

**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, 2021)**

September 17, 2021

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

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

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

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

Tel: 416-304-1616

Fax: 416-304-1313

Lawyers for the Applicant

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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ARRANGEMENT ACT*, R.S.C. 1985, c. C-36, AS AMENDED

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

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

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

Applicants

**COMMON SERVICE LIST
(as at July 19, 2021)**

TO:	<p>THORNTON GROUT FINNIGAN LLP 100 Wellington Street West, Suite 3200 TD West Tower, Toronto-Dominion Centre Toronto, ON M5K 1K7 Fax: 416-304-1313</p> <p>Robert I. Thornton Tel: 416-304-0560 Email: rthornton@tgf.ca</p> <p>Leanne M. Williams Tel: 416-304-0060 Email: lwilliams@tgf.ca</p> <p>Rebecca L. Kennedy Tel: 416-304-0603 Email: rkennedy@tgf.ca</p> <p>Rachel A. Bengino Tel: 416-304-1153 Email: rbengino@tgf.ca</p>
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	<p>Mitchell W. Grossell Tel: 416-304-7978 Email: mgrossell@tgf.ca</p> <p>John L. Finnigan Tel: 416-304-0558 Email: jfinnigan@tgf.ca</p> <p>Lawyers for JTI-Macdonald Corp.</p>
AND TO:	<p>DELOITTE RESTRUCTURING INC. Bay Adelaide East 8 Adelaide Street West Suite 200 Toronto, ON M5H 0A9 Fax: 416-601-6690</p> <p>Paul Casey Tel: 416-775-7172 Email: paucasey@deloitte.ca</p> <p>Warren Leung Tel: 416-874-4461 Email: waleung@deloitte.ca</p> <p>Jean-Francois Nadon Tel: 514-390-0059 Email: jnadon@deloitte.ca</p> <p>Phil Reynolds Tel: 416-956-9200 Email: philreynolds@deloitte.ca</p> <p>Jonathan Chu Tel: 416-643-8261 Email: jochu@deloitte.ca</p> <p>The Monitor of JTI-Macdonald Corp.</p>

AND TO:	<p>BLAKE, CASSELS & GRAYDON LLP 199 Bay Street Suite 4000, Commerce Court West Toronto, ON M5L 1A9 Fax: 416-863-2653</p> <p>Pamela Huff Tel: 416-863-2958 Email: pamela.huff@blakes.com</p> <p>Linc Rogers Tel: 416-863-4168 Email: linc.rogers@blakes.com</p> <p>Chris Burr Tel: 416-863-3261 Email: chris.burr@blakes.com</p> <p>Aryo Shalviri Tel: 416-863-2962 Email: aryo.shalviri@blakes.com</p> <p>Caitlin McIntyre Tel: 416-863-4174 Email: caitlin.mcintyre@blakes.com</p> <p>Nancy Thompson, Law Clerk Tel: 416-863-2437 Email: nancy.thompson@blakes.com</p> <p>Lawyers for Deloitte Restructuring Inc., in its capacity as Monitor of JTI-Macdonald Corp.</p>
AND TO:	<p>MILLER THOMSON LLP Scotia Plaza 40 King Street West, Suite 5800 Toronto, ON M5H 3S1</p> <p>Craig A. Mills Tel: 416-595-8596 Email: cmills@millერთhompson.com</p> <p>Lawyers for North Atlantic Operating Company, Inc.</p>

AND TO:	MILLER THOMSON LLP 1000, rue De La Gauchetière Ouest, bureau 3700 Montreal, QC H3B 4W5 Hubert Sibre Tel: 514-879-4088 Email: hsibre@millerthomson.com Lawyers for AIG Insurance Canada
AND TO:	BLUETREE ADVISORS INC. First Canada Place 100 King Street West Suite 5600 Toronto, ON M5X 1C9 William E. Aziz Tel: 416-640-7122 Email: baziz@bluetreeadvisors.com Chief Restructuring Officer of JTI-Macdonald Corp.
AND TO:	STIKEMAN ELLIOTT LLP Commerce Court West 199 Bay Street, Suite 5300 Toronto, ON M5L 1B9 Fax: 416-947-0866 David R. Byers Tel: 416-869-5697 Email: dbyers@stikeman.com Maria Konyukhova Tel: 416-869-5230 Email: mkonyukhova@stikeman.com Lesley Mercer Tel: 416-869-6859 Email: lmercer@stikeman.com Sanja Sopic Tel: 416-869-6825 Email: ssopic@stikeman.com Lawyers for British American Tobacco p.l.c., B.A.T. Industries p.l.c. and British American Tobacco (Investments) Limited

