

**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 IMPERIAL TOBACCO CANADA LIMITED AND IMPERIAL TOBACCO
COMPANY LIMITED

Applicants

BOOK OF OBJECTIONS
(For April 4 and 5, 2019 Court Hearing)

April 3, 2019

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TAB 1

NOTICE OF APPEARANCE

(APRIL 1, 2019)

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

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

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

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

Applicants

NOTICE OF APPEARANCE

The Former Genstar U.S. Retiree Group Committee intends to respond to this Application on behalf of all beneficiaries entitled to pension benefits under the pension plans guaranteed by the Applicant pursuant to an agreement dated April 2, 1986 (the "Genstar U.S. Plans").

April 1, 2019

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To: 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 IMPERIAL TOBACCO CANADA LIMITED, *et al.*

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

PROCEEDING COMMENCED AT
TORONTO

NOTICE OF APPEARANCE

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TAB 2

NOTICE OF OBJECTION

(APRIL 1, 2019)

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

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

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

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

Applicants

NOTICE OF OBJECTION

April 1, 2019

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NOTICE OF OBJECTION

A. Overview

1. The Former Genstar U.S. Retiree Group Committee (the “**Committee**”) represents the interests of former officers, executives and management employees of Genstar Corporation (“**Genstar**”), a subsidiary of the Applicant, and their survivors, who are beneficiaries entitled to pension benefits guaranteed by Applicant pursuant to an agreement dated April 2, 1986 (the “**Affected Members**”). The pension plans (collectively, the “**Genstar U.S. Plans**”) include:

- (a) a “deferred income plan” for approximately 53 individuals who are either former senior management employees of Genstar or their surviving spouses (“**GCDIP**”);
- (b) a “supplemental executive retirement plan” for approximately 14 individuals who were either former Genstar employees or their surviving spouses (“**SERP**”); and
- (c) a “supplementary pension plan” for 3 individuals who were either former Genstar employees or their surviving spouses (“**SPEN**”).

2. The Affected Members are a significant stakeholder and creditor group. The present value of the pension obligations to Affected Members under the Genstar U.S. Plans, in the aggregate, is estimated to be approximately USD \$32 million (approximately CAD \$43 million).

3. The Committee:

- (a) objects to the Applicant’s intention to cease pension payments and obligations owed to the Affected Members;
- (b) intends to seek an order and bring a motion at the earliest available opportunity, if necessary, appointing members of the Committee as representatives of the Affected Members and appointing representative counsel;
- (c) requests that the Court make an order at the Comeback Motion requiring the Applicant to continue to fund the pension obligations to the Affected Members for at least 120 days from the date of the Initial Order; and

- (d) requests the immediate disclosure to it by the Applicant of:
- i. all relevant plan texts, agreements, insurance policies and other applicable documents and particulars of its financial obligations respecting the Genstar U.S. Plans including with respect to funding or securing the obligations thereunder;
 - ii. the names and contact information of all Affected Members and particulars of their pension entitlements, subject to a confidentiality undertaking; and
 - iii. such additional and other documentation or information as may be necessary or desirable to permit the Committee to represent the Affected Members in these proceedings.

4. The Applicant is not correct that the Affected Members' pensions are "not funded"¹. For the GCDIP and SERP, in particular, Genstar secured the pension benefits by using employees' deferred income (in the case of the GCDIP) and corporate funds (in the case of the SERP) to purchase single-premium life insurance policies on each Member's life. Genstar was the owner and beneficiary of these life insurance policies, which are worth millions of dollars today. This raises trust and fiduciary obligations by the Applicant on behalf of the Affected Members.

5. Moreover, contrary to the Applicants' characterization of the Affected Members' interests as being a "contractual obligation", the Supreme Court of Canada has confirmed that pension benefits earned by an employee during their employment years are not merely contractual, rather are quasi-proprietary in nature². Pensions provide retirement savings and serve a public purpose namely the security and dignity of personhood in one's elder years. In this case, it is believed that a majority of Affected Members are in their late 70s and 80s, if not older.

¹ Exhibit "C" to the Affidavit of Eric Thauvette Sworn March 12, 2019.

² *IBM Canada Limited v. Waterman*, 2013 SCC 70 at 4, 83-4: "Pension benefits are a form of deferred compensation for the employee's service and constitute a type of retirement savings. [They] bear many of the hallmarks of a property right ... As A. Kaplan and M. Frazer explain in *Pension Law* (2nd ed. 2013), at p. 203: ... It is the vesting of pension benefits that shift our perception of pensions from purely contractual entitlements to quasi-proprietary interests."

B. Late Notice of Comeback Motion / Extension of Time to File

6. The Committee and Affected Members did not receive timely notice of these proceedings and therefore seek the Court's indulgence to file this Notice of Objection and, if required, leave to do so. The majority of members live in the United States. The Initial Order (para. 51) provides for notice of the Comeback Motion by way of Canadian newspaper publications, as well as for the Monitor to send "a notice ... to every known creditor who has a claim (contingent, disputed or otherwise) against the Applicants of more than \$5,000, except ... in the case of beneficiaries of the ... pension plans, in which case the Monitor *shall only send a notice to the trustees of each of the ... pension plans*".

7. The Committee states that Affected Members are yet to receive notice or other information concerning this proceeding from the trustees or administrator of the Genstar U.S. Plans.

8. On March 29, the Committee first contacted Mr. Ari Kaplan of Kaplan Law and have since retained that firm to represent the interests of Affected Members in this proceeding. On the same day, Mr. Kaplan sent a letter to the Applicant and Monitors' counsel (**Exhibit "A"**) which asserted the Committee's interests and expressed objections to the Initial Order to the extent it sanctioned the suspension or cessation of payments under the Genstar U.S. Plans. Mr. Kaplan also made initial telephone contact with the Applicant's counsel.

9. Para. 63 of the Initial Order provides that "any interested party ... may apply to this Court to vary or amend this Order on not less than seven (7) days' notice to any other party or parties likely to be affected by the order sought or upon such other notice, if any, as this Court may order".

10. The Monitor has advised that "Any party bringing a motion on the Comeback Motion seeking relief against Imperial Tobacco or a variation of the Initial Order must serve their materials on the Service List and file materials with the Court by March 28, 2019 at 4:00 PM."

11. The Committee was reasonably not in a position to file any materials prior to March 29 and yet it acted prudently and without undue delay, forthwith upon securing counsel. In light of the foregoing and despite the late notice, the Committee seeks standing to appear in this proceeding and at the Comeback Motion, make submissions and bring motions for the benefit and protection of the Affected Members as indicated in this Notice of Objection and as may come to its attention.

C. Background

12. On March 12, 2019, the Applicant Imperial Tobacco Canada Limited (“ITCAN”) filed a Notice of Application under the *Companies’ Creditors Arrangement Act* (Canada) (“CCAA”) and obtained the Initial Order. Schedule “B” to the Initial Order lists all “ITCAN Subsidiaries” (defined at para. 4(f) of the Initial Order), which includes Genstar Corporation. Genstar is a wholly-owned Canadian subsidiary of ITCAN and is currently a dormant Canadian company (see Affidavit of Eric Thauvette Sworn March 12, 2019 [the “**Thauvette Affidavit**”] at para. 24(e)).

13. Historically, various senior employees, executives and other management employees of Genstar and related entities in the United States (including Genstar Company and Imasco Limited) earned benefits including supplementary pensions under the Genstar U.S. Plans.

14. The GCDIP and SERP were designed by an independent firm, Clark/Bardes Organization, Inc., to be at least cost/revenue neutral to Genstar. In the case of the GCDIP, a Member could defer as much as 50% of their annual compensation. In the case of the SERP, Genstar offered this as an incentive to senior executives to stay with the company and to attract new hires of senior executives to the company. Under both the GCDIP and SERP, Genstar purchased single-premium life insurance policies on each Member’s life, using the deferred income on account of the GCDIP, or corporate funds on account of the SERP, to pay for the premiums.

15. As stated, Genstar was the owner and beneficiary of the life insurance policies used to secure and fund payments under the GCDIP and SERP. It is expected that these policies are worth a significant amount today (in the millions of dollars). The policies are effectively trust funds.

16. Pursuant to an agreement dated April 2, 1986 involving various entities (the “**1986 Agreement**”), and in conjunction with the historical acquisition and restructuring of various companies and businesses involving U.S subsidiaries including Imasco Limited and Genstar Company, ITCAN came to be the guarantor of the legacy pension benefits payable under the Genstar U.S. Plans.

17. It appears that ITCAN has historically met its obligations under the Genstar U.S. Plans by making capital contributions as necessary to its applicable U.S. subsidiaries, which are asset-less and responsible for these pension payments, and then writes off these amounts.

18. The present value of the obligations under the Genstar U.S. Plans is estimated to be approximately CAD \$43 million in the aggregate (USD \$32 million). A summary of ITCAN's 11 pension plans in Canada and the United States, as at December 31, 2017 is included as Exhibit "C" to the Thauvette Affidavit and attached hereto as **Exhibit "B"**.

19. The Initial Order provides that ITCAN may suspend its obligations under all of its pension plans. Specifically,

- (a) Para. 7 of the Initial Order provides that the Applicants "entitled but not required to pay the following expenses whether incurred prior to, on or after the date of" the Initial Order: "(a) all outstanding and future ... retiree pension and other benefits and related contributions and payments";
- (b) Para. 14 of the Initial Order provides that "except as specifically permitted herein, the Applicants are hereby directed, until further Order of this Court: (a) to make no payments ... on account of amounts owing by the Applicants or claims to which they are subject to any of their creditors"; and
- (c) Para. 21 of the Initial Order provides that "during the Stay Period, all rights and remedies of any individual ... against or in respect of the Applicants, the ITCAN Subsidiaries or the Monitor ... are hereby stayed and suspended except with the written consent of the Applicants and the Monitor, or leave of this Court".

20. It appears that ITCAN intends to treat the Affected Members of the Genstar U.S. Plans *differently and prejudicially relative to all other pension obligations*. ITCAN has stated that during the course of these proceedings, it "intends to continue to make ordinary course payments" and, where applicable, "amortization payments", in respect of its Canadian pension plans as well as to the Imasco "IHGI U.S. Pension Plan" (Thauvette Affidavit at paras. 49-54).

21. However, with respect to the Genstar U.S. Plans, ITCAN has stated that it "proposes that *any further payments with respect to these obligations be stayed pursuant to the Initial Order*" (Thauvette Affidavit at para. 56). The Committee objects to this inequitable and non-evenhanded treatment by ITCAN respecting its pension obligations. The Affected Members appear to be ITCAN's *only* pension beneficiaries whose pension payments are intended to be stayed.

D. Former Genstar U.S. Retiree Group and Committee

22. As mentioned, on March 29, the Committee established itself and has retained Canadian counsel to represent the interests of the Committee and Affected Members under the Genstar U.S. Plans. The Committee has thus formed the Former Genstar U.S. Retiree Group and is instructing Kaplan Law. The Committee (a steering committees) is currently comprised of the following former Genstar executives and officers:

- (a) Angus A. MacNaughton, former co-CEO;
- (b) Ross J. Turner, former co-CEO;
- (c) Ernest Hartz, former Senior Vice President and General Counsel; and
- (d) Richard D. Paterson, former Senior Vice President and CFO.

23. The members of the Committee have been attempting to contact other Affected Members and are in the process of organizing themselves according to their common interests in these proceedings, in which they are significant stakeholders. The Committee continues its efforts to locate and communicate with Affected Members. However, given the length of time that has passed since Genstar ceased operations and the fact that these individuals are elderly and live all over the United States and beyond, it has proved to be a difficult task.

E. U.S. Chapter 15 Proceedings

24. Commencing on or about March 14, 2019, various Affected Members received voluminous court documents from the Bracewell LLP firm respecting the Chapter 15 proceeding initiated on March 13, 2019 by the Monitor on behalf of ITCAN as Debtor in the United States Bankruptcy Court in the Southern District of New York (the “**Chapter 15 Proceeding**”).

