

1 UNITED STATES BANKRUPTCY COURT
2 SOUTHERN DISTRICT OF NEW YORK
3 Case No. 19-10771

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5 In the Matter of:

7 IMPERIAL TOBACCO CANADA LIMITED,

9 Debtor.

10 - - - - - x

12 United States Bankruptcy Court
13 One Bowling Green
14 New York, NY 10004

16 April 17, 2019
17 2:06 PM

21 B E F O R E :
22 HON SHELLEY C. CHAPMAN
23 U.S. BANKRUPTCY JUDGE

25 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 :

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3 BRACEWELL LLP

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

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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?

1 (Pause)

2 THE COURT: All right. Yes, sir?

3 (Pause)

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

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

9 THE COURT: Okay.

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

12 THE COURT: Okay.

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

15 THE COURT: Hello.

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

17 MR. MALONEY: Good afternoon, Your Honor.

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

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

25 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.

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

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

4 MS. FELDSHER: Thank you, Your Honor.

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

7 (Whereupon these proceedings were concluded at
8 2:23 PM)

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

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

Sonya Ledanski
Hyde

Digitally signed by Sonya Ledanski
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Date: April 23, 2019

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