

Court File No.: CV-19-614614-00CL

**IMERYS TALC AMERICA, INC., IMERYS TALC VERMONT, INC., AND  
IMERYS TALC CANADA INC.**

**FIFTH REPORT OF KPMG INC.,  
IN ITS CAPACITY AS INFORMATION OFFICER**

**April 28, 2022**

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***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 IMERYS TALC AMERICA, INC., IMERYS TALC VERMONT,  
INC., AND IMERYS TALC CANADA INC.**

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

**FIFTH REPORT OF KPMG INC.  
IN ITS CAPACITY AS INFORMATION OFFICER**

**April 28, 2022**

## I. INTRODUCTION

1. On February 13, 2019 (the “**Petition Date**”), Imerys Talc America, Inc. (“**ITA**”), Imerys Talc Vermont, Inc. (“**ITV**”) and Imerys Talc Canada Inc. (“**ITC**” and together with ITA and ITV, the “**Debtors**”), commenced voluntary reorganization proceedings (the “**Chapter 11 Proceedings**”) in the United States Bankruptcy Court for the District of Delaware (the “**US Court**”) by each filing a voluntary petition for relief under chapter 11 (“**Chapter 11**”) of title 11 of the United States Code, 11 U.S.C. §§ 101-1532 (the “**Bankruptcy Code**”).
2. Also on the Petition Date, the Debtors filed various motions for interim and/or final orders (the orders entered by the US Court in respect thereof, the “**First Day Orders**”) in the Chapter 11 Proceedings to permit the Debtors to advance their reorganization. The First Day Orders included an order authorizing ITC to act as the foreign representative (in such capacity, the “**Foreign Representative**”) of the Debtors for the within proceedings (the “**Foreign Representative Order**”).
3. On February 14, 2019, the US Court granted the Foreign Representative Order and other First Day Orders.
4. On February 15, 2019, ITC, in its capacity as Foreign Representative, commenced an application before the Ontario Superior Court of Justice (Commercial List) (the “**Canadian Court**”) pursuant to Part IV of the *Companies’ Creditors Arrangement Act* (R.S.C. 1985, c. C-36, as amended) (the “**CCAA**”).
5. On February 20, 2019, the Canadian Court granted an initial recognition order, *inter alia*: (i) declaring that ITC is a “foreign representative” as defined in section 45 of the CCAA; (ii) declaring that the Chapter 11 Proceedings are recognized as a “foreign main proceeding” under the CCAA; and (iii) granting a stay of proceedings against the Debtors in Canada. The Debtors’ proceedings under the CCAA are referred to herein as the “**Recognition Proceedings**”.
6. Also on February 20, 2019, the Canadian Court granted a supplemental order, pursuant to section 49 of the CCAA, *inter alia*: (i) recognizing and giving full force and effect in Canada to certain of the First Day Orders; (ii) appointing Richter Advisory Group Inc. (“**Richter**”) as the information officer in respect of these proceedings; (iii) staying any proceedings, rights or remedies against or in respect of the Debtors, the business and property of the Debtors, the directors and officers of the Debtors in Canada, and the Information Officer (as defined herein); (iv) restraining the right of any

person or entity to, among other things, discontinue or terminate any supply of products or services required by the Debtors in Canada; and (v) granting a super-priority charge over the Debtors' property in Canada in favour of the Information Officer and its counsel, as security for their professional fees and disbursements incurred in respect of these proceedings, up to a maximum amount of CDN\$200,000.

7. On March 5, 2019, the Office of the United States Trustee (the "**Trustee**") filed a Notice of Appointment of the Official Committee of Tort Claimants (the "**TCC**"), which was formed to represent the tort claimants and ensure that their rights and interests are protected in these proceedings.
8. On March 19, 2019 and March 22, 2019, the US Court entered various orders sought by the Debtors at their "second day hearing", including but not limited to a Final Order Under 11 U.S.C. Sections 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 Payment, and (III) Establishing Procedures for Resolving Requests by Utility Companies for Additional Assurance of Payment (the "**Final Utilities Order**").
9. On April 3, 2019, the Canadian Court granted an order which recognized and gave full force and effect in Canada to, among other things, the Final Utilities Order.
10. On June 3, 2019, the US Court entered an order appointing James L. Patton, Jr. as legal representative for future talc personal injury claimants (the "**FCR**") *nunc pro tunc* to the Petition Date (the "**FCR Order**"). On October 28, 2019, the Canadian Court granted an order which recognized and gave full force and effect in Canada to the FCR Order.
11. On July 25, 2019, the US Court entered an Order (I) Establishing Bar Dates and Related Procedures for Filing Proofs of Claim Other than With Respect to Talc Personal Injury Claims and (II) Approving Form and Manner of Notice Thereof (the "**General Bar Date Order**"). Pursuant to the General Bar Date Order, the US Court established October 15, 2019 at 5:00 p.m. (Prevailing Eastern Time) as the deadline for creditors to file Proofs of Claim against the Debtors based on a Claim other than a Talc Claim (as defined therein) that arose before the Petition Date. On August 7, 2019, the Canadian Court granted an order which recognized and gave full force and effect in Canada to the General Bar Date Order.

