

**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**

**MOTION RECORD  
(Re: RECOGNITION OF FOREIGN ORDERS)  
(Returnable April 19, 2021)**

April 15, 2021

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Lawyers for the Applicant

**TO: ATTACHED SERVICE LIST**

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

**SERVICE LIST  
(April 15, 2021)**

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# INDEX

**ONTARIO  
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**IN THE MATTER OF THE *COMPANIES' CREDITORS ARRANGEMENT ACT*, R.S.C.  
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**I N D E X**

<b>TAB</b>	<b>DOCUMENT</b>
1.	Notice of Motion, returnable April 19, 2021
2.	Affidavit of Ryan Van Meter, sworn April 15, 2021
A.	<i>Exhibit A</i> : Affidavit of Ryan Van Meter, sworn February 18, 2021 (First Van Meter Affidavit) (without exhibits)
B.	<i>Exhibit B</i> : CRO Order
C.	<i>Exhibit C</i> : AIP Order
D.	Exhibit D: Affidavit of Anthony Wilson sworn October 29, 2020 (without exhibits)
3.	Draft Order

# TAB 1

**ONTARIO  
SUPERIOR COURT OF JUSTICE  
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COMPANIES' CREDITORS ARRANGEMENT ACT, R.S.C. 1985, c. C-36, AS AMENDED**

**NOTICE OF MOTION  
(Re: Recognition of Foreign Orders)  
(Returnable April 19, 2021)**

The Applicant, Imerys Talc Canada Inc. ("ITC"), will make a motion to a judge presiding over the Commercial List on April 19, 2021 at 9:30 a.m. or as soon after that time as the motion can be heard by video conference due to the COVID-19 crisis. The video conference details can be found in Schedule "A" to this Notice of Motion. Please advise Nicholas Avis if you intend to join the hearing of this motion by emailing [navis@stikeman.com](mailto:navis@stikeman.com).

**PROPOSED METHOD OF HEARING:**

The motion is to be heard orally by video conference.

**THE MOTION IS FOR:**

1. An order recognizing and enforcing in Canada the following orders of the United States Bankruptcy Court for the District of Delaware (the "**US Court**") made in the insolvency proceedings of the Debtors under chapter 11 of title 11 of the United States Bankruptcy Code:

- (a) *Order Approving Ordinary Course Year-End Bonus Payment Under Sections 105(a), 363 and 503 of the Bankruptcy Code*, entered on March 2, 2021 [Docket No. 3031] (the "**AIP Order**"); and
- (b) *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, Nunc Pro Tunc To January 28, 2021, And (II) Designate Eric Danner As Their President And Treasurer Effective*

*Upon The Closing Of The Sale*, entered on March 12, 2021 [Docket No. 3087] (the “**CRO Order**”);

and

2. Such further and other relief as counsel may advise and this Court deems just.

**THE GROUNDS FOR THE APPLICATION ARE:**

1. Capitalized terms not otherwise defined herein have the meaning ascribed to them in the Affidavit of Ryan Van Meter sworn April 15, 2021 (the “**Second Van Meter Affidavit**”);

***Generally***

2. The Debtors were formerly engaged in talc production and were the market leaders in North America, representing nearly 50% of the market;

3. On February 13, 2019, the Debtors filed voluntary petitions for relief under title 11 of the *United States Code* with the US Court (the “**US Proceeding**”);

4. On February 14, 2019, the US Court made various orders in the US Proceedings (the “**First Day Orders**”), including an order authorizing ITC to act as foreign representative of the US Proceedings and an order placing the Debtors under joint administration in the US Proceedings;

5. On February 20, 2019 this Court made an initial recognition order declaring ITC the foreign representative as defined in section 45 of the *Companies’ Creditors Arrangement Act*, R.S.C. 1985, c. C-36, as amended (the “**CCAA**”) and a supplemental order;

***The Ninth Amended Plan***

6. The Debtors’ stated purpose of the Chapter 11 Cases is to confirm a plan of reorganization that will maximize the value of the Debtors’ assets for the benefit of all stakeholders and include a trust mechanism to address Talc Personal Injury Claims in a fair and equitable manner;

7. On January 27, 2021, the Debtors filed with the US Court the Ninth Amended Plan and the Ninth Amended Disclosure Statement;

8. The Ninth Amended Plan provides a mechanism to resolve the Talc Personal Injury Claims against the Debtors and the other Protected Parties by channelling all Talc Personal Injury Claims by permanent injunction to the Talc Personal Injury Trust, whereupon Talc Personal Injury Claims are to be resolved in accordance with Talc Personal Injury Trust Documents;

9. A key aspect of the Ninth Amended Plan is the sale of substantially all of the Debtors' assets to Magris Resources;

10. The US Court granted the Sale Approval Order on November 17, 2020, this Court recognized the Sale Approval Order on November 25, 2020, and the Sale closed on February 17, 2021;

11. The majority of the Debtors' management and key employees transitioned to Magris Resources as part of the Sale;

12. As a result of the closing of the Sale, the Debtors are no longer engaged in talc operations and have no material assets in Canada other than the cash proceeds of the Sale (if the Ninth Amended Plan is confirmed, the cash proceeds less certain deductions will be transferred to the Talc Personal Injury Trust);

***The CRO Order***

13. The CRO Order, among other things, authorizes the Debtors to:

- (a) retain and employ CohnReznick to provide interim management services during the pendency of the Chapter 11 Cases, *nunc pro tunc* to January 28, 2021;
- (b) designate Mr. Eric Danner as the Chief Restructuring Officer of the Debtors, *nunc pro tunc* to January 28, 2021; and
- (c) designate Mr. Danner as President and Treasurer of the Debtors effective as of the closing of the Sale, subject to certain terms and conditions;

14. Mr. Danner has previously worked in crisis management situations creating and implementing business plans and has acted in chief restructuring officer, chief financial officer and chief operating officer roles in both out-of-court and bankruptcy contexts;

15. CohnReznick is a financial advisory firm with extensive experience providing guidance and advise to financially troubled companies in complex financial restructurings both out-of-court;

16. The engagement of Mr. Danner and CohnReznick is necessary to compensate for the loss of the majority of the Debtors' management and key employees following the Sale;

17. Mr. Danner, CohnReznick, and the additional staff that CohnReznick provides to Mr. Danner and the Debtors, will perform a broad range of services, including, without limitation, managing and guiding the Debtors' day-to-day affairs; assisting the Debtors in addressing strategic and tactical issues; assisting the Debtors in navigating the chapter 11 bankruptcy process; and assisting with supporting confirmation of the Ninth Amended Plan, the implementation of the Ninth Amended Plan, and transitioning to the post effective date period;

***The AIP Order***

18. The AIP Order, among other things, approves the payment of a 2020 year-end bonus payment in the amount of C\$41,589 to the Eligible Employee;

19. The Eligible Employee is employed by ITC as the Director of Operations and serves as a member of the board of directors of ITC;

20. The Eligible Employee previously received a 2020 mid-year bonus payment of C\$10,962.70, which payment was approved by the US Court on September 21, 2020, and recognized by this Court on November 3, 2020;

21. The Eligible Employee's 2020 year-end bonus payment represents the remainder of the Eligible Employee's 2020 AIP bonus compensation (the total amount being C\$52,552);

***Other Grounds***

22. The provisions of the CCAA and the inherent and equitable jurisdiction of this Honourable Court;

23. The provisions of the *Rules of Civil Procedure*, R.R.O. 1990, Reg. 194, including r. 2.03, 3.02, 16 and 37 thereof; and

24. Such further and other grounds as counsel may advise and this Honourable Court may permit.

**THE FOLLOWING DOCUMENTARY EVIDENCE** will be used at the hearing of the motion:

25. The Second Van Meter Affidavit;

26. The CRO Order, a copy of which is attached to the Second Van Meter Affidavit;

27. The AIP Order, a copy of which is attached to the Second Van Meter Affidavit;

28. The second report of the Information Officer, to be filed; and

29. Such further and other materials as counsel may advise and this Honourable Court may permit.

April 15, 2021

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Lawyers for the Applicant

**Schedule "A"**

**Zoom Coordinates**

April 19, 2021 at 9:30 AM Eastern Time (US and Canada)

**Join Zoom Meeting**

<https://zoom.us/j/94401861944?pwd=YWFnTjRpWmdlMnVtQlVKNEhhNFJJdz09>

Meeting ID: 944 0186 1944

Passcode: 202473

One tap mobile

+16475580588,,94401861944#,,,,\*202473# Canada

+17789072071,,94401861944#,,,,\*202473# Canada

Dial by your location

+1 647 558 0588 Canada

+1 778 907 2071 Canada

+1 204 272 7920 Canada

+1 438 809 7799 Canada

+1 587 328 1099 Canada

+1 647 374 4685 Canada

Meeting ID: 944 0186 1944

Passcode: 202473

Find your local number: <https://zoom.us/u/abbC6z4tsb>

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

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

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

Proceeding commenced at Toronto

**NOTICE OF MOTION  
(Returnable April 19, 2021)**

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# TAB 2

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

**ONTARIO  
SUPERIOR COURT OF JUSTICE  
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**IN THE MATTER OF THE *COMPANIES' CREDITORS ARRANGEMENT ACT*,  
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**AFFIDAVIT OF RYAN VAN METER  
(Sworn April 15, 2021)**

I, Ryan Van Meter, of the City of Brookhaven, in the State of Georgia, United States of America (the "**US**"), MAKE OATH AND SAY:

1. I am the Vice President and General Counsel – North America for the Imerys Group and Secretary 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**"). I am authorized to submit this affidavit on behalf of the Debtors.

2. In my role as Vice President and General Counsel – North America for the Imerys Group and Secretary of the Debtors, I am responsible for overseeing the general legal activities of the Debtors. As a result of my role and tenure with the Debtors, my review of public and non-public documents, and my discussions with other members of the Debtors' management team, I either have personal knowledge or 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.

3. I swear this affidavit in support of ITC's motion pursuant to the *Companies' Creditors Arrangement Act*, R.S.C. 1985 c. C-36, as amended (the "**CCAA**"), for an order granting certain

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relief, including recognizing the CRO Order and the AIP Order (both as defined below) in respect of the jointly administered proceeding of the Debtors under title 11 of the *United States Code* (the “**US Bankruptcy Code**”).

4. All capitalized terms not otherwise defined herein are as defined in the affidavit of Ryan Van Meter sworn February 18, 2021 (the “**First Van Meter Affidavit**”), a copy of which is attached hereto (without exhibits) and marked as **Exhibit “A”**.

## I. OVERVIEW

5. The Debtors are three debtors-in-possession in the Chapter 11 Cases (as defined below) commenced before the United States Bankruptcy Court for the District of Delaware (the “**US Court**”).

6. The Debtors were in the business of mining, processing, selling, and/or distributing talc. The Debtors formerly operated talc mines, plants, and distribution facilities in Montana, Vermont, Texas and Ontario. ITA and ITV sold talc directly to their customers as well as to third party and affiliate distributors. ITC exported the vast majority of its talc into the United States almost entirely on a direct basis to its customers. The Debtors sold substantially all of their operations to a third party as part of a transaction that closed on February 17, 2021 and, accordingly, are no longer engaged in the talc business.

7. The Debtors are directly or indirectly owned by Imerys S.A. (“**Imerys**”). Imerys is a French corporation that is the direct or indirect parent entity of over 360 affiliated entities (the “**Imerys Group**”). The Debtors were acquired by the Imerys Group in 2011 when Rio Tinto America, Inc. and certain affiliates sold their talc business to the Imerys Group.

8. On February 13, 2019, the Debtors filed voluntary petitions (collectively, the “**Petitions**” and each a “**Petition**”) for relief under chapter 11 of the US Bankruptcy Code (the “**Chapter 11 Cases**”) with the US Court (the “**US Proceeding**”). The Debtors initiated the Petitions in response to a proliferation of lawsuits claiming that one or more of the Debtors were responsible for personal injuries allegedly caused by exposure to talc (each claim, as more fully defined in the Ninth Amended Plan, a “**Talc Personal Injury Claim**”).

9. The Debtors maintain that their talc is safe and that the Talc Personal Injury Claims are without merit. Nevertheless, the sheer number of alleged talc-related claims combined with the

state of the US tort system led to overwhelming projected litigation costs (net of insurance) that the Debtors were unable to sustain over the long-term, leading to the need for the Petitions to protect the Debtors' estates and preserve value for all stakeholders.

10. On February 14, 2019, the US Court entered various orders in the US Proceeding (the "**First Day Orders**"), including an order authorizing ITC to act as foreign representative on behalf of the Debtors' estates in any judicial or other proceedings in Canada and an order placing the Chapter 11 Cases under joint administration in the US Proceeding. Since February 14, 2019, the US Court has made various orders that are described in greater detail in prior affidavits filed by the Debtors in this proceeding.

11. On February 20, 2019, this Court made an initial recognition order declaring ITC the foreign representative as defined in s. 45 of the CCAA and a supplemental order recognizing the First Day Orders and appointing Richter Advisory Group Inc. as the Information Officer.

## **II. GENERAL INFORMATION ON THE IMERYS GROUP AND THE CHAPTER 11 CASES AND THE CCAA PROCEEDINGS**

### **(a) Recent Orders**

12. The Debtors have been actively pursuing their restructuring efforts in the United States. Since the First Van Meter Affidavit, the US Court has entered the following orders:

- a) *Order Approving Ordinary Course Year-End Bonus Payment Under Sections 105(a), 363 and 503 of the Bankruptcy Code*, entered on March 2, 2021 [Docket No. 3031] (the "**AIP Order**"), which is discussed below;
- b) *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, Nunc Pro Tunc to January 28, 2021, and (II) Designate Eric Danner as Their President and Treasurer Effective Upon the Closing of the Sale*, entered on March 12, 2021 [Docket No. 3087] (the "**CRO Order**"), which is discussed below;
- c) *Order Granting Debtors Motion to Compel Compliance with Rule 2019 of the Federal Rules of Bankruptcy Procedure*, entered on March 12, 2021 [Docket

No. 3088] (the “**Order to Compel**”), which compels the Firms (as defined in the Order to Compel) filing verified statements pursuant to Rule 2019 of the Federal Rules of Bankruptcy Procedure (the “**Bankruptcy Rules**”) to comply with Bankruptcy Rule 2019;

- d) *Order Authorizing Appointment of Commissioner for Discovery in France and for Issuance of Request for International Judicial Assistance Under Chapter II of The Hague Convention*, entered on March 15, 2021 [Docket No. 3099], which, among other things, appointed Daniel Schimmel of Foley Hoag LLP as commissioner to (i) receive from Imerys documents and electronically-stored information (“**ESI**”) that Imerys is required to produce under the US Court’s orders and in response to certain written discovery requests under the Federal Rules of Procedure, (ii) promptly transmit such documents and ESI to counsel for the other parties in the Chapter 11 Cases (as applicable), and (iii) supervise the obtaining of oral deposition testimony of Denis Musson, an Imerys witness located in France (if necessary); and
- e) *Order Resolving the New Jersey Action Insurers Motion for an Order (I) Confirming that the Automatic Stay Does Not Apply to the New Jersey Action or, in the Alternative (II) Granting Relief from the Automatic Stay to Allow the New Jersey Action to Proceed*, entered on March 19, 2021 [Docket No. 3174] (“**New Jersey Action Order**”), which lifts and modifies the automatic stay of section 363 of the US Bankruptcy Code to permit each J&J Insurer and J&J (each as defined in the New Jersey Action Order) to litigate, manage and resolve all claims at issue in the New Jersey Action (as defined in the New Jersey Action Order) subject to certain limitations described in the New Jersey Action Order and provides that no Debtor shall commence an adversary proceeding or file a motion against any J&J Insurer or J&J regarding the availability, scope, or extent of insurance coverage obligations to J&J under the policies issued by the J&J Insurers for claims alleging bodily injury allegedly due to exposure to talc or talc-containing products during the Subject Period (as defined in the New Jersey Action Order).

