

**Court File No. CV-19-616077-00CL**

**Imperial Tobacco Canada Limited and  
Imperial Tobacco Company Limited**

**SECOND REPORT OF THE MONITOR**

**April 24, 2019**

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**ONTARIO  
SUPERIOR COURT OF JUSTICE  
(COMMERCIAL LIST)**

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

**SECOND REPORT TO THE COURT  
SUBMITTED BY FTI CONSULTING CANADA INC.,  
IN ITS CAPACITY AS MONITOR**

**A. GENERAL**

1. In this Report, unless otherwise defined, all capitalized terms shall have the respective meanings specified in the glossary attached to this Report as [Appendix "A"](#). Each capitalized term throughout this Report, if defined in the glossary, is hyperlinked to its respective definition in the glossary.

**B. INTRODUCTION**

2. Pursuant to the [Initial Order](#) of the Ontario Superior Court of Justice (Commercial List) made on March 12, 2019, as amended and restated as of April 5, 2019:
  - (a) Imperial was granted an initial stay of proceedings under the CCAA until April 11, 2019;
  - (b) FTI Consulting Canada Inc. was appointed as the Monitor; and
  - (c) The Hon. Warren K. Winker, Q.C. was appointed as the [Interim Tobacco Claimant Coordinator](#) until April 30, 2019, and following the [Comeback Motion](#), the role was expanded to the [Court-Appointed Mediator](#).

3. On March 13, 2019, [Bracewell](#) on behalf of the Monitor, acting as foreign representative of Imperial, filed the [Chapter 15 Petition](#) in the [US Bankruptcy Court](#), seeking recognition of these [CCAA Proceedings](#) under Chapter 15 of the [US Bankruptcy Code](#).
4. The [Comeback Motion](#) was heard on April 4 and 5, 2019. Following the [Comeback Motion](#):
  - (a) the Court extended the [Stay of Proceedings](#) to June 28, 2019, pursuant to the [Stay Extension Order](#); and
  - (b) the Court issued the [Amended and Restated Initial Order](#), a copy of which can be found [here](#).
5. On April 17, 2019, as discussed in further detail below, the [US Bankruptcy Court](#) granted the [Foreign Recognition Order](#), which can be found [here](#).
6. The principal purpose of these [CCAA Proceedings](#), and the related [Chapter 15 Proceedings](#), is to restructure and compromise [Imperial's](#) liabilities, specifically the liabilities arising from the [Quebec Appeal Judgment](#) and the [Tobacco Claims](#).

### **Purpose of this Report**

7. The purpose of this Report is to provide the [Court](#) with information regarding:
  - (a) [Imperial's](#) budget to actual cash flow results for the three-week period ending April 14, 2019;
  - (b) the activities of the Monitor and its counsel since April 3, 2019, the date of the [First Report](#);
  - (c) the [Chapter 15 Proceedings](#);
  - (d) the objections filed in these [CCAA Proceedings](#) by the proposed Canadian representative counsel to the [Retiree Group](#);

- (e) the status of the issues being mediated by the [Court-Appointed Mediator](#), in respect of Imperial;
  - (f) the approval of the [Insurance Settlement Agreements](#) sought by the [Quebec Litigation Plaintiffs](#) in the Superior Court of Quebec and the related clarification motion in these [CCAA Proceedings](#); and
  - (g) the [Monitor](#)'s comments and recommendations in respect of the foregoing matters.
8. Unless otherwise stated, all monetary amounts contained herein are expressed in Canadian Dollars.

### **C. BACKGROUND**

9. [Imperial](#) is the largest distributor of [Tobacco Products](#) in Canada and operates two businesses: tobacco and logistics. The tobacco business includes the marketing and sale of [Tobacco Products](#). The logistics business distributes [Tobacco Products](#) for tobacco manufacturers, as well as certain non-[Tobacco Products](#) and services.
10. [Imperial](#) is highly integrated with [BAT](#) and its affiliates. [Imperial](#) benefits from a wide range of services, licenses and rights provided by certain of [BAT](#)'s affiliates. These services and functions have been and continue to be vital for preserving [Imperial](#)'s business and value.
11. In preparing this Report, the Monitor has relied upon the audited and unaudited financial information of [Imperial](#) based on its books and records, certain financial information and forecasts prepared by [Imperial](#), and discussions and correspondence with, among others, the senior management and advisors to [Imperial](#).
12. Further information regarding these [CCAA Proceedings](#) and [Imperial](#)'s background is provided in the [Monitor](#)'s [Pre-Filing Report](#) and [First Report](#).
13. All [Court](#) materials filed in these [CCAA Proceedings](#) are available on the

Monitor's website at: <http://cfcanada.fticonsulting.com/imperialtobacco/>

**D. RECEIPTS AND DISBURSEMENTS FOR THE THREE-WEEK PERIOD ENDING APRIL 14, 2019**

14. Imperial's actual net cash inflow for the three-week period ending April 14, 2019, was approximately \$40.7 million. This is compared to the forecasted net cash inflow of \$33.4 million described in the First Report, resulting in a positive variance of approximately \$7.3 million, as indicated in the table below:

*(CAD\$ in thousands)*

<b>VARIANCE REPORT</b>	<b>Actuals</b>	<b>Forecast</b>	<b>Variance</b>
	<b>For the 3-week period ending Apr 14, 2019</b>		
<b>RECEIPTS</b>			
Trade Receipts	266,900	272,177	(5,277)
<b>DISBURSEMENTS</b>			
<i>Operating Disbursements</i>			
Taxes and Levies	(164,163)	(162,117)	(2,046)
Operations	(61,907)	(73,162)	11,255
<i>Total Operating Disbursements</i>	(226,070)	(235,279)	9,209
<b>OPERATING CASH FLOWS</b>	<b>40,830</b>	<b>36,897</b>	<b>3,933</b>
<i>Financing Disbursements</i>			
Interest and Related Fees	(75)	123	(198)
<i>Restructuring Disbursements</i>			
Professional Fees - Canada Related	(78)	(2,580)	2,502
Professional Fees - U.S. Chapter 15 Related	-	(533)	533
Tobacco Claimant Mediator Related Fees	-	(510)	510
<b>NET CASH FLOWS</b>	<b>40,677</b>	<b>33,398</b>	<b>7,279</b>
<b>CASH</b>			
Beginning Balance	364,010	364,010	0
Net Cash Inflows / (Outflows)	40,677	33,398	7,279
Other (FX)	802	-	802
<b>ENDING CASH</b>	<b>405,489</b>	<b>397,408</b>	<b>8,081</b>

15. The main budget to actual variances and corresponding explanations are as follows:

- (a) trade receipts negative variance of \$5.3 million or 2%. Such variances are common in the ordinary course of business;

- (b) taxes and levies negative timing variance of \$2.0 million, which was driven by the timing of income tax payments. This variance is expected to reverse in future forecast periods;
- (c) positive timing variance in operations disbursements of \$11.3 million due to the timing of payments. This variance is expected to reverse in future forecast periods; and
- (d) positive timing variance in restructuring disbursements relating to professional fees of a total of \$3.5 million. This variance is expected to reverse in future forecast periods as outstanding invoices are paid.

