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

ONTARIO
SUPERIOR COURT OF JUSTICE
COMMERCIAL LIST

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

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

Applicant

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(Re: Stay Extension)
(Returnable on September 27, 2023)

September 13, 2023

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

ONTARIO
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(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.**

AND IN THE MATTER OF A PLAN OF COMPROMISE OR ARRANGEMENT OF **IMPERIAL TOBACCO CANADA LIMITED** AND **IMPERIAL TOBACCO COMPANY LIMITED**

AND IN THE MATTER OF A PLAN OF COMPROMISE OR ARRANGEMENT OF **ROTHMANS, BENSON & HEDGES INC.**

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

ONTARIO
SUPERIOR COURT OF JUSTICE
COMMERCIAL LIST

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

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

Applicant

MOTION RECORD
(Re: Stay Extension)
(Returnable on September 27, 2023)

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Tab 1

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

ONTARIO
SUPERIOR COURT OF JUSTICE
COMMERCIAL LIST

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

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

Applicant

NOTICE OF MOTION
(Re: Stay Extension)
(Returnable on September 27, 2023)

The Applicant will make a motion to Chief Justice Morawetz of the Ontario Superior Court of Justice (Commercial List) on September 27, 2023, at 10:30 a.m. (Eastern Time), or as soon after that time as the motion can be heard, by judicial video conference via Zoom at Toronto, Ontario.

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

THE MOTION IS FOR:

(a) An Order extending the Stay Period (as defined in the Initial Order granted in these proceedings on March 8, 2019 (as amended and restated, the "**Initial Order**")), which is currently set to expire on September 29, 2023, up to and including March 29, 2024; and

(b) Such further and other relief as this Court deems just.

THE GROUNDS FOR THE MOTION ARE:

A. Background of CCAA Proceedings

1. All capitalized terms not otherwise defined herein shall have the meanings set forth in the Initial Order.

2. The Applicant is: (a) a defendant in significant healthcare cost recovery litigation commenced by each of the ten provinces, alleging over $600 billion in claims against JTIM and the other defendants in the HCCR Actions, (b) subject to the judgment in the Quebec Class Actions, and (c) a named defendant in certain class actions that have been commenced, but not certified, in six provinces.

3. The Applicant sought the protections available under the CCAA to maintain the *status quo* of its operations, preserve going concern value, and provide the Applicant with a period of stability while attempting to find a collective resolution to the Tobacco Claims made against the Applicant.

4. On March 8, 2019, the Applicant was granted protection from its creditors under the CCAA pursuant to the Initial Order. Deloitte Restructuring Inc. was appointed as monitor of the Applicant (in such capacity, the "**Monitor**"). On April 5, 2019, pursuant to the Amended and Restated Initial Order, the Honourable Warren K. Winkler, K.C. (the "**Court-Appointed Mediator**") was appointed to mediate a global settlement of the Tobacco Claims against the Applicant and the other defendants.

5. The Initial Order granted a stay of proceedings until April 5, 2019, which stay of proceedings has been subsequently extended most recently up to and including September 29, 2023.

6. Since the date of the Initial Order, Imperial Tobacco Company Limited and Imperial Tobacco Canada Limited (together, "**Imperial**") and Rothmans, Benson & Hedges Inc. ("**RBH**") have sought protection from their creditors under the CCAA.

B. Stay Extension

7. The Applicant seeks an extension of the Stay Period until March 29, 2024.

8. The Applicant has acted in good faith and with due diligence during the CCAA proceedings since the date of the Initial Order. Furthermore, the Applicant has actively participated in the ongoing mediation process established by the Mediator.

9. The projected cash flow forecast, as prepared by the Applicant, with the assistance of the Monitor, demonstrates that the Applicant has enough liquidity to operate its business and meet its obligations during the proposed extension of the Stay Period.

10. Extending the Stay Period is required to enable the Applicant to continue to operate in the ordinary course while participating in the mediation process to seek a collective resolution of the Tobacco Claims against the Applicant.

11. The Applicant also relies on:

    (a) the provisions of the CCAA and the statutory, inherent and equitable jurisdiction of this Court;

(b) Rules 1.04, 1.05, 2.03, 3.02, 16, 37 and 39 of the Ontario *Rules of Civil Procedure*, R.R.O. 1990, Reg 194, as amended and Section 106 of the *Courts of Justice Act*, R.S.O. 1990, c. C.43 as amended; and

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

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

(a) the Affidavit of William E. Aziz, sworn September 13, 2023;

(b) the Fifteenth Report of the Monitor, to be filed; and

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

September 13, 2023

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TO: THE COMMON SERVICE LIST

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

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

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

ONTARIO
SUPERIOR COURT OF JUSTICE
(COMMERCIAL LIST)

Proceedings commenced at Toronto

NOTICE OF MOTION
(Re: Stay Extension)
(Returnable on September 27, 2023)

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Tab 2

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

ONTARIO
SUPERIOR COURT OF JUSTICE
(COMMERCIAL LIST)

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

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

Applicant

AFFIDAVIT OF WILLIAM E. AZIZ
(Sworn September 13, 2023)

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

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

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

3. As the CRO of JTIM, I have knowledge of the matters to which I herein depose, except where I have obtained information from others. In preparing this affidavit, I have reviewed previous affidavits sworn in JTIM's CCAA proceeding and mentioned herein, consulted with other members of JTIM's senior management team, legal advisors, and representatives of Deloitte Restructuring Inc. (the "**Monitor**"). Where I have obtained

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

4. All capitalized terms used herein and not otherwise defined have the meanings set forth in the Initial Order.

I. INTRODUCTION

5. This affidavit is sworn in support of a motion for an Order extending the Stay Period to March 29, 2024. This affidavit also provides certain observations regarding the mediation that has been ongoing since 2019 and disclosure regarding joint tax elections that were made by JTIM and certain of its affiliates, along with the financial impact associated with these joint tax elections.

