

Court File No:

**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 IMERYYS TALC AMERICA, INC., IMERYYS TALC VERMONT,
INC., AND IMERYYS TALC CANADA INC. (THE "DEBTORS")**

**APPLICATION OF IMERYYS TALC CANADA INC., UNDER SECTION 46 OF THE
COMPANIES' CREDITORS ARRANGEMENT ACT, R.S.C. 1985, c. C-36, AS AMENDED**

**APPLICATION RECORD
(Volume 1 of 2)
(Returnable February 19, 2019)**

February 15, 2019

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Lawyers for the Applicant

TO: ATTACHED SERVICE LIST

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**SERVICE LIST
(February 13, 2019)**

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Court File No:

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**NOTICE OF APPLICATION
(Returnable February 19, 2019)**

TO THE RESPONDENTS

A LEGAL PROCEEDING HAS BEEN COMMENCED by the applicant. The claim made by the applicant appears on the following page.

THIS APPLICATION will come on for a hearing before a Judge presiding over the Commercial List on Tuesday, February 19, 2019 at 9:30 a.m., or so soon thereafter as the Application may be heard, at 330 University Avenue, Toronto, Ontario.

IF YOU WISH TO OPPOSE THIS APPLICATION, to receive notice of any step in the application or to be served with any documents in the application, you or an Ontario lawyer acting for you must forthwith prepare a notice of appearance in Form 38A prescribed by the *Rules of Civil Procedure*, serve it on the applicant's lawyer or, where the applicant does not have a lawyer, serve it on the applicant, and file it, with proof of service, in this court office, and you or your lawyer must appear at the hearing.

IF YOU WISH TO PRESENT AFFIDAVIT OR OTHER DOCUMENTARY EVIDENCE TO THE COURT OR TO EXAMINE OR CROSS -EXAMINE WITNESSES ON THE APPLICATION, you or your lawyer must, in addition to serving your notice of appearance, serve a copy of the evidence on the applicant's lawyer or, where the applicant does not have a lawyer, serve it on the applicant, and file it, with proof of service, in the court office where the application is to be heard as soon as possible, but not later than two (2) days before the hearing.

IF YOU FAIL TO APPEAR AT THE HEARING, JUDGMENT MAY BE GIVEN IN YOUR ABSENCE AND WITHOUT FURTHER NOTICE TO YOU.

IF YOU WISH TO OPPOSE THIS APPLICATION BUT ARE UNABLE TO PAY LEGAL FEES, LEGAL AID MAY BE AVAILABLE TO YOU BY CONTACTING A LOCAL LEGAL AID OFFICE.

Date: February 19, 2019

Issued by:

Local Registrar

Address of court office:

330 University Avenue
7th Floor
Toronto, ON M5G 1R7

TO: SERVICE LIST

APPLICATION

1. The Applicants, Imerys Talc America, Inc. (“**ITA**”), Imerys Talc Vermont, Inc. (“**ITV**”), and Imerys Talc Canada Inc. (“**ITC**”) make an application for Orders substantially in the form filed herewith. The Orders to be requested on February 19, 2019, the return date of this Application will be, *inter alia*:
 - (a) abridging the time for service of the Notice of Application and the Application Record and dispensing with further service thereof, if necessary;
 - (b) declaring that Imerys Talc Canada Inc. (“**ITC**”) is a “foreign representative” as defined in section 45 of the *Companies’ Creditors Arrangement Act*, R.S.C. 1985, c. C-36, as amended, (the “**CCAA**”) in respect of the jointly administered insolvency proceedings (the “**U.S. Proceedings**”) of ITA, ITV, and ITC. (collectively, the “**Companies**”) in the United States Bankruptcy Court for the District of Delaware (the “**U.S. Court**”) under Chapter 11 of Title 11 (“**Chapter 11**”) of the United States Bankruptcy Code (the “**U.S. Bankruptcy Code**”);
 - (c) declaring that the U.S. Proceedings are “foreign proceedings” as defined in section 45 of the CCAA and the centre of main interests for each of the Companies is the United States of America;
 - (d) declaring that, with respect to each of the Companies, the U.S. Proceedings are “foreign main proceedings” as defined in section 45 of the CCAA;
 - (e) recognizing and enforcing in Canada certain orders of the U.S. Court made in the U.S. Proceedings on February 14, 2019, including the following:
 - (1) an order permitting the joint administration of the the US Proceedings of ITA, ITV and ITC in the US Proceedings US Proceedings (the “**Joint Administration Order**”);
 - (2) an order recognizing ITC as foreign representative (the “**Foreign Representative Order**”);
 - (3) an order authorizing the appointment of Prime Clerk LLC (“**Prime**”

Clerk”) as claims and noticing agent (the “**Claims and Noticing Agent Order**”);

- (4) an order confirming the enforceability and applicability of the protections pursuant to Sections 362, 365, 525 and 541 of the US Bankruptcy Code (the “**Automatic Stay Order**”);
- (5) an interim order (i) authorizing, but not directing, the Debtors to pay prepetition claims held by (a) Shippers in an amount not to exceed US\$1.9 million on an interim basis and US\$3.3 million on a final basis, (b) Lien Claimants in an amount not to exceed US\$1.0 million on an interim basis and US\$1.4 million on a final basis and (c) Royalty Interest Owners in an amount not to exceed US\$200,000 on an interim basis and US\$900,000 on a final basis, each absent further order of the Court, (ii) authorizing, but not directing, the Debtors to pay 503(b)(9) Claims in an amount not to exceed US\$300,000 absent further order of the Court; (iii) confirming the administrative expense priority status of orders for goods not delivered until after the filing date (the “**Outstanding Orders**”) and authorizing, but not directing, the Debtors to pay prepetition amounts related to the Outstanding Orders (the “**Lien Claimants Order**”);
- (6) an interim order (i) authorizing, but not directing, the Debtors to pay prepetition obligations owed to certain critical vendors, up to US\$700,000 on an interim basis, and US\$1.1 million on a final basis; and (ii) authorizing financial institutions to honor and process related checks and transfers (the “**Critical Vendors Order**”);
- (7) an interim order (i) authorizing, but not directing, the Debtors to pay prepetition obligations owed to foreign vendors, up to US\$900,000, on an interim basis, and US\$1.4 million on a final basis; and (ii) authorizing financial institutions to honor and process related checks and transfers (the “**Foreign Vendors Order**”);
- (8) an interim order (i) authorizing, but not directing, the Debtors to pay

Taxes and Fees (as defined in the First Day Declaration), whether accrued prior to, on or after the commencement of the US Proceedings, up to US\$715,000, on an interim basis, and US\$1.505 million on a final basis; and (ii) authorizing financial institutions to honor and process related checks and transfers (the “**Taxes Order**”);

- (9) an order (i) authorizing the Debtors to (a) pay prepetition insurance and bonding obligations, up to US\$600,00 for insurance obligations and up to US\$100,000 for bonding obligations, (b) maintain their postpetition insurance coverage, and (c) maintain their bonding program, and (ii) authorizing financial institutions to honor and process related checks and transfers (the “**Insurance and Bonding Order**”);
- (10) an interim order (i) authorizing the Debtors to pay certain prepetition workforce obligations, including compensation, expense reimbursements, benefits, and related obligations, not exceeding the amount of US\$1.914 million on an interim basis and US\$2.587 million on a final basis and (ii) authorizing financial institutions to honor and process related checks and transfers (the “**Workforce Obligations Order**”);
- (11) an interim order with respect to utilities providers: (i) prohibiting utility service providers from altering or discontinuing service on account of prepetition invoices; (ii) approving an adequate assurance deposit as adequate assurance of postpetition payment to the utilities; and (iii) establishing procedures for resolving any subsequent requests by the utilities for additional adequate assurance of payment (the “**Utilities Order**”);
- (12) an interim order (i) authorizing the ability to honor prepetition obligations owed to customers and to otherwise continue customer programs, and (ii) authorizing financial institutions to honor and process related checks and transfers (the “**Customer Programs Order**”);

- (13) an interim order authorizing, but not directing, maintenance of existing cash management system, including maintenance of existing bank accounts, checks and business forms, authorizing continuation of existing deposit practices, and approving the continuation of (and administrative expense priority status of) certain ordinary course intercompany transactions (the “**Cash Management Order**”); and
- (14) an order authorizing the filing of (i) a consolidated master list of creditors, a list of the twenty law firms with the most significant representations of Talc Claimants, based on the volume of filings, potential scope, and type of alleged liability of the Debtors, or related factors, in lieu of a list of the holders of the twenty largest unsecured claims, and (ii) approving certain notice procedures for talc claimants (the “**Limit Notice and Approve Notice Procedures Order**”).
- (f) staying all proceedings taken or that might be taken against the Companies under the *Bankruptcy and Insolvency Act*, R.S.C. 1985, c. B-3, as amended, or the *Winding-Up and Restructuring Act*, R.S.C. 1985, c. W-11, as amended;
- (g) restraining further proceedings and any action, suit or proceeding against the Companies;
- (h) prohibiting the commencement of any action, suit or proceeding against the Companies;
- (i) granting the Court-ordered Administration Charge as provided for in the draft Supplemental Order;
- (j) appointing Richter Advisory Group Inc. (“**Richter**”) as information officer (in such capacity, the “**Information Officer**”) in respect of this proceeding;
- (k) such further ancillary relief as set out in the draft orders attached at Tabs 3 and 4 of the Application Record; and
- (l) such further and other relief as counsel may request and this Honourable Court may permit.

2. **THE GROUNDS FOR THE APPLICATION ARE:**

- (a) the Companies are market leaders with respect to talc production in North America, representing nearly 50% of the market;
- (b) on February 13, 2019, the Companies commenced the U.S. Proceedings by filing voluntary petitions under Chapter 11;
- (c) pursuant to the Joint Administration Order, the Chapter 11 proceedings in respect of the Companies were placed under joint administration;
- (d) pursuant to the Foreign Representative Order, ITC was authorized to act as the foreign representative of the U.S. Proceedings in respect of the Companies;
- (e) ITC is a corporation incorporated under the CBCA;
- (f) to facilitate the cooperation between the U.S. Court and this Honourable Court and to integrate the U.S. Proceedings with these proceedings, ITC is requesting recognition of the “foreign proceedings” and recognition of certain substantive and procedural orders which have been issued by the U.S. Court in the U.S. Proceedings;
- (g) to ensure that affected stakeholders in Canada are properly informed of developments in the U.S. Proceedings, ITC is requesting the appointment of Richter as the Information Officer to report to this Honourable Court from time to time on the status of the U.S. Proceedings;
- (h) Richter has consented to act as the Information Officer in these proceedings, if so appointed by the Court;
- (i) the provisions of the CCAA, including Part IV thereof;
- (j) rules 2.03, 3.02, 14.05, 16, 17 and 38 of the *Rules of Civil Procedure*, R.R.O. 1990. Reg. 194, as amended;
- (k) section 106 of the *Courts of Justice Act*; R.S.O. 1990, c. C-43; and
- (l) such further and other grounds as counsel may advise and this Honourable

Court may permit.

3. **THE FOLLOWING DOCUMENTARY EVIDENCE** will be used at the hearing of the application:

- (a) the affidavit of Alexandra Picard, sworn February 15, 2019 and the exhibits referred to therein;
- (b) the Pre-Filing Report of Richter dated February 15, 2019;
- (c) the consent of Richter to act as Information Officer; and
- (d) such further and documentary evidence as counsel may advise and this Honourable Court may permit.

February 15, 2019

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IN THE MATTER OF THE COMPANIES' CREDITORS ARRANGEMENT ACT, R.S.C. 1985, c. C-36, AS AMENDED

Court File No: CV-●

AND IN THE MATTER OF IMERYYS TALC AMERICA, INC., IMERYYS TALC VERMONT, INC., AND IMERYYS TALC CANADA INC. (THE "DEBTORS")

APPLICATION OF IMERYYS TALC CANADA INC. UNDER SECTION 46 OF THE COMPANIES' CREDITORS ARRANGEMENT ACT, R.S.C. 1985, c. C-36, AS AMENDED

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

Proceeding commenced at Toronto

NOTICE OF APPLICATION

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Lawyers for the Applicant

TAB 2

**ONTARIO
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**AFFIDAVIT OF ALEXANDRA PICARD
(sworn February 14, 2019)**

I, Alexandra Picard, of the City of San Jose, in the State of California, United States of America (the "US"), MAKE OATH AND SAY:

1. I am the Chief Financial Officer of Imerys Talc America, Inc. ("ITA"), Imerys Talc Vermont, Inc. ("ITV"), and Imerys Talc Canada Inc. ("ITC", and together with ITA and ITV, the "Debtors"). Since I began working with the Debtors and their affiliates in 2005, I have served in various roles, including European Financial Controller for the filtration division level, Deputy Group Treasurer at the Corporate Treasury and then Finance Director for Talc North America before appointment to my current role. I have served as Chief Financial Officer for each of the Debtors since December 2018. I am authorized to submit this Affidavit on behalf of the Debtors.

2. In my role as Chief Financial Officer, I am responsible for overseeing the operations and financial activities of the Debtors, including but not limited to, monitoring cash flow, business relationships, and financial planning. As a result of my tenure with the Debtors, my review of

public and non-public documents, and my discussions with other members of the Debtors' management team, I am generally familiar with the Debtors' businesses, financial condition, policies and procedures, day-to-day operations, and books and records. Except as otherwise noted, I have personal knowledge of the matters set forth herein or have gained knowledge of such matters from the Debtors' employees or retained advisers that report to me in the ordinary course of my responsibilities.

4. I swear this affidavit in support of ITC's application pursuant to the *Companies' Creditors Arrangement Act*, R.S.C. 1985 c. C-36, as amended (the "CCAA"), for orders granting certain relief, including, declaring that ITC is a "foreign representative" as defined in section 45 of the CCAA in respect of the jointly administered chapter 11 proceeding and recognizing the Debtors' US Proceedings under Chapter 11 of the US Bankruptcy Code (as these terms are defined below) and declaring the US Proceedings as a foreign main proceeding with respect to each member of the Debtors, including ITC.

I. OVERVIEW

5. The Debtors are the three debtors in possession in the chapter 11 cases commenced before the United States Bankruptcy Court for the District of Delaware (the "US Court").

6. The Debtors' operations were acquired by Imerys S.A. in 2011. As a result, the Debtors are now part of a group of over 360 affiliated entities directly and indirectly owned by the parent organization, Imerys S.A (the "**Imerys Group**"). None of the other entities in the Imerys Group are seeking protection under chapter 11 or any other insolvency law.

7. The Debtors' operations are focused on the mining, processing, and/or distribution of talc for use in personal care, industrial, and other specialty products. The Debtors supply talc to third-party manufacturers for use in such parties' products; however, they do not manufacture the final products or sell such products directly to consumers.

8. One or more of the Debtors are named as defendants in lawsuits asserting approximately 14,674 litigation claims alleging liability for personal injuries allegedly caused by exposure to talc. The Debtors believe this litigation is without merit and their strategy has consistently been to mount a vigorous defense to all such claims. Nevertheless, given the

increasing number of cosmetic talc lawsuits, the rise in settlement demands in cosmetic talc lawsuits, and the increasing unwillingness of the Debtors' insurers and third party contractual indemnitors to provide coverage for the Debtors' mounting defense costs and potential liability exposure, the Debtors have determined that coordinated and court-supervised chapter 11 proceedings are required to protect their estates and preserve value for all stakeholders. ITC has not been named as a defendant in any of the lawsuits to date. However, ITA, ITV, and ITC constitute the entirety of Imerys's North American talc operations. ITC's operations are not only significantly integrated with the other Debtors (as further described below), but ITC is particularly reliant upon ITA's personnel and other resources, as ITC utilizes ITA assets and personnel for critical cash, treasury and other necessary administrative services. In addition, the Debtors believe ITC faces potential future litigation as the vast majority of the talc produced by ITC is exported and sold in the US. As a result, the Debtors determined it was in ITC's best interests to initiate chapter 11 proceedings along with the other Debtors.

9. The Debtors' main operating offices, management and the vast majority of their assets and operations (taken in the aggregate) are located in the US. All of the current litigation against the Debtors has also been commenced in the US. The Debtors have determined that value for creditors will be maximized by commencing chapter 11 proceedings in the US.

10. Accordingly, on February 13, 2019 (the "**Filing Date**"), the Debtors filed voluntary petitions (collectively, the "**Petitions**" and each a "**Petition**") for relief under chapter 11 of title 11 ("**Chapter 11**") of the United States Code (the "**US Bankruptcy Code**") with the US Court.

11. The Debtors have requested that the Petitions be jointly administered for procedural purposes only. As of the date of this Affidavit, I am not aware of any other bankruptcy proceedings involving any of the Debtors other than the proceedings before the US Court commenced by the Petitions (the "**US Proceedings**") and these proceedings.

12. The Debtors' ultimate goal in the US Proceedings is to confirm a plan of reorganization providing for trust mechanisms and a channeling injunction that will address all current and future talc claims arising from historic operations of the Debtors so the Debtors can emerge from Chapter 11 protection free of such talc-related liabilities. In the near term, however, to minimize any loss of value of their businesses during the US Proceedings, the Debtors'

immediate objective is to maintain a business-as-usual atmosphere during the early stages of the US Proceedings, with as little interruption or disruption to the Debtors' operations as possible. I believe that if the Court grants the relief requested in the within application, the prospect for achieving these objectives and confirmation of a Chapter 11 plan will be substantially enhanced.

13. In support of the Petitions, I caused to be filed with the US Court a declaration (the "First Day Declaration"). The First Day Declaration sets out in greater detail, among other things, the history of the Debtors and the present challenges leading to the US Proceedings and this application. Attached hereto and marked as **Exhibit "A"** is a true copy of the First Day Declaration.

II. DESCRIPTION OF ENTITIES

a. Corporate Structure

14. Since their acquisition in 2011, the Debtors have been part of the Imerys Group. Imerys S.A.,¹ the parent of the Imerys Group, is a French multinational company which specializes in the production and processing of a wide range of industrial minerals. It is headquartered in Paris, France and has operations in 50 countries and approximately 18,000 employees.

15. Details of the incorporating jurisdictions and head office locations of the relevant affiliates are as follows:

- Imerys Talc America, Inc. (ITA), incorporated in Delaware with head office located in San Jose, California;
- Imerys Talc Vermont, Inc. (ITV), incorporated in Vermont with head office located in San Jose California; and

¹ Imerys S.A is listed on Euronext Paris and is part of the CAC MD (mid 60) index within the SBF 120, which represents the 120 largest stocks listed on Euronext Paris, as well as the CAC Basic Materials index. Parent shares are also part of the Dow Jones Euro Stoxx, the benchmark index for the euro zone. The Debtors, however, are not listed on any stock exchange.

- Imerys Talc Canada Inc. (ITC), federally incorporated in Canada with a registered head office in Montreal, Quebec and principal place of business in Timmins, Ontario.

16. The Imerys Group acquired its talc operations, including the operations of the Debtors, in 2011. The Debtors' talc operations were previously owned by various entities, including Johnson & Johnson ("J&J"), Cyprus Mines Corporation ("Cyprus"), Cyprus Talc Corporation, and Rio Tinto America, Inc.

17. The management team of the division resides in San Jose, California (General Manager, Finance Director, and CFO) and provides management services to ITC. The Imerys USA headquarters is in Roswell, Georgia and hosts shared services between the Debtors.

18. A simplified overview of the corporate structure of the Imerys Group is set out in an organizational chart, which is attached hereto as **Exhibit "B"**.

b. Group Business

19. The Imerys Group is the world leader in mineral-based specialties for industry, delivering high value-added, functional solutions to a multitude of sectors, from processing industries to consumer goods and building products. It holds leading positions in the majority of its markets, including: minerals for breathable polymer films; alumino-silicate monolithic refractories; graphite for alkaline batteries; conductive additives for LI-ion batteries; fluxes for continuous casting processes; perlite for construction; and mineral solutions for filtration, paper, plastics, paints, ceramics, health products, and cosmetics.

20. The Imerys Group is organized around two segments: the Performance Minerals segment and the High Temperature Materials & Solutions segment. The Performance Minerals segment is comprised of three geographic business areas, including the Europe Middle East Africa (EMEA) area, the Americas area, and the Asia Pacific (APAC) area, which serve the plastics, paints and coatings, filtration, ceramics, renewable energy, and paper and board markets. The entities in the Performance Minerals segment mine, process, and distribute high quality talc, mica, wollastonite, perlite, diatomaceous earth, carbonate, bentonite, and kaolin.

21. The Debtors are part of the Performance Minerals Americas business area and mine, process, and/or distribute talc. Talc is a hydrated magnesium silicate that is used in the manufacturing of both cosmetic/personal care products and industrial products such as paints and coatings, rubber, paper, polymers, and other specialty products. Talc is mined from talc deposits, which result from the transformation of existing rocks under the effect of hydrothermal fluids carrying one or several of the components needed to form the mineral.

22. The Debtors' talc operations include talc mines, plants, and distribution facilities located in: Montana (Yellowstone, Sappington, and Three Forks); Vermont (Argonaut and Ludlow); Texas (Houston); and Ontario, Canada (Timmins, Penhorwood, and Folyet).

23. The Debtors are the market leader with respect to talc production in North America, representing nearly 50% of the market.

24. The Debtors' top customers in the personal care sector are manufacturers of baby powder (50% of personal care sales), makeup (30% of personal care sales), and soap (20% of personal care sales). The Debtors are the main supplier of talc to J&J in the United States for use in its manufacturing of baby powder.

c. The Debtors' Financial Status

25. ITC does not independently report its financial performance. Its financial reporting is part of a consolidated report prepared for the Imerys Group.

26. The Debtors' total revenue in 2018 was approximately US\$174 million.

27. According to the Debtors' unaudited financial statements, as at December 31, 2018 ITC had total revenue of CDN\$60.521 million, net annual income of CDN\$8.13 million, total assets of CDN\$40.250 million and total liabilities, excluding shareholder equity, of CDN\$16.16 million.

28. As described in greater detail below, certain of the Debtors are also facing numerous product liability claims in respect of their production and distribution of talc.

d. ITC

29. ITC is incorporated under the *Canadian Business Corporations Act*, RSC 1985, c C-44 (“**CBCA**”) and continued from Quebec’s Business Corporations Act, CQLR c S-31.1 (“**QBCA**”) on September 13, 2011.

30. ITC’s registered head office is located at 1155 Rene-Levesque Blvd. West, Suite 4000, Montreal, Quebec which is the address of ITC’s Canadian counsel, Stikeman Elliott LLP. However, the primary place of business is located at 100 Water Tower Road in Timmins, Ontario.

31. ITC has a total of four directors. One director is a Canadian resident and three are US residents. The Canadian director is also a company employee.

32. ITC employs 67 employees as described in greater detail below.

33. ITC mines talc in Ontario and exports approximately 95% of its talc into the United States. The vast majority of the talc is then sold directly to manufacturing customers, with only a small portion sold to distributors. In 2018, ITC distributed approximately 81,400 metric tons (MT) of talc into the United States. The talc is primarily for use in industrial products but a small portion, less than 0.5% of the revenue from talc, is used for agricultural and horticultural markets.

34. The ITC operations are located in Ontario, Canada and include a talc mine (Timmins) and plant (Penhorwood), a distribution center in Foleyet and a warehouse in Mississauga as described in greater detail below.

e. ITC’s Cash Management

35. Cash generated by ITC’s operations is held at two bank accounts at the Royal Bank of Canada (“**RBC**”) held in ITC’s name. These funds are used to pay ordinary course third party and intercompany business expenses as they arise.

36. There are two (2) active accounts and zero (0) inactive accounts. The following bank accounts are held in the name of ITC:

- Imerys Talc Canada, Inc., Royal Bank of Canada, Operating Account (USD), Account No: ***9146 (the “USD Account”); and
- Imerys Talc Canada, Inc., Royal Bank of Canada, Operating Account (CDN), Account No: ***7638 (the “CDN Account”).

The USD Account is used for cash received and transactions conducted in US Dollars and the CDN Account is used for cash received and transactions conducted in Canadian Dollars.

37. ITC’s cash and cash management system is managed by ITA personnel in the finance and accounting department based in Three Forks, Montana., who have day-to-day access and control over the ITC bank accounts. Like the other Debtors, ITC also relies upon, Imerys USA, Inc. (“**Imerys USA**”) personnel to provide treasury and accounts payable services pursuant to the shared services arrangement (as further described below). The treasury department located in Georgia, USA is generally responsible for ITC’s accounts payable and disseminates the cheques to creditors. The treasury department has initiated plans to transfer the cheque issuing process to ITC which is identical to the changes made to the operations of the US Debtors. This new procedure will allow each of the Debtors to have greater control over their cash and disbursements once filing is complete. There will be one ITC employee that handles the printing and issuance of cheques but Imerys USA and ITA employees will still have oversight and provide direction on the vendors selected for payment. Only one ITC employee has access to the ITC bank accounts, and the employee’s access is limited to posting monthly income tax and HST/QST payments.

f. Intercompany Transactions

38. ITC is a party to various intercompany transactions with ITA and ITV in the ordinary course, including transactions for goods and services. In addition, ITC enters into intercompany transactions with other Imerys Group entities, including Imerys S.A. Historically, there was an arrangement in place where, periodically, excess cash from the

Canadian operating account was transferred by the treasury department in Georgia, USA, at the discretion of ITC to the accounts of the parent company, Imerys S.A., and then recorded as an intercompany loan due and payable to ITC. As a result, as of the filing date, ITC was owed a loan from Imerys S.A. in the amount of US\$3 million on account of these intercompany transfers.

39. Historically, if ITC had insufficient funds in its bank accounts, Imerys S.A. provided the funds required for ITC to meet its obligations and would deduct any such amounts from the outstanding loan amount owed by Imerys S.A. to ITC. All intercompany transfers are recorded in Imerys S.A. and ITC's books and records.

40. Prior to the initiation of the US Proceedings, ITC ceased the practice of sweeping excess cash from the Canadian operating account so that all such funds are available to ITC.

g. Creditors

41. ITC is not party to any secured financing arrangements or any third party credit facilities. ITC funds its operations through cash generated from its operations and could request additional funding from Imerys S.A. on an as-needed basis.

42. I am advised by Maria Konyukhova of Stikeman Elliott LLP, Canadian counsel to the Debtors, that searches of the personal property registries for ITC were conducted across Canada on January 24, 2019. As of that date, there were only three (4) registrations in respect of equipment and motor vehicles in Ontario and Quebec. Attached hereto and marked as **Exhibit "C"** is a copy of the personal property search results for Ontario and Quebec.

43. The trailing 12-month average for ITC's unsecured trade debt is approximately US\$2.40 million.

44. With regard to intercompany debt by and between ITC on the one hand and Imerys S.A. and/or the other Debtors on the other, ITC was owed, as at the filing date, US\$3 million from Imerys SA.

45. It is the Debtors' intention to pay all post-filing expenses in the ordinary course. The Debtors have also sought court approval to pay certain pre-filing trade debt of non-US vendors or vendors otherwise deemed critical and have received approval, on an interim basis, to pay such claims. The Debtors anticipate having minimal prepetition trade debt outstanding during the Chapter 11 proceedings.

h. Employees

46. ITC has a total of 67 employees that work out of either the Timmins, Ontario or Penhorwood, Ontario facilities.

47. At the Timmins facility, 23 of ITC's employees are covered by a labor agreement between ITC and the United Steel Workers of America, Local 7580-01, which expires on June 30, 2021. At the Penhorwood/Foley facilities, 26 of ITC's employees are covered by a labor agreement between ITC and United Steel Workers of America, Local 7580-02, which expires on June 30, 2020. ITC also has 18 non-unionized employees.

48. ITC maintains two defined benefit registered pension plans: the Pension Plan for Bargaining Unit Employees of Imerys Talc Canada Inc. (the "**Union Plan**") and the Pension Plan for Employees of Imerys Talc Canada Inc. (the "**Salaried Plan**"). As of December 31, 2017, the Union Plan had a total of 22 active and 11 inactive members, and the Salaried Plan had a total of 31 active and 26 inactive members. The membership of the Union Plan is comprised of employees and former employees of ITC represented by United Steel Workers of America, Local 7580 and the membership of the Salaried Plan is comprised of non-unionized employees and former employees of ITC. ITC is the administrator of the Union Plan and the Salaried Plan.

49. The most recently filed actuarial valuation for each plan was performed as of December 31, 2017. As of that date, the Union Plan had assets of CDN\$4,384,500 and liabilities on a wind-up basis of CDN\$5,046,700, and the Salaried Plan had assets of CDN \$9,770,300 and liabilities on a wind-up basis of CDN\$10,493,400. The valuation indicates that no special payments are currently required to be paid to either the Union Plan or the Salaried Plan.

50. The Debtors intend to continue to pay all of their obligations to their employees and retirees in the ordinary course.

51. ITC's employee administration (e.g. compensation, benefits, and human resource policies) is managed by personnel located in the Three Forks, Montana and Atlanta, Georgia offices. The Atlanta offices are leased by a non-filing US affiliate, and the Three Forks space is owned by ITA. The personnel in the Three Forks office are employees of ITA.

i. Real Estate

52. The primary office of ITC is located on ITC owned real property at 100 Water Tower Road Timmins, Ontario. The registered head office is located at 1155 Rene-Levesque Blvd. West, Suite 4000, Montreal, Quebec which is the Montreal office of ITC's Canadian counsel, Stikeman Elliott LLP.

53. ITC has three main active sites (Timmins, Penhorwood, and Foleyet) and one warehouse (Mississauga) all located in Ontario. At the Timmins location, ITC owns a small parcel of land where a micronizing mill and a central office building are located. The City of Timmins owns the majority of the surface rights to this land.

54. The Penhorwood location is an active mine and beneficiation plant. At this site, ITC actively mines and mills talc. ITC has a land lease, an aggregate permit and a patent mine holding for this location. At the Foleyet location, ITC transloads the talc product to railcars for distribution. The land is owned by CN Railway and leased to ITC.

55. ITC leases a fourth site in Mississauga, Ontario which is the warehouse for storing finished product.

56. ITC also maintains responsibility for a closed talc mine located in the Sherbrooke region of Quebec. Another inactive mine, Marcoux talc mine, is located in close proximity to Mansonville, Quebec. The Marcoux mine has been closed since 2010, but ITC continues to own surface rights to the land and buildings on the property. ITC retains the responsibility of reclamation and closure of the Broughton mines which is scheduled to commence in February 2019. Once rehabilitation work is completed and upon final inspection, the ITC will relinquish responsibility for the Broughton site.

j. Environmental Claims

57. As described above, ITC operates one active mine in Penhorwood and a plant in Timmins. The Timmins Micronizing Mill, based on the most recent Environmental Site Assessment, is a low environmental liability. Similarly, the Penhorwood mine operation is also low risk. It has inherited waste rock piles and un-vegetated, disturbed land on the property; however, progressive rehabilitation is already in process. Regular environmental monitoring is in place and the mine satisfies all conditions for permits and approvals in its operation.

58. ITC has also conducted reclamation of mines that are no longer active. The Marcoux mine was reclaimed and subsequently closed in 2010. ITC still owns the surface rights to this land and the buildings on the land are not inhabitable. Finally, the reclamation for the Broughton mine is set to begin in February 2019 for a period of 10 months.

59. As described in detail in the Debtors' Insurance and Bonding Motion,² the Debtors are obligated to post bonds to cover the costs of obligations related to the reclamation of the land on which their mines are located, as well as certain performance, license/permit, and customs and border protection obligations. To date, there are two bonds posted on behalf of ITC.

60. The premiums for the bonds are paid by ITC. The current total amount of bonds posted by Imerys USA on behalf of ITC is approximately CDN\$2,950,000.

