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 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

MOTION RECORD
(Re: RECOGNITION OF FOREIGN ORDERS)
(Returnable September 15, 2022)

September 12, 2022

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TO: ATTACHED SERVICE LIST

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

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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

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(September 12, 2022)

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I N D E X

TAB 1

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

ONTARIO
SUPERIOR COURT OF JUSTICE
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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

NOTICE OF MOTION[1]
(Re: Recognition of Foreign Orders)
(Returnable September 15, 2022)

The Applicant, Imerys Talc Canada Inc. ("**ITC**"), will make a motion to a judge presiding over the Commercial List on September 15, 2022 at 11:30 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 will be available on the CaseLines website established for this matter. Please advise Ben Muller if you intend to join the hearing of this motion by emailing bmuller@stikeman.com.

PROPOSED METHOD OF HEARING:

- [ ] in writing under subrule 37.12.1(1) because it is on consent or unopposed or made without notice;
- [ ] in writing as an opposed motion under subrule 37.12.1(4);
- [ ] orally.
- [X] 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**"), the United States District Court for the District of Delaware and/or the United States Court of Appeals for the Third Circuit made

[1] All capitalized terms not otherwise defined herein shall have the meaning ascribed to them in the affidavit of Eric Danner sworn September 12, 2022 (the "**Fourth Danner Affidavit**").

in the insolvency proceedings of the Debtors under chapter 11 of title 11 of the United States Bankruptcy Code (the "**US Bankruptcy Code**"):

(a) *Order Approving Stipulation and Agreement by and Among the Mediation Parties Regarding the Term of Mediation*, entered on May 23, 2022 [Docket No. 4818] (the "**Third Mediation Extension Order**");

(b) *Final Order by Third Circuit Court of Appeals, Re: Appeal on District Court Civil Action Number: 19-944*, entered on July 6, 2022 [Docket No. 4909] (the "**Third Circuit Court's Order**");

(c) *Final Order by District Court Judge Maryellen Noreika, Re: Appeal on Civil Action Number: 19-944*, entered on November 25, 2020 [Docket No. 2566] (the "**District Court's Order**");

(d) *Order Approving Stipulation and Agreement by and Among the Mediation Parties Regarding the Term of Mediation*, entered on July 13, 2022 [Docket No. 4933] (the "**Fourth Mediation Extension Order**"); and

(e) *Order (I) Approving Broughton Reclamation Agreement and Escrow Agreement and (II) Authorizing Imerys Talc Canada Inc. to Perform All Obligations Thereunder*, entered on August 15, 2022 [Docket No. 5002] (the "**Broughton Reclamation Agreement Order**").

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

THE GROUNDS FOR THE MOTION ARE:

Background

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

4. On February 13, 2019, the Debtors filed voluntary petitions for relief under title 11 of the *United States Code* with the US Court (the "**Chapter 11 Cases**");

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

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;

The Plan of Reorganization

(i) *Overview*

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

8. On September 16, 2021, the Debtors filed with the US Court the Tenth Amended Plan;

9. The Debtors did not achieve the requisite 75% of votes in favour of the Ninth Amended Plan;

10. The Debtors suspended all remaining Confirmation Deadlines established pursuant to the Confirmation Scheduling Order;

11. The dates that were scheduled for the Confirmation Hearing were taken off the calendar and a new date for a future Confirmation Hearing has not been set;

(ii) *The Mediation Order*

12. On November 30, 2021, the US Court entered the Order (I) Appointing Mediators, (II) Referring Certain Matters to Mediation, and (III) Granting Related Relief [Docket No. 4385] (the "**Mediation Order**");

13. On December 22, 2021, this Court recognized the Mediation Order;

14. The Mediation Order, among other things, authorizes Kenneth R. Feinberg, Esq. to serve as a mediator to mediate any and all issues related to the Cyprus Settlement (the "**Global Settlement Issues**") and the obligations of certain insurers that issued insurance policies to the Cyprus Debtor (the "**Insurance Issues**" and together with the Global Settlement Issues, the "**Mediation Issues**");

15. The Mediation Order also provides that the mediation with respect to the Insurance Issues shall proceed jointly between Mr. Feinberg and Lawrence W. Pollack, Esq. and that Mr. Pollack will assist Mr. Feinberg in mediating disputes with respect to the Global Settlement Issues, as appropriate;

16. The term of the Mediation was originally set to expire on February 28, 2022 and was subject to further order of the US Court;

17. The US Court has entered four orders which, together, extend the current term of the Mediation to September 30, 2022;

The District Court's Order and the Third Circuit Court's Order

18. James Patton, partner at Young, Conaway, Stargatt & Taylor, LLP ("**Young Conaway**") was retained by the Debtors to serve as "Proposed FCR" in pre-Petition negotiations;

19. When the Debtors filed their Petitions on February 13, 2019, they also brought a motion for the US Court to appoint Mr. Patton as FCR;

20. In connection with that motion, Mr. Patton disclosed that Young Conaway represents many insurance companies in insurance coverage disputes that relate to environmental liabilities, including asbestos claims, but are unrelated to talc claims or the Debtors;

21. As of March 13, 2019, the deadline to object to Mr. Patton's proposed appointment as FCR, none of the Debtors' insurers had objected to Mr. Patton's appointment on the basis that Young Conaway represented certain of them in insurance coverage disputes involving coverage for asbestos-related injury claims;

22. Thereafter, certain of the Debtors' insurers filed a supplemental objection in which they objected, for the first time, to Mr. Patton's appointment as FCR on the basis that Young Conaway represented two of the Debtors' insurers, the Continental Insurance Company ("**Continental**") and National Union Fire Insurance Company of Pittsburgh, PA ("**National Union**"), in *Warren Pumps v. Century Indemnity Co.,* No. N10C-06-141 (Del. Super. Ct.), in which two pump makers sued their insurers to get coverage for asbestos-related injury claims;

23. On June 3, 2019, the US Court dismissed the supplemental objection and entered an order appointing Mr. Patton as the FCR (the "**FCR Appointment Order**"). The US Court also entered an order denying certain requested discovery related to Mr. Patton's appointment (the "**Discovery Order**") and an order authorizing Mr. Patton to retain Young Conaway as his counsel (the "**Young Conaway Retention Order**");

24. On October 28, 2019, this Court entered an order recognizing the FCR Appointment Order and the Young Conaway Retention Order;

25. The Appellants appealed the FCR Appointment Order, the Discovery Order, and the Young Conaway Retention Order to the District Court. On November 24, 2020, the District Court entered the District Court's Order in which it affirmed the US Court's FCR Appointment Order, the Discovery Order, and the Young Conaway Retention Order;

26. The Appellants then appealed the FCR Appointment Order, the Discovery Order, and the Young Conaway Retention Order to the Third Circuit Court. On June 30, 2022, the Third Circuit Court entered the Third Circuit Court's Order in which it affirmed the District Court's Order;

27. The recognition of the District Court's Order and the Third Circuit Court's Order is not anticipated to cause material prejudice to Canadian stakeholders;

The Broughton Reclamation Agreement Order

28. ITC previously owned the property located within the Town of Saint-Pierre de Broughton, Quebec, Canada (the "**Broughton Property**") on which the Saint-Pierre-de-Broughton talc mine (the "**Mine**") was operated;

29. On October 6, 2010, ITC sold the Broughton Property, including the Mine, to Les Forages Andre Vachon Inc. ("**Forages**");

30. The Ministry of Energy and Natural Resources ("**MERN**") continues to hold ITC directly responsible for reclaiming the Broughton Property;

31. After several months of negotiations, ITC, Forages and an affiliate of Forages, Les Pierres Stéatites Inc. ("**Stéatites**"), entered into an agreement with respect to the reclamation of the Broughton Property (the "**Broughton Reclamation Agreement**");

32. On August 15, 2022, the US Court entered the Broughton Reclamation Agreement Order which approves the Broughton Reclamation Agreement;

33. The Broughton Reclamation Agreement provides, among other things, that Forages and Stéatites agree to undertake the restoration work and assume ITC's reclamation obligations and all liabilities related to the rehabilitation and restoration of the Broughton Property (the "**Liability Transfer**"), in exchange for a payment of approximately $277,000 from the Debtors;

34. The Debtors' environmental advisor, Ramboll US Consulting, Inc., estimated that the remaining reclamation costs at the Broughton Property, if the reclamation was to be performed by ITC, would likely exceed the amount payable by ITC under the Broughton Reclamation Agreement;

35. Given that the Brought Reclamation Agreement will release ITC from its reclamation obligations in exchange for a payment which is less than the estimated costs of reclaiming the Broughton Property if the reclamation was to be performed by ITC, the Broughton Reclamation Agreement is in the Debtors' best interest;

36. The recognition of the Broughton Reclamation Agreement Order is not expected to cause material prejudice to Canadian stakeholders;

The Third Mediation Extension Order and the Fourth Mediation Extension Order

37. Pursuant to the Mediation Order, the term of the Mediation was originally set to expire on February 28, 2022 and was subject to further order of the US Court;

38. On March 11, 2022, the US Court entered the First Mediation Extension Order, extending the term of the Mediation through to and including April 8, 2022;

39. On April 15, 2022, the US Court entered the Second Mediation Extension Order, extending the term of the Mediation through to and including May 15, 2022;

40. On May 3, 2022, this Court entered an order recognizing the First Mediation Extension Order and the Second Mediation Extension Order;

41. On May 23, 2022, the US Court entered the Third Mediation Extension Order, extending the term of the Mediation through to and including June 30, 2022;

42. On July 13, 2022, the US Court entered the Fourth Mediation Extension Order, extending the term of the Mediation through to and including September 30, 2022;

43. Significant Mediation activity is continuing to occur, and extending the term of the Mediation will provide the Debtors with the best opportunity to progress towards plan confirmation as fast as reasonably practicable;

44. The recognition of the Third Mediation Extension Order and the Fourth Mediation Extension Order is not anticipated to cause material prejudice to Canadian stakeholders;

Other Grounds

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

46. 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

47. 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:

48. The Fourth Danner Affidavit;

49. The District Court's Order, Third Circuit Court's Order, Broughton Reclamation Agreement Order, Third Mediation Extension Order, and Fourth Mediation Extension Order, copies of which are attached to the Fourth Danner Affidavit;

50. The Sixth report of KPMG Inc. in its capacity as the Information Officer, to be filed; and

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

September 12, 2022

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Lawyers for the Applicant

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ONTARIO
SUPERIOR COURT OF JUSTICE
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Proceeding commenced at Toronto

NOTICE OF MOTION
(Returnable September 15, 2022)

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TAB 2

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

ONTARIO
SUPERIOR COURT OF JUSTICE
(COMMERCIAL LIST)

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AFFIDAVIT OF ERIC DANNER
(Sworn September 12, 2022)

I, Eric Danner, of the City of Boston, in the State of Massachusetts, United States of America (the "**US**"), MAKE OATH AND SAY:

1. I am a partner at CohnReznick LLP ("**CohnReznick**"), which maintains offices at 1301-6th Avenue, New York, New York. I am a CPA and hold a Bachelor of Arts in Economics from Vassar College and an MBA in Accounting/Finance from Boston University. On March 12, 2021, the United States Bankruptcy Court for the District of Delaware (the "**US Court**") entered an order (the "**CRO Order**") [Docket No. 3087] that authorized Imerys Talc America, Inc. ("**ITA**"), Imerys Talc Vermont, Inc. ("**ITV**"), and Imerys Talc Canada Inc. ("**ITC**", and together with ITA and ITV, the "**Debtors**") to (i) engage CohnReznick effective *nunc pro tunc* to January 28, 2021; (ii) designate me as their Chief Restructuring Officer, *nunc pro tunc* to January 28, 2021; and (iii) designate me as the President and Treasurer of the Debtors effective as of February 17, 2021. The CRO Order was recognized by the Ontario Superior Court of Justice (Commercial List) on April 19, 2021.

2. As a result of my role and tenure with CohnReznick and the Debtors, my review of public and non-public documents, and my discussions with the Debtors' employees and advisers, 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 relief, including recognizing the Foreign Orders (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 dollar references in this Affidavit are in US dollars, unless otherwise specified.

I. BACKGROUND

5. The Debtors are three debtors-in-possession in the Chapter 11 Cases (as defined below) commenced before 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. Consequently, the Debtors are no longer engaged in the talc business.

7. The Debtors are 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 such claim is referred to herein as a "**Talc Personal Injury Claim**", a term that is more fully defined in the Plan (as defined below)).

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.

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. Richter Advisory Group Inc. was replaced by KPMG Inc. as the Information Officer on January 26, 2021.

12. On March 5, 2019, the Office of the United States Trustee for the District of Delaware (the "**U.S. Trustee**") appointed the Tort Claimants' Committee (the "**TCC**") in the Chapter 11 Cases. On June 3, 2019, the US Court entered an order appointing the future claimants' representative (the "**FCR**") pursuant to sections 105(a), 524(g)(4)(B)(i) and 1109(b) of the US Bankruptcy Code.

13. The events leading up to the within motions and stipulations, including the factual background regarding the Debtors' business operations and the progress of the Chapter 11 Cases, are set out in greater detail in the Debtors' previous motion materials, which are available on the Information Officer's webpage: https://home.kpmg/ca/imerystalc. Copies of documents filed in the US Court in connection with the US Proceedings can be found on the webpage for Kroll, LLC f/k/a Prime Clerk LLC ("**Kroll**"), the Debtors' claims and noticing agent: https://cases.ra.kroll.com/imerystalc/.

II. RECENT DEVELOPMENTS IN THE CHAPTER 11 CASES

(a) Overview

14. The Debtors have been actively pursuing their restructuring efforts in the United States. Since my last Affidavit sworn April 26, 2022, the US Court has entered the following orders:

a) *Order Granting Motion of Rio Tinto for an Order Further Extending the Deadline by Which to Remove Civil Actions*, entered on May 10, 2022 [Docket No. 4795], which extended by 119 days the deadline by which Rio Tinto America Holdings Inc., Rio Tinto America Inc., Rio Tinto Services Inc., and their affiliates may file notices of removal under Bankruptcy Rule 9027(a), through to and including August 19, 2022;

b) *Order Granting Motion of Cyprus Mines Corporation and Cyprus Amax Minerals Company for an Order Further Extending the Deadline by Which to Remove Civil Actions*, entered on May 11, 2022 [Docket No. 4798], which extended by 119 days the deadline by which Cyprus Mines Corporation, and Cyprus Amax Minerals Company, and their affiliates may file notices of removal under Bankruptcy Rule 9027(a), through to and including August 19, 2022;

c) *Tenth Order Further Extending the Deadline By Which the Debtors May Remove Civil Actions*, entered on May 13, 2022 [Docket No. 4802], which extended by 119 days the deadline by which the Debtors may file notices of removal under Bankruptcy Rule 9027(a), through to and including August 19, 2022;

d) *Order Approving Stipulation and Agreement by and Among the Mediation Parties Regarding the Term of Mediation*, entered on May 23, 2022 [Docket No. 4818] (the "**Third Mediation Extension Order**"), which approved the stipulation and agreement to extend the term of the Mediation from May 15, 2022 through to and including June 30, 2022;

e) *Order Denying Motion to Reconsider of RMI Insurers Regarding Orders Approving Stipulations and Agreements by and Among the Mediation Parties and Limited Objection to Debtors' Certification of Counsel Extending Mediation*, entered on June 22, 2022 [Docket No. 4883], which denied the RMI Insurer's request that the US Court modify its May 23, 2022 Order extending the Mediation to June 30, 2022;

f) *Final Order by Third Circuit Court of Appeals, Re: Appeal on District Court Civil Action Number: 19-944*, entered on July 6, 2022 [Docket No. 4909] (the "**Third Circuit Court's Order**"), which affirmed the November 24, 2020 order of the United States District Court for the District of Delaware [Docket No. 2566] (the "**District Court's Order**"), which affirmed the US Court's appointment of James Patton as the FCR;

g) *Order Approving Stipulation and Agreement by and Among the Mediation Parties Regarding the Term of Mediation*, entered on July 13, 2022 [Docket No. 4933] (the "**Fourth Mediation Extension Order**"), which approved the stipulation and agreement to extend the term of the Mediation from June 30, 2022 through to and including September 30, 2022;

h) *Order (I) Approving Broughton Reclamation Agreement and Escrow Agreement and (II) Authorizing Imerys Talc Canada Inc. to Perform All Obligations Thereunder*, entered on August 15, 2022 [Docket No. 5002] (the "**Broughton Reclamation Agreement Order**"), which approved the Broughton Reclamation Agreement;

i) *Eleventh Order Further Extending the Deadline By Which the Debtors May Remove Civil Actions*, entered on September 2, 2022 [Docket No. 5037], which extended by 119 days the deadline by which the Debtors may file notices of removal under Bankruptcy Rule 9027(a), through to and including December 16, 2022;

j) *Order Granting Motion of Cyprus Mines Corporation and Cyprus Amax Minerals Company for an Order Further Extending the Deadline by Which to Remove Civil Actions*, entered on September 6, 2022 [Docket No. 5041], which extended by 119 days the deadline by which Cyprus Mines Corporation, and Cyprus Amax Minerals Company, and their affiliates may file notices of removal under Bankruptcy Rule 9027(a), through to and including December 16, 2022;

k) *Order Granting Motion of Rio Tinto for an Order Further Extending the Deadline by Which to Remove Civil Actions*, entered on September 6, 2022 [Docket No. 5042], which extended by 119 days the deadline by which Rio Tinto America Holdings Inc., Rio Tinto America Inc., Rio Tinto Services Inc., and their affiliates may file notices of removal under Bankruptcy Rule 9027(a), through to and including December 16, 2022.

15. At this time, the Debtors are seeking to recognize only the District Court's Order, the Third Circuit Court's Order, the Broughton Reclamation Agreement Order, the Third Mediation Extension Order, and the Fourth Mediation Extension Order (collectively, the "**Foreign Orders**"), which are described in greater detail below. A copy of the District Court's Order is attached hereto and marked as **Exhibit "A"**. A copy of the Third Circuit Court's Order is attached hereto and marked as **Exhibit "B"**. A copy of the Broughton Reclamation

Agreement Order is attached hereto and marked as **Exhibit "C"**. A copy of the Third Mediation Extension Order is attached hereto and marked as **Exhibit "D"**. A copy of the Fourth Mediation Extension Order is attached hereto and marked as **Exhibit "E"**.

(b) The Plan of Reorganization[1]

(i) ***Overview***

16. 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. To this effect, the Debtors filed with the US Court on January 27, 2021, 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 "**Disclosure Statement**"). On September 16, 2021, the Ninth Amended Plan was amended post-solicitation and the Debtors filed with the US Court 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 [Docket No. 4099] (as may be further amended, the "**Plan**" or the "**Tenth Amended Plan**"), which contained certain updates and modifications.

[1] All capitalized terms used herein that are not otherwise defined have the meaning ascribed to them in the Plan.

17. The US Court entered an order approving the Disclosure Statement on January 27, 2021, and this Court recognized that order on February 23, 2021. Copies of the Plan, Disclosure Statement, and the Plan Supplement can be found on Kroll's website.

18. The Plan is summarized in the Affidavit of Ryan Van Meter sworn February 18, 2021, which is attached hereto (without exhibits) and marked as **Exhibit "F"**.[2]

19. As described in my Affidavit sworn December 14, 2021, which is attached hereto (without exhibits) and marked as **Exhibit "G"**, the Debtors did not achieve the requisite 75% of votes in favour of the Ninth Amended Plan. The Debtors suspended all remaining Confirmation Deadlines established pursuant to the Confirmation Scheduling Order. The dates that were scheduled for the Confirmation Hearing were taken off the calendar and a new date for a future Confirmation Hearing has not been set.

(ii) ***The Cyprus Settlement***

20. The Plan incorporates, among other settlements, a global settlement (the "**Cyprus Settlement**") among (a) the Debtors, (b) Cyprus Mines Corporation (the "**Cyprus Debtor**"), Cyprus Amax Mineral Company ("**CAMC**"), the TCC, and (c) the FCR. The Cyprus Settlement was described in detail in my prior Affidavit dated December 14, 2021.

(c) The Mediation Order

21. On November 30, 2021, the US Court entered the Order (I) Appointing Mediators, (II) Referring Certain Matters to Mediation, and (III) Granting Related Relief [Docket No. 4385] (the "**Mediation Order**"). The Mediation Order was summarized in my previous

[2] The description of the Ninth Amended Plan in the Affidavit of Ryan Van Meter sworn February 18, 2021, is equally applicable to the Plan, unless otherwise noted herein.

Affidavit sworn December 14, 2021. On December 22, 2021, this Court recognized the Mediation Order.

22. The Mediation Order, among other things, (i) authorizes Kenneth R. Feinberg, Esq. to serve as a mediator to mediate any and all issues related to: (a) the Cyprus Settlement (the "**Global Settlement Issues**"); and (b) the resolution of disputes over the obligations of certain insurers that issued insurance policies to the Cyprus Debtor and its past and present affiliates (the "**Insurance Issues**" and together with the Global Settlement Issues, the "**Mediation Issues**"); (ii) provides that the mediation with respect to the Insurance Issues shall proceed jointly between Lawrence W. Pollack, Esq. and Mr. Feinberg (together, the "**Mediators**") and that Mr. Pollack will assist Mr. Feinberg in mediating disputes with respect to the Global Settlement Issues, as appropriate; and (iii) refers the Mediation Issues to mandatory mediation (the "**Mediation**").

23. The term of the Mediation was originally set to expire on February 28, 2022. The US Court has entered four orders extending the term of the Mediation. Currently, the term of the Mediation is set to expire on September 30, 2022, subject to further order of the US Court.

24. The Debtors, the TCC, the FCR, the Cyprus Debtor, the Cyprus TCC and the Cyprus FCR (the "**Mediation Parties**") have participated in mediation sessions with each of (i) Employers Mutual Casualty Company; (ii) TIG Insurance Company, as successor by merger to International Insurance Company, International Surplus Lines Insurance Company, Mt. McKinley Insurance Company (formerly known as Transamerica Premier Insurance Company), Everest Reinsurance Company (formerly known as Prudential Reinsurance Company), and The North River Insurance Company; (iii) Hartford Accident and Indemnity

Company and First State Insurance Company; (iv) American Insurance Company, Fireman's Fund Insurance Company, and Allianz Underwriters Insurance Company f/k/a Allianz Underwriters, Inc.; (v) Travelers Casualty and Surety Company (f/k/a The Aetna Casualty and Surety Company) and the Travelers Indemnity Company; (vi) the Chubb Insurers (as defined in the Mediation Order); and (vii) the Cyprus Historical Excess Insurers (as defined in the Mediation Order, and, together with the above listed insurers, the "**Insurers**").

25. Since the Mediation Order was entered by the US Court, the Mediation Parties have conducted an extensive information exchange in coordination with Mr. Feinberg. In connection with and following that information exchange, the parties have been engaged in regular sessions to develop a common understanding of the Mediation Issues and goals. In addition, mediation sessions with each of the Insurers took place through June 2022. The Imerys Debtors and Cyprus Debtors believe that continuing the Mediation and focusing the Mediation efforts on the Global Settlement Issues is likely to be productive and facilitate the plan confirmation process.