13. At this time, the Debtors are seeking to recognize only the CRO Order and AIP Order, which are described in greater detail below. The CRO Order and AIP Order are attached hereto and marked as **Exhibit “B”** and **Exhibit “C”**, respectively.

**(b) The Ninth Amended Plan and Ninth Amended Disclosure Statement<sup>1</sup>**

14. The Debtors’ stated purpose of the Chapter 11 Cases is to confirm a plan of reorganization that will maximize the value of the Debtors’ assets for the benefit of all stakeholders and include a trust mechanism to address Talc Personal Injury Claims in a fair and equitable manner.

15. On January 27, 2021, the Debtors filed with the US Court 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* [Docket No. 2852] (the “**Ninth Amended Plan**”) and the *Disclosure Statement for Ninth Amended Joint Chapter 11 Plan of Reorganization of Imerys Talc America, Inc. and Its Debtor Affiliates Under Chapter 11 of the Bankruptcy Code* [Docket No. 2853] (the “**Ninth Amended Disclosure Statement**”). The Ninth Amended Plan and the Ninth Amended Disclosure Statement are the current and amended iterations of the plan and disclosure statement that were originally filed with the US Court on May 15, 2020.

16. The US Court entered an order approving the Ninth Amended Disclosure Statement on January 27, 2021 and scheduled a hearing on confirmation of the Ninth Amended Plan to begin on June 21, 2021. This Court recognized the order approving the Ninth Amended Disclosure Statement, among other things, on February 23, 2021. On April 13, 2021, the Debtors filed the *Certification of Counsel Regarding Corrected Order Adjourning Confirmation Hearing and Related Dates* [Docket No. 3390] (“**Proposed Scheduling Order**”), whereby the Debtors have requested that a proposed order modifying certain dates related to confirmation of the Ninth Amended Plan be entered by the US Court. The Proposed Scheduling Order would adjourn the hearing on confirmation of the Ninth Amended Plan so that it begins on August 16, 2021. The order has yet to be entered by the US Court.

17. The primary purpose of the Ninth Amended Plan is to provide a mechanism to resolve the Talc Personal Injury Claims against the Debtors and the other Protected Parties pursuant

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<sup>1</sup> Capitalized terms used in this section that are not otherwise defined are as defined in the Ninth Amended Plan and the Ninth Amended Disclosure Statement.

to sections 524(g) and 105(a) of the US Bankruptcy Code. Specifically, under the terms of the Ninth Amended Plan, all Talc Personal Injury Claims will be channelled by permanent injunction to a trust (the “**Talc Personal Injury Trust**”) established under sections 524(g) and 105(a) of the US Bankruptcy Code.

18. The Ninth Amended Plan incorporates a comprehensive settlement (the “**Imerys Settlement**”) by and among the (a) tort claimants in the Debtors’ Chapter 11 Cases appointed by the United States Trustee (“**Tort Claimants’ Committee**”); (b) James L. Patton in his capacity as the legal representative for any and all persons who may assert a Talc Personal Injury Demand (the “**FCR**”); (c) the Debtors; (d) Imerys; (e) Imerys Talc Italy S.p.A.; and (f) the other Imerys Plan Proponents. The Imerys Settlement secures a recovery for the benefit of the Debtors’ creditors, additional valuable assets that will be provided to the Talc Personal Injury Trust, and additional cash recovery by virtue of the sale of the Debtors’ assets.

19. The Ninth Amended Plan also implements (i) a comprehensive settlement among the Debtors, on the one hand, and Rio Tinto America Inc. (“**Rio Tinto**”), on behalf of itself and the Rio Tinto Captive Insurers, and for the benefit of the Rio Tinto Protected Parties, and Zurich American Insurance Company, in its own capacity and as successor-in-interest to Zurich Insurance Company, U.S. Branch (“**Zurich**”), on behalf of itself and for the benefit of the Zurich Protected Parties, on the other hand, and consented to by the Tort Claimants’ Committee and the FCR (the “**Rio Tinto/Zurich Settlement**”) and (ii) a global settlement (the “**Cyprus Settlement**”) among (i) the Debtors, (ii) Cyprus Mines Corporation (“**Cyprus Mines**”), Cyprus Amax Minerals Company (together with Cyprus Mines, “**Cyprus**”), and Freeport-McMoRan Inc., (iii) the Tort Claimants’ Committee, and (iv) the FCR. The Rio Tinto/Zurich Settlement finally resolves disputes over (i) alleged liabilities relating to the Rio Tinto Corporate Parties’ prior ownership of the Debtors, (ii) alleged indemnification obligations of the Rio Tinto Corporate Parties, and (iii) the amount of coverage to which the Debtors claim to be entitled under the Talc Insurance Policies issued by the Zurich Corporate Parties and the Rio Tinto Captive Insurers. The Cyprus Settlement resolves (i) the treatment of Talc Personal Injury Claims relating to Cyprus, (ii) disputes between Cyprus and the Debtors regarding entitlement to certain insurance proceeds between Cyprus and the Debtors, and (iii) disputes between Cyprus and the Debtors regarding ownership of certain indemnification rights. The Rio Tinto/Zurich Settlement and the Cyprus Settlement will have the effect of generating substantial recoveries for the holders of Talc Personal Injury Claims.

20. More information on the Ninth Amended Plan and the Ninth Amended Disclosure Statement can be found in the First Van Meter Affidavit. Additional information is also available on the Information Officer's website: <https://home.kpmg/ca/en/home/services/advisory/deal-advisory/creditorlinks/imerystalc.html>. Copies of the Ninth Amended Plan (and any plan supplements), the Ninth Amended Disclosure Statement, and related information can be found on the Debtors' claims and noticing agent's website: <https://cases.primeclerk.com/ImerysTalc/>.

**(c) The Sale**

21. A key aspect of the Imerys Settlement is the sale of substantially all of the Debtors' assets pursuant to section 363 of the US Bankruptcy Code. The Ninth Amended Plan contemplates that, if the Ninth Amended Plan is approved by the relevant courts, the proceeds from the sale, less certain deductions, are to be contributed to the Talc Personal Injury Trust.

22. The sale process formally commenced on May 15, 2020. Magris Resources Canada Inc. ("**Magris Resources**") was declared the successful bidder on November 11, 2020. On November 17, 2020, the US Court entered the Sale Approval Order that, among other things, authorized and approved of the sale (the "**Sale**") of the Debtors' assets free and clear to Magris Resources. This Court recognized the Sale Approval Order on November 25, 2020.

23. The Debtors worked diligently and efficiently to close the Sale on February 17, 2021. As a result of the Sale closing, the Sale proceeds were funded to the Debtors' estates and the North American Debtors are no longer engaged in talc operations.

24. The majority of the Debtors' management and key employees transitioned to Magris Resources as part of the Sale. As a result of the Sale, the Debtors' engaged the services of Mr. Eric Danner to take over the management and administration of the Debtors' post-Sale operations and affairs, including in connection with the ongoing Chapter 11 Cases and these CCAA proceedings. Mr. Danner's qualifications and the scope of his services are described below.

### III. OVERVIEW OF THE FOREIGN ORDERS SOUGHT TO BE RECOGNIZED

#### (a) The CRO Order<sup>2</sup>

25. The Debtors are seeking the recognition of the CRO Order. The US Court entered the CRO Order on March 12, 2021.

26. The CRO Order authorizes the Debtors to:

- a) retain and employ CohnReznick LLP (“**CohnReznick**”) to provide interim management services during the pendency of the Chapter 11 Cases, *nunc pro tunc* to January 28, 2021;
- b) designate Mr. Danner as the Chief Restructuring Officer (“**CRO**”) of the Debtors, *nunc pro tunc* to January 28, 2021; and
- c) designate Mr. Danner as President and Treasurer of the Debtors effective as of the closing of the Sale, subject to certain terms and conditions.

#### ***Eric Danner’s Qualifications***

27. Mr. Danner has over 20 years of experience in providing financial consulting and economic analysis to publicly and privately held companies. Mr. Danner is a CPA and holds a BA in Economics from Vassar College (a liberal arts college in New York state) and an MBA in Accounting/Finance from Boston University.

28. Mr. Danner has worked in crisis management situations creating and implementing turnaround business plans and has acted in chief restructuring officer, chief financial officer and chief operating officer roles in both out-of-court and bankruptcy contexts. He is also experienced in providing a variety of fiduciary services, including wind-down leadership, litigation management, and creditor claims resolution.

29. Since the US Court entered the CRO Order, Mr. Danner has been serving as CRO, President, and Treasurer of each of the Debtors. Mr. Danner has been assisting and will continue to assist the Debtors in evaluating and implementing strategic and tactical options throughout the remainder of the Chapter 11 Cases as well as managing any ongoing

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<sup>2</sup> All capitalized terms used in this section that are not otherwise defined are as defined in the CRO Order.

operational, administrative and back-office functions that are necessary for the Debtors to perform.

30. It is also contemplated that Mr. Danner will also serve as the sole director of each of the Debtors upon the effective date of the Ninth Amended Plan.

### ***CohnReznick's Qualifications***

31. CohnReznick is a financial advisory firm with extensive experience in restructuring and providing financial and operational guidance to companies in distressed situations. CohnReznick was formed in October 2012 and is the result of a merger between the accounting and consulting firms of J.H. Cohn LLP and The Reznick Group P.C. CohnReznick is headquartered in New York, NY and is one of the largest financial advisory firms in the United States with over 2,500 employees and a presence in 26 different cities. The partners, managing directors, directors, senior managers, managers, associates and other professional staff of CohnReznick have extensive experience in working with financially troubled companies in complex financial restructurings both out-of-court and in comparable chapter 11 cases.

32. The resources, capabilities and experience of CohnReznick in advising the Debtors are crucial for a successful restructuring following the closing of the Sale. CohnReznick has been working closely with the Debtors, the Debtors' representatives and the other professionals retained by the Debtors to ensure there is no unnecessary duplication of services performed or charged to the Debtors' estates. The Debtors have been and will continue to monitor and direct the services provided by CohnReznick to maximize efficiencies for the benefit of the estates. CohnReznick provides expertise that complements and does not duplicate the services offered by the Debtors' other restructuring professionals.

33. CohnReznick has been providing certain additional staff to assist Mr. Danner and the Debtors (collectively, the "**Additional Personnel**").

### ***Scope of Services***

34. The Debtors anticipate that during the Chapter 11 Cases, Mr. Danner, CohnReznick and the Additional Personnel will perform a broad range of services, including, without limitation, the following:

- a) managing and guiding the Debtors' day-to-day affairs;

- b) assisting the Debtors in addressing strategic and tactical issues;
- c) assisting the Debtors in navigating the chapter 11 bankruptcy process;
- d) managing all aspects of the Debtors' cash receipts and disbursements, including but not limited to, the creation of weekly and monthly cash management reports as required by the Debtors, the determination of cash requirements for payment of accounts payable, periodic payroll (salaries, taxes, impounds, trust funds, etc.) and other operating expenses, if any, and all reporting requirements;
- e) preparation and validation of cash flow budget projections, as needed, including analyzing historical cash disbursements and receipts and results of operations to determine the reasonableness of projected cash flows and short-term cash needs;
- f) preparation of financial reporting in compliance with reporting requirements;
- g) assistance with supporting confirmation of the Ninth Amended Plan, the implementation of the Ninth Amended Plan, and transitioning to the post effective date period;
- h) participation in communications with the Debtors' creditors and governmental authorities; and
- i) other services as directed by the Debtors and agreed to by CohnReznick.

35. The Debtors and CohnReznick intend that all of the services that CohnReznick provides to the Debtors will be: (a) appropriately directed by the Debtors so as to avoid duplicative efforts among the other professionals retained in these cases, and (b) performed in accordance with applicable standards of the profession. For the avoidance of doubt, the services provided by CohnReznick will not overlap with, or in any way duplicate, the services to be provided by the Debtors' other professionals.

36. The hourly rate for Mr. Danner is US\$825 per hour, and the hourly rate for the Additional Personnel range from US\$160 to US\$930 per hour. CohnReznick is also entitled to reimbursement for its reasonable costs and expenses, including but not limited to costs of

travel, reproduction, typing, any applicable state sales tax or excise tax or other direct expenses. The Debtors believe that this compensation structure is reasonable, designed to fairly compensate CohnReznick for the work performed by CohnReznick, Mr. Danner and the Additional Personnel (as applicable), and consistent with CohnReznick's normal and customary billing levels for comparably sized and complex cases, both in and out of court, in connection with the rendering of similar services to be provided by CohnReznick to the Debtors. This compensation structure is also market-based and consistent with, and typical of, arrangements entered into by other comparable advisory firms rendering similar services for clients such as the Debtors under like circumstances.

**(d) The AIP Order**

37. The Debtors are seeking the recognition of the AIP Order.

38. Imerys' annual incentive plan (the "AIP") was implemented by the Debtors in 2012 following their acquisition by the Imerys Group in 2011 and has been periodically revised to ensure alignment with the Debtors' business-wide objectives. The AIP provides ordinary course bonus payments to certain employees of the Debtors, awarding amounts based on prior individual performance and the financial performance of the business. The AIP vests upon payment and there is no obligation to pay back any such payment in the event an employee subsequently terminates his or her employment with the Debtors.

39. Bonuses under the AIP are based on the following weighted objectives: (a) the Debtors' financial objectives (60%) and (b) the safety objectives and the individual employee's personal performance objectives (40%). Each employee has a "maximum" bonus that they can achieve under the AIP based on a designated percentage tied to such employee's base salary.

40. At the request of the United States Trustee, the Debtors agreed that they would obtain a court order prior to making any payments of accrued amounts under the AIP solely with respect to any "insider", including any employee of the Debtors that also serves on any of the Debtors' boards of directors or that holds an officer title, including that of "Vice-President". A court order is not required with respect to AIP payments to non-insider employees of the Debtors.

41. There are 104 employees of the Debtors who are eligible for 2020 year-end bonus payments. One such employee is employed by ITC as the Director of Operations of ITC (the

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“**Eligible Employee**”) and is eligible to receive a 2020 year-end bonus payment in the amount of C\$41,589. Because the Eligible Employee served as a member of the board of directors of ITC during the relevant time period and may be considered an “insider”, the US Court entered the AIP Order to approve the Eligible Employee’s 2020 year-end bonus. The US Court entered that order on March 2, 2021.

42. The Eligible Employee previously received a 2020 mid-year bonus payment of C\$10,962.70, which payment was approved by the US Court on September 21, 2020 [Docket No. 2228] and recognized by this Court on November 3, 2020. The Eligible Employee’s 2020 mid-year bonus payment is described in greater detail in the Affidavit of Anthony Wilson sworn October 29, 2020, a copy of which is attached hereto (without exhibits) and marked as **Exhibit “D”**. The Eligible Employee’s 2020 year-end bonus payment represents the remainder of the Eligible Employee’s 2020 AIP bonus compensation (the total amount being C\$52,552).

#### **IV. NEXT STEPS**

43. The Debtors will continue to work towards confirmation of the Ninth Amended Plan in the coming months. The US Court has scheduled a hearing on June 21, 22, and 23, 2021, at 10:00 a.m. (Prevailing Eastern Time) to consider whether to confirm the Ninth Amended Plan. If the Proposed Scheduling Order is entered, the hearing to consider confirmation of the Ninth Amended Plan will be rescheduled to August 16, 17, 18, 19, and 20, 2021 at 10:00 a.m. (Prevailing Eastern Time). The deadline for voting to accept or reject the Ninth Amended Plan was March 25, 2021 at 4:00 p.m. (Prevailing Eastern Time). Objections to the confirmation of the Ninth Amended Plan are to be filed no later than May 28, 2021, at 4:00 p.m. (Prevailing Eastern Time); however, if the Proposed Scheduling Order is entered, the objection deadline will be July 16, 2021, at 4:00 p.m. (Prevailing Eastern Time).

