

**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 WITH RESPECT TO  
JTI-MACDONALD CORP.**

**FIRST REPORT OF THE MONITOR  
MARCH 28, 2019**

**INTRODUCTION**

1. On March 8, 2019 (the “**Filing Date**”), JTI-Macdonald Corp. (“**JTIM**” or the “**Applicant**”) filed for and obtained protection under the *Companies' Creditors Arrangement Act* (the “**CCAA**”). Pursuant to the Order of this Court granted March 8, 2019 (as may be amended, restated or supplemented from time to time, the “**Initial Order**”), Deloitte Restructuring Inc. (“**Deloitte**”) was appointed as the Monitor in these proceedings (in such capacity, the “**Monitor**”). The Initial Order provided for a stay of proceedings with respect to the Applicant until and including April 5, 2019 (the “**Stay Period**”). A hearing for a comeback motion (the “**Comeback Hearing**”) in respect of the Initial Order has been scheduled for April 4 and April 5, 2019. The proceedings commenced by the Applicant under the CCAA will be referred to herein as the “**CCAA Proceedings**”.
2. On March 8, 2019, Deloitte, in its capacity as proposed monitor, filed the Report of the Proposed Monitor (the “**Pre-Filing Report**”) which, among other things, described certain

background information about JTIM and its 13-week cash flow projection for the period of February 25, 2019 to May 24, 2019 (the “**Cash Flow Statement**”). Copies of the Pre-Filing Report, the Initial Order, and the service list in respect of the CCAA Proceedings are available on the Monitor’s website at <http://www.insolvencies.deloitte.ca/en-ca/JTIM> (the “**Monitor’s Website**”).

3. A more detailed description of JTIM’s business operations and background in respect of the period prior to the Filing Date was provided in the Pre-Filing Report and the Affidavit of Robert McMaster sworn March 8, 2019 in support of the application for the Initial Order (the “**McMaster Affidavit**”), a copy of which without the exhibits thereto is attached hereto as Appendix “A”.

#### **PURPOSE**

4. The purpose of this first report of the Monitor (the “**First Report**”) is to provide the Court with information and updates on the following:
  - a) the activities of JTIM and the Monitor from the Filing Date to the date of this First Report;
  - b) the Cash Flow Statement and results relative to forecast;
  - c) JTIM’s revised cash flow projection (the “**Revised Cash Flow Statement**”) for the 27-week period from March 25, 2019 to September 27, 2019 (the “**Revised Cash Flow Period**”); and

- d) the Monitor's recommendations in respect of the Applicant's motion for an Order extending the Stay Period up to and including June 28, 2019 (the "**Stay Extension Order**").
5. The Monitor intends to file a supplemental report to address and respond to materials served on today's date by certain parties of interest in these CCAA Proceedings.

#### **TERMS OF REFERENCE AND DISCLAIMER**

6. In preparing this First Report and making the comments herein, the Monitor has been provided with, and has relied upon, unaudited financial information, books and records and financial information prepared by JTIM, and discussions with management of the Applicant ("**Management**") (collectively, the "**Information**").
7. The Monitor has reviewed the Information for reasonableness, internal consistency and use in the context in which it was provided. However, the Monitor has not audited or otherwise attempted to verify the accuracy or completeness of the Information in a manner that would wholly or partially comply with Canadian Generally Accepted Assurance Standards ("**Canadian GAAS**") pursuant to the *Chartered Professional Accountants Canada Handbook* and, accordingly, the Monitor expresses no opinion or other form of assurance contemplated under Canadian GAAS in respect of the Information.

8. Some of the information referred to in this First Report consists of financial projections. An examination or review of the financial forecasts and projections, as outlined in the *Chartered Professional Accountants Canada Handbook*, has not been performed.
9. Future oriented financial information referred to in this First Report was prepared based on Management's estimates and assumptions. Readers are cautioned that since projections are based upon assumptions about future events and conditions that are not ascertainable, the actual results will vary from the projections, even if the assumptions materialize, and the variations could be significant.
10. Unless otherwise stated, all monetary amounts noted herein are expressed in Canadian dollars. All terms not defined herein shall have the meanings ascribed to them in the McMaster Affidavit.

#### **ACTIVITIES OF JTIM SINCE THE FILING DATE**

11. Since the Filing Date, JTIM has undertaken the following activities:
  - a) Communicated with all management and staff, via e-mail and meetings, to explain the impact of the CCAA Proceedings and respond to any questions. It was communicated to management and staff that operations are continuing in the normal course (to the extent possible) throughout the CCAA Proceedings;
  - b) Issued communication regarding the CCAA Proceedings to:
    - i. Customers;
    - ii. Suppliers; and

- iii. Unionized employees and retirees.
- c) Managed relationships with customers and suppliers to minimize business disruptions and to maintain an uninterrupted supply of products and services; and
- d) Attempted preliminary discussions with legal counsel to the Class Action Plaintiffs and attended calls and meetings with counsel to certain Provinces.