6. JTIM, through its predecessor corporations and/or other related business entities, has been a manufacturer and distributor of tobacco products in Canada since 1858. JTIM is a private company, headquartered in Mississauga, Ontario. Based on annual volume of sales, JTIM is the smallest Canadian tobacco company subject to the Pending Litigation.

7. As described in previous affidavits sworn in these CCAA proceedings, JTIM is subject to: (a) HCCR Actions by each province in Canada seeking an aggregate of over $600 billion relating to the recovery of alleged health care costs, (b) the judgment in the Quebec Class Actions (the "**QCA Judgment**") on a joint and several basis with Imperial and RBH (each as defined below), and (c) certain class action proceedings that have been commenced, but not certified, in six provinces in Canada (the "**Consumer Class Actions**").

8. JTIM sought the protections provided by the CCAA to: (a) maintain the *status quo* of its operations, (b) preserve going concern value, and (c) provide the Applicant with a period of stability within which to attempt to find a global resolution to all the Tobacco Claims asserted against it. But for the QCA Judgment and the other contingent claims asserted in the Pending Litigation, the Applicant is a profitable and viable corporation.

9. Pursuant to the Initial Order, the Applicant was granted protection from its creditors under the CCAA on March 8, 2019. Deloitte Restructuring Inc. was appointed as the Monitor of the Applicant in these CCAA proceedings.

10. On April 5, 2019, pursuant to the Initial Order, the Honourable Warren K. Winkler, K.C., was appointed as an officer of the Court and a neutral third-party mediator (the "**Mediator**") to mediate a global settlement of the Tobacco Claims against the Applicant, Imperial Tobacco Canada Limited and Imperial Tobacco Company Limited (together, "**Imperial**") and Rothmans, Benson & Hedges Inc. ("**RBH**").

11. The Initial Order provides for a Court-ordered stay of proceedings. The Stay Period is currently set to expire on September 29, 2023, pursuant to the Stay Extension Order issued on March 30, 2023 (the "**Stay Extension Order**").

12. On March 12, 2019 and March 22, 2019, Imperial and RBH each filed for creditor protection under the CCAA. Imperial and RBH are defendants under each of the HCCR Actions, the QCA Judgment and the Consumer Class Actions. Based on my involvement with the concurrent CCAA proceedings, I understand that there is currently a similar stay of all proceedings in respect of JTIM, Imperial and RBH (collectively, the "**Canadian Tobacco Companies**").

II. ACTIVITIES SINCE THE STAY EXTENSION ORDER

13. Since the Stay Extension Order, the Applicant has continued to operate in the ordinary course and actively participate in the CCAA proceedings and the mediation process. The following summarizes the Applicant's activities since the Stay Extension Order:

Operations

(a) the Applicant continued to manage its relationships with customers, suppliers, employees and other stakeholders to ensure there is no disruption to its operations during the CCAA proceedings and to maintain an uninterrupted supply of products and services;

(b) the Applicant addressed certain employee-related matters in the ordinary course;

(c) I am advised that the Applicant consulted with the other Canadian Tobacco Companies regarding potential responses to the implementation and timing of the new packaging and labelling regulations on all tobacco products, including warnings on individual cigarette sticks, as set out in the *Tobacco Products Appearance, Packaging and Labelling Regulations* (the "**Regulations**"). The Regulations came into force on August 1, 2023. Under the regulation, tobacco manufacturers are only permitted to sell or distribute tobacco products that do not meet new labelling elements of the Regulations until January 31, 2024. The requirement for manufacturers to include warnings on each cigarette comes into force on April 30, 2024 for king size cigarettes and on January 31, 2025 for regular size cigarettes, with other packaging changes needing to be implemented by July 31, 2026;

(d) the Applicant sought and obtained approval from the Monitor associated with proposed capital expenditures to be incurred between 2023 to 2025 regarding certain improvements to the Applicant's manufacturing factory in Montreal;

(e) as part of a transition initiated by JTI's Global Treasury for JTI's Americas Region, the Applicant started the process of transitioning its corporate credit card program from Citibank to Bank of America. The new cards from Bank of America are expected to be issued by the end of September 2023. The existing credit cards with Citibank will cease to be available at the end of October 2023. Unlike Citibank, Bank of America will not require any cash collateral from JTIM for these new cards. Once all of the outstanding balances from the Citibank cards have been paid, JTIM has requested that Citibank release the existing cash collateral of $900,000 to JTIM's general operating bank account;

(f) I am advised that, as part of the JTI group's global implementation of an integrated work system, the Applicant and its union negotiated and signed a Letter of Agreement providing that, among other things, the Applicant will make annual lump sum payments to its unionized employees at the Montreal factory beginning in December 2023 and continuing until April 2026. The Applicant sought and obtained the Monitor's approval in respect of these payments;

Global Transformation Project

(g) As previously reported in my September 2019 affidavit, a copy of which is attached hereto (without exhibits) as **Exhibit "A"**, the Applicant completed the global transformation project. I am advised that all changes in personnel at the Applicant have been made. The Applicant's only remaining cost of the global transformation

project is regarding certain salary continuance obligations, which will be completed this year;

CCAA proceedings

(h) the Applicant's external counsel and I continued to provide regular updates and information to the Monitor and its counsel of material developments with respect to the business, the CCAA proceedings and the mediation;

(i) in accordance with the Professional Fee Disclosure Order issued May 14, 2019, the Applicant consulted with the Monitor regarding the monthly fee disclosure summaries delivered to the stakeholders by the Monitor;

Mediation

(j) the Applicant's external counsel and I have continued to communicate with and actively participate in the process established by the Mediator to advance the ongoing mediation process; and

(k) in addition to responding to specific information requests, the Applicant continued to compile commercially sensitive and confidential information for inclusion in the VDR created by the Monitor for the purpose of providing updated relevant information to certain stakeholders in respect of the Applicant's business, operations, finances and future prospects.

