

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

B E T W E E N:

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

**FACTUM OF THE APPLICANTS**

June 13, 2025

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**TO: THE COMMON SERVICE LIST**

## PART I - NATURE OF THE MOTION

1. The Applicants, Imperial Tobacco Canada Limited (“ITCAN”) and Imperial Tobacco Company Limited, bring this motion in order to seek the following orders, each of which approves and authorizes the implementation of settlement agreements entered into by the Applicants:

- (a) the “**CRA/RQ Settlement Approval Order**,” which gives effect to the terms of the settlement agreement between the Canada Revenue Agency (“CRA”), Revenu Quebec (“RQ”) and ITCAN (the “**CRA/RQ Settlement Agreement**” and the underlying settlement, the “**CRA/RQ Settlement**”);
- (b) the “**Genstar Settlement Approval Order**,” which gives effect to the terms of the settlement agreement between the Applicants and the Representatives (as defined below) in respect of the Genstar Plans (as defined below) (the “**Genstar Settlement Agreement**” and the underlying settlement, the “**Genstar Settlement**”); and
- (c) the “**Insurance Settlement Approval Order**,” which gives effect to the terms of the Insurance Settlement Agreements (as defined below, and collectively with the CRA/RQ Settlement Agreement and the Genstar Settlement Agreement, the “**Settlement Agreements**”) and the corresponding payments to be made by the Participating Insurers (as defined below) (the “**Insurance Settlement Payments**”).

2. The Settlement Agreements, which are supported by FTI Consulting Canada Inc. in its capacity as Monitor of these CCAA proceedings (“FTI” or the “**Monitor**”), will provide certainty to the Applicants moving forward, while facilitating the ongoing implementation of the plan of arrangement in these proceedings. The Settlement Agreements are therefore in the best interest of the Applicants and their stakeholders, and the requested relief should be granted by the Court.

## PART II - SUMMARY OF FACTS

3. The facts in support of this motion are set out in the Affidavit of Eric Thauvette.<sup>1</sup>

### A. The CCAA Proceedings and the Plan

4. The Applicants were granted CCAA protection by an order of the Ontario Superior Court of Justice (Commercial List) (the “**Court**”) dated March 12, 2019 (the “**Initial Order**”). The Initial Order, among other things, appointed FTI as Monitor and granted a stay of proceedings in favour of the Applicants and certain related parties for the initial 10-day period (the “**Stay Period**”).<sup>2</sup>

5. On March 6, 2025, the Court granted an order (the “**Sanction Order**”) which, among other things, approved and sanctioned the third amended and restated Court-Appointed Mediator’s and Monitor’s CCAA Plan of Compromise and Arrangement in respect of the Applicants dated February 27, 2025 (the “**Plan**”), which contemplates that certain of the Applicants’ creditors will be entitled to file “Miscellaneous Claims” or retain certain rights as “Unaffected Claimants.”<sup>3</sup>

6. During the course of these CCAA proceedings, including during the most recent Stay Period, the Applicants have engaged with various third parties in an effort to resolve outstanding issues within the framework of the CCAA process, certain of which have culminated in executed

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<sup>1</sup> Affidavit of Eric Thauvette sworn June 13, 2025 (“**Thauvette Affidavit**”). Unless otherwise specified, capitalized terms in this factum have the same meaning as in the Thauvette Affidavit. Unless otherwise stated, all monetary amounts referred to in this factum are expressed in Canadian dollars.

<sup>2</sup> Thauvette Affidavit at para. 5. The Stay of Proceedings has currently been extended to the “Effective Time,” meaning such time on the Plan Implementation Date (as defined in the Plan) as the Court-Appointed Mediator and the Monitor may determine and designate: Thauvette Affidavit, at para. 8.