#### **E. OVERVIEW OF THE MONITOR'S ACTIVITIES**

16. Since the conclusion of the [Comeback Motion](#) on April 5, 2019, the [Monitor](#) and its counsel have held meetings and/or discussions with stakeholders and interested parties to: i) provide information regarding these [CCAA Proceedings](#); ii) gain an understanding of each stakeholder's concerns; and iii) where appropriate, attempt to resolve differences between parties. The relevant stakeholders include:
- (a) the [Court-Appointed Mediator](#) and his counsel;
  - (b) counsel to the [Quebec Litigation Plaintiffs](#);
  - (c) counsel to [BAT](#) and its affiliates;
  - (d) counsel to [JTI](#), the monitor for JTI, and counsel to the monitor for JTI;
  - (e) counsel to [Rothmans](#), the monitor for [Rothmans](#), and counsel to the monitor for [Rothmans](#);
  - (f) counsel to the Province of Ontario, in the Province's capacity as a plaintiff in the [HCCR Claims](#);
  - (g) counsel to the [Consortium of Provinces](#);

- (h) the proposed Canadian representative counsel to the [Retiree Group](#); and
  - (i) the [PBGC](#).
17. On April 19, 2019, the Monitor received an information request from the [PBGC](#), requesting certain information relating to the defined benefit plan sponsored by Imasco Holdings Group, Inc., a largely dormant foreign subsidiary of [ITCAN](#), and the effect of these [CCAA Proceedings](#) on such plan. The deadline to provide this information is May 15, 2019. The Monitor is working with Imperial and its counsel to fulfil the [PBGC](#) information request, to the extent possible.

#### **F. CHAPTER 15 PROCEEDINGS**

18. On April 12, 2019, [Bracewell](#) filed the following materials with the [US Bankruptcy Court](#) in support of [ITCAN](#)'s [Chapter 15 Petition](#):
- (a) “The Monitor’s Omnibus Reply in Support of Verified Chapter 15 Petition for Recognition of Foreign Main Proceeding and Related Relief”, which can be found [here](#);
  - (b) “The Supplemental Declaration of Paul Bishop in Support of Verified Chapter 15 Petition for Recognition of Foreign Main Proceeding”, which can be found [here](#); and
  - (c) “The Agenda for the Chapter 15 Recognition Hearing”, which can be found [here](#).
19. The Monitor has been advised by [Bracewell](#) that four objections to the relief sought under [ITCAN](#)'s [Chapter 15 Petition](#) were filed with the [US Bankruptcy Court](#). Each of the objections were filed by participants in the [Retirement Plans](#) and each asked the [US Bankruptcy Court](#) to condition the recognition of these [CCAA Proceedings](#) on the resumption of payments under the [Retirement Plans](#). In light of these objections, and as a courtesy to the participants in the [Retirement Plans](#), language was included in the [Foreign Recognition Order](#) to reserve the



- rights of such individuals, or representatives of such individuals, to pursue any rights, claims or remedies in these [CCAA Proceedings](#).
20. The hearing to consider ITCAN's [Chapter 15 Petition](#) was originally scheduled for April 15, 2019. However, on that date, the Monitor received a "Notice of Adjournment of Chapter 15 Recognition Hearing". The hearing was adjourned and rescheduled to April 17, 2019.
21. On April 17, 2019, the [US Bankruptcy Court](#) heard and considered ITCAN's [Chapter 15 Petition](#). At the hearing, the presiding judge clarified that the [US Bankruptcy Court](#) did not have the jurisdiction, or the authority, to address the objections described in paragraph 19 above. Such objections should be dealt with by the [Court](#) within these [CCAA Proceedings](#). At the conclusion of the hearing, the [US Bankruptcy Court](#) granted the [Foreign Recognition Order](#). Attached as [Appendix "B"](#) is the transcript from that hearing.

**G. OBJECTIONS FROM THE RETIREE GROUP IN THESE CCAA PROCEEDINGS**

22. On April 1, 2019, proposed Canadian representative counsel to the [Retiree Group](#) served and filed a "Notice of Objection" in these [CCAA Proceedings](#), seeking, among other things, disclosure of certain information relevant to the [Retiree Group](#). On April 22, 2019, counsel to Imperial wrote to the proposed Canadian representative counsel to the [Retiree Group](#), enclosing plan documentation related to the [Retirement Plans](#). In the same letter, counsel to Imperial noted that although its records relating to the [Retirement Plans](#) are limited, it is continuing its efforts to identify documents that would be relevant to the [Retiree Group](#).
23. On April 3, 2019, proposed Canadian representative counsel to the [Retiree Group](#) served and filed a "Notice of Objection" in these [CCAA Proceedings](#), seeking to vary the [Initial Order](#) to allow for the continued funding of the [Retirement Plans](#) for a prescribed period of time. At the [Comeback Motion](#), proposed counsel to the [Retiree Group](#) made limited submissions to the Court on this issue. At the

conclusion of the [Comeback Motion](#), the Court made an endorsement that the extension of the [Stay of Proceedings](#) was without prejudice to the rights of the [Retiree Group](#) to bring a motion for relief concerning the [Retirement Plans](#). The Court agreed to hear arguments on this issue on April 25 or April 26, 2019.

24. On April 9, 2019, proposed Canadian representative counsel to the [Retiree Group](#) served and filed a “Notice of Constitutional Question”, seeking to question the constitutional validity, applicability or operability of the [Amended and Restated Initial Order](#).

#### **H. THE COURT-APPOINTED MEDIATOR**

25. On April 5, 2019, pursuant to the [Amended and Restated Initial Order](#) and on consent of each of the Applicants and the Tobacco Monitors, the role and mandate of the [Interim Tobacco Claimant Coordinator](#) was expanded such that the role is now the “[Court-Appointed Mediator](#)”. The Monitor understands that an agreement has been reached by the [Applicants](#), under which the fees of the [Court-Appointed Mediator](#) and his counsel will be split equally amongst the three [Applicants](#).
26. At the conclusion of the [Comeback Motion](#), the [Court-Appointed Mediator](#) was tasked with resolving certain issues raised by stakeholders. The Monitor has held a number of discussions with the [Court-Appointed Mediator](#) and his counsel. A summary of the issues discussed and the status of each is set out below.

*The Extension of the Stay of Proceedings to Non-Applicant Defendants in the Tobacco Claims*

27. Prior to the [Comeback Motion](#), Imperial initially sought to expand the scope of the [Stay of Proceedings](#), as it related to the [Tobacco Claims](#), to all other named defendants. Rothmans sought similar relief. JTI already included this relief in its initial order. The contemplated amended language in Imperial’s draft [Amended and Restated Initial Order](#) mirrored the relevant language in JTI’s initial order.

28. Since the [Comeback Motion](#), counsel to each of the [Applicants](#), the [Tobacco Monitors](#), and counsel to each of the [Tobacco Monitors](#), have engaged in discussions with counsel to the [Quebec Litigation Plaintiffs](#) to find mutually agreeable language to define the scope of the stay of proceedings, as it relates to the [Tobacco Claims](#), in each Applicant's CCAA proceedings.
29. At the time of writing this Report, the scope of stay issue remains unresolved.

