

ONTARIO
SUPERIOR COURT OF JUSTICE
(COMMERCIAL LIST)



THE HONOURABLE MR.)
JUSTICE MCEWAN)

THURSDAY THE 25TH
DAY OF APRIL, 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
(Representation Order)

THIS MOTION, made by the Former Genstar U.S. Retiree Group Committee (the "**Committee**") and the proposed representatives, Robert M. Brown and George A. Foster, pursuant to the *Companies' Creditors Arrangement Act*, R.S.C. 1985, c. C-36, as amended (the "**CCAA**") for an order appointing representatives and representative counsel and certain other relief, was heard this day at 330 University Avenue, Toronto, Ontario.

ON READING the Notice of Motion and the Affidavits in the Motion Record, and on hearing the submissions of respective counsel for the Committee and proposed representatives, the Applicants, Monitor and such other counsel as were present, no one else appearing although duly served as appears from the Affidavit of Service of Ari Kaplan affirmed April 18 2019, filed:

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.

2. **THIS COURT ORDERS** that Ari Kaplan of Kaplan Law (the “**Representative Counsel**”) is hereby appointed as representative counsel to represent the interests of all persons in these CCAA proceedings (together, the “**Represented Parties**”) with respect to entitlements under the Genstar Corporation “deferred income plan”, “supplemental executive retirement plan” and “supplementary pension plan”, including survivors and beneficiaries of such persons and any other person claiming an interest under or on behalf of a Represented Party (the “**Purpose**”).

3. **THIS COURT ORDERS** that Robert M. Brown and George A. Foster (together, the “**Representatives**”) are hereby appointed as representatives of all Represented Parties (excluding the “**Opt-Out Individuals**”, as defined below, if any) 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. The Representative Counsel may rely upon the advice, information and instructions received from the Representatives in carrying out the mandate of the Representative Counsel without further communications with or instructions from the Represented Parties, except as may be recommended by the Representative Counsel or ordered by this Court.

4. **THIS COURT ORDERS** that, with the exception of Opt-Out Individuals, (a) the Representatives and the Representative Counsel shall represent all Represented Parties in these CCAA proceedings; (b) the Represented Parties shall be bound by the actions of the Representatives and the Representative Counsel in these CCAA proceedings; and (c) the Representatives shall be entitled, on the advice of counsel, to reach any settlement agreements, advocate on behalf of the Represented Parties for the Purpose and compromise any rights, entitlements or claims of the Represented Parties, subject to approval of this Court.

5. **THIS COURT ORDERS** the Applicants to provide to the Representative Counsel, without charge, subject to satisfactory confidentiality arrangements, the following information,

documents and data (the “**Information**”), to be used strictly for the Purpose in the context of these CCAA proceedings,

- (a) the names, last known address, telephone number and email addresses (if any) of all the Represented Parties as well as particulars regarding their entitlements; 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, particulars of insurance policies, communications, booklets, and other applicable documents and particulars of the Applicants’ financial obligations respecting the plans including with respect to funding or securing the obligations and any other relevant documents and data pertaining to the plans and the Applicants’ other pension plans and retirement arrangements, including up to date financial information regarding the funding and investments of any of these arrangements,

in so doing, the Applicants are not required to obtain express consent from any Represented Parties authorizing disclosure of the Information to the Representative Counsel and, further, in accordance with section 7(3) of the *Personal Information Protection and Electronic Documents Act* (Canada) or, if 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 Represented Parties.

6. **THIS COURT ORDERS** that notice of the granting of this Order shall be provided to the Represented Parties by way of first class mailing to their physical address or such electronic means as may be available, by the Applicants with the assistance of the Monitor, consisting of a letter prepared by Representative Counsel (the “**Representation Notice**”) explaining the terms of this Order, which shall include the Monitor's website address where a full copy of this Order can be reviewed and under such other terms as to be agreed upon by Representative Counsel, the Applicant and the Monitor.

