

**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

**MOTION RECORD
Returnable June 26, 2019**

June 13, 2019

Thornton Grout Finnigan LLP
100 Wellington Street West
Suite 3200
TD West Tower, Toronto-Dominion Centre
Toronto, ON M5K 1K7
Robert I. Thornton (LSO# 24266B)
Email: rthornton@tgf.ca
Leanne M. Williams (LSO# 41877E)
Email: lwilliams@tgf.ca
Rebecca L. Kennedy (LSO# 61146S)
Email: rkennedy@tgf.ca

Tel: 416-304-1616

Fax: 416-304-1313

Lawyers for the Applicant

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2	Affidavit of William E. Aziz sworn June 12, 2019
A	Second Amended and Restated Initial Order of McEwen, J. dated March 8, 2019
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TAB 1

**ONTARIO
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**NOTICE OF MOTION
(Re: Stay Extension)
(Returnable on June 26, 2019)**

The Applicant will make a motion before a Judge of the Ontario Superior Court of Justice (Commercial List) on Wednesday, June 26, 2019 at 10:00 a.m., or as soon after that time as the motion can be heard, at 330 University Avenue, in the City of Toronto.

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

THE MOTION IS FOR:

- (a) An Order substantially in the form attached to the Motion Record at Tab 3 (the “**Stay Extension and Cash Collateral Order**”):
 - i. ordering that the Stay Period set out in paragraph 18 of the Initial Order granted in these proceedings on March 8, 2019 (as amended and restated, the “**Initial Order**”) be extended to December 16, 2019;

- ii. authorizing the Applicant to increase the cash collateral amount deposited with Citibank, N.A., Canada Branch (“**Citibank**”) by \$3 million; and
- iii. such further and other relief as this Court deems just.

THE GROUNDS FOR THE MOTION ARE:

Background of CCAA Proceedings

1. On March 1, 2019, the Quebec Court of Appeal released its judgment against the Applicant, Imperial Tobacco Canada Limited (“**Imperial**”) and Rothmans, Benson & Hedges Inc. (“**RBH**”), which ordered the Applicant, Imperial and RBH to pay damages to the Quebec class action plaintiffs in the approximate amount of \$13.5 billion (including interest and an additional indemnity) on a solidary basis.
2. The Applicant also is the subject of significant health care cost recovery litigation by each of the ten provinces.
3. The Applicant obtained the Initial Order pursuant to the *Companies’ Creditors Arrangement Act* (“**CCAA**”). The Initial Order (i) appointed Deloitte Restructuring Inc. to act as monitor (the “**Monitor**”); (ii) appointed the Honourable Warren K. Winkler, Q.C. (the “**Court-Appointed Mediator**”) to mediate a global settlement of the Tobacco Claims (as defined in the Initial Order) against the Applicant and others; and (iii) granted a stay of proceedings until April 5, 2019, which has been subsequently extended to June 28, 2019.
4. All capitalized terms not otherwise defined herein have the meanings set forth in the Initial Order.

5. Since the date of the Initial Order, both Imperial and RBH have sought protection from their creditors under the CCAA.

Citibank Cash Collateral

6. The Applicant maintains seven bank accounts with Citibank. The Applicant previously pledged \$8 million in respect of certain cash management services, including automatic clearing house (“ACH”) transactions, that require extension of credit by Citibank (the “**Citibank Cash Collateral**”);
7. The quantity of ACH transactions has increased in recent years as a result of increased pricing, increased excise taxes and increased direct sales to retail and associated provincial tobacco taxes payable. As a result, there are certain periods when the ACH transactions exceed the amount of the Citibank Cash Collateral;
8. Accordingly, Citibank has requested that the Applicant increase the Citibank Cash Collateral by \$3 million to protect Citibank from possible exposure;
9. The Applicant is seeking an Order authorizing it to increase the Citibank Cash Collateral by \$3 million, to which Order the Monitor has given its consent;

Stay Extension

10. The Stay Period granted in the Initial Order will expire on June 28, 2019. The Applicant seeks an extension of the Stay Period until December 16, 2019. The choice of date was informed by discussions with the Court-Appointed Mediator;

11. The projected cash flow forecast, as prepared by the Applicant with the assistance of the Monitor, demonstrates that the Applicant has sufficient liquidity to operate its business and meet its obligations during the proposed extension of the Stay Period;
12. Extending the Stay Period is required to enable the Applicant to continue to operate in the ordinary course while engaging in discussions to seek a collective resolution of the pending Tobacco Claims as against the Applicant and others;
13. The Applicant has acted in good faith and with due diligence during the course of its CCAA proceedings since the date of the Initial Order;
14. The Applicant also relies on:
 - i. the provisions of the CCAA and the statutory, inherent and equitable jurisdiction of this Court; and
 - ii. such further and other grounds as counsel may advise and this Honourable Court may permit.

THE FOLLOWING DOCUMENTARY EVIDENCE will be used at the hearing of this application:

- (a) the Affidavit of William E. Aziz, sworn June 12, 2019;
- (b) the Fourth Report of the Monitor, to be filed; and

(c) such further and other evidence as counsel may advise and this Court may permit.

June 13, 2019

Thornton Grout Finnigan LLP
100 Wellington Street West
Suite 3200
TD West Tower, Toronto-Dominion Centre
Toronto, ON M5K 1K7
Robert I. Thornton (LSO# 24266B)
Email: rthornton@tgf.ca
Leanne M. Williams (LSO# 41877E)
Email: lwilliams@tgf.ca
Rebecca L. Kennedy (LSO# 61146S)
Email: rkennedy@tgf.ca

Tel: 416-304-1616

Fax: 416-304-1313

Lawyers for the Applicant

TO: THE ATTACHED SERVICE LIST

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**SERVICE LIST
(as at June 6, 2019)**

TO:	<p>THORNTON GROUT FINNIGAN LLP 100 Wellington Street West Suite 3200 TD West Tower, Toronto-Dominion Centre Toronto, ON M5K 1K7 Fax: 416-304-1313</p> <p>Robert I. Thornton Tel: 416-304-0560 Email: rthornton@tgf.ca</p> <p>Leanne M. Williams Tel: 416-304-0060 Email: lwilliams@tgf.ca</p> <p>Rebecca L. Kennedy Tel: 416-304-0603 Email: rkennedy@tgf.ca</p> <p>Rachel A. Bengino Tel: 416-304-1153 Email: rbengino@tgf.ca</p> <p>Mitchell W. Grossell Tel: 416-304-7978 Email: mgrossell@tgf.ca</p>
------------	--

	<p>John L. Finnigan Tel: 416-304-0558 Email: jfinnigan@tgf.ca</p> <p>Lawyers for the Applicant</p>
AND TO:	<p>DELOITTE RESTRUCTURING INC. Bay Adelaide East 8 Adelaide Street West Suite 200 Toronto, ON M5H 0A9 Fax: 416-601-6690</p> <p>Paul Casey Tel: 416-775-7172 Email: paucasey@deloitte.ca</p> <p>Warren Leung Tel: 416-874-4461 Email: waleung@deloitte.ca</p> <p>Jean-Francois Nadon Tel: 514-390-0059 Email: jnadon@deloitte.ca</p> <p>Phil Reynolds Tel: 416-956-9200 Email: philreynolds@deloitte.ca</p> <p>The Monitor</p>
AND TO:	<p>BLAKE, CASSELS & GRAYDON LLP 199 Bay Street Suite 4000, Commerce Court West Toronto, ON M5L 1A9 Fax: 416-863-2653</p> <p>Pamela Huff Tel: 416-863-2958 Email: pamela.huff@blakes.com</p> <p>Linc Rogers Tel: 416-863-4168 Email: linc.rogers@blakes.com</p> <p>Chris Burr Tel: 416-863-3261 Email: chris.burr@blakes.com</p>