<sup>3</sup> Thauvette Affidavit at paras. 6-7. Pursuant to the Plan, all distributions to Miscellaneous Claimants with proven Miscellaneous Claims will be made from a segregated interest-bearing trust account containing an aggregate sum of \$25 million transferred from the Global Settlement Trust Account (as defined in the Plan) (the “**Miscellaneous Claims Fund**”) for a period of three years from the Effective Time (as defined in the Plan), or for such other period of time as is necessary and appropriate to permit the completion of the adjudication of any Miscellaneous Claims (“**Miscellaneous Claims Fund Period**”). Following the expiry of the Miscellaneous Claims Fund Period, to the extent that there remain any residual funds in the Miscellaneous Claims Fund after the payment of all judgments, awards and any other amounts ordered to be paid in regard to proven Miscellaneous Claims, any such residual funds will be apportioned among the Provinces and Territories (as defined in the Plan).

settlement agreements for which the Applicants seek approval on this motion.<sup>4</sup> The Applicants are not aware of any objections to the relief sought on this motion.<sup>5</sup>

**B. The Settlement Agreements**

**(a) The CRA/RQ Settlement Agreement**

7. The CRA/RQ Settlement settles various disputes between the Applicants and the CRA and RQ which arose from certain notices of reassessment issued by the CRA. The first two notices of assessment, which dealt with ITCAN's 2011 and 2014 taxation years respectively, were issued by the CRA on June 10, 2019. These notices of reassessment had the following consequences:<sup>6</sup>

- (a) the 2011 reassessment denied the carry-back of losses arising in 2014, which increased ITCAN's Part I tax payable by \$42,295,500 and increased ITCAN's net provincial and territorial tax payable by \$6,480,487, resulting in total tax and interest payable of \$59,039,887.94; and
- (b) the 2014 reassessment made three adjustments: two related to the settlement of litigation relating to dividends paid in 1986 and 1987 by the Flintkote Company (a previous indirect subsidiary of a predecessor of ITCAN) regarding the settlement itself and the related legal fees, and one related to a deduction of a fee paid by ITCAN to a Mexican affiliate, which increased ITCAN's Part I tax payable by \$64,280,097 and increased ITCAN's net provincial and territorial tax payable by \$10,296,688, resulting in total tax and interest payable of \$91,204,909.52.

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<sup>4</sup> Thauvette Affidavit at para. 10.

<sup>5</sup> Thauvette Affidavit at para. 50.

<sup>6</sup> See Thauvette Affidavit at para. 11 for a detailed summary of the consequences of the 2011 and 2014 reassessments. The totals below include adjustments to arrears and refund interest. Additional interest continues to accrue.

8. ITCAN objected to the 2011 and 2014 reassessments on September 5, 2019. On February 19, 2020, the CRA issued a second reassessment of the 2014 taxation year, which implemented certain unrelated and undisputed adjustments but otherwise maintained the adjustments made in the original 2014 reassessment. ITCAN objected to the new reassessment on August 11, 2020. CRA Appeals subsequently reviewed the objections for 2011 and 2014 and indicated its intention to confirm the reassessments in respect of the Flintkote settlement and legal fees, but to allow the objection in respect of the Mexican affiliate fixed assets write-off issue. In light of these ongoing CCAA proceedings, CRA Appeals has held the objections in abeyance.<sup>7</sup>

9. The CRA subsequently issued further notices of reassessments for ITCAN's 2015 taxation year on September 9, 2020, and for ITCAN's 2016-2018 taxation years on October 13, 2020 and November 24, 2020. These notices of reassessment had the following consequences:<sup>8</sup>

- (a) the 2015 reassessment increased ITCAN's Part I tax payable by \$1,370,121 and increased ITCAN's net provincial and territorial tax payable by \$4,715,607, resulting in a total amount of tax and interest payable of \$7,461,562.49;
- (b) the 2016 reassessment increased ITCAN's Part I tax payable for the 2016 taxation year by \$35,613 and increased ITCAN's net provincial and territorial tax payable by \$6,228, resulting in a total amount of tax and interest payable of \$46,758.29;
- (c) the 2017 reassessment increased ITCAN's Part I tax payable by \$35,666 and reduced ITCAN's net provincial and territorial tax payable by \$12,736,573, resulting in no additional interest or penalties being payable; and

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<sup>7</sup> Thauvette Affidavit at paras. 12-14.

<sup>8</sup> See Thauvette Affidavit at para. 15 for a detailed summary of the consequences of the 2015-2018 reassessments. The totals below include adjustments to arrears and refund interest. Additional interest continues to accrue.

