

**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

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**MOTION RECORD OF THE APPLICANTS  
IMPERIAL TOBACCO CANADA LIMITED  
AND IMPERIAL TOBACCO COMPANY LIMITED  
(Motion for Genstar Settlement Approval returnable June 26, 2019)**

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June 18, 2019

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(COMMERCIAL LIST)**

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

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IN THE MATTER OF THE *COMPANIES' CREDITORS  
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APPLICANTS

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# TAB 1

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

**ONTARIO  
SUPERIOR COURT OF JUSTICE  
COMMERCIAL LIST**

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

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

APPLICANTS

**NOTICE OF MOTION  
(Genstar Settlement Approval  
returnable June 26, 2019)**

The Applicants will make a motion before a judge of the Ontario Superior Court of Justice (Commercial List) on Wednesday, June 26, 2019 at 10:00 a.m., or as soon after that time as the motion can be heard, at 330 University Avenue, Toronto, Ontario.

**PROPOSED METHOD OF HEARING:** The motion is to be heard orally.

**THE MOTION IS FOR:**

1. An Order substantially in the form attached at Tab 4 of the Motion Record (the “**Genstar Settlement Approval Order**”) giving effect to the terms of settlement (the “**Settlement**”) between the Applicants and the Representatives (defined below).
2. Such further and other relief as this Court may deem just.

**THE GROUNDS FOR THE MOTION ARE:**

**Background**

1. The Applicants were granted protection from their creditors under the *Companies' Creditors Arrangement Act*, RSC 1985, c C-36, as amended (the “**CCAA**”), by an Initial Order

of the Ontario Superior Court of Justice (Commercial List) dated March 12, 2019 (as amended from time to time, the “**Initial Order**”);

2. FTI Consulting Canada Inc. was appointed to act as the Monitor in these proceedings;

### **Suspension of payments under Genstar Plans**

3. Under a 1986 agreement, the Applicant Imperial Tobacco Canada Limited (“**ITCAN**”) guaranteed Genstar Corporation’s obligations under three non-qualified deferred compensation plans: a deferred income plan, a supplemental executive retirement plan, and a supplementary pension plan (collectively, the “**Genstar Plans**”);

4. Until March 2019, ITCAN funded the payments under the Genstar Plans (the “**Payments**”) by making monthly capital contributions to Imasco Holdings Group, Inc. (“**IHGI**”), a U.S. subsidiary, which then made the Payments to individuals with entitlements under the Genstar Plans (the “**Genstar Beneficiaries**”);

5. After obtaining the Initial Order, ITCAN ceased funding the Payments as they were pre-filing, unsecured obligations stayed by the Initial Order;

### **Appointment of Representatives and Reinstatement Motion**

6. The Former Genstar U.S. Retiree Group Committee (the “**Committee**”) was formed after these CCAA proceedings began;

7. On April 25, 2019, the Committee obtained an Order (the “**Representation Order**”) that appointed Ari Kaplan as “**Representative Counsel**” and Robert M. Brown and George A. Foster as representatives to represent the Genstar Beneficiaries;

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

9. The Committee filed a motion seeking the reinstatement of benefits under the Genstar Plans (the “**Reinstatement Motion**”) that was scheduled to be heard on April 26, 2019;

## Settlement

10. On April 25, 2019, the Applicants and the Representatives, supported by the Committee, negotiated at arms' length and agreed to resolve the Reinstatement Motion on mutually agreeable terms, subject to court approval;

11. The Applicants and the Representatives entered into a formal agreement dated as of May 10, 2019, setting out the terms of the agreed-upon Settlement, which included the following principal terms:

- (a) The Applicants will pay (i) USD \$1.44 million on account of three months' notice (the "**Notice Amount**") in accordance with a distribution formula determined by Representative Counsel (described below), and (ii) USD \$160,000 on account of legal fees (collectively with the Notice Amount, the "**Genstar Settlement Payments**");
- (b) The Genstar Beneficiaries retain an unsecured claim for remaining unpaid amounts under the Genstar Plans, less the USD \$1.44 million payment contemplated by the Settlement (the "**Unsecured Claim**"); and
- (c) The Applicants and Representatives agreed to seek the Settlement Approval Order (i) releasing the Applicants from any further liabilities in respect of the Genstar Plans except for the Unsecured Claim, and (ii) releasing and discharging the Representatives, Representative Counsel and the Committee in respect of the Settlement (collectively, the "**Releases**");

12. For the purposes of distributing the Notice Amount to the Genstar Beneficiaries, Representative Counsel and the Representatives determined that the following distribution formula was fair and reasonable in the circumstances: (a) each of the Representatives will receive a USD \$2,000 stipend for their labours and efforts; and (b) the remaining Notice Amount will be allocated to each Genstar Beneficiary in proportion to their projected total future payments under the Genstar Plans, with a minimum payment of USD \$5,000;

### **Notice of Settlement Approval Hearing**

13. On May 14, 2019, this Court granted an Order (the “**Notice Procedure Order**”) approving the form of and procedure for providing notice to the Genstar Beneficiaries of the hearing for approving the Settlement;

14. The Applicants and the Monitor have provided notice in accordance with the Notice Procedure Order by (a) sending a Notice Package (as defined in the Notice Procedure Order) to each Genstar Beneficiary by regular, first class U.S. mail on May 15, 2019, and (b) posting a copy of the Notice Package to the Case Website and the Chapter 15 Website;

15. The Notice Package included (a) an opt-out form that any Genstar Beneficiary wishing to opt out of representation had to submit by 5 p.m. Eastern on June 17, 2019; and (b) an objection form that any Genstar Beneficiary wishing to object to the settlement had to submit by 5 p.m. Eastern on June 17, 2019 or such later time as accepted by the Monitor or the Court;

16. As of 5 p.m. Eastern on June 17, 2019, no opt-out forms or objections had been delivered by any Genstar Beneficiary;

### **Settlement Approval Order**

17. The Applicants are seeking the Settlement Approval Order giving effect to the Settlement, including the Genstar Settlement Payments, the retention of the Unsecured Claim, and the Releases;

18. The Settlement is fair and reasonable, in the best of the Applicants and all of their stakeholders, and consistent with the purpose and spirit of the CCAA;

19. The Releases are fair and reasonable, and there is a reasonable connection between the claims being released and the objectives of the Settlement;

20. The Settlement and Settlement Approval Order is supported by the Representatives, the Committee, and the Monitor;

**Other Grounds**

21. The provisions of the CCAA, including section 11, and the inherent and equitable jurisdiction of this Honourable Court;
22. Rules 1.04, 1.05, 2.03, 3.02, 16 and 37 of the Ontario *Rules of Civil Procedure*, R.R.O. 1990, Reg. 194, as amended, and section 106 of the Ontario *Courts of Justice Act*, R.S.O. 1990, c. C.43, as amended; and
23. Such further and other grounds as counsel may advise and this Court may permit.

**THE FOLLOWING DOCUMENTARY EVIDENCE** will be used at the hearing of this motion:

1. The Affidavit of Eric Thauvette sworn June 18, 2019;
2. The Affidavit of Vivian Brennan-Dolezar sworn June 13, 2019;
3. The Fourth Report of the Monitor (to be filed); and
4. Such further and other evidence as counsel may advise and this Court may permit.

June 18, 2019

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

**TO: SERVICE LIST**

IN THE MATTER OF THE COMPANIES' CREDITORS ARRANGEMENT ACT, R.S.C. 1985, c. C-36, AS AMENDED  
AND IN THE MATTER OF A PLAN OF COMPROMISE OR ARRANGEMENT OF IMPERIAL TOBACCO CANADA LIMITED AND  
IMPERIAL TOBACCO COMPANY LIMITED

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

**ONTARIO  
SUPERIOR COURT OF JUSTICE**

Proceeding Commenced at Toronto

**NOTICE OF MOTION  
(Genstar Settlement Approval  
returnable June 26, 2019)**

**OSLER, HOSKIN & HARCOURT LLP**  
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Lawyers for the Applicants, Imperial Tobacco Canada  
Limited and Imperial Tobacco Company Limited

# TAB 2

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

**AFFIDAVIT OF ERIC THAUVETTE**

**(Sworn June 18, 2019)**

I, Eric Thauvette, of the City of Montreal, in the Province of Quebec, the Vice President and Chief Financial Officer of Imperial Tobacco Canada Limited (“ITCAN”), MAKE OATH AND SAY:

1. I am the Chief Financial Officer of ITCAN and, in that role, I am responsible for all financial-related aspects of ITCAN’s business operations. I am also an officer and director of ITCAN’s subsidiary and the other applicant, Imperial Tobacco Company Limited (collectively with ITCAN, the “Applicants”). As such, I have personal knowledge of the matters deposed to herein. Where I have relied on other sources for information, I have stated the sources of my information and believe them to be true.

