

2026

Court Administration

MAR 19 2026

Halifax, N.S.

Hfx No. 551716

SUPREME COURT OF NOVA SCOTIA

IN THE MATTER OF: *The Companies Creditors Arrangement Act*, R.S.C. 1985, c. C-36, as amended (the "CCAA")

AND IN THE MATTER OF: An Application by CFFI Ventures Inc. (the "Applicant") for creditor protection under s. 11 of the CCAA, and other relief

**BRIEF OF LAW OF THE APPLICANT
APPLICATION FOR AMENDED AND RESTATED INITIAL ORDER**

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TO: The Service List

PART I - INTRODUCTION

1. This Brief of Law is intended to be read in conjunction with and supplemental to the Brief of Law filed on behalf of CFFI herein on March 11, 2026.

2. On March 13, 2026 the Applicant (“**CFFI**”) obtained protection from the Supreme Court of Nova Scotia under an Initial Order (the “**Initial Order**”) which, *inter alia*:

- a) declared that CFFI is a Debtor company to which the CCAA applies;
- b) appointed FTI Consulting Canada Inc. (“**FTI**” or the “**Proposed Monitor**”) as Monitor of CFFI in this proceeding (the “**CCAA Proceeding**”);
- c) approved an Administration Charge (\$250,000);
- d) approved a Directors’ Charge (\$100,000);
- e) granted a Stay of Proceedings as regards CFFI until the Comeback Hearing on March 23, 2026 (the “**Comeback Hearing**”); and
- f) granted a limited Stay of Proceedings as regards Non-Filing Affiliates until the Comeback Hearing.

3. Since the Initial Order, CFFI has co-ordinated with the Monitor and consulted with creditors and other stakeholders to develop a plan to stabilize its operations and proceed in a manner which will ensure maximum results under the CCAA.

4. To carry out the proposed plan, CFFI is seeking an Amended and Restated Initial Order (the “**ARIO**”) which, *inter alia*:

- a) abridges the time for service of the Motion and materials filed in support thereof, and dispenses with further service thereof;
- b) extends the Stay of Proceedings granted under the Initial Order as regards CFFI until May 28, 2026;
- c) extends the limited Stay of Proceeding granted under the Initial Order as regards certain Non-Filing Affiliates of CFFI (the “**Non-Filing Affiliates**”) as listed and defined in the ARIO;
- d) maintains the Administration Charge granted under the Initial Order (\$250,000);
- e) maintains the Directors’ Charge under the Initial Order (\$100,000);
and
- f) confirms the appointment of FTI as Monitor.

PART II - ISSUES

1. Should this Honourable Court exercise its discretion under s. 11 of the CCAA so as to grant the ARIO in the form submitted?

PART III – LAW AND ARGUMENT

A. Extension of the Stay Period

1. In granting the Initial Order, the Court deemed CFFI to be eligible for protection pursuant to the CCAA. This protection included a Stay of Proceedings against CFFI (**Initial Order, para. 13**) until the Comeback Hearing, together with a more limited Stay of Proceedings as regards the Non-Filing Affiliates (**Initial Order, para. 14**).

2. CFFI seeks to continue the CCAA Proceeding. It requires an extension of the Stay Period to **May 29, 2026**, during which time it will take the necessary steps to advance its Plan of Arrangement (the “**CCAA Plan**”), including seeking approval of holdings meetings of creditors.

3. Under CCAA ss. 11.02 and 11.03 a Court may extend a Stay of Proceedings where the Applicant satisfies the Court that:

- a) circumstances exist that make the Order appropriate; and
- b) the Applicant has acted, and is acting, in good faith and with due diligence.

4. In Re ***JTI-MacDonald Corp.*** 2019 ONSC 1625, Justice Hainey of the Ontario Supreme Court of Justice granted stay of proceedings pursuant to CCAA s. 11.02 as regards the filing entity in that case and stated (at para. 12):

[12] The Court may grant a stay of proceedings pursuant to s. 11.02 of the CCAA in respect of a debtor company if it is satisfied that circumstances exist that make the order appropriate. In order to determine whether a stay order is appropriate the Court should consider the purpose behind the CCAA. The primary purpose of the CCAA is to maintain the *status quo* for a period while the debtor company consults with its

creditors and stakeholders with a view to continuing the company's operations for the benefit of the company and its creditors.

