

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

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

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

February 22, 2021

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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**

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

February 22, 2021

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; (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 April 24, 2019, the US Court entered a final order (I) Authorizing Continued Use of Existing Cash Management System, Including Maintenance of Existing Bank Accounts, Check, 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 (the "**Final Cash Management Order**"). On May 24, 2019, the Canadian Court granted an order which recognized and gave full force and effect in Canada to the Final Cash Management Order.
9. 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.
10. 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.
11. 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.

12. On March 9, 2020, the US Court granted an order (the “**Non-Debtor Professional Fee Stipulation Order**”) approving a stipulation and agreement permitting ITC to make payments to ITA for the fees and expenses of professionals retained by the TCC and the fees and expenses of professionals retained by the FCR. On April 1, 2020, the Canadian Court granted an order which recognized and gave full force and effect in Canada to the Non-Debtor Professional Fee Stipulation Order.
13. On October 29, 2020, the US Court entered an order (I) Approving Debtors’ Designation of Magris Resources Canada Inc. 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 the Stalking Horse Order.
14. 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.
15. 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**”).
16. On January 26, 2021, the Canadian Court granted orders:
 - (a) recognizing and giving full force and effect in Canada to the Continuance Order;
 - (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 (the “**Substitution Order**”).
17. 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.

18. KPMG, in its then-capacity as proposed Information Officer, previously filed a report (the “**Report**”) dated January 21, 2021 with the Canadian Court to provide information relating to the Foreign Representative’s motion for the Substitution Order. Copies of all materials 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 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 Prime Clerk LLC (“**Prime Clerk**”), 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

19. The purpose of this report (the “**First 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 February 23, 2021 for recognition in Canada of the Solicitation Procedures Order (as defined herein);
 - (b) an update on other matters relating to the Chapter 11 Proceedings;
 - (c) an update on matters relating to ITC; and
 - (d) activities of the Information Officer since the date of the Report.

III. TERMS OF REFERENCE

20. In preparing this First 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 First 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.

21. Unless otherwise stated, all monetary amounts contained herein are expressed in United States dollars.
22. Capitalized terms not otherwise defined herein are as defined in the motion materials, including the Ninth Amended Plan (as defined herein) and affidavit of Ryan Van Meter, Vice President and General Counsel – North America for the Imerys Group and Secretary of the Debtors, sworn on February 18, 2021 (the “**Van Meter Affidavit**”) and filed in support of the Foreign Representative’s motion. This First Report should be read in conjunction with the Van Meter Affidavit, as certain information contained in the Van Meter Affidavit has not been included herein in order to avoid unnecessary duplication.

IV. RECOGNITION OF THE SOLICITATION PROCEDURES ORDER

23. On May 15, 2020, the Debtors filed with the US Court the Joint Chapter 11 Plan of Reorganization of Imerys Talc America, Inc. and its Debtor Affiliates Under Chapter 11 of the Bankruptcy Code (the “**Original Plan**”) and the Disclosure Statement for the Original Plan (the “**Original Disclosure Statement**”). The hearing to consider approval of the Original Disclosure Statement and related solicitation procedures was originally scheduled to be heard by the US Court on June 30, 2020 but was continued various times and ultimately rescheduled for January 12, 15, and 25, 2021.
24. Amended versions of the Original Plan and the Original Disclosure Statement were filed by the Debtors on August 12, 2020, October 5, 2020, October 16, 2020, December 10, 2020, December 22, 2020, January 11, 2021, January 21, 2021, and January 23, 2021, in part to address certain objections to the Original Plan (and certain amendments (as applicable)) and the Original Disclosure Statement (and certain amendments (as applicable)) filed by a number of interested parties, including, but not limited to, the Trustee, certain insurers, certain personal injury claimants, and Johnson & Johnson and Johnson & Johnson Consumer Inc. (collectively, “**J&J**”).
25. 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**” or referred to hereinafter as the “**Plan**”) and the Disclosure Statement for the Ninth Amended Plan (the “**Disclosure Statement**”). 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**”).