	<p>Aryo Shalviri Tel: 416-863-2962 Email: aryo.shalviri@blakes.com</p> <p>Caitlin McIntyre Tel: 416-863-4174 Email: caitlin.mcintyre@blakes.com</p> <p>Nancy Thompson, Law Clerk Tel: 416-863-2437 Email: nancy.thompson@blakes.com</p> <p>Counsel to the Monitor</p>
AND TO:	<p>BLUETREE ADVISORS INC. First Canada Place 100 King Street West Suite 5600 Toronto, ON M5X 1C9</p> <p>William E. Aziz Tel: 416-640-7122 Email: baziz@bluetreadvisors.com</p>
AND TO:	<p>STIKEMAN ELLIOTT LLP Commerce Court West 199 Bay Street, Suite 5300 Toronto, ON M5L 1B9 Fax: 416-947-0866</p> <p>David R. Byers Tel: 416-869-5697 Email: dbyers@stikeman.com</p> <p>Maria Konyukhova Tel: 416-869-5230 Email: mkonyukhova@stikeman.com</p> <p>Lesley Mercer Tel: 416-869-6859 Email: lmercer@stikeman.com</p> <p>Sanja Sopic Tel: 416-869-6825 Email: ssopic@stikeman.com</p> <p>Lawyers for British American Tobacco p.l.c., B.A.T. Industries p.l.c. and British American Tobacco (Investments) Limited</p>

AND TO:	<p>OSLER, HOSKIN & HARCOURT LLP 100 King Street West 1 First Canadian Place Suite 6100, P.O. Box 50 Toronto, ON M5X 1B8 Fax: 416-862-6666</p> <p>Deborah Glendinning Tel: 416-862-4714 Email: dglendinning@osler.com</p> <p>Marc Wasserman Tel: 416-862-4908 Email: mwasserman@osler.com</p> <p>John A. MacDonald Tel: 416-862-5672 Email: jmacdonald@osler.com</p> <p>Michael De Lellis Tel: 416-862-5997 Email: mdelellis@osler.com</p> <p>Lawyers for Imperial Tobacco Canada Limited</p>
AND TO:	<p>DAVIES WARD PHILLIPS & VINDEBERG LLP 155 Wellington Street West Toronto, ON M5V 3J7</p> <p>Jay Swartz Tel: 416-863-5520 Email: jswartz@dwpv.com</p> <p>Robin Schwill Tel: 416-863-5502 Email: rschwill@dwpv.com</p> <p>Natasha MacParland Tel: 416-863-5567 Email: nmacparland@dwpv.com</p> <p>Lawyers to FTI Consulting Canada Inc., in its capacity as Monitor of Imperial Tobacco Canada Limited and Imperial Tobacco Company Limited</p>

AND TO:	<p>FTI CONSULTING CANADA INC. 79 Wellington Street West Suite 2010, P.O. Box 104 Toronto, ON M4K 1G8 Fax: 416-649-8101</p> <p>Greg Watson Tel: 416-649-8077 Email: greg.watson@fticonsulting.com</p> <p>Paul Bishop Tel: 416-649-8053 Email: paul.bishop@fticonsulting.com</p> <p>Jeffrey Rosenberg Tel: 416-649-8073 Email: jeffrey.rosenberg@fticonsulting.com</p> <p>Kamran Hamidi Tel: 416-649-8068 Email: kamran.hamidi@fticonsulting.com</p> <p>Daliwar Azhar Tel: 416-649-8133 Email: dilawar.azhar@fticonsulting.com</p> <p>Monitor of Imperial Tobacco Canada Limited and Imperial Tobacco Company Limited</p>
AND TO:	<p>MCCARTHY TÉTRAULT LLP 66 Wellington Street West Suite 5300 TD Bank Tower, Box 48 Toronto, ON M5K 1E6 Fax: 416-868-0673</p> <p>James Gage Tel: 416-601-7539 Email: jgage@mccarthy.ca</p> <p>Heather Meredith Tel: 416-601-8342 Email: hmeredith@mccarthy.ca</p> <p>Paul Steep Tel: 416-601-7998 Email: psteep@mccarthy.ca</p>

	<p>Trevor Courtis Tel: 416-601-7643 Email: tcourtis@mccarthy.ca</p> <p>Sharon Kour Tel: 416-601-8305 Email: skour@mccarthy.ca</p> <p>Lawyers for Rothmans, Benson & Hedges, Inc.</p>
AND TO:	<p>TORYS LLP 79 Wellington St. West, Suite 3000 Box 270, TD Centre Toronto, ON M5K 1N2 Fax: 416-865-7380</p> <p>Scott Bomhof Tel: 416-865-7370 Email: sbomhof@torys.com</p> <p>Adam Slavens Tel: 416-865-7333 Email: aslavens@torys.com</p> <p>Lawyers for JT Canada LLC Inc. and PricewaterhouseCoopers Inc., in its capacity as receiver of JTI-Macdonald TM Corp.</p>
AND TO:	<p>PRICEWATERHOUSECOOPERS PwC Tower 18 York St., Suite 2600 Toronto, ON M5J 0B2 Fax: 416-814-3210</p> <p>Mica Arlette Tel: 416-814-5834 Email: mica.arlette@ca.pwc.com</p> <p>Receiver and Manager of JTI-Macdonald TM Corp.</p>
AND TO:	<p>BENNETT JONES 100 King Street West Suite 3400 Toronto, ON M5X 1A4 Fax: 416-863-1716</p> <p>Jeff Leon Tel: 416-777-7472 Email: leonj@bennettjones.com</p>

	<p>Mike Eizenga Tel: 416-777-4879 Email: eizengam@bennettjones.com</p> <p>Sean Zweig Tel: 416-777-6254 Email: zweigs@bennettjones.com</p> <p>Lawyers for the Provinces of British Columbia, Manitoba, New Brunswick, Nova Scotia, Prince Edward Island and Saskatchewan, in their capacities as plaintiffs in the HCCR Legislation claims</p>
AND TO:	<p>KSV ADVISORY INC. 150 King Street West Suite 2308, Box 42 Toronto, ON M5H 1J9 Fax: 416-932-6266</p> <p>Noah Goldstein Tel: 416-932-6207 Email: ngoldstein@ksvadvisory.com</p> <p>Bobby Kofman Email: bkofman@ksvadvisory.com</p> <p>Financial Advisory for the Provinces of British Columbia, Manitoba, New Brunswick, Nova Scotia, Prince Edward Island and Saskatchewan, in their capacities as plaintiffs in the HCCR Legislation claims</p>
AND TO:	<p>MINISTRY OF THE ATTORNEY GENERAL Crown Law Office - Civil 720 Bay Street, 8th Floor Toronto, ON M7A 2S9 Fax: 416-326-4181</p> <p>Jacqueline Wall Tel: 416-325-8435 Email: jacqueline.wall@ontario.ca</p> <p>Shahana Kar Tel: 416-314-2080 Email: shahana.kar@ontario.ca</p> <p>Edmund Huang Tel: 416-326-4161 Email: edmund.huang@ontario.ca</p>

