

## Imperial Tobacco's US Assets Covered Amid Canada Reorg

By **Alex Wolf**

*Law360, New York (April 17, 2019, 7:30 PM EDT)* -- Imperial Tobacco Canada Ltd. secured protection Wednesday in New York bankruptcy court for its supply chain and operational assets in the U.S. while it undergoes restructuring in Canada in the wake of an \$11 billion class action judgment.

U.S. Bankruptcy Judge Shelley C. Chapman granted the Canadian tobacco importer relief under Chapter 15 of the Bankruptcy Code, which provides legal protections for foreign companies that are undergoing insolvency or restructuring proceedings abroad. With its Canadian bankruptcy recognized by Judge Chapman, ITC now has additional breathing room to come up with a plan of reorganization without disruptions to parts of its operations that run through the U.S.

Although the request for recognition was largely uncontested, a number of retirement plan beneficiaries lodged objections ahead of Wednesday's hearing, saying the relief should be conditioned on the resumption of pension payments. ITC's foreign representative, FTI Consulting Canada Inc., said in court papers that even though contributions to the so-called "Top-Hat" retirement plans are unsecured liabilities that cannot be justified as "necessary" to the company, Chapter 15 recognition will not impair its ability to fight for the plan payments in the Canadian proceedings.

Speaking in court Wednesday, FTI attorney Jennifer Feldsher of Bracewell LLP said the objections were resolved by the addition of language in the proposed order further explaining that the rights of the plan beneficiaries will not be impaired by recognition in the U.S.

"The obligation is a Canadian issue under Canadian law," she said.

Speaking to the beneficiaries' concerns, Judge Chapman also clarified she does not have the power or authority to rule on the creditors' claims in Canada, saying the recognition order is "completely neutral" in that respect.

ITC's foreign representative filed for U.S. bankruptcy relief in March as the company also sought protection under Canada's Companies' Creditors Arrangement Act following an \$11 billion Quebec appeals court judgment. ITC, a subsidiary of British American Tobacco PLC, said it is under "existential threat" as a result of the decision.

In that March ruling, the Quebec Court of Appeals largely upheld a lower court's 2015 conclusion that subsidiaries of Philip Morris International Inc., Japan Tobacco Inc. and British American Tobacco PLC are

on the hook for about CA\$15.6 billion (\$11.27 billion) plus interest to Quebecois smokers and former smokers who developed a smoking-related disease or addiction.

The appeals court concluded that since 1950, the tobacco companies failed to provide adequate information about their cigarettes and took part in a "campaign of disinformation" by attacking the credibility of warnings that others made about the dangers of cigarettes.

ITC's restructuring monitor put the company's share of the judgment with interest at about CA\$9.1 billion (\$6.8 billion).

The monitor said this was one of more than 20 tobacco litigation claims that have been filed in Canada against ITC and other major tobacco distributors — including suits for medical costs by all 10 provincial governments — seeking more than CA\$330 billion (\$248 billion) in damages.

The restructuring monitor is represented by Jennifer Feldsher and Mark E. Dendinger of Bracewell LLP.

The case is In re: Imperial Tobacco Canada Ltd., case number 19-10771, in the U.S. Bankruptcy Court for the Southern District of New York.

--Additional reporting by Rick Archer and Emily Field. Editing by Amy Rowe.