61. The Debtors will continue to comply with all of their environmental obligations through the course of these proceedings.

III. REASONS FOR REORGANIZATION PROCEEDINGS

62. Certain of the Debtors are facing numerous claims by plaintiffs alleging liability for personal injuries caused by exposure to talc mined, processed, and/or distributed by one or more of the Debtors (the "**Talc Claims**"). The overwhelming majority of the Talc Claims stem from the plaintiffs' alleged use of cosmetic talc, including J&J products. Although there are other talc suppliers in the market, certain of the Debtors have historically been J&J's primary

² The "Insurance and Bonding Motion" means the Debtors' Motion for Order Authorizing Debtors to (I) Pay Their Prepetition Insurance Obligations, (II) Pay Their Prepetition Bonding Obligations, (III) Maintain Their Postpetition Insurance Coverage, and (IV) Maintain Their Bonding Program.

supplier of cosmetic talc and, therefore, have been routinely named as a co-defendant of J&J in litigation related to the Talc Claims.

63. The Debtors believe that the Talc Claims are entirely without merit and that exposure to their talc products has not caused any personal injury. The safety of the Debtors' talc has been confirmed by dozens of peer-reviewed studies and multiple regulatory and scientific bodies, including the US Food & Drug Administration. Moreover, two of the largest real-world studies ever conducted on talc miners and nurses using talc over the course of 50 years have overwhelmingly confirmed that talc is not carcinogenic. The Debtors and the rest of the Imerys Group have been and continue to be committed to the quality and safety of their products above all else.

64. At the time of the Imerys Group's acquisition of the Debtors in 2011, there were only approximately eight Talc Claims pending against the Debtors, each of which was in the early stages of litigation. Although plaintiffs began filing additional cosmetic talc cases at an increasing pace in 2014, the Debtors mounted a vigorous defense against such suits and were successful in dismissing or settling for *de minimis* amounts the vast majority of these cases. Nevertheless, the number of cosmetic Talc Claims filed continued to accelerate rapidly over the next several years.

65. ITA and ITV are named defendants in lawsuits asserting approximately 14,674 alleged Talc Claims. The Debtors have access to certain insurance assets that they have relied on to fund their defense and appropriate settlement costs to date. Nevertheless, the Debtors cannot continue to litigate in perpetuity.

66. Although no claims have yet been filed in Canada or the US against ITC, the Debtors believe it is only a matter of time until that occurs as the vast majority of the talc produced by ITC is exported and sold in the US.

67. The Debtors' primary goal in filing for Chapter 11 and CCAA protection is to confirm a plan of reorganization pursuant to Sections 105(a), 524(g), and 1129 of the Bankruptcy Code. These sections allow for the channelling of all present and future Talc Claims to a funded trust that will liquidate and pay the Talc Claims pursuant to a set of court-approved "trust

distribution procedures". These sections also provide for a channeling injunction to prevent claimants from pursuing against any Debtor or non-Debtor affiliate any claims arising from talc mined, produced, or distributed by any of the Debtors prior to their emergence from the US Proceedings. While the Debtors dispute all liability as to the Talc Claims, they believe this approach will provide fair and equitable treatment of all stakeholders.

68. To facilitate negotiations regarding a potential plan of reorganization and the creation of a trust to address the Talc Claims, the Debtors retained Jim Patton of Young, Conaway, Stargatt & Taylor, LLP on September 25, 2018 to serve as a proposed future claims representative (the "Prepetition FCR") to represent the interests of individuals who may in the future assert talc-related demands against the Debtors. The Prepetition FCR retained Young Conaway, Stargatt & Taylor, LLP, as counsel, and Ankura Consulting, as claims analyst, to provide advice in connection with such representation. Together with his advisors, the Prepetition FCR initiated an extensive diligence process into the Debtors' businesses and the pending talc litigation. The Debtors have worked constructively with the Prepetition FCR and his advisors throughout this process by providing access to a fulsome data room and responses to numerous information requests, as well as by attending multiple in-person diligence meetings, among other things.

69. During the US Proceedings, the Debtors intend to negotiate an agreement with the Prepetition FCR and representatives of the holders of current alleged Talc Claims to resolve their historic talc-related liabilities and develop a go-forward strategy for the impacted talc businesses. The Debtors are confident that such negotiations will culminate in a court-approved plan of reorganization in the first half of 2020 and enable the Debtors to emerge free and clear of all their historic talc-related liabilities and insulate the rest of the Imerys Group from any exposure for such liabilities.

70. While the Debtors dispute all liability as to the Talc Claims, the Debtors believe this approach will provide fair and equitable treatment of all stakeholders. It is within the best interests of the Debtors and their creditors to deal with the Debtors' reorganization comprehensively rather than bearing the time and expense of conducting multiple cross-border proceedings.

71. Further details of the litigation claims, the status of the Debtors' insurance coverage and pre-filing negotiations are set out in the First Day Declaration.

IV. CENTRE OF MAIN INTEREST (COMI)

i. The US Debtors

72. ITA and ITV are incorporated in Delaware and conduct the majority of their operations within the US borders. ITA and ITV have no assets or operations in Canada, nor do they have any significant Canadian creditors or any Canadian employees.

ii. ITC and Integration with ITA and ITV

73. As stated above, ITC has its registered and records office in Montreal, Quebec and main operations in Timmins, Ontario. It is the only talc entity in the Imerys Group operating in Canada.

74. ITC derives its customer base almost exclusively from the US with 95% of its production purchased by US buyers. ITC shares many of its customers with ITV.

75. Three out of four of ITC's directors are not Canadian residents.

76. The highest level of employee located in Canada (Timmins, ON) is the operations manager for the active mines. This individual, a paid employee of ITC, is responsible for the daily operations of both the Vermont office and ITC's mines. However, various operational tasks and decisions are made by ITA personnel or otherwise require senior approval, which is relayed to, and received by, ITA personnel in the United States. ITA personnel making decisions on behalf of ITC also consult with, rely upon or seek approval of, personnel in the US office (primarily Imerys USA) with respect to material matters which are outside of the ordinary course.

77. ITC relies heavily upon ITA personnel and resources located in the United States for both its strategic business operations as well as day-to-day functionality. Decisions are made on behalf of all of the Debtors by a division manager of North American talc operations who is an employee of ITA and located in the United States. These decisions include considerations such

as which shared services each of the Debtors will participate in and the appropriate use of capital expenditures.

78. Material corporate decisions relating to ITC's general business strategy are made or approved by a combination of senior leadership assigned to offices located in San Jose, California, Atlanta, Georgia, and Three Forks, Montana, and Paris, France, including pursuant to Imerys Group and Division-level management authority rules. Decisions related specifically to pricing and business development are developed and approved by the San Jose, California and Paris, France offices.

79. ITA and Imerys USA personnel located in the San Jose, California and Three Forks, Montana offices are responsible for developing and approving all final financial decisions for ITC (except for certain strategically significant and material decisions, which may require higher-level approval). Marketing decisions for ITC are generally overseen by US personnel.

80. ITC, like ITA and ITV, heavily relies on certain shared services provided by the USA Shared Service Center (the "SSC"), a unit of Imerys Clays, Inc. (which is a wholly-owned subsidiary of Imerys USA) (the "Shared Services"). The Debtors, including ITC, incur various costs related to its receipt of the Shared Services. ITA pays all the Shared Services costs on behalf of the Debtors and then charges back these costs to ITC and ITV. These Shared Services allow ITC and the other Debtors to access certain corporate and administrative services, resulting in efficiencies and reduced costs. The division manager employed at ITA and based in the US determines the extent of ITC's participation in the Shared Services. Given how closely integrated their operations are, ITC, ITA and ITV could not obtain the degree of cost efficiencies and operational benefits afforded by the Shared Services arrangement by outsourcing these shared functions to third party providers.

81. ITC receives certain Shared Services relating to treasury management and accounts payable functionality (including vendor setup and maintenance, invoice processing, and related services) governed by a Master Service Level Agreement with the SSC. Specifically, personnel in the Atlanta, Georgia, and Three Forks, Montana offices manage all of ITC's accounts payable and accounts receivable. ITC is also party to separate service level agreements with units of the SSC relating to purchasing activities and services as well as logistics services related to rail

management, warehouse procurement, and vendor management. Separate from the Shared Services, Imerys S.A. also provides group-level executive management, legal, and other corporate overhead services to its subsidiaries (including ITC). Specifically, these services include, among other things: business administration, marketing and sales, legal, internal and external communications, technology, transport, and services and are governed by a Service Agreement by and between Imerys S.A. and ITC.

82. The Debtors were granted relief by the US Court to continue the provision of the Shared Services and other intercompany services described above.

83. These Shared Services and other arrangements described above reflect the thoroughly integrated operations between ITC and the US Debtors. ITC relies on these services for its daily business operations including the efficient sale and delivery of its talc products to its US based customers.

V. OVERVIEW OF THE CHAPTER 11 PROCEEDINGS

84. As part of the first day motions (the "**First Day Motions**") that were heard by the US Court on February 14, 2019, the US Court made several orders (collectively, the "**First Day Orders**"). The First Day Orders made by the US Court include, *inter alia*:

- a) an order permitting the joint administration of the US Proceedings of ITA, ITV and ITC in the US Proceedings, which is attached hereto and marked as **Exhibit "D"** (the "**Joint Administration Order**");
- b) an order recognizing ITC as the foreign representative of the Debtors, which is attached hereto and marked as **Exhibit "E"** (the "**Foreign Representative Order**");
- c) an order authorizing the appointment of Prime Clerk LLC ("**Prime Clerk**") as claims and noticing agent, which is attached hereto and marked as **Exhibit "F"** (the "**Claims and Noticing Agent Order**");
- d) an order confirming the enforceability and applicability of the protections

pursuant to Sections 362, 365, 525 and 541 of the US Bankruptcy Code, which is attached hereto and marked as **Exhibit "G"** (the "**Automatic Stay Order**");

- e) an interim order (i) authorizing, but not directing, the Debtors to pay prepetition claims held by (a) Shippers in an amount not to exceed US\$1.9 million on an interim basis, (b) Lien Claimants in an amount not to exceed US\$1.0 million on an interim basis and (c) Royalty Interest Owners in an amount not to exceed US\$200,000 on an interim basis, each absent further order of the Court, (ii) authorizing, but not directing, the Debtors to pay 503(b)(9) Claims in an amount not to exceed US\$300,000 absent further order of the Court; (iii) confirming the administrative expense priority status of orders for goods not delivered until after the filing date (the "Outstanding Orders") and authorizing, but not directing, the Debtors to pay prepetition amounts related to the Outstanding Orders; which is attached hereto and marked as **Exhibit "H"** (the "**Lien Claimants Order**");
- f) an interim order (i) authorizing, but not directing, the Debtors to pay prepetition obligations owed to certain critical vendors, up to US\$500,000 on an interim basis; and (ii) authorizing financial institutions to honor and process related checks and transfers, which is attached hereto and marked as **Exhibit "I"** (the "**Critical Vendors Order**");
- g) an interim order (i) authorizing, but not directing, the Debtors to pay prepetition obligations owed to foreign vendors, up to US\$900,000, on an interim basis; and (ii) authorizing financial institutions to honor and process related checks and transfers, which is attached hereto and marked as **Exhibit "J"** (the "**Foreign Vendors Order**");
- h) an interim order (i) authorizing, but not directing, the Debtors to pay Taxes and Fees (as defined in the First Day Declaration), whether accrued prior to, on or after the commencement of the US Proceedings, up to US\$715,000, on an interim basis; and (ii) authorizing financial institutions to honor and process related checks and transfers, which is attached hereto and marked as **Exhibit "K"** (the

"Taxes Order");

- i) an order (i) authorizing the Debtors to (a) pay prepetition insurance and bonding obligations, up to US\$700,000 in the aggregate, (b) maintain their postpetition insurance coverage, and (c) maintain their bonding program, and (ii) authorizing financial institutions to honor and process related checks and transfers, which is attached hereto and marked as **Exhibit "L"** (the **"Insurance and Bonding Order"**);
- j) an interim order (i) authorizing the Debtors to pay certain prepetition workforce obligations, including compensation, expense reimbursements, benefits, and related obligations, not exceeding the amount of US\$1.914 million on an interim basis and (ii) authorizing financial institutions to honor and process related checks and transfers, which is attached hereto and marked as **Exhibit "M"** (the **"Workforce Obligations Order"**);
- k) an interim order with respect to utilities providers: (i) prohibiting the Debtors' utility service providers from altering or discontinuing service on account of prepetition invoices; (ii) approving an adequate assurance deposit as adequate assurance of postpetition payment to the utilities; and (iii) establishing procedures for resolving any subsequent requests by the utilities for additional adequate assurance of payment, which is attached hereto and marked as **Exhibit "N"** (the **"Utilities Order"**);
- l) an interim order (i) authorizing the Debtors to honor prepetition obligations owed to customers and to otherwise continue customer programs, and (ii) authorizing financial institutions to honor and process related checks and transfers no exceeding the amount of USD\$600,000 in the interim, which is attached hereto and marked as **Exhibit "O"** (the **"Customer Programs Order"**);
- m) an interim order authorizing, but not directing, the Debtors to maintain their existing cash management system, including maintenance of existing bank accounts, checks and business forms, authorizing continuation of existing

deposit practices, and approving the continuation of certain intercompany transactions, not exceeding the amount of USD\$1.35 million in the interim, and granting superpriority status of certain transactions among the Debtors, which is attached hereto and marked as **Exhibit "P"** (the "**Cash Management Order**"); and

- n) an interim order authorizing the filing of (i) a consolidated master list of creditors, a list of the thirty law firms with the most significant representations of Talc Claimants, , a list of the top thirty unsecured claims (excluding talc claims), and (ii) approving certain notice procedures for talc claimants, which is attached hereto and marked as **Exhibit "Q"** (the "**Limit Notice and Approve Notice Procedures Order**").

Joint Administration Order

85. Pursuant to the Joint Administration Order, the US Court directed that the US Proceedings of each Debtor would be administered jointly, including having one court docket and one service list.

86. In granting the Joint Administration Order, the US Court was satisfied the order was necessary for the US Proceedings and the efficient administration of the US Proceedings. ITC seeks recognition of the Joint Administration Order, so that these proceedings can be managed efficiently and in a manner consistent with the US Proceedings.

Foreign Representative Order

87. The US Court made the Foreign Representative Order appointing ITC as the foreign representative of the Debtors to, among other things, seek recognition of the US Proceedings in Canada. Pursuant to the Foreign Representative Order, the US Court requested the assistance of this Court in aiding and supporting the US Proceedings.

88. In granting the Foreign Representative Order, the US Court was satisfied that each order was necessary for the US Proceedings and the efficient administration of the US Proceedings.

ITC seeks recognition of the Foreign Representative Order, so that these proceedings can be managed efficiently and in a manner consistent with the US Proceedings.

Claims and Noticing Agent Order

89. Pursuant to the Claims Agent Order, the US Court appointed Prime Clerk as claims and noticing agent for the Debtors in order to administer the claims of the Debtors' creditors and provide certain noticing services. Prime Clerk is a bankruptcy claims and noticing agent that specializes in administering chapter 11 proceedings.

90. In entering the Claims Agent Order, the US Court determined that the appointment of Prime Clerk as claims and noticing agent was reasonable and appropriate to ensure the efficient and effective administration and determination of claims against the Debtors.

91. ITC seeks recognition of the Claims Agent Order from this Honourable Court to ensure consistency in the administration of these proceedings and the US Proceedings. However, ITC does not propose that the role of Prime Clerk supplant or replace the proposed role of Richter Advisory Group Inc. ("**Richter**") as Information Officer in these proceedings.

Automatic Stay Order

92. Pursuant to the Automatic Stay Order, the US Court enforced and restated the automatic stay of the US Bankruptcy Code.

93. In entering the Automatic Stay Order, the US Court determined that enforcing and restating the stay provisions of the US Bankruptcy Code was appropriate and necessary to maintain the Debtors' operations, while it continues its efforts to negotiate and confirm a consensual plan of reorganization in the US Proceedings.

94. ITC seeks recognition of the Automatic Stay Order from this Honourable Court and submits that such recognition is necessary to ensure consistency between these proceedings and the US Proceedings.

Lien Claimants Order

95. The US Court entered the Lien Claimants Order, which authorizes (but does not direct) the Debtors to pay certain shippers, lien claimants, royalty interest owners, and claimants with claims arising under Section 503(b)(9) of the US Bankruptcy Code. The Debtors sought this order to ensure that its supply of essential materials and supplies would not be interrupted and that it would be able to continue to transport talc among the Debtors' mines and plants and deliver talc to the Debtors' customers. The Lien Claimants Order was made on an interim basis, and will be subject to a further hearing and final order.

96. In entering the Lien Claimants Order, the US Court was satisfied that it is necessary for the Debtors to be allowed to pay certain shippers, lien claimants, royalty interest owners, and 503(b)(9) claimants for charges incurred in connection with the delivery and transport of goods and the provision of certain services, so that such claimants do not assert possessory, statutory, or other liens against any of the Debtors' property or otherwise refuse to release such property pending receipt of payment, which would disrupt the Debtors' operations and potentially cause substantial delays, great expense and irreparable harm to the Debtors' estates.

97. ITC seeks recognition of the Lien Claimants Order from the Canadian Court and submits that such recognition is necessary to ensure consistency in the treatment of these payments between these proceedings and the US Proceedings.

Critical Vendors Order

98. Pursuant to the Critical Vendors Order, the US Court authorized (but did not direct) the Debtors to pay prepetition obligations owed to certain critical vendors up to the Critical Vendor Claims Cap (as defined in the Critical Vendor Order). The Debtors sought this order to ensure its critical vendors would continue to supply necessary goods and services to the Debtors. The Critical Vendors Order was made on an interim basis, and will be subject to a further hearing and final order.

99. In entering the Critical Vendors Order, the US Court was satisfied that the Critical Vendors Order was necessary to ensure that certain critical vendors that provide essential goods and services to the Debtors do not refuse to provide such goods and services to the

Debtors, which would cause significant disruption to the Debtors' operations. The Debtors are authorized, but not directed, to require a critical vendor to agree to provide goods and services to the Debtors on current or recent trade terms in exchange for payment of such vendor's prepetition claims pursuant to the Critical Vendors Order.

100. ITC seeks recognition of the Critical Vendors Order from the Canadian Court and submits that such recognition is necessary to ensure there is no disruption to the Debtors' operations.

Foreign Vendors Order

101. Pursuant to the Foreign Vendors Order, the US Court authorized (but did not direct) the Debtors to pay prepetition obligations owed to certain foreign vendors up to the Foreign Vendor Claims Cap (as defined in the Foreign Vendor Motion). The Debtors sought this order to ensure its foreign vendors would continue to supply goods and services to the Debtors. In particular, the Debtors were concerned that foreign vendors may not consider themselves bound by the US Proceedings without a specific order. The Foreign Vendors Order was made on an interim basis, and will be subject to a further hearing and final order.

102. In entering the Foreign Vendors Order, the US Court was satisfied that the Foreign Vendors Order was necessary to ensure that certain foreign vendors that provide goods and services to the Debtors do not refuse to provide such goods and services to the Debtors, which would cause significant disruption to the Debtors' operations.

103. ITC seeks recognition of the Foreign Vendors Order from the Canadian Court and submits that such recognition is necessary to ensure there is no disruption to the Debtors' operations.

Taxes Order

104. Pursuant to the Taxes Order, the US Court authorized (but did not direct) the Debtors to pay certain prepetition Taxes and Fees (as defined in the First Day Declaration). The Taxes and Fees include international taxes, state and federal income taxes, franchise taxes, property taxes, sales and use taxes, licenses and fees, and other types of taxes and fees, assessments, or similar

charges. The Taxes Order applies to Canadian taxation authorities, including with respect to sales and use taxes and certain licenses and fees. The Taxes Order was made on an interim basis, and will be subject to a further hearing and final order. ITC seeks authority to make payments directly to taxing authorities and make payments to, or set off amounts owed from, Imerys USA or the other Debtors, in each case on account of the Taxes and Fees.

105. In entering the Taxes Order, the US Court determined that it was appropriate and necessary for the Debtors to have discretion to pay prepetition taxes and fees to facilitate its continued operations and avoid potential disruptions to the Debtors' operations, including interruptions to necessary permits and distracting the efforts of critical employees.

106. ITC seeks recognition of the Taxes Order from the Canadian Court, and submits that such recognition is necessary to ensure the efficient and consistent administration of the Debtors' operations and stability throughout its efforts in the US Proceedings. ITC also seeks recognition of the Taxes Order from the Canadian Court to ensure that Canadian taxation authorities are treated consistently with those in the US.

Insurance and Bonding Order

107. The US Court entered the Insurance and Bonding Order, which authorizes (but does not direct) the Debtors to pay prepetition insurance and bonding obligations and to continue, renew, and modify their postpetition insurance coverage and bonding program.

108. In entering the Insurance and Bonding Order, the US Court was satisfied that all of the insurance and bonding programs covered by the Insurance and Bonding Order are essential to the ongoing operation of the Debtors' businesses and the preservation of the value of the Debtors' estates.

109. ITC seeks recognition of the Insurance and Bonding Order from the Canadian Court and submits that such recognition is necessary to ensure continued insurance coverage for the US Debtors and ITC.

Workforce Obligations Order

110. The US Court entered the Workforce Obligations Order (i) authorizing (but not directing) the Debtors to (i) pay certain prepetition workforce obligations, including compensation, expense reimbursement, benefits, and related obligations, (ii) confirming the Debtor's right to continue workforce programs on a postpetition basis, (iii) authorizing payment of withholding and payroll-related taxes, (iv) confirming the Debtors' right to continue to deduct and transmit deductions from payroll checks as authorized by employees or required under any workforce-related plan, program or policy or as required by law and (v) authorizing payment of prepetition claims owing to administrators of, or third party providers under, workforce programs. The Workforce Obligations Order was made on an interim basis and will be subject to a further hearing and final order. The Workforce Obligations Order includes Canadian employees and all benefits relevant to Canadian employees.

111. In granting the Workforce Obligations Order, the US Court was satisfied that the failure to make payments on account of these obligations to the Debtors' workforce (and for withholdings related to the workforce) would threaten the Debtors' ability to operate, to the detriment of all stakeholders, and hinder their efforts to negotiate and confirm a consensual plan of reorganization in the US Proceedings. The US Court was further satisfied that authorizing the payment of these amounts was a sound exercise of the Debtors' business judgment.

112. ITC seeks recognition of the Workforce Obligations Order from the Canadian Court to ensure that the Debtors' workforce is treated equally in these proceedings and the US Proceedings.

Utilities Order

113. Pursuant to the Utilities Order, the US Court prohibited the Debtors' utility providers from terminating service solely on the basis of the commencement of the US Proceedings, approved adequate assurance of future payment for utility providers, and established procedures for resolving additional adequate assurance requests by utility providers. The utilities providers include those supplying gas, electricity, phone and internet services, among

other things. The Utilities Order includes 14 Canadian utilities providers. The Utilities Order was made on an interim basis and will be subject to a further hearing and final order.

114. In entering the Utilities Order, the US Court was satisfied that continued service was reasonable, appropriate and necessary to maintain the Debtors' operations.

115. ITC seeks the recognition of the Utilities Order from this Honourable Court and submits that such recognition is necessary to ensure consistency between these proceedings and the US Proceedings. ITC also seeks recognition of the Utilities Order from this Honourable Court to ensure Canadian utilities providers are treated consistently with the US utilities providers.

Customer Programs Order

116. Pursuant to the Customer Programs Order, the US Court authorized (but did not direct) the Debtors to pay prepetition obligations owed to certain customers on account of customer programs and to continue honoring customer programs postpetition. The customer programs offered by the Debtors include certain rebate, commission, and warranty programs. The Customer Programs Order was entered on an interim basis, and will be subject to a further hearing and final order.

117. In entering the Customer Programs Order, the US Court was satisfied that the Customer Programs Order was necessary to preserve the Debtors' critical business relationships and customer satisfaction.

118. ITC seeks recognition of the Customer Programs Order from the Canadian Court and submits that such recognition is necessary to ensure the Debtors are able to maintain their relationships with all customers, to the ultimate benefit of their business and estates.

Cash Management Order

119. The US Court entered the Cash Management Order, which (i) authorizes, but does not direct, the Debtors to maintain and use their existing cash management system, including maintenance of the Debtors' existing bank accounts, checks, and business forms, (ii) grants the Debtors a waiver of certain bank account and related requirements of the United States Trustee

to the extent that such requirements are inconsistent with the Debtors' practices under their existing cash management system or other actions described, (iii) authorizes, but does not direct, the Debtors to continue to maintain and use their existing deposit practices notwithstanding the provisions of section 345(b) of the Bankruptcy Code, (iv) approves the continuation of certain ordinary course intercompany transactions, (v) authorizes the Debtors to open and close bank accounts, and (vi) accords superpriority status to postpetition intercompany claims arising from transactions between the Debtors.

120. In short, the Cash Management Order allows the Debtors to continue to operate existing cash management systems consistent with past practice. The Cash Management Order was made on an interim basis and will be subject to a further hearing and final order.

121. Intercompany transactions regularly occur between various Imerys Group entities and ITC in the ordinary course. Historically, funds were transferred between ITC and Imerys S.A. periodically when deemed necessary or prudent, including, but not limited to, transfers as a result of excess cash held at ITC. Following the Petition Date, ITC will not transfer excess funds to Imerys S.A. on a periodic basis. As described in the Cash Management Order, ITC will continue to transfer funds to Imerys S.A. and other Imerys Group entities on account of (i) shared services expenses described herein and in the motion seeking entry of the Cash Management Order (the "**Cash Management Motion**") and (ii) fees and expenses arising from intercompany transactions for goods and/or services provided by Imerys S.A. or other Imerys Group entities as described in the Cash Management Motion and which are necessary for or otherwise benefit ITC's ongoing operations (the "**Permitted ITC Intercompany Transactions**"). Other than the Permitted ITC Intercompany Transactions, following the Petition Date, ITC will not transfer funds to Imerys Group entities on account of any prepetition intercompany transactions, unless otherwise ordered by the US Court.

122. In entering the Cash Management Order, the US Court was satisfied that the existing system was essential to the Debtors' ongoing operations and that there would be no prejudice to the Debtors' continued use of pre-printed business forms without modification to identify the members of the Debtors as debtors in possession.

123. The US Court was also satisfied that the intercompany transactions should continue because the system enables the Debtors to efficiently monitor and control their cash position and maintain control over Intercompany Transactions (as defined in the Cash Management Order). The continued use of the cash management system in such manner during the pendency of the US Proceedings is essential to the Debtors' business operations and their goal of maximizing value for the benefit of all parties in interest. In entering the Cash Management Order, the US Court was further satisfied that the Cash Management Order was necessary to avoid immediate and irreparable harm and is in the best interests of the Debtors' estates and their creditors and all other parties in interest. Examples of intercompany transactions the US Court approved for superpriority include shared services with the US Debtors, shared services with Imerys S.A, sale of goods which occur between ITC and the US Debtors or affiliates, intercompany sharing and commissions, research and development and testing, and hedging transactions.

124. ITC seeks recognition of the Cash Management Order from the Canadian Court to ensure that the Debtors' finances, which are highly integrated, can continue in the ordinary course to the benefit of all stakeholders.

Limit Notice and Approve Notice Procedures Order

125. The US Court entered the Limit Notice and Approve Notice Procedures Order, which (i) authorized the Debtors to file (a) a consolidated master list of creditors, (b) a list of the thirty law firms with the most significant representations of Talc Claimants, and (c) a consolidated list of top 30 unsecured claims and (ii) on an interim basis only, approving the implementation of a set of notice procedures by which the Debtors shall (a) list the addresses of known counsel of record for the Talc Claimants, in lieu of the addresses of the Talc Claimants themselves (where addresses of the Talc Claimants are not reasonably ascertainable to the Debtors), on the Debtors' creditor matrix and (b) send required notices, mailings, and other communications related to these Chapter 11 Cases to such known counsel of record for the Talc Claimants in lieu of sending such communications to the Talc Claimants themselves (where addresses of the Talc Claimants are not reasonably ascertainable to the Debtors).

126. ITC seeks recognition of the Limit Notice and Approve Notice Procedures Order from the Canadian Court to ensure that the Debtors meet their notice obligations as required under the US Bankruptcy Code as well as provide claimants in the talc litigation a fair and appropriate process to be heard.

VI. INFORMATION OFFICER

127. ITC, as foreign representative of the Debtors, seeks the appointment of Richter as the Information Officer in these proceedings. Richter is a licensed trustee-in-bankruptcy.

128. ITC, as foreign representative, believes that the appointment of the Information Officer is appropriate in the circumstances to ensure that both the Canadian Court and ITC's creditors and stakeholders are kept informed of these proceedings and the US Proceedings. Attached hereto and marked as **Exhibit "R"** is a true copy of the executed Consent of Richter to act as Information Officer.

VII. ADMINISTRATION CHARGE

129. ITC, as foreign representative of the Debtors, seeks the granting of an administration charge over the assets of the Debtors in Canada with respect to the fees and disbursements of Richter, the Information Officer, and its counsel, Aird & Berlis LLP, to a maximum of CDN\$200,000 (the "**Administration Charge**").

130. I understand that Richter requires the Administration Charge as security for their fees in order to act in this matter and that the Administration Charge should rank as a first charge.

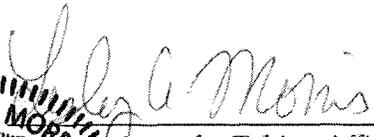
VIII. CONCLUSION

131. The Debtors' ultimate goal in the US Proceedings and the CCAA proceedings is to confirm a plan of reorganization providing for trust mechanisms that will address all current and future talc claims arising from the historic operations of the Debtors while simultaneously preserving value and allowing the Debtors to emerge from chapter 11 free of such talc-related liabilities. In the near term, however, to minimize any loss of value of their businesses during the US Proceedings, the Debtors' immediate objective is to maintain a business-as-usual

atmosphere during the early stages of the US Proceedings, with as little interruption or disruption to the Debtors' operations as possible.

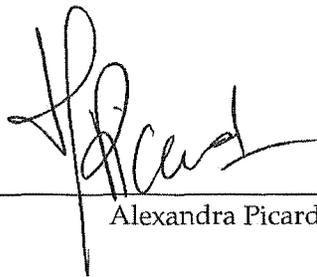
132. I believe that the relief sought in this application (a) is vital to enabling the Debtors to make the transition to, and operate in, chapter 11 with minimum interruptions and disruptions to their businesses or loss of productivity or value and (b) constitutes a critical element in the Debtors' being able to successfully maximize value for the benefit of their estates.

SWORN BEFORE ME in the State of Delaware, on Thursday, February 14, 2019.



Commissioner for Taking Affidavits





Alexandra Picard

TAB A

THIS IS EXHIBIT "A"

referred to in the Affidavit of Alexandra Picard

Sworn before me this 14th
day of February, 2019

Lesley A. Morris

A Commissioner for Taking Affidavits



**IN THE UNITED STATES BANKRUPTCY COURT
FOR THE DISTRICT OF DELAWARE**

----- X
In re: : Chapter 11
: :
IMERYS TALC AMERICA, INC., et al., : Case No. 19-_____ (_____) :
: :
Debtors.¹ : Joint Administration Pending :
: :
----- X

**DECLARATION OF ALEXANDRA PICARD, CHIEF
FINANCIAL OFFICER OF THE DEBTORS IN SUPPORT
OF CHAPTER 11 PETITIONS AND FIRST DAY PLEADINGS**

Under 28 U.S.C. § 1764, Alexandra Picard declares as follows under the penalty of perjury:

1. I am the Chief Financial Officer of Imerys Talc America, Inc., Imerys Talc Vermont, Inc., and Imerys Talc Canada Inc. Imerys Talc America, Inc. is incorporated in Delaware and is an affiliate of the other debtors and debtors in possession (collectively, the “**Debtors**”) in the above-captioned chapter 11 cases (collectively, the “**Chapter 11 Cases**”). Since I began working with the Debtors and their affiliates, I have served in various roles, including the Deputy Group Treasurer, the Finance Director for the Talc North America Division, and the Vice President of Finance. I have served as Chief Financial Officer of the Debtors since December 2018. I am authorized to submit this declaration (the “**First Day Declaration**”) on behalf of the Debtors.