44. If the US Court enters an order confirming the Ninth Amended Plan, the Foreign Representative intends to bring a motion before this Court seeking an order (a) recognizing the US Court’s confirmation order in its entirety and (b) directing that the confirmation order and the Ninth Amended Plan be implemented and made effective in Canada in accordance with their terms. The issuance of such an order by this Court is a condition precedent to the Ninth Amended Plan. The Foreign Representative has not yet scheduled a date for this motion.

**V. CONCLUSION**

45. I believe that the relief sought in this motion (a) is in the best interests of the Debtors and their estates, and (b) constitutes a critical element in the Debtors being able to successfully maximize value for the benefit of their estates and, ultimately, successfully emerge from the Chapter 11 Cases.

I confirm that while connected via video technology, Ryan Van Meter showed me his government-issued photo identity document and that I am reasonably satisfied it is the same person and the document is current and valid.

Sworn before me remotely by video conference by Ryan Van Meter, stated as being in the City of Brookhaven, in the State of Georgia, United States of America, to the City of Toronto, Ontario, on April 15, 2021, in accordance with O. Reg 431/20 *Administering Oath or Declaration Remotely*.

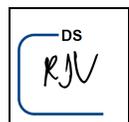
DocuSigned by:  
*Nicholas Avis*  
2C12EEAB5242430...

**Nicholas Avis**

Commissioner for Taking Affidavits  
LSO #76781Q

DocuSigned by:  
*Ryan Van Meter*  
FEF366B664B9476...

**RYAN VAN METER**



This is  
**EXHIBIT "A"**  
to the Affidavit of  
**RYAN VAN METER**  
Sworn April 15, 2021

DocuSigned by:

*Nicholas Avis*

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**Nicholas Avis**

Commissioner for Taking Affidavits  
LSO #76781Q

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

**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.**

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

**AFFIDAVIT OF RYAN VAN METER  
(Sworn February 18, 2021)**

I, Ryan Van Meter, of the City of Brookhaven, in the State of Georgia, United States of America (the "**US**"), MAKE OATH AND SAY:

1. I am the Vice President and General Counsel – North America for the Imerys Group and Secretary 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**"). I am authorized to submit this affidavit on behalf of the Debtors.

2. In my role as Vice President and General Counsel – North America for the Imerys Group and Secretary of the Debtors, I am responsible for overseeing the general legal activities of the Debtors. As a result of my role and tenure with the Debtors, my review of public and non-public documents, and my discussions with other members of the Debtors' management team, I either have personal knowledge or 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.

3. I swear this affidavit in support of ITC's motion pursuant to the *Companies' Creditors Arrangement Act*, R.S.C. 1985 c. C-36, as amended (the "**CCAA**"), for an order granting certain

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relief, including recognizing the Solicitation Procedures Order (as defined below) in respect of the jointly administered proceeding of the Debtors under title 11 of the *United States Code* (the “**US Bankruptcy Code**”).

4. All capitalized terms not otherwise defined herein are as defined in the affidavits of Anthony Wilson sworn January 21, 2021 (the “**Eighth Wilson Affidavit**”), November 20, 2020 (the “**Seventh Wilson Affidavit**”), October 29, 2020 (the “**Sixth Wilson Affidavit**”) and June 29, 2020 (the “**Fifth Wilson Affidavit**”), copies of which (without exhibits) are attached hereto and marked as **Exhibit “A”**, **Exhibit “B”**, **Exhibit “C”** and **Exhibit “D”**, respectively.

## I. OVERVIEW

5. The Debtors are three debtors-in-possession in the Chapter 11 Cases (as defined below) commenced before the United States Bankruptcy Court for the District of Delaware (the “**US Court**”).

6. The Debtors were in the business of mining, processing, selling, and/or distributing talc. The Debtors formerly operated talc mines, plants, and distribution facilities in Montana, Vermont, Texas and Ontario. ITA and ITV sold talc directly to their customers as well as to third party and affiliate distributors. ITC exported the vast majority of its talc into the United States almost entirely on a direct basis to its customers. As described further below, the Debtors have consummated a sale of substantially all of their operations to a third party, and therefore are no longer engaged in the talc business.

7. The Debtors are directly or indirectly owned by Imerys S.A. (“**Imerys**”). Imerys is a French corporation that is the direct or indirect parent entity of over 360 affiliated entities (the “**Imerys Group**”). The Debtors were acquired by the Imerys Group in 2011 when Rio Tinto America, Inc. and certain affiliates sold their talc business to the Imerys Group.

8. On February 13, 2019, the Debtors filed voluntary petitions (collectively, the “**Petitions**” and each a “**Petition**”) for relief under chapter 11 of the US Bankruptcy Code (the “**Chapter 11 Cases**”) with the US Court (the “**US Proceeding**”). The Debtors initiated the Petitions in response to a proliferation of lawsuits claiming that one or more of the Debtors were responsible for personal injuries allegedly caused by exposure to talc (each claim, as more fully defined in the Ninth Amended Plan, a “**Talc Personal Injury Claim**”).

9. The Debtors maintain that their talc is safe and that the Talc Personal Injury Claims are without merit. Nevertheless, the sheer number of alleged talc-related claims combined with the state of the US tort system led to overwhelming projected litigation costs (net of insurance) that the Debtors were unable to sustain over the long-term, leading to the need for the Petitions to protect the Debtors' estates and preserve value for all stakeholders.

10. On February 14, 2019, the US Court entered various orders in the US Proceeding (the "**First Day Orders**"), including an order authorizing ITC to act as foreign representative on behalf of the Debtors' estates in any judicial or other proceedings in Canada and an order placing the Chapter 11 Cases under joint administration in the US Proceeding. Since February 14, 2019, the US Court has made various orders that are described in greater detail in prior affidavits filed by the Debtors in this proceeding.

11. On February 20, 2019, this Court made an initial recognition order declaring ITC the foreign representative as defined in s. 45 of the CCAA and a supplemental order recognizing the First Day Orders and appointing Richter Advisory Group Inc. as the Information Officer.

## **II. GENERAL INFORMATION ON THE IMERYS GROUP AND THE CHAPTER 11 CASES AND THE CCAA PROCEEDINGS**

12. The Debtors have been actively pursuing their restructuring efforts in the United States. Since the Eighth Wilson Affidavit, the US Court has entered the following orders:

- a) *Order Scheduling Omnibus Hearings*, entered on January 21, 2021 [Docket No. 2814];
- b) *Order Scheduling Omnibus Hearings*, entered on January 27, 2021 [Docket No. 2861];
- c) *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*, entered on January 27, 2021 [Docket No. 2863] (the “**Solicitation Procedures Order**”), which is discussed below; and

- d) *Order Sustaining Debtors’ Seventh Omnibus (Non-Substantive) Objection to Amended Claims* [Docket No. 2904], which disallowed certain amended and duplicate claims.

13. At this time, the Debtors are seeking to recognize only the Solicitation Procedures Order, which is described in greater detail below. The Solicitation Procedures Order is attached hereto and marked as **Exhibit “E”**.

### III. THE NINTH AMENDED PLAN AND NINTH AMENDED DISCLOSURE STATEMENT<sup>1</sup>

#### ■ Background

14. The Debtors’ stated purpose of the Chapter 11 Cases is to confirm a plan of reorganization that will maximize the value of the Debtors’ assets for the benefit of all stakeholders and, include a trust mechanism to address Talc Personal Injury Claims in a fair and equitable manner.

15. The Debtors entered into extensive discussions regarding a potential plan of reorganization with the official committee of tort claimants in the Debtors’ Chapter 11 Cases appointed by the United States Trustee (“**Tort Claimants’ Committee**”) and James L. Patton in his capacity as the legal representative for any and all persons who may assert a Talc Personal Injury Demand (the “**FCR**”) following the Petition Date. As discussions matured, they focused on the development of a comprehensive settlement (the “**Imerys Settlement**”) by and among the Tort Claimants’ Committee, the FCR, the Debtors, Imerys, Imerys Talc Italy S.p.A. (“**ITI**”) and the other Imerys Plan Proponents (the “**Plan Proponents**”).

16. The Ninth Amended Plan also implements (i) a comprehensive settlement among the Debtors, on the one hand, and Rio Tinto America Inc. (“**Rio Tinto**”), on behalf of itself and the Rio Tinto Captive Insurers, and for the benefit of the Rio Tinto Protected Parties, and Zurich American Insurance Company, in its own capacity and as successor-in-interest to Zurich

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<sup>1</sup> Capitalized terms used in this section that are not otherwise defined are as defined in the Ninth Amended Plan, the Ninth Amended Disclosure Statement, or the Trust Distribution Procedures (each as defined below), as applicable.

Insurance Company, U.S. Branch (“**Zurich**”), on behalf of itself and for the benefit of the Zurich Protected Parties, on the other hand, and consented to by the Tort Claimants’ Committee and the FCR (the “**Rio Tinto/Zurich Settlement**”) and (ii) a global settlement (the “**Cyprus Settlement**”) among (i) the Debtors, (ii) Cyprus Mines Corporation (“**Cyprus Mines**”), Cyprus Amax Minerals Company (“**CAMC**,” and together with Cyprus Mines, “**Cyprus**”), and Freeport-McMoRan Inc., (iii) the Tort Claimants’ Committee, and (iv) the FCR. The Rio Tinto/Zurich Settlement finally resolves disputes over (i) alleged liabilities relating to the Rio Tinto Corporate Parties’ prior ownership of the Debtors, (ii) alleged indemnification obligations of the Rio Tinto Corporate Parties, and (iii) the amount of coverage to which the Debtors claim to be entitled under the Talc Insurance Policies issued by the Zurich Corporate Parties and the Rio Tinto Captive Insurers. The Cyprus Settlement resolves (i) the treatment of Talc Personal Injury Claims relating to Cyprus, (ii) disputes between Cyprus and the Debtors regarding entitlement to certain insurance proceeds between Cyprus and the Debtors, and (iii) disputes between Cyprus and the Debtors regarding ownership of certain indemnification rights.

17. The Imerys Settlement, the Rio Tinto/Zurich Settlement, and the Cyprus Settlement pave the way for a consensual resolution of the Chapter 11 Cases and these CCAA proceedings. The Imerys Settlement secures a recovery for the benefit of the Debtors’ creditors, additional valuable assets that will be provided to the Talc Personal Injury Trust, and additional cash recovery by virtue of the sale of the Debtors’ assets. The Rio Tinto/Zurich Settlement and the Cyprus Settlement will also generate substantial recoveries for the holders of Talc Personal Injury Claims.

#### ■ Overview of the Ninth Amended Plan

18. On May 15, 2020, the Debtors filed the *Joint Chapter 11 Plan of Reorganization of Imerys Talc America, Inc. and Its Debtor Affiliates Under Chapter 11 of the Bankruptcy Code Filed by Imerys Talc America, Inc.* [Docket No. 1714] (the “**Plan**”) and the *Disclosure Statement for Joint Chapter 11 Plan of Reorganization of Imerys Talc America, Inc. and Its Debtor Affiliates Under Chapter 11 of the Bankruptcy Code* [Docket No. 1715] (the “**Disclosure Statement**”) with the US Court. The Plan and the Disclosure Statement were described in the Fifth Wilson Affidavit.

19. The Plan and the Disclosure Statement have each been amended nine times. The first through seventh amendments were described in the Fifth Wilson Affidavit, the Sixth Wilson Affidavit, Seventh Wilson Affidavit, and the Eighth Wilson Affidavit.

20. On January 23, 2021, the Debtors filed with the US Court the *Eighth Amended Joint Chapter 11 Plan of Reorganization of Imerys Talc America, Inc. and its Debtor Affiliates Under Chapter 11 of the Bankruptcy Code* [Docket No. 2833] (the “**Eighth Amended Plan**”) and the *Disclosure Statement for Eighth Amended Joint Chapter 11 Plan of Reorganization of Imerys Talc America, Inc. and its Debtor Affiliates Under Chapter 11 of the Bankruptcy Code* [Docket No. 2834] (the “**Eighth Amended Disclosure Statement**”). The Eighth Amended Plan and the Eighth Amended Disclosure Statement, among other things, provided additional details on the Cyprus Settlement, and additional disclosures pertaining to the treatment of Talc Personal Injury Claims under the Trust Distribution Procedures.

21. On January 27, 2021, the Debtors filed with the US Court 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* [Docket No. 2853] (the “**Ninth Amended Plan**”) and the *Disclosure Statement for Ninth Amended Joint Chapter 11 Plan of Reorganization of Imerys Talc America, Inc. and its Debtor Affiliates Under Chapter 11 of the Bankruptcy Code* [Docket No. 2853] (the “**Ninth Amended Disclosure Statement**”). The Ninth Amended Plan and the Ninth Amended Disclosure Statement made certain minor revisions and additions, including clarifications related to the allocation of funds generated by the Cyprus Settlement and certain other revisions to account for additional disclosures requested by objecting parties at the hearing to approve the Solicitation Procedures Order.

22. A copy of the Ninth Amended Plan and the Ninth Amended Disclosure Statement are attached hereto and marked as **Exhibit “F”** and **Exhibit “G”**, respectively. The general structure of the Ninth Amended Plan is similar to the structure of the original Plan.

23. The Ninth Amended Plan is the result of extensive negotiations with a number of interested parties, including, but not limited to, the Tort Claimants’ Committee, the FCR, the Imerys Non-Debtors, Cyprus, Rio Tinto and Zurich.<sup>2</sup> In addition, the Debtors committed significant resources to mediating outstanding disagreements with each of Cyprus, Rio Tinto,

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<sup>2</sup> All terms used in this paragraph that are not otherwise defined are as defined in the Ninth Amended Disclosure Statement.

J&J, and several insurers, including Zurich, Truck, the Chubb Insurers, XL, and RMI. The Debtors have expended substantial time and effort to understand and address the concerns of the various stakeholders involved in the Chapter 11 Cases.

### ■ **The Talc Personal Injury Trust**

24. The primary purpose of the Ninth Amended Plan is to provide a mechanism to resolve the Talc Personal Injury Claims against the Debtors and the other Protected Parties pursuant to sections 524(g) and 105(a) of the US Bankruptcy Code. Specifically, under the terms of the Ninth Amended Plan, all Talc Personal Injury Claims will be channelled by permanent injunction to a trust (the “**Talc Personal Injury Trust**”) established under sections 524(g) and 105(a) of the US Bankruptcy Code.

25. The Ninth Amended Plan contemplates that ITI (currently a non-debtor) may file a petition in the US Proceeding. Such proceeding, if commenced, would be jointly administered for procedural purposes (subject to US Court approval) with the Chapter 11 Cases prior to the Confirmation Hearing. ITI intends to file a petition in the US Proceeding if the Ninth Amended Plan is accepted by the requisite number of holders of Talc Personal Injury Claims. Accordingly, if approved, the Ninth Amended Plan will provide for the permanent settlement of Talc Personal Injury Claims against ITI with the Talc Personal Injury Claims against the North American Debtors. Holders of Equity Interests in and Claims against ITI (other than holders of Talc Personal Injury Claims and Non-Debtor Intercompany Claims) will be unimpaired.

