

**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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**SUPPLEMENTARY MOTION RECORD OF THE  
FORMER GENSTAR U.S. RETIREE GROUP COMMITTEE**

**(Motion on April 25, 2019 for a Representation Order and  
Reinstatement of Benefits under the Genstar U.S. Plans)**

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April 23, 2019

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

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COMPANY LIMITED

Applicants

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# TAB 1

Letter from Osler, dated April 22, 2019



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**In the Matter of a Plan of Compromise or Arrangement of Imperial Tobacco  
Canada Limited et al.**

Further to your Notices of Objection in respect of the above matter, as well as your motion materials delivered on April 17, 2019, we are enclosing the responsive plan documentation related to the Genstar U.S. Plans that we have been able to identify to date. In this regard, please note that we have not included any materials that are duplicative of plan documentation that you have included in your recent motion record.

Following receipt of your Notice of Objection on April 1, 2019, and specifically the information request set out at paragraph 34 thereof, we co-ordinated a document review with our client with a view to identifying documents that were responsive to your requests for information. Given the dated nature of the plan, as well as the fact that ITCAN was the guarantor of the plan (rather than the initial plan sponsor), the records relating to the Plans in our client's possession are limited. However, we are continuing in our efforts to identify potentially responsive documentation.

With respect to your requests for detailed information about the individual plan members, specifically their contact information, we are not in a position to disclose this information in the absence of a representation order. Once such an order is obtained, however, we expect to be able to provide you with the contact information for the known beneficiaries upon request.

Please note that we are providing the enclosed information without prejudice to our rights to contest the nature and/or scope of the information requests articulated in your Notices of Objection and Notice of Motion.

Yours very truly,

A handwritten signature in black ink, appearing to read 'Craig Lockwood', enclosed in a thin black rectangular border.

Craig Lockwood  
Partner  
CL:kab

- c. Deborah Glendinning, Marc Wasserman, John MacDonald, Waleed Malik (*Osler*)  
Jay Swartz, Natasha MacParland (*Davies*)  
Paul Bishop, Greg Watson (*FTI*)

# TAB 2

Minutes of Meeting of the Chairman's Office,  
September 9, 1992

~~DRAFT~~

**CORPORATE OWNED LIFE INSURANCE POLICIES  
AND SERP & DIP  
(GENSTAR COMPANY)**

A meeting was held on September 9, 1992 at the offices of Imasco Limited to review the status of the Corporate Owned Life Insurance Policies (COLI). The purpose of the meeting was to decide whether or not we should retain the COLI policies as the funding vehicle for the deferred benefits to be paid to the former Genstar executives.

The following persons were attending:

Messrs. M. Collins  
P. Duhamel  
R. Guyatt  
R. Migliaccio  
L. Schnell  
M. Tombari

In the past, it has always been said that the COLI program, to be tax effective, would have to be part of a corporation with substantial taxable income. Genstar Company's situation has been quite different. Over the past few years, Genstar Company has incurred substantial tax losses, caused by the Serp & Dip payments, the interest on the policy loans used to pay for three of the seven annual premium and interest expense on borrowings from Hardee's Food Systems resulting from negative cash flow over the past few years. Even if we believe Hardee's will be taxable in the future, it is reasonable to assume that the U.S. consolidated tax group will be in a minimum tax position over the next few years.

During the meeting we reviewed schedule IV-D of a document prepared by Clark Bardes (dated August 24, 1992 - see section 2). This schedule provides a detailed cash flow of the COLI policies over the next 50 years based on the assumptions that Imasco Holdings on a consolidated basis will be in minimum tax position for the next 20 years and on mortality tables that were used when the plan was put in place by Genstar Company. These mortality tables are not up to date and death proceeds are likely to be delayed.

Based on these assumptions, if we decide to keep the COLI policies, the cumulative negative cash flow will be approximately \$17.6 million over the next 11 years. So despite the fact that we would receive, through borrowing approximately \$45.6 million of the cash surrender value in 1992, this amount would be reduced to \$28.0 million in 2003 before it starts to increase considerably in the following years. If the IRS does not permit the inclusion of Genco within the Imasco Holdings consolidated tax return, the cumulative negative cash flow will peak at \$35.1 million in year 2007 (see section 3).

The COLI program would generate substantial interest deduction that the U.S. companies will probably not be in a position to use in the next few years. The interest expense for 1993 would amount to \$9.2 million and increase by approximately \$1.5 million a year to \$21.5 million in year 2000 and \$36.8 million in year 2010. On the other hand, if the policies are cancelled, the interest stops and the proceeds would be invested to generate income that will be used to offset Genstar Company's expenses i.e. principally the Serp & Dip benefit payments.

#### Present value of Serp & Dip benefits

When the program was established in 1986, a portion of an executive's compensation was deferred, and under the Serp & Dip program, is earning an effective average rate of 21.16%. If we discount the future payments at the same rate, the present value of the liability is approximately \$32.0 million (see section 4). To cover the liability, the following reserves are available:

Unrecorded gain on increase in cash-surrender value	\$ 7.4 million
Reallocation of benefit reserve in Genstar Company to Serp & Dip liability	\$ 8.5 million
Additional reserve resulting from consolidation of IEI	<u>\$13.3 million</u>
	<u><u>\$29.2 million</u></u>

The difference between our total reserve and the present value of the liability is not significant and could be easily covered. The total expense will be slightly lower than on a pay-as-you-go basis since the present value of liability is recognized at the rate inherent in the initial compensation deferral. The only expense to be recorded will be the interest on the liability amount; the benefits payments being applied against the liability (reserve). If we include the interest income (at 4%) generated by the \$50.0 million received from the cash surrender value upon cancellation, the net expense for the Serp and Dip program over the next five years will be as follows:

	New Basis			Current Policy
	Interest cost on obligation	Interest income	Net Serp Dip expense	Expense = payments
<b>1993</b>	6.8	2.0	4.8	7.5
<b>1994</b>	6.6	2.0	4.6	8.5
<b>1995</b>	6.2	2.0	4.2	8.8
<b>1996</b>	5.7	2.0	3.7	7.7
<b>1997</b>	5.0	2.0	3.0	6.2

We should therefore feel fairly comfortable with our overall position.

Note disclosure in the Financial Statements

In the past, we had a note in the Financial Statements to cover the Serp & Dip payments and their funding through insurance policies. Since the liability will be accrued, I do not believe we will need any special disclosure in the Annual Report and the note concerning the Life Insurance Policy could be completely removed. Some may argue that we should have some disclosure as part of the Pension Liability Note, personally I do not believe that would be necessary since this scheme was designed as a deferred compensation arrangement and not as a pension plan arrangement.

Selling of Insurance Policies to another third party

A purchaser of the Genco policies would not benefit from the same tax treatment as Genco (see memorandum from Sullivan & Cromwell - section 7). We also asked Clarke/Bardes to verify, on a no name basis, if any company would be interested in buying the Genco policies. Their reply after having verified with a few corporations with similar plans is that organizations are not comfortable in having life insurance policies on individuals that did not worked for their organization.

Recommendation

Based on the above, it is recommended to the Office of the Chairman to authorize Genstar Company's officers to proceed with the cancellation of all the Corporate Owned Life Insurance Policies that were put in place to support the funding of the Serp & Dip program.

Pierre Duhamel  
September 18, 1992

The above recommendation was approved by the Chairman's Office.

Purdy Crawford

Raymond E. Guyatt

Brian M. Levitt

Date

## PER ROBERT MIGLICCIO

	DIP PRE-RETIR.	DIP POST-RETIR.	SERP PAYMENTS	TOTAL PAYMENTS
1993	3,004,618	2,604,334	1,939,918	7,548,870
1994	3,795,287	2,736,799	1,939,918	8,472,004
1995	3,993,075	2,864,249	1,939,918	8,797,242
1996	2,920,075	2,959,339	1,863,539	7,742,953
1997	1,013,457	3,183,041	1,995,779	6,192,277
1998	197,789	3,631,233	2,054,699	5,883,721
1999		3,794,251	2,054,699	5,848,950
2000		3,938,077	2,054,699	5,992,776
2001		4,056,501	1,838,551	5,895,052
2002		4,018,731	1,593,126	5,611,857
2003		4,025,496	1,243,812	5,269,308
2004		4,039,930	1,243,812	5,283,742
2005		3,048,978	747,540	3,796,518
2006		2,719,739	571,788	3,291,527
2007		2,380,711	571,788	2,952,499
2008		2,272,907	422,976	2,695,883
2009		2,481,710	246,096	2,727,806
2010		2,632,514	246,096	2,878,610
2011		2,695,231	246,096	2,941,327
2012		2,730,516	246,096	2,976,612
2013		2,435,661	187,176	2,622,837
2014		2,321,355	132,240	2,453,595
2015		2,222,550		2,222,550
2016		2,070,594		2,070,594
2017		1,992,376		1,992,376
2018		1,956,555		1,956,555
2019		1,878,897		1,878,897
2020		1,698,532		1,698,532
2021		1,662,401		1,662,401
2022		1,548,200		1,548,200
2023		1,283,385		1,283,385
2024		942,117		942,117
2025		663,863		663,863
2026		506,056		506,056
2027		247,069		247,069
2028		93,732		93,732
2029		45,020		45,020
2030				
	-----	-----	-----	-----
PV AT:	14,924,301	86,382,650	25,380,362	126,687,313
22.50%	9,116,073	14,578,954	8,292,381	31,987,408
				PV AT 21.16%

		+		-	
		INTEREST		PAYMENTS	
		21.16%			
1993	31,987,408	6,768,535	7,548,870	31,207,073	
1994	31,207,073	6,603,417	8,472,004	29,338,486	
1995	29,338,486	6,208,024	8,797,242	26,749,267	
1996	26,749,267	5,660,145	7,742,953	24,666,459	
1997	24,666,459	5,219,423	6,192,277	23,693,605	
1998	23,693,605	5,013,567	5,883,721	22,823,451	
1999	22,823,451	4,829,442	5,848,950	21,803,943	
2000	21,803,943	4,613,714	5,992,776	20,424,881	
2001	20,424,881	4,321,905	5,895,052	18,851,734	
2002	18,851,734	3,989,027	5,611,857	17,228,904	
2003	17,228,904	3,645,636	5,269,308	15,605,233	
2004	15,605,233	3,302,067	5,283,742	13,623,558	
2005	13,623,558	2,882,745	3,796,518	12,709,785	
2006	12,709,785	2,689,390	3,291,527	12,107,648	
2007	12,107,648	2,561,978	2,952,499	11,717,127	
2008	11,717,127	2,479,344	2,695,883	11,500,588	
2009	11,500,588	2,433,524	2,727,806	11,206,307	
2010	11,206,307	2,371,255	2,878,610	10,698,951	
2011	10,698,951	2,263,898	2,941,327	10,021,523	
2012	10,021,523	2,120,554	2,976,612	9,165,465	
2013	9,165,465	1,939,412	2,622,837	8,482,040	
2014	8,482,040	1,794,800	2,453,595	7,823,245	
2015	7,823,245	1,655,399	2,222,550	7,256,093	
2016	7,256,093	1,535,389	2,070,594	6,720,889	
2017	6,720,889	1,422,140	1,992,376	6,150,653	
2018	6,150,653	1,301,478	1,956,555	5,495,576	
2019	5,495,576	1,162,864	1,878,897	4,779,543	
2020	4,779,543	1,011,351	1,698,532	4,092,362	
2021	4,092,362	865,944	1,662,401	3,295,904	
2022	3,295,904	697,413	1,548,200	2,445,118	
2023	2,445,118	517,387	1,283,385	1,679,120	
2024	1,679,120	355,302	942,117	1,092,305	
2025	1,092,305	231,132	663,863	659,573	
2026	659,573	139,566	506,056	293,083	
2027	293,083	62,016	247,069	108,030	
2028	108,030	22,859	93,732	37,157	
2029	37,157	7,863	45,020	0	
		-----	-----		
		94,699,905	126,687,313		
		31,987,408			
		-----			
		126,687,313			
		126,687,313			
		PV AT 21.16%	31,987,408		

SERP DIP EXPENSE  
(NET OF INTEREST INCOME)

	INTEREST EXPENSE	INTEREST INCOME	NET IMPACT
1993	6,768,535	(2,000,000)	4,768,535
1994	6,603,417	(2,000,000)	4,603,417
1995	6,208,024	(2,000,000)	4,208,024
1996	5,660,145	(2,000,000)	3,660,145
1997	5,219,423	(2,000,000)	3,219,423
1998	5,013,567	(2,000,000)	3,013,567
1999	4,829,442	(2,000,000)	2,829,442
2000	4,613,714	(2,000,000)	2,613,714
2001	4,321,905	(2,000,000)	2,321,905
2002	3,989,027	(2,000,000)	1,989,027
2003	3,645,636	(2,000,000)	1,645,636
2004	3,302,067	(2,000,000)	1,302,067
2005	2,882,745	(2,000,000)	882,745
2006	2,689,390	(2,000,000)	689,390
2007	2,561,978	(2,000,000)	561,978
2008	2,479,344	(2,000,000)	479,344
2009	2,433,524	(2,000,000)	433,524
2010	2,371,255	(2,000,000)	371,255
2011	2,263,898	(2,000,000)	263,898
2012	2,120,554	(2,000,000)	120,554
2013	1,939,412	(2,000,000)	(60,588)
2014	1,794,800	(2,000,000)	(205,200)

# TAB 3

Genstar Imasco Agreement dated April 2, 1986

AGREEMENT

Following discussions between Imasco Limited ("Imasco"), Imasco Enterprises Inc. ("IEI") and Genstar Corporation ("Genstar"), Imasco, IEI and Genstar have reached the following agreements concerning the take-over bid dated 24 March 1986 by IEI (the "Offer") for all outstanding common shares of Genstar at \$54 (Cdn.) net per common share:

1. Imasco, IEI and Genstar agree to negotiate in good faith, with the advice and participation of their respective financial advisers, with a view to the entering into of an agreement providing for (i) the transfer to IEI or an affiliated company, directly or indirectly, of certain assets of Genstar, including, but not necessarily limited to, the indirect interest of Genstar in Canada Trustco Mortgage Company and (ii) a right of each of the existing holders of Genstar common shares, in addition to the right to receive at least \$54 (Cdn.) per share in cash as contemplated by the Offer, to obtain or retain an equity participation in Genstar as a viable continuing public company, pursuant to the receipt or retention of a Genstar security having a value, in the mutual opinion of the financial advisors to Imasco and Genstar, equal to at least the amount by which \$58 exceeds the cash amount per Genstar common share payable under the Offer, as amended.

2. In particular, the parties agree to negotiate in good faith with respect to:

- (a) the basis on which existing holders of common shares would be entitled to continue as shareholders of Genstar;
- (b) the basis upon which IEI or an affiliated company would acquire any such assets of Genstar;
- (c) the basis on which some of the common shares of Genstar acquired by IEI, whether under the Offer or otherwise, might be converted and/or reclassified into other securities of Genstar, and the terms of any such securities; and
- (d) matters relating to management and control of Genstar following completion of the transaction, including, in particular, the basis on which current management of Genstar will participate in the equity of Genstar on an ongoing basis and in the control of Genstar after such transaction;

- 2 -

3. If the agreement contemplated by clause 1 has not been entered into prior to April 15, 1986, IEI will pay \$58 (Cdn.) per Genstar common share tendered and taken up under the Offer and will amend the Offer accordingly.

4. If the agreement contemplated by clause 1 has been entered into prior to April 15, 1986, IEI will appropriately amend the Offer to reflect such agreement.

5. Simultaneously with the execution of this agreement, Imasco, IEI and Genstar have entered into an agreement which, by its terms, specifies the various undertakings of Imasco and IEI with respect to severance arrangements, benefit plans, employment agreements and related matters in the event that the agreement contemplated by clause 1 is not executed prior to April 15, 1986.

6. The board of directors of Genstar will recommend to shareholders of Genstar that they accept the Offer on the basis of the amendment thereof as contemplated by this agreement.

7. The parties agree to seek all necessary regulatory orders and to co-operate in good faith in order to achieve the objectives provided for herein. Imasco will take all necessary action to cause IEI to comply with the provisions hereof.

8. During the period commencing on the date hereof and continuing until the expiry or termination of the Offer, Genstar agrees, subject to the provisions of clause 9 hereof, that:

- (a) Genstar will, and will cause each of its subsidiaries to, carry on its business in, and only in, the ordinary course in substantially the same manner as heretofore conducted and, to the extent consistent with such business, use all reasonable efforts to preserve intact its present business organization and keep available the services of its present officers and employees and others having business dealings with it to the end that its goodwill and going business shall be maintained;

- 3 -

- (b) Except as publicly announced prior to the date hereof, Genstar will not declare any dividends (other than regular quarterly dividends at rates not in excess of the rates at which dividends were paid on the most recent past dividend payment date) on or make other distributions in respect of its outstanding shares. Genstar will not amend its Articles of Incorporation or By-laws;
- (c) Genstar will not, and will ensure that each of its subsidiaries does not, issue, authorize or propose the issuance of, or purchase or propose the purchase of, any shares of its capital stock of any class of securities convertible into, or rights, warrants or options to acquire, any such shares or other convertible securities (other than pursuant to the exercise in accordance with their current terms of employee stock options outstanding on the date of this agreement or the issuance of shares upon the exercise of any of the foregoing options or the conversion of any presently outstanding convertible securities);
- (d) Genstar will use its best efforts to comply promptly with all requirements which Canadian or United States federal, state or provincial law may impose on Genstar with respect to the Offer;
- (e) Genstar will use, and will cause each of its subsidiaries to use, its reasonable best efforts to obtain (and to co-operate with Imasco and/or IEI in obtaining) any consent, authorization or approval of, or any exemption by, any governmental authority or agency, or other third party, required to be obtained by Genstar or its subsidiaries (or by Imasco and/or its subsidiaries or affiliates) in connection with the Offer or the taking of any action contemplated thereby;
- (f) Genstar will not, and will not permit any of its subsidiaries to, acquire or agree to acquire by amalgamating, merging or consolidating with, purchasing substantially all the assets of or otherwise, any business or any corporation, partnership, association or other business organization or division thereof, which acquisition would be material to the business or financial condition of Genstar and its

subsidiaries taken as a whole or of Genstar Financial Corporation and its subsidiaries taken as a whole;

- (g) Genstar will not and will not permit any of its subsidiaries to sell, lease or otherwise dispose of any of its assets that are material, individually or in the aggregate, to the business or financial condition of Genstar and its subsidiaries taken as a whole or of Genstar Financial Corporation and its subsidiaries taken as a whole;
- (h) Genstar will not and will not permit any of its subsidiaries to incur indebtedness for money borrowed or issue or sell any debt securities;
- (i) Except as disclosed in writing to you at or prior to the time of delivery of this agreement, Genstar will not grant and will not permit any of its subsidiaries to grant any executive officer any increase in compensation or in severance or termination pay, or enter into any employment agreement with any executive officer, except as may be required under employment agreements or plans in effect on the date hereof and except for compensation increases in the ordinary course of business consistent with prior practice;
- (j) Except as required to comply with applicable laws, Genstar will not, and will not permit any of its subsidiaries to, adopt or amend in any material respect any collective bargaining, employee pension, profit-sharing, retirement, insurance, incentive, compensation, severance, vacation or other plan, agreement, trust, fund or arrangement for the benefit of employees (whether or not legally binding);
- (k) Genstar will promptly advise Imasco orally and in writing of any change in the condition (financial or otherwise), properties, assets, liabilities, operations, business or prospects of Genstar or any of its subsidiaries that are likely to be materially adverse to Genstar and its subsidiaries as a whole; and

- (1) Genstar will not, and will not permit its subsidiaries to, enter into any agreement to take any action prohibited by the foregoing provisions of this clause 8.