- (d) the 2018 reassessment increased ITCAN's Part I tax payable by \$79,084 and reduced ITCAN's net provincial and territorial tax payable by \$16,396,890, resulting in no additional interest or penalties being payable.

10. ITCAN objected to the 2015 reassessment on December 4, 2020, the 2016-2018 reassessments dated October 13, 2020 on December 22, 2020, and the 2016-2018 reassessments dated November 24, 2020 on February 5, 2021.<sup>9</sup>

11. On January 15, 2025, the CRA, RQ, and ITCAN agreed to settle the tax dispute relating to the Flintkote litigation, as well as certain other federal and Quebec tax issues<sup>10</sup> for an aggregate payment by ITCAN of \$1.5 million and the exchange of full and final mutual releases.<sup>11</sup> Among other things, the CRA/RQ Settlement Agreement provides that the CRA and RQ shall withdraw their Miscellaneous Claims that were filed with the Monitor and undertake not to file or refile any additional Proof of Claim (as defined in the Plan) in these CCAA proceedings.<sup>12</sup>

#### **(b) The Genstar Settlement Agreement**

12. Pursuant to an agreement dated April 2, 1986 among Genstar Corporation, Imasco Limited and Imasco Enterprises Inc., Imasco Limited became a guarantor of the obligations of Genstar Corporation under a "Deferred Income Plan", "Supplemental Executive Retirement Plan" and

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<sup>9</sup> Thauvette Affidavit at para. 16.

<sup>10</sup> These issues include those related to the reassessments issued by RQ under the Taxation Act in Quebec to ITCAN for its taxation years ended December 31, 2018, December 31, 2017, December 31, 2016, December 31, 2015, December 31, 2014, and December 31, 2011 that ITCAN disputes, as well as the Mexican affiliate fixed assets write-off issue: Thauvette Affidavit, at para. 17.

<sup>11</sup> Thauvette Affidavit at para. 17.

<sup>12</sup> Thauvette Affidavit at para. 18. The CRA/RQ Settlement Agreement is attached to the Thauvette Affidavit as Exhibit "A".

“Supplementary Pension Plan” (collectively, the “**Genstar Plans**”). As the corporate successor to Imasco Limited, ITCAN has historically made capital contributions to the Genstar Plans.<sup>13</sup>

13. These payments were terminated as of the date of the CCAA filing, pursuant to the terms of the Initial Order. Certain Genstar retirees (the “**Committee**”) brought a motion within these CCAA proceedings, seeking a Representation Order, which was granted on April 25, 2019. The Representation Order, among other things, appointed Ari Kaplan as representative counsel (the “**Representative Counsel**”), and appointed certain other individuals as representatives (the “**Representatives**”). No Genstar beneficiaries (the “**Affected Members**”) opted out of the Representation Order.<sup>14</sup>

14. On May 10, 2019, the Applicants and the Representatives, as supported by the Committee, negotiated a settlement with respect to the Genstar Plans, which was subsequently approved by the Court on June 26, 2019. The settlement, among other things, contemplated a release of all claims against the Applicants in respect of the Genstar Plans, subject only to the Affected Members retaining an unsecured claim in these CCAA proceedings with respect to any remaining unpaid amounts under the Genstar Plans.<sup>15</sup>

15. The Affected Members have filed a Miscellaneous Claim and asserted ongoing rights as Unaffected Claimants. In order to avoid any disruption of the Plan (as well as costs related to ongoing litigation), on January 17, 2025, the Applicants entered into the Genstar Settlement Agreement with the Affected Members. Pursuant to the Genstar Settlement Agreement, the Applicants agreed to a payment of USD \$850,000 by ITCAN to the Affected Members payable on or prior to the Plan Implementation Date (as defined in the Plan), following which the Applicants

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<sup>13</sup> Thauvette Affidavit at para. 20.

<sup>14</sup> Thauvette Affidavit at paras. 20-21.