Summary Overview of the Ninth Amended Plan¹

26. The Ninth Amended Plan is the culmination of extensive negotiations between the Debtors, Imerys S.A. (the “**Parent**”) and the other Imerys Plan Proponents, the TCC, and the FCR, all of whom are proponents of the Plan (the “**Plan Proponents**”) as defined in the Bankruptcy Code. If confirmed and consummated, the Plan provides for, among other things, the implementation of following:
- (a) a global settlement of issues among the Debtors, the Parent, the TCC and the FCR (the “**Imerys Settlement**”);
 - (b) a comprehensive settlement among the Debtors, Rio Tinto America Inc. (on behalf of itself and other parties) and Zurich American Insurance Company (on behalf of itself and other parties) (the “**Rio Tinto/Zurich Settlement**”). The Rio Tinto/Zurich Settlement, which was consented to by the TCC and the FCR, resolves a number of disputes relating to alleged liabilities, indemnification obligations, and insurance coverage matters relating to the Rio Tinto Corporate Parties’ prior ownership of the Debtors; and
 - (c) a global settlement among the Debtors, Cyprus Mines Corporation (“**Cyprus Mines**”), Cyprus Amax Minerals Company (“**CAMC**”, and together with Cyprus Mines, “**Cyprus**”), Freeport-McMoRan Inc., the TCC, and the FCR (the “**Cyprus Settlement**”). The Cyprus Settlement resolves the treatment of Talc Personal Injury Claims relating to Cyprus as well as disputes between Cyprus and the Debtors relating to entitlement to certain insurance proceeds and ownership of indemnification rights.

¹ The following paragraphs are intended to provide a summary overview of certain key aspects of the Ninth Amended Plan and the proposed solicitation and voting process and is qualified entirely by the actual terms of the Ninth Amended Plan. Detailed disclosure by the Debtors of the terms of the Ninth Amended Plan, the proposed treatment of claims and interests and the solicitation and voting procedures for the Ninth Amended Plan is provided in the Disclosure Statement and creditors should refer to the Disclosure Statement and the Ninth Amended Plan for a complete understanding of same.

27. As described in more detail in the Disclosure Statement and the Ninth Amended Plan, the primary purpose of the Plan is to provide a mechanism to permanently channel (the “**Channeling Injunction**”) the Talc Personal Injury Claims against the Debtors to a trust (the “**Talc Personal Injury Trust**”), which would assume liability of such claims on the Effective Date. Pursuant to the Ninth Amended Plan, Talc Personal Injury Claims include, among other claims, Indirect Talc Personal Injury Claims (such as claims for indemnity, contribution, or reimbursement).
28. To effectuate the Plan, the Talc Personal Injury Trust will receive the Talc Personal Injury Trust Assets, which will include, among other things, contributions of:
- (a) \$75 million plus² any remaining portion of the proceeds from the sale (the “**Transaction**”) of the Debtors’ assets to Magris Resources Canada Inc. (“**Magris**”) pursuant to the Imerys Settlement;
 - (b) \$340 million pursuant to the Rio Tinto/Zurich Settlement (as described in the Ninth Amended Plan); and
 - (c) \$130 million pursuant to the Cyprus Settlement (as described in the Ninth Amended Plan), upon the occurrence of the Cyprus Trigger Date.
29. As outlined in the Disclosure Statement, the Plan Proponents believe that there will be substantially more assets available to resolve Talc Personal Injury Claims under the Ninth Amended Plan than would be the case if there were a liquidation under chapter 7 of the Bankruptcy Code. The contributing parties to the Imerys Settlement, the Rio Tinto/Zurich Settlement, and the Cyprus Settlement are, as a result of the settlements, contributing substantial assets to the Talc Personal Injury Trust, which would not be otherwise available for holders of Talc Personal Injury Claims, as it is unlikely that any of those entities would proceed with the settlements set forth in the Ninth Amended Plan and Disclosure Statement in the absence of the Channeling Injunctions contemplated thereunder. The Imerys Settlement, the Rio Tinto/Zurich Settlement, and the Cyprus Settlement are described in greater detail in the Van Meter Affidavit and not repeated herein.
30. The effect of the Channeling Injunction to be issued as part of the Plan is that Talc Personal Injury Claims may only be pursued against, and resolved by, the Talc Personal Injury Trust. Following

² The Ninth Amended Plan also provides for a contingent purchase price enhancement of up to \$102.5 million (subject to a reduction mechanism based on the amount of money generated from the Sale), which amounts would not be payable in the event the Transaction closes.

the Effective Date of the Plan, Talc Personal Injury Claims may not be asserted against, among others, the Debtors and the other Protected Parties.

