

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.¹

Chapter 15
Case No. 19-10771(SCC)

**MONITOR’S MOTION FOR RECOGNITION AND
ENFORCEMENT OF THE ORDER OF THE CANADIAN
COURT APPROVING SETTLEMENT WITH THE RETIREE GROUP**

FTI Consulting Canada Inc. (“FTI”), in its capacity as the court-appointed monitor (“Monitor”) and foreign representative of Imperial Tobacco Canada Limited (“ITCAN” or the “Debtor”) in a proceeding (the “Canadian Proceeding”) under Canada’s *Companies’ Creditors Arrangement Act*, R.S.C. 1985, c. C-36, as amended (the “CCAA”), pending before the Ontario Superior Court of Justice (Commercial List) at Toronto (the “Canadian Court”), by its undersigned counsel, hereby seeks an order (i) recognizing the settlement (the “Settlement”) between the Debtor and beneficiaries (the “Retiree Group”) of the Genstar executive pension and deferred

¹ The last four digits of the Debtor’s taxpayer identification number is 4374. The Debtor’s registered office is located at 30 Pedigree Court, Brampton (Ontario) Canada L6T 5T8.



compensation plans (the “Top-Hat Plans”) and (ii) out of an abundance of caution, approving the payments by the Debtor required under the Settlement pursuant to sections 363(b)(1) and 1520(a) of title 11 of the United States Code (the “Bankruptcy Code”) and Rule 9019 of the Federal Rules of Bankruptcy Procedure (the “Bankruptcy Rule”), and respectfully represents as follows:

Jurisdiction and Venue

1. This Court has jurisdiction to consider this matter pursuant to 28 U.S.C. §§ 157 and 1334. This is a core proceeding pursuant to 28 U.S.C. § 157(b). Venue is proper before this Court pursuant to 28 U.S.C. § 1410. The statutory predicates for the relief requested herein are sections 105(a), 363(b)(1), and 1520 of the Bankruptcy Code, and Rules 9019 and 6004(h) of the Bankruptcy Rule.

Background

2. On March 13, 2019 (the “Petition Date”), the Monitor filed the Verified Petition (Dkt. No. 2) seeking recognition of the Canadian Proceeding and related relief for the Debtor and its supply-chain in the United States while the Debtor pursues a comprehensive restructuring in Canada. The Debtor commenced the Canadian Proceeding to address mounting claims and ongoing product liability and consumer litigation across Canada. This Court recognized the Canadian Proceeding as a foreign main proceeding and granted related relief by order dated April 17, 2019 (the “Recognition Order,” Dkt. No. 40).

3. Prior to the commencement of the Canadian Proceeding, contributions under the Top-Hat Plans of the Debtor’s U.S. subsidiaries were often funded by the Debtor. However, upon the commencement of the Canadian Proceeding, the Debtor ceased such funding pursuant to the CCAA.² Counsel for the Retiree Group challenged the Debtor’s determination and filed an

² Capitalized terms not defined herein shall have the meaning ascribed to them in the Verified Petition.

objection in the Canadian Proceeding seeking (i) to compel continued funding of the Top-Hat Plans; and (ii) an order of the Canadian Court (a) appointing a group of beneficiary representatives of the Top-Hat Plans and (b) appointing Kaplan Law as representative counsel (the “Canadian Motion to Compel”). Counsel also filed notice of a Canadian constitutional question under the Charter of Rights and Freedoms challenging the validity of provisions of the Canadian Order for Relief that permitted the suspension of payments under the Top-Hat Plans (the “Canadian Constitutional Question”). In addition, several individual participants in the Top-Hat Plans (the “Objectors”) objected to recognition of the Canadian Proceeding in this Court and asked the Court to condition recognition on the resumption of payments under the Top-Hat Plans (the “Objections,” Dkt. Nos. 26, 27, 28, 29, and 32). Although the Objections were ultimately overruled, the rights of the Objectors to seek appropriate relief from the Canadian Court were expressly reserved.

4. On April 25, 2019, the Canadian Court appointed Robert M. Brown and George A. Foster as representatives of the Retiree Group and Kaplan Law as representative counsel (“Representative Counsel”). On May 14, 2019, the Court appointed Vivian Brennan-Dolezar as another representative of the Retiree Group. These parties worked in good faith with the Debtor to resolve their disputes consensually and through the Settlement, to resolve the Canadian Motion to Compel and Canadian Constitutional Question without further litigation. In return, the Debtor agreed to make the following payments (collectively, the “Settlement Payments”):

- (a) USD \$1.44 million (the equivalent of three months’ notice of termination) to beneficiaries under the Top-Hat Plans, allocated in proportion to each beneficiaries projected total future payments under the Top-Hat Plans, with a minimum payment of USD \$5,000;
- (b) a stipend to each of the class representatives of USD \$2,000 payable from the USD \$1.44 million; and

(c) USD \$160,000 to Representative Counsel for legal fees.

The Settlement is without prejudice to any rights of the members of the Retiree Group to file unsecured claims in the Canadian Proceeding for unpaid amounts under the Top-Hat Plans. Except for the ability to assert unsecured claims in the Canadian Proceeding, the Settlement releases the Debtor, ITCO and their U.S. subsidiaries and affiliates, and each of their respective officers, directors, subsidiaries and affiliates, as well as employees, agents, members, legal counsel, financial advisors, administrators, legal representatives, successors and assigns, from any other claims related to the Top-Hat Plans and the Settlement Agreement, including the initiation of any legal proceedings or actions in any court related to entitlements under the Top-Hat Plans, including the right to resumption of payment thereunder. The Settlement Agreement between the parties dated as of May 10, 2019 is attached hereto as Exhibit A.³

5. On May 14, 2019, the Canadian Court entered an order approving notice procedures related to the Settlement and scheduled a hearing on approval of the Settlement for June 26, 2019 (the “Notice Procedures Order”). A copy of the Notice Procedures Order is attached hereto as Exhibit B. Notice of the Settlement was served by KCC on May 14, 2019, in accordance with the Notice Procedures Order.