III. OVERVIEW OF THE FOREIGN ORDERS

(a) Overview of the District Court's Order and the Third Circuit Court's Order

26. As is customary, the Debtors began work in preparation for their Chapter 11 Cases in advance of filing their Petitions on February 13, 2019. As part of this preparatory work, the Debtors retained James Patton, partner at Young, Conaway, Stargatt & Taylor, LLP ("**Young Conaway**") to serve as "Proposed FCR" in pre-Petition negotiations. Mr. Patton possesses a significant amount of relevant experience, having worked for decades on mass-tort bankruptcy matters and serving as an FCR for several bankruptcy cases.

27. When the Debtors ultimately filed their Petitions on February 13, 2019, they also brought a motion for the US Court to appoint Mr. Patton as FCR. That motion was accompanied by, among other things, a declaration by Mr. Patton. Mr. Patton's declaration disclosed that Young Conaway represents many insurance companies in insurance coverage disputes that relate to environmental liabilities, including asbestos claims, but are unrelated to talc claims or the Debtors.

28. The deadline to object to Mr. Patton's proposed appointment as FCR was March 13, 2019. As of the objection deadline, none of the Debtors' insurers had objected to Mr. Patton's appointment on the basis that Young Conaway represented certain of them in insurance coverage disputes involving coverage for asbestos-related injury claims. Certain of the Debtors' insurers only objected to Mr. Patton's appointment as FCR on the basis that his pre-Petition engagement as Proposed FCR raised issues related to his independence from the Debtors. In connection with this objection, a motion was filed to compel discovery responses from the Debtors regarding Mr. Patton's appointment.

29. On May 8, 2019, the US Court issued a ruling on Mr. Patton's appointment as FCR and postponed a final decision on his appointment. The US Court was concerned with Mr. Patton's independence and ordered Mr. Patton to file supplemental disclosures regarding several conflict-related matters, including whether he, through Young Conaway, had represented any insurance companies in insurance coverage litigation related to asbestos liability. Mr. Patton's supplemental declarations revealed that certain of the Debtors' insurers who had been represented by Young Conaway in asbestos related litigation had executed prospective conflict waivers.

30. Thereafter, certain of the Debtors' insurers filed a supplemental objection in which they objected, for the first time, to Mr. Patton's appointment as FCR on the basis that Young Conaway represented certain of them in insurance coverage disputes involving coverage for asbestos-related injury claims. Specifically, two of the Debtors' insurers, the Continental Insurance Company ("**Continental**") and National Union Fire Insurance Company of Pittsburgh, PA ("**National Union**"), were party to *Warren Pumps v. Century Indemnity Co.,* No. N10C-06-141 (Del. Super. Ct.), in which two pump makers sued their insurers to get coverage for asbestos-related injury claims, and Young Conaway represented both Continental and National Union.

31. On June 3, 2019, the US Court dismissed the supplemental objection and entered an order appointing Mr. Patton as the FCR (the "**FCR Appointment Order**"). The US Court also entered an order denying the requested discovery (the "**Discovery Order**") and an order authorizing Mr. Patton to retain Young Conaway as his counsel (the "**Young Conaway Retention Order**").

32. On October 28, 2019, this Court entered an order recognizing the FCR Appointment Order and the Young Conaway Retention Order.

33. Various Excess Insurers[3] (the "**Appellants**") appealed the FCR Appointment Order, the Discovery Order, and the Young Conaway Retention Order to the United States District Court for the District of Delaware (the "**District Court**"). On November 24, 2020, the

[3] The five "**Excess Insurers**" are Columbia Casualty Company, Continental Casualty Company, Continental, Lamorak Insurance Company (formerly known as OneBeacon America Insurance Company and as successor to Employers' Surplus Lines Insurance Company), Stonewall Insurance Company (now known as Berkshire Hathaway Specialty Insurance Company), and National Union.

District Court entered the District Court's Order in which it affirmed the US Court's FCR Appointment Order, the Discovery Order, and the Young Conaway Retention Order.

34. The Appellants then appealed the FCR Appointment Order, the Discovery Order, and the Young Conaway Retention Order to the United States Court of Appeals for the Third Circuit (the "**Third Circuit Court**"). On June 30, 2022, the Third Circuit Court entered the Third Circuit Court's Order in which it affirmed the District Court's Order. Notably, the Third Circuit Court observed, "it appears that the Insurers are only bringing this objection as a tactical one to delay Imerys's plan confirmation", which it characterized as "bad faith".

Impact on Canadian Stakeholders

35. No Canadian stakeholders are anticipated to be prejudiced as a result of recognizing the District Court's Order and the Third Circuit Court's Order.

(b) Overview of the Broughton Reclamation Agreement Order

36. The motion requesting entry of the Broughton Reclamation Agreement Order was filed by the Debtors on July 26, 2022 [Docket No. 4979]. I submitted a declaration in support of this motion [Docket No. 4979-3]. The deadline to submit an objection or response to the entry of the Broughton Reclamation Agreement Order was August 9, 2022 at 4:00 p.m. (the "**Objection Deadline**"). No objection or response was filed or received by the Debtors in connection with the Broughton Reclamation Agreement Order by the Objection Deadline. The US Court entered the Broughton Reclamation Agreement Order on August 15, 2022.

37. The Broughton Reclamation Agreement Order approves the agreement (the "**Broughton Reclamation Agreement**") between ITC, Les Forages Andre Vachon Inc. ("**Forages**"), and an affiliate of Forages, Les Pierres Stéatites Inc. ("**Stéatites**"). The Broughton

Reclamation Agreement provides that Forages and Stéatites shall undertake the restoration work and shall assume ITC's reclamation obligations and all liabilities related to the rehabilitation and restoration of the property located within the Town of Saint-Pierre de Broughton, Quebec, Canada (the "**Broughton Property**") on which the Saint-Pierre-de-Broughton talc mine (the "**Mine**") was operated (the "**Liability Transfer**"), in exchange for a payment of approximately $277,000 from the Debtors.

38. ITC previously owned the Broughton Property on which the Mine was operated. In connection with ITC's mining operations on the Broughton Property, the Ministry of Energy and Natural Resources ("**MERN**") required ITC to pay $58,500 CAD to MERN as financial assurance for ITC's rehabilitation and restoration obligations, which is to be returned to ITC after ITC completes reclamation of the Broughton Property (the "**Financial Assurance**").

39. On October 6, 2010, ITC sold the Broughton Property, including the Mine, to Forages. Under the deed of sale (the "**Deed**"), Forages agreed to assume responsibility for all environmental liability related to the Broughton Property. However, following the sale of the Broughton Property to Forages, Forages failed to post the necessary financial assurance required by the Quebec Mining Act to effectuate the liability transfer under the Deed. As a result, MERN did not consent to the transfer of liability contemplated by the Deed, and has continued to hold ITC directly responsible for reclaiming the Broughton Property.

40. In September 2020, the Debtors' environmental advisor, Ramboll US Consulting, Inc. ("**Ramboll**"), estimated that the remaining reclamation costs at the Broughton Property, if the reclamation was to be performed by ITC, would likely exceed the amount payable by ITC under the Broughton Reclamation Agreement.

41. Following several months of negotiations, ITC, Forages and Stéatites entered into a term sheet (the "**Term Sheet**") on April 21, 2021, whereby Forages and Stéatites agreed to undertake the reclamation work and effectuate the Liability Transfer in exchange for a payment of approximately $277,000 from the Debtors, plus an additional $12,000 escrow fee payable to an escrow agent. The $277,000 payment is comprised of (i) a cash payment of $231,000, and (ii) the Financial Assurance of $58,500 CAD, which will be transferred from MERN to Forages and Stéatites subject to the terms of the Broughton Reclamation Agreement. Neither Forages nor Stéatites are insiders or otherwise affiliated with the Debtors.

42. The parties provided the Term Sheet to MERN in May 2021. In July 2022, MERN informed the parties that it would approve the Liability Transfer, subject to receipt of the fully executed Broughton Reclamation Agreement and ancillary documents.

43. On July 22 and 25, 2022, the parties executed the Broughton Reclamation Agreement, which incorporates the terms of the Term Sheet. The Broughton Reclamation Agreement will only become effective after it is approved by the US Court and this Court. A copy of the Broughton Reclamation Agreement (without exhibits) is attached hereto and marked as **Exhibit "H"**.

The Broughton Reclamation Agreement is in the Debtors' Best Interest

44. The Debtors and their advisors have considered various options to minimize the expenses incurred by ITC to reclaim the Broughton Property, and have made efforts which include contacting over 20 contractors.

45. Current estimates, based on information provided by Ramboll, are that go-forward reclamation costs at the Broughton Property, if such reclamation was to be performed by ITC, would likely exceed the amount payable under the Broughton Reclamation Agreement.

46. While the Debtors could seek to enforce Forages' prior agreement to assume responsibility for all environmental liability related to the Broughton Property pursuant to the Deed, success is not guaranteed and the litigation expenses incurred in seeking such enforcement would likely be substantial.

47. The Broughton Reclamation Agreement enables the full and final release of ITC from its reclamation obligations at the Broughton Property through the Liability Transfer, which negates the possibility of future reclamation costs and expenses being incurred by ITC and provides ITC with financial certainty. In addition, Forages and Stéatites have agreed to indemnify ITC for any liability arising from or relating to the Reclamation Work or the Broughton Property.

48. The Debtors view the Broughton Reclamation Agreement as the best and most efficient path forward as it will enable ITC to resolve its current reclamation obligations in a cost-effective manner and without the need for litigation. The Broughton Reclamation Agreement will eliminate unknown remediation risks, costs, and other burdens, and provide certainty and finality that is advantageous to ITC. The Debtors have determined in their business judgment that the Broughton Reclamation Agreement will maximize the value of the Debtors' estates.

Impact on Canadian Stakeholders

49. ITC is the Debtor that is a party to the Broughton Reclamation Agreement and the party required to conduct the rehabilitation and restoration of the Broughton Property under the Quebec *Mining Act*. As the Broughton Reclamation Agreement is in the best interest of the Debtors' estates, no Canadian stakeholders are anticipated to be prejudiced as a result of recognizing the Broughton Reclamation Agreement (and indeed such stakeholders will benefit due to the release of ITC from its reclamation obligations at the Broughton Property and the related indemnity).

(c) Overview of the Third Mediation Extension Order and the Fourth Mediation Extension Order

50. Under the Mediation Order, the term of the Mediation was set to expire on February 28, 2022, but the date may be extended by further order of the US Court.

51. On March 11, 2022, the US Court entered an order (the "**First Mediation Extension Order**"), approving the stipulation and agreement to extend the term of the Mediation from February 28, 2022 through to and including April 8, 2022. On April 15, 2022, the US Court entered an order (the "**Second Mediation Extension Order**"), approving the stipulation and agreement to extend the term of the mediation from April 8, 2022 through to and including May 15, 2022. On May 3, 2022, this Court entered an order recognizing the First Mediation Extension Order and the Second Mediation Extension Order.

52. The US Court entered the Third Mediation Extension Order on May 23, 2022, and the Fourth Mediation Extension Order on July 13, 2022 (collectively, the "**Mediation Extension Orders**"). The Third Mediation Extension Order extended the Mediation through

June 30, 2022, and the Fourth Mediation Extension Order extended the Mediation through September 30, 2022.

53. Significant Mediation activity is continuing to take place between the Mediation Parties, and further extending the Mediation process will give the Debtors the best opportunity to progress towards plan confirmation as fast as reasonably practicable.

Impact on Canadian Stakeholders

54. ITC is one of the Debtors that is a party to the Mediation. No Canadian stakeholders are anticipated to be prejudiced as a result of recognizing the Mediation Extension Orders.

IV. CONCLUSION

55. I believe that the relief sought in these motions and stipulations (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, Eric Danner 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 Eric Danner, stated as being in the City of Boston, in the State of Massachusetts, United States of America, to the City of Toronto, Ontario, on September 12, 2022, in accordance with O. Reg 431/20 *Administering Oath or Declaration Remotely*.

DocuSigned by:
Ben Muller
77EEB2B8DE444CE...

Ben Muller
Commissioner for Taking Affidavits
LSO #80842N

DocuSigned by:
Eric Danner
107EE4ADACCA4CC...

ERIC DANNER

Deponent's Initials

Exhibit “A”

This is
EXHIBIT "A"
to the Affidavit of
ERIC DANNER
Sworn September 12, 2022

DocuSigned by:
Ben Muller
77FFB2B8DE444CE...

Ben Muller
Commissioner for Taking Affidavits
LSO #80842N

IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF DELAWARE

In re:	)	
	)	Chapter 11
IMERYS TALC AMERICA, INC.,	)	
IMERYS TALC VERMONT, INC., and	)	BK Case No. 19-10289 (LSS)
IMERYS TALC CANADA, INC.,	)	
	)	
Debtors.	)	
CYPRUS HISTORICAL EXCESS	)	
INSURERS,	)	C.A. No. 19-944 (MN)
	)	BAP No. 19-39
Appellant,	)	
	)	C.A. No. 19-1120 (MN)
v.	)	BAP No. 19-42
	)	
IMERYS TALC AMERICA, INC.,	)	C.A. No. 19-1121 (MN)
IMERYS TALC VERMONT, INC.,	)	BAP No. 19-43
IMERYS TALC CANADA, INC., and	)	
FUTURE CLAIMANTS'	)	C.A. No. 19-1122 (MN)
REPRESENTATIVE,	)	BAP No. 19-44
	)	
Appellees.	)	

ORDER

At Wilmington this 24th day of November 2020:

For the reasons set forth in the accompanying Memorandum Opinion issued on this date, IT IS HEREBY ORDERED that:

1. The Bankruptcy Court's Order Appointing James L. Patton, Jr., as Legal Representative for Future Talc Personal Injury Claimants, *Nunc Pro Tunc* to the Petition Date, dated June 3, 2019, is AFFIRMED.

2. The Bankruptcy Court's Order Denying Motion to Compel Debtors' Responses to Discovery in aid of the Objection to Debtors' Motion to Appoint a Future Claimants

Representative, and in the Alternative, to Adjourn the Hearing on the Debtors' Motion to Appoint James L. Patton as Future Claims Representative, dated June 3, 2019, is AFFIRMED.

3. The Bankruptcy Court's Order Authorizing the Future Claimants' Representative to Retain and Employ Young Conaway Stargatt & Taylor, LLP as His Attorneys, *Nunc Pro Tunc* to the Petition Date, dated June 6, 2019, is AFFIRMED.

4. The Clerk of the Court is directed to CLOSE Civ. Nos. 19-944 (MN), 19-1120 (MN), 19-1121 (MN), and 19-1122 (MN).

The Honorable Maryellen Noreika
United States District Judge

IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF DELAWARE

In re:	)	
	)	Chapter 11
IMERYS TALC AMERICA, INC.,	)	
IMERYS TALC VERMONT, INC., and	)	BK Case No. 19-10289 (LSS)
IMERYS TALC CANADA, INC.,	)	
	)	
Debtors.	)	
CYPRUS HISTORICAL EXCESS	)	
INSURERS,	)	C.A. No. 19-944 (MN)
	)	BAP No. 19-39
Appellant,	)	
	)	C.A. No. 19-1120 (MN)
v.	)	BAP No. 19-42
	)	
IMERYS TALC AMERICA, INC.,	)	C.A. No. 19-1121 (MN)
IMERYS TALC VERMONT, INC.,	)	BAP No. 19-43
IMERYS TALC CANADA, INC., and	)	
FUTURE CLAIMANTS'	)	C.A. No. 19-1122 (MN)
REPRESENTATIVE,	)	BAP No. 19-44
	)	
Appellees.	)	

MEMORANDUM OPINION

Stamatios Stamoulis, STAMOULIS & WEINBLATT LLC, Wilmington, DE; Tancred Schiavoni, Janine Panchok-Berry, O'MELVENY & MYERS LLP, New York, NY – Attorneys for Appellants.

Michael J. Merchant, Marcos A. Ramos, RICHARDS, LAYTON & FINGER, P.A., Wilmington, DE; Jeffrey E. Bjork, Amy C. Quartarolo, Helena G. Tseregounis, LATHAM & WATKINS LLP, Los Angeles, CA; Richard A. Levy, LATHAM & WATKINS LLP, Chicago, IL; Roman Martinez, Gregory B. in den Berken, LATHAM & WATKINS LLP, Washington, D.C. – Attorneys for Appellees Imerys Talc America, Inc., Imerys Talc Vermont, Inc., and Imerys Talc Canada, Inc.

Robert S. Brady, Edwin J. Harroun, Sara Beth A.R. Kohut, YOUNG CONAWAY STARGATT & TAYLOR, LLP, Wilmington, DE – Attorneys for Appellee Future Claimants' Representative.

November 24, 2020
Wilmington, Delaware

NOREIKA, U.S. DISTRICT JUDGE:

Before the Court is the appeal (D.I. 14) of five excess insurers ("Appellants" or "the Excess Insurers")[1] of three Bankruptcy Court orders: the Order Appointing James L. Patton, Jr., ("Patton") as Legal Representative for Future Talc Personal Injury Claimants, *Nunc Pro Tunc* to the Petition Date ("the Appointment Order"); the Order Denying Certain Excess Insurers' Motion to Compel Debtors' Responses to Discovery ("the Discovery Order"); and the Order Authorizing the Future Claimants' Representative to Retain and Employ Young Conaway Stargatt & Taylor, LLP ("Young Conaway") as his Attorneys, *Nunc Pro Tunc* to the Petition Date ("the Retention Order").[2] The issues have been fully briefed. (D.I. 14, 15, 22–25, 29, 30). For the reasons set forth below, the Bankruptcy Court's three Orders are affirmed.

I. INTRODUCTION

Appellees Imerys Talc Vermont, Inc., Imerys Talc America, Inc., and Imerys Talc Canada, Inc. (collectively, "Imerys") distribute talc to third-party manufacturers for use in products.

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1 The five Excess Insurers are Columbia Casualty Company ("Columbia"), Continental Casualty Company and the Continental Insurance Company (as successor to CNA Casualty of California and as successor in interest to certain insurance policies issued by Harbor Insurance Company) ("Continental"), Lamorak Insurance Company (formerly known as OneBeacon America Insurance Company and as successor to Employers' Surplus Lines Insurance Company) ("Lamorak"), Stonewall Insurance Company (now known as Berkshire Hathaway Specialty Insurance Company) ("Stonewall"), and National Union Fire Insurance Company of Pittsburgh, PA ("National Union"). (D.I. 14 at 6). Lexington Insurance Company was listed in error in Appellants' opening brief and is not a party to this appeal. (D.I. 29 at 21 n.72).

2 Unless otherwise stated, docket citations are to *In re Imerys Talc America, Inc.*, 1:19-cv-944-MN (D. Del. filed May 22, 2019), appealing the Bench Ruling on Motion to Appoint James L. Patton, Jr. as the Legal Representative for Future Talc Personal Injury Claimants. The Appointment Order is appealed in related case 1:19-cv-1120-MN, the Discovery Order is appealed in related case 1:19-cv-1121-MN, and the Retention Order is appealed in related case 1:19-cv-1122-MN.

(D.I. 22 at 6). Appellants are insurance companies that issued insurance policies to Imerys. (D.I. 14 at 6, 15).

Imerys has been sued in thousands of lawsuits by individuals alleging that Imerys' talc contains asbestos and has caused asbestos-related diseases. (D.I. 22 at 6). In the face of mounting liability, Imerys prepared to file for Chapter 11 bankruptcy and hired Patton as a potential future claimants' representative ("FCR") pursuant to 11 U.S.C. § 524(g)(4)(B)(i). Patton works for the law firm Young Conaway. (D.I. 14 at 13). On February 13, 2019, Imerys filed its chapter 11 petition in the Bankruptcy Court for the District of Delaware. (D.I. 22 at 8; D.I. 1-1 at 1).

Imerys then moved the Bankruptcy Court to have Patton appointed as FCR. (D.I. 22 at 8). The Excess Insurers objected, (D.I. 15-1 at 160–67), and filed a motion to compel discovery responses from Imerys regarding Patton's appointment, (*id.* at 285–95). On April 26, 2019, the Bankruptcy Court held a hearing on the objection and motion to compel. (D.I. 1-1 at 2).

On May 8, 2019, the Bankruptcy Court issued a Bench Ruling on the appointment of Patton as FCR. (D.I. 1-1). The Bankruptcy Court considered different standards for selecting an FCR and ultimately adopted a *guardian ad litem* standard. (*Id.* at 10). Under the *guardian ad litem* standard, the Bankruptcy Court found no reason to doubt Patton's qualifications or independence. (*Id.* at 10–12). The Bankruptcy Court, however, requested additional disclosures on several conflict-related matters relevant to this appeal. (*Id.* at 12). First, because Young Conaway had previously solicited talc personal injury claimants on its website, the court required Patton to disclose whether Young Conaway was engaged to represent any of these clients. (*Id.*) Second, Patton had to disclose whether he, through Young Conaway, had represented any insurance companies in insurance coverage litigation related to asbestos liability. (*Id.*) Patton had testified that Young Conaway may represent the Excess Insurers in the matter *Viking Pump, Inc. v. Century*

Indemnity Co. ("*Warren Pumps*"), but he represented that the Excess Insurers had prospectively waived any conflict. (*Id.* at 12, citing C.A. No. 10C-06-141-PRW, 2013 WL 7098824 (Del. Super. Ct. Oct. 31, 2013)).

Thereafter, Patton provided two supplemental declarations. (D.I. 15-1 at 528–31; *id.* at 532–36). He also submitted for *in camera* review the engagement letter between Young Conaway and the Excess Insurers in *Warren Pumps*, which contained the prospective waiver of conflicts. (*Id.* at 560). The Excess Insurers submitted a supplemental objection to Patton's appointment. (D.I. 23 at 603–23). The Bankruptcy Court considered Patton's supplemental declaration and the Excess Insurers' supplemental objection, and sent a letter to litigants concluding that Patton was fit to serve as FCR. (D.I. 15-1 at 561–69).

On June 3, 2019, the Bankruptcy Court issued the Appointment Order. (D.I. 23 at 640–43). It also issued the Discovery Order, denying the requested discovery. (D.I. 15-1 at 570–71). Three days later, the Bankruptcy Court issued the Retention Order allowing Patton to retain Young Conaway as his attorneys. (D.I. 23 at 649–52).

Appellants timely appealed the Bankruptcy Court's appointment of Patton as FCR, denial of the Excess Insurers' motion to compel discovery responses, and authorization to retain Young Conaway. (D.I. 1). They state the issues as follows:

> 1. Whether the fiduciary standard that the Court below ruled applied to Future Claimants' Representatives ("FCR") permits the representative to waive concurrent conflicts of interest.
>
> 2. Whether the Bankruptcy Court erred as a matter of law by approving the retention of Mr. Patton as FCR and pursuant to the applicable fiduciary standard, knowing [aspects of the factual record and proceedings below].

(D.I. 14 at 8–9).

II. JURISDICTION AND STANDARD OF REVIEW

This Court has jurisdiction over appeals from final judgments, orders, and decrees from the Bankruptcy Court pursuant to 28 U.S.C. § 158(a)(1) and Federal Bankruptcy Rule of Procedure 8001. "The Court reviews the Bankruptcy Court's legal determinations *de novo,* factual findings for clear error, and exercises of discretion for abuse thereof." *Fed. Ins. Co. v. Grace*, Civil Action Nos. 04-844, 04-845, 2004 WL 5517843, at *2 (D. Del. Nov. 22, 2004).

