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 ORDER)
(Returnable December 22, 2021)

December 14, 2021

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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

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

SERVICE LIST
(December 14, 2021)

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INDEX

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

I N D E X

TAB 1

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

NOTICE OF MOTION[1]
(Re: Recognition of Foreign Order)
(Returnable December 22, 2021)

The Applicant, Imerys Talc Canada Inc. ("**ITC**"), will make a motion to a judge presiding over the Commercial List on December 22, 2021 at 9:30 a.m. or as soon after that time as the motion can be heard by video conference due to the COVID-19 crisis. The video conference details can be found in Schedule "A" to this Notice of Motion. Please advise Ben Muller if you intend to join the hearing of this motion by emailing bmuller@stikeman.com.

PROPOSED METHOD OF HEARING:

The motion is to be heard orally by video conference.

THE MOTION IS FOR:

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

[1] All capitalized terms not otherwise defined herein shall have the meaning ascribed to them in the affidavit of Eric Danner sworn December 14, 2021 (the "**Second Danner Affidavit**").

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 Plan resolves the Talc Personal Injury Claims against the Debtors and certain other parties by, among other things, channelling all Talc Personal Injury Claims to a trust (the "**Talc Personal Injury Trust"**);

10. In exchange, the Talc Personal Injury Trust will take ownership of certain assets upon the Plan's Effective Date, which will include certain settlement interests and the proceeds (less certain deductions) derived from the sale of substantially all of the Debtor's assets to Magris Resources Canada Inc., which closed on February 17, 2021, and resulted in a cash payment of US$223 million to the Debtors;

11. As a result of the Sale, the Debtors are no longer engaged in their historic talc business;

(ii) The Cyprus Settlement

12. The Plan incorporates a global settlement (the "**Cyprus Settlement**") that channels all Talc Personal Injury claims against any Cyprus Protected Party, which includes Cyprus Mines Corporation (the "**Cyprus Debtor**"), to the Talc Personal Injury Trust;

13. In return, the Cyprus Settlement provides that the Talc Personal Injury Trust will receive US$130 million in cash and will be assigned rights to certain insurance policies and indemnities;

14. On February 11, 2021, the Cyprus Debtor filed a voluntary petition for relief under chapter 11 of the US Bankruptcy Code;

(iii) Voting on the Plan

15. The voting deadline for the Ninth Amended Plan was March 25, 2021 and was subject to extension by the Debtors;

16. The tabulation of votes that was released on May 7, 2021 showed that the Ninth Amended Plan received the requisite 75% of votes in favour of the Ninth Amended Plan;

17. The Confirmation Hearing was expected to take place on November 15, 2021;

18. Prior to the Confirmation Hearing, the US Court heard several motions (the "**Voting Motions**") brought by various parties alleging that certain votes were impermissibly counted as votes in favour of the Ninth Amended Plan;

19. The US Court issued its opinion on October 13, 2021 (the "**Voting Decision**"). As a result of the US Court's Voting Decision, the Debtors did not achieve the requisite votes in favour of the Ninth Amended Plan;

20. 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;

The Acquisition Motion

21. On May 14, 2021, the Debtors filed a motion (the "**Acquisition Motion**") [Docket No. 3561] seeking, among other things, authority to purchase one or more businesses for an aggregate purchase price not to exceed US$12 million;

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

23. No decision has been released with respect to the Acquisition Motion as of this date;

The Vermont Acquisition Order

24. On July 29, 2021, the Debtors filed a motion (the "**Vermont Acquisition Motion**") [Docket No. 3881] seeking, among other things, authority to purchase certain properties located in Vermont;

25. 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;

26. This Court recognized the Vermont Acquisition Order on October 1, 2021;

The Mediation Order

27. Certain issues have arisen in connection with 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**");

28. The Mediation Issues are some of the key remaining issues in the Chapter 11 Cases;

29. Resolution of the Mediation Issues prior to the Confirmation Hearing on the Plan will contribute to an efficient resolution of the Chapter 11 Cases;

30. Accordingly, on November 30, 2021, the US Court entered the Mediation Order that, among other things, authorizes Kenneth R. Feinberg, Esq. to serve as a mediator to mediate the Mediation Issues;

31. 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. (together, the "**Mediators**") and that Mr. Pollack will assist Mr. Feinberg in mediating disputes with respect to the Global Settlement Issues, as appropriate;

32. The Debtors will share the Mediators' fees and expenses with the Cyprus Debtor equally;

33. The term of the Mediation expires on February 28, 2022, subject to further order of the US Court;

34. The recognition of the Mediation Order is not anticipated to cause material prejudice to Canadian stakeholders;

Other Grounds

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

36. 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

37. 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:

38. The Second Danner Affidavit;

39. The Mediation Order, a copy of which is attached to the Second Danner Affidavit;

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

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

December 14, 2021

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Schedule "A"

Zoom Coordinates
December 22, 2021 at 9:30 noon Eastern Time (US and Canada)

Join Zoom Meeting
https://us02web.zoom.us/j/89692533955?pwd=N0tzMTliV0I4aVdNNnU3VGx4RThyUT09

Meeting ID: 896 9253 3955
Passcode: 795296

One tap mobile
+17789072071,,89692533955#,,,,*795296# Canada
+12042727920,,89692533955#,,,,*795296# Canada

Dial by your location
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+1 204 272 7920 Canada
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+1 587 328 1099 Canada
+1 647 374 4685 Canada
+1 647 558 0588 Canada

Meeting ID: 896 9253 3955
Passcode: 795296

Find your local number: https://us02web.zoom.us/u/kbrcJqbSYZ

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

ONTARIO
SUPERIOR COURT OF JUSTICE
(COMMERCIAL LIST)

Proceeding commenced at Toronto

NOTICE OF MOTION
(Returnable December 22, 2021)

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Lawyers for the Applicant

TAB 2

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

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

This is
EXHIBIT "A"
to the Affidavit of
ERIC DANNER
Sworn December 14, 2021

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.: 4291; 4290; 4295; 4292; 4313; 4315

and

In re:	:	Chapter 11
CYPRUS MINES CORPORATION,[2]	:	Case No. 21-10398 (LSS)
Debtor.	:	Re: Docket Nos.: 593; 595; 603; 605; 609

ORDER (I) APPOINTING MEDIATORS, (II) REFERRING CERTAIN MATTERS TO MEDIATION, AND (III) GRANTING RELATED RELIEF

Upon the motions (the "**Motions**") of (i) the debtors and debtors-in-possession (the "**Imerys Debtors**") in Case No. 10289 (LSS) and jointly administrated cases (the "**Imerys Cases**") and (ii) the debtor and debtor-in-possession (the "**Cyprus Debtor**") in Case No. 21-10398 (LSS) (the "**Cyprus Case**") and Roger Frankel, the future claimants' representative appointed in the Cyprus Case (collectively, the "**Movants**"), for entry of an order (this "**Order**") referring the

[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.

Mediation Issues (as defined below) to mediation (the "**Mediation**") among the Parties (as defined below), as more fully set forth in the Motions; and the Court having jurisdiction over this matter pursuant to 28 U.S.C. § 1334 and the *Amended Standing Order of Reference from the United States District Court for the District of Delaware,* dated February 29, 2012; and entry of this Order being a core proceeding within the meaning of 28 U.S.C. § 157(b)(2); and the Movants having consented to entry of a final order by this Court under Article III of the United States Constitution; and venue of this proceeding and the Motions in this District being proper pursuant to 28 U.S.C. §§ 1408 and 1409; and appropriate notice of and the opportunity for a hearing on the Motions having been given, and it appearing that no other or further notice need be provided; and this Court having reviewed the Motions; and all objections to the Motions having been withdrawn, resolved or overruled; and the relief requested in the Motions being in the best interests of (i) the Cyprus Debtor's estate and its creditors, (ii) the Imerys Debtors' estates and their creditors and (iii) other parties in interest; and this Court having determined that the legal and factual bases set forth in the Motions establish just cause for the relief granted herein; and after due deliberation and sufficient cause appearing therefor,

IT IS HEREBY ORDERED THAT:

1. The Motions are GRANTED as set forth herein.

2. This Order and the relief granted hereby shall be entered on the dockets of, and shall be fully applicable and enforceable in, the above-captioned Cyprus Case and the above-captioned Imerys Cases.

3. Kenneth R. Feinberg, Esq. is authorized to serve as mediator for the purpose of mediating any and all issues related to the settlement[3] (the "**Cyprus Settlement**") entered into by and among the Cyprus Debtor, Cyprus Amax Minerals Company ("**CAMC**"), the Imerys Debtors and other parties and related issues (the "**Global Settlement Issues**") and 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**").[4]

4. The mediation with respect to the Insurance Issues shall proceed jointly with Mr. Pollack and Mr. Feinberg and include the Imerys Debtors, the Imerys TCC, the Imerys FCR, the Cyprus Debtor, the Cyprus FCR, the Cyprus TCC and the Century Insurers, the Cyprus Historical Excess Insurers, Travelers or the Riverstone Insurers, as applicable. Mr. Pollack will also assist Mr. Feinberg, as appropriate, in mediating disputes with respect to the Global Settlement Issues.

5. Mr. Feinberg's fee shall not exceed the following: (1) a flat monthly fee of up to $125,000 for custodian work and work associated with the exchange of information; (2) a flat monthly fee of $250,000 for work associated with mediation of the Insurance Issues with the Insurers (as defined below), and (3) a flat monthly fee of $300,000 for work associated with the Global Settlement Issues (collectively, the "**Feinberg Mediation Fee**"). The Feinberg Mediation Fee includes the services of any employees and staff professionals of Mr. Feinberg and is capped at $300,000 per month. Mr. Pollack's fees shall not exceed $300,000 in the aggregate. Mr. Pollack's rate shall be as follows: (i) through December 31, 2021, Mr. Pollack shall be paid at a

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[3] The Cyprus Settlement Agreement is attached as Exhibit D to the Imerys Debtors' *Ninth Amended Joint Chapter 11 Plan of Reorganization of Imerys Talc America, Inc. and its Debtors Affiliates Under Chapter 11 of the Bankruptcy Code* [Imerys Docket No. 2864].

[4] Capitalized terms not defined herein shall have the meaning ascribed to them in the Motions, as applicable.

daily rate of $12,000 or an hourly rate of $950; and (ii) effective January 1, 2022, Mr. Pollack shall be paid at a daily rate of $14,000 or an hourly rate of $1,000, as applicable (the "**Pollack Mediation Fee**"). The Pollack Mediation Fee and the Feinberg Mediation Fee shall each be paid as follows: 50% by the Imerys Debtors and 50% by the Cyprus Debtor. Any additional mediation fees will be subject to further approval of the Court.

6. The term of the Mediation shall expire on February 28, 2022, which may be extended by further order of the Court.

7. Except as otherwise provided herein, the following parties (collectively, the "**Mediation Parties**") shall participate in the Mediation: (a) the Imerys Debtors; (b) the Imerys TCC; (c) the Imerys FCR; (d) the Cyprus Debtor; (e) CAMC; (f) the Cyprus TCC; (g) the Cyprus FCR; and (h) each of the insurers set forth on Exhibit 1 hereto (collectively, the "**Insurers**"). Any additional party or parties who wish to participate in the Mediation, including, without limitation, any additional insurers, shall be included in the Mediation if (i)(A) all of the Mediation Parties agree to include such additional party or parties in the Mediation and (B) the Mediators agree that the participation of such additional party or parties is necessary or would be beneficial to the Mediation or (ii) the Court orders the inclusion of such party or parties. The Mediation Parties and the additional parties who participate in the Mediation in accordance with the immediately preceding sentence are collectively referred to herein as the "**Parties**" and each individually as a "**Party**."

8. Messrs. Feinberg and Pollack (the "**Mediators**") shall consult with the Parties on the matters concerning the Mediation, including, without limitation: (a) the structure and timing of Mediation procedures, including, without limitation, the attendance of specific Parties at

particular Mediation sessions; and (b) the timing, general content, and manner of any submissions to the Mediators.