#### **ACTIVITIES OF THE MONITOR SINCE THE FILING DATE**

12. Since the Filing Date, the Monitor has undertaken the following activities:

- a) Activated the Monitor's Website, email address ([jtim@deloitte.ca](mailto:jtim@deloitte.ca)) and hotline (1-833-765-1452) to ensure creditors and interested parties are kept current with respect to the CCAA Proceedings;
- b) Published a notice in the Globe and Mail (National Edition) and La Presse on March 14, 2019 and March 21, 2019, respectively. This notice contained the information prescribed in accordance with Section 23(1)(a) of the CCAA as well as the date of the Comeback Hearing;
- c) Within five business days after the date of the Initial Order, the Monitor:
  - i. On March 8, 2019, made the Initial Order, JTIM's Application Record in support of the Initial Order (including the McMaster Affidavit), and the Pre-Filing Report publicly available by posting them on the Monitor's Website;

- ii. On March 13 and March 15, 2019, mailed or caused to be mailed a notice (the “**Notice**”) to every known creditor, who has a claim (contingent, disputed or otherwise) against the Applicant of more than \$5,000 based on contact information of such known creditors provided by JTIM, except with respect to: (i) employees, (ii) plaintiffs in the Pending Litigation, in which cases the Notice was sent to counsel of record as applicable, and (iii) beneficiaries of the Pension Plans in which case a Notice was sent to the trustees of each of the Pension Plans and the Financial Services Commission of Ontario and the Regie Des Rentes Du Quebec, as applicable, advising them that the Initial Order is publicly available on the Monitor’s Website; and
- iii. Prepared a list of the known creditors showing their names, addresses and estimated claim amounts and made it publicly available in the prescribed manner by posting it on the Monitor’s Website on March 13, 2019;
- d) Completed statutory forms 1 and 2, which have been filed with the Office of the Superintendent of Bankruptcy pursuant to subsection 23(1)(f) of the CCAA;
- e) Worked with Management to review disbursement approval and reporting procedures to allow for the monitoring of JTIM’s receipts and disbursements;

- f) Assisted JTIM in preparing revised cash flow projections and cash flow variance reporting;
- g) Attended meetings with Management on site at JTIM's premises in Mississauga and the Plant in Montreal regarding monitoring activities, the CCAA Proceedings, its impact on stakeholders, and their communication strategy with stakeholders;
- h) As requested, attended a meeting with counsel to the consortium of the Provinces of British Columbia, Manitoba, New Brunswick, Nova Scotia, Prince Edward Island and Saskatchewan in connection with their asserted claims for the recovery of health care costs against, among others, JTIM, and responded to questions as appropriate;
- i) Attended to various inquiries which the Monitor received by the Monitor's hotline and/or e-mail address from JTIM's creditors and other interested parties, including Canada Revenue Agency, JTIM's bank, customs broker and ongoing suppliers; and
- j) Engaged in discussions with or otherwise invited key stakeholders and other interested parties (either directly or through counsel) to identify any issues and concerns they may have in connection with the Initial Order so that such issues could be addressed through consensual resolution or in an organized and coordinated manner at the Comeback Hearing. While a number of parties engaged with the Monitor or its counsel, certain parties have not done so.

**CASH FLOW STATEMENT AND RESULTS RELATIVE TO FORECAST**

13. Summarized in the following table are JTIM's actual cash receipts and disbursements for the three-week period ended March 22, 2019 (the "**Reporting Period**") as compared to the matching weeks in the Cash Flow Statement which was included in the Pre-Filing Report.



<b>JTI-Macdonald Corp.</b>				
<b>Summary of Actual versus Forecast Cash Flows</b>				
<b>For the three weeks ended March 22, 2019</b>				
<b>Amounts in CAD ('000s)</b>				
	<b>Notes</b>	<b>Actual</b>	<b>Forecast</b>	<b>Variance</b>
<b>Receipts</b>				
Sales	b	63,189	54,525	8,664
Intercompany Receipts	c	21,740	18,853	2,887
Tax Refunds		1,686	1,000	686
Other Receipts	d	70	-	70
<b>Total Receipts</b>		<b>86,685</b>	<b>74,378</b>	<b>12,307</b>
<b>Disbursement</b>				
General Expenses		7,180	7,043	(137)
Payroll and Benefits		3,246	3,235	(11)
Pension	e	890	767	(123)
Promotions and Marketing	f	6,325	4,831	(1,494)
Leaf	g	4,036	2,688	(1,347)
Capital Expenditures and Leases	h	29	1,689	1,660
Professional Fees	i	343	916	573
Restructuring Costs	j	33	503	470
Domestic and Import Duty		418	-	(418)
GST and HST		-	-	-
Intercompany Disbursements	k	16,264	15,344	(920)
Intercompany Royalties	l	1	-	(1)
Intercompany Interest	m	-	7,648	7,648
Intercompany Principal		-	-	-
Income Tax Instalments and PTT	n	798	1,500	702
<b>Total Disbursements</b>		<b>39,562</b>	<b>46,165</b>	<b>6,602</b>
<b>Cashflow Surplus/Deficit (-)</b>		<b>47,122</b>	<b>28,213</b>	<b>18,909</b>
<b>Opening Cash Balance</b>	a	<b>107,359</b>	<b>105,306</b>	<b>2,052</b>
<b>FX Adjustment</b>		<b>(173)</b>	<b>-</b>	<b>(173)</b>
<b>Closing Cash Balance</b>		<b>154,308</b>	<b>133,520</b>	<b>20,788</b>
<b>Cash Collateral</b>				
Opening Balance		8,900	8,900	-
Cash Collateral Withdrawal/(Deposit)		-	-	-
<b>Closing Balance</b>		<b>8,900</b>	<b>8,900</b>	<b>-</b>
<b>Closing Cash net of Cash Collateral</b>		<b>145,408</b>	<b>124,620</b>	<b>20,788</b>

