

**ONTARIO
SUPERIOR COURT OF JUSTICE
COMMERCIAL LIST**

THE HONOURABLE MR.) TUESDAY, THE 14TH
)
JUSTICE MCEWEN) DAY OF MAY, 2019
)

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

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

APPLICANTS

**ORDER
(Notice Procedure Order)**

THIS MOTION, made by the Applicants for an order approving the form of notice of the Settlement Approval Hearing to the Represented Parties, approving the notice plan for giving notice of the Settlement Approval Hearing to the Represented Parties, and granting certain other relief, was heard this day at 330 University Avenue, Toronto, Ontario.

ON HEARING the submissions of respective counsel for the Applicants, Monitor, Representative Counsel, and such other counsel as were present, no one else appearing:

SERVICE

1. **THIS COURT ORDERS** that the time for service of any motion materials in respect of the relief herein is hereby abridged and validated so that this Motion is properly returnable today and hereby dispenses with further service thereof.

DEFINITIONS

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

- (a) “**Applicants**” means Imperial Tobacco Canada Limited and Imperial Tobacco Company Limited;
- (b) “**Case Website**” means the website for this CCAA proceeding maintained by the Monitor at <http://cfcanada.fticonsulting.com/imperialtobacco/>;
- (c) “**Chapter 15 Website**” means the website for the Chapter 15 Recognition Proceedings maintained by the Monitor at <http://www.kccllc.net/itcan>;
- (d) “**Committee**” means the Former Genstar U.S. Retiree Group Committee;
- (e) “**Genstar Plans**” means the Genstar Corporation deferred income plan, supplemental executive retirement plan, and supplementary pension plan;
- (f) “**Monitor**” means FTI Consulting Canada Inc. in its capacity as the court-appointed Monitor in these CCAA proceedings;
- (g) “**Notice of Objection**” means a notice substantially in the form attached as Schedule “B” to this Order;
- (h) “**Notice of Settlement Approval Hearing**” means a notice substantially in the form attached as Schedule “A” to this Order;
- (i) “**Notice Package**” means the Representation Notice, Opt-Out Notice, Notice of Settlement Approval Hearing, Notice of Objection, Settlement Allocation Statement, and such other materials as the Applicants and Representative Counsel by mutual consent may consider appropriate or desirable;
- (j) “**Objection Deadline**” means 5:00 pm Eastern Time on June 17, 2019;
- (k) “**Opt-Out Notice**” means a notice in the form attached as Schedule “A” to the Representation Order;
- (l) “**Representative Counsel**” means Ari Kaplan in his capacity as representative counsel for the Represented Parties under the Representation Order;

- (m) **“Representation Notice”** means the notice described in paragraph 6 of the Representation Order;
- (n) **“Representation Order”** means the Representation Order made by this Honourable Court on April 25, 2019;
- (o) **“Representatives”** means Robert M. Brown, George A. Foster, and Vivian Brennan-Dolezar in their capacity as representatives of the Represented Parties under the Representation Order;
- (p) **“Represented Parties”** means all persons with entitlements under the Genstar Plans, including survivors and beneficiaries of such persons and any other person claiming an interest under or on behalf of a Represented Party;
- (q) **“Settlement”** means the settlement between the Applicants and the Representatives, as supported by the Committee, relating to the Genstar Plans;
- (r) **“Settlement Allocation Statement”** means the personalized statement substantially in the form attached as Schedule “C” to this Order; and
- (s) **“Settlement Approval Hearing”** means the hearing scheduled before this Court on June 26, 2019 to consider whether to approve the Settlement.

APPOINTMENT OF ADDITIONAL REPRESENTATIVE

3. **THIS COURT ORDERS** that Vivian Brennan-Dolezar is hereby appointed as a Representative to, along with Robert M. Brown and George A. Foster, act in the overall best interests of the Represented Parties, and to advise and where appropriate instruct the Representative Counsel, in consultation with the Committee, in furtherance of representing the interests of the Represented Parties with respect to entitlements under the Genstar Plans. Ms. Brennan-Dolezar shall have all the rights and benefits granted to and be subject to all obligations imposed on the other Representatives by the Representation Order.

