

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

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

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

Applicants

NOTICE OF OBJECTION

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

April 3, 2019

KAPLAN LAW
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Toronto ON M5G 1E6

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

NOTICE OF OBJECTION

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

A. Overview

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

13. No response to this email was received.

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

...

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

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

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

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

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

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

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

D. Issues

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

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

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

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

ii. Prejudice and *Status Quo*

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

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

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

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

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

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

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

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

E. Relief Sought

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

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

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

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

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

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

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

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

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

iv. Repeat of Disclosure and Information Request

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

36. The Committee also notes that:

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

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

F. Conclusion

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

A. Matters Expected to Proceed on an Unopposed Basis

...

5. Reservation of rights for pensioners of ITL Applicants

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

B. Other Matters

...

1. (a) Stay Extension

- Submissions summarized within;

...

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

- Submissions summarized within;

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

...

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

- Submissions summarized within;

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

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

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

Thanks for your quick help, Samara.

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

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

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

Best regards,

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

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

Thank you,

Samara

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

T 416.367.7621

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DAVIES WARD PHILLIPS & VINEBERG LLP

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

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

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

Dear Plan Participants,

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

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

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

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

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

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

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

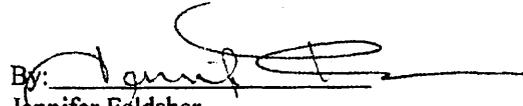
or to counsel for the Monitor at

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

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

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

Dated: March 27, 2019
New York, New York

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

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



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ORINDA, CA 94563

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

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

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

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

Regards,

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

KAPLAN  LAW

Ari Kaplan

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Toronto Ontario Canada M5G 1E6
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.....
kaplanlaw.ca mediationbenefits.co

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

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

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

Marc, Natasha,

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

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

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

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

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

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

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

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

Regards,

Ari Kaplan
416 565.4656
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**THIS IS EXHIBIT “H” TO THE
NOTICE OF OBJECTION OF THE
FORMER GENSTAR U.S. RETIREE GROUP
COMMITTEE
DATED APRIL 3, 2019**

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 Jennifer Feldsher
 Mark E. Dendinger

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

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

In re:

 IMPERIAL TOBACCO CANADA
 LIMITED,

 Debtor in a Foreign Proceeding.

Chapter 15

 Case No. 19-10771 (SCC)

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

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

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



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

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

03/18/2019	20	Document Under Seal Per Court Order. Individual Provisional Relief List Pursuant to Bankruptcy Rule 1007(a) Filed by Jennifer Feldsher on behalf of FTI Consulting Canada Inc. (related document(s) <u>15</u>) (Lopez, Mary). (Entered: 03/20/2019)
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*Attorneys for FTI Consulting Canada Inc.
In its Capacity as Monitor and Foreign Representative for the Debtor*

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

In re:

IMPERIAL TOBACCO CANADA
LIMITED,

Debtor in a Foreign Proceeding.

Chapter 15

Case No. 19-10771 (SCC)

ORDER GRANTING INTERIM MOTION TO SEAL

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

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



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

IT IS HEREBY ORDERED THAT:

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

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

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

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

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

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

Dated: March 14, 2019
New York, New York

/S/ Shelley C. Chapman
UNITED STATES BANKRUPTCY JUDGE

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

In re:

IMPERIAL TOBACCO CANADA
LIMITED,

Debtor in a Foreign Proceeding.

Chapter 15
Case No. 19-10771 (SCC)

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

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



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

BACKGROUND

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

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

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

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

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

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

JURISDICTION AND VENUE

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

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

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

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

RELIEF REQUESTED

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

BASIS FOR RELIEF SOUGHT

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

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

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

PROCEEDING COMMENCED AT
TORONTO

NOTICE OF OBJECTION

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

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Retiree Group Committee