

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

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

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

**September 13, 2022**

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

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

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

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

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

**September 13, 2022**

## I. INTRODUCTION

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

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

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

12. On November 22, 2019, the US Court also entered an Order (I) Establishing a Bar Date for Indirect Talc Claims and Related Procedures for Filing Proofs of Claim for Indirect Talc Claims and (II) Approving Form and Manner of Notice Thereof (the “**Indirect Talc Claims Bar Date Order**”). Pursuant to the Indirect Talc Claims Bar Date Order, the US Court established January 9, 2020 at 5:00 p.m. (Prevailing Eastern Time) as the deadline for creditors to file Proofs of Claim against the North American Debtors based on an Indirect Talc Claim (as defined therein). On December 3, 2019, the Canadian Court granted an order which recognized and gave full force and effect in Canada to the Indirect Talc Claims Bar Date Order.
13. On July 23, 2020, the US Court entered an Order authorizing the employment and retention of Ramboll US Corporation (“**Ramboll**”) as Environmental Advisor *nunc pro tunc* to June 25, 2020 (the “**Ramboll Retention Order**”).
14. On October 29, 2020, the US Court entered an Order (I) Approving Debtors’ Designation of Magris Performance Materials Inc., f/k/a Magris Resources Canada Inc. (“**Magris**”) as Stalking Horse Bidder and Related Bid Protections and (II) Granting Related Relief (the “**Stalking Horse Order**”). On November 3, 2020, the Canadian Court granted an order which recognized and gave full force and effect in Canada to, among other things, the Stalking Horse Order and the Ramboll Retention Order.
15. On November 17, 2020, the US Court entered an Order (I) Approving Sale of All or Substantially All of the Debtors’ Assets Free and Clear of Liens, Claims, Encumbrances, and Other Interests, (II) Authorizing Assumption and Assignment of Certain Executory Contracts and Unexpired Leases, and (III) Granting Related Relief (the “**Sale Approval Order**”). On November 25, 2020, the Canadian Court granted an order which recognized and gave full force and effect in Canada to the Sale Approval Order.
16. On January 8, 2021, the US Court entered an Order authorizing ITC to continue its existence as a corporation under the *Business Corporations Act* (Quebec) (the “**Continuance Order**”).
17. On January 26, 2021, the Canadian Court granted orders:
  - (a) recognizing and giving full force and effect in Canada to the Continuance Order; and
  - (b) discharging Richter as the information officer in these proceedings and appointing KPMG Inc. (“**KPMG**” or the “**Information Officer**”) as the Information Officer effective as of the time of Richter’s discharge.

18. On January 27, 2021, the Debtors filed the Ninth Amended Joint Chapter 11 Plan of Reorganization of Imerys Talc America, Inc. and its Debtor Affiliates Under Chapter 11 of the Bankruptcy Code (the “**Ninth Amended Plan**”) and the Disclosure Statement for the Ninth Amended Plan (the “**Disclosure Statement**”). On September 15, 2021, the Debtors filed the Tenth Amended Joint Chapter 11 Plan of Reorganization of Imerys Talc America, Inc. and its Debtor Affiliates Under Chapter 11 of the Bankruptcy Code (the “**Tenth Amended Plan**” or the “**Plan**”) which contained certain amendments to the Ninth Amended Plan.
19. Also on January 27, 2021, the US Court entered an Order (I) Approving Disclosure Statement and Form and Manner of Notice of Hearing Thereon, (II) Establishing Solicitation Procedures, (III) Approving Form and Manner of Notice to Attorneys and Certified Plan Solicitation Directive, (IV) Approving Form of Ballots, (V) Approving Form, Manner, and Scope of Confirmation Notices, (VI) Establishing Certain Deadlines in Connection with Approval of Disclosure Statement and Confirmation of Plan, and (VII) Granting Related Relief (the “**Solicitation Procedures Order**”).
20. On February 23, 2021, the Canadian Court granted an order which recognized and gave full force and effect in Canada to the Solicitation Procedures Order.
21. On March 12, 2021, the US Court entered an Order Authorizing The Debtors To (I)(A) Employ CohnReznick LLP to Provide Interim Management Services Pursuant to 11 U.S.C. § 363, and (B) Designate Eric Danner as Their Chief Restructuring Officer (the “**CRO**”), *nunc pro tunc* to January 28, 2021, and (II) Designate Eric Danner as Their President and Treasurer Effective Upon the Closing of the Sale (the “**CRO Retention Order**”).
22. On April 19, 2021, the Canadian Court granted an order which recognized and gave full force and effect in Canada to, among other things, the CRO Retention Order.
23. On May 24, 2021, the US Court entered an Order Authorizing the Debtors to Reject Certain Executory Contracts and Unexpired Leases Effective as of the Rejection Date (the “**Contract Rejection Order**”).
24. On August 24, 2021, the US Court entered Orders:
  - (a) Authorizing The Debtors To (A) Close The Adequate Assurance Account Established By The Utilities Order And (B) Utilize All Funds In The Adequate Assurance Account In The Ordinary Course (the “**Utilities Close-Out Order**”); and