AND TO:	<p>OSLER, HOSKIN & HARCOURT LLP 100 King Street West 1 First Canadian Place Suite 6200, P.O. Box 50 Toronto, ON M5X 1B8 Fax: 416-862-6666</p> <p>Deborah Glendinning Tel: 416-862-4714 Email: dglendinning@osler.com</p> <p>Marc Wasserman Tel: 416-862-4908 Email: mwasserman@osler.com</p> <p>John A. MacDonald Tel: 416-862-5672 Email: jmacdonald@osler.com</p> <p>Michael De Lellis Tel: 416-862-5997 Email: mdelellis@osler.com</p> <p>Craig Lockwood Tel: 416-862-5988 Email: clockwood@osler.com</p> <p>Lawyers for Imperial Tobacco Canada Limited and Imperial Tobacco Company Limited</p>
AND TO:	<p>DAVIES WARD PHILLIPS & VINEBERG LLP 155 Wellington Street West Toronto, ON M5V 3J7</p> <p>Jay Swartz Tel: 416-863-5520 Email: jswartz@dwpv.com</p> <p>Robin Schwill Tel: 416-863-5502 Email: rschwill@dwpv.com</p> <p>Natasha MacParland Tel: 416-863-5567 Email: nmacparland@dwpv.com</p>

	Lawyers for FTI Consulting Canada Inc., in its capacity as Monitor of Imperial Tobacco Canada Limited and Imperial Tobacco Company Limited
AND TO:	<p>FTI CONSULTING CANADA INC. 79 Wellington Street West Suite 2010, P.O. Box 104 Toronto, ON M4K 1G8 Fax: 416-649-8101</p> <p>Greg Watson Tel: 416-649-8077 Email: greg.watson@fticonsulting.com</p> <p>Paul Bishop Tel: 416-649-8053 Email: paul.bishop@fticonsulting.com</p> <p>Jeffrey Rosenberg Tel: 416-649-8073 Email: jeffrey.rosenberg@fticonsulting.com</p> <p>Kamran Hamidi Tel: 416-649-8068 Email: kamran.hamidi@fticonsulting.com</p> <p>Tyler Rivas-Perri Tel: 416-649-8076 Email: tyler.rivas-perri@fticonsulting.com</p> <p>Monitor of Imperial Tobacco Canada Limited and Imperial Tobacco Company Limited</p>
AND TO:	<p>MCCARTHY TÉTRAULT LLP 66 Wellington Street West Suite 5300 TD Bank Tower, Box 48 Toronto, ON M5K 1E6 Fax: 416-868-0673</p> <p>James Gage Tel: 416-601-7539 Email: jgage@mccarthy.ca</p> <p>Heather Meredith Tel: 416-601-8342 Email: hmeredith@mccarthy.ca</p>

	<p>Paul Steep Tel: 416-601-7998 Email: psteep@mccarthy.ca</p> <p>Trevor Courtis Tel: 416-601-7643 Email: tcourtis@mccarthy.ca</p> <p>Deborah Templer Tel: 416-601-8421 Email: dtempler@mccarthy.ca</p> <p>Lawyers for Rothmans, Benson & Hedges, Inc.</p>
AND TO:	<p>BCF LLP 1100, René-Lévesque Blvd., Suite 2500 Montreal, QC H3B 5C9</p> <p>Me Bertrand Giroux Tel: 514-397-6935 Email: bertrand.giroux@bcf.ca</p> <p>Me Mireille Fontaine Tel: 514-397-4561 Email: mireille.fontaine@bcf.ca</p> <p>Lawyers for the Top Tube Company</p>
AND TO:	<p>TORYS LLP 79 Wellington St. West, Suite 3000 Box 270, TD Centre Toronto, ON M5K 1N2 Fax: 416-865-7380</p> <p>Scott Bomhof Tel: 416-865-7370 Email: sbomhof@torys.com</p> <p>Adam Slavens Tel: 416-865-7333 Email: aslavens@torys.com</p> <p>Lawyers for JT Canada LLC Inc. and PricewaterhouseCoopers Inc., in its capacity as receiver of JTI-Macdonald TM Corp.</p>

AND TO:	<p>PRICEWATERHOUSECOOPERS PwC Tower 18 York St., Suite 2600 Toronto, ON M5J 0B2 Fax: 416-814-3210</p> <p>Mica Arlette Tel: 416-814-5834 Email: mica.arlette@pwc.com</p> <p>Tyler Ray Email: tyler.ray@pwc.com</p> <p>Receiver and Manager of JTI-Macdonald TM Corp.</p>
AND TO:	<p>BENNETT JONES 100 King Street West Suite 3400 Toronto, ON M5X 1A4 Fax: 416-863-1716</p> <p>Jeff Leon Tel: 416-777-7472 Email: leonj@bennettjones.com</p> <p>Mike Eizenga Tel: 416-777-4879 Email: eizengam@bennettjones.com</p> <p>Sean Zweig Tel: 416-777-6254 Email: zweigs@bennettjones.com</p> <p>Lawyers for the Provinces of British Columbia, Manitoba, New Brunswick, Nova Scotia, Prince Edward Island and Saskatchewan, in their capacities as plaintiffs in the HCCR Legislation claims</p>
AND TO:	<p>MINISTRY OF THE ATTORNEY GENERAL Legal Services Branch 1001 Douglas Street Victoria, BC V8W 2C5 Fax: 250-356-6730</p> <p>Peter R. Lawless Tel: 250-356-8432 Email: peter.lawless@gov.bc.ca</p>