14. JTIM's actual net cash flows for the three-week period ended March 22, 2019 was approximately \$47.1 million, compared to forecasted net cash flows of \$28.2 million resulting in a favourable variance of \$18.9 million. A summary of the major variances are as follows:
- a) A favourable variance of \$2.1 million in JTIM's actual opening cash balance at March 4, 2019 versus the forecast balance from the Cash Flow Statement;
  - b) A favourable variance of \$8.7 million in sales receipts due to price increases in January 2019 and higher than expected volume during the Reporting Period;
  - c) A \$2.9 million favourable variance in intercompany receipts due to a timing difference which is expected to reverse in future periods;
  - d) Other receipts include interest income earned from the Royal Bank of Canada high interest savings accounts;
  - e) An unfavourable variance of \$123,000 in pension disbursements is a permanent difference related to the remittance of amounts withheld from employees' pay and for employer contributions into the direct contribution pension plan. These payments will continue on a biweekly basis and are reflected in the Revised Cash Flow Statement;

- f) An unfavourable variance of \$1.5 million in promotions and marketing disbursements due to timing differences and increased trade incentives based on higher sales;
- g) A \$1.3 million unfavourable variance in disbursements to third party leaf suppliers for planned purchases not made in prior months. This is expected to be a permanent variance;
- h) A \$1.7 million favourable variance in capital expenditures and lease disbursements due to timing differences;
- i) A favourable variance of \$573,000 in professional fees due to certain litigation matters that are not expected to continue during the CCAA Proceedings; which is reflected in the Revised Cash Flow Statement;
- j) A favourable variance of \$470,000 in restructuring costs being a timing difference that is expected to reverse in future periods;
- k) Approximately half of the unfavourable variance of \$920,000 in intercompany disbursements is a timing difference related to amounts that were forecast to be paid during the week of February 25, 2019 for regional services provided by JTI-US. The remaining unfavourable variance is a permanent difference for leaf purchases to account for higher than expected volumes and to support the increase in sales;

- l) A royalty payment of \$518 was made to JTI-SA on March 7, 2019. For greater certainty, this disbursement, which occurred prior to the Filing Date, was not made to TM;
- m) A favourable variance of \$7.6 million in intercompany interest by JTIM to TM on the \$1.2 billion secured convertible debentures, which was originally forecasted but subsequently suspended pursuant to the endorsement of Mr. Justice McEwen dated March 19, 2019, pending a determination at the Comeback Hearing of whether these payments should continue (the “**McEwen Endorsement**”); and
- n) A favourable variance of \$773,000 in income tax instalments and provincial tobacco tax that is expected to be a permanent difference.

#### **APPLICANT’S REVISED CASH FLOW STATEMENT**

- 15. The Applicant, with the assistance of the Monitor, has prepared the Revised Cash Flow Statement for the purposes of projecting the estimated results of the Applicant’s planned operations and other activities during the Revised Cash Flow Period. The Revised Cash Flow Statement has been prepared for a period that extends beyond the period of the stay extension sought by the Applicant. A copy of the Revised Cash Flow Statement is attached as Appendix “**B**”, and is summarized below for the 14-week period ending June 28, 2019 and the 27-week period ending September 27, 2019:

<b>JTI-Macdonald Corp.</b>		
<b>27-week Revised Cash Flow Statement</b>		
<b>SCAD '000, unaudited</b>		
<b>For the week beginning</b>	<b>14-week to June 28, 2019</b>	<b>27-week to Sept. 27, 2019</b>
<b>Receipts</b>		
Sales	327,592	638,121
Intercompany Receipts	81,347	146,424
Tax Refunds	3,000	6,000
<b>Total Receipts</b>	<b>411,938</b>	<b>790,544</b>
<b>Disbursement</b>		
General Expenses	30,181	60,800
Payroll and Benefits	17,530	34,615
Pension	3,701	7,402
Promotions and Marketing	28,689	62,682
Leaf	2,405	4,060
Capital Expenditures and Leases	9,034	10,367
Professional Fees	1,788	2,586
Restructuring Costs	2,166	3,690
Domestic and Import Duty	148,144	280,614
GST and HST	15,310	37,781
Intercompany Disbursements	103,946	186,190
Intercompany Royalties	2,367	5,415
Intercompany Interest	30,593	53,538
Intercompany Principal	-	-
Income Tax Instalments and PTT	12,508	24,988
<b>Total Disbursements</b>	<b>408,362</b>	<b>774,728</b>
<b>Cashflow Surplus/Deficit (-)</b>	<b>3,577</b>	<b>15,816</b>
<b>Opening Cash Balance</b>	<b>154,308</b>	<b>154,308</b>
<b>Closing Cash Balance</b>	<b>157,885</b>	<b>170,124</b>
<b>Cash Collateral pledged to Citibank</b>		
Opening Balance	8,900	8,900
Cash Collateral Withdrawal/(deposit)	-	-
<b>Closing Balance</b>	<b>8,900</b>	<b>8,900</b>
<b>Closing Cash net of Cash Collateral</b>	<b>148,985</b>	<b>161,224</b>