2. This affidavit is made in support of a motion by the Applicants for an order (the “Settlement Approval Order”) under the *Companies’ Creditors Arrangement Act*, RSC 1985, c C-36, as amended (the “CCAA”), giving effect to the terms of settlement (the “Settlement”) between the Applicants and the Representatives (defined below).

## ***I. The Genstar Plans***

3. The Settlement relates to three non-registered deferred compensation plans established by Genstar Corporation (“Genstar”): a deferred income plan (the “GCDIP”), a supplemental executive retirement plan (the “SERP”), and a supplementary pension plan (the “SPEN”, and collectively with the GCDIP and the SERP, the “Genstar Plans”). The Genstar Plans are all unfunded plans.

4. Genstar is a dormant subsidiary of ITCAN that was acquired by a predecessor of ITCAN in 1986. The Genstar Plans were established before ITCAN acquired Genstar. However, under a 1986 agreement, ITCAN is a guarantor of Genstar’s obligations under the Genstar Plans.

5. Until March 2019, ITCAN funded the payments owing under the Genstar Plans (the “Payments”) by making monthly capital contributions to Imasco Holdings Group, Inc. (“IHGI”), a largely dormant U.S. subsidiary of ITCAN. IHGI would then make the Payments to the individuals with entitlements under the Genstar Plans (the “Genstar Beneficiaries”).

6. As at December 31, 2017, the present value of the obligations under the Genstar Plans was estimated to be approximately USD \$32 million (CDN \$43 million). There are currently 59 Genstar Beneficiaries.

## ***II. The CCAA Application and Cessation of the Payments***

7. The Applicants were granted CCAA protection by an order dated March 12, 2019 (as amended from time to time, the “Initial Order”).

8. The Applicants sought CCAA protection in the face of an existential threat from tobacco-related litigation across Canada, including multiple class actions, government claims seeking to recover health care costs under special purpose provincial legislation, and other ongoing

proceedings. On March 1, 2019, the Court of Appeal for Quebec issued an appeal judgment in two tobacco-related class actions, the Letourneau and Blais class actions, and awarded damages of up to a potential maximum amount of over \$9 billion against ITCAN. Moreover, ITCAN is currently facing more than 20 large tobacco litigation claims that have been filed across Canada, with claims for damages totalling well in excess of \$600 billion.

9. While the Applicants dispute the claims made in the various proceedings, the Applicants concluded it was in the best interests of all of their stakeholders to engage in a restructuring process with the overriding objective of preserving the value of the Applicants' business and facilitating a global resolution of all Tobacco Claims (as defined in the Initial Order) in an orderly process under Court supervision.

10. After obtaining the Initial Order, ITCAN ceased funding the Payments on the basis that they were pre-filing, unsecured obligations stayed by the Initial Order. I understand that on March 27, 2019, Bracewell LLP, U.S. counsel to FTI Consulting Canada Inc. (the "Monitor"), sent a notice to the Genstar Beneficiaries advising them that ITCAN had decided to discontinue funding the Payments during the pendency of the CCAA proceeding. The Payments were discontinued as of April 1, 2019.

### ***III. Appointment of Representative Counsel and the Reinstatement Motion***

11. I understand that a committee of certain former Genstar employees called the "Former Genstar U.S. Retiree Group Committee" (the "Committee") was formed after these CCAA proceedings began.

12. On April 25, 2019, the Committee obtained an Order (the "Representation Order") that appointed Ari Kaplan as "Representative Counsel" and Robert M. Brown and George A.

Foster as representatives to represent the interests of the “Represented Parties”, which consists of the Genstar Beneficiaries. Subsequently, on May 14, 2019, Vivian Brennan-Dolezar was appointed as a third representative (with Mr. Brown and Mr. Foster, the “Representatives”).

13. The Committee also filed a motion seeking, among other things, the reinstatement of the Payments (the “Reinstatement Motion”). I am advised by Waleed Malik of Osler, Hoskin & Harcourt LLP and believe that the grounds advanced by the Committee in the Reinstatement Motion included, among others, arguments that (a) the Payments were secured by a constructive trust because Genstar had purchased single- premium life insurance policies on the recipients’ lives to secure the payments under the GCDIP and SERP; and (b) staying the Payments violated section 7 of the *Charter of Rights and Freedoms*.

14. I am also advised by Mr. Malik and believe that the Reinstatement Motion was an interlocutory motion and that, even if the Applicants succeeded in defeating that motion, they could have been required to continue litigating the issues raised in the Reinstatement Motion.

#### ***IV. The Settlement***

15. The Reinstatement Motion was scheduled to be argued on April 26, 2019. However, on April 25, the Applicants and the Representatives, supported by the Committee, negotiated at arms’ length and agreed to resolve the Reinstatement Motion on mutually agreeable terms, subject to court approval.

16. Subsequently, the Applicants and the Representatives entered into a formal agreement dated as of May 10, 2019, setting out the terms of the Settlement, which included the following principal terms:

- (a) The Applicants will pay (i) USD \$1.44 million on account of three months' notice (the "Notice Amount") in accordance with a distribution formula determined by Representative Counsel, and (ii) USD \$160,000 on account of legal fees.
  - (b) The Genstar Beneficiaries retain an unsecured claim for remaining unpaid amounts under the Genstar Plans, less the Notice Amount contemplated by the Settlement (the "Unsecured Claim").
  - (c) The Applicants and Representatives agreed to seek a Settlement Approval Order (i) releasing the Applicants from any further liabilities in respect of the Genstar Plans except for the Unsecured Claim, and (ii) releasing and discharging the Representatives, Representative Counsel and the Committee in respect of the Settlement.
17. A copy of the Settlement Agreement is attached as Exhibit "A".
18. As noted above, the Reinstatement Motion raised a number of complex issues, including a novel constitutional argument and a complex constructive trust argument that hinged on decades-old facts, that would have required significant time and resources to litigate to a final conclusion.
19. In addition, litigating these issues would have required the time and attention of the Applicants' management while the Applicants are engaged in a complex restructuring. The Applicants entered into this CCAA proceeding with the overriding objective of resolving the existential threat posed by the Tobacco Claims. Achieving that objective also requires significant resources and the attention of the Applicants' senior management on a variety of fronts, including to respond to the motions and other issues arising in these proceedings, responding to information

requests from the Monitor or stakeholders, addressing issues with suppliers or business partners to avoid any disruptions to the Applicants' business during the restructuring, and ultimately in developing a plan of compromise or arrangement.

20. Therefore, the Applicants concluded that it was in their best interests and the best interests of all of their stakeholders to enter into the Settlement rather than continuing with potentially protracted, costly, and distracting litigation.

#### ***V. Notice of Settlement Approval Hearing to Genstar Beneficiaries***

21. As the Settlement Approval Order would bind all Genstar Beneficiaries, including those that opt out of representation by the Representatives and Representative Counsel, the Applicants and the Monitor have taken steps to provide notice of the settlement approval hearing to all of the Genstar Beneficiaries.

22. On May 14, 2019, the Court granted the Notice Procedure Order approving the form of notice and a notice plan for giving notice of the settlement approval hearing. The Notice Procedure Order ordered (a) the Applicants to communicate, or cause to be communicated, a Notice Package (as defined in the Notice Procedure Order) to each Genstar Beneficiary by regular, first class U.S. mail on or before May 15, 2019; and (b) the Monitor to post the Notice Package to the website for this CCAA proceeding (the "Case Website") and the website for the Chapter 15 Recognition Proceedings (the "Chapter 15 Website") within 3 business days.

23. All these steps have been completed in accordance with the Notice Procedure Order:

- (a) I am advised by Kamran Hamidi of FTI Consulting Canada Inc. and believe that a Notice Package was sent to each Genstar Beneficiary by regular, first class U.S.

mail on May 15, 2019 by Kurtzman Carson Consultants LLC, the noticing agent retained by the Monitor for purposes of the Chapter 15 recognition proceedings.

- (b) I am advised by Mr. Hamidi and believe that the Notice Package was posted to the Case Website on May 14, 2019.
- (c) I am advised by Mr. Hamidi and believe that the Notice Package was posted to the Chapter 15 Website on May 15, 2019.

24. The Notice Package, among other things, informed the Genstar Beneficiaries that they (a) would be bound by the Settlement if it was approved by the Court, even if they opted out of representation; and (b) could submit an objection by June 17, 2019 or such later date as the Monitor or Court may accept if they disagreed with the Settlement, and explained the manner and deadline for submitting an objection to the Monitor. In addition, the Notice Package included an opt-out form for any Genstar Beneficiaries who did not want to be represented by Representative Counsel and the Representatives.

25. Both opt-out forms and objections had to be delivered to the Monitor to Mr. Hamidi's attention. I am advised by Mr. Hamidi and believe that as of 5:00 pm Eastern Time on June 17, 2019, no opt-out forms or objections had been delivered by any Genstar Beneficiary.

