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 OR ARRANGEMENT OF **JTI-MACDONALD CORP.**

Applicant

RESPONDING MOTION RECORD OF JTI-MACDONALD CORP.
(Returnable January 29, 2025)

January 20, 2025

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Tab 1

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Applicant

AFFIDAVIT OF WILLIAM E. AZIZ
(Sworn January 20, 2025)

I, **WILLIAM E. AZIZ**, of the Town of Oakville, in the Province of Ontario, MAKE OATH AND SAY:

1. I am the President of BlueTree Advisors Inc., which has been retained by JTI-Macdonald Corp. ("**JTIM**") to provide my services as the Chief Restructuring Officer ("**CRO**") of JTIM.

2. My appointment as the CRO of JTIM was approved pursuant to the Initial Order (as amended and restated from time to time, the "**Initial Order**") granted by the Ontario Superior Court of Justice (Commercial List) (the "**Court**") on March 8, 2019, under the *Companies' Creditors Arrangement Act* ("**CCAA**"). A copy of the Initial Order is attached hereto as **Exhibit "A"**.

3. As the CRO of JTIM, I have knowledge of the matters to which I herein depose, except where I have obtained information from others. In preparing this affidavit, I have reviewed the JTIM M&M Plan (defined below), and previous affidavits sworn in JTIM's CCAA proceedings, including the ones mentioned herein, and I have consulted with members of

JTIM and its affiliates' senior management team, JTIM's external legal advisors, and representatives of Deloitte Restructuring Inc. (the "**Monitor**").

4. As CRO for JTIM, I have been kept apprised when mediation sessions are scheduled with JTIM's external legal counsel, have been provided with regular updates on the status of these mediation sessions, have attended case conferences with Chief Justice Morawetz, and have been involved in internal discussions and reports in connection with the mediation activities. For greater certainty, privilege is asserted and maintained with respect to all written and oral discussions.

5. Where I have obtained information from others, I have stated the source of the information and believe it to be true.

6. All capitalized terms used herein and not otherwise defined have the meanings set forth in the Initial Order or the First Amended and Restated Court-appointed Mediator's and Monitors' CCAA Plan of Compromise and Arrangement in respect of JTIM dated December 5, 2024 (the "**JTIM M&M Plan**").

7. The purpose of this affidavit is to provide the Court with, among other things, the evidentiary basis for JTIM's objection to the Sanction Order.

I. INTRODUCTION

8. On October 17, 2024, the Monitor, at the direction of the Mediator, filed a motion for a Meeting Order to, among other things: (a) accept the filing of the JTIM M&M Plan, (b) authorize the Monitor to call, hold and conduct a virtual meeting of the Claimants to vote on the JTIM M&M Plan (the "**Meeting**"), (c) authorize the classification of Affected Creditors into a single class for the purpose of the Meeting and voting on the JTIM M&M

Plan, and (d) authorize the Monitor to bring a motion for the Court to consider an order approving and sanctioning the JTIM M&M Plan if the JTIM M&M Plan was approved by the requisite majorities of Affected Creditors.

9. At the hearing on October 31, 2024 in respect of the Meeting Order (the "**Meeting Order Hearing**"), JTIM advised the Court that it opposed the Meeting Order on the basis that: (a) negotiations in respect of the JTIM M&M Plan had not concluded because important issues remained unresolved, (b) the JTIM M&M Plan does not comply with the statutory provisions of the CCAA, and (c) the JTIM M&M Plan is not fair, reasonable or workable.

10. At the same hearing, PricewaterhouseCoopers Inc. (the "**TM Receiver**") in its capacity as privately-appointed receiver and manager of JTI-Macdonald TM Corp. ("**JTI-TM**"), the sole secured creditor of JTIM, objected to the Meeting Order on the basis that: (a) the JTIM M&M Plan was incapable of sanction, (b) the JTIM M&M Plan unfairly confiscated JTI-TM's cash collateral of nearly $1.6 billion over which JTI-TM held security, and (c) the JTIM M&M Plan required JTI-TM to supply valuable trademarks to JTIM indefinitely and without guarantee of payment.

11. Despite JTIM and JTI-TM's objections, the Court deferred considering such objections to the Sanction Hearing (defined below) because the issues were "solvable" prior to the sanctioning of the JTIM M&M Plan, and therefore the JTIM M&M Plan was not doomed to fail. Accordingly, the Court granted the Meeting Order, accepting the filing of the JTIM M&M Plan, and the scheduling of the Meeting on December 12, 2024. At the Meeting, the Claimants voted unanimously to approve the JTIM M&M Plan, despite the objections.

12. Representatives for JTIM and JTI-TM were not allowed to present materials at the Meeting. I am informed by Scott Bomhof of Torys LLP, counsel to the TM Receiver, that on December 6, 2024, the TM Receiver wrote to the Monitor to request an invitation to attend the Meeting. The TM Receiver received an invitation to attend the Meeting as a "guest", but was not permitted to participate in the Meeting. Attached hereto as **Exhibit "B"** is a copy of the TM Receiver's letter to the Monitor and the responding letter dated December 10, 2024, from Linc Rogers of Blake, Cassels & Graydon LLP, counsel to the Monitor.

13. Following the Meeting, the Monitor sought and obtained the Sanction Protocol Order dated December 23, 2024, that, among other things, scheduled the court hearing to approve and sanction the JTIM M&M Plan (the "**Sanction Hearing**") to commence on January 29, 2025, approved a litigation timetable with respect to the delivery of materials in respect of the Sanction Hearing, and approved a noticing protocol for the Sanction Hearing. At the Sanction Hearing, the Mediator and Monitor will seek an order approving and sanctioning the JTIM M&M Plan (the "**Sanction Order**").

14. JTIM does not agree to the JTIM M&M Plan and cannot support it due to the outstanding important commercial and legal issues that have been previously identified to the Mediator during the mediation and to the Court through my affidavit sworn October 24, 2024 (the "**October Affidavit**"), a copy of which (without exhibits) is attached hereto as **Exhibit "C"**. These issues are further discussed in this affidavit. Until these issues are resolved, the JTIM M&M Plan is not fair, reasonable or workable.

15. I am advised by Mica Arlette of PricewaterhouseCoopers Inc., the TM Receiver, that JTI-TM also does not support the JTIM M&M Plan in its current form and objects to it because, despite classifying JTI-TM's secured claim as an Unaffected Claim, the JTIM M&M Plan attempts to confiscate approximately $1.6 billion of cash collateral held by JTIM that is subject to JTI-TM's security, and purports to require as a condition of closing that JTI-TM enter into a subordination agreement that was never negotiated and that, among other things, subordinates JTI-TM's debt and security behind contingent unsecured litigation claimants whose claims are proposed to be compromised under the JTIM M&M Plan. Mr. Arlette has advised that the TM Receiver does not currently agree to subordinate JTI-TM's security or to allow its collateral to be confiscated.

16. I am also advised by Peter Odgen, Associate General Counsel of JTI, that JTIM's affiliates will not continue to provide intercompany support to JTIM if the JTIM M&M Plan in its current form is sanctioned and implemented. JTIM depends upon its affiliates to maintain its continuing operations and profitability, both of which are important components of the JTIM M&M Plan.

17. As described herein, given the important unresolved issues, and the absence of debtor, secured creditor and critical related party support, the JTIM M&M Plan cannot be implemented as drafted, even if it is sanctioned by the Court.

II. UNRESOLVED ISSUES IN THE JTIM M&M PLAN

18. At the Meeting Order Hearing, JTIM advised the Court that the JTIM M&M Plan (as it was) should not be filed with the Court and the Meeting should not be held because the important issues discussed in the October Affidavit remained unresolved. Instead, JTIM requested that the Court grant the mediation parties additional time to resolve these issues.

19. After my review of the JTIM M&M Plan and following discussions with JTIM and its external legal counsel (over which privilege is asserted and maintained), it is clear that, while certain issues identified in the October Affidavit have since been resolved, several of the important issues remain unresolved. These outstanding issues are summarized as follows:

(a) **Re-allocation of the Global Settlement Amount/Section 5.2 of the JTIM M&M Plan:** This provision in the JTIM M&M Plan states that the issue of allocation of the Global Settlement Amount as among the Tobacco Companies remains unresolved. This statement is unacceptable to JTIM because the allocation mechanism for the Annual Contributions set out in the JTIM M&M Plan adequately provides for an allocation of the Global Settlement Amount as among the Tobacco Companies. However, the JTIM M&M Plan does not, but should, provide for the allocation among the Tobacco Companies of the $750 million carve out from the Upfront Contribution.

(b) **Classification of JTI-TM as an Unaffected Creditor:** The JTIM M&M Plan incorrectly classifies JTI-TM as an Unaffected Creditor. The JTIM M&M Plan acknowledges that JTI-TM is a secured creditor of JTIM. As such, JTI-TM has an undisputed legal priority over all other creditors. The JTIM M&M Plan requires JTIM to pay to the Claimants approximately $1.6 billion from its cash collateral on hand that is subject to JTI-TM's security interest in priority to the Claimants. The JTIM M&M Plan also requires JTI-TM to enter into a subordination agreement as a condition of closing whereby it is only permitted to receive payment for principal and/or interest on the TM Debentures (defined below) from JTIM's residual profit

after JTIM makes its Annual Contribution to the Claimants. Further, JTI-TM was not given an opportunity to vote on the JTIM M&M Plan. Due to the nature and rank of its security and its recognition as the sole secured creditor of JTIM, JTI-TM should have been classified in a separate secured creditor class and should have been allowed a vote.

(c) **Suspension of Royalty Payments:** JTIM has been prohibited by Court order from making post-filing royalty payments to JTI-TM, now totalling approximately $100 million (including interest). Throughout these CCAA proceedings, JTIM has been treated differently than Imperial and RBH, who have been permitted to continue to make such payments, including to related parties. The JTIM M&M Plan does not resolve the unfair and inequitable treatment of royalty payments as among the Tobacco Companies.

(d) **Basic Economics:** There has been no negotiation of the fundamental economic terms since September 2023. Although JTIM may be willing to agree to the economic terms in the JTIM M&M Plan, this must be in the context of an overall consensual CCAA plan that provides commercial certainty and clarity. This includes the Global Settlement Amount ($32.5 billion) and the percentage of the Metric to be paid as an Annual Contribution each year. The percentage of the Metric to be paid is also inextricably bound to the mechanism to calculate the Metric and so can only be agreed if that Metric is confirmed.

(e) **Metric:** The JTIM M&M Plan calculates Annual Contributions using Net-After Tax Income, as defined in the JTIM M&M Plan. However, the JTIM M&M Plan (and the CCAA plans of Imperial and RBH) ignores that one Tobacco Company

(RBH) uses U.S. GAAP for accounting purposes while the other two Tobacco Companies (JTIM and Imperial) use IFRS. One significant difference between U.S. GAAP and IFRS is the calculation of cost-base for inventory. U.S. GAAP permits the cost of inventory to be calculated based on a LIFO (last in, first out) basis, while IFRS requires the cost of inventory to be calculated based on a FIFO (first in, first out) or average cost basis. In a world of rising input costs, as we have today, the U.S. GAAP approach artificially increases the cost of inventory and has the effect of lowering the Net-After Tax Income of the applicable Tobacco Company (RBH). This issue can be addressed by clarifying that the Metric must be applied in a consistent manner across each of the Tobacco Companies so that one Tobacco Company does not have an advantage over the others.

(f) **Tax Issues:** The JTIM M&M Plan includes unresolved tax issues. I am advised by external tax counsel to JTIM that the tax lawyers of the Tobacco Companies have attempted to raise these issues with the Monitors' Tax Counsel, but these issues have not been resolved. I understand that the definition of "Normal Reassessment Period" and its application within the applicable tax provisions is an unresolved issue due to the extension of reassessment periods if there is a reassessment by the Federal Government.

(g) **Drafting Issues:** In addition to the above issues, there continue to be drafting issues in the JTIM M&M Plan that have not been resolved. For example, the JTIM M&M Plan includes provisions that contemplate an acceleration of the settlement payments under the JTIM M&M Plan in the event of certain defaults. Such a provision is unworkable because the Annual Contributions are based on a

percentage of Net-After Tax Income, with no set amount that any of the Tobacco Companies is required to pay. This drafting point could be resolved, by way of example, by requiring the Tobacco Company triggering such acceleration provision to pay an amount calculated based on its historical average Annual Contributions.

III. THE JTIM M&M PLAN IS NOT FAIR, REASONABLE OR WORKABLE

20. The JTIM M&M Plan purports to impose settlement terms that have never been agreed on: (a) an operational CCAA debtor, (b) its secured creditor, who is being asked to subordinate its interest without any compensation or even a vote on the JTIM M&M Plan, and (c) a multinational corporate group. Given these dynamics, and the outstanding unresolved issues discussed more fully below, the JTIM M&M Plan is not fair, reasonable, or workable and cannot be implemented as drafted.

A. Incorrect Classification of JTI-TM as an Unaffected Creditor

21. JTIM is indebted to JTI-TM in the aggregate principal amount of $1.2 billion pursuant to ten secured convertible debentures (the "**TM Debentures**"). As at December 31, 2024, the total amount due and outstanding under the TM Debentures (including interest and default interest) is approximately $1.8 billion. Interest continues to accrue under the TM Debentures at a rate of approximately $10.9 million (including default interest) each month.

22. As described in detail in the Initial Affidavit of Robert McMaster sworn March 8, 2019 in support of the Initial Order (the "**Initial Affidavit**"), JTI-TM is the wholly-owned subsidiary of JTIM. However, JTIM has not exercised control over JTI-TM since 2015 (four years before the commencement of these CCAA proceedings), when JT Canada LLC Inc. ("**LLC**") privately appointed the TM Receiver following JTI-TM's default under loan

and security agreements JTI-TM granted in favour of LLC. A copy of the Initial Affidavit (without exhibits) is attached hereto as **Exhibit "D"**.

23. The TM Debentures are secured by a first charge on the assets of JTIM (the "**TM Security**") pursuant to a Convertible Debenture Subscription Agreement dated November 23, 1999, as amended from time to time.

24. The JTIM M&M Plan acknowledges that JTI-TM is a secured creditor of JTIM and acknowledges the secured nature of the TM Debentures.[1] By requiring JTIM to pay all of its cash-on-hand as an Upfront Contribution under the JTIM M&M Plan, the JTIM M&M Plan effectively confiscates the approximately $1.6 billion in cash collateral that JTIM is estimated to have in 2025. This cash is collateral that is subject to JTI-TM's security interest.

25. Further, the JTIM M&M Plan also requires as a closing condition that JTI-TM enter into an agreement to subordinate the TM Security in favour of the Contribution Security securing the recovery of Affected Creditors. The proposed Subordination Agreement also restricts any payments by JTIM in respect of outstanding principal or interest on the TM Debentures, and the outstanding post-filing, pre-closing royalties owed to JTI-TM, to the residual profit held by JTIM after its payment of the Annual Contributions to the Claimants. Despite all of these negative impacts on JTI-TM under the JTIM M&M Plan, the Meeting Order did not give JTI-TM an opportunity to vote on the JTIM M&M Plan, either in its own class as the sole secured creditor, as should happen, or at all.

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[1] JTIM M&M Plan, s.5.14.

26. JTI-TM was not involved in the development of the JTIM M&M Plan, nor was it invited to participate in any mediation sessions over many years. JTI-TM's interests have clearly been disregarded in both the mediation process and the formulation of the JTIM M&M Plan, which attempts to confiscate its cash collateral and subordinate its debt and security to its detriment. I have been advised by Mr. Arlette that the TM Receiver does not support the JTIM M&M Plan as currently drafted and it will not enter into the proposed Subordination Agreement.

27. In its Endorsement dated October 31, 2025, the Court noted that it was open to the parties to negotiate terms upon which the TM Receiver would agree to the proposed Subordination Agreement. However, there have been no consensual amendments to those aspects of the JTIM M&M Plan or the proposed Subordination Agreement since that time.

B. The JTIM M&M Plan Unfairly Treats JTIM's Post-Filing Royalty Obligations to JTI-TM

28. JTIM has not been permitted to pay any amounts in respect of any post-filing royalty payments in respect of the Trademark License Agreement dated October 8, 1999, as amended from time to time (as amended, the "**Trademark Agreement**") since March 19, 2019. In contrast, both Imperial and RBH have been permitted to pay their respective royalty payments to related parties during the course of their respective CCAA proceedings.

29. Pursuant to the Trademark Agreement, JTI-TM granted to JTIM a non-exclusive, worldwide license to use JTI-TM's trademarks in connection with the manufacturing, distribution, advertising and sale of the licensed products for remuneration set out therein.

30. In August 2017 and January 2018, following a default by JTIM under its secured credit facilities with JTI-TM due to the judgment rendered in respect of the Quebec Class Actions, JTIM and the TM Receiver negotiated amendments to the Trademark Agreement (the "**Trademark Amendments**") as consideration for JTI-TM's agreement to forbear from exercising its enforcement rights against JTIM. The August 2017 amendment changed the frequency of royalty payments paid by JTIM to JTI-TM under the Trademark Agreement from semi-annual to monthly payments.

31. On March 15, 2019, prior to the Comeback Hearing, the Quebec Class Action Plaintiffs (the "**QCAPs**") brought a motion seeking to suspend the payment of principal, interest and royalties by JTIM to JTI-TM, pending further order of the Court. On March 18, 2019, the motion was heard by Justice McEwen, and on the following day, Justice McEwen issued an Endorsement (the "**March 2019 Endorsement**") suspending the payment of interest and royalties pending the return of the Comeback Hearing or further order of the Court. Attached hereto as **Exhibit "E"** is a copy of the March 2019 Endorsement, along with an unofficial transcript prepared by counsel to the Monitor.

32. On March 28, 2019, the QCAPs served a further motion record that, among other things, sought to vary the Initial Order to prohibit the payment of interest and royalties by JTIM to JTI-TM. In response to the QCAPs' motion, JTIM served and filed the Affidavit of Robert McMaster sworn April 1, 2019 (the "**Responding McMaster Affidavit**"), a copy of which (without exhibits) is attached hereto as **Exhibit "F"**. The Responding McMaster Affidavit, among other things, provided the Court with a comprehensive history of the Recapitalization Transactions leading to the intercompany secured debt structure and the financial impact that the suspension of interest and royalty payments would have on JTI-

TM and other affiliates. JTIM took the position that it should be entitled to continue to pay its interest and royalty payments to JTI-TM as the security granted by JTIM to JTI-TM is valid and enforceable. This remains JTIM's position today.

33. At the Comeback Hearing, the Court referred the interest and royalty payment issue to the Mediator for resolution. Although the issue was raised with the Mediator, I am advised by Mr. Bomhof that the Mediator was not prepared to address the issue of payment of royalty and interest obligations as a discrete matter at the beginning of the mediation. This outcome was disclosed with the consent of the Mediator in the Fifth Report of the Monitor dated September 25, 2019. These issues remain outstanding and unresolved. Accordingly, JTIM has not made any interest or royalty payments to JTI-TM for over five years.

34. The effect of the March 2019 Endorsement puts JTIM in a different position than Imperial and RBH. During their respective CCAA proceedings, RBH and Imperial have been permitted to pay their post-filing royalty and licensing obligations to related parties. The Second Amended and Restated Initial Orders granted in RBH and Imperial's CCAA proceedings expressly permit RBH and Imperial to continue payment of any royalties for goods or services supplied to them after the date of their respective CCAA proceedings.

35. As disclosed in the affidavit filed in support of the CCAA proceedings of RBH and the Pre-Filing Report of Ernst & Young Inc., RBH licenses trademarks from Philip Morris Global Brands Inc. ("**PMI**"). In 2018, RBH paid approximately $25 million in annual royalties to a PMI affiliate and $4 million to third parties for the license of trademarks.

36. Similarly, the affidavit filed in support of the CCAA proceedings of Imperial discloses that Imperial paid its parent, British American Tobacco ("**BAT**") 3% or 5% of its annual net

sales revenue for the sales of certain brands owed by BAT. In 2018, Imperial paid approximately $46.8 million in royalties to BAT.

37. Based on the 2018 royalty payments of RBH and Imperial, as disclosed in their respective affidavits filed in support of their CCAA proceedings, I estimate that during these CCAA proceedings, RBH has been permitted to make approximately $143 million in royalty payments to its affiliate and Imperial has been permitted to make approximately $269 million in royalty payments.

38. I am advised by Mr. McMaster, Director of Taxation and Treasury at JTIM, that, as at December 31, 2024, JTIM has accrued approximately $94 million of royalties payable, including accrued interest on unpaid royalties owing to JTI-TM. Unpaid royalties continue to accrue at a rate of approximately $1.7 million (including interest on unpaid royalties) each month. The monthly per diem continues to increase as the total amount outstanding increases.

39. Rather than resolving this issue through mediation, the JTIM M&M Plan attempts to override and circumvent the rights of JTI-TM by restricting JTIM from paying the unpaid post-filing royalties and interest accrued thereon since the commencement of these CCAA proceedings. Imposing a non-consensual restriction on such payments results in an unfair and unjustifiable imbalance of treatment for JTIM and JTI-TM, as compared to RBH and Imperial and their respective affiliates.

C. Section 5.2 of the JTIM M&M Plan

40. The JTIM M&M Plan states that the allocation issue remains unresolved. This statement is unacceptable to JTIM because the JTIM M&M Plan already adequately provides for an

allocation of the Global Settlement Amount as among the Tobacco Companies based on annual Net-After Tax Income. However, the JTIM M&M Plan does not include (and should include) an allocation of the $750 million carve out that does not form part of the Upfront Contribution.

41. The JTIM M&M Plan requires each Tobacco Company to provide 100% of its cash-on-hand on the Plan Implementation Date (less a working capital carve out in the total amount of $750 million). Further, each Tobacco Company is required to provide the same percentage of its Net-After Tax Income (pursuant to audited financial statements), as determined by the Metric, which begins at 85% of Net-After Tax Income, and reduces in 5% increments every five years until reaching 70% of Net-After Tax Income. The Annual Contributions stay at this level until the Global Settlement Amount is repaid in full. Put differently, the entire Canadian tobacco industry is required to pay an annual percentage of its net profits after tax until the Global Settlement Amount is paid in full. This represents a closed eco-system where it does not matter which Applicant sells product and generates profits therefrom.

42. I understand from JTIM's external legal counsel and from RBH's submissions made in respect of the Claims Procedure Order and the Meeting Order that RBH has indicated it wants a re-allocation of the amounts payable under the JTIM M&M Plan so that the Annual Contributions paid by each Tobacco Company would be different to what is currently stated in the JTIM M&M Plan. My understanding is that RBH may wish to see a further allocation based on, among other things, a percentage share of relative liability for each Tobacco Company. I have been advised by litigation counsel to JTIM that relative liability

is a highly contested issue. In addition, RBH wants each Tobacco Company to have a severable share (i.e., a specific number) of the Global Settlement Amount.

43. RBH's position completely changes the business terms of the global settlement underlying the CCAA plans and was not the basis of prior negotiations as understood by JTIM. Thus, such a position would effectively put the parties back to square one.

44. An allocation based on each Tobacco Company having a severable share of liability is also not in the Claimants' interests. RBH's proposed method of allocation could permit one or more of the Tobacco Companies to make an early repayment of their severable share of liability and exit the settlement earlier than the other Tobacco Companies. Once one Tobacco Company is no longer bound by the terms of the CCAA plans, the competitive dynamic between the Tobacco Companies would be altered. With one Tobacco Company able to operate without regard to the settlement terms, administrative oversight and costs, and able to retain all of its net income, it might be in a position to undertake commercial activities that would reduce further the profitability of the Tobacco Companies subject to the settlement, which could lead to such Tobacco Companies becoming unprofitable.

45. The end result would be a longer period of time for the Global Settlement Amount to be paid in full, if at all. If such a concept is incorporated into the JTIM M&M Plan, this would lead to a negative outcome for the Claimants and significantly increase the risk that the Global Settlement Amount is never paid in full.

46. The current methodology to calculate the Annual Contributions works because it is based on each Tobacco Company's ability to pay. Any change in metric would undermine the basis on which the Claimants approved the JTIM M&M Plan. The CCAA plans approved

by creditors involve Annual Contributions calculated based on Net-After Tax Income, so if a Tobacco Company's net income goes down its payment would also go down (and vice-versa), but the burden of settlement payments would not make the Tobacco Company insolvent. Changing this to a different methodology threatens the viability of the Tobacco Companies, and so undermines the payment assurance that the Claimants have negotiated. It would also be contrary to a fundamental principle of the negotiations as repeatedly stated by all the Tobacco Companies.

IV. JTIM Requires Continued Support of the Tobacco Company Group

47. JTIM is part of an integrated global corporate group that relies on other members of its Tobacco Company Group to operate. It is a counterparty to approximately 28 intercompany arrangements that include the supply of raw materials used in JTIM's manufacturing process, global IT network and related services (including the use of the licensed technology system, SAP), legal and regulatory services, human resources services, and other functional group services.

48. The continued supply of intercompany goods and services is critical to maintain JTIM's current operations and sustain its current level of profitability. Under the JTIM M&M Plan, the Claimants must rely on JTIM's profitability for payment of the balance of the Global Settlement Amount over time. In the absence of the Tobacco Company Group's support and cooperation, JTIM's continued operations and profitability could be seriously jeopardized.

V. PURPOSE

49. This affidavit is sworn in objection to the Monitor's motion for a Sanction Order, and for no other or improper purpose.