6. The Notice Procedures Order established June 17, 2019 or such later date as the Monitor or the Court accepts, based on the circumstances (the “Objection Deadline”) as the deadline for beneficiaries of the Top-Hat Plans to object to the Settlement and/or opt out of representation by Representative Counsel. No objections to the Settlement or opt-outs were filed

³ This Motion contains a summary of the Settlement Agreement and to the extent of any inconsistency, the Settlement Agreement controls.

by the June 17th Objection Deadline. A hearing on approval of the Settlement by the Canadian Court is scheduled for June 26, 2019.

7. As the Canadian Proceeding is the main proceeding with respect to the Debtor's assets, the Debtor is seeking approval of the Settlement in the Canadian Court in the first instance. However, since the Top-Hat Plans are U.S. retirement plans and are paid by the Debtor in the United States and many of the beneficiaries are located in the United States, out of an abundance of caution, the Monitor is also seeking recognition by this Court of any order of the Canadian Court approving the Settlement and authorization for the Debtor to make any Settlement Payments approved by the Canadian Court in the United States.

Relief Requested

8. By this Motion, the Monitor seeks (i) recognition of any order of the Canadian Court approving the Settlement and (ii) authorization for the Debtor to make any approved Settlement Payments pursuant to sections 363(b) and 1520 of the Bankruptcy Code. A proposed form of order is annexed hereto as Exhibit C (the "Proposed Order").

The Requested Relief Is Appropriate Under Chapter 15 of the Bankruptcy Code

9. Two of the primary objectives of chapter 15 of the Bankruptcy Code are cooperation between courts of the United States and foreign countries and protection of the foreign debtor's assets. 11 U.S.C. § 1501(a).

10. In furtherance of these objectives, upon a bankruptcy court's granting recognition of a foreign proceeding, relief is available to the petitioner under sections 1520, 1521 and 1507 of the Bankruptcy Code. *See* 11 U.S.C. §§ 1507 (additional assistance), 1520 (effects of recognition of foreign main proceeding), 1521 (relief that may be granted upon recognition). Specifically included within the relief available to a foreign representative as a matter of right under section

1520 of the Bankruptcy Code is the relief allowed under section 363 of the Bankruptcy Code. *See* 11 U.S.C. §1520(a)(2); *In re Artimm, S.r.L.*, 335 B.R. 149, 159 (Bankr. C.D. Cal. 2005) (“under chapter 15, § 363 (governing sale, use or lease of property of the estate) . . . appl[ies] to any transfer of an interest of the debtor in property within the territorial jurisdiction of the United States to the same extent that the sections would apply to property of a domestic bankruptcy estate.”) (citing 11 U.S.C. § 1520(a)(2)); *see also In re SPhinX, Ltd.*, 351 B.R. 103, 115 (Bankr. S.D.N.Y. 2006) (citing 11 U.S.C. § 1520(a)(2)).

11. The Recognition Order provides that the Canadian Proceeding has been recognized by this Court as a foreign main proceeding and this Court has previously recognized that the claims of the Retiree Group are matters to be addressed by the Canadian Court. However, since the Top-Hat Plans are U.S. retirement plans, payments to the Retiree Group will likely be transferred to and through bank accounts located in the territorial jurisdiction of the United States, whereupon section 363 might apply. Therefore, out of an abundance of caution, the Monitor seeks recognition of the Settlement by this Court and authorization for the Debtor to pay the Settlement Payments under section 363(b) of the Bankruptcy Code.

The Monitor is Entitled to the Relief under Sections 363(b)(1) and 1520(a) of the Bankruptcy Code and the Settlement Complies with Bankruptcy Rule 9019

12. Section 363 of the Bankruptcy Code provides, in relevant part, that a debtor “after notice and a hearing, may use, sell, or lease, other than in the ordinary course of business, property of the estate.” 11 U.S.C. § 363(b)(1); *see also* 11 U.S.C. § 1520; *In re Atlas Shipping A/S*, 404 B.R. 726, 739 (Bankr. S.D.N.Y. 2009) (“Once § 1520(a) applies, §§ 363, 549 and 552 also apply to any transfer of a debtor’s interest in property within the United States.”).

13. Courts in this and other circuits, in applying section 363, have deferred to the sound business judgment of the debtor. *See In re Chateaugay Corp.*, 973 F.2d 141, 144-45 (2d Cir. 1992)

(holding that a judge reviewing a Section 363(b) application must find from the evidence presented a good business reason to grant such application); *In re Lionel Corp.*, 722 F.2d 1063, 1071 (2d Cir. 1983) (same). It is generally understood that “[w]here the debtor articulates a reasonable basis for its business decisions (as distinct from a decision made arbitrarily or capriciously), courts will generally not entertain objections to the debtor’s conduct.” *In re Johns-Manville Corp.*, 60 B.R. 612, 616 (Bankr. S.D.N.Y. 1986).