<sup>15</sup> Thauvette Affidavit at para. 22.



will have no obligations whatsoever in relation to the Genstar Plans, including with respect to any unsecured claims.<sup>16</sup> As is discussed in greater detail below, the Genstar Settlement is supported by both the Representatives and the Committee.<sup>17</sup>

**(c) The Insurance Settlement Agreements**

16. Over the years, the Applicants have obtained various primary and excess insurance policies, which have typically provided indemnity for tort-based damages. Between 2014 and 2017, the Applicants entered into settlement agreements with certain insurers, which granted broad releases to such insurers.<sup>18</sup>

17. The Applicants have engaged in ongoing dialogue with various insurers, and have entered into the following three settlement agreements (collectively, the “**Insurance Settlement Agreements**”):<sup>19</sup>

- (a) a settlement agreement with Northumberland General Insurance Company (“**Northumberland**”), dated June 12, 2025, pursuant to which Northumberland will contribute \$500,000;<sup>20</sup>
- (b) a settlement agreement with Northbridge General Insurance Corporation, Northbridge Commercial Insurance Corporation and Northbridge Personal

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<sup>16</sup> Thauvette Affidavit at paras. 23-25. See Thauvette Affidavit at para. 24 for a detailed description of the allocation of the USD \$850,000 payment. A copy of the Genstar Settlement Agreement is attached to the Thauvette Affidavit as Exhibit “D”.

<sup>17</sup> Thauvette Affidavit at para. 22.

<sup>18</sup> Thauvette Affidavit at paras. 27-28.

<sup>19</sup> Thauvette Affidavit, at paras. 35-36. Copies of the Insurance Settlement Agreements are attached to the Thauvette Affidavit as Exhibits “E,” “F,” and “G.”

<sup>20</sup> Note that Northumberland was ordered wound-up in July 1985, pursuant to what is now the *Winding-up and Restructuring Act*, R.S.C. 1985, c. W-11. In May 2010, PricewaterhouseCoopers Inc. was appointed permanent liquidator of Northumberland.

Insurance Corporation (collectively, “**Northbridge**”), dated June 12, 2025, pursuant to which Northbridge will contribute \$2,000,000; and

- (c) a settlement agreement with Employers Insurance Company of Wausau (“**Wausau**,” and together with Northumberland and Northbridge, the “**Participating Insurers**”), dated June 12, 2025, pursuant to which Wausau will contribute \$250,000.

18. The Insurance Settlement Agreements collectively contemplate aggregate settlement amounts of \$2,750,000, and include, among other terms and conditions, a broad release in favour of the Participating Insurers. The Insurance Settlement Agreements contemplate the issuance of a court order that, among other things: (i) approves the Insurance Settlement Agreements, (ii) establishes a bar of claims against the Participating Insurers, and (iii) releases the Participating Insurers in relation to the Imperial Policies (as defined in the Insurance Settlement Agreements).<sup>21</sup>

### **PART III - THE ISSUES AND THE LAW**

19. The issues on this motion are:

- (a) whether the CRA/RQ Settlement Agreements should be approved;
- (b) whether the Genstar Settlement Agreement should be approved; and
- (c) whether the Insurance Settlement Agreements should be approved.

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<sup>21</sup> Thauvette Affidavit at para. 37.

**A. This Court has Jurisdiction to Approve the Settlement Agreements**

20. It is undisputed that CCAA courts have the jurisdiction to approve settlement agreements entered into by debtors during the course of CCAA proceedings.<sup>22</sup> This authority derives from the general discretion granted to the court by s. 11 of the CCAA,<sup>23</sup> and reflects the court's authority to act in the greater good in a manner consistent with the purpose and spirit of the CCAA.<sup>24</sup>

21. In determining whether to approve a proposed settlement, CCAA courts consider the following three factors:<sup>25</sup>

- (a) whether the settlement is fair and reasonable in the circumstances;
- (b) whether the settlement will benefit the debtor and its stakeholders generally; and
- (c) whether the settlement is consistent with the purpose and spirit of the CCAA.

22. In determining whether a settlement is fair and reasonable, the court must consider whether the proposed settlement properly balances the interests of all parties and treats all parties equitably.<sup>26</sup> As part of this process, the court is required to consider the benefits that the settlement offers to creditors as a whole, while at the same ensuring that objecting creditors (if any) are not suffering excessive prejudice or having their rights unjustly confiscated.<sup>27</sup>

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<sup>22</sup> *Robertson v. ProQuest Information & Learning Co.*, [2011 ONSC 1647](#) at para. 22 [*Robertson*].