26. The Ninth Amended Plan, in keeping with the Imerys Settlement, also contemplates, among other things, the following:

- a) the North American Debtors’ sale of substantially all of their assets to a purchaser;
- b) the Equity Interests in the North American Debtors will be cancelled, and on the Effective Date, Equity Interests in the Reorganized North American Debtors will be authorized and issued to the Talc Personal Injury Trust; and
- c) the Equity Interests in ITI will be reinstated following the Effective Date, with approximately 99.66% of such Equity Interests to be retained by Mircal Italia S.p.A., a Non-Debtor Affiliate, while 51% of the Equity Interests in Reorganized

ITI will serve as security for the Talc PI Note (in the amount of US\$500,000) pursuant to the Talc PI Pledge Agreement.

27. Additionally, pursuant to the Imerys Settlement, Imerys has agreed to make, or cause to be made, a contribution of cash and other assets to the Talc Personal Injury Trust to obtain the benefit of certain releases and a permanent channelling injunction that bars the pursuit of Talc Personal Injury Claims against the Protected Parties. Imerys' contribution will include, among other things, a cash contribution of at least \$75 million, and 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, as further described in the Ninth Amended Disclosure Statement.<sup>3</sup>

28. Moreover, pursuant to the Rio Tinto/Zurich Settlement Rio Tinto (on behalf of itself and the Rio Tinto Captive Insurers and for the benefit of the Rio Tinto Protected Parties) and Zurich (on behalf of itself and for the benefit of the Zurich Protected Parties) will contribute \$340 million in Cash, along with certain rights of indemnification, contribution, and/or subrogation against third parties, to the Talc Personal Injury Trust, all as further described in the Ninth Amended Plan. Similarly, pursuant to the Cyprus Settlement, and upon the occurrence of the Cyprus Trigger Date, the Talc Personal Injury Trust will receive \$130 million in cash in seven installments from CAMC, and the Cyprus Protected Parties (as applicable) will assign to the Talc Personal Injury Trust (i) the rights to and in connection with the Cyprus Talc Insurance Policies, and (ii) all rights to or claims for indemnification, contribution, or subrogation against (a) any Person relating to the payment or defense of any Talc Personal Injury Claim or other past talc-related claim channeled to the Talc Personal Injury Trust prior to the Cyprus Trigger Date, and (b) any Person relating to any other Talc Personal Injury Claim or other claims channeled to the Talc Personal Injury Trust.

29. On the Effective Date, the Talc Personal Injury Trust will receive the Talc Personal Injury Trust Assets (such assets include but are not limited to the Imerys Settlement Funds, the right to receive the Rio Tinto/Zurich Contribution, the right to receive the Cyprus Contribution (conditioned upon the occurrence of the Cyprus Trigger Date), insurance proceeds from specified insurance policies, and certain causes of action). The Talc Personal

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<sup>3</sup> The Ninth Amended Plan provides that the contingent purchase price enhancement is not payable in the event the Sale closes.

Injury Trust Assets will be used to resolve Talc Personal Injury Claims in accordance with the Talc Personal Injury Trust Documents, including the Trust Distribution Procedures.

### ■ The Sale

30. A key aspect of the Ninth Amended Plan is the sale of substantially all of the Debtors' assets pursuant to section 363 of the US Bankruptcy Code. The Ninth Amended Plan contemplates that the proceeds from the sale, less certain deductions, are to be contributed to the Talc Personal Injury Trust.

31. The sale process formally commenced on May 15, 2020. Magris Resources Canada Inc. ("**Magris Resources**") was declared the successful bidder on November 11, 2020. On November 17, 2020, the US Court entered the Sale Approval Order that, among other things, authorized and approved of the Sale of the Debtors' assets free and clear to Magris Resources. This Court recognized the Sale Approval Order on November 25, 2020. The Debtors consummated the sale to Magris on February 17, 2021.

32. The Debtors worked diligently and efficiently to close the Magris sale. During the approximately three months that it took to close the transaction, the Debtors were in regular communications with their US and Canadian counsel, their financial advisors, Magris, and US and Canadian counsel to Magris.

33. The sale closed on February 17, 2021. Given the scale and complexity of the transaction, it understandably took approximately three months to close the transaction. As a result of the sale closing, the North American Debtors are no longer engaged in talc operations.

### ■ Creditor Classes & Distributions

34. There are seven Classes of Claims and Equity Interests under the Ninth Amended Plan. Each of these Classes and their proposed treatment under the Ninth Amended Plan are summarized in the following table. Where a Class is Unimpaired, it is presumed to accept the Ninth Amended Plan and is therefore not eligible to vote. Unimpaired Claims will be paid in full.

<b>Class</b>	<b>Class Description<sup>4</sup></b>	<b>Treatment</b>	<b>Estimated Recovery</b>
<b>Class 1</b> Priority Non-Tax Claims	Certain Claims entitled to priority pursuant to section 507(a) of the US Bankruptcy Code (other than an Administrative Claim, a Priority Tax Claim, a Fee Claim, or a DIP Facility Claim)	Unimpaired, not entitled to vote	100%
<b>Class 2</b> Secured Claims	Includes claims secured by a Lien on property in which a particular Estate has an interest, claims subject to setoff pursuant to section 553 of the US Bankruptcy Code, and claims allowed as secured pursuant to the Ninth Amended Plan or any Final Order as a secured Claim	Unimpaired, not entitled to vote	100%
<b>Class 3a</b> Unsecured Claims against the North American Debtors	Includes certain Claims against the North American Debtors that are not an Administrative Claim, a Priority Non-Tax Claim, a Priority Tax Claim, a Secured Claim, a Talc Personal Injury Claim, or an Intercompany Claim	Unimpaired, not entitled to vote	100%
<b>Class 3b</b> Unsecured Claims against ITI	Includes certain Claims against ITI that are not an Administrative Claim, a Priority Non-Tax Claim, a Priority Tax Claim, a Secured Claim, a Talc Personal Injury Claim, or an Intercompany Claim	Unimpaired, not entitled to vote	100%
<b>Class 4</b> Talc Personal Injury Claims	Includes all Talc Personal Injury Claims	Impaired (eligible to vote to accept or reject the Ninth Amended Plan)	Payment ranges are discussed below
<b>Class 5a</b> Non-Debtor Intercompany Claims	Includes any claim held against a Debtor by Imerys S.A. or a Non-Debtor Affiliate, subject to certain exceptions (each holder of an Allowed Claim in Class 5a is a Plan Proponent and therefore presumed to accept the Ninth Amended Plan)	Impaired, not entitled to vote	0%
<b>Class 5b</b> Debtor Intercompany Claims	Any claim held by a Debtor against another Debtor	Unimpaired, not entitled to vote	100%
<b>Class 6</b> Equity Interests in the North American Debtors	Outstanding shares of the Debtors (each holder of an Allowed Claim in Class 6 is a Plan Proponent and therefore presumed to accept the Ninth Amended Plan)	Impaired, not entitled to vote	Cancelled

<sup>4</sup> These descriptions are neither comprehensive nor complete. For the proper definitions of each class, please refer to the Plan.

<b>Class</b>	<b>Class Description<sup>4</sup></b>	<b>Treatment</b>	<b>Estimated Recovery</b>
<b>Class 7</b> Equity Interests in ITI	Outstanding shares of ITI	Unimpaired, not entitled to vote	Reinstated

35. The Debtors believe that the proposed creditor classification is appropriate in the circumstances.

36. Class 4 consists of all Talc Personal Injury Claims. On the Effective Date, liability for all Talc Personal Injury Claims shall be channelled to and assumed by the Talc Personal Injury Trust without further act or deed and shall be resolved in accordance with the Trust Distribution Procedures.

**(f) Trust Distribution Procedures**

37. The Trust Distribution Procedures provide the means for resolving all Talc Personal Injury Claims under the Ninth Amended Plan. The purposes of the Talc Personal Injury Trust is to: (i) assume all Talc Personal Injury Claims; (ii) to preserve, hold, manage, and maximize the assets of the Talc Personal Injury Trust; and (iii) to direct the processing, liquidation, and payment of all compensable Talc Personal Injury Claims in accordance with the Talc Personal Injury Trust Documents.

38. Specifically, the Trust Distribution Procedures establish a methodology for resolving 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. The Trust Distribution Procedures divide Class 4 Talc Personal Injury Claims into three categories:

- a) Ovarian Cancer A Claims (Fund A);
- b) Mesothelioma Claims (Fund B); and
- c) Ovarian Cancer B - D Claims (Fund C).

39. The Trust Distribution Procedures allocate a fixed percentage of the Trust Fund and the Cyprus Contribution to each of these three Funds. Specifically, Fund A will receive a fixed allocation of 40% of the Trust Fund and 30.15% of the Cyprus Contribution; Fund B will receive

a fixed allocation of 40% of the Trust Fund and 55% of the Cyprus Contribution; and Fund C will receive a fixed allocation of 20% of the Trust Fund and 14.85% of the Cyprus Contribution.

40. The division of cash derived from the Talc Personal Injury Trust Assets into three separate pools was the result of extensive internal deliberations among members of the Tort Claimants' Committee designed to achieve the support of the tort claimants.

41. The Trust Distribution Procedures are structured to provide an Expedited Review process using bright-line medical and exposure criteria to reduce the administrative expenses of the Talc Personal Injury Trust and ensure that funds are utilized to the maximum extent to compensate users of the Debtors' talc. Talc Personal Injury Claims that satisfy the criteria for Expedited Review are eligible to receive an offer at the Scheduled Value set forth in the Trust Distribution Procedures (the Scheduled Value is the specific value assigned to claims). Talc Personal Injury Claims which do not meet the criteria for Expedited Review are eligible for evaluation and compensation under the Individual Review Process.

42. All amounts to be paid under the Trust Distribution Procedures are subject to the payment percentages established by the Talc Personal Injury Trust. For example, under the Expedited Review process, the recovery of a holder of a Talc Personal Injury Claim that is resolved in favour of payment may be determined by multiplying the applicable Payment Percentage by the applicable Scheduled Value. The Initial Payment Percentage attributed to each of the Funds will be within the following ranges listed below:

- a) Fund A (Ovarian Cancer A Claimants): 0.40% to 2.34%;
- b) Fund B (Mesothelioma Claimants): 3.70% to 6.24%; and
- c) Fund C (Ovarian Cancer B – D Claimants): 0.30% to 1.48%.

43. The Initial Payment Percentages may change if there are significant changes in cash attributable to the Talc Personal Injury Trust.

#### **■ The Ninth Amended Plan and its Impact on Canadian Stakeholders**

44. The Ninth Amended Plan contemplates that Canadian-based creditors will be treated in the same manner as the US-based creditors. Canadian creditors (other than those with claims in Classes 4 (Talc Personal Injury Claims) and 5a (Non-Debtor Intercompany Claims),

and equity interests in Class 6 (Equity Interests in the North American Debtors)) are Unimpaired and their claims will be satisfied in full. Canadian creditors with claims in Classes 5a and 6 have consented to their treatment under the Ninth Amended Plan (as Plan Proponents), and any Canadian creditors with claims in Class 4 (Talc Personal Injury Claims) will be treated in the same way as US-based creditors that have claims in Class 4.

45. As a result of the closing of the sale transaction with Magris Resources, the Debtors no longer have any material assets in Canada, other than the cash proceeds of the sale (which, if the Ninth Amended Plan is confirmed, will be transferred to the Talc Personal Injury Trust, subject to certain deductions).

46. It is a condition precedent to the Effective Date of the Ninth Amended Plan that this Court enter an order recognizing the US Court order confirming the Ninth Amended Plan in its entirety and that the aforementioned order of the US Court and the Ninth Amended Plan be implemented and effective in Canada in accordance with their terms.

#### **IV. RECOGNITION OF THE SOLICITATION PROCEDURES ORDER<sup>5</sup>**

47. The Solicitation Procedures Order:

- a) approves the Ninth Amended Disclosure Statement for the Ninth Amended Plan;
- b) approves the form and manner of the Disclosure Statement Hearing Notice in respect of the Disclosure Statement Hearing;
- c) establishes Solicitation Procedures;
- d) approves the form and manner of the Direct Talc Personal Injury Claim Solicitation Notice and Certified Plan Solicitation Directive;
- e) approves the forms of Ballots;
- f) approves the form, manner, and scope of the Confirmation Notices in respect of the Confirmation Hearing;

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<sup>5</sup> All capitalized terms used in this section that are not otherwise defined are as defined in the Solicitation Procedures Order.

- g) establishes certain deadlines in connection with the foregoing; and
- h) grants related relief.

48. The US Court entered the Solicitation Procedures Order on January 27, 2021.

49. The Solicitation Procedures Order was developed in consultation with, among others, the Tort Claimants' Committee and the FCR. The Information Officer was kept apprised of the progress of the Solicitation Procedures Order.

### ■ The Disclosure Statement

50. I understand that, pursuant to section 1125(b) of the US Bankruptcy Code, a disclosure statement must provide creditors with "adequate information" regarding a plan. The adequate information standard requires a debtor to disclose information, as far as is reasonably practicable, in light of the nature and history of the debtor that would enable a hypothetical investor of the relevant class to make an informed judgment about the plan. The Ninth Amended Disclosure Statement is intended to achieve this objective.

51. Only the holders of claims in Class 4 (Talc Personal Injury Claims) hold impaired claims that are entitled to vote on the Ninth Amended Plan. The Ninth Amended Disclosure Statement is, accordingly, intended to provide adequate information to the holders of Class 4 claims so that they can make an informed judgment when voting.

52. The Ninth Amended Disclosure Statement was created by the Debtors together with the other Plan Proponents. It describes, among other things, the Debtors' history, operations, assets and liabilities, the circumstances leading to the commencement of the Chapter 11 Cases, ongoing settlement discussions and/or agreements, and the structure and terms of the Ninth Amended Plan and trust distribution procedures. The Ninth Amended Disclosure Statement also includes a liquidation analysis and financial projections.

53. The original Disclosure Statement was filed with the US Court on May 15, 2020. The Debtors filed later iterations thereafter to carefully consider issues raised by objectors and to address those concerns that warranted further information or revision. For instance, over the course of the Chapter 11 Cases, the Debtors worked with the other Plan Proponents, Rio Tinto, Zurich, J&J, Arnold & Itkin LLP, the Insurer Group, Travelers and the U.S. Trustee to craft additional language to include in the Ninth Amended Disclosure Statement.

54. Although the original hearing on the motion to enter the Solicitation Procedures Order was scheduled for June 30, 2020, the hearing was continued multiple times (and was ultimately heard on January 12, 15, and 25, 2021). The continuances allowed the Plan Proponents additional time to incorporate disclosures regarding the Rio Tinto/Zurich Settlement and the Cyprus Settlement, to finalize the Trust Distribution Procedures, to add disclosures regarding debtor-in-possession financing, and to include information regarding the approval of the Sale. In addition, the Ninth Amended Disclosure Statement and Ninth Amended Plan include additional refinements to, among other things, address certain objections. Finally, the continuances allowed certain objectors additional time to review and consider prior iterations of the Ninth Amended Plan and Ninth Amended Disclosure Statement.

55. The US Court concluded that the Ninth Amended Disclosure Statement contains “adequate information” when it approved the Ninth Amended Disclosure Statement as part of the Solicitation Procedures Order.

#### ■ **Notice of the Disclosure Statement Hearing**

56. The Debtors’ form and manner of notice of the Disclosure Statement Hearing to consider the approval of the Disclosure Statement included serving copies of the Disclosure Statement Hearing Notice by electronic and/or first-class mail to the following parties:

- a) parties who have filed proofs of claims in the Chapter 11 Cases that have not been previously withdrawn or disallowed by a Final Order;
- b) certain parties holding liquidated, noncontingent, and undisputed Claims;
- c) all holders of Equity Interests in the Debtors;
- d) all known attorneys representing any holders of Talc Personal Injury Claims;
- e) any other known holders of Claims against, or Equity Interests in, the Debtors;  
and
- f) Imerys Talc Italy S.p.A.

