

Objection Deadline: July 10, 2019 at 4:00 p.m.

Hearing: July 17, 2019 at 2:00 p.m.

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*Attorneys for FTI Consulting Canada Inc., in its
Capacity as Court Appointed Monitor and Authorized Foreign Representative for the Debtor*

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

In re:

IMPERIAL TOBACCO CANADA
LIMITED,

Debtor in a Foreign Proceeding.¹

Chapter 15

Case No. 19-10771(SCC)

Relates to Dkt. No. 44

**DECLARATION OF PAUL BISHOP IN SUPPORT OF MONITOR’S MOTION
FOR RECOGNITION AND ENFORCEMENT OF THE ORDER OF THE
CANADIAN COURT APPROVING SETTLEMENT WITH THE RETIREE GROUP**

I, Paul Bishop, pursuant to 28 U.S.C. § 1746, hereby declare under penalty of perjury as follows:

1. I hereby submit this declaration (the “Declaration”), made in my capacity as a Senior Managing Director of FTI Consulting Canada Inc. (“FTI”), the Court appointed monitor and authorized foreign representative (the “Monitor”) of Imperial Tobacco Canada Limited (“ITCAN” or the “Debtor”) in a proceeding (the “Canadian Proceeding”) under Canada’s *Companies’ Creditors Arrangement Act*, R.S.C. 1985 c. C-36, as amended (“CCAA”), pending before the Ontario Superior Court of Justice (Commercial List) at Toronto, Ontario (the “Canadian

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



Court”), in further support of the *Monitor’s Motion for Recognition and Enforcement of the Order of the Canadian Court Approving Settlement with the Retiree Group* (the “Settlement Motion,” Dkt. No. 44).²

2. I previously submitted two declarations in support of the Verified Petition and related relief (the “First Declaration,” Dkt. No. 5 and “Supplemental Declaration,” Dkt. No 34), which declarations are expressly incorporated herein by reference.

Update on the Settlement with the Retiree Group

3. On May 14, 2019, the Canadian Court entered an order (the “Notice Procedures Order”) approving notice procedures related to the Settlement. A hearing on approval of the Settlement was scheduled for June 26, 2019 (the “Settlement Approval Hearing”). A copy of the Notice Procedures Order is attached to the Settlement Motion as Exhibit B. Notice of the Settlement, in accordance with the Notice Procedures Order, was served on the Retiree Group by KCC on May 15, 2019. No objections to the Settlement were filed in the Canadian Court.

4. At the Settlement Approval Hearing, the Canadian Court approved the Settlement and granted the Settlement Order, finding, in pertinent part, that: “[t]he Settlement Agreement is fair, reasonable and in the overall best interests of the Genstar Beneficiaries[.]” *See* Settlement Order at ¶9. A copy of the Canadian Court’s order (the “Settlement Order”) is attached hereto as

Exhibit A.

5. The Canadian Court also issued an endorsement (the “Endorsement”) providing its reasoning in approving the Settlement Order. A copy of the Endorsement is attached hereto as

Exhibit B.

² Capitalized terms used but not otherwise defined herein shall have the meaning ascribed to them in the Settlement Motion.

6. Notably, the Endorsement provides, in pertinent part, that the Settlement is “consistent with the purpose and intent of the *Companies’ Creditors Arrangement Act*” and that, in the absence of the Settlement, “ongoing litigation would have been protracted and expensive. The disputes were complicated and in some instances, novel.” Endorsement at 2. Accordingly, the Canadian Court found that “[t]he settlement reached by the parties is fair and reasonable. The Notice Amount and remaining terms reflect, accurately, the litigation risk faced by the parties if the matter proceeded to a hearing ... [and] the settlement represents an appropriate balancing of the interests of both sides.” *Id.* at 1, 2.

7. The Canadian Court further found that “the Releases proposed should be granted as drafted and are reasonably connected to the Settlement” and the payments to the Representative Counsel and representatives of the Retiree Group are “very fair and reasonable given the significant efforts that have been expended.” *Id.* at 3, 4.

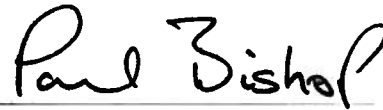
Conclusion

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

[Remainder of page intentionally left blank]

I declare under penalty of perjury under the laws of the United States of America that the
forgoing is true and correct to the best of my knowledge, information and belief.