9. Subject to entry of this Order, the Imerys Debtors and the Cyprus Debtor are each authorized to pay their respective portion of the fees and expenses of the Mediators without further application to the Court. The Mediation shall commence on a date to be determined by the Parties and the Mediators.

10. Each Party shall bear its own costs and expenses incurred in connection with the Mediation, such as attorneys' fees, travel, lodging, and meals; *provided, however*, that (i) subject to the agreements reached in the Cyprus Settlement and as previously discussed among the Cyprus Debtor, the Imerys Debtors, the Imerys TCC, and the Imerys FCR, the Imerys Debtors' estates will bear the expenses of the Imerys Debtors, the Imerys TCC and the Imerys FCR in accordance with the applicable provisions of the Bankruptcy Code and the *Order Under 11 U.S.C. §§ 105(a) and 331, Fed. R. Bankr. P. 2016(a), and Del. Bankr. L.R. 2016-2 Establishing Procedures for Interim Compensation of Professionals*, entered on March 25, 2019 [Docket No. 301]; and (ii) the Cyprus Debtor's estate will bear the expenses of the Cyprus Debtor, the Cyprus TCC and the Cyprus FCR in accordance with the applicable provisions of the Bankruptcy Code and the *Order Establishing Procedures for Interim Compensation and Reimbursement of Professionals*, entered on March 30, 2021 [Cyprus Docket No. 200].

11. To the extent that any Party is in possession of privileged or confidential information provided to such Party pursuant to the terms and conditions of a confidentiality agreement, or other similar agreement, executed (or agreed to via email) with the Cyprus Debtor or the Imerys Debtors, as the case may be, or an order of this Court entered in connection with the Imerys Cases or the Cyprus Case, as the case may be, such information may be disclosed to the

Mediators, but shall otherwise remain privileged and/or confidential and shall not be disclosed to any other Party; *provided, however*, that confidential, but not privileged, information may be disclosed to another Party that is also subject to a confidentiality agreement with the Cyprus Debtor or the Imerys Debtors, as the case may be, or subject to such Court order, as applicable.

12. Any Party may provide documents and/or information to the Mediators that are subject to a privilege or other protection from discovery, including, without limitation, the attorney-client privilege, the work product doctrine, or any other privilege, right, or immunity the Parties may be entitled to claim or invoke (the "**Privileged Information**"). The Party producing such documents and/or information to the Mediators (the "**Producing Party**") must designate such documents and/or information as Privileged Information. By providing Privileged Information solely to the Mediators and no other Party, no Party nor its respective professionals intend to, or shall, waive, in whole or in part, the attorney-client privilege, the work-product doctrine, the mediation privilege or any other privilege, right or immunity they may be entitled to claim or invoke with respect to such Privileged Information. The Mediators shall not provide Privileged Information or disclose the contents thereof to any other person, entity, or Party without the consent of the Producing Party (except that the Mediators may disclose Privileged Information to any person assisting the Mediators in the performance of their mediation duties, in which event such assistant shall be subject to the same restrictions as the Mediators with respect to such Privileged Information). No Party is obligated to provide any documents and/or information, including Privileged Information, to the Mediators.

13. The exchange of information during the mediation shall (a) be subject to protection under Rule 408 of the Federal Rules of Evidence and any equivalent or comparable state law and (b) not constitute a waiver of any existing privileges and immunities.

14. The provisions of Local Rule 9019-5(d) pertaining to "Confidentiality of Mediation Proceedings" shall govern the Mediation; *provided, however*, that if a Party puts at issue any good faith finding concerning the Mediation in any subsequent action concerning insurance coverage, the Party's right to seek discovery, if any, is preserved. During the Mediation process, the Mediators also may make applicable or direct the use of such other provisions of Local Rule 9019-5 as they deem necessary or appropriate, provided that concerns arising from COVID-19 shall be taken into account as to the Parties' attendance in person in connection with the Mediation and no such attendance in person shall be required while the Court is not permitting in-person appearances.

15. Notwithstanding the foregoing, this Order does not require any Party to submit a dispute as to any matter to the Mediators before filing a pleading with the Court or any other court of competent jurisdiction.

16. All rights of the Parties are preserved and shall not be prejudiced by participation in the Mediation, including, without limitation, any rights to: (i) have final orders in non-core matters entered only after a de novo review by a District Court Judge; (ii) seek withdrawal of the reference of any matter subject to mandatory or discretionary withdrawal; (iii) seek remand of any removed matter; (iv) oppose venue transfer of any removed matter; (v) demand arbitration or a jury trial in any proceeding; and (vi) contest the jurisdiction of the Court to enter any order concerning any alleged insurance coverage that is the subject of the Mediation.

17. Notwithstanding any provision of this Order to the contrary, nothing contained in this Order shall in any way operate to, or have the effect of, impairing, altering, supplementing, changing, expanding, decreasing, or modifying the Parties' rights or obligations under any alleged insurance coverage that is the subject of the Mediation or otherwise.

18. The *Order Approving Stipulated Protective Order* entered in the Imerys Cases [Docket No. 1083] (the "**Imerys Protective Order**"), any other protective order entered in the Imerys Cases, the Cyprus Case, or any related adversary proceedings, and any confidentiality agreement or similar agreement executed (or agreed to via e-mail) with the Cyprus Debtor or the Imerys Debtors, as the case may be, shall govern the Parties' production, review, disclosure and handling of Confidential Information (as defined in the Imerys Protective Order) in connection with the Mediation.

19. Notwithstanding anything to the contrary in the Local Rules, the Mediators may conduct the Mediation as they see fit, establish rules of the Mediation, and consider and take appropriate action with respect to any matters the Mediators deem appropriate to conduct the Mediation, subject to the terms of this Order.

20. No written record or transcript of any discussion had in the course of the Mediation is to be kept, absent express written agreement by the Parties; *provided, however*, that the Mediators and any person assisting the Mediators in the performance of their mediation duties shall be entitled to keep such records and take such notes as the Mediators deems necessary or helpful to carry out such duties, and further provided that such records and notes shall not be discoverable.

21. The results of the Mediation are non-binding unless the applicable Parties otherwise agree. Any resolution that is reached at the Mediation and that involves the Cyprus Debtor or its estate or the Imerys Debtors or their estates, as the case may be, will be subject to Court approval after notice and opportunity for hearing, to the extent required under Bankruptcy Rule 9019.

22. Unless the Court orders otherwise or the Parties otherwise agree, no Mediator shall be eligible for post-confirmation employment by any Trust or other similar organization formed

pursuant to a plan of reorganization in these chapter 11 cases for the purpose of resolving and/or liquidating claims; *provided, however*, that any Mediator is eligible to mediate any dispute as to which the parties participating in such mediation (including but not limited to any post-confirmation Trust) mutually agree.

23. Notwithstanding any provision of this Order to the contrary, nothing contained in this Order shall in any way operate to, or have the effect of, impairing, altering, supplementing, changing, expanding, decreasing, or modifying the Parties' rights or obligations under any alleged insurance coverage that is the subject of the Mediation or otherwise.

24. Notwithstanding entry of this Order, the rights and arguments of all parties to the Mediation and other parties-in-interest in the Imerys Cases and the Cyprus Case with respect to the discoverability or admissibility of information and documents exchanged in connection with the Mediation are expressly preserved and nothing in this Order precludes any party from obtaining such discovery or admitting such information or documents in evidence, if otherwise appropriate, including after considering any applicable privileges or protections.

25. For the avoidance of doubt, to the extent any part of this Order shall conflict with Local Rule 9019-5, the terms and provisions of this Order shall govern.

26. The Movants are authorized to take all actions necessary or appropriate to effectuate the relief granted in this Order in accordance with the Motions, including executing a retention agreement with the Mediators.

27. Notwithstanding the possible applicability of Rules 6004(h), 7062, or 9014 of the Federal Rules of Bankruptcy Procedure, or otherwise, the terms and conditions of this Order shall be immediately effective and enforceable upon entry of this Order.

28. This Court retains exclusive jurisdiction with respect to all matters arising from or related to the implementation, interpretation, and enforcement of this Order.

Dated: November 30th, 2021
Wilmington, Delaware

LAURIE SELBER SILVERSTEIN
UNITED STATES BANKRUPTCY JUDGE

Exhibit 1

Insurers

1. Century Indemnity Company, Federal Insurance Company and Central National Insurance Company of Omaha (collectively, the "**Chubb Insurers**")
2. Columbia Casualty Company, Continental Casualty Company, 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, 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**")
3. Travelers Casualty and Surety Company (f/k/a The Aetna Casualty and Surety Company) and The Travelers Indemnity Company (collectively, "**Travelers**")
4. 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**")

This is
EXHIBIT "B"
to the Affidavit of
ERIC DANNER
Sworn December 14, 2021

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

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

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

I. OVERVIEW

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

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

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

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

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

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

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

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

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

a) *Order Scheduling Omnibus Hearings*, entered on January 21, 2021 [Docket No. 2814];

b) *Order Scheduling Omnibus Hearings*, entered on January 27, 2021 [Docket No. 2861];

c) *Order (I) Approving Disclosure Statement and Form and Manner of Notice of Hearing Thereon, (II) Establishing Solicitation Procedures, (III) Approving Form and Manner of Notice to Attorneys and Certified Plan Solicitation Directive, (IV) Approving Form of Ballots, (V) Approving Form, Manner, and Scope of Confirmation Notices, (VI) Establishing Certain Deadlines in Connection with Approval of Disclosure Statement and Confirmation of Plan, and (VII) Granting*

Related Relief, entered on January 27, 2021 [Docket No. 2863] (the "**Solicitation Procedures Order**"), which is discussed below; and

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

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

III. THE NINTH AMENDED PLAN AND NINTH AMENDED DISCLOSURE STATEMENT[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.

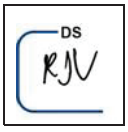
Creditor Classes & Distributions

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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Lawyers for the Applicant

This is
EXHIBIT "C"
to the Affidavit of
ERIC DANNER
Sworn December 14, 2021

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.*,	)	Case No. 19-10289 (LSS)
	)	
Debtors.	)	(Jointly Administered)
	)	
	)	**Re: Dkt. Nos. 3624, 3744, 3922, 4005**

OPINION

Before me are four related motions that were presented over the last several months in this mass tort case. Each motion addresses the voting on Debtors' Ninth Amended Plan of Reorganization.[1] The motions are not academic. Debtors' confirmation hearing is scheduled to begin on November 15, 2021. Absent other developments in these cases, the outcome here will determine whether the only voting class has accepted the Plan and whether Debtors have the vote to support an argument that they are otherwise entitled to receive a § 524(g) injunction.

The first motion is Arnold & Itkin LLP's Motion to Disregard[2] certain vote changes. Arnold & Itkin asks that I disregard the votes of three other law firms—Bevan & Associates, LPA, Inc., Trammel P.C. and Williams Hart Boundas Easterby LLP—that submitted

[1] Ninth Amended Joint Chapter 11 Plan of Reorganization of Imerys Talc America, Inc. and its Debtor Affiliates Under Chapter 11 of the Bankruptcy Code, Dkt. No. 2864 ("Plan"). The Plan was amended post-solicitation, Dkt. No. 4099.

[2] Motion of Holders of Talc Personal Injury Claims Represented by Arnold & Itkin LP 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, Dkt. No. 3624. The Motion to Disregard was joined by Johnson & Johnson & Johnson & Johnson Consumer Inc. Dkt. No. 3653; the Cyprus Historical Excess Insurers, Dkt. No. 3679; Aylstock, Witkin, Kreis & Overholtz PLLC, Dkt. No. 3685; and Imerys S.A., Dkt. No. 3690.

Master Ballots in connection with the Plan. Arnold & Itkin, which has voted to reject the Plan on behalf of its clients, asserts that these other three law firms did not comply with the appropriate procedure for changing their votes from rejecting to accepting the Plan. Argument was heard on June 22, 2021.