16. The Revised Cash Flow Statement is presented on a weekly basis during the Revised Cash Flow Period and represents Management's best estimate of the projected cash flows during the Revised Cash Flow Period. The Revised Cash Flow Statement has been prepared by Management using the assumptions set out in the notes to the Revised Cash Flow Statement (the "**Revised Assumptions**").
17. The forecast net cash surplus for the Revised Cash Flow Period is estimated to be \$15.8 million. Accordingly, the Applicant should have sufficient liquidity during the proposed period of extension to the Stay Period.
18. For illustrative purposes only, the Revised Cash Flow Statement forecasts that the intercompany royalty and interest payment (but not payment of principal) by JTIM to TM for March (which as described above was suspended by the McEwen Endorsement pending the Comeback Hearing) is paid on April 8, 2019. It also forecasts, for illustrative purposes only, that the presently suspended monthly intercompany royalty and interest payments are paid in the ordinary course for the balance of the Revised Cash Flow Period. These forecasted payments are included for illustrative purposes only as the Class Action Plaintiffs have brought a motion for the cessation of such payments and the Court has not yet determined this issue.
19. The Monitor has reviewed the Revised Cash Flow Statement to the standard required of a Court-appointed monitor by Section 23(1)(b) of the CCAA. Section 23(1)(b) requires a monitor to review the debtor's cash flow statement as to its reasonableness and to file a report with the Court on the monitor's findings. The Canadian Association of Insolvency

and Restructuring Professionals' Standard of Professional Practice include a standard for a monitor fulfilling its statutory responsibilities under the CCAA in respect of its report on the cash flow statement.

20. In accordance with the standard, the Monitor's review of the Revised Cash Flow Statement consisted of inquiries, analytical procedures and discussions related to the Revised Cash Flow Statement and Revised Assumptions. Since the Revised Assumptions need not be supported, the Monitor's procedures with respect to them were limited to evaluating whether they were consistent with the purpose of the Revised Cash Flow Statement. The Monitor also reviewed the support provided by Management for the Revised Assumptions and the preparation and presentation of the Revised Cash Flow Statement.
21. Based on the Monitor's review, nothing has come to its attention that causes it to believe, in all material aspects, that:
  - a) The Revised Assumptions are not consistent with the purpose of the Revised Cash Flow Statement;
  - b) As at the date of this First Report, the Revised Assumptions are not suitably supported and consistent with the plans of the Applicant or do not provide a reasonable basis for the Revised Cash Flow Statement, given the Revised Assumptions; or
  - c) The Revised Cash Flow Statement does not reflect the Revised Assumptions.

22. Since the Revised Cash Flow Statement is based on Revised Assumptions regarding future events, actual results will vary from the information presented even if the Revised Assumptions occur, and the variations could be material. Accordingly, the Monitor expresses no assurance as to whether the Revised Cash Flow Statement will be achieved. In addition, the Monitor expresses no opinion or other form of assurance with respect to the accuracy of the financial information presented in the Revised Cash Flow Statement, or relied upon by the Monitor in preparing this First Report.
23. The Revised Cash Flow Statement has been prepared solely for the purposes described above, and readers of this First Report are cautioned that it may not be appropriate for other purposes.

#### **STAY EXTENSION**

24. The current Stay Period expires on April 5, 2019. The Applicant is seeking the extension of the Stay Period up to and including June 28, 2019, in order for the Applicant, with the assistance of the Monitor to:
- a) Preserve the *status quo* and continue to maintain the stability of operations;
  - b) 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 the Applicant; and
  - c) Determine next steps in respect of the CCAA Proceedings.



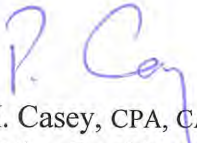
25. As described above, the Applicant's Cash Flow Statement projects that the Applicant will have sufficient liquidity during the Revised Cash Flow Period.
26. In the Monitor's view, the Applicant has acted in good faith and with due diligence.

**RECOMMENDATIONS**

27. The Monitor supports the relief sought by the Applicant in its motion for the extension of the Stay Period and respectfully recommends that the Court grant the Stay Extension Order.

All of which is respectfully submitted this 28<sup>th</sup> day of March, 2019.

**Deloitte Restructuring Inc.,  
Solely in its capacity as Court-appointed Monitor  
of JTIM and not in its personal capacity**

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

# **APPENDIX “A”**

**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 March 8, 2019)**

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AND IN THE MATTER OF A PLAN OF COMPROMISE OR  
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**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:

<b>Supplier</b>	<b>Frequency of Payment</b>	<b>Security</b>	<b>Right to Deposit</b>
<b>JTI-SA</b>	Monthly in advance (save and except the LRD Agreements)	Yes*	No
<b>JT International Business Services Limited (“JTI-BSL”)</b>	Monthly in advance	Yes*	Yes†
<b>JT International Holding B.V. (“JTIH-BV”)**</b>	Monthly in advance	Yes*	Yes†
<b>JTI Services Switzerland SA</b>	Monthly in advance	No	No
<b>JTI (US) Holdings Inc.</b>	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 18<sup>th</sup> 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		
681989I	British Columbia	June 23, 2015	All present and after-acquired personal property.
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:

<b>Location</b>	<b>Status</b>	<b>Defendants</b>
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 <sup>1</sup> 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.

