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in its Capacity as 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 (JPM)

FOREIGN REPRESENTATIVE'S FIFTH STATUS REPORT

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 ("ITCO") in a proceeding (the "Canadian Proceeding") under Canada's *Companies' Creditors Arrangement Act*, R.S.C. 1985 c. C-36, as amended (the "CCAA"), pending before the Ontario Superior Court of Justice (Commercial List) in Toronto, Ontario (the "Canadian Court"), by its undersigned United States counsel, respectfully files this status report (the "Fifth Status Report") to advise the Court, pursuant to 11 U.S.C. § 1518, of significant developments in the Canadian Proceeding since the Monitor's fourth status report on October 25, 2023 (the "Fourth Status Report") [Dkt. No. 75]. Filed contemporaneously

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.

herewith is the Monitor's declaration in support of this Fifth Status Report (the "Bishop Declaration").²

I. Background

2. As the Court is aware, the Debtor is the largest distributor of tobacco products in Canada. It purchases, among other things, finished tobacco products from its Mexican affiliate, British American Tobacco S.A. de C.V. ("BAT"), and imports them through the United States for sale in Canada.³

3. On March 12, 2019, the Debtor, along with its affiliate, ITCO, commenced the Canadian Proceeding to address mounting claims and ongoing product liability and consumer litigation across Canada in a comprehensive fashion. On March 12, 2019, the Canadian Court issued the Canadian Order for Relief (as amended), which, among other things, stayed ongoing and potential litigation arising from the Tobacco Claims (the "Stay").

4. On March 13, 2019, the Monitor, in its capacity as foreign representative of the Debtor, commenced this case seeking recognition of the Canadian Proceeding and related relief to protect the Debtor's assets and supply-chain which runs through the United States while the Debtor pursued a comprehensive restructuring in Canada.

5. On April 17, 2019, the Court recognized the Canadian Proceeding as a foreign main proceeding [*see* Dkt. No. 40] and recognized and implemented the Court-to-Court Communications Order⁴ with the Canadian Court [*see* Dkt. No. 61].

² Capitalized terms not defined herein shall have the meanings ascribed to them in the Imperial Plan (as defined below).

³ *See Verified Chapter 15 Petition for Recognition of Foreign Main Proceeding and Related Relief* [Dkt. No. 2], at 4.

⁴ As defined in the *Monitor's Motion for Order Recognizing Canadian Court's Court-to-Court Communications Order* [Dkt. No. 54].

II. Updates on the Canadian Proceeding and Extension of the Stay

6. As reported in prior status reports to the Court, the Debtor has been engaged in confidential, court-ordered mediation as part of the Canadian Proceeding with the goal of achieving a pan-Canadian global settlement of the Tobacco Claims (the “Mediation”) since 2019.⁵ These settlement discussions have included Canada’s other large tobacco producers, Rothmans, Benson & Hedges and JTI-Macdonald Corp., which also commenced CCAA proceedings (collectively with the Debtor and ITCO, the “Tobacco Companies”), as well as representatives of tobacco smokers and their heirs and certain governmental entities throughout Canada. *See* Dkt. No. 65-2.

7. As previously reported to the Court, in its endorsement dated October 5, 2023 (the “October 5 Endorsement”), the Canadian Court directed the Monitor, along with the court-appointed monitors (collectively with the Monitor, the “Tobacco Monitors”) of the other Tobacco Companies and the Court-Appointed Mediator to develop a plan of compromise or arrangement in each of the Tobacco Companies’ CCAA proceedings (each a “CCAA Plan”). *See* Dkt. No. 75.

8. In accordance with the October 5 Endorsement, the Monitor and the Court-Appointed Mediator jointly filed the Debtor’s CCAA Plan on October 17, 2024 (the “Imperial Plan”) in the Canadian Proceeding that, if approved by the requisite double majority of creditors⁶ and sanctioned by the Canadian Court, will, among other things, resolve all Tobacco Claims against the Debtor and its affiliates, provide a full and comprehensive release of the Tobacco Claims, and certain other releases, to the Debtor, BAT, and certain of their related entities, and allow the Debtor to continue as a going concern.⁷ In return, the Tobacco Companies will pay CAD

⁵ Pursuant to the Canadian Order for Relief (as amended), the Canadian Court appointed the Hon. Warren K. Winkler, K.C., former Chief Justice of Ontario and President of the Court of Appeal for Ontario, as mediator (the “Court-Appointed Mediator”). *See* Dkt. No. 65.

⁶ A majority in number and two-thirds in value.

⁷ Bishop Declaration ¶ 3.

