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*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.<sup>1</sup>

Chapter 15

Case No. 19-10771 (SCC)

RE: Docket No. 64

**SECOND 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 (“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 report (the “Second Status Report”) to advise the Court, pursuant to 11 U.S.C. § 1518, of certain developments in the Canadian Proceeding since the filing of the Monitor’s first status report on April 8, 2020 (the “First Status Report”) [Docket No. 64]. Filed contemporaneously herewith is the Monitor’s declaration in support of the Second Status Report (the “Bishop Declaration”).

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<sup>1</sup> 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. (“BAT MX”) and imports them, through the United States, for sale in Canada.<sup>2</sup> The Debtor’s tobacco products account for approximately 48% of all legal Canadian tobacco sales.<sup>3</sup>

3. On March 12, 2019, the Debtor, along with its affiliate ITCO, commenced the Canadian Proceeding to address all claims brought or that could be brought under applicable law against the Debtor and ITCO in relation to the development, manufacturing, production, marketing, advertising of, any representations made in respect of, the purchase, sale, and use of, or exposure to tobacco products across Canada (the “Tobacco Claims”). On March 12, 2019, the Canadian Court issued the Canadian Order for Relief<sup>4</sup> (as amended), which, among other things, stayed the ongoing and potential litigation arising from the Tobacco Claims against the Debtor and ITCO (the “Stay”). The Stay has been extended on several occasions by the Canadian Court and currently extends through September 30, 2021.

4. On March 13, 2019, the Monitor commenced this case seeking recognition of the Canadian Proceeding and related relief to protect the Debtor’s supply-chain which runs through the United States, while the Debtor pursues a comprehensive restructuring in Canada.

5. 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 Order<sup>5</sup> 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

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<sup>2</sup> *See Verified Chapter 15 Petition for Recognition of Foreign Main Proceeding and Related Relief* (the “Verified Petition,” Dkt. No. 2), at 4.

<sup>3</sup> *Id.*

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

<sup>5</sup> As defined in the *Monitor’s Motion for Order Recognizing Canadian Court’s Court-to-Court Communications Order* [Dkt. No. 54].

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 are attached to the Bishop Declaration as Exhibit A.

## **II. First Status Report**

6. On April 8, 2020, the Monitor filed the First Status Report, reporting that:
  - The Debtor continues to engage in court ordered mediation with the goal of achieving a pan-Canadian global settlement of the Tobacco Claims (the “Mediation”) in the Canadian Proceeding. *See* First Status Report at 3.
  - The Canadian Court appointed retired Chief Justice of Ontario, the Honourable Warren K. Winkler Q.C., as mediator (the “Mediator”) and The Law Practice of Wagner & Associates, Inc. (the “Representative Counsel”) as representative counsel for the TRW Claimants (as such term is defined in the Representative Counsel appointment order issued by the Canadian Court on December 9, 2019 and attached hereto as Exhibit A). *See id.*
  - The Stay was extended to September 30, 2020.

## **III. Update on Canadian Proceeding and Extension of the Stay**

7. On September 29, 2020, the Canadian Court extended the Stay to March 31, 2021 (the “March 2021 Stay Extension Order”), and issued its endorsement of the March 2021 Stay Extension Order (the “Endorsement of March 2021 Stay Extension Order”). In doing so, the Canadian Court found that the Debtor, along with ITCO, “continue[s] to meaningfully engage in the mediation process” and had “sufficient cash flow to operate through the proposed extension period[,]” and that the Stay extension would “not cause material prejudice to the creditors.” Endorsement of March 2021 Stay Extension Order at 2.

8. On March 30, 2021, the Canadian Court further extended the Stay to September 30, 2021 (the “September 2021 Stay Extension Order”) and issued its endorsement of the September 2021 Stay Extension Order on April 6, 2021 (the “Endorsement of September 2021 Stay Extension Order”). The Canadian Court held that “the mediation is progressing well[,]” and “it is sensible to allow the mediation process to continue.” Endorsement of September 2021 Stay

Extension Order at 2. Copies of the September 2021 Stay Extension Order, the Endorsement of September 2021 Stay Extension Order, and the Ninth Report of the Monitor filed in support of the March 19, 2021 motion to extend the Stay are attached to the Bishop Declaration as Exhibit B.

9. Although the Mediation is confidential, the Monitor can report that the parties are continuing to advance the Mediation with a view to facilitating a pan-Canadian global settlement of the Tobacco Claims.

#### **IV. COVID-19 Pandemic Impact**

10. In April and May 2020, the Mexican government imposed a two-month national lockdown due to the global COVID-19 pandemic. Substantially all of the cigarettes imported by the Debtor to Canada are manufactured in Mexico at a facility operated by BAT MX, which temporarily closed during this time. As a result, the Debtor experienced supply disruptions and inventory shortfalls in Canada.

11. In order to address these shortfalls, the Debtor contracted with Brazilian and Chilean affiliates of its parent company, British American Tobacco p.l.c., to temporarily transition production to their facilities. The production runs in Brazil and Chile began in May 2020 and continued until the Mexican government lifted their lockdown measures and BAT MX resumed operations. During this time, a majority of this inventory was airfreighted into Canada to mitigate the inventory supply shortages with the rest of the inventory produced remaining outside of Canada as contingency to address inventory shortfalls in the event of further shutdowns.