2. I am responsible for overseeing the operations and financial activities of the Debtors, including but not limited to, monitoring cash flow, business relationships, and financial planning. As a result of my tenure with the Debtors, my review of public and non-public

¹ The Debtors in these cases, along with the last four digits of each Debtor’s federal tax identification number, are: Imerys Talc America, Inc. (8410), Imerys Talc Vermont, Inc. (8414), and Imerys Talc Canada Inc. (8416). The Debtors’ address is 100 Mansell Court East, Suite 300, Roswell, Georgia 30076.

documents, and my discussions with other members of the Debtors' management team, I am generally familiar with the Debtors' businesses, financial condition, policies and procedures, day-to-day operations, and books and records. Except as otherwise noted, I have personal knowledge of the matters set forth herein or have gained knowledge of such matters from the Debtors' employees or retained advisers that report to me in the ordinary course of my responsibilities. I am authorized by each of the Debtors to submit this First Day Declaration. References to the Bankruptcy Code (as hereafter defined), the chapter 11 process, and related legal matters are based on my understanding of such matters in reliance on the explanation provided by, and the advice of, counsel. If called upon to testify, I would testify competently to the facts set forth in this First Day Declaration.

3. On February 13, 2019 (the "**Petition Date**"), the Debtors filed voluntary petitions for relief in the United States Bankruptcy Court for the District of Delaware (the "**Court**"). The Debtors will continue to operate their businesses and manage their properties as debtors in possession.

4. I submit this First Day Declaration on behalf of the Debtors in support of the Debtors' (a) voluntary petitions for relief that were filed under chapter 11 of title 11 of the United States Code, 11 U.S.C. §§ 101-1330, as amended (the "**Bankruptcy Code**") and (b) "first-day" pleadings, which are being filed concurrently herewith (collectively, the "**First Day Pleadings**").² The Debtors seek the relief set forth in the First Day Pleadings to minimize the adverse effects of the commencement of the Chapter 11 Cases on their businesses. I have reviewed the Debtors' petitions and the First Day Pleadings, or have otherwise had their contents explained to me, and it is my belief that the relief sought therein is essential to ensure the uninterrupted

² Unless otherwise defined herein, all capitalized terms shall have the meanings ascribed to them in the applicable First Day Pleadings.

operation of the Debtors' businesses and to successfully maximize the value of the Debtors' estates.

5. Part 1 of this First Day Declaration provides an overview of the Debtors' businesses, organizational structure, and prepetition indebtedness, as well as a discussion of certain pending litigation and the events leading to the Debtors' chapter 11 filings. Part 2 sets forth the relevant facts in support of the First Day Pleadings.

PART 1

I. COMPANY AND BUSINESS OVERVIEW

A. Background

6. There are three Debtors in these Chapter 11 Cases: Imerys Talc America, Inc. ("**ITA**"), Imerys Talc Vermont, Inc. ("**ITV**"), and Imerys Talc Canada Inc. ("**ITC**"). As shown in the simplified corporate organization chart attached hereto as Exhibit A, ITA is the direct parent of ITV, and ITC is an affiliate of ITA and ITV.³

7. The Debtors' operations are exclusively focused on the mining, processing, and/or distribution of talc. The Debtors supply talc to third-party manufacturers for use in such parties' products. They do not, however, manufacture the final products or sell such products directly to consumers.

8. The Debtors are facing significant potential liabilities as a result of thousands of claims by plaintiffs alleging personal injuries caused by exposure to talc mined, processed, and/or distributed by one or more of the Debtors (the "**Talc Claims**").⁴ The Debtors

³ ITA is incorporated in Delaware, ITV is incorporated in Delaware, and ITC is incorporated in Canada. Certain assets owned by ITC, including bulk product inventory and a professional retainer, are located in the United States.

⁴ While Debtor ITC has not been named in any talc litigation to date, the Debtors constitute the entirety of the Imerys Group's North American talc operations. As a result, ITC's day-to-day operations rely upon and regularly interact with the day-to-day operations of Debtors ITA and ITV. In addition, ITC

believe that the Talc Claims are entirely without merit, as the safety of talc has been confirmed by dozens of peer-reviewed studies and multiple regulatory and scientific bodies.

9. As of the Petition Date, one or more of the Debtors has been sued by approximately 14,650 individual claimants. The overwhelming majority (approximately 98.6%) of the Talc Claims asserted against the Debtors are based on personal injury allegedly arising from the plaintiffs' exposure to cosmetic talc. As described in further detail in Section II below, while the Debtors have access to valuable insurance assets that they have relied on to fund their defense and appropriate settlement costs to date, the Debtors have been forced to fund certain litigation costs and settlements out of their free cash flow due to a lack of currently available coverage for certain Talc Claims, or insurers asserting defenses to coverage. The Debtors lack the financial wherewithal to litigate against the mounting Talc Claims being asserted against them in the tort system.

10. The Debtors' decision to commence the Chapter 11 Cases was prompted by certain recent developments arising from the growing number of Talc Claims in the United States. These developments include: (i) the significant increase in settlement demands with respect to cosmetic Talc Claims in the wake of recent verdicts, including a multi-billion dollar verdict rendered against Johnson & Johnson ("J&J"), and the ensuing media focus on talc for cosmetic applications; (ii) the increased unwillingness of the Debtors' insurers and third party contractual indemnitors to provide coverage for the Debtors' mounting defense costs and potential liability exposure; and (iii) recent constructive discussions with a proposed future claims representative that led the Debtors to conclude that the Chapter 11 Cases would be the optimal path for resolving

may face potential future litigation as the majority of the talc produced by ITC is exported into the United States.

their historical talc-related liabilities in a manner that maximizes distributable value for all stakeholders.

11. The Debtors' primary goal in filing these Chapter 11 Cases is to confirm a consensual plan of reorganization pursuant to Sections 105(a), 524(g), and 1129 of the Bankruptcy Code that channels all of the present and future Talc Claims to a trust vested with substantial assets and provides for a channeling injunction prohibiting claimants from asserting against any Debtor or non-debtor affiliate any claims arising from talc mined, produced, sold, or distributed by any of the Debtors prior to their emergence from these Chapter 11 Cases. While the Debtors dispute all liability as to the Talc Claims, the Debtors believe this approach will provide fair and equitable treatment of all stakeholders.

B. History of the Debtors

12. The Debtors have been owned by various entities over their over 100-year history. In 1989, J&J sold the stock of Windsor Minerals, Inc. ("**Windsor**"), which is now known as ITV, to Cyprus Mines Corporation ("**Cyprus**"). In 1992, Cyprus and its affiliates transferred such stock and all of their other assets in the talc business to a newly formed subsidiary, Cyprus Talc Corporation. Contemporaneously with the 1992 transfer, RTZ America, Inc. (later known as Rio Tinto America, Inc.) purchased the outstanding shares of Cyprus Talc Corporation. Also in 1992, Cyprus Talc Corporation was renamed Luzenac America, Inc. ("**Luzenac America**"), which is now known as ITA.

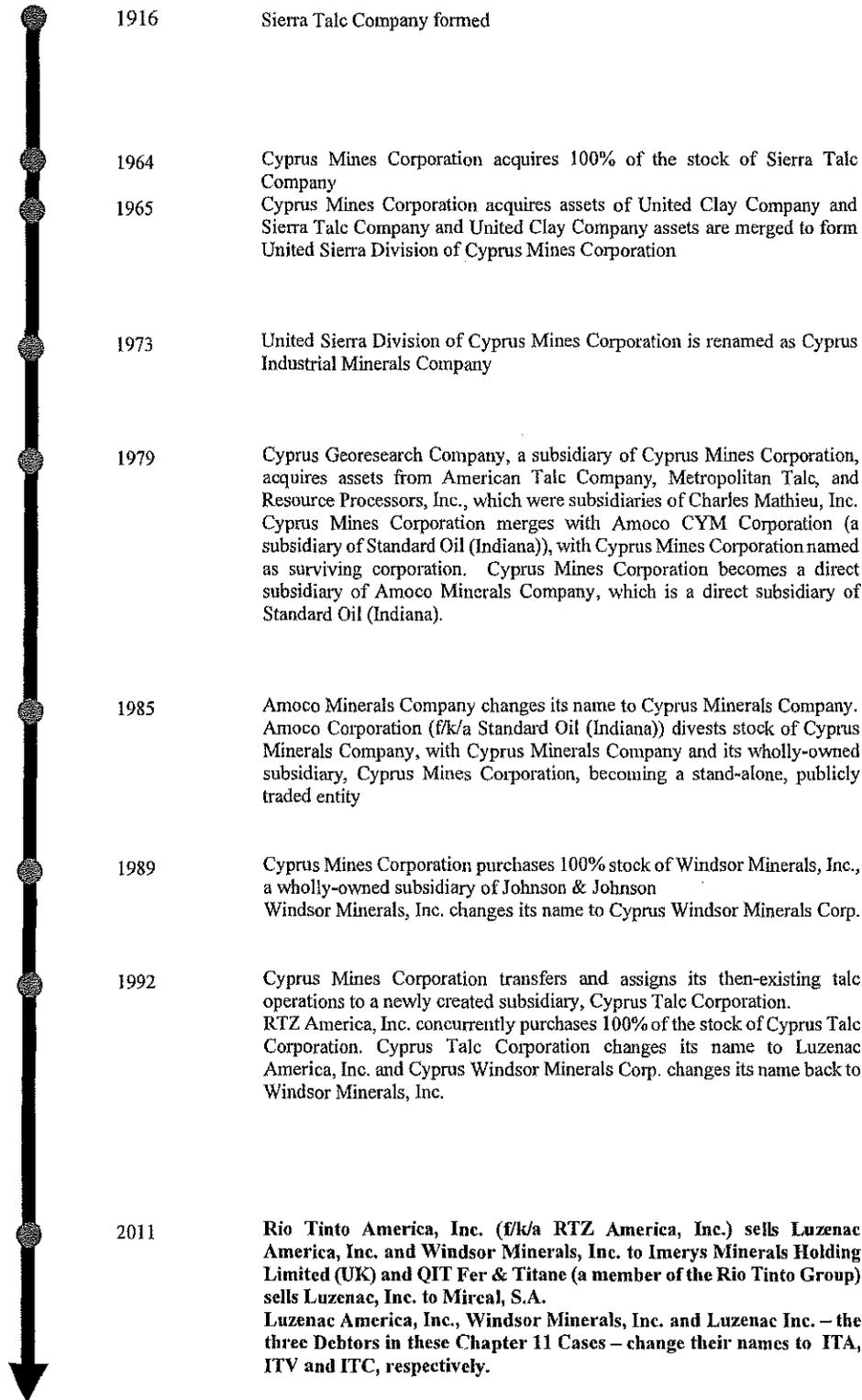
13. The Debtors were acquired by the "Imerys Group"⁵ in 2011 through an Imerys Group holding company, Mircal S.A. Mircal S.A. entered into an agreement with Rio

⁵ The Imerys Group is a French multinational corporation comprised of over 360 affiliated entities directly and indirectly owned by non-debtor affiliate entity Imerys S.A. ("**Parent**"). Other than the three

Tinto America, Inc. to purchase the stock of the Rio Tinto Group's talc operations, including the stock of Luzenac America and Windsor. The stock purchase agreement entitled Mircal S.A. to substitute other members of the Imerys Group to acquire individual talc-related entities from the Rio Tinto Group, and Mircal S.A. exercised that right to cause Imerys Minerals Holding Limited (UK), an indirect, non-debtor subsidiary of Parent, to acquire the outstanding shares of Luzenac America. At the same time, Mircal S.A. also acquired the stock of Luzenac, Inc. ("Luzenac"), which is now known as ITC, from another member of the Rio Tinto Group, QIT Fer & Titane, Inc. Mircal S.A. remains the direct parent entity of ITC. Luzenac America, Windsor and Luzenac—the three Debtors in these Chapter 11 Cases—subsequently changed their names to ITA, ITV, and ITC, respectively. At the time of the Imerys Group's acquisition of the Debtors in 2011, there were only approximately eight Talc Claims pending against the Debtors, each of which was in the early stages of litigation. Most of the Talc Claims allege exposure to talc prior to the Imerys Group's acquisition of the Debtors in 2011.

14. A timeline of the ownership history of each of the Debtors is set forth below:

Debtor entities, none of the other entities in the Imerys Group is seeking protection under chapter 11 or any other insolvency law.



C. Overview of Debtors' Operations and Revenues

15. The Debtors are in the business of mining, processing, selling, and/or distributing talc. Talc is a hydrated magnesium silicate that is used in the manufacturing of dozens of products in a variety of sectors, including coatings, rubber, paper, polymers, cosmetics, food, and pharmaceuticals. Talc is mined from talc deposits, which were geologically formed through the transformation of existing rocks under the effect of hydrothermal fluids carrying one or several of the components needed to form the mineral. There are many types of talc and each ore body has its own features and its own geology. Accordingly, the mining and processing of talc requires highly-technical and specialized knowledge.

16. The Debtors' talc operations include talc mines, plants, and distribution facilities located in: Montana (Yellowstone, Sappington, and Three Forks); Vermont (Argonaut and Ludlow); Texas (Houston); and Ontario, Canada (Timmins, Penhorwood, and Foleyet). The Debtors also utilize offices located in San Jose, California and Roswell, Georgia. In 2018, North American talc sales were comprised of the following products: polymers (31%); paper (18%); paints and coatings (16%); specialties (16%); rubber (7%); personal care/cosmetics (5%); building materials (4%); and others (3%). ITA and ITV sell talc directly to their customers as well as to third party and affiliate distributors. ITC exports the vast majority of its talc into the United States almost entirely on a direct basis to its customers.⁶

17. The Debtors' total revenue in 2018 was approximately \$174 million.

D. Customers

18. The Debtors' top customers in the personal care/cosmetic sector are manufacturers of baby powder (50% of personal care sales), makeup (30% of personal care sales),

⁶ A small portion of ITC's talc is sold to distributors in the United States.

and soap (20% of personal care sales). Although there are other talc suppliers in the market, the Debtors have historically been the sole supplier of cosmetic talc to J&J⁷ and, therefore, have been routinely named as a co-defendant of J&J in litigation related to the Talc Claims. Although personal care/cosmetic sales make up only approximately 5% of the Debtors' revenue, approximately 98.6% of the pending Talc Claims allege injuries based on use of cosmetic products containing talc.

19. In the polymers sector, the Debtors' main customers include compounders, who generally sell products to original equipment manufacturers in the automotive industry. The Debtors' other customers include, among others, manufacturers in the industrial coatings, paper, and catalysts industries.

E. Competitors

20. The Debtors are the market leader with respect to talc production in North America, representing nearly 50% of the market. The Debtors' main competitors are the following companies: Mineral Technologies Inc., American Talc Company, Inc., IMI Fabi, and Cimbar.

F. Shared Services

21. The Debtors participate in certain shared services arrangements with other Imerys Group entities that are beneficial and/or necessary to their operations and permit the Debtors to access critical resources at reduced costs. In particular, the Debtors participate in certain shared services along with other North American Imerys Group entities that permit the Debtors to access certain corporate and administrative services (the "**NA Shared Services**"). The

⁷ Prior to the sale of Windsor to Cyprus, J&J's talc sales were vertically integrated, with Windsor's Vermont operations supplying talc to J&J cosmetic manufacturing operations.

NA Shared Services are generally governed by shared services agreements and are administered by the USA Shared Service Center (the “SSC”), which is a unit of non-debtor Imerys USA, Inc. (“Imerys USA”). As further described in the Cash Management Motion,⁸ ITA and ITV receive NA Shared Services related to accounts payable, treasury, tax, facilities, cash application, information technology, purchasing, logistics, human resources, and certain telecommunications services. ITC receives NA Shared Services related accounts payable, treasury, purchasing and logistics services. The Debtors are invoiced monthly, on a *pro rata* basis, for NA Shared Services expenses based on an annual budget, which is adjusted based on actual costs. The Debtors also incur certain direct costs related to licensing fees, salary payments, and other charges. The expenses arising from the NA Shared Services are paid for by ITA on behalf of the Debtors, with ITV’s and ITC’s portion of the payment recorded as an intercompany receivable on ITA’s books.

22. The Debtors also receive certain group-level executive management, legal, and other corporate overhead services from non-debtor Parent. Specifically, these services include, among other things: business administration, marketing and sales, legal, internal and external communications, technology, transport, and security services (the “SA Shared Services”). Provision of the SA Shared Services is governed by separate Services Agreements between the Debtors and non-debtor Parent. The Debtors incur SA Shared Services expenses totaling the *pro rata* share of the direct and indirect costs incurred by Imerys S.A. on behalf of the Debtor, plus 5%, a portion of the related overhead costs, and direct costs for any expenses incurred on the Debtors’ behalf. Aside from these shared services the Debtors also receive goods

⁸ The “Cash Management Motion” means the *Debtors’ Motion for Orders Under 11 U.S.C. §§ 105(a), 345, 363, 503(b), and 507(a), Fed. R. Bankr. P. 6003 and 6004, and Del. Bankr. L.R. 2015-2 (I) Authorizing Continued Use of Existing Cash Management System, Including Maintenance of Existing Bank Accounts, Checks, and Business Forms, (II) Authorizing Continuation of Existing Deposit Practices, (III) Approving the Continuation of Intercompany Transactions, and (IV) Granting Superpriority Administrative Expense Status to Certain Postpetition Intercompany Claims.*

and services pursuant to certain other intercompany transactions with the Debtors and other non-debtor affiliates that are further described in the Cash Management Motion.

G. Summary of Prepetition Debt

23. Funding. The Debtors are not party to any secured financing arrangements or any third party credit facilities, and instead have relied on the positive cash flow generated by their operations to run their businesses. As described in detail in the Cash Management Motion, prior to the Petition Date, ITA and ITV participated in a zero balance accounting cash management system with their non-debtor, indirect parent, Imerys USA. Under such system, at the end of each business day, funds remaining in ITA's lockbox bank account were automatically swept to Imerys USA's bank account. Historically, Imerys USA paid the majority of ITA's and ITV's expenses directly, pursuant to certain intercompany arrangements, including payments to third parties such as vendors. The amount of such payments were deducted from the amount of funds swept into Imerys USA's accounts from ITA each day. The remaining amount was then recorded in ITA's and Imerys USA's books as an interest-bearing intercompany loan in favor of ITA pursuant to that certain Intercompany Loan and Investment Agreement, dated as of June 2018, by and between ITA and Imerys USA and that certain Intercompany Loan and Investment Agreement, dated as of June 2018, by and between ITV and Imerys USA (each as subsequently amended or revised). In addition to reimbursing Imerys USA for amounts paid on behalf of ITA and ITV, in certain instances, ITA also directly paid ITA's and ITV's other expenses, including payroll, certain bank fees, and other occasional third party payments.⁹ To account for obligations paid by ITA on behalf of ITV, ITA recorded any such amounts on its books as an intercompany receivable from ITV and ITV recorded such amounts on its books as an intercompany payable to ITA.

⁹ ITV does not hold any bank accounts in its own name and utilizes ITA's bank accounts.

24. As ITA and ITV have been historically cash-flow positive, as of the Petition Date, ITA has an outstanding loan payable from non-debtor Imerys USA in the current amount of approximately \$14,400,000. ITV also has an outstanding loan payable from non-debtor Imerys USA in the current amount of approximately \$2,900,000.

25. Prior to the Petition Date, ITA and ITV modified certain aspects of their cash management system in anticipation of the Chapter 11 Cases. ITA and ITV implemented these modifications in order to (i) ensure transparency in the Chapter 11 Cases by avoiding having a system in which Debtor funds were swept to a non-debtor affiliate on a daily basis and comingled with funds belonging to other non-debtor affiliates, and (ii) simplify their cash management system for the purposes of postpetition reporting and seeking first day relief. Accordingly, prior to the Petition Date, ITA and ITV eliminated the practice of automatically sweeping funds to Imerys USA. ITA's and ITV's funds are now retained in ITA's bank accounts, and ITA pays most of ITA's and ITV's third party and intercompany obligations from such accounts. Due to the nature of ITA's and ITV's operations, however, non-debtor Imerys USA may continue to satisfy certain obligations (as discussed in Part 2 below) for the benefit of ITA and ITV, with ITA reimbursing non-debtor Imerys USA on account of such payments. As under the prior cash management system, ITA continues to make payments on behalf of ITV, which are recorded on each entity's books as a receivable held by ITA and a payable due from ITV.

26. ITC operates under a separate cash management system from the other Debtors. Cash generated from ITC's operations is deposited in ITC's accounts and ITC pays its third party and intercompany obligations directly out of its bank accounts. Historically, excess cash generated by ITC's operations was periodically swept to Parent at the discretion of ITC. All transfers of cash that were made to Parent (net of any cash transfers made from Parent to ITC or

on behalf of ITC) were recorded as an intercompany interest-bearing loan on the books of Parent and ITC pursuant to an intra-group treasury agreement and that certain Intercompany Loan and Investment Agreement by and between Imerys S.A. and ITC. As a result, as of the Petition Date, ITC holds an outstanding loan due and payable from non-debtor Parent in the amount of approximately \$3,000,000.

27. Prior to the Petition Date, ITC also modified its cash management system and eliminated the practice of periodically sweeping cash to Parent's account and instead now retains funds generated from operations in ITC's bank accounts.

28. Bonds. As described in detail in the Debtors' Insurance and Bonding Motion,¹⁰ the Debtors are obligated under certain applicable statutes, rules, and regulations to post bonds to cover the costs of obligations related to the reclamation of the land on which their mines are located, as well as certain performance obligations, licenses/permits, customs and border protection obligations, and litigation appeals. As of the Petition Date, there were seven bonds posted on behalf of ITA, one bond posted on behalf of ITV, and two bonds posted on behalf of ITC. ITC paid the applicable surety directly on account of both of its bonding obligations. ITA paid the applicable surety directly on account of the appeal bond. The rest of the Debtors' bonding program is maintained on a consolidated basis by non-debtor Imerys USA. Premiums for each of these bonds were paid by non-debtor Imerys USA for the benefit of the Debtors and the Debtors reimbursed Imerys USA for all fees and costs associated with such bonds. As of the Petition Date, the total amount of bonds posted by or on behalf of the Debtors was approximately \$51,000,000.

¹⁰ The "Insurance and Bonding Motion" means the *Debtors' Motion for Order Under 11 U.S.C. §§ 105(a), 362(b), and 503(b) Authorizing Debtor to (I) Pay Their Prepetition Insurance Obligations, (II) Pay Their Prepetition Bonding Obligations, (III) Maintain Their Postpetition Insurance Coverage, and (IV) Maintain Their Bonding Program*.

29. Letter of Credit Facility. Non-debtor Imerys USA is the obligor under a \$50 million letter of credit facility with Credit Industriel et Commercial, dated as of March 1, 2017 (the "LC Facility"), for the benefit of ITV. Under the LC Facility, three standby letters of credit have been issued, and are currently outstanding, for the benefit of ITV in the aggregate amount of approximately \$410,000. Non-debtor Imerys USA pays all costs related to the LC Facility directly and these costs are then charged back to ITV.

30. Trade Debt. In the ordinary course of their businesses, the Debtors incur trade debt with numerous vendors in connection with their mining, processing, and distribution of talc. The Debtors are substantially current with respect to their unsecured trade debt, and do not believe they have material unsecured liabilities other than the Talc Claims, which are contingent and disputed. The Debtors' unsecured trade debt over the past twelve months was approximately \$11,700,000, on average, per month.

II. LITIGATION AND EVENTS LEADING TO THE CHAPTER 11 FILINGS

31. As discussed in Part 1 above, one or more of the Debtors are among the defendants in thousands of actions brought before several U.S. federal and state courts by multiple plaintiffs asserting Talc Claims. The Debtors believe this litigation is without merit and their strategy has consistently been to mount a vigorous defense to all such claims. Given the increasing number of Talc Claims asserted, the rise in settlement demands in cosmetic talc lawsuits, and the increased unwillingness of the Debtors' insurers and third party contractual indemnitors to provide coverage for the Debtors' mounting defense costs and potential liability exposure, the Debtors determined that the commencement of these Chapter 11 Cases was their best option to protect their estates and preserve value for all stakeholders. The Debtors lack the financial wherewithal to remain in the tort system.

A. Overview of Talc Litigation

32. Plaintiffs generally have asserted two types of Talc Claims: (1) claims alleging ovarian cancer or other gynecological diseases arising as a result of talc exposure (the “**OC Claims**”) and (2) claims alleging respiratory cancers or other asbestos-related diseases arising as a result of talc exposure (“**Mesothelioma Claims**”). As of the Petition Date, there are approximately 13,800 pending alleged OC Claims and approximately 850 pending alleged Mesothelioma Claims.

33. **OC Claims.** Plaintiffs asserting OC Claims generally allege that they have developed ovarian cancer or other gynecological diseases as a result of their use of J&J body powder (which is comprised almost entirely of talc) for feminine hygiene purposes. Historically, plaintiffs have asserted that talc itself causes ovarian cancer and have not asserted that talc contained in the body powder was contaminated with asbestos. In 2017, however, some plaintiffs asserting OC Claims began to assert that their personal injuries also were caused by alleged asbestos contamination of the talc. The Debtors dispute all of these allegations.

34. At the time of the Imerys Group’s acquisition of the Debtors in 2011, there was only one OC Claim pending against ITA, which was in the early stages of litigation. ITA was dismissed from that case on summary judgment prior to trial in 2013, but co-defendant J&J was found liable for negligence (though no damages were awarded). In early 2014, as a result of the publicity surrounding the J&J judgment, there was an influx of additional cases filed against both J&J and ITA. Then, over the next several years, the number of OC Claims filed accelerated at an even more rapid pace. Approximately 16,500 OC Claims have been filed since 2014 and, as of the Petition Date, approximately 13,800 OC Claims are still pending.

35. *Mesothelioma Claims.* Plaintiffs asserting Mesothelioma Claims allege they have developed non-ovarian cancer personal injuries based on some form of asbestos exposure. Some of these plaintiffs assert that they were only exposed to talc that was contaminated with asbestos, while others allege additional non-talc exposure to asbestos. In many cases, plaintiffs have made insufficient allegations for the Debtors to determine whether the Mesothelioma Claims are based on cosmetic talc exposure, industrial talc exposure, or both. For those pending cases where the plaintiff's exposure to talc has been identified with specificity, approximately 63% percent of plaintiffs allege exposure to asbestos through the use of cosmetics, while approximately 24% of plaintiffs allege exposure in industrial occupational settings (the approximately remaining 13% of plaintiffs allege both cosmetic and industrial exposure).

36. At the time of the Imerys Group's acquisition of the Debtors in 2011, there were only approximately seven pending Mesothelioma Claims, which were all in the early stages of litigation. As with OC Claims, however, plaintiffs began filing Mesothelioma Claims at an increasing pace in 2014. Since 2014, approximately 1,200 claims have been filed, of which approximately 850 were still pending as of the Petition Date.

37. As they have consistently argued during all such litigation, the Debtors maintain that their talc is safe, that the OC Claims and the Mesothelioma Claims are entirely without medical or scientific merit, and that exposure to their talc products has not caused any personal injuries. The safety of the Debtors' talc has been confirmed by dozens of peer-reviewed studies and multiple regulatory and scientific bodies, including the FDA. Three of the largest real-world studies ever conducted—one on talc miners over the course of 50 years and two of the largest studies of women's health ever conducted in the United States—have overwhelmingly confirmed that talc is not carcinogenic. Moreover, the trial court supervising the coordinated talc

ovarian cancer litigation in New Jersey state court held that the scientific evidence of talc as an alleged cause of ovarian cancer was insufficient to allow selected bellwether cases in that court (approximately 286) to proceed to trial against ITA and J&J. In addition, the trial court supervising the coordinated talc ovarian cancer litigation in California state court granted summary judgment to ITA before trial and then subsequently dismissed a multimillion dollar verdict against J&J in an ovarian cancer case, in part because of the limited nature of the scientific evidence presented at trial. ITA has won outright three defense verdicts in its favor in jury trials in Missouri state court. No final, unappealable verdict has been issued against any Debtor in a lawsuit asserting a Talc Claim. The Debtors have been and continue to be committed to the quality and safety of their products above all else. Nevertheless, the substantial increase in alleged Talc Claims in the last few years, combined with the current state of the U.S. tort system, has led to overwhelming projected litigation costs (net of insurance) that the Debtors cannot sustain in the long term.

38. Insurance/Indemnities. One or more of the Debtors have rights to the proceeds of insurance policies for both the OC Claims and the Mesothelioma Claims, and the Debtors continue to litigate and negotiate the scope of the potentially available insurance coverage. The Debtors are informed and believe that the total amount of insurance available for the OC Claims is at least \$529 million and believe the total amount of insurance coverage for the Mesothelioma Claims is at least \$180 million.¹¹ The Debtors also believe that the Talc Claims related to the Debtors' sale of talc to J&J are subject to uncapped indemnity rights against J&J under various stock purchase and supply agreements. One or more of the Debtors also have rights to the proceeds of insurance policies issued to J&J and its subsidiaries, and policies issued to

¹¹ ITA currently is involved in coverage litigation in California state court regarding the scope and amount of available coverage for Mesothelioma Claims.

Standard Oil and its subsidiaries, which the Debtors believe to have total limits of approximately slightly more than \$3 billion.

39. **Ovarian Cancer Insurance.** One or more of the Debtors have rights to seek insurance coverage under 14 primary liability policies issued by Zurich American Insurance Company (“**Zurich**”) to Luzenac America or a Rio Tinto entity (both of which were prior owners of the Debtors as summarized in paragraph 13 above). Zurich issued four primary liability policies to Luzenac America from May 1997 to May 2001 with total aggregate limits of liability of \$20 million (the “**Luzenac Policies**”). Zurich issued ten primary liability policies to a Rio Tinto entity (and its subsidiaries) from May 2001 to May 2011 with total aggregate limits of \$480 million (the “**Rio Tinto Policies**,” and together with the Luzenac Policies, the “**Zurich Policies**”). As of the Petition Date, the Debtors are informed and believe that the Zurich Policies have total remaining limits of approximately \$492 million. Pursuant to various agreements with Zurich and Rio Tinto, the Debtors owe no further deductibles on the Zurich Policies. The Debtors are unaware of any excess policies issued to Rio Tinto or to the Debtors when owned by Rio Tinto. Each of the Zurich Policies contains an endorsement that purports to exclude coverage for injuries caused by exposure to asbestos.

40. One or more of the Debtors also have rights to insurance coverage under four primary general liability policies and four umbrella policies issued by XL Insurance America, Inc. (“**XL**”) to Imerys USA and its subsidiaries. XL issued primary general liability policies for the period of January 2011 to January 2015 with total aggregate limits of \$4 million (the “**XL Primary Policies**”). XL also issued umbrella liability policies for the period of January 2011 to January 2015 with total aggregate limits of \$34 million (the “**XL Umbrella Policies**,” and together with the XL Primary Policies, the “**XL Policies**”). As of the Petition Date, the Debtors are

informed and believe that the XL Policies have total remaining limits of approximately \$37 million. Each of the XL Policies contains an endorsement that purports to exclude coverage for injuries caused by exposure to asbestos.