5. Justice Hainey also considered and granted a stay in favour of certain non-applicant third parties and stated (at paras. 14-15):

"[14] [...] The Court has discretion under s. 11 of the CCAA to impose a stay of proceedings with respect to non-applicant third parties. In *Tamerlane Ventures Inc., Re*, 2013 ONSC 5461, Newbould J stated as follows at para. 21:

Courts have an inherent jurisdiction to impose stays of proceedings against non-applicant third parties where it is important to the reorganization and restructuring process, where it is just and reasonable to do so."

[15] I came to the same conclusion in *Pacific Exploration & Production Corp., Re*, 2016 ONSC 5429, where at para. 26 I set out the following list of factors that courts have considered in deciding whether to extend a stay of proceedings to non-applicant third parties:

- (a) the business and operations of the third party was significantly intertwined and integrated with those of the debtor company;
- (b) extending the stay to the third party would help maintain stability and value during the CCAA process;
- (c) not extending the stay to the third party would have a negative impact on the debtor company's ability to restructure, potentially jeopardizing the success of the restructuring and the continuance of the debtor company;
- (d) if the debtor company is prevented from concluding a successful restructuring with its creditors, the economic harm would be far-reaching and significant;
- (e) failure of the restructuring would be even more harmful to customers, suppliers, landlords and other counterparties whose rights would otherwise be stayed under the third party stay;
- (f) if the restructuring proceedings are successful, the debtor company will continue to operate for the benefit of all of its stakeholders, and its stakeholders will retain all of its remedies in the event of future breaches by the debtor company or breaches that are not related to the released claims; and

(g) the balance of convenience favours extending the stay to the third party.”

6. It is submitted that the continuation of the Stay of Proceedings as regards CFFI is appropriate in the circumstances of the present case. The continuation of the Stay will allow CFFI to stabilize its business operations and prevent interruption while, in close consultation with the Monitor, taking the necessary steps to advance the CCAA Plan.

Non-Filing Affiliates

7. It is submitted that this is similarly the case as regards the continuation of the limited stay of proceedings (the “**Non-Filing Affiliate Stay**”) as regards the Non-Filing Affiliates.

8. The proposed Non-Filing Affiliate Stay is limited in scope as it only prohibits actions from being taken against the Non-Filing Affiliates and/or their property as a result of CFFI commencing these proceedings and certain specified related matters. No other rights against the proposed Non-Filing Affiliates are proposed to be stayed.

9. The proposed Non-Filing Affiliate Stay is intended to preserve the value of CFFI’s assets, which are primarily equity interests in the Non-Filing Affiliates. Absent a stay, enforcement steps might be taken against the Non-Filing Affiliates as a result of CFFI’s insolvency, which would effectively circumvent the stay in favour of CFFI to the detriment of the value of its assets.

10. During the course of the hearing as regards the Initial Order, the Court asked that CFFI provide additional clarification as to which specific affiliated entities would be covered by the proposed Non-Filing Affiliate Stay.

11. In response, CFFI has prepared a detailed listing of all affiliated entities which would be covered by the Non-Filing Affiliate Stay, a copy of which appears as Exhibit "B" to the Affidavit of Brittany Bartlett sworn March 19, 2026, and as Schedule "B" to the ARIO.

Good Faith/Due Diligence

12. As regards CCCA s. 11.03(b), CFFI submits that it has acted in good faith and with due diligence since the granting of the Initial Order – as independently confirmed by the Monitor in its First Report.

Continuation of Stays

13. It is respectfully submitted that, in the circumstances of the present case, it is appropriate and in the best interests of all stakeholders that both the stay of proceedings as regards CFFI as granted in the Initial Order and the Non-Filing Affiliate Stay be extended to May 29, 2026.

