

EXHIBIT C

RETENTION AND CONTINGENCY FEE AGREEMENT

This Retention and Contingency Fee Agreement (the "Agreement") is entered into as of February 27, 2006.

1. **Parties To Agreement.** This Agreement is made between The Flintkote Company and Flintkote Mines Limited (collectively, "Client") and Snyder Miller & Orton LLP ("SMO"), Morgenstein & Jubelirer ("M&J"), Alan D. Pedlar, Esq. ("ADP") and Kelly C. Wooster, Esq ("KCW"). SMO, M&J, ADP, and KCW are referred to collectively as "Dividend Recovery Litigation Counsel" or "DRLC" and individually as "Members." The Official Committee of Asbestos Personal Injury Claimants (the "Committee") and The Legal Representative For Future Asbestos Claimants (the "Futures Representative") acknowledge and endorse this Agreement, and have executed it to evidence their consent and endorsement thereof. It is contemplated that, based upon judicial authorization, the Committee and Futures Representative will become clients of DRLC with respect to the claims covered by this Agreement.

2. **Commencement Of Litigation And Judicial Approvals.** Client is the Debtor in Possession in a chapter 11 case pending under title 11 of the United States Code ("Bankruptcy Code") in The United States Bankruptcy Court For the District of Delaware ("Bankruptcy Court"), Case No. 04-11300 ("Bankruptcy Case"). Client wishes to retain DRLC as special counsel to prosecute claims Client has against third parties arising from or related to dividends taken from Client ("Dividend Recovery Litigation" or "DRL"). DRLC are willing to be retained on the terms and conditions set forth in this Agreement, will commence the representation under this Agreement and will promptly prepare and file a complaint in an appropriate forum on the express understanding that Client will, upon the filing of the complaint, immediately seek *nunc pro tunc* approval by the Bankruptcy Court for the retention of DRLC pursuant to this Agreement. If this agreement is not approved by the Bankruptcy Court *nunc pro tunc* and without modification or condition as to each DRLC Member, any and all DRLC Members may, at their option and in their sole discretion, terminate the representation and withdraw as counsel of record in the Dividend Recovery Litigation.

Employment of the DRLC shall be sought pursuant to Bankruptcy Code sections 327 and 328(a), and it is agreed among the parties that the compensation provided for under this agreement shall be reviewed by the

Bankruptcy Court solely under the standards provided for under Bankruptcy Code section 328(a); provided, however, that neither the amount nor the timing of any recovery with respect to the DRL shall be considered a development not capable of being anticipated at the time of the approval of this Agreement.

3. **Scope of Representation.** DRLC will commence and prosecute the Dividend Recovery Litigation on theories and causes of action they consider to be meritorious, against defendants they consider to be appropriate, subject to Client approval, including Imperial Tobacco Canada Limited (formerly Imasco). DRLC's employment is limited to Client, and any successor thereto with respect to the DRL, and does not include the representation of any creditor of Client or any other Person, as such term is defined in the Bankruptcy Code, except as may be authorized by the Bankruptcy Court.

4. **Contacts and Authority.** Client, Committee, and Futures Representative have agreed upon a protocol for cooperative prosecution of the DRL and have entered into arrangements concerning communications with DRLC. Pursuant to those arrangements, unless and until otherwise notified by Client (i) DRLC may be instructed by a designated representative of Client or of the Committee or the Futures representative (collectively, "DRL Management Group") and (ii) DRLC shall report to the DRL Management Group with respect to the Dividend Recovery Litigation. Stephen M. Snyder of SMO will coordinate DRLC efforts to maximize efficiency and effectiveness. In order to promote efficiency and clarity of communication, members of the DRL Management Group may instruct DRLC through Mr. Snyder or such successor as he may appoint. There shall be a joint interest litigation privilege between and among Client, the Committee, and the Futures Representative to enable DRLC to keep interested parties fully informed as to developments in the DRL, and to enable DRLC to discuss litigation and settlement strategies and developments with all such parties and their professionals. Neither the Committee nor the Futures Representative shall be deemed to be a client of DRLC unless and until the Bankruptcy Court issues an order authorizing such joint representation and an appropriate engagement agreement has been executed.

5. **Litigation Costs.** Client shall pay or reimburse DRLC for all costs and expenses of the DRL, including but not limited to costs advanced or incurred by DRLC, such as expert witness fees, consultant fees (provided that Client approves retention of experts and consultants in advance and

obtains, if required, appropriate orders of the Bankruptcy Court), travel expenses, court fees, costs of discovery, electronic research charges, courier and postage charges, telephone and telecopy charges, charges for messenger services and air couriers, photocopying, expenses for working meals, and non-ordinary overhead expenses, and other charges customarily invoiced by law firms in addition to fees for legal services ("DRL Costs"). DRLC will bill Client monthly for DRL Costs. Client will pay such bills within 30 days. Amounts so paid will be subject to final review and approval by the Bankruptcy Court regarding compensation of professionals and, to the extent required, Client will seek to modify any existing orders of the Bankruptcy Court to accommodate the provisions of this Agreement. Client will pay DRL Costs directly to service providers or vendors when client and DRLC determine that such costs will likely exceed \$4,000. All requests for reimbursement of DRL Costs will be made in accordance with guidelines in effect in the Bankruptcy Case or as the Bankruptcy Court may order.