NOTICE TO REPRESENTED PARTIES

4. **THIS COURT ORDERS** that the Notice of Settlement Approval Hearing, the Notice of Objection and the Settlement Allocation Statement, substantially in the forms attached as Schedules “A”, “B” and “C”, respectively, are hereby approved, subject to the right of the Applicants and Representative Counsel to make minor, non-material amendments by mutual agreement as may be necessary or desirable.

5. **THIS COURT ORDERS** that notice of the Settlement Approval Hearing shall be provided as follows:

(a) the Applicants shall communicate, or cause to be communicated, a Notice Package to each Represented Party by regular, first class U.S. mail on or before May 15, 2019; and

(b) the Monitor shall post the Notice Package to the Case Website and the Chapter 15 Website within 3 business days of the date of this Order.

6. **THIS COURT ORDERS** that service and posting of the Notice Package in the manner set out in paragraph 5 above shall constitute good and sufficient service upon the Represented Parties of notice of the Settlement, the Settlement Approval Hearing and the Objection Deadline, and that no other form of service or notice need be made by any of the Applicants or Representative Counsel to any person, and no other documents or materials need be served on any person in respect of the process detailed herein.

7. **THIS COURT ORDERS** that any Represented Party wishing to object to the Settlement shall deliver a Notice of Objection to be received by the Objection Deadline by mail, courier or email to the address indicated on the Notice of Objection.

8. **THIS COURT ORDERS** that the Monitor shall file all Notices of Objection received by the Objection Deadline with the Court before the Settlement Approval Hearing.

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

GENERAL

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

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

SCHEDULE "A"

NOTICE OF SETTLEMENT APPROVAL HEARING

RE: Settlement between Imperial Tobacco Canada Limited and Representatives of beneficiaries of certain non-registered pension plans established by Genstar Corporation, as supported by the Former Genstar U.S. Retiree Group Committee

The Court-Appointed Representatives for beneficiaries of Genstar Corporation's ("Genstar") deferred income plan, supplemental executive retirement plan and supplementary pension plan (collectively, the "Genstar Plans") have reached a settlement with Imperial Tobacco Canada Limited ("ITCAN") relating to the Genstar Plans. This settlement is supported by the Former Genstar U.S. Retiree Group Committee. The Ontario Superior Court of Justice ([the "Ontario Court"](#)) will be asked to grant an Order approving the settlement on June 26, 2019. If the settlement is approved in its current form, it will bind all beneficiaries of the Genstar Plans. If you wish to object to the settlement, you must send a Notice of Objection by 5:00 pm Eastern Time on June 17, 2019 as described below.

Background regarding Genstar Plans and CCAA Proceeding

Genstar established the following non-qualified deferred compensation plans for Genstar's former officers, executives and management employees and their survivors: a deferred income plan, a supplemental executive retirement plan, and a supplementary pension plan. These three plans are called the Genstar Plans in this Notice.

Under a 1986 agreement, ITCAN was a guarantor of Genstar's obligations under the Genstar Plans. Until March 2019, ITCAN made monthly capital contributions to Imasco Holdings Group, Inc. ("IHGI"), a U.S. subsidiary of ITCAN. These monthly contributions permitted IHGI to make the payments owing under the Genstar Plans.

On March 12, 2019, ITCAN was granted protection from its creditors by an initial order (the "Initial Order") of the ~~Ontario Superior Court of Justice (the "Ontario Court")~~ in proceedings under Canada's *Companies' Creditors Arrangement Act* (the "CCAA Proceeding"). ITCAN applied for the Initial Order because it is facing an estimated \$600 billion in alleged liabilities in pending litigation in Canada.