III. LEGAL STANDARDS

A. Appointment of a Future Claimants' Representative

Following dozens of asbestos-related bankruptcies across the country, in 1994, Congress amended the Bankruptcy Code to provide asbestos tort claimants a trust-based means of recovering against a debtor. H.R. REP. NO. 103-835 at 40 (1994); *see also* H.R. REP. NO. 114-352 at 5 (2015). Under 11 U.S.C. § 524(g), as part of a chapter 11 plan of reorganization, a debtor may create a trust to serve as the exclusive source of post-confirmation compensation for any present and future mass-tort claimants. H.R. REP. NO. 103-835 at 41–42. For the trust to be valid and enforceable, the bankruptcy court must "appoint[ ] a legal representative for the purpose of protecting the rights of persons that might subsequently assert demands" of the kind for which the trust is set aside. 11 U.S.C. § 524(g)(4)(B)(i). The court-appointed representative is commonly referred to as the future claimants' representative.

"[A]ppointment of a future claimants' representative is solely within the discretion of the court." *In re Fairbanks Co.,* 601 B.R. 831, 835 (Bankr. N.D. Ga. 2019). *Compare* 11 U.S.C. § 701(a) ("the United States trustee shall appoint one disinterested person"), § 327(a) ("the trustee, with the court's approval, may employ [professionals] that do not hold or represent an interest adverse to the estate, and that are disinterested persons"), *and* § 1104(d) ("the United States trustee . . . shall appoint, subject to the court's approval, one disinterested person . . . to serve as trustee

or examiner"), *with* § 524(g)(4)(B)(i) ("the court appoints a legal representative for the purpose of protecting the rights of persons that might subsequent assert demands"). The Bankruptcy Code does not, however, set the standard or provide procedures for a bankruptcy court to follow when appointing a future claimants' representative. *See Fairbanks*, 601 B.R. at 838.

In *In re Johns-Manville Corp.*, a seminal asbestos bankruptcy case that pioneered the future claimants' trust mechanism later codified in § 524(g), the bankruptcy court appointed an FCR based on a disinterested person standard. 36 B.R. 743, 749 n.3 (Bankr. S.D.N.Y. 1984) ("an independent representative for future claimants is essential"). *See also* H.R. REP. NO. 103-835 at 40. Some bankruptcy courts, however, have recently adopted a "fiduciary-like" *guardian ad litem* standard for appointing an FCR. *Fairbanks*, 601 B.R. at 838. An FCR under a *guardian ad litem* standard must be not only "disinterested and qualified" but also "diligent, competent, and loyal," and "capable of acting as an objective, independent, and effective advocate for the best interests of the future claimants." *Id.* at 841.

IV. DISCUSSION

The Excess Insurers appeal the Appointment, Discovery, and Retention Orders. The bulk of their arguments, however, is directed to Patton's appointment as FCR.[3] The Court will address the appeal of the Appointment and Retention Orders first,[4] and the appeal of the Discovery Order second.

---

[3] The titles of the Excess Insurers' briefs state that the appeal is "from a Bankruptcy Court Order Appointing James Patton of Young Conaway as Future Claimants' Representative." (D.I. 14; D.I. 29).

[4] Like the Bankruptcy Court and the parties, this Court imputes the conflicts of interest of Young Conaway to Patton when considering this appeal. And thus, the Court treats the objections to the appointment of Patton and the retention of Young Conaway together.

A. Appointment of Patton and Retention of Young Conaway

1. Representation of Excess Insurers in Warren Pumps

The Excess Insurers argue that Patton had an actual, concurrent conflict because Young Conaway represents some of the Excess Insurers as defendants in the *Warren Pumps* matter, and the prospective waiver that Young Conaway obtained was not effective to bless the firm's representation of future talc claimants in this case. (D.I. 14 at 36–40).

Three of the Excess Insurers – Columbia, Lamorak, and Stonewall – are not parties to *Warren Pumps*, and thus will not be harmed by any alleged conflict arising from that matter. (D.I. 15-1 at 564). Therefore, those three Appellants do not have standing to raise this conflict. *See In re Dykes*, 10 F.3d 184, 187 (3d Cir. 1993) (limiting bankruptcy appellate standing to persons "whose rights or interests are directly and adversely affected pecuniarily by an order or decree of the bankruptcy court" (internal quotation marks and citation omitted)).

The remaining two Excess Insurers – Continental and National Union – have been represented by Young Conaway in *Warren Pumps* since 2014. (D.I. 14 at 15 n.25). Although Young Conaway's concurrent representation of Patton (and Patton's representation of future claimants) in the present case may create a conflict of interest, Continental and National Union waived this argument by failing to timely raise it. The Excess Insurers first objected to Patton's appointment based on conflicts arising from *Warren Pumps* after the objection deadline set by the Bankruptcy Court. (*See* D.I. 15-1 at 561–69 (letter ruling of the Bankruptcy Court, noting tardiness of the Excess Insurers' supplemental objections, filed after evidentiary hearing)). As a general matter, the Court "refuse[s] to consider issues on appeal that were not raised in the lower courts. This general rule applies with added force where the timely raising of the issue would have permitted the parties to develop a factual record." *In re Am. Biomaterials Corp.*, 954 F.2d 919, 927–28 (3d Cir. 1992) (internal citations omitted).

Thus, the Excess Insurers waived their objections to, or otherwise lack standing to challenge, the Appointment and Retention Orders based on the potential conflict arising from Young Conaway's representation of Excess Insurers in *Warren Pumps*.

2. The Bankruptcy Court Did Not Abuse Its Discretion

Even absent standing and waiver considerations, the Bankruptcy Court did not abuse its discretion in appointing Patton as FCR or allowing Patton to retain Young Conaway. *See Fairbanks*, 601 B.R. at 835 (holding that appointment of FCR is within bankruptcy court's discretion). There is no dispute as to Patton's qualifications or experience. The bases for the Excess Insurers' appeal are the alleged conflicts arising from Young Conaway's representation of current claimants in talc personal injury lawsuits and the Excess Insurers in *Warren Pumps*. The Bankruptcy Court did not abuse its discretion in addressing the purported conflicts.

First, the Excess Insurers have not shown that Young Conaway represents any current talc personal injury claimants. The Excess Insurers' claim to the contrary is based on the fact that, on April 26, 2019 – eight months after Imerys hired Patton as pre-petition FCR – the Young Conaway website stated that "our injury lawyers work with people across Delaware and beyond who have been harmed by all types of dangerous and defective products, including talcum powder." (D.I. 15-1 at 510–11). The Bankruptcy Court found credible Patton's testimony that his firm's pre-engagement conflict search did not reveal any talc personal injury claimants. (D.I. 1-1 at 12). The Bankruptcy Court also accepted Patton's supplemental disclosure that, "[n]either Young Conaway nor I represent any clients who are asserting claims based on exposure to talc." (D.I. 15-1 at 529 ¶ 4; D.I. 15-1 at 563). The Excess Insurers offered no evidence otherwise.[5]

[5] The Excess Insurers blame their lack of evidence on the Bankruptcy Court's denial of the motion to compel discovery responses from Imerys, which they assert would have allowed them to investigate Patton's assertions. (D.I. 14 at 31). As discussed below, the Excess

Second, Patton's appointment was not an abuse of discretion, despite Young Conaway's concurrent representation of the Excess Insurers in *Warren Pumps*. The Bankruptcy Court, within its discretion, applied the *guardian ad litem* standard for appointing an FCR. In doing so, the Bankruptcy Court considered the entire record, supplemental declarations, and objections, and concluded that Patton was fit to serve as FCR. In particular, the Bankruptcy Court parsed the conflict waiver in *Warren Pumps* sentence-by-sentence and found that the conflict, if any, was effectively waived because the Excess Insurers were "sophisticated parties" and "had enough information" to give informed consent. (D.I. 15-1 at 568). Crucially, the waiver contained a specific carveout allowing Young Conaway to represent other clients "in workout, bankruptcy and insolvency proceedings" and "in connection with trusts established pursuant to section 524(g) of the Bankruptcy Code." (*Id.* at 565, 568). Thus, even if Continental and National Union had not waived this objection by failing to timely raise it, the Bankruptcy Court found that they had expressly waived the argument in their agreement with Young Conaway. The Bankruptcy Court also acknowledged that Young Conaway had established an ethical wall between this matter and matters in which the firm represents defendant insurance companies. (*Id.* at 564). This thorough deliberation does not suggest an abuse of discretion regarding *Warren Pumps*.

The Excess Insurers argue that the Bankruptcy Court erred as a matter of law because *Warren Pumps* creates an actual, concurrent conflict of interest, which *per se* disqualifies Patton from serving as FCR. (D.I. 14 at 33–34). The Court disagrees. Rule 1.7 of the Delaware Lawyers' Rules of Professional Conduct states that a concurrent conflict of interest exists if:

> (1) the representation of one client will be directly adverse to another client; or

---

Insurers offer no support for this Court to find that the Discovery Order was an abuse of discretion. *See* Section IV.B *supra*.

> (2) there is a significant risk that the representation of one or more clients will be materially limited by the lawyer's responsibilities to another client, a former client, or a third person or by a personal interest of the lawyer.

DEL. RULES OF PRO. CONDUCT R. 1.7. The American Bar Association clarifies that when a lawyer represents an insurance company in one matter and also represents a plaintiff suing an insured of the insurance company in another matter, "economic adversity alone between the insurer and the plaintiff in the second action is not . . . the sort of direct adversity that constitutes a concurrent conflict of interest." ABA Comm. on Ethics & Pro. Resp., Formal Op. 05-435 (2004). Thus, these two concurrent representations do not create an actual conflict of interest.

The Court is also not persuaded by the Excess Insurers' argument that an actual conflict, if any, is *per se* disqualifying or could not be waived. The Excess Insurers rely on cases that construe other provisions of the Bankruptcy Code involving retention of attorneys. For example, *In re Marvel Entertainment Group, Inc.* construed 11 U.S.C. § 327(a) to disqualify *per se* any law firm with an actual conflict of interest. 140 F.3d 463, 477 (3d Cir. 1998). *See also In re eToys, Inc.*, 321 B.R. 176, 194 (Bankr. D. Del. 2005) (adding that, although these conflicts can be waived, such waivers require greater disclosures in the chapter 11 context). Disinterestedness jurisprudence under § 327(a), however, does not necessarily apply to § 524(g), even if a bankruptcy court decides to apply a disinterestedness standard – or, indeed, a stricter *guardian ad litem* standard – when appointing an FCR. *See Grace*, 2004 WL 5517843, at *6 ("[Section 327(a)] cannot be utilized because it invokes the word 'trustee.' Under § 524, courts must appoint a future claimants' representative, not a trustee."). To import the disinterestedness standard of § 327(a) would undermine the bankruptcy court's broad discretion under § 524(g). *See Fairbanks*, 601 B.R. at 835 ("[A]ppointment of a future claimants' representative is solely within the discretion of the court.").

The Excess Insurers also argue that the conflict waiver in *Warren Pumps* is not effective in the present case because the issues in the two matters are "substantially related." (D.I. 14 at 38). The Excess Insurers characterize both matters as involving questions about "(i) excess policies' defense obligations; (ii) exhaustion of underlying insurance policies; (iv) [sic] allocating indemnity and defense payments among the insurance policies; and (iv) which successor corporate entity is entitled to policy proceeds to pay long-tail claims." (*Id.*). Such a broad construction of "substantially related" would undermine the waiver's express statement that Young Conaway may continue to represent other clients "in workout, bankruptcy and insolvency proceedings." (D.I. 15-1 at 565). Thus, to the extent *Warren Pumps* creates a conflict of interest, the waiver in the engagement letter applies to Patton's appointment as FCR here.

Ultimately, this Court "is free to affirm the appointment of the future claimants' representative on any basis which has sufficient support in the record." *Grace*, 2004 WL 5517843, at *7. The Bankruptcy Court conducted a thorough review under the *guardian ad litem* standard and concluded, "there is no question that Mr. Patton is up to the task." (D.I. 1-1 at 10). None of the Excess Insurers' evidence or objections suggested otherwise. Out of an abundance of caution the Bankruptcy Court considered Patton's supplemental declarations alongside the Excess Insurers' untimely supplemental objections, and still concluded that Patton was fit to serve as FCR. (D.I. 15-1 at 561–69). None of these actions suggest that the Bankruptcy Court abused the broad discretion granted to it by § 524(g), and thus the Bankruptcy Court's Appointment and Retention[6] Orders should be affirmed.

[6] *See supra* note 5.

B. Denial of the Excess Insurers' Motion to Compel

The Excess Insurers offer no factual or legal support for their challenge Bankruptcy Court's Discovery Order. Instead, they submit a conclusory statement that the Bankruptcy Court's refusal to "allow investigation into Young Conaway's efforts to solicit, and indeed, stated representation of current claimants up to and including the hearing date to approve Mr. Patton as FCR . . . was in error." (D.I. 14 at 31). Without more, the Excess Insurers cannot overcome the Bankruptcy Court's "broad discretion in managing discovery and case schedules." *In re Melilo*, Civ. No. 15-3880, 2015 WL 6151230, at *2 (D.N.J. Oct. 19, 2015). Thus, the Bankruptcy Court's Discovery Order is affirmed.

V. CONCLUSION

For the foregoing reasons, the Bankruptcy Court's Appointment Order, Retention Order, and Discovery Order are affirmed. An appropriate order will follow.

Exhibit “B”

This is
EXHIBIT "B"
to the Affidavit of
ERIC DANNER
Sworn September 12, 2022

DocuSigned by:
Ben Muller
77FFB2B8DE444CE...

Ben Muller
Commissioner for Taking Affidavits
LSO #80842N

UNITED STATES COURT OF APPEALS
FOR THE THIRD CIRCUIT

Nos. 20-3485, 20-3486, 20-3487, 20-3488

In re: IMERYS TALC AMERICA, Inc.,
a/k/a Luzenac America, Inc.
a/k/a Imerys Talc Ohio Inc.
a/k/a Imerys Talc Delaware, Inc., et al., Debtors

Cyprus Historical Excess Insurers,
Appellants

On Appeal from the United States District Court for the District of Delaware
(Case Nos. 1:19-cv-944, 1:19-cv-1120, 1:19-cv-1121, 1:19-cv-1122)
District Judge: Hon. Maryellen Noreika

Argued October 5, 2021

Before: KRAUSE, BIBAS, and RENDELL, *Circuit Judges*

JUDGMENT

This cause came to be considered on the record from the United States District Court for the District of Delaware and was argued on October 5, 2021. On consideration whereof,

It is now hereby ORDERED and ADJUDGED that the Order of the District Court entered on November 24, 2020 is hereby AFFIRMED. All of the above in accordance with the opinion of this Court. Costs are to be taxed against Appellants.

ATTESTED:

s/ Patricia S. Dodszuweit
Clerk

DATE: June 30, 2022

PATRICIA S. DODSZUWEIT

CLERK

OFFICE OF THE CLERK

UNITED STATES COURT OF APPEALS
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RE: In re: Imerys Talc America, Inc

Case Numbers: 20-3485, 20-3486, 20-3487, 20-3488
District Court Case Numbers: 1-19-cv-00944, 1:19-cv-1120, 1:19-cv-1121, 1:19-cv-1122

ENTRY OF JUDGMENT

Today, **June 30, 2022** the Court entered its judgment in the above-captioned matter pursuant to Fed. R. App. P. 36.

If you wish to seek review of the Court's decision, you may file a petition for rehearing. The procedures for filing a petition for rehearing are set forth in Fed. R. App. P. 35 and 40, 3rd Cir. LAR 35 and 40, and summarized below.

Time for Filing:
14 days after entry of judgment.
45 days after entry of judgment in a civil case if the United States is a party.

Form Limits:
3900 words if produced by a computer, with a certificate of compliance pursuant to Fed. R. App. P. 32(g).
15 pages if hand or type written.

Attachments:
A copy of the panel's opinion and judgment only.
Certificate of service.
Certificate of compliance if petition is produced by a computer.
No other attachments are permitted without first obtaining leave from the Court.

Unless the petition specifies that the petition seeks only panel rehearing, the petition will be construed as requesting both panel and en banc rehearing. Pursuant to Fed. R. App. P. 35(b)(3), if separate petitions for panel rehearing and rehearing en banc are submitted, they will be treated as a single document and will be subject to the form limits as set forth in Fed. R. App. P. 35(b)(2). If only panel rehearing is sought, the Court's rules do not provide for the subsequent filing of a petition for rehearing en banc in the event that the petition seeking only panel rehearing is denied.

A party who is entitled to costs pursuant to Fed.R.App.P. 39 must file an itemized and verified bill of costs within 14 days from the entry of judgment. The bill of costs must be submitted on the proper form which is available on the court's website.

A mandate will be issued at the appropriate time in accordance with the Fed. R. App. P. 41.

Please consult the Rules of the Supreme Court of the United States regarding the timing and requirements for filing a petition for writ of certiorari.

PRECEDENTIAL

UNITED STATES COURT OF APPEALS
FOR THE THIRD CIRCUIT

_____

Nos. 20-3485, 20-3486, 20-3487, 20-3488

_____

In re: IMERYS TALC AMERICA, Inc.,

a/k/a Luzenac America, Inc.

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Cyprus Historical Excess Insurers,

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District Judge: Hon. Maryellen Noreika

_____

Argued October 5, 2021

Before: KRAUSE, BIBAS, and RENDELL, *Circuit Judges*

(Opinion Filed: June 30, 2022)

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OPINION OF THE COURT

KRAUSE, *Circuit Judge.*

A group of insurance companies[1] appeals an order appointing a representative for the interests of unidentified future asbestos and talc claimants in an ongoing bankruptcy proceeding. According to these insurers, who fund the asbestos claims trust established under 11 U.S.C. § 524(g), this "future claimants' representative" ("FCR") has a conflict of interest precluding him from serving in this role because the FCR's law firm also represented two of the insurance companies in a separate asbestos-related coverage dispute. But the Bankruptcy Court did not abuse its discretion in appointing the FCR. In applying in substance the appointment standard we adopt today, it gave due consideration to the purported conflict, and it correctly determined that the interests of both

[1] The Appellants in this case—collectively, "the Insurers"—are various insurance companies that had issued policies to Imerys or its predecessors, and thus that have an interest in Imerys's reorganization process. They are: Columbia Casualty Company, Continental Casualty Company, the Continental Insurance Company ("Continental"), Lamorak Insurance Company, Berkshire Hathaway Specialty Insurance Company, and National Union Fire Insurance Company of Pittsburgh, PA ("National Union").

the insurance companies and the future claimants were adequately protected. We therefore will affirm.

I. BACKGROUND

We focus today on the appointment and conflicts standard for an FCR. But because the history and purpose of the so-called "524(g) trust" provides necessary context for our analysis, we begin with a brief historical overview before recounting the factual and procedural history of this case.

A. Historical Background

Appellees Imerys Talc America, Inc., Imerys Talc Vermont, Inc., and Imerys Talc Canada Inc. (collectively, "Imerys") are among the latest in a long line of companies to turn to the bankruptcy process in response to the crushing liability imposed by mounting asbestos and talc personal injury claims. *See In re Combustion Eng'g, Inc.*, 391 F.3d 190, 200-01 (3d Cir. 2004).

Asbestos liabilities pose particular challenges for bankruptcy proceedings: While Chapter 11 bankruptcy reorganization normally affects only the rights of a debtor's current creditors and equity holders, many of the claimants who will suffer harm from asbestos exposure traceable to the debtor will not manifest those injuries until long after the reorganization process has concluded. Yet one of the primary goals for a debtor entering Chapter 11 bankruptcy is to cleanly resolve its various liabilities to preserve the going concern of its business. For that reason, a reorganization plan that failed to account for future asbestos liabilities would be of limited utility to the debtor, and likewise, a reorganization plan that did not address future claimants would fail to provide adequately for all parties with an interest in the debtor's assets.

When the once-dominant American producer of asbestos, the Johns-Manville Corporation, filed for bankruptcy in 1982, its reorganization process introduced a novel mechanism for dealing with these issues: a trust designed to compensate present and future asbestos claimants, coupled with an injunction against future asbestos liability. H.R. REP. NO. 114-352, at 5 (2015); *In re Fed.-Mogul Glob., Inc.*, 684

F.3d 355, 359 (3d Cir. 2012). The combination of the trust and injunction allowed the debtor to emerge from bankruptcy without the uncertainty of future asbestos liabilities hanging over its head, while ensuring claimants would not be prejudiced just because they had not yet manifested injuries at the time of the bankruptcy. Another major asbestos company, UNR Industries, soon "follow[ed] Johns-Manville's lead" and deployed a similar trust and injunction in its own bankruptcy plan. H.R. REP. NO. 103-835, at 40 (1994).

In 1994, Congress opted to follow the Manville/UNR model by amending the Bankruptcy Code to include 11 U.S.C. § 524(g), which "allow[s] for the resolution of asbestos liability claims against a debtor through a trust-based system." H.R. REP. NO. 114-352, at 5. That section allows the debtor to establish a trust that will serve as the exclusive source of compensation for any present and future asbestos mass-tort claimants after the confirmation of the reorganization plan. *Id.*; 11 U.S.C. § 524(g)(2)(B)(i). Provided that the trust meets certain statutory requirements, the bankruptcy court issues to the debtor a channeling injunction, which prevents any plaintiff from suing the reorganized debtor for liability based on exposure to asbestos or asbestos-containing products, *id.* § 524(g)(1)(B), and "channel[s] all current and future claims based on the debtor's asbestos liability to [the] trust," *Fed.-Mogul Glob.*, 684 F.3d at 357.

But the mere establishment of the trust and channeling injunction is not enough. In any asbestos-driven bankruptcy proceeding, there are naturally conflicting interests within the larger group of asbestos claimants with respect to the trust. Those who are presently injured—i.e., those who can make a claim on the trust now or within the foreseeable future—are indifferent to whether the trust pays out on fraudulent claims, because the funds are unlikely to be exhausted before they receive their own payouts. If anything, they may prefer a less onerous claims review process in order to maximize the speed with which they can recover against the trust. By contrast, those who will not manifest injuries for years down the line—the future claimants—have a strong interest in intensifying the trust's protections against fraudulent claims and early overpayments, as they need the trust's funds to last until they can submit their own claims. *See generally In re Amatex*

Corp., 755 F.2d 1034, 1042–43 (3d Cir. 1985) (discussing the particular interests of future claimants in asbestos bankruptcy proceedings and concluding that their interests were "adverse" to those of other parties).

In light of this natural adversity and to protect the due process rights of the future claimants in bankruptcy proceedings, § 524(g) includes a requirement that the bankruptcy court appoint "a legal representative for the purpose of protecting the rights of [future claimants]"—the FCR—in the reorganization proceedings in order for the trust and channeling injunction to "be valid and enforceable." 11 U.S.C. § 524(g)(4)(B), 524(g)(4)(B)(i); *see also* H.R. REP. NO. 114-352, at 10. The FCR can then participate in the negotiation of the reorganization plan and object to terms that unfairly disadvantage future claimants.

The Bankruptcy Code is silent, however, on exactly what standard and process the bankruptcy court should use in appointing the FCR. As described next, it is that silence and the uncertainty it has engendered that have led to the current appeal.

B. Factual and Procedural Background

Like asbestos, talc exposure has generated a flood of personal injury claims over recent years, subjecting many talc companies to crushing liability. The experience of Imerys, a company that mined, processed, and distributed talc to third-party manufacturers for use in their products, is no exception. Although for many years it was able to tackle the talc claims as they arose using a combination of insurance assets and free cash flow, by the time it filed for bankruptcy in early 2019, it had been sued by over 14,000 claimants and could no longer afford to fight the growing mountain of claims. It therefore turned to Chapter 11 bankruptcy with the goal of channeling the numerous talc claims into a § 524(g) trust.