6. **Discounted Guideline Rates.** DRLC shall charge hourly rates for services provided by attorneys and staff at the normal and customary guideline rates charged to non-bankruptcy clients ("Guideline Rates"). Travel time will be billed portal to portal at normal hourly rates, subject to any limitations thereon in accordance with guidelines in effect in the Bankruptcy Case. As part of a compensation agreement which includes contingency fees and, potentially fixed fees, DRLC will discount Guideline Rates, subject to restoration of the discounted portion as provided in this Agreement. Client will pay such discounted Guideline Rates ("Discounted Rates") each month, subject only to final review and approval by the Bankruptcy Court. DRLC will render monthly statements reflecting the Guideline Rate and Discounted Rate for each timekeeper providing services.

a. **Discount And Cap.** DRLC will charge and Client will pay 40% of Guideline Rates, but capped for each timekeeper at \$200 per hour.

b. **Core Team And Rates.** DRLC anticipate that the core team for the DRL will consist of Stephen M. Snyder and James L. Miller of SMO; Eliot S. Jubelirer and Jean Bertrand of M&J; Alan D. Pedlar and Kelly C. Wooster. The current Guideline Rates for these professionals are

- Stephen M. Snyder \$600 per hour;
- James L. Miller \$500 per hour;

- Eliot S. Jubelirer \$425 per hour;
- Jean Bertrand \$425 per hour;
- Alan D. Pedlar \$650 per hour
- Kelly C. Wooster \$600 per hour.

c. **Rate Increases.** Current Guideline Rates will increase in the future, usually annually at the start of each year. Any increase will be capped at 5% per annum, except for increases based upon associate attorney or staff seniority advances or status changes.

d. **Result Based Compensation.** In addition to Discounted Rates, Client agrees to pay DRLC result based compensation if and when there is a Net Recovery in the DRL. Net Recovery means gross recovery (including cash and the value of non-cash consideration, but excluding recoveries on account of insurance covering asbestos related claims shared between Client and its former parent company and such parent company's parent, affiliate and subsidiary companies (the "Former Parent") and further excluding any value attributable to any release, assignment or other transfer of any interest the Former Parent may have in any such insurance by judgment(s) or settlements(s), less DRL Costs and all fees previously paid to DRLC (except any costs and fees previously factored into a net recovery calculation by reason of prior Net Recoveries, if any).

e. **Guideline Rate Restoration.** Client will pay DRLC 35% of Net Recovery until full Guideline Rates for services rendered and billed to Client have been paid to each DRLC Member ("Guideline Rate Restoration"). If a Net Recovery does not result in payment of full Guideline Rates to each DRLC Member, Client will pay, out of such Net Recovery, each such Member ratably based on the total dollar amount of services rendered by each Member calculated in accordance with each Member's Guideline Rates.

f. **Contingency Fees.** When and after any Net Recovery results in Guideline Rate restoration to each DRLC Member, Client will pay, out of such Net Recovery, DRLC a contingency fee ("Contingency Fee") as follows:

- i. upon any further Net Recovery of less than \$32.5 million, Client will pay zero percent of such Net Recovery;

ii. upon any further Net Recovery from \$32.5 through \$132.5 million, Client will pay 20% of such Net Recovery;

iii. upon any further Net Recovery above \$132.5 million, Client will pay 15% of such Net Recovery.

g. **Changes In Arrangements.** Any change of forum from that selected by DRLC will require changes in the fee arrangements from those set forth in this Agreement.

h. **Division Of Contingency Fees Among DRLC Members.** Client shall pay each Contingency Fee to DRLC as follows: First, Client shall pay each DRLC Member an amount equal to 50% of the Guideline Rates Client has paid each such Member ("50% Contingent Bonus"). If Net Recovery is not sufficient to pay the 50% Contingent Bonus to each DRLC Member, Client will pay each such Member ratably based upon the total dollar amount of services rendered by each Member calculated in accordance with each Member's Guideline rates. After the 50% Contingent Bonus has been paid to each DRLC Member then Client shall pay any remaining Contingency Fee to each of the Members in the following proportions:

i. SMO 30%

ii. M&J 30%

iii. ADP 20%

iv. KCW 20%

7. **Complementary Individual Claims.** In order to maximize Client's ability to succeed in the DRL for the benefit of Client's creditors, including especially asbestos victims, claims may be pursued in the DRL by certain individual plaintiffs ("Individual Claimant") identified and consented to by Client, Committee and Futures Representative. DRLC agree to cooperate and coordinate with any Individual Claimant and his counsel, and will seek to join such claims in the DRL. Client will, if necessary, enter into a joint prosecution agreement with Individual Claimants under terms acceptable to the DRL Management Group. DRLC's efforts and expenses for such cooperation and coordination will be compensated as part of the Dividend recovery Litigation. DRLC will not represent Individual Claimants.