25. On March 25, the Monitor obtained an Order Granting Preliminary Injunction in the Chapter 15 Proceeding in which the court found that ITCAN is likely the “subject of a pending foreign main proceeding” in Ontario, established the Monitor as the “foreign representative” of ITCAN and stayed proceedings in the U.S. “until such a time as an order adjudicating the Monitor’s request for recognition of the Canadian Proceeding is entered, or as otherwise ordered by this Court”.

26. The Committee is retaining U.S. counsel and intends to participate in and make submissions in the Chapter 15 Proceeding. Some Affected Members have already started writing to the U.S. court to assert their objections and interests (see e.g. **Exhibit “C”** attached hereto).

27. Since the within CCAA proceeding is the “main proceeding” respecting the rights of the Affected Members, the Committee intends to fully participate in this CCAA proceeding. The Committee’s mandate and intended activities in this proceeding include the following:

F. Representation Order

28. Two members of the Committee, Messrs. Ernest Hartz and Richard Paterson, both residents of California, propose to seek an order (the “**Representation Order**”) appointing them as representatives (the “**Representatives**”) of the Affected Members, namely, of all beneficiaries entitled to pension benefits under the Genstar U.S. Plans guaranteed by ITCAN pursuant to the 1986 Agreement, or any person claiming an interest under or on behalf of such Affected Members and their surviving spouses (excluding individuals who opt-out of such representation, if any), for the purpose of representing the Affected Members in these proceedings and in particular with respect to proving, settling or compromising the rights and claims of the Affected Members.

29. The Affected Members are a significant and vulnerable stakeholder group in these proceedings and they require representation. The Affected Members are not yet represented in the proceeding as an organized group and they are exposed to significant losses to their pension benefits. The Applicants’ stated intention that all “further payments” under the Genstar U.S. Plans be “stayed” will have the effect of directly and detrimentally impacting \$43 million of vested benefits and entitlements of 53 elderly members of the GCDIP, 14 members of the SERP and 3 members of the SPEN. The proposed stay, if permitted by this court, will directly and immediately cause losses to Affected Members, most of whom are in their late 70s and 80s. These actions will cause immediate and substantial hardship to Affected Members. The Committee intends to oppose any motion to implement such actions.

30. The Committee will seek an order proposing the appointment of Ari Kaplan of Kaplan Law (“**Representative Counsel**”) as legal counsel to the Representatives in their capacity as representatives for the Affected Members with the mandate to provide assistance to the Affected Members so that they are able to participate in the proceedings and the restructuring process in a

more efficient manner, including to assist the Affected Members in the evaluation of their entitlements and claims in a cost-effective and timely manner.

31. The Committee will seek an order proposing that notice of the appointment of the Representatives and Representative Counsel (the “**Representation Notice**”) be provided to the Affected Members by the Monitor by way of first class mailing and under such other terms and conditions as to be agreed upon by the Representatives, the Applicant and the Monitor, such terms to include that any Affected Member who does not wish to be represented by the Representatives and Representative Counsel and thereby bound by their subsequent actions and decisions be entitled to opt out of representation by the Representatives or Representative Counsel.

G. Disclosure of Information and Entitlements of Affected Members

32. Para. 34 of the Initial Order provides that “the Monitor shall provide any creditor of the Applicants ... with information provided by the Applicants in response to reasonable requests for information made in writing by such person addressed to the Monitor. ... In the case of [confidential] information ..., the Monitor shall not provide such information to creditors unless otherwise directed by this Court or on such terms as the Monitor and the Applicants may agree”.

33. Para. 51 of the Initial Order provides that the Monitor shall “... (C) prepare a list showing the names and addresses of those creditors and the estimated amounts of those claims, and make it publicly available in the prescribed manner ... not includ[ing] the names, addresses or estimated amounts of the claims of those creditors who are individuals or any personal information in respect of an individual”.

34. The Committee requests that the Applicants disclose and, if not forthcoming, seeks an order directing the Applicants to provide to the proposed Representatives and Representative Counsel without charge, the following information, documents and data (the “**Information**”):

- (a) the names, last known address, telephone number and email addresses (if any) of all the Affected Members as well as applicable data regarding their entitlements, subject to a confidentiality agreement as applicable and to only be used for the purposes of these proceedings, and that, in so doing, the Applicants are not required to obtain express consent from such Affected Members authorizing disclosure of

the Information to the proposed Representatives and Representative Counsel and, further, in accordance with section 7(3) of the *Personal Information Protection and Electronic Documents Act* (Ontario) or, where applicable, section 18(9) of *An Act respecting the Protection of Personal Information in the Private Sector*, CQLR c P-39.1, such an order will be sufficient to authorize the disclosure of the Information without the knowledge or consent of the Affected Members; and

- (b) such other documents and data as may be relevant to matters relating to the issues in these proceedings, including all relevant plan texts, agreements, insurance policies, communications, booklets, and other applicable documents and particulars of ITCAN's financial obligations respecting the Genstar U.S. Plans including with respect to funding or securing the obligations and any other relevant other documents and data pertaining to the Genstar U.S. Plans and ITCAN's other pension plans and retirement arrangements, including up to date financial information regarding the funding and investments of any of these arrangements.

35. The requested Information is reasonably sought and necessary for the Committee and proposed Representatives to carry out their activities for the benefit of the Affected Members in these proceedings.

H. No Prejudice to Continue Payments for At Least 120 Days

36. The Committee requests that the Court make an order at the Comeback Motion on April 4 and 5 directing the Applicant to continue to fund the pension obligations to the Affected Members under the Genstar U.S. Plans for at least 120 days from the date of the Initial Order. This is necessary in order to permit the Committee to seek and obtain the Representation Order, receive and review the requested disclosures, commence communicating with and advising the Affected Members in these proceedings, assess the true and accurate number of affected individuals, and prepare and make arguments to the Court respecting the preservation and continuation of the Genstar U.S. Plan payments. A temporary reprieve will also mitigate the prejudicial impact of inadequate notice to Affected Members and the shock to their security of person given that most if not all Affected Members are elderly and on fixed incomes.

37. A fundamental principle of the CCAA is to maintain the *status quo*³. The balance of convenience favours the pre-filing *status quo* with respect to the Genstar U.S. Plans and there is no prejudice to the Applicants nor to any other creditor or stakeholder for pension payments to continue to the Affected Members at this time. In contrast, there is significant prejudice to the Affected Members. In particular,

- (a) ITCAN is sufficiently in funds. In the Court's March 15 Endorsement giving reasons for granting the Initial Order, McEwan J. observed:

[23] ... The Applicants will be carrying on business during the CCAA proceedings. The filed materials demonstrate that the Applicants and their affiliated companies expect that the Applicants will continue to carry on their business in a profitable fashion and be able to meet both their pre-filing and post-filing obligations.

ITCAN has in excess of CAD \$5 billion in assets with significant cash flow and profitability. Its continued contributions to the Genstar U.S. Plans will not be material to its financial position.

- (b) While ITCAN proposes to cease payments under the Genstar U.S. Plans, all other pension plan contributions and payments are continuing. For example,
- i. ITCAN's seven (7) Canadian pension and retirement plans (the 1. Imasco Pension Fund Society, 2. Imperial Tobacco Corporate Pension Plan, 3. Imasco Corporate Supplementary Pension Plan, 4. Imperial Tobacco Supplementary and Executive Pension Plans, 5. ITCL Defined Contribution Retirement Plan, 6. ITCL Non-Registered Savings Plan, and 7. Group RRSP) cover thousands of individuals and they are either fully funded, have a going-concern surplus or otherwise require no additional contributions. With respect to these Canadian plans, ITCAN has stated that it "intends to continue to make 'normal cost' payments or 'current

³ March 15, 2019 Endorsement of McEwan J. at para. 8: "It is settled law that the principal purpose of the CCAA is to maintain the status quo while a debtor company has the opportunity to consult with its creditors and stakeholders with a view to continue the company's operations".

service' contributions, ... any legally required amortization payments ... required ordinary course payments [and] any required employer contributions the during the course of these proceedings"⁴. In 2017, ITCAN made contributions of approximately CAD \$7.5 million toward these plans⁵ and

- ii. ITCAN is responsible for one registered pension plan in the U.S., the Imasco IHGI Pension Plan, which covers over 2,500 individuals (including some Affected Members). As at the end of 2017, this plan was 82% funded on an accounting basis and 71% funded on a termination basis, with USD \$ 76 million in assets and USD \$93 million in benefit liabilities. ITCAN has stated that it "also intends to continue to make ordinary course payments in respect of the IHGI U.S. Pension Plan during the course of these proceedings".

The Applicant has neither explained nor given any reason why it proposes to cease payments under the Genstar U.S. Plans while maintaining its eight remaining plans. The Applicant owes a duty of evenhandedness and good faith to its pension beneficiaries including to the Affected Members which, at a minimum, demands an explanation supporting its intended actions and, most certainly, to treat all similarly situated pension beneficiaries equitably. It is possible that the Applicant and/or the Monitor, by sanctioning a stay of payments under the Genstar U.S. Plans, are conflicted in their duties vis-à-vis the other stakeholders and interested parties.

- (c) ITCAN will receive a windfall were a stay to be granted. As mentioned, the payments guaranteed by the DCDIP and SERP are secured by paid-up premium insurance policies on the lives of Affected Members. Given the security that the insurance policies provide, and the future cash they will almost for certain generate upon the deaths of the Affected Members, ITCAN will receive a windfall directly attributable to the Genstar U.S. Plans were it to cease payments to the Affected

⁴ Thauvette Affidavit at paras. 49-50.

⁵ Thauvette Affidavit at paras. 49-54; Exhibit "C".

Members. Such result also puts the Applicant in a conflict of interest and raises questions about its relationship of trust involving the lives of Affected Members.

- (d) A stay order engages section 7 of the *Canadian Charter of Rights and Freedoms*. It is respectfully submitted that before this Honourable Court makes any order staying pension payments to Affected Members, it must be mindful of whether that order will result in jeopardizing the life or security of any person and be reasonably satisfied that such order will not in actual fact do so. Orders made by judges under the CCAA are subject to the *Charter*⁶. Section 7 of the *Charter* states that “Everyone has the right to life, liberty and security of the person and the right not to be deprived thereof except in accordance with the principles of fundamental justice”. The Committee submits that:

- i. the Information (in the possession of the Applicant and Monitor) and other evidence to be adduced will disclose that the effect of a stay order on the lives of Affected Members will violate each of their rights to life, and to security of their person, contrary to section 7 and such deprivations are not in accordance with principles of fundamental justice, including:
 1. many of the Affected Members (including surviving spouses) are very advanced in age and suffer from ill-health and, in some cases, incapacity. Affected Members rely on their Genstar pensions for ensuring their physical, mental, psychological and emotional security and stability; and

⁶ *Re Nortel Networks Corporation et al*, 2017 ONSC 700 at para. 25: where “the proceedings are being taken under the CCAA and the discretionary power of a court to sanction a plan is contained in section 6 of that statute, ... I accept that any order I make to sanction the Plan may be subject to the Charter”. See also Hogg, Peter W. *Constitutional Law of Canada*, 5th ed. supplemented Thomson: Carswell, 2007 at § 37-22 cited at *Re Nortel*, *supra*, at para. 24: “Where, however a court order is issued ... in a purely private proceeding that is governed by statute law, then the *Charter* will apply to the court order”.

