

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

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

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

Applicants

NOTICE OF OBJECTION

April 1, 2019

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U.S. Retiree Group Committee

NOTICE OF OBJECTION

A. Overview

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

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

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

3. The Committee:

- (a) objects to the Applicant’s intention to cease pension payments and obligations owed to the Affected Members;
- (b) intends to seek an order and bring a motion at the earliest available opportunity, if necessary, appointing members of the Committee as representatives of the Affected Members and appointing representative counsel;
- (c) requests that the Court make an order at the Comeback Motion requiring the Applicant to continue to fund the pension obligations to the Affected Members for at least 120 days from the date of the Initial Order; and

- (d) requests the immediate disclosure to it by the Applicant of:
- i. all relevant plan texts, agreements, insurance policies and other applicable documents and particulars of its financial obligations respecting the Genstar U.S. Plans including with respect to funding or securing the obligations thereunder;
 - ii. the names and contact information of all Affected Members and particulars of their pension entitlements, subject to a confidentiality undertaking; and
 - iii. such additional and other documentation or information as may be necessary or desirable to permit the Committee to represent the Affected Members in these proceedings.

4. The Applicant is not correct that the Affected Members' pensions are "not funded"¹. For the GCDIP and SERP, in particular, Genstar secured the pension benefits by using employees' deferred income (in the case of the GCDIP) and corporate funds (in the case of the SERP) to purchase single-premium life insurance policies on each Member's life. Genstar was the owner and beneficiary of these life insurance policies, which are worth millions of dollars today. This raises trust and fiduciary obligations by the Applicant on behalf of the Affected Members.

5. Moreover, contrary to the Applicants' characterization of the Affected Members' interests as being a "contractual obligation", the Supreme Court of Canada has confirmed that pension benefits earned by an employee during their employment years are not merely contractual, rather are quasi-proprietary in nature². Pensions provide retirement savings and serve a public purpose namely the security and dignity of personhood in one's elder years. In this case, it is believed that a majority of Affected Members are in their late 70s and 80s, if not older.

¹ Exhibit "C" to the Affidavit of Eric Thauvette Sworn March 12, 2019.

² *IBM Canada Limited v. Waterman*, 2013 SCC 70 at 4, 83-4: "Pension benefits are a form of deferred compensation for the employee's service and constitute a type of retirement savings. [They] bear many of the hallmarks of a property right ... As A. Kaplan and M. Frazer explain in *Pension Law* (2nd ed. 2013), at p. 203: ... It is the vesting of pension benefits that shift our perception of pensions from purely contractual entitlements to quasi-proprietary interests."

B. Late Notice of Comeback Motion / Extension of Time to File

6. The Committee and Affected Members did not receive timely notice of these proceedings and therefore seek the Court's indulgence to file this Notice of Objection and, if required, leave to do so. The majority of members live in the United States. The Initial Order (para. 51) provides for notice of the Comeback Motion by way of Canadian newspaper publications, as well as for the Monitor to send "a notice ... to every known creditor who has a claim (contingent, disputed or otherwise) against the Applicants of more than \$5,000, except ... in the case of beneficiaries of the ... pension plans, in which case the Monitor *shall only send a notice to the trustees of each of the ... pension plans*".

7. The Committee states that Affected Members are yet to receive notice or other information concerning this proceeding from the trustees or administrator of the Genstar U.S. Plans.

8. On March 29, the Committee first contacted Mr. Ari Kaplan of Kaplan Law and have since retained that firm to represent the interests of Affected Members in this proceeding. On the same day, Mr. Kaplan sent a letter to the Applicant and Monitors' counsel (**Exhibit "A"**) which asserted the Committee's interests and expressed objections to the Initial Order to the extent it sanctioned the suspension or cessation of payments under the Genstar U.S. Plans. Mr. Kaplan also made initial telephone contact with the Applicant's counsel.

9. Para. 63 of the Initial Order provides that "any interested party ... may apply to this Court to vary or amend this Order on not less than seven (7) days' notice to any other party or parties likely to be affected by the order sought or upon such other notice, if any, as this Court may order".

10. The Monitor has advised that "Any party bringing a motion on the Comeback Motion seeking relief against Imperial Tobacco or a variation of the Initial Order must serve their materials on the Service List and file materials with the Court by March 28, 2019 at 4:00 PM."