9. The provisions of clause 8 hereof shall not operate to prohibit or prevent Genstar or any of its subsidiaries from taking any action which has heretofore been authorized or agreed to or committed to by Genstar or any of its subsidiaries (otherwise than in contemplation of or response to the Offer or in contemplation of a change of control of Genstar), or hereafter done by Genstar or any subsidiary in the ordinary course of the business of Genstar or such subsidiary, or expressly contemplated by this agreement or otherwise agreed to in writing by Imasco.

The directors and senior officers of Genstar have no knowledge of any material change, for purposes of the Securities Act (Ontario), in relation to the affairs of Genstar, Genstar Financial Corporation or Canada Trustco Mortgage Company which (a) occurred since September 11, 1985, (b) was adverse and (c) has not been generally disclosed.

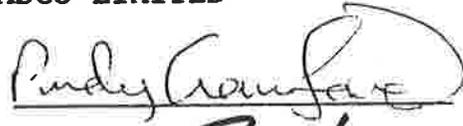
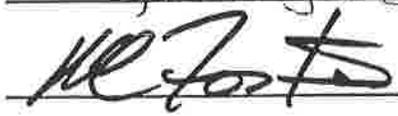
10. Genstar will not, and will ensure that its subsidiaries do not, solicit, initiate or encourage submission of proposals or offers from any other person, entity or group relating to, or facilitate or encourage any effort or attempt with respect to, the acquisition or disposition of all or any substantial part of its issued and outstanding shares, or any amalgamation, merger, sale of all or substantially all of its assets, take-over bid, reorganization, recapitalization, liquidation or winding up of, or other business combination or similar transaction involving Genstar or any of its subsidiaries and any other party (other than Imasco) (each a "Non-Imasco Business Combination"). Subject to the fiduciary obligations of the board of Directors of Genstar to its shareholders, Genstar will not, and will ensure that its subsidiaries do not, participate in any negotiations regarding, or (except as required by law) furnish to any other person, entity or group, any information with respect to, or otherwise cooperate in any way with, or assist or participate in any Non-Imasco Business Combination. If Genstar receives any such enquiry or proposal, it will promptly notify Imasco in writing of all relevant details relating thereto. Genstar will instruct its advisors and representatives not to take or refrain from taking and (subject to their fiduciary

duties) its directors and senior officers not to take or refrain from taking, any action which, if taken or not taken by Genstar, would contravene this clause 10.

11. Promptly after the acquisition of more than 50% of the outstanding common shares of Genstar by IEI, nominees of Imasco shall be appointed to the Board of Directors of Genstar so that nominees of Imasco constitute a majority of the directors of Genstar, and so that all such nominees shall be "continuing directors" for the purposes of the articles and by-laws of Genstar.

Agreed to this 2nd day of April, 1986.

**IMASCO LIMITED**

by   
 C.S.

**IMASCO ENTERPRISES INC.**

by   
 C.S.

**GENSTAR CORPORATION**

by   
 C.S.

# TAB 4

Genstar Imasco Agreement (re Employees)  
dated April 2, 1986

PURCHASE AGREEMENTEFFECTIVE DATE: APR 18 '86

Agreement under Paragraph 5 of the Agreement,  
dated April 2, 1986, among Imasco Limited,  
Imasco Enterprises Inc. and Genstar Corporation

In consideration of the terms and conditions agreed to by Imasco Limited ("Purchaser"), Imasco Enterprises Inc. ("IEI") and Genstar Corporation (the "Company") as set forth in the Agreement (the "Agreement"), dated April 2, 1986, the parties hereto agree as follows in accordance with paragraph 5 of the Agreement.

1. Employee Benefits. Purchaser hereby agrees as follows:

(a) Pension Plans. For a period of five (5) years following the date (the "Effective Time") on which Purchaser or IEI purchases common shares (the "Common Shares") of the Company pursuant to Purchaser's offer (the "Offer"), dated March 24, 1986, as amended, to holders of the Common Shares, Purchaser will maintain, or will cause the Company and its subsidiaries to maintain, each of the qualified defined benefit pension plans (collectively the "Pension Plans") and supplemental retirement plans (collectively, the "Supplemental Plans") of the Company and its subsidiaries on a basis no less favourable to employees

than was in effect on March 1, 1986, or to maintain substitute pension or supplemental plans on bases no less favourable to employees than were in effect under the applicable Pension Plans and Supplemental Plans on March 1, 1986. Without limiting the generality of the foregoing, during such period Purchaser (i) will not amend or cause to be amended any of the Pension Plans or Supplemental Plans to reduce the benefit formulae thereunder, (ii) will cause the Company to grant periodic benefit increases under the Pension Plans to present and future retirees on a basis consistent with the Company's past practice, and (iii) will not voluntarily terminate any Pension Plan, withdraw assets from any Pension Plan (other than a plan which is substantially overfunded) or merge any Pension Plan into another plan, nor permit the voluntary termination of any Pension Plan, withdrawal of assets from any Pension Plan (other than a plan which is substantially overfunded), or merger of any Pension Plan into another plan; provided, however, that the foregoing will not be construed to prohibit the transfer of a portion of the assets and liabilities of the Pension Plans, including any substitute pension plan satisfying the requirements of this subparagraph (a) (which transfer is effected in accordance with applicable law), to another qualified defined benefit

pension plan in connection with any disposition of any or all of the subsidiaries, divisions or businesses of the Company as long as the sponsor of such other qualified defined benefit plan has agreed to maintain such plan on a basis no less favourable than was in effect under the applicable Pension Plan on March 1, 1986 for that period of time remaining in such five (5) year period and to provide a supplemental retirement plan providing benefits no less favourable to employees than those provided under the Supplemental Plans, or any substitute plans therefor satisfying the requirements of this subparagraph (a), for that period of time remaining in the five (5) year period following the Effective Time. In the event of any disposition of any or all of the subsidiaries, divisions or businesses of the Company, nothing in this paragraph will be construed to prohibit the termination of an employee's active participation in any Pension Plan, or such substitute plan, in connection with such disposition, as long as such employee (i) is fully vested in his accrued benefit under the Pension Plan, (ii) begins participation in another qualified defined benefit plan, whose sponsor has agreed to maintain such plan on a basis no less favourable than was in effect under the applicable Pension Plan on March 1, 1986

for that period of time remaining in the five (5) year period following the Effective Time and otherwise to comply with the terms agreed to by Purchaser in this subparagraph (a), (iii) receives full past service credit for vesting and participation purposes in the new plan at least equal to the service credited to such employee under the applicable Pension Plan and such substitute plan and (iv) is entitled to participate in a supplemental retirement plan providing benefits no less favourable than those provided under the Supplemental Plans, or any substitute plans therefor satisfying the requirements of this subparagraph (a), for that period of time remaining in the five (5) year period following the Effective Time. In the event that Purchaser disposes of any or all of the subsidiaries, divisions or businesses of the Company and does not obtain from the acquiror of any such subsidiary, division or business the agreement described in the preceding sentence or in the proviso of the sentence next preceding such sentence, Purchaser will instead continue to provide benefits under supplemental retirement plans to employees of the Company and its subsidiaries employed in such subsidiary, division or business which are no less favourable than such employee would have received under the Pension Plans and Supplemental

Plans, or any substitute plans therefor satisfying the requirements of this subparagraph (a), for that period of time remaining in the five (5) year period following the Effective Time.

(b) Thrift Plan. Purchaser agrees that for a period of two (2) years following the Effective Time, it will maintain, or will cause the Company and its subsidiaries to maintain, the Company's Salaried Employee's Thrift Plan (the "Thrift Plan") on a basis no less favourable to employees than was in effect on March 1, 1986, or to maintain a substitute thrift plan on a basis no less favourable to employees than was in effect under the Thrift Plan on March 1, 1986. In the event of any disposition of any or all of the subsidiaries, businesses or divisions of the Company, the Purchaser will cause the Thrift Plan or such substitute plan (i) to make a plan-to-plan transfer of an employee's account balance in the Thrift Plan or any such substitute thrift plan to another defined contribution plan, as long as the sponsor of such other plan has agreed to maintain such plan on a basis no less favourable than was in effect under the Thrift Plan on March 1, 1986 for that period of time remaining in such two (2) year period, or (ii) to vest an employee who will be employed, directly or

indirectly, by the acquiror of any such subsidiary, business or division subsequent to such disposition in his account balance in the Thrift Plan or such substitute plan and secure the agreement of such acquiror to permit such employee to participate in another defined contribution plan on a basis no less favourable than was in effect under the Thrift Plan on March 1, 1986 for that period of time remaining in such two (2) year period, with past service credit granted for vesting and participation purposes under such plan at least equal to the service credited to such employee under the Thrift Plan and such substitute plan; provided, however, that, in lieu of obtaining such agreement from the acquiror of such subsidiary, division or business, Purchaser may instead continue to provide benefits no less favourable than those provided under the Thrift Plan, or such substitute plan, to employees of the Company and its subsidiaries employed in such subsidiary, division or business which is acquired by such acquiror for that period of time remaining in the two (2) year period following the Effective Time.

(c) Stock Options. Effective as of the Effective Time, each holder of an outstanding and exercisable option to purchase Common Shares granted under the Company's

Employee Incentive Stock Option Plan or the Company's 1982 Employee Incentive Stock Option Plan (collectively, the "Option Plans") will be entitled to receive, upon surrender of each such option, a cash payment from the Company in an amount equal to the product of (i) the price paid (the "Offer Price") for the Common Shares pursuant to the Offer minus the exercise price per share of the option and (ii) the number of Common Shares covered by such option; provided, however, that Purchaser will not require such surrender of such stock options before October 1, 1986; and provided further that the Company shall have no obligation to make a payment hereunder to an option holder if, within a reasonable period of time of such option holder being provided with a form of agreement satisfactory to the Purchaser providing the Company with a right to acquire the option at the price herein provided for, such option holder does not execute and deliver such agreement. Purchaser shall be entitled to cause the purchase of such stock options in accordance with the provisions of applicable law and the foregoing sentence on or after October 1, 1986. Purchaser further agrees that the Company will be permitted to exercise discretion on a selective basis, in accordance with

the Options Plans, to accelerate the exercisability date of stock options issued under the Option Plans.

(d) Welfare Plans. For a period of two (2) years following the Effective Time, Purchaser will maintain, or will cause the Company and its subsidiaries to maintain, each welfare plan of the Company and its subsidiaries on a basis no less favourable to employees than was in effect on March 1, 1986, or to maintain substitute welfare plans on bases no less favourable to employees than were in effect under the welfare plans maintained by the Company and its subsidiaries on March 1, 1986. In the event of any disposition of any or all of the subsidiaries, divisions or businesses of the Company, Purchaser will obtain the agreement of the acquiror of any such subsidiary, division or business to maintain such welfare plans, or substitute plans which provide benefits which are no less favourable than those provided under the welfare plans maintained by the Company or its subsidiaries on March 1, 1986, for that period of time remaining in the two (2) year period following the Effective Time; provided, however, that, in lieu of obtaining such agreement from such acquiror, Purchaser may instead continue to maintain such welfare plans, or such substitute plans, for the benefit of

employees of the Company and its subsidiaries employed in such subsidiary, division or business which is acquired by such acquiror for that period of time remaining in the two (2) year period following the Effective Time. For purposes of this paragraph, "welfare plan" means any health, hospitalization, medical, surgical, salary continuation, life or similar insurance plan or program maintained by the Company or any of its subsidiaries for the benefit of its employees, including, but limited to, any "employee welfare benefit plan" as defined in Section 3(1) of the Employee Retirement Income Security Act of 1974, as amended.

(e) Deferred Income Plan. For a period of two (2) years following the Effective Time, Purchaser will maintain, or will cause the Company and its subsidiaries to maintain, the Company's Deferred Income Plan (the "Deferred Income Plan") on a basis no less favourable to employees than was in effect on March 1, 1986, or to maintain a substitute deferred income plan on a basis no less favourable to employees than was in effect under the Deferred Income Plan on March 1, 1986. In the event of any disposition of any or all of the subsidiaries, divisions or businesses of the Company, Purchaser will obtain the agreement of the acquiror of any such subsidiary, division

or business to maintain the Deferred Income Plan, or a substitute plan providing benefits which are no less favourable than those in effect under the Deferred Income Plan on March 1, 1986, for that period of time remaining in such two (2) year period; provided, however, that, in lieu of obtaining such agreement from such acquiror, Purchaser may instead continue to permit employees of the Company and its subsidiaries employed in such subsidiary, division or business which is acquired by such acquiror to participate in the Deferred Income Plan, or such substitute plan maintained by Purchaser, for that period of time remaining in the two (2) year period following the Effective Time. In no event will a subsequent termination or modification of the Deferred Income Plan adversely affect the rights of any participant therein to receive benefits with respect to contributions made to such plan prior to such termination or modification in accordance with the provisions of such plan in effect on March 1, 1986.

(f) Loans. Purchaser agrees to cause the Company and its subsidiaries to honor the provisions of the amended mortgage and other loan agreements between the Company and certain of its employees. None of such agreements obligate

the Company or its subsidiaries to extend any additional loans to any employee.

(g) Other Plans and Programs. For a period of two (2) years following the Effective Time, Purchaser will maintain and administer, or will cause the Company and its subsidiaries to maintain and administer, each bonus and incentive plan or program (other than plans or programs involving the issuance of stock) of the Company and its subsidiaries in effect on March 1, 1986 on a basis no less favourable to employees than was in effect on March 1, 1986, or to maintain substitute bonus and incentive plans and programs on bases no less favourable to employees than were in effect under the bonus and incentive plans and programs maintained by the Company and its subsidiaries on March 1, 1986. Purchaser shall be under no obligation to maintain, or to cause the Company and its subsidiaries to maintain, any stock, stock option or stock-based plan of the Company and its subsidiaries in effect on March 1, 1986; provided, however, that during such two (2) year period, employees of the Company and its subsidiaries on the date hereof shall be eligible to participate in bonus or incentive compensation plans providing benefits which, in the aggregate, are comparable in amount to those for which they were eligible

under such stock, stock option or stock-based plans. In the event of any disposition of any or all of the subsidiaries, divisions or businesses of the Company, Purchaser will obtain the agreement of the acquiror of any such subsidiary, division or business to maintain and administer such bonus and incentive plans, or substitute plans which provide benefits which are no less favourable than those provided under the bonus and incentive plans maintained by the Company or its subsidiaries on March 1, 1986, for that period of time remaining in the two (2) year period following the Effective Time; provided, however, that, in lieu of obtaining such agreement from such acquiror, Purchaser may instead continue to provide benefits to employees of the Company and its subsidiaries employed in such subsidiary, division or business which is acquired by such acquiror which are no less favourable than those provided under such bonus and incentive plans on March 1, 1986, or such substitute plans, for that period of time remaining in the two (2) year period following the Effective Time. In addition, Purchaser will cause employees of the Company and its subsidiaries to be eligible to participate in Purchaser's stock, stock option and other stock-related plans at levels comparable to the levels of participation

applicable to persons employed in comparable positions;  
provided, however, that such participation will not be required in the event it would necessitate the filing of a registration statement under the United States Securities Act of 1933, as amended, if such filing is not otherwise required. Further, Purchaser will provide, or cause the Company and its subsidiaries to provide, for a period of two (2) years following the Effective Time, to employees of the Company and its subsidiaries such perquisites as have been customarily provided them by the Company and its subsidiaries on a basis no less favourable than was in effect March 1, 1986, including automobile allowances, club membership and vacation days.

(h) Guarantee. Purchaser agrees to, and hereby does, guarantee in full all obligations of the Company and its subsidiaries under the Supplemental Plans and the Deferred Income Plan, and under any supplemental retirement plan or deferred income plan substituted therefor which satisfies the requirements of subparagraphs (a) and (e), respectively.

(i) Service Credit. In the event that any person who is employed by the Company and its subsidiaries on the date hereof becomes an employee of Purchaser or any of its

subsidiaries, such person will receive credit for service with Purchaser and its subsidiaries under all personnel and employee benefit plans and programs of the Company and its subsidiaries including, without limitation, any plans substituted therefor in accordance with this Agreement, unless such person agrees in writing to another arrangement.

(j) Severance Agreements. Purchaser agrees to perform, and assumes, all obligations of the Company and its subsidiaries under the executive severance agreements (the "Severance Agreements") between the Company and each of the officers (the "Officers") listed on Exhibit A hereto.

(k) Separation Policy. For a period of two (2) years following the Effective Time, Purchaser will maintain, or will cause the Company to maintain, the separation policy (the "Separation Policy") attached as Exhibit B hereto, for the benefit of the Company's corporate staff employees (approximately 288 people) and its first two levels of division management (approximately 122 people) (other than persons employed in Canada Trustco, Genstar Container or TXL and persons employed by the Company or its subsidiaries for less than three months at the time of termination of employment), or to maintain a substitute separation policy on a basis no less favourable to such employees than that

provided under the Separation Policy. Further, for a period of two (2) years following the Effective Time, Purchaser will maintain, or will cause the Company and its subsidiaries to maintain, the separation policies in effect for salaried employees of the Company and its subsidiaries, or to maintain substitute policies on bases no less favourable to such employees than those in effect on March 1, 1986. In the event of any disposition of any or all of the subsidiaries, divisions or businesses of the Company, Purchaser will obtain the agreement of the acquiror of any such subsidiary, division or business to maintain the Separation Policy and such other separation policies, or substitute policies which provides benefits which are no less favourable than those provided under the Separation Policy and such other separation policies, for that period of time remaining in such two (2) year period; provided, however, that, in lieu of obtaining such agreement from such acquiror, Purchaser may instead provide benefits, in the event of termination of employment by such acquiror or a subsidiary thereof, to employees of the Company and its subsidiaries employed in such subsidiary, division or business which is acquired by such acquiror which are no less favourable than those which would have been provided

under the Separation Policy and such other separation policies, or such substitute policies, had such employee's employment been terminated thereunder during the two (2) year following the Effective Time.

