS COURT ORDERS** that the CCAA Plan Administrator and the Court-Appointed Mediator, and their respective counsel and any financial, investment or other advisors engaged by the CCAA Plan Administrator in its discretion shall be paid their reasonable fees and disbursements, in each case at their standard rates and charges, by JTIM. JTIM is hereby directed to pay the accounts of the CCAA Plan Administrator, counsel to the CCAA Plan Administrator and financial, investment or other advisors engaged by the CCAA Plan Administrator on a bi-weekly basis and, in respect of the Court-Appointed Mediator and its counsel, their fees and disbursements shall be paid equally by the Tobacco Companies.

26. **THIS COURT ORDERS** that the CCAA Plan Administrator and its legal counsel shall pass their accounts from time to time at intervals as the Court directs, and for this purpose the

accounts of the CCAA Plan Administrator and its legal counsel are hereby referred to a judge of the Commercial List of the Ontario Superior Court of Justice.

F. LIMITATION OF LIABILITY AND INDEMNITY

27. **THIS COURT ORDERS** that the Monitors, CCAA Plan Administrators, CRO and Court-Appointed Mediator and their respective Affiliates, shareholders, Affiliates' shareholders, employees, heirs, successors, assigns, advisors, legal counsel, Representatives, consultants or agents shall not incur any personal liability whatsoever whether on their own part or in respect of any failure on the part of any Tobacco Company to observe, perform or comply with any of its obligations under its CCAA Plan or any other Definitive Document, the Mediation or the CCAA Proceedings.

28. **THIS COURT ORDERS** that nothing in paragraph 27 shall derogate from the protections afforded to the Court-Appointed Mediator, the Monitors or the CCAA Plan Administrators as officers of the CCAA Court, or in the case of the CRO, as the Foreign Representative in the Chapter 15 Proceedings, by the CCAA Plans, the CCAA, any other applicable legislation, including pursuant to Section 142 of the *Courts of Justice Act*, R.S.O. 1990, c. C.43, and any orders made in the CCAA Proceedings or the Chapter 15 Proceedings, if applicable.

29. **THIS COURT ORDERS** that the CCAA Plan Administrator, in fulfilling its mandate pursuant to the CCAA Plan, this Order or any other applicable order of this Court, may rely upon the books, records or information provided to it by JTIM as well as discussions and correspondence with senior management and advisors to JTIM. The CCAA Plan Administrator shall not audit, review or otherwise attempt to verify the accuracy or completeness of this information, nor shall the CCAA Plan Administrator express any opinion or other form of assurance with respect to any such information or discussions.

30. **THIS COURT ORDERS** that no Person shall be entitled to rely on any information or representation in any form or context provided by the CCAA Plan Administrator in fulfilling its mandate pursuant to the CCAA Plan, this Order or any other applicable order of this Court. The CCAA Plan Administrator shall not owe any duty of care to any Person in fulfilling such mandate, other than the Court as an officer thereof.

31. **THIS COURT ORDERS** that JTIM shall indemnify and save harmless the Court-Appointed Mediator, CRO, the CCAA Plan Administrators, the Monitors (including in their capacity as Foreign Representative (as applicable)), and the Administrative Coordinator and, as applicable, their respective Affiliates, shareholders, Affiliates' shareholders, directors, officers, employees, legal counsel, advisors, consultants, Representatives and agents (collectively, the "**Indemnified Parties**"), from and against all claims, demands, losses, actions, causes of action, costs, charges, expenses, damages and liabilities whatsoever, whether at law or in equity, in any way caused by or arising, directly or indirectly, in respect of any act, deed, matter or thing whatsoever made, done, acquiesced in or omitted in or about or in relation to the execution of each Indemnified Party's respective activities or duties in any way in connection with the CCAA Proceeding and the Chapter 15 Proceedings, including for the avoidance of doubt: (i) the actions of the Court-Appointed Mediator, the CRO, the Monitors, the CCAA Plan Administrators and the Administrative Coordinator and their respective legal counsel and advisors in connection with the CCAA Proceeding and the Chapter 15 Proceedings, (ii) the business and affairs of JTIM whenever or however conducted, and (iii) any matter or transaction involving JTIM occurring in or in connection with the CCAA Proceeding and the Chapter 15 Proceedings, the CCAA Plan, or the development thereof (other than the enforcement of the Indemnified Parties' obligations under the CCAA Plan and the Definitive Documents). To the extent any Indemnified Party is not otherwise

compensated by the applicable Tobacco Company, such Indemnified Party may resort to their respective CCAA Plan Administration Reserve for compensation.