11. The Committee was reasonably not in a position to file any materials prior to March 29 and yet it acted prudently and without undue delay, forthwith upon securing counsel. In light of the foregoing and despite the late notice, the Committee seeks standing to appear in this proceeding and at the Comeback Motion, make submissions and bring motions for the benefit and protection of the Affected Members as indicated in this Notice of Objection and as may come to its attention.

C. Background

12. On March 12, 2019, the Applicant Imperial Tobacco Canada Limited (“ITCAN”) filed a Notice of Application under the *Companies’ Creditors Arrangement Act* (Canada) (“CCAA”) and obtained the Initial Order. Schedule “B” to the Initial Order lists all “ITCAN Subsidiaries” (defined at para. 4(f) of the Initial Order), which includes Genstar Corporation. Genstar is a wholly-owned Canadian subsidiary of ITCAN and is currently a dormant Canadian company (see Affidavit of Eric Thauvette Sworn March 12, 2019 [the “**Thauvette Affidavit**”] at para. 24(e)).

13. Historically, various senior employees, executives and other management employees of Genstar and related entities in the United States (including Genstar Company and Imasco Limited) earned benefits including supplementary pensions under the Genstar U.S. Plans.

14. The GCDIP and SERP were designed by an independent firm, Clark/Bardes Organization, Inc., to be at least cost/revenue neutral to Genstar. In the case of the GCDIP, a Member could defer as much as 50% of their annual compensation. In the case of the SERP, Genstar offered this as an incentive to senior executives to stay with the company and to attract new hires of senior executives to the company. Under both the GCDIP and SERP, Genstar purchased single-premium life insurance policies on each Member’s life, using the deferred income on account of the GCDIP, or corporate funds on account of the SERP, to pay for the premiums.

15. As stated, Genstar was the owner and beneficiary of the life insurance policies used to secure and fund payments under the GCDIP and SERP. It is expected that these policies are worth a significant amount today (in the millions of dollars). The policies are effectively trust funds.

16. Pursuant to an agreement dated April 2, 1986 involving various entities (the “**1986 Agreement**”), and in conjunction with the historical acquisition and restructuring of various companies and businesses involving U.S subsidiaries including Imasco Limited and Genstar Company, ITCAN came to be the guarantor of the legacy pension benefits payable under the Genstar U.S. Plans.

17. It appears that ITCAN has historically met its obligations under the Genstar U.S. Plans by making capital contributions as necessary to its applicable U.S. subsidiaries, which are asset-less and responsible for these pension payments, and then writes off these amounts.

18. The present value of the obligations under the Genstar U.S. Plans is estimated to be approximately CAD \$43 million in the aggregate (USD \$32 million). A summary of ITCAN's 11 pension plans in Canada and the United States, as at December 31, 2017 is included as Exhibit "C" to the Thauvette Affidavit and attached hereto as **Exhibit "B"**.

19. The Initial Order provides that ITCAN may suspend its obligations under all of its pension plans. Specifically,

- (a) Para. 7 of the Initial Order provides that the Applicants "entitled but not required to pay the following expenses whether incurred prior to, on or after the date of" the Initial Order: "(a) all outstanding and future ... retiree pension and other benefits and related contributions and payments";
- (b) Para. 14 of the Initial Order provides that "except as specifically permitted herein, the Applicants are hereby directed, until further Order of this Court: (a) to make no payments ... on account of amounts owing by the Applicants or claims to which they are subject to any of their creditors"; and
- (c) Para. 21 of the Initial Order provides that "during the Stay Period, all rights and remedies of any individual ... against or in respect of the Applicants, the ITCAN Subsidiaries or the Monitor ... are hereby stayed and suspended except with the written consent of the Applicants and the Monitor, or leave of this Court".

20. It appears that ITCAN intends to treat the Affected Members of the Genstar U.S. Plans *differently and prejudicially relative to all other pension obligations*. ITCAN has stated that during the course of these proceedings, it "intends to continue to make ordinary course payments" and, where applicable, "amortization payments", in respect of its Canadian pension plans as well as to the Imasco "IHGI U.S. Pension Plan" (Thauvette Affidavit at paras. 49-54).

21. However, with respect to the Genstar U.S. Plans, ITCAN has stated that it "proposes that *any further payments with respect to these obligations be stayed pursuant to the Initial Order*" (Thauvette Affidavit at para. 56). The Committee objects to this inequitable and non-evenhanded treatment by ITCAN respecting its pension obligations. The Affected Members appear to be ITCAN's *only* pension beneficiaries whose pension payments are intended to be stayed.