2. Indemnification and Insurance. Purchaser agrees that all rights to indemnification now existing in favour of the employees, agents, directors or officers of the Company and its subsidiaries (the "Indemnified Parties") as provided in their respective charters or by-laws or otherwise in effect on the date hereof will continue in full force and effect, and be honoured by Purchaser, for a period of five (5) years following the Effective Time; provided, however, that in the event that any claim or claims are asserted or made within such five-year period, all rights to indemnification in respect of any such claims or claims will continue until the disposition of any and all such claims. In the event that any Indemnified Party is entitled to indemnification pursuant to the foregoing sentence, Purchaser, to the extent permitted by applicable law, will or will cause the Company or its subsidiaries, as the case may be, to advance to such Indemnified Party its legal and other expenses (including the cost of any investigation and preparation incurred in connection therewith) within ten

(10) business days of presentation to the Company or such subsidiary of an invoice by an Indemnified Party. Purchaser will cause to be maintained in effect for not less than three (3) years following the Effective Time the current policies of the directors' and officers' liability insurance maintained by the Company and its subsidiaries (provided that Purchaser may substitute therefor policies of at least the same coverage containing terms and conditions that are no less advantageous to the Indemnified Parties as long as no lapse in coverage occurs as a result of such substitution) with respect to all matters, including the transactions contemplated hereby; provided, however, that Purchaser shall not be required to maintain such policies with respect to matters occurring after the Effective Time if it determines in good faith and after using its best efforts to obtain such policies that the annual premium therefor exceeds an amount equal to five times the annual premium payable by the Company with respect to such policies on the date hereof, but in such event Purchaser shall include the Company and its subsidiaries under Purchaser's policies of directors' and officers' liability insurance and such supplemental policies as such additional premiums will purchase, taking into account the appropriate additional

cost of Purchaser's policies allocable to coverage of the Company and its subsidiaries; and provided, further, that in the event that any claim or claims are asserted or made within such three (3) year period, such insurance shall be continued in respect of any such claim or claims until final disposition of any and all such claims. Neither the disposition of any or all of the assets of the Company or any of its subsidiaries nor the sale of any of their respective equity securities shall relieve Purchaser of any obligation under this paragraph 2.

3. 1979 Stock Purchase Plan. Purchaser agrees that immediately following the expiration of the Offer, if Common Shares are purchased under the Offer, it will offer to purchase all preferred shares issued and outstanding under the Company's 1979 Stock Purchase Plan at the Effective Time at a price per share equal to the product of (a) the number of Common Shares which would be received upon conversion of each such preferred share, utilizing a conversion formula based upon a market value for each Common Shares equal to the Offer Price, and (b) the Offer Price per Common Share.

4. Company Management. It is the intention of Purchaser that after the Effective Time the Company will continue to be managed by its management on the date hereof.

5. Company Offices. For a period of three (3) years following the Effective Time, the Company's operations, other than financial services, will continue to be managed in San Francisco, California. The size of the headquarters will be maintained to reflect the scope and nature of the operations from time to time.

6. Effectiveness. The effectiveness of this agreement is conditioned upon the failure of Purchaser, IEI and the Company to execute and deliver the agreement contemplated in clause 1 of the Agreement prior to April 15, 1986.

AGREED to this 2nd day of April, 1986.

**IMASCO LIMITED**

by

[Signature]  
C.S.

**IMASCO ENTERPRISES INC.**

by

[Signature]  
C.S.

**GENSTAR CORPORATION**

by

[Signature]  
C.S.

EXHIBIT A

Parties to Severance Agreements

A.A. MacNaughton

R.J. Turner

W.S. Bannister

J.L. Holman

G.F. Michals

J.A. West

J.E. Hartz

✓ P.J. Kehoe

R.D. Paterson

· J.H. Chase

J.H. Gaul

C.J.B. McNamara

Managerial, Supervisory and Exempt Personnel

Upon termination without cause except for retirement, at normal retirement date, death or disability, separation pay would be one month per year of service, or part thereof, with the following minimum payments. For purposes of calculating the separation pay, the salary rate plus 50% of the maximum incentive opportunity, where applicable, at the time of termination would be used. The maximum payment will be 24 months compensation.

1. Division Presidents - 24 months compensation
2. Senior Managers and Directors (above 1500 Points)  
- 18 months compensation
3. Senior Managers and Directors (901 to 1500 Points)  
- 15 months compensation
4. Managers (600 to 900 Points) - 12 months  
compensation
5. Supervisors, Professionals and Other Exempt  
Personnel - 6 months compensation

Secretarial, Clerical and Other Non-Exempt Personnel

With a minimum of four weeks notice, the separation pay upon termination without cause, except for retirement, at normal retirement date, death or disability,

ONE MONTH  
would be ~~two weeks~~ per year of service with a minimum of three months salary at the rate in effect at the time of termination. Pay in lieu of notice would be paid in addition, if notice is less than four weeks. The maximum payment will be twelve months salary.

**Employee Benefits**

Medical and dental benefit plans would be extended to the terminated employee for the period covered by the separation pay, and/or pay in lieu of notice, but not beyond the employee's commencement of full-time employment with a new employer.

**Career Counselling Upon Termination Without Cause**

The Company would provide professional career counselling services. Full service individual counselling would be provided for those personnel over 600 Points. Individual time limited counselling services would be provided for those from 400 to 600 Points. Group counselling services would be provided for all other personnel.

Relocation Expenses (Approximately 30 People)

For those personnel who have been relocated by the Company since 1979, the Company will absorb the reasonable costs of relocation, not in excess of that to the point of origin from which they were moved by the Company, in accordance with the Company's current relocation expense policy. This policy will only apply where relocation does occur within two years, and where the costs of such relocation have not been absorbed by a new employer. Individual personal financial counselling will be provided to such transferred employees. This policy would not apply to those obtaining full-time employment in the city where they are currently located.

Pension Plan

Service credit would not continue to accrue during the period of separation pay, subject to the limitations of ERISA, however all accrued benefits would become fully vested.

Housing Loans

Upon a change in control, existing housing loans continue to their full term in accordance with the existing plan.

**Housing Assistance Payments (Existing)**

Housing assistance in the form of mortgage rate interest differential and area housing cost differential would be paid for the duration of the separation pay period.

**Execution Perquisites**

All perquisites and fringe benefits in existence would be continued for a three-month period. Corporate-owned club memberships would be transferred to the benefit of the individual employee member at no additional cost to Inasco.

**General**

In the event that any amount received by an employee in accordance with this policy would cause an "excess parachute payment" to exist within the meaning of Sections 280G or 4999 of The Internal Revenue Code, as amended, the Company shall reduce the amount payable to the employee to a lesser amount so that no portion of any amount received by the employee would be an "excess parachute payment."

# TAB 5

Genstar SERP Plan effective July 1, 1984

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GENSTAR CORPORATION  
SUPPLEMENTARY EXECUTIVE RETIREMENT PLAN

(A non-qualified plan)

Effective July 1, 1984

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SUPPLEMENTARY EXECUTIVE RETIREMENT PLAN

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SUPPLEMENTARY EXECUTIVE RETIREMENT PLAN (SERP)

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INTRODUCTION & PURPOSES

The benefits described in this document have been designed by Genstar to include incentive compensation in the retirement income calculation, to overcome the maximum benefit limitations imposed on career executives by tax legislation, and to provide competitive pensions for short service executives who join the company at "mid-career".

The plan is a non-qualified plan under the Internal Revenue Code, and the Income Tax Act of Canada.

A further purpose of this document is to set out benefit conditions and rules for the consistent administration and award of benefits to designated participants by the company.

The plan effective date is July 1, 1984.

IN WITNESS WHEREOF, the corporation has caused this Plan to be executed by its duly authorized officer, and its corporate seal to be hereunto affixed, as of July 1, 1984 as recorded in the minutes of a meeting of the Board of Directors of Genstar Corporation.

Dated \_\_\_\_\_ 1984

By: \_\_\_\_\_  
Name  
Title

Address: Four Embarcadero Center  
Suite 3800  
San Francisco, CA 94111

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SUPPLEMENTARY EXECUTIVE RETIREMENT PLAN

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1.00

## 1.00 DEFINITIONS

- .01 BENEFIT - The gross benefit, as calculated under the formula, described in Section 3.00.
- .02 BENEFIT EARNED - The gross benefit adjusted for age and service at retirement.
- .03 COMPENSATION - Base annual rate of regular salary and incentive awards covered by the Plan, including amounts deferred under any deferred income plan but not including benefits under such plan.
- .04 CURRENCY CONVERSION - The adjustments to benefit entitlements payable in foreign currency, to the currency of the jurisdiction where retirement occurs. Conversion will be made as of the date of the first payment under this plan, based on the New York spot market rate.
- .05 DISABILITY, PERIOD OF - A period of disability prior to attainment of age 65, certified by the attending physician, to be credited as service under the Plan.
- .06 EMPLOYER - Genstar Corporation and affiliated subsidiary companies and divisions in the U.S.A. and Canada.
- .07 EXECUTIVE SUPPLEMENT - The net Plan benefit payable to the Executive participant after all adjustments and offsets.

- .08 FINAL AVERAGE BASE COMPENSATION - The average of the highest consecutive 60 months of base salary paid to the Executive participant in the last 120 months prior to termination of employment.
- .09 FINAL AVERAGE INCENTIVE COMPENSATION - The average of the five highest incentive awards taken from the last ten years prior to termination of employment, or the average of such number of awards with pro-rata awards for past years annualized as have been made to the Executive if less than five.
- .10 OFFSETS - The offsets to the Benefit Earned, as described in Section 5.00.
- .11 PARTICIPANT - An Executive designated by the Chief Executive Officer of Genstar Corporation and approved by the Board of Directors of Genstar Corporation, who holds a position stipulated in Section 2.00: Eligibility & Other Conditions.
- .12 PLAN - "The Plan" means this Supplementary Executive Plan.
- .13 RETIREMENT - Termination of service on or after age 55 with entitlement to benefits under the Plan.

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SUPPLEMENTARY EXECUTIVE RETIREMENT PLAN

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2.00

2.00 ELIGIBILITY & OTHER CONDITIONS

.01 The requirements for eligibility for participation are as follows:

COVERED OR DESIGNATED POSITIONS:

The Chief Executive Officers of Genstar Corporation, corporate Executive Vice Presidents and Vice Presidents and Division Presidents in positions with 2000 or more Hay points, or as approved by the Executive Remuneration Committee.

MINIMUM TIME IN RANK:

A minimum of three years in a covered position as described above is required to qualify for benefits.

POSITION AT RETIREMENT:

Entitlement to benefits requires that the Executive be regularly employed in a designated or covered position immediately prior to the effective date of retirement.

(Table B lists participants at the effective date, unless otherwise indicated).

.02 QUALIFIED BENEFIT LOSS DUE TO DEFERRAL OF INCOME UPON TERMINATION  
BEFORE AGE 55:

If the Executive is a participant in a qualified retirement plan of the Employer at the date of termination of service before age 55 and sustains a loss under the qualified retirement plan as the result of deferral of base salary to the Deferred Income Plan of the Employer, the Employer will make up the said loss.

The said loss shall be made up by the monthly payment by the Employer to the Executive participant of 1/12th of the difference between,

(a) the gross pension payable if amounts of base salary deferrals during the five year final averaging period are included in the calculation under the terms and conditions of the applicable retirement plan of the Employer,

and,

(b) The actual retirement pension calculated in accordance with the retirement plan of the Employer within regulatory requirements as they may affect the retirement plan of the Employer.

This payment will commence when benefits commence under the qualified plan.

.03 QUALIFIED PLANS BENEFIT LOSS DUE TO TRANSFER OF EMPLOYMENT BETWEEN CANADA AND THE UNITED STATES:

Genstar's Canadian and United States pension plans are "Final Average" plans. Under the law, benefits of employees who transfer, for service before the transfer, are calculated based on their final average salary at the time of transfer. Future salary increases do not increase that portion of the benefit as the increases would if all service were in a single country.

In the case of employees who have transferred, the loss of benefit shall be made up by the monthly payment from the Employer to the employee of 1/12th of the difference between,

(a) the qualified pension payable for the pre-transfer service if amounts of base salary after the transfer were included [at par] in the calculation under the terms and conditions of the applicable retirement plan of the Employer,

and,

(b) the actual retirement pension payable for the pre-transfer service calculated in accordance with the retirement plan of the Employer within regulatory requirements as they may affect the retirement plan of the Employer.

This payment will commence when benefits commence under the qualified plan. Benefits will be payable under this section to any employee who transfers employment between the two countries, even if the employee is not a Participant under the remainder of this Plan.

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 SUPPLEMENTARY EXECUTIVE RETIREMENT PLAN
 

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3.00

## 3.00 NORMAL RETIREMENT BENEFITS

.01 The Benefit is calculated as follows:

60% x Final Average Base Compensation

-plus-

60% x Final Average Incentive Compensation.

Subject to maxima for:

(a) Incentive Compensation:

The Final Average Incentive Compensation amount may not exceed the following percentages of Final Average Base Compensation:

For Chief Executive Officers	65%
For Executive Vice Presidents	60%
For all other positions	50%

(b) Overall Maximum Benefit:

The maximum benefit entitlement in any event for any participant is 75% of the annual rate of base compensation in effect for the participant immediately prior to retirement.

.02 Benefit Earned: The Benefit Earned is the Benefit calculated in 3.01, adjusted according to Table A for the executive's age at hire and termination of employment.

- .03 Executive Supplement: The Executive Supplement is the Benefit Earned calculated in 3.02, reduced by the offsets stipulated in 5.00. One-twelfth of the Executive Supplement is payable each month commencing at age 65, and continuing for the duration of the executive's lifetime.
- .04 No benefits are added to the entitlement of a participant by virtue of service in a covered position after attainment of age 65.
- .05 Spouse's Supplement: The Spouse's Supplement is 60% of the Executive's Benefit calculated under 3.02, reduced by the offsets stipulated in 5.00. Where the spouse is more than 3 years junior in age to the Executive, then for such excess the Benefit will be reduced by 1% per year. The supplement is payable to the spouse for the spouse's lifetime commencing after the death of the Executive.

If the Executive has died before retiring, the Spouse's Supplement will be 60% of the Executive Supplement that would have been paid if the Executive had retired at normal retirement age the day prior to his death.

If the executive has died after retiring, the Spouse's Supplement will be 60% of the payment to the Executive at the time of death, payable over the lifetime of the surviving spouse with continuation in the event of the death of the surviving spouse to dependent children until age 19 or until age 22 if still attending school.

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SUPPLEMENTARY EXECUTIVE RETIREMENT PLAN

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4.00

4.00 EARLY RETIREMENT DISCOUNT AND VESTING

.01 EARLY RETIREMENT DISCOUNT

The discount applied to an early retirement Executive Supplement is 5% for each year or portion thereof by which retirement precedes age 65. The discount is reduced, if applicable, by a credit of 1% for each year of credited service in excess of 20 years, to a maximum credit of 10%.

.02 VESTING

No benefits will be payable under this plan if termination occurs before age 55, except as the result of Death (3.05), or Disability (6.04).

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SUPPLEMENTARY EXECUTIVE RETIREMENT PLAN

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5.00

5.00 OFFSETS TO BENEFITS EARNED

All offsets will be calculated as estimated amounts payable at age 65, regardless of the executive's age at retirement.

- .01 Offsets representing the 100% J/S annuity value of any qualified retirement plan sponsored by Genstar or any of its subsidiaries will be subtracted from the Benefit Earned.
- .02 When Federal benefits commence offsets will be deducted from the Benefit Earned at the face value of the following Federal benefits:
  - 50% x Canada Pension Plan, excluding dependent benefits
  - 50% x Quebec Pension Plan, excluding dependent benefits
  - 50% x Social Security, excluding dependent benefits
  - 50% x Old Age Security, excluding dependent benefits
- .03 A further offset against the Benefit Earned is deducted to represent the annuity at the 100% Joint & Survivor value, of any plan of a prior employer maintained for the accrual of retirement income. Where the Plan Benefit Earned is less than 100% then that same lesser percentage will be applied to the annuity value of a prior employer plan in calculating the Executive Supplement.
- .04 Annuity Value will be calculated using the assumptions in the current Retirement Plan sponsored by Genstar Corporation for its salaried employees in the United States.

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SUPPLEMENTARY EXECUTIVE RETIREMENT PLAN

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6.00

6.00 OTHER CONDITIONS OF THE PLAN

The following caveats apply in conjunction with the other conditions governing benefit entitlement.

.01 Guarantee of Employment:

Participation in the Plan is not intended to be and will not be construed by the Employer as a guarantee of employment of any participant.

.02 Future of the Plan:

The Employer expects to maintain the plan in effect indefinitely, however, the Plan may be amended, suspended, discontinued or terminated at the sole discretion of the Chief Executive Officers of Genstar Corporation or its Board of Directors. If the Plan is terminated participants will become fully vested in their Executive Supplement.

.03 Nature of the Genstar Liability:

Genstar may not under current tax regulations, pre-fund the eventual payment of benefits. The participants claim against the Employer for all benefits accrued hereunder or projected for future payment, is in the position of an unsecured creditor.

.04 Disability:

In the event of a period of disability as provided and defined under the insured plans of the Employer;

- (a) The disabled period will count toward vesting and as credited service under the Plan, and
- (b) The Compensation for the purposes of the Plan will be the Final Average Base and Incentive Compensation in effect immediately prior to the onset of the disability.
- (c) The benefits of Employer plans will be paid in the following sequence:
  - o Disabled benefits as provided by the insured plan(s) while disabled, up to age 65, and
  - o Plan benefits as provided herein immediately following attainment of age 65 and the cessation of disability benefits.

.05 Variation of Service Credits and Early Retirement Reduction:

For the purpose of facilitating participant terminations or early retirements the Chief Executive Officers and the Executive Remuneration Committee of the Board may grant additional periods of service and waive early retirement reductions.

.06 Applicable Law:

The provisions of this Plan and the rights of participants and the Employer hereunder will be interpreted and construed in accordance with the laws of the State of California.

TABLE A

SEMP BENEFIT EARNED  
AT RETIREMENT ATTAINED AGES

AGE AT DOH	ATTAINED AGE										
	55	56	57	58	59	60	61	62	63	64	65
35	71.43	75.00	78.57	82.14	85.71	89.28	92.86	96.43	100.00	100.00	100.00
36	70.37	74.07	77.78	81.48	85.19	88.89	92.59	96.30	100.00	100.00	100.00
37	69.23	73.08	76.92	80.77	84.62	88.46	92.31	96.15	100.00	100.00	100.00
38	68.00	72.00	76.00	80.00	84.00	88.00	92.00	96.00	100.00	100.00	100.00
39	66.67	70.83	75.00	79.17	83.33	87.50	91.67	95.83	100.00	100.00	100.00
40	65.22	69.57	73.91	78.26	82.61	86.96	91.30	95.65	100.00	100.00	100.00
41	63.64	68.18	72.73	77.27	81.82	86.36	90.91	95.45	100.00	100.00	100.00
42	61.90	66.67	71.43	76.19	80.95	85.71	90.48	95.24	100.00	100.00	100.00
43	60.00	66.00	70.00	75.00	80.00	85.00	90.00	95.00	100.00	100.00	100.00
44	57.89	63.16	68.42	73.68	78.95	84.21	89.47	94.76	100.00	100.00	100.00
45	56.56	61.11	65.67	70.22	74.78	79.33	83.89	88.44	100.00	100.00	100.00
46	52.94	58.82	64.71	70.59	76.47	82.35	88.24	94.12	100.00	100.00	100.00
47	50.00	56.25	62.50	68.75	75.00	81.25	87.50	93.75	100.00	100.00	100.00
48	46.67	53.33	60.00	66.67	73.33	80.00	86.67	93.33	100.00	100.00	100.00
49	40.00	46.67	53.33	60.00	66.67	73.33	80.00	86.67	93.33	100.00	100.00
50	33.33	40.00	46.67	53.33	60.00	66.67	73.33	80.00	86.67	93.33	100.00
51	26.67	33.33	40.00	46.67	53.33	60.00	66.67	73.33	80.00	86.67	93.33
52	20.00	26.67	33.33	40.00	46.67	53.33	60.00	66.67	73.33	80.00	86.67
53	13.33	20.00	26.67	33.33	40.00	46.67	53.33	60.00	66.67	73.33	80.00
54	6.67	13.33	20.00	26.67	33.33	40.00	46.67	53.33	60.00	66.67	73.33
55		6.67	13.33	20.00	26.67	33.33	40.00	46.67	53.33	60.00	66.67
56			6.67	13.33	20.00	26.67	33.33	40.00	46.67	53.33	60.00
57				6.67	13.33	20.00	26.67	33.33	40.00	46.67	53.33
58					6.67	13.33	20.00	26.67	33.33	40.00	46.67
59						6.67	13.33	20.00	26.67	33.33	40.00
60							6.67	13.33	20.00	26.67	33.33
61								6.67	13.33	20.00	26.67
62									6.67	13.33	20.00
63										6.67	13.33
64											6.67

Table A This table is calculated as 100% of the Benefit being earned over the executive's working period to age 63, but in no event less than 15 years.