2. most if not all Affected Members no longer actively work, are on fixed incomes, and have budgeted accordingly for their security in reliance on their Genstar U.S. Plan income. Pensioners on fixed incomes require as much financial certainty as possible as they budget for the end of their lives. The cessation of such income will deprive many of them of their ability to provide for themselves.
- ii. Laws and court orders that deprive people of their ability to provide for themselves engages the right to life, liberty and security of the person protected by Section 7 of the *Charter*: “The ability to provide for one’s self ... is an interest that falls within the ambit of the s. 7 provision of the necessity of life. Without the ability to provide for those necessities, the entire ambit of other constitutionally protected rights becomes meaningless”⁷. A stay order that has the effect of confiscating people’s retirement savings in their old age deprives them of their ability to provide for themselves and thereby deprives them of their right to life and security of the person which are protected by Section 7;
 - iii. There is a pressing and substantial public policy interest in ensuring that people have an ability to provide for oneself in old age, and this includes the ability to fairly budget within expected means. Poverty amongst seniors is a social ill increasing in scope, due to a rapidly aging demographic and the increased costs which come with increased longevity;

⁷ *Federated Anti-Poverty Groups of BC v Vancouver (City)*, 2002 BCSC 105 at para 201. See also at para. 202:

... [A] person who lacks the basic means of subsistence has a tenuous hold on the most basic of constitutionally guaranteed human rights, the right to life, to liberty, and to personal security. Most, if not all, of the rights and freedoms set out in the Charter presuppose a person who has moved beyond the basic struggle for existence. The Charter accords rights which can only be fully enjoyed by people who are fed, are clothed, are sheltered, have access to necessary health care, to education, and to a minimum level of income.

iv. A stay order as envisioned by the Applicants does not accord with principles of fundamental justice and is arbitrary, overbroad and disproportionate action; it mismatches the legislative objectives of the CCAA with the means chosen to achieve it. A stay order is arbitrary in these circumstances because it is not necessary for the successful restructuring of the company nor is there is a connection between the effect and the object of the stay order. It will be overbroad because it overreaches in its effects. It will be disproportionate because the effects of the order will be grossly disproportionate to its purpose⁸.

(e) In all of the circumstances, there is no material prejudice to other creditors including the “Tobacco Claimants” were the Affected Members to continue to receive their pension payments while the foregoing is addressed and adjudicated.

38. The Committee reserves all rights, arguments and positions respecting the interests of the Affected Members.

⁸ See, generally, *Canada (Attorney General) v. Bedford*, 2013 SCC 72 at paras. 58-105.

**THIS IS EXHIBIT "A" TO THE
NOTICE OF OBJECTION OF THE
FORMER GENSTAR U.S. RETIREE GROUP
COMMITTEE
DATED APRIL 1, 2019**

March 29, 2019

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Dear Counsel:

Re: 00137-Re Imperial Tobacco Canada Limited ("**ITCAN**")
Former Genstar U.S. Retiree Group pension interests

I was contacted this afternoon and am in the process of being retained by a group of former officers and executives of Genstar Corporation, an ITCAN subsidiary ("**Genstar**") and their survivors (the "**Former Genstar U.S. Retiree Group**") who are entitled to pension benefits guaranteed by ITCAN pursuant to an agreement dated April 2, 1986. The pension plans and affected individuals include:

- (a) a "deferred income plan" for approximately 53 individuals who are either former senior management employees of Genstar or their surviving spouses ("**GCDIP**");

- (b) a “supplemental executive retirement plan” for approximately 14 individuals who were either former Genstar employees or their surviving spouses (“SERP”); and
 - (c) a “supplementary pension plan” for 3 individuals who were either former Genstar employees or their surviving spouses (“SPEN”),
- (collectively, the “Genstar U.S. Plans”).

The present value of the pension obligations under the Genstar U.S. Plans, in the aggregate, is estimated to be approximately \$43 million CAD (approximately \$32 million USD).

It appears that ITCAN intends to treat the affected members of the Genstar U.S. Plans under the Initial Order differently and prejudicially relative to all other pension obligations. ITCAN has stated that during the course of these proceedings, it “intends to continue to make ordinary course payments” and, where applicable, amortization payments, in respect of its Canadian pension plans as well as to the Imasco “IHGI U.S. Pension Plan” (see Affidavit of Eric Thauvette Sworn March 12, 2019 (the “Thauvette Affidavit”) at paras. 49-54).

However, with respect to the Genstar U.S. Plans, ITCAN has stated that it “proposes that *any further payments with respect to these obligations be stayed pursuant to the Initial Order*” (“Thauvette Affidavit” at paras. 55-56).

This is not acceptable. Any stay sought or cessation of the pension obligations respecting the Genstar U.S. Plans will be opposed. All rights are reserved.

The affected members are in the process of establishing a committee to instruct counsel and facilitate membership by affected members in the Former Genstar U.S. Retiree Group. The committee is currently comprised of the following former Genstar executives and officers:

- Angus A. MacNaughton, former co-CEO;
- Ross J. Turner, former co-CEO;
- Ernest Hartz, former Senior Vice President and General Counsel; and
- Richard D. Paterson, former Senior Vice President and CFO.

This is to advise that we will be serving and filing a Notice of Appearance in connection with the return of the Comeback Motion scheduled for April 4 and 5. We will be seeking an Order that pension payments under the Genstar U.S. Plans continue for at least 120 days in order to mitigate the prejudicial impact of the cessation of pension payments to them on very short notice; and to permit counsel to bring a representation motion on behalf of vulnerable retirees and their survivors in order to protect their rights, obtain disclosure of the contact information and identity of the affected beneficiaries for the purpose of communicating with them and advising them on their rights, ascertain the realistic status of the Applicants’ ability to continue the payments, engage in discussions with relevant stakeholders with a view toward resolution, and advise the affected members of the Former Genstar U.S. Retiree Group in the course of the Canadian proceeding.

Please also note that the affected members of the Genstar U.S. Plans did not receive timely notice of these proceedings, which explains why I have only been contacted today. The majority of members live in the United States. The Initial Order (para. 51) provides for notice of the Comeback Motion by way of Canadian newspaper publication, as well as for the Monitor to "send, in the prescribed manner, a notice ... to every known creditor who has a claim (contingent, disputed or otherwise) against the Applicants of more than \$5,000, *except with respect to ... in the case of beneficiaries of the ... pension plans, in which case the Monitor shall only send a notice to the trustees of each of the ... pension plans*".

Please contact the undersigned as soon as possible in order to discuss to this matter.

Yours truly,

KAPLAN • LAW



Ari Kaplan
ANK:bh

c. Former Genstar U.S. Retiree Group Committee.

**THIS IS EXHIBIT "B" TO THE
NOTICE OF OBJECTION OF THE
FORMER GENSTAR U.S. RETIREE GROUP
COMMITTEE
DATED APRIL 1, 2019**

**PROJECT REDUX
PENSION / BENEFIT SUMMARY SHEET**

OVERVIEW

All amounts and numbers as at December 31, 2017 unless otherwise indicated and all amounts are in \$CDN unless otherwise indicated

Item	Jurisdiction	Plan / Benefit	Total # of Plan participants as at December 31, 2017	Description	Employer Funding Information
1.	Canada	Imasco Pension Fund Society (IPFS or Society)	2366 (54 active, 2154 pensioners and beneficiaries, 158 other)	Defined benefit plan, registered in Quebec, closed to new members May 2006; covers ITCAN and former Imasco defined benefit pension liabilities for grades below 36	Actuarial valuation done yearly 97.4% funded on a solvency basis Market value of assets – \$914M Solvency liability – \$983M Employer amortization payment: \$1,031,000. Employer normal cost - \$1,596,000 in 2017
2.	Canada	Imperial Tobacco Corporate Pension Plan (ITCPP)	593 (28 active, 461 pensioners and beneficiaries, 104 other)	Defined benefit plan, registered in Quebec, closed to new members May 2006; covers ITCAN and former Imasco defined benefit pension liabilities for grades above 36 and includes Canadian Genstar defined benefit pension liabilities	Actuarial valuation done yearly 94.2% funded on a solvency basis Market value of assets – \$290M Solvency liability– \$308M Employer amortization payment: \$1,199,000. Employer normal cost - \$1,353,000 in 2017
3.	Canada	Imasco Corporate Supplementary Pension Plan (ICSPP or RCA1)	155 (1 active, 148 pensioners and beneficiaries, 6other)	Defined benefit plan, provides benefits relating to service pre-February 2000 where pension determined under registered pension plan formula limited by maximum limits under Income Tax Act.	Actuarial valuation done yearly Market value of assets – \$73M Terminal Funding Liability – \$70M Employer funding obligation for 2018 - nil
4.	Canada	Imperial Tobacco Supplementary Pension Plan	223 (58 active, 144 pensioners)	Defined benefit plan, provides benefits relating to service post-February 2000 where pension determined under registered pension plan	Actuarial valuation done yearly Market value of assets – \$111M

Item	Jurisdiction	Plan / Benefit	Total # of Plan participants as at December 31, 2017	Description	Employer Funding Information
		(ITSP or ITSupp or RCA2) and Imperial Tobacco Supplementary Executive Pension Plan	and beneficiaries, 21 other)	formula limited by maximum limits under Income Tax Act.	Terminal Funding Liability – \$106M Employer funding obligation for 2018 - nil
5.	Canada	ITCL Defined Contribution Retirement Plan	472	Defined contribution plan, recently registered in Quebec, for employees who joined ITCL post-May 2006	Annual cash contribution in 2017 – \$2.4M Total plan assets as of December 31, 2017 – \$30M
6.	Canada	ITCL Non-Registered Savings Plan	7	DC plan excess, non-registered	In the event that an employee’s total annual contribution to the ITCL Defined Contribution Retirement Plan exceeds the maximum limits under the Income Tax Act, excess contribution is remitted into the employee’s excess defined contribution non-registered account
7.	Canada	Group Retirement Savings Plan (Group RSP)	53	Optional to employees; no company contributions; ITCL is policyholder and Plan Sponsor	N/A
8.	US	IHGI and Participating Affiliates Retirement Plan (IHGI Pension Plan)	2528	Registered DB plan for former employees of predecessor companies and business throughout the US (including Genstar Company, Hardee’s Food Systems Inc., and Fast Food Merchandisers Inc.)	Valuation done yearly 82% funded on accounting basis; 71% funded on PBGC termination basis Accounting disclosure as at 12.31 2017: Market value of Assets – USD76M Projected Benefit Obligations – USD93M
9.	US	Genstar Corporation	53	Not funded or registered, contractual obligation to former senior management of Genstar Corporation	Total US DIP, SERP and SPEN present value obligation estimated to be USD\$32M

Item	Jurisdiction	Plan / Benefit	Total # of Plan participants as at December 31, 2017	Description	Employer Funding Information
		Deferred Income Plan (DIP)			
10.	US	Genstar Corporation Supplementary Executive Retirement Plan (SERP)	14	Not funded or registered, contractual obligation to former Genstar employees	Total US DIP, SERP and SPEN present value obligation estimated to be USD\$32M
11.	US	Supplementary Pension Plan (SPEN)	3	Not funded or registered, contractual obligation to former Genstar employees	Total US DIP, SERP and SPEN present value obligation estimated to be USD\$32M

**THIS IS EXHIBIT "C" TO THE
NOTICE OF OBJECTION OF THE
FORMER GENSTAR U.S. RETIREE GROUP
COMMITTEE
DATED APRIL 1, 2019**

BY Priority Mail

March 29, 2019

Hon. Shelley C Chapman
United States Bankruptcy Judge
Southern District of New York
One Bowling Green
New York, NY 10004

Bracewell LLP
Jennifer Feldsher, Esq.
Mark E. Dendinger, Esq.
1251 Avenue of the Americas
New York, NY 10020-1100

OBJECTIONS IN THE MATTER OF A PLAN OF COMPROMISE OR ARRANGEMENT OF IMPERIAL TOBACCO COMPANY CANADA LIMITED CHAPTER 15 PETITION-CASE NO. 19-10771 (SSC)

1. My name is Glen R. Jones and my residence and mailing address is 23 Ashler Ave. Los Gatos, CA 95030. My email address is glenjones38@hotmail.com and my telephone number is (408) 771-8763. I am 77 years of age and fully retired. Attendance at the hearing in this matter in New York City is not feasible for me and accordingly I am submitting my objections in writing.