D. Former Genstar U.S. Retiree Group and Committee

22. As mentioned, on March 29, the Committee established itself and has retained Canadian counsel to represent the interests of the Committee and Affected Members under the Genstar U.S. Plans. The Committee has thus formed the Former Genstar U.S. Retiree Group and is instructing Kaplan Law. The Committee (a steering committees) is currently comprised of the following former Genstar executives and officers:

- (a) Angus A. MacNaughton, former co-CEO;
- (b) Ross J. Turner, former co-CEO;
- (c) Ernest Hartz, former Senior Vice President and General Counsel; and
- (d) Richard D. Paterson, former Senior Vice President and CFO.

23. The members of the Committee have been attempting to contact other Affected Members and are in the process of organizing themselves according to their common interests in these proceedings, in which they are significant stakeholders. The Committee continues its efforts to locate and communicate with Affected Members. However, given the length of time that has passed since Genstar ceased operations and the fact that these individuals are elderly and live all over the United States and beyond, it has proved to be a difficult task.

E. U.S. Chapter 15 Proceedings

24. Commencing on or about March 14, 2019, various Affected Members received voluminous court documents from the Bracewell LLP firm respecting the Chapter 15 proceeding initiated on March 13, 2019 by the Monitor on behalf of ITCAN as Debtor in the United States Bankruptcy Court in the Southern District of New York (the “**Chapter 15 Proceeding**”).

25. On March 25, the Monitor obtained an Order Granting Preliminary Injunction in the Chapter 15 Proceeding in which the court found that ITCAN is likely the “subject of a pending foreign main proceeding” in Ontario, established the Monitor as the “foreign representative” of ITCAN and stayed proceedings in the U.S. “until such a time as an order adjudicating the Monitor’s request for recognition of the Canadian Proceeding is entered, or as otherwise ordered by this Court”.

26. The Committee is retaining U.S. counsel and intends to participate in and make submissions in the Chapter 15 Proceeding. Some Affected Members have already started writing to the U.S. court to assert their objections and interests (see e.g. **Exhibit “C”** attached hereto).

27. Since the within CCAA proceeding is the “main proceeding” respecting the rights of the Affected Members, the Committee intends to fully participate in this CCAA proceeding. The Committee’s mandate and intended activities in this proceeding include the following:

F. Representation Order

28. Two members of the Committee, Messrs. Ernest Hartz and Richard Paterson, both residents of California, propose to seek an order (the “**Representation Order**”) appointing them as representatives (the “**Representatives**”) of the Affected Members, namely, of all beneficiaries entitled to pension benefits under the Genstar U.S. Plans guaranteed by ITCAN pursuant to the 1986 Agreement, or any person claiming an interest under or on behalf of such Affected Members and their surviving spouses (excluding individuals who opt-out of such representation, if any), for the purpose of representing the Affected Members in these proceedings and in particular with respect to proving, settling or compromising the rights and claims of the Affected Members.

29. The Affected Members are a significant and vulnerable stakeholder group in these proceedings and they require representation. The Affected Members are not yet represented in the proceeding as an organized group and they are exposed to significant losses to their pension benefits. The Applicants’ stated intention that all “further payments” under the Genstar U.S. Plans be “stayed” will have the effect of directly and detrimentally impacting \$43 million of vested benefits and entitlements of 53 elderly members of the GCDIP, 14 members of the SERP and 3 members of the SPEN. The proposed stay, if permitted by this court, will directly and immediately cause losses to Affected Members, most of whom are in their late 70s and 80s. These actions will cause immediate and substantial hardship to Affected Members. The Committee intends to oppose any motion to implement such actions.

30. The Committee will seek an order proposing the appointment of Ari Kaplan of Kaplan Law (“**Representative Counsel**”) as legal counsel to the Representatives in their capacity as representatives for the Affected Members with the mandate to provide assistance to the Affected Members so that they are able to participate in the proceedings and the restructuring process in a

more efficient manner, including to assist the Affected Members in the evaluation of their entitlements and claims in a cost-effective and timely manner.

31. The Committee will seek an order proposing that notice of the appointment of the Representatives and Representative Counsel (the “**Representation Notice**”) be provided to the Affected Members by the Monitor by way of first class mailing and under such other terms and conditions as to be agreed upon by the Representatives, the Applicant and the Monitor, such terms to include that any Affected Member who does not wish to be represented by the Representatives and Representative Counsel and thereby bound by their subsequent actions and decisions be entitled to opt out of representation by the Representatives or Representative Counsel.