*Professional Fee Taxation*

30. Prior to the [Comeback Motion](#), the [Quebec Litigation Plaintiffs](#) brought a motion seeking to have the [Tobacco Monitors'](#) fees and their legal fees taxed at regular intervals of no more than 90 days. The [Quebec Litigation Plaintiffs](#) also sought to have the fees of each [Applicant's](#) counsel subject to taxation by the Court.
31. On April 9, 2019, the [Tobacco Monitors](#) submitted collective submissions to the [Court-Appointed Mediator](#) on this issue. The [Tobacco Monitors](#) have been, and intend to continue to be, transparent about their fees and their legal fees. However, the [Tobacco Monitors](#) submitted that the [Quebec Litigation Plaintiffs'](#) proposed structure should not be implemented as such structure would increase the costs of, and introduce unnecessary procedural complexities into, each [Applicant's](#) CCAA proceedings. The [Tobacco Monitors](#) were of the view that the regime for the passing of accounts provided for in the [Model Order](#) should govern. The form of [Model Order](#) provides as follows: "THIS COURT ORDERS that the Monitor and its legal counsel shall pass their accounts from time to time, and for this purpose the accounts of the Monitor and its legal counsel are hereby referred to a judge of the Commercial List of the Ontario Superior Court of Justice."
32. On April 23, 2019, the Monitor was advised by the [Court-Appointed Mediator](#) that counsel to the [Quebec Litigation Plaintiffs](#) was satisfied with the provisions of the Model Order but had requested that professional fees be disclosed on a monthly basis. The Monitor and [Imperial](#) are in agreement with this compromise

and, commencing in May, 2019, the Monitor will make available on its website, a summary showing the fees paid in the preceding month to the following parties: i) counsel to Imperial; ii) the Monitor; iii) counsel to the Monitor; iv) the Court-Appointed Mediator; v) counsel to the [Court-Appointed Mediator](#); and vi) any other counsel or advisors who may be engaged by any of these parties in the future.

33. The Monitor notes that the [Quebec Litigation Plaintiffs](#) reserve the right to raise this matter before the Court in the future.

*Post-Filing Intercompany Payments*

34. Prior to the [Comeback Motion](#), the [Quebec Litigation Plaintiffs](#) brought a motion seeking an order which would prohibit Imperial from making certain ordinary course payments to BAT's affiliates for services provided.
35. The [Court-Appointed Mediator](#) has advised the Monitor that he intends to meet with the relevant stakeholders on this issue. The [Court-Appointed Mediator](#) will meet with, and hear submissions from, each of the following parties separately: i) counsel to each of the [Applicants](#), ii) each of the [Tobacco Monitors](#) and their legal counsel, and iii) counsel to the [Quebec Litigation Plaintiffs](#). These meetings will begin on April 30, 2019.
36. As described in paragraphs 31 to 35 of the [First Report](#), Imperial is completely reliant on the services provided by [BAT's](#) affiliates. The payments made to [BAT's](#) affiliates are the cost of essential goods and services and include, but are not limited to, payments for products, manufacturing services, innovation royalties, and financial services. Further, information provided to the [Monitor](#) indicates that the goods and services provided and the basis of allocation of costs for such goods and services between the [BAT](#) subsidiaries is consistent across [BAT's](#) affiliates. Accordingly, the Monitor continues to support Imperial's intention to make intercompany payments in the ordinary course and to maintain its business supply arrangements with [BAT's](#) affiliates.

*Partially Lifting the Stay of Proceedings to Permit the Filing of a Bankruptcy Application*

37. Prior to the [Comeback Motion](#), the [Quebec Litigation Plaintiffs](#) brought a motion seeking a partial lift of the [Stay of Proceedings](#) for the sole purpose of allowing the [Quebec Litigation Plaintiffs](#) to file an application for a bankruptcy order against Imperial.
38. The Monitor was notified by the [Court-Appointed Mediator](#) on April 23, 2019, that counsel to the [Quebec Litigation Plaintiffs](#) is no longer seeking to file an application for a bankruptcy order.
39. The Monitor notes that the [Quebec Litigation Plaintiffs](#) reserve the right to raise this matter before the Court in the future.

*Relief Sought by the Province of Ontario*

40. Prior to the [Comeback Motion](#), the Province of Ontario brought a motion seeking, among other things, a partial lift of the [Stay of Proceedings](#) to permit the Province of Ontario to: i) amend and serve its Amended Fresh as Amended Statement of Claim in its [HCCR Claim](#); and ii) continue its [HCCR Claim](#) as against ITCAN, BAT, British American Tobacco (Investments) Limited, B.A.T. Industries p.l.c. and Carreras Rothmans Limited. The following is an update on the two foregoing issues:
  - (a) **Amended Statement of Claim:** On April 9, 2019, counsel to the Province of Ontario circulated a draft order to the service list of these [CCAA Proceedings](#) reflecting its requested relief regarding the Amended Fresh as Amended Statement of Claim in its [HCCR Claim](#). The Monitor has been advised that its counsel and counsel to the Province of Ontario have been in discussions to formulate an agreeable form of order. At the time of writing this Report, no resolution has been reached on this issue; and
  - (b) **The Continuation of the HCCR Claim:** This issue has not been resolved

and therefore the Court will hear submissions on April 25 or April 26, 2019. The Monitor is of the view that these [CCAA Proceedings](#) should be the forum to resolve all [Tobacco Claims](#) and that parallel proceedings to deal with the Province of Ontario's [HCCR Claim](#) should remain subject to the [Stay of Proceedings](#). Such parallel proceedings, if allowed to proceed, could undermine two goals of these CCAA Proceedings, which are to treat all Tobacco Claimants equitably and to achieve a timely global resolution of the Tobacco Claims.

## I. INSURANCE SETTLEMENTS

41. At the conclusion of the [Comeback Motion](#), and on consent from Imperial and the Monitor, the Court granted the [Insurance Settlement Order](#), partially lifting the [Stay of Proceedings](#), solely to allow the [Quebec Litigation Plaintiffs](#) to seek the approval of the [Insurance Settlement Agreements](#) from the Honourable Justice Brian Riordan J.S.C. There was some urgency in approving such agreements as the underlying insurers are currently in liquidation.
42. On April 16, 2019, counsel to the [Quebec Litigation Plaintiffs](#) served a motion seeking an order from the Superior Court of Quebec, approving the [Insurance Settlement Agreements](#). However, at paragraphs 35 to 39 of the motion, the [Quebec Litigation Plaintiffs](#) also seek authorization to use the amounts payable under the [Insurance Settlement Agreements](#) to fund, "...an extensive campaign to maximize the number of members who will be indemnified at the end of the claims process". The motion goes on to request authorization to allocate \$500,000 for the maximization of claims. Counsel to the [Quebec Litigation Plaintiffs](#) also requests that "...the balance of the amounts payable under the [Insurance Settlement Agreements] be paid to *Fonds d'aide aux actions collectives*".
43. On April 17, 2019, counsel to [Imperial](#) wrote to the Honourable Justice Brian Riordan J.S.C. to advise him that this Court lifted the [Stay of Proceedings](#) solely to allow for the approval of the [Insurance Settlement Agreements](#). Counsel to Imperial further advised that the limited relief from the [Stay of Proceedings](#) did

not extend to the proposed reparation or related relief.