12. On November 22, 2019, the US Court also entered an Order (I) Establishing a Bar Date for Indirect Talc Claims and Related Procedures for Filing Proofs of Claim for Indirect Talc Claims and (II) Approving Form and Manner of Notice Thereof (the “**Indirect Talc Claims Bar Date Order**”). Pursuant to the Indirect Talc Claims Bar Date Order, the US Court established January 9, 2020 at 5:00 p.m. (Prevailing Eastern Time) as the deadline for creditors to file Proofs of Claim against the North American Debtors based on an Indirect Talc Claim (as defined therein). On December 3, 2019, the Canadian Court granted an order which recognized and gave full force and effect in Canada to the Indirect Talc Claims Bar Date Order.
13. On July 23, 2020, the US Court entered an Order authorizing the employment and retention of Ramboll US Corporation (“**Ramboll**”) as Environmental Advisor *nunc pro tunc* to June 25, 2020 (the “**Ramboll Retention Order**”).
14. On October 29, 2020, the US Court entered an Order (I) Approving Debtors’ Designation of Magris Performance Materials Inc., f/k/a Magris Resources Canada Inc. (“**Magris**”) as Stalking Horse Bidder and Related Bid Protections and (II) Granting Related Relief (the “**Stalking Horse Order**”). On November 3, 2020, the Canadian Court granted an order which recognized and gave full force and effect in Canada to, among other things, the Stalking Horse Order and the Ramboll Retention Order.
15. On November 17, 2020, the US Court entered an Order (I) Approving Sale of All or Substantially All of the Debtors’ Assets Free and Clear of Liens, Claims, Encumbrances, and Other Interests, (II) Authorizing Assumption and Assignment of Certain Executory Contracts and Unexpired Leases, and (III) Granting Related Relief (the “**Sale Approval Order**”). On November 25, 2020, the Canadian Court granted an order which recognized and gave full force and effect in Canada to the Sale Approval Order.
16. On January 8, 2021, the US Court entered an Order authorizing ITC to continue its existence as a corporation under the *Business Corporations Act* (Quebec) (the “**Continuance Order**”).
17. On January 26, 2021, the Canadian Court granted orders:
  - (a) recognizing and giving full force and effect in Canada to the Continuance Order; and
  - (b) discharging Richter as the information officer in these proceedings and appointing KPMG Inc. (“**KPMG**” or the “**Information Officer**”) as the Information Officer effective as of the time of Richter’s discharge.