After obtaining the Initial Order, ITCAN stopped funding the payments under the Genstar Plans.

Appointment of Representatives and Representative Counsel

A committee of beneficiaries of the Genstar Plans called the Former Genstar U.S. Retiree Group Committee (the "Committee") was created after the CCAA Proceeding began.

On April 25, 2019, the Committee obtained an order that, among other things, granted the following relief:

- (i) appointed Ari Kaplan of Kaplan Law as "Representative Counsel" to represent the interests of all persons in the CCAA Proceedings (the "Represented Parties") with respect

to entitlements under the Genstar Plans, including survivors and beneficiaries of such persons and persons claiming an interest under or on behalf of a Represented Party ~~the CCAA Proceedings~~ (the "Purpose"); and

- (ii) appointed Robert M. Brown and George A. Foster as representatives of all Represented Parties (excluding individuals who opt-out of representation in the manner described below) to act in the overall best interests of the Represented Parties, and to advise and where appropriate instruct the Representative Counsel, in consultation with the Committee, in furtherance of the Purpose.

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

Representative Counsel and the Representatives will represent your interests in the CCAA Proceeding in relation to entitlements under the Genstar Plans unless you send an Opt-Out Notice by 5:00 pm Eastern Time on June 17, 2019 in the manner described in the letter from Representative Counsel.

Settlement between ITCAN and the Representatives

The Committee filed a motion to challenge ITCAN's decision to stop funding the payments under the Genstar Plans. On April 25, 2019, ITCAN and the beneficiary Representatives entered into a proposed settlement regarding the payments under the Genstar Plans (the "Settlement").

The Settlement includes the following terms:

- (i) ITCAN will pay a share of USD \$1.44 million to each Genstar Plan beneficiary, allocated in proportion to each beneficiary's projected total future payments under the plans, with a minimum payment of USD \$5,000 (the "Distribution Formula").
- (ii) Under the Distribution Formula, each of the three Representatives will receive a USD \$2,000 stipend for their labours and efforts. These payments will be paid out of the USD \$1.44 million referred to in paragraph (i) above.
- (iii) ITCAN will pay USD \$160,000 to Representative Counsel, in trust, on account of legal fees.
- (iv) Genstar Plan beneficiaries will retain their rights to file an unsecured claim in respect of any unpaid amounts owing under the Genstar Plans in the event of a future plan of compromise or arrangement involving ITCAN (taking into account the payments contemplated by paragraph (i) above).

The Representatives and ITCAN will be asking the Ontario Court to approve the Settlement at a hearing on June 26, 2019. If the Settlement is approved in its current form it will bind all beneficiaries under the Genstar Plans, including any beneficiaries who opt-out of representation by Representative Counsel and the Representatives.

How to Object to the Settlement

If you wish to object to the Settlement, you must send a completed Notice of Objection by 5:00 pm Eastern Time on June 17, 2019 (the ‘Objection Deadline’) by either mail, courier or email to the following address:

FTI CONSULTING CANADA INC.,
in its capacity as Court-Appointed Monitor of
Imperial Tobacco Canada Limited and
Imperial Tobacco Company Limited
~~TD Waterhouse Tower~~
79 Wellington Street West
Suite 2010, PO Box 104
Toronto ON, Canada M445K 1G8

Fax: 416-649-8101

Email: imperialtobacco@fticonsulting.com

Attention: Kamran Hamidi

A form of Notice of Objection is included with this Notice of Settlement Approval Hearing.

If the Notice of Objection is received by the Objection Deadline, it will be provided to the Ontario Court before the Settlement Approval Hearing. If the Notice of Objection is not received by the Objection Deadline, it will ~~be~~ not be provided to the Ontario Court and your objection will not be considered. If you wish to appear in person or by counsel at the Settlement Approval Hearing in order to object, you must indicate as much in your Notice of Objection.