AND TO:	<p>KSV ADVISORY INC. 150 King Street West Suite 2308, Box 42 Toronto, ON M5H 1J9 Fax: 416-932-6266</p> <p>Noah Goldstein Tel: 416-932-6207 Email: ngoldstein@ksvadvisory.com</p> <p>Bobby Kofman Email: bkofman@ksvadvisory.com</p> <p>Financial Advisory for the Provinces of British Columbia, Manitoba, New Brunswick, Nova Scotia, Prince Edward Island and Saskatchewan, in their capacities as plaintiffs in the HCCR Legislation claims</p>
AND TO:	<p>MINISTRY OF THE ATTORNEY GENERAL Crown Law Office - Civil 720 Bay Street, 8th Floor Toronto, ON M7A 2S9 Fax: 416-326-4181</p> <p>Jacqueline Wall Tel: 416-434-4454 Email: jacqueline.wall@ontario.ca</p> <p>Edmund Huang Tel: 416-524-1654 Email: edmund.huang@ontario.ca</p> <p>Peter Entecott Tel: 647-467-7768 Email: peter.entecott@ontario.ca</p> <p>Lawyers for Her Majesty the Queen in Right of Ontario</p>
AND TO:	<p>FISHMAN FLANZ MELAND PAQUIN LLP 4100 – 1250 René-Lévesque Blvd. West Montreal, QC H3A 3H3</p> <p>Avram Fishman Email: afishman@ffmp.ca</p> <p>Mark E. Meland Tel: 514-932-4100 Email: mmeland@ffmp.ca</p>

Margo R. Siminovitch

Email: msiminovitch@ffmp.ca

Jason Dolman

Email: jdolman@ffmp.ca

Nicolas Brochu

Email: nbrochu@ffmp.ca

Tina Silverstein

Email: tsilverstein@ffmp.ca

CHAITONS LLP

5000 Yonge Street 10th Floor
Toronto, ON M2N 7E9

Harvey Chaiton

Tel: 416-218-1129

Email: harvey@chaitons.com

George Benchetrit

Tel: 416-218-1141

Email: george@chaitons.com

TRUDEL JOHNSTON & LESPÉRANCE

750, Cote de la Place d'Armes, Bureau 90
Montréal, QC H2Y 2X8
Fax: 514-871-8800

Philippe Trudel

Tel: 514-871-0800

Email: philippe@tjl.quebec

Bruce Johnston

Tel: 514-871-085

Email: bruce@tjl.quebec

André Lespérance

Tel: 514-871-8385 x204

Email: andre@tjl.quebec

Gabrielle Gagné

Tel: 514-871-8385 x207

Email: gabrielle@tjl.quebec

Lawyers for Conseil québécois sur le tabac et la santé, Jean-Yves Blais and
Cécilia Létourneau (Quebec Class Action Plaintiffs)

AND TO:	<p>KLEIN LAWYERS LLP 100 King Street West, Suite 5600 Toronto, ON M5X 1C9</p> <p>Douglas Lennox Tel: 416-506-1944 Email: dlennox@callkleinlawyers.com</p> <p>KLEIN LAWYERS LLP 400 – 1385 West 8th Avenue Vancouver, BC V6H 3V9</p> <p>David A. Klein Tel: 604-874-7171 Email: dklein@callkleinlawyers.com</p> <p>Lawyers for the representative plaintiff, Kenneth Knight, in the certified British Columbia class action, <i>Knight v. Imperial Tobacco Canada Ltd.</i>, Supreme Court of British Columbia, Vancouver Registry No. L031300</p>
AND TO:	<p>JENSEN SHAWA SOLOMON DUGID HAWKES LLP 800, 304 – 8 Avenue SW Calgary, AB T2P 1C2 Fax: 403-571-1528</p> <p>Carsten Jensen, QC Tel: 403-571-1526 Email: jensenc@jssbarristers.ca</p> <p>Sabri Shawa, QC Tel: 403-571-1527 Email: shawas@jssbarristers.ca</p> <p>Stacy Petriuk Tel: 403-571-1523 Email: petriuks@jssbarristers.ca</p> <p>PALIARE ROLAND ROSENBERG ROTHSTEIN LLP 155 Wellington Street West, 35th Floor Toronto, ON M5V 3H1</p> <p>Kenneth T. Rosenberg Email: ken.rosenberg@pailareroland.com</p> <p>Lilly Harmer Email: lily.harmer@paliareroland.com</p>