- (b) Authorizing the Debtors to Pursue and Effectuate Purchase of Property Located in Lyndonville, Vermont and Johnson, Vermont (the “**VT Acquisition Order**”).
25. On August 30, 2021, the US Court entered an Order Sustaining the Debtors’ Objection to Proof of Claim No. 442 filed by Thomas Neil Fulton (the “**Fulton Claim Objection Order**”).
26. On September 15, 2021, the Debtors filed the Tenth Amended Joint Chapter 11 Plan of Reorganization of Imerys Talc America, Inc. and its Debtor Affiliates Under Chapter 11 of the Bankruptcy Code (the “**Tenth Amended Plan**” or the “**Plan**”) which contained certain amendments to the Ninth Amended Plan.
27. On September 17, 2021, the US Court entered an Order (I) Authorizing Employment and Retention of Ramboll as Environmental Advisor *Nunc Pro Tunc* to August 16, 2021 and (II) Waiving Certain Informational Requirements of Local Rule 2016-2 in Connection Therewith (the “**Supplemental Ramboll Retention Order**”).
28. On October 1, 2021, the Canadian Court granted an order which recognized and gave full force and effect in Canada to the Contract Rejection Order, the VT Acquisition Order, the Fulton Claim Objection Order, the Utilities Close-Out Order and the Supplemental Ramboll Retention Order.
29. On November 30, 2021, the US Court entered an Order (I) Appointing Mediators, (II) Referring Certain Matters to Mediation, and (III) Granting Related Relief (the “**Mediation Order**”).
30. On December 22, 2021, the Canadian Court granted an order which recognized and gave full force and effect in Canada to the Mediation Order.
31. On April 18, 2022, the US Court entered an Order approving the terms of a settlement agreement with Magris in connection with certain post-closing issues (the “**Magris Settlement Order**”).
32. On February 9, 2022, the US Court entered an Order designating American Insurance Company, Fireman’s Fund Insurance Company, and Allianz Underwriters Insurance Company (collectively, the “**Allianz Insurers**”) as “Mediation Parties” in the mediation of insurance issues pursuant to the Mediation Order (the “**Allianz Mediation Order**”).
33. On March 11, 2022, the US Court entered an Order extending the mediation period pursuant to the Mediation Order through to April 8, 2022 (the “**First Mediation Extension Order**”). On April 15,



2022, the US Court entered an Order extending the mediation period through to May 15, 2022 (the “**Second Mediation Extension Order**”).