I held off ruling on the Motion to Disregard as two of the firms stated that they intended to file their own motions. Thereafter, Bevan & Associates and Williams Hart each separately filed a motion seeking permission to change their respective votes pursuant to Bankruptcy Rule 3018;[3] Trammel did not. The Rule 3018 Motions were the subject of an evidentiary hearing on September 20, 2021. At that time, I also heard the fourth motion, J&J's Motion to Designate.[4] J&J also opposes the Plan. It seeks alternative relief pursuant to Bankruptcy Code § 1126(e) in the event any of the three law firms are permitted to change their respective votes.

Having considered the evidence and arguments:

(i) the Motion to Disregard is granted with respect to Trammel—its 1670 votes will remain votes to reject the Plan;

(ii) the Williams Hart Rule 3018 Motion is granted—its 493 votes will be changed to reflect votes to accept the Plan;

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[3] 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, Dkt. No. 3744 ("Bevan & Associates Rule 3018 Motion"); 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, Dkt. No. 3922 ("Williams Hart Rule 3018 Motion" and together with the Bevan & Associates Rule 3018 Motion, the "Rule 3018 Motions").

[4] Johnson & Johnson and Johnson & Johnson Consumer Inc.'s (collectively, "J&J") 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, Dkt. No. 4005.

(iii) the Bevan & Associates Rule 3018 Motion is denied; further, its original Master Ballot will be deemed withdrawn—its 15,719 votes will not be counted as a vote for or against the Plan; and

(iv) the Motion to Designate is moot with respect to Trammel and Bevan & Associates and is denied with respect to Williams Hart.

Background[5]

The Solicitation Procedures

Imerys Talc America Inc. ("Imerys" or "Debtor") and certain affiliated entities (collectively, with Imerys, "Debtors") filed voluntary petitions under chapter 11 of the United States Bankruptcy Code on February 13, 2019. The impetus for the filing was the thousands of prepetition lawsuits alleging personal injuries caused by talc mined, processed or distributed by Debtors. Those lawsuits were overwhelmingly based on exposure to cosmetic (not industrial) talc.

[5] The Court makes findings of fact and conclusions of law pursuant to Fed. R. Civ. Pro. 52, applicable to these contested matters by Fed. R. Bankr. Pro. 7052 and 9014(c). I thank the parties for supplying a Combined List of Potential Exhibits. There were no objections to the exhibits tendered for admission except for Exhibit 90, which consists of extracts from the Boundas deposition. Williams Hart objects to the admission of excerpts on completeness and asks that the entire Boundas deposition be admitted. J&J and Arnold & Itkin object to the entire deposition being admitted. I will admit the entire deposition transcript. Mr. Boundas took the stand and was cross-examined by both J&J and Arnold & Itkin. Notwithstanding the opportunity to elicit testimony from Mr. Boundas, J&J and Arnold & Itkin now seek to enter into evidence select portions of the Boundas deposition. Fairness and completeness dictate that the entire deposition be included in the record. References to the Exhibits herein shall be according to the number on the Combined List of Potential Exhibits. As all exhibits were not tendered, the Exhibit numbers are not sequential.

By Order dated January 27, 2021,[6] I approved a disclosure statement and Solicitation Procedures[7] for the Plan. The only voting class is Class 4: Talc Personal Injury Claims. Simply put, Talc Personal Injury Claims 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").[8]

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[6] Ex. 7 (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, Dkt. No. 2863).

[7] The Solicitation Procedures are Exhibit 1 to the Order. Capitalized terms herein that are not defined have the meaning set forth in the Solicitation Procedures, the Order or the Plan, as applicable.

[8] Less simply put, "**Talc Personal Injury Claim**" means any Claim and any Talc Personal Injury Demand against one or more of the Debtors or any other Protected Party whether known or unknown, including with respect to any manner of alleged bodily injury, death, sickness, disease or alleged disease process, emotional distress, fear of cancer, medical monitoring, or any other alleged personal injuries (whether physical, emotional or otherwise), directly or indirectly arising out of or relating to the presence of or exposure to talc or talc-containing products based on the alleged pre-Effective Date acts or omissions of the Debtors or any other Entity for whose conduct the Debtors have or are alleged to have liability (but only to the extent such Claim or Talc Personal Injury Demand directly or indirectly arises out of or relates to the alleged pre-Effective Date acts or omissions of the Debtors), including, without limitation any claims directly or indirectly arising out of or relating to: (a) any products previously mined, processed, manufactured, sold (including, without limitation, any Sale pursuant to the Sale Order) and/or distributed by the Debtors or any other Entity for whose conduct the Debtors have or are alleged to have liability, but in all cases only to the extent of the Debtors' liability; (b) any materials present at any premises owned, leased, occupied or operated by any Entity for whose products, acts, omissions, business or operations the Debtors have, or are alleged to have, liability; or (c) any talc in any way connected to the Debtors alleged to contain asbestos or other constituent. Talc Personal Injury Claims include all such claims, whether: (1) in tort, contract, warranty, restitution, conspiracy, contribution, indemnity, guarantee, subrogation, or any other theory of law, equity or admiralty, whether brought, threatened or pursued in any United States court or court anywhere in the world; (2) seeking compensatory, special, economic, non-economic, punitive, exemplary, administrative or any other costs, fees, injunctive or

The Plan provides that Class 4 Claims are channeled into a § 524(g) trust governed by Trust Distribution Procedures. The Trust Distribution Procedures provide for distributions only to claimants suffering from mesothelioma or various stages of ovarian cancer. Except for the proceeds of a settlement with Cyprus Mines Corporation, the Imerys Trust Assets are split among three sub-funds: 40% to Sub-Fund A for the benefit of claimants suffering from Ovarian Cancer A; 40% to Sub-Fund B for the benefit of claimants suffering from Mesothelioma; and 20% to Sub-Fund C for the benefit of claimants suffering from Ovarian Cancer B, C or D. This has been referred to in these cases as the 40/40/20 split.

Several provisions of the Solicitation Procedures are particularly relevant to the four motions. First, the Solicitation Procedures require that all ballots be submitted by

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similar relief or any other measure of damages; (3) seeking any legal, equitable or other relief of any kind whatsoever, including, for the avoidance of doubt, any claims arising out of or relating to the presence of or exposure to talc or talc-containing products assertable against one or more Debtors or any other Protected Party; or (4) held by claimants residing within the United States or in a foreign jurisdiction. Talc Personal Injury Claims also include any such claims that have been resolved or are subject to resolution pursuant to any agreement, or any such claims that are based on a judgment or verdict. Talc Personal Injury Claims do not include any claim by any present or former employee of a predecessor or Affiliate of the Debtors for benefits under a policy of workers' compensation insurance or for benefits under any state or federal workers' compensation statute or other statute providing compensation to an employee from an employer. For the avoidance of doubt, the term Talc Personal Injury Claim includes, without limitation (i) all claims, debts, obligations, or liabilities for compensatory damages (such as, without limitation, loss of consortium, medical monitoring, personal or bodily injury, wrongful death, survivorship, proximate, consequential, general, and special damages) and punitive damages; and (ii) Indirect Talc Personal Injury Claims. Notwithstanding the foregoing, Talc Personal Injury Claims do not include any claim that a Settling Talc Insurance Company may have against its reinsurers and/or retrocessionaires in their capacities as such, and nothing in the Plan, the Plan Documents, or the Confirmation Order shall impair or otherwise affect the ability of a Settling Talc Insurance Company to assert any such claim against its reinsurers and/or retrocessionaires in their capacities as such. Plan § 1.1.235. A Direct Talc Personal Injury Claim is any claim that is not an Indirect Talc Personal Injury Claim. Plan § 1.1.79.

March 25, 2021 at 4:00 p.m. (prevailing eastern time), which is defined in the Solicitation Procedures as the "Voting Deadline." Second, the Solicitation Procedures provide Debtors with significant discretion to extend deadlines, including for voting, and/or to permit defects in ballots to be corrected.

Third, the Solicitation Procedures provide "Special Procedures" for voting Direct Talc Personal Injury Claims. The Solicitation Procedures contemplate that individuals will be solicited in accordance with the directive of their respective counsel.[9] Law firms have three options: (i) a firm can certify that it has authority to vote on behalf of its clients and direct Prime Clerk[10] to serve the firm with one solicitation package and one Master Ballot on which the firm "must record the votes on the Plan" for each of its clients; (ii) if a firm does not have authority to vote on behalf of its clients or prefers not to exercise its authority it can elect to (x) direct Prime Clerk to solicit votes directly from its clients or (y) direct Prime Clerk to deliver the solicitation packages to the law firm, which will forward them to its clients; or (iii) a firm can vote some of its clients by Master Ballot and direct Prime Clerk to directly solicit others. So that Prime Clerk knows sufficiently in advance of the service deadline the method by which each holder of a Direct Talc Personal Injury Claim will vote, each law firm is required to complete and return a Certified Plan Solicitation Directive by no later than February 17, 2021. If a firm fails to timely submit a Certified Plan Solicitation

[9] The Solicitation Procedures do not appear to contemplate soliciting votes from holders of Direct Talc Personal Injury Claims that are unrepresented.

[10] Prime Clerk LLC was authorized to assist Debtors with the tabulation of votes on the Plan.

Directive or otherwise fails to select a solicitation method, Prime Clerk is to solicit that law firm's clients directly.

Fourth, Article VI. 2 of the Solicitation Procedures contain various rules for tabulating votes as well as certain "general solicitation procedures and standard assumptions." These rules include:

- Any voter that delivers a valid Ballot may withdraw his, her, or its vote by delivering a written notice of withdrawal to the Solicitation Agent before the Voting Deadline (or such later date as agreed by the Debtors with the consent of the Plan Proponents, with such consent not to be unreasonably withheld). To be valid, the notice of withdrawal must be signed by the party who signed the Ballot to be revoked. The Debtors reserve the right to contest any withdrawals. (Art. VI. 2.c.).

- . . . if multiple Ballots are received form the same attorney or agent with respect to the same Claim (but not from the holder thereof), the latest-dated otherwise valid Ballot that is received before the Voting Deadline (or such later date as agreed by the Debtors with the consent of the Plan Proponents, with such consent not to be unreasonably withheld) will be the Ballot that is counted as a vote to accept or reject the Plan. (Art. VI. 2.h).

- The Debtors will not be obligated to recognize any withdrawal, revocation or change of any vote received after the Voting Deadline (or such later date as agreed by the Debtors with the consent of the Plan Proponents, with such consent not to be unreasonably withheld). (Art. VI. 2. j).

- There will be a rebuttable presumption that any claimant who submits a properly completed superceding Ballot or withdrawal of a Ballot on or before the Voting Deadline has sufficient cause, within the meaning of Bankruptcy Rule 3018(a), to change or withdraw such claimant's acceptance or rejection of the Plan. (Art. VI. 2.f.)

The Voting Declarations

The Order required Prime Clerk to file its Voting Certification by April 8, 2021. On April 7, Christina Pullo, Vice President of Global Corporate Actions for Prime Clerk filed her declaration ("First Voting Declaration") regarding the solicitation of votes and

"preliminary" tabulation of ballots.[11] In the text of the First Voting Declaration, Ms. Pullo declares that Debtors directed Prime Clerk to include in the vote tabulation Master Ballots received after the Voting Deadline from nine law firms. She also declares that Prime Clerk received Master Ballots from law firms that did not submit a valid Certified Plan Solicitation Directive, which Debtors also instructed Prime Clerk to include in the vote tabulation

Exhibit C to the First Voting Declaration provides detail on each ballot not counted and the reason for exclusion. Bevan & Associates, Williams Hart and Trammel are each listed on Exhibit C as having submitted a Master Ballot rejecting the Plan. The reason for exclusion of each of these Master Ballots is "Master Ballot superseded by later received valid master ballot from *different laws firm* with *consistent vote* on account of the same holder."[12]

Taking into account the included and excluded ballots, Prime Clerk concluded that Class 4 Talc Personal Injury Claims voted to accept the Plan, as follows:

Class	Class Description	Number Accepting	Number Rejecting	Amount Accepting	Amount Rejecting	Class Voting Result
		%	%	%	%	
4	Talc Personal Injury Claims	62,549	15,900	$62,549.00	$15,900.00	ACCEPTS
		79.73%	20.27%	79.73%	20.27%	

[11] Ex. 11 (Declaration of Christina Pullo of Prime Clerk LLC Regarding the Solicitation of Votes and Preliminary Tabulation of Ballots Cast 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, Dkt. No. 3334).