<sup>1</sup> 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**”):

<b>Action</b>	<b>Brief Description</b>	<b>Defendants</b>
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., Ryeseckks 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 plaintiffs’ 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., Ryeseckks 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 plaintiffs' 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., Ryeseckks 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	<u>5,928</u>
	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	<u>29,153</u>
Total assets	<u>1,890,561</u>

December 31, 2018

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

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 "I" 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# 699931



\_\_\_\_\_  
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

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Lawyers for the Applicant

# **APPENDIX “B”**

JTI-Macdonald Corp.  
27-week Revised Cash Flow Statement  
\$CAD '000, unaudited

For the week beginning	Notes	25-Mar-19	1-Apr-19	8-Apr-19	15-Apr-19	22-Apr-19	29-Apr-19	6-May-19	13-May-19	20-May-19	27-May-19	3-Jun-19	10-Jun-19	17-Jun-19	24-Jun-19	1-Jul-19	8-Jul-19	15-Jul-19	22-Jul-19	29-Jul-19	5-Aug-19	12-Aug-19	19-Aug-19	26-Aug-19	2-Sep-19	9-Sep-19	16-Sep-19	23-Sep-19	27-week Total	
<b>Receipts</b>																														
Sales	2	18,680	21,766	23,699	19,796	23,048	22,797	23,819	25,114	25,076	23,024	27,931	24,714	22,964	25,162	25,594	27,448	25,525	23,847	24,049	22,877	22,732	21,153	22,396	22,652	22,463	22,279	27,515	638,121	
Intercompany Receipts	3	7,242	5,900	3,000	7,451	5,626	5,101	5,173	5,173	6,044	5,173	5,949	5,949	6,216	7,350	5,384	5,249	8,305	5,249	5,185	5,090	5,090	9,585	5,090	2,666	2,666	2,851	2,666	146,424	
Tax Refunds	4	-	-	-	1,000	-	-	-	1,000	-	-	-	-	1,000	-	-	-	1,000	-	-	-	1,000	-	-	-	-	-	1,000	-	6,000
<b>Total Receipts</b>		<b>25,922</b>	<b>27,666</b>	<b>26,699</b>	<b>28,247</b>	<b>28,674</b>	<b>27,898</b>	<b>28,992</b>	<b>31,287</b>	<b>31,121</b>	<b>28,197</b>	<b>33,880</b>	<b>30,663</b>	<b>30,180</b>	<b>32,513</b>	<b>30,977</b>	<b>32,697</b>	<b>34,830</b>	<b>29,096</b>	<b>29,235</b>	<b>27,967</b>	<b>28,822</b>	<b>30,738</b>	<b>27,486</b>	<b>25,318</b>	<b>25,129</b>	<b>26,130</b>	<b>30,181</b>	<b>790,544</b>	
<b>Disbursement</b>																														
General Expenses	5	2,381	2,273	2,273	2,173	2,273	2,083	1,957	1,957	1,857	1,957	2,250	2,250	2,250	2,250	2,826	2,826	2,826	2,826	2,605	2,273	2,273	2,273	2,273	1,905	1,905	1,905	1,905	60,800	
Payroll and Benefits	6	1,845	445	1,845	445	2,345	445	1,845	445	2,345	445	1,845	445	2,345	445	1,845	445	1,845	945	1,845	445	1,845	945	1,845	445	1,845	945	1,845	1,845	34,615
Pension	7	200	-	200	767	200	-	200	767	200	-	200	-	967	-	200	-	967	-	200	-	967	-	200	-	200	767	200	767	200
Promotions and Marketing	8	1,610	2,562	2,562	2,562	2,562	2,004	1,632	1,632	1,632	1,632	2,075	2,075	2,075	3,016	3,016	3,016	3,016	2,518	1,770	1,770	1,770	1,770	3,083	3,083	3,083	3,083	3,083	62,682	
Leaf	9	-	-	-	2,405	-	-	-	-	-	-	-	-	-	-	-	-	-	-	-	-	471	-	-	-	-	-	1,184	-	4,060
Capital Expenditures and Leases	10	241	-	-	-	-	399	-	-	-	-	7,816	-	-	578	-	-	-	-	-	-	-	-	913	-	-	-	-	-	10,367
Professional Fees	11	113	123	123	123	123	123	167	167	167	167	98	98	98	73	73	73	73	73	58	58	58	58	58	49	49	49	49	49	2,586
Restructuring Costs	12	258	275	165	154	165	209	111	111	126	111	184	86	104	107	184	86	104	107	184	86	104	104	86	184	104	107	86	3,690	
Domestic and Import Duty	13	769	50,173	-	-	-	46,002	-	-	-	-	49,200	-	-	2,000	47,200	-	-	-	51,948	-	-	-	2,000	-	31,322	-	-	-	280,614
GST and HST	14	-	4,000	-	-	-	5,005	-	-	-	-	-	-	-	-	7,831	-	-	-	6,811	-	-	-	-	-	7,829	-	-	-	37,781