44. On April 18, 2019, counsel to the [Quebec Litigation Plaintiffs](#) served and filed a notice of clarification motion in these [CCAA Proceedings](#), seeking an order modifying the [Insurance Settlement Order](#), which, if approved, would authorize the implementation of the [Insurance Settlement Agreements](#) and the distribution of the proceeds thereof. The Monitor and its counsel have reviewed the notice of motion and related materials.
45. The Monitor does not object to the approval of the [Insurance Settlement Agreements](#). However, the Monitor is of the view that the relief sought by the [Quebec Litigation Plaintiffs](#) before the Superior Court of Quebec is overreaching as it proposes to also approve the use of proceeds from the [Insurance Settlement Agreements](#). For that reason, and for the below reasons, the Monitor does not support the relief sought by the [Quebec Litigation Plaintiffs](#) in these [CCAA Proceedings](#) or before the Superior Court of Quebec:
  - (a) **Use of Proceeds:** In addition to the approval of the [Insurance Settlement Agreements](#), counsel to the [Quebec Litigation Plaintiffs](#) has also requested an order of the Superior Court of Quebec authorizing the use of proceeds from the [Insurance Settlement Agreements](#). This would effectively usurp one of this Court's principal functions in these [CCAA Proceedings](#). The Monitor is of the view that these [CCAA Proceedings](#) should be the sole forum to determine the use of any proceeds of the [Insurance Settlement Agreements](#), whether consistent with the request of the [Quebec Litigation Plaintiffs](#) or otherwise. Parallel proceedings to deal with the use of proceeds from the [Insurance Settlement Agreements](#) will be an inappropriate precedent, distraction, expense and may lead to inconsistent results. The Monitor does not object to the payment of the proceeds from the [Insurance Settlement Agreements](#) to counsel for the [Quebec Litigation Plaintiffs](#), provided that such funds are held in trust, pending the resolution of the use of proceeds in these [CCAA Proceedings](#); and

- (b) **Lack of Notice and Information:** Counsel to the [Quebec Litigation Plaintiffs](#) has requested that the [Insurance Settlement Agreements](#) remain under seal, such that the amounts payable thereunder may not even be disclosed to the [Quebec Litigation Plaintiffs](#). On April 23, 2019, counsel to the [Quebec Litigation Plaintiffs](#) provided the [Insurance Settlement Agreements](#), with the amounts payable thereunder redacted, to the Monitor and to the Monitor's counsel subject to confidentiality restrictions. The Monitor and its counsel have reviewed the [Insurance Settlement Agreements](#). The Monitor understands that no notice has been given to the [Quebec Litigation Plaintiffs](#) or other Imperial stakeholders of the approval of the [Insurance Settlement Agreements](#), or the underlying terms, including the monetary terms. In the motion to the Superior Court of Quebec, counsel to the [Quebec Litigation Plaintiffs](#) requests that the [Insurance Settlement Agreements](#) remain under seal and that the settlement amounts payable thereunder not be disclosed. Given the use of proceeds discussed above, including the indirect payment of counsel fees and the allocation of funds for the maximization of claims, the Monitor is concerned about the lack of notice and information provided to Imperial's stakeholders and in particular, the [Tobacco Claimants](#). The Monitor is of the view that notice should be given and, if requested, sufficient information should be provided (subject to necessary confidentiality provisions) to Imperial's stakeholders.
46. The Monitor is of the view that the proceeds from Imperial's insurance policies may be a significant source of recovery for Imperial's stakeholders and has commenced gathering and reviewing relevant information. Such proceeds, including proceeds from the [Insurance Settlement Agreements](#), and the use of such proceeds, will require thoughtful and precise treatment in due course in these [CCAA Proceedings](#). These insurance amounts should be addressed collectively in these [CCAA Proceedings](#), as it is the only forum where the interests of all stakeholders (including the [Tobacco Claimants](#) and the insurers) can be taken into account with a view to achieving a global resolution of the [Tobacco Claims](#). The



Monitor has been advised that Imperial intends to put all of its insurers on notice that any payments under its policies are subject to the [Stay of Proceedings](#).

**J. APPEALS TO THE SUPREME COURT OF CANADA**

47. For the benefit of the stakeholders reading this Report, the Monitor advises that prior to the Comeback Motion, counsel to the [Quebec Litigation Plaintiffs](#) brought a motion, seeking an order, which would automatically terminate these [CCAA Proceedings](#) if Imperial sought leave to appeal the [Quebec Appeal Judgment](#) to the Supreme Court of Canada. As alternative relief, counsel to the [Quebec Litigation Plaintiffs](#) sought an order that would authorize a partial lift of the [Stay of Proceedings](#) to allow the [Quebec Litigation Plaintiffs](#) to respond to such leave application. Imperial responded, arguing that the Court should deny such relief, as leave applications are subject to the [Stay of Proceedings](#) and the tolling provision in the [Initial Order](#). At the conclusion of the [Comeback Motion](#), this Court reserved judgment on this issue.
48. By Endorsement dated April 17, 2019, and Reasons for Decision dated April 23, 2019, this Court dismissed the [Quebec Litigation Plaintiffs](#)' motion and ruled that the [Stay of Proceedings](#) prohibits the commencement of any further proceedings except with leave of this Court, including any applications for leave to the Supreme Court of Canada. The Court further ordered that to the extent of any prescription, time or limitation period relating to any proceeding by or against Imperial that is stayed pursuant to the [Initial Order](#) may expire, the term of such prescription, time or limitation period shall be deemed to be extended by a period equal to the [Stay Period](#). A copy of the Endorsement can be found [here](#) and a copy of the Reasons for Decision [here](#).

The Monitor respectfully submits to the Court this Report.

Dated this 24th day of April, 2019.

*FTI Consulting Canada Inc.*

**FTI Consulting Canada Inc.**

in its capacity as Monitor of Imperial Tobacco Canada Limited and Imperial Tobacco Company Limited

## APPENDIX A

### GLOSSARY

“**Amended and Restated Initial Order**” means the Initial Order, as amended and restated as of April 5, 2019.

“**Applicants**” means, collectively, Imperial, JTI and Rothmans.

“**BAT**” means British American Tobacco p.l.c., a public company listed on the London Stock Exchange.

“**BAT MX**” means British American Tobacco Mexico S.A. de C.V.

“**BAT NL**” means British American Tobacco International (Holdings) B.V.

“**BATIF**” means B.A.T. International Finance p.l.c.

“**BIA**” means the *Bankruptcy and Insolvency Act*, R.S.C. 1985, c. B-3, as amended.

