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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: Dkt. No. 70**

**FOURTH 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, 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 “Fourth Status Report”) to advise the Court, pursuant to 11 U.S.C. § 1518, of ongoing developments in the Canadian Proceeding since filing of the Monitor’s third status report on July 15, 2022 (the “Third Status Report”) [Dkt. No. 70]. Filed contemporaneously herewith is the Monitor’s declaration in support of the Fourth 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 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., and imports them through the United States for sale in Canada.<sup>2</sup>

3. On March 12, 2019, the Debtor, along with its affiliate, ITCO, commenced the Canadian Proceeding to restructure and compromise its liabilities and address pending and future Tobacco Claims in a comprehensive fashion.<sup>3</sup> 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 supply-chain running through the United States while the Debtor pursues 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 Order<sup>4</sup> with the Canadian Court [*see* Dkt. No. 61].

## II. Previous Status Reports

6. On April 8, 2020, the Monitor reported to the Court that (i) the Debtor was engaged in court-ordered confidential mediation with the goal of achieving a pan-Canadian global

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

<sup>4</sup> As defined in the *Monitor’s Motion for Order Recognizing Canadian Court’s Court-to-Court Communications Order* [Dkt. No. 54].

settlement of the Tobacco Claims (the “Mediation”);<sup>5</sup> and (ii) the Stay in the Canadian Proceeding had been extended to September 30, 2020. *See* Dkt. Nos. 64 and 65.

7. On May 3, 2021 and July 15, 2022, the Monitor filed its Second and Third Status Reports (i) advising the Court the Canadian Court had continued to extend the Stay to advance the ongoing Mediation; and (ii) describing certain steps taken by the Debtor to mitigate supply-chain disruptions and inventory shortfalls predominantly caused by the COVID-19 pandemic. *See* Dkt. Nos. 67, 68, 70 and 71.

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

8. By orders dated September 29, 2022, March 30, 2023, and September 27, 2023 (the “Stay Extension Orders”), the Canadian Court has continued to extend the Stay. In its endorsement dated October 5, 2023 extending the Stay to March 29, 2024 (the “Endorsement”), the Canadian Court found that (i) the Debtor and ITCO “continue to work in good faith and with due diligence”; (ii) “all parties continue to be engaged” in the Mediation; and (iii) the parties “have established that circumstances exist that require an extension.” Endorsement at 7-12. Although the Mediation remains highly confidential, the Monitor can report that the Mediation is ongoing and that the parties are continuing to work towards a global settlement of the Tobacco Claims.

9. In issuing the Endorsement, the Canadian Court also indicated that “it is now time for stakeholders to focus on the finalization of comprehensive plans of arrangement” which will be acceptable to a majority of creditors and “be seen to be fair and reasonable”. Endorsement at 11, 18, 20. The Canadian Court stated that the “best chance” at developing such a plan is through the collaboration of neutral third parties such as the Monitor and Mediator. Endorsement at 19.

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<sup>5</sup> 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 “Mediator”).

The Canadian Court held that the “existing structure of the mediation” can be used to this end, directed the Monitor and Mediator to develop a plan of arrangement, and required that the Canadian Court be kept updated of their progress. Endorsement at 20, 22.

10. Additionally, since the last status report, the Heart and Stroke Foundation of Canada (“HSF”) moved for leave to file a motion seeking the appointment of representative counsel for certain future Tobacco Claimants in the Canadian Proceeding. HSF’s request to bring its motion was denied by the Canadian Court on June 26, 2023 (“HSF Leave Decision”), which found, among other things, that (i) HSF’s filing of its motion after “four years” of a “well-known, ongoing Mediation” evidenced HSF’s lack of due diligence; (ii) the future Tobacco Claimants are already “adequately represented” by Representative Counsel previously appointed by the Court;<sup>6</sup> and (iii) the introduction of HSF into the proceedings at this late stage “would likely prejudice the progress of the CCAA Proceedings,” particularly when “[s]ubstantial progress has been made” in the Mediation” and “the Mediation appears to be reaching its latter stages after four years.” HSF Leave Decision at 6, 16, and 17.

11. In addition, on May 17, 2023, in light of the retirement of Justice McEwen, the Canadian Court reassigned the Canadian Proceeding to Hon. Geoffrey B. Morawetz, Chief Justice of the Superior Court of Justice of Ontario, effective July 1, 2023 (the “Case Management Order”).

Copies of the Stay Extension Orders, the Endorsement, the HSF Leave Decision, the Case

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<sup>6</sup> 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, on December 9, 2019, the Canadian Court entered an order appointing 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”) (the “Representative Counsel Order”). A copy of the Representative Counsel Order is attached as **Exhibit D** to the *Declaration of Paul Bishop in Support of Monitor’s Status Report* [Dkt. No. 65].

Management Order, and the Monitor's reports filed in support thereof are attached to the Bishop Declaration as **Exhibit A**.

#### **IV. Operational Updates**

12. On the operational side, on August 1, 2023, the Canadian government promulgated new regulations requiring, among other things, health warnings to be labelled directly on individual cigarettes. The regulations will be implemented via a phased approach and with different timelines for manufacturers and retailers. The Debtor continues to assess the overall impact of these new regulations on its financial performance and will provide additional guidance as required.

13. On June 22, 2023, Wallace & Carey Inc. ("W&C"), a party to certain long-term tobacco-product distribution contracts with the Debtor, filed for protection under the *Companies' Creditors Arrangement Act* in Canada. Following the filing, the Debtor and W&C entered into a receivables-settlement agreement and an agreement for the continued supply of goods and services. These agreements allow the parties to continue their business relationship without disruption while W&C and its affiliates complete their own restructuring.

14. The Debtor, with the assistance of its parent, British American Tobacco ("BAT"), is also investigating a data breach suffered in August 2023. The Debtor does not anticipate any material financial impact as a result of such breach.

15. Finally, since the Third Status Report, Mr. Frank Silva was appointed Chief Executive Officer of the Debtor effective April 1, 2023. Mr. Silva succeeded Ralf Wittenberg, who has assumed a new role with the Debtor's parent, BAT, in London, England.

16. As of the week ended September 3, 2023, the most recent time period for which financial information was provided to the Canadian Court, the Debtor's business remains cash-flow positive, resulting in a cash balance of \$3.65 billion.

17. 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 or in person status conference at the Court's convenience.

Dated: October 25, 2023

**MORGAN, LEWIS & BOCKIUS LLP**

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