

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

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

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

September 28, 2021

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ONTARIO
SUPERIOR COURT OF JUSTICE
(COMMERCIAL LIST)

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

**AND IN THE MATTER OF IMERYS TALC AMERICA, INC., IMERYS TALC VERMONT,
INC., AND IMERYS TALC CANADA INC.**

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

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

September 28, 2021

I. INTRODUCTION

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

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

7. On March 5, 2019, the Office of the United States Trustee (the "**Trustee**") filed a Notice of Appointment of the Official Committee of Tort Claimants (the "**TCC**"), which was formed to represent the tort claimants and ensure that their rights and interests are protected in these proceedings.
8. On March 19, 2019 and March 22, 2019, the US Court entered various orders sought by the Debtors at their "second day hearing", including but not limited to a Final Order Under 11 U.S.C. Sections 105(a) and 366 (I) Prohibiting Utility Companies from Altering or Discontinuing Service on Account of Prepetition Invoices, (II) Approving Deposit as Adequate Assurance of Payment, and (III) Establishing Procedures for Resolving Requests by Utility Companies for Additional Assurance of Payment (the "**Final Utilities Order**").
9. On April 3, 2019, the Canadian Court granted an order which recognized and gave full force and effect in Canada to, among other things, the Final Utilities Order.
10. On June 3, 2019, the US Court entered an order appointing James L. Patton, Jr. as legal representative for future talc personal injury claimants (the "**FCR**") *nunc pro tunc* to the Petition Date (the "**FCR Order**"). On October 28, 2019, the Canadian Court granted an order which recognized and gave full force and effect in Canada to the FCR Order.
11. On July 25, 2019, the US Court entered an Order (I) Establishing Bar Dates and Related Procedures for Filing Proofs of Claim Other than With Respect to Talc Personal Injury Claims and (II) Approving Form and Manner of Notice Thereof (the "**General Bar Date Order**"). Pursuant to the General Bar Date Order, the US Court established October 15, 2019 at 5:00 p.m. (Prevailing Eastern Time) as the deadline for creditors to file Proofs of Claim against the Debtors based on a Claim other than a Talc Claim (as defined therein) that arose before the Petition Date. On August 7, 2019, the Canadian Court granted an order which recognized and gave full force and effect in Canada to the General Bar Date Order.

12. On November 22, 2019, the US Court also entered an Order (I) Establishing a Bar Date for Indirect Talc Claims and Related Procedures for Filing Proofs of Claim for Indirect Talc Claims and (II) Approving Form and Manner of Notice Thereof (the “**Indirect Talc Claims Bar Date Order**”). Pursuant to the Indirect Talc Claims Bar Date Order, the US Court established January 9, 2020 at 5:00 p.m. (Prevailing Eastern Time) as the deadline for creditors to file Proofs of Claim against the North American Debtors based on an Indirect Talc Claim (as defined therein). On December 3, 2019, the Canadian Court granted an order which recognized and gave full force and effect in Canada to the Indirect Talc Claims Bar Date Order.
13. On March 9, 2020, the US Court granted an order (the “**Non-Debtor Professional Fee Stipulation Order**”) approving a stipulation and agreement permitting ITC to make payments to ITA for the fees and expenses of professionals retained by the TCC and the fees and expenses of professionals retained by the FCR. On April 1, 2020, the Canadian Court granted an order which recognized and gave full force and effect in Canada to the Non-Debtor Professional Fee Stipulation Order.
14. On July 23, 2020, the US Court entered an Order authorizing the employment and retention of Ramboll US Corporation (“**Ramboll**”) as Environmental Advisor *nunc pro tunc* to June 25, 2020 (the “**Ramboll Retention Order**”).
15. On October 29, 2020, the US Court entered an Order (I) Approving Debtors’ Designation of Magris Resources Canada Inc. (“**Magris**”) as Stalking Horse Bidder and Related Bid Protections and (II) Granting Related Relief (the “**Stalking Horse Order**”). On November 3, 2020, the Canadian Court granted an order which recognized and gave full force and effect in Canada to, among other things, the Stalking Horse Order and the Ramboll Retention Order.
16. On November 17, 2020, the US Court entered an Order (I) Approving Sale of All or Substantially All of the Debtors’ Assets Free and Clear of Liens, Claims, Encumbrances, and Other Interests, (II) Authorizing Assumption and Assignment of Certain Executory Contracts and Unexpired Leases, and (III) Granting Related Relief (the “**Sale Approval Order**”). On November 25, 2020, the Canadian Court granted an order which recognized and gave full force and effect in Canada to the Sale Approval Order.
17. On January 8, 2021, the US Court entered an Order authorizing ITC to continue its existence as a corporation under the Business Corporations Act (Quebec) (the “**Continuance Order**”).
18. On January 26, 2021, the Canadian Court granted orders:

- (a) recognizing and giving full force and effect in Canada to the Continuance Order; and
 - (b) discharging Richter as the information officer in these proceedings and appointing KPMG Inc. (“KPMG” or the “**Information Officer**”) as the Information Officer effective as of the time of Richter’s discharge.
19. On January 27, 2021, the Debtors filed the Ninth Amended Joint Chapter 11 Plan of Reorganization of Imerys Talc America, Inc. and its Debtor Affiliates Under Chapter 11 of the Bankruptcy Code (the “**Ninth Amended Plan**”) and the Disclosure Statement for the Ninth Amended Plan (the “**Disclosure Statement**”).
20. Also on January 27, 2021, the US Court entered an Order (I) Approving Disclosure Statement and Form and Manner of Notice of Hearing Thereon, (II) Establishing Solicitation Procedures, (III) Approving Form and Manner of Notice to Attorneys and Certified Plan Solicitation Directive, (IV) Approving Form of Ballots, (V) Approving Form, Manner, and Scope of Confirmation Notices, (VI) Establishing Certain Deadlines in Connection with Approval of Disclosure Statement and Confirmation of Plan, and (VII) Granting Related Relief (the “**Solicitation Procedures Order**”).
21. On February 23, 2021, the Canadian Court granted an order which recognized and gave full force and effect in Canada to the Solicitation Procedures Order.
22. On March 2, 2021, the US Court entered an Order Approving Ordinary Course Year-End Bonus Payment Under Sections 105(a), 363 and 503 of the Bankruptcy Code (the “**2020 Year-End AIP Order**”).
23. On March 12, 2021, the US Court entered an Order Authorizing The Debtors To (I)(A) Employ CohnReznick LLP to Provide Interim Management Services Pursuant to 11 U.S.C. § 363, and (B) Designate Eric Danner as Their Chief Restructuring Officer (the “**CRO**”), *nunc pro tunc* to January 28, 2021, and (II) Designate Eric Danner as Their President and Treasurer Effective Upon the Closing of the Sale (the “**CRO Retention Order**”).
24. On April 19, 2021, the Canadian Court granted an order which recognized and gave full force and effect in Canada to the 2020 Year-End AIP Order and the CRO Retention Order.
25. The primary purpose of the Chapter 11 Proceedings is to confirm a plan of reorganization pursuant to the Bankruptcy Code that channels all present and future talc personal injury claims (the “**Talc**

Personal Injury Claims”) against the Debtors to a trust so that the Debtors can emerge from these restructuring proceedings free of historical talc-related liabilities.

26. KPMG, in its capacities as proposed Information Officer and Information Officer, has previously provided the Canadian Court with three reports in respect of these proceedings. Copies of all materials and reports filed, and orders granted by the Canadian Court in these Recognition Proceedings, are available on a website (the “**Information Officer’s Website**”) established by the Information Officer for the purposes of these proceedings at <https://home.kpmg/ca/imerystalc>. Additionally, there is a link on the Information Officer’s website to the Debtors’ restructuring website maintained by Prime Clerk LLC (“**Prime Clerk**”), which includes copies of the US Court materials and orders, notices and additional information in respect of the Chapter 11 Proceedings.