## ***VI. Information Provided to Representative Counsel***

26. The Applicants have provided the following information relating to the Genstar Plans to Representative Counsel in order to implement the Settlement:

- (a) Contact information for the Genstar Beneficiaries, which has been used to determine the identity of the Genstar Beneficiaries and to send the Notice Packages to the Genstar Beneficiaries pursuant to the Notice Procedure Order.

- (b) Projected future Payments, which has been used to determine each Genstar Beneficiary's share of the Notice Amount that the Applicants will be paying pursuant to the Settlement.

27. This information was maintained as part of the Applicants' business records in the usual course of their business and for purposes of administering the Genstar Plans. The projected Payments were prepared and maintained by the Applicants for purposes of quantifying the liability under the Genstar Plans. These projections were calculated using appropriate individual benefit formulas reflecting entitlements under the applicable plan documents, and updated over time as needed with updated mortality assumptions provided by the Applicants' professional actuaries. To the best of the Applicants' knowledge, the information provided to Representative Counsel identifies all individuals who are Genstar Beneficiaries and accurately reflects the expected future entitlements of the Genstar Beneficiaries under the Genstar Plans.

SWORN BEFORE ME at the City of  
Toronto, in the Province of Ontario, this  
18th day of June, 2019.

Waleed Malik  
Commissioner for Taking Affidavits

WALEED MALIK

LSO# 678460

Eric Thauvette  
Eric Thauvette

# TAB A

This is **Exhibit "A"** referred to in the  
Affidavit of Eric Thauvette sworn before me  
this 18<sup>th</sup> day of June, 2019.

Waleed Malik

A COMMISSIONER FOR TAKING AFFIDAVITS, ETC.

WALEED MALIK  
LSO # 678460

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 of 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 13<sup>th</sup> 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: \_\_\_\_\_ /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 13<sup>th</sup> 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 13<sup>th</sup> 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

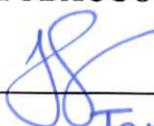
Print Name: Eric Thauvette

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.

*Ontario*

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

Proceeding commenced at Toronto

**AFFIDAVIT OF ERIC THAUVETTE**  
(Sworn June 18, 2019)

**OSLER, HOSKIN & HARCOURT LLP**  
1 First Canadian Place, P.O. Box 50  
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 to the Applicants, Imperial Tobacco Canada  
Limited and Imperial Tobacco Company Limited

Matter No: 1144377

# TAB 3

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

**AFFIDAVIT OF VIVIAN BRENNAN-DOLEZAR**

**(Sworn June 13, 2019)**

I, VIVIAN BRENNAN-DOLEZAR, of City of Mesa, Maricopa County, Arizona,  
HEREBY SWEAR:

1. I am a Representative appointed pursuant to the order of McEwen J. dated May 14, 2019, (the "Notice Procedure Order" attached herewith as Exhibit "A"), and in which order I was made subject to all obligations imposed on Representatives by the order of McEwen J. dated April 25, 2019 (the "Representation Order", attached hereto as Exhibit "B") (together, the "Genstar Orders"). As such, I have personal knowledge of the matters deposed to herein. Where I have relied on the other sources for information, I have stated the sources of my information and believe them to be true.

2. Under the Genstar Orders, I am appointed, along with Robert M. Brown and George A. Foster, to act in the overall best interests of the "Represented Parties", and to advise and where appropriate instruct Representative Counsel in furtherance of representing the interests of the Represented Parties with respect to entitlements under the "Genstar Plans".

3. The Genstar Plans include the Genstar Corporation “deferred income plan” (“**GCDIP**”), “supplemental executive retirement plan” (“**SERP**”) and “supplementary pension plan” (“**SPEN**”). The Represented Parties include 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 such person (together, the “**Genstar Beneficiaries**”).

4. My father, Harold J. Brennan, was a former Genstar management employee and he participated in the GCDIP and SPEN. In 2012, my father passed away. My mother Vivian M. Brennan became the recipient of survivor benefits under his GCDIP and SPEN. She is currently 89 years old and is a Represented Party pursuant to the Genstar Orders. My mother lives with me and my husband and she is directly affected by these CCAA Proceedings.

5. I swear this affidavit in support of the motion seeking approval of a settlement with the Applicants dated May 10, 2019 (the “**Settlement**”) entered into by myself and the other Representatives appointed under the Representation Order.

6. I previously swore an affidavit dated April 15, 2019 (the “**First Brennan-Dolezar Affidavit**”) in support of the Representation Order and of the motion brought by the Former Genstar U.S. Retiree Group Committee (“**Committee**”) for an order reinstating the pension payments owed to under the Genstar Plans (the “**Reinstatement Motion**”) that were ceased by the Applicants and its U.S. Subsidiary, Imasco Holdings Group Inc., following the Applicants’ commencement of these proceedings and this Court’s initial order dated March 12, 2019 (the “**Initial Order**”).

7. On April 25, Ari Kaplan of Kaplan Law, who is representative counsel appointed under the Representation Order, informed me and the other Representatives, Mr. Foster and Mr. Brown, that he had negotiated a potential settlement with the Applicants. I participated in multiple calls that evening with Mr. Kaplan. During these phone calls and in email correspondence, Mr. Kaplan explained the terms of the proposed resolution of the Reinstatement Motion with the Applicants’ counsel and that he was able to recommend it.

8. I and the other Representatives unanimously agreed with Mr. Kaplan’s recommendation and agreed that entering into the proposed settlement was in the best interests of all Genstar

Beneficiaries . Therefore, we instructed Mr. Kaplan to advise the Court of the proposed resolution and to adjourn the Reinstatement Motion, which was scheduled to be heard the next day, April 26. On May 13, I and the other signatories signed the written agreement supporting the proposed Settlement.

9. One of the principal terms of the Settlement is that the Applicants will pay USD \$1.44 million on account of three months' notice in accordance with a distribution formula determined by Representative Counsel (the "**Notice Amount**"). Representative Counsel and the Representatives determined that the Notice Amount should be paid to each Affected Member (an "**Individual Settlement Share**"), 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**"). In addition, we determined that under the Distribution Formula, each of the three Representatives will receive a USD \$2,000 stipend for our labours and efforts.

10. On May 14, 2019, the Court granted the Notice Procedure Order that ordered the Applicants to send a Notice Package to each Affected Member. On May 17, I received in the mail my Notice Package. Included in the Notice Package was a letter to Genstar Beneficiaries from Mr. Kaplan dated May 14 (the "**Representative Counsel Letter**"). Attached hereto as **Exhibit "C"** is a copy of my Notice Package.

11. The purpose of the Representative Counsel Letter was to

- (a) notify Genstar Beneficiaries of the Representation Order;
- (b) advise Genstar Beneficiaries of the right to "opt out" of being represented;
- (c) notify Genstar Beneficiaries that, with Mr. Kaplan's recommendation, the Representatives have entered into the proposed Settlement and there will be a Settlement Approval Hearing on June 26; and
- (d) advise Genstar Beneficiaries that they have the right to object to the Settlement by filling out and returning a Notice of Objection.

12. I have been personally advised by Mr. Kaplan and verily believe that the contents of the Representative Counsel Letter accurately reflect Mr. Kaplan's activities in the proceeding leading up to the Representation Order, the Settlement and Notice Procedure Order.

13. In the Representative Counsel Letter, Mr. Kaplan provided the following explanation for the Distribution Formula:

#### **Settlement Distribution Formula**

Over the past two weeks, I have worked with the Monitor to review and assess a number of "allocation scenarios" illustrating different methods of calculating and distributing individual settlement shares to each Affected Member. I also obtained input from the Committee and Representatives, and consulted with others.

In addition, pursuant to the Representation Order, I was provided with certain confidential documentation and information from the company, including a list of all 59 Affected Members and the amounts of your monthly and annual payments under the Genstar U.S. Plans. This list is redacted under seal in the Chapter 15 Proceeding.

I have settled on what I believe is a fair and equitable Distribution Formula and have secured unanimous consensus on this from the Committee and Representatives. Under the Distribution Formula, each Affected Member will receive a share of USD \$1.44 million (your "Individual Settlement Share" listed on the enclosed Settlement Allocation Statement), which is calculated *pro rata* (in proportion) to each Affected Member's *Projected Total Future Payments* under the plans, with a minimum payment of \$5,000. Your Projected Total Future Payments is listed on the statement. It is calculated as the sum total of all future monthly payments you were expecting to receive under the plans were the payments not terminated starting with the missed payment in April. For most people, this is a straightforward calculation. For example, under the deferred income plan (the DIP), most people are entitled to receive the payment until they reach age 80. Where there is no terminal date for your payments, because you are entitled to lifetime payments (this is the case under the SERP, the supplementary plan and for some people, under the DIP), your Projected Total Future Payments is determined based on actuarial tables, which is the ordinary and accepted method used for calculating pension plan liabilities.