For partial ages the benefit can be calculated similarly.

In the event Earned Benefits before age 55 are needed due to a Change in Control (6.07) the calculations will be made on a basis consistent with this table.

# TAB 6

First Thauvette Affidavit,  
dated March 12, 2019 (excerpts)

Court File No.

**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 March 12, 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. This Affidavit is made in support of an application by ITCAN and its affiliated company Imperial Tobacco Company Limited (“ITCO”, and collectively with ITCAN, the “Applicants”) for an Initial Order and related relief under the *Companies' Creditors Arrangement Act*, RSC 1985, c C-36, as amended (the “CCAA”).

2. I joined ITCAN on August 12, 1996 as an Internal Auditor. In my current role as the Chief Financial Officer of ITCAN, I am responsible for all financial-related aspects of ITCAN’s business operations. I am also an officer and director of ITCO. As such, I have personal knowledge of the matters deposed to herein including, without limitation, the business affairs of both Applicants. Where I have relied on other sources for information, I have stated the sources of my belief and believe them to be true. In preparing this Affidavit, I have also consulted with other

members of the Applicants’ senior management team (the “Senior Management”) and reviewed certain information provided by financial advisors to the Applicants.

3. This Affidavit is organized in the following sections:

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***I. Introduction***

4. ITCAN is primarily a tobacco importer. It is also an importer of Tobacco Heated Products (“THPs”) and Vaping Products (collectively with THPs, the “potentially reduced-risk products” or “PRRPs”). Its subsidiary, ITCO, is the exclusive distributor of tobacco products and PRRPs imported into Canada by ITCAN. ITCO sells 15 brands of cigarette products and PRRPs under various trademarks to approximately 26,825 retailers and 184 wholesalers. Collectively, the Applicants’ operations generated taxes payable to various levels of government totalling approximately \$4.0 billion in 2018. Approximately 466 permanent, full-time and 98 contract employees across Canada rely on the continued existence of the Applicants for their livelihoods. Other key stakeholder groups include ITCAN’s ultimate parent company British American Tobacco, p.l.c. (“BAT”), retired employees, customers, landlords, suppliers, and contingent litigation creditors.

5. The Applicants face an existential threat from litigation across Canada, including multiple class actions, government claims seeking to recover health care costs, and other ongoing proceedings (collectively the “Tobacco Litigation”). While the Applicants dispute liability and entitlement to remedial relief, the plaintiffs in the Tobacco Litigation seek hundreds of billions of

43. On February 1, 2017, ITCO leased space in Vancouver, British Columbia in order to open a retail space. ITCO currently operates a retail space called “Taste and Circle” at this location, which is comprised of one adults-only section that sells Glo Products and accessories.

44. The Applicants intend to maintain their existing leases during the course of these proceedings.

(e) ***Employees***

45. The Applicants employ approximately 466 permanent full-time employees in Canada who rely on the continued existence of the Applicants for their livelihoods. The following chart sets out the approximate number of the Applicants’ permanent employees by province as at December 31, 2018:

<b>Location</b>	<b>Employees</b>
Quebec	268
Ontario	103
Alberta	29
British Columbia	35
Saskatchewan	7
Manitoba	7
Nova Scotia	7
New Brunswick	6
Newfoundland and Labrador	4
<b>Total (Approximately)</b>	<b>466</b>

46. In addition, as of December 31, 2018, the Applicants employed approximately 98 contract employees on a full-time basis.

47. The Applicants paid wages and salaries of approximately \$70 million in 2018.

48. The Applicants do not anticipate any changes with respect to their employees as a result of this CCAA filing.

(f) ***Pension Benefits***

49. The Applicants have three registered Canadian pension plans in place. The Imasco Pension Fund Society (“IPFS”) and the Imperial Tobacco Corporate Pension Plan (“ITCPP”) are registered, defined benefit pension plans (collectively, the “DB Plans”). The Imperial Tobacco Canada Limited Defined Contribution Pension Plan (the “DC Plan”) is a registered, defined contribution pension plan. Benefits under the DB Plans are determined based on a formula which includes the employee’s years of service and final average remuneration. The DB Plans were closed to new members in May 2006; however there are still active employees who are DB Plan members. The DC Plan is provided for employees who joined the Applicants since May 2006.

50. The DB Plans are registered in Quebec and both have an actuarial surplus on a “going concern” basis as of January 1, 2018. While the DB Plans are not currently fully funded on a solvency basis, I’m informed by Julien Ranger of Osler, Hoskin & Harcourt LLP (“Osler”) and believe that pension plans registered in Quebec are not required to be funded on a solvency basis. Since the DB Plans each have an actuarial surplus on a going concern basis, no amortization payments are required with respect to the DB Plans pursuant to the applicable Quebec pension legislation. ITCAN intends to continue to make “normal cost” payments or “current service” contributions and any legally required amortization payments in respect of the DB Plans and any required employer contributions to the DC Plan during the course of these proceedings.

51. ITCAN has caused two irrevocable Letters of Credit (“LOCs”) to be issued in favour of the ITCPP and two LOCs to be issued in favour of the IPFS, as permitted by the *Supplemental Pension Plans Act*, C R-15.1, to partially offset the required pension contributions

for ITCPP and IPFS, as applicable. The total amount of these LOCs is approximately \$68 million. Three of the LOCs are issued by the Bank of Nova Scotia (“BNS”) (\$31 million) and one LOC is issued by HSBC Bank Canada (“HSBC”) (\$37 million).

52. If for any reason the pension administrator of the ITCPP or the IPFS makes a demand for payment in respect of any of these LOCs, the face value of the LOC becomes immediately payable into the ITCPP or the IPFS, as applicable. ITCAN must reimburse BNS within 5 business days after receiving notice from BNS of a drawing under an LOC issued by BNS.

53. Similar LOC provisions require that ITCAN pay HSBC within 10 business days of HSBC making such a demand after a draw down on the LOC issued by HSBC. ITCAN does not have any bank accounts with HSBC.

54. As mentioned above in the description of IHGI liabilities, there is also a U.S. tax qualified defined benefit pension plan (the “IHGI U.S. Pension Plan”), which Mark Maloney of King & Spalding LLP advises and I believe is subject to Title IV of the *U.S. Employee Retirement Income Security Act of 1974*, as amended (“ERISA”). ITCAN also intends to continue to make ordinary course payments in respect of the IHGI U.S. Pension Plan during the course of these proceedings.

55. Detailed descriptions of these four pension plans as well as other (non-registered) pension and retirement savings obligations are summarized in a chart in Exhibit “C”. ITCAN also intends to continue to make its required ordinary course payments in respect of the additional pension and retirement savings obligations during the course of these proceedings, with the exception of (i) a non-U.S. tax qualified “deferred income plan” for approximately 53 individuals who are either former senior management employees of Genstar or their surviving spouses

(“GCDIP”), (ii) a non-U.S. tax qualified “supplemental executive retirement plan” for approximately 14 individuals who were either former Genstar employees or their surviving spouses (“SERP”), and (iii) a non-U.S. tax qualified “supplementary pension plan” for 3 individuals who were either former Genstar employees or their surviving spouses (“SPEN”). The GCDIP, SERP, and SPEN are not U.S.-tax qualified retirement plans or funded. Pursuant to an agreement dated April 2, 1986, ITCAN guaranteed payment of these obligations.

56. The present value of the plan obligations under the GCDIP, SERP, and SPEN is estimated to be approximately \$43 million dollars in the aggregate. ITCAN proposes that any further payments with respect to these obligations be stayed pursuant to the Initial Order.

(g) ***Stock-Based Compensation Plans***

57. Eligible senior executives of ITCAN participate in some of BAT’s stock-based compensation plans, including a long-term incentive plan (“LTIP”) and a deferred share bonus scheme (“DSBS”). Under those plans, participants are awarded common shares in BAT, subject to the terms and conditions of either the LTIP or DSBS and the governing award documentation.

58. Under the LTIP, participants receive an Award Certificate every year setting out the number of shares covered by the award for that year. Participants are eligible to receive BAT shares at no cost – up to the maximum set out in the award – with the actual number of shares to be received depending on the achievement of performance conditions over the three-year period covered by the award. Participants are also entitled to receive a cash payment equivalent to the dividends that would have accrued to a shareholder during the performance period on the number of shares that vest. If a participant ceases employment prior to the end of the performance period, the vesting, if any, is subject to the terms and conditions of the LTIP and related documentation.

59. Under the DSBS, awards of common shares in BAT generally vest after three years from date of grant and may be subject to forfeit if the participant leaves employment before the end of the three-year holding period. If a participant ceases employment prior to the third anniversary of the award, the vesting, if any, is subject to the terms and conditions of the DSBS and related documentation.

60. During the three year vesting period, the BAT shares are held in trust by the Imperial Tobacco Canada Employee Trust (the “Employee Trust”). ITCAN contributes cash to the Employee Trust, which the Trust uses to acquire BAT shares. The shares are then distributed to the beneficiaries – the eligible employees of ITCAN – once the awards vest under the terms of the LTIP and/or DSBS, as applicable. BAT does not pay dividends on the shares to the Employee Trust, as dividends have been waived by the Employee Trust. According to the Employee Trust’s financial statement, the assets of the Employee Trust as of December 31, 2018 consist of shares (approximate market value of £7.3 million) and very nominal cash. The trustee of the Employee Trust is AST Trust Company. ITCAN intends to continue the LTIP and DSBS programs during the course of these proceedings.

61. The Applicants have developed an Incentive Bonus Program for certain key employees during the CCAA proceedings. The Program is based on a pre-existing retention and recognition framework that BAT applies globally. It provides incentives for three groups of employees to encourage them to remain with the Applicants during the CCAA proceedings as described below:

- (a) *Leadership Team*: Approximately four members of the Applicants’ leadership team will be eligible for a bonus of up to 50% of base salary for each year of the program, with half of the amount paid in six-month recognition payouts and half at the end

of the program. The program will end at the end earlier of three years or the completion of a successful CCAA restructuring, and the bonus payments will be pro-rated based on active service during the bonus program period.

- (b) *Group 1:* Approximately six employees identified as critical will be eligible for a bonus of up to 25% to 37.5% of base salary for each year of the program, with half of the amount paid in six-month recognition payouts and half at the end of the program. The program will end at the end of earlier of two years or the completion of a successful CCAA proceeding, and the bonus payments will be pro-rated based on active service during the bonus program period.
- (c) *Group 2:* Approximately 25 employees identified as having key talents and critical skills will be eligible to receive a bonus of up to 12.5% to 25% of base salary for each year of the program, all of which will be paid at the end of the program. The program will end at the end of earlier of two years or the completion of a successful CCAA proceeding, and the bonus payments will be pro-rated based on active service during the bonus program period.

62. The Incentive Bonus Plan for the Leadership Team and Group 1 was triggered by the Applicants' initial filing, whereas the Plan for Group 2 employees will be triggered by the Applicants at a later date. In each case, the bonus payments are subject to a number of conditions, including successful performance by the employee and the employee remaining in their current role for the entire duration of the program for their group, with a full claw back if an employee resigns or is terminated for cause before the end of the program.

63. The Incentive Bonus Plan will cost an estimated \$5 million over the life of the Plan. The payments to employees will not be secured by a court-ordered charge.

(h) ***Post-Retirement and Post-Employment Benefits***

64. In both Canada and the U.S., there are unfunded plans that provide healthcare and life insurance benefits during retirement, as well as post-employment benefits, including various disability plans and medical benefits available to former or inactive employees. These benefits are available to approximately 2051 members of the DB Plans. DC Plan members are not eligible for these benefits. Approximately 148 IHGI U.S. Pension Plan members were also entitled to post-retirement health benefits from IHGI until December 31, 2018. However, this plan was terminated by IHGI effective as of December 31, 2018 and participants are required to file any and all claims incurred on or before such date for eligible care, services or products under the plan by March 31, 2019.

65. The aggregate annual cash contribution in 2018 to provide these post-employment and post-retirement benefits was approximately \$5.1 million for Canada and USD \$1.7 million for the U.S.

66. The post-retirement health plan is administered by Blue Cross in Canada and by Zenith American Solutions in the U.S. ITCAN intends to continue these programs during the course of these proceedings. However, the U.S. post-retirement health plan will only be continued to the extent necessary to process any and all claims incurred on or before December 31, 2018 (the date this plan was terminated) for eligible care, services or products under the plan that are properly filed by March 31, 2019.

potential public market considerations in New York and London in their CCAA application, including in relation to notice and timing of their filing.

SWORN BEFORE ME at the City of  
Toronto, in the Province of Ontario, this  
12<sup>th</sup> day of March, 2019.

Waleed Malik  
Commissioner for Taking Affidavits

WALEED MALIK  
LSO. No. 678460

Eric Thauvette  
Eric Thauvette

THIS IS **EXHIBIT "C"** TO THE AFFIDAVIT  
OF ERIC THAUVETTE, SWORN BEFORE ME  
ON MARCH 12, 2019

Waleed Malik

Commissioner for Taking Affidavits

WALEED MALIK  
LSO #678960

**PROJECT REDUX  
PENSION / BENEFIT SUMMARY SHEET**

**OVERVIEW**

**All amounts and numbers as at December 31, 2017 unless otherwise indicated and all amounts are in \$CDN unless otherwise indicated**

<b>Item</b>	<b>Jurisdiction</b>	<b>Plan / Benefit</b>	<b>Total # of Plan participants as at December 31, 2017</b>	<b>Description</b>	<b>Employer Funding Information</b>
1.	Canada	Imasco Pension Fund Society (IPFS or Society)	2366 (54 active, 2154 pensioners and beneficiaries, 158 other)	Defined benefit plan, registered in Quebec, closed to new members May 2006; covers ITCAN and former Imasco defined benefit pension liabilities for grades below 36	Actuarial valuation done yearly 97.4% funded on a solvency basis Market value of assets – \$914M Solvency liability – \$983M Employer amortization payment: \$1,031,000. Employer normal cost - \$1,596,000 in 2017
2.	Canada	Imperial Tobacco Corporate Pension Plan (ITCPP)	593 (28 active, 461 pensioners and beneficiaries, 104 other)	Defined benefit plan, registered in Quebec, closed to new members May 2006; covers ITCAN and former Imasco defined benefit pension liabilities for grades above 36 and includes Canadian Genstar defined benefit pension liabilities	Actuarial valuation done yearly 94.2% funded on a solvency basis Market value of assets – \$290M Solvency liability– \$308M Employer amortization payment: \$1,199,000. Employer normal cost - \$1,353,000 in 2017
3.	Canada	Imasco Corporate Supplementary Pension Plan (ICSPP or RCA1)	155 (1 active, 148 pensioners and beneficiaries, 6other)	Defined benefit plan, provides benefits relating to service pre-February 2000 where pension determined under registered pension plan formula limited by maximum limits under Income Tax Act.	Actuarial valuation done yearly Market value of assets – \$73M Terminal Funding Liability – \$70M Employer funding obligation for 2018 - nil
4.	Canada	Imperial Tobacco Supplementary Pension Plan	223 (58 active, 144 pensioners)	Defined benefit plan, provides benefits relating to service post-February 2000 where pension determined under registered pension plan	Actuarial valuation done yearly Market value of assets – \$111M

Item	Jurisdiction	Plan / Benefit	Total # of Plan participants as at December 31, 2017	Description	Employer Funding Information
		(ITSP or ITSup or RCA2) and Imperial Tobacco Supplementary Executive Pension Plan	and beneficiaries, 21 other)	formula limited by maximum limits under Income Tax Act.	Terminal Funding Liability – \$106M Employer funding obligation for 2018 - nil
5.	Canada	ITCL Defined Contribution Retirement Plan	472	Defined contribution plan, recently registered in Quebec, for employees who joined ITCL post-May 2006	Annual cash contribution in 2017 – \$2.4M Total plan assets as of December 31, 2017 – \$30M
6.	Canada	ITCL Non-Registered Savings Plan	7	DC plan excess, non-registered	In the event that an employee’s total annual contribution to the ITCL Defined Contribution Retirement Plan exceeds the maximum limits under the Income Tax Act, excess contribution is remitted into the employee’s excess defined contribution non-registered account
7.	Canada	Group Retirement Savings Plan (Group RSP)	53	Optional to employees; no company contributions; ITCL is policyholder and Plan Sponsor	N/A
8.	US	IHGI and Participating Affiliates Retirement Plan (IHGI Pension Plan)	2528	Registered DB plan for former employees of predecessor companies and business throughout the US (including Genstar Company, Hardee’s Food Systems Inc., and Fast Food Merchandisers Inc.)	Valuation done yearly 82% funded on accounting basis; 71% funded on PBGC termination basis Accounting disclosure as at 12.31 2017: Market value of Assets – USD76M Projected Benefit Obligations – USD93M
9.	US	Genstar Corporation	53	Not funded or registered, contractual obligation to former senior management of Genstar Corporation	Total US DIP, SERP and SPEN present value obligation estimated to be USD\$32M

Item	Jurisdiction	Plan / Benefit	Total # of Plan participants as at December 31, 2017	Description	Employer Funding Information
		Deferred Income Plan (DIP)			
10.	US	Genstar Corporation Supplementary Executive Retirement Plan (SERP)	14	Not funded or registered, contractual obligation to former Genstar employees	Total US DIP, SERP and SPEN present value obligation estimated to be USD\$32M
11.	US	Supplementary Pension Plan (SPEN)	3	Not funded or registered, contractual obligation to former Genstar employees	Total US DIP, SERP and SPEN present value obligation estimated to be USD\$32M

# TAB 7

Second Thauvette Affidavit,  
dated March 27, 2019 (excerpts)

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 March 29, 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. In preparing this Affidavit, I have consulted with other members of the Applicants’ senior management team, legal, financial and other advisors of the Applicants, and representatives of FTI Consulting Canada Inc. (“FTI” or the “Monitor”).