57. The Debtors also served copies of the Disclosure Statement Hearing Notice on the U.S. Trustee, the Securities and Exchange Commission, counsel to the Tort Claimants’

Committee, counsel to the FCR, and those parties that have requested notice pursuant to certain rules.

58. Finally, copies of the Disclosure Statement Hearing Notice, the Ninth Amended Disclosure Statement and the Ninth Amended Plan are on file with the Clerk of the US Court for review during normal business hours and are available free-of-charge at <https://cases.primeclerk.com/lmerysTalc/>.

59. The US Court concluded in the Solicitation Procedures Order that the Solicitation Procedures provide a fair and equitable voting process.

60. I am advised by Maria Konyukhova of Stikeman Elliott LLP, Canadian counsel to ITC, that the notice procedures employed by the Debtors are similar to noticing procedures commonly employed in Canada.

#### ■ The Solicitation Procedures

61. The Solicitation Procedures provide a fair and equitable process to solicit votes on the Ninth Amended Plan and will provide a path to confirmation and, ultimately, the Debtors' emergence from its insolvency proceedings.

62. The Solicitation Procedures are outlined in Exhibit 1 of the Solicitation Procedures Order.

63. The Solicitation Procedures Order provides that Solicitation Packages are to be distributed to parties entitled to vote on the Ninth Amended Plan and other interested parties. The Solicitation Package consists of:

- a) a cover letter in paper form describing the contents of the Solicitation Package and a USB flash drive, and instructions for obtaining (free of charge) printed copies of the materials provided in electronic format;
- b) the Confirmation Hearing Notice in paper form;
- c) a USB flash drive containing a copy of the Ninth Amended Disclosure Statement with all exhibits, including the Ninth Amended Plan with its exhibits;
- d) the Solicitation Procedures Order (without exhibits);

- e) the Solicitation Procedures;
- f) solely to counsel for holders of Direct Talc Personal Injury Claims, the Direct Talc Personal Injury Claim Solicitation Notice and the Certified Plan Solicitation Directive;
- g) solely for holders of Talc Personal Injury Claims and their counsel, an appropriate Ballot and voting instructions for the same in paper form;
- h) solely for holders of Talc Personal Injury Claims and their counsel, a preaddressed, return envelope for completed Ballots; and
- i) solely for holders of Talc Personal Injury Claims and their counsel, a letter from the Tort Claimants' Committee.

64. For the Ninth Amended Plan to be accepted with the Channeling Injunction, it needs to be approved by at least two-thirds (2/3) in amount and seventy-five (75%) in number of those voting claims in Class 4 (Talc Personal Injury Claims).

65. All Ballots are to be received by the Solicitation Agent by 4:00 p.m. (Prevailing Eastern Time) on March 25, 2021.

66. The Solicitation Procedures contemplate the method of providing notice for the Confirmation Hearing. In addition to the notice being provided in the Solicitation Packages, notice of the Confirmation Hearing is to be published in *The Wall Street Journal*, the *Bozeman Daily Chronicle*, *Belgrade News*, *The Madisonian*, the *Houston Chronicle*, the *Vermont Journal*, *The Globe and Mail*, the *National Post*, *Le Journal de Montréal*, *La Stampa*, and *L'Eco del Chisone* between February 1, 2021 and February 14, 2021. The Debtors are also effectuating notice through a supplemental notice program designed by the Debtors and Prime Clerk LLC (the Debtors' claims and noticing agent).

#### ■ Ninth Amended Plan Confirmation Schedule

67. The Solicitation Procedures Order established certain dates and deadlines in connection with the Solicitation Procedures and Confirmation Hearing:

<b>Event</b>	<b>Date</b>
Voting Record Date	January 27, 2021
Deadline to Mail Solicitation Packages and Related Notices	February 1, 2021
Newspaper Publication Notice	February 1, 2021 – February 14, 2021
Deadline to File Plan Supplement	February 5, 2021
Deadline for Cure Objections	The later of (a) 14 days after receipt of a Sale Cure Notice (for North American Debtor counterparties only) or February 15, 2021 (for (i) ITI counterparties and (ii) North American Debtor counterparties not previously included on a Sale Cure Notice) and (b) 14 days after (for all counterparties) (i) the Debtors serve a counterparty with notice of any amendment or modification to such counterparty's proposed cure cost or (ii) the Debtors serve a counterparty with notice of a supplement to the list of contracts to be assumed pursuant to the Ninth Amended Plan
Deadline for Assumption Objections	The later of (a) February 15, 2021 and (b) 14 days after the Debtors serve a counterparty with notice of a supplement to the list of contracts to be assumed
Deadline to Serve Written Discovery in Connection with Confirmation	February 15, 2021
Deadline for Attorneys for Holders of Direct Talc Personal Injury Claims to Return Certified Plan Solicitation Directives and Client Lists	February 17, 2021
Deadline to File Rule 3018 Motions	February 19, 2021
Deadline for Plan Proponents to Identify Topics of Anticipated Expert Discovery	February 19, 2021
Deadline to Reply to Rule 3018 Motions	March 5, 2021
Deadline for All Parties Other than Plan Proponents to Identify Topics for Anticipated Affirmative Expert Discovery	March 5, 2021
Hearing on Rule 3018 Motions	March 15, 2021
Deadline for Substantial Completion of Document Productions	March 24, 2021
Voting Deadline	March 25, 2021, at 4:00 p.m. (Prevailing Eastern Time); provided that the Debtors are authorized to extend the Voting Deadline for any party entitled to vote on the Ninth Amended Plan
Fact Depositions	March 29, 2021 – April 14, 2021

Deponent's  
Initials

<b>Event</b>	<b>Date</b>
Deadline to File Voting Certification	April 8, 2021, at 4:00 p.m. (Prevailing Eastern Time)
End of Fact Discovery	April 14, 2021
Affirmative Expert Reports Due	April 19, 2021
Responsive Expert Reports Due	May 10, 2021
Expert Depositions	May 13, 2021 – May 21, 2021
End of Expert Discovery	May 21, 2021
Confirmation Objection Deadline	May 28, 2021, at 4:00 p.m. (Prevailing Eastern Time)
Confirmation Reply Deadline and Deadline to File Form of Confirmation Order	June 14, 2021, at 4:00 p.m. (Prevailing Eastern Time)
Confirmation Hearing	June 21, 22, and 23, 2021, at 10:00 a.m. (Prevailing Eastern Time)

## V. CONCLUSION

68. I believe that the relief sought in this motion (a) is in the best interests of the Debtors and their estates, and (b) constitutes a critical element in the Debtors being able to successfully maximize value for the benefit of their estates and, ultimately, successfully emerge from the Chapter 11 Cases.

*[Remainder of this page left intentionally blank]*

I confirm that while connected via video technology, Ryan Van Meter showed me his government-issued photo identity document and that I am reasonably satisfied it is the same person and the document is current and valid.

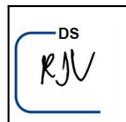
Sworn before me remotely by video conference by Ryan Van Meter, stated as being in the City of Brookhaven, in the State of Georgia, United States of America, to the Community of Eugenia (Grey County), Ontario, on February 18, 2021, in accordance with O. Reg 431/20 *Administering Oath or Declaration Remotely.*

DocuSigned by:  
*Nicholas Avis*  
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**Nicholas Avis**  
Commissioner for Taking Affidavits  
LSO #76781Q

DocuSigned by:  
*Ryan Van Meter*  
FEF366B664B9476...

**RYAN VAN METER**



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

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

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

Proceeding commenced at Toronto

**AFFIDAVIT OF RYAN VAN METER  
SWORN FEBRUARY 18, 2021**

**STIKEMAN ELLIOTT LLP**  
Barristers & Solicitors  
5300 Commerce Court West  
199 Bay Street  
Toronto, Canada M5L 1B9

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[navis@stikeman.com](mailto:navis@stikeman.com)  
Fax: (416) 947-0866

Lawyers for the Applicant

This is  
**EXHIBIT "B"**  
to the Affidavit of  
**RYAN VAN METER**  
Sworn April 15, 2021

DocuSigned by:

*Nicholas Avis*

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**Nicholas Avis**  
Commissioner for Taking Affidavits  
LSO #76781Q

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

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 In re: : Chapter 11  
 :  
 IMERYYS TALC AMERICA, INC., *et al.*,<sup>1</sup> : Case No. 19-10289 (LSS)  
 :  
 Debtors. : (Jointly Administered)  
 :  
 : **Re: Docket No. 2966**  
 :  
 ----- X

**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, *NUNC PRO TUNC* TO  
 JANUARY 28, 2021, AND (II) DESIGNATE ERIC DANNER AS THEIR PRESIDENT  
AND TREASURER EFFECTIVE UPON THE CLOSING OF THE SALE**

Upon the *Debtors’ Motion for Order Authorizing the Debtors to (I) (a) Employ CohnReznick LLP to Provide Interim Management Services During the Pendency of These Proceedings, and (b) Designate Eric Danner as Their Chief Restructuring Officer, Nunc pro Tunc to January 28, 2021, and (ii) Designate Eric Danner as Their President and Treasurer Effective as of the Closing of the Sale* [Docket No. 2966] (the “**Motion**”)<sup>2</sup> filed by the above-captioned debtors and debtors-in-possession (collectively, the “**Debtors**”) for entry of an order, pursuant to Sections 105(a) and 363 of title 11 of the United States Code (the “**Bankruptcy Code**”), authorizing the Debtors to (i) (a) retain and employ CohnReznick LLP (“**CohnReznick**”) to provide interim management services during the pendency of these proceedings, and (b) designate

<sup>1</sup> 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.

<sup>2</sup> All capitalized terms not otherwise defined herein shall have the meanings ascribed to such terms in the Motion.

Eric Danner as the Chief Restructuring Officer (“**CRO**”) of the Debtors, *nunc pro tunc* to January 28, 2021, and (ii) designate Eric Danner as President and Treasurer of the Debtors effective as of the closing of the Sale, on the terms and conditions set forth in the Motion and the Engagement Letter, an executed copy of which was attached as Exhibit B to the Motion; and this Court having found that it has jurisdiction over this matter pursuant to 28 U.S.C. §§ 1334(b) and 157, 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 this Court having found that venue of these cases and the Motion in this District is proper pursuant to 28 U.S.C. §§ 1408 and 1409; and this Court having found that this matter is a core proceeding pursuant to 28 U.S.C. § 157(b); and this Court having found that due and proper notice of the Motion has been given and no other or further notice need be given; and this Court having determined that it may enter a final order consistent with Article III of the United States Constitution; and upon consideration of the Danner Declaration; and upon the record of the Chapter 11 Cases; and this Court having found and determined that the legal and factual bases set forth in the Motion establish just cause for the relief granted herein; and after due deliberation and sufficient cause appearing therefor, it is ORDERED that:

1. The Motion is GRANTED as modified herein.

2. The Debtors are authorized to (i) engage CohnReznick effective *nunc pro tunc* to January 28, 2021; (ii) designate Eric Danner as CRO of the Debtors effective *nunc pro tunc* to January 28, 2021, and (iii) designate Eric Danner as President and Treasurer of the Debtors effective as of the closing of the Sale on February 17, 2021, on the terms described in the Motion, and the Engagement Letter subject to the following terms, which apply notwithstanding anything in the Motion, the Engagement Letter or any other exhibits thereto to the contrary:

a) CohnReznick and its affiliates shall not act in any other capacity (for example, and without limitation, as a financial advisor, claims agent/claims

administrator, or investor/acquirer) in connection with the above-captioned cases.

- b) In the event the Debtors seek to have CohnReznick personnel assume executive officer positions that are different than the positions disclosed in the Motion, or to materially change the terms of the engagement by either (i) modifying the functions of personnel, (ii) adding new personnel, or (iii) altering or expanding the scope of the engagement, a motion to modify the retention shall be filed.
- c) CohnReznick shall file with the Court with copies to the United States Trustee (“**U.S. Trustee**”), the TCC and the FCR a report of staffing on the engagement (the “**Staffing Report**”) by the 20th of each month for the previous month, with the first report covering January 28, 2021 through February 28, 2021 being due on March 20, 2021. Such report shall include the names and functions filled of the individuals assigned. All staffing shall be subject to review by the Court in the event an objection is filed.
- d) No principal, employee or independent contractor of CohnReznick and its affiliates shall serve as a director of any of the above-captioned Debtors prior to the effective date of the Debtors’ plan of reorganization.
- e) In the Staffing Reports, CohnReznick shall report compensation earned and expenses incurred on a monthly basis. Such reports shall contain summary charts which describe the services provided, identify the compensation earned by each executive officer and staff employee provided, and itemize the expenses incurred. Time records shall (i) be appended to the reports, (ii) contain detailed time entries describing the task(s) performed, and (iii) be organized by project category. Where personnel are providing services at an hourly rate, the time entries shall identify the time spent completing each task in 1/10/hour increments and the corresponding charge (time multiplied by hourly rate) for each task. Parties in interest shall have fourteen (14) days after the date each report is served to object to such report. In the event an objection is raised and not consensually resolved, the portion of the staffing report objected to shall be subject to review by the Court. No payments shall be made to CohnReznick until the objection period has passed, and in the event an objection is raised, no payment shall be made to CohnReznick on account of the portion of such staffing report objected to until such objection is resolved.
- f) At the conclusion of the fourteen (14) day objection period, in the absence of any objection filed in accordance with paragraph e, the Debtors are authorized, but not directed, to pay, in the ordinary course of business, 100% of the amounts invoiced by CohnReznick for fees and expenses incurred in connection with CohnReznick’s retention.

- g) Success fees, transaction fees, or other back-end fees shall be approved by the Court at the conclusion of the case on a reasonableness standard and are not being pre-approved by entry of this Order. No success fee, transaction fee or back-end fee shall be sought upon conversion of the case, dismissal of the case for cause, or appointment of a trustee.
- h) Notwithstanding any provision in the Motion or the Engagement Letter, the Debtors are permitted to indemnify those persons serving as executive officers on the same terms as provided to the Debtors' other officers and directors under the corporate bylaws and applicable state law, along with insurance coverage under the Debtors' directors and officers (D&O) policy.
- i) There shall be no indemnification of CohnReznick or its affiliates.
- j) Any limitation of liability set forth in the Engagement Letter, including but not limited to that set forth in paragraph 7 (d), shall have no force or effect during the course of these bankruptcy cases.
- k) For a period of three years after the conclusion of the engagement, neither CohnReznick nor any of its affiliates shall make any investments in the Debtors or the Reorganized Debtors.
- l) CohnReznick shall disclose any and all facts that may have a bearing on whether the firm, its affiliates, and/or any individuals working on the engagement hold or represent any interest adverse to the Debtors, their creditors, or other parties in interest. The obligation to disclose identified in this subparagraph is a continuing obligation.

3. The Debtors are authorized and empowered to take all actions necessary to implement the relief granted in this Order.

4. Notwithstanding any applicability of Bankruptcy Rule 6004(h), the terms and conditions of this Order shall be immediately effective and enforceable upon its entry.

5. The Court shall retain exclusive jurisdiction to hear and determine all matters arising from or related to the implementation of this Order and the Debtors' engagement of CohnReznick and its personnel during the course of these bankruptcy cases.