41. ***Mesothelioma Insurance.*** As a result of the various transactions involving the talc business of Cyprus as noted above in paragraph 13, ITA has the right to seek proceeds from insurance policies that provide coverage for liabilities arising out of the talc business of Cyprus. As of the Petition Date, the Debtors are informed and believe that all of the primary liability policies that could provide coverage for asbestos-related liabilities arising out of the talc business of Cyprus have been exhausted, except four primary liability policies issued by The American Insurance Company from May 1961 to October 1964. The remaining coverage consists of umbrella and excess policies issued by various insurers from April 1962 to July 1986 with total aggregate limits of approximately \$180 million. The Debtors are informed and believe that ITA also has rights to seek the proceeds from insurance policies issued to Standard Oil (Indiana) (which was an indirect prior owner of the Debtors as summarized in paragraph 14 above) from 1980 to 1985 with total aggregate limits of approximately \$1.2 billion. As of the Petition Date, the Debtors lack knowledge as to the remaining and available limits of the policies issued to Standard Oil (Indiana).

42. ***J&J Insurance.*** One or more of the Debtors have the right to seek proceeds from various insurance policies issued to J&J and its subsidiaries with total aggregate limits of approximately \$2 billion. As of the Petition Date, the Debtors lack knowledge as to the total remaining and available limits of the insurance policies issued to J&J and its subsidiaries.

43. Despite this seemingly robust insurance coverage, the Debtors have determined that it is no longer feasible for them to continue to litigate the Talc Claims. While the

Debtors have access to numerous insurance policies, coverage is not available for all claims. For example, where a claimant's alleged date of first exposure to talc occurs after a certain date, the claim may not be covered under some of the insurance policies.¹² In addition, some policies only provide coverage for non-asbestos related injuries, and punitive damages often are not covered by insurance. The Debtors, in consultation with their insurance coverage counsel, have thoroughly analyzed their various insurance policies and determined that currently available insurance coverage for certain cosmetic talc-related litigation may be exhausted in the first half of 2019.

44. *J&J Indemnity.* One or more of the Debtors also have certain indemnity rights against J&J or one of its affiliates for OC Claims and Mesothelioma Claims. For example, under a 1989 stock purchase agreement pursuant to which the Debtors purchased the entity known today as ITV, J&J agreed to indemnify one or more of the Debtors for all liabilities arising out of use or exposure to talc-containing products supplied to J&J prior to the January 6, 1989 closing date. In addition, under various talc supply agreements, J&J agreed to indemnify one or more of the Debtors for all liabilities arising out of the supply of talc to J&J during the term of the supply agreements.

45. While the Debtors have additional protection from the Talc Claims through these indemnification agreements with J&J and its affiliates, the Debtors' ability to recover under these indemnification agreements in a timely fashion is uncertain. As of the Petition Date, J&J has refused to acknowledge or accept its indemnification obligations and has disputed the scope of coverage available to the Debtors under these agreements (or denied indemnification

¹² Under the standard asbestos exclusion in the United States, insurance policies do not cover asbestos liability where a claimant's first exposure occurred after 1986. In addition, certain of the Debtors' insurance policies do not cover OC Claims where a claimant's first exposure is alleged to have occurred after 2015.

altogether). As such, the Debtors' recovery under these indemnification agreements has been significantly delayed.

B. Prepetition Negotiations

46. As a result of the increasing talc litigation and the unwillingness of the Debtors' insurers and indemnitors to provide coverage for the Debtors' mounting defense costs, the Debtors retained Latham & Watkins LLP ("**Latham**") in June 2018 to assist the Debtors in evaluating a number of strategic options. The Debtors and Latham worked with the Debtors' litigation defense counsel, Alston & Bird LLP and Gordon, Rees, Scully, Mansukhani, LLP, and insurance coverage counsel, Neal, Gerber & Eisenberg LLP, to identify and assess alternatives to resolve the Talc Claims, including the costs and benefits associated with continued litigation of the Talc Claims in the tort system

47. At the same time, the Debtors explored the viability of using Chapter 11 to address these Talc Claims by channeling them to a trust created under Sections 105 and 524(g) of the Bankruptcy Code that would be structured to ensure fair and equitable treatment of present and future claimants. As part of this exploratory effort and to facilitate the implementation of this potential Chapter 11 strategy if and when authorized by their boards of directors, the Debtors entered into an engagement letter with James L. Patton, Jr. of Young, Conaway, Stargatt & Taylor, LLP ("**Young Conaway**") on September 25, 2018 to serve as a proposed future claims representative (the "**Proposed FCR**") to represent the interests of individuals who may in the future assert talc-related demands against the Debtors. The Proposed FCR retained Young Conaway as counsel and Ankura Consulting Group, LLC as claims analyst to provide advice in connection with such representation. Together with his advisors, the Proposed FCR initiated an extensive diligence process into the Debtors' businesses and the pending talc litigation, subject

to a confidentiality agreement. The Debtors have worked constructively with the Proposed FCR and his advisors throughout this process by providing access to a fulsome data room and responses to numerous information requests, as well as by attending multiple in-person diligence meetings, among other things. The Debtors had hoped to engage with plaintiffs firms prior to the commencement of these Chapter 11 Cases to determine if a pre-arranged chapter 11 plan could be achieved. The Debtors did not have sufficient time, however, to conduct the diligence process that would be necessary for the parties to engage in meaningful discussions given the pending trial calendar (and risk of incurring a judgment for which the Debtors could not post an appeal bond) and the ever-increasing costs of settlement and defense. Nevertheless, the constructive discussions with the Proposed FCR confirmed, from the Debtors' perspective, the viability of using Chapter 11 to resolve the Talc Claims in a manner that will maximize the distributable value for all stakeholders and will provide fair and equitable treatment of the Talc Claims.

48. After extensive discussions with their advisors, the Debtors ultimately determined that, due to the increasing number of Talc Claims asserted and the prospect of diminishing, readily accessible insurance/third party indemnitor coverage, continued litigation in the tort system was not a viable option and that the commencement of these Chapter 11 Cases was in the best interests of the Debtors, their estates and their stakeholders. Accordingly, on February 13, 2019, the Debtors' boards of directors authorized the filing of these Chapter 11 Cases.

49. The Debtors intend to seek the appointment of Mr. Patton as the future claimants' representative. Given the knowledge of the Debtors' businesses and claims that Mr. Patton gained during the prepetition diligence process, the Debtors believe his appointment will result in efficiencies that benefit creditors and the estates.

50. During the Chapter 11 Cases, the Debtors intend to negotiate the terms of a consensual plan of reorganization with the future claimants' representative appointed by the Court, representatives of the holders of current alleged Talc Claims and the non-debtor Parent on behalf of the rest of the Imerys Group in order to resolve the Talc Claims and develop a go-forward strategy for the affected talc businesses. The Debtors are confident that such negotiations will culminate in a court-approved consensual plan of reorganization in the first half of 2020 and enable the Debtors to emerge free and clear of all their U.S. historic talc-related liabilities.

PART 2

51. In furtherance of the objective of preserving value for all stakeholders, the Debtors have sought approval of the First Day Pleadings and related orders (the "**Proposed Orders**"), and respectfully request that the Court consider entering the Proposed Orders granting such First Day Pleadings. For the avoidance of doubt, the Debtors seek authority, but not direction, to pay amounts or satisfy obligations with respect to the relief requested in any of the First Day Pleadings.

52. I have reviewed each of the First Day Pleadings, Proposed Orders, and exhibits thereto (or have otherwise had their contents explained to me), and the facts set forth therein are true and correct to the best of my knowledge, information, and belief. Moreover, I believe that the relief sought in each of the First Day Pleadings (a) is vital to enabling the Debtors to make the transition to, and operate in, chapter 11 with minimum interruptions and disruptions to their businesses or loss of productivity or value and (b) constitutes a critical element in the Debtors' being able to successfully maximize value for the benefit of their estates.

I. ADMINISTRATIVE AND PROCEDURAL PLEADINGS

A. Joint Administration Motion¹³

53. By the Joint Administration Motion, the Debtors seek entry of an order directing the joint administration of their three Chapter 11 Cases for procedural purposes only. Many of the motions, hearings, and other matters involved in the Chapter 11 Cases will affect the Debtors. Thus, I believe that the joint administration of these cases will avoid the unnecessary time and expense of duplicative motions, applications, orders, and other pleadings, thereby saving considerable time and expense for the Debtors and resulting in substantial savings for their estates.

B. Motion to Limit Notice and Approve Notice Procedures¹⁴

54. In the Motion to Limit Notice and Approve Notice Procedures, the Debtors request entry of an order (i) authorizing the Debtors to file (a) a consolidated master list of creditors, (b) a consolidated list of the top thirty law firms with the most significant Talc Claimant (as defined in the Motion to Limit Notice and Approve Notice Procedures) representations, and (c) a consolidated list of creditors holding the thirty largest unsecured claims (excluding Talc Claims), and (ii) approving the implementation of certain notice procedures for the Talc Claimants.

i. Consolidated Master List

55. In the Motion to Limit Notice and Approve Notice Procedures, the Debtors seek authorization to file a consolidated master list of creditors in lieu of requiring each Debtor to submit a Debtor-specific creditor matrix as provided the Local Rules of the Bankruptcy Practice

¹³ “**Joint Administration Motion**” means *Debtors’ Motion for Order Under Fed. R. Bankr. P. 1015 and Del. Bankr. L.R. 1015-1 Authorizing Joint Administration of Chapter 11 Cases*.

¹⁴ “**Motion to Limit Notice and Approve Notice Procedures**” means the *Debtors’ Motion for Order (I) Authorizing the Filing of (A) A Consolidated Master List of Creditors, (B) A Consolidated List of the Top Thirty Law Firms Representing Talc Claimants, and (C) A Consolidated List of Creditors Holding the Thirty Largest Unsecured Claims, and (II) Approving Certain Notice Procedures for Talc Claimants*.

and Procedure of the United States Bankruptcy Court for the District of Delaware (the “**Local Rules**”). The Debtors have identified thousands of entities to which notice of certain proceedings in the Chapter 11 Cases must be provided. Except for the contact information of the Talc Claimants (as described below), the Debtors (or their agents) presently maintain records containing the names and addresses of their respective creditors that are entitled to receive notices and other documents in the Chapter 11 Cases. I believe that this information may be consolidated and utilized efficiently to provide interested parties with notices and other similar documents as contemplated by the Local Rules on a consolidated basis. I believe that requiring each Debtor to submit a Debtor-specific matrix would be an unnecessarily burdensome and costly task and would likely result in duplicate mailings.

ii. **Consolidated List of Thirty Law Firms With the Most Significant Talc Claimant Representations**

56. By the Motion to Limit Notice and Approve Notice Procedures, the Debtors also seek authorization to file a consolidated list of the top thirty law firms representing the most significant Talc Claimants as determined by the volume, scope and magnitude of Talc Claims asserted against the Debtors, and certain other related factors. As described herein, one or more of the Debtors is currently named as a defendant in pending Talc Claim litigation. Taken in the aggregate, the vast majority of the Debtors’ known creditors are Talc Claimants (though, as noted above, the Debtors vigorously dispute all liability as to the Talc Claims). The Debtors’ primary goal in filing the Chapter 11 Cases is to confirm a consensual plan of reorganization pursuant to sections 105(a), 524(g), and 1129 of the Bankruptcy Code that channels all of the present and future Talc Claims to a trust vested with substantial assets and provides for a channeling injunction prohibiting claimants from asserting against any Debtor or non-Debtor affiliate any claims arising from talc mined, produced, sold, or distributed by any of the Debtors prior to their emergence from

the Chapter 11 Cases. While the Debtors dispute all liability as to the Talc Claims, I believe this approach will provide fair and equitable treatment of all stakeholders. As a result, the Debtors anticipate that the Office of the United States Trustee (the "U.S. Trustee") will appoint an official committee of tort claimants comprised of the predominant plaintiffs' firms representing the Talc Claimants to represent the interests of the Talc Claimants in the Chapter 11 Cases.

57. I do not believe that listing the individual Talc Claimants with the largest unsecured claims against the Debtors would facilitate the U.S. Trustee's appointment of a tort claimants creditors' committee. Tort claimants' committees are typically comprised of the primary plaintiffs' firms that represent plaintiffs in pending litigation and not the individual tort claimants. In addition, I believe that attempting to designate certain individual Talc Claimants as holding the "largest" unsecured claims would be arbitrary, where the pending Talc Claims are disputed, contingent and/or unliquidated. I believe that providing the U.S. Trustee with a list of the top thirty law firms with the most significant Talc Claimant representations as determined by the volume of pending Talc Claims, the scope and magnitude of Talc Claims asserted against the Debtors, and related factors, would better assist the U.S. Trustee in forming such a committee.

iii. **Consolidated List of Creditors Holding the Thirty Largest Unsecured Claims**

58. By the Motion to Limit Notice and Approve Notice Procedures, the Debtors also seek to file a consolidated list of creditors holding the thirty largest unsecured claims (excluding Talc Claimants). I have been informed that pursuant to the Federal Rules of Bankruptcy Procedure (the "Bankruptcy Rules"), a chapter 11 debtor must file with its voluntary petition a list setting forth the names, addresses, and claim amounts of the creditors, excluding insiders, that hold the twenty largest unsecured claims in the debtor's case (a "Top Twenty List").

59. I believe that a consolidated list of the Debtors' top thirty unsecured creditors will be more useful to the U.S. Trustee than separate Top Twenty Lists for each Debtor. First, I believe that the individual Top Twenty Lists for each Debtor would likely overlap. Second, I understand that the Debtors have very few unsecured creditors that are not Talc Claimants and claims held by the Debtors' trade creditors are minimal in comparison to the Talc Claims. Finally, and as discussed above, the Debtors are also proposing to file a list of the top thirty law firms with the most significant Talc Claimant representations as determined by the volume of pending Talc Claims, the scope and magnitude of Talc Claims asserted against the Debtors, and related factors.

iv. The Talc Claimant Notice Procedures

60. In the Motion to Limit Notice and Approve Notice Procedures, the Debtors also seek to implement the certain notice procedures (the "**Notice Procedures**") by which the Debtors will (a) list the addresses of known counsel of record for the Talc Claimants, in lieu of the addresses of the Talc Claimants themselves, on the Debtors' creditor matrix and (b) send required notices, mailings, and other communications related to the Chapter 11 Cases to such known counsel of record for the Talc Claimants in lieu of sending such communications to the Talc Claimants themselves in the manner required pursuant to otherwise applicable noticing procedures in effect in the Chapter 11 Cases.

61. In addition, I understand that throughout the course of the Chapter 11 Cases, various notices, mailings, and other communications will need to be sent to the Talc Claimants. In order to ensure that these claimants receive proper and timely notice of filings and critical events in the Chapter 11 Cases, the Debtors request authority to direct the Claims Agent to send required notices, mailings, and other communications to the counsel of record for the Talc Claimants, in the manner required pursuant to otherwise applicable noticing procedures in effect in the Chapter 11 Cases, *provided* that the Debtors will (or direct the Claims Agent to) send required notices,

mailing and other communications directly to any Talc Claimants who so request such direct notice from the Debtors in writing.¹⁵

62. I believe that by implementing the Notice Procedures, the actual notice that Talc Claimants will receive via their counsel will be superior to the notice that the Talc Claimants would receive if the Debtors were to attempt to deliver notices and other communications directly to such claimants. In addition, I understand that the address for counsel to the Talc Claimants is more likely to remain unchanged over time, and hence providing notice to the counsel of record will allow for more accurate notice to Talc Claimants. Moreover, I believe that the Notice Procedures will also significantly ease the Debtors' administrative burden of sending notices to thousands of Talc Claimants, resulting in a more cost-effective notice procedure that benefits the Debtors' estates and creditors.

C. Motion to Enforce and Confirm Automatic Stay¹⁶

63. By the Motion to Enforce and Confirm Automatic Stay, the Debtors seek entry of an order enforcing the protections of sections 362, 365, 525, and 541(c) of the Bankruptcy Code to aid in the administration of the Chapter 11 Cases and to help ensure that the global operations of the Debtors and their non-Debtor affiliates are not disrupted.

64. I believe that notwithstanding the self-executing and global nature of sections 362, 365, 525, and 541 of the Bankruptcy Code, not all parties affected, or potentially affected, by the commencement of the Chapter 11 Cases are aware of these statutory provisions

¹⁵ Additionally, for those law firms representing multiple Talc Claimants, by the Motion to Limit Notice and Approve Notice Procedures, the Debtors seek authorization to serve each document only a single time on such law firms (at each relevant address) on behalf of all such counsel's clients, *provided that* any notice or other document relating specifically to one or more particular Talc Claimants (rather than all Talc Claimants represented by such law firm) shall clearly identify such parties.

¹⁶ "**Motion to Enforce and Confirm Automatic Stay**" means the *Debtors' Motion for Order Under 11 U.S.C. § 105 Enforcing the Protections of 11 U.S.C. §§ 362, 363, 365, 525, and 541(c)*.

or their significance and impact. Therefore, I believe it is it is prudent to obtain an order confirming and reinforcing the relevant provisions of the aforementioned sections of the Bankruptcy Code.

65. I believe that the requested relief is particularly appropriate because the Debtors and their non-Debtor affiliates and subsidiaries operate, purchase materials, and record sales in numerous countries with different legal systems, including without limitation, Canada, Italy, France, China, India, Belgium, the United Kingdom, Korea, and Austria. The Debtors engage with numerous foreign customers, suppliers, and other vendors, as well as foreign regulators and other governmental units. Moreover, many of the Debtors' key contracts are governed by the laws of foreign jurisdictions. I also believe that, absent an order from this Court, parties might attempt to take improper actions against the Debtors or property of their estates. Accordingly, I believe, that granting the relief requested in the Motion and Order to Enforce and Confirm Automatic Stay is in the best interests of the Debtors, their estates, and their creditors.

D. Motion Appointing a Foreign Representative¹⁷

66. By the Motion Appointing a Foreign Representative, the Debtors seek entry of an order authorizing ITC to act as the foreign representative on behalf of the Debtors' estates in any judicial or other proceedings in Canada.

67. As further described herein, in addition to their operations in the United States, the Debtors have certain assets and operations in Canada. ITC is incorporated in Canada and is an affiliate of the other Debtors in the Chapter 11 Cases. ITC, as the proposed Foreign Representative (as defined below), will shortly seek ancillary relief in Canada on behalf of the

¹⁷ **“Motion Appointing A Foreign Representative”** means the *Debtors' Motion for Order Pursuant to 11 U.S.C. § 1505 Authorizing Imerys Talc Canada Inc. to Act as Foreign Representative*.

Debtors, pursuant to the Companies' Creditors Arrangement Act (Canada) R.S.C. 1985, c. C-36 as amended (the "CCAA") in the Ontario Superior Court of Justice (Commercial List) (the "Canadian Court") in Ontario, Canada. The purpose of the ancillary proceedings (the "Canadian Proceedings") is to request that the Canadian Court recognize the Chapter 11 Cases as a "foreign main proceeding" under the applicable provisions of the CCAA in order to, among other things, protect the Debtors' assets and operations in Canada.

68. To commence the Canadian Proceedings, the Debtors or another third party needs authority to act as the "foreign representative" on behalf of the Debtors' estates (the "Foreign Representative") and, therefore, the Debtors seek to appoint ITC as such Foreign Representative. I understand that for ITC to be recognized as the Foreign Representative of the Debtors in the Canadian Proceedings, and thereby apply to have the Chapter 11 Cases recognized by the Canadian Court, this Court must enter the Order authorizing ITC to act as the Foreign Representative in the Canadian Proceedings. I understand that if the Order is granted, ITC will be able to file the Order with the Canadian Court as the instrument authorizing ITC to act as the Foreign Representative pursuant to section 46 of the CCAA.

E. Retention Applications

69. I believe that the retention of chapter 11 professionals is essential to the Chapter 11 Cases. Accordingly, during the Chapter 11 Cases, the Debtors anticipate that they will request permission to retain, among others, the following professionals: (a) Latham, as co-counsel; (b) Richards, Layton & Finger, P.A., as co-counsel; (c) Prime Clerk LLC, as claims and noticing agent and administrative advisor; (d) A&M, as financial advisor; (e) Neal, Gerber & Eisenberg LLP, as special insurance and indemnification litigation counsel; (f) KCIC, LLC, as insurance and valuation consultant; and (g) Stikeman Elliot LLP, as Canadian counsel. I believe that the above

professionals are well-qualified to perform the services contemplated by their various retention applications, the services are necessary for the success of the Chapter 11 Cases, and the professionals will coordinate their services to avoid duplication of efforts. I understand that the Debtors may find it necessary to seek retention of additional professionals as the Chapter 11 Cases progress.

II. BUSINESS OPERATION MOTIONS

A. Cash Management Motion¹⁸

70. By the Cash Management Motion, the Debtors seek entry of interim and final orders (i) authorizing, but not directing, the Debtors to continue to maintain and use their existing cash management system, including maintenance of their existing bank accounts, checks, and business forms; (ii) granting the Debtors a waiver of certain bank account and related requirements of the U.S. Trustee to the extent that such requirements are inconsistent with the Debtors' practices under their existing cash management system or other actions described herein; (iii) authorizing, but not directing, the Debtors to continue to maintain and use their existing deposit practices notwithstanding the provisions of section 345(b) of the Bankruptcy Code; (iv) approving the continuation of the Intercompany Transactions (as defined below); (v) authorizing the Debtors to open and close bank accounts; and (vi) according superpriority administrative expense status to postpetition intercompany claims arising from transactions among the Debtors.

¹⁸ **"Cash Management Motion"** means *Debtors' Motion for Orders Under 11 U.S.C. §§105(a), 345, 363, 503(b), and 507(a), Fed. R. Bankr. P. 6003 and 6004, and Del. Bankr. L.R. 2015-2 (I) Authorizing Continued Use of Existing Cash Management System, Including Maintenance of Existing Bank Accounts, Checks, and Business Forms, (II) Authorizing Continuation of Existing Deposit Practices, (III) Approving the Continuation of Intercompany Transactions, and (IV) Granting Superpriority Administrative Expense Status to Certain Postpetition Intercompany Claims.*

i. The Debtors' Cash Management System and the Bank Accounts

71. The Debtors oversee the collection, disbursement, and movement of cash generated from their operations through a cash management system (the "**Cash Management System**") that manages the Debtors' cash inflows and outflows through a number of bank accounts. I believe that the Cash Management System is critical to the Debtors' operations as it enables the Debtors to, among other things, (i) monitor cash receipts and ensure payment of necessary disbursements, (ii) track various intercompany transfers and transactions with other Debtors and Non-Debtor Affiliates, and (iii) ensure accurate cash forecasting and reporting. I understand that the Cash Management System has been in place since the Debtors' operations were acquired by the Imerys Group in 2011.

72. The Cash Management System consists of segments relating to (i) ITA and ITV (the "**USA Cash Management System**") and (ii) ITC (the "**ITC Cash Management System**"). A diagram depicting the Cash Management System as of the Petition Date, including ordinary course transfers between the Bank Accounts (as further described and defined below), is attached as Attachment 1 to the Cash Management Motion. A schedule of the Debtor Bank Accounts and the Imerys USA Bank Accounts (each as further described and defined below) is attached to the Cash Management Motion as Attachment 2.

73. As of the Petition Date, the Debtors maintain four bank accounts (the "**Debtor Bank Accounts**"):

1. ITA Bank Accounts

74. ITA maintains two bank accounts in its name in the United States at SunTrust Bank (the "**ITA Bank Accounts**"). The ITA Bank Accounts are used by both ITA and

ITV to manage cash related to their day-to-day operations.¹⁹ One of the ITA Bank Accounts is a lockbox account that receives ITA and ITV funds via incoming checks, wires, ACH transfers, and electronic funds transfers from third parties, including customers, as well as incoming payments on account of Intercompany Transactions (the “**ITA Lockbox Account**”). As of the Petition Date, the ITA Lockbox Account held cash totaling approximately \$7,600,000. The other ITA Bank Account is used to fund disbursements incurred by ITA and ITV via checks, wires, ACH transfers, or electronic funds transfers (the “**ITA Disbursement Account**”), including, among others, vendor, utility, and lease payments, employee payroll, expense reimbursements, and intercompany expenses incurred on account of Intercompany Transactions.

2. ITC Bank Accounts

75. ITC maintains two bank accounts in its name in Canada (the “**ITC Bank Accounts**”) at Royal Bank of Canada (“**RBC**” and, together with SunTrust Bank, the “**Banks**”). The ITC Bank Accounts are both operating accounts that are used for receiving funds earned from ITC’s operations and disbursing funds to pay third party and intercompany obligations via checks, wires, ACH transfers, and electronic funds transfers. ITC regularly transacts business in both U.S. Dollars and Canadian Dollars. Accordingly, one of the ITC Bank Accounts is used solely for transactions conducted in U.S. Dollars (the “**ITC USD Account**”), and the other ITC Bank Account is used solely for transactions conducted in Canadian Dollars (the “**ITC CAD Account**”). As of the Petition Date, the ITC Bank Accounts held cash totaling approximately \$3,400,000 USD.

76. In the ordinary course of business, the Banks charge, and the Debtors pay, honor, or allow to be deducted from the appropriate Debtor Bank Accounts, certain service charges and other fees, costs, and expenses charged by the Banks (collectively, the “**Bank Fees and**

¹⁹ ITV does not hold any bank accounts in its own name and utilizes the ITA Bank Accounts.

Expenses”). The Bank Fees and Expenses currently average approximately \$6,000 per month in the aggregate. The Debtors estimate that approximately \$9,250 of accrued but unpaid Bank Fees and Expenses are outstanding as of the Petition Date.

3. Non-Debtor Affiliate Bank Accounts

77. There are four bank accounts held by certain Non-Debtor Affiliates that are particularly relevant to the Debtors’ Cash Management System and are therefore described herein (the “**Non-Debtor Affiliate Bank Accounts**” and together with the Debtor Bank Accounts, the “**Bank Accounts**”).²⁰

78. Non-Debtor Imerys USA maintains two Non-Debtor Affiliate Bank Accounts in its name in the United States (the “**Imerys USA Bank Accounts**”). The first Imerys USA Bank Account is a concentration account that pools incoming funds from Imerys USA’s subsidiaries (including, historically, although not presently, Debtors ITA and ITV) pursuant to a zero-balance account system (the “**USA ZBA Account**”). The second Imerys USA Bank Account is a controlled disbursement account that is used to fund certain intercompany and third party payments on behalf of ITA, ITV, and other Non-Debtor Affiliates that are subsidiaries of Imerys USA (the “**USA Disbursement Account**”). The Imerys USA Bank Accounts are both denominated in U.S. Dollars.

79. Non-Debtor Imerys S.A. holds two Non-Debtor Affiliate Bank Accounts in its name in France that were previously related to the ITC Cash Management System (the “**Imerys S.A. Bank Accounts**”). One is an account for funds in U.S. Dollars (the “**Imerys S.A. USD Account**”) and the other is an account for funds in Canadian Dollars (the “**Imerys S.A. CAD**”).

²⁰ Additional bank accounts held by Non-Debtor Affiliates are not described in the Cash Management Motion.

Account”). Historically, ITC periodically swept up funds from the ITC Bank Accounts to the applicable Imerys S.A. Bank Account, as further described below.

ii. **The USA Cash Management System**

80. Previously, ITA and ITV utilized an alternative cash management system (the “**Previous USA Cash Management System**”). Under the Previous USA Cash Management System, the ITA Bank Accounts were part of a zero-balance accounting, or ZBA, system with the Imerys USA Bank Accounts. Under this ZBA system, at the end of each business day, all funds in the ITA Lockbox Account were swept up to the USA ZBA Account. Funds in an amount necessary to meet the daily funding needs of ITA and ITV were then automatically transferred at the end of each business day from the USA ZBA Account to either the USA Disbursement Account or to the ITA Disbursement Account. Historically, non-Debtor Imerys USA used funds in the USA Disbursement Account to pay the majority of ITA and ITV’s expenses, including payments to third parties such as vendors. ITA and ITV reimbursed Imerys USA by setting off amounts paid on behalf of ITA’s and ITV’s expenses against the outstanding loan owed by Imerys USA to ITA (described below). These transactions were recorded in ITA’s and Imerys USA’s books. In certain instances, ITA used the ITA Disbursement Account to directly pay ITA’s and ITV’s other expenses, including payroll, certain bank fees, and other occasional third party payments. To account for obligations paid by ITA on behalf of ITV, ITA recorded any such amounts on its books as an intercompany receivable from ITV, and ITV recorded such amounts on its books as an intercompany payable to ITA.

81. Funds held in the Imerys USA Bank Accounts on account of ITA and ITV, after deducting disbursements made on behalf of ITA and ITV, were recorded as an interest-bearing intercompany loan in favor of ITA. As of the Petition Date, ITA has an outstanding loan

payable from Imerys USA in the current amount of approximately \$14,400,000, pursuant to that certain Intercompany Loan and Investment Agreement dated as of June 2018 by and between ITA and Imerys USA and that certain Intercompany Loan and Investment Agreement dated as of June 2018 by and between ITV and Imerys USA. ITV also has an outstanding payable from Imerys USA in the current amount of approximately \$2,900,000.

82. Prior to the Petition Date, ITA and ITV modified certain aspects of the Previous USA Cash Management system in anticipation of the Chapter 11 Cases. ITA and ITV implemented these modifications in order to (i) ensure transparency in the Chapter 11 Cases by avoiding having a system in which Debtor funds were swept to a Non-Debtor Affiliate Bank Account on a daily basis and commingled with funds belonging to other Non-Debtor Affiliates, and (ii) simplify the USA Cash Management System for the purposes of postpetition reporting and seeking first day relief.

83. Accordingly, prior to the Petition Date, ITA and ITV eliminated the practice of automatically sweeping funds in the ITA Lockbox Account to the USA ZBA Account. Now, ITA's and ITV's funds are retained in the ITA Lockbox Account. ITA transfers funds from the ITA Lockbox Account to the ITA Disbursements Account on an as-needed basis to satisfy most of ITA's and ITV's expenses, including intercompany obligations. Due to the nature of ITA's and ITV's operations, after the Petition Date, non-Debtor Imerys USA may continue to satisfy certain obligations for the benefit of ITA and ITV. Following the Petition Date, ITA intends to pay reimbursements owed to Imerys USA on account of such payments directly in cash.

84. Historically, most of the intercompany obligations by and between the Imerys Group entities (including ITA and ITV) were not immediately paid in cash and were

instead “netted out” at the end of each month.²¹ As of the Petition Date, ITA and ITV no longer intend to net out obligations with the Non-Debtor Affiliates. Instead, ITA and ITV will satisfy intercompany obligations as they come due in cash and Non-Debtor Affiliates will similarly satisfy obligations to ITA and ITV as they come due in cash. Payables and receivables may continue to accumulate among the Debtors, however, with such obligations to be settled on a cash basis at the Debtors’ discretion.

iii. The ITC Cash Management System

85. ITC’s operations are managed through the ITC Cash Management System. Cash generated from operations is deposited in the ITC CAD Account or the ITC USD Account depending on the currency (ITC may also transfer funds between the ITC CAD Account and the ITC USD Account to cover disbursement needs). Historically, excess cash generated by ITC’s operations was periodically swept from the ITC Bank Accounts to the Imerys S.A. Bank Accounts at the discretion or consent of ITC. As of the Petition Date, excess funds are no longer swept from the ITC Bank Accounts to Imerys S.A. Bank Accounts. Instead, all funds generated from ITC’s operations are retained in the ITC Bank Accounts.