2. From 1976 to 1986 I was employed by Genstar Corporation ("Genstar") headquartered in San Francisco, CA a U.S. subsidiary of the Debtor as Corporate Counsel. I participated voluntarily in the Genstar Deferred Income Plan ("DIP.") The DIP provided for participants to contribute a portion of their salaries into the plan in return for stipulated monthly retirement payments from age 65 to 80.

3. In Section 14 on page 6 of the Verified Petition the Debtor proposes to continue to fund ordinary course payments to their pension and retirement plans of US subsidiaries with the exception of (i) a deferred income plan for approximately 53 individuals who are former senior management employees of Genstar (the "DIP") (ii) a supplement executive retirement plan for 14 individuals and (iii) a supplementary plan for 3 individuals "(collectively the "Plans"). I am a participant in the DIP plan to which I made salary deduction contributions and I have been receiving regular monthly payments according to the plan since my age 65. I see no reason why contributions to the DIP should be treated in a discriminatory manner from the ordinary course payments to all of the pension and retirement plans of the US subsidiaries of the Debtor.

4. The relief requested to discontinue payments to the Plans by the Debtor including the DIP plan is not justified from a financial point of view. The Debtor is a very long standing going concern with assets in Canada and in the U.S. in excess of C\$ 5 billion with significant cash flow and profitability. The continued contributions to the DIP plan until the participants' age 80 will not be material to its financial position nor to the claims against the Debtor.

5. The failure to continue contributions to the Plans will inflict significant financial harm to the participants all of whom are of advanced retirement age and who have been relying in receipt of these payments since their age 65. The discontinuance of the payments constitutes an immediate breach of the contractual obligations incurred in the establishment of the DIP which provided that the Genstar assets would be sold or merged only with a successor capable of the fulfilling the funding obligations. The DIP participants contributed to the DIP plan with voluntary cash reductions in their salaries in reliance on receiving future retirement payments. In addition insurance policies were purchased to as part of the DIP funding. The Debtor acquired the assets of the Genstar companies in excellent condition and benefitted significantly from their operations. In return the Debtor is legally obligated to fulfill its obligations to the former executive employees under the Plans.

6. I therefore request that during the pendency of the bankruptcy proceedings and beyond that the Debtor be required to continue to fund the Plans without interruption. Furthermore I request that the Court make clear in any rulings that it is not making a determination of my participant's rights under the employee benefit provisions of the DIP and the obligations of the Debtor thereunder. Such determinations should be made in a proper forum with adequate notice and an opportunity for participants to respond represented by counsel.

Respectfully Submitted

Glen R. Jones

BY Priority Mail

March 29, 2019

Hon. Shelley C Chapman
United States Bankruptcy Judge
Southern District of New York
One Bowling Green
New York, NY 10004

Bracewell LLP
Jennifer Feldsher, Esq.
Mark E. Dendinger, Esq.
1251 Avenue of the Americas
New York, NY 10020-1100

OBJECTIONS IN THE MATTER OF A PLAN OF COMPROMISE OR ARRANGEMENT OF IMPERIAL TOBACCO COMPANY CANADA LIMITED CHAPTER 15 PETITION-CASE NO. 19-10771 (SSC)

My name is Alfred K Mueller and I live at 44537 Arapaho Ave, Fremont, CA Telephone # (510) 651-26599, Cell # (510) 207-2321 and Email al.mueller@paccoast.com.

In 1986 I was employed by Genstar Corporation ("Genstar") headquartered in San Francisco, California. As President of Genstar Cement division and I participated in the Genstar Deferred Income Plan ("DIP.") The DIP provided for participants to contribute a portion of their salaries into the plan in return for stipulated monthly retirement payments from age 65 to 80. Attendance at the hearing in this matter in New York City is not feasible for me. Accordingly, I am submitting my objections in writing.

In Section 14 on page 6 of the Verified Petition the Debtor proposes to continue to fund ordinary course payments to their pension and retirement plans of US subsidiaries with the exception of (i) a deferred income plan for approximately 53 individuals who are former senior management employees of Genstar (the "DIP") (ii) a supplement executive retirement plan for 14 individuals and (iii) a supplementary plan for 3 individuals "(collectively the "Plans"). I am a participant in the DIP plan to which I made salary deduction contributions and I have been receiving regular monthly payments according to the plan since my age 65.

I submit that the relief requested "out of an abundance of caution" to discontinue payments to the Plans by the Debtor including the DIP Plan is not justified from a financial point of view. The Debtor is a long standing going concern with assets in Canada and in the U.S. in excess of C\$ 5 billion with significant cash flow and profitability. The Debtor is primarily interested in preservation of its assets and the continued contributions to the Plans will not be material to its financial position.

The failure to continue contributions to the Plans will inflict significant financial harm to the participants all of whom are of advanced retirement age and who have been relying in receipt of these payments since their age 65. The discontinuance of the payments constitutes a breach of the obligations incurred

in the formation of the DIP which provided that the Genstar assets would be sold or merged only with a successor capable of fulfilling the funding obligations. Furthermore the DIP participants contributed to the DIP plan with voluntary cash reductions in their salaries in reliance on receiving future retirement payments. In addition insurance policies were purchased to as part of the DIP funding. The Debtor acquired the assets of the Genstar companies in excellent condition and benefitted significantly from their operations. In return the Debtor should continue to fulfill its obligations to the former executive employees under the Plans.

I therefore request that during the pendency of the bankruptcy proceedings and beyond that the Debtor be required to continue to fund the Plans without interruption. Furthermore I request that the Court make clear in any rulings that it is not making a determination of my participant's rights under the employee benefit provisions of the DIP and the obligations of the Debtor thereunder, which determinations should be made only upon proper notice and an opportunity for me to respond.

Respectfully Submitted

Alfred K. Mueller

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 IMPERIAL TOBACCO CANADA LIMITED, *et al.*

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

PROCEEDING COMMENCED AT
TORONTO

NOTICE OF OBJECTION

KAPLAN LAW
393 University Av., Suite 2000
Toronto ON M5G 1E6

Ari Kaplan (LSO #42042S)

Tel: 416 565.4656

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Email: ari@kaplanlaw.ca

Counsel to the Former Genstar U.S.
Retiree Group Committee

TAB 3

NOTICE OF OBJECTION

- 1. Applicants' Motion for Stay Extension; and**
- 2. Quebec Class Action Plaintiffs' Motion**

(APRIL 3, 2019)

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

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

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

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

Applicants

NOTICE OF OBJECTION

- (1. Applicants' Motion for Stay Extension; and
2. Quebec Class Action Plaintiffs' Motion)**

April 3, 2019

KAPLAN LAW
393 University Av., Suite 2000
Toronto ON M5G 1E6

Ari Kaplan (LSO #42042S)
Tel: 416 565.4656
Fax: 416 352.1544
Email: ari@kaplanlaw.ca

Counsel to the Former Genstar
U.S. Retiree Group Committee

NOTICE OF OBJECTION

(1. Applicants' Motion for Stay Extension; and 2. Quebec Class Action Plaintiffs' Motion)

A. Overview

1. The Former Genstar U.S. Retiree Group Committee (the "**Committee**") represents the interests of 59 former officers, executives and management employees of Genstar Corporation ("**Genstar**"), a subsidiary of the Applicant, and their survivors, who are beneficiaries entitled to pension and deferred compensation benefits guaranteed by Applicant pursuant to an agreement dated April 2, 1986 (the "**Affected Members**"). The pension and deferred compensation plans (collectively, the "**Genstar U.S. Plans**") include:

- (a) a "deferred income plan" for approximately 53 individuals who are either former senior management employees of Genstar or their surviving spouses ("**GCDIP**");
- (b) a "supplemental executive retirement plan" for approximately 14 individuals who were either former Genstar employees or their surviving spouses ("**SERP**"); and
- (c) a "supplementary pension plan" for 3 individuals who were either former Genstar employees or their surviving spouses ("**SPEN**").

2. The Affected Members are significant and vulnerable stakeholders and creditors. The present value of the pension obligations to Affected Members under the Genstar U.S. Plans, in the aggregate, is estimated to be approximately USD \$32 million (approximately CAD \$43 million).

3. On April 1, with no prior notice to the Affected Members nor their counsel, the Applicants ceased funding Affected Members' pensions under the Genstar U.S. Plans. This **Objection is urgent**; the Applicants' actions have prejudiced the security of dozens of elderly persons.

4. The Committee opposes the Applicants' request to extend the Stay Period to June 28, 2019. By extending the Stay Period beyond April 11, without due process, the Court will effectively be authorizing the Applicants to cease funding the Genstar U.S. Plans, not only for the month of April (which it has already done), but for May and June as well. That is severely prejudicial and probably contrary to Affected Members' rights under s. 7 of the *Canadian Charter of Rights and Freedoms*.

5. The Committee also opposes the relief sought by the Quebec Class Action Plaintiffs in their motion returnable April 4 and 5, notably, para. 2(b) of their motion seeking an order:

2. varying the Initial Order ... by, *inter alia*:

(b) prohibiting ... the ITCAN Applicants, pending further order of the Court, from making any payments to ... the ITCAN Subsidiaries (as defined in the ITCAN Initial Order) [and] prohibiting most particularly: ... iii. the transfer of funds to ... ITCAN Subsidiaries for any consideration and reason whatsoever.

6. As further explained below, the Genstar U.S. Plans are funded through intercompany transfer payments made by the Applicant ITCAN to various U.S. “ITCAN Subsidiaries”. To prohibit those transfers would result in extreme prejudice to the Affected Members of those plans.

B. No Notice to Cease Funding and Payments under Genstar U.S. Plans

7. As recounted in the Committee’s initial Notice of Objection (April 1) (the “**Initial Objection**”), commencing on or about March 14, 2019, various Affected Members received voluminous court documents from the Bracewell LLP firm respecting the Chapter 15 proceeding initiated on March 13, 2019 by the Monitor on behalf of ITCAN as Debtor in the United States Bankruptcy Court in the Southern District of New York (the “**Chapter 15 Proceeding**”).

8. Buried in these voluminous documents is a reference to the Genstar U.S. Plans, specifically, that the Applicant ITCAN “*proposes that any further payments with respect to these obligations be stayed pursuant to the Initial Order*” (Affidavit of Eric Thauvette Sworn March 12, 2019 [the “**First Thauvette Affidavit**”] at para. 56). This statement does not state whether pension payments will cease, nor when, nor whether the Applicants will solely rely on the Initial Order (the Stay Period of which ends on April 11) or ask the Court to give specific relief exempting the Applicant from funding these benefits. Rather, the notice states that ITCAN is thinking about (“proposing”) stopping payments.

9. On Friday, March 29, as recounted in the Initial Objection, the Committee retained Ari Kaplan of Kaplan Law. The Committee’s counsel immediately sent a letter to the Applicants’ counsel and Monitor’s counsel objecting to the “proposal” to stay payments under the Genstar

U.S. Plans and made initial telephone contact with the Applicant's counsel (Initial Objection, para. 8. and Exhibit "A" to that document).

10. Neither the Applicant's counsel, nor the Monitor's counsel, advised the Committee's counsel on March 29 nor over the weekend that, in fact, the Applicants had already stopped the Affected Members' Genstar U.S. Plan benefits.

11. On Monday, April 1 at 9:01 a.m., the Committee's counsel served a Notice of Appearance and its Initial Objection on the service list and applied to the Monitor to join the service list. The Initial Objection is comprehensive and detailed and responds strictly to the Notice of Application and Initial Order.