IV. PACE OF THE MEDIATION

14. Certain interested parties have expressed concern as to why a resolution has not yet been achieved during the pendency of the mediation. Some parties raising concern have been involved in the process.

15. The Mediator and the Court have made the ongoing mediation process confidential. However, I am able to provide some general observations with respect to the length of time that the mediation is taking without breaching confidentiality:

    (a) I note that this is the first time in history that an entire Canadian industry has attempted to reach a global resolution of extensive litigation claims in coordinated proceedings occurring at the same time;

    (b) the claimant group is large and diverse, including every provincial and territorial government in Canada plus multiple representatives of individuals. In each case, the pre-CCAA litigation is at different stages of development with respect to the advancement of the Tobacco Claims. In total, there are seventeen different interests represented within the claimant group; and

    (c) the claims involved are enormous.

16. These factors combine to create this unique situation. Since this restructuring is without precedent, it is not reasonable to compare its timeline and progress with other, less complicated, restructurings.

17. It is my view that good progress has been made to-date, given the complexity of the situation. Although there is a considerable amount of ground left to cover, significant steps have been taken toward a global resolution, which is the purpose of the mediation.

18. The Mediator has been actively and continuously involved since the beginning of the CCAA proceedings. He is the person at the centre of all negotiations, and he is best positioned to understand the pace at which these negotiations can and should occur. The Mediator is very experienced in complex negotiations and resolutions.

19. The Canadian Tobacco Companies have never failed to meet a deadline set by the Mediator and they have never asked for an extension of a deadline set by the Mediator. They are fully engaged in the mediation and, from JTIM's perspective, are negotiating in good faith toward a global settlement.

20. I also note that, in this restructuring, the stay extension motions do not dictate the speed of the mediation or the negotiations. The length of the stay extension is, and should remain, separate and distinct from the Mediator's process. Pursuant to the Initial Order, the Court granted the Mediator with the discretion to adopt processes that he considers appropriate in the circumstances in order to facilitate the negotiation of a global settlement of the Tobacco Claims. The stay extension motions necessarily cause a certain diversion of time, resources and attention away from the mediation itself. Increasing the frequency of the stay extension motions will likely adversely affect the mediation process as opposed to promoting a quicker resolution.

21. Overall, JTIM is participating in the mediation in good faith and as requested by the Mediator.

V. SUSPENSION OF INTEREST AND ROYALTY PAYMENTS

22. On March 15, 2019, prior to the comeback hearing, the Quebec Class Action Plaintiffs (the "**QCAPs**") brought an interim motion prohibiting the payment of principal, interest, and royalties by JTIM to JTI-Macdonald TM Corp ("**JTI-TM**"), pending further order of the Court. On March 18, 2019, the motion was heard by Justice McEwen and on the following day, Justice McEwen issued an endorsement suspending the payment of principal, interest and royalties pending the return of the comeback hearing or further order of the Court.

Attached hereto as **Exhibit "B"** is a copy of the March 19 endorsement, along with an unofficial transcript of the March 19 endorsement prepared by counsel to the Monitors.

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

24. On March 28, 2019, the QCAPs served another motion record that, among other things, sought to vary the Initial Order to continue the prohibition of the payment of principal, interest and royalties by JTIM to JTI-TM. In response to the QCAPs' motion, JTIM served and filed the Affidavit of Rob McMaster sworn April 1, 2019 (the "**Responding McMaster Affidavit**") that, among other things, provided the Court with the history of the recapitalization transactions leading to the intercompany secured debt structure and the financial impact that the suspension of interest and royalty payments would have on JTI-TM and other affiliates of JTIM. Attached hereto as **Exhibit "C"** is a copy of the Responding McMaster Affidavit.

25. As described in the Responding McMaster Affidavit, Ernst & Young Inc., JTIM's monitor during the CCAA proceedings that were commenced in 2004, noted that a recapitalization plan to introduce a substantial debt component was not unusual at the time and was typically done primarily for tax purposes because of the thin capitalization rules under the *Income Tax Act* at that time.

26. Following the conclusion of the Comeback Hearing, Justice McEwen referred the interest and royalty payment issue to the Mediator for resolution. The issue has not been resolved, and the March 19 endorsement continues to apply. Accordingly, JTIM has not made any principal, interest or royalty payments to JTI-TM for over four years. As described below,

the prohibition against the payment of interest and royalties required JTIM and its affiliates to make certain joint tax elections to preserve the tax deductibility of such payments and avoid a significant tax payment.

VI. JTIM'S SECURED INTERCOMPANY DEBT

27. As a result of Japan Tobacco's acquisition of the international (non-U.S.) assets of RJR Nabisco, Inc., R.J. Reynolds Tobacco Company, and their affiliates, JTIM is part of an intercompany secured debt structure. JTIM's intercompany secured debt structure is comprehensively summarized in the Affidavit of Rob McMaster sworn March 8, 2019 (the "**Initial McMaster Affidavit**") at paragraphs 42 to 58. The Initial McMaster Affidavit is attached hereto as **Exhibit "D"**.

28. In summary, the following intercompany loans are outstanding:

    (a) JT International Holding B.V. ("**JTIH-BV**") has a secured loan in the initial principal amount of $1.2 billion to JT Canada LLC Inc. ("**JT-LLC**") pursuant to a Loan Agreement (as amended from time to time) between JTIH-BV and JT-LLC dated November 23, 1999 (the "**JTIH-BV Secured Loan**");

    (b) JT-LLC provided a secured loan in the initial principal amount of $1.2 billion to JTI-TM pursuant to ten convertible debentures (the "**JT-LLC Secured Loan**"); and

    (c) JTI-TM provided a secured loan in the initial principal amount of $1.2 billion to JTIM pursuant to ten convertible debentures (the "**JTI-TM Secured Loan**").