	<p>Massimo (Max) Starnino Email: max.starnino@paliareroland.com</p> <p>Danielle Glatt Email: Danielle.glatt@paliareroland.com</p> <p>Elizabeth Rathbone Tel: 416-646-4300 Email: elizabeth.rathbone@paliareroland.com</p> <p>Lawyers for Her Majesty the Queen in Right of Alberta</p>
AND TO:	<p>STEWART MCKELVEY 1959 Upper Water Street, Suite 900 PO Box 997 Halifax, NS B3J 2X2 Fax: 902-420-1417</p> <p>Robert G. MacKeigan, Q.C. Tel: 902-444-1771 Email: robbie@stewartmckelvey.com</p> <p>Lawyers for Sobeys Capital Incorporated</p>
AND TO:	<p>CASSELS BROCK & BLACKWELL LLP 2100 Scotia Plaza 40 King Street West Toronto, ON M5H 3C2</p> <p>Shayne Kukulowicz Tel: 416-860-6463 Fax: 416-640-3176 Email: skukulowicz@cassels.com</p> <p>Jane Dietrich Tel: 416-860-5223 Fax: 416-640-3144 Email: jdietrich@cassels.com</p> <p>Joseph Bellissimo Tel: 416-860-6572 Fax: 416-642-7150 Email: jbellissimo@cassels.com</p> <p>Monique Sassi Tel: 416-860-6886</p>

	<p>Fax: 416-640-3005 Email: msassi@cassels.com</p> <p>Lawyers for Ernst & Young Inc, in its capacity as court-appointed monitor of Rothmans, Benson & Hedges, Inc.</p>
AND TO:	<p>ERNST & YOUNG INC. Ernst & Young Tower 100 Adelaide Street West P.O. Box 1 Toronto, ON M5H 0B3</p> <p>Murray A. McDonald Tel: 416-943-3016 Email: murray.a.mcdonald@ca.ey.com</p> <p>Brent Beekenkamp Tel: 416-943-2652 Email: brent.r.beekenkamp@ca.ey.com</p> <p>Edmund Yau Tel: 416-943-2177 Email: edmund.yau@ca.ey.com</p> <p>Matt Kaplan Tel: 416-932-6155 Email: matt.kaplan@ca.ey.com</p> <p>Philip Kan Email: philip.kan@ca.ey.com</p> <p>Monitor of Rothmans, Benson & Hedges, Inc.</p>
AND TO:	<p>GOWLING WLG (CANADA) LLP 1 First Canadian Place 100 King Street West, Suite 1600 Toronto, ON M5X 1G5 Fax: 416-862-7661</p> <p>Clifton Prophet Tel: 416-862-3509 Email: clifton.prophet@gowlingwlg.com</p> <p>Steven Sofer Tel: 416-369-7240 Email: steven.sofer@gowlingwlg.com</p>

	<p>Nicholas Kluge Tel: 416-369-4610 Email: nicholas.kluge@gowlingwlg.com</p> <p>Lawyers for Philip Morris International Inc.</p>
AND TO:	<p>PALIARE ROLAND ROSENBERG ROTHSTEIN LLP 155 Wellington Street West, 35th Floor Toronto, ON M5V 3H1</p> <p>Kenneth T. Rosenberg Email: ken.rosenberg@paliareroland.com</p> <p>Lilly Harmer Email: lily.harmer@paliareroland.com</p> <p>Massimo (Max) Starnino Email: max.starnino@paliareroland.com</p> <p>Danielle Glatt Email: Danielle.glatt@paliareroland.com</p> <p>Elizabeth Rathbone Tel: 416-646-4300 Email: elizabeth.rathbone@paliareroland.com</p> <p>ROEBOTHAN MCKAY MARSHALL Paramount Building 34 Harvey Road, 5th Floor St. John's NL A1C 3Y7 Fax: 709-753-5221</p> <p>Glenda Best Tel: 705-576-2255 Email: gbest@wrmlaw.com</p> <p>Lawyers for Her Majesty the Queen in Right of Newfoundland</p>
AND TO:	<p>WESTROCK COMPANY OF CANADA CORP. 15400 Sherbrooke Street East Montreal, QC H1A 3S2</p> <p>Dean Jones Tel: 514-642-9251 Email: dean.jones@westrock.com</p>

AND TO	MINISTRY OF THE ATTORNEY GENERAL Civil Law Division, FSCO Branch 5160 Yonge Street, 17 th Floor Toronto, ON M2N 6L9 Fax: 416-590-7556 Thomas Felix Tel: 416-226-7834 Email: thomas.felix@fsrao.ca Lawyers for the Superintendent of Financial Services
AND TO:	KAPLAN LAW 393 University Avenue, Suite 2000 Toronto, ON M5G 1E6 Ari Kaplan Tel: 416-565-4656 Email: ari@kaplanlaw.ca Counsel to the Former Genstar U.S. Retiree Group Committee
AND TO:	McMILLAN LLP Brookfield Place 181 Bay Street, Suite 4400 Toronto, ON M5J 2T3 Wael Rostom Tel: 416-865-7790 Email: wael.rostom@mcmillan.ca Emile Catimel-Marchand Tel: 514-987-5031 Email: catimel-marchand@mcmillan.ca Lawyers for The Bank of Nova Scotia
AND TO	MERCHANT LAW GROUP LLP c/o #400 – 333 Adelaide St. West Toronto, ON M5V 1R5 Fax: 613-366-2793 Evatt Merchant, QC Tel: 613-366-2795 Email: emerchant@merchantlaw.com