A different formula that I considered, and rejected, is one prorated to monthly payments. Under that method, each Affected Member would receive a lump sum payment equal to approximately three months payments under the plans. I considered that method less fair than the one prorated to Projected Total Future Payments. One reason is that each Affected Member has a different period length within which they are expecting to receive payments. I did not consider it fair, e.g., that two people, both entitled to \$2,000 per month under the plans, would receive the same Individual Settlement Share if the first person's payments are expected to end in one year, whereas the other person, who is younger, will forego payments for another 10 years. Put another way, under the selected Distribution Formula, a person expecting \$2,000 per month under the plans for 10 more years will receive the same Individual Settlement Share as one who is expecting \$4,000 per month with five years remaining on their payments.

In addition to basing the Distribution Formula pro rata to Projected Total Future Payments, we have agreed to ensure a \$5,000 minimum share for each person. This is in recognition that, regardless of each person's monthly payments, the immediate shock of terminating the plans is presumed to have a common baseline effect on each person's well-being and ability to make alternate financial arrangements to replace the loss of payments. The \$5,000 minimum will be received by approximately 17 out of the 59 Affected Members. The "top up" to those Individual Settlement Shares is correspondingly subsidized by the remaining 42 Affected Members whose entitlements are on the higher end of the spectrum. In the distribution analysis I received, I can advise that a total of approximately \$42,000 (out of \$1.44 million) is being reallocated to ensure that each Affected Member receives at least \$5,000.

14. I and the other Representatives agree with the explanation provided by Mr. Kaplan and, in particular, we agree that the Distribution Formula is a fair and reasonable methodology for distributing the Notice Amount.

15. In addition, in the Representative Counsel Letter, Mr. Kaplan provided the following reasons for recommending the Settlement:

#### **Recommendation of Settlement**

In my respectful opinion, this is a good settlement and, all things considered is a reasonable compensation for the disaster that occurred in March when your payments were cut off. In my opinion, the documentation you received in March concerning the company's "cessation of funding" your pensions was not adequate. Also, it is plainly unfair that your pensions are being stopped at this time. It came as a surprise to many people that you did not receive your deposits on April 1. This settlement hopes to rectify, in part, the inadequate notice.

I have recommended this settlement to the Committee and the Representatives, which was reached literally "on the eve of trial". In coming to my recommendation, I considered the following:

- the company filed insolvency protection proceedings in Canada and the United States because of a massive judgment against it in Quebec concerning its tobacco practices. The company states that "it is facing an estimated \$600 billion in alleged liabilities in pending litigation in Canada". Because of this, the company obtained an "initial order" from the Canadian Court on March 12 that "stayed" (suspended) its obligation to pay amounts owing as of the filing date, including your pensions. In other words, the company was authorized by the initial order to cease funding your pensions;
- while other company pension plans are being continued at this time, those plans have different circumstances than the Genstar U.S. Plans, including the fact that the other plans either have an active workforce or are funded by way of a separate pension fund with assets available to cover most or all of the liabilities and, as such, are not (or are minimally) affected by the competing unsecured Tobacco litigation claims. In contrast, your pensions are unfunded "contractual" obligations that are paid month-to-month on a pay-as-you-go

basis out of company revenues. They are “non-qualified” plans and thereby do not have pre-funding security pursuant to U.S. pension legislation;

- we are aware that Genstar and Imasco purchased single-premium life insurance policies intended to cover the cost of funding your Genstar pensions (on a cost/revenue neutral basis). We also now know that in 1992, those policies were redeemed by the company for their cash surrender value. I made arguments to the Canadian Court concerning the insurance policies and I asserted that the policies give rise to a “constructive trust” over your pension rights which, if successful, could give you an advantage in reclaiming your entitlements. However, there is litigation risk in this submission. The plan documents state that any “person entitled to payments stands in the same position as any general creditor of the Company.” The terms of the deferred income plan (the DIP) contract in which you participate state that “the parties do not intend that the amounts payable hereunder be held by the Employer in trust or as a segregated fund”, and, the

Employer's obligation under the Plan shall be merely that of an unfunded and unsecured promise ... payable solely from the general assets of the Employer, and [no] person entitled to payments hereunder shall have any interest in any assets of the Employer by virtue of this Agreement. The Agreement merely grants the Employee, the Beneficiary or other person entitled to payments hereunder the contractual right to receive future benefits.

- I also asserted that each Affected Member’s right to life, liberty and security of the person was infringed under section 7 of Canada’s constitutional bill of rights, the Canadian *Charter of Rights and Freedoms*. This is a novel argument that, while I believe ultimately is meritorious, nevertheless faces a number of challenges. To succeed on this argument, we would require expert evidence, which is very costly. We would also have to persuade the judge that the *Charter* protects U.S. residents in these circumstances and applies to private litigation under Canada’s commercial restructuring legislation;

To be successful in achieving more than the amount negotiated in this settlement from the Canadian Court, we have to persuade the judge that: first, there are meritorious equitable grounds to reinstate your pensions on an interim basis, and second, that the reinstatement should be for more than three months’ time. In my opinion, there is litigation risk on the first ground justifying a settlement of any amount and, second, even if successful, the judge could exercise his discretion to award less than three months’ payments. Third, even if successful on both grounds, there is a statutory mechanism available to the company to subsequently apply to “disclaim or resiliate” your plans, with court supervision, thereby further limiting the prospect of a lengthy reinstatement.

As a result of all of the foregoing, I have no hesitation in recommending this settlement. Your Individual Settlement Share is a proverbial “bird in the hand” early in the proceedings, your rights as unsecured claimants are preserved, your legal fees have been covered and you will continue to have representation available to you during the remainder of the proceedings. I believe that you have been heard and are receiving access to justice and a redress for an unfortunate event.

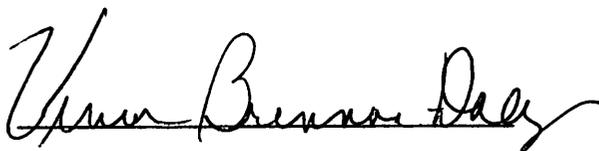
16. I and the other Representatives support the Settlement for the reasons expressed by Mr. Kaplan in the Representative Counsel Letter. I and the other Representatives believe the Settlement is fair and reasonable and in the overall best interests of all Genstar Beneficiaries .

17. In the Representative Counsel Letter, Mr. Kaplan invites any Affected Member who wishes to receive email updates from him about the status of the Canadian Court Proceeding to send him an email he will include them on a group list. I have been advised by Mr. Kaplan and verily believe that as of June 13, 2019, approximately 20 Genstar Beneficiaries have requested to be included in his group emails.

SWORN BEFORE ME at City of Mesa,  
Maricopa County, in the State of Arizona,  
this 13th day of June, 2019

---

A Commissioner for Taking Oaths, etc.



VIVIAN BRENNAN-DOLEZAR



# Acknowledgment by Individual

State of Arizona County of Maricopa

On this 13 day of June, 20 19 before me, Audrey F. Friend  
Name of Notary Public

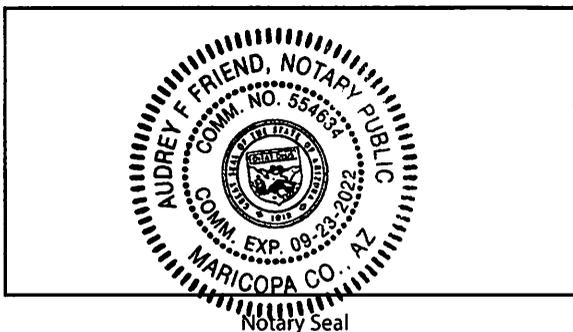
the undersigned Notary Public, personally appeared Vivian B. Dolezal

Name of Signer(s)

- Proved to me on the oath of \_\_\_\_\_
- Personally known to me
- Proved to me on the basis of satisfactory evidence AZDL D03177178  
(Description of ID)

to be the person(s) whose name(s) is/are subscribed to the within instrument, and acknowledged that he/she/they executed it.

WITNESS my hand and official seal.



Audrey F. Friend  
(Signature of Notary Public)  
My commission expires 09.23.2022

Optional: A thumbprint is only needed if state statutes require a thumbprint.



### For Bank Purposes Only

#### Description of Attached Document

Type or Title of Document  
Affidavit of Vivian Brennan-Dolezal

Document Date 6.13.19 Number of Pages 7

Signer(s) Other Than Named Above



# TAB A

# Acknowledgment by Individual

State of Arizona County of Maricopa

On this 13 day of June, 20 19, before me, Audrey F. Friend  
Name of Notary Public

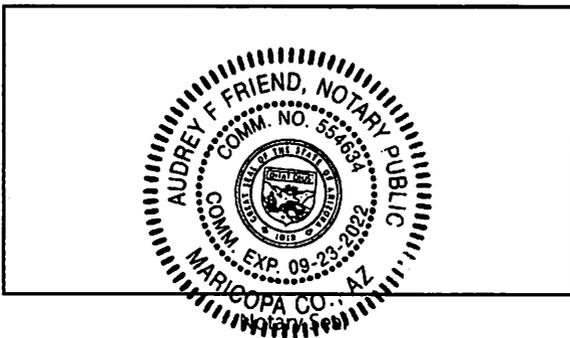
the undersigned Notary Public, personally appeared  
Vivian B. Dolezal

Name of Signer(s)

- Proved to me on the oath of \_\_\_\_\_
- Personally known to me
- Proved to me on the basis of satisfactory evidence AZDL 003177178  
(Description of ID)

to be the person(s) whose name(s) is/are subscribed to the within instrument, and acknowledged that he/she/they executed it.