As has become a relatively common practice among debtors,[2] Imerys began work in preparation for its Chapter 11 bankruptcy proceedings months before actually filing its petitions. In late 2018, as part of that preparation, it engaged James Patton, a partner at the law firm of Young, Conaway, Stargatt & Taylor, LLP (Young Conaway), to serve as "Proposed FCR" in prepetition negotiations. Patton, in turn, retained Young Conaway as his counsel.

Both Patton and his firm had much experience in this area. Patton had worked for decades on mass-tort bankruptcy matters, served as an FCR for several bankruptcy cases and post-bankruptcy settlement-trusts, and was recognized for his competence and expertise in these matters by bankruptcy courts and his colleagues. He was one of a relatively small number of experienced FCRs in this specialized field. *See* Lloyd Dixon *et al.*, *Asbestos Bankruptcy Trust: An Overview of Trust Structure and Activity with Detailed Reports on the Largest Trusts*, RAND Inst. For Civ. Just., at App. B (listing the FCRs for several of the largest active trusts and proposed trusts as of 2010). Young Conaway, too, had represented FCRs in similar bankruptcies.

The engagement letter Patton signed with Imerys specified that, notwithstanding Imerys's obligation to pay his fees and costs, his "sole responsibility and loyalty [was] to the future personal injury claimants[.]" JA 184. Additionally, because the selection and appointment of an FCR is ultimately

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[2] Prepetition work can be beneficial to enable the debtor to enter bankruptcy court having already engaged in many of the negotiations that will lead to a bankruptcy plan, or even enter with a "prepackaged" bankruptcy plan ready to file, saving costs and time in court and clearing Chapter 11 sooner. *See United Artists Theatre Co. v. Walton*, 315 F.3d 217, 224 n.5 (3d Cir. 2003) (explaining the process and utility of "prenegotiated" and "prepackaged" bankruptcies). As such, we have cautiously endorsed this practice, while requiring that the bankruptcy court carefully scrutinize the prepetition activity of the parties and counsel once the petitions have been filed. *See In re Congoleum Corp.*, 426 F.3d 675, 693 (3d Cir. 2005).

left to the bankruptcy court, not the parties, 11 U.S.C. § 524(g)(4)(B)(i), the engagement letter provided that Patton's service as Proposed FCR would terminate immediately upon Imerys filing a bankruptcy petition, that Imerys would suggest to the Bankruptcy Court that Patton serve as FCR, and that the Bankruptcy Court would need to appoint him FCR if his work was to continue beyond the bankruptcy filing.

In February 2019, following several months of prepetition negotiations, Imerys filed its bankruptcy petitions in the Bankruptcy Court, followed by a motion for the Bankruptcy Court to appoint Patton as FCR. That motion was accompanied by a declaration from Patton and a copy of his prepetition engagement letter. The declaration set out a list of "potentially interested parties" in the Imerys bankruptcy—including "insurers"—and asserted that "*except* as set forth in this Declaration," Patton lacked any connection to the potentially interested parties. JA 157 (emphasis added).

One of the exceptions that Patton listed was that "Young Conaway represents [many insurance companies, including Appellant] National Union Fire Insurance Company of Pittsburgh, PA . . . in insurance coverage disputes that relate to environmental liabilities including asbestos claims but unrelated to talc claims or the Debtors." JA 158. Specifically, two of the Appellant Insurers—National Union and Continental—were party to *Warren Pumps v. Century Indemnity Co.*, No. N10C-06-141 (Del. Super. Ct.), in which two pump makers sued their insurers to get coverage for asbestos-related injury claims. At the time Patton made his disclosure, that litigation had been ongoing in the Superior Court of Delaware since June 2010, *see Viking Pump, Inc. v. Century Indem. Co.*, 2018 WL 2331990, at *1-2 (Del. Super. Ct. May 23, 2018), with Young Conaway representing both Continental and National Union. Patton's disclosure was also echoed in the declaration of another Young Conaway partner that was attached to Patton's motion for appointment of the firm as his counsel.

Notwithstanding the disclosures in these declarations, when the deadline for objections to Patton's proposed appointment arrived on March 13, 2019, none of the Insurers raised those representations as an objection. Nor did they

reference the *Warren Pumps* litigation or raise any concerns with Patton's application to retain Young Conaway. Rather, a group of five of Imerys's insurers filed a limited objection to Patton's employment based on his prepetition engagement as Proposed FCR, which they contended raised questions about his independence from Imerys. For its part, the U.S. Trustee argued that the Bankruptcy Court should not give any deference to Patton as the debtor's nominee and instead should hold a hearing to consider a broader pool of candidates.

The Insurers also failed to raise Young Conaway's involvement in the *Warren Pumps* litigation a month later at the Bankruptcy Court's hearing on Patton's appointment, which addressed both of the objections and related discovery disputes. Indeed, even though the objecting Insurers' attorney who cross-examined Patton at the hearing was himself involved in the *Warren Pumps* litigation and thus well aware of Young Conaway's involvement, he focused his questions on other bases for the Insurers' objections. To the extent *Warren Pumps* was referenced at all, it was only obliquely and briefly—with Patton confirming on cross-examination that: (1) Young Conaway represented National Union and Continental, among other insurance companies, (2) both companies had signed conflicts waivers as part of that representation, and (3) the National Union representation concerned insurance coverage for environmental liabilities including asbestos claims.

Instead, it was the Bankruptcy Court that flagged the *Warren Pumps* representation as a potential conflict. In its initial ruling on Patton's appointment on May 8, 2019, the Court disagreed with the objecting Insurers that Patton's prepetition work necessarily undermined his independence as FCR, but it expressed concerns about Patton's personal involvement in Young Conaway's previously disclosed representation of "Certain Excess Insurance companies in insurance coverage litigation related to environmental liabilities, including asbestos liabilities." JA 32. In resolving the motion, the Court articulated its view of the requirements for FCR appointments: "[T]he standard for approval of a legal representative under section 524 is that he must be independent of the debtors and other parties-in-interest in the case and must be able to act with undivided loyalty to demand holders." JA

33. The Court therefore sought to reassure itself of Patton's independence by directing Patton to file supplemental disclosures, postponing a final decision on his appointment.

Patton complied, and his supplemental disclosures revealed that, as part of Young Conaway's engagement letter with the insurance companies in the *Warren Pumps* litigation, those companies agreed to a prospective waiver for certain conflicts of interest that might arise out of Young Conaway's bankruptcy-related work. The disclosures also confirmed that Young Conaway had taken the precautionary step of erecting an ethical wall between Patton's FCR team and the firm's other insurance litigation.

Ironically, it was only upon receipt of this reassurance[3] that the Insurers, for the first time, objected to Patton's appointment based on the purported *Warren Pumps* conflict.[4] On May 17, 2019—ten days after the Court's initial ruling and over two months after the deadline for objections—they filed a "supplemental objection," arguing that Young Conaway's representation of Continental and National Union presented a

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[3] Patton submitted an initial disclosure on May 13, 2019, followed by a second disclosure on May 17, 2019 with more detail on the terms of the conflict waiver and the details of Young Conaway's ethical wall.

[4] This was not the same combination of insurers as that which filed the original objection; the five original companies were joined for this later objection by National Union (one of the two points of overlap between the Appellant Insurers and the companies involved in *Warren Pumps*), and it is this group of six Insurers that now brings the instant appeal.

And, although the Insurers' Corporate Disclosure Statement submitted to this Court includes a seventh company, Lexington Insurance Company, that company is not actually a party to this appeal and, in fact, never seems to have been a part of the shifting group of insurers raising objections to Patton's appointment at any point in the Bankruptcy Court proceedings. The company also seems to have been inappropriately included in the Insurers' initial appeal to the District Court.

concurrent conflict of interest that precluded Patton's appointment. JA 939.

That filing did not sit well with the Bankruptcy Court. The Court took a dim view of the Insurers' supplemental objection as "both confusing and largely irrelevant to the issues actually presented by the Supplemental Declarations, and for that matter, Mr. Patton's original declaration." JA 35 (footnotes omitted). Nevertheless, it went on to address, and ultimately to reject, the merits of the Insurers' arguments. Based on the language of the prospective conflicts waiver and the sophistication of the signatories, the Court concluded the waiver was valid and precluded the Insurers' latest objections. And upon consideration of Patton's supplemental disclosures, it concluded that that Patton met the appointment standard described in its previous ruling. Thus, on June 3, 2019, the Court formally appointed Patton to the FCR position and authorized him to retain Young Conaway.

The District Court affirmed, and the Insurers appealed to this Court.

II. JURISDICTION AND STANDARD OF REVIEW

This case was before the Bankruptcy Court as a core proceeding pursuant to 28 U.S.C. § 157(b), and the District Court had jurisdiction under 28 U.S.C. § 158(a). We have jurisdiction pursuant to 28 U.S.C. § 158(d)(1).

In our review of the Bankruptcy Court's decision, "'we stand in the shoes of the District Court' and apply the same standard of review." *In re Somerset Reg'l Water Res., LLC*, 949 F.3d 837, 844 (3d Cir. 2020) (quoting *In re Glob. Indus. Techs., Inc.*, 645 F.3d 201, 209 (3d Cir. 2011) (en banc)). Thus, "our review duplicates that of the district court and we view the bankruptcy court decision unfettered by the district court's determinations." *In re Brown*, 951 F.2d 564, 567 (3d Cir. 1991) (citing *Universal Mins., Inc. v. C.A. Hughes & Co.*, 669 F.2d 98, 101–03 (3d Cir. 1981)). Like the District Court, then, "[w]e review the bankruptcy court's legal determinations de novo, its factual findings for clear error, and its discretionary decisions for abuse of discretion." *Somerset Reg'l Water Res.*,

949 F.3d at 844 (citing *In re Pursuit Cap. Mgmt., LLC*, 874 F.3d 124, 133 n.14 (3d Cir. 2017)).

III. DISCUSSION

The Insurers challenge the merits of the Bankruptcy Court's decision to appoint Patton FCR. But before we can reach that question, we must address two threshold issues in this appeal: the Insurers' standing to bring this challenge, and their waiver of their particular objection to Patton's appointment. After disposing of these preliminary questions, we turn to the standard a bankruptcy court must apply in making an FCR appointment under § 524(g) and to the propriety of Patton's appointment under that standard.

A. Standing

As a threshold matter, we consider the Insurers' standing, as it appears that not all Appellants are properly before us. The two that were involved in *Warren Pumps*, Continental and National Union, unquestionably have standing to object to Patton's appointment based on his alleged conflict of interest with them specifically. The closer question is whether the remaining Insurers, who were not themselves involved in *Warren Pumps*, also have standing.

Appellants argue that they do because the conflict "implicate[s] the integrity of the bankruptcy process[.]" Rep. Br. 20. Relying on *In re Congoleum Corp.*, 426 F.3d 675, 685–86 (3d Cir. 2005), they contend that even if they themselves will not be prejudiced by Patton's appointment, they have standing to raise it on behalf of the future claimants. But Appellants mistake the import of *Congoleum*.

Both before and after that case, standing in bankruptcy appeals has been limited to "person[s] aggrieved" and, as we explained in *Travelers Insurance Co. v. H.K. Porter Co., Inc.*, parties meet that standard only when a contested order "diminishes their property, increases their burdens, or impairs their rights." 45 F.3d 737, 742 (3d Cir. 1995) (quoting *In re Dykes*, 10 F.3d 184, 187 (3d Cir. 1993)); *see also In re Combustion Eng'g, Inc.*, 391 F.3d at 214. The "person aggrieved" standard is thus "more restrictive" than Article III's

"case or controversy" requirement. *Travelers*, 45 F.3d at 741. But that is necessary. Bankruptcy proceedings "typically involve a 'myriad of parties . . . indirectly affected by every bankruptcy court order,'" so in the absence of such a stringent standing rule, collateral appeals could proliferate and unduly slow the emergence of the filer from the proceedings. *Id.* (alteration in original) (quoting *Kane v. Johns-Manville Corp.*, 843 F.2d 636, 642 (2d Cir. 1988)); *see also Combustion Eng'g*, 391 F.3d at 215.

To the extent there was any question about the viability of *Travelers* after *Congoleum*, we clarify today that the "person aggrieved" standard we articulated there remains good law. The Insurers point out that a proper FCR appointment is required for a valid plan confirmation under § 524(g) and thus "involves 'procedural due process concerns that implicate the integrity of the bankruptcy court proceeding as a whole,'" just as we observed was true for the retention of the special insurance counsel in *Congoleum*. Rep. Br. at 21 (quoting *Congoleum*, 426 F.3d at 685). But it was the particular circumstances in *Congoleum* that led us to conclude that the insurers there were "entitled to standing even under the more restrictive standard applied to bankruptcy proceedings." *Congoleum*, 426 F.3d at 685; *see also In re Boy Scouts of America*, — F.4th —, 2022 WL 1634643, at *4 (3d Cir. 2022) (concluding that an appellant met the "person aggrieved" standard to challenge the retention of counsel where the "same considerations" involved in *Congoleum* applied). In particular, we observed that (1) "as a practical matter," it was "highly unlikely" that any parties other than those who sought standing in that case would seek to challenge the special insurance counsel's retention; (2) the insurers' objection seemed to have been made in good faith, based on their counsel's responsibility to report a clear violation of the ethical rules that would have otherwise been left unaddressed; and (3) it was "extremely important" that the purported conflict be addressed at the point when the insurers brought their challenge, as the court was unlikely to have another opportunity to do so. *Congoleum*, 426 F.3d at 685–87.

But the conditions discussed in *Congoleum* are not present here. First, there is no need to expand the pool of those with standing to raise this particular conflict in order to ensure

it receives judicial review. In contrast to *Congoleum*, we do have other litigants here who are better equipped than the remaining Insurers to alert the court to the *Warren Pumps* conflict—the two insurers who were actually parties to *Warren Pumps*—and those litigants had ample time and opportunity to raise the issue before the Bankruptcy Court.

Second, in the absence of that need, it appears that the Insurers are only bringing this objection as a tactical one to delay Imerys's plan confirmation. This is just the sort of bad-faith tactic that *Congoleum* itself recognized and cautioned against, because of the "acute need to limit appeals in bankruptcy cases." *Congoleum*, 426 F.3d at 685–86 (citing *In re Combustion Eng'g, Inc.*, 391 F.3d at 217–18).

Finally, we are dealing here not with the permissive approval of a debtor's application for additional insurance counsel under § 327(e), as in *Congoleum*, 426 F.3d at 683, but with the bankruptcy court's mandatory appointment of the FCR under § 524. Under § 524, the bankruptcy court itself must make the appointment and thus take an active role in considering and "protecting the rights of" the future claimants. 11 U.S.C. § 524(g)(4)(B)(i). So the need for third parties to play that role is significantly reduced. It is the court that is charged with protecting the integrity of the appointment process, and the Bankruptcy Court here did just that by identifying the potential conflict, requesting supplemental disclosures, and assuring itself of Patton's integrity before appointing him FCR.

In short, *Congoleum* did not eliminate *Travelers*'s heightened standard for bankruptcy appellate standing and it did not authorize parties to bankruptcy proceedings to raise conflicts of interest on behalf of other parties in all circumstances. The Insurers here still must meet the "persons aggrieved" standard, and while Continental and National Union do,[5] Columbia Casualty Company, Continental

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[5] In their letter response brief to the U.S. Trustee's amicus brief, the Insurers argue for the first time that they have standing to raise the future claimants' interests because Continental and National Union, who they contend "were

Casualty Company, Lamorak Insurance Company, and Berkshire Hathaway Specialty Insurance Company do not. Accordingly, those four insurers lack appellate standing and their claims will be dismissed on that basis.

B. Waiver

Before addressing the merits of the claims of Continental and National Union, we confront another threshold issue: whether they waived any objection based on the *Warren Pumps* representation by failing to timely raise it in the bankruptcy proceedings. An argument is waived where a party fails to "adequately raise it" with a "minimum level of thoroughness" in the lower court. *In re Ins. Brokerage Antitrust Litig.*, 579 F.3d 241, 262 (3d Cir. 2009); *Barefoot Architect, Inc. v. Bunge*, 632 F.3d 822, 834–35 (3d Cir. 2011). And in bankruptcy appeals, avoiding a waiver determination at the district court or appellate court requires a party to have properly brought the argument before the bankruptcy court. *In re Trib. Media Co.*, 902 F.3d 384, 400 (3d Cir. 2018) (citing *Buncher Co. v. Off. Comm. of Unsecured Creditors of GenFarm Ltd. P'ship IV*, 229 F.3d 245, 253 (3d Cir. 2000)).

Here, the Insurers objected to Patton's proposed appointment as FCR ever since Imerys first put his name forward, but the first time they raised the *Warren Pumps* representation issue was in a "supplemental objection" filed months after the Bankruptcy Court's deadline for objections had passed. JA 939.

As previously recounted, this was not because Young Conaway's involvement in *Warren Pumps* had only just come to light. Both Patton and Young Conaway had included

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effectively sued by their own lawyer," can invoke doctrines developed to protect others as "a common mode of argument." Insurer Response to U.S. Tr. Amicus Br. at 2. But this has never been in dispute. The issue here is not whether, once standing is ascertained, the Insurers can mount arguments involving the interests of future claimants. The issue is whether, at the threshold, the remaining four Insurers—who have no apparent conflict with Patton or Young Conaway—can establish standing.

references to the litigation in their initial disclosures; the representation was likewise mentioned at the FCR appointment hearing; and, perhaps most significantly, the same attorney for the Insurers who cross-examined Patton about Young Conaway's asbestos and talc work at that hearing was also counsel to some of the insurers in *Warren Pumps* itself. The Insurers thus had adequate notice and opportunity to raise their *Warren Pumps* objection at the appropriate time in the FCR appointment process, and instead made the strategic decision to focus their objections on other grounds. Failing to bring an argument at the appropriate time can result in a finding of waiver. *See, e.g.*, *Pichler v. UNITE*, 542 F.3d 380, 396 n.19 (3d Cir. 2008) (holding an argument waived where a party raised it at oral argument, but not in its briefs); *Confer v. Custom Eng'g Co.*, 952 F.2d 41, 44 (3d Cir. 1991) (noting that the district court "exercised sound discretion" in deeming arguments waived that litigant had brought in a motion for reconsideration, but not in the original summary judgment papers).

And, to be clear, the Insurers' delay in bringing this argument was not without consequence. Much ink was spilled and hours of hearing testimony consumed on the subject of Patton's prepetition work with Imerys (the focus of the Insurers' objections for the bulk of the FCR appointment process), while there was little to no record development concerning any conflict with the *Warren Pumps* representation. As a result, the record is devoid of evidence about what Young Conaway might have learned in the *Warren Pumps* representation that could compromise the Insurers' or others' interests in this bankruptcy proceeding—information that would have helped us assess the existence, nature, and severity of the purported conflict. And the "general rule" that we will not "consider issues on appeal that were not raised in the lower courts" "applies with added force where," as here, "the timely raising of the issue would have permitted the parties to develop a factual record." *In re Am. Biomaterials Corp.*, 954 F.2d 919, 927–28 (3d Cir. 1992) (citations omitted).

In short, there are valid reasons to conclude, as the District Court did, that the Insurers waived their *Warren*

Pumps argument before the Bankruptcy Court.[6] But there are more compelling reasons to address it. For one, the Bankruptcy Court on its own initiative addressed the merits of the Insurers' objection, and we review the Bankruptcy Court's decision "unfettered by the district court's determinations." *Brown*, 951 F.2d at 567. For another, the waiver rule "is one of discretion rather than jurisdiction," and we may overlook waiver where, as here, the "public interest is better served by addressing [an argument] than by ignoring it" and addressing that argument does not cause "surprise or prejudice" to the parties. *Barefoot Architect*, 632 F.3d at 834–35 (internal quotation and citation omitted). Here, the open legal questions in the case have significant implications for bankruptcy law, and the parties will not be prejudiced because these questions were fully briefed following the Bankruptcy Court's issuance of a reasoned opinion on the merits. We therefore proceed to address the proper standard for appointing an FCR and the propriety of Patton's appointment under that standard.

C. The Standard Applicable to FCR Appointments

The briefing and the opinion the Bankruptcy Court issued in this case offer us a wide range of alternatives for the

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[6] The parties characterize this issue as one of forfeiture, but waiver and forfeiture are not precisely the same. Waiver contemplates that an argument has been "intentional[ly] relinquish[ed] or abandon[ed]," while forfeiture is merely a failure to timely raise an issue. *Hamer v. Neighborhood Hous. Servs. of Chi.*, 138 S. Ct. 13, 17 n.1 (2017) (quoting *United States v. Olano*, 507 U.S. 725, 733 (1993)). Because it seems in this case that the Insurers intentionally chose to raise other objections before the deadline, and only brought an untimely "supplemental objection" about the *Warren Pumps* representation after the Bankruptcy Court indicated that topic was of particular interest to it, we agree with the District Court's characterization of the issue here as waiver. Regardless, this distinction would not change whether we reach this issue. *See Barna v. Bd. of Sch. Dirs. of the Panther Valley Sch. Dist.*, 877 F.3d 136, 147–48 (3d Cir. 2017) (noting that courts reach forfeited issues in "exceptional circumstances," such as "when the public interest requires").

standard applicable to FRC appointments. The Bankruptcy Court rejected the "disinterestedness" standard adopted by a handful of other courts, and held that "a legal representative under section 524 . . . must be independent of the debtors and other parties-in-interest in the case and must be able to act with undivided loyalty to demand holders." JA 33. While Imerys and Patton contend that 11 U.S.C. § 101(14)'s definition of "disinterested person"[7] should govern FCR appointments, the Insurers advocate for a "guardian-*ad-litem* test," which they acknowledge is what the Bankruptcy Court adopted in substance. But they do not stop there. The Insurers also urge us to apply § 327 of the Bankruptcy Code, which governs a trustee's employment of certain professionals and requires that any actual conflict of interest held by those professionals is *per se* disqualifying. 11 U.S.C. § 327(a), (c). Meanwhile, the United States Trustee, as amicus,[8] does not espouse the

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[7] That definition provides that a "disinterested person":

> (A) is not a creditor, an equity security holder, or an insider;
>
> (B) is not and was not, within 2 years before the date of the filing of the petition, a director, officer, or employee of the debtor; and
>
> (C) does not have an interest materially adverse to the interest of the estate or of any class of creditors or equity security holders, by reason of any direct or indirect relationship to, connection with, or interest in, the debtor, or for any other reason.

11 U.S.C. § 101(14).

[8] The United States Trustee participated in the FCR appointment process before the Bankruptcy Court, objecting to Patton's appointment on the basis that the Bankruptcy Court should have considered other candidates in addition to the one put forward by the debtor. However, the Trustee did not participate in the objection that spawned this appeal. We

application of § 327 but agrees with the Bankruptcy Court and the Insurers that FCRs "should be held to the high standards applicable to fiduciaries who represent parties not before the Court," such as guardians *ad litem*. U.S. Tr. Amicus Br. 2. As the Trustee frames it, "the [FCR] must be an effective advocate, free from any appearance of conflict of interest, and must have undivided loyalty to the future claimants he or she represents." *Id.* (citing *Meinhard v. Salmon*, 164 N.E. 545, 546 (N.Y. 1928)).