II. PURPOSE OF REPORT

27. The purpose of this third report (the “**Third Report**”) of KPMG in its capacity as the Information Officer is to provide the Canadian Court with information concerning:
- (a) the motion of the Foreign Representative returnable October 1, 2021 for recognition in Canada of the Contract Rejection Order, the VT Acquisition Order, the Fulton Claim Objection Order, the Utilities Close-Out Order and the Supplemental Ramboll Retention Order (each as defined hereinafter);
 - (b) an update on other matters relating to the Chapter 11 Proceedings; and
 - (c) the activities of the Information Officer since the second report (the “**Second Report**”) dated April 15, 2021.

III. TERMS OF REFERENCE

28. In preparing this Third Report, KPMG has relied solely on information and documents provided by the Debtors and their advisors, including unaudited financial information, declarations and affidavits of the Debtors’ executives and other information provided in the Chapter 11 Proceedings (collectively, the “**Information**”). In accordance with industry practice, except as otherwise described in the Third Report, KPMG has reviewed the Information for reasonableness, internal consistency, and use in the context in which it was provided. However, KPMG has not audited or otherwise attempted to verify the accuracy or completeness of the Information in a manner that would comply with Generally Accepted Auditing Standards (“**GAAS**”) pursuant to the *Chartered*

Professional Accountant of Canada Handbook and, as such, KPMG expresses no opinion or other form of assurance contemplated under GAAS in respect of the Information.

29. Unless otherwise stated, all monetary amounts contained herein are expressed in United States dollars.
30. Capitalized terms not otherwise defined herein are as defined in the motion materials, including the affidavit of Eric Danner, the CRO, President and Treasurer of the Debtors, sworn on September 27, 2021 (the “**Danner Affidavit**”) and filed in support of the Foreign Representative’s motion. This Third Report should be read in conjunction with the Danner Affidavit, as certain information contained in the Danner Affidavit has not been included herein in order to avoid unnecessary duplication.

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

Contract Rejection Order

31. On November 17, 2020, the US Court entered the Sale Approval Order approving the sale of substantially all of the Debtors’ assets to Magris (the “**Sale**”), which order was recognized by the Canadian Court on November 25, 2020. The Sale closed on February 17, 2021 and as a result, the Debtors are no longer in the business of mining, processing, selling, or distributing talc.
32. On May 5, 2021, the Debtors filed an omnibus motion (the “**Contract Rejection Motion**”) with the US Court seeking authority to reject, effective as of the date of the Contract Rejection Motion (the “**Rejection Date**”), certain executory contracts and unexpired leases, including any amendments or modifications thereto (collectively, the “**Rejected Contracts and Leases**”). The Information Officer notes that the Contract Rejection Motion encompassed 30 leases and contracts, of which 6 related to leases and contracts of ITC. The Information Officer understands that a copy of the Contract Rejection Motion was served on each of the counterparties for the Rejected Contracts and Leases, including those in Canada.
33. The Information Officer understands the Debtors did not receive any objections to the Contract Rejection Motion and on May 24, 2021, the US Court entered an order without a hearing, authorizing the Debtors to reject the Rejected Contracts and Leases effective as of the Rejection Date (the “**Contract Rejection Order**”). Pursuant to the Contract Rejection Order, any claims based on the rejection of the Rejected Contracts and Leases shall be filed by an affected counterparty in accordance with the General Bar Date Order. Specifically, any claim arising from

or relating to the Debtors' rejection of any of the Rejected Contracts and Leases shall be filed on or before 5:00 p.m., prevailing Eastern Time, on the date that is thirty (30) days after service of the date of the Contract Rejection Order.