32. **THIS COURT ORDERS** that the indemnity in paragraph 31 hereof shall survive the resignation or removal of any Indemnified Party from any role, capacity, engagement, office or position relevant to its activities or duties in connection with the CCAA Plan.

G. SERVICE AND NOTICE

33. **THIS COURT ORDERS** that the service of documents made in accordance with the E-Service Guide of the Commercial List (the “**Guide**”) (which can be found on the Commercial List website at: www.ontariocourts.ca/scj/practice/practice-directions/toronto/eservice-commercial/) shall continue to be valid and effective service. Subject to rule 17.05, this Order shall constitute an order for substituted service pursuant to Rule 16.04 of the Rules of Civil Procedure. Subject to Rule 3.01(d) of the Rules of Civil Procedure and paragraph 13 of the Guide, service of documents in accordance with the Guide will be effective on transmission. This Court further orders that the Case Website established by the Monitor in accordance with the Guide with the following URL: www.insolvencies.deloitte.ca/en-ca/JTIM (the “**Case Website**”) shall be maintained by the Monitor or the CCAA Plan Administrator.

34. **THIS COURT ORDERS** that if the service or distribution of documents in accordance with the Guide is not practicable, the CCAA Plan Administrator is at liberty to serve or distribute this Order, any other materials and orders in connection with the administration of the CCAA Plan, and any notices or other correspondence, by forwarding true copies thereof by prepaid ordinary mail, courier, personal delivery, facsimile or other electronic transmission to the relevant interested parties at their respective addresses as last shown on the records of JTIM, or as otherwise made known to the CCAA Plan Administrator, and that any such service or distribution by courier,

personal delivery, facsimile or other electronic transmission shall be deemed to be received on the date of forwarding thereof, or if sent by ordinary mail, on the third business day after mailing.

35. **THIS COURT ORDERS** that each reference to the “Monitors” shall be replaced with the “Monitors or CCAA Plan Administrators” in the Common Service Protocol approved by the Court by endorsement dated June 26, 2019, which shall continue in force *mutatis mutandis* during the administration of the CCAA Plan. The CCAA Plan Administrator or the Monitor shall manage the scheduling of all motions that are brought in these proceedings or in the administration of the CCAA Plan.

36. **THIS COURT ORDERS** that the CCAA Plan Administrator, the Monitor or their counsel are at liberty to serve or distribute this Order, any other materials and orders as may be reasonably required in these proceedings, including any notices or other correspondence, by forwarding true copies thereof by electronic message to the interested parties and their advisors. For greater certainty, any such distribution or service shall be deemed to be in satisfaction of a legal or juridical obligation, and notice requirements within the meaning of clause 3(c) of the Electronic Commerce Protection Regulations, Reg. 8100 2-175 (SOR/DORS).

37. **THIS COURT ORDERS** that all motions in this proceeding or in connection with the administration of the CCAA Plan are to be brought on not less than seven (7) calendar days’ notice to all persons on the Common Service List. Each notice of motion shall specify a date (the “**Return Date**”) and time for the hearing.

38. **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, JTIM and the CCAA Plan Administrator, with a

copy to all persons on the Common Service List, no later than 5 p.m. (Eastern time) on the date that is four (4) calendar days prior to the Return Date (the “**Objection Deadline**”).

39. **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, virtual 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.

40. **THIS COURT ORDERS** that, if no Responding Materials are served by the Objection Deadline, the CCAA Plan Administrator shall communicate with the Presiding Judge regarding whether a determination has been made by the Presiding Judge concerning the Hearing Details. The CCAA Plan Administrator shall thereafter advise the Common Service List of the Hearing Details and the CCAA Plan Administrator shall report upon its dissemination of the Hearing Details to the Court in a timely manner, which may be contained in the CCAA Plan Administrator’s next report.

41. **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 CCAA Plan Administrator (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 sees 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.