14. Here, the Settlement Payments are a critical component to resolution of the Retiree Group’s claims without the need for protracted and costly litigation. Bankruptcy Rule 9019 permits a debtor to enter into a settlement that is fair and equitable and in the best interests of creditors. *Protective Common. for Indep. Stockholders of TMT Trailer Ferry, Inc. v. Anderson*, 390 U.S. 414, 424 (1968); *In re Ionosphere Clubs, Inc.*, 156 B.R. 414, 426 (S.D.N.Y. 1993), *aff’d*, 17 F.3d 600 (2d Cir. 1994). Although the Bankruptcy Code is silent as to whether Rule 9019 applies in a case commenced under chapter 15 of the Bankruptcy Code, the Monitor submits that to the extent Rule 9019 applies, the Settlement satisfies the standards for approval and is in the best interests of the Debtor’s estate.

15. The decision to approve a particular settlement pursuant to Bankruptcy Rule 9019(a) lies within the sound discretion of the Bankruptcy Court, and should be exercised “in light of the general public policy favoring settlements.” *In re Hibbard Brown & Co., Inc.*, 217 B.R. 41, 46 (Bankr. S.D.N.Y. 1998); *Nellis v. Shugrue*, 165 B.R. 115, 123 (S.D.N.Y. 1994). While a court must “evaluate . . . all . . . factors relevant to a fair and full assessment of the wisdom of the proposed compromise,” *Anderson*, 390 U.S. at 424-25, a court does not need to conduct a “mini-trial” of the merits of the claims being settled, *In re W.T. Grant Co.*, 699 F.2d 599, 608 (2d Cir. 1983), nor does the court need to conduct a full independent investigation. *In re Drexel Burnham*

Lambert Grp., Inc., 134 B.R. 499, 505 (Bankr. S.D.N.Y. 1991). Moreover, the settlement need not result in the best possible outcome for the debtor; rather, it must not “fall beneath the lowest point in the range of reasonableness.” *Id.*

16. In the instant case, entry into the Settlement was manifestly a sound exercise of the Debtor's business judgment. The Settlement is the product of extensive, arm's length negotiations between the parties. It avoids protracted, costly and complex litigation in the Canadian Proceeding and potentially in this proceeding, as well as the diversion of management time and resources at a critical time in the Debtor's restructuring efforts. Simultaneously, it provides beneficiaries of the Top-Hat Plans who were impacted by the Debtor's filing with the equivalent of three months' notice of termination of the funding of the plans, a period that is more than reasonable under the circumstances. The result is a settlement that is fair and reasonable and in the best interests of all parties to the Settlement.

17. Based upon the foregoing, the Monitor respectfully requests that this Court recognize the Settlement and give it full force and effect in the United States and, to the extent necessary, authorize payment of the Settlement Payments in accordance with the Settlement Agreement.

Notice

18. Notice of this Motion has been provided to the U.S. Trustee for the Southern District of New York, Representative Counsel and its US counsel, and the Chapter 15 Notice Parties as defined in the Application for an Order Scheduling Recognition Hearing, Specifying Deadline for Filing Objections and Specifying Form and Manner of Notice (Dkt. No. 3).

Conclusion

WHEREFORE, the Monitor respectfully requests that the Court grant the relief requested herein, as set forth in the Proposed Order submitted herewith, and grant the Monitor such other and further relief as may be just and proper.

Dated: June 19, 2019
New York, New York

By: /s/Jennifer Feldsher
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*

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

SETTLEMENT AGREEMENT

WHEREAS on March 12, 2019, Imperial Tobacco Canada Limited (“ITCAN”) and its subsidiary Imperial Tobacco Company Limited (together, the “Applicants”) initiated proceedings (the “CCAA Proceedings”) and obtained an order (the “Initial Order”) under the *Companies' Creditors Arrangement Act*, RSC 1985, c C-36, as amended (the “CCAA”);

AND WHEREAS the relief under the Initial Order included, *inter alia*, a stay of proceedings against the Applicants, as well as a stay of the Applicants’ obligations to make payments of pre-filing amounts owing as of the filing date (the “CCAA Stay”);

AND WHEREAS 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 “Supplementary Pension Plan” (collectively, the “Genstar US Plans”);

AND WHEREAS ITCAN (as corporate successor to Imasco Limited) historically made monthly capital contributions to fund the Genstar US Plans, but terminated such payments as at the date of its CCAA filing pursuant to the Initial Order;

AND WHEREAS the Former Genstar U.S. Retiree Group Committee (the “Committee”) brought a motion to appoint Robert M. Brown and George A. Foster (the “Representatives”) to

represent the interests of the beneficiaries of the Genstar US Plans (the “Affected Members”) in the CCAA Proceedings;

AND WHEREAS pursuant to an order dated April 25, 2019 (the “Representation Order”), the Representatives were appointed as representatives and Ari Kaplan of Kaplan Law was appointed as representative counsel (the “Representative Counsel”) to represent the interests of the Affected Members in the CCAA Proceedings;

AND WHEREAS pursuant to the Representation Order, the Applicants provided Representative Counsel with certain Information in their possession relevant to the Affected Members’ interests in the CCAA Proceedings;

AND WHEREAS the Representatives, as supported by the Committee, contested ITCAN’s decision to cease funding the Genstar US Plans and brought a motion seeking a reinstatement of payments under the Genstar US Plans (the “Reinstatement Motion”);

AND WHEREAS the Applicants and the Representatives (on behalf of the Affected Members) wish to compromise and settle between themselves all matters related to the Applicants’ payment obligations – and the Affected Members’ entitlements – under the Genstar US Plans, on the terms herein (the “Settlement”);

NOW THEREFORE in consideration of the payments, undertakings and covenants set forth herein, the sufficiency of which consideration is hereby irrevocably acknowledged by each of the parties hereto, the parties covenant and agree as follows:

1. ITCAN shall pay, or cause to be paid, USD \$1.6 million within 30 days of court approval of this Settlement as follows:

- (a) USD \$1.44 million on account of three months’ notice of ITCAN’s termination of payments under the Genstar US Plans, which amounts are to be allocated and paid to each Affected Member as a lump sum payment according to a fair and equitable distribution formula (the “Distribution Formula”), as determined by Representative Counsel and as instructed by the Representatives in consultation with the Committee; and

- (b) USD \$160,000 to Kaplan Law in Trust, on account of legal fees.
2. All Affected Members shall retain an unsecured claim in the CCAA Proceedings for all remaining unpaid amounts under the Genstar US Plans (less the USD \$1.44 million payment contemplated by this Agreement) in the event of a plan of compromise or arrangement (the “Unsecured Claim”).
3. The Applicants and the Representatives shall jointly seek an Order from the Court on May 14, 2019 (or as soon thereafter as the Court can accommodate) prescribing the manner and content of the notice to the Affected Members with respect to this Settlement.
4. The Applicants and the Representatives shall thereafter jointly seek an Order from the Court on June 26, 2019 (or as soon thereafter as the Court can accommodate) approving the Settlement (the “Settlement Approval Order”).
5. The Applicants and the Representatives hereby agree that the Settlement Approval Order shall include the following relief (*inter alia*), an order:
 - (a) binding all Affected Members to the Settlement (including any Affected Members who have opted out of the Representation Order and/or who have filed a Notice of Objection in respect of the Settlement);
 - (b) releasing the Applicants from any further liabilities in respect of the Genstar US Plans (save and except for the Unsecured Claim); and
 - (c) releasing and discharging the Representatives, Representative Counsel and the members of the Committee in respect of the Settlement.
6. The Representatives agree to fully support and recommend the within Settlement in their communications with the Affected Members, and to take all reasonable steps that may be required to effect the Settlement (including the Court approval thereof).
7. The parties agree that if and to the extent that the material terms of the Settlement are not approved by the Court, the Settlement shall be deemed null and void, the parties’ shall be

relieved of their respective obligations under this Agreement and the Reinstatement Motion shall forthwith be returned to the Court for hearing and determination.

8. The Applicants hereby represent and warrant that, to the best of their knowledge, all Information provided to Representative Counsel pursuant to paragraph 5 of the Representation Order accurately reflects the historical, current and future entitlements of the Affected Members under the Genstar US Plans, which Information has been relied upon by the Representatives and Representative Counsel in compromising Affected Members' interests in the CCAA Proceedings and used to determine the Distribution Formula and composition of the class of persons comprising the Affected Member group. 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 calculating entitlements and making the payments to Affected Members required under this Agreement.

9. The Representatives hereby forever release and discharge the Applicants and their respective affiliates (including their respective officers, directors, successors and assigns) from any and all actions, causes of action, claims, complaints or demands for payment, and potential actions, causes of action, claims, complaints or demands for payment, whether at law or in equity, in relation to the Genstar US Plans (save and except for the Unsecured Claim).

10. The Representatives agree not to make any claims or take any proceedings against any other corporation or person who might claim over against the opposite party to this release, or who might claim contribution or indemnity under any statutory provision or otherwise from the parties discharged by this release, or who might seek declaratory relief in a third party proceeding against the parties discharged by this release, in connection with the matters which are released and discharged above.

11. The Representatives hereby represent and warrant that they have not assigned to any person or corporation any of their actions, causes of action, claims, complaints or demands for payment, or their potential actions, causes of action, claims, complaints or demands for payment, whether at law or in equity, as released above.

12. The undersigned hereby warrant that the terms of this Agreement are fully understood by them and that this Agreement is made and the releases herein are given voluntarily, after receiving independent legal advice, for the purpose of making a full and final compromise, adjustment and settlement of all claims and issues as aforesaid.

13. This Agreement constitutes the entire Agreement between the parties in respect of the subject matter hereof and supersedes all prior negotiations and understandings in respect of the subject matter hereof. Each of the parties hereto agrees and confirms that it has not been induced to enter into this Agreement by reason of any representation or warranty of any nature or kind whatsoever and that there is no condition or agreement expressed, implied or collateral affecting this agreement or which will amend or alter this Agreement.

14. This Agreement may be executed by the parties in separate counterparts each of which when so executed and delivered shall be an original, but all such counterparts shall together constitute one and the same instrument.

15. This Agreement shall be governed by the laws of Ontario and the laws of Canada applicable therein, without reference to conflict of laws rules.

ALL OF THE FOREGOING shall enure to the benefit of the parties hereto and their respective successors, assigns and representatives and be binding upon the parties hereto and their respective successors, assigns and representatives.

NOTHING HEREIN shall be deemed to be an admission of liability on the part the Applicants.

IN WITNESS WHEREOF the undersigned have executed this Agreement under seal by proper signing officers.

DATED as May 10, 2019.

EXECUTED at ESTERO, FLORIDA, this 13th day of May, 2019

Robert M Brown

Robert M. Brown (*personally and as Court-Appointed Representative of the Affected Members*)

EXECUTED at _____, this _____ day of May, 2019

George A. Foster (*personally and as Court-Appointed Representative of the Affected Members*)

EXECUTED at _____, this _____ day of May, 2019

Vivian Brennan-Dolezar (*personally and as proposed Court-Appointed Representative of the Affected Members*)

EXECUTED at _____, this _____ day of May, 2019

IMPERIAL TOBACCO CANADA LIMITED

Per: _____ l/s

Print Name:

Title:

I have authority to bind the corporation.