For the reasons set forth below, we agree with the Bankruptcy Court and the Trustee that the FCR standard requires more than disinterestedness. An FCR must be able to act in accordance with a duty of independence from the debtor and other parties in interest in the bankruptcy, a duty of undivided loyalty to the future claimants, and an ability to be an effective advocate for the best interests of the future claimants.[9] We reach this conclusion after considering (1) the Bankruptcy Code itself; (2) the parties' arguments concerning legislative history and legislative acquiescence; (3) the standards governing creditors' committees, which we see as playing an analogous representational role in the bankruptcy process; and (4) the administrability of the fiduciary standard

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therefore invited him to submit supplemental amicus briefing regarding the appropriate FCR appointment standard. We are grateful the Trustee accepted that invitation and appreciate his prompt response and excellent quality of the submission.

[9] The parties generally refer to this standard as a "guardian *ad litem*" standard—a characterization also referenced by the court in *In re Fairbanks Co.*, 601 B.R. 831, 841 (Bankr. N.D. Ga. 2019), which the Bankruptcy Court below considered in fashioning its standard. But using that precise label is unnecessary and may have unintended consequences. We do not suggest, for example, that an FCR *is* a guardian *ad litem* for the future claimants; true guardians *ad litem* have the legal authority to bind those they represent, which an FCR does not (it merely participates in the negotiation of a plan and channeling injunction that will govern its constituents' future claims). What we adopt here is merely a standard *akin* to those employed for guardians *ad litem* in other contexts.

we adopt in the bankruptcy context. Because many of the district and bankruptcy courts in our Circuit had settled on the disinterestedness standard from which we now depart,[10] we address each of these considerations in some detail.

1. Text and Structure of the Bankruptcy Code

The Code does not explicitly lay out an FCR appointment standard. It specifies only that, in order for a channeling injunction to be enforceable in combination with an asbestos trust, the court must do two things: (1) as part of the bankruptcy proceedings leading to the issuance of that injunction, "appoint[] a legal representative for the purposes of protecting the rights" of the future claimants, and (2) "determine[]" that the terms of the injunction are "fair and equitable with respect to" the future claimants," in light of the benefits" provided to the trust by the debtor and other relevant parties. 11 U.S.C. § 524(g)(4)(B).

We begin with the text of the Code, for "[w]here Congress includes particular language in one section of a statute but omits it in another section of the same Act, it is generally presumed that Congress acts intentionally and purposely in the disparate inclusion or exclusion." *Russello v. United States*, 464 U.S. 16, 23 (1983) (quoting *United States v. Wong Kim Bo*, 472 F.2d 720, 722 (5th Cir. 1972)). Congress specifically chose to deploy § 101(14)'s "disinterested person" standard in eleven other sections of the Code. *See* 11 U.S.C. §§ 327(a), 328(c), 332(a), 333(a)(2)(A), 701(a)(1), 703(c), 1104(b)(1), (d), 1163, 1183(a), 1202(a), and 1302(a). In § 524(g), however, it did not.

Given the structure and context of the Code, that is not surprising. As the Bankruptcy Court noted, the sections in

[10] *See, e.g.*, *In re Duro Dyne Nat'l Corp.*, No. 18-15563, 2019 WL 4745879, at *9 (D.N.J. Sept. 30, 2019); *Fed. Ins. Co. v. W.R. Grace*, Nos. 04-844, 04-845, 2004 WL 5517843, at *7 (D. Del. Nov. 22, 2004); *In re Maremont Corp.*, No. 19-10118, ECF No. 126, at 101 (Bankr. D. Del. Mar. 8, 2019)); *In re Leslie Controls, Inc.*, No. 10-12199, ECF No. 146, at 70 (Bankr. D. Del. Aug. 9, 2010).

which the Code applies the "disinterested person" standard relate to professionals whose duties run to the entire estate or to the court, requiring that they remain impartial. Section 327, for example, applies to "attorneys, accountants, appraisers, auctioneers, or other professional persons" who are hired by the trustee and approved by the court "to represent or assist the trustee in carrying out the trustee's duties[,]" but excludes any professional who "represent[s] an interest adverse to the estate." 11 U.S.C. § 327(a). The FCR, by contrast, is the "legal representative" for just such an adverse interest, having been appointed specifically "for the purpose of protecting the rights of" future asbestos claimants. *Id.* § 524(g)(4)(B)(i).

The absence of language invoking the disinterested person standard in § 524(g) thus counsels against adopting that standard for FCR appointments.

But if the language Congress chose to leave out from § 524(g) is significant, so too is that which it opted to include. Section 524(g) directs that the bankruptcy court appoint a "legal representative" for certain interests. *Id.* § 524(g)(4)(B)(i). "Legal representative" is a term of art, referring to one who owes fiduciary duties to his absent, represented constituents. *See, e.g.*, *Kem Mfg. Corp. v. Wilder*, 817 F.2d 1517, 1520 (11th Cir. 1987) (construing "legal representative" in Fed. R. Civ. P. 60(b)). And "it is a cardinal rule of statutory construction that, when Congress employs a term of art, it presumably knows and adopts the cluster of ideas that [a]re attached to [it]." *See FAA v. Cooper*, 566 U.S. 284, 292 (2012) (internal quotations omitted). We presume, therefore, that when Congress employed that term in § 524(g), it anticipated that the FCR would serve as fiduciary to the future claimants. Indeed, legal representatives and their attendant fiduciary duties are central to the bankruptcy process. *See, e.g.*, *Listecki v. Official Comm. of Unsecured Creds.*, 780 F.3d 731, 739 (7th Cir. 2015) (creditors' committee is a representative for "the larger interests of the unsecured private creditors" and so "it is to them . . . that the committee owes a fiduciary duty); *In re AFI Holding, Inc.*, 530 F.3d 832, 845 (9th Cir. 2008) (a trustee is both "the 'legal representative' and 'fiduciary' of the estate"); *In re Smart World Techs., LLC*, 423 F.3d 166, 174–75 & n.12 (2d Cir. 2005) (the debtor-in-possession is a "legal representative of the bankruptcy estate"

and thus is a "fiduciary" for the estate, just as the creditors' committee "owes a fiduciary duty to the class it represents").

The statutory text of § 524(g) therefore suggests that an FCR appointed under that section must be more than merely disinterested, and instead be able to fulfill the heightened duties owed by fiduciaries.

2. Legislative History and Acquiescence

The legislative history and acquiescence arguments on which some courts have relied likewise provide little support for the "disinterested person" standard. *See, e.g.*, *In re Duro Dyne Nat'l Corp.*, No. 18-15563, 2019 WL 4745879, at *9 (D.N.J. Sept. 30, 2019).

Whatever one thinks of using legislative history to interpret statutes, it is of little help here. It appears that Congress drafted § 524(g) to codify the trust-and-channeling injunction mechanisms pioneered in the Johns-Manville and UNR Industries bankruptcies and that it was satisfied with the protection they provided to future claimants. *See* H.R. REP. NO. 103-835, at 41 (explaining that § 524(g) was crafted "in order to strengthen the Manville and UNR trust/injunction mechanisms and to offer similar certitude to other asbestos trust/injunction mechanisms that meet the same kind of high standards with respect to regard for the rights of claimants, present and future, as displayed in the two pioneering cases"). It also appears that the *Johns-Manville* and *UNR* courts applied something like the disinterested standard to their choice of proto-FCRs.[11] Neither, however, was explicit about doing so.

[11] In *Johns-Manville*, the court scheduled a hearing to address the role of the representative for future claimants, and noted that while it was "consider[ing] in preliminary fashion several formulations of legal representation: guardian ad litem, amicus curiae and examiner," it was not precluded from adopting another model altogether. *In re Johns-Manville Corp.*, 36 B.R. 743, 758–59 (Bankr. S.D.N.Y. 1984) (footnote omitted). Following that hearing, the court appointed a representative for future claimants that would exercise the same powers as creditors' committees, a decision affirmed by

And the congressional report accompanying the bill, while gesturing generally to the Johns-Manville and UNR bankruptcies, never specifically called out their FCR appointment processes. *See id.* at 40–41 (omitting mention of the FCR position in its discussion of the new § 524(g)).

As for the legislative acquiescence argument, legislative silence does not often tell us much, and here it tells us nothing. It is true that—against the backdrop of certain courts importing § 101(14)'s "disinterested person" test into § 524(g)—Congress amended § 524 on three occasions[12] without clarifying the test for FCRs. But that silence does not portend acquiescence because there was only a smattering of district and bankruptcy court cases on point, not the "longstanding interpretation" and "almost perfect consistency" in the decisions of the Courts of Appeals, *Gulf Oil Corp. v. Copp Paving Co.*, 419 U.S. 186, 200–01 (1974), or the "virtual

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the district court. *See In re Johns-Manville Corp.*, 52 B.R. 940, 942–43 (S.D.N.Y. 1985). By opting for this model of representation, in which the representative had no authority to bind future claimants, *id.* at 943, the court implicitly rejected the previously proposed guardian *ad litem* model, *see* 36 B.R. at 758 n.7 (explaining that future claimants "would be bound by the actions of [a guardian *ad litem*] by virtue of the doctrine of equitable virtual representation" if it relied on that model).

The *UNR Industries* court similarly entrusted its future claimants' representative with a creditors' committee's powers. *In re UNR Indus., Inc.*, 46 B.R. 671, 676 (Bankr. N.D. Ill. 1985). In soliciting nominations for that representative, it called for someone who was a "disinterested party to serve as Legal Representative for putative asbestos disease victims." *Id.* Without further explanation, it is difficult to determine if the UNR court deliberately chose disinterestedness as the standard, so much as invoked it as a default.

[12] *See* Small Business Reorganization Act of 2019, Pub. L. No. 116-54, § 4(a)(9)(A)–(C), 133 Stat. 1086, 1087 (2019); Bankruptcy Technical Corrections Act of 2010, Pub. L. No. 111-327, § 2(a)(19), 124 Stat. 3557, 3559 (2010); Bankruptcy Abuse and Prevention and Consumer Protection Act of 2005, Pub. L. 109-8, §§ 202, 203(a), 119 Stat. 43, 194 (2005).

unanimity" among the federal courts over decades, *Monessen Sw. Ry. Co. v. Morgan*, 486 U.S. 330, 338 (1988), as have been present when past courts have assumed legislative acquiescence. In addition, the amendments to § 524 were specific and targeted, and as the Supreme Court has cautioned, "when 'Congress has not comprehensively revised a statutory scheme but has made only isolated amendments . . . [i]t is impossible to assert with any degree of assurance that congressional failure to act represents affirmative congressional approval of [a court's] statutory interpretation.'" *AMG Cap. Mgmt., LLC v. Fed. Trade Comm'n*, 141 S. Ct. 1341, 1351 (2021) (alterations in *AMG Cap. Mgmt.*) (quoting *Alexander v. Sandoval*, 532 U.S. 275, 292 (2001)). In short, § 524's history as concerns the "disinterested person" standard is at best inconclusive.

3. Analogy to the Creditors' Committee

We find useful guidance, however, in the jurisprudence surrounding an analogous player in the bankruptcy process: the creditors' committee.

Just as a creditors' committee exists to serve the interests of its constituents, the various creditors, the FCR serves the interests of his constituents, the future claimants. *See Listecki v. Official Comm. of Unsecured Creds.*, 780 F.3d 731, 739 (7th Cir. 2015) (noting that "a [creditors'] committee represents the larger interests of the unsecured private creditors, and it is to them, and not the Trustee, court, or any governmental actor, that the committee owes a fiduciary duty" and collecting cases). And in the creditors' committee context, even though the Code only specifies that the committee be "adequate[ly] representat[ive]" of the relevant creditors, 11 U.S.C. § 1102(a)(2), courts have long required each committee member not only to be free of conflicts of interest but also to fulfill fiduciary duties to the committee's constituents, including duties of undivided loyalty and honesty. *See generally* 7 COLLIER ON BANKRUPTCY ¶ 1103.05[2] (16th ed. 2021) (summarizing the fiduciary duties of committee members); *see also, e.g.*, *Woods v. City Nat. Bank & Tr. Co. of Chi.*, 312 U.S. 262, 268 (1941) ("Protective committees . . . are fiduciaries."); *In re Kensington Int'l, Ltd.*, 368 F.3d 289, 315 (3d Cir. 2004) ("[I]t is established that a Creditors Committee

owes a fiduciary duty to the unsecured creditors as a whole[.]"); *In re PWS Holding Corp.*, 228 F.3d 224, 246 (3d Cir. 2000) ("Section 1103(c) of the Bankruptcy Code, which grants to the Committee broad authority to formulate a plan and perform 'such other services as are in the interest of those represented[,]' . . . has been interpreted to imply . . . a fiduciary duty to committee constituents[.]").

For an FCR, who functions, in effect, as a "creditors' committee" of one, that fiduciary standard is equally appropriate, so in view of its long-standing application in that similar context and the text of the Code itself, that is the standard we adopt today.

4. Administrability

We next address the administration of the fiduciary standard in the FCR appointment process.

To be clear, that standard does not herald a categorical approach to an FCR's appointment. The parties to this appeal vigorously dispute whether Patton had a concurrent conflict of interest as a result of the *Warren Pumps* litigation, the implication being that it would disqualify him *per se*.[13] But the question of *whether* a conflict exists is less relevant to an appointment than the nature of the conflict and importance of the conflict to the future claimants' interests. In a given instance, a purported ethical conflict might have minimal or no

[13] The categorical approach advocated by the Insurers would effectively preclude service by the most effective FCRs, for the reality is that the current universe of qualified and experienced FCRs is small, *see* Lloyd Dixon *et al.*, *Asbestos Bankruptcy Trusts: An Overview of Trust Structure and Activity with Detailed Reports on the Largest Trusts*, RAND INST. FOR CIV. JUST., at App. B (2010) (listing 26 of the largest active trusts and three of the largest proposed trusts as of 2010, with seven FCRs who serve on two or more of them); JA 735 (noting that Patton currently serves as FCR for six different trusts), and it is entirely to be expected that the law firms that are home to those professionals with experience in asbestos-related bankruptcies would also be involved in asbestos-related insurance coverage litigation.

impact on an FCR's ability to successfully represent the future claimants' interests. For instance, the litigation giving rise to the conflict may be long over or subject to effective ethical walls at the FCR's firm. In such cases, the court, in its discretion, may well determine that the proposed FCR still meets the appointment requirements.[14]

The comparison to a creditors' committee is again instructive, for those members have some degree of inherent "conflict" in that they each have their own interests as individual creditors that are arguably adverse to other creditors. Yet they may still serve on the committee if they can act independently of their self-interest and fulfill their fiduciary duties to the creditors as a whole. *See Westmoreland Hum.*

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[14] Along similar lines, the Insurers ask us to decide whether Rule 1.7 of the Model Rules of Professional Conduct applies to the FCR role, which Imerys disputes because the FCR is not, technically, a "lawyer" representing a "client" as contemplated by the terms of the rule. But this debate is largely beside the point. First, even for those practicing lawyers who are undisputedly covered by the ethics rules, the bankruptcy court still has discretion to decide whether or not those rules should result in disqualification under the circumstances: "[A] court's . . . decision about whether to use that power is discretionary and 'never is automatic.'" *In re Boy Scouts of America*, — F.4th —, 2022 WL 1634643, at *7 (3d Cir. 2022) (quoting *United States v. Miller*, 624 F.2d 1198, 1201 (3d Cir. 1980)). Thus, "even when an ethical conflict exists (or is assumed to exist), a court may conclude based on the facts before it that disqualification is not an appropriate remedy." *Id.* Second, the ethics rules themselves, even if they applied, would not determine whether an FCR candidate meets the appointment standard we set today. If an "actual conflict" under the Rules is merely technical and extremely unlikely to prejudice the interests of the future claimants, the bankruptcy court can still properly make the appointment under § 524 after engaging in the appropriate analysis of the future claimants' interests and the appointee's abilities and qualifications. *Cf. id.* at *5 (noting in a conflicts analysis under § 327 that the Rules "may be informative in some cases," but are not determinative of what an "actual conflict" is under the terms of that section).

Opportunities, Inc. v. Walsh, 246 F.3d 233, 256 (3d Cir. 2001) ("We have construed § 1103(c) as implying a fiduciary duty on the part of members of a creditor's committee . . . toward their constituent members. A committee member violates its fiduciary duty by pursuing a course of action that furthers its self-interest to the potential detriment of fellow committee members." (citing *In re PWS Holding Corp.*, 228 F.3d at 246)). Just so, the mere existence of a technical conflict should not disqualify an FCR if the bankruptcy court concludes he or she will meet the duties of independence and undivided loyalty and will serve as an effective advocate for the future claimants.

While we have settled on an FCR appointment standard, we do not today prescribe any particular process the bankruptcy court must follow in making that appointment. Of course, implicit in the FCR appointment standard is one procedural requirement: that whatever process the bankruptcy court follows ensures that the court has the information necessary to assess the candidate(s)'s qualifications. But given that "as part of the proceedings leading to issuance of [a channeling] injunction, the court appoints a legal representative for the purpose of protecting the rights of" future claimants, 11 U.S.C. § 524(g)(4)(B)(i), variations in the appointment process are otherwise within the discretion of the bankruptcy court.

D. Propriety of Patton's Appointment

With the FCR appointment standard set, we now turn to the question of whether Patton was properly appointed to the FCR position in the Imerys bankruptcy. It is important to note that, ultimately, neither the Insurers nor the Bankruptcy Court raised any question regarding Patton's qualifications, independence, undivided loyalty, or ability to be an effective advocate for future claimants apart from the purported ethical conflict arising out of Young Conaway's work on *Warren Pumps*.

The Insurers nonetheless contend that Young Conaway's *Warren Pumps* representation prevents Patton from meeting the FCR appointment standard. Essentially, they make two arguments: first, that *Warren Pumps* creates a direct conflict of interest between Patton and Continental and

National Union themselves, which requires his disqualification; and second, that his *Warren Pumps* connection taints his independence and ability to be an effective advocate on behalf of the future claimants' interests. Neither are persuasive.

i. Alleged Direct Conflict of Interest

To the extent Continental and National Union argue that *Warren Pumps* requires Patton's disqualification because of the direct conflict of interest it creates between the two companies and Patton, the Bankruptcy Court was correct in ruling that the prospective waiver disposed of this issue. In that waiver provision, those Insurers acknowledged that Young Conaway maintained a "substantial corporate workout, bankruptcy[,] and insolvency practice," and that they "agree[d] that [Young Conaway] may represent other clients (i) in workout, bankruptcy[,] and insolvency proceedings, and (ii) in connection with trusts established pursuant to section 524(g) of the Bankruptcy Code." JA 898. They also agreed they "w[ould] not assert that this instant Engagement is a basis for disqualifying [Young Conaway] from representing others" in those bankruptcy-related matters if those Insurers were creditors of the debtor in those bankruptcies and if the interests of Young Conaway's clients in those matters were "directly adverse" to the Insurers.[15] JA 898–99.

The Insurers next argue that it was impossible for them to have given informed consent to the conflict when it arose in the Imerys bankruptcy because Patton's prepetition work as Proposed FCR was done pursuant to a non-disclosure agreement. Even aside from the fact that the Insurers are sophisticated parties who were represented by both an agent

[15] Of course, this was subject to the condition that the future bankruptcy-related matters were not "the same matter or a matter substantially related to the same matter" as the one in which Young Conaway represented the Insurers. JA 898. For the reasons explained below, however, Continental and National Union have not met their burden to establish that this condition of the waiver was not met. *See, e.g.*, *Satellite Fin. Planning Corp. v. First Nat'l Bank of Wilmington*, 652 F. Supp. 1281, 1283 (D. Del. 1987).

and that agent's insurance counsel, their argument misapprehends what we require of valid prospective waivers. Prospective waivers do not necessitate a second round of consent when a future conflict actually arises; that would defeat the purpose of obtaining a prospective waiver in the first place. Rather, the question is whether *at the time of signing the prospective waiver* the clients could give "truly informed consent" as to the potential conflicts that foreseeably might arise in the future. *Congoleum*, 426 F.3d at 691; MODEL RULES OF PRO. CONDUCT, r. 1.7 cmt. 22 ("The effectiveness of such [prospective] waivers is generally determined by the extent to which the client reasonably understands the material risks that the waiver entails."). And the waiver at issue here was quite clear not only that Young Conaway might be involved in bankruptcy proceedings in which the Insurers would be creditors, but also that the firm was likely to be involved in FCR work specifically.

As such, the Bankruptcy Court was justified in concluding that the *Warren Pumps* insurers would have known at the time of signing that there was a material risk that Young Conaway would be involved in the future in § 524(g) proceedings that would also involve insurance company creditors, a risk that materialized with the Imerys bankruptcy.[16] *See, e.g.*, *In re Fisker Auto. Holdings, Inc. S'holder Litig.*, 2018 WL 3991470, at *3–4 (D. Del. Aug. 20, 2018) (upholding the

[16] Along similar lines, although we concluded *supra* that § 327 does not govern FCR appointments, we note that even the Insurer's requested analysis under that section's *per se* disqualification provision would have required more information regarding the *Warren Pumps* litigation. In urging us to apply § 327's requirements, the Insurers do not identify an actual (or even a potential or apparent) conflict other than the fact of Young Conaway's involvement in the *Warren Pumps* litigation. As recently explained, "a conflict is actual [for the purposes of § 327] when the specific facts before the bankruptcy court suggest that 'it is likely that a professional will be placed in a position permitting it to favor one interest over an impermissibly conflicting interest.'" *Boy Scouts*, — F.4th —, 2022 WL 1634643, at *4 (3d Cir. 2022) (quoting *In re Pillotex, Inc.*, 304 F.3d 246, 254 (3d Cir. 2002)). Those facts are lacking here.

validity of a prospective waiver based on an analysis of the waiver's language and the sophistication of the parties).

ii. Ability to Provide Effective Advocacy

The Insurers' only remaining argument is that because the *Warren Pumps* litigation "involve[d] substantially related issues" as will be raised in the Imerys Bankruptcy, JA 945, it impairs Patton's ability to serve the future claimants' interests.

Their primary argument on this point is that a future claimant "would probably be displeased" with Patton's appointment, "[e]specially when . . . this isn't an unrelated case [to the *Warren Pumps* litigation]" and "[t]he arguments that [Young Conaway] was making in that case" about policy interpretation issues would be "adverse" to the arguments the FCR can be expected to make about the Insurers' policies in this bankruptcy.[17] Tran. 64. But in typical conflicts analyses, "substantially related" does not refer to the similarities between the legal issues raised; rather, "[m]atters are 'substantially related' . . . if they involve the same transaction or legal dispute or if there otherwise is a substantial risk that confidential factual information as would normally have been obtained in the prior representation would materially advance the client's position in the subsequent matter." MODEL RULES OF PRO. CONDUCT r. 1.9 cmt. 3 (AM. BAR ASS'N 2020); *see also* RESTATEMENT (THIRD) OF LAW GOVERNING LAWYERS § 132 (2000).

Because the Insurers fail to show that *Warren Pumps* involved the same transactions or legal disputes as might be implicated by Patton's future work as FCR in the Imerys bankruptcy, we can only say that the matters are "substantially

[17] Apart from this argument, the Insurers support their contention of the cases being "substantially related" with only vague assertions that in both cases, "(i) more than one corporate entity asserts a claim to insurance policy proceeds, (ii) insurers have contribution rights among insurers, and (iii) there are issues raised regarding whether excess policies owe defense obligations and to whom under what limitations and conditions," JA 975-76.

related" if there is a "substantial risk" that Patton and Young Conaway will use in the Imerys bankruptcy any confidential information that Young Conaway obtained from its representation of Continental and National Union in *Warren Pumps*. That is a fact-specific inquiry, *see, e.g.*, *Madukwe v. Del. State Univ.*, 552 F. Supp. 2d 452, 458 (D. Del. 2008), and the Insurers simply do not point to any facts that would establish any risk of weaponized confidential information.