31. The Plan, although proposed jointly, does not contemplate the substantive consolidation of the Debtors' estates; rather, it constitutes a separate Chapter 11 Plan for each of ITA, ITV, and ITC. Imerys Talc Italy S.p.A. ("**ITI**"), an affiliate of the Debtors, may file (but has not yet filed) a Chapter 11 case to address Talc Personal Injury Claims against ITI. ITI's filing is contingent upon acceptance of the Ninth Amended Plan by the holders of such claims, as described more fully below.
32. Although ITI is not currently in bankruptcy, ITI will solicit acceptance of the Ninth Amended Plan as a "prepackaged plan of reorganization" and if the Plan is approved by the requisite number and amount of holders of Talc Personal Injury Claims, it would provide for the permanent settlement of Talc Personal Injury Claims as against ITI contemporaneously with the Talc Personal Injury Claims against the Debtors.
33. As further described below, holders of Allowed Unsecured Claims (Class 3a) against the Debtors, including the unsecured creditors of ITC, will be unimpaired and have their claims paid in full under the Plan.

Summary of the Treatment and Classification of Claims and Interests

Class	Claim/Interest	Treatment	Voting Status	Estimated Recovery
1	Priority Non-Tax Claims	Unimpaired	Not Entitled to Vote (Presumed to Accept)	100%
2	Secured Claims	Unimpaired	Not Entitled to Vote (Presumed to Accept)	100%
3a	Unsecured Claims against the North American Debtors	Unimpaired	Not Entitled to Vote (Presumed to Accept)	100%
3b	Unsecured Claims against ITI	Unimpaired	Not Entitled to Vote (Presumed to Accept)	100%
4	Talc Personal Injury Claims	Impaired	Entitled to Vote	<p>The Initial Payment Percentages are estimated in the following ranges:</p> <p>1) Fund A (Ovarian Cancer A Claimants): 0.40% to 2.34%</p> <p>2) Fund B (Mesothelioma Claimants): 3.70% to 6.24%; and</p> <p>3) Fund C (Ovarian Cancer B-D Claimants): 0.30% to 1.48%</p> <p>The Trust Distribution Procedures include provisions that would permit a subsequent modification of Payment Percentages on a Claim category by Claim category basis</p>
5a	Non-Debtor Intercompany Claims	Impaired	Not Entitled to Vote (Presumed to Accept)	0%
5b	Debtor Intercompany Claims	Unimpaired	Not Entitled to Vote (Presumed to Accept)	100%
6	Equity Interests in the North American Debtors	Impaired	Not Entitled to Vote (Presumed to Accept)	Cancelled
7	Equity Interests in ITI	Unimpaired	Not Entitled to Vote (Presumed to Accept)	Reinstated