EXECUTED at _____, this _____ day of May, 2019

Robert M. Brown (*personally and as Court-Appointed Representative of the Affected Members*)

EXECUTED at Alamo, Ca., this 13th day of May, 2019

George A. Foster
George A. Foster (*personally and as Court-Appointed Representative of the Affected Members*)

EXECUTED at _____, this _____ day of May, 2019

Vivian Brennan-Dolezar (*personally and as proposed Court-Appointed Representative of the Affected Members*)

EXECUTED at _____, this _____ day of May, 2019

IMPERIAL TOBACCO CANADA LIMITED

Per: _____ /s

Print Name:

Title:

I have authority to bind the corporation.

EXECUTED at _____, this _____ day of May, 2019

Robert M. Brown (*personally and as Court-Appointed Representative of the Affected Members*)

EXECUTED at _____, this _____ day of May, 2019

George A. Foster (*personally and as Court-Appointed Representative of the Affected Members*)

EXECUTED at MESA, AZ, this 13th day of May, 2019

Vivian Brennan-Dolezar

Vivian Brennan-Dolezar (*personally and as proposed Court-Appointed Representative of the Affected Members*)

EXECUTED at _____, this _____ day of May, 2019

IMPERIAL TOBACCO CANADA LIMITED

Per: _____ /s

Print Name:

Title:

I have authority to bind the corporation.

EXECUTED at _____, this _____ day of May, 2019

Robert M. Brown (*personally and as Court-Appointed Representative of the Affected Members*)

EXECUTED at _____, this _____ day of May, 2019

George A. Foster (*personally and as Court-Appointed Representative of the Affected Members*)

EXECUTED at _____, this _____ day of May, 2019

Vivian Brennan-Dolezar (*personally and as proposed Court-Appointed Representative of the Affected Members*)

EXECUTED at Marked, this 13 day of May, 2019

IMPERIAL TOBACCO CANADA LIMITED

Per: Eric Thauvette /s

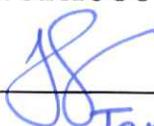
Print Name: Eric Thauvette

Title: VP & CFO

I have authority to bind the corporation.

EXECUTED at Montreal, this 13 day of May, 2019

IMPERIAL TOBACCO COMPANY LIMITED

Per:  _____ l/s

Print Name: Tamara Gitto

Title: Vice President, Legal & External Affairs

I have authority to bind the corporation.

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

**ONTARIO
SUPERIOR COURT OF JUSTICE
COMMERCIAL LIST**

THE HONOURABLE MR.) TUESDAY, THE 14TH
)
JUSTICE MCEWEN) DAY OF MAY, 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
(Notice Procedure Order)**

THIS MOTION, made by the Applicants for an order approving the form of notice of the Settlement Approval Hearing to the Represented Parties, approving the notice plan for giving notice of the Settlement Approval Hearing to the Represented Parties, and granting certain other relief, was heard this day at 330 University Avenue, Toronto, Ontario.

ON HEARING the submissions of respective counsel for the Applicants, Monitor, Representative Counsel, and such other counsel as were present, no one else appearing:

SERVICE

1. **THIS COURT ORDERS** that the time for service of any motion materials in respect of the relief 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:

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- (a) “**Applicants**” means Imperial Tobacco Canada Limited and Imperial Tobacco Company Limited;
- (b) “**Case Website**” means the website for this CCAA proceeding maintained by the Monitor at <http://cfcanada.fticonsulting.com/imperialtobacco/>;
- (c) “**Chapter 15 Website**” means the website for the Chapter 15 Recognition Proceedings maintained by the Monitor at <http://www.kccllc.net/itcan>;
- (d) “**Committee**” means the Former Genstar U.S. Retiree Group Committee;
- (e) “**Genstar Plans**” means the Genstar Corporation deferred income plan, supplemental executive retirement plan, and supplementary pension plan;
- (f) “**Monitor**” means FTI Consulting Canada Inc. in its capacity as the court-appointed Monitor in these CCAA proceedings;
- (g) “**Notice of Objection**” means a notice substantially in the form attached as Schedule “B” to this Order;
- (h) “**Notice of Settlement Approval Hearing**” means a notice substantially in the form attached as Schedule “A” to this Order;
- (i) “**Notice Package**” means the Representation Notice, Opt-Out Notice, Notice of Settlement Approval Hearing, Notice of Objection, Settlement Allocation Statement, and such other materials as the Applicants and Representative Counsel by mutual consent may consider appropriate or desirable;
- (j) “**Objection Deadline**” means 5:00 pm Eastern Time on June 17, 2019; *or such later date as the Monitor accepts, based on the circumstances.*  *M*
- (k) “**Opt-Out Notice**” means a notice in the form attached as Schedule “A” to the Representation Order;
- (l) “**Representative Counsel**” means Ari Kaplan in his capacity as representative counsel for the Represented Parties under the Representation Order;

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- (m) “**Representation Notice**” means the notice described in paragraph 6 of the Representation Order;
- (n) “**Representation Order**” means the Representation Order made by this Honourable Court on April 25, 2019;
- (o) “**Representatives**” means Robert M. Brown, George A. Foster, and Vivian Brennan-Dolezar in their capacity as representatives of the Represented Parties under the Representation Order;
- (p) “**Represented Parties**” 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 Represented Party;
- (q) “**Settlement**” means the settlement between the Applicants and the Representatives, as supported by the Committee, relating to the Genstar Plans;
- (r) “**Settlement Allocation Statement**” means the personalized statement substantially in the form attached as Schedule “C” to this Order; and
- (s) “**Settlement Approval Hearing**” means the hearing scheduled before this Court on June 26, 2019 to consider whether to approve the Settlement.