	<p>Chris Simoes Email: csimoes@merchantlaw.com</p> <p>Lawyers for the Class Action Plaintiffs (MLG)</p>
AND TO:	<p>LABSTAT INTERNATIONAL INC. 262 Manitou Drive Kitchener, ON N2C 1L3</p> <p>Kimberly Stevenson Chow (CFO) Tel: 519-748-5409 Email: kstevens@labstat.com</p>
AND TO:	<p>CERNOS FLAHERTY SVONKIN LLP 220 Bay Street, Suite 700 Toronto, ON M5J 2W4 Fax: 647-725-5440</p> <p>Patrick Flaherty Tel: 416-855-0403 Email: pflaherty@cfscounsel.com</p> <p>Bryan D. McLeese Tel: 416-855-0414 Email: bmcleese@cfscounsel.com</p> <p>STOCKWOODS LLP 77 King Street West, Suite 4130 TD North Tower, P.O. Box 140, TD Centre Toronto, ON M5K 1H1 Fax: 416-593-9345</p> <p>Brian Gover Tel: 416-593-2489 Email: briang@stockwoods.ca</p> <p>Justin Safayeni Tel: 416-593-3494 Email: justins@stockwoods.ca</p> <p>Lawyers for R.J. Reynolds Tobacco Company and R.J. Reynolds Tobacco International Inc.</p>

AND TO:	<p>WEISZ FELL KOUR 100 King Street West, Suite 5600 Toronto, ON M5X 1C9</p> <p>Steven Weisz Tel: 416-613-8281 Email: sweisz@wfklaw.ca</p> <p>INCH HAMMOND PROFESSIONAL CORPORATION 1 King Street West, Suite 500 Hamilton, ON L8P 4X8</p> <p>Amanda McInnis Tel: 905-525-0031 Email: amcinnis@inchlaw.com</p> <p>Lawyer for Grand River Enterprises Six Nations Ltd.</p>
AND TO:	<p>STROSBERG SASSO SUTTS LLP 1561 Ouellette Avenue Windsor, ON M8X 1K5 Fax: 866-316-5308</p> <p>William V. Sasso Tel: 519-561-6222 Email: wvs@strosbergco.com</p> <p>David Robins Tel: 519-561-6215 Email: drobins@strosbergco.com</p> <p>Lawyers for The Ontario Flue-Cured Tobacco Growers' Marketing Board, plaintiffs in Ontario Superior Court of Justice Court File No. 1056/10CP (Class Proceedings)</p>
AND TO:	<p>ATTORNEY GENERAL OF CANADA Department of Justice Canada Ontario Regional Office, Tax Law Section 120 Adelaide Street West, Suite 400 Toronto, ON M5H 1T1 Fax: 416-973-0810</p> <p>Diane Winters, General Counsel Tel: 647-256-7459 Email: diane.winters@justice.gc.ca</p> <p>Lawyers for the Minister of National Revenue</p>

AND TO:	<p>LAX O’SULLIVAN LISUS GOTTLIEB LLP Suite 2750, 145 King Street West Toronto, ON M5H 1J8</p> <p>Jonathan Lisus Tel: 416-598-7873 Email: jlisus@lolg.ca</p> <p>Matthew Gottlieb Tel: 416-644-5353 Email: mgottlieb@lolg.ca</p> <p>Nadia Campion Tel: 416-642-3134 Email: ncampion@lolg.ca</p> <p>Andrew Winton Tel: 416-644-5342 Email: awinton@lolg.ca</p> <p>Lawyers for the Court-Appointed Mediator</p>
AND TO:	<p>FOGLER, RUBINOFF LLP Suite 3000, P.O. Box 95 Toronto-Dominion Centre 77 King Street West Toronto, ON M5K 1G8 Fax: 416-941-8852</p> <p>Vern W. DaRe Tel: 416-941-8842 Email: vdare@foglers.com</p> <p>CANADIAN CANCER SOCIETY 116 Albert Street, Suite 500 Ottawa, ON K1P 5G3 Fax: 613-565-2278</p> <p>Robert Cunningham Tel: 613-565-2522 ext. 4981 Email: rcunning@cancer.ca</p> <p>Lawyers for Canadian Cancer Society</p>