29. As of June 30, 2023, and as a result of the March 19, 2019 endorsement suspending interest and royalty payments by JTIM, the total indebtedness outstanding under the intercompany loans are:

    (a) JTIH-BV Secured Loan: $1.16 billion;

    (b) JT-LLC Secured Loan: $1.36 billion; and

    (c) JTI-TM Secured Loan: $1.65 billion.

VII. THE FINANCIAL EFFECT OF THE FAILURE TO PAY INTEREST AND ROYALTIES

30. As detailed in the Responding McMaster Affidavit, the failure to pay interest and royalties has a significant negative impact on JTIM, JTI-TM, JTI LLC, and JTIH-BV. The potential issues described in the Responding McMaster Affidavit have recently materialized such that the tax rules required JTIM and its affiliates to file certain elections for reasons stated herein.

JTIM / JTI-TM Tax Election

31. Since the suspension of the interest and royalty payments on March 19, 2019, JTIM has accrued over $465 million of interest payable to JTI-TM, and over $64 million of royalties payable and interest on unpaid royalties payable to JTI-TM.

32. Related party tax deductible amounts accrued in a year but unpaid as at the end of the second following taxation year must be included in JTIM's income in the period that is three years following the year that the expense was incurred unless JTIM and the counterparty (JTI-TM) make a joint election to deem the amount to be paid to JTI-TM, and subsequently loaned back to JTIM. For the interest and royalties accrued in 2019 and still

unpaid as at December 31, 2021, this joint tax election was required to be made before June 30, 2023 (the due date for JTIM to file its 2022 corporate income tax return, the third following taxation year). If it was not made, JTIM would have been required to include the accrued amounts in its 2022 taxable income, thereby increasing its income tax payable for that tax year (and reducing JTIM's cash on hand).

33. In 2019, JTIM accrued approximately $80.1 million in interest (including default interest) and approximately $10.5 million in royalties payable to JTI-TM. Without the joint tax election, approximately $90.6 million would have been added to JTIM's 2022 taxable income, and JTIM would have had to pay approximately $25 million in taxes, depleting funds that otherwise may be available to JTIM's stakeholders.

34. Although JTI-TM is a subsidiary of JTIM, it is in receivership due to defaults in respect of the JT-LLC Secured Loan, which defaults and receivership predate JTIM's CCAA proceeding. Therefore, JTIM no longer controls JTI-TM. JTI-TM's decision to sign the joint election is at the discretion of JT-LLC and its privately appointed receiver, PricewaterhouseCoopers Inc. (the "**TM Receiver**").

35. Based on discussions among JTIM, JT-LLC, the TM Receiver and the Monitor, JTI-TM agreed to make the joint tax election with JTIM to avoid JTIM paying approximately $25 million in additional taxes. The joint tax election was filed with the Canada Revenue Agency on June 12, 2023, with the approval of the Monitor.

Additional Joint Tax Elections

36. In addition, JTIM licenses the Vantage trademark from JTI-SA. Since 2019, JTIM has not made certain royalty payments to JTI-SA in accordance with the March 19 Endorsement.

These payments are substantially less than the royalty payments to JTI-TM. In 2019, JTIM has accrued but unpaid royalties owing to JTI-SA in the approximate amount of $8,000. To avoid this amount being added to JTIM's income, JTIM and JTI-SA filed the joint tax election with the Canada Revenue Agency on June 12, 2023.

VIII. EXTENSION OF THE STAY PERIOD

37. The Applicant seeks an extension of the Stay Period until March 29, 2024. It is my understanding from the Monitor that Imperial and RBH are also seeking an extension of their respective stay periods until the same date. The Applicant believes that continuing to coordinate the stay periods at this stage in the CCAA proceedings is efficient, cost-effective and in the best interests of the continuation of the court-ordered mediation process.

38. 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 September 4, 2023, to the week ending March 29, 2024. I understand that the Cash Flow Statement will be appended to the Monitor's Fifteenth Report to the Court, to be filed. The Cash Flow Statement demonstrates that JTIM has enough liquidity to operate its business and meet its obligations during the proposed extension of the Stay Period.

39. Extending the Stay Period is required to enable the Applicant to continue to operate in the ordinary course while participating in the mediation and continuing discussions to seek a global resolution of the Tobacco Claims. The Applicant has acted in good faith and with due diligence during the CCAA proceedings since the date of the Initial Order.

PURPOSE

40. This affidavit is sworn in support of JTIM's motion for the extension of the Stay Period to March 29, 2024, and for no other or improper purpose.

SWORN BEFORE ME BY VIDEO CONFERENCE by William E. Aziz on September 13, 2023 in accordance with *O. Reg. 431/20, Administering Oath or Declaration Remotely*. The affiant was in the Town of Oakville, in the Province of Ontario and the commissioner was in the City of Toronto, in the Province of Ontario.

Commissioner for Taking Affidavits

Mitchell W. Grossell
LSO # 69993I

WILLIAM E. AZIZ

This is Exhibit “A” referred to in the
Affidavit of William E. Aziz sworn by William E. Aziz of the
Town of Oakville, in the Province of Ontario, before me at the
City of Toronto, in the Province of Ontario,
this 13th day of September, 2023 in accordance with
O. Reg. 431/20, Administering Oath or Declaration Remotely.

A Commissioner for taking affidavits

MITCHELL W. GROSSELL

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

ONTARIO
SUPERIOR COURT OF JUSTICE
COMMERCIAL LIST

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

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

Applicant

AFFIDAVIT OF WILLIAM E. AZIZ
(Sworn September 20, 2019)

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

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

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

3. As the CRO of JTIM, I have knowledge of the matters to which I herein depose, except where I have obtained information from others. Where I have obtained information from others, I have stated the source of the information and believe it to be true.