SWORN BEFORE ME BY VIDEO CONFERENCE by William E. Aziz on January 20, 2025 in accordance with *O. Reg. 431/20, Administering Oath or Declaration Remotely*. The affiant was in the City of Naples, in the State of Florida and the commissioner was in the City of Toronto, in the Province of Ontario.

Commissioner for Taking Affidavits
REBEKAH O'HARE
LSO # 87983G

WILLIAM E. AZIZ

This is Exhibit “A” referred to in the
Affidavit of William E. Aziz sworn by William E. Aziz of the
City of Naples, in the State of Florida, before me at the City
of Toronto, in the Province of Ontario,
this 20th day of January, 2025 in accordance with
O. Reg. 431/20, Administering Oath or Declaration Remotely.

A Commissioner for taking affidavits

REBEKAH O'HARE
(LSO# 87983G)

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

ONTARIO
SUPERIOR COURT OF JUSTICE
(COMMERCIAL LIST)

THE HONOURABLE	)	FRIDAY, THE 8TH
	)	
JUSTICE MCEWEN	)	DAY OF MARCH, 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.**

SECOND AMENDED AND RESTATED INITIAL ORDER

THIS APPLICATION, made by JTI-Macdonald Corp. (the "**Applicant**"), pursuant to the *Companies' Creditors Arrangement Act*, R.S.C. 1985, c. C-36, as amended (the "**CCAA**") was heard this day at 330 University Avenue, Toronto, Ontario.

ON READING (i) the affidavit of Robert McMaster sworn March 8, 2019 and the exhibits thereto (the "**McMaster Affidavit**"); (ii) the affidavit of Robert McMaster sworn March 28, 2019 and the exhibits thereto; (iii) the affidavit of Robert McMaster sworn April 1, 2019 (the "**Comeback Affidavit**"); (iv) the affidavit of William E. Aziz sworn April 1, 2019; (v) the pre-filing report dated March 8, 2019 (the "**Pre-Filing Report**") of Deloitte Restructuring Inc. ("**Deloitte**") in its capacity as the proposed monitor of the Applicant; (vi) the first report of Deloitte, in its capacity as Monitor of the Applicant (the "**Monitor**") dated March 28, 2019; and (vii) the second report of the Monitor dated April 1, 2019, and on being advised that JTI-Macdonald TM Corp. and JT Canada LLC Inc., the secured creditors who are likely to be affected by the charges created herein (the "**Secured Creditors**") were given notice, and on

hearing the submissions of counsel for the Applicant, the Secured Creditors, Deloitte and on reading the consent of Deloitte to act as the Monitor,

SERVICE

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

APPLICATION

2. **THIS COURT ORDERS AND DECLARES** that the Applicant is a company to which the CCAA applies.

PLAN OF ARRANGEMENT

3. **THIS COURT ORDERS** that the Applicant shall have the authority to file and may, subject to further order of this Court, file with this Court a plan of compromise or arrangement (hereinafter referred to as the "**Plan**").

DEFINITIONS

4. **THIS COURT ORDERS** that for purposes of this Order:

(a) "**JTI Group**" means entities related to or affiliated with the Applicant;

(b) "**Pending Litigation**" means any and all actions, applications and other lawsuits existing at the time of this Order in which the Applicant is a named defendant or respondent (either individually or with other Persons (as defined below)), relating in any way whatsoever to a Tobacco Claim (as defined below), including, without limitation, the Quebec Class Actions (as defined below), the Additional Class Actions and the HCCR Actions (as each of those terms is defined in the McMaster Affidavit);

(c) **"Quebec Class Actions"** means the proceedings in the Quebec Superior Court and the Quebec Court of Appeal in (i) *Cécilia Létourneau et al. v. JTI-Macdonald Corp., Imperial Tobacco Canada Limited and Rothmans, Benson & Hedges Inc.* and (ii) *Conseil Québécois sur le Tabac et la Santé and Jean-Yves Blais v. JTI-Macdonald Corp., Imperial Tobacco Canada Limited and Rothmans, Benson & Hedges Inc.* and all decisions and orders in such proceedings;

(d) "**Sales & Excise Taxes**" means all goods and services, harmonized sales or other applicable federal, provincial or territorial sales taxes, and all federal excise taxes and customs and import duties and all federal, provincial and territorial tobacco taxes;

(e) "**Tobacco Claim**" means any right or claim (including, without limitation, a claim for contribution or indemnity) of any Person against or in respect of the Applicant or any member of the JTI Group that has been advanced (including without limitation, in the Pending Litigation), that could have been advanced or that could be advanced, and whether such right or claim is on such Person's own account, on behalf of another Person, as a dependent of another Person or on behalf of a certified or proposed class or made or advanced as a government body or agency, insurer, employer or otherwise under or in connection with:

(i) applicable law, to recover damages in respect of the development, manufacture, production, marketing, advertising, distribution, purchase or sale of Tobacco Products (as defined below), the use of or exposure to Tobacco Products or any representation in respect of Tobacco Products in Canada or, in the case of the Applicant, anywhere else in the world; or

(ii) the HCCR Legislation (as defined in the McMaster Affidavit),

excluding any right or claim of a supplier relating to goods or services supplied to, or the use of leased or licensed property by, the Applicant or any member of the JTI Group; and

(f) "**Tobacco Products**" means tobacco or any product made or derived from tobacco or containing nicotine that is intended for human consumption, including any component, part, or accessory of or used in connection with a tobacco product, including cigarettes, cigarette tobacco, roll your own tobacco, smokeless tobacco, electronic cigarettes, vaping liquids and devices, heat-not-burn tobacco, and any other tobacco or nicotine delivery systems and shall include materials, products and by-products derived from or resulting from the use of any tobacco products.

POSSESSION OF PROPERTY AND OPERATIONS

5. **THIS COURT ORDERS** that the Applicant shall remain in possession and control of its current and future assets, undertakings and properties of every nature and kind whatsoever, and wherever situate including all proceeds thereof (the "**Property**"). Subject to further Order of this Court, the Applicant shall continue to carry on business in a manner consistent with the preservation of its business (the "**Business**") and Property. The Applicant is authorized and empowered to continue to retain and employ the employees, independent contractors, consultants, agents, experts, accountants, counsel and such other persons (collectively "**Assistants**") currently retained or employed by it, with liberty to retain such further Assistants as it deems reasonably necessary or desirable in the ordinary course of business, to preserve the value of the Property or the Business, or for the carrying out of the terms of this Order.

6. **THIS COURT ORDERS** that the Applicant shall be entitled to continue to utilize the central cash management system currently in place as described in the McMaster Affidavit or replace it with another substantially similar central cash management system (the "**Cash Management System**") and that any present or future bank providing the Cash Management System shall not be under any obligation whatsoever to inquire into the propriety, validity or legality of any transfer, payment, collection or other action taken under the Cash Management System, or as to the use or application by the Applicant of funds transferred, paid, collected or otherwise dealt with in the Cash Management System, shall be entitled to provide the Cash Management System without any liability in respect thereof to any Person (as hereinafter defined) other than the Applicant, pursuant to the terms of the documentation applicable to the Cash Management System, and shall be, in its capacity as provider of the Cash Management System, an unaffected creditor under the Plan with regard to any claims or expenses it may suffer or incur in connection with the provision of the Cash Management System.

7. **THIS COURT ORDERS** that the Applicant shall be entitled but not required to pay the following expenses whether incurred prior to, on or after the date of this Order:

(a) all outstanding and future wages, salaries, commissions, compensation, vacation pay, bonuses, incentive plan payments, employee and retiree pension and other benefits and related contributions and payments (including, without limitation, expenses related to employee and retiree medical, dental, disability, life insurance and similar benefit plans or arrangements, employee assistance programs and contributions to or any payments in respect of the Pension Plans (as defined in the McMaster Affidavit), reimbursement expenses (including, without limitation, amounts charged to corporate credit cards), termination pay, salary continuance

and severance pay, all of which is payable to or in respect of employees, independent contractors and other personnel, in each case incurred in the ordinary course of business and consistent with existing compensation policies and arrangements or with Monitor approval; and

(b) the fees and disbursements of any Assistants retained or employed by the Applicant at their standard rates and charges.

8. **THIS COURT ORDERS** that, except as otherwise provided to the contrary herein, the Applicant shall be entitled but not required to pay all reasonable expenses incurred by the Applicant in carrying on the Business in the ordinary course prior to, on or after the making of this Order, and in carrying out the provisions of this Order, which expenses shall include, without limitation:

(a) all expenses and capital expenditures reasonably necessary for the preservation of the Property or the Business including, without limitation, payments on account of insurance (including directors and officers insurance), maintenance and security services;

(b) capital expenditures other than as permitted in clause (a) above to replace or supplement the Property or that are otherwise of benefit to the Business, provided that Monitor approval is obtained for any single such expenditure in excess of $1 million or an aggregate of such expenditures in a calendar year in excess of $10 million;

(c) all interest due and payable on the Applicant's secured obligations; and

(d) payment for goods or services supplied or to be supplied to the Applicant (including the payment of any royalties or shared services).

9. **THIS COURT ORDERS** that the Applicant is authorized to complete outstanding transactions and engage in new transactions with the members of the JTI Group and to continue, on and after the date hereof, to buy and sell goods and services, and to allocate, collect and pay costs, expenses and other amounts from and to the members of the JTI Group, including without limitation in relation to finished, unfinished and semi-finished materials, personnel, administrative, technical and professional services, and royalties and fees in respect of trademark licences (collectively, all transactions and all inter-company policies and procedures between the Applicant and any member of the JTI Group, the "**Intercompany Transactions**") in the ordinary course of business or as otherwise approved by the Monitor. All Intercompany Transactions in the ordinary course of business between the Applicant and any member of the JTI Group, including the provision of goods and services from any member of the JTI Group to the Applicant, shall continue on terms consistent with existing arrangements or past practice or as otherwise approved by the Monitor.

10. **THIS COURT ORDERS** that the Applicant shall remit, in accordance with legal requirements, or pay (whether levied, accrued or collected before, on or after the date of this Order):

(a) any statutory deemed trust amounts in favour of the Crown in right of Canada or of any Province thereof or any other taxation authority which are required to be deducted from employees' wages, including, without limitation, amounts in respect of (i) employment insurance, (ii) Canada Pension Plan, (iii) Quebec Pension Plan, and (iv) income taxes;

(b) all Sales & Excise Taxes required to be remitted by the Applicant in connection with the Business; and

(c) any amount payable to the Crown in right of Canada or of any Province thereof or any political subdivision thereof or any other taxation authority in respect of municipal realty, municipal business or other taxes, assessments or levies of any nature or kind which are entitled at law to be paid in priority to claims of secured creditors and which are attributable to or in respect of the carrying on of the Business by the Applicant.

11. **THIS COURT ORDERS** that the Applicant is authorized to post and to continue to have posted cash collateral, letters of credit, performance bonds, payment bonds, surety bonds, guarantees and other forms of security from time to time, in an aggregate amount not exceeding $18 million (the "**Bonding Collateral**"), to satisfy regulatory or administrative requirements to provide security that have been imposed on it in the ordinary course and consistent with past practice in relation to the collection and remittance of federal excise taxes and customs and import duties and federal, provincial and territorial tobacco taxes, whether the Bonding Collateral is provided directly or indirectly by the Applicant as such security, and the Applicant is authorized to post and to continue to have posted surety bonds with Chubb Insurance Company of Canada (f/k/a ACE INA Insurance) and any other issuers of Bonding Collateral as security therefor.

12. **THIS COURT ORDERS** that the Canadian federal, provincial and territorial authorities entitled to receive payments or collect monies from the Applicant in respect of Sales & Excise Taxes are hereby stayed during the Stay Period (as defined below) from requiring that any additional bonding or other security be posted by or on behalf of the Applicant in connection with Sales & Excise Taxes or any other matters for which such bonding or security may otherwise be required.

13. **THIS COURT ORDERS** that until a real property lease is disclaimed or resiliated in accordance with the CCAA, the Applicant shall pay all amounts constituting rent or payable as rent under real property leases (including, for greater certainty, common area maintenance charges, utilities and realty taxes and any other amounts payable to the landlord under the lease) or as otherwise may be negotiated between the Applicant and the landlord from time to time ("**Rent**"), for the period commencing from and including the date of this Order, at such intervals as such Rent is usually paid in the ordinary course of business. On the date of the first of such payments, any Rent relating to the period commencing from and including the date of this Order shall also be paid.

14. **THIS COURT ORDERS** that, except as specifically permitted herein, the Applicant is hereby directed, until further Order of this Court: (a) to make no payments of principal, interest thereon or otherwise on account of amounts owing by the Applicant or claims to which it is subject to any of its creditors as of this date and to post no security in respect of any such amounts or claims, including pursuant to any order or judgment; (b) to grant no security interests, trust, liens, charges or encumbrances upon or in respect of any of its Property; and (c) to not grant credit or incur liabilities except in the ordinary course of the Business.

RESTRUCTURING

15. **THIS COURT ORDERS** that the Applicant shall, subject to such requirements as are imposed by the CCAA, have the right to:

(a) permanently or temporarily cease, downsize or shut down any of its business or operations, and to dispose of redundant or non-material assets not exceeding $5 million in any one transaction or $10 million in the aggregate;

(b) terminate the employment of such of its employees or temporarily lay off such of its employees as it deems appropriate;

(c) pursue all avenues of refinancing of the Business or Property, in whole or part, subject to prior approval of this Court being obtained before any material refinancing; and

(d) pursue all avenues to resolve any of the Tobacco Claims, in whole or in part,

all of the foregoing to permit the Applicant to proceed with an orderly restructuring of the Business.

16. **THIS COURT ORDERS** that the Applicant shall provide each of the relevant landlords with notice of the Applicant's intention to remove any fixtures from any leased premises at least seven (7) days prior to the date of the intended removal. The relevant landlord shall be entitled to have a representative present in the leased premises to observe such removal and, if the landlord disputes the Applicant's entitlement to remove any such fixture under the provisions of the lease, such fixture shall remain on the premises and shall be dealt with as agreed between any applicable secured creditors, such landlord and the Applicant, or by further Order of this Court upon application by the Applicant on at least two (2) days' notice to such landlord and any such secured creditors. If the Applicant disclaims or resiliates the lease governing such leased premises in accordance with Section 32 of the CCAA, it shall not be required to pay Rent under such lease pending resolution of any such dispute (other than Rent payable for the notice period provided for in Section 32(5) of the CCAA), and the disclaimer or resiliation of the lease shall be without prejudice to the Applicant's claim to the fixtures in dispute.

17. **THIS COURT ORDERS** that if a notice of disclaimer or resiliation is delivered pursuant to Section 32 of the CCAA, then (a) during the notice period prior to the effective time

of the disclaimer or resiliation, the landlord may show the affected leased premises to prospective tenants during normal business hours, on giving the Applicant and the Monitor 24 hours' prior written notice, and (b) at the effective time of the disclaimer or resiliation, the relevant landlord shall be entitled to take possession of any such leased premises without waiver of or prejudice to any claims or rights such landlord may have against the Applicant in respect of such lease or leased premises, provided that nothing herein shall relieve such landlord of its obligation to mitigate any damages claimed in connection therewith.

STAY OF PROCEEDINGS

18. **THIS COURT ORDERS** that until and including April 5, 2019, or such later date as this Court may order (the "**Stay Period**"), no proceeding or enforcement process in any court or tribunal (each, a "**Proceeding**"), including but not limited to an application for leave to appeal to the Supreme Court of Canada in the Quebec Class Action (a "**QCA Leave Application**"), the Pending Litigation and any other Proceeding in relation to a Tobacco Claim, shall be commenced, continued or take place by, against or in respect of the Applicant, the Monitor, or the Court-Appointed Mediator (defined below), or affecting the Business or the Property, except with leave of this Court, and any and all Proceedings currently under way or directed to take place by, against or in respect of the Applicant or affecting the Business or the Property are hereby stayed and suspended pending further Order of this Court. All counterclaims, cross-claims and third party claims of the Applicant in the Pending Litigation are likewise subject to this stay of Proceedings during the Stay Period.

19. **THIS COURT ORDERS** that during the Stay Period, (i) none of the Pending Litigation or any Proceeding in relation thereto shall be commenced, continued or take place against or in respect of any Person named as a defendant or respondent other than Imperial Tobacco Canada

Limited, Imperial Tobacco Company Limited or Rothmans, Benson and Hedges Inc. in any of the Pending Litigation (such Persons, the "**Other Defendants**"); and (ii) no Proceeding in Canada that relates in any way to a Tobacco Claim or to the Applicant, the Business or the Property shall be commenced, continued or take place against or in respect of any member of the JTI Group or R. J. Reynolds Tobacco Company or R. J. Reynolds Tobacco International, Inc., except with leave of this Court, and any and all such Proceedings currently underway or directed to take place against or in respect of any of the Other Defendants or any member of the JTI Group, or affecting the Business or the Property are hereby stayed and suspended pending further Order of this Court.

20. **THIS COURT ORDERS** that, to the extent any prescription, time or limitation period relating to any Proceeding against or in respect of the Applicant, any of the Other Defendants, or any member of the JTI Group that is stayed pursuant to this Order may expire, including but not limited to any prescription of time whereby the Applicant would be required to commence the QCAP Leave Application, the term of such prescription, time or limitation period shall hereby be deemed to be extended by a period equal to the Stay Period.

NO EXERCISE OF RIGHTS OR REMEDIES

21. **THIS COURT ORDERS** that during the Stay Period, all rights and remedies of any individual, firm, corporation, governmental body or agency, or any other entities (all of the foregoing, collectively being "**Persons**" and each being a "**Person**") against or in respect of the Applicant or the Monitor, or affecting the Business or the Property (including for greater certainty, any enforcement process or steps or other rights and remedies under or relating to the Quebec Class Actions or any enforcement process or other steps in respect of the Applicant or the JTI Group's trademarks or other intellectual property used by the Applicant), are hereby

stayed and suspended except with the written consent of the Applicant and the Monitor, or leave of this Court, provided that nothing in this Order shall (i) empower the Applicant to carry on any business which the Applicant is not lawfully entitled to carry on, (ii) affect such investigations, actions, suits or proceedings by a regulatory body as are permitted by Section 11.1 of the CCAA, (iii) prevent the filing of any registration to preserve or perfect a security interest, or (iv) prevent the registration of a claim for lien.

NO INTERFERENCE WITH RIGHTS

22. **THIS COURT ORDERS** that during the Stay Period, no Person shall discontinue, fail to honour, alter, interfere with, repudiate, terminate or cease to perform any right, renewal right, contract, agreement, licence or permit in favour of or held by the Applicant, except with the written consent of the Applicant and the Monitor, or leave of this Court.

CONTINUATION OF SERVICES

23. **THIS COURT ORDERS** that during the Stay Period, all Persons having oral or written agreements with the Applicant or statutory or regulatory mandates for the supply of goods and/or services, including without limitation all computer software, communication and other data services, centralized banking services, payroll services, insurance, transportation services, utility, customs clearing, warehouse or logistical services, or other services to the Business or the Applicant, are hereby restrained until further Order of this Court from discontinuing, altering, interfering with or terminating the supply of such goods or services as may be required by the Applicant, and that the Applicant shall be entitled to the continued use of its current premises, telephone numbers, facsimile numbers, internet addresses and domain names, provided in each case that the normal prices or charges for all such goods or services received after the date of this Order are paid by the Applicant in accordance with normal payment practices of the Applicant or

such other practices as may be agreed upon by the supplier or service provider and each of the Applicant and the Monitor, or as may be ordered by this Court.

NON-DEROGATION OF RIGHTS

24. **THIS COURT ORDERS** that, notwithstanding anything else in this Order, no Person shall be prohibited from requiring immediate payment for goods, services, use of leased or licensed property or other valuable consideration provided on or after the date of this Order, nor shall any Person be under any obligation on or after the date of this Order to advance or re-advance any monies or otherwise extend any credit to the Applicant. Nothing in this Order shall derogate from the rights conferred and obligations imposed by the CCAA.

SALES AND EXCISE TAX CHARGE

25. **THIS COURT ORDERS** that the Canadian federal, provincial and territorial authorities that are entitled to receive payments or collect monies from the Applicant in respect of Sales & Excise Taxes shall be entitled to the benefit of and are hereby granted a charge (the "**Sales and Excise Tax Charge**") on the Property, which charge shall not exceed an aggregate amount of $127 million, as security for all amounts owing by the Applicant in respect of Sales & Excise Taxes. The Sales and Excise Tax Charge shall have the priority set out in paragraphs 46 and 48 herein.

PROCEEDINGS AGAINST DIRECTORS AND OFFICERS

26. **THIS COURT ORDERS** that during the Stay Period, and except as permitted by subsection 11.03(2) of the CCAA, no Proceeding may be commenced or continued against any of the former, current or future directors or officers of the Applicant with respect to any claim against the directors or officers that arose before the date hereof and that relates to any

obligations of the Applicant whereby the directors or officers are alleged under any law to be liable in their capacity as directors or officers for the payment or performance of such obligations.

DIRECTORS' AND OFFICERS' INDEMNIFICATION AND CHARGE

27. **THIS COURT ORDERS** that the Applicant shall indemnify its directors and officers against obligations and liabilities that they may incur as directors or officers of the Applicant after the commencement of the within proceedings, except to the extent that, with respect to any officer or director, the obligation or liability was incurred as a result of the director's or officer's gross negligence or wilful misconduct.

28. **THIS COURT ORDERS** that the directors and officers of the Applicant shall be entitled to the benefit of and are hereby granted a charge (the "**Directors' Charge**") on the Property, which charge shall not exceed an aggregate amount of $4.1 million, as security for the indemnity provided in paragraph 27 of this Order. The Directors' Charge shall have the priority set out in paragraphs 46 and 48 herein.

29. **THIS COURT ORDERS** that, notwithstanding any language in any applicable insurance policy to the contrary, (a) no insurer shall be entitled to be subrogated to or claim the benefit of the Directors' Charge, and (b) the Applicant's directors and officers shall only be entitled to the benefit of the Directors' Charge to the extent that they do not have coverage under any directors' and officers' insurance policy, or to the extent that such coverage is insufficient to pay amounts indemnified in accordance with paragraph 27 of this Order.

CRO APPOINTMENT

30. **THIS COURT ORDERS** that

(a) the agreement dated as of April 23, 2018 pursuant to which the Applicant has engaged BlueTree Advisors Inc. ("**BlueTree**") to provide the services of William E. Aziz to act as chief restructuring officer to the Applicant (the "**CRO**"), a copy of which is attached as Confidential Exhibit "1" to the McMaster Affidavit (the "**CRO Engagement Letter**"), and the appointment of the CRO pursuant to the terms thereof is hereby approved, including, without limitation, the payment of the fees and expenses contemplated thereby;

(b) the CRO shall not be or be deemed to be a director or employee of the Applicant;

(c) neither BlueTree nor the CRO shall, as a result of the performance of their respective obligations and services in accordance with the terms of the CRO Engagement Letter, be deemed to be in Possession (as defined below) of any of the Property within the meaning of any Environmental Legislation (as defined below);

(d) BlueTree and the CRO shall not have any liability with respect to any losses, claims, damages or liabilities, of any nature or kind, to any Person from and after the date of this Order except to the extent such losses, claims, damages or liabilities result from the negligence or wilful misconduct on the part of BlueTree or the CRO;

(e) no action or other proceeding shall be commenced directly, or by way of counterclaim, third party claim or otherwise, against or in respect of BlueTree and the CRO, and all rights and remedies of any Person against or in respect of them are hereby stayed and suspended, except with the written consent of the CRO or with leave of this Court on notice to the Applicant, the Monitor and the CRO. Notice of any such motion seeking leave of this Court shall be served upon the Applicant, the Monitor and the CRO at least seven (7) days prior to the return date of any such motion for leave; and

(f) the obligations of the Applicant to BlueTree and the CRO pursuant to the CRO Engagement Letter shall be treated as unaffected and may not be compromised in any Plan or proposal filed under the *Bankruptcy and Insolvency Act*, R.S.C, 1985, c. B-3, as amended (the "**BIA**") in respect of the Applicant.

APPOINTMENT OF MONITOR

31. **THIS COURT ORDERS** that Deloitte is hereby appointed pursuant to the CCAA as the Monitor, an officer of this Court, to monitor the business and financial affairs of the Applicant with the powers and obligations set out in the CCAA or set forth herein and that the Applicant and its shareholders, officers, directors, and Assistants shall advise the Monitor of all material steps taken by the Applicant pursuant to this Order, and shall co-operate fully with the Monitor in the exercise of its powers and discharge of its obligations and provide the Monitor with the assistance that is necessary to enable the Monitor to adequately carry out the Monitor's functions.

32. **THIS COURT ORDERS** that the Monitor, in addition to its prescribed rights and obligations under the CCAA, is hereby directed and empowered to:

(a) monitor the Applicant's receipts and disbursements;

(b) report to this Court at such times and intervals as the Monitor may deem appropriate with respect to matters relating to the Property, the Business, and such other matters as may be relevant to the proceedings herein;

(c) advise the Applicant in its preparation of the Applicant's cash flow statements, which information shall be reviewed with the Monitor;

(d) advise the Applicant in its development of the Plan and any amendments to the Plan;

(e) assist the Applicant, to the extent required by the Applicant, with the holding and administering of creditors' or shareholders' meetings for voting on the Plan;

(f) have full and complete access to the Property, including the premises, books, records, data, including data in electronic form, and other financial documents of the Applicant, to the extent that is necessary to adequately assess the Applicant's business and financial affairs or to perform its duties arising under this Order;

(g) be at liberty to engage independent legal counsel or such other persons as the Monitor deems necessary or advisable respecting the exercise of its powers and performance of its obligations under this Order;

(h) assist the Applicant, to the extent required by the Applicant, in its efforts to explore the potential for a resolution of any of the Tobacco Claims;

(i) consult with the Court-Appointed Mediator in connection with the Court-Appointed Mediator's mandate, including in relation to any negotiations to settle any Tobacco Claims and the development of the Plan; and

(j) perform such other duties as are required by this Order or by this Court from time to time.