AND TO:	<p>BLANEY MCMURTRY LLP 2 Queen Street East, Suite 1500 Toronto, ON M5C 3G5</p> <p>David Ullmann Tel: 416-596-4289 Email: dullmann@blaney.com</p> <p>Dominic T. Clarke Tel: 416-593-3968 Email: dclarke@blaney.com</p> <p>Alexandra Teodorescu Tel: 416-596-4279 Email: ateodorescu@blaney.com</p> <p>Alex Fernet Brochu Tel: 416-593-3937 Email: afernetbrochu@blaney.com</p> <p>Lawyers for La Nordique Compagnie D'Assurance du Canada</p>
AND TO:	<p>VAILLANCOURT & CLOCCHIATTI 2600, boul. Laurier, bur. 760 Quebec, QC G1V 4T3 Fax: 416-643-050-</p> <p>Marc-André Maltais Tel: 418-657-8702, ext. 3018 Email: marc-andre.maltais@retraitequebec.gouv.qc.ca</p> <p>Lawyers for Retraite Québec</p>
AND TO:	<p>LECKER & ASSOCIATES 4789 Yonge Street, Suite 514 Toronto, ON M2N 0G3</p> <p>Brook Auld Tel: 416-223-5391 Email: bauld@leckerslaw.com</p> <p>Lawyer for Imperial Tobacco claimant</p>

AND TO:	McMILLAN LLP 181 Bay Street, Suite 4400 Toronto, ON M5J 2T3 Fax: 416-865-7048 Brett Harrison Tel: 416-865-7932 Email: brett.harrison@mcmillan.ca Lawyers for the Province of Quebec
AND TO:	ATTORNEY GENERAL OF CANADA Department of Justice Canada Ontario Regional Office, L.E.A.D. 120 Adelaide Street West, Suite 400 Toronto, ON M5H 1T1 John C. Spencer Tel: 647-256-0557 Email: john.spencer@justice.gc.ca Victor Paolone Tel: 647-256-7548 Email: victor.paolone@justice.gc.ca
AND TO:	McMILLAN LLP Brookfield Place 181 Bay Street, Suite 4400 Toronto, ON M5J 2T3 Fax: 416-865-7048 Stephen Brown-Okruhlik Tel: 416-865-7043 Email: stephen.brown-okruhlik@mcmillan.ca Lawyers for Citibank Canada
AND TO:	BORDEN LADNER GERVAIS LLP Bay Adelaide Centre, East Tower 22 Adelaide Street West, Suite 3400 Toronto, ON M5H 4E3 Fax: 416-367-6749 Alex MacFarlane Tel: 416-367-6305 Email: amacfarlane@blg.com

	<p>James W. MacLellan Tel: 416-367-6592 Email: jmaclellan@blg.com</p> <p>Bevan Brooksbank Tel: 416-367-6604 Email: bbrooksbank@blg.com</p> <p>Lawyers for Chubb Insurance Company of Canada</p>
AND TO:	<p>INDUSTRY CANADA, LEGAL SERVICES 235 Queen Street, 8th Floor, East Tower Ottawa, ON K1A 0H5</p> <p>Adrian Scotchmer Email: adrian.scotchmer@canada.ca</p> <p>Michel Ohayon Email: michel.ohayon@canada.ca</p>
AND TO:	<p>ROCHON GENOVA LLP Barristers • Avocats 121 Richmond Street West, Suite 900 Toronto, ON M5H 2K1 Fax: 416-363-0263</p> <p>Joel P. Rochon Tel: 416-363-1867 x222 Email: jrochon@rochongenova.com</p> <p>Ronald Podolny Tel: 416-363-1867 x288 Email: rpodolny@rochongenova.com</p> <p>Lawyers for Suzanne Jacklin, Barbara Bourassa on behalf of the Estate of Mitchell David Bourassa, Roderick Dennis McDermid, Linda Dorion, Thelma Adams, Ben Sample and Deborah Kunta, in their capacity as Representative Plaintiffs in certain proposed class proceedings</p>

AND TO:	<p>WAGNERS 1869 Upper Water Street, Suite PH301 3rd Floor, Pontac House, Historic Properties Halifax, NS B3J 1S9 Fax: 902-422-1233</p> <p>Raymond F. Wagner, Q.C. Tel: 902-425-7330 Email: raywagner@wagners.co</p> <p>Kate Boyle Tel: 902-425-7330 Email: kboyle@wagners.co</p> <p>Representative Counsel</p>
AND TO:	<p>REVENU QUÉBEC 1600, boul. René-Lévesque Ouest Secteur R23DGR Montréal, QC H3H 2V2</p> <p>Alain Casavant Email: alain.casavant@revenuquebec.ca</p>
AND TO:	<p>PELLETIER D'AMOURS 1, Complexe Desjardins Tour Sud, 12e étage Montreal, QC H5B 1B1</p> <p>David Robinson Email: david.robinson@dgag.ca</p> <p>Lawyers for Desjardins Assurances</p>

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**ONTARIO
SUPERIOR COURT OF JUSTICE
COMMERCIAL LIST**

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

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

Applicant

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2	Affidavit of William E. Aziz sworn September 17, 2021
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TAB 1