[12] Certain of the votes recorded on Trammel's Master Ballot were also excluded from the voting tabulation because the ballot did not contain a valid social security number or an indication that the claimant does not have a social security number.

After the filing of the First Voting Declaration, Arnold & Itkin filed a motion seeking to extend the Plan discovery deadline in order to take discovery with respect to the voting and tabulation of the vote.[13] Arnold & Itkin argued that the First Voting Declaration was inaccurate as it seemed to encompass a statistically implausible result. In particular, the negative votes reflected in the Master Ballot submitted by Bevan & Associates alone accounted for all but 200 of the ballots to reject the Plan. I granted that request over a disappointing argument by Debtors (and others in support of the Plan) that the discovery deadline had passed and parties should have anticipated the issues raised by the First Voting Declaration.

As it turned out, Arnold & Itkin's suspicions were correct. A month later, on May 7, 2021, Christina Pullo filed a Supplemental Voting Declaration.[14] In the Supplemental Voting Declaration, Prime Clerk again concludes that Class 4 accepted the Plan:

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

[13] Motion of Holders of Talc Personal Injury Claims Represented by Arnold & Itkin LLP to Extend Discovery Deadlines and Permit Discovery of the Plan Proponents, Prime Clerk and Certain Third Parties Relating to the Solicitation and Voting With Respect to Ninth Amended Joint Chapter 11 Plan of Reorganization of Imerys Talc America, Inc. and its Debtor Affiliates Under Chapter 11 of the Bankruptcy Code [Dkt. No. 3425]. Others joined in: Certain Insurers, Dkt. No. 3491; Cyprus Historical Excess Insurers, Dkt. No. 3502; Aylstock Witkin, Kreis & Overholtz PLLC, Dkt. No. 3527.

[14] Ex. 12 (Supplemental Declaration of Christina Pullo of Prime Clerk LLC Regarding the Solicitation of Votes and Preliminary Tabulation of Ballots Cast 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, Dkt. No. 3534).

But, the reason for exclusion of Master Ballots filed by Bevan & Associates, Williams Hart and Trammel now reads: "Master Ballot superseded by latest-dated valid Master Ballot from *the same law firm* with *inconsistent vote* on account of the same holder." The Supplemental Voting Certification, therefore, is the first time that parties or the court were advised that these three firms had changed their respective votes from rejecting the Plan to accepting the Plan.

Resolution of the Motions

I. The Motion to Disregard is Granted with respect to Trammel

On June 8, 2021, Arnold & Itkin filed its Motion to Disregard. Arnold & Itkin argues that none of the three firms sought permission to change their respective votes from rejecting to accepting in derogation of Bankruptcy Rule 3018(a). While the Motion to Disregard is moot as to Bevan & Associates and Williams Hart, it is still relevant as to the 1,670 votes cast by Trammel.

In support of the vote changes, Debtors[15] and the law firms who seek to change their votes rely heavily on the Order arguing that Debtors and Prime Clerk complied with the Solicitation Procedures and so the vote changes should be permitted. Specifically, Debtors argue that the Order requires Prime Clerk to count the last-dated ballot received before or after the Voting Deadline if Debtors consent, which they did. Taken together with the

[15] Debtors' Objection to Motion of Holders of Talc Personal Injury Claims Represented by Arnold & Itkin LP 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, Dkt. No. 3686. In this objection, Debtors do not really argue in favor of Trammel or Williams Hart and thus it could be argued that they have no objection to the Motion to Disregard with respect to either of those firms.

rebuttable presumption of cause within the meaning of Rule 3018, Debtors argue that the Solicitation Procedures allow claimants to file superseding ballots before or after the Voting Deadline and obviate the need for the filing of a Rule 3018 motion.[16]

A presumption requires the factfinder to accept some facts as proven once provided proof of other facts. It is a procedural rule under which "if a basic fact (Fact A) is established than the finder of fact must accept that the presumed fact (Fact B) has been established."[17] A presumption is not evidence, however, and is not given the weight of evidence.[18] And, a rebuttable presumption is just that—rebuttable. Once the opposing party comes forward with some evidence to create a material fact, the presumption disappears; the party with the burden of persuasion always retains it.[19]

The creation of the presumption in the Solicitation Procedures arguably runs counter to Rule 3018. There is no general entitlement to change a vote once cast.[20] Bankruptcy Rule 3018(a) only permits a change "for cause."[21] The overarching concern underlying

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[16] It is, of course, understandable that parties should rely on the Order, but as I discuss herein the presumption provision was arguably improvidently entered. While Debtors cited a string of orders for the proposition that such a presumption is typical, including in the mass tort context, there is no indication that any of the orders were contested or were otherwise challenged as is the case here.

[17] 1 Jack B. Weinstein & Margaret A. Berger, *Weinstein's Federal Evidence* § 301.01[1] (2d ed. 2021).

[18] *Id.* (citing New York Life Ins. Co. v. Gamer, 303 U.S. 161 (1938)).

[19] *Weinstein's Federal Evidence* § 301.01[2].

[20] 9 Collier on Bankruptcy, ¶ 3018.01[4] (16th ed. 2021) ("A change of vote may not occur as a matter of right.").

[21] The relevant part of Bankruptcy Rule 3018 provides: "[f]or cause shown, the court after notice and a hearing may permit a creditor or equity security holder to change or withdraw an acceptance of rejection."

Rule 3018 is that any vote change not be "improperly motivated,"[22] a proposition that requires both an explanation and scrutiny. The presumption created in the Solicitation Procedures requires neither; nor is there any logical nexus between Fact A (the change of vote) and Fact B (cause, or a proper motivation).

I expressed skepticism at argument regarding whether I could and/or should have created the presumption in the Solicitation Procedures, but I need not decide that here.[23] The three law firms do not meet even the minimal requisite in the Solicitation Procedures for the creation of the presumption because it arises only if a vote is changed prior to the Voting Deadline. It is undisputed that Trammel and Williams Hart changed their respective votes the day after the Voting Deadline. It is also undisputed that Bevan & Associates first withdrew its vote on March 29 and then resubmitted a Master Ballot accepting the Plan on April 6 more than a week after the Voting Deadline. "Fact A" has not been established by any of the three firms.

Debtors and others in support of counting the changed votes contend that because Trammel and Williams Hart changed their votes within the extended deadline granted by Debtors that those firms are entitled to the presumption. I disagree. The Solicitation Procedures contain multiple provisions in which the term Voting Deadline is qualified by the granting of an extension,[24] but the presumption provision contains no such qualification.

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[22] *In re MPM Silicones, LLC*, 2014 Bankr. LEXIS 4062 * 5 (Bankr. S.D.N.Y. Sept. 17, 2014) (citing 9 Collier on Bankruptcy, ¶ 3018.01[4] (16th ed. 2021)).

[23] No party briefed the issue of whether a court can create a presumption and the circumstances under which it might be permissible to do so. As discussed at the hearing, in many circumstances the presumption created here could cut down on unnecessary and ancillary litigation.

[24] *See supra.*

I will not re-write the Solicitation Procedures to expand the presumption provision especially where, as here, it appears that the presumption may be in derogation of the very rule it references.

As importantly, there is nothing in the Order or the Solicitation Procedures that excuses the filing of a Rule 3018 Motion. Even assuming a presumption is permissible, the presumption must be applied in the context of an actual controversy. Under the Bankruptcy Rules, a change of vote is initiated by the filing of a Rule 3018 motion. While supporters of the vote changes argue that the Solicitation Procedures imply such a motion is unnecessary, given the atypical creation of the presumption, I will not entertain the waiver of the requirement to file a Rule 3018 motion by implication.

I received little evidence with respect to the votes cast by Trammel, which only came in peripherally through Mr. Boundas' testimony. His testimony as well as undisputed representations in the submissions are that Trammel originally cast a timely ballot rejecting the Plan, was given a one-day extension it did not request (but, was requested for it by Mr. Boundas) and then subsequently changed its vote to accept within the extended deadline. Because Trammel did not file a Rule 3018 motion, did not file an opposition to the Motion to Disregard nor present any evidence of its own, I have no evidence as to why Trammel changed its vote. Accordingly, I will not permit the vote change.

The Motion to Disregard is granted as to Trammel. As for Williams Hart and Bevan & Associates, the Motion to Disregard is moot. I will consider the Rule 3018 Motions on

the merits, but the law firms will not be entitled to a presumption of cause.[25] Each has the burden of both production and persuasion on its motion.

II. The Rule 3018 Motions

Bankruptcy Rule 3018 provides "[f]or cause shown, the court after notice and hearing may permit a creditor or equity security holder to change or withdraw an acceptance or rejection" of a plan. Neither the Bankruptcy Rules nor the Bankruptcy Code define cause. It is up to judges to determine "cause" based on the context and to grant or deny a motion in their discretion.[26] While "cause" is necessarily a fact-driven determination, some general principles have emerged from the caselaw as set forth in *MPM Silicones*.[27] First, the "for cause" standard should not be hard to meet. "As long as the reason for the vote change is not tainted, the change of vote should usually be permitted."[28] Second, human error is "cause" to change a vote. Human error occurs when there is (i) a breakdown in communications at the voting entity; (ii) a misreading of the plan terms; or (iii) the execution of a ballot by one without authority corrected by one with authority.[29] Third, courts look unfavorably on votes changes made to enhance an objector's leverage in

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[25] Even if Williams Hart and Bevan & Associates were entitled to the presumption, I conclude that the presumption has been rebutted based on the evidence submitted at the hearing.

[26] *MPM Silicones* *5; *In re J.C. Householder Land Trust # 1*, 502 B.R. 602 (Bankr. M.D. Fla. 2013).

[27] *MPM Silicones, LLC* (collecting cases).

[28] *In re Dow Corning Corp.*, 237 B.R. 374, 377 (Bankr. E.D. Mich. 1999) (citing 9 Collier on Bankruptcy ¶ 3018[4] (15th ed. Rev. 1999)).

[29] *MPM Silicones* *2 (citing *In re Kellogg Square Partnership*, 160 B.R. 332, 334 (Bankr. D. Minn. 1993)).

situations such as to force a cram down.[30] Fourth, cause should be "more than a mere change of heart."[31] Fifth, where plan proponents support the vote change in furtherance of a consensual resolution, cause likely exists unless there is some extra consideration being offered for the vote change.[32] I will apply these general principles separately to each Rule 3018 Motion.

A. The Bevan & Associates Rule 3018 Motion is Denied.

On June 25, 2021, Bevan & Associates filed its Rule 3018 Motion. By its motion, Bevan & Associates seeks to change the votes of its 15,719 clients from votes to reject the Plan to votes to accept the Plan. That same day, Bevan & Associates filed a Rule 2019 statement identifying its clients.[33]

Findings of Fact

Mr. Bevan is a named partner in Bevan & Associates LPA, Inc.[34] He has been practicing for 30 years and his primary area of practice is asbestos litigation.[35] While he is not a bankruptcy lawyer, he has represented clients in numerous bankruptcy cases over the years and has represented clients who have served on several creditors' committees in

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[30] *Id.** 2 (citing *In re Eastern Systems, Inc.*, 118 B.R. 223 (Bankr. S.D.N.Y. 1990) (denying motion), *In re Windmill Durango Office, LLC*, 481 B.R. 51 (B.A.P. 9th Cir. 2012) (denying motion)).

[31] *Id.* (citing *Windmill Durango*, 481 B.R. at 66).