Utilities Close-Out Order

34. On March 22, 2019, the US Court entered the Final Utilities Order, which approved adequate protection assurance be provided for certain of the Debtors' utilities providers (the "**Utility Providers**"), including approximately 13 Utility Providers located in Canada. Pursuant to the Final Utilities Order, the Debtors maintained \$500,000 (the "**Adequate Assurance Deposit**"), or approximately half of their estimated monthly utilities costs, in a separate bank account (the "**Adequate Assurance Account**"). The Final Utilities Order also provided that the Debtors were to maintain the Adequate Assurance Deposit until the earlier of the effective date of a plan of reorganization or an order of the US Court authorizing the return of the Adequate Assurance Deposit.
35. Following the closing of the Sale, the Debtors no longer require the services of the Utility Providers, save and except for Green Mountain Power Corporation and Vermont Telephone Company (collectively, the "**Remaining Utility Providers**"). The Remaining Utility Providers continue to provide services to the Debtors at a closed mine located in Vermont (which obligations remained with the Debtors post-closing of the Sale). The Debtors have reached an agreement with each of the Remaining Utility Providers to fund modest deposits (approximately \$2,000 in the aggregate) to each of them directly.
36. The underlying agreements with the Utility Providers (excluding the Remaining Utility Providers) have either been assumed and assigned to Magris, terminated in accordance with their terms, or rejected by the Debtors pursuant to the Contract Rejection Order and, as such, the Debtors believe the Adequate Assurance Account is no longer necessary.
37. Accordingly, on August 6, 2021, the Debtors filed a motion with the US Court for an order authorizing the Debtors to (A) close the Adequate Assurance Account established by the Final Utilities Order and (B) utilize all funds in the Adequate Assurance Account in the ordinary course and for general administrative purposes (the "**Utilities Close-Out Motion**").
38. The Debtors received informal comments to the Utilities Close-Out Motion from the Trustee, which comments were resolved by revising the original form of order. The revised form of order was

circulated to the Trustee, the TCC and the FCR, and no other comments were received. On August 24, 2021, the US Court entered an order Authorizing The Debtors To (A) Close The Adequate Assurance Account Established By The Utilities Order And (B) Utilize All Funds In The Adequate Assurance Account In The Ordinary Course (the “**Utilities Close-Out Order**”).

39. Pursuant to the Adequate Assurance Order, any Utility Providers (excluding the Remaining Utility Providers) directly holding an adequate assurance deposit, not otherwise funded from the Adequate Assurance Account for post-petition utility charges, are required to return such amounts to the Debtors.

Fulton Claim Objection Order

40. Thomas Neil Fulton commenced employment as a senior engineer with the corporate predecessor of ITC on or about June 9, 2008. On February 15, 2017, Mr. Fulton’s employment was terminated for cause by ITC, at which point he held the position of the Canadian Operations Manager for ITC, making him the highest-ranking ITC employee in Canada at the time. Details on the Mr. Fulton’s employment and the causes for termination are outlined in the Danner Affidavit.
41. Prior to the Petition Date, Mr. Fulton commenced an action against ITC in the Ontario Superior Court of Justice (Court File No.: CV-17-573647) (the “**Action**”). As part of the Action, Mr. Fulton alleged claims against ITC in the amount of \$300,000 for wrongful dismissal, plus out-of-pocket expenses incurred as a result of his attempts to secure alternative employment, interest on all amounts found due and owing, and costs of the Action on a substantial indemnity basis. ITC filed a statement of defence in response to the Action and the parties attempted to resolve the Action through mediation, but were ultimately unsuccessful. As a result of the commencement of the Chapter 11 Proceedings, the Action has been stayed.
42. On October 21, 2019, Mr. Fulton filed a proof claim (Claim No. 442) in the Chapter 11 Proceedings against ITC in the amount of \$300,000 (the “**Fulton Claim**”). The General Bar Date Order established October 15, 2019 at 5:00 p.m. (Prevailing Eastern Time) (the “**Bar Date**”) as the deadline for creditors to file Proofs of Claim against the Debtors. To the extent a party failed to submit a proof of claim by the Bar Date, he or she would not be treated as a creditor with respect to such claim for purposes of voting upon any plan in the Chapter 11 Proceedings and distribution from property of the Debtors’ estates.