\$32.5 billion over time to compensate Claimants for harms suffered related to tobacco-related diseases, healthcare-related claims, and certain other claims.⁸ If consummated, the Imperial Plan, together with the other Tobacco Companies' CCAA Plans (collectively, the "Tobacco Plans"), would represent the largest structured tobacco-related settlement of its kind since the 1998 tobacco settlements in the United States.⁹ A copy of the Imperial Plan is attached as **Exhibit A** to the Bishop Declaration.

9. On October 17, 2024, as an initial step towards confirmation of the Tobacco Plans, the Tobacco Monitors filed various procedural motions in the Canadian Proceeding seeking approval for procedures related to noticing the Tobacco Plans, convening creditors' meetings to vote on the Tobacco Plans, and administering claims thereunder (the "Plan Solicitation Motions").¹⁰ The Plan Solicitation Motions were approved by the Canadian Court on October 31, 2024.¹¹ On the same date, the Canadian Court extended the Stay to January 31, 2025.¹² A copy of the order extending the Stay is attached as **Exhibit B** to the Bishop Declaration.

10. Pursuant to the orders entered in connection with the Plan Solicitation Motions, the Monitor is authorized to convene a virtual creditors' meeting on December 12, 2024 (or such later date as may be determined by the Monitor) to vote on the Imperial Plan (the "Meeting").¹³ Implementation of the Imperial Plan is contingent on it first being approved at the Meeting by a majority in number and at least two-thirds in value of the eligible claims voting on the Imperial Plan.¹⁴ If approved at the Meeting, the Imperial Plan will then be submitted by the Monitor for

⁸ *Id.*

⁹ *Id.*

¹⁰ Bishop Declaration ¶ 5.

¹¹ *Id.*

¹² *Id.*

¹³ Bishop Declaration, Ex. C at 7.

¹⁴ Bishop Declaration, Ex. A at 31.

final sanction at a hearing before the Canadian Court anticipated to occur in early 2025.¹⁵ The Monitor expects to seek this Court’s recognition of any sanction order by the Canadian Court to ensure the continued preservation of the Debtor’s critical operations in and through the United States.¹⁶ Copies of the creditors’ meeting order and the claims procedure order are attached as **Exhibit C** and **Exhibit D**, respectively, to the Bishop Declaration.

IV. **Operational Updates**

11. The Monitor also submits the following operational updates regarding the Debtor since the filing of the Fourth Status Report:

- a. In April 2024, the Debtor relocated distribution of its products from a facility in Brampton, Ontario and a facility in Montreal, Quebec to a distribution facility in Vaughan, Ontario.¹⁷ This transition was completed in August 2024.¹⁸
- b. As previously reported to the Court, on August 1, 2023, the Canadian government promulgated new regulations requiring, among other things, health warnings to be labelled directly on individual cigarettes.¹⁹ The Debtor has timely implemented the required packaging changes as well as the on-stick warnings for king-sized cigarettes that were mandated for “Phase I” (with an effective manufacturing date of January 31 and April 30, 2024) under the new regulations²⁰ and is currently preparing for “Phase 2”, which contemplates on-stick warnings for regular cigarettes (with an effective manufacturing date of January 31, 2025).²¹
- c. The Fourth Status Report also disclosed the existence of a data breach suffered by the Debtor in August 2023.²² An internal investigation supported by BAT to establish the facts surrounding the breach was completed and it was concluded that there was no material financial impact or further exposure.²³
- d. The Debtor has entered into intercompany agreements with two BAT subsidiaries: BASS Americas S.A. and BAT BS Mexico SA de CV.²⁴ The agreement with BASS

¹⁵ Bishop Declaration, Ex. A at 47 and 48.

¹⁶ Bishop Declaration, Ex. A at 123.

¹⁷ Bishop Declaration ¶ 9.

¹⁸ *Id.*

²⁰ *Id.*

²¹ *Id.*

²² *Id.*

²³ *Id.*

²⁴ *Id.*

Americas S.A. provides for various back-office and administrative services, including accounting, accounts payable and human resources, and replaces the prior agreement, which had been in effect since 2015.²⁵ The agreement with BAT BS Mexico SA de CV governs services provided by a shared service center based in Monterrey, Mexico in relation to the Debtor's revenue growth management program, which generates pricing recommendations on the portfolio of products that the Debtor may decide to adopt.²⁶

12. As of the week ended October 4, 2024, the most recent time period in which such financial information was provided to the Canadian Court, the Debtor's business remained cash-flow positive, resulting in a cash balance of approximately CAD \$4.499 billion.²⁷

13. In accordance with 11 U.S.C. § 1518, the Monitor will continue to keep the Court informed of substantial developments in the Canadian Proceeding and the Imperial Plan confirmation process. The Monitor is also available for a telephonic or in person status conference at the Court's convenience.

Dated: November 22, 2024
New York, New York

MORGAN, LEWIS & BOCKIUS LLP

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²⁵ *Id.*

²⁶ *Id.*

²⁷ *Id.*