WITNESS my hand and official seal.



Audrey F. Friend  
(Signature of Notary Public)  
My commission expires 09.23.2022

Optional: A thumbprint is only needed if state statutes require a thumbprint.

Right Thumbprint of Signer

Top of thumb here

### For Bank Purposes Only

### Description of Attached Document

Type or Title of Document

Exhibit "A"

Document Date

5.14.19

Number of Pages

17

Signer(s) Other Than Named Above



FO01-00000DSG5350-01

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

**ONTARIO  
SUPERIOR COURT OF JUSTICE  
COMMERCIAL LIST**

THE HONOURABLE MR.	)	TUESDAY, THE 14 <sup>TH</sup>
	)	
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:

- 2 -

- (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;

- 3 -

- (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.

- 4 -

#### **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.

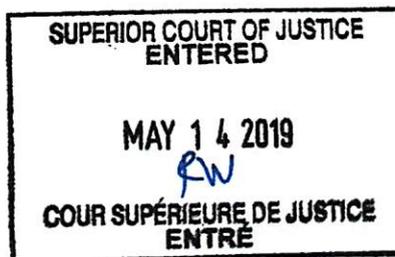
9. **THIS COURT ORDERS** that any Notices of Objection received after the Objection Deadline shall not be filed with the Court or considered at the Settlement Approval Hearing.

- 5 -

**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. A.', 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

- 2 -

- (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*

- 3 -

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](mailto: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.

- 4 -

**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](mailto: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](mailto: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)*

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**ENTITLEMENTS UNDER GENSTAR PLANS:**

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

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**REASONS FOR OBJECTION:**

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

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- 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 >
<b>Your Individual Settlement Share</b>	<b>&lt; Total Payout &gt;</b>

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](mailto: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

# TAB B

# Acknowledgment by Individual

State of Arizona County of Maricopa

On this 13 day of June, 20 19, before me, Audrey F. Friend  
Name of Notary Public

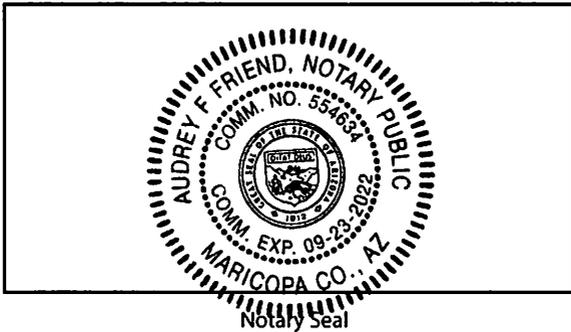
the undersigned Notary Public, personally appeared Vivian B. Dolzow

Name of Signer(s)

- Proved to me on the oath of \_\_\_\_\_
- Personally known to me
- Proved to me on the basis of satisfactory evidence AZDL D03177178  
(Description of ID)

to be the person(s) whose name(s) is/are subscribed to the within instrument, and acknowledged that he/she/they executed it.

WITNESS my hand and official seal.



Audrey F. Friend  
(Signature of Notary Public)  
My commission expires 09.23.2022

Optional: A thumbprint is only needed if state statutes require a thumbprint.

Right Thumbprint of Signer

Top of thumb here

### For Bank Purposes Only

### Description of Attached Document

Type or Title of Document Exhibit "B"

Document Date 4.25.19 Number of Pages 8

Signer(s) Other Than Named Above \_\_\_\_\_



FO01-00000DSG5350-01

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

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



THE HONOURABLE MR. )  
 JUSTICE MCEWAN )

THURSDAY THE 25<sup>TH</sup>  
 DAY OF APRIL, 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**  
**(Representation Order)**

**THIS MOTION**, made by the Former Genstar U.S. Retiree Group Committee (the "**Committee**") and the proposed representatives, Robert M. Brown and George A. Foster, pursuant to the *Companies' Creditors Arrangement Act*, R.S.C. 1985, c. C-36, as amended (the "**CCAA**") for an order appointing representatives and representative counsel and certain other relief, was heard this day at 330 University Avenue, Toronto, Ontario.

**ON READING** the Notice of Motion and the Affidavits in the Motion Record, and on hearing the submissions of respective counsel for the Committee and proposed representatives, the Applicants, Monitor and such other counsel as were present, no one else appearing although duly served as appears from the Affidavit of Service of Ari Kaplan affirmed April 18 2019, filed:

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.
2. **THIS COURT ORDERS** that Ari Kaplan of Kaplan Law (the “**Representative Counsel**”) is hereby appointed as representative counsel to represent the interests of all persons in these CCAA proceedings (together, the “**Represented Parties**”) with respect to entitlements under the Genstar Corporation “deferred income plan”, “supplemental executive retirement plan” and “supplementary pension plan”, including survivors and beneficiaries of such persons and any other person claiming an interest under or on behalf of a Represented Party (the “**Purpose**”).
3. **THIS COURT ORDERS** that Robert M. Brown and George A. Foster (together, the “**Representatives**”) are hereby appointed as representatives of all Represented Parties (excluding the “**Opt-Out Individuals**”, as defined below, if any) 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. The Representative Counsel may rely upon the advice, information and instructions received from the Representatives in carrying out the mandate of the Representative Counsel without further communications with or instructions from the Represented Parties, except as may be recommended by the Representative Counsel or ordered by this Court.
4. **THIS COURT ORDERS** that, with the exception of Opt-Out Individuals, (a) the Representatives and the Representative Counsel shall represent all Represented Parties in these CCAA proceedings; (b) the Represented Parties shall be bound by the actions of the Representatives and the Representative Counsel in these CCAA proceedings; and (c) the Representatives shall be entitled, on the advice of counsel, to reach any settlement agreements, advocate on behalf of the Represented Parties for the Purpose and compromise any rights, entitlements or claims of the Represented Parties, subject to approval of this Court.
5. **THIS COURT ORDERS** the Applicants to provide to the Representative Counsel, without charge, subject to satisfactory confidentiality arrangements, the following information,

documents and data (the “**Information**”), to be used strictly for the Purpose in the context of these CCAA proceedings,

- (a) the names, last known address, telephone number and email addresses (if any) of all the Represented Parties as well as particulars regarding their entitlements; and
- (b) such other documents and data as may be relevant to matters relating to the issues in these proceedings, including all relevant plan texts, agreements, particulars of insurance policies, communications, booklets, and other applicable documents and particulars of the Applicants’ financial obligations respecting the plans including with respect to funding or securing the obligations and any other relevant documents and data pertaining to the plans and the Applicants’ other pension plans and retirement arrangements, including up to date financial information regarding the funding and investments of any of these arrangements,

in so doing, the Applicants are not required to obtain express consent from any Represented Parties authorizing disclosure of the Information to the Representative Counsel and, further, in accordance with section 7(3) of the *Personal Information Protection and Electronic Documents Act* (Canada) or, if applicable, section 18(9) of *An Act respecting the Protection of Personal Information in the Private Sector*, CQLR c P-39.1, such an order will be sufficient to authorize the disclosure of the Information without the knowledge or consent of the Represented Parties.

6. **THIS COURT ORDERS** that notice of the granting of this Order shall be provided to the Represented Parties by way of first class mailing to their physical address or such electronic means as may be available, by the Applicants with the assistance of the Monitor, consisting of a letter prepared by Representative Counsel (the “**Representation Notice**”) explaining the terms of this Order, which shall include the Monitor’s website address where a full copy of this Order can be reviewed and under such other terms as to be agreed upon by Representative Counsel, the Applicant and the Monitor.

7. **THIS COURT ORDERS** that any individual Represented Party who does not wish to be represented by the Representatives and the Representative Counsel in these CCAA proceedings shall, within 30 days of the date of the Representation Notice pursuant to paragraph 6, notify the

Monitor in writing that he or she is opting out of representation by the Representatives and the Representative Counsel by delivering to the Monitor an opt-out notice in the form attached as Schedule "A" hereto (each an "Opt-Out Notice") and thereafter he or she shall not be represented by nor bound by the actions of the Representatives or the Representative Counsel in these CCAA proceedings (any such persons who deliver an Opt-Out Notice in compliance with the terms of this paragraph shall be "Opt-Out Individuals") and may represent himself or herself, personally or through counsel that he or she may retain at his or her own expense and as an independent, individual party, to the extent that they wish to participate in these proceedings, and the Proposed Representatives and Proposed Representative Counsel shall have no obligation to represent them. The Monitor shall deliver copies of all Opt-Out Notices received to the Applicants and the Representative Counsel as soon as reasonably practicable.

