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In its Capacity as Monitor and 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.

Chapter 15  
Case No. 19-10771 (SCC)

**INTERIM MOTION TO SEAL PURSUANT TO  
11 U.S.C. § 107(b) AND FED. R. BANKR. P. 9018**

FTI Consulting Canada Inc. (“FTI”), in its capacity as the court-appointed monitor (“Monitor”) and authorized foreign representative of Imperial Tobacco Canada Limited (the “Debtor”), by and through its undersigned counsel, respectfully requests entry of the proposed order attached hereto as **Exhibit A** (the “Proposed Order”) pursuant to 11 U.S.C. § 107(b) and Rule 9018 of the Federal Rules of Bankruptcy Procedure (the “Bankruptcy Rules”) authorizing the Monitor to file the names and contact information of individual members of the Debtor’s U.S. subsidiaries’ retirement and pension plans against whom the Debtor is seeking provisional relief (the “Individual Provisional Relief List”) under seal, on an interim basis; and (b) directing that the Individual Provisional Relief List shall remain under seal and not be made available to anyone,



except as specifically provided in the Proposed Order, without the consent of the Monitor or further order of the Court.

### **BACKGROUND**

1. On March 13, 2019 (the “Petition Date”), the Monitor commenced this Chapter 15 case (the “Chapter 15 Case”) by filing, on behalf of the Debtor and pursuant to section 1504 and 1515 of title 11 of the United States Code (the “Bankruptcy Code”), the Verified Chapter 15 Petition for Recognition of Foreign Main Proceeding and Related Relief (the “Verified Petition”) along with the Official Form 401 (*Chapter 15 Petition for Recognition of a Foreign Proceedings*). As set forth in greater detail in the Verified Petition, the Monitor is seeking recognition of the Debtor’s 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) at Toronto (the “Canadian Court”) to protect the Debtor and its assets and supply chain in the United States during the Debtor’s restructuring in Canada.

2. The Debtor is the direct or indirect corporate parent of several subsidiaries in the United States. These include Imasco Holdings Group, Inc. (“Imasco”), Imasco Holdings, Inc., ITL (USA) Limited, and Genstar Pacific Corporation (collectively, the “U.S. Subsidiaries”). The U.S. Subsidiaries are dormant but administer various legacy liabilities related to their former business operations, including worker’s compensation claims and pension and retirement benefit plan liabilities. Pursuant to an agreement dated April 2, 1986, the Debtor guaranteed certain of these pension and retirement obligations and over the years, the Debtor has provided funding for the U.S. Subsidiaries on a monthly basis in the form of a capital contribution to Imasco for these obligations. While the Debtor intends to continue to fund Imasco so that the U.S. Subsidiaries can make ordinary course payments in respect of many of the pension and retirement plan obligations,

it will no longer be funding several of the executive-level retirement and pension plans. In light of the Debtor guarantee, out of an abundance of caution, the individual members of these plans are included in the parties against whom the Debtor is seeking provisional relief.

3. Ordinarily, pursuant to Rule 1007(a)(4) of the Federal Rules of Bankruptcy Procedure, a petition for recognition under chapter 15 must be accompanied by, among other things, a list of “entities against whom provisional relief is being sought under section 1519 of the Code.” Fed. R. Bankr. P. 1007(a)(4). However, in the instant case, the Monitor is constrained by the Canadian Order for Relief and federal and provincial statutes in Canada from publicly disclosing the names and addresses of creditors who are individuals or any personal information in respect of such individuals. Specifically the Canadian Order for Relief provides that, with respect to any creditor list, the Monitor “shall not include the names, addresses or estimated amounts of the claims of those creditors who are individuals or any personal information in respect of an individual.” See Canadian Order for Relief ¶ 51. Moreover, the *Personal Information Protection and Electronic Documents Act* (Canada) (“PIPEDA”), Canada’s federal privacy law, and comparable provincial personal privacy laws in effect in Canada, require organizations that are subject to PIPEDA to first obtain consent for the collection, use and disclosure of the personal information of individuals. See e.g., [https://www.priv.gc.ca/en/privacy-topics/privacy-laws-in-canada/the-personal-information-protection-and-electronic-documents-act-pipeda/pipeda\\_brief/](https://www.priv.gc.ca/en/privacy-topics/privacy-laws-in-canada/the-personal-information-protection-and-electronic-documents-act-pipeda/pipeda_brief/) (last visited March 14, 2019).<sup>1</sup> Given these prohibitions, the Monitor seeks limited relief and authority to file and maintain only the Individual Provisional Relief List under seal. Notably, other

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<sup>1</sup> Both the Debtor and the Monitor are subject to PIPEDA.

parties against whom the Debtor is seeking provisional relief are included on the *List Pursuant To Bankruptcy Rule 1007(a)(4)* [Dkt. No. 2, Ex. C].