Chapter 15 Proceedings

FTI Consulting Canada Inc., in its capacity as the Court-Appointed Monitor in the CCAA Proceeding and Foreign Representative of ITCAN, commenced a Chapter 15 case in the United States Bankruptcy Court for the Southern District of New York in aid of the CCAA Proceeding. However, please note that the Ontario Court will be deciding whether to approve the Settlement. Accordingly, if you wish to make submissions in respect of the Settlement, you must do so in the context of the Settlement Approval Hearing in Toronto, Ontario.

Further Information

Additional information about the CCAA Proceedings, including all orders made by the Ontario Court, are posted on the Case Website maintained by the Monitor at the following address: <http://cfcanda.fticonsulting.com/imperialtobacco/>

If you would like additional information, please contact Representative Counsel using the information below:

Ari Kaplan, Kaplan Law
393 University Avenue
Suite 2000
Toronto ON M5G 1E6
Canada

Phone: 416-565-4656

Email: info@kaplanlaw.ca

SCHEDULE "B"

NOTICE OF OBJECTION

TO: FTI CONSULTING CANADA INC.,
in its capacity as Court-Appointed Monitor of
Imperial Tobacco Canada Limited and
Imperial Tobacco Company Limited
~~TD Waterhouse Tower~~
79 Wellington Street West
Suite 2010, PO Box 104
Toronto ON, Canada M445K 1G8

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

Attention: Kamran Hamidi

RE: Settlement between Imperial Tobacco Canada Limited and Representatives of beneficiaries of Genstar Plans, as supported by the Former Genstar U.S. Retiree Group Committee

FROM:

(Insert full legal name and address of person who is submitting this Objection)

ENTITLEMENTS UNDER GENSTAR PLANS:

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

REASONS FOR OBJECTION:

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

SCHEDULE “C”

SETTLEMENT ALLOCATION STATEMENT

TO: < **First Name** > < **Last Name** >

This Statement

This Settlement Allocation Statement (the “**Statement**”) provides the estimated amount payable to you under the settlement reached between Imperial Tobacco Canada Limited and Representatives of beneficiaries of certain non-registered pension plans established by Genstar Corporation (the “**Genstar Plans**”), as further described in the Notice of Settlement Hearing document that accompanies this Statement (the “**Settlement**”). You will receive the amount indicated on this Statement if the Ontario Court approves the Settlement at the hearing on June 26, 2019. If the Settlement is approved in its current form, it will bind all beneficiaries under the Genstar Plans, including any beneficiaries who opt-out of representation by Representative Counsel and the Representatives.

Allocation of Settlement Share

In accordance with the Settlement, each beneficiary of the Genstar Plans (collectively, the “**Settlement Class**”) will receive a share of USD \$1.44 million (your “**Individual Settlement Share**”), allocated amongst the Settlement Class in proportion to each beneficiary’s projected total future payments under the plans, with a minimum payment of USD \$5,000. If you are a beneficiary of more than one Genstar Plan (i.e., both the deferred income plan, and the supplemental executive retirement plan or supplementary pension plan), your Individual Settlement Share indicated below is inclusive of all entitlements.

Your Settlement Share

The following is your Settlement Share, in accordance with the terms of the Settlement, based on the information provided by the company:

Plan 1	< Plan 1 >
Plan 2 (if applicable)	< Plan 2 >
Monthly Payments (pre-April 2019)	< Monthly Payments >
Projected Total Future Payments	< PTFP >
Pro-Rated % Share (before Minimum, if applicable)	< Pro Rata % Share >
Your Individual Settlement Share	< Total Payout >

If you have any questions about anything in this Statement, please contact Representative Counsel, Ari Kaplan, at 416.565.4656 or at info@kaplanlaw.ca.

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

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

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

ONTARIO
SUPERIOR COURT OF JUSTICE
(Commercial List)

Proceeding Commenced at Toronto

ORDER
(Notice Procedure Order)

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