86. Cash amounts swept from the ITC Bank Accounts to the Imerys S.A. Bank Accounts prior to the Petition Date (net of any cash transfers made from Imerys S.A. to ITC or on behalf of ITC) were recorded as an intercompany interest-bearing loan on the books of Imerys S.A. and ITC. As a result, as of the Petition Date, ITC holds an outstanding loan due and payable

²¹ For example, if in one month ITA bought goods for \$70,000 from an Imerys Group entity, and the same Imerys Group entity incurred expenses totaling \$60,000 for services provided to it by ITA in that same month, the net \$10,000 balance owed by ITA would be reflected on ITA’s books as a payable from ITA to the Imerys Group entity. Periodically, Imerys USA, on ITA’s and ITV’s behalf, would settle outstanding intercompany payables or receivables held by ITA or ITV by either increasing or reducing ITA’s outstanding intercompany loan.

from non-Debtor Imerys S.A. in the amount of approximately \$3,000,000 pursuant to that certain Intra-Group Treasury Agreement by and between Imerys S.A. and certain of its affiliates.

87. ITC disburses funds to satisfy outstanding third party and intercompany obligations from the applicable ITC Bank Account as they come due. However, similar to ITA and ITV under the Previous USA Cash Management System, intercompany obligations by and between ITC and other Imerys Group entities were historically netted out and recorded on the relevant entity's books as a payable or receivable, as applicable, instead of being paid immediately in cash. On a periodic basis, Imerys S.A. would settle, on ITC's behalf, outstanding intercompany payables or receivables held by ITC by either increasing or reducing ITC's outstanding loan receivable due from Imerys S.A. As of the Petition Date, ITC no longer intends net out obligations with the Non-Debtor Affiliates. Instead, ITC will satisfy intercompany obligations with the Non-Debtor Affiliates as they come due in cash and the Non-Debtor Affiliates will similarly satisfy obligations to ITC as they come due in cash. However, payables and receivables may continue to accumulate among the Debtors, with such obligations to be settled on a cash basis at the Debtors' discretion.

iv. Continued Ordinary-Course Intercompany Transactions and Postpetition Intercompany Claims and Granting of Superpriority Status

88. In the ordinary course of business, the Debtors engage in various business relationships with one another and with certain Non-Debtor Affiliates under certain shared services agreements. I believe that these intercompany relationships, as further described in the Cash Management Motion, are necessary and beneficial to the Debtors' business operations and generally provide the Debtors with material savings in respect of general administrative and corporate overhead costs (collectively, the "Intercompany Transactions"). As a result of the

Intercompany Transactions, cash, goods, and services flow between the Debtors and the Non-Debtor Affiliates on a regular basis.

89. I believe the Intercompany Transactions are critical to the Debtors' operations. The Debtors rely upon the Intercompany Transactions described above for basic functions, like treasury and cash management, that are necessary to keep the Debtors' businesses operational and to ensure that the Debtors are able to pay their vendors and supply their products to their customers in a timely manner. In addition, because certain the Intercompany Transactions, including the shared services provided by the SSC and non-Debtor Imerys S.A., are provided by entities with institutional knowledge of the Debtors' operations, I believe the Debtors benefit from cost savings that they would otherwise be unable to achieve with third parties.

90. In addition, to ensure that each individual Debtor will not fund the operations of another entity at the expense of such Debtor's creditors, in the Cash Management Motion, the Debtors request that all postpetition claims, including those arising from any transfer of cash between the Debtors, against a Debtor by another Debtor arising from transactions among them (the "**Intercompany Claims**"), be accorded superpriority administrative expense status.²² It is my understanding that if postpetition Intercompany Claims are accorded superpriority administrative expense status, then each individual Debtor on whose behalf another Debtor has utilized funds or incurred expenses will continue to bear ultimate repayment responsibility, thereby protecting the interests of each individual Debtor's creditors.

²² For the avoidance of doubt, the Debtors reserve the right, in the Cash Management Motion, to transfer cash by and amongst themselves during the pendency of the Chapter 11 Cases.

v. Continued Use of the Debtors' Existing Cash Management System and the Debtor Bank Accounts

91. I believe that the Cash Management System is an ordinary course, customary, and essential business practice, the continued use of which is essential to the Debtors' business operations during the Chapter 11 Cases and the Debtors' goal of maximizing value for the benefit of all parties in interest. I believe that to require the Debtors to adopt a new cash management system at this early and critical stage would be expensive, impose needless administrative burdens, and cause undue disruption. Any disruption in the collection and disbursement of funds as currently implemented would adversely (and perhaps irreparably) affect the Debtors' ability to maximize estate value and repay their creditors. Moreover, I believe that such a disruption would be wholly unnecessary because the Cash Management System provides a valuable and efficient means for the Debtors to address their cash management requirements and, to the best of the Debtors' knowledge, the Debtor Bank Accounts are held at financially stable institutions insured by the FDIC or, in the case of the non-U.S. bank, at a highly-rated, global financial institution that is widely recognized as well-capitalized and financially stable, and that is insured by the CDIC. For the aforementioned reasons, I believe that maintaining the existing Cash Management System without disruption is in the best interests of the Debtors, their estates, and their stakeholders.

92. If the relief requested in the Cash Management Motion is granted, the Debtors will implement appropriate mechanisms to ensure that no payments will be made on any debts incurred by the Debtors prior to the Petition Date, other than those authorized by this Court. To prevent the possible inadvertent payment of prepetition claims against the Debtors, except those otherwise authorized by the Court, the Debtors will work closely with the Banks to ensure appropriate procedures are in place to prevent checks issued by the Debtors prepetition from being

honored absent this Court's approval and to ensure that no third party with automatic debit capabilities is able to debit amounts attributable to the Debtors' prepetition obligations. In light of the scope and complexity of the Cash Management System, I believe it would be onerous for the Debtors to meet the U.S. Trustee Guidelines requiring them to close all existing bank accounts and open new debtor in possession accounts. I also believe that doing so would also risk material operational problems, as the Debtors' business partners and own personnel transition to a wholly-new system

vi. Continued Use of the Debtors' Existing Checks and Business Forms

93. To minimize expenses to their estates, the Debtors seek authorization to continue using all checks substantially in the forms existing immediately prior to the Petition Date, without reference to the Debtors' status as debtors-in-possession; provided, however, that in the event the Debtors generate new checks during the pendency of the Chapter 11 Cases other than from their existing stock of checks, such checks will include a legend referring to the Debtor as "Debtor-in-Possession." I believe that changing the Debtors' existing checks, correspondence, and other business forms would be expensive, unnecessary, and burdensome to the Debtors' estates. Further, such changes would disrupt the Debtors' business operations and would not confer any benefit upon parties that deal with the Debtors.

vii. Waiver of Certain Requirements of the U.S. Trustee

94. I have been generally informed of the applicable requirements of the U.S. Trustee Guidelines. As set forth above, I believe that (a) the Debtors are able to work with their current Banks to ensure that this goal of separation between the prepetition and postpetition periods is observed and (b) enforcing certain of the U.S. Trustee Guidelines would disrupt the Debtors' operations and impose a financial burden on the Debtors' estates.

95. In light of the complexity of the Cash Management System, it would be onerous, unnecessarily inconvenient, and fail to produce any realizable benefits to the Debtors' estates to require the Debtors to close all of the Debtor Bank Accounts and open new debtor-in-possession accounts.

96. Further, it would be unnecessary and inefficient to require the Debtors to abide by the UST Requirement to establish specific debtor-in-possession accounts for tax payments (including payroll taxes) and to deposit in such accounts sufficient funds to pay any tax liability (when incurred) associated with the Debtors' payroll and other tax obligations. I believe that the Debtors can pay their tax obligations most efficiently in accordance with their existing practices, and any diversion from the Debtors' existing practices will complicate payment of the Debtors' tax obligations since certain of these fees are paid by non-Debtor Imerys USA. Further, I believe that the U.S. Trustee will have wide latitude to monitor the flow of funds into and out of such accounts. I also believe that the creation of new debtor-in-possession accounts designated solely for tax obligations would be unnecessarily burdensome.

viii. Continued Deposit Practices

97. As part of the Cash Management System, the Debtors routinely deposit funds into the Debtor Bank Accounts (the "**Deposit Practices**"). The Debtors request (i) authorization to continue to deposit funds in accordance with existing practices under the Cash Management System, subject to any reasonable changes the Debtors may implement to the Cash Management System, and (ii) a waiver of the deposit requirements of section 345(b) of the Bankruptcy Code, on an interim basis, to the extent that such requirements are inconsistent with the Deposit Practices. For the avoidance of doubt, to the extent the Debtor Bank Accounts may be classified as an investment account, or to the extent any of the Debtors' routine deposits into the Debtor Bank Accounts may be regarded as investment activity, the Debtors seek authorization

to continue to deposit funds into such Debtor Bank Accounts in accordance with existing practices, notwithstanding the requirements of section 345(b) of the Bankruptcy Code.

B. Workforce Obligations Motion²³

98. By the Workforce Obligations Motion, the Debtors seek entry of interim and final orders authorizing them, in their discretion, to pay, continue, or otherwise honor various prepetition workforce-related obligations (collectively, the **“Prepetition Workforce Obligations”**) to or for the benefit of their employees (the **“Employees”**), temporary workers (the **“Temporary Workers”**), and independent contractors (the **“Independent Contractors”** and, together with the Employees and Temporary Workers, the **“Workforce”**) for compensation, expense reimbursements, and benefits under all plans, programs, policies, and agreements maintained by or for the benefit of, or contributed to or entered into by, the Debtors prior to the Petition Date (collectively and as further described in the Workforce Obligations Motion, the **“Workforce Programs”**) in an aggregate amount not to exceed \$1,914,000 on an interim basis and \$2,587,000 on a final basis. In addition, the Debtors request that the Court confirm their right to continue each of the Workforce Programs in the ordinary course of business during the pendency of the Chapter 11 Cases in the manner and to the extent that such Workforce Programs were in effect immediately prior to the filing of such cases and to make payments in connection with expenses incurred in the postpetition administration of any Workforce Program.

²³ **“Workforce Obligations Motion”** means the Debtors' Motion for Entry of Orders Under 11 U.S.C. §§ 105(a), 362(d), 363(b), 363(c), 506(a), 507(a), 541, 553, 1107(a), and 1108 and Fed. R. Bankr. 6003 (I) Authorizing the Debtors to Pay Certain Prepetition Workforce Obligations, Including Compensation, Expense Reimbursements, Benefits and Related Obligations, (II) Confirming Right to Continue Workforce Programs on Postpetition Basis, (III) Authorizing Payment of Prepetition Claims Owing to Administrators of, Third Party Providers Under, Workforce Programs, and (V) Authorizing Banks to Honor Prepetition Checks and Fund Transfers for Authorized Payments.

99. As described more fully in the Workforce Obligations Motion, the Prepetition Workforce Obligations arise in connection with, without limitation, plans, programs, policies, and agreements providing for: (a) wages, salaries, holiday pay, paid time off, incentive plans, and other accrued compensation; (b) reimbursement of business, travel, and other reimbursable expenses; and (c) benefits in the form of (i) medical and dental coverage, basic term life insurance, accidental death and dismemberment insurance, short-term disability coverage, long-term disability coverage, workers' compensation, and miscellaneous other benefits provided to the Workforce in the ordinary course of business, and (ii) prepetition contributions to, and benefits under 401(k) plans and pension plans.

100. As of the Petition Date, the Debtors' Workforce consists of approximately 281 Employees, of whom 184 are employed by Debtor ITA (such Employees, the "**ITA Employees**"), 30 are employed by Debtor ITV (together with ITA, the "**US Debtors**"; and such Employees, the "**ITV Employees**" and together with the ITA Employees, the "**US Employees**"), and 67 are employed by Debtor ITC (such Employees, the "**Canadian Employees**"). The Debtors' Employees are located at the Debtors' offices in San Jose, California, and the Debtors' talc mines, plants, and distribution facilities located in: Montana (Yellowstone, Sappington, and Three Forks); Vermont (Argonaut and Ludlow); Texas (Houston); and Ontario, Canada (Timmins, Penhorwood, and Foleyet). Approximately 97 of the Employees are salaried employees (the "**Salaried Employees**") and approximately 184 of the Employees are hourly employees (the "**Hourly Employees**"). In addition to the Employees, the Debtors' Workforce also includes approximately 23 part-time, Temporary Workers, and approximately 30 Independent Contractors.

101. Included in the Hourly Employee headcount are approximately 108 Employees (the “Union Employees”) who are covered by various collective bargaining agreements as further described in the Workforce Obligations Motion. The Union Employees are all Hourly Employees, whereas the Employees not covered by collective bargaining agreements (the “Non-Union Employees”) include both Salaried Employees and Hourly Employees.

102. I believe that the Debtors’ ability to preserve their businesses and successfully reorganize is dependent on the expertise and continued enthusiasm and service of their Workforce. Due to the disruption and uncertainty that typically accompanies a chapter 11 filing, I believe that the morale and, thus, the performance of the Workforce may be adversely affected. I also believe that if the Debtors fail to pay the Prepetition Workforce Obligations in the ordinary course, their Workforce will suffer extreme personal hardship and, in some cases, may be unable to pay their basic living expenses. Such a result would have a highly negative impact on Workforce morale and likely would result in unmanageable performance issues or turnover, thereby resulting in immediate and irreparable harm to the Debtors and their estates. I believe that continuation of the Workforce Programs is vital to preserving and rebuilding Workforce morale during the pendency of the Chapter 11 Cases and to reducing the level of attrition that might otherwise occur.

i. Prepetition Workforce Compensation

103. *Employee Payroll and Payroll Deductions.* The Debtors’ Employees are typically paid bi-weekly on Thursdays or Fridays (or on the preceding business day if these dates fall on a holiday). Employees are paid one week in arrears, so that they receive their bi-weekly earnings one week after the last day of a pay period.

104. In the ordinary course of their businesses, the Debtors make deductions from Employees’ paychecks for payments to third parties on behalf of Employees for various

federal, state, local, and foreign, income, FICA, employment insurance and other taxes, as well as for court ordered garnishments, union dues, savings programs, repayments for loans taken against the savings programs, benefit plans, insurance and other similar programs (collectively, the "**Deductions**"). The Debtors' average bi-weekly Deductions for Employees aggregate approximately \$286,000.

105. The Debtors estimate that, as of the Petition Date, accrued but unpaid wages and Deductions total approximately \$714,000 (comprised of \$522,000 owed to the Employees on account of unpaid wages and \$192,000 attributable to the Deductions).

106. *Temporary Workers.* In addition to the Employees, the Debtors currently retain approximately 23 Temporary Workers to perform a variety of tasks related to the Debtors' mining operations in the ordinary course of business. The Temporary Workers generally earn hourly rates and the employment agencies provide the Debtors with invoices for the Temporary Workers' services (and generally are paid) on a bi-weekly basis. As of the Petition Date, the Debtors have approximately \$135,000 of accrued but unpaid liability with respect to the Temporary Workers.

107. *Independent Contractors.* In addition to the Employees and Temporary Workers, the Debtors currently retain approximately 30 Independent Contractors to perform a variety of tasks related to the Debtors' mining operations in the ordinary course of business. The Independent Contractors generally earn hourly rates and the Independent Contractors or their contracting agency, if applicable, provide the Debtors with invoices for the Independent Contractors' services (and generally are paid) on either a monthly or bi-weekly basis. As of the Petition Date, the Debtors have approximately \$62,000 of accrued but unpaid liability with respect to the Independent Contractors.

108. *PTO, vacation days, and sick leave.* The Debtors offer their Employees paid time off (“**PTO**”), for among other things vacation, holidays and sick leave. The specifics of the Debtors’ PTO policies vary based upon whether the Employee is a Salaried Employee, Non-Union Hourly Employee, or a Union Employee. I believe these programs are typical and customary, and continuing to offer them is necessary for the Debtors to retain Employees during the reorganization process.

109. *Employee Incentive Programs.* In the ordinary course of business, in order to encourage and reward outstanding performance, the Debtors offer eligible Employees the opportunity to earn bonuses under various bonus and incentive programs (collectively, the “**Employee Incentive Programs**”), under which the Employees are eligible to earn awards based on individual and business targets. The Debtors paid approximately \$4,757,000 on account of the Employee Incentive Programs during the twelve month period prior to the Petition Date, of which approximately \$3,200,000 was earned during the 2017 calendar year and approximately \$1,557,000 was earned during the 2018 calendar year. As of the Petition Date, the Debtors estimate that accrued and unpaid amounts under the Employee Incentive Programs total approximately \$94,000. Given the large percentage of the Employees covered by the Employee Incentive Programs, I believe that any interruption in payments pursuant to the Employee Incentive Programs could upset Employee morale or cause attrition, which could lead to severe disruptions to the Debtors’ operations.

ii. Prepetition Employee Reimbursements

110. *Business Expenses.* The Debtors, in the ordinary course of their business, reimburse Employees for a variety of ordinary, necessary, and reasonable business-related expenses that Employees incur within the scope of their job duties. In certain instances, Employees may be issued corporate credit cards through American Express to pay for

reimbursable expenses. The average monthly amount of business expenses reimbursed, directly or indirectly, by the Debtors is approximately \$242,000, inclusive of amounts that are owed on the Credit Cards. The Debtors estimate that there are accrued but unpaid amounts owing on account of Employees' business expenses totaling approximately \$438,000 as of the Petition Date.

111. *Vehicle Programs.* The Debtors also maintain Vehicle Programs (as defined in the Workforce Obligations Motion) through which eligible Employees who use vehicles in the ordinary course of their work, and maintain a vehicle meeting certain standards and conditions, are provided a monthly vehicle allowance. As of the Petition Date, approximately 39 Employees participate in the Vehicle Programs. The Debtors estimate that there are accrued but unpaid amounts under the Vehicle Programs of approximately \$4,000 as of the Petition Date.

112. *Relocation Expenses.* In the ordinary course of business, the Debtors cover relocation expenses if an Employee relocates at the request of the Debtors (the "Relocation Expenses"). As of the Petition Date, the Debtors have no accrued but unpaid liability with respect to Relocation Expenses, but the Debtors seek to continue to pay Relocation Expenses as they arise in the ordinary course of business.

113. *Miscellaneous Expenses.* The Debtors also reimburse their Employees for certain other miscellaneous programs and benefits (the "Miscellaneous Reimbursement Programs"). For example, the Debtors, at the discretion of an Employee's applicable business unit, may reimburse (or pay directly for) certain professional expenses, such as required continuing education expenses, professional license fees or dues, and subscriptions. The total amount of reimbursements paid by the Debtors under these Miscellaneous Reimbursement Programs average approximately \$6,000 per month. As of the Petition Date, the Debtors estimate

that accrued and unpaid amounts under the Miscellaneous Reimbursement Programs total approximately \$9,000.

iii. Employee Benefits

114. Prior to the Petition Date, the Debtors offered Employees and their eligible spouses and dependents various standard employee benefits, including, without limitation, (a) medical insurance (b) dental insurance, (c) basic term life and accidental death and dismemberment insurance, (d) long-term and short-term disability insurance, (e) savings and related types of benefits, (f) workers' compensation, (g) severance benefits, and (h) miscellaneous other benefits provided to the Employees in the ordinary course of business (collectively, the "**Employee Benefits**").

115. As further provided in the Workforce Obligations Motion, certain of the Employee Benefits remained unpaid or unprovided as of the Petition Date because certain obligations of the Debtors under the applicable plan, program, or policy accrued either in whole or in part prior to the commencement of the Chapter 11 Cases, but will not be required to be paid or provided in the ordinary course of the Debtors' business until a later date. The Debtors request authority to pay or provide as they become due all prepetition Employee Benefits that have already accrued. The Debtors estimate that the aggregate accrued amount of such prepetition Employee Benefits described in the Workforce Obligations Motion is approximately \$1,064,000.

iv. Payments to Independent Directors

116. Each of the Debtors' board of directors includes a non-Employee independent director, Kevin Collins (the "**Independent Director**"). The Independent Director is paid quarterly fees within thirty (30) days after the end of each fiscal quarter, in the amount of \$16,666.67 from ITV, \$16,666.67 from ITA, and \$16,666.67 from ITC. Beginning with the quarter starting on April 2, 2019, the Independent Director will receive quarterly fees of \$6,666.67

from ITV, \$6,666.67 from ITA, and \$6,666.67 from ITC. I believe that the Independent Director's service is necessary for the continued management of the Debtors and, accordingly, it is essential that the Debtors be authorized to pay all prepetition amounts accrued as of the Petition Date to the Independent Director. As of the Petition Date, there are no accrued but unpaid monthly fees owed to the Independent Director, but the Debtors seek the authority to reimburse any unpaid expenses incurred by the Independent Director prior to the Petition Date not to exceed \$5,000 without further order of the Court.

v. Payments to Administrators

117. With respect to the Employee compensation and benefits described in the Workforce Obligations Motion, the Debtors, directly or indirectly, contract with several vendors to administer and deliver payments or other benefits to their Employees (the "Administrators"). For example, the Debtors, in the ordinary course of business, pay average monthly fees of approximately \$9,000 in arrears directly to ADP (as defined in the Workforce Obligations Motion) in connection with payroll administration. As of the Petition Date, the Debtors estimate that they owe approximately \$13,000 to ADP. The Debtors pay additional Administrators' fees and expenses indirectly through non-debtor affiliates or their employee benefits consultants.

118. I believe that the Administrators may fail to adequately and timely perform or may terminate their services to the Debtors unless the Debtors pay the Administrators' prepetition claims for administrative services rendered and expenses incurred. If the Debtors were required to replace the Administrators postpetition, it likely would cause significant disruption to the payment of benefits and other obligations to the Workforce. Accordingly, I believe that the payment of claims owed to the Administrators is in the best interest of the Debtors' estates.

vi. Payments to Employee Benefits Consultants

119. With respect to the Employee Benefits described in the Workforce Obligations Motion, the Debtors contract with several consultants (the “**Employee Benefits Consultants**”) to provide strategic advice and to act as liaisons and administrative agents between the Debtors and the third party insurers, administrators and providers of the Employee Benefits. The Debtors estimate that the aggregate accrued amount of such prepetition payments owed in connection with the Employee Benefits Consultants is approximately \$49,000. Unless the prepetition claims owed to the Employee Benefits Consultants are paid, I believe that the Employee Benefits Consultants may fail to perform adequately and timely or may terminate their services to the Debtors, which would likely cause significant disruption to the payment of benefits and other obligations to or for the benefit of the Workforce.

C. Tax Motion²⁴

120. By the Tax Motion, the Debtors seek entry of interim and final orders authorizing the Debtors, in their sole discretion, to pay and set off any prepetition tax and fee obligations including, without limitation, international taxes, state and federal income taxes, franchise taxes, property taxes, sales and use taxes, licenses and fees, and any other types of taxes, fees, assessments or similar charges and any penalty, interest or similar charges in respect of such taxes (collectively, the “**Taxes and Fees**”) owing to (i) certain international, federal, state and local governmental and quasi-governmental entities (the “**Taxing Authorities**”),²⁵ (ii) Imerys USA, as reimbursement for amounts paid by Imerys USA on behalf of the Debtors on account of

²⁴ “**Tax Motion**” means the Debtors’ Motion for Orders Under 11 U.S.C. §§ 105(a), 363(b), 506(a), 507(a)(8), and 541 and Fed. R. Bankr. P. 6003 Authoring Payment of Prepetition Taxes and Fees.

²⁵ A list of all international, federal, state, and local governmental and quasi-governmental entities to which the Debtors or the Debtors’ officers and directors may be liable is attached as Exhibit C to the Tax Motion.

the Taxes and Fees, and (iii) as between Debtors ITA and ITV for amounts reimbursed to Imerys USA by ITA on behalf of ITV on account of the Taxes and Fees. The Debtors propose to limit the aggregate amount of payments to be made on account of prepetition Taxes and Fees under the Tax Motion to (i) \$715,000 on interim basis and (ii) \$1,505,000 on final basis.

121. The manner in which the Debtors pay the Taxes and Fees varies. With respect to certain of the Taxes and Fees, the Debtors pay the applicable Taxing Authority directly. With respect to other Taxes and Fees, Imerys USA makes payments to the applicable Taxing Authority on account of the collective Taxes and Fees of Debtors ITA and ITV and certain of their non-debtor affiliates. ITA historically reimbursed Imerys USA for payments made on account of ITA and ITV by setting off these amounts against intercompany loan amounts owed by Imerys USA to ITA pursuant to an intercompany loan agreement. Following the Petition Date, I understand that ITA intends to pay amounts owed to Imerys USA on account of Taxes and Fees directly via check rather than by setting off such amounts against intercompany loans.²⁶

122. Although, as of the Petition Date, the Debtors were substantially current in the payment of assessed and undisputed Taxes and Fees, certain Taxes and Fees attributable to the prepetition period may not yet have become due. Certain prepetition Taxes and Fees will not be due until the applicable monthly, quarterly, or annual payment dates – in some cases immediately and in others not until next year. I have been informed that, as of the Petition Date, the Debtors estimate that they have accrued liabilities, which are not yet due, in the approximate amount of \$1,505,000 on account of Taxes and Fees.

²⁶ Additional information regarding the Debtors' prepetition system of intercompany loan set offs and postpetition payment procedures with respect to the Taxes and Fees is included in the Cash Management Motion and the Tax Motion.

123. If the Taxes and Fees are not timely paid, I believe that the Debtors will be required to expend time and incur attorneys' fees and other costs to resolve a multitude of issues related to such obligations, each turning on the particular terms of each Taxing Authority's applicable laws. Moreover, I understand that nonpayment or delayed payment of the Taxes and Fees may also subject the Debtors to efforts by certain governmental entities, whether or not permissible under the Bankruptcy Code, to revoke the Debtors' licenses and other privileges either on a postpetition or post-confirmation basis. I also understand that certain of the Taxes and Fees may be considered to be obligations as to which the Debtors' officers and directors may be held directly or personally liable in the event of nonpayment. In such events, I believe that collection efforts by the Taxing Authorities would create obvious distractions for the Debtors and their officers and directors in their efforts to bring the Chapter 11 Cases to an expeditious conclusion. Accordingly, I believe that the continued payment of the Taxes and Fees on their normal due dates will ultimately preserve the resources of the Debtors' estates, thereby promoting their prospects for a successful chapter 11 process.

D. Insurance and Bonding Motion²⁷

124. By the Insurance and Bonding Motion, the Debtors request entry of of interim and final orders authorizing them to pay and set off prepetition amounts owed under their ordinary course insurance policies and bonding program, and to maintain their insurance policies and bonding program in the ordinary course postpetition. The Debtors propose to limit the aggregate amount of prepetition payments on account of their Insurance Policies (as defined

²⁷ **"Insurance and Bonding Motion"** means *Debtors' Motion for Orders Under 11 U.S.C. §§105(a), 362(d), 363(b), and 503(b) Authorizing Debtors' to (I) Pay Their Prepetition Insurance Obligations, (II) Pay Their Prepetition Bonding Obligations, (III) Maintain Their Postpetition Insurance Coverage, and (IV) Maintain Their Bonding Program.*

below) to \$600,000. The Debtors propose to limit the aggregate amount of prepetition payments on account of their Bonding Obligations (as defined below) to \$100,000.

i. The Debtors' Insurance Obligations

125. In the ordinary course of business, the Debtors maintain certain insurance policies that are administered by multiple third-party insurance carriers (the "**Insurance Carriers**"), including commercial and general liability, umbrella liability, automobile, ERISA bond, fiduciary liability, property, employment practices liability, crime, directors' and officers' liability, and cargo (collectively, the "**Insurance Policies**").²⁸ I believe that the Insurance Policies are essential to the preservation of the Debtors' businesses, property, and assets, and, in some cases, I understand that such coverage is required by various federal and state laws and regulations, as well as the terms of the Debtors' various commercial contracts. It is also my understanding that the Insurance Policies provide coverage that is typical in scope and amount for businesses within the Debtors' industry.

126. The manner in which the Debtors pay premiums, Brokers' Fees (as defined in the Insurance and Bonding Motion), and other costs associated with the Insurance Policies (such amounts, the "**Insurance Obligations**") depends on the Insurance Policy. With respect to some Insurance Policies, the Debtors pay the applicable Insurance Carrier or Broker (as defined in the Insurance and Bonding Motion), who in turn pays the applicable Insurance Carrier, on account of the Debtors' Insurance Obligations. With respect to other Insurance Policies, ITA pays the applicable Insurance Carrier or Broker, who in turn pays the applicable Insurance Carrier, on account of the collective Insurance Obligations of itself, ITV, and, with respect to certain

²⁸ A detailed list of the Debtors' Insurance Policies is attached to the Insurance and Bonding Motion as **Exhibit C**.

Insurance Policies, ITC. With respect to yet other Insurance Policies, Imerys USA pays the applicable Insurance Carrier or Broker, who in turn pays the applicable Insurance Carrier, on account of the collective Insurance Obligations of Debtors ITA and ITV and certain of their non-debtor affiliates. ITA historically reimbursed Imerys USA (either directly or indirectly through an affiliate intermediary, as described in the Insurance and Bonding Motion) for payments made on account of ITA and ITV by setting off those amounts against intercompany loan amounts owed by Imerys USA to ITA. Following the Petition Date, I understand that ITA intends to pay amounts owed to Imerys USA on account of Insurance Obligations directly via check rather than by setting off such amounts against intercompany loans.²⁹

127. In addition to the Insurance Policies listed in the Insurance and Bonding Motion, and as further described herein, the Debtors have access to, and rights under, various historical liability policies and indemnification agreements (collectively, the “Historical Policies”) with insurers, indemnitors, and other third parties (collectively, the “Historical Policy Counterparties”) that cover, among other things, certain talc-related personal injury liabilities and related litigation costs (including defense costs). I understand that the payment of defense costs by certain of the Historical Policy Counterparties (specifically, The American Insurance Company, Truck Insurance Exchange, National Union Fire Insurance Company of Pittsburgh, PA, Zurich American Insurance Company, Zurich Insurance Company, and XL Insurance America, Inc.) does not erode the underlying coverage available to the Debtors under the Historical Policies. I do not believe Court approval is required to maintain such Historical Policies, as no current or future payments are expected to be made by the Debtors with respect

²⁹ Additional information regarding the Debtors’ prepetition system of intercompany loan set offs and postpetition payment procedures with respect to the Insurance Obligations is included in the Cash Management Motion and the Insurance and Bonding Motion.

thereto. Nevertheless, out of an abundance of caution and in the interest of disclosure, in the Insurance and Bonding Motion the Debtors submit that they will continue to maintain such Historical Policies and exercise their rights thereunder in the ordinary course of business.³⁰

128. The Debtors' Insurance Policies renew at various times throughout each year. The Debtors pay all of the annual premiums due for each of the policies at the beginning of each particular policy period. The total amount paid in annual premiums and payments associated with all of the Insurance Policies is approximately \$515,000, approximately \$320,000 of which is paid by the Debtors directly to the Insurance Carriers or Brokers and approximately \$195,000 of which is paid by Imerys USA to the Insurance Carriers or Brokers on behalf of the Debtors. I understand that as of the Petition Date, approximately \$600,000 may be currently due on account of Prepetition Insurance Obligations, of which approximately \$25,000 may be due in connection with Broker's Fees.