#### **JURISDICTION AND VENUE**

4. This Court has jurisdiction over this matter pursuant to 28 U.S.C. § 1334. This is a core proceeding under 28 U.S.C. § 157(b)(2)(P).

5. This case has been properly commenced pursuant to Section 1504 of the Bankruptcy Code by filing the Petition for recognition of the proceeding (the “Canadian Proceeding”) pending against the Debtor under Canada’s *Companies’ Creditors Arrangement Act*, R.S.C. 1985, c. C-36, as amended (the “CCAA”).

6. Venue is proper pursuant to 28 U.S.C. § 1410.

7. The statutory bases for the relief requested herein are section 107(b)(1) of title 11 of the United States Code, and Rule 9018 of the Federal Rules of Bankruptcy Procedure.

#### **RELIEF REQUESTED**

8. By this Motion, the Monitor seeks to file and maintain under seal the Individual Provisional Relief List, which contains the names and addresses of individuals against whom the Debtor is seeking provisional relief so as to exclude the names and addresses of those individuals from the public records that are “open to examination by any entity” in this case under 11 U.S.C. §107(a). As set forth in the Proposed Order, the Monitor requests the Court to direct that the Individual Provisional Relief List remain under seal and not be made available in the public records during the pendency of the Debtor’s Chapter 15 case or as otherwise ordered by the Court.

#### **BASIS FOR RELIEF SOUGHT**

9. Pursuant to section 107(b) of the Bankruptcy Code, the Court may authorize the Monitor to file materials under seal. Section 107(b) of the Bankruptcy Code provides in pertinent part: “[o]n request of a party in interest, the bankruptcy court shall, and on the bankruptcy court’s

own motion, the bankruptcy court may – (1) protect an entity with respect to a trade secret or confidential research, development, or commercial information . . . .” 11 U.S.C. § 107(b)(1). Bankruptcy Rule 9018 sets forth the procedure by which a party may move for relief under 11 U.S.C. § 107(b).

10. Section 107(b) of the Bankruptcy Code and Bankruptcy Rule 9018 “protect business entities from disclosure of information that could reasonably be expected to cause the entity commercial injury.” *In re Global Crossing Ltd.*, 295 B.R. 720, 725 (Bankr. S.D.N.Y. 2003). In granting relief under section 107(b) of the Bankruptcy Code, “[t]he court determines whether the subject documents fall within the provisions § 107(b) and the appropriate protective remedy if they do.” *In re Barney’s, Inc.*, 201 B.R. 703, 707 (Bankr. S.D.N.Y. 1996). Upon determining that a party in interest is seeking protection of information that falls within section 107(b), the Court “is *required* to protect a requesting interested party and has no discretion to deny the application.” *Video Software Dealers Ass’n v. Orion Pictures Corp. (In re Orion Pictures Corp.)*, 21 F.3d 24, 27 (2d Cir. 1994) (emphasis in original).

11. Courts in this district have defined “commercial information” broadly. Indeed, the Second Circuit has held that section 107(b) of the Bankruptcy Code and Bankruptcy Rule 9018 do “not require that commercial information be the equivalent of a trade secret before protecting such information.” *Id.* at 28. Rather, an interested party need only show that the information it wishes to seal is “confidential” and “commercial” in nature, and no showing of “good cause” is necessary”. *Id.*; *see also Global Crossing*, 295 B.R. at 725 (finding that the “whole point of [Bankruptcy Rule 9018] is to protect business entities from disclosure of information that could reasonably be expected to cause the entity commercial injury”). “[S]ection 107(b) and Bankruptcy Rule 9018 must be viewed from the practical perspective of damage to the estate or its creditors,

and squarely includes information that could prejudice [the estate or its creditors].” *Global Crossing*, 295 B.R. at 725.