4. All capitalized terms used herein and not otherwise defined have the meanings set forth in the Initial Order.

INTRODUCTION

5. This affidavit is sworn in support of a motion for an Order extending the Stay Period to March 6, 2020.

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

7. 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**") up to the approximate amount of $13.5 billion (including interest and an additional indemnity) on a solidary basis.

8. 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.[1] 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 $600 billion has been claimed by

[1] None of the three territories has commenced healthcare cost recovery actions against the Applicant, Imperial or RBH (each as defined below).

the provincial plaintiffs who have quantified their claims.

9. 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 tobacco-related claims being made against it. But for the QCA Judgment and the other contingent tobacco-related litigation claims, the Applicant is a profitable and viable corporation.

10. 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"**. Pursuant to the Initial Order, Deloitte Restructuring Inc. was appointed as the Monitor (the "**Monitor**") of the Applicant in these CCAA proceedings.

11. The Honourable Warren K. Winkler, Q.C. was appointed on April 5, 2019, pursuant to the Amended and Restated Initial Order of the Honourable Mr. Justice McEwen, 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.

12. The Initial Order provides for a Court-ordered stay of proceedings (the "**Stay of Proceedings**"), which is currently set to expire on October 4, 2019, pursuant to the Stay Extension and Cash Collateral Order issued on June 26, 2019 (the "**Initial Stay Extension Order**").

13. 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 similar stay of proceedings in respect of all three tobacco defendants under the QCA Judgment, their affiliates and all of the defendants under the HCCR Actions.

ACTIVITIES SINCE INITIAL STAY EXTENSION ORDER

14. Since the date of the Initial Stay Extension Order:

(a) the Applicant finalized and executed an amending agreement with Citibank, N.A., Canada Branch ("**Citibank**") regarding the deposit of $3,000,000 in additional cash collateral with Citibank, in accordance with the Initial Stay Extension Order;

(b) the Applicant's advisors and I have communicated with the Court-Appointed Mediator from time to time, directly and indirectly through his counsel, at the request of the Court-Appointed Mediator and in order to advance the mediation process;

(c) the Applicant has complied with the timetable and procedure of the mediation process set out by the Court-Appointed Mediator, including the delivery of the Applicant's mediation brief and preparation for the upcoming plenary session.

(d) the Applicant's external counsel and I collaborated with the Monitor with respect to the availability of certain initial information that would be made available to the stakeholders through a virtual data room ("**VDR**") administered by the Monitor;

(e) the Applicant gathered the information to be populated in the VDR and provided same to the Monitor;

(f) the Applicant and I, with external legal counsel, reviewed the additional information requests from the financial advisor to certain of the Provinces and collaborated with the Monitor to populate the VDR with additional information that was available to and controlled by the Applicant;

(g) the Applicant's external counsel, with counsel to both Imperial and RBH, continued negotiations of the advisor non-disclosure agreement and client non-disclosure agreement to allow stakeholders to access the VDR. The Applicant has settled on the form of the advisor non-disclosure agreement;

(h) the Applicant's external counsel and I continued to provide regular updates to the Monitor and its counsel of material developments with respect to the business, the CCAA proceedings and the mediation, to the extent that the Monitor was not directly involved in such discussions;

(i) in accordance with the Professional Fee Disclosure Order issued May 14, 2019, the Monitor delivered the monthly fee disclosure summaries to the stakeholders in consultation with the Applicant; and

(j) external counsel and I coordinated with counsel to Imperial and counsel to RBH from time to time in respect of common CCAA issues among the three tobacco companies.

Mediation Process

15. The Applicant continues to follow the mediation timetable and procedure as set out by the Court-Appointed Mediator.

16. The QCAPs brought a motion originally returnable on June 26, 2019, requiring JTI-Macdonald TM Corp. ("**TM**"), the Applicant's subsidiary (in receivership), to return the $1.33 million deposit it previously held which was set off against accrued and unpaid royalty amounts due and owing to TM by JTIM (the "**Royalties Issue**"). The Royalties Issue was referred by the Court to the Court-appointed Mediator to attempt to find a resolution. I have been advised by counsel to the TM receiver that the Royalties Issue is no longer being pursued as a discrete issue in the mediation.

JTI Group Global Transformation Project

17. I am advised by senior management at JTIM that, as part of a global restructuring of the JTI Group that commenced approximately 18 months ago, JTIM's operations were reviewed and a decision was made that certain activities in the human resources, finance, information technology and purchasing departments at JTIM will be centralized globally to reduce duplication and capitalize on economies of scale, improving global competitiveness and efficiencies. The global restructuring was reported in the Swiss media where JTI's international HQ operations are located. An article on the topic in English is attached hereto as **Exhibit "B"**.

18. Approximately 3,720 of 45,000 employees (roughly 8%) worldwide are expected to be affected. The Applicant expects the changes to affect 48 employees of JTIM between 2019 and 2022. I am advised by senior management at JTIM that 21 of these affected employees provide global services and their costs are met in large part by another entity in the group pursuant to a global services agreement. During the proposed extension of the Stay Period to March 6, 2020, 12 of the employees either have been, or will be terminated.