34. On May 3, 2022, the Canadian Court granted an order which recognized and gave full force and effect in Canada to the Magris Settlement Order, the Allianz Mediation Order, the First Mediation Extension Order and the Second Mediation Extension Order.
35. The primary purpose of the Chapter 11 Proceedings is to confirm a plan of reorganization pursuant to the Bankruptcy Code that channels all present and future talc personal injury claims (the “**Talc Personal Injury Claims**”) against the Debtors to a trust so that the Debtors can emerge from these restructuring proceedings free of historical talc-related liabilities.
36. KPMG, in its capacities as proposed Information Officer and Information Officer, has previously provided the Canadian Court with six reports in respect of these proceedings. Copies of all materials and reports filed, and orders granted by the Canadian Court in these Recognition Proceedings, are available on a website (the “**Information Officer’s Website**”) established by the Information Officer for the purposes of these proceedings at <https://home.kpmg/ca/imerystalc>. Additionally, there is a link on the Information Officer’s Website to the Debtors’ restructuring website maintained by Kroll, LLC f/k/a Prime Clerk LLC, which includes copies of the US Court materials and orders, notices and additional information in respect of the Chapter 11 Proceedings.

## **II. PURPOSE OF REPORT**

37. The purpose of this sixth report (the “**Sixth Report**”) of KPMG in its capacity as the Information Officer is to provide the Canadian Court with information concerning:
  - (a) the motion of the Foreign Representative returnable September 15, 2022 for recognition in Canada of the Broughton Reclamation Order, the District Court Order, the Third Circuit Order and the Mediation Extension Orders (each as defined herein); and
  - (b) the activities of the Information Officer since the fifth report (the “**Fifth Report**”) dated April 28, 2022.

## **III. TERMS OF REFERENCE**

38. In preparing this Sixth Report, KPMG has relied solely on information and documents provided by the Debtors and their advisors, including unaudited financial information, declarations and

affidavits of the Debtors' executives and other information provided in the Chapter 11 Proceedings (collectively, the "**Information**"). In accordance with industry practice, except as otherwise described in the Sixth Report, KPMG has reviewed the Information for reasonableness, internal consistency, and use in the context in which it was provided. However, KPMG has not audited or otherwise attempted to verify the accuracy or completeness of the Information in a manner that would comply with Generally Accepted Auditing Standards ("**GAAS**") pursuant to the *Chartered Professional Accountant of Canada Handbook* and, as such, KPMG expresses no opinion or other form of assurance contemplated under GAAS in respect of the Information.

39. Unless otherwise stated, all monetary amounts contained herein are expressed in United States dollars.
40. Capitalized terms not otherwise defined herein are as defined in the affidavit of Eric Danner, the CRO, President and Treasurer of the Debtors, sworn on September 12, 2022 (the "**September 12 Danner Affidavit**") and filed in support of the Foreign Representative's motion. This Sixth Report should be read in conjunction with the September 12 Danner Affidavit, as certain information contained in the September 12 Danner Affidavit has not been included herein in order to avoid unnecessary duplication.

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

##### **Broughton Reclamation Order**

41. A predecessor to ITC, Luzenac Inc. ("**Luzenac**"), previously owned property in the town of Saint-Pierre de Broughton, Quebec (the "**Broughton Property**") on which Luzenac operated the Saint-Pierre-de-Broughton talc mine (the "**Broughton Mine**").
42. Luzenac was acquired in 2011 by an Imerys Group holding company, Mircal S.A. ("**Mircal**"). Mircal entered into an agreement with Rio Tinto America, Inc. ("**Rio Tinto**") to purchase the stock of certain Rio Tinto affiliates' talc operations. Mircal acquired the stock of Luzenac from a Rio Tinto affiliate, QIT Fer & Titane, Inc. Luzenac subsequently changed its name to ITC.
43. In 2004, the Ministry of Energy and Natural Resources ("**MERN**") approved a rehabilitation and restoration plan in connection with ITC's mining operations on the Broughton Property (the "**Restoration and Rehabilitation Plan**") that required ITC to conduct the rehabilitation and restoration of the Broughton Property under the *Quebec Mining Act*. In connection with the Restoration and Rehabilitation Plan, ITC paid CAD\$58,500 (approximately \$46,000) to MERN as

financial assurance for ITC's rehabilitation and restoration obligations (the "**Financial Assurance**"), which amounts were to be returned to ITC after completion of the reclamation of the Broughton Property.

