

Jennifer Feldsher
MORGAN, LEWIS & BOCKIUS LLP
101 Park Avenue
New York, NY 10178-0060
Telephone: (212) 309-6000
Facsimile: (212) 309-6001

Shannon B. Wolf
David K. Shim
MORGAN, LEWIS & BOCKIUS LLP
One State Street
Hartford, CT 06103-3178
Telephone: (860) 240-2700
Facsimile: (860) 240-2701

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)

STATUS REPORT REGARDING CANADIAN PROCEEDING

1. FTI Consulting Canada Inc., the authorized foreign representative of Imperial Tobacco Canada Limited (the “Debtor”) and the Court appointed monitor (the “Monitor”) of the Debtor and Imperial Tobacco Company Limited 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) in Toronto, Ontario (the “Canadian Court”), by its undersigned United States counsel, respectfully advises the Court, pursuant to 11 U.S.C. § 1518, of the following recent developments in the Canadian Proceeding (the “Status Report”). Filed contemporaneously herewith, is the Monitor’s declaration in support of the Status Report (the “Bishop Declaration”).

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



I. Background

2. The Debtor is primarily a tobacco importer. It purchases, among other things, finished tobacco products from its Mexican affiliate British American Tobacco S.A. de C.V. and imports them, through the United States, for sale in Canada.² The Debtor's tobacco products account for approximately 48% of all legal Canadian tobacco sales.³

3. On March 13, 2019, the Monitor filed the Verified Petition⁴ seeking recognition of the Canadian Proceeding and related relief for the Debtor to protect the Debtor's supply-chain running through the United States while the Debtor pursues a comprehensive restructuring in Canada. The Debtor commenced the Canadian Proceeding to address overwhelming claims and ongoing product liability and consumer litigation across Canada (the "Tobacco Claims"). On March 12, 2019, the Canadian Court issued the Canadian Order for Relief (as amended), which, among other things, stayed the Tobacco Litigation against the Debtor and its subsidiary, Imperial Tobacco Company Limited (the "Stay").

4. On April 17, 2019, this Court recognized the Canadian Proceeding as a foreign main proceeding, *see* Dkt. No. 40, and recognized and implemented the Court-to-Court Communications Order⁵ with the Canadian Court, *see* Dkt. No. 61. This Court has also recognized and implemented the order of the Canadian Court approving the settlement between the Debtor and the beneficiaries of the Genstar executive pension and deferred compensation plans. *See* Dkt. No. 52. A complete list of the orders issued to date in the Canadian Proceeding is attached to the Bishop Declaration as Exhibit A.

² *See Verified Chapter 15 Petition for Recognition of Foreign Main Proceeding and Related Relief* (the "Verified Petition," Dkt. No. 2), at 4.

³ *Id.*

⁴ Capitalized terms not defined herein shall have the meanings ascribed to them in the Verified Petition.

⁵ As defined in the *Monitor's Motion for Order Recognizing Canadian Court's Court-to-Court Communications Order* [Dkt. No. 54].

II. Update on Canadian Proceeding and Extension of the Stay

5. In the Canadian Proceeding, the Debtor continues to engage in a court ordered mediation with the goal of facilitating a pan-Canadian global settlement of the Tobacco Claims (the “Mediation”). On March 12, 2019, pursuant to the Canadian Order for Relief (as amended), the Canadian Court appointed retired Chief Justice of Ontario, the Honourable Warren K. Winkler Q.C. as the Mediator (the “Mediator”).

6. On October 2, 2019, the Canadian Court extended the Stay to March 12, 2020, holding that the extension of the Stay was reasonable, because progress had been made in the Mediation, and the Debtor, along with its related Canadian debtors, had sufficient liquidity to operate within the Stay period. A copy of the Fifth Report of the Monitor filed in support of the September 23, 2019 motion to extend the Stay is attached to the Bishop Declaration as Exhibit B.

7. On February 20, 2020, the Canadian Court issued the Stay Extension Order, and its Endorsement of the Stay Extension Order (the “Stay Order Endorsement”), extending the Stay to September 30, 2020. The Canadian Court found that “it is sensible to maintain the status quo during the mediation process” because, in part, the Mediation “is progressing in a meaningful fashion.” Stay Order Endorsement at 1. A copy of the Stay Extension Order, the Stay Order Endorsement, and the Seventh Report of the Monitor filed in support of the February 13, 2020 motion to extend the Stay is attached to the Bishop Declaration as Exhibit C.

III. Appointment of Representative Counsel for Tobacco Claimants

8. As described in the Verified Petition, the Tobacco Claims “do not represent all of the potential claims brought or that could be brought under applicable law in relation to [the Debtor’s] tobacco products” Verified Petition at 7. In order to ensure that all Tobacco Claims are properly represented and therefore capable of being resolved in the Canadian

Proceeding, the Canadian Court entered the Appointment of Representative Counsel Order on December 9, 2019. Such order appointed The Law Practice of Wagner & Associates, Inc. (the “Representative Counsel”) as counsel to all interested individuals with non-commercial Tobacco Claims to the extent that they are not represented in previously certified class actions (the “Tobacco Claimants”)⁶. A copy of the Appointment of Representative Counsel Order (the “Representative Counsel Order”), the Endorsement of December 9, 2019 (the “Representative Counsel Endorsement”), the Reasons for Decision, and the Sixth Report of the Monitor filed in support of the motion to appoint the Representative Counsel is attached to the Bishop Declaration as Exhibit D.

9. The appointment of Representative Counsel is a significant step in the Debtor's restructuring process. As a result of the Representative Counsel Order, the Tobacco Claimants who may have claims against the Debtor will now be able to participate meaningfully in the Canadian Proceeding. The Tobacco Claimants' participation, in turn, will allow the Debtor to address such claims through its restructuring process, which is a necessary component to any global settlement of the claims against the Debtor and the Debtor's successful emergence from the Canadian Proceeding.

10. In accordance with 11 U.S.C. § 1518, the Monitor will continue to keep the Court apprised of substantial developments in the Canadian Proceeding. The Monitor is also available for a telephonic status conference at the Court's convenience should the Court prefer.

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⁶ At the hearing on the motion to appoint the Representative Counsel, The Merchant Law Group (proposed counsel in several putative class actions) and Rochon Genova LLP (collectively, “Moving Counsel”), sought an adjournment, or in the alternative, permission to appear as co-counsel with the Representative Counsel. Both of Moving Counsel's requests were denied.

Dated: April 8, 2020

MORGAN, LEWIS & BOCKIUS LLP

By: /s/ Jennifer Feldsher

Jennifer Feldsher
101 Park Avenue
New York, NY 10178-0060
Telephone: (212) 309-6000
Facsimile: (212) 309-6001
Email: jennifer.feldsher@morganlewis.com

Shannon B. Wolf
David K. Shim
One State Street
Hartford, CT 06103-3178
Telephone: (860) 240-2700
Facsimile: (860) 240-2701
Email: shannon.wolf@morganlewis.com
Email: david.shim@morganlewis.com

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