G. Disclosure of Information and Entitlements of Affected Members

32. Para. 34 of the Initial Order provides that “the Monitor shall provide any creditor of the Applicants ... with information provided by the Applicants in response to reasonable requests for information made in writing by such person addressed to the Monitor. ... In the case of [confidential] information ..., 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”.

33. Para. 51 of the Initial Order provides that the Monitor shall “... (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 ... not includ[ing] the names, addresses or estimated amounts of the claims of those creditors who are individuals or any personal information in respect of an individual”.

34. The Committee requests that the Applicants disclose and, if not forthcoming, seeks an order directing the Applicants to provide to the proposed Representatives and Representative Counsel without charge, the following information, documents and data (the “**Information**”):

- (a) the names, last known address, telephone number and email addresses (if any) of all the Affected Members as well as applicable data regarding their entitlements, subject to a confidentiality agreement as applicable and to only be used for the purposes of these proceedings, and that, in so doing, the Applicants are not required to obtain express consent from such Affected Members authorizing disclosure of

the Information to the proposed Representatives and Representative Counsel and, further, in accordance with section 7(3) of the *Personal Information Protection and Electronic Documents Act* (Ontario) or, where applicable, section 18(9) of *An Act respecting the Protection of Personal Information in the Private Sector*, CQLR c P-39.1, such an order will be sufficient to authorize the disclosure of the Information without the knowledge or consent of the Affected Members; and

- (b) such other documents and data as may be relevant to matters relating to the issues in these proceedings, including all relevant plan texts, agreements, insurance policies, communications, booklets, and other applicable documents and particulars of ITCAN's financial obligations respecting the Genstar U.S. Plans including with respect to funding or securing the obligations and any other relevant other documents and data pertaining to the Genstar U.S. Plans and ITCAN's other pension plans and retirement arrangements, including up to date financial information regarding the funding and investments of any of these arrangements.

35. The requested Information is reasonably sought and necessary for the Committee and proposed Representatives to carry out their activities for the benefit of the Affected Members in these proceedings.

H. No Prejudice to Continue Payments for At Least 120 Days

36. The Committee requests that the Court make an order at the Comeback Motion on April 4 and 5 directing the Applicant to continue to fund the pension obligations to the Affected Members under the Genstar U.S. Plans for at least 120 days from the date of the Initial Order. This is necessary in order to permit the Committee to seek and obtain the Representation Order, receive and review the requested disclosures, commence communicating with and advising the Affected Members in these proceedings, assess the true and accurate number of affected individuals, and prepare and make arguments to the Court respecting the preservation and continuation of the Genstar U.S. Plan payments. A temporary reprieve will also mitigate the prejudicial impact of inadequate notice to Affected Members and the shock to their security of person given that most if not all Affected Members are elderly and on fixed incomes.

37. A fundamental principle of the CCAA is to maintain the *status quo*³. The balance of convenience favours the pre-filing *status quo* with respect to the Genstar U.S. Plans and there is no prejudice to the Applicants nor to any other creditor or stakeholder for pension payments to continue to the Affected Members at this time. In contrast, there is significant prejudice to the Affected Members. In particular,

- (a) ITCAN is sufficiently in funds. In the Court's March 15 Endorsement giving reasons for granting the Initial Order, McEwan J. observed:

[23] ... The Applicants will be carrying on business during the CCAA proceedings. The filed materials demonstrate that the Applicants and their affiliated companies expect that the Applicants will continue to carry on their business in a profitable fashion and be able to meet both their pre-filing and post-filing obligations.

ITCAN has in excess of CAD \$5 billion in assets with significant cash flow and profitability. Its continued contributions to the Genstar U.S. Plans will not be material to its financial position.

- (b) While ITCAN proposes to cease payments under the Genstar U.S. Plans, all other pension plan contributions and payments are continuing. For example,
- i. ITCAN's seven (7) Canadian pension and retirement plans (the 1. Imasco Pension Fund Society, 2. Imperial Tobacco Corporate Pension Plan, 3. Imasco Corporate Supplementary Pension Plan, 4. Imperial Tobacco Supplementary and Executive Pension Plans, 5. ITCL Defined Contribution Retirement Plan, 6. ITCL Non-Registered Savings Plan, and 7. Group RRSP) cover thousands of individuals and they are either fully funded, have a going-concern surplus or otherwise require no additional contributions. With respect to these Canadian plans, ITCAN has stated that it "intends to continue to make 'normal cost' payments or 'current

³ March 15, 2019 Endorsement of McEwan J. at para. 8: "It is settled law that the principal purpose of the CCAA is to maintain the status quo while a debtor company has the opportunity to consult with its creditors and stakeholders with a view to continue the company's operations".