129. I believe that maintenance of insurance coverage under the various Insurance Policies is essential to the continued operation and preservation of value of the Debtors' assets and, indeed, it is my understanding that it is required under the U.S. Trustee Guidelines, the federal laws and regulations applicable to the Debtors' business, the laws of the various states in which the Debtors operate and the Debtors' various contractual commitments. Moreover, I believe the Debtors' maintenance of their relationships with the Insurance Carriers is critical to ensuring the continued availability of insurance coverage and reasonable pricing of such coverage for future policy periods. Thus, I believe the Debtors should be authorized, but not directed, to continue to pay and set off premiums, taxes, claims, deductibles, charges, fees, indemnity

³⁰ In the Insurance and Bonding Motion, the Debtors reserve the right to seek additional relief from the Court with respect to these historical policies and any rights or obligations thereunder.

obligations and other obligations, including Broker's fees, owed under or with respect to the Insurance Policies as such obligations come due in the ordinary course of the Debtors' business.

ii. The Debtors' Bonding Program

130. In the ordinary course of business, the Debtors are required by certain applicable statutes, rules, and regulations to purchase new, supplemental, or replacement surety bonds (such bonds, together with the surety bonds outstanding as of the Petition Date, the "**Bonding Program**"). Under the Bonding Program, Imerys USA issues surety bonds to certain Sureties (as defined in the Insurance and Bonding Motion) to secure the Debtors' payment or performance of certain obligations, often to governmental units or other public agencies. The Bonding Program generally covers reclamation, performance, license/permit, customs and border protection and appeal obligations (collectively, the "**Covered Obligations**").³¹ I believe that the Bonding Program provides coverage that is typical in scope and amount for businesses within the Debtors' industry.

131. The manner in which the Debtors pay amounts owed to the Sureties (such amounts the "**Bonding Obligations**") varies. ITC pays the applicable Surety directly on account of all of its Bonding Obligations. ITA pays the applicable Surety directly on account of the appeal bond. With respect to the other bonds, Imerys USA pays the Bonding Obligations on behalf of Debtors ITA and ITV and certain of their non-debtor affiliates. ITA historically reimbursed Imerys USA (either directly or indirectly through an affiliate intermediary entity, as described in the Insurance and Bonding Motion) for payments made on account of ITA and ITV by setting off those amounts against intercompany loan amounts owed by Imerys USA to ITA. Following the

³¹ A detailed list of the surety bonds that are currently maintained for the benefit of the Debtors is attached to the Insurance and Bonding Motion as **Exhibit D**.

Petition Date, I understand that ITA intends to pay amounts owed to Imerys USA on account of Bonding Obligations directly via check rather than by setting off such amounts against intercompany loans.³²

132. The premiums for the surety bonds are generally determined on an annual basis and are paid when the bonds are issued and annually upon renewal. The total amount paid in annual premiums and payments associated with all of the surety bonds is approximately \$500,000. I understand that as of the Petition Date, the Debtors estimate that all premium payments due and owing under the Bonding Program have been paid in full and the Debtors are not aware of any pending requests for payment by the Sureties.

133. I believe that the success of the Debtors' efforts to operate effectively and efficiently will depend on the maintenance of the Bonding Program on an uninterrupted basis. To continue their business operations, the Debtors must be able to provide financial assurances to federal and state governments, regulatory agencies, and other third parties. This, in turn, requires the Debtors to maintain access to the existing Bonding Program maintained by Imerys USA, including by paying the Bonding Obligations as they come due, as well as renewing or potentially acquiring additional bonding capacity as needed in the ordinary course of their businesses, requesting releases from obsolete bonding obligations, and executing other agreements in connection with the Bonding Program. Accordingly, I believe it is important that the Debtors be authorized to participate in the Bonding Program in the same manner as they did prepetition and to pay or set off any prepetition or postpetition Bonding Obligations, and revise, extend,

³² Additional information regarding the Debtors' prepetition system of intercompany loan set offs and postpetition payment procedures with respect to the Bonding Obligations is included in the Cash Management Motion and the Insurance and Bonding Motion.

supplement, or change the Bonding Program as needed, including through the issuance of new surety bonds.

E. Utilities Motion³³

134. In the Utilities Motion, the Debtors request entry of interim and final orders, approving procedures that would provide adequate assurance of payment to their utility service providers (the “Utility Companies”) under section 366 of the Bankruptcy Code, while allowing the Debtors to avoid the threat of imminent termination of electricity, water, natural gas, diesel and gasoline, compressed natural gas, waste management, propane, telecommunications, and similar utility products and services (collectively, the “Utility Services”) from the Utility Companies.

135. As of the Petition Date, approximately thirty-five Utility Companies provide Utility Services to the Debtors at various locations.³⁴ The Utility Companies service the Debtors’ operations and facilities related to the Debtors’ mining, processing, and global distribution of talc. The success and smooth operation of the Debtors’ businesses depend on the reliable delivery of electricity, fuel, and the other Utility Services. The Debtors require the Utility Services to operate their businesses, manage their mines and plants, and maintain and service the equipment the Debtors use to service their customers. I am not currently aware of any past due amounts owed to any of the Utility Companies. Based on the timing of the filings in relation to the Utility Companies’ billing cycles, however, there may be utility costs that have been invoiced

³³ “**Utilities Motion**” Means the *Debtors’ Motion for Orders Under 11 U.S.C. §§ 105(a) and 366 (I) Prohibiting Utility Companies from Altering or Discontinuing Service on Account of Prepetition Invoices, (II) Approving Deposit as Adequate Assurance of Payments, and (III) Establishing Procedures for Resolving Requests by Utility Companies for Additional Assurance of Payment.*

³⁴ A non-exclusive list of the Utility Companies and the Utility Services they provide is attached to the Utilities Motion as Exhibit A.

to the Debtors for which payment is not yet due and utility costs for services provided since the end of the last billing cycle that have not yet been invoiced to the Debtors.

136. I understand that the Debtors intend to pay all postpetition obligations owed to the Utility Companies in a timely manner. Nevertheless, to provide additional assurance of payment for future services to the Utility Companies, the Debtors will deposit \$500,000, which is an amount equal to approximately fifty percent of the estimated monthly cost of the Utility Services, into a newly created, segregated, interest-bearing account, within twenty days of the Petition Date (the "**Adequate Assurance Deposit**"). The Adequate Assurance Deposit will be maintained during the Chapter 11 Cases, subject to adjustment by the Debtors to account for the termination or beginning of new Utility Services by the Debtors or entry into other arrangements with respect to adequate assurance of payment reached with individual Utility Companies.

F. Customer Programs Motion³⁵

137. By the Customer Programs Motion, the Debtors seek entry of interim and final orders authorizing the Debtors to satisfy, in their discretion, various obligations owed to customers and distributors, including Rebates, Commissions, and Warranties (each as defined below, and together the "**Customer Obligations**") that the Debtors deem beneficial and cost-effective to their businesses, and to otherwise continue their customer practices. The Debtors propose to limit the aggregate amount of payments to be made on account of prepetition Customer Obligations under the Customer Programs Motion to (i) \$600,000 on interim basis and (ii) \$1,900,000 on final basis.

³⁵ "**Customer Programs Motion**" means *Debtors' Motion for Orders Under 11 U.S.C. §§ 105(a), 363(b), 363(c), 506(a) and 533 and Fed. R. Bankr. P. 6003 and 6004 Authorizing (I) the Debtors to Honor Prepetition Obligations to Customers and to Otherwise Continue Customer Programs and (II) Financial Institutions to Honor and Process Related Checks and Transfers.*

138. As discussed herein, the Debtors mine, process, and distribute talc for use in personal care, industrial, and other specialty products. In some instances, the Debtors supply talc directly to their customers, which include third-party manufacturers of such products. In other instances, the Debtors supply talc to third-party distributors, who serve as a conduit between the Debtors and the product manufacturers. I believe that the Debtors' goodwill and ongoing business relationships may erode if their customers or distributors perceive that the Debtors are unable or unwilling to fulfill the prepetition commitments they have made through the Customer Obligations. I also believe that if the Debtors are unable to preserve the loyalty of their customers and distributors, the Debtors' businesses would likely suffer material harm. Accordingly, I believe that granting the relief requested in the Customer Programs Motion is in the best interests of the Debtors, their estates, and their creditors.

139. The following are general descriptions and examples of the programs through which the Debtors incur the Customer Obligations.

i. Rebates

140. Under the Debtors' rebate program, if a customer purchases a certain amount of talc within a designated one-year period, the Debtors issue a credit (a "**Rebate**") to such customer. The value of the Rebate increases as the total volume of talc purchased increases.³⁶ Thus, both the rate at which the Rebate is earned and the Rebate's aggregate value increase as the volume of talc purchased increases. The Debtors settle their two largest customer

³⁶ As an example, the first 1-100 pounds of talc a customer purchases from the Debtors may result in a Rebate amounting to \$0.01 per pound, while the next 101-200 pounds of talc a customer purchases from the Debtors may result in a Rebate amounting to \$0.02 per pound. These numbers are hypothetical and do not reflect actual Rebate amounts.

Rebates via check on an annual basis. The Debtors settle their other customer Rebates via check on a periodic basis.

141. The manner in which the Debtors pay the Rebates varies. For Rebates owed by ITC, Rebate checks are issued directly by ITC to the customer. Historically, for Rebates owed by ITA or ITV, the Rebate check was issued to the customer by Imerys USA. ITA then reimbursed Imerys USA for Rebate payments made on account of ITA and ITV by setting off such amounts against intercompany loan amounts owed by Imerys USA to ITA. Following the Petition Date, I understand that ITA intends to issue checks on account of Rebates owed by ITA and ITV directly to the customer.³⁷

142. Given that the Rebates are based on ongoing sales volumes, I understand that it is difficult to calculate the exact amount of Rebates accrued prior to the Petition Date. I understand that the Debtors estimate that the value of the Rebates accrued prior to the Petition Date is approximately \$1,000,000.

ii. Commissions

143. The Debtors issue commissions to (i) certain third party distributors (the "**Third Party Distributors**") who supply the Debtors' talc to customers that are located in geographic areas not easily accessible by the Debtors (the "**Third Party Distributor Commissions**") and (ii) certain of their non-debtor affiliates (the "**Affiliate Distributors**"),³⁸ who sell talc produced by the Debtors to third parties (the "**Affiliate Distributor Commissions**" and, together with the Third Party Distributor Commissions, the "**Commissions**").

³⁷ Additional information regarding the Debtors' prepetition system of intercompany loan set offs and postpetition payment procedures with respect to the Rebates is included in the Cash Management Motion and the Customer Programs Motion.

³⁸ Such non-debtor affiliate distributors include Kentucky-Tennessee Co. and Celite Korea Ltd., among others.

144. The amount of the Third Party Distributor Commissions earned by Third Party Distributors is either based on the volume of the talc distributed or a pre-negotiated flat fee amount. Once earned, a Third Party Distributor Commission is paid either through a credit issued by the applicable Debtor against the Third Party Distributor's outstanding accounts receivable, or through a check or ACH issued to the Third Party Distributor. The Debtors generally pay the Third Party Distributor Commissions on a quarterly or monthly basis depending on the terms.

145. The manner in which the Debtors pay the Commissions varies. With respect to Commissions owed by ITC, where a Third Party Distributor is paid via check or ACH, ITC issues such check or ACH directly to the Third Party Distributor. With respect to Commissions owed by ITA or ITV, historically, where the Third Party Distributor was paid via check or ACH, such checks or ACHs were issued by Imerys USA and then ITA reimbursed Imerys USA in the manner described above. Following the Petition Date, I understand that ITA intends to issue checks on account of Third Party Distributor Commissions owed by ITA and ITV directly to the Third Party Distributor.³⁹

146. I understand that the Debtors estimate that approximately \$200,000 is owed to Third Party Distributors and Imerys USA as of the Petition Date on account of prepetition Third Party Distributor Commissions.

147. As with the Third Party Distributor Commissions, the amount of Affiliate Distributor Commissions earned by Affiliate Distributors is either based on the volume of the talc distributed or a pre-negotiated flat fee amount. Once earned, the Debtors have historically settled Affiliate Distributor Commissions by setting off those amounts against intercompany loan

³⁹ Additional information regarding the Debtors' prepetition system of intercompany loan set offs and postpetition payment procedures with respect to the Commissions is included in the Cash Management Motion and the Customer Programs Motion.

amounts owed by the Affiliate Distributor to the applicable Debtor. Such intercompany transactions were then recorded in such Debtor's and the Affiliate Distributor's books and records. Following the Petition Date, I understand that, the Debtors intend to settle Affiliate Distributor Commissions by issuing checks directly to the Affiliate Distributor rather than by setting off such amounts against intercompany loans.⁴⁰

148. I understand that the Debtors estimate that approximately \$200,000 is owed to Affiliate Distributors as of the Petition Date on account of prepetition Affiliate Distributor Commissions.

iii. Warranties

149. Under certain customer contracts, the Debtors guarantee that the tale products they supply will comply with certain customer specifications (such arrangement, the "Spec Warranty"). Pursuant to the Spec Warranty, if the Debtors fail to comply with such specifications, customers must file a complaint with the Debtors, and, upon satisfactory review of the complaint, the Debtors will generally reimburse the customer the amount paid for the non-conforming product. The Spec Warranty is paid either through a credit issued by the applicable Debtor against the customer's outstanding accounts receivable, or through a check issued to the customer.

150. The manner in which the Debtors pay Spec Warranty amounts varies. With respect to amounts owed by ITC on account of Spec Warranties, where a customer is paid via check, ITC issues such check directly to the customer. With respect to amounts owed by ITA or ITV on account of Spec Warranties, historically, where the customer was paid via check, such

⁴⁰ Additional information regarding the Debtors' prepetition system of intercompany loan set offs and postpetition payment procedures with respect to the Warranties is included in the Cash Management Motion and the Customer Programs Motion.

check was issued by Imerys USA and then ITA reimbursed Imerys USA in the manner described above. Following the Petition Date, I understand that ITA intends to issue checks for Spec Warranty amounts owed by ITA and ITV directly to the customer.⁴¹

151. Additionally, the Debtors guarantee their supply of certain talc products (such arrangement the “Supply Warranty” and together with the Spec Warranty, the “Warranties”). Pursuant to the Supply Warranty, in the event that one of the Debtors’ plants does not have a customer’s specified product, one of the other Debtors will provide such customer with the specified product from its own inventory. The customer is not charged any additional cost for this substitution.

III. CONTINUING VENDOR MOTIONS

A. Critical Vendor Motion⁴²

152. By the Critical Vendor Motion, the Debtors seek entry of interim and final orders authorizing the Debtors to pay the prepetition fixed, liquidated, and undisputed claims (the “Critical Vendor Claims”) owing to certain suppliers of goods and services, with whom the Debtors continue to do business and whose goods and services are critical and essential to the Debtors’ operations (the “Critical Vendors”) in an amount not to exceed \$700,000 on an interim basis and \$1,100,000 on a final basis.

153. As described herein, the Debtors operate global businesses that are primarily engaged in the mining and processing of talc in North America, and the distribution of

⁴¹ Additional information regarding the Debtors’ prepetition system of intercompany loan set offs and postpetition payment procedures with respect to the Customer Programs is included in the Cash Management Motion and the Customer Programs Motion.

⁴² “Critical Vendor Motion” means the Debtors’ Motion for Orders Under 11 U.S.C. §§ 105(a), 363(b), 503(b)(9), 1107(a), and 1108 and Fed. R. Bankr. P. 6003 (I) Authorizing Payment of Prepetition Claims of Critical Vendors; (II) Authorizing Financial Institutions to Honor and Process Related Checks and Transfers; and (III) Granting Related Relief.

their talc products to countries in North America, South America, Europe, and Asia. The Debtors' ordinary course operations generally involve the extraction of talc from their mines in North America, the processing and treatment of talc at their plants, and the packaging and distribution of finished talc products to customers around the world. In order to ensure the success of the Debtors' businesses, the Debtors necessarily rely on certain Critical Vendors that provide the Debtors with the materials, supplies, and/or services necessary to conduct their operations. I believe that without the goods and services provided by the Critical Vendors, the Debtors would be unable to efficiently mine and process their talc or supply talc products to their customers.

154. I believe payment of the Critical Vendor Claims is necessary due to the critical nature of the goods and services provided by the Critical Vendors. These goods and services are critical for several reasons. First, certain of the Debtors' mines and other operations are in remote locations, and therefore there are often a limited number of vendors and suppliers in close proximity to the Debtors. Accordingly, certain Critical Vendors represent one of a few vendors or the only vendor within a particular area that can provide the goods and services that the Debtors require to operate their businesses. In addition, the Debtors require certain specialized supplies, materials, and equipment that only a handful of vendors have the means or skillset to provide. Therefore, if these existing Critical Vendors were to stop doing business with the Debtors, I believe it would be difficult (if not impossible) and cost-prohibitive for the Debtors to locate alternative vendors and suppliers. The Debtors further rely on certain vendors, like transportation providers and administrative service providers, that are necessary to maintain the Debtors' supply chain, and any inability to continue receiving services from these specific vendors would greatly disrupt the Debtors' businesses. Accordingly, I believe it is essential that the Debtors receive authorization to pay the Critical Vendor Claims of such vendors and service

providers, subject to the criteria specified in the Critical Vendors Motion, because payment of such claims is necessary to achieve their chapter 11 objectives, provide initial supply chain stability, and to preserve the value of their businesses for the benefit of their constituents.

155. I have been informed that to ensure that the Debtors correctly identify their Critical Vendors, certain of the Debtors' employees and professionals who are responsible for maintaining, and have intimate knowledge of, the Debtors' vendor and service provider relationships, have conducted, and will continue to conduct, an extensive analysis and review of the Debtors' immediate needs for goods and services.

156. I understand that as part of such analysis and review, the Debtors have used, and will continue to use, the following criteria to determine which of the Debtors' vendors and service providers should be designated as Critical Vendors: (a) whether the vendor or service provider is a sole-source or limited source provider; (b) whether the Debtors receive advantageous pricing or other terms from a vendor or service provider such that a postpetition replacement would result in significantly higher costs; (c) whether quality requirements, geographic constraints, customizations, or other specifications prevent the Debtors from obtaining the necessary goods or services from alternative sources within a reasonable timeframe; (d) whether, if the vendor is not a sole source provider, the Debtors have insufficient inventory of goods or in-house capabilities to continue operations while a replacement is found and put into place; (e) whether a vendor or service provider is contractually obligated to continue to provide goods and services but the Debtors cannot afford the time and expense of an enforcement action if the vendor or service provider wrongfully refuses to perform; (f) whether a vendors' prepetition claim is entitled to administrative expense status under section 503(b)(9) of the Bankruptcy Code; and (g) whether a vendor or service provider meeting any of the aforementioned standards in

(a) through (f) refuses to, demands pricing or trade terms that constitute an effective refusal to, or is likely financially unable to, provide goods or services to the Debtors on a postpetition basis if the prepetition balances are not paid. I am confident that this process will result in designating only those vendors and service providers that are truly critical to the Debtors' estates as Critical Vendors.

157. Among the Critical Vendors identified by the Debtors are certain providers of essential goods and services that the Debtors rely upon in the operation of their businesses and include (i) specialty packaging suppliers, (ii) mine and plant related equipment suppliers and service providers, (iii) administrative and logistic service providers, and (iv) chemical suppliers and manufacturers. I believe that many of these vendors are critical to the Debtors' businesses because they possess unique technical knowledge regarding, and have familiarity with, the Debtors' talc operations and/or are located near the Debtors' operations. I believe that even in those instances where the Debtors could potentially locate a suitable replacement vendor, the Debtors have determined that replacing any of the Critical Vendors would be cost-prohibitive and disruptive to the Debtors' operations. Furthermore, I believe that the requisite time to qualify and replace incumbent Critical Vendors could impair scheduling and delivery commitments. Therefore, I believe that any such disruptions could result in delays in the mining, processing, or delivery of the Debtors' talc products, which could, in turn, cause irreparable harm to the Debtors' businesses.

158. Vendors and service providers of the nature described above, and others that satisfy the criteria described above, fall under the rubric of Critical Vendors. I believe that there is a high likelihood that such Critical Vendors would no longer do business with the Debtors if they are not paid on account of any outstanding prepetition claims. Any refusal by the Critical

Vendors to provide essential goods or perform key services would have immediate and severe adverse repercussions, including jeopardizing or impairing the value of the Debtors' businesses. Under these circumstances, I believe that paying the Critical Vendor Claims is both necessary and essential to the Debtors' ability to achieve their chapter 11 objectives and preserve value for their various constituencies.

159. I understand that the Debtors will attempt to condition the payment of Critical Vendor Claims on the agreement of individual Critical Vendors to continue supplying goods or services to the Debtors on trade terms that are the same or better than the trade terms that existed immediately prior to the Petition Date or, if more favorable, within the sixty day period prior to the Petition Date (the "**Customary Trade Terms**"). The Debtors reserve the right to negotiate new trade terms (the "**Minimum Credit Terms**") with any Critical Vendor as a condition to payment of any Critical Vendor Claim, in the Debtors' sole discretion.

160. I understand that to ensure that the Critical Vendors deal with the Debtors on either Customary Trade Terms or Minimum Credit Terms, the Debtors propose that a letter agreement (a "**Trade Agreement**") be sent to the Critical Vendors for execution, together with a copy of the Order granting the Critical Vendors Motion.

161. In the Critical Vendors Motion, the Debtors request only the authorization to enter into Trade Agreements when the Debtors determine, in their sole discretion, that payment of such Critical Vendor Claims is necessary to enable the Debtors to realize their chapter 11 objectives and that such Trade Agreements are advisable. The Debtors also request authorization to make payments on account of Critical Vendor Claims in the absence of a Trade Agreement if the Debtors determine, in their business judgment, that the failure to pay such Critical Vendor Claims will result in harm to the Debtors' business

162. I understand that in the event that a Critical Vendor, whether under a Trade Agreement or otherwise, refuses to supply goods and/or services to the Debtors on Customary Trade Terms or Minimum Credit Terms (or such other terms as are agreed by the parties) following receipt of payment on its Critical Vendor Claim or otherwise fails to comply with any Trade Agreement entered into between such Critical Vendor and the Debtors, then the Debtors reserve their rights to take any and all actions necessary to return the parties to the positions they held immediately prior to entry of this Final Order with respect to all prepetition claims, including but not limited to: (a) declaring that any Trade Agreement between the Debtors and such Critical Vendor is terminated; (b) declaring that payments made to such Critical Vendor on account of its Critical Vendor Claims shall be deemed to have been made in payment of then-outstanding (or subsequently accruing) postpetition claims of such Critical Vendor without further order of the Court or action by any person or entity; and (c) recovering or seeking disgorgement of any payment made to such Critical Vendor on account of its Critical Vendor Claims to the extent that such payments exceed the value of the postpetition claims of such Critical Vendor, without giving effect to any rights of setoff, claims, provision for payment of reclamation or trust fund claims, or other defense. In addition, the Debtors reserve the right to seek damages or other appropriate remedies against any breaching Critical Vendor.

163. In the Critical Vendors Motion, the Debtors further propose that any Trade Agreement terminated as a result of a Critical Vendor's refusal to comply with the terms thereof may be reinstated if the underlying default under the Trade Agreement is fully cured by the Critical Vendor not later than five business days following the Debtors' notification to the Critical Vendor of such a default, or the Debtors, in their sole discretion, reach a favorable alternative agreement with the Critical Vendor.

164. I believe that the relief requested in the Critical Vendor Motion is necessary to permit the Debtors to obtain the timely delivery of goods and uninterrupted provision of services from the Critical Vendors.

B. Foreign Vendor Motion⁴³

165. By the Foreign Vendor Motion, the Debtors seek entry of interim and final orders authorizing the Debtors to pay the prepetition fixed, liquidated, and undisputed claims (the "**Foreign Vendor Claims**") owing to certain foreign suppliers of goods and services, with whom the Debtors continue to do business (the "**Foreign Vendors**") in an amount not to exceed \$900,000 on an interim basis and \$1,400,000 on a final basis.

166. As described herein, the Debtors operate multi-national businesses that are primarily engaged in the mining and processing of talc in the United States and Canada, as well as the distribution of their talc products in North America, South America, Europe, and Asia. Due to the international nature of their supply chain, the Debtors rely on a number of foreign vendors and suppliers to mine and distribute their products. The foreign vendors and suppliers include businesses based in countries such as China, India, and Canada, among others, and are not believed to have meaningful contacts with the United States.

167. In the Foreign Vendor Motion, the Debtors propose to pay the Foreign Vendor Claims only for those Foreign Vendors that agree, to the Debtors' satisfaction, to continue to supply goods or services to the Debtors according to (a) the most favorable trade terms and practices (including, without limitation, credit limits, pricing, timing of payments, allowances,

⁴³ "**Foreign Vendor Motion**" means the Debtors' Motion for Orders Under 11 U.S.C. §§ 105(a), 363(b), and 1107(a), and Fed. R. Bankr. P. 6003 (I) Authorizing Payment of Prepetition Claims of Foreign Vendors; (II) Authorizing Financial Institutions to Honor and Process Related Checks and Transfers; and (III) Granting Related Relief.

rebates, discounts, and other applicable terms and programs) in effect between the Foreign Vendor and the Debtors within the sixty day period preceding the Petition Date or (b) such other trade terms and practices as agreed to by the Debtors and the Foreign Vendor (the “Customary Trade Terms”). However, if the Debtors are unable to negotiate continued supply upon Customary Trade Terms, the Debtors seek authority, based on their business judgment, to pay Foreign Vendors all or a portion of their Foreign Vendor Claims in return for the continued supply of critical goods and services (even if such payment is not according to the Customary Trade Terms).

168. In the event that a Foreign Vendor refuses to supply goods and/or services to the Debtors on Customary Trade Terms (or such other terms as are agreed by the parties) following receipt of payment on its Foreign Vendor Claim, the Debtors reserve their rights to return the parties to the positions they held immediately prior to entry of any interim order or final order approving the Foreign Vendor Motion with respect to all prepetition claims. Further, the Debtors reserve their rights to and may seek approval of the Court to: (a) declare that payments made to such Foreign Vendor on account of its Foreign Vendor Claim be deemed to have been in payment of then-outstanding (or subsequently accruing) postpetition claims of such Foreign Vendor without further order of the Court or action by any person or entity; and (b) recover or seek disgorgement of any payment made to such Foreign Vendor on account of its Foreign Vendor Claim to the extent that such payments exceed the value of the postpetition claims of such Foreign Vendor, without giving effect to any rights of setoff, claims, provision for payment of reclamation or trust fund claims, or other defense.

169. I believe that the services, supplies, and equipment provided by the Foreign Vendors are crucial to the Debtors’ operations. I understand that Debtors do not typically engage

with the Foreign Vendors pursuant to long-term contracts. Rather, purchases are typically undertaken on a purchase order by purchase order basis. Thus, I believe that the Debtors do not have the ability to compel contractual performance across the broad base of their vendors. Even if such rights generally existed, I believe they may be of limited utility in this regard. In particular, I believe that many of the Foreign Vendors may be unfamiliar with the chapter 11 process, particularly those in countries with liquidation-oriented insolvency regimes. I understand that the “debtor-in-possession” concept at the heart of chapter 11 does not exist in other countries where “bankruptcy” is equivalent to “liquidation.” Absent prompt and full payment of the Foreign Vendor Claims, I believe that the Foreign Vendors may therefore refuse to provide the equipment, supplies, and services that are required by the Debtors and their affiliates during the pendency of the Chapter 11 Cases. Even if they do not take such drastic action, it is likely that the Foreign Vendors will, absent payment, delay providing such equipment, supplies, and services and thereby expose the Debtors’ estates to significant economic harm.

170. In addition, I understand that many of the Foreign Vendors may not be (or may assert that they are not) subject to the jurisdiction of this Court. Although the scope of the automatic stay set forth in section 362 of the Bankruptcy Code is universal, I believe that there is a serious risk that certain of the Foreign Vendors holding prepetition claims against the Debtors may consider themselves to be beyond the jurisdiction of the Court, disregard the automatic stay provisions of the Bankruptcy Code, and engage in conduct that would disrupt the Debtors’ operations. Thus, I believe that efforts by the Debtors to enforce this Court’s orders and the applicable provisions of the Bankruptcy Code against them could be cost-prohibitive, time-consuming, and, possibly, of little practical value as these Foreign Vendors are located primarily or exclusively in jurisdictions outside of the United States.

171. Even if such Foreign Vendors do not resort to “self-help” remedies, I believe their failure to pay the Foreign Vendor Claims will have an immediate effect on the Chapter 11 Cases. For example, the Debtors currently benefit from favorable trade terms from many such Foreign Vendors, and the Debtors’ failure to make timely payments could result in the acceleration or elimination of such terms—thereby imposing a corresponding liquidity drain on these estates. Additionally, I do not believe that the Debtors can readily or easily replace these Foreign Vendors on similar economic terms without impairing their current operations and their ability to mine, process and distribute talc to customers. For the foregoing reasons, I believe that a failure to pay the Foreign Vendor Claims in a timely manner would jeopardize the Chapter 11 Cases.

C. Lien Claimant Motion⁴⁴

172. By the Lien Claimant Motion, the Debtors request entry of interim and final orders (i) authorizing, but not directing, the Debtors to pay prepetition claims held by (a) shippers, (b) lien claimants and (c) royalty interest owners, (ii) authorizing, but not directing, the Debtors to pay 503(b)(9) claims, (iii) confirming the administrative expense priority status of outstanding orders for goods that will not be delivered until on or after the Petition Date and authorizing, but not directing, the Debtors to pay prepetition amounts related to such outstanding orders, and (iv) granting related relief.

173. A summary of the specific relief requested herein is set forth below:

⁴⁴ “**Lien Claimant Motion**” means *Debtors’ Motion for Orders Under 11 U.S.C. §§ 105(a), 363(b), 503(b), 1107(a), and 1108 and Fed. R. Bankr. P. 6003 (I) Authorizing Debtors to Pay Certain Prepetition Claims of Shippers, Lien Claimants, and 503(b)(9) Claimants, (II) Confirming Administrative Expense Priority of Undisputed and Outstanding Prepetition Orders, and (III) Granting Related Relief.*

	Interim Relief	Final Relief
Shipping Claims	\$1,900,000	\$3,300,000
Lien Claims	\$1,000,000	\$1,400,000
Royalty Payments	\$200,000	\$900,000
503(b)(9) Claims	\$300,000	\$300,000

174. As described herein, the Debtors are primarily engaged in the mining, processing, and/or distribution of talc. I believe that the Debtors' ability to operate their business without interruptions is dependent upon the Debtors' vendors, suppliers, shippers and warehousemen, each of which either provides the Debtors with the materials and supplies necessary to ensure safe mining conditions, extract and process talc, transport talc among the Debtors' mines and plants, or deliver talc to the Debtors' customers. As more fully described in the Lien Claimant Motion, the Debtors utilize the services of a number of service providers who, by the nature of their business and the work that they perform for the Debtors, may be able to assert that prepetition amounts owed to them are secured by statutory liens on property of the Debtors that is either in the possession of the service provider or that has been improved upon by the provider. The Debtors are also obligated to make royalty payments to certain royalty interest owners who may assert that prepetition royalty payments owed to them are secured by liens on the Debtors' property. Moreover, amounts held by the Debtors on account of the royalty interests may not be property of the Debtors' bankruptcy estates. In addition, the claims of certain providers of goods to the Debtors may be entitled to priority under section 503 of the Bankruptcy Code because such goods were delivered to the Debtors within twenty days prior to the Petition Date. In order to continue the operation of their business uninterrupted postpetition, the Debtors seek to pay the prepetition claims of these claimants, each of which may be entitled to priority over general unsecured creditors.