H. GENERAL

42. **THIS COURT ORDERS** that the CCAA Plan Administrator may from time to time apply to this Court to amend, vary, supplement or replace this Order or for advice and directions concerning the discharge of its powers and duties under this Order, the interpretation or application of this Order, or any matters relevant to the implementation or administration of the CCAA Plan.

43. **THIS COURT ORDERS** that in the event of a conflict between (i) this Order, (ii) the Sanction Order, (iii) the CCAA Plan, and (iv) the terms of any agreement existing between any Person and JTIM as at the Plan Implementation Date, the terms of the Sanction Order shall govern, subject to any subsequent order of this Court dated after the Sanction Order.

44. **THIS COURT ORDERS** that the Applicant, the CRO and the CCAA Plan Administrator are at liberty and are hereby authorized and empowered to apply to any court, tribunal, regulatory or administrative body, wherever located, for the recognition of this Order and for assistance in carrying out the terms of this Order, and that the CCAA Plan Administrator is authorized and

empowered to act as a representative in respect of the within proceedings for the purpose of having this Order recognized in a jurisdiction outside Canada.

45. **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, or abroad, including but not limited to the Courts in respect of the Pending Litigation and the Quebec Class Actions, to give effect to this Order and to assist JTIM, the Monitor, the CCAA Plan Administrator and their respective agents in carrying out the terms of this Order and the CCAA Plan. All courts, tribunals, regulatory and administrative bodies are hereby respectfully requested to make such orders and to provide such assistance to JTIM, the CCAA Plan Administrator and the Monitor as an officer of this Court, as may be necessary or desirable to give effect to this Order and the CCAA Plan or to assist JTIM, the CCAA Plan Administrator and the Monitor and their respective agents in carrying out the terms of this Order and the CCAA Plan.



Chief Justice G.B. Morawetz

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.

ONTARIO
SUPERIOR COURT OF JUSTICE
(COMMERCIAL LIST)
Proceeding commenced at Toronto

**CCAA PLAN ADMINISTRATOR APPOINTMENT
ORDER**

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*Lawyers for Deloitte Restructuring Inc., in its capacity
as the Court-appointed Monitor of JTI-Macdonald Corp.*

APPENDIX “E”

Global Settlement Trust Account, JTIM PCC Trust Account, JTIM QCAP Trust Account, JTIM Cy-près Trust Account, JTIM Miscellaneous Claims Fund, JTIM CCAA Plan Administration Reserve Account, JTIM PCC Compensation Plan Reserve Account and JTIM Supplemental Trust Account.

14.4 Duties and Responsibilities of CCAA Plan Administrators

In implementing the administration of the CCAA Plans during the Contribution Period, the duties and responsibilities of the CCAA Plan Administrators shall be as set out below provided, however, that the CCAA Plan Administrators shall incur no liability of any kind whatsoever to the Provinces, Territories, any Impacted Claimants or any other Person in respect of their performance of such duties and responsibilities and shall be held harmless in this regard:

- (a) On an annual basis, receiving and reviewing the Business Plan and accompanying MD&A which each Tobacco Company shall provide pursuant to Article 10, Sections 10.1 and Section 10.2.2 of their respective CCAA Plans;
- (b) On a quarterly basis, receiving and reviewing the financial statements and accompanying MD&A which each Tobacco Company shall provide pursuant to Article 10, Section 10.2.3 herein;
- (c) On an annual basis, receiving and reviewing the financial statements with notes that each Tobacco Company shall provide pursuant to Article 10, Section 10.2.1 herein;
- (d) Receiving and reviewing the information that each Tobacco Company shall provide to the CCAA Plan Administrators regarding the calculation of the Annual Contributions and Reserved Amounts to be paid by each Tobacco Company in respect of each calendar year pursuant to Article 10, Section 10.8 herein;
- (e) Receiving and reviewing the information that each Tobacco Company shall provide in response to the *ad hoc* requests made from time to time by the CCAA Plan Administrators in connection with the Tobacco Company's Business Plan, annual MD&A, quarterly MD&A and Annual Financial Statements pursuant to Article 10, Section 10.3 herein;
- (f) Reporting to the Provinces, Territories and any Impacted Claimants regarding any issue, event or condition pertaining to a Tobacco Company which is disclosed to the CCAA Plan Administrators as an event which may constitute a Material Adverse Effect, or may constitute a Breach or an Event of Default;
- (g) **Intentionally deleted;**
- (h) Reporting to the Provinces, Territories and any Impacted Claimants regarding the calculation of the amount of the Annual Contributions and Reserved Amounts payable by the Tobacco Companies in each calendar year;
- (i) Overseeing and concurring with the release of funds from the JTIM Supplemental Trust Account pursuant to Article 5, Section 5.5;