8. **THIS COURT ORDERS** that the Representative Counsel shall be given notice of all motions to which the Represented Parties are entitled to receive notice in these CCAA proceedings and that it shall be entitled to represent those on whose behalf it is hereby appointed in all such proceedings.

9. **THIS COURT ORDERS** that the Representative Counsel is hereby authorized to take all steps and do all acts necessary or desirable in relation to the Purpose or to carry out the terms of this Order.

10. **THIS COURT ORDERS** that the Representative Counsel shall be at liberty, and is hereby authorized, at any time, to apply to this Court for advice and directions in respect of its appointment or the fulfillment or discharge of its powers or duties, in carrying out the provisions of this Order, or for any other relief, including on any matter raised in the Notice of Motion not yet adjudicated, which shall be brought on notice to all interested parties, unless this Court orders otherwise, it being understood that the Applicants and Monitor reserve their rights in future to object to any motion seeking the funding of professional fees for the Representatives or Representative Counsel.

11. **THIS COURT ORDERS** that the Representative Counsel, the Representatives and the members of the Committee, or their delegates or agents, shall have no personal liability or obligations as a result of the performance of their duties in carrying out the provisions of this Order

or any subsequent Orders in these CCAA proceedings, save and except for liability arising out of gross negligence or wilful misconduct.

12. **THIS COURT ORDERS** that no action or other proceeding may be commenced against the Representative Counsel, the Representatives or the members of the Committee in respect of the performance of their duties under this Order without leave of this Court on seven (7) days' notice to the Representative Counsel, the Representatives, or the Committee, as the case may be.

13. **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, 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 and in case, any which motion to be served within three (3) weeks of the date of this Order.



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ENTERED AT / INSCRIT A TORONTO  
ON / BOOK NO:  
LE / DANS LE REGISTRE NO:

APR 25 2019

PER / PAR:



**SCHEDULE "A" – FORM OF OPT-OUT NOTICE**

**TO: FTI CONSULTING CANADA INC., in  
its capacity as Court-appointed Monitor  
of the ITCAN Parties  
TD Waterhouse Tower  
79 Wellington Street West  
Suite 2010, P.O. Box 104  
Toronto ON CANADA M4K 1G8**

**Fax: 416-649-8101  
Email: imperialtobacco@fticonsulting.com**

**Attention: •**

I hereby provide written notice that I do not wish to be represented by Kaplan Law, representative counsel (the "Representative Counsel") with respect to my entitlements under the Genstar Corporation "deferred income plan", "supplemental executive retirement plan" or "supplementary pension plan", in the proceedings involving Imperial Tobacco Canada Limited and its affiliates and subsidiaries (the "ITCAN Parties") in their proceedings under the *Companies' Creditors Arrangement Act* (Court File No. CV-19-616077-00CL) (the "CCAA Proceedings"). I understand that by opting out of representation, if I wish to take part in the CCAA Proceedings, I would need to do so as an independent party. I am responsible for retaining my own legal counsel should I choose to do so, and that I would be personally liable for the costs of my own legal representation.

I understand that a copy of this Opt-Out Form will be provided to the Representative Counsel and to the ITCAN Parties.

\_\_\_\_\_ Signature  
\_\_\_\_\_ Witness

Name [please print]: \_\_\_\_\_

Address: \_\_\_\_\_

\_\_\_\_\_

\_\_\_\_\_

Telephone: \_\_\_\_\_ Email: \_\_\_\_\_

**Note: To opt out, this form must be completed and received at the above address on or before \_\_\_\_\_, 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, *et al.*

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

**PROCEEDING COMMENCED AT  
TORONTO**

**ORDER**

**(April 25, 2019)**

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

**Ari Kaplan (LSO #42042S)**

**Tel: 416 565.4656**

**Fax: 416 352.1544**

**Email: [ari@kaplanlaw.ca](mailto:ari@kaplanlaw.ca)**

**Counsel to the Former Genstar U.S.  
Retiree Group Committee and the  
Representatives**

# TAB C

# Acknowledgment by Individual

State of Arizona County of Maricopa

On this 13 day of June, 2019, before me, Audrey F. Friend  
Name of Notary Public

the undersigned Notary Public, personally appeared

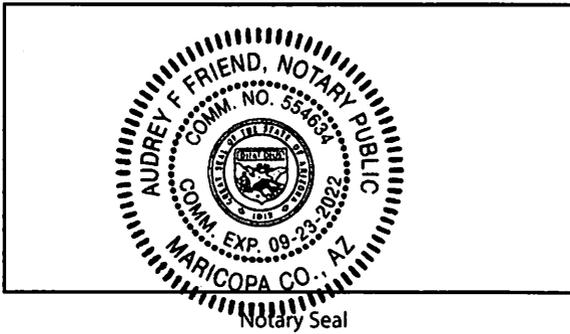
Vivian B Dolezal

Name of Signer(s)

- Proved to me on the oath of \_\_\_\_\_
- Personally known to me
- Proved to me on the basis of satisfactory evidence AZDL D03177778  
(Description of ID)

to be the person(s) whose name(s) is/are subscribed to the within instrument, and acknowledged that he/she/they executed it.

WITNESS my hand and official seal.



Audrey F. Friend  
(Signature of Notary Public)

My commission expires 09.23.2022

Optional: A thumbprint is only needed if state statutes require a thumbprint.

Right Thumbprint of Signer

Top of thumb here

### For Bank Purposes Only

### Description of Attached Document

Type or Title of Document

Exhibit "C"

Document Date

5.14.19

Number of Pages

27

Signer(s) Other Than Named Above

\_\_\_\_\_



FO01-00000DSG5350-01



May 14, 2019

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

To: All persons with an entitlement under the Genstar Corporation “deferred income plan”, “supplemental executive retirement plan” or “supplementary pension plan”, including survivors, beneficiaries and other persons claiming an interest on behalf of such persons.

Re: *In the Matter of Imperial Tobacco Canada Limited et. al. under the Companies’ Creditors Arrangement Act, R.S.C. 1985, c. C-36 as amended, Ontario Superior Court of Justice File No. CV-19-616077-00CL (the “Canadian Court Proceeding”).*

Dear Genstar U.S. Plan beneficiary:

I am writing to you pursuant to a Court order in my capacity as “representative counsel” to all persons affected by Imperial Tobacco Canada Limited’s decision to cease funding payments under three Genstar pension plans (the “Genstar U.S. Plans”). If you are receiving this letter, you are one of 59 “Affected Members” under the Genstar U.S. Plans identified by the company.

Accompanying this letter is the following documentation:

1. Settlement Allocation Statement (personalized, with your name and entitlements listed);
2. Notice of Settlement Approval Hearing;
3. Notice of Objection; and
4. Opt-Out Form.

The purpose of this letter, and the enclosed documents, is to:

- (a) notify you that the Canadian Court has appointed me as representative counsel, and three individuals as “Representatives”, to represent the interests of all Affected Members in the Canadian Court Proceeding;
- (b) advise that you have the right to “opt out” of being represented by myself and the Representatives by filling out and returning the enclosed Opt-Out Form by June 17;

- (c) notify you that, with my recommendation, the Representatives have entered into a proposed settlement with Imperial Tobacco, which is subject to Court approval on June 26. If the settlement is approved, you will be bound by the terms of the settlement and will be entitled to a lump sum payment equal to the amount stated in the enclosed Settlement Allocation Statement as your "Individual Settlement Share"; and
- (d) advise that you have the right to object to the proposed settlement by filling out and returning the enclosed Notice of Objection, no later than June 17.

Please read this letter and the accompanying documents carefully. There is a proposed settlement concerning your payments under the Genstar U.S. Plans. *The settlement is a compromise of your vested rights to future payments under the plans, in consideration for a lump sum payment to you of an Individual Settlement Share.* After the settlement, your rights in the Canadian Court Proceeding will be preserved as *general unsecured claimants*, in the event of a future successful restructuring of Imperial Tobacco.

If after reading this material, you agree with the settlement, *there is no further active step that you need to take at this time.* The court will be asked to approve the settlement on June 26 and you will be bound to the order approving it.

If you would like more information than what is contained in these documents, or have any questions, please write to me at [info@kapanlaw.ca](mailto:info@kapanlaw.ca) or call me at 416.565.4656.

### **Background**

On March 29, 2019, I was retained by the Former Genstar U.S. Retiree Group Committee, comprised of former Genstar executives Angus A. MacNaughton, Ross J. Turner, Richard D. Paterson, and J. Ernest Hartz. Messrs. Paterson and Hartz have been my day-to-day contacts. Since its formation, the Committee's mandate has been to protect the common interests of Affected Members, whose pension payments under the Genstar U.S. Plans ceased after Imperial Tobacco filed for insolvency protection in March, in Canada and the United States (Chapter 15).