CONCLUSION

175. The Debtors' ultimate goal in these Chapter 11 Cases is to confirm a plan of reorganization providing for trust mechanisms that will address all current and future Talc Claims against the Debtors while simultaneously preserving value and allowing the Debtors to emerge from chapter 11 free of historic talc-related liabilities. In the near term, however, to minimize any loss of value of their businesses during these Chapter 11 Cases, the Debtors' immediate objective is to maintain a business-as-usual atmosphere during the early stages of these Chapter 11 Cases, with as little interruption or disruption to the Debtors' operations as possible. I believe that if the Court grants the relief requested in each of the First Day Pleadings, the prospect for achieving these objectives and confirmation of a chapter 11 plan will be substantially enhanced.

176. I hereby certify that the foregoing statements are true and correct to the best of my knowledge, information and belief, and respectfully request that all of the relief requested in the First Day Pleadings be granted, together with such other and further relief as is just.

I declare under penalty of perjury that the foregoing is true and correct.

Executed this 13 day of February 2019.

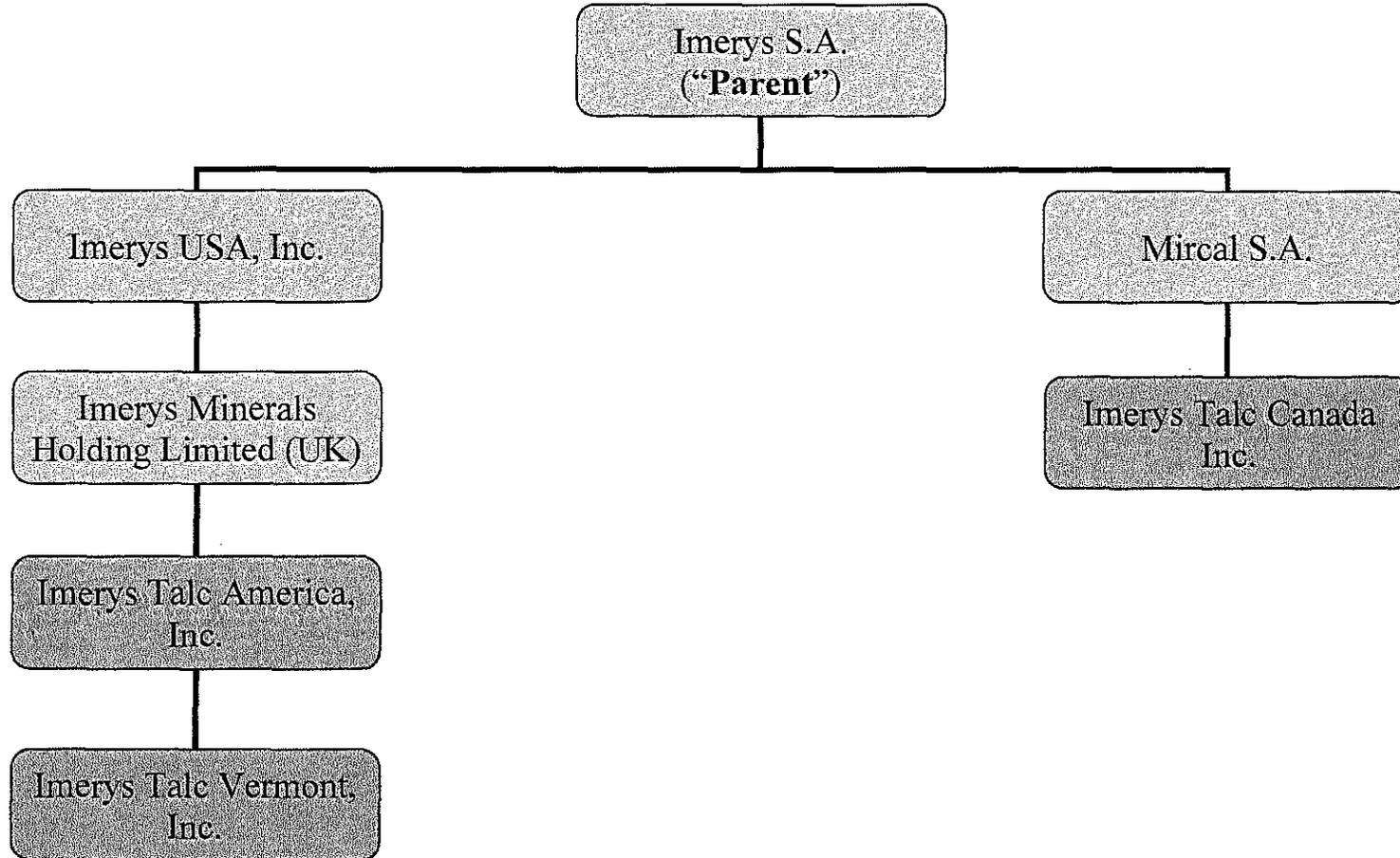
/s/ Alexandra Picard

Alexandra Picard
Chief Financial Officer of Imerys Talc
America, Inc., Imerys Talc Vermont, Inc. and
Imerys Talc Canada Inc.

Exhibit A

Simplified Imerys Group Organizational Chart

SIMPLIFIED ORGANIZATIONAL CHART



Debtors - 

TAB B

THIS IS EXHIBIT "B"

referred to in the Affidavit of Alexandra Picard

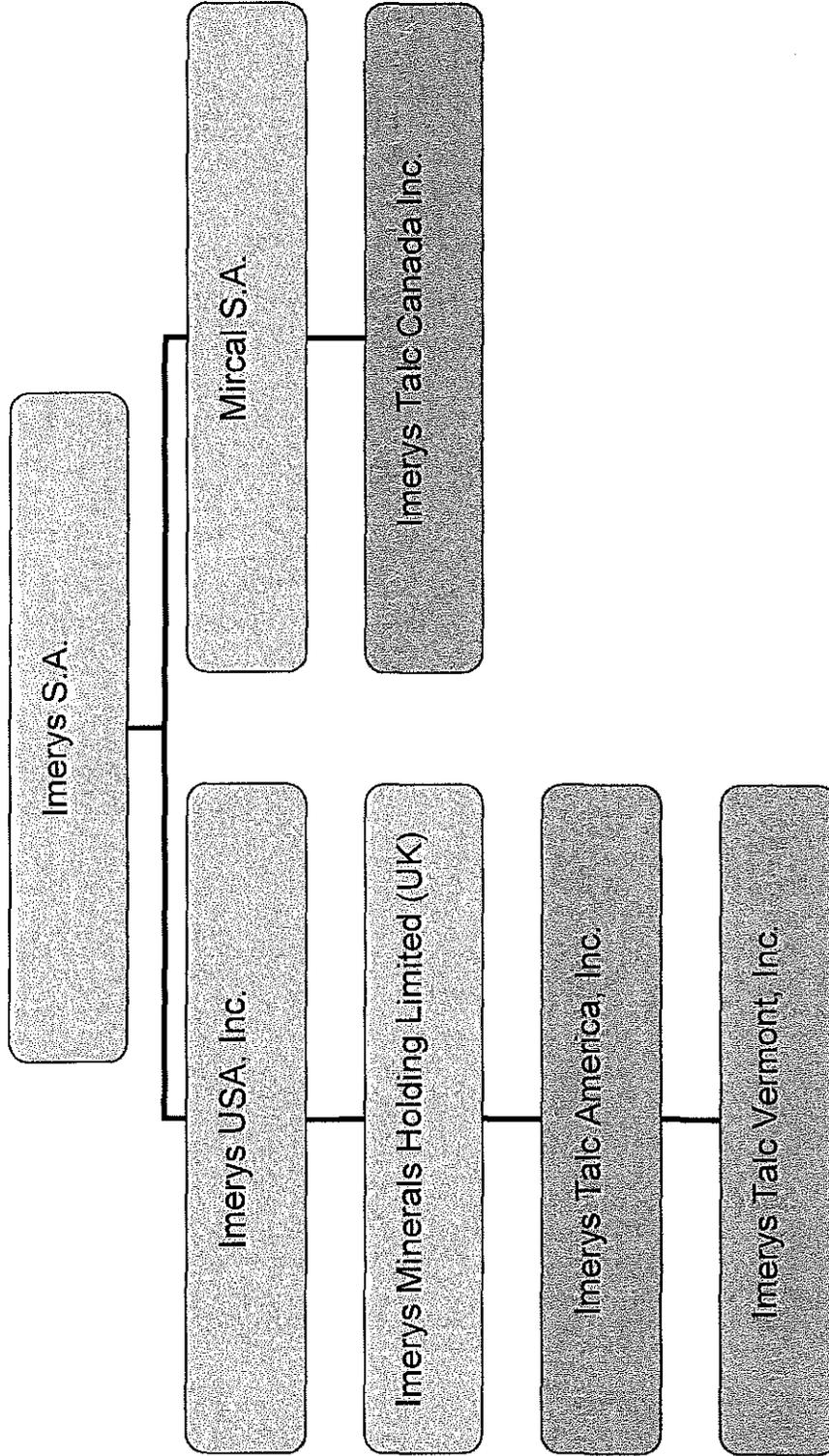
Sworn before me this *14th*
day of February, 2019

Lesley A. Morris

A Commissioner for Taking Affidavits



SIMPLIFIED ORGANIZATIONAL CHART



Debtors - 

TAB C

THIS IS EXHIBIT "C"

referred to in the Affidavit of Alexandra Picard

Sworn before me this 14th

day of February, 2019

Lesly A. Morris

A Commissioner for Taking Affidavits





Powered by Dye & Durham

PERSONAL PROPERTY SECURITY
REGISTRATION SYSTEM
(ONTARIO) ENQUIRY RESULTS

Prepared for : Stikeman Elliott LLP - Marco Garcia - Ma
Reference : P. Joseph
Docket : 133860,1003
Search ID : 713458
Date Processed : 1/24/2019 4:41:36 PM
Report Type : PPSA Electronic Response
Search Conducted on : IMERYYS TALC CANADA INC.
Search Type : Business Debtor

DISCLAIMER :

This report has been generated using data provided by the Personal Property Registration Branch, Ministry of Government Services, Government of Ontario. No liability is undertaken regarding its correctness, completeness, or the interpretation and use that are made of it.

MINISTRY OF CONSUMER AND BUSINESS SERVICES
PERSONAL PROPERTY SECURITY REGISTRATION SYSTEM
ENQUIRY RESPONSE

THIS IS TO CERTIFY THAT A SEARCH HAS BEEN MADE IN THE RECORDS OF THE
CENTRAL OFFICE OF THE PERSONAL PROPERTY SECURITY SYSTEM IN RESPECT
OF THE FOLLOWING:

TYPE OF SEARCH: BUSINESS DEBTOR

CONDUCTED ON: IMERYS TALC CANADA INC.

FILE CURRENCY: January 23, 2019

RESPONSE CONTAINS: APPROXIMATELY 3 FAMILIES and 9 PAGES.

THE SEARCH RESULTS MAY INDICATE THAT THERE ARE SOME REGISTRATIONS
WHICH SET OUT A BUSINESS DEBTOR NAME WHICH IS SIMILAR TO THE NAME
IN WHICH YOUR ENQUIRY WAS MADE. IF YOU DETERMINE THAT THERE ARE
OTHER SIMILAR BUSINESS DEBTOR NAMES, YOU MAY REQUEST THAT
ADDITIONAL ENQUIRIES BE MADE AGAINST THOSE NAMES.

THE ABOVE REPORT HAS BEEN CREATED BASED ON THE DATA PROVIDED BY
THE PERSONAL PROPERTY REGISTRATION BRANCH, MINISTRY OF CONSUMER
AND BUSINESS SERVICES, GOVERNMENT OF ONTARIO. NO LIABILITY IS
UNDERTAKEN REGARDING ITS CORRECTNESS, COMPLETENESS, OR THE
INTERPRETATION AND USE THAT ARE MADE OF IT.

MINISTRY OF CONSUMER AND BUSINESS SERVICES
PERSONAL PROPERTY SECURITY REGISTRATION SYSTEM
ENQUIRY RESPONSE

TYPE OF SEARCH: BUSINESS DEBTOR

CONDUCTED ON: IMERYS TALC CANADA INC.

FILE CURRENCY: January 23, 2019

1C FINANCING STATEMENT / CLAIM FOR LIEN

FAMILY : 1 OF 3 ENQUIRY PAGE : 1 OF 9

SEARCH : BD : IMERYS TALC CANADA INC.

00 FILE NUMBER : 707876028 EXPIRY DATE : 09JUL 2021 STATUS :
01 CAUTION FILING : PAGE : 01 OF 003 MV SCHEDULE ATTACHED :
REG NUM : 20150709 1031 8077 5862 REG TYP: P PPSA REG PERIOD: 6
02 IND DOB : IND NAME:
03 BUS NAME: IMERYS TALC CANADA INC.
OCN :
04 ADDRESS : 100 WATER TOWER RD
CITY : TIMMINS PROV: ON POSTAL CODE: P4N7J5
05 IND DOB : IND NAME:
06 BUS NAME:
OCN :
07 ADDRESS :
CITY : PROV: POSTAL CODE:

08 SECURED PARTY/LIEN CLAIMANT :
PACCAR FINANCIAL LTD.
09 ADDRESS : 6711 MISSISSAUGA RD.N.,STE 500
CITY : MISSISSAUGA PROV: ON POSTAL CODE: L5N 4J8
CONS. MV DATE OF OR NO FIXED
GOODS INVTRY. EQUIP ACCTS OTHER INCL AMOUNT MATURITY MAT DATE
10 X X X X X X
YEAR MAKE MODEL V.I.N.
11 2016 KENWORTH T680 1XKZDP0X9GJ979558

12
GENERAL COLLATERAL DESCRIPTION
13 WITH ALL ATTACHMENTS, ACCESSORIES AND ALL PROCEEDS THEREOF.
14 VIN 979498 - 2016 KENWORTH T680, DAY CAB, VANTAGE CAB INTERIOR
15 PACKAGE, MERITOR 14.6K RATED FRONT AXLE, WITH REAR DANA SPICER 46K
16 AGENT: REGISTRY = RECOVERY INC.
17 ADDRESS : 1551 THE QUEENSWAY
CITY : TORONTO PROV: ON POSTAL CODE: M8Z 1T5

CONTINUED

*** FOR FURTHER INFORMATION, CONTACT THE SECURED PARTY. ***

MINISTRY OF CONSUMER AND BUSINESS SERVICES
PERSONAL PROPERTY SECURITY REGISTRATION SYSTEM
ENQUIRY RESPONSE

TYPE OF SEARCH: BUSINESS DEBTOR

CONDUCTED ON: IMERYS TALC CANADA INC.

FILE CURRENCY: January 23, 2019

1C FINANCING STATEMENT / CLAIM FOR LIEN

FAMILY : 1 OF 3 ENQUIRY PAGE : 2 OF 9

SEARCH : BD : IMERYS TALC CANADA INC.

00 FILE NUMBER : 707876028 EXPIRY DATE : 09JUL 2021 STATUS :
01 CAUTION FILING : PAGE : 02 OF 003 MV SCHEDULE ATTACHED :
REG NUM : 20150709 1031 8077 5862 REG TYP: REG PERIOD:
02 IND DOB : IND NAME:
03 BUS NAME:
OCN :
04 ADDRESS :
CITY : PROV: POSTAL CODE:
05 IND DOB : IND NAME:
06 BUS NAME:
OCN :
07 ADDRESS :
CITY : PROV: POSTAL CODE:

08 SECURED PARTY/LIEN CLAIMANT :
PACCAR FINANCIAL SERVICES LTD.
09 ADDRESS : 6711 MISSISSAUGA RD.N.,STE 500
CITY : MISSISSAUGA PROV: ON POSTAL CODE: L5N 4J8
CONS. MV DATE OF OR NO FIXED
GOODS INVTRY. EQUIP ACCTS OTHER INCL AMOUNT MATURITY MAT DATE
10
YEAR MAKE MODEL V.I.N.
11
12
GENERAL COLLATERAL DESCRIPTION
13 RATED AXLE. 10 ALUMINUM WHEELS, CUMINS ISX15 / 485 ENGINE, 18 SPEED
14 FULLER MANUAL TRANSMISSION, AIR SLIDE 5TH WHEEL AND AIR RIDE REAR
15 SUSPENSION.
16 AGENT:
17 ADDRESS :
CITY : PROV: POSTAL CODE:

CONTINUED

*** FOR FURTHER INFORMATION, CONTACT THE SECURED PARTY. ***

MINISTRY OF CONSUMER AND BUSINESS SERVICES
PERSONAL PROPERTY SECURITY REGISTRATION SYSTEM
ENQUIRY RESPONSE

TYPE OF SEARCH: BUSINESS DEBTOR

CONDUCTED ON: IMERYS TALC CANADA INC.

FILE CURRENCY: January 23, 2019

1C FINANCING STATEMENT / CLAIM FOR LIEN

FAMILY : 1 OF 3 ENQUIRY PAGE : 3 OF 9

SEARCH : BD : IMERYS TALC CANADA INC..

00 FILE NUMBER : 707876028 EXPIRY DATE : 09JUL 2021 STATUS :
01 CAUTION FILING : PAGE : 03 OF 003 MV SCHEDULE ATTACHED :
REG NUM : 20150709 1031 8077 5862 REG TYP: REG PERIOD:
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03 BUS NAME:
OCN :
04 ADDRESS :
CITY : PROV: POSTAL CODE:
05 IND DOB : IND NAME:
06 BUS NAME:
OCN :
07 ADDRESS :
CITY : PROV: POSTAL CODE:

08 SECURED PARTY/LIEN CLAIMANT :

09 ADDRESS :
CITY : PROV: POSTAL CODE:
CONS. MV DATE OF OR NO FIXED
GOODS INVTRY. EQUIP ACCTS OTHER INCL AMOUNT MATURITY MAT DATE
10
YEAR MAKE MODEL V.I.N.
11
12
GENERAL COLLATERAL DESCRIPTION
13
14
15
16 AGENT:
17 ADDRESS :
CITY : PROV: POSTAL CODE:

CONTINUED

*** FOR FURTHER INFORMATION, CONTACT THE SECURED PARTY. ***

MINISTRY OF CONSUMER AND BUSINESS SERVICES
PERSONAL PROPERTY SECURITY REGISTRATION SYSTEM
ENQUIRY RESPONSE

TYPE OF SEARCH: BUSINESS DEBTOR

CONDUCTED ON: IMERYS TALC CANADA INC.

FILE CURRENCY: January 23, 2019

2C FINANCING CHANGE STATEMENT / CHANGE STATEMENT

FAMILY : 1 OF 3 ENQUIRY PAGE : 4 OF 9

SEARCH : BD : IMERYS TALC CANADA INC.

FILE NUMBER 707876028

PAGE TOT REGISTRATION NUM REG TYPE
01 CAUTION : 01 OF 001 MV SCHED: 20150724 1434 8077 7144 P PPSA
21 REFERENCE FILE NUMBER : 707876028
22 AMEND PAGE: NO PAGE: CHANGE: A AMNDMNT REN YEARS: CORR PER:
23 REFERENCE DEBTOR/ IND NAME:
24 TRANSFEROR: BUS NAME: IMERYS TALC CANADA INC.

25 OTHER CHANGE:

26 REASON: AMEND MODEL ON SERIAL COLLATERAL 1 TO T880 FROM T680.

27 /DESCR:

28 :

02/05 IND/TRANSFEE:

03/06 BUS NAME/TRFEE:

OCN:

04/07 ADDRESS:

CITY: PROV: POSTAL CODE:

29 ASSIGNOR:

08 SECURED PARTY/LIEN CLAIMANT/ASSIGNEE :

09 ADDRESS :

CITY :	PROV :	POSTAL CODE :				
CONS.	MV	DATE OF	NO FIXED			
GOODS INVTRY EQUIP ACCTS OTHER	INCL	AMOUNT	MATURITY OR	MAT DATE		
10	X					
11 2016 KENWORTH	T880				1XKZDP0X9GJ979558	

12

13

14

15

16 NAME : REGISTRY = RECOVERY INC.

17 ADDRESS : 1551 THE QUEENSWAY

CITY : TORONTO PROV : ON POSTAL CODE : M8Z 1T5

END OF FAMILY

*** FOR FURTHER INFORMATION, CONTACT THE SECURED PARTY. ***

MINISTRY OF CONSUMER AND BUSINESS SERVICES
PERSONAL PROPERTY SECURITY REGISTRATION SYSTEM
ENQUIRY RESPONSE

TYPE OF SEARCH: BUSINESS DEBTOR

CONDUCTED ON: IMERYS TALC CANADA INC.

FILE CURRENCY: January 23, 2019

1C FINANCING STATEMENT / CLAIM FOR LIEN

FAMILY : 2 OF 3 ENQUIRY PAGE : 5 OF 9

SEARCH : BD : IMERYS TALC CANADA INC.

00 FILE NUMBER : 709912494 EXPIRY DATE : 14SEP 2019 STATUS :
01 CAUTION FILING : PAGE : 001 OF 3 MV SCHEDULE ATTACHED :
REG NUM : 20150914 1458 1901 9985 REG TYP: P PPSA REG PERIOD: 04
02 IND DOB : IND NAME:
03 BUS NAME: IMERYS TALC CANADA INC
OCN :
04 ADDRESS : PO BOX 1245
CITY : TIMMINS PROV: ON POSTAL CODE: P4N 7J5
05 IND DOB : IND NAME:
06 BUS NAME:
OCN :
07 ADDRESS :
CITY : PROV: POSTAL CODE:

08 SECURED PARTY/LIEN CLAIMANT :

ROYNAT INC.

09 ADDRESS : SUITE 1500, 4710 KINGSWAY ST.

CITY : BURNABY PROV: BC POSTAL CODE: V5H 4M2

CONS. MV DATE OF OR NO FIXED

GOODS INVTRY. EQUIP ACCTS OTHER INCL AMOUNT MATURITY MAT DATE

10 X X
YEAR MAKE MODEL V.I.N.

11

12

GENERAL COLLATERAL DESCRIPTION

13 TRIMBLE KIT(S), RECEIVER(S), SURVEY EQUIPMENT, DATA COLLECTOR(S),

14 FIBRE POLE(S), POLE(S), ANTENNA(S), RADIO(S), GPS(S) TOGETHER WITH

15 ALL ATTACHMENTS ACCESSORIES ACCESSIONS REPLACEMENTS SUBSTITUTIONS

16 AGENT: AVS SYSTEMS INC.

17 ADDRESS : 201 - 1325 POLSON DR.

CITY : VERNON PROV: BC POSTAL CODE: V1T 8H2

CONTINUED

*** FOR FURTHER INFORMATION, CONTACT THE SECURED PARTY. ***

MINISTRY OF CONSUMER AND BUSINESS SERVICES
PERSONAL PROPERTY SECURITY REGISTRATION SYSTEM
ENQUIRY RESPONSE

TYPE OF SEARCH: BUSINESS DEBTOR

CONDUCTED ON: IMERYS TALC CANADA INC.

FILE CURRENCY: January 23, 2019

1C FINANCING STATEMENT / CLAIM FOR LIEN

FAMILY : 2 OF 3 ENQUIRY PAGE : 6 OF 9

SEARCH : BD : IMERYS TALC CANADA INC.

00 FILE NUMBER : 709912494 EXPIRY DATE : 14SEP 2019 STATUS :
01 CAUTION FILING : PAGE : 002 OF 3 MV SCHEDULE ATTACHED :
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03 BUS NAME:
OCN :
04 ADDRESS :
CITY : PROV: POSTAL CODE:
05 IND DOB : IND NAME:
06 BUS NAME:
OCN :
07 ADDRESS :
CITY : PROV: POSTAL CODE:

08 SECURED PARTY/LIEN CLAIMANT :

09 ADDRESS :
CITY : PROV: POSTAL CODE:
CONS. MV DATE OF OR NO FIXED
GOODS INVTRY. EQUIP ACCTS OTHER INCL AMOUNT MATURITY MAT DATE
10
YEAR MAKE MODEL V.I.N.

11
12

GENERAL COLLATERAL DESCRIPTION

13 ADDITIONS AND IMPROVEMENTS THERETO AND ALL PROCEEDS IN ANY FORM
14 DERIVED DIRECTLY OR INDIRECTLY FROM ANY SALE AND OR DEALINGS WITH THE
15 COLLATERAL AND A RIGHT TO AN INSURANCE PAYMENT OR OTHER PAYMENT THAT
16 AGENT:
17 ADDRESS :
CITY : PROV: POSTAL CODE:

CONTINUED

*** FOR FURTHER INFORMATION, CONTACT THE SECURED PARTY. ***

MINISTRY OF CONSUMER AND BUSINESS SERVICES
PERSONAL PROPERTY SECURITY REGISTRATION SYSTEM
ENQUIRY RESPONSE

TYPE OF SEARCH: BUSINESS DEBTOR

CONDUCTED ON: IMERYS TALC CANADA INC.

FILE CURRENCY: January 23, 2019

1C FINANCING STATEMENT / CLAIM FOR LIEN

FAMILY : 2 OF 3 ENQUIRY PAGE : 7 OF 9

SEARCH : BD : IMERYS TALC CANADA INC.

00 FILE NUMBER : 709912494 EXPIRY DATE : 14SEP 2019 STATUS :
01 CAUTION FILING : PAGE : 003 OF 3 MV SCHEDULE ATTACHED :
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OCN :
04 ADDRESS :
CITY : PROV: POSTAL CODE:
05 IND DOB : IND NAME:
06 BUS NAME:
OCN :
07 ADDRESS :
CITY : PROV: POSTAL CODE:

08 SECURED PARTY/LIEN CLAIMANT :

09 ADDRESS :
CITY : PROV: POSTAL CODE:
CONS. MV DATE OF OR NO FIXED
GOODS INVTRY. EQUIP ACCTS OTHER INCL AMOUNT MATURITY MAT DATE
10
YEAR MAKE MODEL V.I.N.
11
12

GENERAL COLLATERAL DESCRIPTION

13 INDEMNIFIES OR COMPENSATES FOR LOSS OR DAMAGE TO THE COLLATERAL OR
14 PROCEEDS OF THE COLLATERAL

15

16 AGENT:

17 ADDRESS :
CITY : PROV: POSTAL CODE:

END OF FAMILY

*** FOR FURTHER INFORMATION, CONTACT THE SECURED PARTY. ***

MINISTRY OF CONSUMER AND BUSINESS SERVICES
PERSONAL PROPERTY SECURITY REGISTRATION SYSTEM
ENQUIRY RESPONSE

TYPE OF SEARCH: BUSINESS DEBTOR

CONDUCTED ON: IMERYS TALC CANADA INC.

FILE CURRENCY: January 23, 2019

1C FINANCING STATEMENT / CLAIM FOR LIEN

FAMILY : 3 OF 3 ENQUIRY PAGE : 8 OF 9

SEARCH : BD : IMERYS TALC CANADA INC.

00 FILE NUMBER : 742083552 EXPIRY DATE : 27JUL 2024 STATUS :
01 CAUTION FILING : PAGE : 01 OF 002 MV SCHEDULE ATTACHED :
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02 IND DOB : IND NAME:
03 BUS NAME: IMERYS TALC CANADA INC
OCN :
04 ADDRESS : 100 WATER TOWER RD
CITY : TIMMINS PROV: ON POSTAL CODE: P4N7J5
05 IND DOB : IND NAME:
06 BUS NAME:
OCN :
07 ADDRESS :
CITY : PROV: POSTAL CODE:

08 SECURED PARTY/LIEN CLAIMANT :
PACCAR FINANCIAL LTD.
09 ADDRESS : 6711 MISSISSAUGA RD.N.,STE 500
CITY : MISSISSAUGA PROV: ON POSTAL CODE: L5N 4J8
CONS. MV DATE OF OR NO FIXED
GOODS INVTRY. EQUIP ACCTS OTHER INCL AMOUNT MATURITY MAT DATE
10 X X X X X
YEAR MAKE MODEL V.I.N.
11 2019 KENWORTH T800 1XKDD40X4KJ946663
12
GENERAL COLLATERAL DESCRIPTION
13 WITH ALL ATTACHMENTS, ACCESSORIES AND ALL PROCEEDS THEREOF.
14 DAY CAB
15
16 AGENT: REGISTRY = RECOVERY INC.
17 ADDRESS : 1551 THE QUEENSWAY
CITY : TORONTO PROV: ON POSTAL CODE: M8Z 1T5

CONTINUED

*** FOR FURTHER INFORMATION, CONTACT THE SECURED PARTY. ***

MINISTRY OF CONSUMER AND BUSINESS SERVICES
PERSONAL PROPERTY SECURITY REGISTRATION SYSTEM
ENQUIRY RESPONSE

TYPE OF SEARCH: BUSINESS DEBTOR

CONDUCTED ON: IMERYS TALC CANADA INC.

FILE CURRENCY: January 23, 2019

1C FINANCING STATEMENT / CLAIM FOR LIEN

FAMILY : 3 OF 3 ENQUIRY PAGE : 9 OF 9

SEARCH : BD : IMERYS TALC CANADA INC.

00 FILE NUMBER : 742083552 EXPIRY DATE : 27JUL 2024 STATUS :
01 CAUTION FILING : PAGE : 02 OF 002 MV SCHEDULE ATTACHED :
REG NUM : 20180727 1433 8077 7019 REG TYP: REG PERIOD:
02 IND DOB : IND NAME:
03 BUS NAME:
OCN :
04 ADDRESS :
CITY : PROV: POSTAL CODE:
05 IND DOB : IND NAME:
06 BUS NAME:
OCN :
07 ADDRESS :
CITY : PROV: POSTAL CODE:

08 SECURED PARTY/LIEN CLAIMANT :
PACCAR FINANCIAL SERVICES LTD.
09 ADDRESS : 6711 MISSISSAUGA RD.N.,STE 500
CITY : MISSISSAUGA PROV: ON POSTAL CODE: L5N 4J8
CONS. MV DATE OF OR NO FIXED
GOODS INVTRY. EQUIP ACCTS OTHER INCL AMOUNT MATURITY MAT DATE
10
YEAR MAKE MODEL V.I.N.
11
12
GENERAL COLLATERAL DESCRIPTION
13
14
15
16 AGENT:
17 ADDRESS :
CITY : PROV: POSTAL CODE:
LAST SCREEN

*** FOR FURTHER INFORMATION, CONTACT THE SECURED PARTY. ***

Date, heure, minute de certification : 2019-02-13 10:29

Critère de recherche Nom d'organisme : IMERYS TALC CANADA INC.

RÉSULTAT EXACT (1)

Fiche	Inscription	Date	h:min
001	MODIFICATION D'UN DROIT PUBLIÉ	2019-02-11	13:26
	19-0127337-0001		

Date, heure, minute de certification : 2019-02-13 10:29

NOMS PRÉSENTANT DES SIMILARITÉS (25)

Nom d'organisme	Code postal
CANADA INC	H4S 1M1
CANADA INC	H9P 2W2
CANADA INC	J1X 6Z6
DEP CHEZ TALL	G0A 4L0
IMERIS AGENCE HYPOTHECAIRE INC	H7S 2N5
IMERIS AGENCE HYPOTHECAIR	H7S 2N5
IMERYS CANADA 2004 INC	H3B 3Z1
IMERYS CANADA LP	
IMERYS CANADA LP	H3B 3Z1
IMERYS CANADA LP IMERYS CANADA SEC	H3B 3Z1
IMERYS CANADA SEC	H3B 3Z1
IMERYS CANADA SEC IMERYS CANADA LP	H3B 3Z1
IMERYS GRAPHITE & CARBON CANA	J6Y 1V1
IMERYS GRAPHITE & CARBON CANADA INC	J0W 1J0
IMERYS GRAPHITE & CARBON CANADA INC	J6Y 1V1
IMERYS GRAPHITE & CARBON CANADA INC IMERYS GRAPHI...	J0W 1J0
IMERYS GRAPHITE & CARBON CANADA INC IMERYS GRAPHI...	J6Y 1V1
IMERYS GRAPHITE & CARBONE CANADA INC	J0W 1J0
IMERYS GRAPHITE & CARBONE CANADA INC	J6Y 1V1
IMERYS GRAPHITE & CARBONE CANADA INC IMERYS GRAPH...	J0W 1J0
IMERYS MICA SUZORITE INC	J4B 6A1
INVESTISSEMENT TALS INC	H4S 1X9
TALL J INVESTMENTS LTD	H3G 1L2
TALS INVESTMENTS INC	H9X 3N8
TALS INVESTMENTS INC	H9X 3N8

Date, heure, minute de certification : 2019-02-13 10:29

Critère de recherche Nom d'organisme :

IMERYS TALC CANADA INC.