- (j) Administering the distribution to the Claimants of amounts from the JTIM Global Settlement Trust Account in accordance with Article 16, Sections 16.1, 16.2 and 16.3 until such time as the implementation of all of the CCAA Plans has been completed;
- (k) Overseeing the administration of the PCC Compensation Plan including:
 - (i) **Intentionally deleted;**
 - (ii) **Intentionally deleted;**
 - (iii) Reviewing the Global Claims Administration Costs Framework, the First Annual Global Claims Administration Costs Budget and the Subsequent Annual Global Claims Administration Costs Budget submitted by the Claims Administrator and the PCC Agent for the administration of the claims made to the PCC Compensation Plan;
 - (iv) From time to time, providing a distribution plan to the Trustees for the advancement of instalments of funds from the JTIM PCC Trust Account to the Claims Administrator to enable it to make Individual Payments to Eligible Pan-Canadian Claimants; and
 - (v) Receiving and reviewing the Weekly Actual Costs Reports, Weekly Claims Administration Reports, Weekly Events Reports, Monthly Actual Costs Reports, Monthly Claims Administration Reports, Monthly Events Reports, and any other reports prepared by the Claims Administrator and the PCC Agent as circumstances warrant at any other times as requested by the CCAA Plan Administrators in their discretion or as the CCAA Court directs, in accordance with the terms of the Claims Administrator Order;
- (l) Certain oversight activities regarding the Cy-près Foundation;
- (m) Overseeing the administration of the Quebec Administration Plan including:
 - (i) **Intentionally deleted;**
 - (ii) **Intentionally deleted;**
 - (iii) Reviewing the Global Claims Administration Costs Framework, the First Annual Global Claims Administration Costs Budget and the Subsequent Annual Global Claims Administration Costs Budget submitted by the Claims Administrator for the administration of the claims made to the Quebec Administration Plan;
 - (iv) From time to time, providing a distribution plan to the Trustees for the advancement of instalments of funds from the JTIM QCAP Trust Account to the Claims Administrator to enable it to make Compensation Payments to Eligible *Blais* Class Members; and

- (v) Receiving and reviewing the Weekly Actual Costs Reports, Weekly Claims Administration Reports, Weekly Events Reports, Monthly Actual Costs Reports, Monthly Claims Administration Reports, Monthly Events Reports, and any other reports prepared by the Claims Administrator as circumstances warrant at any other times as requested by the CCAA Plan Administrators in their discretion or as the CCAA Court directs, by the Claims Administrator in accordance with the terms of the Claims Administrator Order;
- (n) On an annual basis, and as circumstances warrant at any other times in the discretion of the CCAA Plan Administrators, or as the CCAA Court directs, reporting to the CCAA Court regarding:
 - (i) The annual amounts of the Annual Contributions and Reserved Amounts paid by the Tobacco Companies for deposit into the JTIM Global Settlement Trust Account and JTIM Supplemental Trust Account, and the progress of the payment of the share of the Global Settlement Amount allocated to the Provinces and Territories;
 - (ii) The progress of the payment of the share of the Global Settlement Amount allocated to the Tobacco Producers;
 - (iii) The progress of the administration of the PCC Compensation Plan including the publication of notices, the PCC Claims Application Deadline to file claims, claims approved, claims rejected, claims under review, any delays in the claims process, disbursements made to Eligible Pan-Canadian Claimants, fees charged and disbursements made;
 - (iv) The progress of the administration of the Cy-près Fund;
 - (v) The progress of the administration of the Quebec Administration Plan including the publication of notices, the *Blais* Claims Application Deadline to file claims, claims approved, claims rejected, claims under review, any delays in the claims process, disbursements made to Eligible *Blais* Class Members, fees charged and disbursements made; and
 - (vi) Any other matter which the CCAA Plan Administrators in their discretion deem to be appropriate.