Date: 7/3/2019
Toronto, Canada

A handwritten signature in black ink that reads "Paul Bishop". The signature is written in a cursive style with a horizontal line underneath it.

Paul Bishop, LIT
Senior Managing Director
FTI Consulting Canada Inc.

EXHIBIT A

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

**ONTARIO
SUPERIOR COURT OF JUSTICE
COMMERCIAL LIST**

THE HONOURABLE MR.) WEDNESDAY, THE 26TH
)
JUSTICE MCEWEN) DAY OF JUNE, 2019
)



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

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

APPLICANTS

**ORDER
(Genstar Settlement Approval)**

THIS MOTION, made by the Applicants for an order giving effect to the terms of the Settlement Agreement, was heard this day at 330 University Avenue, Toronto, Ontario.

ON READING the Notice of Motion and the supporting Affidavits of Eric Thauvette sworn June 18, 2019 and Vivian Brennan-Dolezar sworn June 13, 2019, and on hearing the submissions of respective counsel for the Applicants and the Monitor, Representative Counsel, and such other counsel as were present, no one else appearing although duly served as appears from the Affidavit of Service of Waleed Malik affirmed June 18, 2019, filed:

SERVICE

1. **THIS COURT ORDERS** that the time for service of the Notice of Motion and the Motion Record herein is hereby abridged and validated so that this Motion is properly returnable today and hereby dispenses with further service thereof.

DEFINITIONS

2. **THIS COURT ORDERS** that for purposes of this Order:

- (a) “**Applicants**” means Imperial Tobacco Canada Limited and Imperial Tobacco Company Limited;
- (b) “**Committee**” means the Former Genstar U.S. Retiree Group Committee, the members of which are Angus A. MacNaughton, Ross J. Turner, Richard D. Paterson, and J. Ernest Hartz;
- (c) “**Distribution Formula**” has the meaning ascribed in paragraph 3(a);
- (d) “**Genstar Beneficiaries**” means all persons with entitlements under the Genstar Plans, including survivors and beneficiaries of such persons and any other person claiming an interest under or on behalf of a Genstar Beneficiary;
- (e) “**Genstar Plans**” means the Genstar Corporation deferred income plan, supplemental executive retirement plan, and supplementary pension plan;
- (f) “**Individual Settlement Share**” has the meaning ascribed in paragraph 3(a);
- (g) “**ITCAN Subsidiaries**” means the direct and indirect subsidiaries of the Applicants listed in Schedule “B” of the Second Amended and Restated Initial Order dated March 12, 2019;
- (h) “**Monitor**” means FTI Consulting Canada Inc. in its capacity as the court-appointed Monitor in these CCAA proceedings;
- (i) “**Representative Counsel**” means Ari Kaplan in his capacity as representative counsel under the Representation Order;
- (j) “**Representation Order**” means the Representation Order made by this Court on April 25, 2019;

- (k) “**Representatives**” means Robert M. Brown, George A. Foster, and Vivian Brennan-Dolezar in their capacity as representatives under the Representation Order;
- (l) “**Settlement Agreement**” means the Settlement Agreement between the Applicants and the Representatives, dated as of May 10, 2019 and executed by all parties on May 13, 2019; and
- (m) “**Unsecured Claim**” has the meaning ascribed in paragraph 5.

SETTLEMENT

3. **THIS COURT ORDERS** that the Applicants shall pay, or cause to be paid, USD \$1.6 million within 30 days of the date of this Order as follows:

- (a) USD \$1.44 million on account of three months’ notice of the Applicants’ termination of payments under the Genstar Plans, which amounts are to be allocated and paid to each Genstar Beneficiary as a lump sum payment (an “**Individual Settlement Share**”), allocated in proportion to each Genstar Beneficiary’s projected total future payments under the Genstar Plans, with a minimum payment of USD \$5,000 (the “**Distribution Formula**”);
- (b) USD \$2,000 to each of the three Representatives as a stipend for their labours and efforts, which payments will be paid out of the USD \$1.44 million referred to in subparagraph (a) above; and
- (c) USD \$160,000 to Kaplan Law in Trust, on account of legal fees and disbursements.

4. **THIS COURT ORDERS** the motion of the Committee for the reinstatement of benefits under the Genstar Plans, originally returnable April 25, 2019, is hereby dismissed, in accordance with the terms set out herein.