“**Bracewell**” means Bracewell LLP, in its capacity as counsel to the Monitor in the Chapter 15 Proceedings.

“**CCAA**” means the *Companies’ Creditors Arrangement Act*, R.S.C. 1985, c. C-36, as amended.

“**CCAA Proceedings**” means the insolvency proceedings commenced by Imperial under the CCAA.

“**Chapter 15 Petition**” means the Verified Chapter 15 Petition for Recognition of Foreign Main Proceeding filed by Bracewell in respect of ITCAN on March 13, 2019, seeking recognition of these CCAA proceedings and related relief.

“**Chapter 15 Proceedings**” means the proceedings commenced by [ITCAN](#) on March 13, 2019, for relief under Chapter 15 of the [US Bankruptcy Code](#).

“**Comeback Motion**” means the Comeback Motion, as defined in the Initial Order, which was heard on April 4 and 5, 2019.

“**Court**” means the Ontario Superior Court of Justice (Commercial List).

“**Court-Appointed Mediator**” means the Honourable Warren K. Winkler Q.C., acting as an officer of the Court and as a neutral third party to mediate a global settlement of the Tobacco Claims, in the context of these CCAA Proceedings.

“**Consortium of Provinces**” means, collectively, the Province of British Columbia, Province of Manitoba, Province of New Brunswick, Province of Nova Scotia, Province

of Prince Edward Island and Province of Saskatchewan, in each Province's capacity as a plaintiff in the HCCR Claims.

“**EY**” means Ernst & Young.

“**First Report**” means the report filed by the Monitor on April 3, 2019, in connection with the relief sought at the Comeback Motion.

“**Foreign Recognition Order**” means an order of the US Bankruptcy Court recognizing the CCAA Proceedings as the main proceedings and staying proceedings against ITCAN in the United States.

“**FTI**” means FTI Consulting Canada Inc.

“**Genstar**” Genstar Corporation, a subsidiary of ITCAN.

“**HCCR Claims**” means the claims started by each of the Provinces of Canada under each Province's health care cost recovery legislation, to recover health care costs associated with smoking and the use of Tobacco Products.

“**Imperial**” means collectively, Imperial Tobacco Canada Limited and Imperial Tobacco Company Limited.

“**Insurance Settlement Agreements**” means the settlement agreements in respect of insurance policies issued by Kansa General International Insurance Company Ltd. and Northumberland General Insurance Company to ITCAN and/or its predecessor entities.

“**Insurance Settlement Order**” means an order of this Court dated April 25, 2019, partially lifting the Stay of Proceedings solely to allow the Quebec Litigation Plaintiffs to seek the approval of the Insurance Settlement Agreements from Justice Riordan of the Superior Court of Quebec.

“**Initial Order**” means the initial order granted on March 12, 2019, by this Court which authorized, among other things, the Stay of Proceedings and FTI's appointment as Monitor of Imperial's CCAA Proceedings.

“**Interim Sealing Order**” means an order of the US Bankruptcy Court granting an interim motion to seal the names and contact information of individual members of ITCAN's subsidiaries' retirement and pension plans.

“**Interim Tobacco Claimant Coordinator**” means the Honourable Warren K. Winkler Q.C., acting as a coordinator for the Tobacco Claimants in the context of the CCAA Proceedings.

“**ITCAN**” means Imperial Tobacco Canada Limited.

“**ITCO**” means Imperial Tobacco Company Limited.

“**JTI**” means JTI-Macdonald Corp.

“**KCC**” means Kurtzman Carson Consultants.

“**Model Order**” means Ontario Model CCAA Initial Order.

“**PMI**” means Phillip Morris International.

“**Monitor**” means FTI Consulting Canada Inc.

“**PBGC**” means the Pension Benefit Guaranty Corporation.

“**Pre-Filing Report**” means the report filed by the Monitor on March 12, 2019, in its capacity as proposed Monitor of Imperial, in connection with Imperial’s initial application to this Court for relief under the CCAA.

“**Quebec Judgment**” means the Quebec Superior Court’s judgment on the “Letourneau action” and the “Blais action” released on May 27, 2015 in which the trial judge found the co-defendants jointly liable for \$15.6 billion, with Imperial’s share being approximately \$10.6 billion.

“**Quebec Appeal Judgment**” means the Quebec Court of Appeal decision on the appeal of the Quebec Judgment whereby the Court of Appeal substantially upheld the Quebec Judgment with two notable modifications: (i) the total claim amount was reduced by just over \$1 million; and (ii) the interest schedule was adjusted, reducing the interest payable on the total claim amount by approximately \$3 billion. Imperial’s share of the liability stands at \$9,153,565,094.80 with interest and additional indemnity for moral damages and punitive damages.

“**Quebec Litigation Plaintiffs**” means, collectively, the representative plaintiff and the certified class of plaintiffs in each of the “Letourneau action” and the “Blais action”, as described in the Thauvette Affidavit.

“**Responding Thauvette Affidavit**” means the affidavit of Eric Thauvette, Vice President and Chief Financial Officer of Imperial, sworn April 2, 2019 and filed in response to the motion materials filed by counsel for the Quebec Litigation Plaintiffs on March 28, 2019.

“**Retiree Group**” means a steering committee formed to represent the interests of former officers, executives, and management employees of Genstar.

“**Retirement Plans**” means, collectively, the following pension plans: i) a deferred income plan for approximately 53 individuals who are either former senior management employees of Genstar or their surviving spouses; ii) supplemental executive retirement plan for approximately 14 individuals who were either former Genstar employees or their surviving spouses; and iii) a supplementary pension plan for 3 individuals who were either former Genstar employees or their surviving spouses.

“**Rothmans**” means Rothmans Benson & Hedges Inc.

**“Sales Taxes”** means GST, HST, PST, and other retail sales taxes collected in connection with the sale of Tobacco Products

**“Second Thauvette Affidavit”** means the affidavit of Eric Thauvette, Vice President and Chief Financial Officer of Imperial, sworn March 29, 2019.

**“Stay Period”** the term of the Stay of Proceedings, to June 28, 2019.

**“Stay Extension Order”** an order of the Court, dated April 5, 2019, extending the length of the Stay of Proceedings to June 28, 2019.

**“Stay of Proceedings”** the stay of proceedings during the Stay Period in favour of Imperial and their non-applicant subsidiaries, including Liggett & Meyers Tobacco Company of Canada Limited, as well as, a limited stay in favour of BAT and certain BAT affiliates.

**“Thauvette Affidavit”** means the affidavit of Eric Thauvette, Vice President and Chief Financial Officer of Imperial, sworn March 12, 2019.

**“Tobacco Claimants”** means all persons with any Tobacco Claim, other than the federal, provincial and territorial governments of Canada.

**“Tobacco Claims”** means all claims brought or that could be brought under applicable law against Imperial 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, the Tobacco Products.

**“Tobacco Monitors”** means, collectively, the Monitor, EY in its capacity as monitor for Rothmans, and Deloitte in its capacity as monitor for JTI.

