

**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 March 28, 2023)**

March 17, 2023

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(Re: Stay Extension)
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1.	Notice of Motion dated March 17, 2023
2.	Affidavit of William E. Aziz sworn March 17, 2023
3.	Draft Stay Extension Order

TAB 1

**ONTARIO
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**NOTICE OF MOTION
(Re: Stay Extension)
(Returnable on March 28, 2023)**

The Applicant will make a motion to Justice McEwen of the Ontario Superior Court of Justice (Commercial List) on March 28, 2023, at 11:00 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 March 31, 2023, up to and including September 29, 2023; 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, 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 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 March 31, 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 September 29, 2023.
8. 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.
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 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 March 17, 2023;
- (b) the Fourteenth Report of the Monitor, to be filed; and
- (c) such further and other evidence as counsel may advise and this Court may permit.

March 17, 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

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(COMMERCIAL LIST)**

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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.**

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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

**NOTICE OF MOTION
(Re: Stay Extension)
(Returnable on March 28, 2023)**

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TAB 2

**ONTARIO
SUPERIOR COURT OF JUSTICE
COMMERCIAL LIST**

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

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

Applicant

**AFFIDAVIT OF WILLIAM E. AZIZ
(Sworn March 17, 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. (the "**Applicant**" or "**JTIM**") to provide my services 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. In preparing this affidavit, I have consulted with other members of the Applicant'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 September 29, 2023.
6. The Applicant, 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: (i) HCCR Actions by each province in Canada seeking an aggregate of over \$600 billion relating to the recovery of alleged health care costs, (ii) 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 (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 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

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 “**Court-Appointed 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 March 31, 2023, pursuant to the Stay Extension Order issued on September 29, 2022 (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. I understand that there is currently a similar stay of all proceedings in respect of JTIM, Imperial and RBH.

II. ACTIVITIES SINCE THE 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:

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 continued to monitor and follow applicable regulations and bylaws, guidance from Health Canada, and public health guidance in, among other provinces, Ontario and Quebec, as provincial authorities continued to lift restrictions in place as a result of the COVID-19 pandemic. As previously reported, JTIM's operations, including its manufacturing facility, did not experience any significant disruption due to the COVID-19 pandemic;
- (c) I am advised that the Applicant responded to a Health Canada consultation regarding proposed new packaging and labelling regulations on all tobacco products and their packaging, including warnings on individual cigarette sticks, which, if implemented as set out in the proposed *Regulations Amending the Tobacco Products Regulations (Plain and Standardized Appearance)* will give rise to significant technical manufacturing challenges. In addition to a written response, the Applicant met with Health Canada to discuss the proposed regulations. It remains uncertain whether and, if so, when these proposed regulations may come into effect;
- (d) in compliance with the Applicant's internal policies, the Applicant started the internal expenditure approval process associated with the replacement of leased vehicles that will occur in 2023. There are 152 leased vehicles that are planned to

be replaced. The costs associated with such replacements are expected to be incurred after March 31, 2023. The Applicant has provided the Monitor with information related to the vehicle replacements and the Monitor has provided its approval;

- (e) I am advised that in order to better reflect the extended scope of the operations of a related party, the Applicant terminated an existing licence with respect to one of its brands and entered into a new sub-licence for that brand on the same terms and conditions as the previous licence. The Monitor was provided with details of this arrangement and provided its approval. These arrangements have now been finalized;

Global Transformation Project

- (f) as previously reported, the Applicant completed the global transformation project. 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 in 2023;

Redundant Equipment

- (g) as previously described in my affidavit sworn March 8, 2022, after the *Tobacco Products Regulations (Plain and Standardized Appearance)* came into force, six packaging machines owned by JTIM became obsolete. Three of the packaging machines were sold to a third-party manufacturer and the fourth was sold to JTI Germany. Since my last affidavit, JTIM sold the remaining two packaging machines to JTI Germany, which were approved by the Monitor in accordance with the Initial Order;

War in Ukraine

- (h) in response to the war in Ukraine, JTI created a Crisis Response Plan that provides financial assistance to employees of JTI Ukraine who have been displaced for three months or more due to the war in Ukraine. The Applicant received the Monitor's consent to provide such financial assistance as part of the Crisis Response Plan if necessary;
- (i) as previously disclosed in my last affidavit, the Applicant sourced some of its dried ice expanded tobacco (DIET) and reconstituted sheet tobacco (RST) from a related party entity located in Russia. Since then, the Applicant has sourced all of its DIET and RST tobacco requirements from another related party entity and the Monitor provided its approval of such agreements. The new agreements do not have a material impact on the Applicant's operations;

CCAA proceedings

- (j) 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;
- (k) 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

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

- (m) the Applicant has complied with the timetable and steps of the mediation process as established by the Court-Appointed Mediator;
- (n) 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; and
- (o) 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 September 29, 2023. 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 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 March 6, 2023, to the week ending September 29, 2023. I understand that the Cash Flow Statement will be appended to the Monitor's Fourteenth 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.

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 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 September 29, 2023, and for no other or improper purpose.

SWORN BEFORE ME BY VIDEO CONFERENCE by William E. Aziz on March 17, 2023 in accordance with *O. Reg. 431/20, Administering Oath or Declaration Remotely*. The affiant was in the City of Naples, in the State of Florida and the commissioner was in the City of Toronto, in the Province of Ontario.



Commissioner for Taking Affidavits

Mitchell W. Grossell
LSO # 699931



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 March 17, 2023)**

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TAB 3

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

THE HONOURABLE) TUESDAY, THE 28TH
)
JUSTICE MCEWEN) DAY OF MARCH, 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 March 17, 2023 and the exhibits thereto, the Fourteenth 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 Khadija Waqqas sworn on March [▶], 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 September 29, 2023.

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.

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.**

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ONTARIO
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STAY EXTENSION ORDER

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ONTARIO
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**MOTION RECORD
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