In any event, the Bankruptcy Court carefully considered this issue. After it set out an appointment standard quite close in substance to that which we adopt today—one centered on Patton's ability to serve the future claimants' interests effectively and impartially—the Court requested additional disclosures concerning the particular matters it thought relevant to its determination of whether Patton met that standard. One of those matters was Patton's involvement in Young Conaway's previously disclosed representation of "many if not all of the Certain Excess Insurance companies in insurance coverage litigation related to environmental liabilities, including asbestos liabilities." JA 32. In response to that request, the Court received and considered not only Patton's disclosures, but also the unsolicited supplemental objection of the Insurers raising the *Warren Pumps* conflict, Patton's response to that objection, and several related declarations and exhibits. And what they revealed only bolstered the Court's confidence in Patton: that Young Conaway had implemented an ethical wall between its work on *Warren Pumps* and Patton's work as FCR in the Imerys bankruptcy, that Patton himself was never involved in the *Warren Pumps* matter at all, and that Young Conaway had billed only a handful of hours to the matter since 2016 and none since 2018. Given the state of the record on this issue and Patton's reputation and qualifications for the FCR role, the Bankruptcy Court did not abuse its discretion in concluding that the alleged conflict would not impair Patton's performance, and that his credentials, experience, and expertise would serve the future claimants' interests with the required degree of independence and loyalty.

IV. CONCLUSION

For the foregoing reasons, we will affirm the judgment of the District Court.

Exhibit “C”

This is
EXHIBIT "C"
to the Affidavit of
ERIC DANNER
Sworn September 12, 2022

DocuSigned by:
Ben Muller
77FFB2B8DE444CE...

Ben Muller
Commissioner for Taking Affidavits
LSO #80842N

IN THE UNITED STATES BANKRUPTCY COURT
FOR THE DISTRICT OF DELAWARE

In re:	:	Chapter 11
IMERYS TALC AMERICA, INC., *et al.*,[1]	:	Case No. 19-10289 (LSS)
Debtors.	:	(Jointly Administered)
	:	Re: Docket No. 4979

ORDER (I) APPROVING BROUGHTON RECLAMATION AGREEMENT AND ESCROW AGREEMENT AND (II) AUTHORIZING IMERYS TALC CANADA INC. TO PERFORM ALL OBLIGATIONS THEREUNDER

Upon the motion (the "**Motion**")[2] of the Debtors for entry of an order (this "**Order**") (a) approving the Broughton Reclamation Agreement on the terms and conditions set forth therein, (b) authorizing ITC to perform all obligations under the Broughton Reclamation Agreement, including entering into the Escrow Agreement, (c) authorizing ITC to make any and all payments required under the Broughton Reclamation Agreement and the Escrow Agreement, including the Escrow Payments, (d) authorizing ITC to take other actions as it may deem necessary to effectuate the Broughton Reclamation Agreement and the Escrow Agreement, (e) approving the Broughton Reclamation Agreement and Escrow Agreement as fair, reasonable, and adequate, and (f) granting related relief, on the terms and conditions set forth in the Motion; and this Court having reviewed the Motion and the Danner Declaration; and this Court having determined that the relief requested in the Motion is in the best interests of the Debtors and their estates; and this Court having

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

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

jurisdiction to consider the Motion and the relief requested therein in accordance with 28 U.S.C. §§ 157 and 1334 and the *Amended Standing Order of Reference from the United States District Court for the District of Delaware* dated as of February 29, 2012; and consideration of the Motion and the relief requested therein being a core proceeding under 28 U.S.C. § 157(b)(2); and this Court having authority to enter a final order consistent with Article III of the United States Constitution; and venue being proper before this Court under 28 U.S.C. §§ 1408 and 1409; and it appearing that proper and adequate notice of the Motion has been given and that no other or further notice is necessary; and upon the record of all of the proceedings before this Court; and after due deliberation thereon; and good and sufficient cause appearing therefor, it is hereby

ORDERED, ADJUDGED AND DECREED THAT:

1. The Motion is GRANTED as set forth herein.

2. Pursuant to sections 363 and 105 of the Bankruptcy Code and Bankruptcy Rules 6004, 9014 and 9019, the Broughton Reclamation Agreement and the Escrow Agreement are approved and ITC is authorized to perform its obligations under the Broughton Reclamation Agreement and the Escrow Agreement, including payment of the Reclamation Payment and Escrow Payments.

3. The Broughton Reclamation Agreement and the Escrow Agreement are approved as fair, reasonable, and adequate.

4. ITC is authorized and empowered to take other actions as it may deem necessary to effectuate the Broughton Reclamation Agreement and the Escrow Agreement.

5. The stay provided in Bankruptcy Rule 6004(h) is hereby expressly waived and shall not apply. The terms and conditions of this Order shall be immediately effective and enforceable upon its entry.

6. This Court shall retain jurisdiction with respect to all matters arising from or related to the implementation and/or interpretation of this Order.

Dated: August 15th, 2022
Wilmington, Delaware

LAURIE SELBER SILVERSTEIN
UNITED STATES BANKRUPTCY JUDGE

Exhibit “D”

This is
EXHIBIT "D"
to the Affidavit of
ERIC DANNER
Sworn September 12, 2022

DocuSigned by:
Ben Muller
77FFB2B8DE444CE...

Ben Muller
Commissioner for Taking Affidavits
LSO #80842N

IN THE UNITED STATES BANKRUPTCY COURT
FOR THE DISTRICT OF DELAWARE

In re:	:	Chapter 11
IMERYS TALC AMERICA, Inc., *et al.*,[1]	:	Case No. 19-10289 (LSS)
Debtors.	:	(Jointly Administered)
	:	**Re: Docket Nos. 4385, 4605, 4652, 4753**

and

In re:	:	Chapter 11
CYPRUS MINES CORPORATION,[2]	:	Case No. 21-10398 (LSS)
Debtor.	:	**Re: Docket Nos. 673, 851, 912, 963**

ORDER APPROVING STIPULATION AND AGREEMENT BY AND AMONG THE MEDIATION PARTIES REGARDING THE TERM OF MEDIATION

Upon consideration of the *Stipulation and Agreement By and Among the Mediation Parties Regarding the Term of Mediation*, a copy of which is attached hereto as Exhibit A (the "**Stipulation**");[3] and the Court having determined that good and adequate cause exists for approval of the Stipulation; it is hereby **ORDERED** that:

1. The Stipulation is approved.

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

[2] The last four digits of the Cyprus Debtor's taxpayer identification number are 0890. The Cyprus Debtor's address is 333 North Central Avenue, Phoenix, AZ 85004.

[3] Capitalized terms used but not defined herein shall have the meanings ascribed to them in the Stipulation.

2. This Court retains jurisdiction with respect to all matters arising from or related to the Stipulation and this Order.

LAURIE SELBER SILVERSTEIN
UNITED STATES BANKRUPTCY JUDGE

Dated: May 23, 2022
Wilmington, Delaware

25009232

EXHIBIT A

Stipulation

IN THE UNITED STATES BANKRUPTCY COURT
FOR THE DISTRICT OF DELAWARE

In re:	:	Chapter 11
IMERYS TALC AMERICA, Inc., *et al.*,[4]	:	Case No. 19-10289 (LSS)
Debtors.	:	(Jointly Administered)
	:	**Re: Docket No. 4385, 4605, 4652**

and

In re:	:	Chapter 11
CYPRUS MINES CORPORATION,[5]	:	Case No. 21-10398 (LSS)
Debtor.	:	**Re: Docket No. 673, 851, 912**

STIPULATION AND AGREEMENT BY AND AMONG THE MEDIATION PARTIES REGARDING THE TERM OF MEDIATION

This stipulation and agreement (this "**Stipulation**") is entered into by and among the Mediation Parties (as defined below). The Mediation Parties have agreed to extend the term of the Mediation[6] as set forth below:

Recitals

A. On February 13, 2019, Imerys Talc America, Inc., Imerys Talc Vermont, Inc., and Imerys Talc Canada Inc. (collectively, the "**Imerys Debtors**") each commenced with this Court a

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

[5] The last four digits of the Cyprus Debtor's taxpayer identification number are 0890. The Cyprus Debtor's address is 333 North Central Avenue, Phoenix, AZ 85004.

[6] Capitalized terms used but not defined herein shall have the meaning ascribed to them in the *Order (I) Appointing Mediators (II) Referring Certain Matters to Mediation, and (III) Granting Related Relief* [Imerys Docket No. 4385; Cyprus Docket No. 673] (the "**Mediation Orders**").

voluntary case (the "**Imerys Chapter 11 Cases**") under chapter 11 of title 11 of the United States Code (the "**Bankruptcy Code**"). The Imerys Chapter 11 Cases are being jointly administered pursuant to Rule 1015(b) of the Federal Rules of Bankruptcy Procedure as Case No. 10289. The Imerys Debtors are authorized to operate their businesses and manage their properties as debtors-in-possession pursuant to sections 1107(a) and 1108 of the Bankruptcy Code. No trustee or examiner has been appointed in the Imerys Chapter 11 Cases.

B. On February 11, 2021, Cyprus Mines Corporation (the "**Cyprus Debtor**") commenced with this Court a voluntary case under chapter 11 of the Bankruptcy Code (the "**Cyprus Case**"). The Cyprus Debtor is authorized to operate its business and manage its properties as debtor-in-possession pursuant to sections 1107(a) and 1108 of the Bankruptcy Code. No trustee or examiner has been appointed in the Cyprus Case.

C. On October 26, 2021, the Imerys Debtors filed the *Debtors' Motion for Entry of an Order (I) Appointing Mediator, (II) Referring Certain Matters to Mediation, and (III) Granting Related Relief* [Imerys Docket No. 4291] (the "**Imerys Mediation Motion**"). On October 27, 2021, the Cyprus Debtor and Roger Frankel, the future claimants' representative appointed in the Cyprus Case, filed the *Joint Motion of the Cyprus Debtor and the Cyprus Future Claimants' Representative for Entry of an Order (I) Appointing Mediator, (II) Referring Certain Matters to Mediation, and (III) Granting Related Relief* [Imerys Docket No. 4295; Cyprus Docket No. 593] (the "**Cyprus Mediation Motion**" and together with the Imerys Mediation Motion, the "**Mediation Motions**").

D. On November 30, 2021, the Court entered the Mediation Orders, which approved the relief requested in the Mediation Motions.

E. The parties participating in the Mediation and that are signatories to this Stipulation are: (i) the Imerys Debtors; (ii) the Imerys TCC; (iii) the Imerys FCR; (iv) the Cyprus Debtor; (v) the Cyprus TCC; and (vi) the Cyprus FCR (collectively, the "**Mediation Parties**").

F. Paragraph 6 of the Mediation Orders provides: "The term of the Mediation shall expire on February 28, 2022, which may be extended by further order of the Court." On March 11, 2022 and April 15, 2022, the Court entered Orders extending the mediation period through April 8, 2022 and May 15, 2022, respectively [Docket Nos. 4652 and 4753] (each, an "**Extension Order**").

G. Since the most recent Extension Order was entered on April 15, 2022, the Mediation Parties participated in a mediation session with Travelers Casualty and Surety Company (f/k/a The Aetna Casualty and Surety Company) and The Travelers Indemnity Company. In addition, mediations with each of: (i) Employers Mutual Casualty Company, (ii) TIG Insurance Company, as successor by merger to International Insurance Company, International Surplus Lines Insurance Company, Mt. McKinley Insurance Company (formerly known as Gibraltar Insurance Company), Fairmont Premier Insurance Company (formerly known as Transamerica Premier Insurance Company), Everest Reinsurance Company (formerly known as Prudential Reinsurance Company), and The North River Insurance Company, (iii) Hartford Accident and Indemnity Company and First State Insurance Company, (iv) American Insurance Company, Fireman's Fund Insurance Company, and Allianz Underwriters Insurance Company f/k/a Allianz Underwriters, Inc., (v) the Chubb Insurers and (iv) the Cyprus Historical Excess Insurers are each open and ongoing. In the event all or certain of the Mediation Parties determine that additional time to mediate is necessary and appropriate, such parties will request a further extension from the Court.

H. As the Mediation Parties and other parties participating in the mediation are continuing to engage in mediation with respect to the Mediation Issues described in the Mediation

Motions, they and the Mediators have agreed to extend the term of the Mediation to permit them additional time to complete the mediation process.

Agreement

1. The term of the Mediation shall expire on June 30, 2022, which may be extended by further order of the Court.

2. This Stipulation may be executed in counterparts, each of which shall be deemed an original but all of which together shall constitute one and the same instrument. A signature transmitted by facsimile or other electronic copy shall be deemed an original signature for purposes of this Stipulation.

3. This Stipulation contains the entire agreement by and among the Mediation Parties with respect to the subject matter hereof, and all prior understandings or agreements, if any, are merged into this Stipulation.

4. The undersigned counsel hereby attest that they are duly authorized by their respective clients to enter into this Stipulation.

5. This Stipulation may be changed, modified, or otherwise altered in a writing executed by the Mediation Parties. Oral modifications are not permitted.

6. This Stipulation shall be effective immediately upon approval by the Court.

7. This Stipulation is expressly subject to and contingent upon its approval by this Court. If this Court does not approve this Stipulation, this Stipulation shall be null and void.

8. This Court shall retain jurisdiction to hear any matters or disputes arising from or relating to this Stipulation.

9. The Mediation Parties reserve all rights with respect to the Mediation.

SO STIPULATED:

By: */s/ Michael J. Merchant*

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Counsel to the Cyprus FCR

Exhibit “E”

This is
EXHIBIT "E"
to the Affidavit of
ERIC DANNER
Sworn September 12, 2022

DocuSigned by:
Ben Muller
77FFB2B8DE444GE...

Ben Muller
Commissioner for Taking Affidavits
LSO #80842N

IN THE UNITED STATES BANKRUPTCY COURT
FOR THE DISTRICT OF DELAWARE

In re:	:	Chapter 11
CYPRUS MINES CORPORATION,[1]	:	Case No. 21-10398 (LSS)
Debtor.	:	**Re: Docket Nos. 1035, 963, 912, 897, 851, 833, 793, 673, 671, 664, 647, 618, 617, 609, 605, 603, 593**
and		
In re:	:	Chapter 11
IMERYS TALC AMERICA, INC., *et al.*,[2]	:	Case No. 19-10289 (LSS)
Debtors.	:	(Jointly Administered)
	:	**Re: Docket Nos. 4818, 4817, 4812, 4753, 4652, 4605, 4518, 4385, 4376, 4333, 4332, 4331, 4328, 4315, 4313, 4295, 4292, 4291, 4290**

ORDER APPROVING STIPULATION AND AGREEMENT
EXTENDING THE TERM OF MEDIATION

Upon consideration of the *Stipulation and Agreement Extending the Term of Mediation*, a copy of which is attached hereto as Exhibit A (the "**Stipulation**"); and the Court having determined that good and adequate cause exists for approval of the Stipulation; it is hereby

[1] The last four digits of the Cyprus Debtor's taxpayer identification number are 0890. The Cyprus Debtor's address is 333 North Central Avenue, Phoenix, AZ 85004.

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

ORDERED THAT:

1. The Stipulation is approved.

2. This Court retains jurisdiction with respect to all matters arising from or related to the Stipulation and this Order.

LAURIE SELBER SILVERSTEIN
UNITED STATES BANKRUPTCY JUDGE

Dated: July 13, 2022
Wilmington, Delaware

EXHIBIT A

Stipulation

IN THE UNITED STATES BANKRUPTCY COURT
FOR THE DISTRICT OF DELAWARE

In re:	Chapter 11
CYPRUS MINES CORPORATION,[1]	Case No. 21-10398 (LSS)
Debtor.	**Re: Docket Nos. 1035, 963, 912, 897, 851, 833, 793, 673, 671, 664, 647, 618, 617, 609, 605, 603, 593**

and

In re:	Chapter 11
IMERYS TALC AMERICA, INC., *et al.*,[2]	Case No. 19-10289 (LSS)
	(Jointly Administered)
Debtors.	**Re: Docket Nos. 4818, 4817, 4812, 4753, 4652, 4605, 4518, 4385, 4376, 4333, 4332, 4331, 4328, 4315, 4313, 4295, 4292, 4291, 4290**

STIPULATION AND AGREEMENT
EXTENDING THE TERM OF MEDIATION

This Stipulation and Agreement (this "**Stipulation**") is entered into by and among: (i) the Imerys Debtors; (ii) the Imerys TCC; (iii) the Imerys FCR; (iv) the Cyprus Debtor; (v) the Cyprus TCC; (vi) the Cyprus FCR (collectively, the "**Estate Mediation Parties**"); and (vii) Cyprus Amax

[1] The last four digits of the Cyprus Debtor's taxpayer identification number are 0890. The Cyprus Debtor's address is 333 North Central Avenue, Phoenix, AZ 85004.

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

Minerals Company ("**CAMC**"). The Estate Mediation Parties and CAMC have agreed to extend the term of the Mediation[3] as set forth below:

RECITALS

A. On February 13, 2019, Imerys Talc America, Inc., Imerys Talc Vermont, Inc., and Imerys Talc Canada Inc. (collectively, the "**Imerys Debtors**") each commenced with this Court a voluntary case (the "**Imerys Chapter 11 Cases**") under chapter 11 of title 11 of the United States Code (the "**Bankruptcy Code**"). The Imerys Chapter 11 Cases are being jointly administered pursuant to Rule 1015(b) of the Federal Rules of Bankruptcy Procedure as Case No. 10289. The Imerys Debtors are authorized to operate their businesses and manage their properties as debtors-in-possession pursuant to sections 1107(a) and 1108 of the Bankruptcy Code. No trustee or examiner has been appointed in the Imerys Chapter 11 Cases.

B. On February 11, 2021, Cyprus Mines Corporation (the "**Cyprus Debtor**") commenced with this Court a voluntary case under chapter 11 of the Bankruptcy Code (the "**Cyprus Case**"). The Cyprus Debtor is authorized to operate its business and manage its properties as debtor-in-possession pursuant to sections 1107(a) and 1108 of the Bankruptcy Code. No trustee or examiner has been appointed in the Cyprus Case.

C. On October 26, 2021, the Imerys Debtors filed the *Debtors' Motion for Entry of an Order (I) Appointing Mediator, (II) Referring Certain Matters to Mediation, and (III) Granting Related Relief* [Imerys D.I. No. 4291] (the "**Imerys Mediation Motion**") with this Court.

D. On October 27, 2021, the Cyprus Debtor and the Cyprus FCR filed the *Joint Motion of the Cyprus Debtor and the Cyprus Future Claimants' Representative For Entry of an Order*

[3] Capitalized terms used but not defined herein shall have the meanings ascribed to them in the Mediation Motions (as defined below) or the Mediation Orders (as defined below), as applicable.

(I) Appointing Mediator, (II) Referring Certain Matters to Mediation, and (III) Granting Related Relief [Cyprus D.I. 593; Imerys D.I. 4295] (the "**Cyprus Mediation Motion**" and together with the Imerys Mediation Motion, the "**Mediation Motions**") in the Cyprus Case and the Imerys Chapter 11 Cases.

E. On November 30, 2022, this Court entered the *Order (I) Appointing Mediators, (II) Referring Certain Matters to Mediation, and (III) Granting Related Relief* in the Cyprus Case and the Imerys Chapter 11 Cases [Cyprus D.I. 673; Imerys D.I. 4385] (collectively, the "**Mediation Orders**").

F. Paragraph 6 of the Mediation Orders provides that "[t]he term of the Mediation shall expire on February 28, 2022, which may be extended by further order of the Court." Cyprus D.I. 673, ¶ 6 at 4; Imerys D.I. 4385, ¶ 6 at 4.

G. By further order of this Court, the term of the Mediation has been extended on multiple occasions, most recently through June 30, 2022 [Cyprus D.I. 1035; Imerys D.I. 4817 & 4818], pursuant to a certification of counsel filed on May 20, 2022 [Cyprus D.I. 1029; Imerys D.I. 4812].

H. The Estate Mediation Parties and CAMC believe that continuing the Mediation through September 30, 2022 and focusing the Mediation efforts on the Global Settlement Issues (as defined in the Mediation Orders) is likely to be productive and, as such, is worth the substantial continued time and expense to each of the Cyprus Estate and the Imerys Estates.

AGREEMENT

1. The term of the Mediation is extended to September 30, 2022, as to the Global Settlement Issues. Such extension is without prejudice to the parties' rights to seek a further

extension of the term of the Mediation. In all other respects, the Mediation Orders remain in full force and effect.

2. This Stipulation may be executed in counterparts, each of which shall be deemed an original but all of which together shall constitute one and the same instrument. A signature transmitted by facsimile or other electronic copy shall be deemed an original signature for purposes of this Stipulation.

3. This Stipulation contains the entire agreement by and among the Estate Mediation Parties and CAMC with respect to the subject matter hereof, and all prior understandings or agreements, if any, are merged into this Stipulation.

4. The undersigned counsel hereby attest that they are duly authorized by their respective clients to enter into this Stipulation.

5. This Stipulation may be changed, modified, or otherwise altered in a writing executed by the signatories hereto. Oral modifications are not permitted.

6. This Stipulation shall be effective immediately upon approval by the Court.

7. This Stipulation is expressly subject to and contingent upon its approval by this Court. If this Court does not approve this Stipulation, this Stipulation shall be null and void.

8. This Court shall retain jurisdiction to hear any matters or disputes arising from or relating to this Stipulation.

9. The Estate Mediation Parties and CAMC reserve all rights and privileges with respect to the continued Mediation.

SO STIPULATED:

[*Signatures to follow.*]

Dated: July 8, 2022
Wilmington, Delaware

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Counsel to Cyprus Amax Minerals Company

Exhibit “F”

This is
EXHIBIT "F"
to the Affidavit of
ERIC DANNER
Sworn September 12, 2022

DocuSigned by:
Ben Muller
77FFB2B8DE444CE...

Ben Muller
Commissioner for Taking Affidavits
LSO #80842N

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 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

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

DS
RJV

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[1]

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

[1] 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.[2] In addition, the Debtors committed significant resources to mediating outstanding disagreements with each of Cyprus, Rio Tinto,

[2] 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.[3]

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

[3] 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.

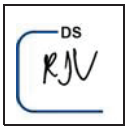
Creditor Classes & Distributions

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.

Class	Class Description[4]	Treatment	Estimated Recovery
Class 1 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%
Class 2 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%
Class 3a 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%
Class 3b 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%
Class 4 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
Class 5a 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%
Class 5b Debtor Intercompany Claims	Any claim held by a Debtor against another Debtor	Unimpaired, not entitled to vote	100%
Class 6 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

[4] These descriptions are neither comprehensive nor complete. For the proper definitions of each class, please refer to the Plan.

Deponent's Initials



Class	Class Description[4]	Treatment	Estimated Recovery
Class 7 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 Vale. 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[5]

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;

[5] 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 appraised 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/ImerysTalc/.

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:

Event	Date
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

Event	Date
Deadline to File Voting Certification	April 8, 2021, at 4:00 p.m. (Prevailing Eastern Time)
End of Fact Discovery	April 14, 2021
Affirmative Export 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
2C12EFAB5242430...