	<p>Peter Entecott Tel: 416-325-8359 Email: peter.entecott@ontario.ca</p>
AND TO:	<p>FISHMAN FLANZ MELAND PAQUIN LLP 4100 – 1250 René-Lévesque Blvd. West Montreal, Quebec H3A 3H3</p> <p>Avram Fishman Email: afishman@ffmp.ca</p> <p>Mark E. Meland Tel: 514-932-4100 Email: mmeland@ffmp.ca</p> <p>Margo R. Siminovitch Email: msiminovitch@ffmp.ca</p> <p>Jason Dolman Email: jdolman@ffmp.ca</p> <p>Nicolas Brochu Email: nbrochu@ffmp.ca</p> <p>Tina Silverstein Email: tsilverstein@ffmp.ca</p> <p>CHAITONS LLP 5000 Yonge Street 10th Floor Toronto, ON M2N 7E9</p> <p>Harvey Chaiton Tel: 416-218-1129 Email: harvey@chaitons.com</p> <p>George Benchetrit Tel: 416-218-1141 Email: george@chaitons.com</p> <p>Lawyers for Conseil québécois sur le tabac et la santé, Jean-Yves Blais and Cécilia Létourneau (Quebec Class Action Plaintiffs)</p>
AND TO:	<p>JENSEN SHAWA SOLOMON DUGID HAWKES LLP 800, 304 – 8 Avenue SW Calgary, AB T2P 1C2 Fax: 403-571-1528</p>

	<p>Carsten Jensen, QC Tel: 403-571-1526 Email: jensenc@jssbarristers.ca</p> <p>Sabri Shawa, QC Tel: 403-571-1527 Email: shawas@jssbarristers.ca</p> <p>Stacy Petriuk Tel: 403-571-1523 Email: petriuks@jssbarristers.ca</p> <p>PALIARE ROLAND ROSENBERG ROTHSTEIN LLP 155 Wellington Street West, 35th Floor Toronto, ON M5V 3H1</p> <p>Kenneth T. Rosenberg Email: ken.rosenberg@paliareroland.com</p> <p>Lilly Harmer Email: lily.harmer@paliareroland.com</p> <p>Massimo (Max) Starnino Email: max.starnino@paliareroland.com</p> <p>Danielle Glatt Email: Danielle.glatt@paliareroland.com</p> <p>Elizabeth Rathbone Tel: 416-646-4300 Email: elizabeth.rathbone@paliareroland.com</p> <p>Lawyers for Her Majesty the Queen in Right of Alberta</p>
<p>AND TO:</p>	<p>STEWART MCKELVEY 1959 Upper Water Street, Suite 900 PO Box 997 Halifax, NS B3J 2X2 Fax: 902-420-1417</p> <p>Robert G. MacKeigan, Q.C. Tel: 902-444-1771 Email: robbie@stewartmckelvey.com</p> <p>Lawyers for Sobeys Capital Incorporated</p>

AND TO:	<p>CASSELS BROCK & BLACKWELL LLP 2100 Scotia Plaza 40 King Street West Toronto, ON M5H 3C2</p> <p>Shayne Kukulowicz Tel: 416-860-6463 Fax: 416-640-3176 Email: skukulowicz@casselsbrock.com</p> <p>Jane Dietrich Tel: 416-860-5223 Fax: 416-640-3144 Email: jdietrich@casselsbrock.com</p> <p>Joseph Bellissimo Tel: 416-860-6572 Fax: 416-642-7150 Email: jbellissimo@casselsbrock.com</p> <p>Monique Sassi Tel: 416-860-6886 Fax: 416-640-3005 Email: msassi@casselsbrock.com</p> <p>Lawyers for Ernst & Young Inc, in its capacity as court-appointed monitor of Rothmans, Benson & Hedges, Inc.</p>
AND TO:	<p>ERNST & YOUNG INC. Ernst & Young Tower 100 Adelaide Street West P.O. Box 1 Toronto, ON M5H 0B3</p> <p>Murray A. McDonald Tel: 416-943-3016 Email: murray.a.mcdonald@ca.ey.com</p> <p>Brent Beekenkamp Tel: 416-943-2652 Email: brent.r.beekenkamp@ca.ey.com</p> <p>Edmund Yau Tel: 416-943-2177 Email: edmund.yau@ca.ey.com</p> <p>Monitor of Rothmans, Benson & Hedges, Inc.</p>

AND TO:	<p>GOWLING WLG (CANADA) LLP 1 First Canadian Place 100 King Street West, Suite 1600 Toronto, ON M5X 1G5 Fax: 416-862-7661</p> <p>Derrick Tay Tel: 416-369-7330 Email: derrick.tay@gowlingwlg.com</p> <p>Clifton Prophet Tel: 416-862-3509 Email: clifton.prophet@gowlingwlg.com</p> <p>Steven Sofer Tel: 416-369-7240 Email: steven.sofer@gowlingwlg.com</p> <p>Lawyers for Philip Morris International Inc.</p>
AND TO:	<p>PALIARE ROLAD ROSENBERG ROTHSTEIN LLP 155 Wellington Street West, 35th Floor Toronto, ON M5V 3H1</p> <p>Kenneth T. Rosenberg Email: ken.rosenberg@paliareroland.com</p> <p>Lilly Harmer Email: lily.harmer@paliareroland.com</p> <p>Massimo (Max) Starnino Email: max.starnino@paliareroland.com</p> <p>Danielle Glatt Email: Danielle.glatt@paliareroland.com</p> <p>Elizabeth Rathbone Tel: 416-646-4300 Email: elizabeth.rathbone@paliareroland.com</p> <p>ROEBOTHAN MCKAY MARSHALL Paramount Building 35 Harvey Road, 5th Floor St. John's NL A1C 3Y7 Fax: 709-753-5221</p>

	<p>Glenda Best Tel: 705-576-2255 Email: gbest@wrmlaw.com</p> <p>Lawyers for Her Majesty the Queen in Right of Newfoundland</p>
AND TO:	<p>WESTROCK COMPANY OF CANADA CORP. 15400 Sherbrooke Street East Montreal, Quebec H1A 3S2</p> <p>Dean Jones Tel: 514-642-9251 Email: dean.jones@westrock.com</p>
AND TO	<p>MINISTRY OF THE ATTORNEY GENERAL Civil Law Division, FSCO Branch 5160 Yonge Street, 17th Floor Toronto, ON M2N 6L9 Fax: 416-590-7556</p> <p>Michael Scott Tel: 416-226-7834 Email: michael.scott@fSCO.gov.on.ca</p> <p>Lawyers for the Superintendent of Financial Services</p>
AND TO	<p>MERCHANT LAW GROUP LLP c/o #400 – 333 Adelaide St. West Toronto, ON M5V 1R5 Fax: 613-366-2793</p> <p>Evatt Merchant, QC Tel: 613-366-2795 Email: emerchant@merchantlaw.com</p> <p>Chris Simoes Email: csimoes@merchantlaw.com</p> <p>Lawyers for the Class Action Plaintiffs (MLG)</p>
AND TO:	<p>CHERNOS FLAHERTY SVONKIN LLP 220 Bay Street, Suite 700 Toronto, ON M5J 2W4 Fax: 647-725-5440</p> <p>Patrick Flaherty Tel: 416-855-0403 Email: pflaherty@cfscounsel.com</p>

	<p>Bryan D. McLeese Tel: 416-855-0414 Email: bmcleese@cfscounsel.com</p> <p>STOCKWOODS LLP 77 King Street West, Suite 4130 TD North Tower, P.O. Box 140, TD Centre Toronto, ON M5K 1H1 Fax: 416-593-9345</p> <p>Brian Gover Tel: 416-593-2489 Email: briang@stockwoods.ca</p> <p>Justin Safayeni Tel: 416-593-3494 Email: justins@stockwoods.ca</p> <p>Lawyers for R.J. Reynolds Tobacco Company and R.J. Reynolds tobacco International Inc.</p>
AND TO:	<p>BRAUTI THORNING LLP 161 Bay Street, Suite 2900 Toronto, ON M5J 2S1</p> <p>Steven Weisz Tel: 416-304-6522 Email: sweisz@btlegal.ca</p> <p>INCH HAMMOND PROFESSIONAL CORPORATION 1 King Street West, Suite 500 Hamilton, ON L8P 4X8</p> <p>Amanda McInnis Tel: 905-525-0031 Email: amcinnis@inchlaw.com</p> <p>Lawyer for Grand River Enterprises Six Nations Ltd.</p>
AND TO:	<p>STROSBERG SASSO SUTTS LLP 1561 Ouellette Avenue Windsor, ON M8X 1K5 Fax: 866-316-5308</p> <p>Harvey T. Strosberg Tel: 519-561-6228 Email: harvey@strosbergco.com</p>