C. No Timely Notice of the Comeback Motion and Quebec Class Action Plaintiffs' Motion

12. At 11:40 a.m. on April 1, Mr. Kaplan wrote to the Monitor's counsel [**Exhibit "D"**, attached, *continuing the numbering of the Exhibits from the Initial Objection*] asking for copies of any motions returnable on the April 4 or 5 dates and that no such materials were posted on the Monitor's case website. The Committee's counsel also wrote:

It is not clear from the initial application materials whether the company intends to rely on para. 7 of the Initial Order [to cease funding the Genstar U.S Plans] or seek specific orders and remedies from the court with respect to the plans. If the company is relying on the initial order then I may have to bring such a motion this week to lift the stay for those plans.

13. No response to this email was received.

14. In the early afternoon of April 1, the Committee was contacted by some Affected Members who were confused and distressed after noticing that their Genstar U.S. Plan benefits had not been deposited into their bank accounts that day, as was the case on the first day of every prior month, for some people, for up to 30 years.

15. In the late afternoon of April 1 (Pacific time), one of the Committee members, Mr. J. Ernest Hartz, received in the mail a "Notice to Participants in Non-Qualified Deferred Compensation Plans", dated March 27 (the "**Cessation Notice**") [attached hereto as **Exhibit "E"**], stating:

As part of its restructuring efforts, ITCAN has ceased funding the following legacy qualified deferred compensation plans (the "Affected Plans") [i.e. the **Genstar Plans**] as of the Filing Date:

- (i) the "deferred income plan" for individuals who are either former senior management employees of Genstar or their beneficiaries ("GCDIP"),
- (ii) the "supplemental executive retirement Plan" for individuals who were either former Genstar employees or their beneficiaries ("SERP"), and
- (iii) the "supplementary pension plan" for individuals who were either former Genstar employees or their beneficiaries ("SPEN").

ITCAN has represented that its decision to cease funding of the Affected Plans was based largely on the fact that the liabilities under these plans constitute unsecured claims. As payment of these claims is not necessary to ITCAN's ongoing business, although ITCAN has honored its commitment to fund these plans for more than 30 years, it is not in a position to continue to do so given the hundreds of billions of dollars in other unsecured claims asserted.

16. To be clear, this Cessation Notice advising that the Applicant has, in fact now, "ceased funding" the Genstar U.S Plans was received by Affected Members *after* many of them discovered they did not receive their pension income under plans that they expected to be deposited in their accounts for the month of April, on April 1.

17. As a result of this new information, the Committee's counsel immediately notified the Applicants' counsel and Monitor's counsel [**Exhibit "F"**] that he will be bringing a motion to direct continuation of payment of the pensions under the Genstar U.S. Plans:

Further to my telephone and email messages to you both, one of my clients received the attached letter this afternoon Pacific time, in the mail (though it is dated March 27). FYI, this is the first explanation and notice to affected members that their pensions are ceased, on the day they were to receive their April pensions by direct deposit.

We will be bringing a motion to direct the continuation of payment of these pensions, which I expect to file on Weds p.m. returnable at the Comeback Motion. It will largely follow the points made in the Notice of Objection, served today.

18. On April 2, the Committee's counsel had a telephone conference with the Applicants' counsel and Monitor's counsel where the former learned *for the first time* that morning that:

- (a) On March 28, the Quebec Class Action Plaintiffs and the Province of Ontario both served and filed motions returnable at the Comeback Motion on April 4 and 5 and that these materials were posted that morning (April 2) on the Monitor's case website;
- (b) On March 29, the Applicants had served and filed its Motion for Stay Extension and Amendment to Initial Order (the "**Comeback Motion**") and that these materials were posted that morning (April 2) on the Monitor's case website; and
- (c) the case management judge tasked the Monitor with proposing additional dates beyond April 4 and 5 for hearing all issues arising at the Comeback Motion with motions to be served and filed with one week's notice.

19. Immediately after the telephone conference, on April 2, the Committee's counsel obtained the Comeback Motion and Quebec Class Action Motion from the Monitor's case website.

20. Upon reviewing the Comeback Motion, the Committee's counsel read confirmation for the first time in a court document that the Applicant in fact "made a determination to discontinue funding" the Genstar U.S. Plans (as opposed to merely "proposing" it) (Affidavit of Eric Thauvette Sworn March 29, 2019 [the "**Second Thauvette Affidavit**"] at para. 25):

On March 27, 2019, Bracewell, in its capacity as U.S. counsel to the Monitor, also sent a notice to participants in the following non-qualified deferred compensation plans [i.e. the **Genstar U.S. Plans**], advising the participants that ITCAN had made a determination to discontinue funding such plans during the pendency of the CCAA proceeding:

- (a) the "deferred income plan" for individuals who are either former senior management employees of Genstar or their beneficiaries;
- (b) the "supplemental executive retirement Plan" for individuals who were either former Genstar employees or their beneficiaries; and
- (c) the "supplementary pension plan" for individuals who were either former Genstar employees or their beneficiaries.

21. This is a reference to the Cessation Notice that was received by some Affected Members in the late afternoon of April 1 (Pacific time).

22. The Committee’s counsel also learned from the Comeback Motion, on April 2, that the Applicants seek an extension of the Stay Period from April 11 to June 28 (the “**Stay Extension**”). This Stay Extension, if granted without conditions, *will severely and further prejudice the Affected Members and continue to create massive and unnecessary undue hardship*.

23. The legal basis for the Applicant ceasing to fund the April payments to the Genstar U.S. Plans is the stay granted by the Initial Order through April 11. Para. 7 of the Initial Order provides that during the Stay Period, the Applicant is “entitled but not required to pay the following expenses whether incurred prior to, on or after the date of” the Initial Order: (a) all outstanding and future ... retiree pension and other benefits and related contributions and payments”.

24. The Committee’s counsel immediately wrote to the Applicants’ counsel and Monitor’s counsel opposing the stay extension unless the Affected Members’ rights were reserved and preserved with respect to the relief being sought in the Initial Objection and for the Committee to have scheduled a motion to be brought and heard before May. The Committee’s counsel advised as follows (**Exhibit “G”**):

Given our conversation this morning about scheduling our motion for the Genstar Retirees before the end of May, it prejudices my clients’ rights were the Stay extended after April 11 without reservation because it will authorize the company to cease making payments under the Genstar U.S Plans in the months of May and June (without the Stay Extension they could not do so).

As a result, we will be filing a Supplementary Notice of Objection, based on the just-received Comeback Motion. We will be objecting to the Stay Extension unless we can have language in the Stay Extension Order reserving the rights of the Genstar retirees and hearing our motion before the May payments are due. ...

...

I would preliminarily propose adding the following sentence to the end of Para. 3 of the Order (Stay Extension):

“This Court also orders that the within extension of the Stay Period is without prejudice to the rights of the Former Genstar U.S. Retiree Group Committee to bring and be heard for relief concerning the Genstar U.S. Plans prior to the end of April with all rights reserved and without regard to the passage of time until then”.

25. With respect to the Quebec Class Action Plaintiffs' motion, the Committee opposes any order prohibiting the Applicant from funding the ITCAN Subsidiaries to the extent it prohibits the payment of benefits under the Genstar U.S. Plans.

26. In its response to the Quebec Class Action Plaintiffs' motion (served on April 2 at 7:12 p.m.), the Applicant states as follows (Affidavit of Eric Thauvette Sworn April 2, 2019 [the "**Third Thauvette Affidavit**"] at paras. 35-36):

35. ITCAN makes payments to a U.S. subsidiary Imasco Holdings Group, Inc. ("IHGI"). IHGI is a largely dormant Delaware corporation that holds certain legacy obligations as a result of the historical acquisition and restructuring of various companies and businesses in the U.S. ITCAN makes capital contributions as necessary to IHGI on a monthly basis and then writes off these amounts (approximately USD \$7.0 million a year). These transfers permit IHGI to make necessary payments like pension plan contributions, workers compensation, and expenses such as rent, fees for professional advisors and banking fees.

36. The vast majority of the amounts transferred to IHGI (approximately \$6 million) were used to make payments under certain non-qualified deferred compensation plans for former employees of Genstar Corporation ("Genstar"), an ITCAN subsidiary, or their beneficiaries. ITCAN has decided to discontinue funding these plans during the pendency of the CCAA proceeding and therefore the corresponding transfers to IHGI will no longer be necessary going forward.

27. The Committee responds to the Quebec Class Action Plaintiffs' motion and to the Applicant's response to it, by stating that the Committee *seeks a positive order* from this Honourable Court on April 4 or 5 *directing* the Applicant to *continue* making those payments to the plans and *prohibiting it* from ceasing funding at this time, on an interim basis until the Committee' motion can be scheduled, brought and heard by this Honourable Court.

D. Issues

i. Timing and Standing to Seek Relief on April 4 and 5

28. Para. 63 of the Initial Order provides that "any interested party ... may apply to this Court to vary or amend this Order on not less than seven (7) days' notice to any other party or parties likely to be affected by the order sought or upon such other notice, if any, as this Court may order." The Committee was reasonably not in any position to file any materials prior to March 29 nor take steps to ensure that the April pension payments to the Genstar U.S. Plans were made. However,

the Committee acted prudently and without undue delay, forthwith upon securing counsel, including serving a Notice of Appearance and detailed Notice of Objection on April 1.

29. Similarly, the Committee was not in any reasonable position to respond to either the Comeback Motion or the Quebec Class Action Plaintiffs' motion prior to being notified of and receiving those documents on April 2.

ii. Prejudice and *Status Quo*

30. It is respectfully submitted that it will be *highly prejudicial and unfair* to the Affected Members for this Honourable Court to grant the Stay Extension without conditions or grant the Quebec Class Action Plaintiffs their requested relief. Such an order would effectively sanction permitting the Applicants to deny Affected Members their April, May and June pension payments under the Genstar U.S. Plans without a hearing on the merits of their concerns, and immediately after their April pensions were cut off without due notice.

31. Paragraphs 36-37 of the Committee's Initial Objection (pp. 10-13) sets out the Committee's submission, applicable herein, requesting that the Court make an order on April 4 or 5 directing the Applicant to continue to fund the pension obligations to the Affected Members under the Genstar U.S. Plans for at least 120 days from the date of the Initial Order. In short:

- (a) The balance of convenience favours the pre-filing *status quo* with respect to the Genstar U.S. Plans and there is no prejudice to the Applicants nor to any other creditor or stakeholder for pension payments to continue to the Affected Members at this time. In contrast, there is significant prejudice to the Affected Members, who are elderly (in their 70s and 80s), in ill-health, and on fixed incomes;
- (b) While the Applicants have singled out the Genstar U.S. Plans to cease funding, it has continued making contributions and payments under *all of its eight (8) other pension plans* in Canada and the United States;
- (c) the Applicants owe a duty of evenhandedness and good faith to all of its pension beneficiaries including to the Affected Members to treat all similarly situated pension beneficiaries equitably. It is possible that the Applicant and/or the Monitor,

by sanctioning a stay of payments under the Genstar U.S. Plans, are conflicted in their duties vis-à-vis the other stakeholders and interested parties; and

- (d) The Applicants will receive an unjust enrichment and windfall were they to cease funding the plans. The payments the Genstar U.S. Plans are guaranteed by the Applicant and *secured by paid-up premium insurance policies on the lives of Affected Members which funds these benefits*. The Applicant is therefore not correct when it states that those plans are “not funded” and such a statement puts the Applicant in a conflict of interest and raises questions about its relationship of trust involving the lives of Affected Members.

iii. Security of Person under *Section 7 of the Charter of Rights and Freedoms*

32. It is also respectfully submitted that before this Honourable Court makes any further order affecting the Genstar U.S. Plans and the rights of the Affected Members, including extending the Stay Period, it should be mindful of whether that order will result in jeopardizing the life or security of any person and be reasonably satisfied that such order will not in actual fact do so.