APPOINTMENT OF ADDITIONAL REPRESENTATIVE

3. **THIS COURT ORDERS** that Vivian Brennan-Dolezar is hereby appointed as a Representative to, along with Robert M. Brown and George A. Foster, act in the overall best interests of the Represented Parties, and to advise and where appropriate instruct the Representative Counsel, in consultation with the Committee, in furtherance of representing the interests of the Represented Parties with respect to entitlements under the Genstar Plans. Ms. Brennan-Dolezar shall have all the rights and benefits granted to and be subject to all obligations imposed on the other Representatives by the Representation Order.

NOTICE TO REPRESENTED PARTIES

4. **THIS COURT ORDERS** that the Notice of Settlement Approval Hearing, the Notice of Objection and the Settlement Allocation Statement, substantially in the forms attached as Schedules "A", "B" and "C", respectively, are hereby approved, subject to the right of the Applicants and Representative Counsel to make minor, non-material amendments by mutual agreement as may be necessary or desirable.

5. **THIS COURT ORDERS** that notice of the Settlement Approval Hearing shall be provided as follows:

- (a) the Applicants shall communicate, or cause to be communicated, a Notice Package to each Represented Party by regular, first class U.S. mail on or before May 15, 2019; and
- (b) the Monitor shall post the Notice Package to the Case Website and the Chapter 15 Website within 3 business days of the date of this Order.

6. **THIS COURT ORDERS** that service and posting of the Notice Package in the manner set out in paragraph 5 above shall constitute good and sufficient service upon the Represented Parties of notice of the Settlement, the Settlement Approval Hearing and the Objection Deadline, and that no other form of service or notice need be made by any of the Applicants or Representative Counsel to any person, and no other documents or materials need be served on any person in respect of the process detailed herein.

7. **THIS COURT ORDERS** that any Represented Party wishing to object to the Settlement shall deliver a Notice of Objection to be received by the Objection Deadline by mail, courier or email to the address indicated on the Notice of Objection.

8. **THIS COURT ORDERS** that the Monitor shall file all Notices of Objection received by the Objection Deadline with the Court before the Settlement Approval Hearing.

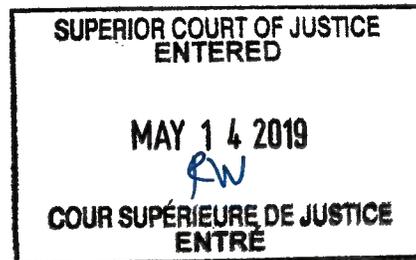
9. **THIS COURT ORDERS** that any Notices of Objection received after the Objection Deadline shall not be filed with the Court or considered at the Settlement Approval Hearing.

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GENERAL

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

11. **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.

A handwritten signature in black ink, appearing to be 'M. J. S.', is written over a horizontal line.

SCHEDULE "A"

NOTICE OF SETTLEMENT APPROVAL HEARING

RE: Settlement between Imperial Tobacco Canada Limited and Representatives of beneficiaries of certain non-registered pension plans established by Genstar Corporation, as supported by the Former Genstar U.S. Retiree Group Committee

The Court-Appointed Representatives for beneficiaries of Genstar Corporation's ("Genstar") deferred income plan, supplemental executive retirement plan and supplementary pension plan (collectively, the "Genstar Plans") have reached a settlement with Imperial Tobacco Canada Limited ("ITCAN") relating to the Genstar Plans. This settlement is supported by the Former Genstar U.S. Retiree Group Committee. The Ontario Superior Court of Justice (the "Ontario Court") will be asked to grant an Order approving the settlement on June 26, 2019. If the settlement is approved in its current form, it will bind all beneficiaries of the Genstar Plans. If you wish to object to the settlement, you must send a Notice of Objection by 5:00 pm Eastern Time on June 17, 2019 as described below.

Background regarding Genstar Plans and CCAA Proceeding

Genstar established the following non-qualified deferred compensation plans for Genstar's former officers, executives and management employees and their survivors: a deferred income plan, a supplemental executive retirement plan, and a supplementary pension plan. These three plans are called the Genstar Plans in this Notice.

Under a 1986 agreement, ITCAN was a guarantor of Genstar's obligations under the Genstar Plans. Until March 2019, ITCAN made monthly capital contributions to Imasco Holdings Group, Inc. ("IHGI"), a U.S. subsidiary of ITCAN. These monthly contributions permitted IHGI to make the payments owing under the Genstar Plans.

On March 12, 2019, ITCAN was granted protection from its creditors by an initial order (the "Initial Order") of the Ontario Court in proceedings under Canada's *Companies' Creditors Arrangement Act* (the "CCAA Proceeding"). ITCAN applied for the Initial Order because it is facing an estimated \$600 billion in alleged liabilities in pending litigation in Canada.

After obtaining the Initial Order, ITCAN stopped funding the payments under the Genstar Plans.

Appointment of Representatives and Representative Counsel

A committee of beneficiaries of the Genstar Plans called the Former Genstar U.S. Retiree Group Committee (the "Committee") was created after the CCAA Proceeding began.

On April 25, 2019, the Committee obtained an order that, among other things, granted the following relief:

- (i) appointed Ari Kaplan of Kaplan Law as "Representative Counsel" to represent the interests of all persons in the CCAA Proceeding (the "Represented Parties") with respect to entitlements under the Genstar Plans, including survivors and beneficiaries of such persons and persons claiming an interest under or on behalf of a Represented Party (the "Purpose"); and

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- (ii) appointed Robert M. Brown and George A. Foster as representatives of all Represented Parties (excluding individuals who opt-out of representation in the manner described below) to act in the overall best interests of the Represented Parties, and to advise and where appropriate instruct the Representative Counsel, in consultation with the Committee, in furtherance of the Purpose.