2. This Affidavit is made in support of a motion by the Applicants for an Order under the *Companies’ Creditors Arrangement Act*, RSC 1985, c C-36, as amended (the “CCAA”),

extending the Stay Period (defined below) up to and including June 28, 2019 and making certain amendments to the Initial Order (defined below).

## ***I. Background***

3. The Applicants were granted CCAA protection by an order of the Ontario Superior Court of Justice (Commercial List) dated March 12, 2019 (the “Initial Order”). The Initial Order appointed FTI as the Monitor and granted a stay of proceedings in favour of the Applicants until and including April 11, 2019 (the “Initial Stay Period”), among other things.

4. The Applicants sought CCAA protection as they are facing 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 (the “Medicaid Actions”), and other ongoing proceedings (collectively the “Tobacco Litigation”). 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 (the “Quebec 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 over \$600 billion.

5. While the Applicants dispute liability and entitlement to the relief requested, the plaintiffs in the Tobacco Litigation seek damages that, in the aggregate, exceed the Applicants’ total assets by many orders of magnitude. As a result, the Applicants concluded it was in their best interests and the best interests of all of their stakeholders to engage in a restructuring process with the overriding objective of resolving all Tobacco Claims (as defined in the Initial Order) in a controlled and orderly process under Court supervision.

6. ITCAN, JTI-Macdonald Corp. (“JTI”), and Rothmans Benson & Hedges Inc. (“RBH”) are the three major Canadian manufacturers and distributors of tobacco products. JTI and RBH have also been granted CCAA protection under orders made on March 8, 2019 and March 22, 2019, respectively.

## ***II. Discussions with Tobacco Litigation Plaintiffs***

7. I am advised by Marc Wasserman of Osler, Hoskin & Harcourt LLP that the Applicants’ counsel extended invitations to counsel representing plaintiffs in various Tobacco Litigation to meet with them and to establish lines of communications shortly after the granting of the Initial Order. In particular, meetings were held with counsel for the following Tobacco Litigation plaintiffs: (a) the Quebec Class Action plaintiffs; (b) British Columbia, Manitoba, New Brunswick, Nova Scotia, Prince Edward Island, and Saskatchewan in those provinces’ Medicaid Actions; (c) Ontario in Ontario’s Medicaid Action; and (d) Alberta in Alberta’s Medicaid Action. The Monitor and its counsel participated in all of these meetings.

8. The Applicants’ meetings with counsel for the Tobacco Litigation plaintiffs were productive with a frank and open exchange of views, including with respect to the Initial Order and the CCAA proceedings. The Applicants agreed to consider matters raised by counsel for the Tobacco Litigation plaintiffs and to move forward on a consensual basis to the extent possible. The Applicants intend to continue this dialogue with a view to developing a framework for future discussions and, ultimately, a plan of compromise or arrangement for the benefit of all stakeholders.

9. The Applicants’ counsel have also met with the Honourable Warren K. Winkler in his capacity as the “Interim Tobacco Claimant Coordinator” and his counsel to discuss his appointment in these CCAA proceedings.

### ***III. Communications with Suppliers, Vendors, and Customers***

10. Since filing for CCAA protection, the Applicants' senior management have spoken directly to representatives of numerous strategic business relationship partners, including suppliers of transportation, financial, and marketing services. The Monitor participated in many of these discussions. Further, counsel for the Applicants, the Monitor, and counsel for the Monitor have communicated with counsel representing certain suppliers.

11. The Applicants are working diligently with the Monitor to consensually resolve creditor and supplier issues as they arise. This includes considering requests for payment of pre-filing obligations, dealing with the ongoing needs of the business and operations, and answering general questions about the CCAA process and how it will affect particular vendors, suppliers, or other creditors.

12. The Applicants have also advised significant customers that they intend to continue business in the ordinary course and have the financial resources to do so.

13. The early communication strategy for critical business relationships implemented by the Applicants and the Monitor yielded positive results. All of the Applicants' suppliers have continued to supply goods and services post-filing based on existing arrangements or terms negotiated with the Applicants with the result that there has been negligible disruption or impairment of the Applicants' business operations.

### ***IV. Communications with Employees and Retirees***

14. The Applicants sent communications to their employees and Canadian retirees shortly after obtaining the Initial Order to inform them of the CCAA filing and to proactively address any concerns that the employees and retirees may have had.

15. An email was sent to all of the Applicants' employees on March 12, 2019 informing them that the Applicants had applied for CCAA protection, and assuring them that the Applicants will continue to operate in the ordinary course, that employee pay, bonuses and benefits would not be affected, and that the Applicants did not have any plans for staffing changes because of the CCAA filing. The email to employees attached a set of FAQs providing additional information about the CCAA filing.

16. The Applicants also held a townhall meeting for their employees in Montreal on the morning of March 13, 2019. The townhall was streamed live and recorded for field employees outside of Montreal as well.

17. A letter dated March 13, 2019 was sent to the Applicants' Canadian retirees informing them that the Applicants had applied for CCAA protection, and assuring them that these CCAA proceedings will not have any impact on the Applicants' day-to-day operations or their Canadian pensions and benefits. The letter also included a set of FAQs providing additional information about the CCAA filing, referred retirees to the Monitor's website, and noted that additional information about the CCAA proceedings was available on the website.

#### ***V. Communications with Tax Authorities***

18. I am advised by Mr. Wasserman that the Applicants' counsel met with counsel for the Canada Revenue Agency to discuss various issues, including payments under the July 31, 2008 Comprehensive Agreement between ITCAN and Her Majesty the Queen in Right of Canada and the Provinces and matters related to the Applicants' tax audit. In addition, ITCAN has had discussions with the provincial taxing authorities.

## ***VI. Chapter 15 Proceedings***

19. I am advised by Jennifer Feldsher of Bracewell LLP, U.S. counsel to FTI, that on March 13, 2019 (the “Petition Date”), FTI, as Monitor, filed a petition for relief under Chapter 15 of the United States Bankruptcy Code (the “Bankruptcy Code”) on behalf of ITCAN, seeking (a) recognition of the Monitor as the foreign representative of ITCAN; (b) recognition of this CCAA proceeding as a foreign main proceeding pursuant to sections 1515, 1517, and 1520 of the Bankruptcy Code; (c) recognition and enforcement of the Initial CCAA Order; and (d) other appropriate relief under the Bankruptcy Code (the “Chapter 15 Case”).

20. The Chapter 15 Case was filed in the United States Bankruptcy Court for the Southern District of New York (the “U.S. Court”). Along with the petition for recognition of ITCAN’s CCAA proceeding (the “Recognition Hearing”), FTI also filed a (i) notice application to schedule the recognition hearing, specify a deadline for filing objections, and specify a form and manner of notice to interested parties (the “Notice Application”); and (ii) an application for interim relief seeking a temporary restraining order and a preliminary injunction order staying execution against the assets, business operations and supply chain, inventory management and distribution processes of ITCAN in the United States pending the Recognition Hearing (the “Injunctive Relief”).

21. Judge Shelley C. Chapman was assigned to the case and an initial hearing took place before her on March 14, 2019. At the first day hearing, Judge Chapman approved the Notice Application and the Injunctive Relief on an *ex parte* basis.

22. Objections to the Injunctive Relief were due on March 22, 2019. FTI did not receive any timely objections to entry of the preliminary injunction order or the requested Injunctive Relief. Accordingly, the Court cancelled the hearing and entered the preliminary injunction order

on March 25, 2019. Under the preliminary injunction order, the following relief was granted pending the Recognition Hearing:

- (a) establishing the Monitor as the “foreign representative” of ITCAN;
- (b) enjoining all persons and entities from seizing, attaching, possessing, executing, and/or enforcing liens against the assets, businesses operation, or processes of ITCAN; and
- (c) providing that the automatic stay pursuant to section 362 of the Bankruptcy Code applies in the Chapter 15 Case within the territorial jurisdiction of the United States.

23. The Recognition Hearing is scheduled for April 15, 2019, and any objections are due by April 8, 2019.

24. Notice of FTI’s motion papers and approved orders in the Chapter 15 Case have been served on, among others, those entities against whom provisional relief was being sought in the United States and parties to litigation pending in the United States in which ITCAN was a party as of the Petition Date.

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, 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.

## ***VII. Stay Extension***

26. The Applicants are seeking to extend the Stay Period up to and including June 28, 2019. The extension of the Stay Period is necessary and appropriate in the circumstances to allow for the continued operation of the Applicants’ business while they work towards developing a plan of compromise or arrangement for the resolution of the Tobacco Claims.

27. I believe that the Applicants have acted and are continuing to act in good faith and with due diligence in these CCAA proceedings since the granting of the Initial Order. As described above, the Applicants have been working diligently, in consultation with the Monitor, to establish lines of communication with the Tobacco Litigation plaintiffs with a view towards ultimately developing a plan of compromise or arrangement.

28. I understand that the Monitor will be providing an updated Cash Flow Forecast which will demonstrate that the Applicants will have access to sufficient liquidity to fund operations during the requested extension of the Stay Period.

29. The Monitor has expressed its support for the extension of the Stay Period to June 28, 2019.

SWORN BEFORE ME at the City of Montreal, in the Province of Quebec, this 29<sup>th</sup> day of March, 2019.

I. Berthiaume  
Commissioner for Taking Affidavits

Eric Thauvette  
Eric Thauvette



APPLICANTS

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

Proceeding commenced at Toronto

**AFFIDAVIT OF ERIC THAUVETTE**  
(Sworn March 29, 2019)

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Fax: (416) 862-6666

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

Matter No: 1144377

# TAB 8

Third Thauvette Affidavit,  
dated April 2, 2019 (excerpts)

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 April 2, 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. In preparing this Affidavit, I have consulted with other members of the Applicants’ senior management team, legal, financial and other advisors of the Applicants, and representatives of the Monitor.

2. I am swearing this Affidavit in response to the motion brought by the representative plaintiffs (the “Quebec Class Action Plaintiffs”) in the Letourneau and Blais class actions (the “Quebec Class Actions”) for an order, among other things, prohibiting the Applicants from making

any payments to members of the BAT Group and the ITCAN Subsidiaries (both terms defined below), except payments for physical inventory actually supplied by such parties.

3. The relief sought by the Quebec Class Action Plaintiffs betrays a fundamental lack of understanding on their part about the Applicants' business. The Applicants' operations have been integrated with the BAT Group over the years to take advantage of the BAT Group's scale and its collective resources. The Applicants outsource many business critical services to the BAT Group, ranging from the most basic accounting functions like accounts payable and receivables to the critically important research and development ("R&D") function required for protecting the Applicants' market share. The costs of these shared services are allocated to the BAT Group members across the world, all of which benefit from them, and this integration has successfully resulted in reduced operating costs and increased profitability for the Applicants.

4. This Affidavit is organized in the following sections:

I.	The Applicants are Part of a Global, Highly-Integrated Business.....	3
II.	The BAT Group Provides Critical Services.....	5
	(a) Manufacturing Services.....	6
	(b) Innovation Royalties .....	6
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	(e) Accounting and Human Resources Services.....	8
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III.	The Services Provided by the BAT Group are Necessary for the Applicants' Business ..	12
IV.	The Payments to the BAT Group are not a Transfer of Profits .....	13
V.	Payments to ITCAN Subsidiaries .....	14
VI.	Other Issues.....	15
	(a) The Applicants Have Many Tobacco Litigation Stakeholders in Addition to the Quebec Class Action Plaintiffs.....	15
	(b) The Applicants Made Full Disclosure at the Initial Order Hearing .....	15
	(c) There are no Life Insurance Policies Related to the Genstar Deferred Income Plans ...	17

## ***V. Payments to ITCAN Subsidiaries***

33. The Quebec Class Action Plaintiffs are also attempting to halt any payments by the Applicants to their subsidiaries listed in Schedule “B” to the Initial Order (the “ITCAN Subsidiaries”).

34. There are no such payments in Canada. The Applicants record intercompany journal transfers to Imperial Tobacco Products Limited, Marlboro Canada Limited, Cameo Inc., Medallion Inc., Allan Ramsay and Company Limited, John Player & Sons Ltd., and Imperial Brands Ltd. (collectively, the “Trademark Companies”) pursuant to agreements granting ITCAN licenses to use their trademarks. However, the Trademark Companies do not have their own bank accounts and the Applicants only record intercompany journal transfers for the amounts owing to the Trademark Companies.

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.

## ***VI. Other Issues***

### ***(a) The Applicants Have Many Tobacco Litigation Stakeholders in Addition to the Quebec Class Action Plaintiffs***

37. The Quebec Class Action Plaintiffs have attempted to create the impression that they are somehow unique as compared to the other plaintiffs in the tobacco-related litigation. Many other plaintiffs have been advancing significant Tobacco Claims (as defined in the Initial Order) for a long time, and have invested significant time and resources in the prosecution of their claims. For example, I am advised by Craig Lockwood of Osler, Hoskin & Harcourt LLP that the Province of British Columbia has been prosecuting its Medicaid action since 1998 and it is seeking an estimated \$118 billion in damages. Similarly, New Brunswick has been prosecuting its Medicaid action since 2008 for damages in the range of \$11-\$60 billion and its trial was scheduled to begin in November 2019 until recently.

### ***(b) The Applicants Made Full Disclosure at the Initial Order Hearing***

38. In their motion materials, the Quebec Class Action Plaintiffs asserted that the Applicants failed to make full disclosure because they did not disclose that certain motions had been scheduled at the Quebec Court of Appeal to be argued on March 25, 2019. This is incorrect. I was present at the March 12, 2019 hearing and counsel to the Applicants informed Justice McEwen of these pending motions during their oral submissions.

39. In addition, the Quebec Class Actions Plaintiffs have misrepresented the events leading to the motions before the Quebec Court of Appeal and the Applicants' CCAA filing. The

Applicants did not choose to file a motion with the Quebec Court of Appeal while intending to make a CCAA filing. The Applicants' view was that (a) the judgment of the Court of Appeal for Quebec released on March 1, 2019 (the "Quebec Appeal Judgment") was not executory; (b) ITCAN's only potential obligation under the Quebec Appeal Judgment was to pay an initial deposit into its counsel's trust account within 60 days; and (c) ITCAN's share of the initial deposit would be paid using the funds ITCAN had previously posted with the court with a minor top up.

40. It soon became apparent that the Quebec Class Action Plaintiffs took a different view. Immediately upon release of the Quebec Appeal Judgment, on March 1, 2019, the Quebec Class Action Plaintiffs attended at the court registry to request that the funds paid into court by ITCAN and Rothmans Benson & Hedges Inc. be paid out to them. Once that request was denied, they filed a motion on the same day to have the funds posted with the court paid out to the Quebec Class Action Plaintiffs directly. ITCAN filed its motion seeking an interim stay of execution of the Quebec Appeal Judgment, returnable on March 4, 2019, only as a protective measure in response to the Quebec Class Action Plaintiffs' motion. As acknowledged in the Quebec Class Action Plaintiffs' motion materials, they disagreed with the Applicants' interpretation that the Quebec Class Action Plaintiffs could not take any steps to enforce the Quebec Appeal Judgment until at least 60 days had elapsed and that they set out this disagreement in an email to the Court.

41. On March 4, 2019, all of the motions before the Quebec Court of Appeal were adjourned to March 25, 2019. Following that adjournment, circumstances changed that influenced the Applicants' decision to make this CCAA filing. In particular, on March 8, 2019, JTI-MacDonald Corp. ("JTI") obtained CCAA protection.

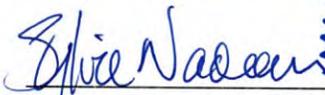
(c) ***There are no Life Insurance Policies Related to the Genstar Deferred Income Plans***

42. I understand that a proposed Former Genstar U.S. Retiree Group Committee (the “Committee”) has filed a Notice of Objection for the Comeback Hearing in this matter. The Committee has asserted that Genstar purchased life insurance policies on the life of each member of a deferred income plan (“GCDIP”) and a supplemental executive retirement plan (“SERP”) for certain former Genstar employees and their beneficiaries. While Genstar did purchase life insurance policies when the GCDIP and SERP were set up, those policies were all cashed out decades ago. There are no current insurance policies in place related to the GCDIP or SERP.

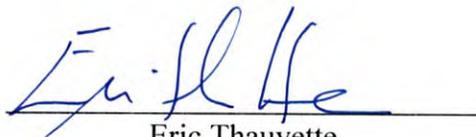
***VII. Conclusion***

43. It is readily apparent that the continuation of the intercompany payments described in this Affidavit is necessary to ensure the continued vitality and profitability of the Applicants’ business. There is simply no rationale for exposing the Applicants’ operations to the potential serious risks that could result from ceasing their intercompany payments. Therefore, the Applicants believe that continuing the intercompany payments and maintaining their business relationships with the BAT Group is in their best interests and the best interests of all of their stakeholders.

SWORN BEFORE ME at the City of  
Montreal, in the Province of Quebec, this  
2<sup>nd</sup> day of April, 2019.

  
Commissioner for Taking Affidavits



  
Eric Thauvette

# TAB 9

Amended and Restated Initial Order,  
made on April 5, 2019

**ONTARIO  
SUPERIOR COURT OF JUSTICE  
COMMERCIAL LIST**

THE HONOURABLE )  
JUSTICE MCEWEN ) TUESDAY, THE 12TH  
 ) DAY OF MARCH, 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 (the "Applicants")

**AMENDED AND RESTATED INITIAL ORDER**

THIS APPLICATION, made by the Applicants, pursuant to the *Companies' Creditors Arrangement Act*, R.S.C. 1985, c. C-36, as amended (the "CCAA") was heard this day at 330 University Avenue, Toronto, Ontario.

ON READING (i) the affidavit of Eric Thauvette sworn March 12, 2019 and the exhibits thereto (the "**Thauvette Affidavit**"), (ii) the affidavit of Nancy Roberts sworn March 12, 2019, and (iii) the pre-filing report dated March 12, 2019 (the "**Monitor's Pre-Filing Report**") of FTI Consulting Canada Inc. ("**FTI**") in its capacity as the proposed Monitor of the Applicants, and on hearing the submissions of counsel for the Applicants, BAT (as defined herein), FTI and the Honourable Warren K. Winkler, Q.C. in his capacity as proposed Court-Appointed Mediator (as defined herein), and on reading the consent of FTI to act as the Monitor,

**SERVICE**

1. THIS COURT ORDERS that the time for service and filing of the Notice of Application and the Application Record is hereby abridged and validated so that this Application

is properly returnable today and hereby dispenses with further service thereof.

## APPLICATION

2. THIS COURT ORDERS AND DECLARES that the Applicants are companies to which the CCAA applies.

## PLAN OF ARRANGEMENT

3. THIS COURT ORDERS that the Applicants, individually or collectively, shall have the authority to file and may, subject to further order of this Court, file with this Court a plan of compromise or arrangement (hereinafter referred to as the “**Plan**”).