33. As further submitted in the Initial Objection (at para. 37(d) (pp. 13-15)), orders made by judges under the CCAA are subject to the *Charter*. Orders that deprive people of their ability to provide for themselves engage the right to life, liberty and security of the person protected by Section 7 of the *Charter*. The Committee submits that the Initial Order as envisioned by the Applicant does not accord with principles of fundamental justice, mismatches the legislative objectives of the CCAA with the means chosen to achieve it, and is arbitrary, overbroad and disproportionate action.

E. Relief Sought

34. The Committee therefore seeks the following relief and reasonable due process rights, and makes the following proposal for resolution of the issues (in reverse chronological order):

- (a) The Committee be scheduled on a motion date for a half-day hearing on April 25 and 26 for this Honourable Court to hear the evidence and arguments for representation and directions as described in the Initial Objection, including the

concerns raised under section 7 of the *Charter of Rights and Freedoms* (the “Committee’s Motion”);

- (b) That portion of the Quebec Class Action Plaintiffs’ motion involving intercompany transfers to the ITCAN Subsidiaries be heard at the same time as or immediately adjacent to the Committee’s Motion on the same date;
- (c) The Committee is to serve and file materials supporting Committee’s Motion before the end of April, i.e. by 4:00 p.m. one week prior to the scheduled hearing date;
- (d) At least one week prior to the date the Committee is to serve and file the Committee’s Motion, the Applicants or Monitor are to disclose and provide to the Committee’s counsel all Information (as defined in the Initial Objection), subject to a confidentiality agreement where applicable; and
- (e) Respecting the Comeback Motion, the Court makes an immediate interim order:
 - i. directing the Applicant to continue funding the Genstar U.S. Plans in accordance with the pre-filing *status quo*;
 - ii. varying the Initial Order by adding the following underlined language to para. 7(a) of the Initial Order:

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

- (a) all outstanding and future wages, salaries, commissions, compensation, vacation pay, bonuses, incentive and share compensation plan payments, employee and retiree pension and other benefits and related contributions and payments (including, without limitation, expenses related to the Applicants’ employee and retiree medical, dental, disability, life insurance and similar benefit plans or arrangements, employee assistance programs and contributions to or any payments in respect of the Applicants’ other retirement programs, excluding expenses and benefits payable under the Genstar deferred income plan, supplemental executive retirement plan and supplementary pension plan), reimbursement expenses

(including, without limitation, amounts charged to corporate credit cards), termination pay, salary continuance and severance pay payable to employees, independent contractors and other personnel, in each case incurred in the ordinary course of business and consistent with existing compensation policies and arrangements or with Monitor approval;

- iii. and granting the Stay Extension, subject to adding the following underlined words to the end of Para. 2 of the draft Order (Stay Extension):

2. THIS COURT ORDERS that the Stay Period as defined in paragraph 18 of the Initial Order dated March 12, 2019 (the "Initial Order") is hereby extended from April 11, 2019, until and including June 28, 2019, except that this extension of the Stay Period is without prejudice to the rights of the Former Genstar U.S. Retiree Group Committee to bring and be heard for relief concerning the Genstar U.S. Plans prior to the end of April with all rights reserved and without regard to the passage of time until then.

iv. Repeat of Disclosure and Information Request

35. In order to adduce full and proper evidence for the hearing of the Committee's Motion, the Committee's counsel *repeats* that the Committee needs the Information described at para. 34 of the Initial Objection. This Information is reasonably sought and necessary for the Affected Members to make their case and protect their interests. This Information is in the hands of the Applicant or Monitor and the Committee acknowledges the statement in the Monitor's First Report (April 3) (at para. 24) that it is "working with Imperial and its Canadian and US counsel to address certain information requests made by proposed counsel for the beneficiaries of the Genstar Plans".

36. The Committee also notes that:

- (a) it does not have a copy of the April 2, 1986 guarantee involving Genstar and Imasco that is the source of the Applicants' obligation to fund the Genstar U.S. Plans, nor copies of any of the applicable plan texts, agreements or booklets;
- (b) it does not have any information or details of the paid-up life insurance premiums purchased to fund and secure the benefits under the Genstar U.S. Plans. These need to be located and disclosed *as they are assets of the debtor*; and

- (c) certain requested Information is currently under seal in the Chapter 15 Proceedings (the “**Seal Order**”) including the names and contact information of all 59 Affected Members. The Seal Order only applies in the Chapter 15 Proceedings and nothing in that order prohibits that Information from being disclosed to the Committee and counsel, with the consent of the Monitor (see e.g., Docket 18 – Individual Provisional Relief List Pursuant to Bankruptcy Rule 1007(a)(4); Docket 20 – Document Under Seal Per Court Order; Docket 15 – Order Granting Interim Motion to Seal; and Docket 10 – Interim Motion to Seal Pursuant to 11 U.S.C. § 107(b) and Fed. R. Bankr. P. 9018 (excerpts) (**Exhibit “H”**)).

F. Conclusion

37. In conclusion, **the Committee has urgent and immediate interests before this Honourable Court on April 4 and 5**. The Committee has received the “Monitor’s Proposed Order of Proceedings for Comeback Hearing (April 4-5, 2019)” and, with reference to that document, gives notice that it intends to appear on the following matters set out in that list:

A. Matters Expected to Proceed on an Unopposed Basis

...

5. Reservation of rights for pensioners of ITL Applicants

- The Committee has made submissions (Initial Objection para. 21) pointing out the “inequitable and non-evenhanded treatment by ITCAN respecting its pension obligations. The Affected Members appear to be ITCAN’s *only* pension beneficiaries whose pension payments are intended to be stayed”.
- The Committee has also submitted (Initial Objection at para. 37(b)) that the Applicant “owes a duty of evenhandedness and good faith to its pension beneficiaries including to the Affected Members ... to treat all similarly situated pension beneficiaries equitably. It is possible that the Applicant and/or the Monitor, by sanctioning a stay of payments under the Genstar U.S. Plans, are conflicted in their duties vis-à-vis the other stakeholders and interested parties”.

B. Other Matters

...

1. (a) Stay Extension

- Submissions summarized within;

...

3. (b) Motion by QCAP to prohibit post-filing related party payments to subsidiaries and service providers (ITL specific submissions)

- Submissions summarized within;

C. Motions Proposed to be Rescheduled (Proposed Further Dates to be Confirmed: April 25-26, 2019)

...

2. Proposed Motion by Former Genstar U.S. Retiree Group Committee for representation and reinstatement of related party pension payments (to be scheduled to be heard prior to end of April, 2019)

- Submissions summarized within;

38. The Committee reserves all rights, arguments and positions respecting the interests of the Affected Members; all of which is respectfully submitted.

**THIS IS EXHIBIT “D” TO THE
NOTICE OF OBJECTION OF THE
FORMER GENSTAR U.S. RETIREE GROUP
COMMITTEE
DATED APRIL 3, 2019**

Subject: Re: Imperial Tobacco
Date: Monday, April 1, 2019 at 11:40:10 AM Eastern Daylight Time
From: Ari Kaplan
To: Zaifman, Samara, MacParland, Natasha
Attachments: image001.png

Thanks for your quick help, Samara.

Hi Natasha. I am looking for copies of any motions, objections or other materials delivered prior to me being put on the eService list in connection with the comeback motion this week relating to the ITCAN proceeding that are not available on the FTI case website. I understood there are motions by the Quebec class action group and the Province of Ontario?

Also, I had a specific question about whether we will be needing to bring a motion to lift the stay of the Initial Order respecting the company's intention to cease pension payments under my clients plans (the Genstar U.S. Plans per our Objection). It is not clear from the initial application materials whether the company intends to rely on para. 7 of the Initial Order or seek specific orders and remedies from the court with respect to those plans. If the company is relying on the initial order then I may have to bring such a motion this week to lift the stay for those plans. If the company intends to move for specific relief then I suppose I can be responding to that. If the Monitor has a position on that it would be well received.

I am also happy to chat with you regarding our request for a rep. order and the timing for bringing that motion and whether it will be consented to or opposed, as well as the disclosure request outlined in the Objection.

Best regards,

Ari Kaplan
416 565.4656
ari@kaplanlaw.ca
kaplanlaw.ca

KAPLAN  **LAW**

Ari Kaplan
393 University Avenue Suite 2000
Toronto Ontario Canada M5G 1E6
ari@kaplanlaw.ca 416 565.4656

.....
kaplanlaw.ca mediationbenefits.co

benefit legal

From: "Zaifman, Samara" <SZaifman@dwpv.com>
Date: Monday, April 1, 2019 at 11:02 AM
To: "ari@kaplanlaw.ca" <ari@kaplanlaw.ca>
Cc: "MacParland, Natasha" <NMacParland@dwpv.com>
Subject: Imperial Tobacco

Ari: Thanks for your call. I have communicated your questions to Natasha MacParland (cc'd), the partner on this file, who will get back to you with the relevant answers. 50 of 72

Thank you,

Samara

Samara Zaifman | [Bio](#) | [vCard](#)

T 416.367.7621

szaifman@dpvp.com

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Toronto, ON M5V 3J7

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DAVIES WARD PHILLIPS & VINEBERG LLP

This email may contain confidential information which may be protected by legal privilege. If you are not the intended recipient, please immediately notify us by reply email or by telephone. Delete this email and destroy any copies.

**THIS IS EXHIBIT "E" TO THE
NOTICE OF OBJECTION OF THE
FORMER GENSTAR U.S. RETIREE GROUP
COMMITTEE
DATED APRIL 3, 2019**

**NOTICE TO PARTICIPANTS IN
NON-QUALIFIED DEFERRED COMPENSATION PLANS**

Dear Plan Participants,

Bracewell LLP represents FTI Consulting Canada Inc. (the “**Monitor**”), the Court appointed Monitor and Foreign Representative of Imperial Tobacco Canada Limited (“**ITCAN**”). As you may know from prior court notices you have received, on March 12, 2019 (the “**Filing Date**”), ITCAN commenced a proceeding under Canada’s *Companies’ Creditors Arrangement Act* before the Ontario Superior Court of Justice (Commercial List) at Toronto (the “**Canadian Restructuring Proceeding**”). On March 13, 2019, the Monitor commenced a case under chapter 15 of title 11 of the United States Code in the United States Bankruptcy Court for Southern District of New York on behalf of ITCAN and in aid of the Canadian Restructuring Proceeding (the “**Chapter 15 Case**”).

As described more fully in the filings in the Canadian Restructuring Proceeding, ITCAN is facing an estimated \$600 billion in alleged liabilities in pending litigation in Canada. These liabilities caused ITCAN to initiate the Canadian Restructuring Proceeding and the Monitor to commence the related Chapter 15 Case.

As part of its restructuring efforts, ITCAN has ceased funding the following legacy U.S. non-qualified deferred compensation plans (the “**Affected Plans**”) as of the Filing Date:

- (i) the “deferred income plan” for individuals who are either former senior management employees of Genstar or their beneficiaries (“**GCDIP**”),
- (ii) the “supplemental executive retirement Plan” for individuals who were either former Genstar employees or their beneficiaries (“**SERP**”), and
- (iii) the “supplementary pension plan” for individuals who were either former Genstar employees or their beneficiaries (“**SPEN**”).

ITCAN has represented that its decision to cease funding of the Affected Plans was based largely on the fact that the liabilities under these plans constitute unsecured claims. As payment of these claims is not necessary to ITCAN’s ongoing business, although ITCAN has honored its commitment to fund these plans for more than 30 years, it is not in a position to continue to do so given the hundreds of billions of dollars in other unsecured claims asserted against it.

Should you have questions regarding this Notice, the Canadian Restructuring Proceeding or the Chapter 15 Case, please direct them to the Monitor at

Phone: 416-649-8044
Toll Free: 1-844-707-7558
Fax: 416-649-8101
Email: imperialtobacco@fticonsulting.com

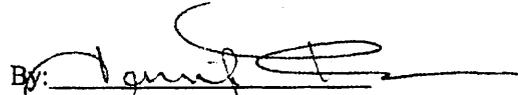
or to counsel for the Monitor at

Bracewell LLP
1251 Avenue of the Americas
New York, New York, 10020
Attn: Shannon Wolf
(T) (860) 256-8558
Shannon.wolf@bracewell.com.