33. **THIS COURT ORDERS** that the Monitor shall not take possession of the Property and shall take no part whatsoever in the management or supervision of the management of 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.

34. **THIS COURT ORDERS** that nothing herein contained shall require the Monitor to occupy or to take control, care, charge, possession or management (separately and/or

collectively, "**Possession**") of any of the Property that might be environmentally contaminated, might be a pollutant or a contaminant, or might cause or contribute to a spill, discharge, release or deposit of a substance contrary to any federal, provincial or other law respecting the protection, conservation, enhancement, remediation or rehabilitation of the environment or relating to the disposal of waste or other contamination including, without limitation, the *Canadian Environmental Protection Act*, the Ontario *Environmental Protection Act*, the *Ontario Water Resources Act*, the Ontario *Occupational Health and Safety Act* the Quebec *Environment Quality Act*, the Quebec *Act Respecting Occupational Health and Safety* and regulations thereunder (the "**Environmental Legislation**"), provided however that nothing herein shall exempt the Monitor from any duty to report or make disclosure imposed by applicable Environmental Legislation. The Monitor shall not, as a result of this Order or anything done in pursuance of the Monitor's duties and powers under this Order, be deemed to be in Possession of any of the Property within the meaning of any Environmental Legislation, unless it is actually in possession.

35. **THIS COURT ORDERS** that the Monitor shall provide any creditor of the Applicant with information provided by the Applicant in response to reasonable requests for information made in writing by such creditor addressed to the Monitor. The Monitor shall not have any responsibility or liability with respect to the information disseminated by it pursuant to this paragraph. In the case of information that the Monitor has been advised by the Applicant is confidential, the Monitor shall not provide such information to creditors unless otherwise directed by this Court or on such terms as the Monitor and the Applicant may agree.

36. **THIS COURT ORDERS** that, in addition to the rights and protections afforded the Monitor under the CCAA or as an officer of this Court, the Monitor shall incur no liability or

obligation as a result of its appointment or the carrying out of the provisions of this Order, save and except for any gross negligence or wilful misconduct on its part. Nothing in this Order shall derogate from the protections afforded the Monitor by the CCAA or any applicable legislation.

37. **THIS COURT ORDERS** that the Monitor, counsel to the Monitor and counsel to the Applicant shall be paid their reasonable fees and disbursements, in each case at their standard rates and charges, by the Applicant as part of the costs of these proceedings and the CRO shall be paid its fees and expenses pursuant to the CRO Engagement Letter. The Applicant is hereby authorized and directed to pay the accounts of the Monitor, counsel for the Monitor and counsel for the Applicant on a bi-weekly basis and the fees and expenses of the CRO pursuant to the CRO Engagement Letter.

38. **THIS COURT ORDERS** that the Monitor and its legal counsel shall pass their accounts from time to time, and for this purpose the accounts of the Monitor and its legal counsel are hereby referred to a judge of the Commercial List of the Ontario Superior Court of Justice.

39. **THIS COURT ORDERS** that the Monitor, counsel to the Monitor, the CRO and counsel to the Applicant shall be entitled to the benefit of and are hereby granted a charge (the "**Administration Charge**") on the Property, which charge shall not exceed an aggregate amount of $3 million, as security for their professional fees and disbursements incurred at the standard rates and charges of the Monitor and such counsel, both before and after the making of this Order in respect of these proceedings and the CRO, other than in respect of any success fee provided for in the CRO Engagement Letter. The Administration Charge shall have the priority set out in paragraphs 46 and 48 hereof.

COURT-APPOINTED MEDIATOR

40. **THIS COURT ORDERS** that the Hon. Warren K. Winkler, Q.C. is hereby appointed, as an officer of the Court and shall act as a neutral third party (the "**Court-Appointed Mediator**") to mediate a global settlement of the Tobacco Claims.

41. **THIS COURT ORDERS** that in carrying out his mandate, the Court-Appointed Mediator may, among other things:

(a) Adopt processes which, in his discretion, he considers appropriate to facilitate negotiation of a global settlement;

(b) Retain independent legal counsel and such other advisors and persons as the Court-Appointed Mediator considers necessary or desirable to assist him in carrying out his mandate;

(c) Consult with all Persons with Tobacco Claims ("**Tobacco Claimants**"), the Monitor, the Applicant, the CRO, the Co-Defendants (as defined in the Comeback Affidavit), other creditors and stakeholders of the Applicant and/or the Co-Defendants and any other persons the Court-Appointed Mediator considers appropriate;

(d) Accept a court appointment of similar nature in any proceedings under the CCAA commenced by a company that is a co-defendant or respondent with the Applicant or the Co-Defendants in any action brought by one or more Tobacco Claimants, including the Pending Litigation; and,

(e) Apply to this Court for advice and directions as, in his discretion, the Court-Appointed Mediator deems necessary.

42. **THIS COURT ORDERS** that, subject to an agreement between the Applicant and the Court-Appointed Mediator, all reasonable fees and disbursements of the Court-Appointed Mediator and his legal counsel and financial and other advisors as may have been incurred by them prior to the date of this Order or which shall be incurred by them in relation to carrying out his mandate shall be paid by the Applicant and the Co-Defendants on a monthly basis, forthwith upon the rendering of accounts to the Applicant and the Co-Defendants.

43. **THIS COURT ORDERS** that the Court-Appointed Mediator shall be entitled to the benefit of and is hereby granted a charge (the "**Court-Appointed Mediator Charge**") on the Property, which charge shall not exceed an aggregate amount of $1 million, as security for his fees and disbursements and for the fees and disbursements of his legal counsel and financial and other advisors, in each case incurred at their standard rates and charges, both before and after the making of this Order in respect of these proceedings. The Court-Appointed Mediator Charge shall have the priority set out in paragraphs 47 and 49 hereof.

44. **THIS COURT ORDERS** that the Court-Appointed Mediator is authorized to take all steps and to do all acts necessary or desirable to carry out the terms of this Order, including dealing with any Court, regulatory body or other government ministry, department or agency, and to take all such steps as are necessary or incidental thereto.

45. **THIS COURT ORDERS** that, in addition to the rights and protections afforded as an officer of this Court, the Court-Appointed Mediator shall incur no liability or obligation as a result of his appointment or the carrying out of the provisions of this Order, save and except for any gross negligence or wilful misconduct on his part. Nothing in this Order shall derogate from the protections afforded a person pursuant to Section 142 of the *Courts of Justice Act* (Ontario).

VALIDITY AND PRIORITY OF CHARGES CREATED BY THIS ORDER

46. **THIS COURT ORDERS** that the priorities of the Administration Charge, the Directors' Charge, the Sales and Excise Tax Charge and the Court-Appointed Mediator Charge (collectively, the "**Charges**" and each individually, a "**Charge**"), as among them, shall be as follows:

First – Administration Charge (to the maximum amount of $3 million) and the Court-Appointed Mediator Charge (to the maximum amount of $1 million), *pari passu*;

Second — Directors' Charge (to the maximum amount of $4.1 million); and

Third – Sales and Excise Tax Charge (to the maximum amount of $127 million).

47. **THIS COURT ORDERS** that the filing, registration or perfection of the Charges shall not be required, and that the Charges shall be valid and enforceable for all purposes, including as against any right, title or interest filed, registered, recorded or perfected subsequent to the Charges coming into existence, notwithstanding any such failure to file, register, record or perfect.

48. **THIS COURT ORDERS** that each of the Charges shall constitute a charge on the Property and such Charges shall rank in priority to all other security interests, trusts, liens, charges, encumbrances and claims of secured creditors, statutory or otherwise (collectively, the "**Encumbrances**") in favour of any Person in respect of such Property, save and except for

(a) purchase-money security interests or the equivalent security interests under various provincial legislation and financing leases (that, for greater certainty, shall not include trade payables);

(b) statutory super-priority deemed trusts and liens for unpaid employee source deductions;

(c) deemed trusts and liens for any unpaid pension contribution or deficit with respect to the Pension Plans, but only to the extent that any such deemed trusts and liens are statutory super-priority deemed trusts and liens afforded priority by statute over all pre-existing Encumbrances granted or created by contract;

(d) liens for unpaid municipal property taxes or utilities that are given first priority over other liens by statute; and

(e) cash collateral (i) deposited with a financial institution as at the date of this Order, or (ii) deposited with a financial institution after the date of this Order with either the consent of the Monitor or pursuant to further order of the Court.

49. **THIS COURT ORDERS** that except as otherwise expressly provided for herein, or as may be approved by this Court, the Applicant shall not grant any Encumbrances over any Property that ranks in priority to, or *pari passu* with, any of the Charges, unless the Applicant also obtains the prior written consent of the Monitor and the beneficiaries of the Charges affected thereby (collectively, the "**Chargees**"), or further Order of this Court.

50. **THIS COURT ORDERS** that the Charges shall not be rendered invalid or unenforceable and the rights and remedies of the Chargees shall not otherwise be limited or impaired in any way by (a) the pendency of these proceedings and the declarations of insolvency made herein; (b) any application(s) for bankruptcy order(s) issued pursuant to the BIA, or any bankruptcy order made pursuant to such applications; (c) the filing of any assignments for the general benefit of creditors made pursuant to the BIA; (d) the provisions of any federal or provincial statutes; or (e) any negative covenants, prohibitions or other similar provisions with

respect to borrowings, incurring debt or the creation of Encumbrances, contained in any existing loan documents, lease, sublease, offer to lease or other agreement (collectively, an "**Agreement**") which binds the Applicant, and notwithstanding any provision to the contrary in any Agreement:

(a) the creation of the Charges shall not create or be deemed to constitute a breach by the Applicant of any Agreement to which it is a party;

(b) none of the Chargees shall have any liability to any Person whatsoever as a result of any breach of any Agreement caused by or resulting from the creation of the Charges; and

(c) the payments made by the Applicant pursuant to this Order and the granting of the Charges, do not and will not constitute preferences, fraudulent conveyances, transfers at undervalue, oppressive conduct, or other challengeable or voidable transactions under any applicable law.

51. **THIS COURT ORDERS** that any Charge created by this Order over leases of real property in Canada shall only be a Charge in the Applicant's interest in such real property leases.

SERVICE AND NOTICE

52. **THIS COURT ORDERS** that the Monitor shall (i) without delay, publish in The Globe and Mail (National Edition) and La Presse a notice containing the information prescribed under the CCAA as well as the date of the Comeback Motion (as defined below), (ii) within five days after the date of this Order or as soon as reasonably practicable thereafter, (A) make this Order publicly available in the manner prescribed under the CCAA, (B) send, in the prescribed manner, a notice (which shall include the date of the Comeback Motion) to every known creditor, except employees, who has a claim (contingent, disputed or otherwise) against the Applicant of more

than $5,000, except with respect to (I) plaintiffs in the Pending Litigation, in which cases the Monitor shall only send a notice to counsel of record as applicable, and (II) beneficiaries of the Pension Plans in which case the Monitor shall only send a notice to the trustees of each of the Pension Plans and the Financial Services Commission of Ontario and the Régie Des Rentes Du Québec as applicable, and (C) prepare a list showing the names and addresses of those creditors and the estimated amounts of those claims, and make it publicly available in the prescribed manner, all in accordance with Section 23(1)(a) of the CCAA and the regulations made thereunder. The list referenced at subparagraph (C) above shall not include the names, addresses, or estimated amounts of the claims of those creditors who are individuals or any personal information in respect of an individual.

53. **THIS COURT ORDERS** that the E-Service Guide of the Commercial List (the "**Guide**") is approved and adopted by reference herein and, in this proceeding, the service of documents made in accordance with the Guide (which can be found on the Commercial List website at: www.ontariocourts.ca//scj/practice/practice-directions/toronto/eservice-commercial/) shall 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 a Case Website (the "**Case Website**") shall be established by the Monitor in accordance with the Guide with the following URL ' www.insolvencies.deloitte.ca/en-ca/JTIM'.

54. **THIS COURT ORDERS** that if the service or distribution of documents in accordance with the Guide is not practicable, the Applicant and the Monitor are at liberty to serve or distribute this Order, any other materials and orders in these proceedings 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 Applicant's creditors or other interested parties at their respective addresses as last shown on the records of the Applicant and that any such service or notice by courier, personal delivery or 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.

55. **THIS COURT ORDERS** that the Applicant is authorized to rely upon the notice provided in paragraph 52 to provide notice of the comeback motion to be heard on a date to be set by this Court upon the granting of this Order (the "**Comeback Motion**") and shall only be required to serve motion materials relating to the Comeback Motion, in accordance with the Guide, upon those parties who serve a Notice of Appearance in this proceeding prior to the date of the Comeback Motion.

56. **THIS COURT ORDERS** that the Monitor shall create, maintain and update as necessary a list of all Persons appearing in person or by counsel in this proceeding (the "**Service List**"). The Monitor shall post the Service List, as may be updated from time to time, on the case website as part of the public materials to be recorded thereon in relation to this proceeding. Notwithstanding the foregoing, the Monitor shall have no liability in respect of the accuracy of or the timeliness of making any changes to the Service List.

57. **THIS COURT ORDERS** that the Applicant and the Monitor and 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 Applicant's creditors or other 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).

58. **THIS COURT ORDERS** that, subject to paragraph 59, all motions in this proceeding are to be brought on not less than seven (7) calendar days' notice to all persons on the Service List. Each Notice of Motion shall specify a date (the "**Return Date**") and time for the hearing.

59. **THIS COURT ORDERS** that motions for relief on an urgent basis need not comply with the notice protocol described herein.

60. **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, the Applicant and the Monitor, with a copy to all Persons on the Service List, no later than 5 p.m. on the date that is four (4) calendar days prior to the Return Date (the "**Objection Deadline**").

61. **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, by telephone 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.

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

63. **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 Monitor (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 may see 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.

SEALING

64. **THIS COURT ORDERS** that the Confidential Exhibit "1" to the McMaster Affidavit be and is hereby sealed pending further Order of the Court and shall not form part of the public record.

GENERAL

65. **THIS COURT ORDERS** that the Applicant or the Monitor 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 their respective powers and duties under this Order or the interpretation or application of this Order.

66. **THIS COURT ORDERS** that nothing in this Order shall prevent the Monitor from acting as an interim receiver, a receiver, a receiver and manager, or a trustee in bankruptcy of the Applicant, the Business or the Property.

67. **THIS COURT HEREBY REQUESTS** the aid and recognition of any court, tribunal, regulatory or administrative body having jurisdiction in Canada or outside of Canada, to give effect to this Order and to assist the Applicant, the Monitor and their respective agents in carrying out the terms of this Order. All courts, tribunals and regulatory and administrative bodies are hereby respectfully requested to make such orders and to provide such assistance to the Applicant and to the Monitor, as an officer of this Court, as may be necessary or desirable to give effect to this Order, to grant representative status to the Monitor in any foreign proceeding, or to assist the Applicant and the Monitor and their respective agents in carrying out the terms of this Order.

68. **THIS COURT ORDERS** that each of the Applicant and the Monitor be at liberty and is 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 Monitor is authorized and empowered to act as a representative in respect of the within proceedings for the purpose of having these proceedings recognized in a jurisdiction outside Canada.

69. **THIS COURT ORDERS** that any interested party (including the Applicant and the Monitor) may apply to this Court to vary or amend this Order on not less than seven (7) days notice to any other party or parties likely to be affected by the order sought or upon such other notice, if any, as this Court may order.

70. **THIS COURT ORDERS** that this Order and all of its provisions are effective as of 12:01 a.m. Eastern Standard/Daylight Time on the date of this Order (the "**Effective Time**") and that from the Effective Time to the time of the granting of this Order any action taken or notice given by any creditor of the Applicant or by any other Person to commence or continue any enforcement, realization, execution or other remedy of any kind whatsoever against the Applicant, the Property or the Business shall be deemed not to have been taken or given, as the case may be.

ENTERED AT / INSCRIT À TORONTO
ON / BOOK NO:
LE / DANS LE REGISTRE NO:

APR 25 2019

PER / PAR: RW

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.**

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

ONTARIO
SUPERIOR COURT OF JUSTICE
(COMMERCIAL LIST)

Proceedings commenced at Toronto

AMENDED AND RESTATED INITIAL ORDER

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Lawyers for the Applicant

This is Exhibit “B” referred to in the
Affidavit of William E. Aziz sworn by William E. Aziz of the
City of Naples, in the State of Florida, before me at the City
of Toronto, in the Province of Ontario,
this 20th day of January, 2025 in accordance with
O. Reg. 431/20, Administering Oath or Declaration Remotely.

A Commissioner for taking affidavits

REBEKAH O'HARE
(LSO# 87983G)

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Scott Bomhof
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December 6, 2024

VIA EMAIL

Deloitte Restructuring Inc.,
in its capacity as Court Appointed Monitor of
JTI-Macdonald Corp.
Bay Adelaide East
8 Adelaide Street West, Suite 200
Toronto, ON M5H 0A9

Attention: Philip J. Reynolds and Paul Casey

Dear Sirs:

Re: CCAA Proceedings of JTI-Macdonald Corp.

All capitalized terms not otherwise defined herein shall have the same meanings ascribed to them in the Meeting Order dated October 31, 2024 (the "Meeting Order").

We write as counsel for the Receiver, PricewaterhouseCoopers Inc., in its capacity as privately appointed receiver and manager of JTI-Macdonald TM Corp. ("TM"). This letter is written to you in your capacity as Monitor and/or to the designated representative of the Monitor who will preside as Chair at the Meeting.

On behalf of the Receiver, and pursuant to paragraph 29 of the Meeting Order, we hereby request that an invitation for admittance to the Meeting be provided to the Receiver, its representative(s) and its counsel. We look forward to receiving your response to this request as soon as possible.

Please contact us should you have any questions about this letter.

Yours truly,

Scott Bomhof

Blake, Cassels & Graydon LLP
Barristers & Solicitors
Patent & Trademark Agents
199 Bay Street
Suite 4000, Commerce Court West
Toronto ON M5L 1A9 Canada
Tel: 416-863-2400 Fax: 416-863-2653

December 10, 2024

Linc Rogers
Partner
Dir: 416-863-4168
Linc.rogers@blakes.com
Reference: 38358/98

Via Email

Torys LLP
79 Wellington Street West, 30th Floor
Box 270, TD South Tower
Toronto, ON M5K 1N2

Attention: Scott Bomhof

Re: CCAA Proceedings of JTI-Macdonald Corp. ("JTIM")

Dear Mr. Bomhof:

We are in receipt of your letter dated December 6, 2024. All capitalized terms not otherwise defined herein shall have the meanings ascribed to them in the Meeting Order dated October 31, 2024 in the CCAA proceedings of JTI-Macdonald Corp (the "**Meeting Order**").

With respect to the request of PricewaterhouseCoopers Inc., in its capacity as privately appointed receiver and manager (the "**Receiver**") of JTI-Macdonald TM Corp., Deloitte Restructuring Inc., in its capacity as Monitor of JTIM (the "**Monitor**"), is extending the Receiver an invitation, pursuant to paragraph 29 of the Meeting Order, to attend the meeting of creditors of JTIM (the "**Meeting**") scheduled to take place on December 12, 2024 at 3:00 p.m. Eastern time.

Please note that the invitation is extended for the Receiver to attend as a "guest" at the Meeting. Guests will be able to attend the Meeting to observe only and will not be able to speak during the Meeting, nor will they be able to pose questions to the Meeting Chair.

Please provide the contact information for the Receiver's representatives that will be attending the Meeting to the Monitor at your earliest convenience and, in any case, no later than 12:00 p.m. Eastern time on December 11, 2024.

Yours very truly,

Jake Harris

P.P. Linc Rogers

c: P. Huff and J. Harris (Blakes)
P. Casey, P. Reynolds and W. Leung (Deloitte)
A. Slavens (Torys)

1374-6899-4321.1

This is Exhibit "C" referred to in the
Affidavit of William E. Aziz sworn by William E. Aziz of the
City of Naples, in the State of Florida, before me at the City
of Toronto, in the Province of Ontario,
this 20th day of January, 2025 in accordance with
O. Reg. 431/20, Administering Oath or Declaration Remotely.

A Commissioner for taking affidavits

REBEKAH O'HARE
(LSO# 87983G)

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 OR ARRANGEMENT OF **JTI-MACDONALD CORP.**

Applicant

AFFIDAVIT OF WILLIAM E. AZIZ
(Sworn October 24, 2024)

I, **WILLIAM E. AZIZ**, of the Town of Oakville, in the Province of Ontario, MAKE OATH AND SAY:

1. I am the President of BlueTree Advisors Inc., which has been retained by JTI-Macdonald Corp. ("**JTIM**") to provide my services as the Chief Restructuring Officer ("**CRO**") of JTIM.

2. My appointment as the CRO of JTIM was approved pursuant to the Initial Order (as amended and restated from time to time, the "**Initial Order**") granted by the Ontario Superior Court of Justice (Commercial List) (the "**Court**") on March 8, 2019, under the *Companies' Creditors Arrangement Act* ("**CCAA**"). A copy of the Initial Order is attached hereto as **Exhibit "A"**.

3. As the CRO of JTIM, I have knowledge of the matters to which I herein depose, except where I have obtained information from others. In preparing this affidavit, I have reviewed the M&M Plan (defined below), and previous affidavits sworn in JTIM's CCAA proceeding, including the ones mentioned herein, and I have consulted with members of

JTIM and its affiliates' senior management team, JTIM's external legal advisors, and representatives of Deloitte Restructuring Inc. (the "**Monitor**").

4. Notwithstanding my court appointment as Chief Restructuring Officer for JTIM, I have not been permitted to attend the mediation sessions that were scheduled following the October Endorsement (defined below). However, I am informed as to the activities of the mediation and have been provided with regular updates on the status of these discussions by JTIM's external legal counsel and have been involved in internal discussions and reports (over all of which privilege is asserted and maintained) in connection with the mediation activities.

5. Where I have obtained information from others, I have stated the source of the information and believe it to be true.

6. All capitalized terms used herein and not otherwise defined have the meanings set forth in the Initial Order or the CCAA Plan of Compromise and Arrangement dated October 17, 2024, filed by the Mediator and the collective Monitors as their plan of compromise and arrangement (the "**M&M Plan**").

I. INTRODUCTION

7. On October 17, 2024, the Monitor, at the direction of the Court-Appointed Mediator (the "**Mediator**"), filed a motion returnable on October 31, 2024, seeking a Claims Procedure Order and a Meeting Order (the "**Meeting Order**"), among other things, (a) accepting the filing of the M&M Plan, (b) authorizing the Monitor to call, hold and conduct a virtual meeting of Affected Creditors (as defined in the M&M Plan) to vote on the M&M Plan (the "**Meeting**"), (c) authorizing the classification of creditors into a single class for the

purpose of the Meeting, and (d) authorizing the Monitor to bring a motion for the Court to consider an order approving and sanctioning the M&M Plan if the M&M Plan is approved by the requisite majorities of Affected Creditors.

8. The purpose of this affidavit is to provide the evidentiary basis for JTIM's objection to the Meeting Order.

9. JTIM does not agree to the M&M Plan in its current form and cannot support it due to the critical outstanding issues that are identified and discussed in this affidavit.

10. I am advised by Mica Arlette of PricewaterhouseCoopers Inc., the privately-appointed receiver of JTI-Macdonald TM Corp. ("**JTI-TM**"), the sole secured creditor of JTIM, that JTI-TM also does not support the M&M Plan in its current form and objects to it at present because the M&M Plan purports to confiscate approximately $1.6 billion of cash collateral that is subject to JTI-TM's security and attempts to subordinate JTI-TM's debt and security to a priority that is below the position proposed for the unsecured creditors being compromised under the M&M Plan. JTI-TM has not been invited to participate in the mediation for many years. Its interests appear to have been disregarded in the mediation process and in the formulation of the M&M Plan.

11. I am advised by Peter Ogden, Associate General Counsel of JTI, that JTIM's Tobacco Company Group, upon whose support JTIM depends and on which the M&M Plan purports to rely, also does not support the M&M Plan in its current form.

12. In summary, the debtor, its sole secured creditor, and the debtor's multinational affiliates that provide intercompany services do not support the M&M Plan in its current form and

will not implement it. The M&M Plan requires the cooperation of JTIM and its affiliates over a prolonged settlement period. As a result, the M&M Plan in its current form is unworkable and not capable of implementation.

13. The Monitor's motion and the M&M Plan is the product of a mediation process which, in my view, goes beyond the mandate set out in the Initial Order to *mediate* a global settlement of the Tobacco Claims.

14. The M&M Plan attempts to impose commercial terms that have never been agreed on: (a) an operational CCAA debtor, (b) its secured creditor, who is being asked to subordinate its interest without any compensation or even a vote on the M&M Plan, and (c) a multinational corporate group over which neither the CCAA Court nor the Mediator have jurisdiction.