43. The Information Officer understands that Mr. Fulton’s counsel was served with notice of the Bar Date pursuant to the General Bar Date Order. Further, Mr. Fulton did not file a motion with the US Court or contact the Debtors to request to file a late proof of claim or provide reasoning for his late filed claim.
44. On July 13, 2021, the Debtors filed an objection to the Fulton Claim pursuant to section 502 of title 11 of the Bankruptcy Code and Rule 3007 of the Federal Rules of Bankruptcy Procedure and requested an order of the US Court disallowing the Fulton Claim (the “**Fulton Objection**”).
45. On August 9, 2021, counsel for the Debtors contacted Mr. Fulton and informed him that because of the lack of response to the Fulton Objection the Debtors intended to file a certificate of no objection with the US Court with respect to the relief requested in the Fulton Objection. The Information Officer understands that Mr. Fulton responded that, while he did not agree with the Fulton Objection or the Debtors’ explanation of Canadian law, he did not intend to pursue his response to the Fulton Objection. The Debtors received no other responses to the Fulton Objection.
46. Accordingly, on August 30, 2021, the US Court entered an order sustaining the Debtors’ Objection to Proof of Claim No. 442 filed by Thomas Neil Fulton (the “**Fulton Claim Objection Order**”).

VT Acquisition Order

47. The Debtors, together with their advisors, have considered various options to maximize the value generated from the proceeds of the Sale. The Debtors ultimately concluded that utilizing a portion of the Sale proceeds to purchase one or more operating businesses is the best path forward because this would likely enhance the value of the estates by generating a reliable stream of revenue in excess of the 0.1% the Sale proceeds are currently earning.
48. On May 14, 2021, the Debtors filed a motion with the US Court for an order seeking, among other things, (a) authority to purchase one or more businesses for an aggregate purchase price not to exceed \$12 million, (b) authority to make one or more refundable deposits with respect to the potential acquisitions, and (c) approval of certain notice procedures related thereto (the “**Notice Procedures Motion**”). On June 22, 2021, the US Court held a hearing with respect to the Notice Procedures Motion, at the conclusion of which the judge took the matter under submission. The Information Officer understands the US Court has not issued a decision on the Notice Procedures Motion as at the date of this Third Report.

49. Following the filing of the Notice Procedures Motion, the Debtors continued to explore potential acquisition opportunities. Based on the feedback the Debtors received in connection with the Notice Procedures Motion, the Debtors' focus turned to real property opportunities including a triple-net lease (or similar) component. The Information Officer understands that since the June 22, 2021 hearing, the Debtors reviewed 84 business acquisition opportunities, including 51 net lease opportunities. Based on an initial review, the Debtors contacted sellers and/or brokers to express initial indications of interest with respect to 21 of these opportunities.
50. On July 29, 2021, the Debtors filed a motion with the US Court for an order (a) authorizing ITV to pursue the purchase of certain properties located in Lyndonville, Vermont (the "**Lyndonville Property**") and Johnson, Vermont (the "**Johnson Property**") and, together with the Lyndonville Property, the "**Properties**"), in each case subject to an existing ground lease, together with the seller's rights and interests as landlord pursuant to such lease (collectively, the "**Acquisitions**"), (b) authorizing the Debtors to make one or more refundable earnest deposits with respect to the Acquisitions on the terms and conditions set forth herein, (c) authorizing the Debtors to take other actions as they may deem necessary to effectuate the Acquisitions, and (d) granting related relief (the "**VT Acquisition Motion**").
51. In the Debtors' view, the inability to make deposits and contingencies regarding court approval are significant impediments to the Debtors' ability to execute on attractive opportunities. Further, sellers and/or brokers have advised the Debtors that uncertainty regarding ability to close and timing to close due to the Chapter 11 Proceedings is a material consideration in assessing a potential offer from the Debtors. In consideration of these challenges, the Debtors sought authority to pursue and effectuate the Acquisitions, including making deposits, executing asset purchase agreements, and taking other steps necessary to close on the Acquisitions.
52. The Information Officer understands that the Lyndonville Property is subject to an existing triple-net lease and the Johnson Property is subject to an existing absolute triple-net lease, which provides that the tenant is responsible for all the expenses covered by a typical triple-net lease plus any capital costs associated with the underlying property and the improvements thereon.
53. On July 28, 2021, ITV submitted a non-binding letter of intent with respect to each of the Lyndonville Property (the "**Lyndonville LOI**") and the Johnson Property (the "**Johnson LOI**"). As part of the VT Acquisition Motion, the Debtors sought authority to, among other things:

- (a) purchase the Lyndonville Property for a total unadjusted purchase price of not more than 5% in excess of the listing price of \$4,200,000 and provide a \$200,000 refundable deposit; and
 - (b) purchase the Johnson Property for a total unadjusted purchase price of not more than 5% in excess of the listing price of \$2,030,476 and provide a \$100,000 refundable deposit.
54. The key terms and details of the Acquisitions are summarized in the Danner Affidavit. Both contemplated transactions remain subject to the successful completion of due diligence to ITV's satisfaction.
55. As noted in the Danner Affidavit, the Acquisitions are not expected to materially impact any creditors in Canada, including those potentially holding Talc Personal Injury Claims because, on the Effective Date of the Plan, the Talc Personal Injury Trust will indirectly own the Properties as a result of their direct ownership of Reorganized ITA and Reorganized ITC.
56. Similar to the Notice Procedures Motion, the Debtors received a number of objections (the "**Objections**") to the VT Acquisition Motion from Arnold & Itkin LLP and Aylstock, Witkin, Kreis & Overholtz, PLLC, on behalf of certain holders of Talc Claims, and certain insurers including but not limited to Central National Insurance Company of Omaha, Century Indemnity Company, Federal Insurance Company, and Lloyd's London (collectively, the "**Objecting Parties**"). The Objecting Parties argued, among other things, that the Debtors had not demonstrated a sound business justification for spending \$6.2 million of funds from the bankruptcy estate on the proposed Acquisitions.
57. On August 20, 2021, the Debtors filed an omnibus reply in response to the Objections and asserted that the Objecting Parties have not demonstrated any reason the US Court should disregard the typical deference given to a debtor's business judgment. Further, the Debtors state that the Objecting Parties' true intent with the Objections is to obstruct the Debtors' progress towards confirmation of the Plan as granting the relief sought in the VT Acquisition Motion will strengthen the Debtors' ability to confirm the Plan. The Information Officer, the TCC and the FCR both supported and joined the VT Acquisition Motion.
58. Although the foregoing objections were raised by the Objecting Parties and considered by the US Court at the hearing seeking approval of the VT Acquisition Motion, the US Court ultimately entered an order Authorizing Debtors to Pursue and Effectuate Purchase of Properties Located in Lyndonville, Vermont and Johnson, Vermont (the "**VT Acquisition Order**").

Supplemental Ramboll Retention Order

59. Under the Ramboll Retention Order, Ramboll was retained as the Debtors' environmental advisor to provide services to assist with the sale of the Debtors' assets and related due diligence process, including:
- (a) conducting an environmental site assessment at each of the Debtors' active and inactive sites;
 - (b) conducting a 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 matters; and
 - (d) preparing a summary report of its complete environmental assessment (as requested by the Debtors).
60. Ramboll has not incurred fees or expenses since October 2020, which coincides with the end of the Sale-related diligence period and the selection of Magris as the Stalking Horse Bidder (as defined in the Sale Approval Order).
61. In order to complete the Acquisitions described above, the Debtors are conducting due diligence on the Properties, which includes the performance of certain environmental diligence. In addition, the Debtors are currently in the process of mitigating and resolving certain historical environmental liabilities at formerly owned properties that were not acquired by Magris as part of the Sale as described in the Danner Affidavit. Accordingly, Ramboll and the Debtors entered into a new proposal dated as of August 16, 2021 whereby the Debtors engaged Ramboll to provide supplemental services related to the foregoing activities.
62. On August 30, 2021, the Debtors filed an application for entry of an order (a) expanding the scope of services which Ramboll may perform under the existing Ramboll Retention Order, effective *nunc pro tunc* to August 16, 2021; and (b) waiving certain informational requirements of Local Rule 2016-2 in connection therewith (the "**Supplemental Ramboll Retention Order**").
63. The Supplemental Ramboll Retention Order provides that, among other things:

- (a) Ramboll will be paid by the Debtors for the services at their customary hourly billing rates and in a manner that is consistent with the Debtors' other professionals; and
- (b) the Debtors are authorized to enter into additional proposals with Ramboll for additional services provided the anticipated additional engagement fees will be less than \$50,000 and subject to the Debtors adhering to the noticing requirements as detailed in the Danner Affidavit.