**“Tobacco Products”** means tobacco or any product made or derived from tobacco or containing nicotine that is intended for human consumption, including any component, part, or accessory of or used in connection with a tobacco product, including cigarettes, cigarette tobacco, roll your own tobacco, smokeless tobacco, electronic cigarettes, vaping liquids and devices, heat-not-burn tobacco, and any other tobacco or nicotine delivery systems and shall include materials, products and by-products derived from or resulting from the use of any tobacco products.

**“Tobacco Taxes”** means the federal excise taxes, import duties, and provincial tobacco taxes on all tobacco products imported into Canada and sold in a province.

**“US”** means the United States of America

**“US Bankruptcy Code”** means title 11 of the United States Code.

**“US Bankruptcy Court”** means the United States Bankruptcy Court for the Southern District of New York.

## **APPENDIX B**

See attached.

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UNITED STATES BANKRUPTCY COURT

SOUTHERN DISTRICT OF NEW YORK

Case No. 19-10771

- - - - - x

In the Matter of:

IMPERIAL TOBACCO CANADA LIMITED,

Debtor.

- - - - - x

United States Bankruptcy Court

One Bowling Green

New York, NY 10004

April 17, 2019

2:06 PM

B E F O R E :

HON SHELLEY C. CHAPMAN

U.S. BANKRUPTCY JUDGE

ECRO: KAREN



1 HEARING re Recognition Hearing

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3 HEARING re Doc# 36 Notice of Adjournment of Hearing

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25 Transcribed by: Sonya Ledanski Hyde

1     **A P P E A R A N C E S :**

2

3     **BRACEWELL LLP**

4             Attorneys for FTI Consulting Canada, Inc., the Court-  
5             Appointed Monitor and Foreign Representative for the  
6             Debtor

7             1251 Avenue of the Americas, 49th Floor  
8             New York, NY 10020

9

10    **BY:    JENNIFER FELDSHER**

11

12    **KING & SPALDING LLP**

13             Attorney for Imperial Tobacco  
14             1180 Peachtree Street NE  
15             Atlanta, GA 30309

16

17    **BY:    MARK M. MALONEY**

18

19    **APPEARING TELEPHONICALLY:**

20    **JOHN BRINGARDNER**

21    **DAVID LAWTON**

22    **VIVIAN DOLEZAR**

23    **KIMBERLY NEUREITER**

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P R O C E E D I N G S

THE COURT: Please have a seat. How's everyone today

MR. MALONEY: Good morning, Your Honor.

THE COURT: All right. I'm ready when you are.

MS. FELDSHER: Good afternoon, Your Honor.

THE COURT: Good afternoon.

MS. FELDSHER: Jennifer Feldsher from Bracewell on behalf of FTI Consulting Canada, Inc., the court-appointed monitor and foreign representative for the Debtor, Imperial Tobacco Canada Limited.

THE COURT: Very good. Okay. On the phone, let's see who we have. We have another representative of FTI. It looks like we have someone from the PBGC, and it looks like we have Ms. Dolezar. Are you there, ma'am?

MS. DOLEZAR: Yes, I am, Your Honor.

THE COURT: Okay. Can you hear us?

MS. DOLEZAR: Yes, I can hear.

THE COURT: All right. So, counsel is going to make a presentation and then I will give you an opportunity to say something if you would like to add something to the record, all right?

MS. DOLEZAR: Okay. Thank you.

THE COURT: Okay. Good. Is there anyone else on the phone that I haven't identified?

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(Pause)

THE COURT: All right. Yes, sir?

(Pause)

THE COURT: All right. We're going to get started.

MS. FELDSHER: Your Honor, in the courtroom as well for appearances is Mr. Paul Bishop, the senior managing director at FTI.

THE COURT: Okay.

MS. FELDSHER: And Natasha MacParland from the Davies Firm which is Canadian counsel for the monitor.

THE COURT: Okay.

MS. FELDSHER: And they were here at the first day hearing as well. And Mark Maloney from King & Spalding --

THE COURT: Hello.

MS. FELDSHER: -- U.S. counsel for the Debtor.

MR. MALONEY: Good afternoon, Your Honor.

THE COURT: Okay. There were a number of letters expressing objections and concerns that were filed on the docket. One of them was I believe Ms. Dolezar. Is there anyone else in the courtroom who has submitted a pleading in connection with relief requested today?

All right. So let the record reflect that no one indicated that they're here for that purpose. Okay.

MS. FELDSHER: Yes. I believe, Your Honor, some

1 of the letters indicated that people couldn't make the trip.

2 THE COURT: Okay.

3 MS. FELDSHER: And if anybody had called our  
4 offices, we would have --

5 THE COURT: Right.

6 MS. FELDSHER: They did not, but we would have  
7 made the call-in available.

8 THE COURT: Right. And we make it clear that  
9 their dialing in is an option. Okay.

10 MS. FELDSHER: Your Honor, unless the Court would  
11 like me to handle things in a different order, I was  
12 planning on just giving the Court some updates on the  
13 Canadian --

14 THE COURT: Sure.

15 MS. FELDSHER: -- case and then going into the  
16 case in chief about recognition --

17 THE COURT: Yes.

18 MS. FELDSHER: -- and the standards --

19 THE COURT: I think the important focus since  
20 you've laid out very well the grounds for this Court  
21 granting recognition to the Canadian proceeding, I think it  
22 would be most helpful for the benefit of the record and the  
23 objectors for you to reiterate what you've also laid out  
24 clearly in your reply which is why the concerns regarding  
25 the unfortunate situation with the pension payments is not

1 in fact something that this Court is being asked to address  
2 or indeed even could address.

3 So I think that should be the focus, but I'm happy  
4 to let you make your record.

5 MS. FELDSHER: Okay, Your Honor. And I was  
6 planning on handling that as well.

7 THE COURT: Okay. Speak up a bit so that they can  
8 hear you.

9 MS. FELDSHER: Oh, sorry. That's not usually my  
10 problem.

11 THE COURT: I know it's usually not your problem,  
12 so.

13 MS. FELDSHER: So I will make sure to correct  
14 that.

15 THE COURT: Okay.

16 MS. FELDSHER: Your Honor, as we predicted at the  
17 first day hearing, Rothman, Benson & Hedges, which is the  
18 third of the big three tobacco companies has now filed for  
19 CCA protection in Canada as well just as an update to the  
20 Court. Obviously, we had predicted that because all three  
21 companies have the same, you know, overhang of liabilities  
22 --

23 THE COURT: Right.

24 MS. FELDSHER: -- from their tobacco claimants.  
25 Last Friday we filed a supplemental affidavit from Mr.

1 Bishop with recent developments in the Canadian proceeding,  
2 and I go through it only because that's at Docket Number 34,  
3 Your Honor.

4 THE COURT: Yes.

5 MS. FELDSHER: Because I do think it bears  
6 mentioning with respect to those individuals who have  
7 written letters to the Court and to the monitor with respect  
8 to the pension plans. On April 4th and 5th, the Canadian  
9 court held what they call a comeback hearing. That's the  
10 hearing after notice has been provided for people. Your  
11 Honor is obviously familiar with that.