In the days and weeks that followed, with instructions from the Committee, I did the following:

- on April 1, I filed an Objection with the Canadian Court, objecting to the cessation of payments under the Genstar U.S. Plans;
- on April 3, I filed a supplementary Objection with the Canadian Court;
- on April 4 and 5, I attended before the judge overseeing the Canadian Court Proceeding and obtained a date, April 25, to re-appear to argue for the reinstatement of your pensions;
- on April 9, I filed a Notice of Constitutional Question in which I asserted that your rights have been infringed under the *Canadian Charter of Rights and Freedoms*;

- on April 17, I filed a Motion Record consisting of four affidavits from Affected Members and dozens of evidentiary exhibits compiled to support a Representation Order and for the reinstatement of your pensions; and
- on April 23, I filed a Supplementary Motion Record consisting of additional documentation and evidence obtained from Imperial Tobacco. I also filed a “factum” (written legal submission) and books of case law and statutory authorities.

All of the material that we filed in the Canadian Court Proceeding can be viewed and downloaded from the “case website” maintained by the court-appointed Monitor, FTI Consulting, here:

<http://cfcanada.fticonsulting.com/imperialtobacco/motions.htm>

On April 25, I appeared before the judge and obtained a “Representation Order”. The Representation Order appoints me as representative counsel to represent the interests of all Affected Members in the Canadian Court Proceeding with respect to your entitlements under the Genstar U.S. Plans, except for persons who elect to “opt out” from representation (opting out is described below). The Court also appointed Messrs. Robert. M. Brown of Florida and George A. Foster of California as “Representatives” from amongst the Affected Members.

You can view and download a copy of the Representation Order here:

<http://cfcanada.fticonsulting.com/imperialtobacco/courtOrders.htm>

The judge also scheduled the hearing of our motion to reinstate your payments, for the next day, namely Friday, April 26.

At approximately 9:00 p.m. on April 25, I reached a proposed settlement with the company’s attorneys, with instructions from the Committee and the Representatives. The settlement provides that the company will pay out USD \$1.44 million, equal to approximately three months of payments under the Genstar U.S. Plans, in order to give a reasonable notice period of termination of payments under the plans. In addition, the company will pay \$160,000 on account of legal fees incurred by the Committee in Canada and the United States and to cover fees on a going forward basis. All payments mentioned herein are in United States Dollars. These payments are not an admission of liability on the part of the company.

On April 26, I re-appeared before the judge and we advised him of the proposed settlement and sought an approval process. The judge adjourned the motion to reinstate payments and agreed to schedule June 26 as a Settlement Approval Hearing date.

On May 14, the judge made an order prescribing a process leading up to the Settlement Approval Hearing and approved the form of documents enclosed with this letter (the Settlement Allocation Statement, Notice of Settlement Hearing and Notice of Objection). The judge also appointed Ms. Vivian Brennan-Dolezar of Arizona as a third Representative (with Messrs. Brown and Foster) on

behalf of the Affected Members. (You can view and download a copy of this May 14 order on the same web page as the Representation Order, above).

### **Settlement Distribution Formula**

Over the past two weeks, I have worked with the Monitor to review and assess a number of "allocation scenarios" illustrating different methods of calculating and distributing individual settlement shares to each Affected Member. I also obtained input from the Committee and Representatives, and consulted with others.

In addition, pursuant to the Representation Order, I was provided with certain confidential documentation and information from the company, including a list of all 59 Affected Members and the amounts of your monthly and annual payments under the Genstar U.S. Plans. This list is redacted under seal in the Chapter 15 Proceeding.

I have settled on what I believe is a fair and equitable Distribution Formula and have secured unanimous consensus on this from the Committee and Representatives. Under the Distribution Formula, each Affected Member will receive a share of USD \$1.44 million (your "Individual Settlement Share" listed on the enclosed Settlement Allocation Statement), which is calculated *pro rata* (in proportion) to each Affected Member's *Projected Total Future Payments* under the plans, with a minimum payment of \$5,000. Your Projected Total Future Payments is listed on the statement. It is calculated as the sum total of all future monthly payments you were expecting to receive under the plans were the payments not terminated starting with the missed payment in April. For most people, this is a straightforward calculation. For example, under the deferred income plan (the DIP), most people are entitled to receive the payment until they reach age 80. Where there is no terminal date for your payments, because you are entitled to lifetime payments (this is the case under the SERP, the supplementary plan and for some people, under the DIP), your Projected Total Future Payments is determined based on actuarial tables, which is the ordinary and accepted method used for calculating pension plan liabilities.

A different formula that I considered, and rejected, is one prorated to monthly payments. Under that method, each Affected Member would receive a lump sum payment equal to approximately three months payments under the plans. I considered that method less fair than the one prorated to Projected Total Future Payments. One reason is that each Affected Member has a different period length within which they are expecting to receive payments. I did not consider it fair, e.g., that two people, both entitled to \$2,000 per month under the plans, would receive the same Individual Settlement Share if the first person's payments are expected to end in one year, whereas the other person, who is younger, will forego payments for another 10 years. Put another way, under the selected Distribution Formula, a person expecting \$2,000 per month under the plans for 10 more years will receive the same Individual Settlement Share as one who is expecting \$4,000 per month with five years remaining on their payments.

In addition to basing the Distribution Formula *pro rata* to Projected Total Future Payments, we have agreed to ensure a \$5,000 minimum share for each person. This is in recognition that, regardless of each person's monthly payments, the immediate shock of terminating the plans is presumed to have a common baseline effect on each person's well-being and ability to make

alternate financial arrangements to replace the loss of payments. The \$5,000 minimum will be received by approximately 17 out of the 59 Affected Members. The “top up” to those Individual Settlement Shares is correspondingly subsidized by the remaining 42 Affected Members whose entitlements are on the higher end of the spectrum. In the distribution analysis I received, I can advise that a total of approximately \$42,000 (out of \$1.44 million) is being reallocated to ensure that each Affected Member receives at least \$5,000.

Finally, each of the three Representatives will be receiving a \$2,000 stipend, from the settlement funds, on account of their labours and efforts over the past couple of months. The Representatives have worked closely with me and spent dozens of hours compiling exhibits and preparing their objections and affidavits.

The company has agreed that it will pay out all Individual Settlement Shares within 30 days of the Canadian Court approving the settlement. If the settlement is approved on June 26, the payments will be made by July 25. It is my understanding that the company will effect the settlement payments in the same manner that it had been making your monthly payments (e.g. by direct deposit). These payments will be subject to ordinary U.S. taxation rules. If you have any tax-related questions, I suggest you speak to a U.S.-based tax or financial advisor.

### **Other Settlement Features**

In addition to receiving your Individual Settlement Share, each Affected Member,

- will continue to be a general unsecured creditor with a retained unsecured claim against Imperial Tobacco in the Canadian Court Proceeding for all remaining unpaid amounts under the Genstar U.S. Plans (less the amount of your Individual Settlement Share). For example, in the event the company successfully restructures and a “plan of compromise or arrangement” is approved, you will share *pro rata* in any distribution alongside all other unsecured creditors of the company; and
- is releasing Imperial Tobacco and its affiliates and subsidiaries from any further payments and liabilities in respect of the Genstar U.S. Plans (save and except as a general unsecured claimant, as noted above). You are also releasing the Committee, Representatives, and representative counsel in respect of the settlement.

### **Recommendation of Settlement**

In my respectful opinion, this is a good settlement and, all things considered is a reasonable compensation for the disaster that occurred in March when your payments were cut off. In my opinion, the documentation you received in March concerning the company's “cessation of funding” your pensions was not adequate. Also, it is plainly unfair that your pensions are being stopped at this time. It came as a surprise to many people that you did not receive your deposits on April 1. This settlement hopes to rectify, in part, the inadequate notice.

I have recommended this settlement to the Committee and the Representatives, which was reached literally “on the eve of trial”. In coming to my recommendation, I considered the following:

- the company filed insolvency protection proceedings in Canada and the United States because of a massive judgment against it in Quebec concerning its tobacco practices. The company states that “it is facing an estimated \$600 billion in alleged liabilities in pending litigation in Canada”. Because of this, the company obtained an “initial order” from the Canadian Court on March 12 that “stayed” (suspended) its obligation to pay amounts owing as of the filing date, including your pensions. In other words, the company was authorized by the initial order to cease funding your pensions;
- while other company pension plans are being continued at this time, those plans have different circumstances than the Genstar U.S. Plans, including the fact that the other plans either have an active workforce or are funded by way of a separate pension fund with assets available to cover most or all of the liabilities and, as such, are not (or are minimally) affected by the competing unsecured Tobacco litigation claims. In contrast, your pensions are unfunded “contractual” obligations that are paid month-to-month on a pay-as-you-go basis out of company revenues. They are “non-qualified” plans and thereby do not have pre-funding security pursuant to U.S. pension legislation;
- we are aware that Genstar and Imasco purchased single-premium life insurance policies intended to cover the cost of funding your Genstar pensions (on a cost/revenue neutral basis). We also now know that in 1992, those policies were redeemed by the company for their cash surrender value. I made arguments to the Canadian Court concerning the insurance policies and I asserted that the policies give rise to a “constructive trust” over your pension rights which, if successful, could give you an advantage in reclaiming your entitlements. However, there is litigation risk in this submission. The plan documents state that any “person entitled to payments stands in the same position as any general creditor of the Company.” The terms of the deferred income plan (the DIP) contract in which you participate state that “the parties do not intend that the amounts payable hereunder be held by the Employer in trust or as a segregated fund”, and, the

Employer’s obligation under the Plan shall be merely that of an unfunded and unsecured promise ... payable solely from the general assets of the Employer, and [no] person entitled to payments hereunder shall have any interest in any assets of the Employer by virtue of this Agreement. The Agreement merely grants the Employee, the Beneficiary or other person entitled to payments hereunder the contractual right to receive future benefits.