18. On January 27, 2021, the Debtors filed the Ninth Amended Joint Chapter 11 Plan of Reorganization of Imerys Talc America, Inc. and its Debtor Affiliates Under Chapter 11 of the Bankruptcy Code (the “**Ninth Amended Plan**”) and the Disclosure Statement for the Ninth Amended Plan (the “**Disclosure Statement**”). On September 15, 2021, the Debtors filed the Tenth Amended Joint Chapter 11 Plan of Reorganization of Imerys Talc America, Inc. and its Debtor Affiliates Under Chapter 11 of the Bankruptcy Code (the “**Tenth Amended Plan**” or the “**Plan**”) which contained certain amendments to the Ninth Amended Plan.
19. Also on January 27, 2021, the US Court entered an Order (I) Approving Disclosure Statement and Form and Manner of Notice of Hearing Thereon, (II) Establishing Solicitation Procedures, (III) Approving Form and Manner of Notice to Attorneys and Certified Plan Solicitation Directive, (IV) Approving Form of Ballots, (V) Approving Form, Manner, and Scope of Confirmation Notices, (VI) Establishing Certain Deadlines in Connection with Approval of Disclosure Statement and Confirmation of Plan, and (VII) Granting Related Relief (the “**Solicitation Procedures Order**”).
20. On February 23, 2021, the Canadian Court granted an order which recognized and gave full force and effect in Canada to the Solicitation Procedures Order.
21. On March 12, 2021, the US Court entered an Order Authorizing The Debtors To (I)(A) Employ CohnReznick LLP to Provide Interim Management Services Pursuant to 11 U.S.C. § 363, and (B) Designate Eric Danner as Their Chief Restructuring Officer (the “**CRO**”), *nunc pro tunc* to January 28, 2021, and (II) Designate Eric Danner as Their President and Treasurer Effective Upon the Closing of the Sale (the “**CRO Retention Order**”).
22. On April 19, 2021, the Canadian Court granted an order which recognized and gave full force and effect in Canada to, among other things, the CRO Retention Order.
23. On May 24, 2021, the US Court entered an Order Authorizing the Debtors to Reject Certain Executory Contracts and Unexpired Leases Effective as of the Rejection Date (the “**Contract Rejection Order**”).
24. On August 24, 2021, the US Court entered Orders:
  - (a) Authorizing The Debtors To (A) Close The Adequate Assurance Account Established By The Utilities Order And (B) Utilize All Funds In The Adequate Assurance Account In The Ordinary Course (the “**Utilities Close-Out Order**”); and

- (b) Authorizing the Debtors to Pursue and Effectuate Purchase of Property Located in Lyndonville, Vermont and Johnson, Vermont (the “**VT Acquisition Order**”).
25. On August 30, 2021, the US Court entered an Order Sustaining the Debtors’ Objection to Proof of Claim No. 442 filed by Thomas Neil Fulton (the “**Fulton Claim Objection Order**”).
26. On September 17, 2021, the US Court entered an Order (I) Authorizing Employment and Retention of Ramboll as Environmental Advisor *Nunc Pro Tunc* to August 16, 2021 and (II) Waiving Certain Informational Requirements of Local Rule 2016-2 in Connection Therewith (the “**Supplemental Ramboll Retention Order**”).
27. On October 1, 2021, the Canadian Court granted an order which recognized and gave full force and effect in Canada to the Contract Rejection Order, the VT Acquisition Order, the Fulton Claim Objection Order, the Utilities Close-Out Order and the Supplemental Ramboll Retention Order.
28. On November 30, 2021, the US Court entered an Order (I) Appointing Mediators, (II) Referring Certain Matters to Mediation, and (III) Granting Related Relief (the “**Mediation Order**”).
29. On December 22, 2021, the Canadian Court granted an order which recognized and gave full force and effect in Canada to the Mediation Order.
30. The primary purpose of the Chapter 11 Proceedings is to confirm a plan of reorganization pursuant to the Bankruptcy Code that channels all present and future talc personal injury claims (the “**Talc Personal Injury Claims**”) against the Debtors to a trust so that the Debtors can emerge from these restructuring proceedings free of historical talc-related liabilities.
31. KPMG, in its capacities as proposed Information Officer and Information Officer, has previously provided the Canadian Court with five reports in respect of these proceedings. Copies of all materials and reports filed, and orders granted by the Canadian Court in these Recognition Proceedings, are available on a website (the “**Information Officer’s Website**”) established by the Information Officer for the purposes of these proceedings at <https://home.kpmg/ca/imerystalc>. Additionally, there is a link on the Information Officer’s Website to the Debtors’ restructuring website maintained by Kroll, LLC f/k/a Prime Clerk LLC, which includes copies of the US Court materials and orders, notices and additional information in respect of the Chapter 11 Proceedings.



## II. PURPOSE OF REPORT

32. The purpose of this fifth report (the “**Fifth Report**”) of KPMG in its capacity as the Information Officer is to provide the Canadian Court with information concerning:
- (a) the motion of the Foreign Representative returnable May 3, 2022 for recognition in Canada of the Magris Settlement Order, the Allianz Mediation Order and the Mediation Extension Orders (each as defined herein); and
  - (b) the activities of the Information Officer since the fourth report (the “**Fourth Report**”) dated December 15, 2021.