<sup>23</sup> *Return on Innovation Capital Ltd. v. Gandi Innovations Ltd.*, [2010 ONSC 1759](#) at para. 11 [*Gandi*]; *Nortel Networks Corp.*, (Re), [2010 ONSC 1708](#) at paras. 68-71 [*Nortel*]; *1057863 B.C. Ltd. (Re)*, [2024 BCSC 1111](#) at para. 13 [*Northern Pulp*].

<sup>24</sup> *Calpine Canada Energy Ltd. (Re)*, [2007 ABQB 504](#) at para. 75 [*Calpine*].

<sup>25</sup> *Robertson*, at para. 22; see also *Labourers' Pension Fund of Central and Eastern Canada v. Sino-Forest Corp.*, [2013 ONSC 1078](#) at para. 49 [*Sino-Forest*]; *The Cash Store Financial Services Inc. (Re)*, [2015 ONSC 7538](#) at para. 14.

<sup>26</sup> *Nortel*, at para. 73.

<sup>27</sup> *Calpine*, at para. 62.

**B. The Settlement Agreements Should be Approved**

23. The criteria outlined above are satisfied. Each of the Settlement Agreements is fair and reasonable in the circumstances, and beneficial for the Applicants and their stakeholders generally. The Settlement Agreements provide certainty by avoiding the spectre of time-consuming and costly litigation, while simultaneously facilitating the implementation of the Plan by removing the settled claims from the existing claims process and increasing the funds immediately available for distribution to creditors. Further, the Settlement Agreements, which are the product of good faith negotiations, are supported by the Monitor, and the Applicants are not aware of any creditors which object to their approval.<sup>28</sup>

**(a) The Settlement Agreements Will Allow the Applicants to Avoid Potentially Time-Consuming and Costly Litigation**

24. The Settlement Agreements provide the parties with certainty both in relation to the total exposure to the Genstar and the CRA/RQ claims, and in relation to the total aggregate contribution being provided by the Participating Insurers, in the process eliminating the potential distraction of future litigation to the benefit of all parties.<sup>29</sup>

25. The avoidance of unnecessary and costly litigation provides an especially important benefit in the context of CCAA proceedings, and courts have approved settlement agreements where the resolution of the settled claims by way of litigation could have required significant costs and effort, and where the settlement would provide certainty to a difficult and complex restructuring.<sup>30</sup> In particular, had the Affected Members been required to pursue their claims with respect to the

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<sup>28</sup> Thauvette Affidavit at para. 50.

<sup>29</sup> Thauvette Affidavit at para. 47.

<sup>30</sup> *Northern Pulp*, at para. 17(a)-(b); *Maple Bank GmbH (Re)*, [2016 ONSC 7218](#) at para. 10 [*Maple Bank*].

Genstar Plans through the Miscellaneous Claims process, the Affected Members would have had to participate in a protracted claims procedure, the outcome and timing of which would have been subject to significant uncertainty.<sup>31</sup>

26. The settlement of outstanding litigation in this manner has further been found to be consistent with the spirit and purpose of the CCAA,<sup>32</sup> and courts have held that settlement of claims within the CCAA should therefore be encouraged:

[...] the chances of achieving a successful restructuring proceeding increase where the parties can agree on certain issues. Settlement agreements between the parties in these types of proceedings are very much encouraged where resolutions take place in the boardroom, as opposed to the courtroom. There is every reason to encourage such settlements, with approval and implementation subject to appropriate judicial oversight.<sup>33</sup>

27. By protecting the Applicants from costly and time-consuming litigation – in the process removing a pressing distraction during at a crucial time in the ongoing restructuring – the Settlement Agreements provide a significant benefit to creditors and stakeholders generally, in a manner consistent with the spirit and purpose of the CCAA. Further, the terms of the Insurance Settlement Agreements are consistent with settlement agreements with insurers which have previously been approved in parallel CCAA proceedings.<sup>34</sup>

**(b) The Settlement Agreements Will Facilitate Plan Implementation**

28. The Settlement Agreements will also facilitate the implementation of the Plan. By entering into the CRA/RQ Settlement Agreement and the Genstar Settlement Agreement, the Applicants have ensured that none of the CRA, RQ or the Affected Members will be entitled to assert any

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<sup>31</sup> Thauvette Affidavit at para. 46.