**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
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Applicant

**NOTICE OF MOTION
(Re: Stay Extension)
(Returnable on September 27, 2021)**

The Applicant will make a motion to Justice McEwen of the Ontario Superior Court of Justice (Commercial List) on September 27, 2021, at 10:00 a.m., 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 30, 2021, up to and including March 31, 2022; 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: (i) 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, (ii) subject to the judgment in the Quebec Class Actions up to the approximate amount of \$13.5 billion plus accruing interest, and (iii) a named defendant in certain class actions that have been commenced, but not certified, in six provinces.
3. The Applicant sought the protections afforded under the CCAA in order to maintain the *status quo* of its operations, preserve going concern value, and provide the Applicant with a period of stability within which 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, Q.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 30, 2021.
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 31, 2022.
8. The projected cash flow forecast, as prepared by the Applicant, with the assistance of the Monitor, demonstrates that the Applicant has sufficient liquidity to operate its business and meet its obligations during the proposed extension of the Stay Period.
9. Extending the Stay Period is required to enable the Applicant to continue to operate in the ordinary course while participating in the mediation process in an effort to seek a collective resolution of the Tobacco Claims against the Applicant.
10. 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 17, 2021;
- (b) the Tenth Report of the Monitor, to be filed; and
- (c) such further and other evidence as counsel may advise and this Court may permit.

September 17, 2021

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

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

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

Lawyers for the Applicant

TO: THE 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, 2021)**

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

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

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

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

Tel: 416-304-1616

Fax: 416-304-1313

Lawyers for the Applicant

TAB 2

**ONTARIO
SUPERIOR COURT OF JUSTICE
COMMERCIAL LIST**

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

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Applicant

**AFFIDAVIT OF WILLIAM E. AZIZ
(Sworn September 17, 2021)**

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.

I. INTRODUCTION

5. This affidavit is sworn in support of a motion for an Order extending the Stay Period to March 31, 2022.
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 Canadian tobacco company subject to the Pending Litigation based on volume of sales in Canada.
7. As described in previous affidavits sworn in these CCAA proceedings, JTIM is subject to:
 - (i) HCCR Actions by each province in Canada seeking over \$600 billion in total relating to the recovery of alleged health care costs, (ii) the judgment in the Quebec Class Actions (the “**QCA Judgment**”) up to the approximate amount of \$13.5 billion plus accruing interest, on a joint and several basis with Imperial and RBH (each as defined below), and (iii) certain class action proceedings that have been commenced, but not certified, in six provinces in Canada (the “**Consumer Class Actions**”).
8. 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 Claims asserted against it. But for the QCA Judgment and the other contingent tobacco-related litigation claims, the Applicant is a profitable and viable corporation.

9. On March 8, 2019, the Applicant was granted protection from its creditors under the CCAA pursuant to the Initial Order. Pursuant to the Initial Order, Deloitte Restructuring Inc. was appointed as the monitor (in such capacity, the “**Monitor**”) of the Applicant in these CCAA proceedings.
10. On April 5, 2019, pursuant to the Initial Order of the Honourable Mr. Justice McEwen, the Honourable Warren K. Winkler, Q.C., was appointed as an officer of the Court and a neutral third party mediator (the “**Court-Appointed Mediator**”) to mediate a global settlement of the Tobacco Claims against the Applicant.
11. The Initial Order provides for a Court-ordered stay of proceedings, which is currently set to expire on September 30, 2021, pursuant to the Stay Extension Order issued on March 30, 2021 (the “**Stay Extension Order**”).
12. 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 the HCCR Actions, the QCA Judgment and the Consumer Class Actions. I understand that there is currently a similar stay of all proceedings in respect of all three of the tobacco defendants.

II. ACTIVITIES SINCE STAY EXTENSION ORDER

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

Operational

- (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 continued to navigate the COVID-19 pandemic in accordance with applicable regulations and bylaws, guidance from Health Canada and the public health guidance in Ontario, Quebec and elsewhere and took steps to minimize disruption to the operation of the manufacturing facility;

Global Transformation Project

- (c) as described in my affidavit sworn September 22, 2019, certain of the Applicant's activities in the human resources, finance, information technology and purchasing departments were centralized globally (the "**Global Transformation Project**"). The purposes of the Global Transformation Project were to reduce duplication and capitalize on economies of scale, improving global competitiveness and efficiencies. The Applicant continued its implementation of the Global Transformation Project whereby the JTI Global Business Services Center in Manila, Philippines ("**GBS Manila**") began performing certain human resources, finance and purchasing activities for the Applicant as well as taking on the activities that were previously performed by the JTI Manchester Business Service Center ("**BSC Manchester**"). In alignment with this handover of activities, the Applicant was not charged for any services from the BSC Manchester after December 31, 2020 and certain employees of the Applicant have begun receiving severance

payments. The proposed terms of the intercompany agreement between the Applicant and GBS Manila were reviewed by the Monitor and the Monitor has provided its approval of this agreement pursuant to paragraph 9 of the Initial Order. Following the Monitor's approval, the agreement was fully executed by both parties and payments have been made for services rendered by GBS Manila. The negotiation of terms with JTI's Global Business Service Center in Warsaw, Poland ("**GBS Warsaw**") remains outstanding, including approval by the Monitor. GBS Warsaw is performing human resources recruitment activities as well as certain legal and regulatory affairs activities that are not available in GBS Manila. The Applicant anticipates finalizing the terms of this agreement, including seeking approval by the Monitor, during the next few months. Once the agreement is fully executed, payments would be made for services performed;