service' contributions, ... any legally required amortization payments ... required ordinary course payments [and] any required employer contributions the during the course of these proceedings"⁴. In 2017, ITCAN made contributions of approximately CAD \$7.5 million toward these plans⁵ and

- ii. ITCAN is responsible for one registered pension plan in the U.S., the Imasco IHGI Pension Plan, which covers over 2,500 individuals (including some Affected Members). As at the end of 2017, this plan was 82% funded on an accounting basis and 71% funded on a termination basis, with USD \$ 76 million in assets and USD \$93 million in benefit liabilities. ITCAN has stated that it "also intends to continue to make ordinary course payments in respect of the IHGI U.S. Pension Plan during the course of these proceedings".

The Applicant has neither explained nor given any reason why it proposes to cease payments under the Genstar U.S. Plans while maintaining its eight remaining plans. The Applicant owes a duty of evenhandedness and good faith to its pension beneficiaries including to the Affected Members which, at a minimum, demands an explanation supporting its intended actions and, most certainly, to treat all similarly situated pension beneficiaries equitably. It is possible that the Applicant and/or the Monitor, by sanctioning a stay of payments under the Genstar U.S. Plans, are conflicted in their duties vis-à-vis the other stakeholders and interested parties.

- (c) ITCAN will receive a windfall were a stay to be granted. As mentioned, the payments guaranteed by the DCDIP and SERP are secured by paid-up premium insurance policies on the lives of Affected Members. Given the security that the insurance policies provide, and the future cash they will almost for certain generate upon the deaths of the Affected Members, ITCAN will receive a windfall directly attributable to the Genstar U.S. Plans were it to cease payments to the Affected

⁴ Thauvette Affidavit at paras. 49-50.

⁵ Thauvette Affidavit at paras. 49-54; Exhibit "C".

Members. Such result also puts the Applicant in a conflict of interest and raises questions about its relationship of trust involving the lives of Affected Members.

- (d) A stay order engages section 7 of the *Canadian Charter of Rights and Freedoms*. It is respectfully submitted that before this Honourable Court makes any order staying pension payments to Affected Members, it must be mindful of whether that order will result in jeopardizing the life or security of any person and be reasonably satisfied that such order will not in actual fact do so. Orders made by judges under the CCAA are subject to the *Charter*⁶. Section 7 of the *Charter* states that “Everyone has the right to life, liberty and security of the person and the right not to be deprived thereof except in accordance with the principles of fundamental justice”. The Committee submits that:

- i. the Information (in the possession of the Applicant and Monitor) and other evidence to be adduced will disclose that the effect of a stay order on the lives of Affected Members will violate each of their rights to life, and to security of their person, contrary to section 7 and such deprivations are not in accordance with principles of fundamental justice, including:
 1. many of the Affected Members (including surviving spouses) are very advanced in age and suffer from ill-health and, in some cases, incapacity. Affected Members rely on their Genstar pensions for ensuring their physical, mental, psychological and emotional security and stability; and

⁶ *Re Nortel Networks Corporation et al*, 2017 ONSC 700 at para. 25: where “the proceedings are being taken under the CCAA and the discretionary power of a court to sanction a plan is contained in section 6 of that statute, ... I accept that any order I make to sanction the Plan may be subject to the Charter”. See also Hogg, Peter W. *Constitutional Law of Canada*, 5th ed. supplemented Thomson: Carswell, 2007 at § 37-22 cited at *Re Nortel, supra*, at para. 24: “Where, however a court order is issued ... in a purely private proceeding that is governed by statute law, then the *Charter* will apply to the court order”.

2. most if not all Affected Members no longer actively work, are on fixed incomes, and have budgeted accordingly for their security in reliance on their Genstar U.S. Plan income. Pensioners on fixed incomes require as much financial certainty as possible as they budget for the end of their lives. The cessation of such income will deprive many of them of their ability to provide for themselves.
- ii. Laws and court orders that deprive people of their ability to provide for themselves engages the right to life, liberty and security of the person protected by Section 7 of the *Charter*: “The ability to provide for one’s self ... is an interest that falls within the ambit of the s. 7 provision of the necessity of life. Without the ability to provide for those necessities, the entire ambit of other constitutionally protected rights becomes meaningless”⁷. A stay order that has the effect of confiscating people’s retirement savings in their old age deprives them of their ability to provide for themselves and thereby deprives them of their right to life and security of the person which are protected by Section 7;
 - iii. There is a pressing and substantial public policy interest in ensuring that people have an ability to provide for oneself in old age, and this includes the ability to fairly budget within expected means. Poverty amongst seniors is a social ill increasing in scope, due to a rapidly aging demographic and the increased costs which come with increased longevity;