For greater certainty, the CCAA Plan Administrators shall not conduct an audit or other assurance engagement, or otherwise attempt to verify the accuracy or completeness of the financial information in each Tobacco Company's Business Plan, annual MD&A, quarterly MD&A, Annual Financial Statements and any information produced by a Tobacco Company in response to an *ad hoc* request from the CCAA Plan Administrators.

Also, for greater certainty, the duties and responsibilities of the CCAA Plan Administrators are fully described in the CCAA Plan Administrator Appointment Order for each of Imperial, RBH and JTIM.

APPENDIX “F”

Court File No. CV-19-615862-00CL
 Court File No. CV-19-616077-00CL
 Court File No. CV-19-616779-00CL

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

| | | |
|--------------------|---|------------------------------|
| THE HONOURABLE |) | FRIDAY, the 24 th |
| |) | |
| MR. JUSTICE McEWEN |) | DAY of MAY, 2019 |

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.**

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

**ENDORSEMENT (COURT-APPOINTED MEDIATOR COMMUNICATION AND CONFIDENTIALITY
 PROTOCOL)**

For ease of reference, the above proceedings will collectively be referred to as the "CCAA Proceedings".

The Honourable Warren K. Winkler, Q.C., former Chief Justice of Ontario, has been appointed as a neutral third party (the "**Court-Appointed Mediator**") to mediate a global settlement of the Tobacco Claims (the "**Mediation Process**"), as defined in each Applicant's Initial Order as amended and restated (the "**Initial Orders**"), in each CCAA Proceeding.

The Court has authorized the following communication and confidentiality protocol between the Court and the Court-Appointed Mediator:

1. The Court and the Court-Appointed Mediator may communicate between one another directly to discuss, on an on-going basis, the conduct of the Mediation Process and the manner in which it will be coordinated with the CCAA Proceedings, including but not

limited to individual matters referred specifically by the Court to the Court-Appointed Mediator for resolution.

2. The Court will not disclose to the Court-Appointed Mediator how they will decide any matter which may come before them for determination. The Court-Appointed Mediator will not disclose to the Court the negotiating positions or confidential information of any of the parties in the Mediation Process.
3. All statements, discussions, offers made and documents produced by any of the parties in the course of the Mediation Process shall not be subject to disclosure through discovery or any other process; shall be confidential; shall not be referred to in Court and shall not be admissible into evidence for any purpose, including impeaching credibility or to establish the meaning and/or validity of any settlement or alleged settlement arising from the Mediation Process.
4. Any notes, records, statements made, discussions had and recollections of the Court-Appointed Mediator and/or his legal counsel, Lax O'Sullivan Lisus Gottlieb LLP, in conducting the Mediation Process shall be confidential and without prejudice and protected from disclosure for all purposes in accordance with paragraph (3) above.
5. The Court-Appointed Mediator shall not be liable to any party or participant for any act or omission in connection with the Mediation Process and shall have the immunity of a Judge of a Superior Court in Canada.



Justice McEwen

APPENDIX “G”



SUPERIOR COURT OF JUSTICE
COMMERCIAL LIST

Direction

COURT FILE NO.: CV-19-616077-00CL

DATE: June 26, 2025

CV-19-616779-00CL

CV-19-615862-00CL

IMPERIAL TOBACCO CANADA LIMITED et al v. JTI-MACDONALD CORP. et al

&

ROTHMANS, BENSON & HEDGES INC. v. IMPERIAL TOBACCO CANADA LIMITED et al

&

JTI-MACDONALD CORP. et al v. BENSON & HEDGES INC. et al

DIRECTIONS RE: FEE APPROVALS

[1] In order for the Monitors and their counsel to pass their accounts in accordance with the Second Amended and Restated Initial Orders granted in each CCAA Proceeding while maintaining confidentiality as required by the endorsement of the Court dated May 24, 2019 (the “**Confidentiality Protocol**”), the Court directs the Court-Appointed Mediator to review the fees and disbursements of the Monitors and their counsel incurred since the commencement of the CCAA Proceedings (including any amounts accrued pre-filing but billed after the applicable filing date), and on an ongoing basis and advise the Court if, in his sole discretion, it is the opinion of the Court-Appointed Mediator, that the fees and disbursements of the Monitors and their counsel are fair and reasonable in the circumstances.