15. As a result of an imposed deadline for a Creditors' Meeting of December 12, 2024, which tight timeline has not been explained, attempts to resolve the critical issues identified in this affidavit appear to have been suspended and the M&M Plan in its current form is being put forward for consideration by the Claimants at a Creditors' Meeting, absent critical debtor and related party support. This attempts to force the M&M Plan on unwilling participants. In this dynamic, there is no reasonable prospect that the M&M Plan will be implemented unless amendments are made to address the issues identified below. These issues have been previously identified by JTIM in the mediation process and remain unresolved.

II. BACKGROUND OF CCAA PROCEEDINGS AND MEDIATION

16. On March 12, 2019, and March 22, 2019, respectively, Imperial and RBH each filed for creditor protection under the CCAA. Due to their interconnected nature, the CCAA proceedings of JTIM, Imperial and RBH (collectively, the "**Tobacco Companies**") have been conducted in parallel with each other.

17. On April 5, 2019, pursuant to the Initial Order, the Mediator was appointed to mediate a global settlement of the Tobacco Claims.

18. Pursuant to the Stay Extension Order dated September 27, 2023, and the corresponding Endorsement of Chief Justice Morawetz dated October 5, 2023 (the "**October Endorsement**"), copies of which are attached hereto as **Exhibit "B"**, the Court ordered and directed the Monitors, in conjunction with the Mediator, to develop plans of compromise or arrangement that, after due consideration by the Tobacco Companies and their creditors, would have the best opportunity to be considered fair and reasonable to the Tobacco Companies and their creditors.

19. JTIM has always been willing to participate on a timely basis and has actively participated to the extent permitted in the confidential mediation process established by the Mediator. JTIM followed the Mediator's process throughout and complied with all timelines set by the Mediator. JTIM remains engaged in the mediation process and is willing to work with the Mediator and mediation parties to achieve resolution of outstanding issues to arrive at a consensual CCAA plan. The M&M Plan in its current form, however, is not a consensual CCAA plan.

III. JTIM'S INTEREST AND ROYALTY OBLIGATIONS

JTIM's Interest Obligations

20. JTIM has not been permitted to pay any amounts in respect of secured interest owing to JTI-TM pursuant to the TM Debentures (defined below) or any post-filing royalty payments in respect of the Trademark Agreements since March 19, 2019.

21. As described in detail in the Initial Affidavit of Robert McMaster sworn March 8, 2019, in support of the Initial Order (the "**Initial Affidavit**"), JTI-TM is the wholly-owned subsidiary of JTIM. As a result of the Recapitalization Transactions[1] (as defined in the Initial Affidavit), JTIM is indebted to JTI-TM pursuant to ten secured convertible debentures, in the aggregate principal amount of $1.2 billion (the "**TM Debentures**"). As at September 30, 2024, the total amount due and outstanding under the TM Debentures (including accrued interest and default interest) is approximately $1.8 billion. A copy of the Initial Affidavit (without exhibits) is attached hereto as **Exhibit "C"**.

22. JTI-TM is indebted to JT Canada LLC Inc. ("**JT-LLC**"), which is the direct parent of JTIM, pursuant to security agreements granted by JTI-TM in favour of JT-LLC. Following a default under those security agreements, JT-LLC privately appointed PricewaterhouseCoopers Inc. as the receiver and manager of JTI-TM (the "**TM Receiver**") on July 9, 2015. Following the appointment of the TM Receiver, all of JTI-TM's directors resigned.

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[1] The Recapitalization Transactions were completed in 1999 as part of Japan Tobacco's purchase of the international, non-U.S., tobacco business and assets of RJR Nabisco, Inc., R.J. Reynolds Tobacco Company and their affiliates. These transactions involved a series of secured intercompany loans to create a leveraged buy-out transaction that was typical in M&A transactions at this time due to favourable tax treatment.

23. Following the default of JTIM's secured credit facilities with JTI-TM due to the judgement rendered in respect of the Quebec Class Actions, JTIM and the TM Receiver negotiated the terms of a forbearance agreement and entered into such agreement on August 3, 2017. Among other things, the TM Receiver agreed to forbear from enforcing its rights and remedies against JTIM in consideration of changes to the frequency of royalty payments owing pursuant to the Trademark Agreement (as defined below).

24. Prior to the Initial Order, JTIM paid monthly interest to JTI-TM under the TM Debentures in the amount of approximately $7.6 million per month at an interest rate of 7.75% per annum. The original Initial Order granted on March 8, 2019, had authorized JTIM to continue payment of the secured interest to JTI-TM.

JTIM's Royalty Obligations

25. As described in the Initial Affidavit, JTIM's market share in Canada is largely attributable to the brands of tobacco products it exclusively sells in the Canadian market. JTIM licenses or has the right to use all of the trademarks with respect to such brands from related parties, many of which are owned by JTI-TM.

26. Pursuant to the Trademark License Agreement dated October 8, 1999, as amended from time to time (as amended, the "**Trademark Agreement**"), JTI-TM granted to JTIM a non-exclusive, worldwide license to use JTI-TM's trademarks in connection with the manufacturing, distribution, advertising and sale of the licensed products for the remuneration set out therein. As mentioned above, as consideration for JTI-TM agreeing to forbear from enforcing under the TM Debentures, JTIM and JTI-TM agreed to amend the Trademark Agreement, including with respect to the frequency of royalty payments

paid by JTIM to JTI-TM from semi-annual to monthly payments. Immediately prior to the Initial Order, JTIM owed JTI-TM approximately $1 million under the Trademark Agreement.

Suspension of Interest and Royalty Payments

27. On March 15, 2019, prior to the comeback hearing, the Quebec Class Action Plaintiffs (the "**QCAPs**") brought a motion seeking to prohibit the payment of principal, interest and royalties by JTIM to JTI-TM, pending further order of the Court. JTIM never proposed to pay principal on the TM Debentures. On March 18, 2019, the motion was heard by Justice McEwen and on the following day, Justice McEwen issued an Endorsement (the "**March 2019 Endorsement**") suspending the payment of interest and royalties pending the return of the comeback hearing or further order of the Court. Attached hereto as **Exhibit "D"** is a copy of the March 2019 Endorsement, along with an unofficial transcript prepared by counsel to the Monitor.

28. The comeback hearing in the parallel CCAA proceedings was originally scheduled for two days between April 4 and 5, 2019 (the "**Comeback Hearing**").

29. On March 28, 2019, the QCAPs served another motion record that, among other things, sought to vary the Initial Order to prohibit the payment of interest and royalties by JTIM to JTI-TM. In response to the QCAPs' motion, JTIM served and filed the Affidavit of Robert McMaster sworn April 1, 2019 (the "**Responding McMaster Affidavit**") that, among other things, provided the Court with the history of the Recapitalization Transactions leading to the intercompany secured debt structure and the financial impact that the suspension of interest and royalty payments would have on JTI-TM and other

affiliates. JTIM took the position that it should be entitled to continue to pay its interest and royalty payments to JTI-TM as the security granted by JTIM to JTI-TM is valid and enforceable. This remains the position today. Attached hereto as **Exhibit "E"** is a copy of the Responding McMaster Affidavit (without exhibits).

30. As set out in the Monitor's Second Report to the Court dated April 1, 2019, the Monitor: (i) supported JTIM's position that it should be entitled to continue to pay the royalty payments under the Trademark Agreements, (ii) did not object to the payment of interest on the TM Debentures, and (iii) supported the maintenance of the *status quo*. A copy of the Monitor's Second Report is attached hereto as **Exhibit "F"**.

31. Following the conclusion of the Comeback Hearing, the Court referred the interest and royalty payment issue to the Mediator for resolution.

32. I am advised by Scott Bomhof of Torys LLP, counsel to the TM Receiver that, on May 19, 2019, the TM Receiver wrote to the Monitor to advise that the TM Receiver intended to apply a deposit of $1.3 million it held for unpaid royalties (the "**Royalty Deposit**") against the accrued unpaid royalties. The Monitor did not object. However, in June 2019, the QCAPs filed a motion seeking the return of the Royalty Deposit. The Court directed the issue to mediation. As it stands, the TM Receiver continues to hold the Royalty Deposit.

33. Although the issue was raised with the Mediator, I am further advised by Mr. Bomhof that the Mediator was not prepared to address the issue of payment of royalty and interest obligations, including the application of the Royalty Deposit, as discrete matters when they were referred to the Mediator. These issues remain outstanding and unresolved by the Mediator in the overall mediation.

34. Accordingly, JTIM has not made any interest or royalty payments to JTI-TM for over five years. The prohibition against the payment of interest and royalties negatively impacted JTI-TM.

35. I am advised by Robert McMaster, Director of Taxation and Treasury at JTIM, that, as at September 30, 2024, JTIM has accrued approximately $623 million of interest due and outstanding to JTI-TM, including default interest, and approximately $90 million of royalties payable, including accrued interest on unpaid royalties owing to JTI-TM. Interest continues to accrue under the TM Debentures and on the unpaid royalties. Interest on the TM Debentures accrue at a rate of approximately $10.9 million (including default interest) each month, and unpaid royalties continue to accrue at a rate of approximately $1.7 million (including interest on unpaid royalties) each month. The monthly *per diem* continues to increase as the total amount outstanding increases.

36. I am advised by Mr. Arlette that JTI-TM has significant ongoing expenses, including tax obligations to the CRA and the Quebec Ministry of Revenue, that are paid from the revenue received pursuant to the Trademark Agreement and the TM Debentures.

37. Rather than resolving this issue through the mediation, the M&M Plan attempts to override and circumvent the rights of JTI-TM by prohibiting JTIM from paying the unpaid post-filing royalties and accrued post-filing secured interest on or before the plan implementation date.

Treatment of ITL and RBH Royalties

38. The effect of the March 2019 Endorsement put JTIM in a different position than Imperial and RBH. Throughout their respective CCAA proceedings, RBH and Imperial have been permitted to pay their post-filing royalty and licensing obligations to related parties.

39. As disclosed in the affidavit filed in support of the CCAA proceedings of RBH and the Pre-Filing Report of Ernst & Young Inc., RBH licences trademarks from Philip Morris Global Brands Inc. ("**PMI**"). In 2018, RBH paid approximately $25 million in annual royalties to a PMI affiliate and $4 million to third parties for the licence of trademarks.

40. Similarly, the affidavit filed in support of the CCAA proceedings of Imperial discloses that Imperial pays its parent, British American Tobacco ("**BAT**"), 3% or 5% of its annual net sales revenue for the sales of certain brands owed by BAT. In 2018, Imperial paid approximately $46.8 million in royalties to BAT.

41. The Second Amended and Restated Initial Orders granted in RBH and Imperial's CCAA proceedings expressly permit RBH and Imperial to continue payment of any royalties for goods or services supplied to RBH or Imperial after the date of their respective CCAA proceedings.

42. Based on the 2018 royalty payments, I estimate that RBH has been permitted to make approximately $140 million in royalty payments to its PMI affiliate during these CCAA proceedings and Imperial has been permitted to make approximately $260 million in royalty payments to BAT during these CCAA proceedings.

IV. ISSUES WITH THE M&M PLAN AND HOW THEY CAN BE RESOLVED

43. After my review of the M&M Plan and following discussions with JTIM and its external legal counsel (over which privilege is asserted and maintained), there are several outstanding critical issues for JTIM with respect to the M&M Plan. These issues can be summarized as follows:

(a) **Section 5.2 (Allocation among the Tobacco Companies of the Global Settlement Amount)**: This provision in the M&M Plan states that there is an allocation issue that remains unresolved. This statement is unacceptable to JTIM because the M&M Plan already adequately provides for an allocation of the Global Settlement Amount as among the Tobacco Companies. The M&M Plan requires each Tobacco Company to provide 100% of its cash-on-hand on the plan implementation date (less a working capital carve out in the total amount of $750 million). Further, each Tobacco Company is required to provide the same percentage of its Net After-Tax Income (pursuant to audited financial statements), as determined by the Metric, which begins at 85% of Net After-Tax Income, and reduces in 5% increments every five years until reaching 70% of Net After-Tax Income. The Annual Contributions stay at this level until the Global Settlement Amount is repaid in full. In other words, the entire Canadian tobacco industry is required to pay an annual percentage of its net profits after tax until the Global Settlement Amount is paid in full. This represents a closed ecosystem where all of the Tobacco Companies' Net After-Tax Income is subject to a sweep mechanism, no matter which Applicant makes the money in future years. This issue can be resolved by removing section 5.2 from the M&M Plan and clarifying that the

allocation issue is restricted to the allocation of the $750 million working capital carve out provided for in the M&M Plan.

(b) **The Metric**: The Metric was developed with almost no consultation or discussion with JTIM's financial team. The Monitor has advised that the Metric is intended to capture the Net After-Tax Income of JTIM, adjusted for certain non-cash items. However, the definition of the Metric unfairly includes the proceeds from the disposition of assets, but excludes the cost-base of such assets (i.e. the price paid by JTIM) from the calculation of the Metric. This is unfair because it provides the Claimants with the benefit of the proceeds received from the disposition while not taking into consideration the initial cash needed to acquire the asset. Representatives of JTIM are willing to provide input to ensure the Metric is fair, reasonable and workable.

(c) **Classification of JTI-TM as Unaffected Creditor:** The M&M Plan purports to classify JTI-TM as an Unaffected Creditor. However, the M&M Plan ignores the legal priority that JTI-TM has over all other creditors and requires JTIM to pay to the Claimants an estimated (as of December 31, 2024) $1.581 billion in cash that is subject to JTI-TM's priority security interest. The M&M Plan also requires JTI-TM to enter into a subordination agreement whereby it is only permitted to receive payment for principal and/or interest on the TM Debentures from JTIM's residual profit after JTIM makes its Annual Contribution to the Claimants. This is not possible to do in the context of a plan that is not supported by JTIM or its Tobacco Company Group.

(d) **Suspension of Royalty Payments:** As set out above, JTIM, alone among the Tobacco Companies, has been prohibited from making post-filing royalty payments since the March 2019 Endorsement. This issue must be addressed in a way that satisfies the TM Receiver.

(e) **Basic Economics:** The fundamental economics in the M&M Plan have never been agreed to by JTIM. These economics include the total Global Settlement Amount. This issue is directly related to the other outstanding issues in the M&M Plan. All of these issues must be resolved concurrently.

(f) **Amendment to Representative Counsel Order:** Since representative counsel was appointed to represent the tobacco-related wronged claimants (now referred to as the Pan-Canadian Claimants), discussions have evolved to further clarify representative counsel's constituency that requires the Representative Counsel Order to be amended to match the definition of PCC Claimants in the M&M Plan. This amendment is critical to the scope of the release in the M&M Plan and has not been included in the relief sought by the Monitors on October 31. As set out in the Notice of Cross Motion dated October 24, 2024, JTIM brings a cross motion seeking the required amendment to the Representative Counsel Order.

(g) **Quantum of the Miscellaneous Claims Fund:** The purpose of the Miscellaneous Claims Fund is to solidify the release granted in the M&M Plan in the event that: (i) someone comes forward with a pre-implementation claim not already addressed in the Claimant Allocation in the M&M Plan, (ii) someone seeks recovery of a Section 5.1(2) Claim or Section 19(2) Claim, or (iii) someone alleges that they are not caught by the release granted in the M&M Plan and the CCAA Court grants

leave for the claim to be determined. In this event, there must be a fund to respond to any such claims, and the fund must be of a sufficient size. JTIM understood that there was agreement that the Miscellaneous Claims Fund would be $60 million, however, the M&M Plan only provides for a fund amount of $25 million.

(h) **Approval of M&M Plan by Quebec Court:** The M&M Plan does not include approval of the settlement of the Quebec Class Actions pursuant to the M&M Plan as a condition precedent to the implementation of the plan. Instead, the M&M Plan provides that the Sanction Order shall include language requesting the Quebec Superior Court to aid, recognize and assist the CCAA Court to confirm that the M&M Plan has fully and finally resolved the Quebec Class Actions. I am advised by JTIM's external legal counsel that, since class action proceedings are governed by provincial legislation, it is important for the court in the province in which the class action was commenced to approve any settlement of the class action. In JTIM's view, the approval of the settlement of the Quebec Class Actions pursuant to the M&M Plan must be a condition precedent to implementation of the plan.

(i) **Tax Deduction Provisions:** The M&M Plan requires JTIM to pay 100% of any Tax Refund Cash Payment into a Supplemental Trust Account, which is to be held in the Supplemental Trust Account until the expiry of the last applicable reassessment period. In the event that there is a reassessment of any tax deductions made and a subsequent dispute, JTIM requires 100% of the disputed amount to be given to the CRA pending determination of the dispute. If less than 100% of the disputed amount is given to the CRA and JTIM is unsuccessful in the dispute, interest and penalties accrue on the outstanding amount, which are not tax

deductible. JTIM previously proposed language to the Monitors to address this concern, which language is not included in the M&M Plan.

(j) **Drafting Issues:** In addition to the above issues, there continue to be drafting issues in the M&M Plan that have not been resolved. By way of example only, the publicly filed M&M Plan for JTIM still includes erroneous references to Imperial rather than JTIM.

V. JTIM, ITS PARENT AND ITS AFFILIATES WILL NOT SUPPORT THE PLAN

44. As currently drafted and given the issues identified above, there is the potential that the M&M Plan introduces significant commercial uncertainty and ambiguity in the application of the settlement on the Canadian tobacco industry. As a result, JTIM and its Tobacco Company Group will not support the M&M Plan in its current form.

45. As JTI-TM is subject to the appointment of a private receiver, the receiver has duties and obligations to its appointing secured creditor (in this case LLC). I am advised by Mr. Arlette that the TM Receiver cannot support the M&M Plan that is not supported by JTIM and its parent.

46. Furthermore, JTIM is counterparty to approximately 28 intercompany arrangements with its affiliates. These intercompany arrangements include the supply of raw materials used in JTIM's manufacturing process, global IT network and related services (including the use of the licensed technology system SAP), legal and regulatory services, human resources services, and other functional group services.

47. The continued supply of intercompany services is critical to JTIM's operations and ongoing profitability in the ordinary course. Using SAP as one example, SAP is the enterprise resource planning software JTIM relies on to operate its business. I am advised by Mr. McMaster that if JTIM no longer had access to SAP, JTIM would immediately be unable to manufacture and distribute products until it found an alternative solution. Implementing a new enterprise resource planning software for such a complicated manufacturing and logistics business could take years and cost a significant amount of money.

48. If JTIM does not receive the support of its parent and other affiliates, JTIM's profitability could be reduced or even eliminated.

VI. PURPOSE

49. This affidavit is sworn in support of JTIM's objection to the Meeting Order, and for no other or improper purpose.

SWORN BEFORE ME BY VIDEO CONFERENCE by William E. Aziz on October 24, 2024 in accordance with *O. Reg. 431/20, Administering Oath or Declaration Remotely*. The affiant was in the Town of Oakville, in the Province of Ontario and the commissioner was in the City of Toronto, in the Province of Ontario.

Rudrakshi Chakrabarti

Commissioner for Taking Affidavits
RUDRAKSHI CHAKRABARTI
LSO # 86868U

William E. Aziz

WILLIAM E. AZIZ

This is Exhibit “D” referred to in the
Affidavit of William E. Aziz sworn by William E. Aziz of the
City of Naples, in the State of Florida, before me at the City
of Toronto, in the Province of Ontario,
this 20th day of January, 2025 in accordance with
O. Reg. 431/20, Administering Oath or Declaration Remotely.

A Commissioner for taking affidavits

REBEKAH O'HARE
(LSO# 87983G)

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 ARRANGEMENTOF **JTI-MACDONALD CORP.**

Applicant

AFFIDAVIT OF ROBERT MCMASTER
(sworn March 8, 2019)

I, **ROBERT MCMASTER**, of the Town of Whitby, in the Province of Ontario, MAKE OATH AND SAY:

I. INTRODUCTION

1. I am a Chartered Professional Accountant (CPA, CA) and the Director, Taxation and Treasury for JTI-Macdonald Corp. ("**JTIM**") and as such, have knowledge of the matters hereinafter deposed to, save where I have obtained information from others. Where I have obtained information from others I have stated the source of the information and believe it to be true.

2. This affidavit is sworn in support of an application by JTIM for an order (the "**Initial Order**") pursuant to the *Companies' Creditors Arrangement Act,* R.S.C. 1985, c. C-36, as amended (the "**CCAA**"), which application has been commenced as a result of the current financial circumstances of JTIM due to recent adverse developments in certain litigation in which JTIM is a defendant.

II. PRESSING NEED FOR RELIEF

3. JTIM, through its predecessor corporations and other related business entities, have been manufacturers of tobacco products in Canada since 1858.

4. As described more fully herein, Mr. Justice Riordan of the Quebec Superior Court rendered a judgment in the Class Actions (as defined herein) against JTIM and the other defendants (the "**Judgment**"), which was publicly released on June 1, 2015, and subsequently amended on June 9, 2015, that awarded a total of approximately $6.8 billion in damages on a collective and solidary basis against the defendants and punitive damages on an individual basis (all of which had an aggregate value of approximately $15.5 billion including interest and an additional indemnity as of the date of the Judgment).

5. JTIM was unsuccessful in overturning the Judgment at the Quebec Court of Appeal for the reasons described in the decision released on March 1, 2019 (the "**QCA Judgment**"). The QCA Judgment substantially upheld the Judgment and requires JTIM to pay an initial deposit of $145 million. There is uncertainty as to whether the QCA Judgment is immediately enforceable, or provides JTIM with a maximum of up to 60 days to make the payment of the initial deposit. 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**".

6. JTIM is an economically viable company that is able to meet its ordinary course obligations as they become due. However, if not stayed, the QCA Judgment will put JTIM out of business and destroy value for its approximately 500 full time employees, 1,300 suppliers and its customers. It would also impact approximately 28,000 retailers that sell JTIM's products and approximately 790,000 consumers of its products. Currently, the federal and provincial governments collect more

than $1.3 billion in taxes annually in relation to the sale of JTIM's products. If JTIM is forced out of business, those collections would stop.

7. JTIM is also the subject of significant health care cost recovery litigation (the "**HCCR Actions**"). The HCCR Actions commenced as a result of legislation passed in each of the ten provinces regarding the recovery of health care costs related to alleged "tobacco related wrongs", as defined in the applicable statutes. The total potential quantum of damages claimed against the defendants in the HCCR Actions, including JTIM on a joint and several basis together with other Canadian manufacturers and certain of their affiliates, is not yet known as some provincial plaintiffs have not specified the amount of their claim. However, to date, I am advised by counsel that over $500 billion has been claimed to be owing by all of the defendants in the five provinces where amounts have been specified in the claims or that have been detailed in expert reports. These claims are vastly in excess of the total book value of JTIM's assets (as disclosed herein) and are vastly in excess of the global asset value of the parent companies of the other defendant Canadian tobacco manufacturers as presented in their most recent Annual Reports.

8. JTIM requires the protections afforded under the CCAA in order to maintain the *status quo* of its operations, to allow for an application for leave and, if successful, to appeal the QCA Judgment to the Supreme Court of Canada and preserve going concern value for all of its stakeholders.

9. Notwithstanding that JTIM continues to assert that it has no liability in respect of the litigation claims asserted against it, in parallel with any appeal of the QCA Judgment, JTIM has decided to seek a collective solution for the benefit of all stakeholders in respect of the QCA

Judgment and the other multi-billion dollar claims currently being pursued against it. The requested stay under the CCAA will allow JTIM time and a platform to achieve such a solution.

III. OVERVIEW OF THE APPLICANT

A. *Corporate Structure*

10. JTIM is a private company that was continued as a corporation under the *Canada Business Corporations Act* in April 2012, and maintains its registered head office in Mississauga, Ontario (the "**Head Office**"). JTIM is owned indirectly by Japan Tobacco Inc. ("**Japan Tobacco**"), a publicly listed company in Japan.

11. A copy of an organization chart of the relevant related-party tobacco companies outside of Japan (such companies, collectively, "**JT International**") is attached as Exhibit "**B**".

12. On May 11, 1999, JTIM, then known as RJR-Macdonald Corp. was acquired by JT Nova Scotia Corporation, an indirectly wholly-owned subsidiary of Japan Tobacco.

13. Following an amalgamation and corporate reorganization in 2012, JTIM is now a direct wholly-owned subsidiary of JT Canada LLC Inc. ("**ParentCo**"), a Nova Scotia corporation and an indirect subsidiary of Japan Tobacco.

14. JTIM is the parent and sole shareholder of JTI-Macdonald TM Corp. ("**TM**"). TM owns many of the trademarks that JTIM uses in its business and is a secured creditor of JTIM. As a result of the Recapitalization Transactions (as defined herein), ParentCo is a secured creditor of TM.

15. On April 13, 2015, ParentCo demanded payment of the secured indebtedness owing from TM to ParentCo, then in the amount of approximately $1.0 billion. TM was unable to satisfy that

demand. Pursuant to the terms of the security agreements granted by TM in favour of ParentCo, on July 9, 2015, ParentCo privately appointed PricewaterhouseCoopers Inc. as the receiver and manager of TM (the "**TM Receiver**"). Subsequent to the appointment of the TM Receiver, each of the directors of TM resigned.

16. TM is not a party in any of the litigation involving JTIM. For that reason, TM is not a part of these proceedings.

B. ***The Business***

17. Most of JTIM's senior management are located at the Head Office in Mississauga, Ontario. The Head Office is responsible for all functional areas regarding the sales and distribution of JTIM's products in Canada. Managerial responsibilities for the manufacturing of JTIM's products are carried out at a manufacturing facility located at 2455 Ontario Street East, in Montreal, Quebec (the "**Plant**").