12 At that hearing, the Canadian court entered  
13 various orders, but notable here in the Chapter 15 case is  
14 that the Court extended the stay until January 28th, 2019  
15 and appointed a mediator in respect of the tobacco claims to  
16 start the discussion between the parties. Also, prior to  
17 that hearing, counsel for the Debtor and counsel for the  
18 monitor were contacted by counsel representing several of  
19 the beneficiaries for the -- what we colloquially called in  
20 our reply the top hat plans. Those are the plans that are  
21 impacted by the Debtor's filing and where contributions have  
22 ceased.

23 Counsel represented to us that they were trying to  
24 --

25 THE COURT: I think you said extended the stay to

1 January 2019.

2 MS. FELDSHER: June --

3 THE COURT: You meant June 2019.

4 MS. FELDSHER: I apologize, June 28th, 2019.

5 THE COURT: Yes, 2019.

6 MS. FELDSHER: Yes.

7 THE COURT: Okay.

8 MS. FELDSHER: June 28th. Counsel for the  
9 beneficiaries represented to us that they are trying to form  
10 a putative group to represent beneficiaries of the top hat  
11 plans. And they had retained counsel both in Canada and the  
12 United States to do so. In Canada, that counsel has now  
13 appeared in the CCA proceeding and filed a motion to certify  
14 a putative class to have themselves appointed as counsel for  
15 that class and seeking relief to compel resumption of  
16 payments under the top hat plans.

17 That matter has been adjourned by the Canadian  
18 court until a further hearing on April 25th, 2019 because  
19 the Court just couldn't handle that type of relief.

20 THE COURT: Right.

21 MS. FELDSHER: Counsel has also certified a  
22 constitutional question under Canadian law as to whether or  
23 not the pension payments could be terminated, you know, as  
24 it can --

25 THE COURT: Under Canadian law, okay.



1 MS. FELDSHER: Absolutely.

2 THE COURT: Does the group, the retiree group that  
3 you reference in Paragraph 5 of the document of the  
4 supplemental declaration that appears at my Docket 34, does  
5 that group include, for example --

6 MS. FELDSHER: Several of --

7 THE COURT: -- Ms. Dolezar's family member? Do  
8 you know?

9 MS. FELDSHER: Your Honor, I don't know, but I do  
10 know that -- I believe that it did represent several of the  
11 people who wrote letters. But I don't know if Ms. Dolezar  
12 --

13 THE COURT: Okay.

14 MS. FELDSHER: -- has, you know, since spoken to  
15 counsel or chosen to be part of that group.

16 THE COURT: Okay.

17 MS. FELDSHER: But I only make mention of that for  
18 two reasons that I think are relevant in this proceeding.  
19 The first is that we worked with counsel for the proposed  
20 group and made certain changes to the order that I'll be  
21 happy to go through with the Court, and the second is that  
22 they're doing what we believe should be done. The issue of  
23 whether or not the payments should have been terminated by  
24 the Debtor or not is really not a U.S. --

25 THE COURT: Correct.

1 MS. FELDSHER: -- issue. The obligation is a  
2 Canadian issue, all right, under Canadian law.

3 THE COURT: Right.

4 MS. FELDSHER: The Debtor has guaranteed those  
5 obligations. And whether or not it could just stop funding  
6 them is an issue that is properly before the Canadian court  
7 that's addressing the larger restructuring and unsecured  
8 claims generally. And what we did in the (indiscernible) of  
9 the order which we filed as an exhibit to our reply.

10 THE COURT: Right.

11 MS. FELDSHER: I'm happy to hand up --

12 THE COURT: Recognition order.

13 MS. FELDSHER: To the recognition order is we made  
14 clear, and many of the letters while stating that they do  
15 not oppose approval of recognition in this Court --

16 THE COURT: Right.

17 MS. FELDSHER: -- asked for the -- you know, asked  
18 the Court to do two things, either to order that payments be  
19 resumed --

20 THE COURT: Right.

21 MS. FELDSHER: -- which is not before the Court.

22 THE COURT: Not something -- well, just to be  
23 clear, that's not something that is within my power,  
24 authority, or jurisdiction. That is entirely up to the  
25 Canadian court.

1 MS. FELDSHER: Correct. And the second request  
2 was to put language into the order to make clear what is  
3 actually factually correct in this case which is we were not  
4 trying to do anything in the recognition, the proposed  
5 recognition order to impair the rights of beneficiaries  
6 under the top hat plans to pursue claims --

7 THE COURT: Right.

8 MS. FELDSHER: -- or any of their other rights or  
9 -- or claims that they have in the Canadian court --

10 THE COURT: Right.

11 MS. FELDSHER: -- subject to the defenses that the  
12 Debtor may have --

13 THE COURT: Right.

14 MS. FELDSHER: -- and the monitor may raise in  
15 that proceeding. Everybody's rights are reserved on those  
16 issues.

17 THE COURT: Right. And to be clear, that's now at  
18 --

19 MS. FELDSHER: That's now --

20 THE COURT: -- newly added Paragraph 11 of your  
21 order which I'll read into the record. It says, "Nothing  
22 contained herein shall be deemed or construed to impair or  
23 otherwise adversely affect any rights of any group  
24 representative of the beneficiaries of the top hat plans  
25 appointed by the Canadian court, if any, or any individual

1 participant of the top hat plans from pursuing any rights,  
2 claims, and remedies collectively or individually in the  
3 Canadian proceeding or the Debtor's or monitor's rights,  
4 claims, defenses, and remedies in connection therewith."

5 In other words, the order, the recognition order  
6 that this Court will enter is absolutely neutral coming and  
7 going, if you will, on that point as which is the only way  
8 that it could be.

9 MS. FELDSHER: Absolutely, Your Honor, and we  
10 agree with that. And so we were happy to work with, as I  
11 said, counsel to the proposed class. And they have reviewed  
12 this language and approved it and do not object to the order  
13 with the added language. There was some additional language  
14 that we added just to make clear, and this is -- I'm now  
15 since we're in the black line order, Paragraph 5 and 7 which  
16 I view as being related. I'm just making clear also what we  
17 have previously told the Court which is that the Debtor is  
18 continuing to operate its business. This is not the case  
19 where the monitor is coming in and the Debtor's not an  
20 operating business.

21 THE COURT: Right.

22 MS. FELDSHER: Here the Debtor is continuing to  
23 operate its business, so we're not requesting relief under  
24 1521(a)(5) which would allow the monitor to step in the  
25 shoes --

1 THE COURT: Yeah.

2 MS. FELDSHER: -- of the Debtor. Here the Debtors  
3 are going to continue to do that, and that's really  
4 consistent with the message that we have told to the  
5 beneficiaries of the pension plan, which is this is a  
6 determination made under Canadian law by the Debtor. They  
7 don't believe that under Canadian law they can make these  
8 unsecured payments, you know, and treat beneficiaries  
9 differently from other unsecured creditors. But if wrong,  
10 the Canadian court will hear that matter, and it'll be fully  
11 briefed, and we'll make a determination on that count. And  
12 obviously, vis-à-vis this case, the Debtor will act in  
13 accordance with whatever's ordered by the Canadian court.