## DEFINITIONS

4. THIS COURT ORDERS that for purposes of this Order:

- (a) “**BAT**” means British American Tobacco p.l.c.;
- (b) “**BAT Group**” means, collectively, BAT, BATIF, B.A.T Industries p.l.c., British American Tobacco (Investments) Limited, Carreras Rothmans Limited or entities related to or affiliated with them other than the Applicants and the ITCAN Subsidiaries;
- (c) “**BATIF**” means B.A.T. International Finance p.l.c.;
- (d) “**Co-Defendants**” means JTI-Macdonald Corp. and Rothmans, Benson & Hedges Inc.;
- (e) “**Deposit Posting Order**” means the order of the Quebec Court of Appeal granted October 27, 2015 or any other Order requiring the posting of security or the payment of a deposit in respect of the Quebec Class Actions;
- (f) “**ITCAN**” means Imperial Tobacco Canada Limited;
- (g) “**ITCAN Subsidiaries**” means the direct and indirect subsidiaries of the Applicants listed in Schedule “B”;

- (h) “**Pending Litigation**” means any and all actions, applications and other lawsuits existing at the time of this Order in which any of the Applicants is a named defendant or respondent (either individually or with other Persons (as defined below)) relating in any way whatsoever to a Tobacco Claim, including without limitation the litigation listed in Schedule “A”;
- (i) “**Quebec Class Actions**” means the proceedings in the Quebec Superior Court and the Quebec Court of Appeal in (i) *Cécilia Létourneau et al. v. JTI Macdonald Corp., Imperial Tobacco Canada Limited and Rothmans, Benson & Hedges Inc.* and (ii) *Conseil Québécois sur le Tabac et la Santé and Jean-Yves Blais v. JTI Macdonald Corp., Imperial Tobacco Canada Limited and Rothmans, Benson & Hedges Inc.* and all decisions and orders in such proceedings, including, without limitation, the Deposit Posting Order;
- (j) “**Sales & Excise Taxes**” means all goods and services, harmonized sales or other applicable federal, provincial or territorial sales taxes, and all federal excise taxes and customs and import duties and all federal, provincial and territorial tobacco taxes;
- (k) “**Tobacco Claim**” means any right or claim (including, without limitation, a claim for contribution or indemnity) of any Person against or in respect of the Applicants, the ITCAN Subsidiaries or any member of the BAT Group that has been advanced (including, without limitation, in the Pending Litigation), that could have been advanced or that could be advanced, and whether such right or claim is on such Person’s own account, on behalf of another Person, as a dependent of another Person, or on behalf of a certified or proposed class, or made or advanced as a government body or agency, insurer, employer, or otherwise, under or in connection with:
- (i) applicable law, to recover damages in respect of the development, manufacture, production, marketing, advertising, distribution, purchase or sale of Tobacco Products, the use of or exposure to Tobacco Products or any representation in respect of Tobacco Products, in Canada, or in the case

of any of the Applicants, anywhere else in the world; or

- (ii) the legislation listed on Schedule “C”, as may be amended or restated, or similar or analogous legislation that may be enacted in future,

excluding any right or claim of a supplier relating to goods or services supplied to, or the use of leased or licensed property by, the Applicants, the ITCAN Subsidiaries or any member of the BAT Group; and

- (l) “**Tobacco Products**” means tobacco or any product made or derived from tobacco or containing nicotine that is intended for human consumption, including any component, part, or accessory of or used in connection with a tobacco product, including cigarettes, cigarette tobacco, roll your own tobacco, smokeless tobacco, electronic cigarettes, vaping liquids and devices, heat-not-burn tobacco, and any other tobacco or nicotine delivery systems and shall include materials, products and by-products derived from or resulting from the use of any tobacco products.

## **POSSESSION OF PROPERTY AND OPERATIONS**

5. THIS COURT ORDERS that the Applicants shall remain in possession and control of their respective current and future assets, undertakings and properties of every nature and kind whatsoever, and wherever situate including all proceeds thereof (the “**Property**”). Subject to further Order of this Court, the Applicants shall continue to carry on business in a manner consistent with the preservation of their business (the “**Business**”) and Property. The Applicants are authorized and empowered to continue to retain and employ the employees, independent contractors, consultants, agents, experts, accountants, counsel and such other persons (collectively “**Assistants**”) currently retained or employed by them, with liberty to retain such further Assistants as they deem reasonably necessary or desirable in the ordinary course of business, to preserve the value of the Property or Business or for the carrying out of the terms of this Order.

6. THIS COURT ORDERS that the Applicants and the applicable ITCAN Subsidiaries shall be entitled to continue to utilize the central cash management system currently in place as described in the Thauvette Affidavit or replace it with another substantially similar

central cash management system (the “**Cash Management System**”) and that any present or future bank or other Person providing the Cash Management System (including, without limitation, BATIF and its affiliates, The Bank of Nova Scotia and Citibank, N.A.) shall not be under any obligation whatsoever to inquire into the propriety, validity or legality of any transfer, payment, collection or other action taken under the Cash Management System, or as to the use or application by the Applicants and the applicable ITCAN Subsidiaries of funds transferred, paid, collected or otherwise dealt with in the Cash Management System, shall be entitled to provide the Cash Management System without any liability in respect thereof to any Person other than the Applicants and the applicable ITCAN Subsidiaries, pursuant to the terms of the documentation applicable to the Cash Management System, and shall be, in its capacity as provider of the Cash Management System, an unaffected creditor under the Plan with regard to any claims or expenses it may suffer or incur in connection with the provision of the Cash Management System.

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), 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;
- (b) the fees and disbursements of any Assistants retained or employed by the Applicants, including without limitation in respect of any proceedings under Chapter 15 of the United States Bankruptcy Code, 11 U.S.C. §§ 101-1330, as amended, at their standard rates and charges;

- (c) with the consent of the Monitor, amounts for goods or services actually supplied to the Applicants prior to the date of this Order:
  - (i) by logistics or supply chain providers, including customs brokers and freight forwarders;
  - (ii) by providers of information technology, social media marketing strategies and publishing services; and
  - (iii) in respect of the Loyalty Program as set out in the Thauvette Affidavit;
- (d) with the consent of the Monitor, amounts payable in respect of any Intercompany Transactions (as defined herein); and
- (e) by other third party suppliers, if, in the opinion of the Applicants, such payment is necessary or desirable to preserve the operations of the Business or the Property.

8. THIS COURT ORDERS that, except as otherwise provided to the contrary herein, the Applicants shall be entitled but not required to pay all reasonable expenses incurred by the Applicants in carrying on the Business in the ordinary course after this Order, and in carrying out the provisions of this Order, which expenses shall include, without limitation:

- (a) all expenses and capital expenditures reasonably necessary for the preservation of the Property or the Business including, without limitation, payments on account of insurance (including directors and officers insurance), maintenance and security services;
- (b) capital expenditures other than as permitted in clause (a) above to replace or supplement the Property or that are otherwise of benefit to the Business, provided that Monitor approval is obtained for any single such expenditure in excess of \$1 million or an aggregate of such expenditures in a calendar year in excess of \$5 million; and
- (c) payment for goods or services supplied or to be supplied to the Applicants on or after the date of this Order (including the payment of any royalties).

9. THIS COURT ORDERS that the Applicants are authorized to complete outstanding transactions and engage in new transactions with any member of the BAT Group and to continue, on and after the date hereof, to buy and sell goods and services and to allocate, collect and pay costs, expenses and other amounts from and to the members of the BAT Group, including without limitation in relation to head office and shared services, finished, unfinished and semi-finished materials, personnel, administrative, technical and professional services, and royalties and fees in respect of trademark licenses (collectively, together with the Cash Management System and all transactions and all inter-company funding policies and procedures between any of the Applicants and any member of the BAT Group, the “**Intercompany Transactions**”) in the ordinary course of business as described in the affidavit or as otherwise approved by the Monitor. All Intercompany Transactions in the ordinary course of business between the Applicants and any member of the BAT Group, including the provision of goods and services from any member of the BAT Group to any of the Applicants, shall continue on terms consistent with existing arrangements or past practice or as otherwise approved by the Monitor.

10. THIS COURT ORDERS that the Applicants shall remit, in accordance with legal requirements, or pay (whether levied, accrued or collected before, on or after the date of this Order):

- (a) any statutory deemed trust amounts in favour of the Crown in right of Canada or of any Province thereof or any other taxation authority which are required to be deducted from employees’ wages, including, without limitation, amounts in respect of (i) employment insurance, (ii) Canada Pension Plan, (iii) Quebec Pension Plan, and (iv) income taxes;
- (b) all Sales & Excise Taxes required to be remitted by the Applicants in connection with the Business; and
- (c) any amount payable to the Crown in right of Canada or of any Province thereof or any political subdivision thereof or any other taxation authority in respect of municipal realty, municipal business or other taxes, assessments or levies of any nature or kind which are entitled at law to be paid in priority to claims of secured creditors and which are attributable to or in respect of the carrying on of the Business by the Applicants.

11. THIS COURT ORDERS that the Applicants are, subject to paragraph 12, authorized to post and to continue to have posted, cash collateral, letters of credit, performance bonds, payment bonds, guarantees and other forms of security from time to time, in an aggregate amount not exceeding \$111 million (the “**Bonding Collateral**”), to satisfy regulatory or administrative requirements to provide security that have been imposed on the Applicants in the ordinary course and consistent with past practice in relation to the collection and remittance of federal excise taxes and customs and import duties and federal, provincial and territorial tobacco taxes, whether the Bonding Collateral is provided directly or indirectly by the Applicants as such security.

12. THIS COURT ORDERS that the Canadian federal, provincial and territorial authorities entitled to receive payments or collect monies from the Applicants in respect of Sales & Excise Taxes are hereby stayed during the Stay Period from requiring that any additional bonding or other security be posted by or on behalf of the Applicants in connection with Sales & Excise Taxes, or any other matters for which such bonding or security may otherwise be required.

13. THIS COURT ORDERS that until a real property lease is disclaimed or resiliated in accordance with the CCAA, the Applicants shall pay all amounts constituting rent or payable as rent under real property leases (including, for greater certainty, common area maintenance charges, utilities and realty taxes and any other amounts payable to the landlord under the lease) or as otherwise may be negotiated between the relevant Applicant and the landlord from time to time (“**Rent**”), for the period commencing from and including the date of this Order, at such intervals as such Rent is usually paid in the ordinary course of business. On the date of the first of such payments, any Rent relating to the period commencing from and including the date of this Order shall also be paid.

14. THIS COURT ORDERS that, except as specifically permitted herein, the Applicants are hereby directed, until further Order of this Court: (a) to make no payments of principal, interest thereon or otherwise on account of amounts owing by the Applicants or claims to which they are subject to any of their creditors as of this date and to post no security in respect of such amounts or claims, including pursuant to an order or judgment; (b) to grant no security interests, trust, liens, charges or encumbrances upon or in respect of any of their Property; and (c) to not grant credit or incur liabilities except in the ordinary course of the Business.

## RESTRUCTURING

15. THIS COURT ORDERS that the Applicants shall, subject to such requirements as are imposed by the CCAA, have the right to:

- (a) permanently or temporarily cease, downsize or shut down any of their respective businesses or operations and to dispose of redundant or non-material assets not exceeding \$1,000,000 in any one transaction or \$5,000,000 in the aggregate;
- (b) terminate the employment of such of its employees or temporarily lay off such of its employees as it deems appropriate;
- (c) pursue all avenues of refinancing of the Business or Property, in whole or part, subject to prior approval of this Court being obtained before any material refinancing; and
- (d) pursue all avenues to resolve any of the Tobacco Claims, in whole or in part,

all of the foregoing to permit the Applicants to proceed with an orderly restructuring of the Business (the “**Restructuring**”).

16. THIS COURT ORDERS that the Applicants shall provide each of the relevant landlords with notice of the relevant Applicant’s intention to remove any fixtures from any leased premises at least seven (7) days prior to the date of the intended removal. The relevant landlord shall be entitled to have a representative present in the leased premises to observe such removal and, if the landlord disputes the relevant Applicant’s entitlement to remove any such fixture under the provisions of the lease, such fixture shall remain on the premises and shall be dealt with as agreed between any applicable secured creditors, such landlord and such Applicant, or by further Order of this Court upon application by such Applicant on at least two (2) days’ notice to such landlord and any such secured creditors. If the relevant Applicant disclaims or resiliates the lease governing such leased premises in accordance with Section 32 of the CCAA, it shall not be required to pay Rent under such lease pending resolution of any such dispute (other than Rent payable for the notice period provided for in Section 32(5) of the CCAA), and the disclaimer or

resiliation of the lease shall be without prejudice to such Applicant's claim to the fixtures in dispute.

17. THIS COURT ORDERS that if a notice of disclaimer or resiliation is delivered pursuant to Section 32 of the CCAA, then (a) during the notice period prior to the effective time of the disclaimer or resiliation, the landlord may show the affected leased premises to prospective tenants during normal business hours, on giving the relevant Applicant and the Monitor 24 hours' prior written notice, and (b) at the effective time of the disclaimer or resiliation, the relevant landlord shall be entitled to take possession of any such leased premises without waiver of or prejudice to any claims or rights such landlord may have against such Applicant in respect of such lease or leased premises, provided that nothing herein shall relieve such landlord of its obligation to mitigate any damages claimed in connection therewith.

#### STAY OF PROCEEDINGS

18. THIS COURT ORDERS that until and including April 11, 2019, or such later date as this Court may order (the "**Stay Period**"), no proceeding or enforcement process in any court or tribunal (each, a "**Proceeding**"), including but not limited to any Pending Litigation and any other Proceeding in relation to any other Tobacco Claim, shall be commenced, continued or take place against or in respect of the Applicants, the ITCAN Subsidiaries, the Monitor, any of their respective employees and representatives acting in that capacity, the Court-Appointed Mediator, or affecting the Business or the Property or the funds deposited pursuant to the Deposit Posting Order except with the written consent of the Applicants and the Monitor, or with leave of this Court, and any and all Proceedings currently under way or directed to take place against or in respect of any of the Applicants or the ITCAN Subsidiaries, any of their respective employees and representatives acting in that capacity or affecting the Business or the Property or the funds deposited pursuant to the Deposit Posting Order are hereby stayed and suspended pending further Order of this Court. All counterclaims, cross-claims and third party claims of the Applicants in the Pending Litigation are likewise subject to this stay of Proceedings during the Stay Period.

19. THIS COURT ORDERS that, during the Stay Period, no Proceeding in Canada that relates in any way to a Tobacco Claim or to the Applicants, the Business or the Property, including the Pending Litigation, shall be commenced, continued or take place against or in respect of any member of the BAT Group except, in either case, with the written consent of the Applicants and

the Monitor, or with leave of this Court, and any and all such Proceedings currently underway or directed to take place against or in respect of any member of the BAT Group, ~~or affecting the Business or the Property or the funds deposited pursuant to the Deposit Posting Order~~ are hereby stayed and suspended pending further Order of this Court.

20. THIS COURT ORDERS that, to the extent any prescription, time or limitation period relating to any Proceeding against or in respect of the Applicants, the ITCAN Subsidiaries, or any member of the BAT Group that is stayed pursuant to this Order may expire, the term of such prescription, time or limitation period shall hereby be deemed to be extended by a period equal to the Stay Period.

#### **NO EXERCISE OF RIGHTS OR REMEDIES**

21. THIS COURT ORDERS that during the Stay Period, all rights and remedies of any individual, firm, corporation, governmental body or agency, or any other entities (all of the foregoing, collectively being “Persons” and each being a “Person”) against or in respect of the Applicants, the ITCAN Subsidiaries or the Monitor or their respective employees and representatives acting in that capacity, or affecting the Business or the Property or to obtain the funds deposited pursuant to the Deposit Posting Order (including, for greater certainty, any enforcement process or steps or other rights and remedies under or relating to the Quebec Class Actions against the Applicants, the Property or the ITCAN Subsidiaries), are hereby stayed and suspended except with the written consent of the Applicants and the Monitor, or leave of this Court, provided that nothing in this Order shall (i) empower the Applicants or the ITCAN Subsidiaries to carry on any business which the Applicants or the ITCAN Subsidiaries are not lawfully entitled to carry on, (ii) affect such investigations, actions, suits or proceedings by a regulatory body as are permitted by Section 11.1 of the CCAA, (iii) prevent the filing of any registration to preserve or perfect a security interest, or (iv) prevent the registration of a claim for lien.

#### **NO INTERFERENCE WITH RIGHTS**

22. THIS COURT ORDERS that during the Stay Period, no Person shall discontinue, fail to honour, alter, interfere with, repudiate, terminate or cease to perform any right, renewal right, contract, agreement, licence or permit in favour of or held by the Applicants or the ITCAN

Subsidiaries, except with the written consent of the Applicants and the Monitor, or leave of this Court.

### **CONTINUATION OF SERVICES**

23. THIS COURT ORDERS that during the Stay Period, all Persons having oral or written agreements with the Applicants or the ITCAN Subsidiaries or statutory or regulatory mandates for the supply of goods and/or services, including without limitation all computer software, communication and other data services, centralized banking services, payroll services, insurance, transportation services, utility, customs clearing, warehouse or logistical services or other services to the Business, the Applicants or the ITCAN Subsidiaries, are hereby restrained until further Order of this Court from discontinuing, altering, interfering with or terminating the supply of such goods or services as may be required by the Applicants or the ITCAN Subsidiaries, and that the Applicants and the ITCAN Subsidiaries shall be entitled to the continued use of their current premises, telephone numbers, facsimile numbers, internet addresses and domain names, provided in each case that the normal prices or charges for all such goods or services received after the date of this Order are paid by the Applicants and the ITCAN Subsidiaries in accordance with normal payment practices of the Applicants and the ITCAN Subsidiaries or such other practices as may be agreed upon by the supplier or service provider and the respective Applicant or ITCAN Subsidiary and the Monitor, or as may be ordered by this Court.

### **NON-DEROGATION OF RIGHTS**

24. THIS COURT ORDERS that, notwithstanding anything else in this Order, no Person shall be prohibited from requiring immediate payment for goods, services, use of leased or licensed property or other valuable consideration provided on or after the date of this Order, nor shall any Person be under any obligation on or after the date of this Order to advance or re-advance any monies or otherwise extend any credit to the Applicants. Nothing in this Order shall derogate from the rights conferred and obligations imposed by the CCAA.

### **SALES AND EXCISE TAX CHARGE**

25. THIS COURT ORDERS that the Canadian federal, provincial and territorial authorities that are entitled to receive payments or collect monies from the Applicants in respect of Sales & Excise Taxes (including for greater certainty the Canada Border Services Agency) shall

be entitled to the benefit of and are hereby granted a charge (the “**Sales and Excise Tax Charge**”) on the Property, which charge shall not exceed an aggregate amount of \$580 million, as security for all amounts owing by the Applicants in respect of Sales & Excise Taxes, after taking into consideration any Bonding Collateral posted in respect thereof. The Sales and Excise Tax Charge shall have the priority set out in paragraphs 45 and 47 hereof.