18. JTIM employs approximately 500 full-time employees in Canada. In addition, JTIM leases offices and warehouse space and employs sales representatives and associates across Canada. JTIM has been on the Aon Hewitt Best Employers list for Canadian companies and was recently certified as a Top Employer in Canada by the Top Employers Institute.

19. JTIM is the third largest tobacco company defendant in the Class Actions (as defined herein) based on volume of sales in Canada. JTIM's products consist of cigarettes, fine-cut tobacco, cigars and accessories branded under various trademarks and brand names for distribution throughout Canada and for export. JTIM imports tobacco products for distribution in Canada mainly from JT International SA ("**JTI-SA**"), a foreign sister company to ParentCo.

20. JTIM purchases some processed tobacco from other related party entities, including JTI-SA, but most is purchased from third party suppliers.

21. JTIM's processed tobacco is stored at leased premises near Montreal, Quebec and is shipped to the Plant as needed. The Plant has been in operation since 1874 and is JTIM's only manufacturing facility.

22. JTIM's tobacco products are either manufactured at the Plant or imported by JTIM. Generally, JTIM sells to wholesalers who in turn sell to retailers who sell to consumers. On a lesser basis, JTIM sells tobacco products directly to retailers and consumers.

C. ***Pension Plans***

23. JTIM is the plan sponsor and administrator of the following four pension and post-retirement benefits plans: (i) the JTI-Macdonald Corp. Employees' Retirement Plan (the "**ERP**"), (ii) the JTI-Macdonald Corp. Management Employees' Pension Plan (the "**MEPP**"), (iii) the JTI-Macdonald Corp. Executive Supplemental Benefit Plan (the "**ESBP**"), and (iv) the JTI-Macdonald Corp. Supplemental Non-Registered DC Pension Plan (the "**Non-Registered DC Plan**" and collectively with the ERP, the MEPP and the ESBP, the "**Pension Plans**").

24. Based on the most recent actuarial valuations, the Pension Plans had the following degrees of solvency: (i) 99.5% for the ERP, representing a deficiency in the amount of approximately $2.0 million, (ii) 99% for the MEPP, representing a deficiency in the amount of approximately $0.3 million, and (iii) 100% for the ESBP. The concept of a solvency deficiency does not apply to the Non-Registered DC Plan.

25. All employee contributions and solvency deficiency payments are current in respect of each of the Pension Plans.

26. JTIM provides other post-employment benefits ("**OPEBs**") to former salaried and hourly employees (unionized and non-unionized) and their dependants, including drug, medical, dental and life insurance benefits. As of December 31, 2018, the total present value for future OPEB contingent liabilities is estimated at $109.2 million. It is contemplated that these CCAA proceedings will not affect any payments required to be made in respect of the Pension Plans or the OPEBs.

D. ***Material Contracts***

i) Trademark Agreement

27. JTIM's market share in Canada is largely attributed to the brands of tobacco products it exclusively sells in the Canadian market. JTIM licenses or has the right to use all of the trademarks with respect to such brands from related parties. If such arrangements were terminated, JTIM's business would effectively cease in its current form.

28. Many of the trademarks that JTIM is permitted to use in its operations are owned by TM. Pursuant to the Trademark License Agreement dated October 8, 1999, as amended from time to time (collectively, the "**Trademark Agreement**"), TM granted to JTIM a non-exclusive, world-wide license to use TM's trademarks in association with the manufacturing, distribution, advertising and sale of the licensed products for the remuneration set out therein.

29. In August 2017 and January 2018, after a default by JTIM under its secured facilities with TM as a result of the issuance of the Judgment (such default is discussed in more detail below), JTIM and TM negotiated amendments to the Trademark Agreement (the "**Trademark**

Amendments") as consideration for TM's agreement to forbear from exercising its enforcement rights against JTIM. The August 2017 amendment changed the frequency of royalty payments paid by JTIM to TM under the Trademark Agreement from semi-annual payments to monthly payments. The aggregate annual amounts payable under the Trademark Agreement remained unchanged. The January 2018 amendment to the Trademark Agreement, which was a condition of the extension of the forbearance arrangement, made the supply of goods and services under the Trademark Agreement solely in the discretion of TM, acting through the TM Receiver, and required JTIM to provide a deposit to TM in an amount equal to 1.5 times the average monthly payment under the Trademark Agreement against which outstanding liabilities could be set-off. JTIM provided TM with a deposit, which as of February 28, 2019 is $1,330,000, in satisfaction of this term of the January 2018 amendment. Attached as Exhibit "**C**" are copies of the Trademark Amendments.

30. The Trademark Amendments were required by ParentCo as part of a forbearance arrangement and in response to the possibility of liquidity constraints on JTIM in the event that the Judgment was upheld. ParentCo. is the senior secured creditor of TM and has enforced its security and appointed the TM Receiver over TM. As a result of the forbearance arrangement, the TM Receiver has agreed to forbear from enforcing on the loan and security granted by JTIM to TM.

31. JTIM is required to continue paying TM pursuant to the terms of the Trademark Agreement. Termination of the right to use the trademarks licensed pursuant to the Trademark Agreement (which license is provided on a discretionary basis) would likely cause the cessation of JTIM's business. Although not every aspect of the business is affected by the TM trademarks,

the remaining lines of business would likely not be viable on a stand-alone basis. These arrangements have allowed JTIM to continue operating in the ordinary course.

ii) Other Related Party Agreements

32. JTIM is a party to numerous services agreements and limited risk distribution agreements (the "**LRD Agreements**") with related parties, which are required for JTIM's continued operations.

33. JTIM also has related party contracts in respect of manufacturing, distribution, leaf sourcing and other miscellaneous agreements.

34. I have been advised by legal counsel that the Proposed Monitor (as defined below) in this proceeding has reviewed the material related party agreements, including the payment provisions thereunder. The service charges in place have also been audited by Canada Revenue Agency ("**CRA**") up to the 2013 taxation year and no adjustments have been required to date. CRA is currently in the process of auditing the 2014-2016 taxation years and, to date, no adjustments have been proposed.

iii) 2018 Amendments and Forbearance of Related Party Agreements

35. Against the backdrop of litigation and related credit risk, JTIM's related-party suppliers expressed concern about their potential exposure in the event that enforcement steps were taken by a judgment creditor resulting in JTIM's need to seek creditor protection. Under the intercompany arrangements then in place, such credit risk was viewed by the related parties as unacceptable. The related party suppliers advised JTIM that the intercompany supply agreements were at risk of termination. Given the unique nature of the goods and services provided, it would not be possible for JTIM to find satisfactory replacement supply arrangements. The agreements

reached with these suppliers were necessary to permit JTIM to continue operating in the ordinary course.

36. In order to maintain the necessary supply of goods and services and avoid a disruption to JTIM's business, JTIM negotiated forbearance agreements (the "**Forbearance Agreements**"), copies of which are attached as Exhibit "**D**", with five of its related party suppliers. Collectively, the Forbearance Agreements increased the frequency of payments (but not the total amount of payments) to monthly in advance (except for the LRD Agreements), required JTIM to provide a deposit capable of being set-off by the related party supplier against amounts owing by JTIM, and/or granted a security interest in all of JTIM's present and after acquired personal property in the form of a general security agreement or moveable hypothec. The following chart summarizes the changes implemented under the Forbearance Agreements:

Supplier	Frequency of Payment	Security	Right to Deposit
JTI-SA	Monthly in advance (save and except the LRD Agreements)	Yes*	No
JT International Business Services Limited ("JTI-BSL")	Monthly in advance	Yes*	Yes†
JT International Holding B.V. ("JTIH-BV")**	Monthly in advance	Yes*	Yes†
JTI Services Switzerland SA	Monthly in advance	No	No
JTI (US) Holdings Inc.	Monthly in advance	No	No

* The security granted was in the form of a general security agreement and moveable hypothec.

**On its own behalf and on behalf of certain of its affiliates.

† A deposit was ultimately not required as payments were, and continue to be, made monthly in advance.

E. ***Cash Management***

37. JTIM is part of a globally-integrated business processes and information system known as SAP. The SAP system provides substantial operational benefits to JTIM, including the integration of the supply chain, research and development and finance/treasury information systems, real-time data availability, improved quality control and internal controls, and treasury-related benefits such as reducing the number of bank accounts, automating bank reconciliations, enhancing cash flow forecasting and improving liquidity management.

38. As a result of the SAP system, JTIM's information flows are consistent with its foreign affiliates. In addition, the management of JT International is provided with real-time visibility into JTIM's operational and financial information.

39. Citibank Canada is the banking service provider for those JT International entities operating in North America. JTIM maintains seven bank accounts with Citibank, N.A., Canada Branch ("**Citibank**"), one of which is denominated in USD. JTIM's accounts are comprised of single-purpose accounts for the receipt of tax refunds, for payment of employee benefits, for receipt of funds from direct sales to retailers, for payment of marketing and sales programs to retailers and to hold cash collateral, as further described below. The USD account and one CAD account are used for general operations transactions in those respective currencies.

40. Pursuant to agreements dated November 18, 2016 and February 24, 2017 between JTIM and Citibank, JTIM pledged $900,000 as cash collateral in respect of central travel account card

services and $8 million in respect of certain cash management services which require the extension of credit by Citibank, respectively, in each case as provided by Citibank to JTIM. Attached as Exhibits "**E**" and "**F**" are the two cash collateral agreements.

41. JTIM currently maintains two bank accounts at Royal Bank of Canada, one of which is a high interest savings account and the other is used for collecting sales proceeds from certain retail customers. JTIM also maintains term deposits at Sumitomo Mitsui Banking Corporation, Canada Branch.

IV. LIABILITIES OF THE APPLICANT

A. *Secured Creditors of JTIM*

i) TM Term Debentures

42. On March 9, 1999, it was announced that Japan Tobacco had reached an agreement to purchase the international (non-US) tobacco assets of RJR Nabisco, Inc., R. J. Reynolds Tobacco Company and their affiliates (collectively, the "**RJR Group**") pursuant to the terms of the Purchase Agreement (as defined below). The aggregate purchase price as set out in the Purchase Agreement was USD$7,832,539,000 in cash. The bid process was competitive and the major international tobacco groups participated in it. At the time, Japan Tobacco was a large company in Japan but only had a limited international presence.

43. From the outset, it was understood that, for tax-planning purposes, the acquisition of the Canadian assets would be a leveraged buyout leaving the Canadian operating company with debt and interest that would be deductible from its earnings. However, because of the extremely tight time frame to close the transaction, which ultimately occurred on May 11, 1999, the completion of many of the necessary planning and implementation steps required to integrate this worldwide

acquisition had to be postponed until after closing.

44. To effect a leveraged buyout structure, on November 23, 1999, JT International B.V. ("**JTI-BV**"), an affiliated entity incorporated under the laws of the Netherlands, borrowed $1.2 billion from ABN AMRO Bank N.V. ("**ABN AMRO**"), a third-party financial institution. On the same day, JTI-BV made a secured advance of $1.2 billion to ParentCo. ParentCo then made a secured advance of $1.2 billion to TM and TM made a secured advance of $1.2 billion to JT Nova Scotia Corporation (now JTIM through amalgamation). JTIM then returned capital of $1.2 billion to its then parent, JT Canada LLC II Inc. Through various intercompany transactions, the funds were eventually paid to JTI-BV, who repaid the loan to ABN AMRO (collectively, the "**Recapitalization Transactions**").

45. The Recapitalization Transactions were reviewed in detail during the CCAA proceedings commenced by the Applicant in 2004 as more particularly described herein. The Fourth Report to the Court of the 2004 Monitor (as defined herein) dated February 16, 2005 (the "**Fourth Report**"), a copy of which is attached without exhibits as Exhibit "**G**", provides a detailed overview of the Recapitalization Transactions. My comments on the Recapitalization Transactions are based on my personal knowledge of the Recapitalization Transactions and from my review of the Fourth Report.

46. As a result of the Recapitalization Transactions, the amounts owed by JTIM to TM are: (i) evidenced by ten (10) convertible debentures, governed by the laws of the Province of Quebec, in the total aggregate principal amount of $1.2 billion (the "**TM Term Debentures**"), as amended from time to time, (ii) subscribed for under the Convertible Debenture Subscription Agreement dated November 23, 1999, as amended by the Amending Agreement dated December 23, 2014

(collectively, the "**Subscription Agreement**"), (iii) due on November 18, 2024, and (iv) redeemable at the option of JTIM and convertible into special preference shares of JTIM at the option of the holder. On December 2, 1999, JTIM also delivered a demand debenture to TM (the "**Demand Debenture**"), governed by the laws of the Province of Nova Scotia, granting TM a general and continuing security interest in JTIM's business, undertakings and all of its property and assets, real and personal, movable and immovable of whatsoever kind and nature, both present and future. Copies of one of the TM Term Debentures, the Subscription Agreement and the Demand Debenture are attached as Exhibits "**H**", "**I**" and "**J**".

47. The Judgment triggered an event of default pursuant to section 13.9 of the Subscription Agreement, making the security granted thereunder enforceable by the TM Receiver against JTIM. On August 3, 2017, the TM Receiver and JTIM agreed to the terms of a forbearance letter (the "**TM Forbearance Letter**"). Pursuant to the terms of the TM Forbearance Letter, the TM Receiver agreed, among other things, to forbear from enforcing its rights and remedies against JTIM in consideration of changes to the frequency of royalty payments owing pursuant to the Trademark Agreement, as described above. A copy of the TM Forbearance Letter (without schedules because these schedules are separately attached hereto as Exhibit "**C**") is attached as Exhibit "**K**".

48. The forbearance was extended pursuant to several letter agreements (collectively, the "**Forbearance Extensions**"). Copies of the Forbearance Extensions are attached as Exhibit "**L**".

49. The Forbearance Extensions expired on February 28, 2019. On February 28, 2019, by way of letter, the TM Receiver informed JTIM that in light of the pending QCA Judgment, the TM Receiver was not prepared to formally extend the forbearance period further. However, the TM

Receiver would agree to a day-to-day extension under the same terms and conditions of the TM Forbearance Letter, which day-to-day extension may be terminated at the TM Receiver's sole and absolute discretion. A copy of the letter from TM's counsel is attached as Exhibit "**M**".

50. In accordance with the terms of the TM Forbearance Letter, the TM Term Debentures were amended by an agreement dated August 3, 2017 (the "**TM Debenture Amending Agreement**" and collectively with the TM Term Debentures, the "**Revised TM Term Debentures**") to change the interest payment frequency (but not total amount) from bi-annually to monthly. Currently, JTIM makes interest payments to TM on account of its secured indebtedness in the approximate amount of $7.6 million monthly on the 18th and principal payments of approximately $950,000 in May and November annually. As at February 28, 2019, the amount outstanding under the TM Term Debentures (including accrued interest) was approximately $1.18 billion. A copy of the TM Debenture Amending Agreement is attached as Exhibit "**N**".

51. The Revised TM Term Debentures are secured by, among other things, the Demand Debenture, a Deed of Hypothec dated November 23, 1999, a Supplemental Deed of Hypothec dated December 2, 1999, a Deed of Moveable Hypothec and Pledge of Shares dated December 12, 2000 and a Deed of Confirmation dated May 14, 2015, each as amended (collectively, the "**Hypothecs**") now held by BNY Trust Company of Canada (and in certain cases, formerly held by the Trust Company of Bank of Montreal) ("**TrustCo**") as the attorney for TM. Copies of the Hypothecs are attached as Exhibits "**O**", "**P**", and "**Q**" and "**R**", respectively.

52. I am advised by legal counsel that:

(a) TM directly registered its security interest against the personal property of JTIM in the following jurisdictions and on the following dates:

Registration Number	Jurisdiction	Registration Date	Collateral
856928601	Ontario	November 22, 1999	All classes except "consumer goods".
2399489 / 2417398	Nova Scotia		All present and after-acquired personal property.
681989I	British Columbia	June 23, 2015	
15062337351	Alberta		
301355169	Saskatchewan	June 24, 2015	
201511679902	Manitoba		
26022244	New Brunswick		
3707279	Prince Edward Island		
13031521	Newfoundland		

(b) pursuant to the security interest granted by the Hypothecs, TrustCo registered its security interest, as attorney for TM, in Ontario and Nova Scotia on December 11, 2000 under the Ontario *Personal Property Security Act* and Nova Scotia *Personal Property Security Act*. Copies of the personal property registry searches in each province as at February 28, 2019, are attached as Exhibit "**S**";

(c) as holder of the TM Term Debentures, TrustCo also registered its security interest in Quebec on December 13, 2000 and May 14, 2015 in the Registrar of Personal and Moveable Real Rights (Quebec) (the "**Quebec RPMRR**") in respect of all of JTIM's present and future property, moveable and immovable, real and personal, corporeal and incorporeal, tangible and intangible;

(d) TrustCo also registered a charge against the Plant in the Land Register for the registration division of Montreal on December 3, 1999 under registration number 5 138 944 (the "**Charge**"). There are no registrations against title to the Plant other than the Charge. A copy of the real property subsearch report prepared by Quebec counsel to JTIM relating to the Plant as at February 27, 2019 is attached as Exhibit "**T**".

ii) JTIM Secured Debt to ParentCo

53. Prior to the issuance of the Judgment, Citibank had granted an unsecured credit facility to JTIM, TM and ParentCo as joint borrowers in the principal amount of $60 million (the "**Citibank Loan**"). The Citibank Loan was used as a "smoothing" facility that was necessary as a result of the timing of the payments of substantial monthly federal excise duty and other obligations, such as interest payments, royalty payments and payroll, versus the timing of the collection of the receivables generated by the sale of inventory.

54. On June 25, 2015, after the delivery of the Judgment, Citibank advised that JTIM was no longer authorized to borrow under its credit facility. To ensure necessary cash flow for continued operations, ParentCo agreed to provide a secured borrowing facility to JTIM in the principal amount of $70 million (the "**Cash Flow Loan**") on the terms outlined in the loan agreement dated June 25, 2015 (the "**ParentCo Loan Agreement**"), attached as Exhibit "**U**". Among other things, the ParentCo Loan Agreement allows JTIM to pay the required excise duty as such obligations become due and payable, while also paying trade and employee obligations in the ordinary course.

55. As security for the amounts advanced under the Cash Flow Loan, JTIM granted a hypothec to ParentCo in respect of, among other things, its moveable property located in the Province of Quebec (the "**ParentCo Hypothec**"). The ParentCo Hypothec is attached as Exhibit "**V**". I am advised by legal counsel that ParentCo registered its security interest against JTIM pursuant to the Quebec RPMRR on June 26, 2015.

56. As of February 28, 2019, there are no amounts outstanding under the ParentCo Loan Agreement.

iii) Related Party Security Agreements

57. As noted above, as a result of the uncertainty caused by the Judgment, certain related party suppliers required JTIM to grant security to them in respect of goods and services that are delivered on credit. As at the quarter ended December 31, 2018, the gross amount outstanding to these related party suppliers is approximately $54.6 million and such amount relates almost entirely to JTIM's LRD Agreement with JTI-SA to distribute JTI-SA's tobacco products in Canada. This related party security is described in more detail below.

58. I am advised by legal counsel that,

(a) *JTI-SA Security:* in accordance with the terms of its forbearance arrangement, JTI-SA registered a purchase money security interest ("**PMSI**") against JTIM in all of the provinces (except Quebec) in Canada and a hypothec in Quebec, being the jurisdictions in which the products sold thereunder are located. A copy of the notices issued to effect the PMSI priority and hypothec are attached as Exhibit "**W**";

(b) *JTI-BSL Security:* in accordance with the terms of its forbearance arrangement, JTI-BSL registered its security interest against JTIM in all of the provinces (except Quebec) in Canada and a hypothec in Quebec, being the jurisdictions in which the services may be provided thereunder; and

(c) *JTIH-BV Security:* in accordance with the terms of its forbearance arrangement, JTIH-BV registered its security interest against JTIM in all of the provinces (except

Quebec) in Canada and a hypothec in Quebec, being the jurisdictions in which the services may be provided thereunder.

B. ***Litigation***

i) Quebec Class Actions

59. I am advised by our litigation counsel, François Grondin of Borden Ladner Gervais LLP, that:

(a) on February 21, 2005, a class action was certified against JTIM, Imperial Tobacco Canada Limited ("**Imperial**") and Rothmans, Benson & Hedges Inc. ("**Rothmans**" and collectively, with JTIM and Imperial, the "**Defendants**") in *Cécilia Létourneau* v. *Imperial Tobacco Limitée, Rothmans, Benson & Hedges Inc. and JTI-Macdonald Corp.* on behalf of tobacco smokers in the Province of Quebec for the purpose of claiming, for each proposed class member, moral damages resulting from an alleged addiction to nicotine, as well as punitive damages (the "**Létourneau Class Action**");

(b) on February 21, 2005, a class action was certified against the Defendants in *Conseil québécois sur le tabac et la santé and Jean-Yves Blais* v. *Imperial Tobacco Limitée, Rothmans, Benson & Hedges Inc. and JTI-Macdonald Corp.*, on behalf of tobacco smokers in the Province of Quebec suffering from lung, larynx or throat cancer or emphysema for the purpose of claiming, for each proposed class member, compensatory and exemplary damages (the "**Blais Class Action**");

(c) all of the alleged wrong-doings in the Létourneau Class Action and the Blais Class Action (collectively, the "**Class Actions**") occurred prior to the acquisition of JTIM by Japan Tobacco;

(d) the Class Actions were tried together and concluded on December 11, 2014. The Defendants were found liable for "moral damages" (i.e. non-pecuniary damages including pain and suffering, loss of enjoyment of life, etc.) in the Blais Class Action in the aggregate amount of approximately $6.8 billion ($15.5 billion with interest and the additional indemnity described below) of which JTIM was specifically liable for 13% of that amount totalling approximately $2 billion. However, as all of the Defendants were found "solidarily liable", each Defendant is liable for the full amount of the moral damages awarded and the Judgment can therefore be enforced against each Defendant for the full amount of the said moral damages awarded against all three Defendants. Each Defendant would have a "contribution" claim against the other Defendants for the part of the Judgment owing by them that was paid by such Defendant;

(e) the Defendants were found liable for punitive damages in the Létourneau Class Action in the amount of $131 million, of which JTIM was specifically liable for $12.5 million**.** JTIM was also found to be liable for punitive damages in the Blais Class Action in the amount of $30,000. The "condemnations" in punitive damages were awarded on an individual basis against each Defendant, including JTIM. Attached hereto as Exhibit "**X**" is an excerpt of the conclusions of the Judgment;

(f) the Defendants appealed the Judgment to the Quebec Court of Appeal (the "**QCA**") and brought a motion to strike provisions in the Judgment authorizing the plaintiffs in the Class Actions (the "**Class Action Plaintiffs**") to provisionally execute the Judgment. On July 23, 2015, the QCA released a decision that cancelled those provisions. Attached hereto as Exhibit "**Y**" is a copy of the judgment cancelling provisional execution of the Judgment;

(g) in response, the plaintiffs in the Class Actions filed a motion seeking an order that the Defendants furnish security for the Judgment, which motion was heard by the QCA on October 6, 2015. Prior to the commencement of the hearing, the motion against JTIM was withdrawn by the Class Action Plaintiffs due to the inability of counsel for JTIM and counsel for the Class Action Plaintiffs to find a mutually agreeable hearing date;

(h) a judgment was granted against Imperial and Rothmans only on October 26, 2015, which was later modified on December 9, 2015, ordering Imperial and Rothmans to furnish security to the Class Action Plaintiffs. Security was ordered in the amount of $758 million with respect to Imperial and in the amount of $226 million in respect to Rothmans, each payable by way of equal quarterly instalments until September 30, 2017. Attached hereto as Exhibit "**Z**" is a copy of the judgment ordering Imperial and Rothmans to furnish security;

(i) between November 21 and 30, 2016, the QCA heard the appeal of the Judgment. On March 1, 2019, the QCA released its judgment with respect to the appeal. The QCA Judgment confirmed the Judgment in all respects, but revised certain dates

related to the calculation of interest. The result is that the Defendants remained liable for damages in the aggregate amount of approximately $6.8 billion (approximately $13.5 billion with the revised interest dates and additional indemnity). JTIM remained specifically liable for 13% of that amount, totalling approximately $1.75 billion. Each of the Defendants remained "solidarily liable" for the full amount of the damages awarded to the Class Action Plaintiffs; and

(j) the Defendants remained liable for punitive damages in the Létourneau Class Action in the amount of $131 million, of which JTIM was specifically liable for $12.5 million. JTIM also remained liable for punitive damages in the Blais Class Action in the amount of $30,000. JTIM has up to a maximum of 60 days from the date of the QCA Judgment to pay an initial deposit of $145 million.

ii. HCCR Actions

60. I am advised by internal legal counsel that JTIM is also subject to ten distinct HCCR Actions brought by each province. The HCCR Actions were commenced as a result of legislation enacted in each of the ten provinces exclusively to allow the provinces to recoup the health care costs allegedly incurred, and that will be incurred, resulting from alleged "tobacco related wrongs", as defined in the applicable statutes. The HCCR Actions were commenced against numerous parties, including Imperial, Rothmans and certain of their affiliates, and JTIM.