	<p>William V. Sasso Tel: 519-561-6222 Email: wvs@strosbergco.com</p> <p>David Robins Tel: 519-561-6215 Email: drobins@strosbergco.com</p> <p>Lawyers for The Ontario Flue-Cured Tobacco Growers' Marketing Board, plaintiffs in Ontario Superior Court of Justice Court File No. 1056/10CP (Class Proceedings)</p>
AND TO:	<p>ATTORNEY GENERAL OF CANADA Department of Justice Canada Ontario Regional Office, Tax Law Section 120 Adelaide Street West, Suite 400 Toronto, ON M5H 1T1 Fax: 416-973-0810</p> <p>Diane Winters, General Counsel Tel: 647-256-7459 Email: diane.winters@justice.gc.ca</p> <p>Lawyers for the Minister of National Revenue</p>
AND TO:	<p>LAX O'SULLIVAN LISUS GOTTLIEB LLP Suite 2750, 145 King Street West Toronto, ON M5H 1J8</p> <p>Jonathan Lisus Tel: 416-598-7873 Email: jlisus@lolg.ca</p> <p>Matthew Gottlieb Tel: 416-644-5353 Email: mgottlieb@lolg.ca</p> <p>Nadia Campion Tel: 416-642-3134 Email: ncampion@lolg.ca</p> <p>Andrew Winton Tel: 416-644-5342 Email: awinton@lolg.ca</p> <p>Lawyers for the Court-Appointed Mediator</p>

AND TO:	<p>FOGLER, RUBINOFF LLP Suite 3000, P.O. Box 95 Toronto-Dominion Centre 77 King Street West Toronto, ON M5K 1G8 Fax: 416-941-8852</p> <p>Vern W. DaRe Tel: 416-941-8842 Email: vdare@foglers.com</p> <p>CANADIAN CANCER SOCIETY 116 Albert Street, Suite 500 Ottawa, ON K1P 5G3 Fax: 613-565-2278</p> <p>Robert Cunningham Tel: 613-565-2522 ext. 4981 Email: rcunning@cancer.ca</p> <p>Lawyers for Canadian Cancer Society</p>
AND TO:	<p>VAILLANCOURT & CLOCCHIATTI 2600, boul. Laurier, bur. 760 Quebec, Quebec G1V 4T3 Fax: 416-643-050-</p> <p>Marc-André Maltais Tel: 418-657-8702, ext. 3018 Email: marc-andre.maltais@retraitequebec.gouv.qc.ca</p> <p>Lawyers for Retraite Québec</p>

Email Service List

rthornton@tgf.ca; lwilliams@tgf.ca; rkennedy@tgf.ca; rbengino@tgf.ca; mgrossell@tgf.ca;
jfinnigan@tgf.ca; rmanea@tgf.ca; paucasey@deloitte.ca; waleung@deloitte.ca;
jnadon@deloitte.ca; philreynolds@deloitte.ca; pamelahuff@blakes.com;
linc.rogers@blakes.com; chris.burr@blakes.com; aryo.shalviri@blakes.com;
caitlin.mcintyre@blakes.com; ilia.kravtsov@blakes.com; nancy.thompson@blakes.com;
baziz@bluetreadvisors.com; dbyers@stikeman.com; mkonyukhova@stikeman.com;
lmercer@stikeman.com; ssopic@stikeman.com; dglendinning@osler.com;
mwasserman@osler.com; jmacdonald@osler.com; mdelellis@osler.com; wmalik@osler.com;
jswartz@dwpv.com; rschwill@dwpv.com; nmacparland@dwpv.com; szafman@dwpv.com;
nrenner@dwpv.com; tbarbiero@dwpv.com; greg.watson@fticonsulting.com;
paul.bishop@fticonsulting.com; jeffrey.rosenberg@fticonsulting.com;
kamran.hamidi@fticonsulting.com; dilawar.azhar@fticonsulting.com; jgage@mccarthy.ca;
hmeredith@mccarthy.ca; psteep@mccarthy.ca; tcourtis@mccarthy.ca; skour@mccarthy.ca;
kfick@mccarthy.ca; sbomhof@torys.com; aslavens@torys.com; mica.arlette@ca.pwc.com;
leonj@bennettjones.com; eizengam@bennettjones.com; zweigs@bennettjones.com;
ngoldstein@ksvadvisory.com; bkofman@ksvadvisory.com; jacqueline.wall@ontario.ca;
shahana.kar@ontario.ca; edmund.huang@ontario.ca; peter.entecott@ontario.ca;
afishman@ffmp.ca; mmeland@ffmp.ca; msiminovitch@ffmp.ca; jdolman@ffmp.ca;
nbrochu@ffmp.ca; tsilverstein@ffmp.ca; harvey@chaitons.com; george@chaitons.com;
jensenc@jssbarristers.ca; shawas@jssbarristers.ca; petriuks@jssbarristers.ca;
ken.rosenberg@paliareroland.com; lily.harmer@paliareroland.com;
max.starnino@paliareroland.com; danielle.glatt@paliareroland.com;
elizabeth.rathbone@paliareroland.com; karen.lam@paliareroland.com;
sarita.sanasie@paliareroland.com; natalia.botelho@paliareroland.com;
robbie@stewartmckelvey.com; skukulowicz@casselsbrock.com; jdietrich@casselsbrock.com;
jbellissimo@casselsbrock.com; msassi@casselsbrock.com; murray.a.mcdonald@ca.ey.com;
brent.r.beekenkamp@ca.ey.com; edmund.yau@ca.ey.com; derrick.tay@gowlingwlg.com;
clifton.prophet@gowlingwlg.com; steven.sofer@gowlingwlg.com; gbest@wrmmlaw.com;
dean.jones@westrock.com; michael.scott@fsco.gov.on.ca; emerchant@merchantlaw.com;
csimoes@merchantlaw.com; jtim.ccaa@merchantlaw.com; pflaherty@cfscounsel.com;
bmcleese@cfscounsel.com; briang@stockwoods.ca; justins@stockwoods.ca; sweisz@btlegal.ca;
amcinnis@inchlaw.com; harvey@strosbergco.com; wvs@strosbergco.com;
drobins@strosbergco.com; diane.winters@justice.gc.ca; jlisus@lolg.ca; mgottlieb@lolg.ca;
ncampion@lolg.ca; awinton@lolg.ca; vdare@foglers.com; rcunning@cancer.ca;
marc-andre.maltais@retraitequebec.gouv.qc.ca;

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

AND IN THE MATTER OF A PLAN OF COMPROMISE OR ARRANGEMENT OF **JTI-MACDONALD CORP.**

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

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

Proceedings commenced at Toronto

**NOTICE OF MOTION
(Re: Stay Extension and Cash Collateral)
(Returnable on June 26, 2019)**

Thornton Grout Finnigan LLP
100 Wellington Street West
Suite 3200
TD West Tower, Toronto-Dominion Centre
Toronto, ON M5K 1K7

Robert I. Thornton (LSO# 24266B)

Email: rthornton@tgf.ca

Leanne M. Williams (LSO# 41877E)

Email: lwilliams@tgf.ca

Rebecca L. Kennedy (LSO# 61146S)

Email: rkennedy@tgf.ca

Tel: 416-304-1616

Fax: 416-304-1313

Lawyers for the Applicant

TAB 2

**ONTARIO
SUPERIOR COURT OF JUSTICE
COMMERCIAL LIST**

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

AND IN THE MATTER OF A PLAN OF COMPROMISE OR ARRANGEMENT
OF JTI-MACDONALD CORP.