8. **Fee Sharing By DRLC.** Client understands and agrees that DRLC may share and reallocate result based compensation payments among

the Members in such a manner as they determine in their discretion to be necessary in order to fairly compensate each Member for his or its efforts in and contribution to the DRL.

9. **Fixed Fees.** Federal tort reform legislation, including but not limited to the proposed FAIR Act, may take, freeze or impair access to funds held by Client or its successors or held in asbestos bankruptcy trusts ("Confiscatory Legislation") or may remove asbestos claims from the tort system ("Relevant Tort Reform"). If Confiscatory Legislation is enacted, the parties foresee litigation to invalidate the legislation on constitutional or other grounds ("Taking Litigation"). If a trust is established in connection with its bankruptcy case, Client desires that the trust be able to pursue the Dividend Recovery Litigation despite the existence of Confiscatory Legislation and during any Taking Litigation. Although the enactment of Confiscatory Legislation would threaten the trust's ability to pay for legal services, DRLC are willing to continue to pursue the DRL for Client or a successor trust under those conditions, if satisfactory arrangements are made to compensate them for that risk. Accordingly,

a. Any proposed plan of reorganization that channels asbestos claims to a trust or that otherwise exposes trust assets to Confiscatory Legislation (a "524(g) Reorganization") shall include a provision for a prepaid escrow to insure availability of funds to DRLC. The plan will provide that the escrow shall be funded by either reorganized Client or the trust established under a 524(g) Reorganization upon passage of Confiscatory Legislation by either the Senate or Congress ("Escrow Funding Date").

b. If there is a 524(g) Reorganization and Confiscatory Legislation is passed, DRLC may elect to be paid a fixed compensation covering services of DRLC in the DRL for up to 18 months in the amounts set forth below ("Fixed Fee"). During the period of the Fixed Fee, DRLC will provide all necessary services in the DRL and will advance litigation costs, subject to reimbursement.

c. Counsel have estimated fees (at Guideline Rates) and DRL Costs for a six month period at \$4.27 million ("Six Month Estimate") and have estimated such fees and costs for an 18 month period at \$12.8 million ("18 Month Estimate"). Client agrees the estimates are reasonable and agree to use the estimates as a basis upon which to calculate the Fixed Fee.

d. Upon or before the Escrow Funding Date, Client (or reorganized Client, if applicable) or the trust will establish an escrow for the benefit of DRLC under an escrow agreement and instructions to be approved by DRLC in their discretion ("Escrow Agreement"):

e. Upon the Escrow Funding Date, reorganized Client or the trust will deposit into the escrow a sum equal to the 18 Month Estimate and the total of all Guideline Rates deferred as of the Escrow Funding Date under the 40/60 discount formula set out in Paragraph 6(a) above ("Deferred Guideline Rates"). Client will assure that the full amount deposited ("Escrow Funds") remains available to DRLC without depletion for escrow expenses or any other charge.

f. The Escrow Agreement shall provide in substance that upon request of DRLC:

i. An amount equal to the Six Month Estimate and the Deferred Guideline Rates shall be disbursed to DRLC, and

ii. If six months has elapsed after passage of Confiscatory Legislation and the DRL is not stayed or dismissed, the remainder of the Escrow Funds shall be disbursed to DRLC.

g. All Escrow Funds disbursed to DRLC shall be paid irrevocably as a Fixed Fee and as consideration for costs to be advanced by DRLC during the Fixed Fee period.

h. If Relevant Tort Reform is enacted, DRLC may elect to forego any Contingency Fee and be paid the difference between Guideline Rates and Discounted Rates for past services and shall be paid Guideline Rates for future services. If Relevant Tort Reform is finally ruled invalid, fee arrangements set forth in Paragraph 6 will be reinstated and will apply thereafter.

10. **Invalidity of Confiscatory Legislation.** If Escrow Funds are disbursed to DRLC and Confiscatory Legislation is finally declared invalid, the Fixed Fee will terminate and the fee structure will revert to that in effect before passage of the Confiscatory Legislation. Client shall have offsets against future Discounted Guideline rates until the Parties are restored to the positions they would have occupied had there been no fixed fee and if the Discounted Guideline Rates had been in place continuously. If Guideline Rate Restoration becomes necessary after the escrowed funds are paid to DRLC, it shall be calculated by recognizing all time devoted by counsel