On May 14, 2019, Vivian Brennan-Dolezar was appointed as a third representative (with Mr. Brown and Mr. Foster, the "Representatives").

Representative Counsel and the Representatives will represent your interests in the CCAA Proceeding in relation to entitlements under the Genstar Plans unless you send an Opt-Out Notice by 5:00 pm Eastern Time on June 17, 2019 in the manner described in the letter from Representative Counsel.

Settlement between ITCAN and the Representatives

The Committee filed a motion to challenge ITCAN's decision to stop funding the payments under the Genstar Plans. On April 25, 2019, ITCAN and the beneficiary Representatives entered into a proposed settlement regarding the payments under the Genstar Plans (the "Settlement").

The Settlement includes the following terms:

- (i) ITCAN will pay a share of USD \$1.44 million to each Genstar Plan beneficiary, allocated in proportion to each beneficiary's projected total future payments under the plans, with a minimum payment of USD \$5,000 (the "Distribution Formula").
- (ii) Under the Distribution Formula, each of the three Representatives will receive a USD \$2,000 stipend for their labours and efforts. These payments will be paid out of the USD \$1.44 million referred to in paragraph (i) above.
- (iii) ITCAN will pay USD \$160,000 to Representative Counsel, in trust, on account of legal fees.
- (iv) Genstar Plan beneficiaries will retain their rights to file an unsecured claim in respect of any unpaid amounts owing under the Genstar Plans in the event of a future plan of compromise or arrangement involving ITCAN (taking into account the payments contemplated by paragraph (i) above).

The Representatives and ITCAN will be asking the Ontario Court to approve the Settlement at a hearing on June 26, 2019. If the Settlement is approved in its current form it will bind all beneficiaries under the Genstar Plans, including any beneficiaries who opt-out of representation by Representative Counsel and the Representatives.

How to Object to the Settlement

If you wish to object to the Settlement, you must send a completed Notice of Objection by 5:00 pm Eastern Time on June 17, 2019 (the "Objection Deadline") by either mail, courier or email to the following address:

or such later date as the Monitor accepts, based on the circumstances on the Court

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FTI CONSULTING CANADA INC.,
in its capacity as Court-Appointed Monitor of
Imperial Tobacco Canada Limited and
Imperial Tobacco Company Limited
79 Wellington Street West
Suite 2010, PO Box 104
Toronto ON, Canada M5K 1G8

Fax: 416-649-8101

Email: imperialtobacco@fticonsulting.com

Attention: Kamran Hamidi

A form of Notice of Objection is included with this Notice of Settlement Approval Hearing.

If the Notice of Objection is received by the Objection Deadline, it will be provided to the Ontario Court before the Settlement Approval Hearing. If the Notice of Objection is not received by the Objection Deadline, it will not be provided to the Ontario Court and your objection will not be considered. If you wish to appear in person or by counsel at the Settlement Approval Hearing in order to object, you must indicate as much in your Notice of Objection.

Chapter 15 Proceedings

FTI Consulting Canada Inc., in its capacity as the Court-Appointed Monitor in the CCAA Proceeding and Foreign Representative of ITCAN, commenced a Chapter 15 case in the United States Bankruptcy Court for the Southern District of New York in aid of the CCAA Proceeding. However, please note that the Ontario Court will be deciding whether to approve the Settlement. Accordingly, if you wish to make submissions in respect of the Settlement, you must do so in the context of the Settlement Approval Hearing in Toronto, Ontario.

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Further Information

Additional information about the CCAA Proceeding, including all orders made by the Ontario Court, are posted on the Case Website maintained by the Monitor at the following address:
<http://cfcanada.fticonsulting.com/imperialtobacco/>

If you would like additional information, please contact Representative Counsel using the information below:

Ari Kaplan, Kaplan Law
393 University Avenue
Suite 2000
Toronto ON M5G 1E6
Canada

Phone: 416-565-4656

Email: info@kaplanlaw.ca

SCHEDULE "B"

NOTICE OF OBJECTION

TO: FTI CONSULTING CANADA INC.,
in its capacity as Court-Appointed Monitor of
Imperial Tobacco Canada Limited and
Imperial Tobacco Company Limited
79 Wellington Street West
Suite 2010, PO Box 104
Toronto ON, Canada M5K 1G8

Fax: 416-649-8101

Email: imperialtobacco@fticonsulting.com

Attention: Kamran Hamidi

**RE: Settlement between Imperial Tobacco Canada Limited and Representatives of
beneficiaries of Genstar Plans, as supported by the Former Genstar U.S. Retiree
Group Committee**

FROM:

(Insert full legal name and address of person who is submitting this Objection)

ENTITLEMENTS UNDER GENSTAR PLANS:

*(Provide details of your entitlements under the Genstar Plans, including the applicable plan(s),
your monthly payments, etc.)*

REASONS FOR OBJECTION:

*(Describe your reasons for objecting to the settlement. Please attach extra pages if you need more
space):*

- I **do not** intend to appear at the Settlement Approval Hearing and understand that my objection will be filed with the Court prior to the Settlement Approval Hearing if it is received before 5:00 pm Eastern Time on June 17, 2019.

- I **do** intend to appear at the Settlement Approval Hearing, in person or by counsel, and to make submissions.

DATED this _____ day of _____, 2019.