[2] In providing such advice to the Court, the Court-Appointed Mediator, also in his sole discretion, will establish a process to review the fees and disbursements and the Court-Appointed Mediator shall have unfettered discretion as to the documentation and information he will review.

[3] For certainty, the production of any documents in accordance with this endorsement by any party including the Court-Appointed Mediator, shall remain subject to the Confidentiality Protocol and no parties shall be deemed or considered to have waived the confidentiality or privilege in respect of any such documents.

[4] In discharging his duties in accordance with these directions, the Court-Appointed Mediator shall continue to have the benefits of all the protections given to him by the CCAA or any order or endorsement of this Court including without limitation, the Confidentiality Protocol, the Sanction Orders, the CCAA Plans and shall incur no liability in connection with the discharge of his duties and shall continue to have the immunity of a Judge of a Superior Court in Canada.



Chief Justice Geoffrey B. Morawetz

Dated: June 26, 2025

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.

ONTARIO
SUPERIOR COURT OF JUSTICE
(COMMERCIAL LIST)
PROCEEDING COMMENCED AT TORONTO

**SECOND REPORT OF THE CCAA PLAN
ADMINISTRATOR**

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**Lawyers for Deloitte in its capacity as CCAA Plan
Administrator of JTI-Macdonald Corp.**

TAB 3

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

**ONTARIO
SUPERIOR COURT OF JUSTICE
COMMERCIAL LIST**

| | | |
|----------------------|---|------------------------------|
| THE HONOURABLE CHIEF |) | MONDAY, THE 15 th |
| |) | |
| JUSTICE MORAWETZ |) | DAY OF DECEMBER, 2025 |

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.**

CCAA PLAN ADMINISTRATOR REPORT ORDER

THIS MOTION, made by Deloitte Restructuring Inc. in its capacity as CCAA Plan Administrator (the “**CCAA Plan Administrator**”) of JTI-Macdonald Corp. (the “**Applicant**”) pursuant to the CCAA Plan Administrator Appointment Order of this Court dated March 6, 2019 for an Order, among other things, approving the Second Report of the CCAA Plan Administrator dated December 8, 2025 (the “**Second Report**”) and the activities of the CCAA Plan Administrator described therein (the “**Activities**”) was heard virtually on this day in Toronto, Ontario.

ON READING the Motion Record of the CCAA Plan Administrator dated December 8, 2025, including the Second Report, and upon hearing the submissions of counsel to the CCAA Plan Administrator, counsel to the Applicant, and those other parties listed on the Participant Information Form, no one appearing for any other person on the Common Service List, although properly served with the CCAA Plan Administrator’s Motion Record, as appears from the Lawyer’s Certificate of Service of Jake Harris, dated December [•], 2025;

SERVICE

1. **THIS COURT ORDERS** that the time for service of the Notice of Motion and the Motion Record is hereby abridged and validated so that this Motion is properly returnable today and that further service thereof is hereby dispensed with.

INTERPRETATION

2. **THIS COURT ORDERS** that capitalized terms used and not otherwise defined herein shall have the meanings ascribed to them in the Fourth Amended and Restated Court-Appointed Mediator's and Monitor's CCAA Plan of Compromise and Arrangement concerning, affecting and involving JTI-Macdonald Corp. dated August 27, 2025.

APPROVAL OF THE SECOND REPORT AND ACTIVITIES

3. **THIS COURT ORDERS** that the Second Report and the Activities are hereby approved.

GENERAL PROVISIONS

4. **THIS COURT ORDERS** that this Order shall have full force and effect in all provinces and territories in Canada, outside Canada and against all Persons against whom it may be enforceable.

5. **THIS COURT ORDERS** that this Order and all of its provisions are effective as of 12:01 a.m. on the date hereof and is enforceable without further need for entry or filing.

Chief Justice Morawetz

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.

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

Proceeding Commenced at Toronto

**CCAA PLAN ADMINISTRATOR REPORT
ORDER**

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**Lawyers for Deloitte Restructuring Inc.
in its capacity as CCAA Plan Administrator of
JTI-Macdonald Corp.**

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.**

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

Proceeding commenced at Toronto

**MOTION RECORD
(CCAA Plan Administrator Report Order)
Returnable December 15, 2025**

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