#### **PROCEEDINGS AGAINST DIRECTORS AND OFFICERS**

26. THIS COURT ORDERS that during the Stay Period, and except as permitted by subsection 11.03(2) of the CCAA, no Proceeding may be commenced or continued against any of the former, current or future directors or officers of the Applicants with respect to any claim against the directors or officers that arose before the date hereof and that relates to any obligations of the Applicants whereby the directors or officers are alleged under any law to be liable in their capacity as directors or officers for the payment or performance of such obligations.

#### **DIRECTORS’ AND OFFICERS’ INDEMNIFICATION AND CHARGE**

27. THIS COURT ORDERS that the Applicants shall indemnify their directors and officers against obligations and liabilities that they may incur as directors or officers of the Applicants after the commencement of the within proceedings, except to the extent that, with respect to any officer or director, the obligation or liability was incurred as a result of the director’s or officer’s gross negligence or wilful misconduct.

28. THIS COURT ORDERS that the directors and officers of the Applicants shall be entitled to the benefit of and are hereby granted a charge (the “**Directors’ Charge**”) on the Property, which charge shall not exceed an aggregate amount of \$16 million, as security for the indemnity provided in paragraph 27 of this Order. The Directors’ Charge shall have the priority set out in paragraphs 45 and 47 herein.

29. THIS COURT ORDERS that, notwithstanding any language in any applicable insurance policy to the contrary, (a) no insurer shall be entitled to be subrogated to or claim the benefit of the Directors’ Charge, and (b) the Applicants’ directors and officers shall only be entitled to the benefit of the Directors’ Charge to the extent that they do not have coverage under any directors’ and officers’ insurance policy, or to the extent that such coverage is insufficient to pay amounts indemnified in accordance with paragraph 27 of this Order.

## APPOINTMENT OF MONITOR

30. THIS COURT ORDERS that FTI Consulting Canada Inc. is hereby appointed pursuant to the CCAA as the Monitor, an officer of this Court, to monitor the business and financial affairs of the Applicants with the powers and obligations set out in the CCAA or set forth herein and that the Applicants and their shareholders, officers, directors, and Assistants shall advise the Monitor of all material steps taken by the Applicants pursuant to this Order, and shall co-operate fully with the Monitor in the exercise of its powers and discharge of its obligations and provide the Monitor with the assistance that is necessary to enable the Monitor to adequately carry out the Monitor's functions.

31. THIS COURT ORDERS that the Monitor, in addition to its prescribed rights and obligations under the CCAA, is hereby directed and empowered to:

- (a) monitor the Applicants' receipts and disbursements;
- (b) report to this Court at such times and intervals as the Monitor may deem appropriate with respect to matters relating to the Property, the Business, and such other matters as may be relevant to the proceedings herein;
- (c) advise the Applicants in their preparation of the Applicants' cash flow statements;
- (d) advise the Applicants in their development of the Plan and any amendments to the Plan;
- (e) assist the Applicants, to the extent required by the Applicants, with the holding and administering of creditors' or shareholders' meetings for voting on the Plan;
- (f) have full and complete access to the Property, including the premises, books, records, data, including data in electronic form, and other financial documents of the Applicants, to the extent that is necessary to adequately assess the Applicants' business and financial affairs or to perform its duties arising under this Order;

- (g) be at liberty to engage independent legal counsel or such other persons as the Monitor deems necessary or advisable respecting the exercise of its powers and performance of its obligations under this Order;
- (h) assist the Applicants, to the extent required by the Applicants, in its efforts to explore the potential for a resolution of any of the Tobacco Claims;
- (i) consult with the Court-Appointed Mediator in connection with the Court-Appointed Mediator's mandate, including in relation to any negotiations to settle any Tobacco Claims and the development of the Plan;
- (j) be and is hereby appointed to serve as the "foreign representative" of the Applicants in respect of an application to the United States Bankruptcy Court for relief pursuant to Chapter 15 of the United States Bankruptcy Code, 11 U.S.C. §§ 101-1330, as amended; and
- (k) perform such other duties as are required by this Order or by this Court from time to time.

32. THIS COURT ORDERS that the Monitor shall not take possession of the Property and shall take no part whatsoever in the management or supervision of the management of the Business and shall not, by fulfilling its obligations hereunder, be deemed to have taken or maintained possession or control of the Business or Property, or any part thereof.

33. THIS COURT ORDERS that nothing herein contained shall require the Monitor to occupy or to take control, care, charge, possession or management (separately and/or collectively, "**Possession**") of any of the Property that might be environmentally contaminated, might be a pollutant or a contaminant, or might cause or contribute to a spill, discharge, release or deposit of a substance contrary to any federal, provincial or other law respecting the protection, conservation, enhancement, remediation or rehabilitation of the environment or relating to the disposal of waste or other contamination including, without limitation, the *Canadian Environmental Protection Act*, the Ontario *Environmental Protection Act*, the *Ontario Water Resources Act*, the Ontario *Occupational Health and Safety Act*, the Quebec *Environment Quality Act*, the Quebec *Act Respecting Occupational Health and Safety* and any regulations under any of the foregoing statutes (the "**Environmental Legislation**"), provided however that nothing herein shall exempt the

Monitor from any duty to report or make disclosure imposed by applicable Environmental Legislation. The Monitor shall not, as a result of this Order or anything done in pursuance of the Monitor's duties and powers under this Order, be deemed to be in Possession of any of the Property within the meaning of any Environmental Legislation, unless it is actually in possession.

34. THIS COURT ORDERS that the Monitor shall provide any creditor of the Applicants and the Court-Appointed Mediator with information provided by the Applicants in response to reasonable requests for information made in writing by such person addressed to the Monitor. The Monitor shall not have any responsibility or liability with respect to the information disseminated by it pursuant to this paragraph. In the case of information that the Monitor has been advised by the Applicants is confidential, the Monitor shall not provide such information to creditors unless otherwise directed by this Court or on such terms as the Monitor and the Applicants may agree.

35. THIS COURT ORDERS that, in addition to the rights and protections afforded the Monitor under the CCAA or as an officer of this Court, the Monitor shall incur no liability or obligation as a result of its appointment or the carrying out of the provisions of this Order, save and except for any gross negligence or wilful misconduct on its part. Nothing in this Order shall derogate from the protections afforded the Monitor by the CCAA or any applicable legislation.

36. THIS COURT ORDERS that the Monitor, counsel to the Monitor and counsel to the Applicants shall be paid their reasonable fees and disbursements, in each case at their standard rates and charges, by the Applicants as part of the costs of these proceedings. The Applicants are hereby authorized and directed to pay the accounts of the Monitor, counsel to the Monitor and counsel to the Applicants on a bi-weekly basis and, in addition, the Applicants are hereby authorized, *nunc pro tunc*, to pay to the Monitor, counsel to the Monitor and counsel to the Applicants retainers to be held by them as security for payment of their respective fees and disbursements outstanding from time to time.

37. THIS COURT ORDERS that the Monitor and its legal counsel shall pass their accounts from time to time, and for this purpose the accounts of the Monitor and its legal counsel are hereby referred to a judge of the Commercial List of the Ontario Superior Court of Justice.

38. THIS COURT ORDERS that the Monitor, counsel to the Monitor and counsel to the Applicants shall be entitled to the benefit of and are hereby granted a charge (the “**Administration Charge**”) on the Property, which charge shall not exceed an aggregate amount of \$5 million, as security for their professional fees and disbursements incurred at the standard rates and charges of the Monitor and such counsel, both before and after the making of this Order in respect of these proceedings. The Administration Charge shall have the priority set out in paragraphs 45 and 47 hereof.

#### **COURT-APPOINTED MEDIATOR**

39. THIS COURT ORDERS that the Hon. Warren K. Winkler, Q.C. is hereby appointed, as an officer of the Court and shall act as a neutral third party (the “**Court-Appointed Mediator**”) to mediate a global settlement of the Tobacco Claims.

40. THIS COURT ORDERS that in carrying out his mandate, the Court-Appointed Mediator may, among other things:

- (a) Adopt processes which, in his discretion, he considers appropriate to facilitate negotiation of a global settlement;
- (b) Retain independent legal counsel and such other advisors and persons as the Court-Appointed Mediator considers necessary or desirable to assist him in carrying out his mandate;
- (c) Consult with all Persons with Tobacco Claims (“**Tobacco Claimants**”), the Monitor, the Applicants, the Co-Defendants, other creditors and stakeholders of the Applicants and/or the Co-Defendants and any other persons the Court-Appointed Mediator considers appropriate;
- (d) Accept a court appointment of similar nature in any proceedings under the CCAA commenced by a company that is a co-defendant or respondent with the Applicants or the Co-Defendants in any action brought by one or more Tobacco Claimants, including the Pending Litigation;
- (e) Apply to this Court for advice and directions as, in his discretion, the Court-

Appointed Mediator deems necessary.

41. THIS COURT ORDERS that, subject to an agreement between the Applicants and the Court-Appointed Mediator, all reasonable fees and disbursements of the Court-Appointed Mediator and his legal counsel and financial and other advisors as may have been incurred by them prior to the date of this Order or which shall be incurred by them in relation to carrying out his mandate shall be paid by the Applicants and the Co-Defendants on a monthly basis, forthwith upon the rendering of accounts to the Applicants and the Co-Defendants.

42. THIS COURT ORDERS that the Court-Appointed Mediator shall be entitled to the benefit of and is hereby granted a charge (the “**Court-Appointed Mediator Charge**”) on the Property, which charge shall not exceed an aggregate amount of \$1 million, as security for his fees and disbursements and for the fees and disbursements of his legal counsel and financial and other advisors, in each case incurred at their standard rates and charges, both before and after the making of this Order in respect of these proceedings. The Court-Appointed Mediator Charge shall have the priority set out in paragraphs 45 and 47 hereof.

43. THIS COURT ORDERS that the Court-Appointed Mediator is authorized to take all steps and to do all acts necessary or desirable to carry out the terms of this Order, including dealing with any Court, regulatory body or other government ministry, department or agency, and to take all such steps as are necessary or incidental thereto.

44. THIS COURT ORDERS that, in addition to the rights and protections afforded as an officer of this Court, the Court-Appointed Mediator shall incur no liability or obligation as a result of his appointment or the carrying out of the provisions of this Order, save and except for any gross negligence or wilful misconduct on his part. Nothing in this Order shall derogate from the protections afforded a person pursuant to Section 142 of the *Courts of Justice Act* (Ontario).

#### **VALIDITY AND PRIORITY OF CHARGES CREATED BY THIS ORDER**

45. THIS COURT ORDERS that the priorities of the Administration Charge, the Court-Appointed Mediator Charge, the Directors’ Charge, and the Sales and Excise Tax Charge (collectively, the “**Charges**”), as among them, shall be as follows:

- (a) First – Administration Charge (to the maximum amount of \$5 million) and the

Court-Appointed Mediator Charge (to the maximum amount of \$1 million), *pari passu*;

- (b) Second – Directors’ Charge (to the maximum amount of \$16 million); and
- (c) Third – the Sales and Excise Tax Charge (to the maximum amount of \$580 million).

46. THIS COURT ORDERS that the filing, registration or perfection of the Charges shall not be required, and that the Charges shall be valid and enforceable for all purposes, including as against any right, title or interest filed, registered, recorded or perfected subsequent to the Charges coming into existence, notwithstanding any such failure to file, register, record or perfect.

47. THIS COURT ORDERS that each of the Charges shall constitute a charge on the Property and such Charges shall rank in priority to all other security interests, trusts, liens, charges encumbrances, and claims of secured creditors, statutory or otherwise (collectively, the “**Encumbrances**”) in favour of any Person in respect of such Property save and except for:

- (a) purchase-money security interests or the equivalent security interests under various provincial legislation and financing leases (that, for greater certainty, shall not include trade payables);
- (b) statutory super-priority deemed trusts and liens for unpaid employee source deductions;
- (c) deemed trusts and liens for any unpaid pension contribution or deficit with respect to the DB Plans, the DC Plan (as such terms are defined in the Thauvette Affidavit) and any of the Applicants’ other pension plans, but only to the extent that any such deemed trusts and liens are statutory super-priority deemed trusts and liens afforded priority by statute over all pre-existing Encumbrances granted or created by contract; and
- (d) liens for unpaid municipal property taxes or utilities that are given first priority over

other liens by statute.

48. THIS COURT ORDERS that except as otherwise expressly provided for herein, or as may be approved by this Court, the Applicants shall not grant any Encumbrances over any Property that rank in priority to, or *pari passu* with, any of the Charges unless the Applicants also obtain the prior written consent of the Monitor and the beneficiaries of the Charges affected thereby (collectively, the “**Chargees**”), or further Order of this Court.

49. THIS COURT ORDERS that each of the Charges shall not be rendered invalid or unenforceable and the rights and remedies of the Chargees thereunder shall not otherwise be limited or impaired in any way by (a) the pendency of these proceedings and the declarations of insolvency made herein; (b) any application(s) for bankruptcy order(s) issued pursuant to the *Bankruptcy and Insolvency Act* (“**BIA**”), or any bankruptcy order made pursuant to such applications; (c) the filing of any assignments for the general benefit of creditors made pursuant to the BIA; (d) the provisions of any federal or provincial statutes; or (e) any negative covenants, prohibitions or other similar provisions with respect to borrowings, incurring debt or the creation of Encumbrances, contained in any existing loan documents, lease, sublease, offer to lease or other agreement (collectively, an “**Agreement**”) which binds the Applicants, and notwithstanding any provision to the contrary in any Agreement:

- (a) the creation of the Charges shall not create or be deemed to constitute a breach by the Applicants of any Agreement to which it is a party;
- (b) none of the Chargees shall have any liability to any Person whatsoever as a result of any breach of any Agreement caused by or resulting from the creation of the Charges; and
- (c) the payments made by the Applicants pursuant to this Order and the granting of the Charges do not and will not constitute preferences, fraudulent conveyances, transfers at undervalue, oppressive conduct, or other challengeable or voidable transactions under any applicable law.

50. THIS COURT ORDERS that any Charge created by this Order over leases of real property in Canada shall only be a Charge in the Applicants’ interest in such real property leases.

## SERVICE AND NOTICE

51. THIS COURT ORDERS that the Monitor shall (i) without delay, publish in The Globe and Mail (National Edition) and La Presse a notice containing the information prescribed under the CCAA as well as the date of the Comeback Motion (as defined below) and advising of the appointment of the Court-Appointed Mediator, (ii) within five days after the date of this Order or as soon as reasonably practicable thereafter, (A) make this Order publicly available in the manner prescribed under the CCAA, (B) send, in the prescribed manner, a notice (which shall include the date of the Comeback Motion) to every known creditor who has a claim (contingent, disputed or otherwise) against the Applicants of more than \$5,000, except with respect to (I) Tobacco Claimants, in which cases the Monitor shall only send a notice to the Court-Appointed Mediator and to counsel of record in the applicable Pending Litigation (if any) and (II) in the case of beneficiaries of the DB Plans, the DC Plan (as such terms are defined in the Thauvette Affidavit) and any of the Applicants' other pension plans, in which case the Monitor shall only send a notice to the trustees of each of the DB Plans, the DC Plan and the Applicants' other pension plans, and the Retraite Québec, and (C) prepare a list showing the names and addresses of those creditors and the estimated amounts of those claims, and make it publicly available in the prescribed manner, all in accordance with Section 23(1)(a) of the CCAA and the regulations made thereunder. The list referenced in subparagraph (C) above 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.

52. THIS COURT ORDERS that notice of the appointment of the Court-Appointed Mediator shall be provided to the Tobacco Claimants by:

- (a) notice on the Case Website (as defined herein) posted by the Monitor;
- (b) advertisements published without delay by the Monitor in The Globe and Mail (National Edition) and La Presse, which advertisements shall be in addition to the advertisement required under paragraph 51 hereof, and which shall be run on two non-consecutive days following the day on which the advertisement set out in paragraph 51 is run; and
- (c) delivery by the Applicant of a copy of this Order to counsel of record in the

applicable Pending Litigation, who shall thereafter (i) post notice of the appointment of the Court-Appointed Mediator on their respective websites and (ii) deliver notice of the appointment of the Court-Appointed Mediator to each representative plaintiff;

53. THIS COURT ORDERS that notice of any motions or other proceedings to which the Tobacco Claimants are entitled or required to receive in these CCAA proceedings and in respect of which the Court-Appointed Mediator has the authority to represent the Tobacco Claimants may be served on the Court-Appointed Mediator and, unless the Court has ordered some other form of service, such service will constitute sufficient service and any further service on Tobacco Claimants is dispensed with.

54. THIS COURT ORDERS that the E-Service Guide of the Commercial List (the “**Guide**”) is approved and adopted by reference herein and, in this proceeding, the service of documents made in accordance with the Guide (which can be found on the Commercial List website at <http://www.ontariocourts.ca/scj/practice/practice-directions/toronto/eservice-commercial/>) shall be valid and effective service. Subject to Rule 17.05 this Order shall constitute an order for substituted service pursuant to Rule 16.04 of the Rules of Civil Procedure. Subject to Rule 3.01(d) of the Rules of Civil Procedure and paragraph 13 of the Guide, service of documents in accordance with the Guide will be effective on transmission. This Court further orders that a Case Website shall be established by the Monitor in accordance with the Guide with the following URL: <http://cfcanada.fticonsulting.com/imperialtobacco> (“**Case Website**”).

55. THIS COURT ORDERS that if the service or distribution of documents in accordance with the Guide is not practicable, the Applicants and the Monitor are at liberty to serve or distribute this Order, any other materials and orders in these proceedings, and any notices or other correspondence, by forwarding true copies thereof by prepaid ordinary mail, courier, personal delivery, facsimile or other electronic transmission to the Applicants’ creditors or other interested parties at their respective addresses as last shown on the records of the Applicants and that any such service or distribution by courier, personal delivery, facsimile or other electronic transmission shall be deemed to be received on the date of forwarding thereof, or if sent by ordinary mail, on the third business day after mailing.

56. THIS COURT ORDERS that the Applicants are authorized to rely on the notice provided in paragraph 51 to provide notice of the comeback motion to be heard on a date to be set by this Court upon the granting of this Order (the “**Comeback Motion**”) and shall only be required to serve motion materials relating to the Comeback Motion, in accordance with the Guide, upon those parties who serve a Notice of Appearance in this proceeding prior to the date of the Comeback Motion.

57. THIS COURT ORDERS that the Monitor shall create, maintain and update as necessary a list of all Persons appearing in person or by counsel in this proceeding (the “**Service List**”). The Monitor shall post the Service List, as may be updated from time to time, on the Case Website as part of the public materials to be recorded thereon in relation to this proceeding. Notwithstanding the foregoing, the Monitor shall have no liability in respect of the accuracy of or the timeliness of making any changes to the Service List. The Monitor shall manage the scheduling of all motions that are brought in these proceedings.

58. **THIS COURT ORDERS** that the Applicants and the Monitor and their counsel are at liberty to serve or distribute this Order, any other materials and orders as may be reasonably required in these proceedings, including any notices, or other correspondence, by forwarding true copies thereof by electronic message to the Applicants’ creditors or other interested parties and their advisors. For greater certainty, any such distribution or service shall be deemed to be in satisfaction of a legal or juridical obligation, and notice requirements within the meaning of clause 3(c) of the Electronic Commerce Protection Regulations, Reg. 8100 2-175 (SOR/DORS).