Additional information regarding ITCAN's Canadian Restructuring Proceeding can also be found on the Monitor's website at <http://cfcanada.fticonsulting.com/imperialtobacco/>.

Please be aware that neither the Monitor nor Bracewell can provide you with legal advice.

Dated: March 27, 2019
New York, New York

By: 
Jennifer Feldsher
Mark E. Dendinger
BRACEWELL LLP
1251 Avenue of Americas
New York, New York 10020-1104
Telephone: (212) 508-6100
Facsimile: (212) 938-3837
Jennifer.Feldsher@bracewell.com
Mark.Dendinger@bracewell.com

*Attorneys for FTI Consulting Canada Inc.
In its Capacity as Monitor and Foreign
Representative for the Debtor*

In re Imperial To
c/o KCC
2335 Alaska Ave
El Segundo, CA 90245



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US POSTAGE \$000.50



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4/1/19

J E #

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HARTZ JR J E
336 CAMINA SOBRANTE
ORINDA, CA 94563

THIS IS **EXHIBIT "F"** TO THE
NOTICE OF OBJECTION OF THE
FORMER GENSTAR U.S. RETIREE GROUP
COMMITTEE
DATED APRIL 3, 2019

Subject: ITCAN - Notice to Participants re Genstar U.S. Plans
Date: Monday, April 1, 2019 at 7:32:59 PM Eastern Daylight Time
From: Ari Kaplan
To: mwasserman@osler.com, MacParland, Natasha
Attachments: Notice to Participants March 27 2019.pdf, image001.png

Further to my telephone and email messages to you both, one of my clients received the attached letter this afternoon Pacific time, in the mail (though it is dated March 27). FYI, this is the first explanation and notice to affected members that their pensions are ceased, on the day they were to receive their April pensions by direct deposit.

We will be bringing a motion to direct the continuation of payment of these pensions, which I expect to file on Weds p.m. returnable at the Comeback Motion. It will largely follow the points made in the Notice of Objection, served today.

Regards,

Ari Kaplan
416 565.4656
ari@kaplanlaw.ca
kaplanlaw.ca

KAPLAN  LAW

Ari Kaplan

393 University Avenue Suite 2000
Toronto Ontario Canada M5G 1E6
ari@kaplanlaw.ca 416 565.4656

.....
kaplanlaw.ca mediationbenefits.co

[benefit legal](http://benefitlegal.com)

**THIS IS EXHIBIT "G" TO THE
NOTICE OF OBJECTION OF THE
FORMER GENSTAR U.S. RETIREE GROUP
COMMITTEE
DATED APRIL 3, 2019**

Subject: ITCAN - Former Genstar U.S. Retirees - Objection to Stay Order Extension
Date: Tuesday, April 2, 2019 at 10:51:48 AM Eastern Daylight Time
From: Ari Kaplan
To: Wasserman, Marc, MacParland, Natasha
Priority: High
Attachments: image001.png

Marc, Natasha,

Thanks for the call today and letting me know that all of the Comeback materials were posted this morning on the FTI case site. I have now had a very quick opportunity to see the company's Comeback motion and its request to extend the Stay Period to June 28. Given our conversation this morning about scheduling our motion for the Genstar Retirees before the end of May, it prejudices my clients' rights were the Stay extended after April 11 without reservation because it will authorize the company to cease making payments under the Genstar U.S Plans in the months of May and June (without the Stay Extension they could not do so).

As a result, we will be filing a Supplementary Notice of Objection, based on the just-received Comeback Motion. We will be objecting to the Stay Extension unless we can have language in the Stay Extension Order reserving the rights of the Genstar retirees and hearing our motion before the May payments are due. I do not think this should be controversial since Natasha already indicated that you agree we ought to be heard in April, and further, having without prejudice language regarding their rights ought not to be prejudicial to anyone else's rights. This is particularly important given para. 25 of the new Thauvette affidavit confirming the cessation of the Genstar U.S. Plans immediately before he asks for the Stay extension. We do not acquiesce on this point.

I will supplement this more in our Supplementary Notice of Objection, but for the time being, I would preliminarily propose adding the following sentence to the end of Para. 3 of the Order (Stay Extension):

"This Court also orders that the within extension of the Stay Period is without prejudice to the rights of the Former Genstar U.S. Retiree Group Committee to bring and be heard for relief concerning the Genstar U.S. Plans prior to the end of April with all rights reserved and without regard to the passage of time until then".

I hope this will not be controversial however I hope you can appreciate the need for some assurance and reservation of rights in the Stay Order Extension.

If reasonable language cannot be agreed to on this then I will definitely need to speak to this point at the hearing of the company's Comeback Motion and request to extend the Stay, as well as on the previously-agreed to point regarding the scheduling of our motion. To repeat, it is imperative that our motion be heard prior to May 1 when their May pensions are due.

Please keep this in mind as the Monitor is tasked with organizing these motions.

I am available to speak today to resolve this, at your convenience.

Regards,

Ari Kaplan
416 565.4656
ari@kaplanlaw.ca
kaplanlaw.ca

**THIS IS EXHIBIT “H” TO THE
NOTICE OF OBJECTION OF THE
FORMER GENSTAR U.S. RETIREE GROUP
COMMITTEE
DATED APRIL 3, 2019**

Bracewell LLP
 1251 Avenue of the Americas
 New York, NY 10020-1100
 Telephone: (212) 508-6100
 Facsimile: (212) 508-6101
 Jennifer Feldsher
 Mark E. Dendinger

*Attorneys for FTI Consulting Canada Inc.
 In its Capacity as Monitor and Foreign Representative for the Debtor*

**UNITED STATES BANKRUPTCY COURT
 SOUTHERN DISTRICT OF NEW YORK**

In re:

 IMPERIAL TOBACCO CANADA
 LIMITED,

 Debtor in a Foreign Proceeding.

Chapter 15

 Case No. 19-10771 (SCC)

**INDIVIDUAL PROVISIONAL RELIEF LIST¹
 PURSUANT TO BANKRUPTCY RULE 1007(a)(4)**

	Creditor Name	Address	City	State	Zip
1	[REDACTED]	[REDACTED]	[REDACTED]	[REDACTED]	[REDACTED]
2	[REDACTED]	[REDACTED]	[REDACTED]	[REDACTED]	[REDACTED]
3	[REDACTED]	[REDACTED]	[REDACTED]	[REDACTED]	[REDACTED]
4	[REDACTED]	[REDACTED]	[REDACTED]	[REDACTED]	[REDACTED]
5	[REDACTED]	[REDACTED]	[REDACTED]	[REDACTED]	[REDACTED]
6	[REDACTED]	[REDACTED]	[REDACTED]	[REDACTED]	[REDACTED]
7	[REDACTED]	[REDACTED]	[REDACTED]	[REDACTED]	[REDACTED]
8	[REDACTED]	[REDACTED]	[REDACTED]	[REDACTED]	[REDACTED]
9	[REDACTED]	[REDACTED]	[REDACTED]	[REDACTED]	[REDACTED]
10	[REDACTED]	[REDACTED]	[REDACTED]	[REDACTED]	[REDACTED]
11	[REDACTED]	[REDACTED]	[REDACTED]	[REDACTED]	[REDACTED]
12	[REDACTED]	[REDACTED]	[REDACTED]	[REDACTED]	[REDACTED]
13	[REDACTED]	[REDACTED]	[REDACTED]	[REDACTED]	[REDACTED]

¹ The Individual Provisional Relief List is in addition to the *List Pursuant to Bankruptcy Rule 1007(a)* [Dkt. No. 2-3].



	Creditor Name	Address	City	State	Zip
14	[REDACTED]	[REDACTED]	[REDACTED]	[REDACTED]	[REDACTED]
15	[REDACTED]	[REDACTED]	[REDACTED]	[REDACTED]	[REDACTED]
16	[REDACTED]	[REDACTED]	[REDACTED]	[REDACTED]	[REDACTED]
17	[REDACTED]	[REDACTED]	[REDACTED]	[REDACTED]	[REDACTED]
18	[REDACTED]	[REDACTED]	[REDACTED]	[REDACTED]	[REDACTED]
19	[REDACTED]	[REDACTED]	[REDACTED]	[REDACTED]	[REDACTED]
20	[REDACTED]	[REDACTED]	[REDACTED]	[REDACTED]	[REDACTED]
21	[REDACTED]	[REDACTED]	[REDACTED]	[REDACTED]	[REDACTED]
22	[REDACTED]	[REDACTED]	[REDACTED]	[REDACTED]	[REDACTED]
23	[REDACTED]	[REDACTED]	[REDACTED]	[REDACTED]	[REDACTED]
24	[REDACTED]	[REDACTED]	[REDACTED]	[REDACTED]	[REDACTED]
25	[REDACTED]	[REDACTED]	[REDACTED]	[REDACTED]	[REDACTED]
26	[REDACTED]	[REDACTED]	[REDACTED]	[REDACTED]	[REDACTED]
27	[REDACTED]	[REDACTED]	[REDACTED]	[REDACTED]	[REDACTED]
28	[REDACTED]	[REDACTED]	[REDACTED]	[REDACTED]	[REDACTED]
29	[REDACTED]	[REDACTED]	[REDACTED]	[REDACTED]	[REDACTED]
30	[REDACTED]	[REDACTED]	[REDACTED]	[REDACTED]	[REDACTED]
31	[REDACTED]	[REDACTED]	[REDACTED]	[REDACTED]	[REDACTED]
32	[REDACTED]	[REDACTED]	[REDACTED]	[REDACTED]	[REDACTED]
33	[REDACTED]	[REDACTED]	[REDACTED]	[REDACTED]	[REDACTED]
34	[REDACTED]	[REDACTED]	[REDACTED]	[REDACTED]	[REDACTED]
35	[REDACTED]	[REDACTED]	[REDACTED]	[REDACTED]	[REDACTED]
36	[REDACTED]	[REDACTED]	[REDACTED]	[REDACTED]	[REDACTED]
37	[REDACTED]	[REDACTED]	[REDACTED]	[REDACTED]	[REDACTED]
38	[REDACTED]	[REDACTED]	[REDACTED]	[REDACTED]	[REDACTED]
39	[REDACTED]	[REDACTED]	[REDACTED]	[REDACTED]	[REDACTED]
40	[REDACTED]	[REDACTED]	[REDACTED]	[REDACTED]	[REDACTED]
41	[REDACTED]	[REDACTED]	[REDACTED]	[REDACTED]	[REDACTED]
42	[REDACTED]	[REDACTED]	[REDACTED]	[REDACTED]	[REDACTED]
43	[REDACTED]	[REDACTED]	[REDACTED]	[REDACTED]	[REDACTED]
44	[REDACTED]	[REDACTED]	[REDACTED]	[REDACTED]	[REDACTED]
45	[REDACTED]	[REDACTED]	[REDACTED]	[REDACTED]	[REDACTED]

	Creditor Name	Address	City	State	Zip
46	[REDACTED]	[REDACTED]	[REDACTED]	[REDACTED]	[REDACTED]
47	[REDACTED]	[REDACTED]	[REDACTED]	[REDACTED]	[REDACTED]
48	[REDACTED]	[REDACTED]	[REDACTED]	[REDACTED]	[REDACTED]
49	[REDACTED]	[REDACTED]	[REDACTED]	[REDACTED]	[REDACTED]
50	[REDACTED]	[REDACTED]	[REDACTED]	[REDACTED]	[REDACTED]
51	[REDACTED]	[REDACTED]	[REDACTED]	[REDACTED]	[REDACTED]
52	[REDACTED]	[REDACTED]	[REDACTED]	[REDACTED]	[REDACTED]
53	[REDACTED]	[REDACTED]	[REDACTED]	[REDACTED]	[REDACTED]
54	[REDACTED]	[REDACTED]	[REDACTED]	[REDACTED]	[REDACTED]
55	[REDACTED]	[REDACTED]	[REDACTED]	[REDACTED]	[REDACTED]
56	[REDACTED]	[REDACTED]	[REDACTED]	[REDACTED]	[REDACTED]
57	[REDACTED]	[REDACTED]	[REDACTED]	[REDACTED]	[REDACTED]
58	[REDACTED]	[REDACTED]	[REDACTED]	[REDACTED]	[REDACTED]
59	[REDACTED]	[REDACTED]	[REDACTED]	[REDACTED]	[REDACTED]

03/18/2019	20	Document Under Seal Per Court Order. Individual Provisional Relief List Pursuant to Bankruptcy Rule 1007(a) Filed by Jennifer Feldsher on behalf of FTI Consulting Canada Inc. (related document(s) <u>15</u>) (Lopez, Mary). (Entered: 03/20/2019)
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Facsimile: (212) 508-6101
Jennifer Feldsher
Mark E. Dendinger

*Attorneys for FTI Consulting Canada Inc.
In its Capacity as Monitor and Foreign Representative for the Debtor*

**UNITED STATES BANKRUPTCY COURT
SOUTHERN DISTRICT OF NEW YORK**

In re:

IMPERIAL TOBACCO CANADA
LIMITED,

Debtor in a Foreign Proceeding.