64. On September 17, 2021, the US Court entered the Supplemental Ramboll Retention Order without hearing as the only comments received in connection therewith were from the Trustee, which were resolved prior to the scheduled hearing date.

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

65. The Danner Affidavit describes the material orders entered and motions that have been heard within the Chapter 11 Proceedings and that information is not repeated herein. The Information Officer has provided commentary on certain other developments within the Chapter 11 Proceedings that may be of particular interest to the Canadian Court.

Tenth Amended Plan

66. On September 15, 2021, the Debtors filed the Tenth Amended Joint Chapter 11 Plan of Reorganization of Imerys Talc America, Inc. and its Debtor Affiliates Under Chapter 11 of the Bankruptcy Code (the "**Tenth Amended Plan**") which contained certain amendments to the Ninth Amended Plan, as detailed in the Danner Affidavit.

The Vote Motions

67. Pursuant to motions filed in June 2021, claimants represented by Bevan & Associates LPA Inc. (the "**Bevan Claimants**") and Williams Hart Boundas Easterby LLP (the "**Williams Claimants**"), sought to affirm certain vote changes, namely to permit the Bevan Claimants and the Williams Claimants to vote in favour of the Plan (the "**Affirmation Motions**"). The Bevan Claimants and Williams Claimants had initially voted against the Plan and required approval of the US Court to affirm their vote changes.

68. On September 3, 2021, Johnson & Johnson ("**JNJ**") and Johnson & Johnson Consumer Inc. ("**JJCI**" and together with JNJ, "**J&J**") filed an objection to the Affirmation Motions, and brought

a motion to designate (the “**Designation Motion**”) the Bevan Claimants’ and Williams Claimants’ votes, as well as the votes of claimants represented by Trammell PC, which together constitute approximately 17,500 votes in favour of the Plan (the “**Subject Votes**”). Such motion, if successful, would effectively disallow the Subject Votes.

69. If the Subject Votes are disallowed, the Debtors will have insufficient votes in favour of the Plan to meet the Plan approval threshold.
70. The US Court heard the Affirmation Motions and the Designation Motion on September 20, 2021, but has not yet issued a ruling on the matter.

J&J Adversary Proceeding

71. On July 27, 2021, ITA and ITV filed a complaint (the “**Complaint**”) against J&J seeking declaratory judgments regarding J&J’s obligations under a series of contracts in which J&J agreed to indemnify ITA, ITV, and their affiliates and predecessors for all losses, liabilities, damages, costs, and expenses in connection with product liability claims arising out of the sale of talc or talc-containing products by J&J or its affiliates, and damages for J&J’s breach of those same contracts. The Plan is intended to vest all of the rights of the Debtors to the benefits of the J&J Indemnities (as defined therein) in the trust to be established pursuant to the Plan.
72. As set forth in the Complaint, ITA and ITV assert that, in the Debtors’ view, the Talc Personal Injury Claims are subject to uncapped indemnity rights against J&J under various stock purchase and supply agreements. Further, ITA and ITV note that J&J has itself acknowledged to the US Court that its indemnification obligations amount to billions of dollars in potential liability.
73. Through the Complaint, ITA and ITV are seeking a number of declarations from the US Court to resolve the various disputes between the Debtors and J&J regarding the obligations owed by one to the other under the J&J Indemnities.
74. Also on July 27, 2021, the TCC filed a motion to intervene as plaintiff in the Adversary Proceeding (the “**TCC Intervention Motion**”). On July 28, 2021, the FCR also filed a motion to intervene as plaintiff in the Adversary Proceeding (the “**FCR Intervention Motion**”, and together with the TCC Intervention Motion, the “**Intervention Motions**”) and joined in the motion brought by the TCC due to the overlap between the FCR and the TCC’s factual and legal bases for intervention. The Debtors consented to both the TCC and the FCR’s intervention in the Adversary Proceeding.