Dated: March 12th, 2021  
Wilmington, Delaware

  
LAURIE SELBER SILVERSTEIN  
UNITED STATES BANKRUPTCY JUDGE

This is  
**EXHIBIT "C"**  
to the Affidavit of  
**RYAN VAN METER**  
Sworn April 15, 2021

DocuSigned by:

*Nicholas Avis*

2C12EFAB5242430

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**Nicholas Avis**  
Commissioner for Taking Affidavits  
LSO #76781Q

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

----- X  
 In re: : Chapter 11  
 :  
 IMERYYS TALC AMERICA, INC., *et al.*,<sup>1</sup> : Case No. 19-10289 (LSS)  
 :  
 Debtors. : (Jointly Administered)  
 :  
 : **Ref. Docket No. 2925**  
 ----- X

**ORDER APPROVING ORDINARY  
COURSE YEAR-END BONUS PAYMENT UNDER  
SECTIONS 105(a), 363 AND 503 OF THE BANKRUPTCY CODE**

Upon the motion (the “Motion”)<sup>2</sup> of the Debtors for entry of an order, pursuant to sections 105(a), 363 and 503 of the title 11 of the United States Code, 11 U.S.C. §§ 101-1532 (the “**Bankruptcy Code**”), approving an ordinary course year-end bonus payment to one employee pursuant to the 2020 Imerys Annual Incentive Plan (the “**AIP**”); and the Court having reviewed the Motion; and the Court having jurisdiction to consider the Motion and the relief requested therein in accordance with 28 U.S.C. §§ 157 and 1334 and 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 an 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

<sup>1</sup> 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.

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

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, to the extent set forth herein.
2. The 2020 Year-End Bonus Payment under the 2020 AIP is hereby approved as to the Director of Operations of Debtor Imerys Talc Canada Inc. ("ITC"), who also serves as a member of the board of directors of ITC (the "Eligible Employee").
3. The Debtors are authorized to make the 2020 Year-End Bonus Payment to the Eligible Employee consistent with the terms of the 2020 AIP set forth in the Motion, in the amount of CAD \$41,589.
4. Nothing in this Order approves or authorizes any payment under the 2020 AIP beyond what this Court has already approved and authorized in the Final Wages Order and the 2020 Mid-Year Bonus Payment Order, other than the 2020 Year-End Bonus Payment to the Eligible Employee in the amount set forth in paragraph 3 above.
5. The entry of this Order is without prejudice to the Debtors' right to request further relief with respect to the AIP or any other Employee Incentive Plan.
6. This Court shall retain jurisdiction to hear and determine all matters arising from or related to the implementation, interpretation, or enforcement of this Order.

Dated: March 2nd, 2021  
Wilmington, Delaware

  
3 LAURIE SELBER SILVERSTEIN  
UNITED STATES BANKRUPTCY JUDGE

This is  
**EXHIBIT "D"**  
to the Affidavit of  
**RYAN VAN METER**  
Sworn April 15, 2021

DocuSigned by:

*Nicholas Avis*

2C12EFAB5242430

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**Nicholas Avis**  
Commissioner for Taking Affidavits  
LSO #76781Q

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

**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**

**AFFIDAVIT OF ANTHONY WILSON  
(Sworn October 29, 2020)**

I, Anthony Wilson, 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 Treasurer and Director of Finance 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**"). I began working with the Imerys Group (as defined below) in 2012, and have served in various roles, including as Vice President of the Debtors before appointment to my current role. I have served as Treasurer for each of the Debtors since July 1, 2019. I am authorized to submit this Affidavit on behalf of the Debtors.
2. In my role as Treasurer and Director of Finance, I am responsible for overseeing the day-to-day 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 role and tenure with the Debtors, my review of public and non-public documents, and my discussions with other members of the Debtors' management team, I either have personal knowledge or 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.

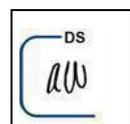
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3. I swear this affidavit in support of ITC's motion pursuant to the *Companies' Creditors Arrangement Act*, R.S.C. 1985 c. C-36, as amended (the "**CCAA**"), for an order granting certain relief, including recognizing the Stalking Horse Approval Order, the Ramboll Retention Order, the AIP Orders, and the KEIP Order (as such terms are defined below) in respect of the jointly administered proceeding of the Debtors under title 11 of the *United States Code* (the "**US Bankruptcy Code**").
4. All capitalized terms not otherwise defined herein are as defined in (a) my last affidavit sworn June 29, 2020 (the "**Fifth Wilson Affidavit**") and/or, (b) the *Third Amended Joint Chapter 11 Plan of Reorganization of Imerys Talc America, Inc. and its Debtor Affiliates Under Chapter 11 of the Bankruptcy Code* [Docket No. 2354] (the "**Third Amended Plan**" or the "**Plan**"). A copy of the Third Amended Plan is attached hereto and marked as **Exhibit "A"**.

## I. OVERVIEW

5. The Debtors are three debtors-in-possession in the Chapter 11 Cases (as defined below) commenced before the United States Bankruptcy Court for the District of Delaware (the "**US Court**").
6. The Debtors are in the business of mining, processing, selling, and/or distributing talc. The Debtors operate talc mines, plants, and distribution facilities in Montana, Vermont, Texas and Ontario. 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.
7. The Debtors are directly or indirectly owned by Imerys S.A. ("**Imerys**"). Imerys is a French corporation that is the direct or indirect parent entity of over 360 affiliated entities (the "**Imerys Group**"). The Debtors were acquired by the Imerys Group in 2011 when Rio Tinto America, Inc. and certain affiliates sold their talc operations to the Imerys Group. Currently, none of the other entities in the Imerys Group have sought protection under the US Bankruptcy Code or any other insolvency law.
8. On February 13, 2019 (the "**Petition Date**"), the Debtors filed voluntary petitions (collectively, the "**Petitions**" and each a "**Petition**") for relief under chapter 11 of the US Bankruptcy Code (the "**Chapter 11 Cases**") with the US Court (the "**US Proceeding**").

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The Debtors initiated the Petitions in response to a proliferation of lawsuits claiming that one or more of the Debtors were responsible for personal injuries allegedly caused by exposure to talc (each claim, as more fully defined in the Third Amended Plan, a **“Talc Personal Injury Claim”**).

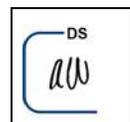
9. The Debtors maintain that their talc is safe and that the Talc Personal Injury Claims are without merit. Nevertheless, the sheer number of alleged talc-related claims combined with the state of the U.S. tort system led to overwhelming projected litigation costs (net of insurance) that the Debtors were unable to sustain over the long-term, leading to the need for the Petitions to protect the Debtors’ estates and preserve value for all stakeholders.
10. On February 14, 2019, the US Court entered various orders in the US Proceeding (the **“First Day Orders”**), including an order authorizing ITC to act as foreign representative on behalf of the Debtors’ estates in any judicial or other proceedings in Canada and an order placing the Chapter 11 Cases under joint administration in the US Proceeding. Since February 14, 2019, the US Court has made various orders that are described in greater detail in prior affidavits filed by the Debtors in this proceeding.
11. On February 20, 2019, this Court made an initial recognition order declaring ITC the foreign representative as defined in section 45 of the CCAA and a supplemental order recognizing the First Day Orders and appointing Richter Advisory Group Inc. as the Information Officer.

## **II. GENERAL INFORMATION ON THE IMERYS GROUP AND THE CHAPTER 11 CASES AND THE CCAA PROCEEDINGS**

### **(a) The Debtors’ Assets and Liabilities**

12. As detailed in the Third Amended Disclosure Statement (as defined below), the Debtors’ assets primarily consist of:
  - a) cash on hand (in the approximate amount of \$14.4 million) and accounts receivable (approximately \$17.7 million), as of July 31, 2020;
  - b) intercompany loans: ITA has an outstanding loan receivable from Imerys USA in the approximate amount of \$8.5 million, and ITV has an outstanding loan receivable from Imerys USA in the approximate amount of \$3 million. ITC holds an

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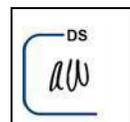


outstanding loan due and payable from Imerys in the approximate amount of \$2.6 million, as of August 31, 2020;

- c) insurance policies, indemnification rights and settlement agreements: the Debtors estimate that the amount of the aggregate insurance available is material, but the realizable value of such coverage is subject to any number of factors, including, without limitation, the solvency of the insurers and the outcome of existing and any future coverage disputes. In addition, the Debtors believe that (i) the Talc Personal Injury Claims related to the Debtors' sale of talc to J&J are subject to uncapped indemnity rights against J&J under certain stock purchase and supply agreements and (ii) one or more of the Debtors have the rights to the proceeds of insurance policies issued to J&J. The Debtors' ability to access certain insurance and indemnity assets is affected by the Rio Tinto/Zurich Settlement (as described below); and
- d) other assets, including inventory (approximately \$29.8 million), machinery, fixtures, and equipment (approximately \$36.4 million), mining assets (approximately \$13.5 million), and land and buildings (approximately \$5.7 million), as of July 31, 2020.

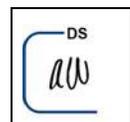
- 13. The Debtors' most significant liabilities are the numerous Talc Personal Injury Claims asserted against them, which the Debtors maintain are without medical or scientific merit. As of the Petition Date, approximately 14,650 claims were still pending.
- 14. The Debtors are not party to any secured financing arrangements, public debt offerings or any third-party credit facilities and have instead relied on positive cash flows generated by their operations to run their businesses and fund the Chapter 11 Cases. The Debtors have not sought debtor-in-possession financing during the course of the Chapter 11 Cases. Nevertheless, the Debtors are in the process of evaluating and arranging debtor-in-possession financing in an amount not to exceed \$30 million in order to meet their liquidity needs as they move towards a resolution of the Chapter 11 Cases.

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**(b) US Court Orders**

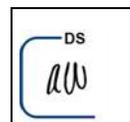
15. The Debtors have been actively pursuing their restructuring efforts in the United States. Since the Fifth Wilson Affidavit, the US Court has entered various orders including the following:
- a) *Order (I) (A) Establishing Bidding Procedures, Assumption and Assignment Procedures, and Stalking Horse Procedures for Sale of Substantially All Assets, (B) Scheduling Auction and Sale Hearing, and (C) Approving Form and Manner of Notice Thereof, and (II) Granting Related Relief*, entered on June 30, 2020 [Docket No. 1950] (the “**Bidding Procedures Order**”). This order, among other things, authorized and approved bidding procedures for the sale of all or substantially all of the Debtors’ assets. This order was recognized by this Court on July 3, 2020;
  - b) *Order Authorizing Employment and Retention of Ramboll US Corporation as Environmental Advisor Nunc Pro Tunc to June 25, 2020 and Waiving Certain Informational Requirements of Local Rule 2016-2 in Connection Therewith*, entered on July 23, 2020 [Docket No. 2022] (the “**Ramboll Retention Order**”). This order approved the retention of Ramboll US Corporation as environmental advisor to the Debtors;
  - c) *Order Sustaining Debtors’ Fourth Omnibus (Substantive) Objection to Certain No Liability Claims, Substantive Duplicate Claims, Reclassified Claim, and Overstated, Reclassified Claim*, entered on September 4, 2020 [Docket No. 2161]. This order, among other things, disallowed, expunged and/or modified certain no liability claims, certain substantive duplicate claims, and that certain overstated, reclassified claim;
  - d) *Order Sustaining Debtors’ Fifth Omnibus (Substantive) Objection to Certain Satisfied Claims, Substantive Duplicate Claims, and Partially Satisfied Claim*, entered on September 4, 2020 [Docket No. 2162]. This order, among other things, disallowed, expunged and/or modified certain satisfied claims, certain substantive duplicate claims, and that certain partially satisfied claim;
  - e) *Order Appointing Mediator*, entered on October 11, 2020 [Docket No. 2188]. This order appointed a mediator and established mediation procedures related to the

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mediation between the Debtors, the Tort Claimants' Committee, the FCR, and J&J and Johnson & Johnson Consumer Inc.;

- f) *Order Approving Ordinary Course Mid-Year Bonus Payment*, entered on September 21, 2020 [Docket No. 2228];
- g) *Fifth Order Further Extending the Deadline by Which the Debtors May Remove Civil Actions*, entered on September 21, 2020 [Docket No. 2229]. This order further extended the deadline by which the Debtors may remove civil actions to December 30, 2020;
- h) *Order Granting Motion of Cyprus Mines Corporation and Cyprus Amax Minerals Company for an Order Pursuant to 28 U.S.C. § 1452 and Fed. R. Bankr. P. 9006(b) and 9027*, entered September 21, 2020 [Docket No. 2230]. This order further extended the deadline by which to remove civil actions to December 30, 2020;
- i) *Order Granting Motion of Rio Tinto for an Order Pursuant to 28 U.S.C. § 1452 and Fed. R. Bankr. P. 9006(B) and 9027*, entered on September 21, 2020 [Docket No. 2231]. This order further extended the deadline by which to remove civil actions to December 30, 2020;
- j) *First Amended Order Appointing Mediator*, entered on September 21, 2020 [Docket No. 2232]. This order appointed a mediator and established mediation procedures related to an additional day of mediation between the Debtors, the Tort Claimants' Committee, the FCR, and J&J and Johnson & Johnson Consumer Inc.;
- k) *Order Denying Motion for Order Modifying Automatic Stay*, entered on September 25, 2020 [Docket No. 2253]. This order denied Johnson & Johnson's motion to modify the automatic stay (the "**J&J Stay Motion**") to permit it to send notice assuming defense of certain talc claims and to implement talc litigation protocol, as further described in the motion (as further modified by a proposed order filed by J&J [Docket No. 2247]);
- l) *Order Appointing Mediator*, entered on October 12, 2020 [Docket No. 2325]. This order appointed a mediator and established mediation procedures related to

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mediation between the Debtors, the Tort Claimants' Committee, the FCR, XL Insurance America, Inc. and certain other parties;

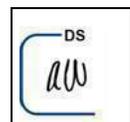
- m) *Fourth Omnibus Order Awarding Interim Allowance of Compensation for Services Rendered and For Reimbursement of Expenses*, entered on October 16, 2020 [Docket No. 2353];
- n) *Order Appointing Mediator*, entered on October 23, 2020 [Docket No. 2399]. This order appointed a mediator and established mediation procedures, related to mediation between the Debtors, the Tort Claimants' Committee, the FCR, Century Indemnity Company, Federal Insurance Company, and Central National Insurance Company of Omaha, and certain other parties; and
- o) *Order (i) Approving the Debtors' Designation of Magris Resources Canada Inc. as Stalking Horse Bidder and Related Bid Protections and (ii) Granting Related Relief*, entered on October 29, 2020 [Docket No. 2439] (the "**Stalking Horse Approval Order**").

16. At this time, the Debtors are not seeking to recognize any of the above-mentioned orders other than the Ramboll Retention Order and the Stalking Horse Approval Order.

**(c) Claims Process Update**

17. The Debtors sought and obtained various orders setting out the procedures for filing and adjudicating claims against them. The Orders are described in greater detail in the Fifth Wilson Affidavit and this Affidavit.
18. The Debtors continue to review and analyze the proofs of claim filed to date and reconcile these proofs of claim with the Debtors' scheduled claims. The Debtors do not presently know and cannot reasonably determine the actual number and aggregate amount of the Claims that will ultimately be allowed against the Debtors.
19. All Allowed Non-Talc Claims other than Non-Debtor Intercompany Claims are expected to be paid in full under the Third Amended Plan. The Third Amended Plan contemplates that all Talc Personal Injury Claims will be channelled to the Talc Personal Injury Trust, where they will be resolved pursuant to the Trust Distribution Procedures.