Intercompany Disbursements	15	5,799	5,590	6,336	12,301	6,522	7,900	7,270	8,471	7,120	6,727	7,032	7,650	8,196	6,219	6,219	6,219	7,093	7,093	5,451	5,451	5,451	6,174	6,626	6,313	6,313	6,844	6,313	186,190	
Intercompany Royalties	16	-	-	750	-	-	749	-	1	-	867	1	-	-	1,051	-	-	-	939	-	1	-	-	-	-	1,058	1	-	-	5,415
Intercompany Interest	17	-	-	7,648	7,648	-	-	-	-	7,648	-	-	-	-	7,648	-	-	-	7,648	-	-	-	-	7,648	-	-	-	7,648	-	53,538
Intercompany Principal	17	-	-	-	-	-	-	-	-	-	-	-	-	-	-	-	-	-	-	-	-	-	-	-	-	-	-	-	-	-
Income Tax Instalments and PTT	18	28	2,660	1,500	-	-	2,660	1,500	-	-	2,660	1,500	-	-	2,660	1,500	-	-	-	2,660	1,500	-	-	-	-	2,660	1,500	-	-	24,988
<b>Total Disbursements</b>		<b>13,245</b>	<b>68,100</b>	<b>23,401</b>	<b>28,577</b>	<b>14,189</b>	<b>67,578</b>	<b>14,682</b>	<b>13,550</b>	<b>21,095</b>	<b>77,886</b>	<b>15,185</b>	<b>11,986</b>	<b>23,138</b>	<b>15,750</b>	<b>73,105</b>	<b>14,166</b>	<b>23,489</b>	<b>13,187</b>	<b>77,295</b>	<b>11,583</b>	<b>12,938</b>	<b>18,972</b>	<b>15,770</b>	<b>54,847</b>	<b>15,000</b>	<b>22,533</b>	<b>13,481</b>	<b>774,728</b>	
<b>Cashflow Surplus/Deficit (-)</b>		<b>12,677</b>	<b>(40,434)</b>	<b>3,298</b>	<b>(330)</b>	<b>14,485</b>	<b>(39,680)</b>	<b>14,310</b>	<b>17,737</b>	<b>10,026</b>	<b>(49,689)</b>	<b>18,695</b>	<b>18,676</b>	<b>7,042</b>	<b>16,762</b>	<b>(42,128)</b>	<b>18,532</b>	<b>11,341</b>	<b>15,909</b>	<b>(48,061)</b>	<b>16,384</b>	<b>15,884</b>	<b>11,766</b>	<b>11,716</b>	<b>(29,529)</b>	<b>10,129</b>	<b>3,597</b>	<b>16,700</b>	<b>15,816</b>	
<b>Opening Cash Balance</b>	1	<b>154,308</b>	<b>166,985</b>	<b>126,552</b>	<b>129,849</b>	<b>129,519</b>	<b>144,005</b>	<b>104,325</b>	<b>118,635</b>	<b>136,372</b>	<b>146,398</b>	<b>96,709</b>	<b>115,404</b>	<b>134,081</b>	<b>141,122</b>	<b>157,885</b>	<b>115,757</b>	<b>134,288</b>	<b>145,629</b>	<b>161,538</b>	<b>113,478</b>	<b>129,861</b>	<b>145,745</b>	<b>157,511</b>	<b>169,227</b>	<b>139,698</b>	<b>149,827</b>	<b>153,424</b>	<b>154,308</b>	
<b>Closing Cash Balance</b>		<b>166,985</b>	<b>126,552</b>	<b>129,849</b>	<b>129,519</b>	<b>144,005</b>	<b>104,325</b>	<b>118,635</b>	<b>136,372</b>	<b>146,398</b>	<b>96,709</b>	<b>115,404</b>	<b>134,081</b>	<b>141,122</b>	<b>157,885</b>	<b>115,757</b>	<b>134,288</b>	<b>145,629</b>	<b>161,538</b>	<b>113,478</b>	<b>129,861</b>	<b>145,745</b>	<b>157,511</b>	<b>169,227</b>	<b>139,698</b>	<b>149,827</b>	<b>153,424</b>	<b>170,124</b>	<b>170,124</b>	
<b>Cash Collateral pledged to Citibank</b>	19																													
Opening Balance		8,900	8,900	8,900	8,900	8,900	8,900	8,900	8,900	8,900	8,900	8,900	8,900	8,900	8,900	8,900	8,900	8,900	8,900	8,900	8,900	8,900	8,900	8,900	8,900	8,900	8,900	8,900	8,900	8,900
Cash Collateral Withdrawal/(deposit)		-	-	-	-	-	-	-	-	-	-	-	-	-	-	-	-	-	-	-	-	-	-	-	-	-	-	-	-	-
<b>Closing Balance</b>		<b>8,900</b>	<b>8,900</b>	<b>8,900</b>	<b>8,900</b>	<b>8,900</b>	<b>8,900</b>	<b>8,900</b>	<b>8,900</b>	<b>8,900</b>	<b>8,900</b>	<b>8,900</b>	<b>8,900</b>	<b>8,900</b>	<b>8,900</b>	<b>8,900</b>	<b>8,900</b>	<b>8,900</b>	<b>8,900</b>	<b>8,900</b>	<b>8,900</b>	<b>8,900</b>	<b>8,900</b>	<b>8,900</b>	<b>8,900</b>	<b>8,900</b>	<b>8,900</b>	<b>8,900</b>	<b>8,900</b>	<b>8,900</b>
<b>Closing Cash net of Cash Collateral</b>		<b>158,085</b>	<b>117,652</b>	<b>120,949</b>	<b>120,619</b>	<b>135,105</b>	<b>95,425</b>	<b>109,735</b>	<b>127,472</b>	<b>137,498</b>	<b>87,809</b>	<b>106,504</b>	<b>125,181</b>	<b>132,222</b>	<b>148,985</b>	<b>106,857</b>	<b>125,388</b>	<b>136,729</b>	<b>152,638</b>	<b>104,578</b>	<b>120,961</b>	<b>136,845</b>	<b>148,611</b>	<b>160,327</b>	<b>130,798</b>	<b>140,927</b>	<b>144,524</b>	<b>161,224</b>	<b>161,224</b>	