B. Administration Charge

14. The Initial Order established an Administration Charge of up to \$250,000.00 in favour of the Monitor, its counsel, and counsel for CFFI as security for their respective fees and disbursements.

15. CFFI is not seeking any increase in the Administration Charge at the Comeback hearing or under the ARIO.

C. Directors' Charge

16. The Initial Order established a Directors' Charge in the amount of \$100,000 in favour of CFFI's directors and officers as regards potential liabilities that could be incurred during the CCAA Proceeding. The Directors' Charge ranks behind the Administration Charge.

17. CFFI is not seeking any increase any increase in the Director's Charge at the Comeback Hearing or under the ARIO.

All of which is respectfully submitted this 19th day of March, 2026:



Stephen Kingston



Ben Pryde

Counsel to the Applicant, CFFI Ventures Inc

Ontario Cases

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JTI-Macdonald Corp., Re

2019 ONSC 1625, 2019 CarswellOnt 3653 • Ontario Superior Court of Justice [Commercial List] • Ontario • March 12, 2019 • (Approx. 11 pages)

Document History (1) Citing References (48) Cited With (114) Legal Memos (0) Court Docs (0) Experts (0)



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2019 ONSC 1625

Ontario Superior Court of Justice [Commercial List]

JTI-Macdonald Corp., Re

2019 CarswellOnt 3653, 2019 ONSC 1625, 303 A.C.W.S. (3d) 241, 69 C.B.R. (6th) 285

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

IN THE MATTER OF A PLAN OF COMPROMISE OR ARRANGEMENT OF JTI-MACDONALD CORP. (Applicant)

Hainey J.

Heard: March 8, 2019

Judgment: March 12, 2019

Docket: CV-19-615862-00CL

Counsel: Robert I. Thornton, Leanne M. Williams, Rachel Bengino, Mitch Grossell, for Applicant

Scott A. Bomhof, Adam M. Slavens, for Respondents, JT Canada LLC, and PWC, in its capacity as Receiver of JTI-MacDonald
TM

Pamela L.J. Huff, Linc A. Rogers, Christopher Burr, for Proposed Monitor, Deloitte Restructuring Inc.

Subject: Insolvency

Related Abridgment Classifications

Bankruptcy and insolvency

XIX Companies' Creditors Arrangement Act

XIX.2 Initial application

XIX.2.a Grant and length of stay

Headnote

Bankruptcy and insolvency --- Companies' Creditors Arrangement Act — Initial application — Grant of stay — Maintenance of status quo

As result of judgment from Quebec Court of Appeal, debtor and four others were found liable to pay damages of \$13.5 billion — Debtor claimed it did not have sufficient assets to satisfy judgment and that enforcement would lead to its demise, impacting its 500 employees, 1,300 suppliers, 28,000 retailers and 790,000 consumers — Debtor was also defendant in significant number of health care costs recovery actions claiming damages of more than \$500 billion — On basis it wanted opportunity to seek collective solution to all proceedings, for benefit of all stakeholders, debtor brought application for initial order under Companies' Creditors Arrangement Act — Application granted —

Given amount of judgment debt and debtor's apparent inability to pay, there was no question debtor was insolvent company to which Act applied — On basis primary purpose of Act was to maintain status quo while debtor consulted with creditors and stakeholders with view to continuing operations for benefit of company, creditors and stakeholders, it was appropriate to grant stay of proceedings — On basis goal was to reach collective solution, including other defendants in tobacco litigation, it was appropriate to extend stay to those non-applicant third parties — Appointment of proposed monitor was approved — Administrative charges in favour of counsel, restructuring officer and monitor and its counsel in amount of \$3 million were authorized — In order to ensure ongoing stability of debtor's business during proceeding, directors' charges in amount of \$4.1 million were authorized — In order to protect directors and officers from personal liability, payment of sales taxes, excise taxes and duties of \$127 million was authorized — Also in order to maintain debtor's business as going concern, payment of various pre-existing and ongoing obligations arising in ordinary course of business, to employees, trade creditors and like, was authorized — Appointment of proposed restructuring officer, on terms set out in engagement letter, was approved — Debtor was entitled to order sealing engagement letter, which contained commercially sensitive information — Debtor was granted permission to continue application for leave to appeal to Supreme Court of Canada.