CLAIMS AND RELEASE

5. **THIS COURT ORDERS** that, notwithstanding anything to the contrary in this Order, each Genstar Beneficiary will retain an unsecured claim for purposes of these CCAA Proceedings

for all remaining unpaid amounts under the Genstar Plans owing to that Genstar Beneficiary less the payment received by that Genstar Beneficiary pursuant to paragraph 3 of this Order (“**Unsecured Claims**”). Representative Counsel may, at the appropriate time, prove such Unsecured Claims on behalf of all Genstar Beneficiaries, no one having opted out of representation under the Representation Order in the context of the CCAA Proceedings.

6. **THIS COURT ORDERS** that, in the absence of proof satisfactory to the Applicants to the contrary, the Applicants may rely on the most recent records in their possession for purposes of determining the composition of the class of persons comprising the Genstar Beneficiary group, as well as calculating the projected future entitlements of the Genstar Beneficiaries. Representative Counsel shall also be entitled, without independent investigation, to rely on the books and records of the Applicants and any information provided by the Applicants for the purposes of determining the Distribution Formula and each Individual Settlement Share, and shall not be liable for any claims or damages resulting from any errors or omissions in the Applicants’ books, records or information.

7. **THIS COURT ORDERS** that, except as provided in paragraph 5 of this Order, no person or entity, including without limitation, the Representatives, the Committee, and the Genstar Beneficiaries, shall directly or indirectly assert, advance, re-assert or re-file any claim or initiate any legal proceedings or actions of any nature or kind in these proceedings or in any subsequent receivership or bankruptcy proceedings, or in any other proceedings, or in any other forum whatsoever concerning their entitlements under the Genstar Plans (including any motion or other proceeding seeking to recommence payments under the Genstar Plans), and shall not assert or advance any claim, directly or indirectly, that their entitlements related to the Genstar Plans, or any part thereof, are secured or rank as a priority or preferential claim over the claims of ordinary unsecured creditors, including, without limitation, that it is the subject of a trust (whether deemed or otherwise) or a lien or charge, or under other legal or equitable theory, and all such secured, priority, trust, lien or charge claims are hereby forever barred, enjoined, released and extinguished as against the Applicants, the ITCAN subsidiaries, and their respective officers, directors, subsidiaries and affiliates, as well as the employees, agents, members, legal counsel, financial advisors, administrators, legal representatives, successors and assigns of each of the foregoing.

8. **THIS COURT ORDERS** that, except as provided in paragraph 5 of this Order, the Monitor, the Monitor's counsel, the Applicants, the ITCAN Subsidiaries, and their respective officers, directors, subsidiaries and affiliates, as well as the employees, agents, members, legal counsel, financial advisors, administrators, legal representatives, successors and assigns of each of the foregoing, are hereby released, discharged and remised from any and all direct and indirect claims (contingent, liquidated or unliquidated, proven or unproven, known or unknown, in the nature of damages or otherwise, whether or not asserted and whether arising by contract, agreement (whether written or oral), under statute, civil law, common law, or in equity, or otherwise in any jurisdiction) related to the Genstar Plans or the Settlement Agreement.

9. **THIS COURT DECLARES AND ORDERS** that the Settlement Agreement is fair, reasonable and in the overall best interests of the Genstar Beneficiaries, and the Representatives, Representative Counsel, and the members of the Committee are hereby released, discharged and remised from any and all direct and indirect claims in respect of the Settlement and shall have no liability as a result of entering into the Settlement Agreement, performing any of their obligations set forth in the Settlement Agreement or taking any actions contemplated by the Settlement Agreement, except for any claims, demands, or proceedings due to wilful misconduct, gross negligence or fraud arising from any act or omission in the performance of such obligations or in the taking of any such action.

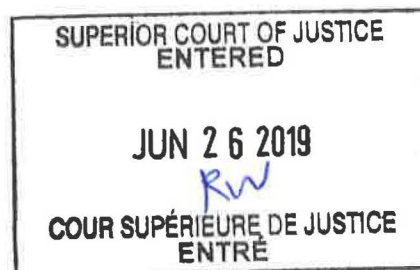
10. **THIS COURT ORDERS** that no person or entity, including without limitation, the Representatives, the Committee, and the Genstar Beneficiaries, shall assert, advance or make any claims of any nature whatsoever against any person or entity whatsoever that could reasonably be expected to result in a claim over (including, without limitation, a claim for contribution or indemnity) being made against any of the Applicants or the ITCAN Subsidiaries with respect to the subject matter of the release provisions hereof.