Collective Bargaining Agreement

- (d) I have been advised by the Applicant that its collective bargaining agreement with its unionized employees represented by the Syndicat International de Travailleurs et Travailleuses de la Boulangerie, Confiserie, Tabac et Meunerie, Section Local 235T, expired in 2020, however, the parties agreed to a temporary moratorium on negotiations due to the COVID-19 pandemic. The labour negotiations resumed in 2021 and the Applicant reached an acceptable collective bargaining agreement in June 2021, which was signed in July 2021. Pursuant to the Initial Order, the Applicant is entitled to pay all wages, salaries, commissions, compensation, bonuses and incentive plan payments incurred in the ordinary course of business or with Monitor approval. I understand that the Applicant is of the view that the

collective bargaining agreement is consistent with existing compensation policies and arrangements, however, out of an abundance of caution, the Applicant did seek approval of the Monitor prior to ratifying the agreement, which was provided. The agreement has a six-year term, retroactive to May 1, 2020, and provides salary increases and benefit improvements in line with previous collective bargaining agreements between the parties. The impact of this agreement is reflected in the forecast of projected cash flows noted below in paragraph 15;

Swann Action

- (e) further to the Order granted May 14, 2019 lifting the stay of proceedings to permit the continuation of a personal injury matter involving an employee of the Applicant as co-defendant (the “**Swann Action**”), the continuation of this proceeding resulted in the settlement and dismissal of the Swann Action entirely without liability to JTIM or any payment made by JTIM;

CCAA proceedings

- (f) 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, to the extent that the Monitor was not directly involved in such discussions;
- (g) the Applicant’s 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;

- (h) 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

- (i) the Applicant's external counsel and I have continued to communicate with and participate in the process established by the Court-Appointed Mediator in an effort to advance the ongoing mediation process;
- (j) the Applicant has complied with the timetable and steps of the mediation process that has been established by the Court-Appointed Mediator;
- (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 purposes of providing relevant information to certain stakeholders in respect of the Applicant's business, operations, finances and future prospects; and
- (l) the Applicant is participating in the mediation in good faith and as requested by the Mediator.

III. EXTENSION OF THE STAY PERIOD

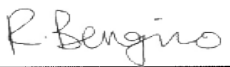
- 14. The Applicant seeks an extension of the Stay Period until March 31, 2022. It is my understanding from counsel to JTIM that Imperial and RBH are also seeking an extension of their respective stay periods until the same date. The Applicant believes that continuing to coordinate the stay periods at this stage in the proceedings is efficient, cost-effective and in the best interests of the court-ordered mediation process that continues.

15. 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 6, 2021 to the week ending April 1, 2022. I understand that the Cash Flow Statement will be appended to the Monitor’s Tenth 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 Period.
16. Extending the Stay Period is required to enable the Applicant to continue to operate in the ordinary course while participating in the mediation process and continuing discussions to seek a collective resolution of the Tobacco Claims. 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.

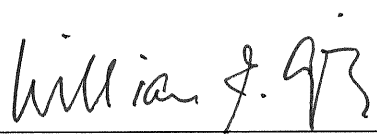
IV. PURPOSE

17. This affidavit is sworn in support of JTIM’s motion for the extension of the Stay Period to March 31, 2022 and for no other or improper purpose.

SWORN BEFORE ME BY VIDEO CONFERENCE by William E. Aziz on September 17, 2021 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



WILLIAM E. AZIZ

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 17, 2021)**

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

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

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

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

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

Lawyers for the Applicant

TAB 3

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

THE HONOURABLE) MONDAY, THE 27TH
)
JUSTICE MCEWEN) DAY OF SEPTEMBER, 2021
)
)

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 due to the COVID-19 pandemic.

ON READING the affidavit of William E. Aziz sworn September 17, 2021 and the exhibits thereto, and the Tenth 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 Rachel Bengino sworn on September 17, 2021, filed:

SERVICE

1. **THIS COURT ORDERS** that the time for service and filing of the Notice of Motion and the Motion Record is hereby validated so that this Motion was properly returnable on September 27, 2021, and hereby dispenses with further service thereof.

STAY EXTENSION

2. **THIS COURT ORDERS** that the Stay Period, as ordered and defined in paragraph 18 of the Initial Order granted March 8, 2019 (as amended and restated from time to time) (the “**Initial Order**”) is hereby extended until and including March 31, 2022.

GENERAL

3. **THIS COURT ORDERS** that this Order is effective from the date that it is made and is enforceable without any need for entry and filing.

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

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

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

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

Proceedings commenced at Toronto

STAY EXTENSION ORDER

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

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

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

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

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

Lawyers for the Applicant

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

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

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

Proceedings commenced at Toronto

**MOTION RECORD
(Re: Stay Extension)
(Returnable on September 27, 2021)**

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

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

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

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

Tel: 416-304-1616

Fax: 416-304-1313

Lawyers for the Applicant