[32] *Id. (*citing *Dow Corning).*

[33] Exs. 16, 16A.

[34] Hr'g Tr. 15:14-15, Sept. 20, 2021, Dkt. No. 4144.

[35] Hr'g Tr. 15:18-19; 24:24-25:6.

asbestos cases.[36] Mr. Bevan could not recall whether or how many lawsuits his firm may have filed against Imerys prepetition.[37] Bevan & Associates was not involved in the multi-district talc litigation proceeding in New Jersey.[38] For purposes of solicitation, it appears that Debtors supplied Prime Clerk the name of only one claimant represented by Bevan & Associates.[39]

Bevan & Associates did not take an active role (or any role) in the bankruptcy case prior to voting. As for voting, Bevan & Associates did not send Prime Clerk a Certified Plan Solicitation Directive by the February 17, 2021 deadline.[40] Rather, Bevan & Associates' first communication with Prime Clerk was by email on March 18, 2021 seeking a Master Ballot for voting purposes.[41] On March 23, 2021, Bevan & Associates emailed a Certified Plan Solicitation Directive to Prime Clerk.[42] After receiving approval from Debtors' counsel, Prime Clerk approved the late request to vote by Master Ballot[43] and Bevan & Associates submitted a Master Ballot to Prime Clerk, by email, on

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[36] Hr'g Tr. 15:20-21; 28:13-29:1.

[37] Ex. 90 (Aug. 31, 2021 Dep. of Thomas W. Bevan 14:25-16:4, Dkt. No. 4092-28).

[38] Bevan Dep. 20:24-21:4.

[39] Ex. 26. I say, "it appears" because the email from Prime Clerk to Bevan & Associates listing clients Prime Clerk has on file references the "Haffner law."

[40] Ex. 23; Ex. 26.

[41] Ex. 26.

[42] Ex. 26.

[43] Ex. 28.

March 25, 2021.[44] By the Master Ballot, Bevan & Associates voted on behalf of all of its clients to reject the Plan.[45]

From at least February 24, 2021, Prime Clerk sent Debtors and their counsel periodic updates on the progress of the voting tabulation.[46] Late in the evening of March 25, 2021, that report tallied all ballots received through the Voting Deadline and revealed that Class 4 rejected the Plan with only 57% of voters accepting the Plan and 43% of voters rejecting the Plan.[47]

That evening, Natalie Ramsey, counsel for the Tort Claimants Committee texted Mr. Bevan as follows: "Hi. Reaching out for another case. Could we chat about Imerys tomorrow morning? So you know before responding – I represent the committee and learned tonight you cast around 15,000 votes against the plan. Want to understand your concerns."[48] Mr. Baron, individual counsel for a member of the TCC, also reached out to Mr. Bevan that evening.[49]

Ms. Ramsey and Mr. Bevan spoke the following day (March 26).[50] Mr. Bevan expressed concern that a vote in favor of the Imerys Plan would preclude him from voting

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[44] Exs. 32; 60.

[45] *Id.*

[46] Ex. 54.

[47] Ex. 54.

[48] Ex. 51.

[49] Ex. 30.

[50] Hr'g Tr. 75:4-13.

against a Plan in the Cyprus Mines bankruptcy case.[51] Ms. Ramsey discussed the interplay between the Cyprus Mines and Imerys cases and subsequently put in writing her understanding of the same in a "settlement communication."[52] The communication states, among other things, that "[t]here is nothing in the Imerys Plan that attempts to limit or circumscribe the rights of the Cyprus Committee or any creditor in the Cyprus Bankruptcy Case."[53] She also proposes to place the following language in any order confirming the Imerys Plan: "Notwithstanding anything contained in this Confirmation Order, the failure to submit a Ballot, withdrawal of a Ballot, or submission of a Ballot voting in favor of the Imerys Plan does not and shall not affect any rights of any claimant with respect to the Cyprus Bankruptcy, including without limitation the Cyprus Settlement. For the avoidance of doubt, a vote in favor of the Imerys Plan is not and shall not be deemed to be a vote in favor of the Cyprus Settlement."[54]

Ms. Ramsey followed up with Mr. Bevan by text on March 27 and March 29 asking if he could let her know whether he will be leaving his votes in place, withdrawing them or changing them to accepting votes.[55] On March 29, Mr. Bevan responds saying that he will be withdrawing his votes that day based on the communication Ms. Ramsey sent him.[56]

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[51] Hr'g Tr. 17:17-25; 76:14-77:1. Cyprus Mines Corporation is a previous owner of Debtors' talc assets and filed its own bankruptcy case in this Court, Case No. 21-10398. The Cyprus Mines case is proceeding separately, but prior to filing bankruptcy, Cyprus Mines and Debtors reached a settlement agreement which is embodied in the Imerys Plan.

[52] Hr'g Tr. 18:5-13.

[53] Ex. 31.

[54] *Id.*

[55] Ex. 51; Hr'g Tr. 83:1-12; 84:14-85:1.

[56] Ex. 51.

Bevan & Associates did, in fact, withdraw its Master Ballot on March 29, via an email to Prime Clerk.[57] At that point, Mr. Bevan believed he was concluded with the voting process.[58]

Later on March 29, Debtors approved what they termed a "request" to withdraw Bevan & Associates Master Ballot.[59] Unfortunately from Debtors' perspective, Prime Clerk's revised report reflecting Bevan & Associates' withdrawal of its ballot revealed that while Class 4 now accepted the Plan, it did not meet the 75% threshold required for a § 524(g) channeling injunction, with only 73.65% of those voting, voting in favor.[60]

Ms. Ramsey reached out to Mr. Bevan by phone sometime between March 29 and April 6 as did Mr. Placitella, another attorney representing a member of the TCC.[61] While Mr. Bevan does not remember the particulars of either conversation, he had the impression that the TCC needed "yes" votes and was told that he could change the votes of his clients to accept the Plan.[62] On April 6, 2021, Bevan & Associates communicated with Prime Clerk again. This time, Bevan & Associates sought to "reinstate" its Master Ballot and vote

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[57] Ex. 32; Hr'g Tr. 86:13-87:2.

[58] Hr'g Tr. 133:21-134:4.

[59] Ex. 55.

[60] Ex. 55.

[61] Hr'g Tr. 89:25-90:16.

[62] Hr'g Tr. 91:5-23; 134:5-19.

to accept the Plan.[63] Attached to the email was a Master Ballot and an excel spreadsheet with the name of the clients on whose behalf Bevan & Associates was voting.[64]

Mr. Bevan voted on behalf of 15,719 clients. He did not consult with any of his clients prior to voting on the Plan (either the vote rejecting the Plan, the withdrawal of the vote, or the vote accepting the Plan).[65] Rather, he relies on a one page general "Attorney Agreement" which provides that Mr. Bevan can vote on behalf of his client in a bankruptcy case filed by any debtor.[66] Clients may have signed the Attorney Agreement as far back as twenty years ago.[67] He uses this Attorney Agreement to act on behalf of his clients even if they are unaware that a specific bankruptcy has been filed. The only time that Mr. Bevan believes he informs a client of a specific bankruptcy case is if he going to submit that client for consideration on a creditors' committee.[68]

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[63] Ex. 86.

[64] *Id.*

[65] Hr'g Tr. 97:12-16.

> Q: Okay. So, how do you know that your clients wanted you to vote against the plan, when you voted in March?
> A: Because my clients want me to do what's - - what's best, and I don't check with my clients on every little thing that I do on their case."

[66] Ex. 16 A ("The undersigned claimant hereby authorizes Thomas W. Bevan, as attorney in fact and with full power of substitution to vote on any questions that may be lawfully submitted by debtors and any debtor in bankruptcy, in any Chapter 11 filed on behalf of any Debtor; to vote, after review of the appropriate disclosure statement, for any Plan of Reorganization of the Debtor; and in general, to perform any act not constituting the practice of law of the undersigned in all matters arising in any bankruptcy case.").

[67] Hr'g Tr. 103:3-5.

[68] Hr'g Tr. 153:13-154:25.

In this case and in previous bankruptcy cases in which Mr. Bevan has cast votes for his clients, he votes in a block. Mr. Bevan either accepts or rejects the plan on behalf of all of his clients; he has never split a vote.[69] In voting in this fashion, he does what he believes is best for his clients as a whole.[70] In other words, Bevan & Associates does not make an individual assessment of how to vote each client; rather Mr. Bevan treats his clients "as a group."[71] Mr. Bevan is aware that a given plan may provide different treatment for his various clients, but he does not consider that to create a conflict situation.[72] Rather, it is just a fact that some of his clients will be compensated under a given plan and some will not.[73]

It is likely that Bevan & Associates previously submitted claims on behalf of the majority of its 15,719 clients in other bankruptcy cases, including the Quigley, Garlock, ACandS and Sepco bankruptcy cases[74] and in the BASF class action litigation.[75] Indeed, if Bevan & Associates were to submit a ballot in the Imerys case today, it is likely they would

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[69] Hr'g Tr. 104: 24-105:2.

[70] Hr'g Tr. 104:24-105:2; 135:3-14.

[71] Hr'g Tr. 133:14-20; 135:3-14. Hr'g Tr. 135:25–137:6.

> Q: Okay, And just as you didn't make an individualized assessment for – on behalf of each of your clients to withdraw the master ballot, you did not make an individualized assessment on behalf of each of your clients to vote affirmatively, correct?
> A: I – you know --, and I'm not sure how to characterize the individual assessment. Again, I – I assessed my clients' claims as a whole, because there is so much similarity in their claims as a whole, that I decided what's best for them as a whole. Do I – did I go through each individual, with (indiscernable) a yes/no? It doesn't really work that way in a – in our business.

[72] Hr'g Tr. 155:1-14.

[73] Hr'g Tr. 155:1-156:13.

[74] Hr'g Tr. 117:6-119:4.

[75] Hr'g Tr. 158:23-160:1.

vote for more than 15,719 clients as they have since taken on more clients. If the balloting deadline had been a year prior to the Voting Deadline it would have submitted fewer votes. In Mr. Bevan's words – "it's a moving target."[76]

Based on his in-take process and the characterization of Debtors' products as "ubiquitous," Mr. Bevan believes it is "likely" that all of his clients were exposed to Debtors' talc.[77] Bevan & Associates' in-take process included a question regarding exposure to talc,[78] but there was never a specific question directed to exposure to an Imerys talc product.[79] Bevan & Associates' intake process asks more general questions regarding exposures, work experience and disease diagnosis.[80] In submitting the Master Ballot, Bevan & Associates did not parse through its database to determine which of its clients were likely exposed to Debtors' product (or any talc product) and which were not.[81] Rather, Mr. Bevan "believes" that "it is likely" his clients have such claims.[82]

Approximately 400 of Bevan & Associates' clients suffer from mesothelioma with the remainder suffering from some other form of cancer.[83] None of its clients have been

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[76] Hr'g Tr. 149:4-14.

[77] Hr'g Tr. 147:16-148:6; 160:14-21; *see also* Hr'g Tr. 48:6-15.

[78] Hr'g Tr. 163:9-15.

[79] Hr'g Tr: 60:4-18.

[80] Hr'g Tr. 162:14-25.

[81] Hr'g Tr. 145:22-146:7.

[82] Hr'g Tr. 59:22-25; 148:12-149:3; 145:22-146:7.

[83] Hr'g Tr. 56:2-11.

diagnosed with ovarian cancer.[84] Nor were any of its clients employed by Debtors.[85] Mr. Bevan was aware when voting on the Plan that the Imerys Plan and proposed Trust Distribution Procedures provide recoveries only for claimants diagnosed with mesothelioma or ovarian cancer.[86] He was aware when voting on the Plan that approximately 15,319 of his clients were currently ineligible for a recovery under the Trust Distribution Procedures.[87] And, Mr. Bevan did not ask any individual client how he/she wanted to vote his/her claim. Rather, as Mr. Bevan testified:

> THE WITNESS: We do not ask our clients what they want us to do in any voting situation, because our clients have no expertise in this particular area. And they, you know, it – it would be a exercise in futility, I guess I would call it, to – to ask each one of my clients what they want to do, when that, particularly as you've said, is why they've hired us.
>
> BY MR. TSEKERIDES:
>
> Q: Okay. Do you think it takes expertise to know you're not getting any money under a plan?
>
> A: I think it takes expertise to understand the full plan, and why they wouldn't get any money in that particular case.[88]

Discussion

Were I to mechanically apply the general principles to the Bevan & Associates Rule 3018 Motion, I would likely grant it. Mr. Bevan testified that he initially voted on behalf of

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[84] Hr'g Tr. 54:25-55:23. More accurately, Bevan & Associates is not pursuing ovarian cancer claims against Imerys on behalf of any of its clients.