Table of Authorities

Cases considered by *Hainey J.*:

Canwest Publishing Inc./Publications Canwest Inc., Re (2012), 2012 ONSC 633, 2012 CarswellOnt 1134, 89 C.B.R. (5th) 332 (Ont. S.C.J. [Commercial List]) — considered

Cinram International Inc., Re (2012), 2012 ONSC 3767, 2012 CarswellOnt 8413, 91 C.B.R. (5th) 46 (Ont. S.C.J. [Commercial List]) — considered

Pacific Exploration & Production Corp., Re (2016), 2016 ONSC 5429, 2016 CarswellOnt 13733, 40 C.B.R. (6th) 64 (Ont. S.C.J. [Commercial List]) — considered

Sierra Club of Canada v. Canada (Minister of Finance) (2002), 2002 SCC 41, 2002 CarswellNat 822, 2002 CarswellNat 823, (sub nom. *Atomic Energy of Canada Ltd. v. Sierra Club of Canada*) 211 D.L.R. (4th) 193, (sub nom. *Atomic Energy of Canada Ltd. v. Sierra Club of Canada*) 18 C.P.R. (4th) 1, 44 C.E.L.R. (N.S.) 161, 287 N.R. 203, 20 C.P.C. (5th) 1, 40 Admin. L.R. (3d) 1, (sub nom. *Atomic Energy of Canada Ltd. v. Sierra Club of Canada*) 93 C.R.R. (2d) 219, 223 F.T.R. 137 (note), [2002] 2 S.C.R. 522, 2002 CSC 41 (S.C.C.) — considered

Tamerlane Ventures Inc., Re (2013), 2013 ONSC 5461, 2013 CarswellOnt 12213, 6 C.B.R. (6th) 328 (Ont. S.C.J. [Commercial List]) — considered

Statutes considered:

Canada Business Corporations Act, R.S.C. 1985, c. C-44
Generally — referred to

Companies' Creditors Arrangement Act, R.S.C. 1985, c. C-36
Generally — referred to

s. 11 — considered

s. 11.02 [en. 2005, c. 47, s. 128] — considered

s. 11.7 [en. 1997, c. 12, s. 124] — considered

s. 11.7(2) [en. 1997, c. 12, s. 124] — considered

s. 11.52 [en. 2005, c. 47, s. 128] — considered

Courts of Justice Act, R.S.O. 1990, c. C.43
s. 137(2) — considered

Hailey J.:

Background

- 1 On March 8, 2019 JTI-Macdonald Corp. ("JTIM" or "Applicant") sought an Initial Order pursuant to *The Companies Creditors Arrangement Act* ("CCAA"). I granted the Initial Order and endorsed the record as follows:

I am satisfied that this application should be granted today on the terms of the attached Initial Order. There shall be a sealing order on the terms of para. 59 of the Initial Order. I will provide written reasons for my decision to grant this order in due course. The comeback motion referred to in para. 50 shall be on April 4, 2019 at 10 a.m. in this Court.

- 2 These are my Reasons.

