

**ONTARIO
SUPERIOR COURT OF JUSTICE
COMMERCIAL LIST**

THE HONOURABLE MR.) WEDNESDAY, THE 26TH
)
JUSTICE MCEWEN) DAY OF JUNE, 2019
)



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

**ORDER
(Genstar Settlement Approval)**

THIS MOTION, made by the Applicants for an order giving effect to the terms of the Settlement Agreement, was heard this day at 330 University Avenue, Toronto, Ontario.

ON READING the Notice of Motion and the supporting Affidavits of Eric Thauvette sworn June 18, 2019 and Vivian Brennan-Dolezar sworn June 13, 2019, and on hearing the submissions of respective counsel for the Applicants and the Monitor, Representative Counsel, and such other counsel as were present, no one else appearing although duly served as appears from the Affidavit of Service of Waleed Malik affirmed June 18, 2019, filed:

SERVICE

1. **THIS COURT ORDERS** that the time for service of the Notice of Motion and the Motion Record herein is hereby abridged and validated so that this Motion is properly returnable today and hereby dispenses with further service thereof.

DEFINITIONS

2. **THIS COURT ORDERS** that for purposes of this Order:

- (a) “**Applicants**” means Imperial Tobacco Canada Limited and Imperial Tobacco Company Limited;
- (b) “**Committee**” means the Former Genstar U.S. Retiree Group Committee, the members of which are Angus A. MacNaughton, Ross J. Turner, Richard D. Paterson, and J. Ernest Hartz;
- (c) “**Distribution Formula**” has the meaning ascribed in paragraph 3(a);
- (d) “**Genstar Beneficiaries**” means all persons with entitlements under the Genstar Plans, including survivors and beneficiaries of such persons and any other person claiming an interest under or on behalf of a Genstar Beneficiary;
- (e) “**Genstar Plans**” means the Genstar Corporation deferred income plan, supplemental executive retirement plan, and supplementary pension plan;
- (f) “**Individual Settlement Share**” has the meaning ascribed in paragraph 3(a);
- (g) “**ITCAN Subsidiaries**” means the direct and indirect subsidiaries of the Applicants listed in Schedule “B” of the Second Amended and Restated Initial Order dated March 12, 2019;
- (h) “**Monitor**” means FTI Consulting Canada Inc. in its capacity as the court-appointed Monitor in these CCAA proceedings;
- (i) “**Representative Counsel**” means Ari Kaplan in his capacity as representative counsel under the Representation Order;
- (j) “**Representation Order**” means the Representation Order made by this Court on April 25, 2019;

- (k) “**Representatives**” means Robert M. Brown, George A. Foster, and Vivian Brennan-Dolezar in their capacity as representatives under the Representation Order;
- (l) “**Settlement Agreement**” means the Settlement Agreement between the Applicants and the Representatives, dated as of May 10, 2019 and executed by all parties on May 13, 2019; and
- (m) “**Unsecured Claim**” has the meaning ascribed in paragraph 5.

SETTLEMENT

3. **THIS COURT ORDERS** that the Applicants shall pay, or cause to be paid, USD \$1.6 million within 30 days of the date of this Order as follows:

- (a) USD \$1.44 million on account of three months’ notice of the Applicants’ termination of payments under the Genstar Plans, which amounts are to be allocated and paid to each Genstar Beneficiary as a lump sum payment (an “**Individual Settlement Share**”), allocated in proportion to each Genstar Beneficiary’s projected total future payments under the Genstar Plans, with a minimum payment of USD \$5,000 (the “**Distribution Formula**”);
- (b) USD \$2,000 to each of the three Representatives as a stipend for their labours and efforts, which payments will be paid out of the USD \$1.44 million referred to in subparagraph (a) above; and
- (c) USD \$160,000 to Kaplan Law in Trust, on account of legal fees and disbursements.

4. **THIS COURT ORDERS** the motion of the Committee for the reinstatement of benefits under the Genstar Plans, originally returnable April 25, 2019, is hereby dismissed, in accordance with the terms set out herein.

CLAIMS AND RELEASE

5. **THIS COURT ORDERS** that, notwithstanding anything to the contrary in this Order, each Genstar Beneficiary will retain an unsecured claim for purposes of these CCAA Proceedings

for all remaining unpaid amounts under the Genstar Plans owing to that Genstar Beneficiary less the payment received by that Genstar Beneficiary pursuant to paragraph 3 of this Order (“**Unsecured Claims**”). Representative Counsel may, at the appropriate time, prove such Unsecured Claims on behalf of all Genstar Beneficiaries, no one having opted out of representation under the Representation Order in the context of the CCAA Proceedings.