Chapter 15

Case No. 19-10771 (SCC)

ORDER GRANTING INTERIM MOTION TO SEAL

Upon the motion, dated March 14, 2019 (the “Motion”), of FTI Consulting Canada Inc. (“FTI,” or the “Monitor”) pursuant to section 107(b) of title 11 of the United States Code (the “Bankruptcy Code”), Rule 9018 of the Federal Rules of Bankruptcy Procedures (the “Bankruptcy Rules”), and Local Rule 9081-1 to file and maintain the Individual Provisional Relief List¹ under an order directing that the sealed information shall remain under seal and not be made available to anyone, except as specifically provided in this Order, without further order of the Court, all as more fully set forth in the Motion; and the Court having jurisdiction to consider the Motion and the relief requested therein in accordance with 28 U.S.C. §§ 157 and 1334; and consideration of the Motion and the relief requested therein being a core proceeding pursuant to 28 U.S.C. § 157(b);

¹ Capitalized terms not defined herein shall have the same meaning as given in the Motion.



and venue being proper before this Court pursuant to 28 U.S.C. §§ 1408 and 1409; and the Court having found and determined that the relief sought in the Motion is in the best interests of the Monitor in its capacity as foreign representative for the Debtor and all parties in interest and that the legal and factual bases set forth in the Motion establish just cause for the relief granted herein; and after due deliberation and sufficient cause appearing therefor;

IT IS HEREBY ORDERED THAT:

1. The Motion is granted as set forth herein.
2. Pursuant to sections 105(a) and 107(b) and (c) of the Bankruptcy Code, Bankruptcy Rule 9018 and Local Rule 9018-1, the Monitor is authorized and directed to file the Individual Provisional Relief List under seal, on an interim basis; *provided*, that the U.S. Trustee's rights to contest the Monitor's ability to file such information under seal and request further briefing on the issue are fully reserved, subject in all respects to the Monitor's rights to contest any such requests.
3. The Monitor shall provide unredacted copies of the Individual Provisional Relief List to the Court for *in camera* review and to the United States Trustee.
4. All information filed under seal pursuant to this Order shall remain under seal until the further order of the Court.
5. This Order is without prejudice to the rights of any party in interest to seek to make public any portion of the Individual Provisional Relief List filed under seal.
6. Upon entry of this Order, the Monitor shall submit the signed Order, together with one hard copy and one soft copy (on CD or flash drive) of the Individual Provisional Relief List with the Clerk of this Court under seal in an envelope, clearly indicating that the same has been

filed under seal by order of the United States Bankruptcy Court for the Southern District of New York and may not be unsealed until and unless permitted by further order of the Court.

7. The Clerk of the Court shall treat the Individual Provisional Relief List as confidential and counsel for the Monitor shall contact the Clerk's Office regarding the return or disposition of the Individual Provisional Relief List as soon as practicable following the conclusion of this case.

8. The Monitor is authorized to take all actions necessary to effectuate the relief granted pursuant to this Order in accordance with the Motion.

9. The terms and conditions of this Order shall be immediately effective and enforceable upon its entry.

10. This Court retains jurisdiction with respect to all matters arising from or related to the implementation of this Order.

Dated: March 14, 2019
New York, New York

/S/ Shelley C. Chapman
UNITED STATES BANKRUPTCY JUDGE

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**UNITED STATES BANKRUPTCY COURT
SOUTHERN DISTRICT OF NEW YORK**

In re:

IMPERIAL TOBACCO CANADA
LIMITED,

Debtor in a Foreign Proceeding.

Chapter 15
Case No. 19-10771 (SCC)

**INTERIM MOTION TO SEAL PURSUANT TO
11 U.S.C. § 107(b) AND FED. R. BANKR. P. 9018**

FTI Consulting Canada Inc. (“FTI”), in its capacity as the court-appointed monitor (“Monitor”) and authorized foreign representative of Imperial Tobacco Canada Limited (the “Debtor”), by and through its undersigned counsel, respectfully requests entry of the proposed order attached hereto as **Exhibit A** (the “Proposed Order”) pursuant to 11 U.S.C. § 107(b) and Rule 9018 of the Federal Rules of Bankruptcy Procedure (the “Bankruptcy Rules”) authorizing the Monitor to file the names and contact information of individual members of the Debtor’s U.S. subsidiaries’ retirement and pension plans against whom the Debtor is seeking provisional relief (the “Individual Provisional Relief List”) under seal, on an interim basis; and (b) directing that the Individual Provisional Relief List shall remain under seal and not be made available to anyone,



except as specifically provided in the Proposed Order, without the consent of the Monitor or further order of the Court.

BACKGROUND

1. On March 13, 2019 (the "Petition Date"), the Monitor commenced this Chapter 15 case (the "Chapter 15 Case") by filing, on behalf of the Debtor and pursuant to section 1504 and 1515 of title 11 of the United States Code (the "Bankruptcy Code"), the Verified Chapter 15 Petition for Recognition of Foreign Main Proceeding and Related Relief (the "Verified Petition") along with the Official Form 401 (*Chapter 15 Petition for Recognition of a Foreign Proceedings*). As set forth in greater detail in the Verified Petition, the Monitor is seeking recognition of the Debtor's proceeding under Canada's *Companies' Creditors Arrangement Act*, R.S.C. 1985, c. C-36, as amended, pending before the Ontario Superior Court of Justice (Commercial List) at Toronto (the "Canadian Court") to protect the Debtor and its assets and supply chain in the United States during the Debtor's restructuring in Canada.

2. The Debtor is the direct or indirect corporate parent of several subsidiaries in the United States. These include Imasco Holdings Group, Inc. ("Imasco"), Imasco Holdings, Inc., ITL (USA) Limited, and Genstar Pacific Corporation (collectively, the "U.S. Subsidiaries"). The U.S. Subsidiaries are dormant but administer various legacy liabilities related to their former business operations, including worker's compensation claims and pension and retirement benefit plan liabilities. Pursuant to an agreement dated April 2, 1986, the Debtor guaranteed certain of these pension and retirement obligations and over the years, the Debtor has provided funding for the U.S. Subsidiaries on a monthly basis in the form of a capital contribution to Imasco for these obligations. While the Debtor intends to continue to fund Imasco so that the U.S. Subsidiaries can make ordinary course payments in respect of many of the pension and retirement plan obligations,

it will no longer be funding several of the executive-level retirement and pension plans. In light of the Debtor guarantee, out of an abundance of caution, the individual members of these plans are included in the parties against whom the Debtor is seeking provisional relief.

3. Ordinarily, pursuant to Rule 1007(a)(4) of the Federal Rules of Bankruptcy Procedure, a petition for recognition under chapter 15 must be accompanied by, among other things, a list of “entities against whom provisional relief is being sought under section 1519 of the Code.” Fed. R. Bankr. P. 1007(a)(4). However, in the instant case, the Monitor is constrained by the Canadian Order for Relief and federal and provincial statutes in Canada from publicly disclosing the names and addresses of creditors who are individuals or any personal information in respect of such individuals. Specifically the Canadian Order for Relief provides that, with respect to any creditor list, the Monitor “shall not include the names, addresses or estimated amounts of the claims of those creditors who are individuals or any personal information in respect of an individual.” See Canadian Order for Relief ¶ 51. Moreover, the *Personal Information Protection and Electronic Documents Act* (Canada) (“PIPEDA”), Canada’s federal privacy law, and comparable provincial personal privacy laws in effect in Canada, require organizations that are subject to PIPEDA to first obtain consent for the collection, use and disclosure of the personal information of individuals. See e.g., https://www.priv.gc.ca/en/privacy-topics/privacy-laws-in-canada/the-personal-information-protection-and-electronic-documents-act-pipeda/pipeda_brief/ (last visited March 14, 2019).¹ Given these prohibitions, the Monitor seeks limited relief and authority to file and maintain only the Individual Provisional Relief List under seal. Notably, other

¹ Both the Debtor and the Monitor are subject to PIPEDA.

parties against whom the Debtor is seeking provisional relief are included on the *List Pursuant To Bankruptcy Rule 1007(a)(4)* [Dkt. No. 2, Ex. C].

JURISDICTION AND VENUE

4. This Court has jurisdiction over this matter pursuant to 28 U.S.C. § 1334. This is a core proceeding under 28 U.S.C. § 157(b)(2)(P).

5. This case has been properly commenced pursuant to Section 1504 of the Bankruptcy Code by filing the Petition for recognition of the proceeding (the “Canadian Proceeding”) pending against the Debtor under Canada’s *Companies’ Creditors Arrangement Act*, R.S.C. 1985, c. C-36, as amended (the “CCAA”).

6. Venue is proper pursuant to 28 U.S.C. § 1410.

7. The statutory bases for the relief requested herein are section 107(b)(1) of title 11 of the United States Code, and Rule 9018 of the Federal Rules of Bankruptcy Procedure.

RELIEF REQUESTED

8. By this Motion, the Monitor seeks to file and maintain under seal the Individual Provisional Relief List, which contains the names and addresses of individuals against whom the Debtor is seeking provisional relief so as to exclude the names and addresses of those individuals from the public records that are “open to examination by any entity” in this case under 11 U.S.C. §107(a). As set forth in the Proposed Order, the Monitor requests the Court to direct that the Individual Provisional Relief List remain under seal and not be made available in the public records during the pendency of the Debtor’s Chapter 15 case or as otherwise ordered by the Court.

BASIS FOR RELIEF SOUGHT

9. Pursuant to section 107(b) of the Bankruptcy Code, the Court may authorize the Monitor to file materials under seal. Section 107(b) of the Bankruptcy Code provides in pertinent part: “[o]n request of a party in interest, the bankruptcy court shall, and on the bankruptcy court’s

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 IMPERIAL TOBACCO CANADA LIMITED, *et al.*

ONTARIO
SUPERIOR COURT OF JUSTICE
(COMMERCIAL LIST)

PROCEEDING COMMENCED AT
TORONTO

NOTICE OF OBJECTION

(1. Applicants' Motion for Stay Extension; and
2. Quebec Class Action Plaintiffs' Motion)

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Retiree Group Committee

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 IMPERIAL TOBACCO CANADA LIMITED, *et al.*

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

PROCEEDING COMMENCED AT
TORONTO

**BOOK OF OBJECTIONS
(For April 4 and 5, 2019 Court Hearing)**

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