Applicant

**AFFIDAVIT OF WILLIAM E. AZIZ
(sworn June 12, 2019)**

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

1. Pursuant to the Initial Order (as amended and restated, the “**Initial Order**”) granted by the Ontario Superior Court of Justice (Commercial List) (the “**Court**”) on March 8, 2019 pursuant to the *Companies' Creditors Arrangement Act* (“**CCAA**”) in the proceedings initiated by JTI-Macdonald Corp. (the “**Applicant**” or “**JTIM**”), the Court approved my appointment as the Chief Restructuring Officer (“**CRO**”) of JTIM. As such I 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. All capitalized terms used herein and not otherwise defined have the meanings set forth in the Initial Order.

INTRODUCTION

3. This affidavit is sworn in support of a motion for an Order:

(a) extending the Stay Period to December 16, 2019; and

(b) authorizing JTIM to increase the cash collateral amount deposited with Citibank, N.A., Canada Branch (“**Citibank**”) by \$3 million.

4. The Applicant, through its predecessor corporations and other related business entities, has been a manufacturer of tobacco products in Canada since 1858. JTIM is a private company, headquartered in Mississauga, Ontario and is the third largest tobacco company defendant in the Quebec Class Actions based on volume of sales in Canada.

5. As further described in the affidavit of Robert McMaster sworn on March 8, 2019 in support of the Initial Order (the “**Initial Affidavit**”), on March 1, 2019, the Quebec Court of Appeal released its judgment (the “**QCA Judgment**”), which substantially upheld the judgment of Mr. Justice Riordan of the Quebec Superior Court released on June 1, 2015 (the “**2015 Judgment**”). The QCA Judgment ordered JTIM and the other defendants to pay damages to the plaintiffs in the Quebec Class Actions (the “**QCAPs**”) in the approximate amount of \$13.5 billion (including interest and an additional indemnity) on a solidary basis.

6. Additionally, and as also further described in the Initial Affidavit, the Applicant is the subject of significant health care cost recovery litigation (the “**HCCR Actions**”) by each of the ten provinces. Although the total potential quantum of damages claimed in the HCCR Actions is not yet known, I am advised by counsel to the Applicant 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 detailed in expert reports.

7. As a result of the QCA Judgment and the HCCR Actions, the Applicant sought the protections afforded under the CCAA in order to (i) maintain the *status quo* of its operations, (ii) preserve going concern value, and (iii) provide the Applicant with a period of stability within which to attempt to find a collective resolution to all of the claims being made against it. But for the QCA Judgment and the other contingent litigation claims, the Applicant is a profitable and viable corporation.

8. On March 8, 2019, the Applicant was granted protection from its creditors under the CCAA pursuant to the Initial Order. A copy of the Initial Order is attached as **Exhibit “A”**.

9. Pursuant to the Initial Order, Deloitte Restructuring Inc. was appointed as the Monitor (the “**Monitor**”) of the Applicant in these CCAA proceedings. Additionally, the Honourable Warren K. Winkler, Q.C. was appointed as an officer of the Court and a neutral third party (the “**Court-Appointed Mediator**”) to mediate a global settlement of the Tobacco Claims against the Applicant pursuant to the Initial Order.

10. The Initial Order provides for a Court-ordered stay of proceedings (the “**Stay of Proceedings**”), which is currently set to expire on June 28, 2019 pursuant to an Order of the Court dated April 5, 2019.

11. On March 12, 2019 and March 22, 2019, Imperial Tobacco Canada Limited and Imperial Tobacco Company Limited (together, “**Imperial**”) and Rothmans, Benson & Hedges Inc. (“**RBH**”) each filed for creditor protection under the CCAA, respectively. Imperial and RBH are defendants under both the QCA Judgment and the HCCR Actions. I am advised by the Applicant’s counsel that there is currently a stay of proceedings against all three defendants under the QCA Judgment, their affiliates and all of the defendants under the HCCR Actions.

ACTIVITIES SINCE INITIAL ORDER

12. I am advised by counsel to the Applicant that, since the date of the Initial Order:

(a) external legal counsel has continued discussions with counsel to:

(i) the Province of Ontario;

(ii) the consortium (the “**Consortium**”) of the Provinces of British Columbia, Manitoba, New Brunswick, Nova Scotia, Prince Edward Island and Saskatchewan;

(iii) the Provinces of Alberta and Newfoundland and Labrador; and

(iv) the QCAPs,

in an attempt to commence resolution discussions in respect of their respective claims against the Applicant;

(b) external legal counsel and the Monitor have been communicating with the Court-Appointed Mediator from time to time at the request of the Court-Appointed Mediator;

(c) JTIM, along with Imperial and RBH, are in the process of negotiating and finalizing a form of non-disclosure agreement that will permit stakeholders to access requested commercially sensitive and confidential information; and

(d) the Applicant’s external counsel has provided regular updates to the Monitor and its counsel in respect of such discussions, to the extent that the Monitor did not participate directly in such discussions.

Fee Disclosure Order

13. In response to a motion brought by the QCAPs on May 14, 2019, the Court granted an Order (the “**Fee Disclosure Order**”) requiring the Monitor to provide to counsel to the QCAPs, and upon written request, any other parties on the Service List, the fees and disbursements paid to each of the Monitor, the Monitor’s counsel, the Applicant’s counsel and any financial advisor of the Applicant retained in connection with the CCAA proceedings, except for any financial advisor in respect of whose work the Applicant properly asserts solicitor-client, settlement, litigation or other privilege.

14. A substantially similar order was granted on the same date in respect of each of Imperial and RBH.

15. I am advised by the Applicant’s counsel that the Monitor has received written requests from, and has provided such information to, each of counsel for the QCAPs, Consortium, the Province of Ontario, and the Provinces of Alberta and Newfoundland and Labrador.

Communication Protocol

16. On May 24, 2019, Justice McEwen granted an Endorsement approving a communication and confidentiality protocol (the “**Communication Protocol**”) between the Court-Appointed Mediator and the Court in respect of each of JTIM, Imperial and RBH’s CCAA proceedings. The Communication Protocol provides that the Court and the Court-Appointed Mediator may have direct confidential communications between one another to discuss the conduct of the mediation process and the manner in which it will be coordinated within the CCAA proceedings. There are certain restrictions on what can be disclosed between the Court and the Court-Appointed Mediator,

including: (i) how the Court will decide any matter before it for determination; and (ii) the negotiating positions or confidential information of the parties in the mediation process.

17. Copies of all orders and endorsements granted in these CCAA Proceedings, including the Fee Disclosure Order and the Communication Protocol, are available on the Monitor's website accessible at: www.insolvencies.deloitte.ca/en-ca/JTIM.

Application of security deposit held by JTI-Macdonald TM Corp.

18. As described in the Initial Affidavit, JTIM licenses or has the right to use trademarks owned by JTI-Macdonald TM Corp. ("**TM**") pursuant to the Trademark License Agreement dated October 8, 1999 (as amended, the "**Trademark Agreement**"). Under the Trademark Agreement, JTIM is required to pay monthly royalty payments to TM as consideration for the use of TM's trademarks. Pursuant to the Endorsement of Justice McEwen granted on March 19, 2019 (the "**March Endorsement**"), such payments have been suspended pending further order of the Court.