⁷ *Federated Anti-Poverty Groups of BC v Vancouver (City)*, 2002 BCSC 105 at para 201. See also at para. 202:

... [A] person who lacks the basic means of subsistence has a tenuous hold on the most basic of constitutionally guaranteed human rights, the right to life, to liberty, and to personal security. Most, if not all, of the rights and freedoms set out in the Charter presuppose a person who has moved beyond the basic struggle for existence. The Charter accords rights which can only be fully enjoyed by people who are fed, are clothed, are sheltered, have access to necessary health care, to education, and to a minimum level of income.

iv. A stay order as envisioned by the Applicants does not accord with principles of fundamental justice and is arbitrary, overbroad and disproportionate action; it mismatches the legislative objectives of the CCAA with the means chosen to achieve it. A stay order is arbitrary in these circumstances because it is not necessary for the successful restructuring of the company nor is there is a connection between the effect and the object of the stay order. It will be overbroad because it overreaches in its effects. It will be disproportionate because the effects of the order will be grossly disproportionate to its purpose⁸.

(e) In all of the circumstances, there is no material prejudice to other creditors including the “Tobacco Claimants” were the Affected Members to continue to receive their pension payments while the foregoing is addressed and adjudicated.

38. The Committee reserves all rights, arguments and positions respecting the interests of the Affected Members.

⁸ See, generally, *Canada (Attorney General) v. Bedford*, 2013 SCC 72 at paras. 58-105.

**THIS IS EXHIBIT "A" TO THE
NOTICE OF OBJECTION OF THE
FORMER GENSTAR U.S. RETIREE GROUP
COMMITTEE
DATED APRIL 1, 2019**



March 29, 2019

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Dear Counsel:

Re: 00137-Re Imperial Tobacco Canada Limited ("**ITCAN**")
Former Genstar U.S. Retiree Group pension interests

I was contacted this afternoon and am in the process of being retained by a group of former officers and executives of Genstar Corporation, an ITCAN subsidiary ("**Genstar**") and their survivors (the "**Former Genstar U.S. Retiree Group**") who are entitled to pension benefits guaranteed by ITCAN pursuant to an agreement dated April 2, 1986. The pension plans and affected individuals include:

- (a) a "deferred income plan" for approximately 53 individuals who are either former senior management employees of Genstar or their surviving spouses ("**GCDIP**");

- (b) a “supplemental executive retirement plan” for approximately 14 individuals who were either former Genstar employees or their surviving spouses (“SERP”); and
 - (c) a “supplementary pension plan” for 3 individuals who were either former Genstar employees or their surviving spouses (“SPEN”),
- (collectively, the “Genstar U.S. Plans”).

The present value of the pension obligations under the Genstar U.S. Plans, in the aggregate, is estimated to be approximately \$43 million CAD (approximately \$32 million USD).

It appears that ITCAN intends to treat the affected members of the Genstar U.S. Plans under the Initial Order differently and prejudicially relative to all other pension obligations. ITCAN has stated that during the course of these proceedings, it “intends to continue to make ordinary course payments” and, where applicable, amortization payments, in respect of its Canadian pension plans as well as to the Imasco “IHGI U.S. Pension Plan” (see Affidavit of Eric Thauvette Sworn March 12, 2019 (the “Thauvette Affidavit”) at paras. 49-54).

However, with respect to the Genstar U.S. Plans, ITCAN has stated that it “proposes that *any further payments with respect to these obligations be stayed pursuant to the Initial Order*” (“Thauvette Affidavit” at paras. 55-56).

This is not acceptable. Any stay sought or cessation of the pension obligations respecting the Genstar U.S. Plans will be opposed. All rights are reserved.

The affected members are in the process of establishing a committee to instruct counsel and facilitate membership by affected members in the Former Genstar U.S. Retiree Group. The committee is currently comprised of the following former Genstar executives and officers:

- Angus A. MacNaughton, former co-CEO;
- Ross J. Turner, former co-CEO;
- Ernest Hartz, former Senior Vice President and General Counsel; and
- Richard D. Paterson, former Senior Vice President and CFO.