Nicholas Avis
Commissioner for Taking Affidavits
LSO #76781Q

DocuSigned by:
Ryan Van Meter
FEF366B664B9476...

RYAN VAN METER

Deponent's Initials

DS
RJV

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

AFFIDAVIT OF RYAN VAN METER
SWORN FEBRUARY 18, 2021

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Exhibit “G”

This is
EXHIBIT "G"
to the Affidavit of
ERIC DANNER
Sworn September 12, 2022

DocuSigned by:
Ben Muller
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Ben Muller
Commissioner for Taking Affidavits
LSO #80842N

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 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

AFFIDAVIT OF ERIC DANNER
(Sworn December 14, 2021)

I, Eric Danner, of the City of Boston, in the State of Massachusetts, United States of America (the "**US**"), MAKE OATH AND SAY:

1. I am a partner at CohnReznick LLP ("**CohnReznick**"), which maintains offices at 1301-6th Avenue, New York, New York. I am a CPA and hold a Bachelor of Arts in Economics from Vassar College and an MBA in Accounting/Finance from Boston University. On March 12, 2021, the United States Bankruptcy Court for the District of Delaware (the "**US Court**") entered an order (the "**CRO Order**") [Docket No. 3087] that authorized Imerys Talc America, Inc. ("**ITA**"), Imerys Talc Vermont, Inc. ("**ITV**"), and Imerys Talc Canada Inc. ("**ITC**", and together with ITA and ITV, the "**Debtors**") to (i) engage CohnReznick effective *nunc pro tunc* to January 28, 2021; (ii) designate me as their Chief Restructuring Officer, *nunc pro tunc* to January 28, 2021; and (iii) designate me as the President and Treasurer of the Debtors effective as of February 17, 2021. The CRO Order was recognized by the Ontario Superior Court of Justice (Commercial List) on April 19, 2021.

2. As a result of my role and tenure with CohnReznick and the Debtors, my review of public and non-public documents, and my discussions with the Debtors' employees and advisers, 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 relief, including recognizing the Foreign 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 dollar references in this Affidavit are in US dollars, unless otherwise specified.

I. BACKGROUND

5. The Debtors are three debtors-in-possession in the Chapter 11 Cases (as defined below) commenced before 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. Consequently, the Debtors are no longer engaged in the talc business.

7. The Debtors are 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 such claim is referred to herein as a "**Talc Personal Injury Claim**", a term that is more fully defined in the Plan (as defined below)).

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.

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. Richter Advisory Group Inc. was replaced by KPMG Inc. as the Information Officer on January 26, 2021.

12. On March 5, 2019, the Office of the United States Trustee for the District of Delaware (the "**U.S. Trustee**") appointed the Tort Claimants' Committee (the "**TCC**") in the Chapter 11 Cases. On June 3, 2019, the US Court entered an order appointing the future claimants' representative (the "**FCR**") pursuant to sections 105(a), 524(g)(4)(B)(i) and 1109(b) of the US Bankruptcy Code.

13. The events leading up to the within motion, including the factual background regarding the Debtors' business operations and the progress of the Chapter 11 Cases, are set out in greater detail in the Debtors' previous motion materials, which are available on the Information Officer's webpage: https://home.kpmg/ca/imerystalc. Copies of documents filed in the US Court in connection with the US Proceedings can be found on the webpage for Prime Clerk LLC ("**Prime Clerk**"), the Debtors' claims and noticing agent: https://cases.primeclerk.com/ImerysTalc/.

II. RECENT DEVELOPMENTS IN THE CHAPTER 11 CASES

(a) Overview

14. The Debtors have been actively pursuing their restructuring efforts in the United States. Since my last Affidavit sworn September 27, 2021, the US Court has entered the following orders:

a) *Order Granting Motion to Extend Time to Respond to Claims Objections*, entered on September 17, 2021 [Docket No. 4111];

b) *Order Granting Johnson & Johnson and Johnson & Johnson Consumer Inc.'s Motion for Leave to File and Serve a Late Reply in Support of its Motion Pursuant to 11 U.S.C. § 1126(e) for Entry of an Order Designating Votes to Accept 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 Cast By Bevan & Associates LPA, Inc., Williams Hart Boundas Easterby, and Trammell P.C.*, entered on September 24, 2021 [Docket No. 4156];

c) *Order Granting Motion to Seal Objection of Holders of Talc Personal Injury Claims Represented by Arnold & Itkin LLP to Motion of Bevan Claimants to Affirm Certain Vote Changes in Connection with the Voting on 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 Pursuant to Bankruptcy Rule 3018*, entered on September 24, 2021 [Docket No. 4157];

d) *Order Granting Johnson & Johnson and Johnson & Johnson Consumer Inc.'s Motion for Leave to File and Serve a Late Reply in Support of its Motion Pursuant to 11 U.S.C. § 1126(e) for Entry of an Order Designating Votes to Accept 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 Cast By Bevan & Associates LPA, Inc., Williams Hart Boundas Easterby, and Trammell P.C.*, entered on September 24, 2021 [Docket No. 4159];

e) *Order Authorizing the Debtors to File Certain Portions of the Declarations Filed in Support of the Debtors Objection to the J&J Motion and the Joinder and Reply Under Seal*, entered on September 24, 2021 [Docket No. 4160];

f) *Order Granting in Part and Denying in Part Motion of Holders of Talc Personal Injury Claims Represented by Arnold & Itkin LLP to Disregard Certain Vote Changes Made Without Complying with Bankruptcy Rule 3018, and the Required Showing of Cause in Connection with the Voting on 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*, entered on October 14, 2021 [Docket No. 4244], which, as discussed below, granted Arnold & Itkin LLP's Motion to Disregard [Docket No. 3624] with respect to the votes cast in favour of the Plan by Trammel P.C. and denied it as moot with respect to the votes cast in favour of the Plan by Bevan & Associates LPA Inc. and Williams Hart Boundas Easterby LLP;

g) *Order Denying Motion of Bevan Claimants to Affirm Certain Vote Changes in Connection with the Voting on 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*, entered on October 14, 2021 [Docket No. 4245], which, as discussed below, denied Bevan & Associates LPA Inc.'s motion seeking permission to change its votes pursuant to Bankruptcy Rule 3018 [Docket No. 3744];

h) *Order Granting Williams Hart Plaintiffs' Motion Pursuant to Rule 3018 to Affirm Certain Vote Changes in Connection with 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, entered on October 14, 2021 [Docket No. 4246], which, as discussed below, granted Williams Hart Boundas Easterby LLP's motion seeking permission to change its votes pursuant to Bankruptcy Rule 3018 [Docket No. 3922];

i) *Order Denying Johnson & Johnson and Johnson & Johnson Consumer Inc.'s Motion Pursuant to 11 U.S.C. § 1126(e) for Entry of an Order Designating Votes to Accept 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 Cast By Bevan & Associates LPA, Inc., Williams Hart Boundas Easterby LLP, and Trammell PC*, entered on October 14, 2021 [Docket No. 4247], which denied Johnson & Johnson and Johnson & Johnson Consumer Inc.'s motion to designate the votes of Bevan & Associates LPA Inc., Trammel P.C. and Williams Hart Boundas Easterby LLP if any of them are permitted to change their votes. The motion was denied as moot against the former two law firms and denied on the basis that the drastic remedy of designating the latter law firm's votes was not warranted on the facts;

j) *Revised Order Denying Motion of Bevan Claimants to Affirm Certain Vote Changes in Connection with the Voting on 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*, entered on October 15, 2021 [Docket No. 4254], which ordered that the Master Ballot filed by Bevan &

Associates LPA Inc. will not be counted as a vote in favour or against the Ninth Amended Plan;

k) *Order Sustaining Debtors' Tenth Omnibus Substantive Objection to Proofs of Claim Filed by Various Insurers*, entered on October 15, 2021 [Docket No. 4260], which disallowed and expunged certain claims made by certain insurance companies from the Debtors' claims register;

l) *Eighth Omnibus Order Awarding Interim Allowance of Compensation for Services Rendered and for Reimbursement of Expenses*, entered on October 28, 2021 [Docket No. 4299], which authorized payment to certain professionals retained by the Debtors, the TCC and the FCR for the period from December 1, 2020 to February 28, 2021;

m) *Order Sustaining Debtors Eleventh Omnibus (Substantive) Objection to a Certain No Liability Claim*, entered on November 12, 2021 [Docket No. 4351], which disallowed and expunged certain no liability claims from the Debtors' claims register;

n) *Order Approving First and Final Fee Application of PJT Partners LP as Investment Banker to the Debtors and Debtors-in-Possession for Allowance (and Final Approval) of Compensation for Services Rendered for the Period of November 7, 2019 Through February 17, 2021*, entered on November 30, 2021 [Docket No. 4387];

o) *Order (I) Appointing Mediators, (II) Referring Certain Matters to Mediation, and (III) Granting Related Relief,* entered on November 30, 2021 [Docket No. 4385] (the "**Mediation Order**").

15. At this time, the Debtors are seeking to recognize only the Mediation Order (the "**Foreign Order**"), which is described in greater detail below. A copy of the Foreign Order is attached hereto and marked as **Exhibit "A"**.

(b) The Plan of Reorganization[1]

(i) ***Overview***

16. 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. To this effect, the Debtors filed with the US Court on January 27, 2021, 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 "**Disclosure Statement**"). On September 16, 2021, the Ninth Amended Plan was amended post-solicitation and the Debtors filed with the US Court 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* [Docket No. 4099] (as may be further amended, the "**Plan**" or the "**Tenth Amended Plan**"), which contained certain updates and modifications.

[1] All capitalized terms used herein that are not otherwise defined have the meaning ascribed to them in the Plan.

17. The US Court entered an order approving the Disclosure Statement on January 27, 2021, and this Court recognized that order on February 23, 2021. Copies of the Plan, Disclosure Statement, and the Plan Supplement can be found on Prime Clerk's website.

18. The Plan is summarized in the Affidavit of Ryan Van Meter sworn February 18, 2021, which is attached hereto (without exhibits) and marked as **Exhibit "B"**.[2] In brief, the Plan contemplates the establishment of the Talc Personal Injury Trust pursuant to sections 105(a) and 524(g) of the Bankruptcy Code to which the Debtors' Talc Personal Injury Claims will be channeled upon the Effective Date. Upon the Effective Date of the Plan, the Talc Personal Injury Trust will take full ownership of the Reorganized North American Debtors, including certain settlement interests and the proceeds (less certain deductions) derived from the sale (the "**Sale**") of substantially all of the Debtors' assets to Magris Resources Canada Inc. ("**Magris**"), which closed on February 17, 2021 and resulted in a cash payment of $223 million to the Debtors.

19. The only voting class is Class 4: Talc Personal Injury Claims, which are claims of individuals based on bodily injury or death arising out of exposure to Debtors' talc or talc-containing products ("**Direct Talc Personal Injury Claims**") as well as claims of corporations, co-defendants or predecessors for indemnification, contribution or reimbursement ("**Indirect Talc Personal Injury Claims**").

[2] The description of the Ninth Amended Plan in the Affidavit of Ryan Van Meter sworn February 18, 2021, is equally applicable to the Plan, unless otherwise noted herein.

(ii) *The Cyprus Settlement*

20. Underlying the Foreign Order is the fact that the Plan incorporates a global settlement (the "**Cyprus Settlement**") among (a) the Debtors, (b) Cyprus Mines Corporation (the "**Cyprus Debtor**"), Cyprus Amax Mineral Company ("**CAMC**"), (c) the TCC, and (d) the FCR.

21. The Cyprus Settlement resolves the treatment of all Talc Personal Injury Claims relating to the Cyprus Debtor and CAMC, and resolves the disputes with the Cyprus Debtor and CAMC regarding, (i) the Debtors' entitlement to the proceeds of the Cyprus Talc Insurance Policies, and (ii) the rights of the Debtors and the Cyprus Debtor and CAMC to certain indemnities.

22. Subject to the occurrence of the Cyprus Trigger Date, the Cyprus Settlement (a) releases the Cyprus Protected Parties from the Estate Causes of Action and the Cyprus Released Claims, and (b) channels to the Talc Personal Injury Trust all Talc Personal Injury Claims against any Cyprus Protected Party. In return, and also subject to the occurrence of the Cyprus Trigger Date, the Talc Personal Injury Trust will receive $130 million in cash in seven installments, and the Cyprus Protected Parties (as applicable) will assign to the Talc Personal Injury Trust (a) the rights to and in connection with the Cyprus Talc Insurance Policies, and (b) all rights to or claims for indemnification, contribution, or subrogation against (i) any Person relating to the payment or defence 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 (ii) any Person relating to any other Talc Personal Injury Claim or other claims channelled to the Talc Personal Injury Trust.

23. On February 11, 2021, after the Cyprus Settlement was entered into, the Cyprus Debtor filed a voluntary petition for relief under chapter 11 of the US Bankruptcy Code (the "**Cyprus Chapter 11 Case**") with the US Court. The U.S. Trustee appointed the Tort Claimants'

Committee (the "**Cyprus TCC**") in the Cyprus Chapter 11 Case on March 4, 2021. On April 10, 2021, the US Court entered an order appointing the future claimants' representative in the Cyprus Chapter 11 Case (the "**Cyprus FCR**") pursuant to sections 105(a), 524(g) and 1109(b) of the US Bankruptcy Code.

(iii) ***Voting on the Plan***

24. The voting deadline for the Ninth Amended Plan was 4:00 p.m. (prevailing Eastern Time) on March 25, 2021 and was subject to extension by the Debtors. Votes in respect of Direct Talc Personal Injury Claims were solicited in accordance with the directive of their respective counsel. A law firm that certified that it had authority to vote on behalf of its clients could direct Prime Clerk to serve the firm with one solicitation package and one Master Ballot on which the firm must record the votes on the Ninth Amended Plan for each of its clients.

25. Prime Clerk received, reviewed, determined the validity of, and tabulated the ballots cast to accept or reject the Plan. Prime Clerk's final tabulation, which was released on May 7, 2021, showed that at least 75% in number of Class 4: Talc Personal Injury Claims voted to accept the Ninth Amended Plan, as required by s. 524(g) of the Bankruptcy Code:

Class	Class Description	Number Accepting	Number Rejecting	Amount Accepting	Amount Rejecting	Class Voting Result
4	Talc Personal Injury Claims	65,553	15,804	$62,553.00	$15,804.00	ACCEPTS
		79.83%	20.17%	79.83%	20.17%	

26. The US Court was originally expected to conduct the Confirmation Hearing beginning on June 22, 2021. The Confirmation Hearing has been adjourned several times and in my last

Affidavit sworn September 27, 2021, I stated that the US Court was expected to conduct the Confirmation Hearing beginning on November 15, 2021.

27. The Confirmation Hearing did not go ahead on November 15, 2021. Prior to the Confirmation Hearing, several motions (the "**Voting Motions**") were brought by various parties alleging that certain votes were impermissibly counted as votes in favour of the Ninth Amended Plan. If the Voting Motions were successful, the Debtors would not have achieved the requisite 75% of votes in favour of the Ninth Amended Plan.

28. The factual basis for the Voting Motions is as follows. Three law firms, Bevan & Associates, LPA, Inc. ("**Bevan & Associates**"), Trammel P.C. ("**Trammel**") and Williams Hart Boundas Easterby LLP ("**Williams Hart**"), initially voted, on behalf of their clients, against the Ninth Amended Plan, before changing their votes to accept the Ninth Amended Plan.

29. Trammel and Williams Hart changed their vote to a vote in favour of the Ninth Amended Plan after March 25, 2021. Bevan & Associates withdrew their vote against the Ninth Amended Plan before submitting a vote in favour of the Ninth Amended Plan after March 25, 2021. At the time of the tabulation of votes, neither Bevan & Associates, Trammel, nor Williams Hart had submitted a motion seeking permission to change their respective votes pursuant to Bankruptcy Rule 3018. Thereafter, Bevan & Associates and Williams Hart each filed a separate motion seeking permission to change their respective votes pursuant to Bankruptcy Rule 3018. Trammel never filed a Bankruptcy Rule 3018 motion.

30. The Debtors argued that the Solicitation Procedures Order allowed claimants to file superseding ballots before the voting deadline as extended by the Debtors. The Solicitation Procedures Order requires Prime Clerk to count the last-dated ballot received before or after

the voting deadline if the Debtors consent. Thus, the Solicitation Procedures Order obviated the need to file a Bankruptcy Rule 3018 motion.

31. The US Court held hearings with respect to the Voting Motions on June 22, 2021 and September 20, 2021 and issued its opinion on October 13, 2021 (the "**Voting Decision**"), which is attached hereto and marked as **Exhibit "C"**. The US Court ruled that the provision in the Solicitation Procedures Order on which the Debtors relied had arguably been improvidently entered. The US Court held that a party is not entitled to change its vote once cast as of right. Bankruptcy Rule 3018(a) only permits a change "for cause".

32. The US Court concluded that there was nothing in the Solicitation Procedures Order that would excuse the filing of a Bankruptcy Rule 3018 motion. Additionally, since the US Court ruled Bevan & Associates had conducted no diligence and submitted its Master Ballot without regard to whether any of its 15,713 clients had a Talc Personal Injury Claim, Bevan & Associates' votes in favor of the Ninth Amended Plan would not be counted. As a result, the US Court ordered that:

a) Trammel not be permitted to change its vote from "against" the Ninth Amended Plan to "in favour" – its 1,670 votes will remain votes to reject the Ninth Amended Plan;

b) Bevan & Associates not be permitted to change its vote from "against" the Ninth Amended Plan to "in favour" and its votes will be deemed withdrawn – its 15,719 votes will not be counted as a vote for or "against" the Ninth Amended Plan; and

c) Williams Hart be permitted to change its vote from "against" the Ninth Amended Plan to "in favour" – its 493 votes will be changed to reflect votes to accept the Ninth Amended Plan.

33. Due to the US Court's Voting Decision, the Debtors did not achieve the requisite votes in favour of the Ninth Amended Plan. The Debtors suspended all remaining Confirmation Deadlines established pursuant to the Confirmation Scheduling Order. The dates that were scheduled for the Confirmation Hearing were taken off the calendar and a new date for a future Confirmation Hearing has not been set.

(c) The Acquisition Motion and Vermont Acquisition Order

34. On May 14, 2021, the Debtors filed with the US Court the *Motion for Entry of Order (I) Approving Notice Procedures, (II) Authorizing Acquisitions and (III) Granting Related Relief* [Docket No. 3561] (the "**Acquisition Motion**"). The Acquisition Motion was summarized in my previous Affidavit sworn September 27, 2021.

35. In brief, due to the Sale, the Debtors hold significant amounts of cash in their bank accounts that earn minimal returns. To generate greater returns on the Sale proceeds, the Debtors believe the most provident course forward is to use a portion of the Sale proceeds to purchase one or more businesses. As a result, pursuant to the Acquisition Motion, the Debtors sought, among other things, authority to purchase one or more businesses for an aggregate purchase price not to exceed $12 million.

36. On June 22, 2021, the US Court held a hearing with respect to the Acquisition Motion, at the conclusion of which the US Court took the matter under consideration. As of the date of

this Affidavit, the US Court has still not released a decision with respect to the Acquisition Motion.

37. On July 29, 2021, the Debtors filed with the US Court the *Debtors' Motion for Entry of Order Authorizing Debtors to Pursue and Effectuate Purchase of Properties Located in Lyndonville, Vermont and Johnson, Vermont* [Docket No. 3881] (the "**Vermont Acquisition Motion**"). The Vermont Acquisition Motion was summarized in my previous Affidavit sworn September 27, 2021.

38. Pursuant to the Vermont Acquisition Motion, the Debtors requested authority to purchase certain properties located in Lydonville, Vermont and Johnson, Vermont, authority to make one or more refundable earnest deposits with respect to the acquisitions, and authority to take actions the Debtors deem necessary to effectuate the acquisition of the properties.

39. On August 24, 2021, the US Court entered the *Order Authorizing Debtors to Pursue and Effectuate Purchase of Property Located in Lydonville, Vermont and Johnson, Vermont* [Docket No. 3961] (the "**Vermont Acquisition Order**"), which granted the relief requested in the Vermont Acquisition Motion. The Vermont Acquisition Order was summarized in my previous Affidavit sworn September 27, 2021. The Vermont Acquisition Order was recognized by the Ontario Superior Court of Justice (Commercial List) on October 1, 2021.

III. OVERVIEW OF THE FOREIGN ORDER

40. The motion with respect to the Mediation Order was heard on November 15, 2021. The US Court entered the Mediation Order on November 30, 2021.

41. The Mediation Order:

a) authorizes Kenneth R. Feinberg, Esq. to serve as a mediator:

i. to mediate any and all issues related to the settlement (the "**Cyprus Settlement**") entered into by and among the Cyprus Debtor, CAMC, the Debtors and other parties and related issues (the "**Global Settlement Issues**");

ii. to mediate any and all issues related to the resolution of disputes over the obligations of certain insurers that issued insurance policies to the Cyprus Debtor and its past and present affiliates (the "**Insurance Issues**" and together with the Global Settlement Issues, the "**Mediation Issues**");

b) provides that the mediation with respect to the Insurance Issues shall proceed jointly between Lawrence W. Pollack, Esq. and Mr. Feinberg (together, the "**Mediators**") and that Mr. Pollack will assist Mr. Feinberg in mediating disputes with respect to the Global Settlement Issues, as appropriate;

c) refers the Mediation Issues to mandatory mediation (the "**Mediation**"); and

d) grants related relief.

42. The parties that are to participate in mandatory mediation pursuant to the Mediation Order are:

a) the Debtors;

b) the TCC;

c) the FCR;

d) the Cyprus Debtor;

e) CAMC;

f) the Cyprus TCC;

g) the Cyprus FCR;

h) Century Indemnity Company, Federal Insurance Company and Central National Insurance Company of Omaha (collectively, the "**Century Insurers**");

i) Columbia Casualty Company, Continental Casualty Company, the Continental Insurance Company, as successor to CAN Casualty of California and as successor in interest to certain insurance policies issued by Harbor Insurance Company, Stonewall Insurance Company (now known as Berkshire Hathaway Specialty Insurance Company), National Union Fire Insurance Company of Pittsburgh PA, and Lexington Insurance Company to the extent that they issued policies to Cyprus Mines Corporation prior to 1981 (collectively, the "**Cyprus Historical Excess Insurers**");

j) Travelers Casualty and Surety Company (f/k/a The Aetna Casualty and Surety Company) and The Travelers Indemnity Company (collectively, "**Travelers**"); and

k) TIG Insurance Company, as successor by merger to International Insurance Company, International Surplus Lines Insurance Company, Mt. McKinley Insurance Company (formerly known as Gibraltar Insurance Company),

Fairmont Premier Insurance Company (formerly known as Transamerica Premier Insurance Company), Everest Reinsurance Company (formerly known as Prudential Reinsurance Company), and The North River Insurance Company (collectively, the "**Riverstone Insurers**" and with the Century Insurers, Cyprus Historical Excess Insurers and Travelers, the "**Insurers**"),

(collectively, the "**Mediation Parties**").

43. If it is necessary or would be beneficial to the Mediation, any additional party or parties may be added to the Mediation in the future if the Mediation Parties and the Mediators agree or the US Court orders the inclusion of such parties.

44. There is no date specified in the Mediation Order for the commencement of the mandatory mediation. It will be left up to the Mediators, in consultation with the Mediation Parties and any other party or parties subsequently added to the Mediation, to determine a schedule, as they deem appropriate. It is expected that the mediation process can begin forthwith, and the term of the Mediation expires on February 28, 2022, subject to further order of the US Court.