19. As also set out in the Initial Affidavit, in accordance with the Trademark Agreement and as a condition to the forbearance by TM of exercising enforcement rights against JTIM prior to its commencement of these proceedings, JTIM was required to provide a deposit to TM (acting through its privately appointed receiver, PricewaterhouseCoopers Inc. (the "**TM Receiver**")) in an amount equal to 1.5 times the average monthly payment under the Trademark Agreement against which outstanding liabilities could be set-off. As of the date of the Initial Order, the deposit held by TM was \$1.33 million (the "**Deposit**").

20. Since the date of the March Endorsement, JTIM has not been paying the royalty payments owing to TM under the Trademark Agreement and such amounts have been accruing. I am advised

by Robert McMaster, Director, Taxation and Treasury for JTIM that, as of May 31, 2019, the amount payable to TM (including pre-filing royalties) exceeded \$2.44 million.

21. Accordingly, as permitted under the Trademark Agreement and the forbearance arrangements between the TM Receiver and the Applicant, the TM Receiver advised the Applicant and the Monitor that it intended to exercise its rights of set-off against the Deposit. Accordingly, the TM Receiver has applied the Deposit in reduction of the outstanding liabilities owing from JTIM to TM under the Trademark Agreement, which was applied first against the outstanding royalty accrual related to the pre-filing period.

Mediation Process

22. The Applicant intends to follow the mediation timetable and procedure as recently set out by the Court-Appointed Mediator.

CITIBANK CASH COLLATERAL

23. As described in the Initial Affidavit, JTIM maintains seven bank accounts with Citibank. JTIM pledged \$8 million in respect of certain cash management services that require the extension of credit by Citibank, including automatic clearing house (“ACH”) transactions and credits and debits initiated by JTIM (the “**Citibank Cash Collateral**”).

24. The types of ACH transactions that JTIM initiates in its ordinary course of business are: (i) payments (i.e., payroll related or other vendor payments); and (ii) direct debits (i.e., preauthorized debits that JTIM collects from customers). On a daily basis, these transactions may lead to potential financial exposure for Citibank as a result of, respectively, (i) a lack of sufficient funds in the Applicant’s bank account, resulting in Citibank advancing the funds to complete the

transaction; and (ii) a customer recalling the debit payment after JTIM has already expended the funds for other purposes. I am advised by Robert McMaster that, in response to the 2015 Judgment and in accordance with Citibank's policies, Citibank required JTIM to pledge the Citibank Cash Collateral to protect Citibank for any potential exposure.

25. I am further advised by Robert McMaster that the quantity of ACH transactions has increased in recent years as a result of increased pricing, increased excise taxes and increased sales direct to retail and associated provincial tobacco taxes payable. As a result, Citibank has requested that the Applicant increase the Citibank Cash Collateral by \$3 million. Based on the Applicant's year-to-date activity, there are certain dates when the ACH transactions exceed the existing amount of the Citibank Cash Collateral by approximately \$2.5 million. Accordingly, the requested increase is to protect Citibank from possible exposure and, in my opinion, is a common request from credit providers and is reasonable in the circumstances.

26. Paragraph 48(e) of the Initial Order provides that the Charges do not rank in priority to cash collateral "deposited with a financial institution after the date of [the Initial Order] with either the consent of the Monitor or pursuant to further order of the Court." Although the Monitor consents to this request, given the quantum, the Applicant thought it prudent to seek an Order authorizing it to increase the Citibank Cash Collateral. It is imperative that JTIM remains in good standing with Citibank, its main banking service provider.

EXTENSION OF THE STAY OF PROCEEDINGS

27. The Applicant seeks an extension of the Stay Period until December 16, 2019. This date was informed by my discussions with the Court-Appointed Mediator on this point. It is my understanding from external counsel that Imperial and RBH are also seeking an extension of their

respective stay periods until the same date. The Applicant believes that coordinating the stay periods at this stage in the proceedings is efficient and cost-effective.

28. JTIM, with the assistance of the Monitor, has prepared a forecast of the projected cash flows (the “**Cash Flow Statement**”) of JTIM for the week commencing June 17, 2019 to the week ending December 20, 2019. I understand that the Cash Flow Statement will be appended to the Monitor’s Fourth Report to the Court, to be filed. The Cash Flow Statement demonstrates that JTIM has sufficient liquidity to operate its business and meet its obligations during the proposed extension of the Stay of Proceedings.

29. Extending the Stay Period is required to enable the Applicant to continue to operate in the ordinary course while engaging in discussions to seek a collective resolution of the pending litigation claims as against the Applicant. The Applicant has acted in good faith and with due diligence during the course of its CCAA proceedings since the date of the Initial Order.

PURPOSE

30. This affidavit is sworn in support of JTIM’s motion for the extension of the Stay Period to December 16, 2019 and authorization to increase the Citibank Cash Collateral and for no other or improper purpose.

SWORN BEFORE ME at the City of Toronto, Province of Ontario, on June 12, 2019.


Commissioner for Taking Affidavits




WILLIAM E. AZIZ

EXHIBIT “A”

This is Exhibit "A" referred to in the
Affidavit of William E. Aziz sworn before me
this 12th day of May, 2019.



A Commissioner for taking affidavits

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

THE HONOURABLE)
JUSTICE MCEWEN)
)
)
)

FRIDAY, THE 8TH
DAY OF MARCH, 2019



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

AND IN THE MATTER OF A PLAN OF COMPROMISE OR ARRANGEMENT OF **JTI-MACDONALD CORP.**

SECOND AMENDED AND RESTATED INITIAL ORDER

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

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

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

SERVICE

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

APPLICATION

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

PLAN OF ARRANGEMENT

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

DEFINITIONS

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

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

- (c) **“Quebec Class Actions”** means the proceedings in the Quebec Superior Court and the Quebec Court of Appeal in (i) *Cécilia Létourneau et al. v. JTI-Macdonald Corp., Imperial Tobacco Canada Limited and Rothmans, Benson & Hedges Inc.* and (ii) *Conseil Québécois sur le Tabac et la Santé and Jean-Yves Blais v. JTI-Macdonald Corp., Imperial Tobacco Canada Limited and Rothmans, Benson & Hedges Inc.* and all decisions and orders in such proceedings;
- (d) **“Sales & Excise Taxes”** means all goods and services, harmonized sales or other applicable federal, provincial or territorial sales taxes, and all federal excise taxes and customs and import duties and all federal, provincial and territorial tobacco taxes;
- (e) **“Tobacco Claim”** means any right or claim (including, without limitation, a claim for contribution or indemnity) of any Person against or in respect of the Applicant or any member of the JTI Group that has been advanced (including without limitation, in the Pending Litigation), that could have been advanced or that could be advanced, and whether such right or claim is on such Person’s own account, on behalf of another Person, as a dependent of another Person or on behalf of a certified or proposed class or made or advanced as a government body or agency, insurer, employer or otherwise under or in connection with:
- (i) applicable law, to recover damages in respect of the development, manufacture, production, marketing, advertising, distribution, purchase or sale of Tobacco Products (as defined below), the use of or exposure to Tobacco Products or any representation in respect of Tobacco Products in Canada or, in the case of the Applicant, anywhere else in the world; or

- (ii) the HCCR Legislation (as defined in the McMaster Affidavit),
excluding any right or claim of a supplier relating to goods or services supplied to, or the use of leased or licensed property by, the Applicant or any member of the JTI Group; and
- (f) **“Tobacco Products”** means tobacco or any product made or derived from tobacco or containing nicotine that is intended for human consumption, including any component, part, or accessory of or used in connection with a tobacco product, including cigarettes, cigarette tobacco, roll your own tobacco, smokeless tobacco, electronic cigarettes, vaping liquids and devices, heat-not-burn tobacco, and any other tobacco or nicotine delivery systems and shall include materials, products and by-products derived from or resulting from the use of any tobacco products.