34. As noted in the table above, holders of claims in Class 4 (Talc Personal Injury Claims) are the primary impaired class (the “**Voting Class**”) that are entitled to vote to accept or reject the Plan. Holders of claims in Class 1 (Priority Non-Tax Claims), Class 2 (Secured Claims), Class 3a (Unsecured Claims against the North American Debtors), Class 3b (Unsecured Claims against ITI), Class 5b (Debtor Intercompany Claims) and Class 7 (Equity Interests in ITI) are unimpaired (collectively the “**Unimpaired Accepting Classes**”) under the Plan and, consequently, are deemed to have accepted the Plan pursuant to the Bankruptcy Code. While holders of claims or interests in Class 5a (Non-Debtor Intercompany Claims) and Class 6 (Equity Interests in the North American Debtors) will have their claims or interests cancelled, discharged and/or eliminated on the Effective Date, each claimant in these classes (the “**Impaired Accepting Classes**”) has consented to its treatment under the Plan as a Plan Proponent and, therefore, is presumed to have accepted the Plan pursuant to the Bankruptcy Code.
35. As noted above, general unsecured creditors of ITC are unimpaired within the meaning of section 1124 of the Bankruptcy Code and, as such, are conclusively presumed to have accepted the Plan and will not be entitled to vote. As detailed in the Ninth Amended Plan, holders of allowed claims in Class 3a shall have their claims paid in full in cash as soon as practicable after the later of (i) the Effective Date or (ii) in the case of a disputed claim, the date that such claim becomes allowed.
36. As set out in the Disclosure Statement, the Debtors’ estimate of allowed general unsecured claims against the Debtors is approximately \$2.1 million, of which approximately \$0.4 million is related to ITC.

The Talc Personal Injury Trust

37. The Talc Personal Injury Trust will be created on the Effective Date of the Plan. The Talc Personal Injury Trust will be funded by the Talc Personal Injury Trust Assets in order to resolve Talc Personal Injury Claims in accordance with the Talc Personal Injury Trust Documents. Specifically, the purposes of the Talc Personal Injury Trust shall be, among other things, to:
- (a) assume all Talc Personal Injury Claims;
 - (b) to preserve, hold, manage, and maximize the assets of the Talc Personal Injury Trust; and
 - (c) to direct the processing, liquidation, and payment of all compensable Talc Personal Injury Claims in accordance with the Talc Personal Injury Trust Documents.

38. It is contemplated that the Trust Distribution Procedures will establish a methodology for resolution of Talc Personal Injury Claims, establish the process by which Talc Personal Injury Claims will be reviewed by the Talc Personal Injury Trust, and specify liquidated values for compensable claims based on the disease underlying the claim.
39. The Trust Distribution Procedures allocates a fixed percentage of the Trust Fund³ and the Cyprus Contribution to three funds within the Talc Personal Injury Trust. The allocations are:
- (a) Fund A (Ovarian Cancer A Claimants): 40% of the Trust Fund and 30.15% of the Cyprus Contribution;
 - (b) Fund B (Mesothelioma Claimants): 40% of the Trust Fund and 55% of the Cyprus Contribution; and
 - (c) Fund C (Ovarian Cancer B-D Claimants): 20% of the Trust Fund and 14.85% of the Cyprus Contribution.

Current Status of Plan Timetable

40. The chart below provides a summary of the Debtors’ timeline for the Plan solicitation and confirmation as set out in the Disclosure Statement:

Event	Date
Voting Record Date	January 27, 2021
Solicitation Date	February 1, 2021
Plan Voting Deadline	March 25, 2021
Confirmation Objection Deadline	May 28, 2021
Confirmation Brief Deadline	June 14, 2021
Confirmation Hearing	June 21-23, 2021

³ Defined as the Talc Personal Injury Trust Assets excluding the Cyprus Contribution.