7. **THIS COURT ORDERS** that any individual Represented Party who does not wish to be represented by the Representatives and the Representative Counsel in these CCAA proceedings shall, within 30 days of the date of the Representation Notice pursuant to paragraph 6, notify the

Monitor in writing that he or she is opting out of representation by the Representatives and the Representative Counsel by delivering to the Monitor an opt-out notice in the form attached as Schedule "A" hereto (each an "Opt-Out Notice") and thereafter he or she shall not be represented by nor bound by the actions of the Representatives or the Representative Counsel in these CCAA proceedings (any such persons who deliver an Opt-Out Notice in compliance with the terms of this paragraph shall be "Opt-Out Individuals") and may represent himself or herself, personally or through counsel that he or she may retain at his or her own expense and as an independent, individual party, to the extent that they wish to participate in these proceedings, and the Proposed Representatives and Proposed Representative Counsel shall have no obligation to represent them. The Monitor shall deliver copies of all Opt-Out Notices received to the Applicants and the Representative Counsel as soon as reasonably practicable.

8. **THIS COURT ORDERS** that the Representative Counsel shall be given notice of all motions to which the Represented Parties are entitled to receive notice in these CCAA proceedings and that it shall be entitled to represent those on whose behalf it is hereby appointed in all such proceedings.

9. **THIS COURT ORDERS** that the Representative Counsel is hereby authorized to take all steps and do all acts necessary or desirable in relation to the Purpose or to carry out the terms of this Order.

10. **THIS COURT ORDERS** that the Representative Counsel shall be at liberty, and is hereby authorized, at any time, to apply to this Court for advice and directions in respect of its appointment or the fulfillment or discharge of its powers or duties, in carrying out the provisions of this Order, or for any other relief, including on any matter raised in the Notice of Motion not yet adjudicated, which shall be brought on notice to all interested parties, unless this Court orders otherwise, it being understood that the Applicants and Monitor reserve their rights in future to object to any motion seeking the funding of professional fees for the Representatives or Representative Counsel.

11. **THIS COURT ORDERS** that the Representative Counsel, the Representatives and the members of the Committee, or their delegates or agents, shall have no personal liability or obligations as a result of the performance of their duties in carrying out the provisions of this Order

or any subsequent Orders in these CCAA proceedings, save and except for liability arising out of gross negligence or wilful misconduct.

12. **THIS COURT ORDERS** that no action or other proceeding may be commenced against the Representative Counsel, the Representatives or the members of the Committee in respect of the performance of their duties under this Order without leave of this Court on seven (7) days' notice to the Representative Counsel, the Representatives, or the Committee, as the case may be.

13. **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, 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 and in case, any which motion to be served within three (3) weeks of the date of this Order.



A handwritten signature in black ink, appearing to be 'M. J. ...', written over a horizontal line.

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

APR 25 2019

PER / PAR:



A small handwritten signature in blue ink, appearing to be 'A', written next to the 'PER / PAR:' label.

SCHEDULE "A" – FORM OF OPT-OUT NOTICE

TO: FTI CONSULTING CANADA INC., in
its capacity as Court-appointed Monitor
of the ITCAN Parties
TD Waterhouse Tower
79 Wellington Street West
Suite 2010, P.O. Box 104
Toronto ON CANADA M4K 1G8

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

Attention: •

I hereby provide written notice that I do not wish to be represented by Kaplan Law, representative counsel (the "Representative Counsel") with respect to my entitlements under the Genstar Corporation "deferred income plan", "supplemental executive retirement plan" or "supplementary pension plan", in the proceedings involving Imperial Tobacco Canada Limited and its affiliates and subsidiaries (the "ITCAN Parties") in their proceedings under the *Companies' Creditors Arrangement Act* (Court File No. CV-19-616077-00CL) (the "CCAA Proceedings"). I understand that by opting out of representation, if I wish to take part in the CCAA Proceedings, I would need to do so as an independent party. I am responsible for retaining my own legal counsel should I choose to do so, and that I would be personally liable for the costs of my own legal representation.

I understand that a copy of this Opt-Out Form will be provided to the Representative Counsel and to the ITCAN Parties.

Witness Signature

Name [please print]: _____

Address: _____

Telephone: _____ Email: _____

Note: To opt out, this form must be completed and received at the above address on or before _____, 2019.

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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

ORDER
(April 25, 2019)

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Retiree Group Committee and the
Representatives