Facts

- 3 As a result of a judgment of the Quebec Court of Appeal released on March 1, 2019 in a class proceeding ("Quebec Class Action"), JTIM and two other defendants are liable for damages totaling \$13.5 billion ("Quebec Judgment"). If this judgment is not stayed, its enforcement could destroy the company because JTIM does not have sufficient funds to satisfy the judgment.
- 4 According to JTIM, enforcement of the Quebec Judgment would destroy the company's value for its 500 employees and 1,300 suppliers. It would also impact approximately 28,000 retailers that sell JTIM's products and 790,000 consumers of its products. Enforcement of the Quebec Judgment would also jeopardize federal and provincial taxes and duties in excess of \$1.3 billion paid annually in connection with JTIM's operations (of which \$500 million per year is paid directly by JTIM and another \$800 million per year is paid by third parties and consumers).
- 5 JTIM is also a defendant in a number of significant health care costs recovery actions ("HCCR Actions"). The total claims in the HCCR Actions exceed \$500 billion.
- 6 JTIM wishes to seek a "collective solution" to the Quebec Judgment and the HCCR Actions for the benefit of all of its stakeholders. It is for this reason that it seeks a stay of all proceedings in its application for an Initial Order pursuant to the CCAA.
- 7 In its application JTIM seeks protection from its creditors and the following additional relief under the CCAA:
 - (a) declaring that it is a company to which the CCAA applies;
 - (b) granting a stay of proceedings against it, and the Other Defendants in the Pending Litigation, as defined and described in the Notice of Application;
 - (c) appointing Deloitte Restructuring Inc. ("Proposed Monitor") as Monitor in these CCAA proceedings;
 - (d) granting an Administrative Charge, Directors' Charge and Tax Charge;
 - (e) authorizing the Applicant to pay its pre-filing and post-filing obligations in respect of suppliers, trade creditors, taxes, duties, employees (including outstanding and future pension plan contributions, other post-employment benefits and severance packages) and royalty payments and to pay post-filing interest of certain of its secured obligations in the ordinary course of business in order to minimize any disruption of the Applicant's business;
 - (f) approving the engagement letter dated April 23, 2018 (the "CRO Engagement Letter") appointing Blue Tree Advisors Inc. as the Applicant's Chief Restructuring Officer ("CRO");
 - (g) authorizing it to apply for leave and, if successful, to appeal the Quebec Judgment to the Supreme Court of Canada; and
 - (h) sealing Confidential Exhibit "1" of Robert Master's affidavit.

Issues

- 8 I must decide the following issues:

- (a) Should the Court grant protection to JTIM under the CCAA?
- (b) Is it appropriate to grant the requested stay of proceedings?
- (c) Should the Proposed Monitor be appointed as Monitor in these proceedings?
- (d) Should the Court grant the requested charges?
- (e) Is it appropriate to allow the payment of certain pre-filing and post-filing amounts?
- (f) Should Blue Tree Advisors be appointed as CRO?
- (g) Should JTIM be authorized to continue its application for leave to appeal of the Quebec Judgment to the Supreme Court of Canada?

Analysis

Should the Court grant protection to JTIM under the CCAA?

- 9 The CCAA applies to an insolvent company whose liabilities exceed \$5 million.
- 10 JTIM is a company incorporated pursuant to the *Canada Business Corporations Act*.
- 11 JTIM's liabilities clearly exceed \$5 million. It faces a judgment for \$13.5 billion. According to Robert McMaster, JTIM's Director, Taxation and Treasury, the company does not have sufficient funds to satisfy the Quebec Judgment which is currently payable. Accordingly, JTIM is an insolvent company to which the CCAA applies.

Is it appropriate to grant the requested stay of proceedings?

- 12 The Court may grant a stay of proceedings pursuant to s. 11.02 of the CCAA in respect of a debtor company if it is satisfied that circumstances exist that make the order appropriate. In order to determine whether a stay order is appropriate the Court should consider the purpose behind the CCAA. The primary purpose of the CCAA is to maintain the *status quo* for a period while the debtor company consults with its creditors and stakeholders with a view to continuing the company's operations for the benefit of the company and its creditors.
- 13 JTIM cannot pay the amount of the Quebec Judgment. Any steps to enforce the judgment could cause serious harm to JTIM's business to the detriment of all of its stakeholders. In my view, it is appropriate for this reason to grant the requested stay of proceedings in favour of JTIM.
- 14 JTIM also requests a stay of proceedings in favour of the other defendants in other litigation relating to tobacco claims in which JTIM is a defendant, including the Quebec Class Action and the HCCR Actions. The Court has discretion under s. 11 of the CCAA to impose a stay of proceedings with respect to non-applicant third parties. In *Tamerlane Ventures Inc., Re*, 2013 ONSC 5461 (Ont. S.C.J. [Commercial List]), Newbould J stated as follows at para. 21:

Courts have an inherent jurisdiction to impose stays of proceedings against non-applicant third parties where it is important to the reorganization and restructuring process, where it is just and reasonable to do so.
- 15 I came to the same conclusion in *Pacific Exploration & Production Corp., Re*, 2016 ONSC 5429 (Ont. S.C.J. [Commercial List]), where at para. 26 I set out the following list of factors that courts have considered in deciding whether to extend a stay of proceedings to non-applicant third parties:
 - (a) the business and operations of the third party was significantly intertwined and integrated with those of the debtor company;
 - (b) extending the stay to the third party would help maintain stability and value during the CCAA process;
 - (c) not extending the stay to the third party would have a negative impact on the debtor company's ability to restructure, potentially jeopardizing the success of the restructuring and the continuance of the debtor company;
 - (d) if the debtor company is prevented from concluding a successful restructuring with its creditors, the economic harm would be far-reaching and significant;

(e) failure of the restructuring would be even more harmful to customers, suppliers, landlords and other counterparties whose rights would otherwise be stayed under the third party stay;

(f) if the restructuring proceedings are successful, the debtor company will continue to operate for the benefit of all of its stakeholders, and its stakeholders will retain all of its remedies in the event of future breaches by the debtor company or breaches that are not related to the released claims; and

(g) the balance of convenience favours extending the stay to the third party.

- 16 Having considered these factors, I am satisfied that granting the requested stay of proceedings to the other defendants will allow JTIM to attempt to arrive at a collective solution with respect to the Quebec Class Action and the HCCR actions. If these actions continue to proceed against the other defendants but not JTIM there could be significant economic harm for all of JTIM's stakeholders.
- 17 Accordingly, I have concluded that the balance of convenience favours exercising my discretion under the CCAA to grant a stay of proceedings to the other defendants.

Should the Proposed Monitor be appointed as the Monitor?

- 18 I am satisfied that Deloitte Restructuring Inc. ("Deloitte") should be appointed the Monitor in these proceedings pursuant to s. 11.7 of the CCAA. Deloitte regularly acts as the Monitor in CCAA proceedings and it is not subject to any of the restrictions set out in s. 11.7(2) of the CCAA.

Should the requested charges be granted?

Administrative Charge

- 19 JTIM requests that I grant an administrative charge in favour of JTIM's counsel, the CRO, the Monitor and its legal counsel in the amount of \$3 million.
- 20 The Court has jurisdiction to grant an administrative charge pursuant to s. 11.52 of the CCAA. In *Canwest Publishing Inc./Publications Canwest Inc., Re*, 2012 ONSC 633 (Ont. S.C.J. [Commercial List]), Pepall J. set out the following list of factors the Court should consider when granting an administrative charge:
- (a) the size and the complexity of the business being restructured;
 - (b) the proposed role of the beneficiaries of the charge;
 - (c) whether there is an unwarranted duplication of roles
 - (d) whether the quantum of the proposed charge appears to be fair and reasonable;
 - (e) the position of the secured creditors likely to be affected by the charge; and
 - (f) the position of the monitor.
- 21 Having considered these factors, I am satisfied that the requested administration charge should be granted for the following reasons:
- (a) JTIM's restructuring will require extensive involvement by the professional advisors who are subject to the administrative charge;
 - (b) the professionals subject to the administration charge have contributed, and will continue to contribute, to the restructuring of JTIM;
 - (c) there is no unwarranted duplication of roles so that the professional fees associated with these proceedings will be minimized;
 - (d) the administrative charge will rank in priority to the directors' charge and the tax charge. The only secured creditors that will be affected by the administrative charge are JTIM's parent companies and certain other secured related party suppliers, each of which support the granting of the administrative charge; and

(e) the Proposed Monitor believes that the amount of the administration charge is reasonable

Directors' Charge

22 I am satisfied that the directors' charge should be approved to ensure the ongoing stability of JTIM's business during the CCAA proceedings. The directors and officers have a great deal of institutional knowledge and experience and JTIM requires their continued management of its business. To ensure that the officers and directors remain with JTIM during the CCAA proceedings they require the protection of the directors' charge. The proposed charge of \$4.1 million will only be available to the extent that the directors' and officers' insurance is not available if a claim is made against them. The Proposed Monitor is of the view that the directors' charge is reasonable and appropriate.