## III. TERMS OF REFERENCE

33. In preparing this Fifth Report, KPMG has relied solely on information and documents provided by the Debtors and their advisors, including unaudited financial information, declarations and affidavits of the Debtors’ executives and other information provided in the Chapter 11 Proceedings (collectively, the “**Information**”). In accordance with industry practice, except as otherwise described in the Fifth Report, KPMG has reviewed the Information for reasonableness, internal consistency, and use in the context in which it was provided. However, KPMG has not audited or otherwise attempted to verify the accuracy or completeness of the Information in a manner that would comply with Generally Accepted Auditing Standards (“**GAAS**”) pursuant to the *Chartered Professional Accountant of Canada Handbook* and, as such, KPMG expresses no opinion or other form of assurance contemplated under GAAS in respect of the Information.
34. Unless otherwise stated, all monetary amounts contained herein are expressed in United States dollars.
35. Capitalized terms not otherwise defined herein are as defined in the affidavit of Eric Danner, the CRO, President and Treasurer of the Debtors, sworn on April 26, 2022 (the “**April 26 Danner Affidavit**”) and filed in support of the Foreign Representative’s motion. This Fifth Report should be read in conjunction with the April 26 Danner Affidavit, as certain information contained in the April 26 Danner Affidavit has not been included herein in order to avoid unnecessary duplication.

#### IV. ORDERS OF THE US COURT FOR WHICH RECOGNITION IS SOUGHT

##### Magris Settlement Order

36. On November 17, 2020, the US Court entered the Sale Approval Order approving the sale (the “**Sale**”) of substantially all of the Debtors’ assets to Magris pursuant to an asset purchase agreement dated October 13, 2020 (the “**APA**”). The Canadian Court recognized the Sale Approval Order on November 25, 2020. The Sale closed on February 17, 2021 (the “**Sale Closing**”).
37. Following the Sale Closing, certain disputes arose among the Debtors and Magris in connection with the interpretation of matters under the APA and the allocation of certain costs in connection with the Sale, including:
- (a) fees related to the transfer of surety bonds, including the Debtors’ rights to assert certain indemnification claims under the APA (the “**Indemnification Claim**”). The Debtors asserted the Indemnification Claim against Magris in the amount of \$263,169.86 for reimbursement of post-closing costs related to their assertion that Magris was delayed in replacing financial assurance instruments;
  - (b) the respective parties’ rights and obligations with respect to certain intercompany trade payables (the “**Intercompany Payables Claim**”). The Debtors asserted the Intercompany Payables Claim against Magris in the amount of \$285,859.77 for payment of intercompany trade payables that the Debtors assert were assumed by Magris at the Sale Closing in connection with the APA;
  - (c) the respective parties’ obligations arising out of a 2021 annual incentive plan (the “**AIP Claim**” and together with the Indemnification Claim and the Intercompany Payables Claim, the “**Post-Closing Claims**”). Magris asserted the AIP Claim against the Debtors for reimbursement of \$260,000.00 in 2021 incentive payments incurred for certain employees based on the Sale Closing section of the APA; and
  - (d) compliance with Section 2.6(b) of the APA, which addressed, among other things, the purchase price allocation (the “**Interpretation Issue**”).
38. The parties had discussed the above issues at various points in the months following the Sale Closing and ultimately reached an agreement to resolve such issues through a settlement agreement

dated March 29, 2022 (the “**Settlement Agreement**”). Pursuant to the terms of the Settlement Agreement:

- (a) Magris will remit \$144,514.82 (the “**Settlement Funds**”) to the Debtors within five (5) business days after the US Court enters an order approving the Settlement Agreement and such order becomes final and no longer subject to appeal;
  - (b) payment of the Settlement Funds shall fully and finally resolve the Post-Closing Claims; and
  - (c) the Debtors and Magris agree to enter into an amendment of Section 2.6(b) of the APA in order to resolve the Interpretation Issue.
39. The Debtors assert that the Settlement Agreement falls within the range of reasonable litigation outcomes as to each of the Post-Closing Claims and the Interpretation Issues. In choosing to enter into the Settlement Agreement, the Debtors carefully considered the uncertainty, burden, and expense associated with continued negotiations and the likelihood of litigation with Magris to resolve the aforementioned issues. Further, the Settlement Agreement provides the Debtors’ estates with an immediate cash recovery, which the Information Officer notes amounts to approximately 50% of the aggregate proceeds claimed by the Debtors from the Post-Closing Claims (assuming each was a valid claim).
40. On March 30, 2022, the Debtors filed a motion with the US Court for entry of an order (the “**Magris Settlement Order**”) approving the terms of the Settlement Agreement. On April 14, 2022, the Debtors filed a certificate with the US Court stating the Debtors had not received an answer, objection or any other responsive pleading with respect to the Debtors’ motion for the Magris Settlement Order prior to the objection deadline. On April 18, 2022, the US Court entered the Magris Settlement Order without a hearing.
41. As noted in the April 26 Danner Affidavit, ITC is a party to the Settlement Agreement as substantially all of its assets were sold to Magris as part of the APA. The Settlement Agreement is in the best interest of the Debtors’ estates and no Canadian stakeholders are anticipated to be prejudiced as a result of recognizing the Magris Settlement Order. It is anticipated that 50% of the Settlement Funds will be allocated to ITC.