GENERAL

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

12. **THIS COURT HEREBY REQUESTS** the aid and recognition of any court, tribunal, regulatory or administrative body, having jurisdiction in Canada or in the United States of America, to give effect to this Order and to assist the Applicants, the Monitor and their respective agents in carrying out the terms of this Order. All courts, tribunals, regulatory and administrative bodies are hereby respectfully requested to make such orders and to provide such assistance to the Applicants and to the Monitor, as an officer of this Court, as may be necessary or desirable to give effect to this Order, to grant representative status to the Monitor in any foreign proceeding, or to assist the Applicants and the Monitor and their respective agents in carrying out the terms of this Order.





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

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

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

**ONTARIO
SUPERIOR COURT OF JUSTICE
(Commercial List)**

Proceeding Commenced at Toronto

**ORDER
(Genstar Settlement Approval)**

OSLER, HOSKIN & HARCOURT LLP

Box 50, 1 First Canadian Place
Toronto ON M5X 1B8

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

Tel: 416.362.2111
Fax: 416.862.6666

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

EXHIBIT B

Superior Court of Justice
Commercial List

FILE/DIRECTION/ORDER

In the Matter of a Plan of Compromise
or Arrangement ^{AND} Imperial Tobacco Canada ^{Plaintiff(s)}
Limited and Imperial Tobacco Company Limited ^{Defendant(s)}

Case Management Yes No by Judge: _____

Counsel	Telephone No:	Facsimile No:
D. Glendinning / M. Wasserman / T. MacDonald / C. Lockwood - Applies.		
A. Kaplan - Former Genstar US Retiree Group Committee		

- Order Direction for Registrar (No formal order need be taken out)
- Above action transferred to the Commercial List at Toronto (No formal order need be taken out)
- Adjourned to: _____
- Time Table approved (as follows):

On June 26/19 I granted the Order approving the Genstar settlement with reasons to follow. I am now providing those reasons.

In my view, the settlement reached by the parties is fair and reasonable. The Notice Amount and remaining terms reflect, accurately, the litigation risk faced by the parties if the

27 June 19

Date

[Signature]

Judge's Signature

Additional Pages 3

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Superior Court of Justice
Commercial List

FILE/DIRECTION/ORDER

Judges Endorsment Continued

matter proceeded to a hearing. Furthermore,
ongoing litigation would have been
protracted and expensive. The disputes
were complicated and in some instances,
novel

I am satisfied that the settlement
represents an appropriate balancing of
the interests of both sides. It further
benefits the other stakeholders in a
general sense and hence oppose the
settlement. In this sense, it is
consistent with the purpose and intent
of the Companies' Creditors Arrangement
Act ("CCAA")

Further, in this regard, the law is
settled that this Court has the
jurisdiction to approve this settlement,
which binds all Genstar Beneficiaries.

Insofar as the Genstar Beneficiaries
are concerned it is noteworthy that

Court File Number: _____

Superior Court of Justice
Commercial List

FILE/DIRECTION/ORDER

Judges Endorsment Continued

That they have been represented throughout by court-appointed counsel and Representatives. Amongst the Genstar Beneficiaries there have been no opt-outs or objections. All of them received the court-approved documents in or about May 15, 2019 concerning the settlement proposal and this hearing.

Insofar as the distribution between the Genstar Beneficiaries is concerned I am also of the view that the Distribution Formula is fair and reasonable. The distributions are being allocated in proportion to each beneficiary's projected future payments.

I further agree with counsel that the Releases proposed should be granted as drafted and are reasonably connected to the settlement.

With respect to the issue of

Court File Number: _____

Superior Court of Justice
Commercial List

FILE/DIRECTION/ORDER

Judges Endorsment Continued

The payments to the Representatives and Counsel are concerned. I have reviewed the proposed amounts - \$2,000 USD for each Representative and \$160,000.00 USD for counsel. These amounts are very fair and reasonable given the significant efforts that have been expended.

Last, counsel indicated that the Genstar Beneficiaries reserved their rights to pursue any unsecured claim on a pari passu basis. I note the observation but make no order in this regard.

For all of the reasons above the Order approving the Genstar Settlement was granted.