19. Terminated employees will receive salary continuance depending on the employees' position and years of service in accordance with JTIM's existing compensation policies in the ordinary course of business. I am advised by senior management of JTIM that certain employees in critical roles that are being asked to stay for a period of time before being terminated will, if they remain in employment with JTIM throughout the retention period, receive a retention bonus payment in accordance with standard global arrangements for the restructuring. JTIM will be reimbursed in full by another JTI entity for salary continuance and retention bonus payments made to 21 employees that are subject to a global services agreement. The below chart provides an annual summary of the amounts that JTIM projects to pay and be reimbursed with respect to the salary continuance and retention bonus payments:

	2019	***2020***	***2021***	***2022***
Termination Amounts	($538,842)	($1,302,756)	($4,331,494)	($1,593,348)
Reimbursed Amounts	$0	$281,167	$2,193,466	$664,465
Net Cash Impact	($538,842)	($1,021,589)	($2,138,028)	($928,883)

20. JTIM is responsible for the salary continuance and retention bonus payments to the 27 employees not subject to a global services agreement. I understand that paragraph 7(a) of the Initial Order authorizes the Applicant to make such payments. Paragraph 7(a) provides:

> **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, … 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 in the ordinary course of business and consistent with existing compensation policies and arrangements or with Monitor approval.

21. Based on discussions with the Monitor, I understand that the Monitor has reviewed such transformation steps with the Applicant. I further understand that the Monitor agrees that the

arrangements with the Applicant's employees affected by the global transformation are in the ordinary course of business, consistent with existing compensation practices and arrangements, and the Monitor has approved of such arrangements.

EXTENSION OF THE STAY OF PROCEEDINGS

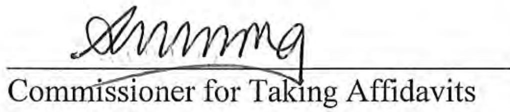
22. The Applicant seeks an extension of the Stay Period until March 6, 2020. It is my understanding from counsel to JTIM that Imperial and RBH are also seeking an extension of their respective stay periods until the same date. The Applicant believes that coordinating the stay periods at this stage in the proceedings is efficient and cost-effective.

23. 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 September 16, 2019 to the week ending March 6, 2020. I understand that the Cash Flow Statement will be appended to the Monitor's Fifth 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.

24. Extending the Stay Period is required to enable the Applicant to continue to operate in the ordinary course while participating in the mediation process established by the Court-appointed Mediator and continuing to engage in discussions to seek a collective resolution of the pending litigation claims 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

25. This affidavit is sworn in support of JTIM's motion for the extension of the Stay Period to March 6, 2020 and for no other or improper purpose.

SWORN BEFORE ME at the City of Singapore, Singapore, on September 20, 2019.  Commissioner for Taking Affidavits	 WILLIAM E. AZIZ

GENEVIEVE WONG
LSO# 37393C

This is Exhibit "B" referred to in the
Affidavit of William E. Aziz sworn by William E. Aziz of the
Town of Oakville, in the Province of Ontario, before me at the
City of Toronto, in the Province of Ontario,
this 13th day of September, 2023 in accordance with
O. Reg. 431/20, Administering Oath or Declaration Remotely.

A Commissioner for taking affidavits

MITCHELL W. GROSSELL

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

Superior Court of Justice
Commercial List

FILE/DIRECTION/ORDER

Re: JTI Macdonald Corp
Plaintiff(s)

AND

Defendant(s)

Case Management ☑ Yes ☐ No by Judge: McEwen J

Counsel	Telephone No:	Facsimile No:
(see attached)		

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

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

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

19 March 19
Date

Judge's Signature

☑ Additional Pages nine

Court File Number:

Superior Court of Justice
Commercial List

FILE/DIRECTION/ORDER

Judges Endorsment Continued

pending further Order of the Court.

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

The Plaintiffs are supported by HMQ for Ontario.

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

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

The plaintiffs raise a number of arguments primarily as follows:

- JTIM did not disclose to

Judges Initials TM

Court File Number: ____________________

Superior Court of Justice
Commercial List

FILE/DIRECTION/ORDER

Judges Endorsment Continued

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

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

Judges Initials TM

Court File Number: ______

Superior Court of Justice
Commercial List

FILE/DIRECTION/ORDER

Judges Endorsment Continued

interest rates reduced;

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

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

Judges Initials TM

Court File Number: ______

Superior Court of Justice
Commercial List

FILE/DIRECTION/ORDER

Judges Endorsment Continued

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

JTIM vigorously opposes the relief sought primarily submitting as follows:

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

Judges Initials TM

Court File Number: ____________

Superior Court of Justice
Commercial List

FILE/DIRECTION/ORDER

Judges Endorsment Continued

Further Order of this court;

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

Judges Initials TM

Court File Number: ______________________

Superior Court of Justice
Commercial List

FILE/DIRECTION/ORDER

Judges Endorsment Continued

way mislead the Court or provide insufficient information.

STIM ∴ submits that it is premature to grant the orders sought.

I disagree.

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

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

Further, given the history of

Judges Initials DM

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

Court File Number:

Superior Court of Justice
Commercial List

FILE/DIRECTION/ORDER

Judges Endorsment Continued

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

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

Page 8 of 9 Judges Initials TM

Court File Number: ______________________

Superior Court of Justice
Commercial List

FILE/DIRECTION/ORDER

Judges Endorsment Continued

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

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

[signature]

Judges Initials TM

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

ONTARIO
SUPERIOR COURT OF JUSTICE
(COMMERCIAL LIST)

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

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

UNOFFICIAL TRANSCRIBED ENDORSEMENT OF JUSTICE MCEWEN

March 19, 2019

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

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

The Plaintiffs are supported by HMQ for Ontario.

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

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

The Plaintiffs raise a number of arguments primarily as follows:

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

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

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

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

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

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

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

JTIM vigorously opposes the relief sought primarily submitting as follows:

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

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

I disagree.

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

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

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

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

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

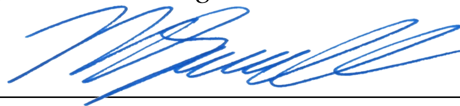
In all of the above circumstances, pending the comeback hearing or further order, I agree with the Plaintiffs that it is equitable to suspend the payments referred to at Tab DD of Volume 4 of the Application Record; namely the Intercompany Royalty and interest payments (as well as any principal payments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

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

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

McEwen J.