Voting Process on Plan

41. The Solicitation Procedures Order and the exhibits attached thereto contain a detailed description of the manner in which the Debtors will solicit votes on the Ninth Amended Plan, including approved forms of ballots and notices to creditors. There will be no separate Plan voting process for Canadian holders of claims or interests in the Debtors and, as such, Canadian holders will be subject to the voting process set out in the Solicitation Procedures Order. As noted above, only holders of claims in Class 4 are entitled to vote on the Plan and, as such, the Debtors do not intend to solicit votes from claimants in other classes.
42. The Solicitation Procedures Order provides that holders of Talc Personal Injury Claims in Class 4, including Indirect Talc Personal Injury Claims, shall be temporarily allowed claims in the amount of \$1.00 in the aggregate per claimant solely for purposes of voting on the Plan and not for any other purpose. If any holder of an Indirect Talc Personal Injury Claim seeks a different treatment of its claim for voting purposes, such holder will be required to file a motion (a “**Rule 3018 Motion**”) with the US Court by February 19, 2021 seeking temporary allowance of their Claim in a different amount for purposes of voting to accept or reject the Plan. As at the date of this First Report, the Information Officer is not aware of any Rule 3018 Motions that have been filed.
43. Pursuant to the Bankruptcy Code, only holders of allowed claims are generally entitled to vote on a plan of reorganization. Claims that are contingent, unliquidated, disputed, zero-dollar, and/or subject to a pending objection, are not considered allowed claims and, as such, holders of these claims generally require leave of the court to have their claims admitted for purposes of voting to accept or reject a plan. The Debtors assert the Talc Personal Injury Claims are contingent, unliquidated and disputed. However as the Debtors’ most significant liabilities are the numerous Talc Personal Injury Claims asserted against them, the proposed temporary allowance of Talc Personal Injury Claims for voting purposes addresses this issue in a way that considers the particular circumstances of these proceedings and is supported by the TCC and the FCR.
44. The Information Officer understands Solicitation Packages will be mailed by Prime Clerk to, among others, holders of Direct Talc Personal Injury Claims and Indirect Talc Personal Injury Claims. The Solicitation Packages will include, among other things, copies of the Disclosure Statement, the Ninth Amended Plan, the Solicitation Procedures, a letter from the TCC and the FCR supporting the Plan, and a Ballot. In addition, Prime Clerk shall also include a copy of the notice of the hearing to confirm the Plan (the “**Confirmation Hearing Notice**”). Although the

Debtors will not be soliciting votes from the Unimpaired Accepting Classes and the Impaired Accepting Classes, Prime Clerk will mail copies of a notice advising of their non-voting status and the Confirmation Hearing Notice to these creditors. As noted above, as holders of allowed unsecured claims against ITC are deemed unimpaired and are conclusively presumed to have accepted the Plan, they will not receive a Solicitation Package.

45. In addition to mailing the Confirmation Hearing Notice, the Information Officer understands the Debtors published the Confirmation Hearing Notice in, among other publications, *The Globe and Mail*, the *National Post* and *Le Journal de Montréal* between February 1, 2021 and February 14, 2021.
46. Each holder of a claim in the Voting Class is entitled to vote to accept or reject the Ninth Amended Plan. The Voting Class shall have accepted the Plan pursuant to the requirements of the Bankruptcy Code if at least two-thirds (2/3) in amount and seventy-five percent (75%) in number of those voting claims in Class 4 vote to accept the Plan.
47. Assuming the requisite acceptances are obtained, the Debtors intend to seek confirmation of the Ninth Amended Plan at the confirmation hearing scheduled for June 21, 22, and 23, 2021, before the US Court.
48. The Information Officer will report further to the Canadian Court in respect of the Plan Confirmation as part of the Foreign Representative's motion for an order seeking recognition of any orders granted by the US Court in connection therewith.

Positions of Objecting Parties with respect to the Disclosure Statement

49. As noted in the Disclosure Statement, the Debtors have received comments on and objections to certain disclosures included in the Disclosure Statement from the following parties (the "**Objecting Parties**"): (i) J&J, (ii) Arnold & Iktin LLP ("**Arnold & Itkin**") on behalf of certain holders of Talc Personal Injury Claims, (iii) certain insurers that have insurance obligations to the Debtors or have issued policies to which the Debtors have asserted rights and interests, and (iv) Travelers Casualty and Surety Company ("**Travelers**"), which issued certain policies to Cyprus and J&J to which the Debtors have asserted their rights and interests. Each of these objections are summarized in the Disclosure Statement and discussed briefly below.