14 THE COURT: Right. So I think that what remains  
15 for us to do is perhaps to enter into the record the first  
16 declaration of Mr. Bishop which was filed at Docket 5, yes?

17 MS. FELDSHER: Correct.

18 THE COURT: All right. So does anyone have an  
19 objection to the admission into evidence of Mr. Bishop's  
20 declaration in support of among other things the petition  
21 for recognition of this proceeding as a foreign main  
22 proceeding?

23 And does anyone wish to cross-examine?

24 Okay. And then similarly, we should also enter  
25 into evidence the supplemental declaration which was as you

1 mentioned filed at Docket 34. Anyone have an objection?

2 Anyone wish to cross-examine?

3 All right. So I believe that those declarations

4 in combination with your memorandum of law and as

5 supplemented by your omnibus reply lay out clearly and

6 carefully the predicates for the relief that you request.

7 Is there anything else that you wish to add? I don't really

8 feel the need for you to run through the elements for

9 recognition.

10 MS. FELDSHER: No, Your Honor. Unless the Court

11 has any further questions or something else.

12 THE COURT: So let me turn to Ms. Dolezar, since

13 you have Ms. Feldsher here who's representing the Debtor

14 here in the United States, do you have any additional

15 questions or are you now comfortable in your understanding

16 at least of the procedural posture of things?

17 MS. DOLEZAR: So I'm understanding, Your Honor,

18 that you do not have the authority to rule on anything if

19 it's zoned to be held in Canada?

20 THE COURT: Yes.

21 MS. DOLEZAR: Am I correct on that?

22 THE COURT: Yes, exactly right.

23 MS. DOLEZAR: Okay. I think the only thing that -

24 -- and I don't know how relevant this is to you. I think

25 the way things were handled such short notice that people's

1 incomes were cut off. They literally had two weeks' notice.  
2 And what I'm noticing now is they're referring to this as a  
3 top hat plan instead of a non-qualified. And I feel they're  
4 trying to do that to make it sound these were all top-level  
5 executives making hundreds of thousands dollars a year, and  
6 that's not the case at all, not in my personal case anyway.

7 THE COURT: Sure.

8 MR. DOLEZAR: My father was a manager. He was not  
9 a senior vice-president or anything else. And the only  
10 reason he was even put into the plan was because they had  
11 asked him to stay until the very end into the company was  
12 taken completely over by (indiscernible). So normally, he  
13 would not have even been qualified for that plan at his  
14 level. And so I do take objections to them changing this to  
15 top hat trying to make it sound like these are all very,  
16 very rich people and they're not.

17 THE COURT: Yes. I hear you. I understand. You  
18 know, for better or worse, as you correctly acknowledge, I  
19 don't have the power or authority frankly to have anything  
20 to say about that, but I can tell you that I hear you.  
21 Among other things, I preside over the Lehman Brothers case  
22 here in the United States. And there were many individuals  
23 who were quite hurt by the failure of Lehman Brothers and  
24 whose stories are very similar to yours, folks who sounded  
25 like they may have earned a lot of money but in fact did

1 not. And, you know, I certainly struggled in occasions when  
2 I had to deny the relief that they were requesting after  
3 they had loyally worked for a company for many, many years.

4 So I'm afraid the best that I can do for you is to  
5 encourage you to make your concerns known to the Canadian  
6 court and to counsel. And, you know, the Canadian court  
7 bankruptcy proceedings are in my experience, you know, very  
8 well-run with an eye toward affording all parties due  
9 process and the rights to be heard. And that's about the  
10 best that I can do. I do very much appreciate your taking  
11 the time to dial in and appear here today.

12 MS. DOLEZAR: Well, thank you. I appreciate your  
13 time.

14 THE COURT: All righty. Okay. Does anyone else  
15 wish to be heard?

16 All right. Ms. Feldsher, if you could ensure that  
17 we get a copy, a Word version of the newly revised order,  
18 we'll get it on the docket as soon as possible.

19 MS. FELDSHER: I believe we emailed that to  
20 chambers --

21 THE COURT: Yes.

22 MS. FELDSHER: -- on Friday so you should have it.

23 THE COURT: Apparently you did.

24 MS. FELDSHER: But if you --

25 THE COURT: Okay.



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MS. FELDSHER: -- need it again, let me know.

THE COURT: All right. We'll get it on the docket today.

MS. FELDSHER: Thank you, Your Honor.

THE COURT: All right. Thank you for coming in. Good afternoon, everyone.

(Whereupon these proceedings were concluded at 2:23 PM)

C E R T I F I C A T I O N

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I, Sonya Ledanski Hyde, certified that the foregoing transcript is a true and accurate record of the proceedings.

Sonya Ledanski Hyde

Veritext Legal Solutions  
330 Old Country Road  
Suite 300  
Mineola, NY 11501

Date: April 23, 2019

<b>&amp;</b>	<b>accurate</b> 19:4	<b>atlanta</b> 3:15	9:12 15:19
<b>&amp;</b> 3:12 5:14 7:17	<b>acknowledge</b> 16:18	<b>attorney</b> 3:13	<b>canadian</b> 5:11
<b>1</b>	<b>act</b> 14:12	<b>attorneys</b> 3:4	6:13,21 8:1,8,12
<b>10004</b> 1:14	<b>add</b> 4:21 15:7	<b>authority</b> 11:24	9:17,22,25 11:2,2
<b>10020</b> 3:8	<b>added</b> 12:20	15:18 16:19	11:6,25 12:9,25
<b>11</b> 12:20	13:13,14	<b>available</b> 6:7	13:3 14:6,7,10,13
<b>11501</b> 19:23	<b>additional</b> 13:13	<b>avenue</b> 3:7	17:5,6
<b>1180</b> 3:14	15:14	<b>b</b>	<b>carefully</b> 15:6
<b>1251</b> 3:7	<b>address</b> 7:1,2	<b>b</b> 1:21	<b>case</b> 1:3 6:15,16
<b>15</b> 8:13	<b>addressing</b> 11:7	<b>bankruptcy</b> 1:1	8:13 12:3 13:18
<b>1521</b> 13:24	<b>adjourned</b> 9:17	1:12,23 17:7	14:12 16:6,6,21
<b>17</b> 1:16	<b>adjournment</b> 2:3	<b>bears</b> 8:5	<b>cca</b> 7:19 9:13
<b>19-10771</b> 1:3	<b>admission</b> 14:19	<b>behalf</b> 4:9	<b>ceased</b> 8:22
<b>2</b>	<b>adversely</b> 12:23	<b>believe</b> 5:20,25	<b>certain</b> 10:20
<b>2019</b> 1:16 8:14 9:1	<b>affect</b> 12:23	10:10,22 14:7	<b>certainly</b> 17:1
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**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**

Court File No. CV-19-616077-00CL

***ONTARIO***  
**SUPERIOR COURT OF JUSTICE**  
**(COMMERCIAL LIST)**

Proceeding commenced at Toronto

**SECOND REPORT OF THE MONITOR**  
**APRIL 24, 2019**

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