<sup>32</sup> *Nortel*, at para. 74

<sup>33</sup> *Great Basin Gold Ltd. (Re)*, [2012 BCSC 1773](#) at para. 15.

<sup>34</sup> Thauvette Affidavit at para. 39, in reference to the settlements approved in *Rothmans, Benson & Hedges Inc. (Re)*, (December 23, 2024), Ont S.C.J. [Commercial List], Court File No. CV- 19-00616779-00CL ([RBH Insurance Settlement and Bar Order](#)) [RBH Insurance Settlement and Bar Order].

claims in respect of any of the payments distributed under the Plan to any of the creditors or the funds contemplated by the Plan; as a result, creditors will receive payments under the Plan without the need to account for either of these potential liabilities.<sup>35</sup> Further, the underlying claims are being removed from the claims procedure contemplated in these CCAA proceedings at a material discount to their notional claim value, which will both streamline Plan implementation and avoid future litigation, as the notional value of the CRA/RQ and Genstar claims would have greatly exceeded the Miscellaneous Claims Fund, potentially frustrating the very purpose of the fund.<sup>36</sup>

29. Similarly, the Insurance Settlement Agreements provide for the Insurance Settlement Payments, which are to be paid to the Global Settlement Trust Account on the Plan Implementation Date. These payments will provide available funding for distribution in accordance with the Plan, to the benefit of eligible claimants generally.<sup>37</sup>

**(c) The Settlement Agreements are the Product of Good Faith Negotiations and are Supported by the Monitor**

30. The Settlement Agreements are the product of good faith, arms-length negotiations with the settling parties,<sup>38</sup> and are each supported by the Monitor.<sup>39</sup>

31. Each of these facts strongly supports the approval of the Settlement Agreement. In approving settlements, courts have noted favourably where the settlement was the outcome of good

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<sup>35</sup> Thauvette Affidavit at para. 48.

<sup>36</sup> Thauvette Affidavit at para. 45.

<sup>37</sup> Thauvette Affidavit at paras. 41, 49.

<sup>38</sup> Thauvette Affidavit at para. 44. See also, in relation to the Gemstar Settlement Agreement, the Affidavit of Vivian Brennan-Dolezar sworn June 11, 2025, at paras. 15-16 [Brennan-Dolezar Affidavit].

<sup>39</sup> Thauvette Affidavit at para. 50.

faith negotiation between the parties.<sup>40</sup> Further, courts place significant weight on the support of the monitor for a settlement.<sup>41</sup>

**C. The Releases in the Settlement Agreements Should be Approved**

32. The Settlement Agreements provide for the following third-party releases upon performance of the obligations in the Settlement Agreements:

- (a) The CRA/RQ Settlement Agreement includes the exchange of full and final mutual releases of any and all claims relating to and any assessment of corporate income taxes (including interest, penalties and additions to tax applicable thereto) payable by ITCAN relating to the taxation year ended December 31, 2018 and any and all preceding taxation.<sup>42</sup>
- (b) The Genstar Settlement Agreement requires that the Applicants and the Representatives jointly seek an Order, among other things, releasing and discharging the Representatives, Representative Counsel and the members of the Committee in respect of the unsecured claim of the Affected Members, these CCAA proceedings, and the Genstar Settlement including the manner or method of determining or making any distributions in accordance with the Genstar Settlement Agreement.<sup>43</sup>
- (c) The Insurance Settlement Agreements release the Participating Insurers in relation to the Imperial Policies (as defined in the Insurance Settlement Agreements). The

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<sup>40</sup> *Northern Pulp*, at para. 18.

<sup>41</sup> *Nortel Networks Corporation (Re)*, [2018 ONSC 6257](#) at para. 27; *Northern Pulp*, at para. 18; *Maple Bank*, at para. 9.

<sup>42</sup> Thauvette Affidavit at para. 17; CRA/RQ Settlement Agreement at para. 7.