## **Allianz Mediation Order**

42. On January 13, 2022, the American Insurance Company, Fireman’s Fund Insurance Company, and Allianz Underwriters Insurance Company (collectively, the “**Allianz Insurers**”) filed a motion (the “**Allianz Motion**”) in the Chapter 11 Proceedings seeking an order (the “**Allianz Mediation Order**”) designating the Allianz Insurers as “Mediation Parties” in Mediation of Insurance Issues pursuant the Mediation Order. As noted in the Fourth Report, the Mediation Order provided for additional parties to be added to the Mediation subject to approval of all of the Mediation Parties and the Mediators, or further order of the US Court.
43. In the Allianz Motion, the Allianz Insurers note they were previously a party to a 2021 mediation with the Debtors in the Chapter 11 Proceedings. The Allianz Insurers are of the view that their inclusion as “Mediation Parties” would be most consistent with the Debtors’ desires to resolve insurance coverage disputes expeditiously and efficiently. The Information Officer understands the Debtors had no objection to the Allianz Insurers participating in the Mediation.
44. On February 9, 2022, the US Court entered the Allianz Mediation Order without a hearing as no formal or informal objection or response to the Allianz Motion was received prior to the objection deadline.

## **Mediation Extension Orders**

45. As noted above, the US Court entered the Mediation Order on November 30, 2021, which order was recognized by the Canadian Court on December 22, 2021. Pursuant to the Mediation Order, the term of the Mediation was to expire on February 28, 2022, which date could be extended by further order of the US Court.
46. On March 11, 2022, the US Court entered an order extending the Mediation period through to April 8, 2022 (the “**First Mediation Extension Order**”). On April 15, 2022, the US Court entered an order extending the Mediation through to May 15, 2022 (the “**Second Mediation Extension Order**”) and together with the First Mediation Extension Order, the “**Mediation Extension Orders**”).
47. The Information Officer understands that while progress has been made in the Mediation, the mediation activity remains ongoing and extending the term of the Mediation will provide the parties additional time to continue the Mediation to hopefully progress towards a resolution of the Mediation Issues.

**V. ACTIVITIES OF THE INFORMATION OFFICER**

48. The activities of the Information Officer since the date of the Fourth Report include:

- (a) communicating with the Debtors' advisors, including the CRO, and the Information Officer's counsel regarding the status of matters related to the Chapter 11 Proceedings and the Recognition Proceedings;
- (b) reviewing materials filed by various parties in the Chapter 11 Proceedings in connection with the Magris Settlement Order, the Allianz Mediation Order and the Mediation Extension Orders;
- (c) reviewing the Debtors' cash flow reporting and professional fee reimbursement requests, and corresponding with the CRO and CohnReznick on same;
- (d) attending before the Canadian Court in respect of the Foreign Representative's motion for recognition of the Mediation Order;
- (e) maintaining and updating, as necessary, the Information Officer's Website; and
- (f) preparing this Fifth Report.

**VI. INFORMATION OFFICER'S RECOMMENDATION**

49. Based on the Information received and reviewed, the Information Officer is of the view that it is reasonable to recognize the Magris Settlement Order, the Allianz Mediation Order and the Mediation Extension Orders, and respectfully recommends that the Canadian Court grant the recognition order being sought by the Foreign Representative in its motion returnable May 3, 2022.

All of which is respectfully submitted this 28<sup>th</sup> day of April, 2022.

**KPMG Inc.**

**In its capacity as the Information Officer of**

**Imerys Talc America, Inc., Imerys Talc Vermont, Inc. and Imerys Talc Canada Inc.**

**And not in its personal or corporate capacity**

Per:

*Katherine Forbes*

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**Katherine Forbes**  
**CPA, CA, CIRP, LIT**  
President

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

Proceeding commenced at Toronto

**FIFTH REPORT OF THE INFORMATION OFFICER**  
**(April 28, 2022)**

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