#### **GENERAL**

59. THIS COURT ORDERS that the Applicants or the Monitor may from time to time apply to this Court to amend, vary, supplement or replace this Order or for advice and directions concerning the discharge of their respective powers and duties under this Order or the interpretation or application of this Order.

60. THIS COURT ORDERS that nothing in this Order shall prevent the Monitor from acting as an interim receiver, a receiver, a receiver and manager, or a trustee in bankruptcy of the Applicants, the Business or the Property.

61. THIS COURT HEREBY REQUESTS the aid and recognition of any court, tribunal, regulatory or administrative body having jurisdiction in Canada, in the United States or any other country, 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.

62. THIS COURT ORDERS that each of the Applicants and the Monitor be at liberty and is hereby authorized and empowered to apply to any court, tribunal, regulatory or administrative body, wherever located, for the recognition of this Order and for assistance in carrying out the terms of this Order, and that the Monitor is authorized and empowered to act as a representative in respect of the within proceedings for the purpose of having these proceedings recognized in a jurisdiction outside Canada.

63. THIS COURT ORDERS that any interested party (including the Applicants, BAT, and the Monitor) 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.

64. THIS COURT ORDERS that this Order and all of its provisions are effective as of 12:01 a.m. Eastern Standard/Daylight Time on the date of this Order (the "**Effective Time**") and that from the Effective Time to the time of the granting of this Order any action taken or notice given by any creditor of the Applicants or by any other Person to commence or continue any enforcement, realization, execution or other remedy of any kind whatsoever against the Applicant, the Property, the Business or the funds deposited pursuant to the Deposit Posting Order shall be deemed not to have been taken or given, as the case may be.

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

APR 05 2019



PER / PAR: RW

**SCHEDULE "A"**  
**PENDING LITIGATION**

**A. Medicaid Claim Litigation**

	<b>Jurisdiction</b>	<b>File Date &amp; Court File No.</b>	<b>Plaintiff(s)</b>	<b>Defendant(s)</b>
1.	Alberta	June 8, 2012; 1201-07314 (Calgary)	Her Majesty in Right of Alberta	Altria Group, Inc.; B.A.T Industries p.l.c.; British American Tobacco (Investments) Limited; British American Tobacco p.l.c.; Canadian Tobacco Manufacturers Council; Carreras Rothmans Limited; Imperial Tobacco Canada Limited; JTI-MacDonald Corp.; Philip Morris International, Inc.; Philip Morris USA, Inc.; R.J. Reynolds Tobacco Company; R.J. Reynolds Tobacco International, Inc.; Rothmans, Benson & Hedges Inc.; and Rothmans Inc.
2.	British Columbia	January 24, 2001, further amended February 17, 2011; S010421 (Vancouver)	Her Majesty the Queen in right of British Columbia	Imperial Tobacco Canada Limited, Rothmans, Benson & Hedges Inc., Rothmans Inc., JTI-Macdonald Corp., Canadian Tobacco Manufacturers' Council, B.A.T Industries p.l.c., British American Tobacco (Investments) Limited, Carreras Rothmans Limited, Philip Morris Incorporated, Philip Morris International, Inc., R. J. Reynolds Tobacco Company, R. J. Reynolds Tobacco International, Inc., Rothmans International Research Division and Ryesekks p.l.c.
3.	Manitoba	May 31, 2012, amended October 16, 2012; CI 12-01-78127 (Winnipeg)	Her Majesty the Queen in right of the Province of Manitoba	Rothmans, Benson & Hedges Inc., Rothmans, Inc., Altria Group, Inc., Philip Morris U.S.A. Inc., Philip Morris International, Inc., JTI-MacDonald Corp., R.J. Reynolds Tobacco Company, R.J. Reynolds Tobacco International Inc., Imperial Tobacco Canada Limited, British American Tobacco p.l.c., B.A.T Industries p.l.c., British American Tobacco (Investments) Limited, Carreras Rothmans Limited, and Canadian Tobacco Manufacturers' Council
4.	New Brunswick	March 13, 2008; F/C/88/08 (Fredericton)	Her Majesty the Queen in right of the Province of New Brunswick	Rothmans Inc., Rothmans, Benson & Hedges Inc., Carreras Rothmans Limited, Altria Group, Inc., Phillip Morris U.S.A. Inc., Phillip Morris International Inc., JTI-MacDonald Corp., R.J. Reynolds Tobacco Company, R.J. Reynolds Tobacco International Inc., Imperial Tobacco Canada Limited, British American Tobacco p.l.c., B.A.T Industries p.l.c., British American Tobacco (Investments) Limited and Canadian Tobacco Manufacturers' Council

	<b>Jurisdiction</b>	<b>File Date &amp; Court File No.</b>	<b>Plaintiff(s)</b>	<b>Defendant(s)</b>
5.	Newfoundland and Labrador	February 8, 2011, amended June 4, 2014; 01G. No. 0826 (St. John's)	Attorney General of Newfoundland and Labrador	Rothmans Inc., Rothmans, Benson & Hedges Inc., Carreras Rothmans Limited, Altria Group, Inc., Philip Morris USA Inc, Philip Morris International Inc., JTI-MacDonald Corp., RJ Reynolds Tobacco Company, RJ Reynolds Tobacco International Inc., Imperial Tobacco Canada Limited, British American Tobacco p.l.c., B.A.T Industries p.l.c, British America Tobacco (Investments) Limited and Canadian Tobacco Manufacturers' Council
6.	Nova Scotia	January 2, 2015; 434868/737868 (Halifax)	Her Majesty The Queen in Right of the Province of Nova Scotia	Rothmans, Benson & Hedges Inc., Rothmans Inc., Altria Group, Inc., Philip Morris U.S.A. Inc, Philip Morris International Inc., JTI-MacDonald Corp., R.J. Reynolds Tobacco Company, R.J. Reynolds Tobacco International Inc., Imperial Tobacco Canada Limited, British American Tobacco p.l.c., B.A.T Industries p.l.c., British American Tobacco (Investments) Limited, Carreras Rothmans Limited and Canadian Tobacco Manufacturers' Council.
7.	Ontario	Amended December 11, 2009, amended as amended August 25, 2010, fresh as amended March 28, 2014, amended fresh as amended, April 20, 2016; CV-09-387984 (Toronto)	Her Majesty the Queen in right of Ontario	Rothmans Inc., Rothmans, Benson & Hedges Inc., Carreras Rothmans Limited, Altria Group, Inc., Phillip Morris U.S.A. Inc., Phillip Morris International Inc., JTI-MacDonald Corp., R.J. Reynolds Tobacco Company, R.J. Reynolds Tobacco International Inc., Imperial Tobacco Canada Limited, British American Tobacco p.l.c., B.A.T Industries p.l.c., British American Tobacco (Investments) Limited and Canadian Tobacco Manufacturers' Council
8.	Prince Edward Island	September 10, 2012, amended October 17, 2012; SI GS-25019 (Charlottetown)	Her Majesty the Queen in right of the Province of Prince Edward Island	Rothmans, Benson & Hedges Inc., Rothmans, Inc., Altria Group, Inc., Philip Morris U.S.A. Inc., Philip Morris International, Inc., JTI-MacDonald Corp., R.J. Reynolds Tobacco Company, R.J. Reynolds Tobacco International Inc., Imperial Tobacco Canada Limited, British American Tobacco p.l.c., B.A.T Industries p.l.c., British American Tobacco (Investments) Limited, Carreras Rothmans Limited, and Canadian Tobacco Manufacturers' Council
9.	Québec	June 8, 2012; 500-17-072363-123 (Montréal)	Procureur général du Québec	Impérial Tobacco Canada Limitée, B.A.T Industries p.l.c., British American Tobacco (Investments) Limited, Carreras Rothmans Limited, Rothmans, Benson & Hedges, Philip Morris USA Inc., Philip Morris International

	Jurisdiction	File Date & Court File No.	Plaintiff(s)	Defendant(s)
				Inc., JTI-MacDonald Corp., R.J. Reynolds Tobacco Company, R.J. Reynolds Tobacco International, Inc., et Conseil Canadien de Fabricants des Produits du Tabac
10.	Saskatchewan	Amended October 5, 2012; Q.B. 8712012 (Saskatoon)	The Government of Saskatchewan	Rothmans, Benson & Hedges Inc., Rothmans Inc., Altria Group, Inc., Philip Morris International, Inc., JTI-Macdonald Corp., R.J. Reynolds Tobacco Company, R.J. Reynolds Tobacco International Inc., Imperial Tobacco Canada Limited, British American Tobacco p.l.c., B.A.T Industries p.l.c., British American Tobacco (Investments) Limited, Carreras Rothmans Limited, and Canadian Tobacco Manufacturers' Council

### B. Tobacco Claim Litigation – Certified and Proposed Class Actions

	Jurisdiction	Date Filed; Court File No.	(Representative) Plaintiff	Defendant(s)
1.	Alberta	June 15, 2009; 0901-08964 (Calgary)	Linda Dorion	Canadian Tobacco Manufacturers' Council, B.A.T Industries p.l.c., British American Tobacco (Investments) Limited, British American Tobacco p.l.c., Imperial Tobacco Canada Limited, Altria Group, Inc., Phillip Morris Incorporated, Phillip Morris International, Inc., Phillip Morris U.S.A. Inc., R.J. Reynolds Tobacco Company, R.J. Reynolds Tobacco, International, Inc., Carreras Rothmans Limited, JTI-MacDonald Corp., Rothmans, Benson & Hedges Inc., Rothmans Inc., Ryesecks p.l.c.
2.	British Columbia	May 8, 2003; L 031300 (Vancouver)	John Smith (a.k.a., Kenneth Knight)	Imperial Tobacco Canada Ltd.
3.	British Columbia	June 25, 2010; 10-2780 (Victoria)	Barbara Bourassa on behalf of the Estate of Mitchell David Bourassa	Imperial Tobacco Canada Limited, B.A.T Industries p.l.c., British American Tobacco (Investments) Limited, British American Tobacco p.l.c., Altria Group, Inc. Phillip Morris International, Inc., Phillip Morris U.S.A. Inc., R.J. Reynolds Tobacco Company, R.J. Reynolds Tobacco International, Inc., Carreras Rothmans Limited, JTI-MacDonald Corp., Rothmans, Benson & Hedges Inc., Rothmans Inc., Ryesecks p.l.c. and Canadian Tobacco Manufacturers' Council <sup>1</sup>

<sup>1</sup> British American Tobacco p.l.c. and Carreras Rothmans Limited have been released from this action.

	Jurisdiction	Date Filed; Court File No.	(Representative) Plaintiff	Defendant(s)
4.	British Columbia	June 25, 2010; 10-2769 (Victoria)	Roderick Dennis McDermid	Imperial Tobacco Canada Limited, B.A.T Industries p.l.c., British American Tobacco (Investments) Limited, British American Tobacco p.l.c., Altria Group, Inc., Phillip Morris International, Inc., Phillip Morris U.S.A. Inc., R.J. Reynolds Tobacco Company, R.J. Reynolds Tobacco International, Inc., Carreras Rothmans Limited, JTI-MacDonald Corp., Rothmans, Benson & Hedges Inc., Rothmans Inc., Ryesekks p.l.c. and Canadian Tobacco Manufacturers' Council <sup>2</sup>
5.	Manitoba	June 2009; CI09-01-61479 (Winnipeg)	Deborah Kunta	Canadian Tobacco Manufacturers' Council, B.A.T Industries p.l.c., British American Tobacco (Investments) Limited, British American Tobacco p.l.c., Imperial Tobacco Canada Limited, Altria Group, Inc., Phillip Morris Incorporated, Phillip Morris International Inc., Phillip Morris U.S.A. Inc., R.J. Reynolds Tobacco Company, R.J. Reynolds Tobacco, International, Inc., Carreras Rothmans Limited, JTI-MacDonald Corp., Rothmans, Benson & Hedges Inc., Rothmans Inc and Ryesekks p.l.c.
6.	Nova Scotia	June 18, 2009; 312869 2009 (Halifax)	Ben Semple	Canadian Tobacco Manufacturers' Council, B.A.T Industries p.l.c., British American Tobacco (Investments) Limited, British American Tobacco p.l.c., Imperial Tobacco Canada Limited, Altria Group, Inc., Phillip Morris Incorporated, Phillip Morris International, Inc., Phillip Morris U.S.A. Inc., R.J. Reynolds Tobacco Company, R.J. Reynolds Tobacco, International, Inc., Carreras Rothmans Limited, JTI-MacDonald Corp., Rothmans, Benson & Hedges Inc., Rothmans Inc., Ryesekks p.l.c.
7.	Ontario	December 2, 2009; 64757 (London)	The Ontario Flue-Cured Tobacco Growers' Marketing Board, Andy J. Jacko, Brian Baswick, Ron Kichler and Arpad Dobrentey	Imperial Tobacco Canada Limited, which is to be heard together with similar actions against Rothmans, Benson & Hedges Inc., and JTI-MacDonald Corp.
8.	Ontario	June 27, 2012; 53794/12 (St. Catharines)	Suzanne Jacklin	Canadian Tobacco Manufacturers' Council, B.A.T Industries p.l.c., British American Tobacco (Investments) Limited, British American Tobacco p.l.c., Imperial Tobacco Canada Limited, Altria Group, Inc., Phillip Morris Incorporated, Phillip Morris International Inc., Phillip Morris U.S.A. Inc.,

<sup>2</sup> British American Tobacco p.l.c. and Carreras Rothmans Limited have been released from this action.

	Jurisdiction	Date Filed; Court File No.	(Representative) Plaintiff	Defendant(s)
				R.J. Reynolds Tobacco Company, R.J. Reynolds Tobacco, International, Inc., Carreras Rothmans Limited, JTI-MacDonald Corp., Rothmans, Benson & Hedges Inc., Rothmans Inc., Ryeseckks p.l.c
9.	Quebec	September 30, 2005; 500-06-000070-983 (Montreal)	Christine Fortin, Cécilia Létourneau and Joseph Mandelman	Imperial Tobacco Canada Ltd., Rothmans, Benson & Hedges Inc. and JTI-Macdonald Corp.
10.	Quebec	September 29, 2005; 500-06-000076-980 (Montreal)	Conseil Quebecois Sur Le Tabac Et La Sante and Jean-Yves Blais	Imperial Tobacco Canada Ltd., Rothmans, Benson & Hedges Inc. and JTI Macdonald Corp.
11.	Saskatchewan	July 10, 2009; 1036 of 2009; (June 12, 2009; 916 of 2009 never served) (Regina)	Thelma Adams	Canadian Tobacco Manufacturers' Council, B.A.T Industries p.l.c., British American Tobacco (Investments) Limited, British American Tobacco p.l.c., Imperial Tobacco Canada Limited, Altria Group, Inc., Phillip Morris Incorporated, Phillip Morris International Inc., Phillip Morris USA Inc., R.J. Reynolds Tobacco Company, R.J. Reynolds Tobacco, International, Inc., Carreras Rothmans Limited, JTI-MacDonald Corp., Rothmans, Benson & Hedges Inc., Rothmans Inc. and Ryeseckks p.l.c. <sup>3</sup>

### C. Tobacco Claim Litigation – Individual Actions

	Jurisdiction	Date Filed; Court File No.	(Representative) Plaintiff	Defendant(s)
1.	Nova Scotia	February 20, 2002, 177663 (Halifax)	Peter Stright	Imperial Tobacco Canada Limited
2.	Ontario	May 1, 1997, amended May 25, 1998; fresh as amended March 28, 2004; C17773/97 (Milton)	Ljubisa Spasic as estate trustee of Mirjana Spasic	Imperial Tobacco Limited and Rothmans, Benson & Hedges Inc.
3.	Ontario	Amended September 8, 2014; 00-CV-	Ragoonanan <i>et al.</i>	Imperial Tobacco Canada Limited

<sup>3</sup> B.A.T Industries p.l.c., British American Tobacco (Investments) Limited, British American Tobacco p.l.c. have been released from this action.

		183165-CP00 (Toronto)		
4.	Ontario	June 30, 2003; 1442/03 (London)	Scott Landry	Imperial Tobacco Canada Limited
5.	Ontario	June 12, 1997; 21513/97 (North York)	Joseph Battaglia	Imperial Tobacco Canada Limited
6.	Quebec	December 8, 2016; 750-32- 700014-163 (Saint- Hyacinthe)	Roland Bergeron	Imperial Tobacco Canada Limited

**SCHEDULE "B"**  
**ITCAN SUBSIDIARIES**

Imperial Tobacco Services Inc.  
Imperial Tobacco Products Limited  
Marlboro Canada Limited  
Cameo Inc.  
Medallion Inc.  
Allan Ramsay and Company Limited  
John Player & Sons Ltd.  
Imperial Brands Ltd.  
2004969 Ontario Inc.  
Construction Romir Inc.  
Genstar Corporation  
Imasco Holdings Group, Inc.  
ITL (USA) limited  
Genstar Pacific Corporation  
Imasco Holdings Inc.  
Southward Insurance Ltd.  
Liggett & Myers Tobacco Company of Canada Limited

**SCHEDULE “C”  
HEALTH CARE COSTS RECOVERY LEGISLATION**

Jurisdiction	Statute
Alberta	<i>Crown’s Right of Recovery Act</i> , SA 2009, c C-35
British Columbia	<i>Tobacco Damages and Health Care Costs Recovery Act</i> , SBC 2000, c 30
Manitoba	<i>The Tobacco Damages Health Care Costs Recovery Act</i> , SM 2006, c 18
New Brunswick	<i>Tobacco Damages and Health Care Costs Recovery Act</i> , SNB 2006, c T-7.5
Newfoundland and Labrador	<i>Tobacco Health Care Costs Recovery Act</i> , SNL 2001, c T-4.2
Nova Scotia	<i>Tobacco Health-Care Costs Recovery Act</i> , SNS 2005, c 46
Northwest Territories	Proclaimed but not yet in force: <i>Tobacco Damages and Health Care Costs Recovery Act</i> , SNWT 2011, c 33
Nunavut	Proclaimed but not yet in force: <i>Tobacco Damages and Health Care Costs Recovery Act</i> , SNu 2010, c 31
Ontario	<i>Tobacco Damages and Health Care Costs Recovery Act</i> , 2009, SO 2009, c 13
Prince Edward Island	<i>Tobacco Damages and Health Care Costs Recovery Act</i> , SPEI 2009, c 22
Québec	<i>Tobacco-related Damages and Health Care Costs Recovery Act</i> , 2009, CQLR c R-2.2.0.0.1
Saskatchewan	<i>The Tobacco Damages and Health Care Costs Recovery Act</i> , SS 2007, c T-14.2
Yukon	N/A

**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

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**APPLICANTS**

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

Proceeding commenced at Toronto

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**AMENDED AND RESTATED INITIAL ORDER**

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

Matter No: 1144377

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.*

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

PROCEEDING COMMENCED AT  
TORONTO

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**SUPPLEMENTARY  
MOTION RECORD**  
**(Motion returnable April 25, 2019)**

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