61. The HCCR Actions have also been brought against R. J. Reynolds Tobacco Company and R. J. Reynolds Tobacco International, Inc. (collectively, "**Reynolds**"). Pursuant to a Purchase Agreement dated as of March 9, 1999 as amended and restated as of May 11, 1999 (the "**Purchase Agreement**"), Japan Tobacco agreed to indemnify the RJR Group as a former parent of JTIM, for

any Damages (as defined therein) incurred by the RJR Group for liabilities or obligations relating to the health effects of any products manufactured or sold by the RJR Group at any time that were consumed or intended to be consumed outside the United States, including products that were sold prior to the purchase of the business by Japan Tobacco. JTIM may have liability for certain claims being made against Reynolds. In order to effect a CCAA stay for JTIM and allow for a collective solution to the HCCR Actions, it is also beneficial to have those claims stayed against Reynolds. A copy of the relevant portions of the Purchase Agreement are attached as Exhibit "**AA**".

62. I am advised by internal legal counsel to JTIM that the status of the HCCR Actions in each of the provinces is:

Location	Status	Defendants
British Columbia	It was commenced in January 2001 against tobacco industry members including JTIM. The claim amount is unspecified. An expert report served by the Province of British Columbia in the proceeding states the value of the claim to be $120 billion. The action remains pending. The pre-trial process is ongoing and a trial date is not yet scheduled.	JTIM, Reynolds, Imperial, Rothmans, B.A.T Industries p.l.c., British American Tobacco (Investments) Limited, Carreras Rothmans Limited, Philip Morris Incorporated, Philip Morris International, Inc., Rothmans International Research Division and Ryesekks p.l.c.and Canadian Tobacco Manufacturers Council (the "**CTMC**")
Alberta	It was commenced in June 2012 against tobacco industry members, including JTIM. The statement of claim contains allegations of joint and several liabilities among all the defendants but does not specify any individual amount or percentages. The total amount claimed is at least $10 billion. The pre-trial process is ongoing and a trial date is not yet scheduled.	JTIM, Reynolds, Imperial, Rothmans, CTMC, Altria Group, Inc., B.A.T Industries p.l.c., British American Tobacco (Investments) Limited, British American Tobacco p.l.c., Carreras Rothmans Limited; Philip Morris International, Inc., Philip Morris USA, Inc., and Rothmans Inc.

Saskatchewan	It was commenced in June 2012 against tobacco industry members, including JTIM. The claim amount is unspecified. The pre-trial process is ongoing and a trial date is not yet scheduled.	JTIM, Reynolds, Imperial, Rothmans, CTMC, Rothmans Inc., Altria Group, Inc., Philip Morris International, Inc., British American Tobacco p.l.c., B.A.T Industries p.l.c., British American Tobacco (Investments) Limited, and Carreras Rothmans Limited
Manitoba	It was commenced in May 2012 against tobacco industry members including JTIM. The claim amount is unspecified. The pre-trial process is ongoing and a trial date is not yet scheduled.	JTIM, Reynolds, Imperial, Rothmans, CTMC, Rothmans, Inc., Altria Group, Inc., Philip Morris U.S.A. Inc., Philip Morris International, Inc., British American Tobacco p.l.c., B.A.T Industries p.l.c., British American Tobacco (Investments) Limited and Carreras Rothmans Limited
Ontario	It was commenced in September 2009 against tobacco industry members, including JTIM. The statement of claim contains allegations of joint and several liabilities among all the defendants but does not specify any individual amount or percentages within the total claimed amount of $330[1] billion. The pre-trial process is ongoing and a trial date is not yet scheduled.	JTIM, Reynolds, Imperial, Rothmans, CTMC, Carreras Rothmans Limited, Altria Group, Inc., Phillip Morris U.S.A. Inc., Phillip Morris International Inc., British American Tobacco p.l.c., B.A.T Industries p.l.c., and British American Tobacco (Investments) Limited
Quebec	It was commenced in June 2012 against tobacco industry members, including JTIM. The statement of claim contains allegations of joint and several liabilities among all the defendants but does not specify any individual amount or percentages. The total amount claimed is approximately $61 billion.	JTIM, Reynolds, Imperial, Rothmans, CTMC, B.A.T Industries p.l.c., British American Tobacco (Investments) Limited, Carreras Rothmans Limited, Philip Morris USA Inc., and Philip Morris International Inc.

[1] On May 31, 2018, the Province of Ontario indicated to the defendants that it intends to amend its Statement of Claim to increase the amount claimed to $330 billion from $50 billion.

	The pre-trial process is ongoing and a trial date is not yet scheduled.	
New Brunswick	It was commenced in March 2008 against tobacco industry members, including JTIM. The claim amount is unspecified. The documents filed by the Province of New Brunswick in the proceeding valued its claim at approximately $18 billion. The pre-trial process is ongoing and the trial is scheduled to begin in November 2019.	JTIM, Reynolds, Imperial, Rothmans, CTMC, Carreras Rothmans Limited, Altria Group, Inc., Phillip Morris U.S.A. Inc., Phillip Morris International Inc., British American Tobacco p.l.c., B.A.T Industries p.l.c., and British American Tobacco (Investments) Limited
Nova Scotia	It was commenced in January 2015 against tobacco industry members, including JTIM. The claim amount is unspecified. JTIM filed a defence on July 2, 2015. The parties entered into a "standstill" agreement whereby all parties agreed to take no further steps in the litigation. Although the standstill has expired, the proceeding continues to be on hold and no significant document production has occurred.	JTIM, Reynolds, Imperial, Rothmans, CTMC, Rothmans Inc., Altria Group, Inc., Philip Morris U.S.A. Inc, Philip Morris International Inc., British American Tobacco p.l.c., B.A.T Industries p.l.c., British American Tobacco (Investments) Limited and Carreras Rothmans Limited
Prince Edward Island	It was commenced in September 2012 against tobacco industry members, including JTIM. The claim amount is unspecified. The pre-trial process is ongoing and a trial date is not yet scheduled.	JTIM, Reynolds, Imperial, Rothmans, CTMC, Rothmans, Inc., Altria Group, Inc., Philip Morris U.S.A. Inc., Philip Morris International, Inc., British American Tobacco p.l.c., B.A.T Industries p.l.c., British American Tobacco (Investments) Limited and Carreras Rothmans Limited
Newfoundland and Labrador	It was commenced in February 2011 against tobacco industry members, including JTIM. The claim amount is unspecified. The proceedings are ongoing and a trial date is not yet scheduled.	JTIM, Reynolds, Imperial, Rothmans, CTMC, Carreras Rothmans Limited, Altria Group, Inc., Philip Morris USA Inc, Philip Morris International Inc., British American Tobacco p.l.c., B.A.T Industries p.l.c, and British America Tobacco (Investments) Limited

iii) Other Ongoing Litigation

63. I am advised by internal legal counsel that JTIM is also subject to the following other unresolved class actions (the "**Additional Class Actions**"):

Action	Brief Description	Defendants
Tobacco Growers Class Action	On April 23, 2010, a class action was commenced on behalf of Ontario flue-cured tobacco growers and producers against JTIM for the alleged failure of JTIM to appropriately pay for tobacco purchased for sale in the Canadian market in the amount of $50 million (plus interest and costs). The proceedings are ongoing.	JTIM, to be heard together with similar class actions filed against Imperial and Rothmans
Adams, Kunta, Dorian and Semple Class Actions	In July 2009, four class actions seeking unquantified damages were filed in Saskatchewan, Manitoba, Alberta and Nova Scotia against JTIM as well as a number of other manufacturers participating in the Canadian cigarette market alleging that cigarettes are a defective product with the potential to cause harm. Apart from the initial exchange of pleadings, no further steps have been taken to advance the claims and are thus, each either expired or dormant.	JTIM, Reynolds, Imperial, B.A.T Industries p.l.c, British American Tobacco (Investments) Limited, British American Tobacco p.l.c, Rothmans, Altria Group Inc., Phillip Morris Incorporated, Phillip International, Inc. and Phillip Morris U.S.A. Inc., Carreras Rothman, Carreras Rothmans Limited, Rothmans Inc., Ryesekks p.l.c. and the CTMC
Bourassa and McDermid Class Actions	In July 2010, two class actions seeking unquantified damages were filed and served in British Columbia against JTIM as well as a number of other manufacturers participating in the Canadian cigarette market. In the class actions, the plantiffs' claim for health related damages on behalf of individuals who smoked a minimum of 25,000 cigarettes designed, manufactured, imported, marketed or distributed by the defendants. Apart from the initial	JTIM, Reynolds, Imperial, B.A.T Industries p.l.c, British American Tobacco (Investments) Limited, British American Tobacco p.l.c., Rothmans, Rothmans, Altria Group Inc., Phillip Morris Incorporated, Phillip International, Inc. and Phillip Morris U.S.A. Inc., Carreras Rothman, Carreras Rothmans

	exchange of pleadings, no further steps have been taken to advance the claims and are thus, each either expired or dormant.	Limited, Rothmans Inc., Ryesekks p.l.c and the CTMC
Jacklin Class Action	In June 2012, a class action seeking unquantified damages was filed in Ontario against JTIM as well as a number of other manufacturers participating in the Canadian cigarette market. In the class action, the plantiffs' claim for health related damages on behalf of individuals who smoked a minimum of 25,000 cigarettes designed, manufactured, imported, marketed or distributed by the defendants. The claims were served on JTIM in November 2012, but no further steps have been taken and are currently dormant.	JTIM, Reynolds, Imperial, B.A.T Industries p.l.c, British American Tobacco (Investments) Limited, British American Tobacco p.l.c., Rothmans, Rothmans, Altria Group Inc., Phillip Morris Incorporated, Phillip International, Inc. and Phillip Morris U.S.A. Inc., Carreras Rothman, Carreras Rothmans Limited, Rothmans Inc., Ryesekks p.l.c and the CTMC

C. *Ordinary Course Obligations*

64. JTIM has approximately 1,300 suppliers and other normal course creditors. All of JTIM's trade, tax and employment obligations are current in accordance with agreed or required payment terms. As at December 31, 2018, the total outstanding pre-filing indebtedness for these ordinary course obligations, excluding related party trade debt, is approximately $108.1 million. Of that amount, approximately $54.6 million relates to outstanding taxes and duties, $12 million is in respect of payroll and benefits (including pension payments), $5 million relates to arm's length trade creditors and $36.5 million relates to accruals and other liabilities including accruals for goods received before invoices in respect thereof are received. JTIM pays its outstanding taxes and duties one month in arrears in accordance with the law and is current on its payments.

65. JTIM proposes to continue to pay its suppliers in the ordinary course and to treat them as unaffected creditors in the CCAA proceeding.

66. Any damage to the ongoing operations of the business would negatively affect JTIM's stakeholders. In the majority of cases, it would be difficult to quickly replace a trade creditor that stopped supply as a result of JTIM's failure to pay its outstanding obligations. The cost of any potential disruption to JTIM's business and the costs that would be associated with any claim identification and determination process involving a multitude of trade creditors for relatively minor amounts as compared to the stated litigation claims would be uneconomical and unnecessary. JTIM's total third party ordinary course trade liabilities represent less than 0.30% of the total liabilities of JTIM as at December 31, 2018, including the QCA Judgment but excluding any other litigation claims. Preservation of going concern value, including by minimizing supply disruption, is in the best interests of all stakeholders.

67. JTIM's employees are paid periodically, usually in arrears through a payroll provider. All payments to employees are being made, and are proposed to continue to be paid, in the ordinary course.

68. JTIM proposes to pay all Pension Plan obligations, including OPEBs, in accordance with applicable requirements and in the ordinary course.

69. JTIM pays substantial amounts in taxes and duties to the various provincial and federal governments. All obligations are current in accordance with required terms and are proposed to continue to be paid in the ordinary course.

70. Pursuant to the Trademark Agreement, the next monthly royalty payment to TM is due, and is proposed to be paid, on April 1, 2019, in the ordinary course. The amount of the royalty payment varies with sales, but has historically been approximately $1 million per month.

V. Financial Situation and Cash Flow Forecast

A. *Financial Statements*

71. As at the close of business on February 28, 2019, JTIM had approximately $90 million in net available cash on hand, after allowing for known payments that were due on that day. As the operations of JTIM have been, and are expected to remain, cash flow positive, JTIM will have sufficient cash to fund its projected operating costs until the end of the proposed stay period. A copy of JTIM's annual financial statements for the year ended December 31, 2017, are attached as Exhibit "**BB**". A copy of JTIM's interim quarterly financial statements for the quarter ended December 31, 2018, are attached as Exhibit "**CC**".

72. As at December 31, 2018, JTIM's assets had a book value of approximately $1.9 billion and JTIM's liabilities, other than the QCA Judgment and the litigation related contingent liabilities, were valued as follows:

	December 31, 2018
ASSETS (CDN$000s)	
Current	
Cash and short term investments	139,195
Accounts receivable	9,643
Inventories	152,528
Other current assets	5,928
	307,294
Non-current	
Properties, plant and equipment	40,886
Investment in subsidiary companies	1,200,000
Other Assets	8,900
Goodwill	304,328
Future income taxes	29,153
Total assets	1,890,561

	December 31, 2018
LIABILITIES (CDN$000s)	
Current	
Short Term Borrowing	-
Accounts payable and accrued liabilities	103,719
Due to related parties – current	39,932
	143,651
Non-current	
Secured convertible debenture payable to subsidiary	1,183,326
Employee future benefits	102,553
Other liabilities and capital leases	4,394
Total liabilities	1,433,924

73. A majority of JTIM's approximately $1.9 billion book value of assets on its balance sheet relates to JTIM's $1.2 billion equity investment in its subsidiary, TM. This equity interest ranks behind the secured debt owing by TM to ParentCo of approximately $1.0 billion. TM is in receivership and the value of JTIM's equity investment is questionable at best. The remaining assets of JTIM cannot satisfy the secured claims against JTIM, much less the unsecured litigation claims including the QCA Judgment.

74. As at December 31, 2018, JTIM had non-contingent liabilities totalling approximately $1.4 billion, of which approximately $144 million consist of current liabilities, such as accounts payable and accrued liabilities. The majority of JTIM's liabilities consist of the $1.18 billion of secured debt owed to TM, now under the control of the TM Receiver appointed by ParentCo.

75. As described above, JTIM is able to meet its ordinary course obligations as they become due. JTIM is seeking relief, however, because it does not have the financial resources to pay its share of the QCA Judgment, let alone the full amount for which it is solidarily liable. JTIM therefore requires the protections offered under the CCAA to obtain a stay and a period of stability within which to attempt to find a collective resolution.

76. I am advised by legal counsel that it is uncertain whether steps can be taken immediately to enforce the QCA Judgment and that counsel to the Class Action Plaintiffs have refused to confirm that the QCA Judgment is not immediately enforceable, notwithstanding that the QCA Judgment provides for up to a maximum of 60 days for JTIM to provide the initial deposit. Therefore, JTIM is facing the potential for the immediate enforcement of a significant judgment and is also the subject of the pending HCCR Actions, which claims are far in excess of the book value of the assets of JTIM (as discussed above). The total secured and unsecured obligations of JTIM, including the QCA Judgment, greatly exceed my expectation of the realizable value of the assets on a going concern basis**.** I have been advised by external legal counsel that JTIM is therefore insolvent, as that term is understood in the restructuring context.

B. *Cash Flow Forecast*

77. Attached as Exhibit "**DD**" is a statement of the projected 13-week cash flow forecast (the "**Cash Flow Statement**") of JTIM for the week commencing February 25, 2019 to the week ending May 24, 2019. The Cash Flow Statement was prepared by JTIM with the assistance of Deloitte Restructuring Inc. ("**Deloitte**"), the proposed Monitor (in such capacity, the "**Proposed Monitor**"). The Cash Flow Statement demonstrates that if the relief requested is granted, including the staying of the QCA Judgment, JTIM has sufficient liquidity to meet its obligations during the initial 13 week period of a CCAA filing.

VI. RELIEF BEING SOUGHT IN THE CCAA

A. *The Monitor*

78. Deloitte has consented to act as the Court-appointed Monitor of JTIM, subject to Court approval. A copy of Deloitte's consent is attached as Exhibit "**EE**". I am advised by external counsel that Deloitte is a trustee within the meaning of section 2 of the *Bankruptcy and Insolvency*

Act, R.S.C. 1985, c. B-3, as amended, and is not subject to any of the restrictions on who may be appointed as monitor set out in section 11.7(2) of the CCAA.

B. ***Treatment of Ordinary Creditors***

i) The 2004 CCAA Proceedings

79. JTIM was in CCAA from 2004 to 2010 (the "**2004 CCAA Proceedings**"). During the 2004 CCAA Proceedings, JTIM was allowed to pay all of its trade creditors in the ordinary course. JTIM seeks the same result in this proceeding. As was the case in the 2004 CCAA Proceedings, the continued payment of all trade liabilities remains an essential part of preserving the value of JTIM's business.

80. By way of background, in response to enforcement and seizure actions taken by the Minister of Revenue for the Province of Quebec (the "**MRQ**") in respect of allegedly unpaid taxes from allegedly contraband activities (the "**MRQ Assessment**"), JTIM obtained protection pursuant to the CCAA by Order of Mr. Justice Farley of the Ontario Superior Court of Justice on August 24, 2004 (the "**2004 Initial Order**"), a copy of which is attached as Exhibit "**FF**". Ernst & Young Inc. was appointed as Monitor (the "**2004 Monitor**").

81. The critical events precipitating JTIM's filing for CCAA protection in 2004 were the issuance of the MRQ Assessment and the related immediate measures taken to collect on the MRQ Assessment by the MRQ. The result of the service of third-party demands for payment issued by the MRQ on all of JTIM's Quebec customers would have diverted approximately 40% of JTIM's revenue. If the collection action had not been stayed by the 2004 CCAA Proceedings, JTIM would likely have been forced to cease operations and its business likely would have been destroyed.

82. At the time of the 2004 Initial Order, many of the litigation claims that are discussed herein were being pursued against JTIM, which posed the threat of enormous judgments against JTIM, among others. However, no claimant, with the exception of the MRQ, had the ability to disrupt JTIM from carrying on business in the ordinary course until a judgment was rendered and execution steps were taken. As discussed herein, the Class Action Plaintiffs have the same ability to prevent JTIM from carrying on business in the ordinary course as the MRQ did in 2004, through enforcement of the QCA Judgment.

83. On April 13, 2010, a global settlement was reached with all government authorities (the "**Global Settlement**") for the resolution of all alleged contraband claims that precipitated the 2004 CCAA Proceedings, and those proceedings were terminated on April 16, 2010. Similar settlements were also previously entered into by the other major Canadian tobacco manufacturers. JTIM has continued operations in the ordinary course since the termination of the 2004 CCAA Proceedings. The Class Actions and the HCCR Actions have also continued in the ordinary course.

ii) Proposed Treatment

84. Consistent with the approach authorized by Mr. Justice Farley in the 2004 CCAA Proceedings, JTIM is of the opinion that certain pre-filing amounts should be paid following the date of the Initial Order as non-payment of these amounts may have a significant detrimental impact on JTIM's business and going concern value. JTIM intends to treat all of its trade creditors equally and fairly.

85. JTIM proposes to pay its suppliers, trade creditors (including intercompany trade payables and monthly royalty payments), taxes, duties and employees (including outstanding and future pension plan contributions, OPEBs and severance packages) in the ordinary course of

business for current amounts owing both before and after JTIM's application to the Court for protection under the CCAA in order to minimize any disruption of its business. Maintaining JTIM's operations as a going concern and avoiding any unnecessary disruption to its business operations is in the best interests of all of JTIM's stakeholders, including the Class Action Plaintiffs.

86. I am advised by legal counsel that it is JTIM's current expectation that its trade creditors and employees would be unaffected by any plan of arrangement that it may file in this proceeding. I have been further advised by internal legal counsel that not paying the outstanding ordinary course payments would significantly and unnecessarily complicate the restructuring proceedings. I am advised by counsel that the Proposed Monitor supports this relief and will provide further comment on this issue in its report to the Court in connection with this application.

C. ***Stay of Proceedings***

87. In addition to the stay of proceedings in respect of JTIM, JTIM is requesting a stay of proceedings in respect of: (i) any person named as a defendant or respondent in any of the Class Actions, HCCR Actions and the Additional Class Actions (collectively, the "**Pending Litigation**"), and (ii) any proceeding in Canada relating to a tobacco claim against or in respect of any member of JT International or the RJR Group. In both cases, JTIM and the Monitor may provide their written consent to allow the stay to be temporarily lifted.

88. I am advised by legal counsel that JTIM requires the extension of the stay of proceedings to any other defendant or respondent in the Pending Litigation to ensure that steps are not taken in the Pending Litigation without JTIM's participation, which may prevent JTIM's ability to reach a collective solution. Further, the RJR Group is named as a defendant in the HCCR Actions. Since

the defence of the RJR Group and JTIM are connected, it would be potentially disadvantageous to JTIM to allow such actions to continue against the RJR Group alone.

D. ***Interest on TM Term Debentures***

89. It is the current expectation that JTIM will continue paying the secured monthly interest payments to TM under the TM Term Debentures. The TM Term Debentures have been in place since 1999. There would be potential adverse tax consequences to its senior secured creditor if such payments were suspended for a significant period of time. Further, I have been advised by legal counsel that the Proposed Monitor does not object to this relief.

90. JTIH-BV, a credit-worthy entity related to JTIM, has provided an undertaking to repay any post-filing interest received during these CCAA proceedings (the "**Repayment Undertaking**") in the event this Court (or any applicable appellate court) finally determines that TM was not entitled to receive the post-filing interest payments. As evidence of its credit-worthiness, a copy of the 2017 Annual Report of JTIH-BV is attached as Exhibit "**GG**". A copy of the Repayment Undertaking of JTIH-BV is attached as Exhibit "**HH**".

E. ***Administration Charge***

91. JTIM seeks a first-ranking charge (the "**Administration Charge**") on the Property (as defined in the proposed form of Initial Order) in the maximum amount of $3 million to secure the fees and disbursements incurred in connection with services rendered to JTIM both before and after the commencement of the CCAA proceedings by counsel to JTIM, the Proposed Monitor, counsel to the Proposed Monitor and the proposed Chief Restructuring Officer (the "**CRO**"), other than any success fee in respect of the CRO.

92. It is contemplated that each of the aforementioned parties will have extensive involvement

during the CCAA proceedings, have contributed and will continue to contribute to the restructuring of the Applicant, and there will be no unnecessary duplication of roles among the parties.

93. I am advised by legal counsel that the Proposed Monitor believes that the proposed quantum of the Administration Charge to be reasonable and appropriate in view of JTIM's CCAA proceedings and the services provided and to be provided by the beneficiaries of the Administration Charge. I am further advised by legal counsel that the only secured creditors that will be affected by the Administration Charge are ParentCo, TM and certain other secured related party suppliers, each of which support the Administration Charge.

F. ***Directors' Charge***

94. To ensure the ongoing stability of JTIM's business during the CCAA proceedings, JTIM requires the continued participation of its directors and officers who manage the business and commercial activities of JTIM. The directors and officers of JTIM have considerable institutional knowledge and valuable experience.

95. There is a concern that the directors and officers of JTIM may discontinue their services during this restructuring unless the Initial Order grants the Directors' Charge (as defined below) to secure JTIM's indemnity obligations to the directors and officers that arise post-filing in respect of potential personal statutory liabilities.

96. JTIM maintains directors' and officers' liability insurance (the "**D&O Insurance**") for the directors and officers of JTIM. The current D&O Insurance policies provide a total of $12.908 million in coverage. In addition, under the D&O Insurance, a retention amount, akin to a deductible, is applicable for certain claims in the amount of $45,178.

97. The proposed Initial Order contemplates the establishment of a second-ranking charge on the Property in the amount of $4.1 million (the "**Directors' Charge**") to protect the directors and officers against obligations and liabilities they may incur as directors and officers of JTIM after the commencement of the CCAA proceedings, except to the extent that the obligation or liability is incurred as a result of the director's or officer's gross negligence or wilful misconduct. The Directors' Charge was calculated by reference to the monthly payroll, withholding and pension obligations of JTIM totalling approximately $4 million. The payroll obligations of JTIM are paid primarily in arrears which increases the potential director and officer liability.

98. JTIM worked with the Proposed Monitor in determining the proposed quantum of the Directors' Charge and believes that the Directors' Charge is reasonable and appropriate in the circumstances. The Directors' Charge is proposed to rank behind the Administration Charge, but ahead of the Tax Charge (as defined below) and the existing security granted by JTIM in favour of TM and ParentCo. I have been advised by counsel that the Proposed Monitor is of the view that the Directors' Charge is reasonable and appropriate in the circumstances.

99. Although the D&O Insurance is available, the directors and officers of JTIM do not know whether the insurance providers will seek to deny coverage on the basis that the D&O Insurance does not cover a particular claim or that coverage limits have been exhausted. JTIM may not have sufficient funds available to satisfy any contractual indemnities to the directors or officers should the directors or officers need to call upon those indemnities. It is proposed that the Directors' Charge will only be engaged if the D&O Insurance fails to respond to a claim.

G. *Tax Charge*

100. Of the $1.3 billion of annual taxes and duties payable in connection with its operations and products, JTIM directly pays, on its own behalf, more than $500 million each year to the various provincial and federal governments. The additional $800 million is paid by JTIM's customers and the consumers of JTIM's products.