**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.**

**("JTIM" or the "Applicant")**

**Notes to the Applicant's Unaudited Cash Flow Statement**

**Disclaimer**

In preparing this cash flow projection (the "**Cash Flow Statement**"), the Applicant has relied upon unaudited interim financial information and the major assumptions listed below. The Cash Flow Statement includes estimates concerning the operations of the Applicant with consideration to the impact of a filing under the *Companies' Creditors Arrangement Act*, as amended (the "**CCAA**"). The Cash Flow Statement is based on assumptions about future events and the actual results achieved during the forecast period will vary from the Cash Flow Statement, even if the assumptions materialize, and such variations may be material. There is no representation, warranty or other assurance that any of the estimates, forecasts or projections will be realized. Parties using the Cash Flow Statement for reasons other than to assess the cash flows of the Applicant during the forecast period are cautioned that it may not be appropriate for their purposes.

**Overview**

The Cash Flow Statement reflects cash flows from JTIM. The Applicant, with the assistance of the Monitor, has prepared the Cash Flow Statement based primarily on historical results and JTIM's current expectations derived from their annual budgeting process. Consistent with the Applicant's budgeting process, the Cash Flow Statement is presented in thousands of Canadian Dollars. Receipts and disbursements denominated in U.S. Dollars have been converted into Canadian Dollars using an exchange rate of **CDN\$1.29 = USD\$1.00**.

## **Major Assumptions**

### **RECEIPTS**

#### **1. Opening cash balance**

This is the opening cash balance at the start of the cash flow projection.

#### **2. Sales**

Receipts from JTIM's trade sales are estimated based on a weekly forecast of collections from existing accounts. The projected sales are derived from JTIM's annual budget, which includes assumptions surrounding industry wide price fluctuations. JTIM collects payment from its customers via direct debit once product is shipped. The vast majority of JTIM's customers are tobacco wholesalers. In limited circumstances, JTIM sells directly to retail accounts.

#### **3. Intercompany Receipts**

JTIM is owned indirectly by Japan Tobacco Inc. ("**Japan Tobacco**"), a publicly listed company in Japan. Certain employees of JTIM, located at either the Mississauga head office or Montreal factory locations, perform services for non-Canadian entities. A charge for time spent is applied to the related party corporation benefiting from the services. The charge is based on time spent by the employees based on an annual submission that the employee provides. The fee rate is based on the cost of each employee to JTIM, plus a 5% mark-up.

JTIM provides other related-party international tobacco companies outside of Japan ("**JT International**") with skilled personnel (i.e. expatriates working abroad), and is reimbursed the costs of such employees.

There are three JT International Global Service Desks ("**GSDs**") located across the world in Canada, Russia and Malaysia. The GSDs handle information and technology queries from JT International employees and corporations on a twenty-four hour basis. The GSDs are managed out of the international headquarters of Japan Tobacco in Geneva, Switzerland. The costs of the Canadian GSD, located in Montreal, are initially paid by JTIM, but fully cross-charged to JT International S.A. ("**JTI-SA**") to be included in the global IT cost base for allocation across Japan Tobacco.

JTIM performs contract manufacturing for non-Canadian branded cigarettes at the Montreal manufacturing facility for JTI-SA.

JTIM also provides services to JTI Canada Tech Inc. with respect to the distribution of potentially reduced risk products in Canada.

JTIM exports Canadian brand cigarettes to other JT International entities for sale.

#### **4. Tax Refunds**

The projected tax refunds relate to the collection of QST refunds in Quebec, excise tax refunds for product that require rework or destruction and customs duty refunds for imported product that require destruction.

### **DISBURSEMENTS**

#### **5. General Expenses**

These projected disbursements include payments related to non-tobacco materials, travel, service related activities, utilities and rent.

#### **6. Payroll and Benefits**

These projected disbursements include payroll and benefit costs for all salaried and hourly plant employees. The forecast amounts are based on historic run rates. Hourly plant employees are paid weekly and salaried employees are paid bi-weekly. Payroll disbursements include all employee source deductions, employee and employer portions of CPP/QPP and EI, and other payroll-related taxes.

#### **7. Pension**

These projected disbursements represent payments to JTIM's registered employees plan, registered executive employees plan and the executive supplemental benefit plan. The pension amounts forecast in the cash flow include all current and special obligation amounts.

## **8. Promotions and Marketing**

These projected disbursements relate to the various marketing and promotional initiatives, such as inventory support programs and brand support programs. Initiatives are generally paid 30 days in arrears or via quarterly installments.

## **9. Leaf**

These projected disbursements represent payments to third party suppliers of tobacco leaf. Third party purchases are used in circumstances where JTI-SA does not have a specific grade of tobacco available at the time required to meet the plant's tobacco blend requirements to reduce disruptions in the production process.

## **10. Capital Expenditures and Leases**

These projected disbursements relate to capital expenditures for plant and equipment purchases at the Montreal production facility. These capital expenditures primarily relate to new plain packaging machinery for statutory compliance, machine upgrades, new product flow control systems and environmental health and safety. Additional expenditures are forecast for regional sales office leases, vehicles used by marketing representatives and miscellaneous information technology requirements.