<sup>43</sup> Thauvette Affidavit at para. 25; Genstar Settlement Agreement at para. 3(c).

releases will be effective on the Plan Implementation Date, provided that the Insurance Settlement Payments are paid in full.<sup>44</sup>

33. The Court has repeatedly confirmed that it has jurisdiction to grant orders approving releases (including third-party releases) in the context of CCAA proceedings.<sup>45</sup> Releases contained in settlement agreements are approved where they are necessary and connected to the resolution of the claims in question, will benefit creditors generally, and are not overly broad or offensive to public policy.<sup>46</sup>

34. The proposed releases satisfy these criteria, which are consistent with the releases previously approved by the Court in respect of settlements entered into in the course of these CCAA proceedings,<sup>47</sup> are appropriate in the circumstances and should be approved by the Court. The releases are clearly connected to the resolution of the claims that are the subject of the Settlement Agreements, and are a necessary component of the Settlement Agreements, which contemplate and require the granting of the proposed releases by the Court.<sup>48</sup> Further, the proposed releases will benefit the Applicants' creditors generally by removing these claims from the claims procedure contemplated in the Plan, and in the case of the Insurance Settlement Payments, providing for an earlier contribution by the Applicants of their portion of the "Global Settlement Amount."<sup>49</sup> The proposed releases are also appropriately limited in scope, as they apply only to

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<sup>44</sup> Thauvette Affidavit at para. 37(e).

<sup>45</sup> See, i.e., *Lydian International Limited (Re)*, [2020 ONSC 4006](#) at para. 53; *Nortel*, at para. 79.

<sup>46</sup> *Nortel*, at para. 79.

<sup>47</sup> With respect to releases in favour of Representative Counsel, Representatives, and the Committee, see *Imperial Tobacco Canada Limited et. al. (Re)*, (June 26, 2019), Ont S.C.J. [Commercial List], Court File No. CV- 19-00616777-00CL ([Genstar Settlement Approval](#)) at para. 9. With respect to releases granted to the Participating Insurers, see Thauvette Affidavit at para. 50; RBH Insurance Settlement and Bar Order at para. 6.

<sup>48</sup> Thauvette Affidavit at paras. 17, 25, 37(e), 42.

<sup>49</sup> Thauvette Affidavit at paras. 42, 45.



claims in relation to the subject matter of each of the Settlement Agreements, as set out above, and only if the obligations in the Settlement Agreements are satisfied.

**D. The Genstar Settlement Agreement is Authorized by the Representation Order**

35. As set out above, on April 25, 2019, this Court granted the Representation Order, which ordered that the Representative Counsel is entitled to represent the Represented Parties on all motions to which the Represented Parties are entitled to receive notice.<sup>50</sup> The Representation Order specifically authorized the Representatives to enter into settlement agreements and compromise any rights, entitlements and claims of the Represented Parties,<sup>51</sup> and further authorized the Representative Counsel to rely upon the instructions received from the Representatives without further communications with or instructions from the Represented Parties.<sup>52</sup> As noted previously, none of the Affected Members opted out of the Representation Order.<sup>53</sup>

36. The terms of the Representation Order clearly authorize the Representatives, as advised by the Representative Counsel, to enter into the Genstar Settlement on behalf of the Affected Members. The Genstar Settlement is strongly supported by the Representatives, who received extensive advice on the issue from the Representative Counsel.<sup>54</sup>

37. Although the Representation Order does not require any further communication with or approval from the Affected Members, all Affected Members that have provided email addresses to Representative Counsel will be informed of this motion upon the serving of the Notice of Motion.<sup>55</sup> Further, the proposed Genstar Settlement Approval Order provides that the Applicants

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<sup>50</sup> *Imperial Tobacco Canada Limited et. al. (Re)*, (April 25, 2019), Ont S.C.J. [Commercial List], Court File No. CV- 19-00616777-00CL ([Representation Order](#)) at paras. 8-9.

<sup>51</sup> Representation Order, at para. 4.

<sup>52</sup> Representation Order, at para. 3.

<sup>53</sup> Thauvette Affidavit at para. 21.

<sup>54</sup> Brennan-Dolezar Affidavit at paras. 15-20.