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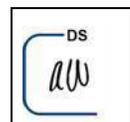


### III. THE PLAN & DISCLOSURE STATEMENT

#### (a) Background

20. The Debtors' stated purpose of the Chapter 11 Cases is to confirm a plan of reorganization that will maximize the value of the Debtors' assets for the benefit of all stakeholders and include a trust mechanism to address Talc Personal Injury Claims in a fair and equitable manner.
21. The Debtors entered into extensive discussions regarding a potential plan of reorganization with the official committee of tort claimants in the Debtors' Chapter 11 Cases appointed by the United States Trustee ("**Tort Claimants' Committee**") and James L. Patton in his capacity as the legal representative for any and all persons who may assert a Talc Personal Injury Demand (the "**FCR**") following the Petition Date. As discussions matured, they focused on the development of a comprehensive settlement (the "**Imerys Settlement**") by and among the Tort Claimants' Committee, the FCR, the Debtors, Imerys, Imerys Talc Italy S.p.A. ("**ITI**") and the Non-Debtor Affiliates (the "**Plan Proponents**").
22. I summarized the Imerys Settlement in the Fifth Wilson Affidavit. Among other things, the Imerys Settlement provides that:
- a) the Debtors will sell substantially all assets of the Debtors (the "**Sale**") to one or more purchaser(s) with the net proceeds from the Sale less any related expenses being contributed to the Talc Personal Injury Trust;
  - b) the Equity Interests in the North American Debtors will be cancelled, and on the Effective Date, Equity Interests in the Reorganized North American Debtors will be authorized and issued to the Talc Personal Injury Trust.
23. Imerys has agreed to make, or cause to be made, a contribution of cash and other assets to the Talc Personal Injury Trust to obtain the benefit of certain releases and a permanent channelling injunction that bars the pursuit of Talc Personal Injury Claims against the Imerys Protected Parties. Imerys' contribution will include, among other things, (a) a cash contribution of \$75 million, plus (b) the Sale Proceeds; plus (c) a contingent purchase price enhancement of up to \$102.5 million, less (d) amounts required to pay the DIP Facility Claims pursuant to the terms of the DIP Loan Documents and allowed by the DIP Order.

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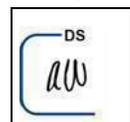


24. The Imerys Settlement, which is effectuated by the terms of the Third Amended Plan, helps to pave the way for a consensual resolution of the Chapter 11 Cases and these CCAA proceedings. The Imerys Settlement secures a recovery for the benefit of the Debtors' creditors, additional valuable assets that will be provided to the Talc Personal Injury Trust, and a possibility for additional cash recovery by virtue of a potential sale of the Debtors' assets.
25. The Third Amended Plan also incorporates the Rio Tinto/Zurich Settlement, which is a comprehensive settlement agreement among the Debtors, on the one hand, and Rio Tinto, on behalf of itself and the Rio Tinto Captive Insurers, and for the benefit of the Rio Tinto Protected Parties, and Zurich, on behalf of itself and for the benefit of the Zurich Protected Parties, on the other hand, and consented to by the Tort Claimants' Committee and the FCR, that resolves, among other things, certain disputes arising from Rio Tinto's prior ownership of the Debtors, alleged indemnification obligations of Rio Tinto, and the amount of insurance coverage to which the Debtors claim to be entitled under the Rio Tinto Captive Insurance Policies and the Zurich Policies.
26. The Rio Tinto/Zurich Settlement provides for a contribution of \$340 million in cash, along with certain rights of indemnification, contribution, and/or subrogation against third parties, to the Talc Personal Injury Trust from Rio Tinto (on behalf of itself and the Rio Tinto Captive Insurers and for the benefit of the Rio Tinto Protected Parties) and Zurich (on behalf of itself and for the benefit of the Zurich Protected Parties).

**(b) The Amendments Leading Up to the Third Amended Plan**

27. As previously reported to this Court, 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* [Docket No. 1714] (the "**Original Plan**") on May 15, 2020. At the same time, the Debtors also filed with the US Court the *Disclosure Statement for Joint Chapter 11 Plan of Reorganization of Imerys Talc America, Inc. and its Debtor Affiliates Under Chapter 11 of the Bankruptcy Code* [Docket No. 1715] (the "**Original Disclosure Statement**").
28. The Original Disclosure Statement was intended to provide stakeholders with adequate information to make an informed judgment about the Original Plan and determine whether to vote in favour of or against the Original Plan. Among other things, the Original

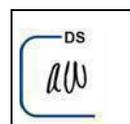
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Disclosure Statement contains an overview of the Original Plan and a description of the various classes eligible to vote, the Debtors' operations, and the US Proceeding.

29. On August 12, 2020, the Debtors filed with the US Court the *Amended Joint Chapter 11 Plan of Reorganization of Imerys Talc America, Inc. and its Debtor Affiliates Under Chapter 11 of the Bankruptcy Code* [Docket No. 2083] (the "**First Amended Plan**") and the *Disclosure Statement for Amended Joint Chapter 11 Plan of Reorganization of Imerys Talc America, Inc. and its Debtor Affiliates Under Chapter 11 of the Bankruptcy Code* [Docket No. 2084] (the "**First Amended Disclosure Statement**"). Among other things, the First Amended Plan incorporated the Rio Tinto/Zurich Settlement (as described below). The First Amended Plan also included certain provisions related to the J&J Stay Motion. The J&J Stay Motion was a motion brought by J&J to modify the automatic stay to (a) permit holders of certain J&J Talc Claims (as defined in the J&J Stay Motion) to pursue those claims against the Debtors, (b) permit J&J to send notices of assumption of the defence of certain J&J Talc Claims and (c) take certain other actions set forth in a protocol pursuant to which J&J would, *inter alia*, assume the defence and control of the resolution of the J&J Talc Claims against a Debtor.
30. On October 5, 2020, the Debtors filed with the US Court the *Second Amended Joint Chapter 11 Plan of Reorganization of Imerys Talc America, Inc. and its Debtor Affiliates Under Chapter 11 of the Bankruptcy Code* [Docket No. 2289] (the "**Second Amended Plan**") and the *Disclosure Statement for Second Amended Joint Chapter 11 Plan of Reorganization of Imerys Talc America, Inc. and its Debtor Affiliates Under Chapter 11 of the Bankruptcy Code* [Docket No. 2290] (the "**Second Amended Disclosure Statement**"). Among other things, the Second Amended Plan took into account the fact that the J&J Stay Motion was denied by the US Court.
31. On October 16, 2020, the Debtors filed with the US Court the Third Amended Plan and the *Disclosure Statement for Third Amended Joint Chapter 11 Plan of Reorganization of Imerys Talc America, Inc. and its Debtor Affiliates Under Chapter 11 of the Bankruptcy Code* [Docket No. 2355] (the "**Third Amended Disclosure Statement**"). Among other things, the Third Amended Disclosure Statement describes the Debtors' intention to obtain Debtor-in-Possession Financing (as described below) and disclosed the designation of Magris Resources Canada Inc. ("**Magris Resources**") as the proposed Stalking Horse Bidder. The designation of Magris Resources as the proposed Stalking Horse Bidder is

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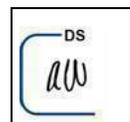
discussed in greater detail below. As noted earlier, a copy of the Third Amended Plan is attached hereto and marked as **Exhibit "A"**. A copy of the Third Amended Disclosure Statement is attached hereto and marked as **Exhibit "B"**.

32. I note that the Third Amended Disclosure Statement serves the same purpose as the Original Disclosure Statement; that is, the Third Amended Disclosure Statement is intended to provide stakeholders with adequate information to make an informed judgment about the Third Amended Plan and determine whether to vote in favour of or against the Third Amended Plan.
33. The Debtors have scheduled a hearing with the US Court on November 16, 2020 seeking an order, among other things, approving the Third Amended Disclosure Statement.

***Overview of the Third Amended Plan***

34. The Third Amended Plan maintains the same general structure and mechanisms as the Original Plan. I summarized the Original Plan in the Fifth Wilson Affidavit, a copy of which (without exhibits) is attached hereto and marked as **Exhibit "C"**.
35. In brief, the primary purpose of the Third Amended Plan (as with the Original Plan) is to provide a mechanism to resolve the Talc Personal Injury Claims against the Debtors and the other Protected Parties pursuant to sections 524(g) and 105(a) of the US Bankruptcy Code. Specifically, under the terms of the Third Amended Plan, all Talc Personal Injury Claims will be channelled to a trust (the "**Talc Personal Injury Trust**") established under sections 524(g) and 105(a) of the US Bankruptcy Code, where they will be resolved pursuant to the Trust Distribution Procedures.
36. The Third Amended Plan incorporates the Imerys Settlement and the Rio Tinto/Zurich Settlement.
37. On the Effective Date, the Talc Personal Injury Trust will receive the Talc Personal Injury Trust Assets (such assets include but are not limited to the Imerys Settlement Funds, the right to receive the Rio Tinto/Zurich Contribution pursuant to the Rio Tinto/Zurich Settlement, various cash holdings, and certain causes of action). The Talc Personal Injury Trust Assets will be used to resolve Talc Personal Injury Claims in accordance with the Talc Personal Injury Trust Documents, including the Trust Distribution Procedures. The Trust Distribution Procedures establish a methodology for resolution of Talc Personal

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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.

38. The Rio Tinto/Zurich Settlement is one of the key advances made in the Chapter 11 Cases since the Fifth Wilson Affidavit, and it is now incorporated into the Third Amended Plan. As noted above, the Rio Tinto/Zurich Settlement is expected to generate substantial recoveries for the holders of Talc Personal Injury Claims. Among other things, the Rio Tinto/Zurich Settlement provides that Rio Tinto and Zurich will contribute \$340 million in cash, along with certain rights of indemnification, contribution, and/or subrogation against third parties, to the Talc Personal Injury Trust.
39. The Tort Claimants' Committee, FCR and Imerys S.A. and its affiliates all support the Third Amended Plan.

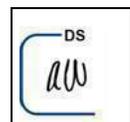
***Debtor-in-Possession Financing***

40. The Third Amended Plan incorporates language about the Debtors' process to evaluate and arrange for debtor-in-possession financing to alleviate liquidity constraints in an amount not to exceed \$30 million (the "**Proposed DIP**"). Any and all amounts payable under the Proposed DIP will be paid in full consistent with the DIP Loan Documents and the DIP Order. The proposed treatment of the Proposed DIP is described in the Third Amended Plan and in the DIP Term Sheet. A copy of the DIP Term Sheet is attached as Exhibit "E" to the Third Amended Disclosure Statement (as noted above, the Third Amended Disclosure Statement is attached hereto and marked as Exhibit "B").
41. The Debtors believe that the Proposed DIP is in the best interests of the Estates because it will provide the Debtors with the additional liquidity they need to bring the Third Amended Plan to a confirmation hearing. The Debtors may, if the US Court grants an order related to debtor-in-possession financing, seek recognition of such an order in Canada.

**(c) Sale of Assets**

42. A key component of the Imerys Settlement is the Sale pursuant to section 363 of the US Bankruptcy Code. The Sale is intended to make available additional funding for the benefit of the Debtors' Estates, and, ultimately, the Talc Personal Injury Trust. The Third Amended

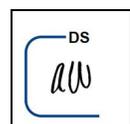
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Plan contemplates that the net proceeds from the Sale(s) less any related expenses will be contributed to the Talc Personal Injury Trust.

43. On June 30, 2020, the US Court entered the Bidding Procedures Order, which, among other things, (a) established the bidding procedures for the Sale (the “**Bidding Procedures**”); (b) established the procedures in connection with the selection of a Stalking Horse Bidder, if any; and the protections to be afforded thereto; and (c) scheduled an auction for the Debtors’ assets.
44. Certain dates and deadlines contained in the Bidding Procedures Order have been modified by the *Notice of Modified Deadlines Contained in the Bidding Procedures and the Bidding Procedures Order* [Docket No. 2039], the *Second Notice of Modified Dates Contained in the Bidding Procedures and the Bidding Procedures Order* [Docket No. 2189], and the *Third Notice of Modified Dates Contained in the Bidding Procedures and Bidding Procedures Order* [Docket No. 2329].
45. On October 13, 2020, in accordance with the Bidding Procedures Order, the Debtors filed the *Notice of (I) Designation of Stalking Horse Bidder, (II) Filing of Stalking Horse Agreement and Proposed Sale Order and (III) Request for Approval of Bid Protections* [Docket No. 2330] (the “**Stalking Horse Notice**”), pursuant to which the Debtors selected Magris Resources as the proposed Stalking Horse Bidder, subject in all respects to the terms and conditions of that certain Asset Purchase Agreement, dated as of October 13, 2020 (the “**Stalking Horse Agreement**”), substantially in the form attached as Exhibit A to the Stalking Horse Notice. The proposed form of sale order with respect to the Stalking Horse Agreement is attached to the Stalking Horse Notice as Exhibit B.
46. The following chart lists the key upcoming dates in the sale process:

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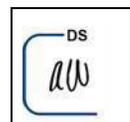


<b>Event</b>	<b>Proposed Date</b>
Stalking Horse Objection Deadline	October 27, 2020 at 4:00 p.m. (ET)
Hearing on Designation of Stalking Horse Bidder and Bid Protections, if any	October 29, 2020 at 9:30 a.m. (ET)
Sale Objection Deadline	November 2, 2020 at 4:00 p.m. (ET)
Bid Deadline	November 10, 2020 at 4:00 p.m. (ET)
Auction (if necessary)	November 12, 2020 at 10:00 a.m. (ET)
Deadline to file and serve notice of the Successful Bidder and amount of the Successful Bid	Within one business day after the Auction is concluded
Sale Hearing	November 16, 2020 at 10:00 a.m. (ET)
Order in Canadian proceeding to recognize the Sale Order	On or before November 30, 2020

**(d) The Impact of the Third Amended Plan and the Sale on Canadian Stakeholders**

47. The Third Amended Plan contemplates that Canadian-based creditors will be treated in the same manner as the US-based creditors. Canadian creditors (other than those with claims in Classes 4 (Talc Personal Injury Claims) and 5a (Non-Debtor Intercompany Claims), and equity interests in Class 6 (Equity Interests in the North American Debtors)) are Unimpaired and their claims will be satisfied in full. Canadian creditors with claims in Classes 5a and 6 have consented to their treatment under the Third Amended Plan (as Plan Proponents), and any Canadian creditors with claims in Class 4 (Talc Personal Injury Claims) will be treated in the same way as US-based creditors that have claims in Class 4.
48. The Sale contemplates the sale of substantially all of the assets of the Debtors, including ITC. As detailed in the affidavit of Alexandra Picard sworn February 14, 2019, ITC's assets include:
- a) a talc mine in Timmins, Ontario. The City of Timmins owns the majority of the surface rights to this land, but ITC owns a small parcel of land where ITC has a central office building and a small micronizing mill;
  - b) a land lease, aggregate permit and a patent mine holding in Penhorwood, Ontario;
  - c) a leased distribution centre in Foleyet, Ontario; and

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d) a warehouse in Mississauga, Ontario.

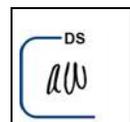
49. As part of the Sale, the Canadian assets could be sold separately or together with other sale assets.
50. It is a condition precedent to the Effective Date of the Third Amended Plan that (a) the order of the US Court approving the Sale be recognized by this Court; and (b) this Court enter an order recognizing the order of the US Court confirming the Third Amended Plan in its entirety and ordering that said order and the Third Amended Plan to be implemented and effective in Canada in accordance with their terms.