75. On July 28, 2021, the TCC and the FCR brought a motion (the “**TRO Motion**”) for (i) entry of a temporary restraining order restraining and enjoining J&J from using a divisive merger or any other form of corporate transaction to separate themselves from the indemnification obligations they owe to the Debtors, and (ii) entry of a preliminary injunction restraining and enjoining J&J from using a divisive merger or any other form of corporate transaction to separate themselves from the indemnification obligations they owe to ITA and ITV pending the final adjudication of the Complaint.
76. On August 24, 2021, the US Court held a hearing to consider, among other things, the Intervention Motions and the TRO Motion. On August 27, 2021, the US issued its ruling and granted the Intervention Motions but denied the TRO Motion on the basis that the TCC and FCR did not have standing to bring the request and, even if they did, the divisive merger alluded to in the TRO Motion would not violate the automatic stay in the Chapter 11 Proceedings.

Hearing to Consider Confirmation of the Plan

77. The Information Officer understands that the Debtors continue to work towards confirmation of the Tenth Amended Plan in the coming months. As detailed in the Second Report, the US Court had rescheduled confirmation hearings to August 16, 17, 18, 19, and 20, 2021, with an objection deadline of July 16, 2021.
78. On July 20, 2021, the US Court entered an order adjourning the aforementioned confirmation hearing dates and rescheduled the confirmation hearings to November 15, 16, 17, 19, and 22, 2021 and the deadline for objections to the confirmation of the Plan to October 15, 2021.

VI. ACTIVITIES OF THE INFORMATION OFFICER

79. The activities of the Information Officer since the date of the Second Report include:

- (a) communicating with the Debtors' advisors, including the CRO, and the Information Officer's counsel regarding the status of matters related to the Chapter 11 Proceedings and the Recognition Proceedings;
- (b) reviewing materials filed by various parties in the Chapter 11 Proceedings in connection with Contract Rejection Order, the VT Acquisition Order, the Fulton Claim Objection Order, the Utilities Close-Out Order and the Supplemental Ramboll Retention Order;
- (c) reviewing the Debtors' cash flow reporting and professional fee reimbursement requests, and corresponding with the CRO and CohnReznick on same;
- (d) attending before the Canadian Court in respect of the Foreign Representative's motion for recognition of the 2020 Year-End AIP Order and the CRO Retention Order;
- (e) maintaining and updating, as necessary, the Information Officer's Website; and
- (f) preparing this Third Report.

VII. INFORMATION OFFICER'S RECOMMENDATION

80. Based on the Information received and reviewed, the Information Officer is of the view that it is reasonable to recognize the Contract Rejection Order, the VT Acquisition Order, the Fulton Claim Objection Order, the Utilities Close-Out Order and the Supplemental Ramboll Retention Order, and respectfully recommends that the Canadian Court grant the recognition order being sought by the Foreign Representative in its motion returnable October 1, 2021.

All of which is respectfully submitted this 28th day of September 2021.

KPMG Inc.

**In its capacity as the Information Officer of
Imerys Talc America, Inc., Imerys Talc Vermont, Inc. and Imerys Talc Canada Inc.
And not in its personal or corporate capacity**

Per:



Katherine Forbes
CPA, CA, CIRP, LIT
Senior Vice President

**IN THE MATTER OF THE COMPANIES' CREDITORS ARRANGEMENT ACT, R.S.C. 1985, c. C-36, AS
AMENDED AND IN THE MATTER OF IMERYS TALC AMERICA, INC., IMERYS TALC VERMONT, INC., AND
IMERYS TALC CANADA INC. (THE "DEBTORS")**

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

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

ONTARIO
SUPERIOR COURT OF JUSTICE
(COMMERCIAL LIST)

Proceeding commenced at Toronto

THIRD REPORT OF THE INFORMATION OFFICER
(September 28, 2021)

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