[85] Hr'g Tr. 62:7-9.

[86] Hr'g Tr. 56:12-15.

[87] Hr'g Tr. 51:4-9; 56:12-24.

[88] Hr'g Tr. 100:4-15.

his clients to reject the Plan because he believed a vote in support of the Plan could negatively impact his vote in the related, but separate, Cyprus Mines bankruptcy case. Mr. Bevan's reading of the Plan is incorrect as a vote for the Imerys Plan does not preclude a vote against any Cyprus Mines plan. As changing a vote after receiving corrected information falls squarely within the "human error" category (i.e. a misreading of the Plan), this counsels in favor of permitting the vote change.

So, too, I would likely reject the many reasons proffered by Arnold & Itkin and J&J for denying the motion. For example, I do not accept the argument that Mr. Bevan's reason for changing the vote is not genuine. The contemporaneous documentary evidence verifies his concern over the relatedness of the vote between the Imerys and Cyprus Mines plans. While it may be true that a person concerned more about recoveries against Cyprus Mines might vote to reject the Imerys Plan and that the clarification sent by Ms. Ramsey is not precisely accurate,[89] the correctness of Mr. Bevan's assessment based on his communications is not an issue in a Rule 3018 context. Relatedly, it may also be true that it is logical for a claimant who receives nothing under the Plan, at least currently, to vote to reject the plan. Once, again, however, a determination of what is in the best interest of a particular creditor is left up to that creditor in most instances. Finally, the evidence is clear that Bevan & Associates was not offered anything to change its clients' votes. While perhaps Mr. Bevan was trying to curry some favor with other members of the plaintiff's bar,

[89] A vote in favor of the Imerys Plan is, in essence, a vote in favor of the Imerys settlement with Cyprus Mines at least in the context of the Imerys Plan.

that, too, is not necessarily a reason to prohibit a vote change given the documented explanation.[90]

But, there are more fundamental issues at play here: the evidence raises significant questions as to whether any of Bevan & Associates' clients have a claim against any Debtor. What is crystal clear is that: (i) Bevan & Associates has a database of clients built up over the past thirty years, (ii) prior to voting, Bevan & Associates performed zero diligence to discern which of its clients, if any, had been exposed to talc, much less to Debtors' talc and (iii) Bevan & Associates submitted its Master Ballot without regard to whether any of its 15,713 clients had a Talc Personal Injury Claim as required to vote on the Plan. In other words, Bevan & Associates simply printed out a list of its clients in excel spreadsheet format and slapped it behind a Master Ballot.

Master Ballots seem to be commonplace in mass tort bankruptcies.[91] At Debtors' request, and without objection by any party-in-interest, as part of the Solicitation Procedures

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[90] Two groups of insurers also objected to the Motion. The Cyprus Excess Insurers would have me deny the motion because of asserted conflicts among Bevan & Associates' clients. The Cyprus Excess Insurers contend that there is an inherent conflict between those claimants who will receive a distribution under the Trust Distribution Procedures and those who will not. To rule on this ground would require an exploration of the attorney-client relationships between Bevan & Associates and its clients, the various professional rules of responsibility in the states in which Bevan & Associates practices and the application of those rules to each of its clients and, perhaps, to mass tort representations, generally. I find the conflict-of-interest allegations concerning, but I hesitate to address them when it is not necessary to do so to decide what is before me and without the benefit of a complete factual record and legal briefing. The Certain Insurers argue by analogy to § 1126(g) of the Bankruptcy Code that claimants who receive nothing under a plan are deemed to reject the Plan and so Bevan & Associates' 15,319 clients who will not currently receive anything under the Plan should not be able to vote in favor of it. The Future Claimants' Representative does not challenge this argument directly, but instead argues that eligibility to vote is based on whether a claimant has a claim that will be "addressed" by the trust not on whether a claim "satisfies the presumptive validity" under trust distribution procedures. Limited Response to (A) the 3018 Objections and (B) Johnson & Johnson and Johnson & Johnson Consumer Inc.'s Motion to Designate, D.I. 4080. These two positions raise a host of intellectually challenging issues that may also have very practical consequences in mass tort cases. I need not decide them either in order to determine this motion.

[91] I do not comment on whether Master Ballots should be commonplace.

I approved the use of a Master Ballot. Simultaneously, and again without objection, I temporarily allowed the claims of Direct Talc Personal Injury Claims (which are unliquidated and disputed claims) at $1.00 for voting purposes. The result was that law firms submitted at least eighty-five Master Ballots.[92] In order for Master Ballots to work, great trust is placed in the plaintiff's bar.[93] With respect to Bevan & Associates, the evidence shows that such trust was not well-placed. It is true that Direct Talc Personal Injury Claims will be channeled to a trust for liquidation, but a lawyer filing a Master Ballot still has the obligation to ensure that he only votes on behalf of clients who have a claim against Debtors. Indeed, embedded in the defined term is the requirement that a person must have been exposed to Debtors' talc. And, in signing the Master Ballot, the attorney certifies that each client he votes for has a Direct Talc Personal Injury Claim.[94]

Debtors argue that I should focus on the Rule 3018 standard and grant the motion because there was no improper motive underlying the vote change. In essence, Debtors' argument is that I should ignore the evidence regarding the questionable nature of the Bevan & Associates Master Ballot and just grant the motion. This thinking is misguided. While no case cited for the Rule 3018 standard appears to include a requirement that the

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[92] The actual number of Master Ballots submitted does not appear to be in the evidence submitted. This number was based on a review of information in the Supplemental Declaration.

[93] In this case, Debtors did not request a bar date for holders of Direct Talc Personal Injury Claims, thus the Master Ballots and any Rule 2019 statements are the only opportunity for parties in interest to review the basis for any Direct Talc Personal Injury Claims.

[94] Ex. 86 ("[e]ach holder of a Direct Talc Personal Injury Claim listed on the Exhibit accompanying this Master Ballot, as of the Voting Deadline, has a Direct Talc Personal Injury Claim in Class 4.").

underlying claim be valid, that is hardly surprising. Application of Rule 3018 presupposes that the vote movant seeks to change is supported by a valid claim against the debtor.[95]

Debtors also argue that the issue of how to handle the Bevan & Associates Master Ballot should be reserved for confirmation. Upon questioning, however, counsel candidly admitted that the same arguments would be raised at that time. Delaying decision on a motion is sometimes attractive, but it is not appropriate here. This issue has been pending for several months, parties-in-interest engaged in discovery and a full evidentiary hearing was held. The immediacy of the confirmation hearing counsels in favor of, not against, resolution. Given the magnitude of its vote, all parties-in-interest need to know the outcome of the Bevan & Associates Rule 3018 Motion. While Debtors are free to address additional voting issues, as appropriate, if they choose,[96] this matter is ripe for decision.

Given the evidence, the only fair result is to use my discretion to exclude any vote by Bevan & Associates. I will not permit Bevan & Associates to change its votes and accept the Plan, but neither will I permit its Master Ballot to be counted as votes to reject the Plan. The Master Ballot will be considered withdrawn. While I do not make this move lightly, in ruling on this request, I cannot—and will not—ignore how the Master Ballot was generated.

Finally, before concluding my discussion on this motion, I feel compelled to observe my disagreement with Mr. Bevan's apparent strongly-held belief that that his clients cannot make a decision in their best interest when it comes to voting on a plan. I agree that plans

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[95] If proofs of claim are filed, then assuming no objections, holders of those claims are entitled to vote on a plan. 11 U.S.C. § 1126(a). If an objection to a proof of claim is filed and the creditor wants to vote, it needs to file a motion to have its claim estimated for voting purposes. Fed. R. Bankr. P. 3018 (a).

[96] Debtors suggested at argument that it may be appropriate to review Master Ballots filed by other plaintiff firms. Whether or not that is appropriate, it does not change the outcome here.

of reorganization, including the Imerys Plan, are complicated documents. But, it is counsel's job to make the plan understandable and (if counsel is not empowered to vote for the client) to provide advice on whether to accept or reject the plan. This is the second time this year in a mass tort case that counsel has suggested that these types of cases are too complicated for individuals to comprehend. To paraphrase my previous response: "I don't buy it."[97]

B. The Williams Hart Rule 3018 Motion is Granted.

On August 12, 2021, Williams Hart filed its Rule 3018 Motion. By its motion, Williams Hart seeks to change the votes of its 493 clients from votes to reject the Plan to votes to accept the Plan.

Findings of Fact

Mr. Boundas is a named partner in Williams Hart.[98] The firm represents 493 clients suffering from ovarian cancer, which are listed in the firm's Rule 2019 Statement.[99] During

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[97] *In re Cyprus Mines Corporation, Case No. 21-10398 (LSS)*, United States Bankruptcy Court, District of Delaware, May 17, 2021, Bench Ruling on Motion of the Kazan McClain Firm Personal Injury Plaintiffs for Modification of the Tort Claimants Committee or for Appointment of Tort Claimants Conflicts Committee, D.I. 302. ("Why this 'committee by proxy' universe has evolved, I can only guess. And, I won't speculate here.. But, it was suggested at argument it is because these are complex cases and the claimants have to rely on their individual counsel for bankruptcy experience. Mass tort cases are certainly unique and undoubtedly present complex and complicated issues. But, from the perspective of committee member participation, mass tort cases are no more or less complex than any other type of bankruptcy case. And, they are no more or less complex than patent infringement cases, medical malpractice cases or even the underlying asbestos cases in which individuals serve as jurors every day in this country and make decisions unaided by counsel in the jury room. Bottom line: I simply don't buy that argument. More importantly, individuals serving on committees bring valuable real life/non-legal perspectives (whether business or personal) to committee deliberations and how a case should proceed.").

[98] Hr'g Tr. 165:5-7.

[99] Ex. 9.

an interview and vetting process, Williams Hart confirms both exposure to talc products and a diagnosis of ovarian cancer.[100]

Williams Hart followed the bankruptcy case since its inception.[101] Through its own counsel, Williams Hart filed an objection to the approval of the disclosure statement raising two main objections. Williams Hart believes that Debtors may have a large indemnification claim against J&J, but Williams Hart does not see anything in the Plan or Trust Distribution Procedures that requires that claim to be vigorously pursued.[102] Williams Hart also questions the justification for the 40/40/20 split of the Imerys Trust Assets.[103] In addition to filing the disclosure statement objection, Mr. Boundas was in contact with other plaintiffs' firms (including Arnold & Itkin) regarding issues raised by the Plan and attended a zoom call in February 2021 with other plaintiff firms and counsel for the TCC.[104]

In the days leading up to the Voting Deadline, Mr. Boundas was in discussions regarding possible resolutions.[105] As the Voting Deadline approached with no firm agreement, Mr. Boundas reached out to Mr. Baron. On March 25, Mr. Boundas and Mr. Baron exchanged emails regarding possible resolutions, but Williams Hart's objections were not resolved by the 4:00 p.m. (eastern) deadline to submit ballots.[106] Accordingly, out of an

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[100] Hr'g Tr. 167:11-20; *see also* Ex. 9 (Exemplar Power of Attorney and Employment Agreement: Talcum Powder Cancer Claim).

[101] Hr'g Tr. 168:3-8.

[102] Hr'g Tr. 168:9-23; 179:19-180:24.

[103] Hr'g Tr. 168:24-170:2;182:1-183:4.