This is Exhibit "C" referred to in the
Affidavit of William E. Aziz sworn by William E. Aziz of the
Town of Oakville, in the Province of Ontario, before me at the
City of Toronto, in the Province of Ontario,
this 13th day of September, 2023 in accordance with
O. Reg. 431/20, Administering Oath or Declaration Remotely.



A Commissioner for taking affidavits

MITCHELL W. GROSSELL

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

ONTARIO
SUPERIOR COURT OF JUSTICE
COMMERCIAL LIST

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

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

Applicant

AFFIDAVIT OF ROBERT MCMASTER
(sworn April 1, 2019)

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

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

INTRODUCTION

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

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

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

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

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

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

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

v. the payment of dividends;

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

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

(d) rescinding the appointment of the CRO.

BACKGROUND

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

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

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

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

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

PAYMENT OF PRINCIPAL, INTEREST AND ROYALTIES

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

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

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

Recapitalization Transactions

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

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

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

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

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

JTIM.

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

Safeguard Motion

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

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

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

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

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

Trial Judgment

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

Deposit Motion

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

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

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

transactions after the Trial Judgment was rendered;

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

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

QCA Judgment

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

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

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

Payment of Royalties

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

Effect of Failure to Pay Interest and Royalties

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

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

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

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

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

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

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

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

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

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

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

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

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

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

REPAYMENT AGREEMENT

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

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

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

PAYMENT FOR INTERCOMPANY SERVICES

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

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

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

Amounts in '000s				**Balance as at December 31, 2018**	
Related Party	**Description**	**Frequency**	**2018 Annual Receipt (Payment)**	**Due to JTIM**	**Due from JTIM**
TM	Convertible debenture[1]	Monthly	(93,634)	-	1,187,674
TM	Royalty payments[1]	Monthly	(10,640)	429	-
ParentCo	Revolving Line of Credit*	On demand	-	-	-
ParentCo	Demand note	On demand	-	-	8,989
JTI-SA	Tobacco purchases, payments related to contract manufacturing and distribution of certain brands	Monthly in advance except Vantage royalties and distribution of certain brands which are 60 or 90 days	(262,594)	-	54,537
JTI-SA	Contract manufacturing for JTI-SA	Monthly	199,051	23,252	-
JTI-SA	Global IT services from JTI-SA	Monthly in advance	(4,140)	-	-
JTI-SA	Global function services for JTI-SA	Quarterly	4,691	34	-
JTI-SA	Regional IT services	Quarterly	4,475	416	
JTI-SA	Global human resources services	Monthly	5,058	207	
JTIH-BV[2]	Global administrative services	Monthly in advance	(6,688)	-	-
JTI Services[3]	Global human resources services	Monthly in advance	(1,203)	34	-
JTI-US[4]	Regional services provided for JTI-US	Quarterly	3,075	26	-
JTI-US[4]	Regional services provided by JTI-US	Monthly in advance	(632)	-	-
LLC-Cres[5]	Tobacco purchases	Monthly in advance	(2,229)	-	70
JTI-USA[6]	Distribution of brands in USA	Two to three times annually	4,428	1,890	-
JTI-USA[6]	Master Settlement Agreement for distribution of brands in USA	Monthly in advance	(578)	-	-

JTI-BusServ[7]	Global administrative services	Monthly in advance	(1,052)	-	-
JTI CTI[8]	Administrative services	Monthly	174	933	-
Logic[9]	Scientific & regulatory affairs services	Quarterly	1,184	-	-
				27,221	**1,251,270**

*ParentCo Loan Agreement was entered into on June 25, 2015 to replace the facility with Citibank; the principal balance outstanding is nil as at February 28, 2019.
[1]Amounts include both principal and interest accrual and payments. The Forbearance Letter dated August 3, 2017 (as amended on January 26, 2018, April 10, 2018, July 31, 2018, September 28, 2018 and January 8, 2019) between TM and JTIM amended the royalty and interest payment frequency from semi-annually to monthly. The amount owing with respect to royalty payments is net of a deposit of $1.3 million provided to TM, in satisfaction of the terms of the January 26, 2018 amendment.
[2]JT International Holding B.V.
[3]JTI Services Switzerland SA
[4]JTI (US) Holdings Inc.
[5]LLC Cres Neva
[6]Japan Tobacco International USA Inc.
[7]JTI Business Services Ltd.
[8]JTI Canada Tech Inc.
[9]Logic Technology Development LLC

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

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

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

…)."

DELOITTE RESTRUCTURING AS MONITOR

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

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

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

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

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

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

NECESSITY OF THE CRO

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

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

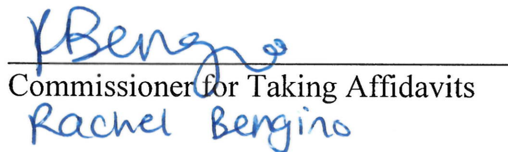
CONDUCT OF THE APPLICANT

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

PURPOSE

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

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



Commissioner for Taking Affidavits
Rachel Bergino

ROBERT MCMASTER

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

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

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

ONTARIO
SUPERIOR COURT OF JUSTICE
(COMMERCIAL LIST)

Proceedings commenced at Toronto

AFFIDAVIT OF ROBERT MCMASTER
Sworn April 1, 2019

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Lawyers for the Applicant

This is Exhibit "D" referred to in the
Affidavit of William E. Aziz sworn by William E. Aziz of the
Town of Oakville, in the Province of Ontario, before me at the
City of Toronto, in the Province of Ontario,
this 13th day of September, 2023 in accordance with
O. Reg. 431/20, Administering Oath or Declaration Remotely.