50. J&J objects to its indemnification obligations to the Debtors as well as aspects of the Imerys Settlement, Rio Tinto/Zurich Settlement, and Cyprus Settlement. J&J also objects to the Disclosure Statement on grounds relating to the proposed treatment of Talc Personal Injury Claims particularly relating to the improper modification of certain contractual agreements, the inadequacy of medical and exposure criteria in the Trust Distribution Procedures, and the structure of the Talc Personal Injury Trust.
51. Arnold & Itkin represents over 2,000 holders of Talc Personal Injury Claims but no members of the TCC. Among other things, Arnold & Itkin's objections to the Disclosure Statement relate to its assertion that certain provisions of the Trust Distribution Procedures create the potential for some categories of Talc Personal Injury Claims to receive less favourable treatment than other categories of such claims.
52. The Insurer Group asserts that the Disclosure Statement does not make certain disclosures that are necessary before approval of the Disclosure Statement. The Insurer Group alleges that (i) the Trust Distribution Procedures abandon Debtors' Liability Defenses which increases the "quantum of liability" and may reduce overall recoveries, and (ii) there is a potential breach of J&J's indemnification obligations possibly reducing amounts available to holders with Claims in Class 4. The Insurer Group also asserts that ITI may not be a proper debtor and questions the US Court's ability to issue any channeling injunction under section 524 (g) of the Bankruptcy Code. Lastly, the Insurer Group disagrees with the Plan Proponents' assertion that the Plan is "insurance neutral" as the Plan does not protect the insurer's contractual rights and threatens to increase their obligations significantly.
53. Travelers contends that the Disclosure Statement is vague regarding the treatment of Indirect Talc Personal Injury Claims under the Plan and that the Trust Distribution Procedures do not clarify the rights of the holders of Indirect Talc Personal Injury Claims. In addition, Travelers has concerns on lack of clarification as to whether J&J's insurance policies constitute Talc Insurance Policies and if they are subject to the insurance neutrality provisions of the Plan. Travelers further contends that the Plan cannot be confirmed because it does not comply with sections 105(a) and 524(g) of the Bankruptcy Code.
54. The Plan Proponents note that the Objecting Parties have no fiduciary obligations to the Debtors' estates, their creditors, or the holders of the Talc Personal Injury Claims, and that their concerns may be for their own self-interest.

55. Although the foregoing objections were raised by the Objecting Parties and considered by the US Court at the hearing seeking approval of the Solicitation Procedures Order, the US Court ultimately concluded that the Disclosure Statement contained sufficient information for claimants entitled to vote and granted the Solicitation Procedures Order.

V. UPDATE ON CERTAIN OTHER MATTERS IN THE CHAPTER 11 PROCEEDINGS

The J&J Stipulation

56. In response to the Indirect Talc Claims Bar Date Order, on January 9, 2020, J&J filed proofs of claim in the amount of \$20 million in each of the Debtors' estates (the "**J&J Claims**"). In the J&J Claims, J&J alleges to have incurred substantial out-of-pocket defence costs and losses resulting from settlement payments made by J&J to plaintiffs in certain personal injury and wrongful death actions commenced against J&J. The J&J Claims assert three types of claims that are premised on the terms of certain supply agreements entered into with predecessors of the Debtors: (i) contractual indemnity claims, (ii) a contractual claim to insurance proceeds, and (iii) other claims.
57. On October 5, 2020, the Debtors filed an objection (the "**Debtors' Objection**") to the J&J Claims seeking an order disallowing the J&J Claims in their entirety arguing, among other things, that the Debtors are not obligated to indemnify J&J pursuant to the historical supply agreements.
58. On February 4, 2021, the Debtors and J&J entered into a stipulation and agreement agreeing to, among other things, continue the hearing on the Debtors' Objection to a date to be determined after the hearing on confirmation of the Plan. Further, the J&J Claims, which fall into Class 4 under the Plan, shall be temporarily allowed in the amount of \$1.00 in the aggregate solely for purposes of voting to accept or reject the Plan, and J&J shall not file a Rule 3018 Motion with respect to the J&J Claims.

Cyprus Bankruptcy

59. On February 11, 2021, Cyprus Mines commenced voluntary reorganization proceedings (the "**Cyprus Proceedings**") in the United States Bankruptcy Court for the District of Delaware by filing a voluntary petition for relief under Chapter 11. The Information Officer understands the commencement of the Cyprus Proceedings was contemplated as part of the implementation of the Cyprus Settlement.