101. The government agencies to whom JTIM remits its taxes currently hold surety bonds in the approximate amount of $18 million that have been posted as security for such unremitted taxes and duties (the "**Tax Bonds**"). The proposed Initial Order contemplates the establishment of a third-ranking charge on the Property in the amount of $127 million (the "**Tax Charge**") to secure the payment of any excise tax or duties, import or customs duties and provincial and territorial tobacco tax and any harmonized sales or provincial sales taxes (collectively, "**Taxes**") required to be remitted by JTIM to the applicable provincial, territorial or federal taxing authority in connection with the import, manufacture or sale of goods and services by JTIM after the commencement of the CCAA proceedings.

102. The Tax Charge was calculated by reference to the amount of monthly Taxes that JTIM must remit in a month where the highest exposure exists to directors, multiplied by two to reflect the liability that directors actually face (one month in arrears plus an ongoing "stub" period), totalling approximately $136 million, less the amount of such liabilities that would be covered by outstanding Tax Bonds. I have been advised by legal counsel that the Proposed Monitor is of the view that the Tax Charge is reasonable and appropriate in the circumstances.

H. ***CRO Appointment***

103. JTIM hopes to achieve a collective solution among its stakeholders. Based on past experience, JTIM believes that achieving such a result will be complicated and time consuming. In order to minimize disruption to the business and the distraction of senior executives away from the task of managing the business and maintaining positive cash flow, JTIM seeks (i) the approval and confirmation of the Court of the retention of an experienced CRO to oversee the stakeholder engagement and negotiation process and (ii) the approval of the terms of the CRO's engagement letter.

104. Pursuant to the CRO engagement letter dated April 23, 2018, JTIM agreed to apply to the Court for approval of: (i) the engagement letter, (ii) retention of the CRO, and (iii) the payment of the fees and expenses of the CRO. Compensation to the CRO includes both a monthly work fee component and a success fee component. A redacted copy of the CRO engagement letter is attached as Exhibit "**II**". An unredacted version of the CRO engagement letter is attached as Confidential Exhibit "**1**" to the Confidential Compendium.

105. JTIM proposes retaining BlueTree Advisors Inc. to provide the services of William E. Aziz as the CRO in accordance with the terms of the CRO engagement letter. Mr. Aziz is a well-known and experienced CRO as evidenced from his *curriculum vitae* attached as Exhibit "**JJ**". I have been advised by legal counsel that the Proposed Monitor is of the view that the relief sought with respect to the CRO is appropriate in the circumstances and consistent with established precedent.

I. ***Sealing Order***

106. JTIM will be seeking an order sealing the unredacted copy of the CRO engagement letter. I have been advised by the CRO that the engagement letter contains commercially sensitive terms

of the engagement of the CRO. The CRO has advised me that the disclosure of those commercial terms would have a detrimental impact on the CRO's ability to negotiate compensation on any future engagements.

107. I am advised by counsel that the sealing of the unredacted CRO engagement letter should not materially prejudice any third parties. I have been advised by counsel to JTIM that the Monitor supports the sealing of the unredacted CRO engagement letter.

VII. FORM OF ORDER

108. JTIM seeks an Initial Order under the CCAA substantially in the form of the Model Order adopted for proceedings commenced in Toronto, subject to certain changes all as reflected in the proposed form of order contained in the Motion Record, blacklined to the Model Order. The reasons for the material proposed changes are described herein.

109. By letter dated July 6, 2015, restructuring counsel to the Class Action Plaintiffs wrote to the Court House of Montreal and the Superior Court of Justice requesting seven (7) days prior notice of any CCAA filing in Quebec or Ontario. JTIM did not respond to this request. A copy the July 6, 2015 letter is attached as Exhibit "**KK**".

110. By letter to JTIM's counsel dated March 6, 2019, counsel to the Provinces of British Columbia, Manitoba, New Brunswick, Nova Scotia, Prince Edward Island and Saskatchewan in connection with the HCCR Actions requested advance notice prior to any CCAA filing. JTIM's counsel did not respond to this request. A copy of the March 6, 2019 letter is attached as Exhibit "**LL**".

111. By letter to JTIM's litigation counsel dated March 7, 2019, counsel to Her Majesty the Queen in right of Ontario requested advance notice prior to any CCAA filing. JTIM's counsel did not respond to this request. A copy of the March 7, 2019 letter is attached as Exhibit "**MM**".

112. As described above, Japan Tobacco is a publicly traded company on the Tokyo stock exchange. In order to manage market responses and prevent potentially opportunistic trading of Japan Tobacco and other tobacco stock, the approach to the application for CCAA relief, including the notice and timing of the filing, has to take into account public market considerations in Tokyo, New York and London. In this regard, a request for a hearing, and disclosure of that hearing, when none of these markets are open were considered to be appropriate steps in the circumstances.

113. This affidavit is sworn in support of JTIM's application for protection pursuant to the CCAA and for no improper purpose.

SWORN BEFORE ME at the City of Toronto, Province of Ontario, on March 8, 2019.

Commissioner for Taking Affidavits

Mitchell Grossell
Barrister & Solicitor
LSO# 69993I

ROBERT MCMASTER

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.

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

ONTARIO
SUPERIOR COURT OF JUSTICE
(COMMERCIAL LIST)

Proceedings commenced at Toronto

AFFIDAVIT OF ROBERT MCMASTER

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Fax: 416-304-1313

Lawyers for the Applicant

This is Exhibit “E” referred to in the
Affidavit of William E. Aziz sworn by William E. Aziz of the
City of Naples, in the State of Florida, before me at the City
of Toronto, in the Province of Ontario,
this 20th day of January, 2025 in accordance with
O. Reg. 431/20, Administering Oath or Declaration Remotely.

A Commissioner for taking affidavits

REBEKAH O'HARE
(LSO# 87983G)

Court File Number: CV-19-615862-00CL

Superior Court of Justice
Commercial List

FILE/DIRECTION/ORDER

Re: JTI Macdonald Corp
Plaintiff(s)

AND

Defendant(s)

Case Management ☑ Yes ☐ No by Judge: McEwen J

Counsel	Telephone No:	Facsimile No:
(see attached)		

☐ Order ☐ Direction for Registrar **(No formal order need be taken out)**
☐ Above action transferred to the Commercial List at Toronto **(No formal order need be taken out)**

☐ Adjourned to: _____
☐ Time Table approved (as follows):

The Quebec Class Action Plaintiffs ("the Plaintiffs") bring this motion seeking an order suspending the operation of paragraphs 8(c) and 8(d) of the Initial Order of Justice Hainey dated March 8, 2019 (the "Initial Order") thus prohibiting the payments of principal, interest and royalties to JTI-Macdonald TM Corp.

19 March 19
Date

Judge's Signature

☑ Additional Pages nine

Court File Number: _____

Superior Court of Justice
Commercial List

FILE/DIRECTION/ORDER

Judges Endorsment Continued

pending further Order of the Court.

The Plaintiffs also seek an Order permitting them to oppose or seek a variation of the Initial Order at the comeback hearing scheduled for April 4 and 5, 2019.

The Plaintiffs are supported by HMQ for Ontario.

JTI Macdonald Corp (JTIM) opposes the relief sought. It is supported by JT Canada LLC and PWC, as well as the Monitor.

For the reasons below I am prepared to grant the relief sought pending the return of the comeback hearing or further order made by me as the case management judge.

The plaintiffs raise a number of arguments primarily as follows:

- JTIM did not disclose to

Judges Initials TM

Court File Number: _____

Superior Court of Justice
Commercial List

FILE/DIRECTION/ORDER

Judges Endorsment Continued

Justice Hainey the negative comments made by Justice Riarden against JTIM and JTI-macdonald TM Corp ("TM") with respect to their inter-company contracts concerning payments of principal, interest and royalties: see in particular paras: 1095-97, 1101, 1103 and 2141;

- the affidavit of Robert McMaster filed in support of the Application was vague regarding potential adverse tax consequences;
- when JTIM obtained an initial order from Justice Farley in August 2004 these same payments to TM were not requested nor made;
- subsequent to the order of Justice Farley at various times royalty payments and interest were not paid or in the case of interest the

Judges Initials JM

Court File Number: _____

Superior Court of Justice
Commercial List

FILE/DIRECTION/ORDER

Judges Endorsment Continued

interest rates reduced;

- JTIM also did not disclose to Justice Hainey comments made by Justice Schrager who heard a motion to have JTIM and others post security: see in particular paras 42 and 52.

Based on the foregoing the Plaintiffs submit the Intercompany Royalty and Interest payments that are scheduled to take place before the comeback hearing ought to be suspended. They argue that JTIM had an obligation to put all of the above information before Justice Hainey and failed to do so. Based on the above the Plaintiffs claim that there is nothing to suggest that JTIM or TM will be prejudiced if the payments stop and that the payments in any event are a sham.

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Judges Initials TM

Court File Number: _____

Superior Court of Justice
Commercial List

FILE/DIRECTION/ORDER

Judges Endorsment Continued

Last, the Plaintiffs submit that it is unfair to allow JTIM to continue to make the payments in the above circumstances. It is not in keeping with the purpose of the CCAA and payments ought to be suspended pending an opportunity to adjudicate the matter at the comeback hearing.

JTIM vigorously opposes the relief sought primarily submitting as follows:

- the proper materials were before Justice Hainey;
- the decision of Justice Morgan in effect "cancels out" the comments made by Justice Riordan;
- the relief sought is designed to inflict pain on a secured creditor;
- there is no request to pay principal and none will be paid absent a

Judges Initials TM

Court File Number: _____

Superior Court of Justice
Commercial List

FILE/DIRECTION/ORDER

Judges Endorsment Continued

Further Order of this court;

- if pre-filing royalties are not paid they will be deducted from a deposit held by TM
- royalties going forward must be paid pursuant to the provisions of s.11 of the CCAA;
- with respect to the issue of interest, it is a secured debt and its suspension could lead to an enormous debt later as it will compound - this would adversely affect plaintiffs in all actions;
- there is a repayment agreement in place to satisfy any judgment with a properly Capitalized ent[illegible] - JT International Holding B.V., with respect to interest (not royalties);
- the Monitor approved TTIM's submissions and neither TTIM or for that fact the Monitor sought to [illegible] in any

Judges Initials DM

Court File Number: _____

Superior Court of Justice
Commercial List

FILE/DIRECTION/ORDER

Judges Endorsment Continued

way mislead the Court or provide insufficient information.

TTIM is submits that it is premature to grant the orders sought. I disagree.

While I am not prepared to cast aspersions with respect to the material before Justice Hainey at this time the arguments raised by the Plaintiffs persuade me that there should be a pause in the payments pending the return of the comeback hearing.

The comments of Justices Riordan[1] and Schrager raise clear concerns about the legitimacy of the inter-company contracts. Their decisions post-date the decision of Justice Morgan which was released pre-trial. Further, given the history of

Page 7 of 9 Judges Initials DM

1. Justice Riordan's factual findings were upheld on appeal.

Court File Number: _____

Superior Court of Justice
Commercial List

FILE/DIRECTION/ORDER

Judges Endorsment Continued

reduced or lack of payments after the 2004 order of Justice Farley I am not satisfied at this juncture that the adverse consequences described by Mr McMaster will be borne out. Further, as noted, the relief concerning principal, interest and royalty payments was not sought before Justice Farley, nor granted.

In all of the above circumstances pending the comeback hearing or further order, I agree with the Plaintiffs that it is equitable to suspend the payments referred to at Tab DD of Vol 4 of the Application Record; namely the Interim Royalty and Interest payments (as well as any principal payments although as noted JTIM is not making these payments).

Page 8 of 9

Judges Initials JM

Court File Number: _____

Superior Court of Justice
Commercial List

FILE/DIRECTION/ORDER

Judges Endorsment Continued

There is no real prejudice to STIM or TM in obtaining this interim suspension pending the return of the matter at the comeback hearing.

Based on the submissions I believe that the ad relevant payments the Plaintiffs seek to suspend are noted at Tab DD above. If further clarification is required I can be spoken to as I appreciate that paras. 8(c) and 8(d) of Justice Haire's order are somewhat broader in nature than the above-noted payments.

Judges Initials _____

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 OR ARRANGEMENT OF JTI-MACDONALD CORP.

UNOFFICIAL TRANSCRIBED ENDORSEMENT OF JUSTICE MCEWEN

March 19, 2019

The Quebec Class Action Plaintiffs (the "Plaintiffs") bring this motion seeking an order suspending the operation of paragraphs 8(c) and 8(d) of the Initial Order of Justice Hainey dated March 8, 2019 (the "Initial Order") thus prohibiting the payments of principal, interest and royalties to JTI-Macdonald TM Corp. pending further Order of the Court.

The Plaintiffs also seek an Order permitting them to oppose or seek a variation of the Initial Order at the comeback hearing scheduled for April 4 and 5, 2019.

The Plaintiffs are supported by HMQ for Ontario.

JTI-Macdonald Corp. ("JTIM") opposes the relief sought. It is supported by JT Canada LLC and PWC, as well as the Monitor.

For the reasons below I am prepared to grant the relief sought pending the return of the comeback hearing or further order made by me as the case management judge.

The Plaintiffs raise a number of arguments primarily as follows:

- JTIM did not disclose to Justice Hainey the negative comments made by Justice Riordan against JTIM and JTI-Macdonald TM Corp. ("TM") with respect to their inter-company contracts concerning payments of principal, interest and royalties: see in particular paras. 1095-97, 1101, 1103 and 2141;

- the affidavit of Robert McMaster filed in support of the Application was vague regarding potential adverse tax consequences;

- when JTIM obtained an initial order from Justice Farley in August 2004 these same payments to TM were not requested nor made;

- subsequent to the order of Justice Farley at various times royalty payments and interest were not paid or in the case of interest the interest rates reduced;
- JTIM also did not disclose to Justice Hainey comments made by Justice Schrager who heard a

motion to have JTIM and others post security: see in particular paras. 42 and 52.

Based on the foregoing the Plaintiffs submit the Intercompany Royalty and Interest payments that are scheduled to take place before the comeback hearing ought to be suspended. They argue that JTIM had an obligation to put all of the above information before Justice Hainey and failed to do so. Based on the above the Plaintiffs claim that there is nothing to suggest that JTIM or TM will be prejudiced if the payments stop and that the payments, in any event, are a sham.

Last, the Plaintiffs submit that it is unfair to allow JTIM to continue to make the payments in the above circumstances. It is not in keeping with the purpose of the CCAA and payments ought to be suspended pending an opportunity to adjudicate the matter at the comeback hearing.

JTIM vigorously opposes the relief sought primarily submitting as follows:

- the proper materials were before Justice Hainey;
- the decision of Justice Mongeon in effect "cancels out" the comments made by Justice Riordan;
- the relief sought is designed to inflict pain on a secured creditor;
- there is no request to pay principal and none will be paid absent a further Order of this court;
- if pre-filing royalties are not paid they will be deducted from a deposit held by TM;
- royalties going forward must be paid pursuant to the provisions of s.11 of the CCAA;
- with respect to the issue of interest, it is a secured debt and its suspension could lead to an enormous debt later as it will compound – this would adversely affect plaintiffs in all actions;
- there is a repayment agreement in place to satisfy any judgment with a properly capitalized entity – JT International Holding B.V., with respect to interest (not royalties);
- the Monitor approved JTIM's submissions and neither JTIM or for that fact the Monitor sought to, in any way mislead the Court or provide insufficient information.

JTIM therefore submits that it is premature to grant the orders sought.

I disagree.

While I am not prepared to cast aspersions with respect to the materials before Justice Hainey at this time the arguments raised by the Plaintiffs persuade me that there should be a pause in the payments pending the return of the comeback hearing.

The comments of Justice Riordan[1] and Schrager raise clear concerns about the legitimacy of the inter-company contracts. Their decisions post-date the decision of Justice Mongeon which was released pre-trial.

Further, given the history of reduced or lack of payments after the 2004 order of Justice Farley I am not satisfied at this juncture that the adverse consequences described by Mr. McMaster will be borne out.

[1] Justice Riordan's factual findings were upheld on appeal.

Further, as noted, the relief concerning principal, interest and royalty payments was not sought before Justice Farley, nor granted.

In all of the above circumstances, pending the comeback hearing or further order, I agree with the Plaintiffs that it is equitable to suspend the payments referred to at Tab DD of Volume 4 of the Application Record; namely the Intercompany Royalty and interest payments (as well as any principal payments although as noted JTIM is not making these payments).

There is no real prejudice to JTIM or TM in ordering this interim suspension pending the return of the matter at the comeback hearing.

Based on the submissions I believe that the only relevant payments the Plaintiffs seek to suspend are noted at Tab DD above. If further clarification is required I can be spoken to as I appreciate that paras. 8(c) and 8(d) of Justice Hainey's order are somewhat broader in nature than the above-noted payments.

McEwen J.

This is Exhibit “F” referred to in the
Affidavit of William E. Aziz sworn by William E. Aziz of the
City of Naples, in the State of Florida, before me at the City
of Toronto, in the Province of Ontario,
this 20th day of January, 2025 in accordance with
O. Reg. 431/20, Administering Oath or Declaration Remotely.

A Commissioner for taking affidavits

REBEKAH O'HARE
(LSO# 87983G)

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 OR ARRANGEMENT
OF JTI-MACDONALD CORP.

Applicant

AFFIDAVIT OF ROBERT MCMASTER
(sworn April 1, 2019)

I, **ROBERT MCMASTER**, of the Town of Whitby, in the Province of Ontario, MAKE OATH AND SAY:

1. I am a Chartered Professional Accountant (CPA, CA) and the Director, Taxation and Treasury for JTI-Macdonald Corp. (the "**Applicant**" or "**JTIM**") and as such have knowledge of the matters hereinafter deposed to, save where I have obtained information from others. Where I have obtained information from others I have stated the source of the information and believe it to be true.

INTRODUCTION

2. All capitalized terms not otherwise defined herein shall be as defined in the Order of Justice Hainey dated March 8, 2019 (the "**Initial Order**").

3. This affidavit is sworn in response to certain relief requested by counsel to the Class Action Plaintiffs (as defined herein):

(a) prohibiting JTIM from making payments to the JTI Group, save and except for the payment for physical inventory actually supplied by such member of the JTI Group in connection with the manufacture, purchase and sale of Tobacco Products. Prohibited payments include:

i. the payment of principal and interest to the Applicant's secured creditor, JTI-Macdonald TM Corp. ("**JTI-TM**");

ii. the payment of royalties to any member of the JTI Group;

iii. the payment for services rendered by the JTI Group by way of set-off or otherwise;

iv. the transfer of funds to entities in the JTI Group for any consideration or reason whatsoever; and

v. the payment of dividends;

(b) ordering that all net cash generated by JTIM remain with JTIM;

(c) rescinding the appointment of Deloitte Restructuring Inc. ("**Deloitte Restructuring**") as the Monitor; and

(d) rescinding the appointment of the CRO.

BACKGROUND

4. The Applicant was granted protection from its creditors pursuant to the *Companies' Creditors Arrangement Act*, R.S.C. 1985, C. C-36, as amended (the "**CCAA**") on March 8, 2019 pursuant to the Initial Order. This affidavit is sworn in addition to my affidavits sworn in this proceeding on March 8, 2019 (the "**Initial Affidavit**") and March 28, 2019. A copy of the Initial Affidavit (without exhibits) is attached as **Exhibit "A"**.

5. This CCAA proceeding was initiated as a result of the release of the judgment of the

Quebec Court of Appeal (the "**QCA**") on March 1, 2019 (the "**QCA Judgment**"), which substantially upheld the judgment of Mr. Justice Riordan of the Quebec Superior Court publicly released on June 1, 2015, and subsequently amended on June 9, 2015 (the "**Trial Judgment**"). The QCA Judgment is in respect of the Quebec Class Actions and ordered JTIM and the other co-defendants to pay damages to the Quebec class action plaintiffs (the "**Class Action Plaintiffs**") in the approximate amount of $13.5 billion (including interest and an additional indemnity) on a solidary basis. A copy of the Trial Judgment is attached as **Exhibit "B"** and a copy of an unofficial English translation of the QCA Judgment is attached as **Exhibit "C"**.

6. In addition to the QCA Judgment, JTIM is also the subject of significant health care cost recovery litigation (the "**HCCR Actions**") and certain other tobacco-related class action litigation (the "**Additional Class Actions**"), which are in various stages of progress. I am informed by counsel to the Applicant that, contrary to the materials filed by the Class Action Plaintiffs, none of JTIM's affiliates, including its indirect parent, Japan Tobacco Inc. ("**Japan Tobacco**"), a publicly listed company in Japan, are defendants in any of the Class Actions, the HCCR Actions or the Additional Class Actions.

7. The other defendants in the Class Actions, Imperial Tobacco Canada Limited and Imperial Tobacco Company Limited (collectively, "**ITL**") and Rothmans, Benson & Hedges Inc. ("**RBH**"), have also obtained protection under the CCAA.

PAYMENT OF PRINCIPAL, INTEREST AND ROYALTIES

8. The Initial Order permits the Applicant to pay: (i) all interest due and payable on the Applicant's secured obligations, and (ii) for goods or services supplied or to be supplied to the Applicant (including the payment of any royalties or shared services). The Applicant did not seek

and it was not provided with the authority to make principal payments on its secured obligations. JTIM also has not paid dividends to any member of the JTI Group and will not do so during the course of these proceedings. Since the Applicant is insolvent, I am informed by legal counsel to the Applicant that it is prohibited as a matter of corporate law from paying dividends.

9. The Class Action Plaintiffs have sought to prohibit the payment of principal, interest and royalties to JTI-TM during the course of these proceedings. It is the position of the Applicant that interest and royalty payments to JTI-TM should continue to be made until and unless there is a determination that the security granted by the Applicant to JTI-TM is invalid and unenforceable and that the transfer of trademarks to JTI-TM should be set aside. No such order has been made or sought.

Recapitalization Transactions

10. On March 9, 1999, it was announced that Japan Tobacco had reached an agreement to purchase the international, non-U.S., tobacco assets of RJR Nabisco, Inc., R.J. Reynolds Tobacco Company and their affiliates (collectively, the "**RJR Group**"). The bid process was competitive and the major international tobacco groups participated in it.

11. For tax-planning purposes, the acquisition of the Canadian assets was structured as a leveraged buyout leaving the Canadian operating company with debt and interest that would be deductible from its earnings. I have reviewed the affidavit of Mary Carol Holbert (tax counsel with R.J Reynolds Tobacco International, S.A. ("**RJRI**") in 1999) sworn on September 12, 2013 (the "**Holbert Affidavit**") in the context of the Safeguard Motion (as defined below). According to the Holbert Affidavit, at the time of the acquisition, Japan Tobacco was a large public company in Japan but only had a limited international presence and limited experience in international

acquisitions. Because of the extremely tight time frame available to close the transaction, the completion of many of the necessary planning and implementation steps required to integrate this worldwide acquisition had to be completed after closing. At the time of the acquisition, I was the Manager, Taxation and Insurance of RJR-Macdonald Corp. ("**RJRM**"), the predecessor of JTIM. Although responsibility for the tax planning of the acquisition by Japan Tobacco was led by RJRI, as a result of my position, I was aware of the recapitalization steps and their Canadian tax implications. A copy of the Holbert Affidavit is attached as **Exhibit "D"**.

12. A typical form of leveraged buy-out is accomplished by replacing equity with debt. A portion of the debt is typically taken by the acquirer of international assets and is transferred to an acquired entity that generates earnings. The intention to execute a leveraged buyout explains the capitalization of the Canadian company at the time of closing with redeemable preferred shares that subsequently facilitated the implementation of the debt structure. The leveraged buyout was accomplished by taking on a loan and using its proceeds to redeem preferred shares. This leveraged buyout structure has well known tax advantages, including the deduction of interest expense by the entity that generates the earnings (i.e. taxable income).

13. At the time of the acquisition by Japan Tobacco, the federal government and several provinces imposed capital taxes based on the book value of assets and liabilities in the statutory financial statements that were required for tax return purposes. Generally accepted accounting principles required a "step up" to the fair value of the assets of an acquired company if that acquired company was later amalgamated with the acquiring company. The trademarks had a significant value and were thus expected to have a significant impact on the stepped up book value of JTIM once the planned amalgamation occurred. This would create a significant capital tax liability for

JTIM.

14. It was also common at the time that, in order to alleviate the imposition of a substantial capital tax burden resulting from a high value asset in an operating entity, that asset would be transferred to a subsidiary in consideration for shares pursuant to a section 85 rollover election in accordance with the provisions of the *Income Tax Act* (Canada)(the "**ITA**"). Generally accepted accounting principles allowed JTI-TM to have a nominal book value based on the tax election. Shortly after the acquisition and prior to the amalgamation of JT Nova Scotia Corp. and RJRM to create JTIM, the trademarks were transferred to a wholly-owned subsidiary, JTI-TM, in consideration for the issuance of shares. As a result, after the amalgamation to create JTIM, the trademarks were included in the investment in a subsidiary category for capital tax purposes, which was an allowed investment deduction in the capital value of JTIM. Direct investments in trademarks were not an allowable investment deduction in capital value for capital tax purposes. I also note that JTI-TM had a lower combined federal and provincial corporate tax rate than JTIM, which resulted in an additional tax benefit after the transfer of the trademarks to JTI-TM.

15. The capital tax savings on an annual basis as a result of the transfer of the trademarks to JTI-TM was approximately $3.6 million, beginning in 1999, until 2005. Starting in 2006, these capital taxes were reduced and ultimately eliminated at the end of 2010 as a result of changes to the tax legislation.