[104] Hr'g Tr. 170:16-171:5.

[105] Hr'g Tr. 171:10-172:4.

[106] Hr'g Tr. 171:10-172:19.

"abundance of caution" at 3:59 p.m. Williams Hart emailed to Prime Clerk a Master Ballot voting each of its clients' claims to reject the Plan.[107] At the same time, however, Debtors granted Williams Hart and four other firms an extension of the Voting Deadline to noon (eastern) the following day.[108]

Later in the day of March 25, Mr. Boundas and Mr. Baron reached an agreement after exchanging terms multiple times. The final agreement, which was memorialized in an email, is as follows:

1. Vote on plan passes.
2. WH votes yes, withdraws all objections; contacts other objectors to discuss voting yes as well or changing votes if possible.
3. Indemnity claim will be pursued against J&J (no drafting changes in plan).
4. WH firm on TAC, and as a TAC member will be involved in indemnity matters to the extent the TAC is involved.
5. Trustees need (i) TAC consent* and (ii) court approval to settle claims.
6. Approval of indemnity settlement requires 66% of TAC members to approve.
7. WH reserves the right to object to court approval of any settlement on any grounds (including the division of funds among claimants) in their individual capacities.

*Note, if TAC doesn't consent, Trustee reserves the right to go to court to get approval over TAC objection. [109]

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[107] Ex. 49; Hr'g Tr. 173:8-22.

[108] Ex. 48; Hr'g Tr. 176:4-25. The other four firms were Aylstock Witkin, Trammell Law, Linville Johnson and Fears, Nachawati. While these firms did not request an extension, Mr. Boundas was speaking with representatives of these firms and passed their names along to Mr. Baron.

[109] Ex. 47.

Mr. Boundas believes that while not ideal, this agreement sufficiently addresses Williams Hart's two primary objections to the Plan.[110] Further, he views the reservation of rights in item number 6 to apply to all claimants, not just Williams Hart.[111] As for a position on the TAC (Trust Advisory Committee), Mr. Boundas believes that having a seat at the table is favorable for his clients and gives further voice to claimants suffering from ovarian cancer claimants. But, he was not overly enthusiastic about this position.[112]

Mr. Boundas took several actions based on this agreement. As promised, he reached out to the four firms for whom he got an extension.[113] And, on March 26 at 11:10 a.m. he submitted a new Master Ballot to Prime Clerk voting all of his clients claims to accept the Plan.[114]

Discussion

J&J is the primary objector to Williams Hart's request to change its vote. J&J argues that Williams Hart has not met its burden to show cause for the vote change for two main reasons. J&J contends that the change of vote is tainted because granting Williams Hart a seat on the TAC is providing something of value that is prohibited. J&J posits that while it might have been appropriate to provide ovarian cancer claimants with another seat on the

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[110] Ex. 90 (Aug. 12, 2021 Dep. of John Theodore Boundas 91:8-17, Dkt. No. 4061-2).

[111] Hr'g Tr. 185-86.

[112] Boundas Dep. 91:22-94:3.

[113] Hr'g Tr. 179:10-18.

[114] Ex. 50.

TAC, offering it to Williams Hart was simply vote buying. J&J also argues that the reservation of rights on the 40/40/20 split is undisclosed and, perhaps, illusory.[115]

Having listened carefully to Mr. Boundas' testimony and read his deposition, I find cause exists to permit Williams Hart to change the vote of its clients. Mr. Boundas was entirely credible and straight forward in his answers to questions in both settings. Williams Hart expressed valid concerns with respect to the Plan and engaged in negotiations to see if a resolution could be reached. Ultimately, Williams Hart accepted a deal, not a perfect deal, but an agreement that was good enough to convince it to support the Plan. Williams Hart then changed its vote.

The two issues raised by J&J do merit consideration, but I am unconvinced that they require me to deny the motion. First, the evidence does not suggest that the seat on the TAC drove the negotiations; indeed, there is no evidence that Mr. Boundas initially made this demand. The only testimony on this front is that the seat on the TAC was the "least appealing" part of the agreement, but was part of advocating for pursuit of the indemnity claim against J&J.[116] In different circumstances, a seat on a governance board may constitute an improper motivation or "extra consideration" for a vote change. In the circumstances here, however, I do not find it to be outside of the bounds of proper negotiation to come to a consensual resolution of significant objections to a plan. Further, any objections to the make-up of the TAC (including the participation by Williams Hart) can be raised at confirmation.

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[115] Arnold & Itkin filed a limited objection seeking only to ensure that point 7 in the settlement agreement reached between Williams Hart and the TCC would apply to all parties-in-interest.

[116] It is not lost on me that J&J is the only party objecting to Williams Harts' inclusion on the TAC.

As for the reservation of rights to revisit the 40/40/20 split in the future, to the extent it was not disclosed I do not attribute that to Williams Hart. Williams Hart is not a plan proponent and has no responsibility to amend the Plan or the Trust Distribution Procedures, if amendment is necessary. Further, the 40/40/20 split and any reservation of rights is a confirmation issue. As discussed on the record, I am skeptical that this split of Imerys Trust Assets can be revisited if there is a recovery against or settlement with J&J at some point in the future. The 40/40/20 split has been the subject of much discussion in the case and will no doubt be addressed at confirmation. In any event, that this aspect of the agreement may be illusory or that Williams Hart's clients may not receive the benefit of this aspect of the bargain is not a basis to deny Williams Hart the ability to change its votes.

Williams Hart has met its burden of proof. The Williams Hart Rule 3018 Motion is granted.

III. The Motion to Designate is Denied.

J&J filed the Motion to Designate on September 3, 2021. By the Motion, J&J asks me to designate the votes of each of Bevan & Associates, Trammel and Williams Hart if any of them are permitted to change their votes. Given the resolution of the Motion to Disregard and the Bevan & Associate Rule 2019 Motion, the Motion to Designate is moot as to them. It remains pending as to Williams Hart.[117]

Of this seventy-one page speaking motion, approximately seven pages are devoted to Williams Hart's change of votes. Once again, J&J contends the sanctionable behavior is that Williams Hart improperly received a seat on the TAC and that the agreement reached

[117] The Findings of Fact on the Williams Hart 3018 Motion are incorporated herein by reference.

is arguably inconsistent with the Plan. J&J argues Williams Hart received an "unfair advantage" not available to other creditors.

Section 1126(e) provides that the court "may designate any entity whose acceptance or rejection of such plan was not in good faith, or was not solicited or procured in good faith or in accordance with the provisions of this title."[118] Section 1126(e) is permissive, not mandatory, and is within the discretion of the court.[119] Designating a vote is a "drastic remedy" and the burden on the movant is a heavy one.[120]

A review of the authorities J&J cites directed to Williams Hart show that the conduct at issue here is not close to the conduct that would lead to designation of Williams Hart's votes. For example, the *Dune Deck* Court explains:

> Over the years, Courts have developed several badges of bad faith which may justify disqualification. They include creditor votes designed to (1) assume control of the debtor, (2) put the debtor out of business or otherwise gain a competitive advantage, (3) destroy the debtor out of pure malice or (4) obtain benefits available under a private agreement with a third party which depends on the debtor's failure to reorganize.[121]

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[118] 11 U.S.C. § 1126(e).

[119] *In re Adelphia Communications Corp.*, 359 B.R. 54, 60 (Bankr. S.D.N.Y. 2006).

[120] *Id.* at 61.

[121] *In re Dune Deck Owners Corp.*, 175 B.R. 839, 844 (interior citations omitted) (Bankr. S.D.N.Y. 1995). *See also* 7 Collier on Bankruptcy ¶ 1126.06 [2] (interior citations omitted) (16th ed. 2021):

> The party seeking to designate a claim under section 1126(e) bears a heavy burden. Courts generally reserve designation for situations in which the evidence demonstrates an improper purpose or ulterior motive on the part of the voting creditor. For example, a creditor's vote may be designated in the following instances:
>
> - a competitor purchases a blocking position in a class of claims after a plan is proposed in order to control the bankruptcy process to pursue a strategic transaction with the debtor rather than maximize its return on its claim;
> - a vote to block a reorganization plan in order to acquire the debtor company for one's self;
> - the purchaser and potential voter of an impaired claim is a co-proponent of the plan and would become the general partner of the debtor upon confirmation;

These examples evidence some type of obstructive behavior or behavior inconsistent with the creditor's interest *qua* creditor. The negotiation between Williams Hart and the TCC is not the type of destructive or controlling behavior that designation is designed to remedy. The agreement reached does not enable Williams Hart to control Debtors (or even the TAC), put Debtors out of business or prevent confirmation.

The decision in *Adelphia* is instructive. There, the court refused to designate the votes of creditors even though their conduct was considered "overly aggressive and/or stepped over the line." That conduct included extracting special consideration in the way of releases, exculpation and fee awards not provided to others in their class. The court concluded that if complaints regarding such conduct were appropriate, they could be addressed at confirmation, but conduct furthering one's self-interest as a creditor is not sanctionable by designation.

I agree with the *Adelphia* court and once again conclude that the agreement reached with Williams Hart can be addressed at confirmation, if appropriate. Any "unfair advantage" Williams Hart received furthered the interests of its clients in maximizing their recoveries from the Trust. Even assuming such conduct was "over the line," it does not warrant the drastic remedy of disqualifying votes.

- the purchase of claims by an affiliate or an insider of the debtor for the sole purpose of blocking the confirmation of a competing plan;
- a vote to accept a plan motivated by financial incentives provided under a separate settlement agreement;
- a vote motivated by considerations not consistent with protecting the creditor's self-interest;
- a creditor's purposeful destruction of a debtor's business.

J&J has not carried its burden of proof. The Motion to Delegate as to Williams Hart is denied.

Conclusion

Separate orders will be issued on each motion consistent with the above.

Dated: October 13, 2021

Laurie Selber Silverstein
United States Bankruptcy Judge

This is
EXHIBIT "D"
to the Affidavit of
ERIC DANNER
Sworn December 14, 2021

DocuSigned by:
Ben Muller
77FFB2B8DE444CE...

Ben Muller
Commissioner for Taking Affidavits
LSO #80842N

KENNETH R. FEINBERG, ESQ.

The Law Offices of Kenneth R. Feinberg, PC

Kenneth R. Feinberg is one of the nation's leading experts in mediation and alternative dispute resolution. He has administered numerous high-profile compensation programs, having served as Special Master of the September 11th Victim Compensation Fund. In this capacity, Mr. Feinberg developed and promulgated the Regulations governing the Fund's administration and oversaw the evaluation of applications, determinations of appropriate compensation, and dissemination of awards totaling over $7 billion. He also served as the Court-appointed Settlement Master in the Agent Orange Victim Compensation Program.

Mr. Feinberg currently serves as Special Master of the U.S. Victims of State-Sponsored Terrorism Fund being administered by the Department of Justice, as well as independent Fund Administrator for various Catholic Church sexual abuse claims compensation programs established by Catholic dioceses in five states. He also currently serves as the Bankruptcy Court Appointed Mediator in the opioid Purdue Bankruptcy with a Court mandate to resolve financial allocation disputes involving various public and private creditors and the debtor.

In 2015, Mr. Feinberg was appointed as Special Master by the Secretary of the Treasury to oversee the Department of the Treasury's review of applications proposing to reduce pension benefits in connection with the Kline-Miller Multiemployer Pension Reform Act of 2014.

From 2014-2015, he served as the Administrator of the GM Ignition Compensation Claims Resolution Facility.

Mr. Feinberg recently served in a *pro bono* capacity as Administrator of the OneOrlando Fund, designing and implementing a claims program for the distribution of $30 million in corporate and private donations to the victims of the Pulse Nightclub shooting in Orlando in June 2016. Mr. Feinberg has also served in a *pro bono* capacity as Fund Administrator for the One Fund Boston Victim Relief Fund arising out of the Boston Marathon bombings, Advisor for the Newtown-Sandy Hook Victim Compensation Fund, Administrator of the Aurora Victim Relief Fund following the Colorado movie theater shootings in 2012, and Administrator of the Hokie Spirit Memorial Fund following the shootings at Virginia Tech University in 2007.