- I also asserted that each Affected Member’s right to life, liberty and security of the person was infringed under section 7 of Canada’s constitutional bill of rights, the *Canadian Charter of Rights and Freedoms*. This is a novel argument that, while I believe ultimately is meritorious, nevertheless faces a number of challenges. To succeed on this argument, we would require expert evidence, which is very costly. We would also have to persuade the judge that the *Charter* protects U.S. residents in these circumstances and applies to private litigation under Canada’s commercial restructuring legislation;

To be successful in achieving more than the amount negotiated in this settlement from the Canadian Court, we have to persuade the judge that: first, there are meritorious equitable grounds to reinstate your pensions on an interim basis, and second, that the reinstatement should be for more than three months' time. In my opinion, there is litigation risk on the first ground justifying a settlement of *any* amount and, second, even if successful, the judge could exercise his discretion to award less than three months' payments. Third, even if successful on both grounds, there is a statutory mechanism available to the company to subsequently apply to "disclaim or resiliate" your plans, with court supervision, thereby further limiting the prospect of a lengthy reinstatement.

As a result of all of the foregoing, I have no hesitation in recommending this settlement. Your Individual Settlement Share is a proverbial "bird in the hand" early in the proceedings, your rights as unsecured claimants are preserved, your legal fees have been covered and you will continue to have representation available to you during the remainder of the proceedings. I believe that you have been heard and are receiving access to justice and a redress for an unfortunate event.

### **Objections**

As stated, if you agree with this settlement, there are no active steps you need to take at this time. You will be advised if the settlement is approved, most notably, when you receive your Individual Settlement Share.

If you do not agree with this proposed settlement, you have the right to oppose it. One of the documents enclosed with this package is a Notice of Objection form. If you would like to oppose the settlement, you have the right to fill out this form and return it to FTI Consulting by June 17, as further described in the Notice of Settlement Approval Hearing.

### **Representation and Opting-Out**

If you are agreeable to me continuing to represent you in the Canadian Court Proceeding together with the three Representatives, there is nothing further you need to do. Under my representation, I will continue to keep you informed of major steps in the proceeding affecting your interests. If a plan of compromise is reached or a claims process initiated, I may be able to participate on your behalf and file any required proofs of claim or other documentation.

If you wish to receive email updates from me about the status of the Canadian Court Proceeding, please send me an email to [info@kaplanlaw.ca](mailto:info@kaplanlaw.ca) and I will include you on a group list.

If you do not want me and the Representatives to represent you in the Canadian Court Proceeding, you have the right to "opt out" of representation. Enclosed with this package is an "Opt-Out Form". If you wish to opt out, you will need to fill out this form and return it to FTI Consulting by June 17. If you opt out, you will be responsible for retaining your own attorney, if you choose to do so, and personally liable for the costs of your representation.

**Settlement Will Be Binding**

Please be aware that, if approved, the proposed settlement will be binding on you and you will receive your Individual Settlement Share. This applies even if you file a Notice of Objection or Opt-Out Form. To be clear, you may not opt out of the settlement.

If the Canadian Court does not approve the settlement, you will not receive your Individual Settlement Share, and the parties have agreed that our motion asking the judge to reinstate your pensions will be scheduled and returned to the court for a hearing and adjudication.

**Further Questions and Next Steps**

I have attempted in this letter to provide you with a comprehensive explanation of the status of your rights in the Canadian Court Proceeding. I appreciate that you, or a family member, or your personal attorney, may have further questions. You or they can contact me by phone at 416.565.4656 or by email at [info@kaplanlaw.ca](mailto:info@kaplanlaw.ca). I will try to return your message promptly. Further, as stated I am compiling a group email list of interested members to which I will send various updates from time to time concerning the status of the Canadian Court Proceeding. Please let me know by email if you wish you be part of this group list.

Please also keep an eye on the FTI case website. A few days before the June 26 Settlement Approval Hearing, the company will be serving and filing a motion for Settlement Approval. Those materials will include a draft Order that the judge will be asked to sign approving the Settlement.

Finally, I wish to acknowledge the considerable efforts of your Committee members and Representatives in getting us to the place we are at today with respect to your matter. We could not have achieved this settlement without their contributions.

Yours truly,

**KAPLAN • LAW**



Ari Kaplan  
ANK:bh

/encl.

- Settlement Allocation Statement
- Notice of Settlement Approval Hearing
- Notice of Objection
- Opt-Out Form

## SETTLEMENT ALLOCATION STATEMENT

TO: **VIVIAN BRENNAN**

### *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	<b>DIP</b>
Plan 2 (if applicable)	<b>SPEN</b>
Monthly Payments (pre-April 2019)	<b>\$2,423.07</b>
Projected Total Future Payments	<b>\$109,038.15</b>
Pro-Rated % Share (before Minimum, if applicable)	<b>0.3%</b>
<b>Your Individual Settlement Share</b>	<b>\$5,000.00</b>

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](mailto:info@kaplanlaw.ca).

## 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

- 2 -

- (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 or such later date as the Monitor or the Court accepts, based on the circumstances (the “Objection Deadline”) by either mail, courier or email to the following address:

- 3 -

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](mailto: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.

**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](mailto:info@kaplanlaw.ca)

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](mailto: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)*

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ENTITLEMENTS UNDER GENSTAR PLANS:

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

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REASONS FOR OBJECTION:

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

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- 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)*

**OPT-OUT FORM**

TO: FTI CONSULTING CANADA INC.,  
 in its capacity as Court-appointed  
 Monitor of the ITCAN Parties  
 79 Wellington Street West  
 Suite 2010, P.O. Box 104  
 Toronto ON CANADA M5K 1G8

Fax: 416-649-8101  
 Email: imperialtobacco@fticonsulting.com

Attention: Kamran Hamidi

I hereby provide written notice that I do not wish to be represented by Kaplan Law, representative counsel (the "Representative Counsel") with respect to my entitlements under the Genstar Corporation "deferred income plan", "supplemental executive retirement plan" or "supplementary pension plan", in the proceedings involving Imperial Tobacco Canada Limited and its affiliates and subsidiaries (the "ITCAN Parties") in their proceedings under the *Companies' Creditors Arrangement Act* (Court File No. CV-19-616077-00CL) (the "CCAA Proceedings"). I understand that by opting out of representation, if I wish to take part in the CCAA Proceedings, I would need to do so as an independent party. I am responsible for retaining my own legal counsel should I choose to do so, and that I would be personally liable for the costs of my own legal representation.

I understand that a copy of this Opt-Out Form will be provided to the Representative Counsel and to the ITCAN Parties.

\_\_\_\_\_

Witness

\_\_\_\_\_

Signature

Name [please print]: \_\_\_\_\_

Address: \_\_\_\_\_

\_\_\_\_\_

\_\_\_\_\_

Telephone: \_\_\_\_\_ Email: \_\_\_\_\_

**Note: To opt out, this form must be completed and received at the above address on or before 5:00 p.m. Eastern Time on June 17, 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, *et al.*

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

**PROCEEDING COMMENCED AT  
TORONTO**

**AFFIDAVIT OF  
VIVIAN BRENNAN-DOLEZAR**  
(Sworn June 13, 2019)

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

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

Representative Counsel to the  
Genstar Beneficiaries

# TAB 4

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

**ONTARIO  
SUPERIOR COURT OF JUSTICE  
COMMERCIAL LIST**

THE HONOURABLE MR.	)	WEDNESDAY, THE 26 <sup>TH</sup>
	)	
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 ● affirmed ●, 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 the Genstar Beneficiaries that have not 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.

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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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**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**

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

*Ontario*

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

Proceeding commenced at Toronto

**MOTION RECORD OF THE APPLICANTS  
IMPERIAL TOBACCO CANADA LIMITED AND  
IMPERIAL TOBACCO COMPANY LIMITED  
(Motion for Genstar Settlement Approval  
returnable June 26, 2019)**

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Matter No: 1144377