POSSESSION OF PROPERTY AND OPERATIONS

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

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

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

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

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

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

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

- (a) all expenses and capital expenditures reasonably necessary for the preservation of the Property or the Business including, without limitation, payments on account of insurance (including directors and officers insurance), maintenance and security services;
- (b) capital expenditures other than as permitted in clause (a) above to replace or supplement the Property or that are otherwise of benefit to the Business, provided that Monitor approval is obtained for any single such expenditure in excess of \$1 million or an aggregate of such expenditures in a calendar year in excess of \$10 million;
- (c) all interest due and payable on the Applicant's secured obligations; and
- (d) payment for goods or services supplied or to be supplied to the Applicant (including the payment of any royalties or shared services).

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

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

- (a) any statutory deemed trust amounts in favour of the Crown in right of Canada or of any Province thereof or any other taxation authority which are required to be deducted from employees' wages, including, without limitation, amounts in respect of (i) employment insurance, (ii) Canada Pension Plan, (iii) Quebec Pension Plan, and (iv) income taxes;
- (b) all Sales & Excise Taxes required to be remitted by the Applicant in connection with the Business; and

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

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

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

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

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

RESTRUCTURING

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

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

- (b) terminate the employment of such of its employees or temporarily lay off such of its employees as it deems appropriate;
- (c) pursue all avenues of refinancing of the Business or Property, in whole or part, subject to prior approval of this Court being obtained before any material refinancing; and
- (d) pursue all avenues to resolve any of the Tobacco Claims, in whole or in part,

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

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

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

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

STAY OF PROCEEDINGS

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

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

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

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

NO EXERCISE OF RIGHTS OR REMEDIES

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

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

NO INTERFERENCE WITH RIGHTS

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

CONTINUATION OF SERVICES

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

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

NON-DEROGATION OF RIGHTS

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

SALES AND EXCISE TAX CHARGE

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

PROCEEDINGS AGAINST DIRECTORS AND OFFICERS

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

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

DIRECTORS' AND OFFICERS' INDEMNIFICATION AND CHARGE

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

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

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

CRO APPOINTMENT

30. **THIS COURT ORDERS** that

- (a) the agreement dated as of April 23, 2018 pursuant to which the Applicant has engaged BlueTree Advisors Inc. (“**BlueTree**”) to provide the services of William E. Aziz to act as chief restructuring officer to the Applicant (the “**CRO**”), a copy of which is attached as Confidential Exhibit “1” to the McMaster Affidavit (the “**CRO Engagement Letter**”), and the appointment of the CRO pursuant to the terms thereof is hereby approved, including, without limitation, the payment of the fees and expenses contemplated thereby;
- (b) the CRO shall not be or be deemed to be a director or employee of the Applicant;
- (c) neither BlueTree nor the CRO shall, as a result of the performance of their respective obligations and services in accordance with the terms of the CRO Engagement Letter, be deemed to be in Possession (as defined below) of any of the Property within the meaning of any Environmental Legislation (as defined below);
- (d) BlueTree and the CRO shall not have any liability with respect to any losses, claims, damages or liabilities, of any nature or kind, to any Person from and after the date of this Order except to the extent such losses, claims, damages or liabilities result from the negligence or wilful misconduct on the part of BlueTree or the CRO;
- (e) no action or other proceeding shall be commenced directly, or by way of counterclaim, third party claim or otherwise, against or in respect of BlueTree and the CRO, and all rights and remedies of any Person against or in respect of them are hereby stayed and suspended, except with the written consent of the CRO or with leave of this Court on notice to the Applicant, the Monitor and the CRO. Notice of any such motion seeking leave of this Court shall be served upon the Applicant, the Monitor and the CRO at least seven (7) days prior to the return date of any such motion for leave; and

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

APPOINTMENT OF MONITOR

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

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

- (a) monitor the Applicant's receipts and disbursements;
- (b) report to this Court at such times and intervals as the Monitor may deem appropriate with respect to matters relating to the Property, the Business, and such other matters as may be relevant to the proceedings herein;
- (c) advise the Applicant in its preparation of the Applicant's cash flow statements, which information shall be reviewed with the Monitor;
- (d) advise the Applicant in its development of the Plan and any amendments to the Plan;

- (e) assist the Applicant, to the extent required by the Applicant, with the holding and administering of creditors' or shareholders' meetings for voting on the Plan;
- (f) have full and complete access to the Property, including the premises, books, records, data, including data in electronic form, and other financial documents of the Applicant, to the extent that is necessary to adequately assess the Applicant's business and financial affairs or to perform its duties arising under this Order;
- (g) be at liberty to engage independent legal counsel or such other persons as the Monitor deems necessary or advisable respecting the exercise of its powers and performance of its obligations under this Order;
- (h) assist the Applicant, to the extent required by the Applicant, in its efforts to explore the potential for a resolution of any of the Tobacco Claims;
- (i) consult with the Court-Appointed Mediator in connection with the Court-Appointed Mediator's mandate, including in relation to any negotiations to settle any Tobacco Claims and the development of the Plan; and
- (j) perform such other duties as are required by this Order or by this Court from time to time.

33. **THIS COURT ORDERS** that the Monitor shall not take possession of the Property and shall take no part whatsoever in the management or supervision of the management of the Business and shall not, by fulfilling its obligations hereunder, be deemed to have taken or maintained possession or control of the Business or Property, or any part thereof.

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

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

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

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

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

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

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

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

COURT-APPOINTED MEDIATOR

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

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

- (a) Adopt processes which, in his discretion, he considers appropriate to facilitate negotiation of a global settlement;
- (b) Retain independent legal counsel and such other advisors and persons as the Court-Appointed Mediator considers necessary or desirable to assist him in carrying out his mandate;
- (c) Consult with all Persons with Tobacco Claims (“**Tobacco Claimants**”), the Monitor, the Applicant, the CRO, the Co-Defendants (as defined in the Comeback Affidavit), other creditors and stakeholders of the Applicant and/or the Co-Defendants and any other persons the Court-Appointed Mediator considers appropriate;
- (d) Accept a court appointment of similar nature in any proceedings under the CCAA commenced by a company that is a co-defendant or respondent with the Applicant or the Co-Defendants in any action brought by one or more Tobacco Claimants, including the Pending Litigation; and,
- (e) Apply to this Court for advice and directions as, in his discretion, the Court-Appointed Mediator deems necessary.

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

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

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

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

VALIDITY AND PRIORITY OF CHARGES CREATED BY THIS ORDER

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

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

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

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

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

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

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

- (b) statutory super-priority deemed trusts and liens for unpaid employee source deductions;
- (c) deemed trusts and liens for any unpaid pension contribution or deficit with respect to the Pension Plans, but only to the extent that any such deemed trusts and liens are statutory super-priority deemed trusts and liens afforded priority by statute over all pre-existing Encumbrances granted or created by contract;
- (d) liens for unpaid municipal property taxes or utilities that are given first priority over other liens by statute; and
- (e) cash collateral (i) deposited with a financial institution as at the date of this Order, or (ii) deposited with a financial institution after the date of this Order with either the consent of the Monitor or pursuant to further order of the Court.

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

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

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

- (a) the creation of the Charges shall not create or be deemed to constitute a breach by the Applicant of any Agreement to which it is a party;
- (b) none of the Chargees shall have any liability to any Person whatsoever as a result of any breach of any Agreement caused by or resulting from the creation of the Charges; and
- (c) the payments made by the Applicant pursuant to this Order and the granting of the Charges, do not and will not constitute preferences, fraudulent conveyances, transfers at undervalue, oppressive conduct, or other challengeable or voidable transactions under any applicable law.