Transaction Closing

60. As noted in the Van Meter Affidavit, the Transaction with Magris closed on February 17, 2021. Consequent to the closing, the Debtors no longer have any active operations or material assets in North America, other than the cash proceeds from the Transaction, part of which will ultimately be transferred to the Talc Personal Injury Trust in accordance with the provisions of the Ninth Amended Plan, if confirmed and consummated.

Upcoming Matters in the Chapter 11 Proceedings

61. The Debtors have filed a motion (the “**2020 Year-End AIP Motion**”) for entry of an order approving ordinary course year-end bonus payments under the Debtors’ annual incentive plan (“**AIP**”) for 2020. There are 104 of the Debtors’ employees eligible for the year-end payment, including the Director of Operations of ITC who is also a member of ITC’s board of directors. The US Court previously entered orders approving 2019 mid-year and year-end, and 2020 mid-year bonus payments to eligible employees under the AIP.
62. On February 17, 2021, the Debtors filed a motion (the “**CRO Motion**”) for an order authorizing the Debtors to (I) (a) employ CohnReznick LLP to provide interim management services during the pendency of the Chapter 11 Proceedings, and (b) designate Eric Danner as their Chief Restructuring Officer, *nunc pro tunc* to January 28, 2021, and (II) designate Eric Danner as the Debtors’ President and Treasurer effective as of the closing of the Transaction.
63. The 2020 Year-End AIP Motion and the CRO Motion are scheduled to be heard by the US Court on March 15, 2021. The Information Officer will report further to the Canadian Court in respect of these motions should the Foreign Representative seek recognition of any orders granted by the US Court in connection therewith.

VI. UPDATE ON CERTAIN MATTERS RELATING TO IMERYS TALC CANADA INC.

64. The Debtors have provided reporting to the Information Officer with respect to the cashflows of ITC. For the four-week period from January 18, 2021 to February 12, 2021, ITC had total cash receipts of approximately \$3.8 million (as compared to forecast cash receipts of 3.7 million) and total cash disbursements of \$3.6 million, with no amounts paid to ITA as reimbursement of fees and expenses relating to professionals retained by the Debtors and the Non-Debtor Professional Fee Stipulation Order (as compared to forecast cash disbursements of 5.3 million, including \$2.0

million paid to ITA for professional fee reimbursements), for a net cash inflow of \$0.2 million (as compared to forecast net cash outflow of \$1.7 million) over the period.

65. As at February 12, 2021, the Information Officer understands that ITC had approximately \$9.1 million of cash on hand, including balances held in ITC's accounts at SunTrust Bank pursuant to the Final Cash Management Order.
66. As a result of the closing of the Transaction, the Debtors, including ITC, no longer have any active operations or material assets in Canada, and as such, go-forward cash flows will only be forecast and reported on a combined level and not the entity level.

VII. ACTIVITIES OF THE INFORMATION OFFICER

67. The activities of the Information Officer since the date of the Report include:
 - (a) communicating with the Debtors' advisors 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 Solicitation Procedures Order and the Ninth Amended Plan;
 - (c) attending hearings of the US Court to consider the Debtors' motion for the Solicitation Procedures Order;
 - (d) reviewing ITC's cash flow reporting and corresponding with the Debtors' financial advisor, Alvarez & Marsal North America, LLC, on same;
 - (e) attending before the Canadian Court for issuance of the Continuance Order and the Substitution Order
 - (f) maintain and updating, as necessary, the Information Officer's Website; and
 - (g) preparing this First Report.

VIII. INFORMATION OFFICER'S RECOMMENDATION

68. Based on the Information received and reviewed to date, the Information Officer is of the view that it is reasonable to recognize the Solicitation Procedures Order and respectfully recommends that the Canadian Court grant the recognition order sought by the Foreign Representative.

All of which is respectfully submitted this 22nd day of February 2021.

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
CPA, CA, CIRP, LIT
Senior Vice President

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. (THE "DEBTORS")

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

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

FIRST REPORT OF THE INFORMATION OFFICER
(February 22, 2021)

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