Critère de sélection Nom d'organisme :

IMERYS TALC CANADA I...

Code Postal :

H3B3V2

Détail de l'inscription

INSCRIPTION	DATE-HEURE-MINUTE
19-0127337-0001	2019-02-11 13:26
MODIFICATION D'UN DROIT PUBLIÉ	
PARTIES	
Titulaire	
ARI Financial Services Inc.	
1270 Central Pkwy W, Ste 600, Mississauga, ON L5C 4P4	
Constituant	
IMERYS CANADA LP.	
100 MANSELL COURT EAST, SUITE 300, ROSWELL, GA 30076 USA	
Constituant	
IMERYS CANADA 2004 INC.	
40-1155 BOUL RENE-LEVESQUE O, MONTREAL, QC	H3B 3Z1
Constituant	
IMERYS CANADA L.P.	
40-1155 BOUL RENE-LEVESQUE O, MONTREAL, QC	H3B 3Z1
Constituant	
IMERYS CANADA S.E.C.	
40-1155 BOUL RENE-LEVESQUE O, MONTREAL, QC	H3B 3Z1
Constituant	
IMERYS CANADA L.P. / IMERYS CANADA S.E.C.	
40-1155 BOUL RENE-LEVESQUE O, MONTREAL, QC	H3B 3Z1
Constituant	
IMERYS CANADA S.E.C. / IMERYS CANADA L.P.	
40-1155 BOUL RENE-LEVESQUE O, MONTREAL, QC	H3B 3Z1
Crédit-preneur	
IMERYS TALC CANADA INC.	
4100-1155 RENE-LEVESQUE BLVD. WEST, MONTREAL, QC H3B 3V2	
MENTIONS	
Référence à l'inscription visée	
NUMÉRO	NATURE
04-0099838-0010	HYPOTHEQUE OUVERTE
Référence à l'acte constitutif	
Forme de l'acte : Sous seing privé	
Autres mentions :	
REF: (IMERYS - 7A39 / BCC81C137736-2 / 11027130)	
Autres mentions:	
Add debtor - IMERYS TALC CANADA INC.	



Date, heure, minute de certification : **2019-02-13 10:29**
 Critère de recherche Numéro d'inscription : 04-0099838-0010

Détail de l'inscription

INSCRIPTION	DATE-HEURE-MINUTE	DATE EXTRÊME D'EFFET
04-0099838-0010	2004-02-25 09:00	2014-01-21

HYPOTHÈQUE OUVERTE

PARTIES

Titulaire

ARI Financial Services Inc.
 1270 Central Pkwy W, Ste 600, Mississauga, ON L5C 4P4

Constituant

ECC INTERNATIONAL INC.
 5775 Peachtree St., Atlanta, GA 30342

BIENS

Leased vehicles and equipment under Master Lease between ARI Financial Services Inc. and ECC International Inc. dated as of December 12, 1994

MENTIONS

Somme de l'hypothèque

C\$200,000.00

Référence à l'acte constitutif

Forme de l'acte : Sous seing privé
 Date : 1994-12-12
 Lieu : MISSISSAUGA, ON

Autres mentions :

REF: (ECC INTERNATIONAL IN / ONQCS1F7031-1 / 2682996)

REMARQUES

INSCRIPTION	DATE-HEURE-MINUTE
04-0211415-0008	2004-04-16 09:00
RECTIFICATION D'UNE INSCRIPTION	
09-0049050-0001	2009-01-30 11:20
Cession d'un droit	
11-0945396-0004	2011-12-08 09:08
Cession de droits	
14-0011486-0001	2014-01-09 09:00
RENOUVELLEMENT DE LA PUBLICITÉ D'UN DROIT	
16-0138392-0001	2016-02-18 14:36
MODIFICATION D'UN DROIT PUBLIÉ	
16-0475413-0001	2016-05-20 09:00
RECTIFICATION D'UNE INSCRIPTION	
19-0127337-0001	2019-02-11 13:26
MODIFICATION D'UN DROIT PUBLIÉ	

TAB D

THIS IS EXHIBIT "D"

referred to in the Affidavit of Alexandra Picard

Sworn before me this 14th

day of February, 2019

Lesley A. Morris

A Commissioner for Taking Affidavits



**IN THE UNITED STATES BANKRUPTCY COURT
FOR THE DISTRICT OF DELAWARE**

----- X
In re: : Chapter 11
: :
IMERYS TALC AMERICA, INC., : Case No. 19-10289 (LSS)
: :
Debtor. : Tax I.D. No. 84-1196358
: :
----- X **Re: Docket No. 2**

----- X
In re: : Chapter 11
: :
IMERYS TALC VERMONT, INC., : Case No. 19-10291 (LSS)
: :
Debtor. : Tax I.D. No. 03-0119050
: :
----- X **Re: Docket No. 2**

----- X
In re: : Chapter 11
: :
IMERYS TALC CANADA INC., : Case No. 19-10292 (LSS)
: :
Debtor. : Tax I.D. No. 98-1306748
: :
----- X **Re: Docket No. 2**

**ORDER UNDER FED. R. BANKR. P. 1015 AND DEL. BANKR. L.R. 1015-1
AUTHORIZING JOINT ADMINISTRATION OF CHAPTER 11 CASES**

Upon the motion (the "**Motion**")¹ of the Debtors for an order under Bankruptcy Rule 1015 and Local Rule 1015-1, authorizing the joint administration of their Chapter 11 Cases; and the Court having reviewed the Motion and the Picard Declaration; 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 the *Amended Standing Order of Reference from the United States District*

¹ Capitalized terms used but not otherwise defined herein shall have the meanings ascribed to such terms in the Motion.

Court for the District of Delaware, dated February 29, 2012; and the Court having found that this is a core proceeding pursuant to 28 U.S.C. § 157(b)(2) and that this Court may enter a final order consistent with Article III of the United States Constitution; and the Court having found that venue of this proceeding and the Motion in this district is proper pursuant to 28 U.S.C. §§ 1408 and 1409; and it appearing that proper and adequate notice of the Motion has been given and that no other or further notice is necessary; and upon the record herein; and after due deliberation thereon; and the Court having determined that there is good and sufficient cause for the relief granted in this order, it is hereby

ORDERED, ADJUDGED, AND DECREED THAT:

1. The Motion is GRANTED, as set forth herein.
2. All objections to the entry of this Order, to the extent not withdrawn or settled, are overruled.
3. The above-captioned cases are consolidated for procedural purposes only and shall be administered jointly under Case No. 19-10289 (LSS) in accordance with the provisions of Bankruptcy Rule 1015 and Local Rule 1015-1.
4. The caption of pleadings and other documents filed in the jointly administered cases shall read as follows:

-----	X
In re:	: Chapter 11
	: :
IMERY'S TALC AMERICA, INC., <i>et al.</i> , ¹	: Case No. 19-10289 (LSS)
	: :
Debtors.	: Jointly Administered
	: :
-----	X

¹ The Debtors in these cases, along with the last four digits of each Debtor's federal tax identification number, are: Imerys Talc America, Inc. (6358), Imerys Talc Vermont, Inc. (9050), and

Imerys Talc Canada Inc. (6748). The Debtors' address is 100 Mansell Court East, Suite 300, Roswell, Georgia 30076.

As reflected in the above caption, footnote 1 shall set forth a complete listing of the Debtors' names, as well as the last four digits of each Debtor's tax identification number and the Debtors' address.

5. The caption set forth above shall be deemed to satisfy any applicable requirements of section 342(c) of the Bankruptcy Code and Bankruptcy Rule 2002(n).

6. All pleadings and other documents to be filed in the jointly administered cases shall be filed and docketed in the case of Imerys Talc America, Inc., Case No. 19-10289 (LSS).

7. A docket entry shall be made in the Chapter 11 Cases of the Debtors, other than Imerys Talc America, Inc., substantially as follows:

An order has been entered in this case consolidating this case with the case of Imerys Talc America, Inc., Case No. 19-10289 (LSS), for procedural purposes only and providing for its joint administration in accordance with the terms thereof. The docket in Case No. 19-10289 (LSS) should be consulted for all matters affecting this case.

8. Any creditor filing a proof of claim against any of the Debtors shall clearly assert such claim against the particular Debtor obligated on such claim and not against the jointly administered Debtors, except as otherwise provided in any other order of this Court.

9. Nothing contained in the Motion or this Order shall be deemed or construed as directing or otherwise effecting the substantive consolidation of the Chapter 11 Cases.

10. The procedural consolidation shall be for administrative purposes only and shall not be a substantive consolidation of the respective estates.

11. This Order shall take effect immediately upon entry.

12. The Court retains exclusive jurisdiction with respect to all matters arising from or related to the implementation, interpretation, and enforcement of this Order.

Dated: February 14th, 2019
Wilmington, Delaware



LAURIE SELBER SILVERSTEIN
UNITED STATES BANKRUPTCY JUDGE

TAB E

THIS IS EXHIBIT "E"

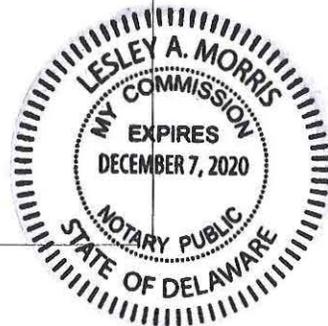
referred to in the Affidavit of Alexandra Picard

Sworn before me this 14th

day of February, 2019

Lesley A. Morris

A Commissioner for Taking Affidavits



**IN THE UNITED STATES BANKRUPTCY COURT
FOR THE DISTRICT OF DELAWARE**

-----	X	
In re:	:	Chapter 11
	:	
IMERYYS TALC AMERICA, INC., <i>et al.</i> , ¹	:	Case No. 19-10289 (LSS)
	:	
Debtors.	:	(Jointly Administered)
	:	
-----	X	Re: Docket No. 6

**ORDER UNDER 11 U.S.C. § 1505 AUTHORIZING IMERYYS TALC CANADA INC.
TO ACT AS FOREIGN REPRESENTATIVE**

Upon the motion (the "Motion")² of the Debtors for entry of an order under section 1505 of the Bankruptcy Code authorizing Imerys Talc Canada Inc. ("ITC") to act as the foreign representative on behalf of the Debtors' estates in any judicial or other proceedings in Canada; and the Court having reviewed the Motion and the Picard Declaration; 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 the *Amended Standing Order of Reference* from the United States District Court for the District of Delaware dated as of February 29, 2012; and the Court having found that this is a core proceeding pursuant to 28 U.S.C. § 157(b)(2) and that this Court may enter a final order consistent with Article III of the United States Constitution; and the Court having found that venue of this proceeding and the Motion in this district is proper pursuant to 28 U.S.C. §§ 1408 and 1409; and it appearing that proper and adequate notice of the Motion has been given and that no other or further notice is necessary; and upon the record herein; and the

¹ The Debtors in these cases, along with the last four digits of each Debtor's federal tax identification number, are: Imerys Talc America, Inc. (6358), Imerys Talc Vermont, Inc. (9050), and Imerys Talc Canada Inc. (6748). The Debtors' address is 100 Mansell Court East, Suite 300, Roswell, Georgia 30076.

² Capitalized terms used but not otherwise defined herein shall have the meanings ascribed to such terms in the Motion.

Court having determined that there is good and sufficient cause for the relief granted in this Order, it is hereby

ORDERED, ADJUDGED AND DECREED THAT:

1. The Motion is GRANTED as set forth herein.
2. ITC is hereby authorized, pursuant to section 1505 of the Bankruptcy Code, to act as the Foreign Representative on behalf of the Debtors' estates in any judicial or other proceeding in Canada. As a Foreign Representative, ITC shall be authorized and shall have the power to act in any way permitted by applicable foreign law, including, but not limited to, (a) seeking recognition of the Chapter 11 Cases in the Canadian Proceedings, (b) requesting that the Canadian Court lend assistance to this Court in protecting the property of the Debtors' estates, and (c) seeking any other appropriate relief from the Canadian Court that ITC deems just and proper in the furtherance of the protection of the Debtors' estates.
3. This Court requests the aid and assistance of the Canadian Court to recognize the Chapter 11 Cases as a "foreign main proceeding" and ITC as a "foreign representative" pursuant to the CCAA, and to recognize and give full force and effect in all provinces and territories of Canada to this Order.
4. The Debtors are hereby authorized to take such actions and to execute such documents as may be necessary to implement the relief granted by this Order.

5. This Court retains exclusive jurisdiction with respect to all matters arising from or related to the implementation, interpretation, and enforcement of this Order.

Dated: February 14th, 2019
Wilmington, Delaware

US-DOCS\105945671.1RLF1 20810249v.2



LAURIE SELBER SILVERSTEIN
UNITED STATES BANKRUPTCY JUDGE

TAB F

THIS IS EXHIBIT "F"

referred to in the Affidavit of Alexandra Picard

Sworn before me this 14th

day of February, 2019

Lesley A. Morris

A Commissioner for Taking Affidavits



**IN THE UNITED STATES BANKRUPTCY COURT
FOR THE DISTRICT OF DELAWARE**

----- X
In re: : Chapter 11
: :
IMERYS TALC AMERICA, INC., *et al.*,¹ : Case No. 19-10289 (LSS)
: :
Debtors. : (Jointly Administered)
: :
----- X **Re: Docket No. 14**

**ORDER AUTHORIZING RETENTION AND APPOINTMENT
OF PRIME CLERK LLC AS CLAIMS AND NOTICING AGENT**

Upon the Debtors' application (the "Application")² for retention and appointment of Prime Clerk as Claims and Noticing Agent pursuant to section 156(c) of title 28 of the United States Code, section 105(a) of the Bankruptcy Code, and Local Rule 2002-1(f) to, among other things, (i) distribute required notices to parties in interest, (ii) receive, maintain, docket, and otherwise administer the proofs of claim filed in the Debtors' Chapter 11 Cases and (iii) provide such other administrative services – as required by the Debtors – that would fall within the purview of services to be provided by the Clerk's office; and the Court having reviewed the Application and the Steele Declaration; and the Court having jurisdiction to consider the Application and the relief requested therein in accordance with 28 U.S.C. §§ 157 and 1334 and the *Amended Standing Order of Reference from the United States District Court for the District of Delaware*, dated February 29, 2012; and the Court having found that this is a core proceeding pursuant to 28 U.S.C. § 157(b)(2) and that this Court may enter a final order consistent with Article III of the United States Constitution; and the Court having found that venue of this

¹ The Debtors in these cases, along with the last four digits of each Debtor's federal tax identification number, are: Imerys Talc America, Inc. (6358), Imerys Talc Vermont, Inc. (9050), and Imerys Talc Canada Inc. (6748). The Debtors' address is 100 Mansell Court East, Suite 300, Roswell, Georgia 30076.

² Capitalized terms used but not otherwise defined herein shall have the meanings ascribed to such terms in the Application.

proceeding and the Application in this district is proper pursuant to 28 U.S.C. §§ 1408 and 1409; and the Debtors having estimated that there are in excess of sixty thousand creditors or parties in interest in these Chapter 11 Cases, many of which are expected to file proofs of claim; and it appearing that the receiving, docketing, and maintaining of proofs of claim would be unduly time consuming and burdensome for the Clerk; and the Court being authorized under 28 U.S.C. § 156(c) to utilize, at the Debtors' expense, outside agents and facilities to provide notices to parties in title 11 cases and to receive, docket, maintain, photocopy, and transmit proofs of claim; and the Court being satisfied that Prime Clerk has the capability and experience to provide such services and that Prime Clerk does not hold an interest adverse to the Debtors or the estates respecting the matters upon which it is to be engaged; and it appearing that proper and adequate notice of the Application has been given and that no other or further notice is necessary; and upon the record herein; and after due deliberation thereon; and the Court having determined that there is good and sufficient cause for the relief set forth in this Order, it is hereby

ORDERED ADJUDGED, AND DECREED THAT:

1. The Application is approved as set forth herein.
2. Notwithstanding the terms of the Engagement Agreement attached to the Application, the Application is approved solely as set forth in this Order.
3. The Debtors are authorized to retain Prime Clerk as Claims and Noticing Agent effective *nunc pro tunc* to the Petition Date under the terms of the Engagement Agreement, and Prime Clerk is authorized and directed to perform noticing services and to receive, maintain, record, and otherwise administer the proofs of claim filed in these Chapter 11 Cases, and all related tasks, all as described in the Application.
4. Prime Clerk shall serve as the custodian of court records and shall be designated as the authorized repository for all proofs of claim filed in these Chapter 11 Cases and is authorized

and directed to maintain official claims registers for each of the Debtors, to provide public access to every proof of claim unless otherwise ordered by the Court, and to provide the Clerk with a certified duplicate thereof upon the request of the Clerk.

5. Prime Clerk is authorized and directed to provide an electronic interface for filing proofs of claim and to obtain a post office box or address for the receipt of proofs of claim.

6. Prime Clerk is authorized to take such other action to comply with all duties set forth in the Application.

7. The Debtors are authorized to compensate Prime Clerk in accordance with the terms of the Engagement Agreement upon the receipt of reasonably detailed invoices setting forth the services provided by Prime Clerk and the rates charged for each, and to reimburse Prime Clerk for all reasonable and necessary expenses it may incur, upon the presentation of appropriate documentation, without the need for Prime Clerk to file fee applications or otherwise seek Court approval for the compensation of its services and reimbursement of its expenses.

8. Prime Clerk shall maintain records of all services showing dates, categories of services, fees charged, and expenses incurred, and shall serve monthly invoices on the Debtors, the office of the United States Trustee, counsel for the Debtors, counsel for any official committee monitoring the expenses of the Debtors, and any party-in-interest who specifically requests service of the monthly invoices.

9. The parties shall meet and confer in an attempt to resolve any dispute which may arise relating to the Engagement Agreement or monthly invoices; *provided* that the parties may seek resolution of the matter from the Court if resolution is not achieved.

10. Pursuant to section 503(b)(1)(A) of the Bankruptcy Code, the fees and expenses of Prime Clerk under this Order shall be an administrative expense of the Debtors' estates.

11. Prime Clerk may apply its advance to all prepetition invoices, and, thereafter,

Prime Clerk may hold its advance under the Engagement Agreement during the Chapter 11 Cases as security for the payment of fees and expenses incurred under the Engagement Agreement.

12. During the pendency of these Chapter 11 Cases, the late charge set forth in paragraph 2(c) of the Engagement Agreement shall be of no force and effect.

13. Notwithstanding anything to the contrary in the Engagement Agreement, including paragraph 6, by this Order, the Court is not authorizing Prime Clerk to establish accounts with financial institutions on behalf of the Debtors.

14. The Debtors shall indemnify Prime Clerk under the terms of the Engagement Agreement, as modified pursuant to this Order.

15. Prime Clerk shall not be entitled to indemnification, contribution, or reimbursement pursuant to the Engagement Agreement for services other than the services provided under the Engagement Agreement, unless such services and the indemnification, contribution, or reimbursement therefor are approved by this Court.

16. Notwithstanding anything to the contrary in the Engagement Agreement, the Debtors shall have no obligation to indemnify Prime Clerk, or provide contribution or reimbursement to Prime Clerk, for any claim or expense that is either: (i) judicially determined (that determination having become final) to have arisen from Prime Clerk's gross negligence, willful misconduct, or fraud; (ii) for a contractual dispute in which the Debtors allege the breach of Prime Clerk's contractual obligations if the Court determines that indemnification, contribution, or reimbursement would not be permissible pursuant to *In re United Artists Theatre Co.*, 315 F.3d 217 (3d Cir. 2003); or (iii) settled prior to a judicial determination under (i) or (ii), but determined by this Court, after notice and a hearing, to be a claim or expense for which Prime Clerk should not receive indemnity, contribution, or reimbursement under the terms of the Engagement Agreement as modified by this Order.

17. If, before the earlier of (i) the entry of an order confirming a chapter 11 plan in these Chapter 11 Cases (that order having become a final order no longer subject to appeal), and (ii) the entry of an order closing these Chapter 11 Cases, Prime Clerk believes that it is entitled to the payment of any amounts by the Debtors on account of the Debtors' indemnification, contribution, and/or reimbursement obligations under the Engagement Agreement (as modified by this Order), including the advancement of defense costs, Prime Clerk must file an application therefor in this Court, and the Debtors may not pay any such amounts to Prime Clerk before the entry of an order by this Court approving the payment. This paragraph is intended only to specify the period of time under which the Court shall have jurisdiction over any request for fees and expenses by Prime Clerk for indemnification, contribution, or reimbursement, and not a provision limiting the duration of the Debtors' obligation to indemnify Prime Clerk. All parties in interest shall retain the right to object to any demand by Prime Clerk for indemnification, contribution, or reimbursement.

18. The limitation of liability section in paragraph 10 of the Engagement Agreement is deemed to be of no force or effect with respect to the services to be provided pursuant to this Order.

19. In the event Prime Clerk is unable to provide the services set out in this Order, Prime Clerk will immediately notify the Clerk and the Debtors' attorney and, upon approval of the Court, cause to have all original proofs of claim and computer information turned over to another claims and noticing agent with the advice and consent of the Clerk and the Debtors' attorney.

20. The Debtors may submit a separate retention application, pursuant to section 327 of the Bankruptcy Code and/or any applicable law, for work that is to be performed by Prime Clerk but is not specifically authorized by this Order.

21. The Debtors and Prime Clerk are authorized to take all actions necessary to

effectuate the relief granted pursuant to this Order in accordance with the Application.

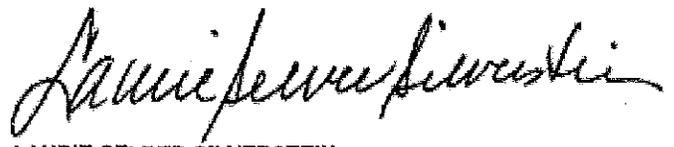
22. Notwithstanding any term in the Engagement Agreement to the contrary, the Court retains exclusive jurisdiction with respect to all matters arising from or related to the implementation, interpretation, and enforcement of this Order.

23. Notwithstanding any provision in the Bankruptcy Rules to the contrary, this Order shall be immediately effective and enforceable upon its entry.

24. Prime Clerk shall not cease providing claims processing services during the Chapter 11 Cases for any reason, including nonpayment, without an order of the Court.

25. In the event of any inconsistency between the Engagement Agreement, the Application and this Order, this Order shall govern.

Dated: February 14th, 2019
Wilmington, Delaware



LAURIE SELBER SILVERSTEIN
UNITED STATES BANKRUPTCY JUDGE

TAB G

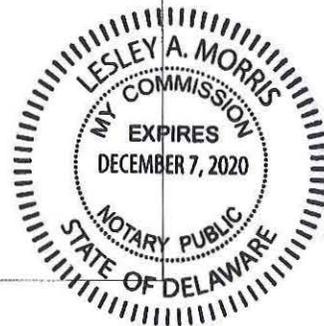
THIS IS EXHIBIT "G"

referred to in the Affidavit of Alexandra Picard

Sworn before me this *14th*
day of February, 2019

Lesley A. Morris

A Commissioner for Taking Affidavits



**IN THE UNITED STATES BANKRUPTCY COURT
FOR THE DISTRICT OF DELAWARE**

----- X
In re: : Chapter 11
: :
IMERY'S TALC AMERICA, INC., *et al.*,¹ : Case No. 19-10289 (LSS)
: :
Debtors. : (Jointly Administered)
: :
----- X Re: Docket No. 16

**ORDER PURSUANT TO 11 U.S.C. § 105 ENFORCING
THE PROTECTIONS OF 11 U.S.C. §§ 362, 365, 525, AND 541(c)**

Upon the motion (the "Motion")² of the Debtors for entry of an order enforcing the protections of sections 362, 365, 525, and 541(c) of the Bankruptcy Code; and the Court having reviewed the Motion and the Picard Declaration; 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 the *Amended Standing Order of Reference* from the United States District Court for the District of Delaware dated as of February 29, 2012; and the Court having found that this is a core proceeding pursuant to 28 U.S.C. § 157(b)(2) and that this Court may enter a final order consistent with Article III of the United States Constitution; and the Court having found that venue of this proceeding and the Motion in this district is proper pursuant to 28 U.S.C. §§ 1408 and 1409; and it appearing that proper and adequate notice of the Motion has been given and that no other or further notice is necessary; and upon the record herein; and after due deliberation

¹ The Debtors in these cases, along with the last four digits of each Debtor's federal tax identification number, are: Imerys Talc America, Inc. (6358), Imerys Talc Vermont, Inc. (9050), and Imerys Talc Canada Inc. (6748). The Debtors' address is 100 Mansell Court East, Suite 300, Roswell, Georgia 30076.

² Capitalized terms used but not otherwise defined herein shall have the meanings ascribed to such terms in the Motion.

thereon; and the Court having determined that there is good and sufficient cause for the relief granted in this Order, it is hereby

ORDERED, ADJUDGED AND DECREED THAT:

1. The Motion is GRANTED, as set forth herein.
2. Pursuant to and to the extent set forth in section 362 of the Bankruptcy Code, the commencement of these Chapter 11 Cases shall operate as a stay, applicable to all persons (including individuals, partnerships, corporations, and all those acting for or on their behalf) and all foreign and domestic governmental units (and all those acting for or on their behalf) of:
 - a. The commencement or continuation, including the issuance or employment of process, of a judicial, administrative, or other action or proceeding against the Debtors that was or could have been commenced before the commencement of the Chapter 11 Cases, or an act to recover a claim against the Debtors that arose before the commencement of the Chapter 11 Cases;
 - b. The enforcement, against the Debtors or against property of their estates, of a judgment obtained before the commencement of the Chapter 11 Cases;
 - c. Any act to obtain possession of property of the estates or of property from the estates or to exercise control over property of the Debtors' estates;
 - d. Any act to create, perfect, or enforce any lien against property of the Debtors' estates;
 - e. Any act to create, perfect, or enforce against property of the Debtors any lien to the extent that such lien secures a claim that arose before the commencement of the Chapter 11 Cases;
 - f. Any act to collect, assess, or recover a claim against the Debtors that arose before the commencement of the Chapter 11 Cases;
 - g. The setoff of any debt owing to the Debtors that arose before the commencement of these Chapter 11 Cases, except as allowed under section 553 of the Bankruptcy Code; and

- h. The commencement or continuation of a proceeding before the United States Tax Court concerning a tax liability of the Debtors for a taxable period the bankruptcy court may determine.
3. This Order shall not affect the exceptions to the automatic stay contained in section 362(b) of the Bankruptcy Code or the right of any party in interest to seek relief from the automatic stay in accordance with section 362(d) of the Bankruptcy Code.
4. Pursuant to and to the extent set forth in section 365(e) of the Bankruptcy Code, and notwithstanding a provision in an executory contract or unexpired lease, or in applicable law, an executory contract or unexpired lease of the Debtors may not be terminated or modified, and any right or obligation under such contract or lease may not be terminated or modified, at any time after the commencement of the Chapter 11 Cases solely because of a provision in such contract or lease that is conditioned on (i) the insolvency or financial condition of any or all Debtors or (ii) the commencement of the Chapter 11 Cases.
5. Pursuant to and to the extent set forth in section 525 of the Bankruptcy Code, a foreign or domestic governmental unit may not deny, revoke, suspend, or refuse to renew a license, permit, charter, franchise, or other similar grant to, condition such a grant to, discriminate with respect to such a grant against, deny employment to, terminate the employment of, or discriminate with respect to employment against, the Debtors or the Debtors' affiliates on account of (i) the commencement of the Chapter 11 Cases; (ii) the Debtors' insolvency; or (iii) the fact that the Debtors have not paid a debt that is dischargeable in Chapter 11 Cases.
6. Pursuant to and to the extent set forth in section 541(c) of the Bankruptcy Code, any interest of the Debtors in property becomes property of the estates, notwithstanding any provision in any agreement, transfer instrument, or applicable nonbankruptcy law, that: (a) restricts or conditions transfer of such interest by the Debtors, or (b) is conditioned on the insolvency or financial condition of the Debtors or on the commencement of the Debtors'

Chapter 11 Cases, and that effects or gives an option to effect a forfeiture, modification, or termination of the Debtor's interest in property.

7. This Order is intended to be declarative of and coterminous with, and shall neither abridge, enlarge nor modify, the rights and obligations of any party under sections 362, 365, 525, 541(c), and 553 of the Bankruptcy Code or any other provision of the Bankruptcy Code.

8. Nothing in the Motion or this Order, or any action taken by the Debtors in implementing this Order, shall be deemed or construed as (a) an admission as to the validity or priority of any claim against the Debtors or any lien on the Debtors' properties, or (b) an approval or assumption of any agreement, contract or lease pursuant to section 365 of the Bankruptcy Code, or (c) a waiver of the right of the Debtors, or shall impair the ability of the Debtors, to contest the validity and amount of any claim.

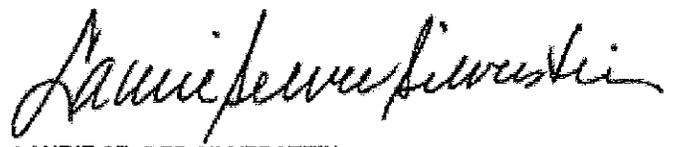
9. Notwithstanding the relief granted herein or any actions taken hereunder, nothing contained in this Order shall create any rights in favor of, or enhance the status of any claim held by, any person to whom any claim may be owed.

10. Neither the provisions contained herein, nor any actions made by the Debtors pursuant to this Order, shall be deemed an admission as to the validity of any underlying obligation or a waiver of any rights the Debtors may have to dispute such obligation on any ground that applicable law permits.

11. The Debtors are hereby authorized to take such actions and to execute such documents as may be necessary to implement the relief granted by this Order.

12. This Court retains exclusive jurisdiction with respect to all matters arising from or related to the implementation, interpretation, and enforcement of this Order.

Dated: February 14th, 2019
Wilmington, Delaware



LAURIE SELBER SILVERSTEIN
UNITED STATES BANKRUPTCY JUDGE

IN THE MATTER OF THE COMPANIES' CREDITORS ARRANGEMENT ACT, R.S.C. 1985, c. C-36, AS
AMENDED

Court File No: CV-

AND IN THE MATTER OF IMERYS TALC AMERICA, INC., IMERYS TALC VERMONT, INC., AND IMERYS
TALC CANADA INC. (THE "DEBTORS")

APPLICATION OF IMERYS TALC CANADA INC. UNDER SECTION 46 OF THE COMPANIES' CREDITORS
ARRANGEMENT ACT, R.S.C. 1985, c. C-36, AS AMENDED

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

Proceeding commenced at Toronto

**APPLICATION RECORD
(Volume 1 of 2)**

(Returnable February 19, 2019)

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