16. Subsequent to the transfer of the trademarks, on November 23, 1999, JT International B.V. ("**JTI-BV**"), an affiliated entity incorporated under the laws of the Netherlands, borrowed $1.2 billion from ABN AMRO Bank N.V. ("**ABN AMRO**"), a third-party financial institution. JTI-BV made a secured advance of $1.2 billion to JT Canada LLC Inc. ("**JT-LLC**"). JT-LLC then

made a secured advance of $1.2 billion to TM and TM made a secured advance of $1.2 billion to JT Nova Scotia Corporation (now the Applicant through amalgamation). The Applicant then returned capital of $1.2 billion to its then parent, JT Canada LLC II Inc. Through various intercompany transactions as more particularly set out in the Fourth Report (as defined below), the funds were eventually paid to JTI-BV, who repaid the loan to ABN AMRO collectively, (the "**Recapitalization Transactions**"). These steps created the leveraged buyout structure.

17. At the time of the acquisition from the RJR Group, Canada was generally considered to be a high tax jurisdiction. According to the Holbert Affidavit, the Canadian income tax burden of JTIM represented approximately one-third of the entire RJR Group's income tax expense. In 1999, the ITA permitted foreign investors to leverage their acquisitions by capitalizing the acquired entity with a prescribed ratio of debt to equity. These are referred to as the "thin capitalization rules" that prescribed that ratio to be 3:1 at the time of the Recapitalization Transactions. At all times, the Recapitalization Transactions respected the thin capitalization rules prescribed ratio.

18. The Recapitalization Transactions allowed JTIM to pay interest on the secured loan and claim an interest expense deduction to reduce income, resulting in lower taxes paid in Canada, and the receipt of interest income in a more favourable tax jurisdiction.

19. As a result of the Recapitalization Transaction, JTIM has realized significant Canadian tax savings since 1999. For the first five years following the completion of the Recapitalization Transactions, JTIM had an average tax saving of $45 million per year. The annual savings continue to be significant but at lesser levels due to lower royalty expenses and lower corporate income tax rates. Currently, JTIM saves approximately $27 million annually as a result of the Recapitalization Transactions. Notwithstanding the tax savings, the provincial and federal

governments currently collect more than $1.3 billion in taxes annually in relation to the sale of JTIM's products as indicated in my Initial Affidavit.

20. As outlined in my Initial Affidavit, the Recapitalization Transactions were reviewed in detail during the CCAA proceedings commenced by JTIM in 2004 (the "**2004 CCAA Proceedings**"). In connection with the contraband litigation commenced by the Attorney General of Canada ("**AG Canada**") on August 13, 2003 against the Applicant (which was later settled), AG Canada filed a statement of claim which included a challenge to the validity of the Recapitalization Transactions (the "**AG Claim**"). As a result of the AG Claim, Ernst & Young Inc., in its capacity as Court-appointed Monitor of JTIM (the "**2004 Monitor**") described in detail the Recapitalization Transactions and the documentation that instituted and/or recorded the inter-company debt and royalty obligations during the 2004 CCAA Proceedings in its Fourth Report to the Court dated February 16, 2005 (the "**Fourth Report**"), a copy of which is attached as Exhibit "**E**".

21. The 2004 Monitor noted that a recapitalization plan to introduce a substantial debt component, such as the structure employed by Japan Tobacco in Canada, was not unusual at the time and was typically done primarily for tax purposes. The 2004 Monitor also obtained opinions confirming, among other things, the validity of the security interests of JTI-TM in the assets of JTIM in Ontario, Nova Scotia, and Quebec.

22. As noted above, AG Canada filed a statement of claim challenging the Recapitalization Transactions as a fraudulent conveyance, but the action did not proceed. As stated in paragraph 8 of the Endorsement of Justice Farley dated February 8, 2006 (the "**2006 Endorsement**") in the 2004 CCAA Proceedings, the Recapitalization Transactions were in the past and not proven as a

fraudulent conveyance. Justice Farley found that the Recapitalization Transactions were of "no material relevance" to a determination of whether JTIM should be allowed to commence the payment of principal, interest and royalties during the 2004 CCAA Proceedings.

23. The Class Action Plaintiffs assert that the "real reason" that the Recapitalization Transactions occurred were for creditor proofing purposes. This is not the case. As set out in the Holbert Affidavit, the Recapitalization Transactions were motivated by tax efficiency, as evidenced by the significant tax benefits. However, as noted in the Holbert Affidavit, in order to avoid the possible imposition of the general anti-avoidance rule ("**GAAR**") with respect to the transfer of the trademarks to JTI-TM, JTIM was required to provide a business purpose, other than the tax benefit, to taxing authorities for transactions that result in diminished taxes payable. The business purpose attributed by JTIM to the transfer of the trademarks was to afford protection to a portion of the business by placing the trademarks in a "bankruptcy remote" position. JTIM's position was that this was an acceptable business purpose under GAAR. Canada Revenue Agency ("**CRA**") has completed tax audits up to the 2013 taxation year and is currently in the process of auditing the 2014-2016 taxation years and has not issued any proposed reassessments related to this issue.

24. Ms. Holbert clearly states in the Holbert Affidavit that she was unaware of the existence of any litigation against RJRM (now JTIM) at the time of the acquisition, including the Class Actions which, I am informed by the Applicant's litigation counsel, were not yet certified as a class proceeding in 1999. Ms. Holbert also did not receive any suggestions or instructions from anyone to develop such a plan to counter any actual or threatened litigation involving RJRM (now JTIM) in the preparation of the Recapitalization Transactions. The Class Actions (as they then were) were completely irrelevant to the instructions that Ms. Holbert had and her work as a tax specialist

for RJRI. I am informed by the Applicant's legal counsel that counsel to the Class Action Plaintiffs chose not to cross-examine Ms. Holbert on the Holbert Affidavit nor challenge the veracity of the statements therein.

Safeguard Motion

25. In 2013, the Class Action Plaintiffs brought a "safeguard motion" against the Applicant (the "**Safeguard Motion**") in an attempt to prevent JTIM from making its scheduled principal, interest and royalty payments to JTI-TM. As set out in more detail below, this motion was denied by the Quebec Superior Court and leave to appeal was refused by the QCA.

26. By Judgment issued on December 4, 2013 (the "**Safeguard Decision**"), Justice Mongeon of the commercial branch of the Quebec Superior Court denied the relief sought by the Class Action Plaintiffs and noted at paragraph 44 of the Safeguard Decision that the Class Action Plaintiffs had failed to actually challenge the Recapitalization Transactions. A copy of the Safeguard Decision is attached as Exhibit "**F**".

27. Justice Mongeon noted that the Class Action Plaintiffs sued only JTIM and not the contractual counterparties to the Recapitalization Transactions and stated at paragraph 97 of the Safeguard Decision that, "Whatever the intent or effect of the integrated series of transactions set up to acquire the tobacco operations of the [RJR Group] by [Japan Tobacco] may have been, these integrated transactions are to be considered valid and opposable … unless attacked as being invalid and/or inopposable".

28. Leave to appeal the Safeguard Decision was sought by the Class Action Plaintiffs at the QCA but was denied by Justice Savard on March 10, 2014, a copy of an unofficial English

translation of which is attached as Exhibit "**G**".

Trial Judgment

29. Notwithstanding the Safeguard Decision, Justice Riordan made negative comments in respect of the Recapitalization Transactions in the Trial Judgment in the context of His Honour's consideration of JTIM's ability to pay an award of punitive damages. Justice Riordan acknowledged at paragraph 1099 of the Trial Judgment that "no one has attacked the validity or the legality of the tax planning behind the Interco Contracts, or the contracts themselves" and noted at paragraph 1102 that the matter of their legality was not the subject of the Class Actions.

Deposit Motion

30. I am informed by the Applicant's legal counsel in the Class Actions that:

(a) the Trial Judgment contained a conclusion ordering provisional execution notwithstanding appeal. The Defendants brought a motion to cancel provisional execution, which was granted by the QCA on July 23, 2015. Further to the QCA's decision canceling the provisional execution of the Trial Judgment, the Plaintiffs moved on August 13, 2015 for the posting of security against the Defendants (the "**Deposit Motion**"), which motion was heard by Justice Schrager, J.C.A., on October 6, 2015;

(b) the Class Action Plaintiffs did not seek any order to invalidate the Recapitalization Transactions, or to prevent JTIM from making any payments pursuant to such

transactions after the Trial Judgment was rendered;

(c) prior to the commencement of the hearing of the Deposit Motion, counsel to the Plaintiffs and JTIM were unable to find a mutually agreeable hearing date and the Plaintiffs ultimately decided to withdraw their motion against JTIM, "because attorneys were unavailable due to health issues" on Plaintiffs' chosen date. Rather than adjourn the hearing, counsel to the Plaintiffs advised the Court that, in respect of the appeal to the QCA, it was their intention "not to proceed [with the Deposit Motion] against JTI today or ever". A copy of the transcripts of the hearing of October 6, 2015 before Justice Schrager are attached as Exhibit "**H**"; and

(d) a judgment was granted only against ITL and RBH on October 27, 2015 (the "**Deposit Judgment**") (which was later modified on December 9, 2015), ordering ITL and RBH to furnish security to the Class Action Plaintiffs. The Deposit Motion was dropped against JTIM. A copy of the Deposit Judgment is attached as Exhibit "**I**".

QCA Judgment

31. I am further informed by the Applicant's legal counsel in the Class Actions that JTIM argued at trial that the Court should take the loan and security documents into account when assessing JTIM's ability to pay punitive damages, However, the Trial Judgment and QCA found that the Recapitalization Transactions should be taken into account for the purpose of establishing the entitlement and amount of punitive damages assessed against JTIM, not JTIM's ability to pay. Notwithstanding that the QCA Judgment upheld this aspect of the Trial Judgment, the QCA Judgment expressly notes at paragraph 1158 [unofficial translation] that, "the mere fact that the contracts concluded between [JTIM] and other entities may be legal or valid for tax purposes, an

issue on which the Court does not rule, does not lead to the conclusion that the court cannot take them into account when assessing the company's actual assets".

32. The recapitalization of the Applicant and the security granted in respect thereto has been in place since the acquisition of the RJR Group by Japan Tobacco in 1999. Apart from the fraudulent conveyance challenge in the AG Claim, although full particulars of the Recapitalization Transactions were disclosed and widely known as a result of the 2004 CCAA Proceedings and the Safeguard Motion, I am informed by legal counsel of the Applicant that no party has challenged the validity or enforceability of the security, there are no outstanding proceedings to which JTIM is a party and there are no Court rulings adverse to the enforceability of the debt and security of JTI-TM.

Payment of Royalties

33. As outlined in the Initial Affidavit, JTIM is the parent and sole shareholder of JTI-TM that owns many of the trademarks that JTIM uses in its business and is a secured creditor of JTIM. JTIM's market share and profits in Canada is largely attributed to the brands of tobacco products it exclusively sells in the Canadian market. If such arrangements were terminated, JTIM's business would effectively cease in its current form.

Effect of Failure to Pay Interest and Royalties

34. At the commencement of the 2004 CCAA Proceedings, JTIM and JTI-TM agreed that JTIM would stop making principal, interest and royalty payments to JTI-TM as at the date of filing. During the 2004 CCAA Proceeding, JTIM was the subject of numerous unexpected business developments, including declining sales volumes due to increased untaxed cigarettes in the market

and decreased earnings due to a shift to value brands until 2008 when sales began to recover. JTIM also lost over $97 million during the 2004 CCAA Proceedings as a result of its investments in asset-backed commercial papers (the "**ABCP Loss**"). Earnings from operations had deteriorated from approximately $137 million in 2001 to $47 million in 2006 which is less than half the total royalties and regular interest expense. Earnings from operations have since grown to $207 million in 2018.

35. As outlined in the Eleventh Report of the 2004 Monitor dated January 13, 2006 (the "**Eleventh Report**"), a copy of which is attached as Exhibit "**J**", JTIM and its affiliates began to experience a significant and avoidable tax burden as a result of JTIM's failure to pay principal, interest and royalties. JTI-TM and JT-LLC had no other source of revenue, other than the payments originating from JTIM. As outlined in the Eleventh Report, if JTIM simply accrued the amounts owing to JTI-TM without payment, those amounts would have to be included in the income of JTIM in the subsequent third taxation year following the year the expense was incurred unless a joint election is made to deem the amount paid and loaned back to JTIM. However, the joint election only addresses certain of the implications of non-payment as set out in the Eleventh Report. For example, interest would continue to accrue and be compounded in accordance with the loan and security agreements granted by JTIM to JTI-TM at the rate of 7.75% per annum. Interest on any unpaid royalties would accrue at the rate of 5.85%.

36. I estimate that the annual interest accrual on the debentures granted by JTIM to JTI-TM would equal approximately $2.4 million in the first year and compound thereafter such that it would escalate to $30.8 million by 2023. The estimated annual interest accrual on the royalties

would be approximately $133,000 in 2019 and build to $2.2 million by 2023.

37. If the joint election is made by JTIM and JTI-TM, and also between JTI-TM and JT-LLC and JT-LLC and JT International Holding BV ("**JTIH-BV**"), withholding taxes would become payable by JT-LLC but no funds would be available to pay the withholding taxes. The filing of the election would trigger the payment by JT-LLC of withholding taxes that would not otherwise be payable until the funds flowed from JT-LLC to JTIH-BV. I estimate that the withholding taxes that would be payable by JT-LLC would be approximately $4.3 million in 2023 and $6.5 million annually thereafter. JT-LLC would have no alternative but to attempt to secure financing to pay the withholding taxes, incurring further interest expense and, I am informed by legal counsel to the Applicant that the loan and security documents state, that such cost would ultimately be passed back to JTIM. As a result, JT-LLC and JTIH-BV may determine that it is not in their best interest to make the joint election. Similarly, JT-LLC and JTI-TM may not agree to make the election and JTI-TM may also decide not to make the tax election with JTIM.

38. Neither JTI-TM nor JT-LLC are parties to the Class Actions, the HCCR Actions or the Other Class Actions. Within the next few months, neither of these entities will have sufficient funds to pay their outstanding taxes and will be subject to compounding interest obligations if the payments that are properly due and owing are not paid. In order to pay its outstanding taxes, JTI-TM would require financing in the amount of $2.3 million in 2019 which would grow to $54.5 million in 2023 and JT-LLC would require $3.8 million in 2020 which would grow to $39.2 million in 2023.

39. The Class Action Plaintiffs argue that JTIM should revise their related party security and royalty agreements to eliminate or dramatically decrease the payments of interest and royalties

that would be owing thereunder as they did in the 2004 CCAA Proceedings. This type of arbitrary change is not tax effective as various related party benefit rules could apply to create taxable income for the recipient of the benefit (for example JTIM). The taxable income amount would be the value of the benefit, such as a reduced interest expense. The ITA guidelines require non-arm's length persons to conduct themselves as arm's length persons would as it relates to transactions among them. Thus, absent special circumstances, it is not reasonable for JTIM to expect JTI-TM, JT-LLC, and in turn JTIH-BV to permit reduced payments unless a third party would do likewise in the same circumstances.

40. During the 2004 CCAA Proceedings, JTIM was able to reduce the interest rate owing as it was able to demonstrate that the forbearance of the payment of interest was justified in the circumstances. Each year, the cumulative unpaid interest and royalties was compared to the total cash on hand plus forecasted income for the upcoming year, prior to the charge of any interest. In the years in question, these cumulative amounts exceeded the funds available for additional interest. As a result, only a nominal interest rate applied in those years and JTIM was able to take the position that any further interest amount had no value to JTI-TM as there was no chance of collection. Since the foregone interest had no value, there was no taxable income inclusion for the foregone interest with no value. The financial situation of JTIM was re-evaluated at the end of each year to determine if the forbearance could continue. As a result of the increase in illegal untaxed tobacco products in Canada, the changes in the market and declining sales, JTIM was able to demonstrate that it could no longer support the level of interest that was being accrued. This was worsened again by the ABCP Loss in 2008 which allowed a continued reduction in debt servicing. As stated above, JTIM's earnings from operations deteriorated to $47 million in 2006 and did not improve back to the level of $100 million and above until 2011. Once JTIM's financial

situation improved and the cumulative unpaid amounts were paid, the interest payments eventually resumed at their underlying normal levels in 2013.

41. Unlike during the 2004 CCAA Proceedings, the Applicant does not see any justifiable third-party argument that would permit JTIM to reduce the rate of interest on its indebtedness to JTI-TM that would be satisfactory for taxation purposes at this time. JTIM currently has sufficient cash on hand to service its secured debt as due. As noted above, JTIM's earnings from operations were $207 million in 2018, which can clearly support the royalties and interest expense payments as they come due. Consequently, it is the position of the Applicant that the tax authorities would not support this type of unjustified forbearance by a secured creditor. As noted by Farley J. in the 2006 Endorsement, "the applicant and its various related entities have contractual obligations governing their debt and trademark relationships – I think it too simplistic, with respect, to say that these relationships should be changed as it appears to me that the tax agencies may have some concerns about that *ex post facto* redeployment".

42. If JTIM were to invest the funds that it would otherwise pay to JTI-TM in respect of interest and royalties in term deposits, it would only earn approximately 2% on term deposits at today's current rate. In the event that JTIM does not pay interest and royalties as they come due, interest will continue to compound to the detriment of JTIM and its unsecured creditors. This would result in a net cost of 5.75% (7.75% compounded interest less 2% term deposit returns) in respect of unpaid interest and 3.85% (5.85% compounded interest less 2% term deposit returns) in unpaid royalties. If JTI-TM did not agree to the tax election, JTIM would also lose the tax deduction for interest and royalty expenses which would increase the income tax burden on JTIM by approximately $27 million per year in comparison to a scenario where interest and royalties are paid as due. Paying these taxes would ultimately reduce any amount that may be available to

unsecured creditors in a settlement of the claims against JTIM yet the obligations to secured creditors for interest, compounded interest and royalties would remain.

REPAYMENT AGREEMENT

43. It is the Applicant's position that the Repayment Agreement between JTIH-BV and JTIM (the "**Repayment Agreement**") satisfactorily addresses any concerns with respect to the payment of interest to JTI-TM.

44. JTIH-BV is an entity related to JTIM that owns most of the international tobacco subsidiaries of Japan Tobacco outside of Japan. The Repayment Agreement obligates JTIH-BV to repay JTIM, or cause TM and/or JT-LLC to pay to JTIM, an amount equal to the aggregate of all secured payments received by JTI-TM from JTIM from the date of commencement of these proceedings in the event that it is finally determined that JTI-TM was not entitled to receive the post-filing interest payments.

45. It is the Applicant's position that the Repayment Agreement is sufficient such that there is no prejudice to its stakeholders in the event that JTI-TM's security is successfully challenged and set aside. As appears from its latest public financial statements, JTIH-BV has net assets with a book value of approximately USD $28 billion.

PAYMENT FOR INTERCOMPANY SERVICES

46. As outlined in my Initial Affidavit and in the pre-filing report of the Monitor dated March 8, 2019 (the "**Pre-filing Report**"), JTIM is a party to numerous services agreements and limited risk distribution agreements with related parties, which are required for JTIM's continued operations. As set out in the Pre-filing Report, the Monitor has reviewed the material related party

agreements, including the payment provisions thereunder. The service charges in place have also been audited by CRA and are currently being audited as mentioned above. To date, no adjustments have been proposed by CRA.

47. As with most multi-national companies, JTIM takes advantage of the benefits derived from global group purchasing, financing, management expertise, information technology and licensing agreements. The Pre-filing Report provides a chart summarizing the material receivables and payables (gross annual transactions greater than $1 million) between the JTI Group for the month ended December 31, 2018, a copy of which is reproduced below:

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**

*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.
[1]Amounts 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.
[2]JT International Holding B.V.
[3]JTI Services Switzerland SA
[4]JTI (US) Holdings Inc.
[5]LLC Cres Neva
[6]Japan Tobacco International USA Inc.
[7]JTI Business Services Ltd.
[8]JTI Canada Tech Inc.
[9]Logic Technology Development LLC

48. In addition to the foregoing, I have attached a schedule, Schedule **"1"**, which summarizes the material service agreements between JTIM and the JTI Group. Many of the payments set out in the contracts between JTIM and the JTI Group have been in place for several years and are regularly reviewed to ensure that they comply with transfer pricing guidelines that are issued by the Organization for Economic Co-operation and Development (the "**OECD**") as updated from time-to-time and adopted by tax authorities of OECD countries, including the CRA, among others.

49. I am informed by the Applicant's legal counsel that counterparties cannot be forced to provide post-filing services for free during a CCAA proceeding. If the members of the JTI Group ceased providing services due to non-payment, it would cause irreparable disruption to JTIM's business. The Applicant would have to attempt to outsource these services from third parties at possibly increased costs, if such services could be replaced at all.

50. As stated in the 2006 Endorsement by Farley J., "the continued operation of the applicant in the ordinary course is beneficial not only to the applicant and its related entities including the head parent [Japan Tobacco], but it is beneficial to is various stakeholders including the employees and the tax collector (including the tax collectors of the various governments suing the applicant

…)."

DELOITTE RESTRUCTURING AS MONITOR

51. It is the Applicant's position that Deloitte Restructuring has no conflict or appearance of conflict in acting as the Applicant's Monitor in these CCAA Proceedings. Contrary to the assertions of the Class Action Plaintiffs, I am informed by legal counsel to the Applicant that Japan Tobacco is not subject to the stay of proceedings as it is not a defendant in any of the affected litigation proceedings. JTIM's profit before tax is less than 2% of Japan Tobacco's consolidated profit before tax.

52. Also contrary to the assertions of the Class Action Plaintiffs, in the Applicant's view, Deloitte Restructuring did not "rubber stamp" the intercompany arrangements currently in place. Deloitte Restructuring and its counsel were given access to all of the material related party contracts. Deloitte Restructuring discussed all of such related party relationships with JTIM to ascertain the nature of the relationship, whether the services performed were critical to JTIM's operations and whether the amounts payable were appropriate.

53. Likewise, Deloitte Restructuring is not the auditor or valuator of JTIM as asserted by the Class Action Plaintiffs in their materials. As outlined in the Pre-filing Report, neither Deloitte Restructuring nor any affiliate of Deloitte Restructuring provides any audit services to JTIM or any of its Canadian affiliates. In Canada, an affiliate of the Monitor, Deloitte LLP, provides audit services to the trustees of the Applicant's pension plans and is retained directly by them, not JTIM.

54. Deloitte Restructuring was retained by JTIM in 2015 after the release of the Trial Judgment. I have been one of the principal contacts for Deloitte Restructuring in connection with

the efforts to prepare for a potential CCAA filing of JTIM. In the course of preparing for its role as Monitor, Deloitte Restructuring has endeavoured to achieve an extensive understanding of JTI's operations, financial structure, intercompany relationships, management and organization. Monitoring and reporting protocols between JTIM and Deloitte Restructuring have been carefully developed and are now well established. The replacement of Deloitte Restructuring would cause unnecessary disruption to the process and lead to additional professional fees as any replacement monitor would have to be brought up to speed, which is not in the best interest of JTIM or its stakeholders.

55. I have read the Pre-filing Report of the Monitor wherein Deloitte Restructuring makes disclosure of various connections which other members of the intentional network of Deloitte Restructuring firms have with JTIM or its related parties. The Applicant does not believe Deloitte Restructuring has any actual or apparent conflicts of interest and agrees with Deloitte Restructuring's conclusion that it does not have any impediment to act as the Monitor. My experience with members of the Deloitte Restructuring team have been such that they have acted with diligence and integrity and I see no reason why they would not continue to do so.

NECESSITY OF THE CRO

56. It is the position of the Applicant that having an experienced Chief Restructuring Officer ("**CRO**") will benefit all of the parties to this proceeding and will facilitate a global resolution of the claims facing the Applicant. The CRO is not intended to be involved in the operations of JTIM, which do not require restructuring. The CRO is intended to lead the Canada-wide negotiations on behalf of JTIM with a view to seeking a workable resolution of all claims. The upcoming challenges in this proceeding requires an expert skillset in negotiating multi-party complex

restructuring deals that no one at the Applicant possesses. The CRO will be able to provide his full attention to the restructuring negotiations whereas senior management of the Applicant are required to remain primarily focused on maintaining the existing business operations.

CONDUCT OF THE APPLICANT

57. The materials of the Class Action Plaintiffs allege an abuse of litigation procedure in the Class Actions by the Applicant, ITL and RBH, which JTIM vigorously refutes. I am informed by the Applicant's legal counsel in the Class Actions, that Justice Riordan ruled orally on September 29, 2014, a copy of the transcript of which are attached as Exhibit "**K**", to suspend the Plaintiffs' allegation of abuse of procedure until after judgment on the merits was rendered. This issue has never been debated since that time and remains pending. A copy of the Applicant's Argument Plan is attached as Exhibit "**L**".

PURPOSE

58. This affidavit is sworn in response to the motion of Class Action Plaintiffs and for no improper purpose.

SWORN BEFORE ME at the City of Toronto, Province of Ontario, on April 1, 2019.

Commissioner for Taking Affidavits
Rachel Bergino

ROBERT MCMASTER

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.**

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

ONTARIO
SUPERIOR COURT OF JUSTICE
(COMMERCIAL LIST)

Proceedings commenced at Toronto

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

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RESPONDING MOTION RECORD OF JTI-MACDONALD CORP.

(Returnable January 29, 2025)

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