This is to advise that we will be serving and filing a Notice of Appearance in connection with the return of the Comeback Motion scheduled for April 4 and 5. We will be seeking an Order that pension payments under the Genstar U.S. Plans continue for at least 120 days in order to mitigate the prejudicial impact of the cessation of pension payments to them on very short notice; and to permit counsel to bring a representation motion on behalf of vulnerable retirees and their survivors in order to protect their rights, obtain disclosure of the contact information and identity of the affected beneficiaries for the purpose of communicating with them and advising them on their rights, ascertain the realistic status of the Applicants’ ability to continue the payments, engage in discussions with relevant stakeholders with a view toward resolution, and advise the affected members of the Former Genstar U.S. Retiree Group in the course of the Canadian proceeding.

Please also note that the affected members of the Genstar U.S. Plans did not receive timely notice of these proceedings, which explains why I have only been contacted today. The majority of members live in the United States. The Initial Order (para. 51) provides for notice of the Comeback Motion by way of Canadian newspaper publication, as well as for the Monitor to "send, in the prescribed manner, a notice ... to every known creditor who has a claim (contingent, disputed or otherwise) against the Applicants of more than \$5,000, *except with respect to ... in the case of beneficiaries of the ... pension plans, in which case the Monitor shall only send a notice to the trustees of each of the ... pension plans*".

Please contact the undersigned as soon as possible in order to discuss to this matter.

Yours truly,

KAPLAN • LAW

A handwritten signature in black ink, appearing to read "Ari Kaplan", written over the printed name and initials.

Ari Kaplan
ANK:bh

c. Former Genstar U.S. Retiree Group Committee.

**THIS IS EXHIBIT "B" TO THE
NOTICE OF OBJECTION OF THE
FORMER GENSTAR U.S. RETIREE GROUP
COMMITTEE
DATED APRIL 1, 2019**

**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

Item	Jurisdiction	Plan / Benefit	Total # of Plan participants as at December 31, 2017	Description	Employer Funding Information
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 ITSupp 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

**THIS IS EXHIBIT "C" TO THE
NOTICE OF OBJECTION OF THE
FORMER GENSTAR U.S. RETIREE GROUP
COMMITTEE
DATED APRIL 1, 2019**

BY Priority Mail

March 29, 2019

Hon. Shelley C Chapman
United States Bankruptcy Judge
Southern District of New York
One Bowling Green
New York, NY 10004

Bracewell LLP
Jennifer Feldsher, Esq.
Mark E. Dendinger, Esq.
1251 Avenue of the Americas
New York, NY 10020-1100

OBJECTIONS IN THE MATTER OF A PLAN OF COMPROMISE OR ARRANGEMENT OF IMPERIAL TOBACCO COMPANY CANADA LIMITED CHAPTER 15 PETITION-CASE NO. 19-10771 (SSC)

1. My name is Glen R. Jones and my residence and mailing address is 23 Ashler Ave. Los Gatos, CA 95030. My email address is glenjones38@hotmail.com and my telephone number is (408) 771-8763. I am 77 years of age and fully retired. Attendance at the hearing in this matter in New York City is not feasible for me and accordingly I am submitting my objections in writing.

2. From 1976 to 1986 I was employed by Genstar Corporation ("Genstar") headquartered in San Francisco, CA a U.S. subsidiary of the Debtor as Corporate Counsel. I participated voluntarily in the Genstar Deferred Income Plan ("DIP.") The DIP provided for participants to contribute a portion of their salaries into the plan in return for stipulated monthly retirement payments from age 65 to 80.

3. In Section 14 on page 6 of the Verified Petition the Debtor proposes to continue to fund ordinary course payments to their pension and retirement plans of US subsidiaries with the exception of (i) a deferred income plan for approximately 53 individuals who are former senior management employees of Genstar (the "DIP") (ii) a supplement executive retirement plan for 14 individuals and (iii) a supplementary plan for 3 individuals "(collectively the "Plans"). I am a participant in the DIP plan to which I made salary deduction contributions and I have been receiving regular monthly payments according to the plan since my age 65. I see no reason why contributions to the DIP should be treated in a discriminatory manner from the ordinary course payments to all of the pension and retirement plans of the US subsidiaries of the Debtor.

4. The relief requested to discontinue payments to the Plans by the Debtor including the DIP plan is not justified from a financial point of view. The Debtor is a very long standing going concern with assets in Canada and in the U.S. in excess of C\$ 5 billion with significant cash flow and profitability. The continued contributions to the DIP plan until the participants' age 80 will not be material to its financial position nor to the claims against the Debtor.