Tax Charge

23 JTIM is also seeking a third-ranking super-priority charge in the amount of \$127 million in favour of the Canadian federal, provincial and territorial authorities that are entitled to receive payments and collect money from JTIM with respect to sales taxes and excise taxes and duties. I am satisfied that this tax charge should be granted so that JTIM's directors and officers do not become personally liable for these taxes. Further, the Proposed Monitor is of the view that the tax charge is reasonable and appropriate.

Is it appropriate to allow the payment of certain pre-filing and post-filing amounts?

24 In *Cinram International Inc., Re*, 2012 ONSC 3767 (Ont. S.C.J. [Commercial List]) Morawetz J. (as he then was) concluded at Para. 68 that the court should consider the following factors in deciding whether to authorize the payment of pre-filing obligations:

(a) whether the goods and services were integral to the business of the applicants;

(b) the debtors' need for the uninterrupted supply of the goods or services;

(c) the Monitor's support and willingness to work with the applicants to ensure that payments to suppliers in respect of pre-filing liabilities were appropriate; and

(d) the effect on the debtors' ongoing operations and ability to restructure if they were unable to make pre-filing payments to their critical suppliers.

25 JTIM's business is expected to remain cash-flow positive during these CCAA proceedings so that it will have sufficient cash to meet its pre-filing and post-filing obligations. JTIM's operations depend on timely and continuous supply from its suppliers. Maintaining its operations as a going concern is in the best interests of all of JTIM's stakeholders. The Proposed Monitor supports JTIM's intentions to pay its employees, trade creditors, royalty payments, interest, payments, previous obligations and other disbursements in the ordinary course of its business. I agree and adopt the Proposed Monitor's reasons for supporting these pre-filing and post-filing payments as set out at paras. 65-72 of the Report of the Proposed Monitor dated March 8, 2019.

Should Blue Tree Advisors be appointed as CRO?

26 According to JTIM, it requires the proposed Chief Restructuring Officer, William Aziz, to successfully complete its contemplated restructuring plan. Mr. Aziz has the experience and necessary skills to oversee and assist JTIM with its complex negotiations during the CCAA proceedings. With the assistance of the CRO, JTIM's management can focus on the company's operations which should maximize value for its stakeholders.

27 I am satisfied that Mr. Aziz should be appointed as CRO pursuant to the terms of the CRO Engagement Letter which the Monitor supports.

28 JTIM requests an order sealing the unredacted copy of the CRO Engagement Letter. Section 137(2) of the *Courts of Justice Act* gives the Court jurisdiction to order that a document filed in a civil proceeding be treated as confidential, sealed and not form part of the public record.

29 The CRO Engagement Letter sets out the commercial terms of the CRO's engagement. This is commercially sensitive information. In my view JTIM's request for a sealing order meets the test set out in the Supreme Court of Canada's

decision in *Sierra Club of Canada v. Canada (Minister of Finance)*, 2002 SCC 41 (S.C.C.) because it will protect a commercial interest and the salutary effects of sealing the CRO's Engagement Letter outweighs any deleterious effects since this is the type of information that a private company outside of a CCAA proceeding would treat as confidential.

Should JTIM be authorized to continue its appeal to the Supreme Court of Canada?

30 At para. 75 of its Factum, JTIM submits as follows:

75. In this case, the Applicant is cash flow positive and has successful business operations. Its insolvency is primarily due to the QCA Judgment. The Applicant wishes to exercise its right to appeal the QCA Judgment, while staying enforcement thereof and while considering its options for a viable solution for the benefit of all of its stakeholders.

31 In my view, based on this submission it is reasonable to permit JTIM to continue its leave to appeal application to the Supreme Court of Canada.

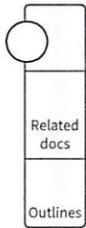
Conclusion

32 For the reasons set out above the Application is granted.

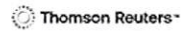
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