Mr. Feinberg was appointed by the Obama Administration and BP in 2010 to serve as Administrator of the Gulf Coast Claims Facility to compensate victims of the BP Deepwater Horizon oil spill in the Gulf of Mexico.

Secretary of the Treasury Timothy Geithner appointed Mr. Feinberg in 2009 to serve as Special Master of the Troubled Asset Relief ("TARP") Executive Compensation Program in order to determine the compensation structures of certain employees of Corporate TARP recipients who had received exceptional financial assistance. During this time, Mr. Feinberg also served as Court appointed Fee Examiner of the Lehman Brothers bankruptcy case, examining and instituting caps on fees and expenses charged by professionals retained during the bankruptcy process.

In 2008, Mr. Feinberg designed, implemented and administered Alternative Dispute Resolution Programs for Liberty Mutual Insurance Company and Zurich Insurance Company for resolving insurance claims arising from Hurricanes Katrina, Gustav, Ike and other hurricanes in the Gulf region.

Mr. Feinberg was appointed in June of 2007 as the Distribution Agent of *In Re: United States Securities and Exchange Commission v. American International Group, Inc.,* responsible for the design and implementation of a Plan for the distribution of a $800 million Fund to eligible claimants. He has also served as Fund Administrator in other prominent settlements including: *In Re: United States of America v. Computer Associates International, Inc.* (responsible for the design and implementation of a restitution fund of $275 million); *In Re: International Air Transportation Surcharge Antitrust Litigation* (responsible for the design and administration of a $200 million fund in both the United States and England); *In Re: Zyprexa Product Liability Litigation* (a $700 million settlement fund); and *In Re: Latino Officers Association City of New York v The City of New York* (a $17 million settlement fund).

Mr. Feinberg received his B.A. *cum laude* from the University of Massachusetts in 1967 and his J.D. from New York University School of Law in 1970, where he was Articles Editor of the *Law Review*. He was a Law Clerk for Chief Judge Stanley H. Fuld, New York State Court of Appeals from 1970 to 1972; Assistant United States Attorney, Southern District of New York from 1972 to 1975; Special Counsel, United States Senate Committee on the Judiciary from 1975 to 1978; Chief of Staff to Senator Edward M. Kennedy from 1978 to 1980; Partner at Kaye, Scholer, Fierman, Hays & Handler from 1980 to 1993; and founded The Law Offices of Kenneth R. Feinberg, PC.

MEDIATION

Special Settlement Master, In re: Andrew Herman. et al. v. Westinghouse

Electric Corporation (employment discrimination class action).

Special Settlement Master, In re: "Agent Orange" Product Liability Litigation.

Special Settlement Master, County of Suffolk et al. v. Long Island Lighting Co. et al. (Shoreham Nuclear Facility class action RICO litigation).

Special Settlement Master, In re: Eagle-Picher Industries Inc. (national asbestos personal injury/wrongful death class action).

Special Settlement Master, In re: Joint Eastern and Southern District Asbestos Litigation (federal and state asbestos personal injury/wrongful death litigation arising out of exposures at the Brooklyn Navy Yard).

Special Settlement Master, In re: Asbestos Personal Injury Litigation (asbestos personal injury/wrongful death litigation pending in the Maryland State courts).

Special Settlement Master, In re: Joint Eastern and Southern District Asbestos Litigation (federal asbestos personal injury/wrongful death litigation arising out of exposures at various New York utilities).

Special Settlement Master/Referee, In re: DES Cases (federal and state personal injury/wrongful death DES litigation).

Trustee, In re: A.H. Robins Co. (Dalkon Shield Claimants' Trust).

Mediator, FRT Plywood Mediation (fire retardant plywood litigation involving allegations of defective roofs in approximately 250,000 homes).

Mediator in hundreds of matters involving allegations of antitrust violations, breach of contract, civil RICO violations, civil fraud and product liability; mediator in various commercial and insurance coverage disputes.

Member, National Panel, Center for Public Resources (one of 64 individuals selected nationally by the CPR to mediate and/or engage in other forms of alternative dispute resolution).

Arbitrator, American Arbitration Association.

Arbitrator, Marine Spill Response Corporation.

Former Vice-Chair, Committee on Alternative Dispute Resolution, American Bar Association.

LAW

Managing Partner, Feinberg Rozen, LLP (2009 – present).

Founder, The Feinberg Group, LLP, Washington, D.C. (1993-2009).

Partner, Kaye, Scholer, Fierman, Hays & Handler, Washington, D.C. (1980-1993).

Steven and Maureen Klinsky Lecturer on Law, Harvard University Law School, Cambridge, Mass. (2015-present)

Adjunct Professor of Law, Harvard University Law School, Cambridge, Mass. (2008-2015)

Adjunct Professor of Law, Georgetown University Law Center, Washington, D.C. (1979-Present).

Adjunct Professor of Law, University of Pennsylvania Law School, Philadelphia, PA (1998-2005).

Adjunct Professor of Law, New York University School of Law, New York, NY (2000-Present).

Adjunct Professor of Law, Columbia University Law School (2002-2006).

Adjunct Professor of Law, University of Virginia Law School, Charlottesville, VA (Current Semester 2000).

Adjunct Professor of Law, The Graduate School of Political Management, New York, New York. (1988-1990).

Visiting Lecturer, University of California, Los Angeles, Los Angeles, California (2007).

Visiting Lecturer, Vanderbilt University, Nashville, Tennessee (2008).

Visiting Lecturer, Duke University, Durham, North Carolina (2008).

Visiting Lecturer, New York Law School, New York, New York (2008).

Administrative Assistant, Senator Edward M. Kennedy, Washington, D.C. (1978-1980).

Special Counsel, United States Senate Committee on the Judiciary, Washington, D.C. (1977-1978).

General Counsel, Subcommittee on Administrative Practice and Procedure, United States Senate Committee on the Judiciary, Washington, D.C. (1975-1977).

Assistant United States Attorney, Southern District of New York (1972-1975).

COMMISSIONS

General Counsel, James Madison Memorial Fellowship Foundation. (Public Law

No. 99-591 (1986) and, as amended, Public Law No. 101-208 (1989).

Member, Presidential Advisory Committee on Human Radiation Experiments

(1994-1998).

Member, Presidential Commission on Catastrophic Nuclear Accidents. (1989-1990).

Member, Carnegie Commission Task Force on Science and Technology in Judicial and Regulatory Decisionmaking. (1989-Present).

Member, American Bar Association Special Committee on Mass Torts. (1988-1989).

Special Consultant, United States Sentencing Commission. (1984-1987); Chairman, New York State Committee on Sentencing Reform. (1985-1987).

EDUCATION

J.D. (Cum Laude), New York University School of Law (1970) (New York University Law Review; Butler Prize for "Unusual distinction in scholarship, character and professional activities;" Newman Prize for Ameritorious achievement in the area of public law.")

B.A. (Cum Laude), University of Massachusetts (1967) (Class commencement address)

Law Clerk, Chief Judge Stanley H. Fuld, New York State Court of Appeals. (1970-1972)

HONORS AND AWARDS

Listed in "The 100 Most Influential Lawyers in America," The National Law Journal (March 25, 2013).

Honorary Doctorate, Curry College, Milton, May 2013.

Honorary Doctor of Humane Letters, Salem State University, 2012.

Honorary Doctor of Laws, Saint Francis College, May, 2011.

Honorary Doctor of Laws, Suffolk University, May, 2010.

Designated "Lawyer of the Year" by the *National Law Journal* (December, 2004).

Listed in "Profiles in Power: The 100 Most Influential Lawyers in America" (*National Law Journal*, May 2, 1988; March 25, 1991; April 4, 1994; June 12, 2000; June 19, 2006).

Listed in "The Next Establishment: Twenty-Seven Future Leaders of America's Major Firms" (The American Lawyer, March, 1986).

Listed in "125 Alumni to Watch," University of Massachusetts (October 15, 1988).

Charles A. Fahy Annual Award for Best Adjunct Professor of Law, Georgetown University Law Center (1988-1989).

BAR AND PROFESSIONAL AFFILIATIONS

New York 1971

District of Columbia 1977

Massachusetts 1980

Southern District of New York 1973

Northern District of New York 1991

Federal District Court of the District of Columbia 1981

Federal District Court for the District of Massachusetts 1981

United States Court of Appeals for the Second Circuit 1972

Bar Association of the City of New York 1972

Bar Association of the District of Columbia 1977

Massachusetts Bar Association 1980

American Bar Association Ad Hoc Committee on Tort Law Reform (Chairman, Subcommittee on Statutory Compensation Systems).

Advisory Board, Center for Research in Crime and Justice of the New York University School of Law (1984)

Member of Board of Directors, Lawyers Committee for Human Rights, New York (1990).

Member of Board of Directors, National Organization for Victim Assistance, Washington, D.C. (1991)

Chairman of the Board of the RAND Institute for Civil Justice, Washington, D.C. (2009)

President of the Washington National Opera, Washington, D.C. (2007 – 2011)

Member, Board of Overseers, RAND Institute for Civil Justice, Washington, D.C. (2010- present)

Vice-Chairman of Human Rights First, New York, NY. (2007 - Present)

Member of the Board of Trustees, The Bazelon Center for Mental Health Law, Washington, D.C. (1996 - Present)

Founding Chairman, RAND Center for Catastrophic Risk Management and Compensation (2012 – present)

PUBLICATIONS

1. Books

Who Gets What? Fair Compensation After Tragedy and Financial Upheaval (Public Affairs Press, 2012).

What is Life Worth? The Unprecedented Effort to Compensate the Victims of 9/11 (Public Affairs Press, 2005).

2. Law Review Articles

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

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

ONTARIO
SUPERIOR COURT OF JUSTICE
(COMMERCIAL LIST)

Proceeding commenced at Toronto

AFFIDAVIT OF ERIC DANNER
SWORN DECEMBER 14, 2021

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TAB 3

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

ONTARIO
SUPERIOR COURT OF JUSTICE
(COMMERCIAL LIST)

THE HONOURABLE	)	WEDNESDAY, THE 22nd
	)	
	)	
MR. JUSTICE KOEHNEN	)	DAY OF DECEMBER, 2021

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 ORDER)

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 December 14, 2021 (the "**Second Danner Affidavit**"), the Fourth Report of KPMG Inc., in its capacity as information officer (the "I**nformation Officer**") dated December __, 2021, each filed, and upon being provided with copies of the documents required by section 49 of the CCAA,

AND UPON HEARING the submissions of counsel for the Foreign Representative, counsel for the Information Officer, and those other parties listed on the counsel slip, no one else appearing although served as evidenced by the Affidavit of Ben Muller sworn December __, 2021, filed;

SERVICE

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

hereby dispenses with further service thereof.

RECOGNITION OF FOREIGN ORDERS

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

3. **THIS COURT ORDERS** that the following order of the United States Bankruptcy Court for the District of Delaware made in the insolvency proceedings of the Debtors under Chapter 11 of Title 11 of the United States Bankruptcy Code is hereby recognized and given full force and effect in all provinces and territories of Canada pursuant to Section 49 of the CCAA: *Order (I) Appointing Mediators, (II) Referring Certain Matters to Mediation, and (III) Granting Related Relief*, entered on November 30, 2021 [Docket No. 4385] (the "**Mediator Order**").

GENERAL

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

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

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.
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ORDER
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IN THE MATTER OF THE *COMPANIES' CREDITORS ARRANGEMENT ACT*, R.S.C. 1985, c. C-36, AS AMENDED AND IN THE MATTER OF IMERYS TALC AMERICA, INC., IMERYS TALC VERMONT, INC., AND IMERYS TALC CANADA INC. (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
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Proceeding commenced at Toronto

MOTION RECORD
(RECOGNITION OF FOREIGN ORDER)
(Returnable December 22, 2021)

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