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

SERVICE AND NOTICE

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

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

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

54. **THIS COURT ORDERS** that if the service or distribution of documents in accordance with the Guide is not practicable, the Applicant and the Monitor are at liberty to serve or distribute this Order, any other materials and orders in these proceedings and any notices or other

correspondence, by forwarding true copies thereof by prepaid ordinary mail, courier, personal delivery, facsimile or other electronic transmission to the Applicant's creditors or other interested parties at their respective addresses as last shown on the records of the Applicant and that any such service or notice by courier, personal delivery or facsimile or other electronic transmission shall be deemed to be received on the date of forwarding thereof, or if sent by ordinary mail, on the third business day after mailing.

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

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

57. **THIS COURT ORDERS** that the Applicant and the Monitor and their counsel are at liberty to serve or distribute this Order, any other materials and orders as may be reasonably required in these proceedings, including any notices, or other correspondence, by forwarding true copies thereof by electronic message to the Applicant's creditors or other interested parties and their advisors. For greater certainty, any such distribution or service shall be deemed to be in

satisfaction of a legal or juridical obligation, and notice requirements within the meaning of clause 3(c) of the Electronic Commerce Protection Regulations, Reg. 8100-2-175 (SOR/DORS).

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

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

60. **THIS COURT ORDERS** that any interested Person wishing to object to the relief sought in a motion must serve responding motion material or, if they do not intend to file material, a notice in all cases stating the objection to the motion and the grounds for such objection in writing (the "**Responding Material**") to the moving party, the Applicant and the Monitor, with a copy to all Persons on the Service List, no later than 5 p.m. on the date that is four (4) calendar days prior to the Return Date (the "**Objection Deadline**").

61. **THIS COURT ORDERS** that, if no Responding Materials are served by the Objection Deadline, the judge having carriage of the motion (the "**Presiding Judge**") may determine:

- (a) whether a hearing is necessary;
- (b) whether such hearing will be in person, by telephone or by written submissions only; and
- (c) the parties from whom submissions are required

(collectively, the "**Hearing Details**"). In the absence of any such determination, a hearing will be held in the ordinary course.

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

63. **THIS COURT ORDERS** that if any party objects to the motion proceeding on the Return Date or believes that the Objection Deadline does not provide sufficient time to respond to the motion, such objecting party shall, promptly upon receipt of the Notice of Motion and in any event prior to the Objection Deadline, contact the moving party and the Monitor (together with the objecting party and any other party who has served Responding Materials, the “**Interested Parties**”) to advise of such objection and the reasons therefor. If the Interested Parties are unable to resolve the objection to the timing and schedule for the motion following good faith consultations, the Interested Parties may seek a scheduling appointment before the Presiding Judge to be held prior to the Return Date or on such other date as may be mutually agreed by the Interested Parties or as directed by the Presiding Judge to establish a schedule for the motion. At the scheduling appointment, the Presiding Judge may provide directions including a schedule for the delivery of any further materials and the hearing of the contested motion, and may address such other matters, including interim relief, as the Court may see fit. Notwithstanding the foregoing, the Presiding Judge may require the Interested Parties to proceed with the contested motion on the Return Date or on any other date as may be directed by the Presiding Judge or as may be mutually agreed by the Interested Parties, if otherwise satisfactory to the Presiding Judge.

SEALING

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

GENERAL

65. **THIS COURT ORDERS** that the Applicant or the Monitor may from time to time apply to this Court to amend, vary, supplement or replace this Order or for advice and directions concerning the discharge of their respective powers and duties under this Order or the interpretation or application of this Order.

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

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

68. **THIS COURT ORDERS** that each of the Applicant and the Monitor be at liberty and is hereby authorized and empowered to apply to any court, tribunal, regulatory or administrative

body, wherever located, for the recognition of this Order and for assistance in carrying out the terms of this Order, and that the Monitor is authorized and empowered to act as a representative in respect of the within proceedings for the purpose of having these proceedings recognized in a jurisdiction outside Canada.

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

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



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

APR 25 2019

PER / PAR: *RW*

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

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

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

Proceedings commenced at Toronto

AMENDED AND RESTATED INITIAL ORDER

Thornton Grout Finnigan LLP
100 Wellington Street West
Suite 3200
TD West Tower, Toronto-Dominion Centre
Toronto, ON M5K 1K7

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

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

Rebecca L. Kennedy (LSO# 61146S)
Email: rkennedy@tgf.ca

Tel: 416-304-1616

Fax: 416-304-1313

Lawyers for the Applicant

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

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

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

Proceedings commenced at Toronto

**AFFIDAVIT OF WILLIAM E. AZIZ
(sworn June 12, 2019)**

Thornton Grout Finnigan LLP
100 Wellington Street West
Suite 3200
TD West Tower, Toronto-Dominion Centre
Toronto, ON M5K 1K7

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

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

Rebecca L. Kennedy (LSO# 61146S)
Email: rkennedy@tgf.ca

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

Lawyers for the Applicant

TAB 3

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

THE HONOURABLE) WEDNESDAY, THE 26TH
)
JUSTICE MCEWEN) DAY OF JUNE, 2019
)
)

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

AND IN THE MATTER OF A PLAN OF COMPROMISE OR
ARRANGEMENT OF **JTI-MACDONALD CORP.**

STAY EXTENSION AND CASH COLLATERAL ORDER

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

ON READING (i) the affidavit of William E. Aziz sworn June 12, 2019 and the exhibits thereto and (ii) the fourth report dated June 12, 2019 of Deloitte Restructuring Inc. in its capacity as Monitor of the Applicant (the “**Monitor**”), and on hearing the submissions of counsel for the Applicant, the Monitor, and any other party appearing for any other person on the service list, properly served as appears from the affidavit of Rachel Bengino sworn on June 12, 2019, filed:

SERVICE

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

STAY EXTENSION

2. **THIS COURT ORDERS** that the Stay Period as ordered and defined in paragraph 18 of the Initial Order granted March 8, 2019 (as amended and restated, the “**Initial Order**”) is hereby extended until and including December 16, 2019.

CITIBANK CASH COLLATERAL

3. **THIS COURT ORDERS** that, at the request of Citibank, N.A., Canada Branch, the Applicant is hereby authorized to deposit additional cash collateral with Citibank in the amount of \$3,000,000 (the “**Additional Citibank Cash Collateral**”). For greater certainty, the Additional Citibank Cash Collateral is cash collateral deposited with a financial institution in accordance with paragraph 48(e) of the Initial Order.

GENERAL

4. **THIS COURT HEREBY REQUESTS** the aid and recognition of any court, tribunal, regulatory or administrative body having jurisdiction in Canada or in the United States to give effect to this Order and to assist the Applicant and the Monitor in carrying out the terms of this Order. All courts, tribunals, regulatory and administrative bodies are hereby respectfully requested to make such orders and to provide such assistance to the Applicant and the Monitor as may be

necessary or desirable to give effect to this Order or to assist the Applicant and the Monitor in carrying out the terms of this Order.

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

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

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

Proceedings commenced at Toronto

**STAY EXTENSION AND CASH COLLATERAL
ORDER**

Thornton Grout Finnigan LLP
100 Wellington Street West
Suite 3200
TD West Tower, Toronto-Dominion Centre
Toronto, ON M5K 1K7

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

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

Rebecca L. Kennedy (LSO# 61146S)
Email: rkennedy@tgf.ca

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

Lawyers for the Applicant

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

AND IN THE MATTER OF A PLAN OF COMPROMISE OR ARRANGEMENT OF **JTI-MACDONALD CORP.**

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

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

Proceedings commenced at Toronto

**MOTION RECORD
(Returnable on June 26, 2019)**

Thornton Grout Finnigan LLP
100 Wellington Street West
Suite 3200
TD West Tower, Toronto-Dominion Centre
Toronto, ON M5K 1K7

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

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

Rebecca L. Kennedy (LSO# 61146S)
Email: rkennedy@tgf.ca

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Fax: 416-304-1313

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