#### IV. OVERVIEW OF THE FOREIGN ORDERS SOUGHT TO BE RECOGNIZED

##### (a) Stalking Horse Approval Order

51. The Debtors are seeking the recognition of the Stalking Horse Approval Order.
52. The US Court entered the Stalking Horse Approval Order on October 29, 2020. A copy of the Stalking Horse Approval Order is attached hereto and marked as **Exhibit "D"**.
53. As noted above, the Debtors filed the Stalking Horse Notice designating Magris Resources as the Stalking Horse Bidder on October 13, 2020 [Docket No. 2330], at which time they also designated the Bid submitted by Magris Resources as the Stalking Horse Bid; and provided notice that the Debtors entered into the Stalking Horse Agreement. A copy of the Stalking Horse Agreement is attached hereto and marked as **Exhibit "E"**.
54. The Stalking Horse Approval Order approves (a) the designation of Magris Resources as the Stalking Horse Bidder for the Debtors' assets for the purposes of conducting the Auction and (b) the proposed Bid Protections. The Bid Protections include:
- a) **Break-Up Fee and Expense Reimbursement:** Pursuant to Section 7.13 of the Stalking Horse Agreement, upon the consummation of an Alternative Transaction (as defined in the Stalking Horse Agreement) by any Debtor, Magris Resources will be entitled to payment, which will have administrative expense priority under sections 503(b) and 507(a)(2) of the *US Bankruptcy Code*, of (i) a break-up fee of \$3,345,000 (1.5% of the cash component of the Purchase Price) and (ii) a reimbursement, not to exceed \$500,000, for reasonable and documented out-of-

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pocket costs and expenses (including expenses of outside counsel, accountants and financial advisors) incurred by Magris Resources in connection with, or related to, its evaluation, consideration, analysis, negotiation, and documentation of a possible transaction with the Debtors, or in connection with or related to the transactions contemplated by the Stalking Horse Agreement; and

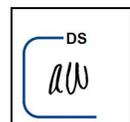
b) **Minimum Overbid Amount:** An initial minimum overbid amount of \$100,000.

55. The purchase price payable to the Debtors under the Stalking Horse Agreement for the Purchased Assets (as defined in the Stalking Horse Agreement) consists of (a) \$223,000,000 in cash consideration and (b) the assumption of the Assumed Liabilities (as defined in the Stalking Horse Agreement).
56. The Debtors and Magris Resources intend to consummate the transaction contemplated by the Stalking Horse Bid pursuant to the terms of the Stalking Horse Agreement, unless a higher or otherwise better Qualified Bid or Overbid (each as defined in Bidding Procedures) is submitted with respect to such assets.
57. The Information Officer was kept updated on the selection of the Stalking Horse Bid.

**(b) Ramboll Retention Order**

58. The Debtors are seeking the recognition of the Ramboll Retention Order.
59. The US Court entered the Ramboll Retention Order on July 23, 2020. A copy of the Ramboll Retention Order is attached hereto and marked as **Exhibit "F"**.
60. The Ramboll Retention Order, among other things, authorizes the Debtors to employ and retain Ramboll US Corporation ("**Ramboll**") as their environmental advisor, *nunc pro tunc* to June 25, 2020. Ramboll has been recognized as a leader in assessing environmental issues for companies and has performed thousands of environmental assessments of industrial properties, commercial and residential developments, and hazardous waste sites throughout the United States and internationally. Ramboll is expected to be paid in a manner that is consistent with the Debtors' other professionals.
61. Since its engagement, Ramboll has been assisting the Debtors in (a) conducting an environmental site assessment at each of the active and inactive sites, (b) conducting a

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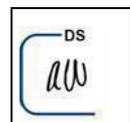
desktop assessment of known and potential contamination concerns and closure costs associated with sites that the Debtors formerly owned or operated and have since divested, (c) preparing a range of cost estimates to address closure costs and any significant or potentially significant contamination and compliance matter, and (d) preparing a summary report of its complete environmental assessment (as requested by the Debtors).

62. These services are essential to the sale of the Debtors' assets and will enable the Debtors to maximize the value of their estates by permitting potential purchasers to fully understand the nature and scope of the Debtors' assets. Ramboll has performed site visits and an analysis of the Debtors' Canadian properties so that potential purchasers have insight into any environmental issues associated with those properties. Ramboll's analysis of the Debtors' properties is for the benefit of all bidders and is essential to the overall success of the sale process.

**(c) The AIP Orders**

63. The Debtors are seeking the recognition of the *Order Approving Ordinary Course Year-End Bonus Payments for Certain Employees Under Sections 105(a), 363 and 503 of the Bankruptcy Code*, entered on April 9, 2020 [Docket No. 1617] (the "**Year End AIP Order**") and the *Order Approving Ordinary Course Mid-Year Bonus Payment Under Sections 105(a), 363, and 503 of the Bankruptcy Code*, entered on September 21, 2020 [Docket No. 2228] (the "**Mid-Year AIP Order**" and together with the Year-End AIP Order, the "**AIP Orders**"). A copy of the Year End AIP Order is attached hereto and marked as **Exhibit "G"**. A copy of the Mid-Year End AIP Order is attached hereto and marked as **Exhibit "H"**.
64. The AIP Orders, among other things, approve AIP (as defined below) bonus payments. Specifically, (a) the Year-End AIP Order approves year-end 2019 AIP bonus payments (the "**2019 Year-End Bonus Payments**") for two individual employees of Debtor Imerys Talc America, Inc. (the "**2019 Eligible Employees**"), and (b) the Mid-Year AIP Order approves the mid-year 2020 AIP bonus payment (the "**2020 Mid-Year Bonus Payment**" and together with the 2019 Mid-Year Bonus Payments, the "**AIP Bonus Payments**") for one individual employee of ITC (the "**2020 Eligible Employee**" and together with the 2019 Eligible Employees, the "**Eligible Employees**"). The 2019 Eligible Employees include: (a)

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the General Manager of Talc North America, who also serves as a member of the board of directors and President of each of the Debtors (the “**President**”) and (b) the Director of Finance of Talc North America, who also serves as Treasurer of each of the Debtors (the “**Treasurer**”). The 2020 Eligible Employee is the Director of Operations of ITC, who also serves as a member of the board of directors of ITC. The Eligible Employees are insiders.

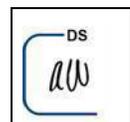
65. The Imerys Annual Incentive Plan (the “**AIP**”) provides ordinary course year-end and mid-year bonus payments to certain employees of the Debtors, awarding amounts based on prior individual performance and the financial performance of the business. The AIP vests upon payment and there is no obligation to pay back any such payment in the event an employee subsequently terminates his or her employment with the Debtors.
66. Bonuses under the AIP are based on the following weighted objectives: (a) the Debtors’ financial objectives (60%) and (b) the safety objectives and the individual employee’s personal performance objectives (40%). Each employee has a “maximum” bonus that they can achieve under the AIP based on a designated percentage tied to such employee’s base salary. The 2019 Eligible Employees are eligible to receive the 2019 Year-End Bonus Payments in the amount of \$101,887 (President) and \$54,094 (Treasurer). Such payments represent the remainder of each 2019 Eligible Employee’s total 2019 AIP bonus compensation. The 2020 Eligible Employee is eligible to receive the 2020 Mid-Year Bonus Payment in the amount of C\$10,962.70. Such payment represents the first semi-annual payment of the 2020 Eligible Employee’s 2020 AIP Bonus compensation.
67. The 2019 Year-End Bonus Payments have been paid; however, the 2020 Eligible Employee has not yet received the 2020 Mid-Year Bonus Payment. ITA paid the 2019 Year-End Bonus Payments and no amount was allocated to ITC. ITC will pay the entirety of 2020 Mid-Year Bonus Payment.
68. The 2020 Eligible Employee is employed by ITC, and both 2019 Eligible Employees perform tasks that benefit ITC. The President provides services related to ITC’s general management, administration and strategic decision making; the Treasurer provides services related to ITC’s financial infrastructure.

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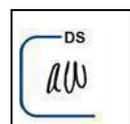
**(d) KEIP Order**

69. The Debtors are seeking the recognition of the *Order Approving Debtors' Revised Key Employee Incentive Program*, entered on June 1, 2020 [Docket No. 1787] (the "**KEIP Order**"). A copy of the KEIP Order is attached hereto and marked as **Exhibit "I"**.
70. The KEIP Order, among other things, approves a key employee incentive program (the "**Revised KEIP**") for certain employees of the Debtors, as further detailed in the *Supplement to Motion of Debtors for Entry of an Order (I) Authorizing Implementation of a Key Employee Incentive Program and a Key Employee Retention Program, (II) Approving the Terms of the Debtors' Key Employee Incentive Program and a Key Employee Retention Program, and (III) Granting Related Relief* [Docket No. 1726] (the "**Revised KEIP Motion**").
71. On November 1, 2019, the Debtors filed the *Motion of Debtors for Entry of an Order (I) Authorizing Implementation of a Key Employee Incentive Program and a Key Employee Retention Program, (II) Approving the Terms of the Debtors' Key Employee Incentive Program and a Key Employee Retention Program, and (III) Granting Related Relief* [Docket No. 1201] (the "**Original KEIP/KERP Motion**"). The United States Trustee filed an objection to the Original KEIP/KERP Motion on grounds that the proposed key employee incentive program (the "**Original KEIP**") did not properly incentivize the participants. In light of the objection, the Debtors determined to postpone seeking approval of the Original KEIP.
72. The Revised KEIP was filed following the filing of the Original Plan and the development of the proposed Sale. The Revised KEIP, unlike the Original KEIP, provides more challenging metrics that better align with the Sale. The Revised KEIP is intended to maximize the value of the Sale and incent the participants of the Revised KEIP (the "**KEIP Participants**") to perform optimally.
73. The KEIP Participants include (a) the President and (b) the Treasurer. The KEIP Participants have institutional knowledge and skills that are essential to the Debtors' efforts to maximize value in the Chapter 11 Cases. In addition to their day-to-day responsibilities, the KEIP Participants have been and are continuing to steer the Sale in an effort to gain the highest and best purchase price available. The success of the Sale will be significantly impacted by their efforts.

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74. Payments under the Revised KEIP are based on (a) a sliding-scale incentive payment tied to the proceeds of the sale (the “**Sale Component**”) and (b) incentive payments that are identical to the bonuses each KEIP Participant would receive under the Debtors’ existing AIP for 2020 (the “**AIP Component**”).
75. KEIP Participants will no longer receive bonuses under the AIP. The AIP continues to apply to non-KEIP Participants.
76. Under the Revised KEIP, the KEIP Participants can achieve: (a) incentive payments equal to 98% of their respective base salaries under the Sale Component if the net proceeds of the Sale total \$150 million, and (b) a maximum incentive payment equal to 50% (with respect to the Treasurer) and 70% (with the respect to the President) of their respective base salaries under the AIP Component. If the foregoing is satisfied, the KEIP Participants will be eligible to receive an aggregate amount of \$682,367.
77. In order to be eligible to receive any payment with respect to the Sale Component, the net proceeds of the Sale must exceed \$30 million. The KEIP Participants will not receive any incentive payments if the net sale proceeds do not exceed the threshold value. If the proceeds from the Sale exceed \$30 million, the KEIP Participants will be eligible for incentive payments calculated based on a percentage of the proceeds that incrementally increases with higher proceed values.
78. The AIP Component will measure overall annual performance based on the following weighted objectives: (a) the Debtors’ financial performance objective (60%) and (b) the individual KEIP Participant’s personal performance and safety objectives (40%).
79. As noted above, the actual amount payable under the KEIP is contingent upon the final purchase price. For example, if the Stalking Horse Bid with Magris Resources is consummated, the maximum amount payable under the Sale Component of the KEIP is \$931,000. Separately, a maximum of approximately \$262,367 is payable under the AIP Component of the KEIP. The actual amount payable is contingent upon financial and operating metrics that will not be finalized until a later date. Together, and assuming the consummation of the Stalking Horse Bid with Magris Resources, this means that bonuses totalling approximately \$1,193,367 may be payable under the KEIP. Of this combined total, approximately \$229,408 will be recharged to ITC based on the current allocation

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methodology. The final allocation will not be available until a later date because allocation is based on ITC's relative contribution to the totality of the Debtors' business.

- 80. As noted above, the President and the Treasurer are KEIP Participants. Both, as described above, perform tasks that benefit ITC.

**V. CONCLUSION**

- 81. I believe that the relief sought in this motion (a) in the best interests of the Debtors and their estates, and (b) constitutes a critical element in the Debtors being able to successfully maximize value for the benefit of their estates and, ultimately, successfully emerge from the Chapter 11 Cases.

I confirm that while connected via video technology, Anthony Wilson showed me his government-issued photo identity document and that I am reasonably satisfied it is the same person and the document is current and valid.

Sworn before me by video conference from City of San Jose, in the State of California, United States of America, to the Community of Eugenia (Grey County), Ontario, on October 29, 2020.

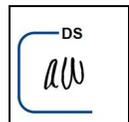
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**Nicholas Avis**  
 Commissioner for Taking Affidavits  
 LSO #76781Q

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**ANTHONY WILSON**

Deponent's Initials



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

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

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

Proceeding commenced at Toronto

**AFFIDAVIT OF RYAN VAN METER  
SWORN APRIL 15, 2021**

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Lawyers for the Applicant

# TAB 3

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

THE HONOURABLE

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MONDAY, THE 19<sup>TH</sup>

MR. JUSTICE KOEHNEN

DAY OF APRIL, 2021

**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.**

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

**ORDER  
(RECOGNITION OF FOREIGN ORDERS)**

**THIS MOTION**, made by Imerys Talc Canada Inc. in its capacity as the foreign representative (the "**Foreign Representative**") of the Debtors, pursuant to the *Companies' Creditors Arrangement Act*, R.S.C. 1985, c. C-36, as amended (the "**CCAA**") for an Order substantially in the form enclosed in the Motion Record, proceeded on this day by way of video conference due to the COVID-19 crisis.

**ON READING** the affidavit of Ryan Van Meter sworn April 15, 2021 (the "**Second Van Meter Affidavit**"), the Second Report of KPMG Inc., in its capacity as information officer (the "**Information Officer**") dated April ●, 2021, each filed, and upon being provided with copies of the documents required by section 49 of the CCAA,

**AND UPON HEARING** the submissions of counsel for the Foreign Representative, counsel for the Information Officer, and those other parties listed on the counsel slip, no one else appearing although served as evidenced by the Affidavit of Nicholas Avis sworn April ●, 2021, filed;

**SERVICE**

1. **THIS COURT ORDERS** that the time for service of the Notice of Motion and the Motion Record is hereby abridged and validated so that this motion is properly returnable today and

hereby dispenses with further service thereof.

## **RECOGNITION OF FOREIGN ORDERS**

2. **THIS COURT ORDERS** that any capitalized terms not otherwise defined herein shall have the meanings given to such terms in the Second Van Meter Affidavit.

3. **THIS COURT ORDERS** that the following orders of the United States Bankruptcy Court for the District of Delaware made in the insolvency proceedings of the Debtors under Chapter 11 of Title 11 of the United States Bankruptcy Code are hereby recognized and given full force and effect in all provinces and territories of Canada pursuant to Section 49 of the CCAA:

- (a) *Order Approving Ordinary Course Year-End Bonus Payment Under Sections 105(a), 363 and 503 of the Bankruptcy Code*, entered on March 2, 2021 [Docket No. 3031] (the “**AIP Order**”); and
- (b) *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, Nunc Pro Tunc to January 28, 2021, and (II) Designate Eric Danner as their President and Treasurer Effective Upon the Closing of the Sale*, entered on March 12, 2021 [Docket No. 3087] (the “**CRO Order**”).

## **GENERAL**

4. **THIS COURT HEREBY REQUESTS** the aid and recognition of any court, tribunal, regulatory or administrative body having jurisdiction in Canada to give effect to this Order and to assist the Debtors, the Foreign Representative, the Information Officer as officer of this Court, and their respective counsel and agents in carrying out the terms of this Order.

5. **THIS COURT ORDERS AND DECLARES** that this Order and all of its provisions are effective from the date it is made without any need for entry and filing.

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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

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

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

Proceeding commenced at Toronto

**ORDER  
(RECOGNITION OF FOREIGN ORDERS)**

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Lawyers for the Applicant

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

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

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

Proceeding commenced at Toronto

**MOTION RECORD  
(RECOGNITION OF FOREIGN ORDERS)  
(Returnable April 19, 2021)**

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