6. **THIS COURT ORDERS** that, in the absence of proof satisfactory to the Applicants to the contrary, the Applicants may rely on the most recent records in their possession for purposes of determining the composition of the class of persons comprising the Genstar Beneficiary group, as well as calculating the projected future entitlements of the Genstar Beneficiaries. Representative Counsel shall also be entitled, without independent investigation, to rely on the books and records of the Applicants and any information provided by the Applicants for the purposes of determining the Distribution Formula and each Individual Settlement Share, and shall not be liable for any claims or damages resulting from any errors or omissions in the Applicants’ books, records or information.

7. **THIS COURT ORDERS** that, except as provided in paragraph 5 of this Order, no person or entity, including without limitation, the Representatives, the Committee, and the Genstar Beneficiaries, shall directly or indirectly assert, advance, re-assert or re-file any claim or initiate any legal proceedings or actions of any nature or kind in these proceedings or in any subsequent receivership or bankruptcy proceedings, or in any other proceedings, or in any other forum whatsoever concerning their entitlements under the Genstar Plans (including any motion or other proceeding seeking to recommence payments under the Genstar Plans), and shall not assert or advance any claim, directly or indirectly, that their entitlements related to the Genstar Plans, or any part thereof, are secured or rank as a priority or preferential claim over the claims of ordinary unsecured creditors, including, without limitation, that it is the subject of a trust (whether deemed or otherwise) or a lien or charge, or under other legal or equitable theory, and all such secured, priority, trust, lien or charge claims are hereby forever barred, enjoined, released and extinguished as against the Applicants, the ITCAN subsidiaries, and their respective officers, directors, subsidiaries and affiliates, as well as the employees, agents, members, legal counsel, financial advisors, administrators, legal representatives, successors and assigns of each of the foregoing.

8. **THIS COURT ORDERS** that, except as provided in paragraph 5 of this Order, the Monitor, the Monitor's counsel, the Applicants, the ITCAN Subsidiaries, and their respective officers, directors, subsidiaries and affiliates, as well as the employees, agents, members, legal counsel, financial advisors, administrators, legal representatives, successors and assigns of each of the foregoing, are hereby released, discharged and remised from any and all direct and indirect claims (contingent, liquidated or unliquidated, proven or unproven, known or unknown, in the nature of damages or otherwise, whether or not asserted and whether arising by contract, agreement (whether written or oral), under statute, civil law, common law, or in equity, or otherwise in any jurisdiction) related to the Genstar Plans or the Settlement Agreement.

9. **THIS COURT DECLARES AND ORDERS** that the Settlement Agreement is fair, reasonable and in the overall best interests of the Genstar Beneficiaries, and the Representatives, Representative Counsel, and the members of the Committee are hereby released, discharged and remised from any and all direct and indirect claims in respect of the Settlement and shall have no liability as a result of entering into the Settlement Agreement, performing any of their obligations set forth in the Settlement Agreement or taking any actions contemplated by the Settlement Agreement, except for any claims, demands, or proceedings due to wilful misconduct, gross negligence or fraud arising from any act or omission in the performance of such obligations or in the taking of any such action.

10. **THIS COURT ORDERS** that no person or entity, including without limitation, the Representatives, the Committee, and the Genstar Beneficiaries, shall assert, advance or make any claims of any nature whatsoever against any person or entity whatsoever that could reasonably be expected to result in a claim over (including, without limitation, a claim for contribution or indemnity) being made against any of the Applicants or the ITCAN Subsidiaries with respect to the subject matter of the release provisions hereof.

GENERAL

11. **THIS COURT ORDERS** that this Order shall have full force and effect in all provinces and territories in Canada.

12. **THIS COURT HEREBY REQUESTS** the aid and recognition of any court, tribunal, regulatory or administrative body, having jurisdiction in Canada or in the United States of America, to give effect to this Order and to assist the Applicants, the Monitor and their respective agents in carrying out the terms of this Order. All courts, tribunals, regulatory and administrative bodies are hereby respectfully requested to make such orders and to provide such assistance to the Applicants and to the Monitor, as an officer of this Court, as may be necessary or desirable to give effect to this Order, to grant representative status to the Monitor in any foreign proceeding, or to assist the Applicants and the Monitor and their respective agents in carrying out the terms of this Order.



SUPERIOR COURT OF JUSTICE ENTERED
JUN 26 2019 <i>RW</i>
COUR SUPÉRIEURE DE JUSTICE ENTRÉ

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

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

**ONTARIO
SUPERIOR COURT OF JUSTICE
(Commercial List)**

Proceeding Commenced at Toronto

**ORDER
(Genstar Settlement Approval)**

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