12. In the instant case, the Monitor’s request to file the confidential and sensitive personal information on the Individual Provisional Relief List falls squarely within the relief permitted under Section 107(b). Filing the Individual Provisional Relief List under seal will not impact notice of any provisional relief on the parties to the Individual Provisional Relief List, just public disclosure of their private information. Absent the requested relief, the Monitor and the Debtor would be in violation of the Canadian Order for Relief and possibly, Canadian law, with respect to such commercial information, thereby exposing them to potential liability. For example, a violation of PIPEDA could result in an investigation of the Monitor or Debtor by the Office of the Privacy Commissioner of Canada, and result in monetary damages and/or to harm the Debtor’s relationship with both current and former employees. Should any individual consent to release of their information or file a notice of appearance in this case, the Debtor would then add their information to any Master Service List maintained by the Debtor’s noticing agent.

#### **NOTICE**

13. Notice of this Application will be provided to the Chapter 15 Notice Parties.

#### **NO PRIOR REQUEST**

14. No prior request for the relief requested herein has been made to this or any other court.

#### **CONCLUSION**

15. For the forgoing reasons, the Monitor respectfully requests that the Court grant the Motion and issue an order substantially in the form submitted as **Exhibit A**, granting the relief requested therein and any such other and further relief as may be just and proper.

Dated: March 14, 2019  
New York, New York

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**Exhibit A**  
**Proposed Order**



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**UNITED STATES BANKRUPTCY COURT  
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Chapter 15

Case No. 19-10771 (SCC)

**ORDER GRANTING INTERIM MOTION TO SEAL**

Upon the motion, dated March 14, 2019 (the “Motion”), of FTI Consulting Canada Inc. (“FTI,” or the “Monitor”) pursuant to section 107(b) of title 11 of the United States Code (the “Bankruptcy Code”), Rule 9018 of the Federal Rules of Bankruptcy Procedures (the “Bankruptcy Rules”), and Local Rule 9081-1 to file and maintain the Individual Provisional Relief List<sup>1</sup> under an order directing that the sealed information shall remain under seal and not be made available to anyone, except as specifically provided in this Order, without further order of the Court, all as more fully set forth in the Motion; and the Court having jurisdiction to consider the Motion and the relief requested therein in accordance with 28 U.S.C. §§ 157 and 1334; and consideration of the Motion and the relief requested therein being a core proceeding pursuant to 28 U.S.C. § 157(b);

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<sup>1</sup> Capitalized terms not defined herein shall have the same meaning as given in the Motion.

and venue being proper before this Court pursuant to 28 U.S.C. §§ 1408 and 1409; and the Court having found and determined that the relief sought in the Motion is in the best interests of the Monitor in its capacity as foreign representative for the Debtor and all parties in interest and that the legal and factual bases set forth in the Motion establish just cause for the relief granted herein; and after due deliberation and sufficient cause appearing therefor;

**IT IS HEREBY ORDERED THAT:**

1. The Motion is granted as set forth herein.
2. Pursuant to sections 105(a) and 107(b) and (c) of the Bankruptcy Code, Bankruptcy Rule 9018 and Local Rule 9018-1, the Monitor is authorized and directed to file the Individual Provisional Relief List under seal, on an interim basis; *provided*, that the U.S. Trustee's rights to contest the Monitor's ability to file such information under seal and request further briefing on the issue are fully reserved, subject in all respects to the Monitor's rights to contest any such requests.
3. The Monitor shall provide unredacted copies of the Individual Provisional Relief List to the Court for *in camera* review and to the United States Trustee.
4. All information filed under seal pursuant to this Order shall remain under seal until the further order of the Court.
5. This Order is without prejudice to the rights of any party in interest to seek to make public any portion of the Individual Provisional Relief List filed under seal.
6. Upon entry of this Order, the Monitor shall submit the signed Order, together with one hard copy and one soft copy (on CD or flash drive) of the Individual Provisional Relief List with the Clerk of this Court under seal in an envelope, clearly indicating that the same has been

filed under seal by order of the United States Bankruptcy Court for the Southern District of New York and may not be unsealed until and unless permitted by further order of the Court.

7. The Clerk of the Court shall treat the Individual Provisional Relief List as confidential and counsel for the Monitor shall contact the Clerk's Office regarding the return or disposition of the Individual Provisional Relief List as soon as practicable following the conclusion of this case.

8. The Monitor is authorized to take all actions necessary to effectuate the relief granted pursuant to this Order in accordance with the Motion.

9. The terms and conditions of this Order shall be immediately effective and enforceable upon its entry.

10. This Court retains jurisdiction with respect to all matters arising from or related to the implementation of this Order.

Dated: \_\_\_\_\_, 2019  
New York, New York

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UNITED STATES BANKRUPTCY JUDGE