A Commissioner for taking affidavits

MITCHELL W. GROSSELL

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

ONTARIO
SUPERIOR COURT OF JUSTICE
(COMMERCIAL LIST)

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

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

Applicant

AFFIDAVIT OF ROBERT MCMASTER
(sworn March 8, 2019)

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

I. INTRODUCTION

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

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

II. PRESSING NEED FOR RELIEF

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

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

5. JTIM was unsuccessful in overturning the Judgment at the Quebec Court of Appeal for the reasons described in the decision released on March 1, 2019 (the "**QCA Judgment**"). The QCA Judgment substantially upheld the Judgment and requires JTIM to pay an initial deposit of $145 million. There is uncertainty as to whether the QCA Judgment is immediately enforceable, or provides JTIM with a maximum of up to 60 days to make the payment of the initial deposit. The QCA Judgment is 422 pages and is in French only. The English conclusions of the QCA Judgment and an English summary prepared by the Quebec Court of Appeal is attached as Exhibit "**A**".

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

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

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

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

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

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

III. OVERVIEW OF THE APPLICANT

A. *Corporate Structure*

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

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

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

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

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

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

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

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

B. *The Business*

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

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

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

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

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

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

C. *Pension Plans*

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

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

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

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

D. *Material Contracts*

i) Trademark Agreement

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

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

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

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

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

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

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

ii) Other Related Party Agreements

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

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

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

iii) 2018 Amendments and Forbearance of Related Party Agreements

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

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

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

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

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

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

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

E. *Cash Management*

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

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

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

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

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

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

IV. LIABILITIES OF THE APPLICANT

A. *Secured Creditors of JTIM*

i) TM Term Debentures

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

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

acquisition had to be postponed until after closing.

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

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

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

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

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

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

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

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

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

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

52. I am advised by legal counsel that:

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

<table>
<tr><th>Registration Number</th><th>Jurisdiction</th><th>Registration Date</th><th>Collateral</th></tr>
<tr><td>856928601</td><td>Ontario</td><td rowspan="2">November 22, 1999</td><td>All classes except “consumer goods”.</td></tr>
<tr><td>2399489 / 2417398</td><td>Nova Scotia</td><td rowspan="8">All present and after-acquired personal property.</td></tr>
<tr><td>681989I</td><td>British Columbia</td><td rowspan="2">June 23, 2015</td></tr>
<tr><td>15062337351</td><td>Alberta</td></tr>
<tr><td>301355169</td><td>Saskatchewan</td><td rowspan="5">June 24, 2015</td></tr>
<tr><td>201511679902</td><td>Manitoba</td></tr>
<tr><td>26022244</td><td>New Brunswick</td></tr>
<tr><td>3707279</td><td>Prince Edward Island</td></tr>
<tr><td>13031521</td><td>Newfoundland</td></tr>
</table>

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

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

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

ii) JTIM Secured Debt to ParentCo

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

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

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

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

iii) Related Party Security Agreements

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

58. I am advised by legal counsel that,

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

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

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

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

B. *Litigation*

i) Quebec Class Actions

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

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

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

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

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

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

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

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

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

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

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

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

ii. HCCR Actions

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

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

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

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

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

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

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

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

iii) Other Ongoing Litigation

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

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

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

C. *Ordinary Course Obligations*

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

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

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

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

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

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

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

V. Financial Situation and Cash Flow Forecast

A. *Financial Statements*

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

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

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

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

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

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

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

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

B. *Cash Flow Forecast*

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

VI. RELIEF BEING SOUGHT IN THE CCAA

A. *The Monitor*

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

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

B. *Treatment of Ordinary Creditors*

i) The 2004 CCAA Proceedings

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

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

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

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

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

ii) Proposed Treatment

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

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

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

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

C. *Stay of Proceedings*

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

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

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

D. *Interest on TM Term Debentures*

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

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

E. *Administration Charge*

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

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

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

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

F. ***Directors' Charge***

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

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

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

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

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

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

G. *Tax Charge*

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

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

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

H. *CRO Appointment*

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

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

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

I. *Sealing Order*

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

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

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

VII. FORM OF ORDER

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

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

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

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

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

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

SWORN BEFORE ME at the City of Toronto, Province of Ontario, on March 8, 2019. Commissioner for Taking Affidavits	ROBERT MCMASTER

Mitchell Grossell
Barrister & Solicitor
LSO# 69993I

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

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

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

ONTARIO
SUPERIOR COURT OF JUSTICE
(COMMERCIAL LIST)

Proceedings commenced at Toronto

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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 September 13, 2023)

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Tab 3

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

ONTARIO
SUPERIOR COURT OF JUSTICE
(COMMERCIAL LIST)

THE HONOURABLE CHIEF	)	WEDNESDAY, THE 27TH
	)	
JUSTICE MORAWETZ	)	DAY OF SEPTEMBER, 2023
	)	

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 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 by way of judicial video conference in Toronto, Ontario in accordance with the Guidelines to Determine Mode of Proceeding in Civil.

ON READING the affidavit of William E. Aziz sworn September 13, 2023 and the exhibits thereto, the Fifteenth Report of the Monitor, as filed by Deloitte Restructuring Inc. in its capacity as Monitor of the Applicant (the "**Monitor**"), and on hearing the submissions of counsel for the Applicant, counsel for the Monitor and such other counsel as were present, no one else appearing although duly served as appears from the affidavit of service of Natalie Longmore sworn on September ___, 2023, filed:

STAY EXTENSION

1. **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 from time to time, the "**Initial Order**") is hereby extended up to and including March 29, 2024.

GENERAL

2. **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.

____

Chief Justice G.B. Morawetz

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

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

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

ONTARIO
SUPERIOR COURT OF JUSTICE
(COMMERCIAL LIST)

Proceedings commenced at Toronto

STAY EXTENSION ORDER

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

ONTARIO
SUPERIOR COURT OF JUSTICE
(COMMERCIAL LIST)

Proceeding commenced at Toronto

MOTION RECORD
(Re: Stay Extension)
(Returnable on September 27, 2023)

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