45. The Mediation will not delay the progress of the Chapter 11 Cases. On the contrary, the Mediation is expected to lead to a cost-effective and more expeditious resolution of these Chapter 11 Cases.

(a) Dispute Over Choice of Mediator(s)

46. The Mediation Order was the subject of considerable debate, with approximately 15 filings being made on the subject, comprised of various motions, joinders and replies. The main topic of dispute was as to the choice of mediator. In particular:

a) The Cypress Historical Excess Insurers proposed the appointment of Jonathan B. Marks as mediator.

b) The Century Insurers proposed that Cyprus Mines, CAMC, the Cyprus TCC and the Cyprus FCR be added to an ongoing court-appointed mediation before Lawrence W. Pollack, Esq., between the Century Insurers, on the one hand, and the Debtors, TCC and FCR, on the other hand.

c) Johnson & Johnson and LTL Management LLC (collectively, "**J&J**") objected to the proposed form of order and requested that the US Court expressly limit the scope of the mediation privilege to prevent the Mediation Parties from later invoking the privilege in an attempt to withhold relevant information from J&J. Specifically, J&J sought to limit the scope of the mediation privilege as it relates to any documents or communications concerning the Trust Distribution Procedures and/or that expressly refer to J&J or otherwise impact J&J's rights, defenses, or obligations.

47. The Debtors acceded to the Century Insurers request and proposed a revised form of order which became the subject of the Mediation Order now sought to be recognized. The Debtors resolved J&J's objection in advance of the hearing.

(b) Kenneth Feinberg's Qualifications

48. Kenneth Feinberg is one of the U.S.'s leading experts in mediation and alternative dispute resolution. He has acted as an independent mediator for more than 30 years.

49. His professional experience includes administering numerous high-profile compensation programs. Kenneth Feinberg's most notable mandate is as acting as the Special

Master of the September 11th Victim Compensation Fund. In this capacity he disseminated over $7 billion in funds to victims of the September 11 tragedy.[3]

50. Kenneth Feinberg also possesses recent experience acting as a mediator in the insolvency context, having been appointed by the Bankruptcy Court to serve as the mediator in the opioid Purdue Bankruptcy for the purpose of resolving financial allocation disputes involving various public and private creditors and the debtor. His insolvency experience also extends to having been appointed Fee Examiner of the Lehman Brothers bankruptcy case, in which he examined and instituted caps on fees and expenses charged by professionals retained during the bankruptcy process. He has also mediated numerous matters involving insurance coverage disputes. A copy of Mr. Feinberg's *curriculum vitae* is attached hereto and marked as **Exhibit "D"**.

(c) Lawrence Pollack's Qualifications

51. Mr. Pollack has experience serving as a mediator in many complex commercial matters. For 30 years he has addressed issues related to domestic and international insurance.

52. On October 23, 2020, the U.S. Court entered a substantially similar order which appointed Lawrence W. Pollack as mediator to conduct a mediation among the Debtors and the Century Insurers (as well as with other insurers). As a result, Mr. Pollack has been extensively involved in prior mediation sessions in these Chapter 11 Cases between the Debtors and the Century Insurers (as well as with other insurers).

[3] Kenneth Feinberg's role as Special Master of the September 11th Victim Compensation Fund is so famous that it became the subject of a rendition by actor Michael Keaton in the Netflix film *Worth*.

53. Mr. Pollack was also instrumental in assisting the Cyprus Debtor, CAMC, the Debtors, the TCC and the FCC in reaching the Cyprus Settlement. Therefore, he will be able to offer valuable assistance to Mr. Feinberg, as appropriate, in mediating disputes with respect to the Cyprus Settlement and related issues.

(d) Compensation Structure

54. The Debtors will share the Mediators' fees and expenses (the "**Mediation Fees**") with the Cyprus Debtor. The Debtors will bear 50% of the Mediation Fees, and the Cyprus Debtor will bear the remaining 50% of the Mediation Fees. The Mediation Fees are capped as follows:

a) Mr. Feinberg's fees shall not exceed:

i. a flat monthly fee of up to $125,000 for custodian work and work associated with the exchange of information;

ii. a flat monthly fee of $250,000 for work associated with mediation of the Insurance Issues with the Insurers, and

iii. a flat monthly fee of $300,000 for work associated with the Global Settlement Issues.

b) Mr. Pollack's fees shall not exceed:

i. $300,000 in the aggregate.

(e) Mediation is in the Debtors' Best Interest

55. Some of the key remaining open issues facing the Debtors in these Chapter 11 Cases are the resolution of insurance coverage disputes and issues with respect to the Cyprus

Settlement. Litigating coverage issues and issues that may arise in relation to the Cyprus Settlement may cause undue delay and excessive costs, including professional fees.

56. The appointment of the Mediators is necessary to address these key remaining issues and avoid contentious, time-intensive and expensive court proceedings relating to coverage issues and the Cyprus Settlement. Whereas the costs of the Mediation are being shared by the Debtors and the Cyprus Debtor, the costs of protracted litigation in relation to the Mediation Issues would predominantly be borne by the Debtors' estates to the detriment of their creditors and the only impaired voting class in the Debtors' Chapter 11 Cases—the Talc Personal Injury Claimants.

57. The proposal embodied in the Mediation Order maximizes efficiencies while ensuring that the Mediation Parties will benefit from the retention of skillful mediators with differing, and synergistic, expertise and experience. Mr. Pollack's skills and experience will complement Mr. Feinberg's to achieve an efficient Mediation at relatively minimal incremental costs.

58. Accordingly, the Debtors' estates, and ultimately the Talc Personal Injury Claimants, will benefit from the Mediators' vast experience with the hope that the Mediation will enable the Mediation Parties to resolve the Mediation Issues on a consensual basis in advance of the confirmation hearing on the Plan.

(f) Impact on Canadian Stakeholders

59. ITC is one of the Debtors that the Mediation Order contemplates participating in the Mediation. The Mediation Issues include issues relating to the Cyprus Settlement, to which ITC is a party. As the Mediation is expected to maximize value for the Debtors' estates and

move the Chapter 11 Cases towards an efficient resolution, no Canadian stakeholders are anticipated to be prejudiced as a result of recognizing the Mediation Order.

IV. NEXT STEPS

60. As noted above, the US Court has not yet entered an order with respect to the Acquisition Motion. In the event the US Court enters such an order, the Foreign Representative intends to seek recognition of it in Canada.

61. To achieve Plan confirmation at this stage, the Debtors will need to file a new disclosure statement and solicitation procedures. As and when the Debtors achieve these steps, the Foreign Representative intends to bring a motion before this Court for recognition, as appropriate. For greater certainty, the Foreign Representative expects to seek recognition of any future order the Debtors obtain regarding the disclosure statement and/or solicitation procedures.

62. If ultimately the US Court enters an order confirming the Plan, then 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 Plan be implemented and made effective in Canada in accordance with their terms. The Foreign Representative has not yet scheduled a date with this Court to recognize a potential Plan confirmation order, but any such recognition hearing would happen after the Confirmation Hearing (which is not currently scheduled).

V. CONCLUSION

63. 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, Eric Danner 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 Eric Danner, stated as being in the City of Boston, in the State of Massachusetts, United States of America, to the City of Toronto, Ontario, on December 14, 2021, in accordance with O. Reg 431/20 *Administering Oath or Declaration Remotely*.

DocuSigned by:
Ben Muller
77FFB2B8DE444CE...

Ben Muller
Commissioner for Taking Affidavits
LSO #80842N

DocuSigned by:
Eric Danner
107EF4ADACCA4CC...

ERIC DANNER

Deponent's Initials DS ED

Exhibit “H”

This is
EXHIBIT "H"
to the Affidavit of
ERIC DANNER
Sworn September 12, 2022

DocuSigned by:
Ben Muller
77FFB2B8DE444CE...

Ben Muller
Commissioner for Taking Affidavits
LSO #80842N

BROUGHTON RECLAMATION AGREEMENT

This Reclamation Agreement (this "***Agreement***") is made and entered into by and between Imerys Talc Canada Inc. ("***Imerys***"), Les Forages Andre Vachon Inc. ("***Forages***"), and Les Pierres Stéatites Inc. ("***Stéatites***"). Imerys, Forages, and Stéatites may be referred to hereinafter individually as a "***Party***" or together as the "***Parties***."

RECITALS

WHEREAS, on October 6, 2010, Forages purchased from Imerys (then known as Luzenac Inc., which subsequently changed its name to Imerys Talc Canada Inc. in 2011) a property located at 2, l5e rang within the Town of Saint-Pierre-de Broughton, Quebec, Canada, about 15 km northeast of Thetford Mine, 328977 m East and 5125199 m North, UTM Zone 19T, as more fully described in the deed of sale signed in front of Marie-Josée Leclerc, notary, bearing registration number 17,621,082 in the Quebec land register (the "***Deed of Sale***"), on which the Saint-Pierre-de-Broughton talc mine (the "***Mine***") was operated (the "***Site***").

WHEREAS, pursuant to Section 6.1.1 of the Deed of Sale, Forages assumed "responsibility in respect of the physical condition of the Property and all environmental liability in respect of the Property."

WHEREAS, at the time of this acquisition, Imerys (then Luzenac Inc.) had a rehabilitation and restoration plan (the "***Plan***") in place relating to the Mine, which Plan was approved by the Ministry of Energy and Natural Resources ("***MERN***") in April 2004.

WHEREAS, in connection with the Plan, Imerys put in place with MERN financial assurance in the amount of $58,500 CAD (the "***Plan Payment***"), which MERN is currently holding pending rehabilitation and restoration of the Mine.

WHEREAS, following discussions with MERN as to the transfer to Forages of liability for Site reclamation, on April 21, 2021, the Parties entered into the Broughton Reclamation Term Sheet (the "***Term Sheet***") to provide a framework for MERN and the Ministry of Environment and the Fight Against Climate Change ("***MEFACC***") to approve the transfer from Imerys to Forages and Stéatites of all obligations and liabilities relating to the rehabilitation and restoration of the Site, including the Plan, (the "***Liability Transfer***").

WHEREAS, pursuant to the Term Sheet, the Parties provided the Term Sheet to MERN in May 2021 and sought MERN's approval of the Liability Transfer. MERN informed the Parties in May 2021 that it would agree to the Liability Transfer, subject to a site visit to review the scope of the reclamation work. MERN and the Parties performed a site visit in August 2021. MERN conducted a further financial review of the Liability Transfer and informed the Parties in January 2022 that it would approve the Liability Transfer, subject to Imerys' agreement to disburse a payment towards rehabilitation and restoration of the Site in a manner satisfactory to MERN.

WHEREAS, the Parties enter into this Agreement to effectuate the Liability Transfer in accordance with MERN's direction.

NOW THEREFORE, in consideration of the foregoing and of the mutual promises and benefits contained hereinafter, and for other good and valuable consideration, the receipt and sufficiency of which is hereby acknowledged, the Parties agree as follows:

AGREEMENT

1. The Work. Forages and Stéatites shall ensure the rehabilitation and restoration of the Site, in accordance with the Plan and all applicable laws, rules, regulations, directives, guidelines, policies and other legal requirements, to the satisfaction of MERN, MEFACC, and any other applicable governmental agencies and/or judicial bodies with jurisdiction (the "***Work***") in order to secure the full and final release of Imerys for any obligations or liabilities related to the Site at any time, including the issuance by MERN in favour of Imerys of a certificate of release under section 232.10 of the *Mining Act* (the "***Release***").

    a. Work Phase I. Within three months following MERN's issuance of the Release, Forages and Stéatites shall complete the following work tasks, as discussed in detail in Exhibit 1 (*Ancien Site Minier À Saint-Pierre-De-Broughton, Rapport Annuel 2019, ENV0410-1502-PA*), Exhibit 2 (*Imerys Talc Canada Restauration Du Site Minier De St-Pierre De Broughton, Travaux 2020, INF0410-55000*), and Exhibit 3 (*Inspection de Site en Vue D'Une Opinion Geotechnique, 200155-GT1*), and provide all evidence thereof to Imerys and MERN:

        i. Restoration of Waste Dump No. 1,
        ii. Restoration of Unnamed Dump,
        iii. Culvert Repair,[1]
        iv. Work on the Pit Wall in Accordance With Recommendations Described in Exhibit 3, and
        v. Removal of the Pit Infrastructures and Residual Waste.

    b. Work Phase II. Within five months following MERN's approval of the Phase I work tasks, but no later than twelve months after the Release, Forages and Stéatites shall complete the following work task, as discussed in detail in Exhibit 1, Exhibit 2, and Exhibit 4 (*SRK Consulting Memo on Waste Dump 2 Reprofiling and GCM Executive Summary, NPR0410-1501-00*), and provide all evidence thereof to Imerys and MERN:

        i. Restoration of Waste Dump No. 2, in accordance with option 3 described in Exhibit 4.

    c. Work Phase III. Within six months following MERN's approval of the Phase II work tasks, Forages and Stéatites shall initiate the following work task, as

[1] As of the date of this Agreement, the Parties believe culvert repair work is complete and pending approval by MERN.

discussed in detail in Exhibit 1, and upon completion, Forages and Stéatites shall provide all evidence thereof to Imerys and MERN:

i. Groundwater Monitoring.

d. Timing of Work; Force Majeure. Forages and Stéatites shall use best efforts to comply with each deadline established in subsections 1.a - 1.c. Forages and Stéatites shall not be liable for any delay in complying with such a deadline to the extent the delay is caused by any event or circumstance that is not within the reasonable control of Forages and Stéatites, which events or circumstances include: adverse weather conditions, pandemics (as declared pursuant to local, provincial or federal law), war, fires, earthquakes, floods, civil disturbances, vandalism, or labor disputes. Forages and Stéaties will promptly notify MERN and Imerys if such delay is expected.

2. Payment, Escrow Account, and FA. Imerys shall contribute a payment to support the completion of the Work in accordance with this Section 2 and the timeframes identified in subsections (a)-(b) herein (the "***Payment***"). The Parties intend for the Payment to be disbursed to Forages (for the benefit of Forages and Stéatites) in accordance with this Section 2, following completion of Work Phases I-III by Forages and Stéatites to the satisfaction of MERN and MERN's authorization of such disbursements. The Payment shall consist of the Escrow Amount (defined below) and the MERN Amount (defined below).

a. Escrow Amount. Within fifteen (15) business days following Imerys' receipt of the Release, Imerys shall form an escrow account (the "***Escrow Account***") and deposit in the Escrow Account a payment in the amount of $231,000 USD (the "***Escrow Amount***"). Imerys shall form the Escrow Account by entering into, with an independent third party selected by Imerys who will act as the escrow agent (the "***Escrow Agent***"), an agreement substantially similar to Exhibit 5 hereto (*Form of Escrow Account Agreement*). In accordance with Exhibit 5, the Parties intend that MERN will authorize the disbursement to Forages of (i) $85,000 USD following completion of Work Phase I to the satisfaction of MERN and (ii) $146,000 USD following completion of Work Phase II to the satisfaction of MERN.

b. MERN Amount. MERN is currently in possession of Imerys' Plan Payment in the amount of $58,500 CAD (the "***MERN Amount***") (which is approximately $46,000 USD), and which is to be returned to Imerys upon completion of the Work. Within fifteen (15) business days following the Effective Date (defined below), Imerys shall submit to MERN a letter substantially similar to Exhibit 6 hereto (*Form of Plan Payment Letter*). The purpose of the letter is to request that, subject to MERN's issuance of the Release, MERN (i) consider the MERN Amount to serve as a guarantee for Forages and Stéatites in connection with the Work, and (ii) disburse the MERN Amount to Forages following completion of Work Phase III to the satisfaction of MERN.

3. Additional Work Costs. Forages and Steatites shall, by way of any arrangement acceptable to MERN, pay and maintain any additional amount of capital that MERN requires in connection with the Work.

4. Indemnification. Forages and Steatites agree to jointly and severally indemnify, defend, release and hold harmless Imerys, its directors, officers, employees, agents, principals, representatives, successors and assigns from and against any liability, obligation, responsibility, loss, damage, claim, demand, proceeding, penalty, fine, cost or expense arising out of, as a result of, or in any way relating to the Work, the Plan or the Site.

5. Termination. Imerys shall have the unilateral right to terminate this Agreement if Imerys determines, in its sole discretion, that MERN, MEFACC, the United States Bankruptcy Court for the District of Delaware or the Ontario Superior Court of Justice (the "***Courts***"), or any other governmental agency or judicial body with jurisdiction over the Site or Imerys' bankruptcy proceeding, will not timely approve of or consent to this Agreement, that this Agreement would not result in the full and final resolution of Imerys' liability and responsibility with respect to the Site, or that a Release (or similar instrument) in Imerys' favor cannot reasonably be obtained from a relevant governmental agency in order to effectuate the full and final resolution of Imerys' liability and responsibility with respect to the Site.

6. Condition Precedent. This Agreement shall not become effective until Imerys receives approval from both Courts of this Agreement (the "***Condition Precedent***"), or until Imerys has waived the Condition Precedent, in its sole discretion. The first date after satisfaction of the Condition Precedent shall constitute the "***Effective Date***".

7. Confidential Information. Forages and Steatites acknowledge that Imerys may, from time to time, provide to Forages, Steatites, or their employees, agents, principals, or officers, documentation or materials relating to the Site, the Work, or this Agreement, including, but not limited to, documentation or materials prepared or held by Imerys' former consultant, GCM Consultants (collectively, "***Confidential Information***"). Following the execution of this Agreement, Forages and Steatites agree:

    a. That Imerys makes no representations or warranties whatsoever regarding Confidential Information;
    b. To refrain from providing or distributing Confidential Information to any third parties without Imerys' express written consent; and
    c. To promptly return or destroy any, or all, Confidential Information upon Imerys' request.

8. Notices. All notices or other communications required or contemplated by this Agreement shall be deemed to have been properly given if given in writing and delivered either: (a) by hand in person; (b) by registered or certified mail, return receipt requested; (c) by overnight courier delivery service that provides a return receipt; or (d) by electronic mail. Addresses

for notices may be changed by notice to the other Party given in the manner provided herein.

If to Imerys:

Imerys Talc Canada, Inc.
c/o CohnReznick LLP
Attn: Eric Danner
1301 Avenue of the Americas
New York, New York 10019
Eric.Danner@cohnreznick.com

If to Forages or Steatites:

Jean-Francois Vachon
770, rang 7 Nord
East Broughton, Qc CAN, G0N 1H0
jf@soapstonesupply.com

With a copy to:

Aron Potash
Latham & Watkins LLP
355 South Grand Avenue, Suite 100
Los Angeles, CA 90071-1560
Aron.Potash@lw.com

9. Entire Agreement. This Agreement, together with the exhibits thereto, the Term Sheet, and the Deed of Sale contain the entire understanding of the Parties with respect to the subject matter hereof and supersede all prior agreements and understandings, oral or written, with respect to such matters. Imerys reserves all rights to enforce the obligations of Forages and Stéatites under the Deed of Sale and the Term Sheet.

10. Governing Law. This Agreement shall be enforced, interpreted, and construed in accordance with the applicable laws of the State of Delaware, United States of America. Any dispute or litigation pertaining to the interpretation or application of this Agreement shall be exclusively decided by the courts of the State of Delaware, United States of America.

11. Counterparts; Electronic Delivery. This Agreement may be executed in two or more counterparts, each of which shall be deemed an original, but all of which taken together shall constitute one and the same instrument. Signatures to this Agreement transmitted by facsimile, email, portable document format (or .pdf), or by any other electronic means intended to preserve the original graphic and pictorial appearance of this Agreement shall have the same effect as the physical delivery of the paper document bearing original signature.

12. Language. The Parties have expressly required that this Agreement and all documents relating thereto be drafted in English. *Les parties ont expressément exigé que la présente Convention ainsi que tous les documents qui s'y rapportent soient rédigés en anglais.*

13. Amendments. This Agreement may be amended or modified only by a written instrument executed by each Party hereto.

14. Successors and Assigns. All of the terms and conditions of this Agreement shall be binding upon, and inure to the benefit of and be enforceable by, the Parties hereto, as well as their respective successors and assigns.

15. Imerys' Sole Obligations. For the avoidance of doubt, Imerys' sole obligations under this Agreement are to (i) form the Escrow Account with the Escrow Agent using an agreement substantially similar to Exhibit 5, (ii) deposit the Escrow Amount into the Escrow Account, and (iii) submit a letter to MERN substantially similar to Exhibit 6. Upon completion of these obligations, Imerys shall be deemed to have fully complied with all of its obligations under this Agreement.

16. Validity. If any provision included in this Agreement proves to be invalid or unenforceable, it shall not affect the validity of the remaining provisions.

[Signature pages follow]

IN WITNESS WHEREOF, the Parties have entered into this Agreement to be effective as of the Effective Date.

Imerys Talc Canada Inc.:

By: DocuSigned by: Eric Danner 1DB14976B03745B... _____

Name: Eric Danner

Title: President

Date: July 22, 2022

Les Forages André Vachon Inc.:

By: _____

Name: André Vachon

Title: Président

Date: 25/07/2022

Les Pierres Stéatites Inc.:

By: _____

Name: Jean François Vachon

Title: President

Date: 25/07/2022

[End of signature pages]

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

AFFIDAVIT OF ERIC DANNER
SWORN SEPTEMBER 12, 2022

STIKEMAN ELLIOTT LLP
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bmuller@stikeman.com

Lawyers for the Applicant

TAB 3

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

ONTARIO
SUPERIOR COURT OF JUSTICE
(COMMERCIAL LIST)

THE HONOURABLE	)	THURSDAY, THE 15TH
	)	
	)	
MR. JUSTICE MCEWEN	)	DAY OF SEPTEMBER, 2022
	)	

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

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 Eric Danner sworn September 12, 2022 (the "**Fourth Danner Affidavit**"), the Sixth Report of KPMG Inc., in its capacity as information officer (the "I**nformation Officer**") dated September [●], 2022, 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 Ben Muller sworn September [●], 2022, 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 Fourth Danner Affidavit.

3. **THIS COURT ORDERS** that the following orders of the United States Bankruptcy Court for the District of Delaware, the United States District Court for the District of Delaware and/or the United States Court of Appeals for the Third Circuit 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 Stipulation and Agreement by and Among the Mediation Parties Regarding the Term of Mediation,* entered on May 23, 2022 [Docket No. 4818];

(b) *Final Order by Third Circuit Court of Appeals, Re: Appeal on District Court Civil Action Number: 19-944,* entered on July 6, 2022 [Docket No. 4909];

(c) *Final Order by District Court Judge Maryellen Noreika, Re: Appeal on Civil Action Number: 19-944,* entered on November 25, 2020 [Docket No. 2566];

(d) *Order Approving Stipulation and Agreement by and Among the Mediation Parties Regarding the Term of Mediation*, entered on July 13, 2022 [Docket No. 4933]; and

(e) *Order (I) Approving Broughton Reclamation Agreement and Escrow Agreement and (II) Authorizing Imerys Talc Canada Inc. to Perform All Obligations Thereunder,* entered on August 15, 2022 [Docket No. 5002].

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.

_____

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
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Proceeding commenced at Toronto

ORDER
(RECOGNITION OF FOREIGN ORDERS)

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Lawyers for the Foreign Representative

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 September 15, 2022)

STIKEMAN ELLIOTT LLP
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Lawyers for the Applicant