## **11. Professional Fees**

These projected disbursements include payments to JTIM's legal advisors for corporate litigation matters.

## **12. Restructuring Costs**

These projected disbursements include payments to JTIM's legal advisors for specialist restructuring advice, the fees and costs of the Monitor and its counsel and the fees and costs of the Chief Restructuring Officer.

### **13. Domestic and Import Duty**

These projected disbursements relate to payments to the Canada Revenue Agency (“CRA”) with respect to tobacco products produced under the *Excise Act*, 2001 and duty on imported tobacco products. Excise duty returns and payments are due on the last day of the month following the reporting period (e.g. a return for a period ending February 28 is due by March 31). Import duty payments are paid once a month on a rolling basis with the 21st being the end of the month.

### **14. GST and HST**

These projected disbursements represent payments to the CRA with respect to GST and HST. Historically, JTIM has always been in a monthly net payable position.

### **15. Intercompany Disbursements**

These projected disbursements represent: (i) payments for goods and services provided by JT International entities such as tobacco products from JTI-SA, LLC Cres Neva, JTI (US) Holdings Inc., and Japan Tobacco International USA Inc., (ii) IT services provided by JTI-SA, (iii) global administrative services provided by JTI Business Services Ltd., (iv) employee arrangements provided by JTI Services Switzerland SA, and (v) global headquarter services provided by JT International Holdings B.V.

### **16. Intercompany Royalties**

JTI-Macdonald TM Corp. (“TM”) provides licenses to JTIM to use the trademarks to manufacture and sell goods bearing the trademarks in exchange for a monthly royalty payment. The amount payable for March is forecast to be paid on April 8, 2019, with monthly payments continuing on or around the 18<sup>th</sup> of every month.

### **17. Intercompany Interest and Principal**

This disbursement represents monthly interest payments on the \$1.2 billion secured convertible debentures by JTIM to TM. The amount payable for March is forecast to be paid on April 8, 2019 with monthly payments continuing on or around the 18<sup>th</sup> of every month.

## **18. Income Tax Instalments and Provincial Tobacco Taxes**

These projected disbursements represent corporate income tax instalments and payments of Provincial Tobacco Taxes (“**PTT**”) on direct retail sales.

## **19. Cash Collateral**

Cash Collateral of \$8.9 million was pledged to Citibank pursuant to two agreements dated in 2016 and 2017 to allow for continued central travel account card services and cash management services provided by Citibank.



March 28, 2019

Deloitte Restructuring Inc.  
Bay Adelaide East  
8 Adelaide Street West  
Suite 200  
Toronto, Ontario M5H 0A9  
Canada

Attention: Paul M. Casey

Dear Sirs:

**Re: Proceedings under the *Companies' Creditors Arrangement Act* ("CCAA")  
Responsibilities/Obligations and Disclosure with Respect to Cash Flow  
Projections**

In connection with the CCAA proceedings in respect of JTI-Macdonald Corp. ("JTIM"), the management of JTIM ("**Management**") has prepared the attached Cash Flow Statement and the assumptions on which the Cash Flow Statement is based.

JTIM confirms that:

1. The Cash Flow Statement and the underlying assumptions are the responsibility of JTIM;
2. All material information relevant to the Cash Flow Statement and to the underlying assumptions has been made available to Deloitte Restructuring Inc., in its capacity as Monitor of JTIM;
3. Management has taken all actions that it considers necessary to ensure:
  - a. That the individual assumptions underlying the Cash Flow Statement are appropriate in the circumstances;
  - b. That the individual assumptions underlying the Cash Flow Statement, taken as a whole, are appropriate in the circumstances; and
  - c. That all relevant assumptions have been properly presented in the Cash Flow Statement or in the notes accompanying the Cash Flow Statement.

JTI-Macdonald Corp

1 Robert Speck Parkway, Suite 1601  
Mississauga, Ontario, L4Z 0A2, Canada  
905 804 7300

[jti.com](http://jti.com)

4. Management understands and agrees that the determination of what constitutes a material adverse change in the projected cash flow or financial circumstances, for the purposes of our monitoring the on-going activities of JTIM, is ultimately at your sole discretion, notwithstanding that Management may disagree with such determination;
5. Management understands its duties and obligations under the CCAA and that a breach of these duties and obligations could make the JTIM's Management liable to fines and imprisonment in certain circumstances; and
6. The Cash Flow Statement and assumptions have been reviewed and approved by the JTIM's board of directors or Management has been duly authorized by JTIM's board of directors to prepare and approve the cash flow assumptions.

Yours truly,



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Name: Robert McMaster

Title: Director, Taxation and Treasury



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

IN THE MATTER OF THE *COMPANIES' CREDITORS ARRANGEMENT ACT*, R.S.C. 1985, c. C-36, AS AMENDED  
AND IN THE MATTER OF A PLAN OF COMPROMISE OR ARRANGEMENT OF **JTI-MACDONALD CORP.**

**ONTARIO  
SUPERIOR COURT OF JUSTICE  
COMMERCIAL LIST**

Proceeding Commenced at Toronto

**FIRST REPORT OF THE MONITOR  
Dated March 28, 2019**

**BLAKE, CASSELS & GRAYDON LLP**

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Lawyers for the Monitor