12. The Debtor has also increased its inventory levels in Canada and outside Canada to account for the ever-present risk of further shutdowns.

13. While the Debtor incurred additional costs associated with temporarily transitioning links in its supply chain, the negative impact of COVID-19 on the Debtor's business was mitigated by, among other things, increased sales in Canada as a result of a contraction in the illegal cigarette market caused by Canada's strict lockdown measures. Despite these additional costs incurred as a result of COVID-19 related supply interruptions, the Debtor's business remained cashflow positive, resulting in a cash balance at the week ended March 7, 2021 of \$1,868 million.

14. 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.

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Dated: May 3, 2021

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**EXHIBIT A**

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Schedule "A"

**Definition of TRW Claimants**

"TRW Claimants" means all individuals (including their respective successors, heirs, assigns, litigation guardians and designated representatives under applicable provincial family law legislation) who assert or may be entitled to assert a claim or cause of action as against one or more of the Applicants, the ITCAN subsidiaries, the BAT Group, the JTIM Group or the PMI Group, each as defined below, or persons indemnified by such entities, in respect of:

- (i) the development, manufacture, importation, production, marketing, advertising, distribution, purchase or sale of Tobacco Products (defined below),
- (ii) the historical or ongoing use of or exposure to Tobacco Products; or
- (iii) any representation in respect of Tobacco Products,

in Canada or in the case of the Applicants, anywhere else in the world, including, without limitation, claims for contribution or indemnity, personal injury or tort damages, restitutionary recovery, non-pecuniary damages or claims for recovery grounded in provincial consumer protection legislation but specifically excluding claims:

- (i) in any person's capacity as a trade supplier, contract counterparty, employee, pensioner, or retiree;
- (ii) captured by any of the following commercial class actions:
  - (A) *The Ontario Flue-Cured Tobacco Growers' Marketing Board v. JTI-Macdonald Corp.*, Court File No. 64462 CP (London, Ontario);
  - (B) *The Ontario Flue-Cured Tobacco Growers' Marketing Board v. Rothmans, Benson & Hedges Inc.*, Court File No. 1056/10CP (London, Ontario);
  - (C) *The Ontario Flue-Cured Tobacco Growers' Marketing Board v. Imperial Tobacco Canada Ltd.*, Court File No. 64757 CP (London, Ontario);
- (iii) captured by any of the following class actions:
  - (A) *Conseil québécois sur le tabac et la santé et al. v. JTI-Macdonald Corp. et al.*, Court File No. 500-06-000076-980 (Montreal, Quebec);
  - (B) *Cécilia Létourneau et al. v. Imperial Tobacco Canada Ltd., et al.*, Court File No. 500-06-000070-983 (Montreal, Quebec);



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(C) *Kenneth Knight v. Imperial Tobacco*, Court File No. L031300  
(Vancouver, British Columbia).

**"BAT Group"** means, collectively, British American Tobacco p.l.c., B.A.T. International Finance p.l.c., B.A.T Industries p.l.c., British American Tobacco (Investments) Limited, Carreras Rothmans Limited or entities related to or affiliated with them other than the ITL Applicants and the ITCAN Subsidiaries.

**"ITCAN Subsidiaries"** means Imperial Tobacco Services Inc., Imperial Tobacco Products Limited, Marlboro Canada Limited, Cameo Inc., Medallion Inc., Allan Ramsay and Company Limited, John Player & Sons Ltd., Imperial Brands Ltd., 2004969 Ontario Inc., Construction Romir Inc., Genstar Corporation, Imasco Holdings Group, Inc., ITL (USA) limited, Genstar Pacific Corporation, Imasco Holdings Inc., Southward Insurance Ltd., Liggett & Myers Tobacco Company of Canada Limited or entities related to or affiliated with them other than the ITL Applicants and the BAT Group.

**"JTIM Group"** means the entities currently or formerly related to or affiliated with JTIM.

**"PMI Group"** means Phillip Morris International Inc. and all entities related to or affiliated with it, other than RBH.

**"Tobacco Products"** means any product made in whole or in part of tobacco that is intended for human consumption or use, including any component, part, or accessory of or used in connection with a tobacco product, including cigarettes, tobacco sticks (intended for smoking and requiring further preparation before they are smoked), loose tobacco intended for incorporation into cigarettes, cigars, cigarillos, pipe tobacco, kreteks, bidis and smokeless tobacco (including chewing tobacco, nasal snuff and oral snuff), but does not include Vapour Products.

**"Vapour Products"** means:

- (i) a device that produces emissions in the form of an aerosol and is intended to be brought to the mouth for inhalation of the aerosol without burning of (i) a substance or (ii) a mixture of substances;
- (ii) a part or accessory that may be used with those devices; and
- (iii) a substance or mixture of substances, whether or not it contains tobacco or nicotine, that is intended for use with or without those devices to produce emissions in the form of an aerosol without burning.