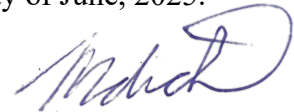
<sup>55</sup> Brennan-Dolezar Affidavit at para. 23.

shall transmit, or cause to be communicated, to each Affected Member: (i) a copy of the Genstar Settlement Approval Order, and (ii) the letter from Representative Counsel, attached as Exhibit “D” to the Brennan-Dolezar Affidavit.<sup>56</sup> Such notice is sufficient in the circumstances, as the courts have recognized that the considerations governing notice and approval of settlements under the CCAA differ from those that might exist under the *Class Proceedings Act*.<sup>57</sup>

#### **PART IV - NATURE OF THE ORDER SOUGHT**

38. For the reasons set out above, the Applicants request that this Court grant the proposed Settlement Approval Orders substantially in the forms of the draft orders included at Tabs 4, 5, and 6 of the Motion Record.

**ALL OF WHICH IS RESPECTFULLY SUBMITTED** this 13<sup>th</sup> day of June, 2025.



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**OSLER, HOSKIN & HARCOURT LLP**  
per Marleigh Dick

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<sup>56</sup> Thauvette Affidavit at para. 51.

<sup>57</sup> *Robertson*, at para. 8; see also *Canadian Red Cross Society (Re)*, [2008 CanLII 53855](#) (ONSC) at para. 21, in which the court noted that the notice requirement applicable to class proceedings do not apply to CCAA proceedings. For the test for settlement approval in the CCAA, see *Robertson*, at para. 22.

## SCHEDULE "A": LIST OF AUTHORITIES

1. *1057863 B.C. Ltd. (Re)*, [2024 BCSC 1111](#)
2. *Canadian Red Cross Society (Re)*, [2008 CanLII 53855](#) (ONSC)
3. *Calpine Canada Energy Ltd. (Re)*, [2007 ABQB 504](#)
4. *Great Basin Gold Ltd. (Re)*, [2012 BCSC 1773](#)
5. *Imperial Tobacco Canada Limited et. al. (Re)*, (April 25, 2019), Ont S.C.J. [Commercial List], Court File No. CV- 19-00616777-00CL ([Representation Order](#))
6. *Imperial Tobacco Canada Limited et. al. (Re)*, (June 26, 2019), Ont S.C.J. [Commercial List], Court File No. CV- 19-00616777-00CL ([Genstar Settlement Approval](#))
7. *Labourers' Pension Fund of Central and Eastern Canada v. Sino-Forest Corp.*, [2013 ONSC 1078](#)
8. *Lydian International Limited (Re)*, [2020 ONSC 4006](#)
9. *Maple Bank GmbH (Re)*, [2016 ONSC 7218](#)
10. *Nortel Networks Corp.*, (Re), [2010 ONSC 1708](#)
11. *Nortel Networks Corporation (Re)*, [2018 ONSC 6257](#)
12. *Return on Innovation Capital Ltd. v. Gandi Innovations Ltd.*, [2010 ONSC 1759](#)
13. *Robertson v. ProQuest Information & Learning Co.*, [2011 ONSC 1647](#)
14. *Rothmans, Benson & Hedges Inc. (Re)*, (December 23, 2024), Ont S.C.J. [Commercial List], Court File No. CV- 19-00616779-00CL ([RBH Insurance Settlement and Bar Order](#))
15. *The Cash Store Financial Services Inc. (Re)*, [2015 ONSC 7538](#)

I certify that I am satisfied as to the authenticity of every authority.

Date June 13, 2025



Signature

**SCHEDULE “B”**  
**TEXT OF STATUTES, REGULATIONS & BY-LAWS**

*Companies’ Creditors Arrangement Act*, RSC 1985, c C-36

**General power of court**

**11** Despite anything in the Bankruptcy and Insolvency Act or the Winding-up and Restructuring Act, if an application is made under this Act in respect of a debtor company, the court, on the application of any person interested in the matter, may, subject to the restrictions set out in this Act, on notice to any other person or without notice as it may see fit, make any order that it considers appropriate in the circumstances.

**IN THE MATTER OF the *Companies' Creditors Arrangement Act*, R.S.C. 1985, c. C-36,  
as amended**

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

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

**APPLICANTS**

***Ontario*  
SUPERIOR COURT OF JUSTICE  
COMMERCIAL LIST**

Proceeding commenced at Toronto

**FACTUM OF THE APPLICANTS**

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