5. The failure to continue contributions to the Plans will inflict significant financial harm to the participants all of whom are of advanced retirement age and who have been relying in receipt of these payments since their age 65. The discontinuance of the payments constitutes an immediate breach of the contractual obligations incurred in the establishment of the DIP which provided that the Genstar assets would be sold or merged only with a successor capable of the fulfilling the funding obligations. The DIP participants contributed to the DIP plan with voluntary cash reductions in their salaries in reliance on receiving future retirement payments. In addition insurance policies were purchased to as part of the DIP funding. The Debtor acquired the assets of the Genstar companies in excellent condition and benefitted significantly from their operations. In return the Debtor is legally obligated to fulfill its obligations to the former executive employees under the Plans.

6. I therefore request that during the pendency of the bankruptcy proceedings and beyond that the Debtor be required to continue to fund the Plans without interruption. Furthermore I request that the Court make clear in any rulings that it is not making a determination of my participant's rights under the employee benefit provisions of the DIP and the obligations of the Debtor thereunder. Such determinations should be made in a proper forum with adequate notice and an opportunity for participants to respond represented by counsel.

Respectfully Submitted

Glen R. Jones

BY Priority Mail

March 29, 2019

Hon. Shelley C Chapman
United States Bankruptcy Judge
Southern District of New York
One Bowling Green
New York, NY 10004

Bracewell LLP
Jennifer Feldsher, Esq.
Mark E. Dendinger, Esq.
1251 Avenue of the Americas
New York, NY 10020-1100

OBJECTIONS IN THE MATTER OF A PLAN OF COMPROMISE OR ARRANGEMENT OF IMPERIAL TOBACCO COMPANY CANADA LIMITED CHAPTER 15 PETITION-CASE NO. 19-10771 (SSC)

My name is Alfred K Mueller and I live at 44537 Arapaho Ave, Fremont, CA Telephone # (510) 651-26599, Cell # (510) 207-2321 and Email al.mueller@paccoast.com.

In 1986 I was employed by Genstar Corporation ("Genstar") headquartered in San Francisco, California. As President of Genstar Cement division and I participated in the Genstar Deferred Income Plan ("DIP.") The DIP provided for participants to contribute a portion of their salaries into the plan in return for stipulated monthly retirement payments from age 65 to 80. Attendance at the hearing in this matter in New York City is not feasible for me. Accordingly, I am submitting my objections in writing.

In Section 14 on page 6 of the Verified Petition the Debtor proposes to continue to fund ordinary course payments to their pension and retirement plans of US subsidiaries with the exception of (i) a deferred income plan for approximately 53 individuals who are former senior management employees of Genstar (the "DIP") (ii) a supplement executive retirement plan for 14 individuals and (iii) a supplementary plan for 3 individuals "(collectively the "Plans"). I am a participant in the DIP plan to which I made salary deduction contributions and I have been receiving regular monthly payments according to the plan since my age 65.

I submit that the relief requested "out of an abundance of caution" to discontinue payments to the Plans by the Debtor including the DIP Plan is not justified from a financial point of view. The Debtor is a long standing going concern with assets in Canada and in the U.S. in excess of C\$ 5 billion with significant cash flow and profitability. The Debtor is primarily interested in preservation of its assets and the continued contributions to the Plans will not be material to its financial position.

The failure to continue contributions to the Plans will inflict significant financial harm to the participants all of whom are of advanced retirement age and who have been relying in receipt of these payments since their age 65. The discontinuance of the payments constitutes a breach of the obligations incurred

in the formation of the DIP which provided that the Genstar assets would be sold or merged only with a successor capable of fulfilling the funding obligations. Furthermore the DIP participants contributed to the DIP plan with voluntary cash reductions in their salaries in reliance on receiving future retirement payments. In addition insurance policies were purchased to as part of the DIP funding. The Debtor acquired the assets of the Genstar companies in excellent condition and benefitted significantly from their operations. In return the Debtor should continue to fulfill its obligations to the former executive employees under the Plans.

I therefore request that during the pendency of the bankruptcy proceedings and beyond that the Debtor be required to continue to fund the Plans without interruption. Furthermore I request that the Court make clear in any rulings that it is not making a determination of my participant's rights under the employee benefit provisions of the DIP and the obligations of the Debtor thereunder, which determinations should be made only upon proper notice and an opportunity for me to respond.

Respectfully Submitted

Alfred K. Mueller

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

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

PROCEEDING COMMENCED AT
TORONTO

NOTICE OF OBJECTION

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