(Print name of Objector)

(Signature of Objector)

SCHEDULE "C"

SETTLEMENT ALLOCATION STATEMENT

TO: < **First Name** > < **Last Name** >

This Statement

This Settlement Allocation Statement (the "**Statement**") provides the estimated amount payable to you under the settlement reached between Imperial Tobacco Canada Limited and Representatives of beneficiaries of certain non-registered pension plans established by Genstar Corporation (the "**Genstar Plans**"), as further described in the Notice of Settlement Hearing document that accompanies this Statement (the "**Settlement**"). You will receive the amount indicated on this Statement if the Ontario Court approves the Settlement at the hearing on June 26, 2019. If the Settlement is approved in its current form, it will bind all beneficiaries under the Genstar Plans, including any beneficiaries who opt-out of representation by Representative Counsel and the Representatives.

Allocation of Settlement Share

In accordance with the Settlement, each beneficiary of the Genstar Plans (collectively, the "**Settlement Class**") will receive a share of USD \$1.44 million (your "**Individual Settlement Share**"), allocated amongst the Settlement Class in proportion to each beneficiary's projected total future payments under the plans, with a minimum payment of USD \$5,000. If you are a beneficiary of more than one Genstar Plan (i.e., both the deferred income plan, and the supplemental executive retirement plan or supplementary pension plan), your Individual Settlement Share indicated below is inclusive of all entitlements.

Your Settlement Share

The following is your Settlement Share, in accordance with the terms of the Settlement, based on the information provided by the company:

Plan 1	< Plan 1 >
Plan 2 (if applicable)	< Plan 2 >
Monthly Payments (pre-April 2019)	< Monthly Payments >
Projected Total Future Payments	< PTFP >
Pro-Rated % Share (before Minimum, if applicable)	< Pro Rata % Share >
Your Individual Settlement Share	< Total Payout >

If you have any questions about anything in this Statement, please contact Representative Counsel, Ari Kaplan, at 416.565.4656 or at info@kaplanlaw.ca.

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
(Notice Procedure Order)**

OSLER, HOSKIN & HARCOURT LLP
Box 50, 1 First Canadian Place
Toronto ON M5X 1B8

Deborah Glendinning (LSO# 31070N)
Marc Wasserman (LSO# 44066M)
John A. MacDonald (LSO# 25884R)
Craig Lockwood (LSO# 46668M)

Tel: 416.362.2111
Fax: 416.862.6666

Lawyers for the Applicants, Imperial Tobacco Canada
Limited and Imperial Tobacco Company Limited

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

*Attorney 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.¹

Chapter 15

Case No. 19-10771 (SCC)

**ORDER GRANTING MOTION FOR RECOGNITION AND
ENFORCEMENT OF THE ORDER OF THE CANADIAN
COURT APPROVING SETTLEMENT WITH THE RETIREE GROUP**

This matter was brought by FTI Consulting Canada Inc., in its capacity as the Court-appointed monitor² (the “Monitor”) and duly authorized foreign representative for Imperial Tobacco Canada Limited (the “Debtor”), upon its filing of the *Monitor’s Motion for Recognition and Enforcement of the Order of the Canadian Court Approving Settlement with the Retiree Group* (the “Motion”), pursuant to sections 363 and 1520 of title 11 of the United States Code (the

¹ The last four digits of the Debtor’s taxpayer identification number is 4374. The Debtor’s registered office is located at 30 Pedigree Court, Brampton (Ontario) Canada L6T 5T8.

² FTI was appointed as Monitor pursuant to Canada’s *Companies’ Creditors Arrangement Act*, R.S.C. 1985, c. C-36, as amended, by order dated March 12, 2019.

“Bankruptcy Code”) and Rule 9019 of the Federal Rules of Bankruptcy Procedure (the “Bankruptcy Rules”).

At a hearing held on _____, 2019, the Court considered and reviewed the Motion, exhibits attached thereto and the other pleadings submitted in support thereof.

After due deliberation and sufficient cause appearing therefor:

THE COURT HEREBY MAKES THE FOLLOWING FINDINGS OF FACT AND CONCLUSIONS OF LAW:

A. This Court has jurisdiction over this matter pursuant to 28 U.S.C. §§ 157 and 1334 and section 1501 of the Bankruptcy Code.

B. This is a core proceeding pursuant to 28 U.S.C. § 157(b).

C. Venue is proper before this Court pursuant to 28 U.S.C. § 1410.

D. Due and proper notice of the Motion was provided. No other or further notice need be provided.

E. The relief granted herein is necessary and appropriate, in the interests of public and international comity and consistent with the public policy of the United States.

F. The Settlement³ is fair, equitable, reasonable and appropriate, and consummation of the transactions contemplated by the Settlement is in the best interests of the Debtor and its estate and represents an exercise of the Debtor’s sound business judgment.

NOW THEREFORE, IT IS HEREBY ORDERED AS FOLLOWS:

1. The Motion is hereby **GRANTED** as set forth herein.

2. The order of the Canadian Court approving the Settlement (the “Settlement Order”) is hereby recognized and given full force and effect in the United States and the Settlement Agreement is approved. The Debtor is hereby authorized, pursuant to section 363 of the

³ Capitalized terms not defined herein shall have the meanings ascribed to them in the Motion.

Bankruptcy Code, as made applicable to this Chapter 15 case by section 1520(a)(2), to implement and fully perform any and all obligations and to take any and all actions reasonably necessary or appropriate to consummate the Settlement Agreement and perform any and all obligations contemplated therein in accordance with the Settlement Order.

3. The releases and injunctions set forth in Paragraphs 7 through 9 of the Settlement Order are hereby recognized and shall have full force and effect in the United States.

4. The requirements of Bankruptcy Rule 6004(h) are waived and the terms of this Order shall be effective and enforceable immediately upon entry.

5. This Court shall retain jurisdiction with respect to the enforcement, implementation or interpretation of this Order.

Dated: _____, 2019
New York, New York

UNITED STATES BANKRUPTCY JUDGE