44. On October 6, 2010, Les Forages Andre Vachon Inc. ("**Forages**") purchased the Broughton Property, including the Broughton Mine, from ITC (the "**Broughton Sale**") and as part of the transaction agreed to assume responsibility for all environmental liability related to the Broughton Property. However, subsequent to the Broughton Sale, Forages failed to post the necessary financial assurance required by the *Quebec Mining Act* to effectuate the liability transfer. As a result, MERN did not consent to the transfer of liability to Forages and continued to hold ITC responsible for reclamation of the Broughton Property.
45. In January 2021, Forages approached ITC about the possibility of assuming, with the consent of MERN, ITC's reclamation obligations and all liabilities related to the rehabilitation and restoration of the Broughton Property (the "**Liability Transfer**") in exchange for a \$250,000 cash payment. On April 21, 2021, ITC, Forages and its affiliate, Les Pierres Stéatites Inc., ("**Steatites**" and collectively, the "**Parties**") entered into a term sheet. The Parties provided the term sheet to MERN in May 2021 and sought approval of the Liability Transfer. MERN conducted a site visit to review the scope of the reclamation work in August 2021, and, thereafter performed a further financial review of the Liability Transfer. In July 2022, MERN informed the Parties that it would approve the Liability Transfer, subject to receipt of a fully executed agreement among the Parties in respect of the Liability Transfer (the "**Broughton Reclamation Agreement**").
46. On July 22 and 25, 2022 the Parties executed the Broughton Reclamation Agreement, a copy of which is attached (without exhibits) as Exhibit "H" to the September 12 Danner Affidavit. ITC's obligations pursuant to the Broughton Reclamation Agreement include:
  - (a) forming an escrow account (the "**Escrow Account**") and depositing \$231,000 (the "**Escrow Amount**") into the Escrow Account within fifteen business days following receipt of the Release (as defined in the Broughton Reclamation Agreement), which amount will be held in accordance with the terms of an agreement ("**Escrow Agreement**") to be entered into with an independent third party to be selected by ITC to act as the escrow agent (the "**Escrow Agent**"); and
  - (b) submitting a letter (the "**Letter**") to MERN within fifteen business days following the date after ITC receives approval from the US Court and the Canadian Court of the Broughton

Reclamation Agreement, under which ITC will request that, subject to MERN's issuance of the Release, MERN (i) permit the Financial Assurance to serve as a guarantee for Forages and Steatites in connection with the Reclamation Work, and (ii) disburse the Financial Assurance to Forages and Steatites following completion of Phase III of the Reclamation Work (as defined in the Broughton Reclamation Agreement).

47. Upon completion of these obligations, ITC shall be deemed to have fully complied with all of its obligations under the Broughton Reclamation Agreement and shall have no further obligation or liability with respect to the reclamation of the Broughton Property.
48. The total cost to ITC related to the Broughton Reclamation Agreement is approximately \$290,000<sup>1</sup> in aggregate, comprised of:
  - (a) the Escrow Amount, which amount will be released by the Escrow Agent to Forages and Steatites in accordance with the terms of the Escrow Agreement;
  - (b) the Financial Assurance, which amount is currently held by MERN pursuant to the Restoration and Rehabilitation Plan and would be transferred from MERN to Forages and Steatites in accordance with the terms of the Broughton Reclamation Agreement; and
  - (c) \$12,000, as the fee to be paid to the Escrow Agent upon signing of the Escrow Agreement.
49. In September 2020, Ramboll, the Debtors' environmental advisor, estimated that the remaining reclamation costs at the Broughton Property, if the reclamation was to be performed by ITC, would likely exceed the \$290,000 to be incurred by ITC in aggregate under the Broughton Reclamation Agreement and ancillary documents.
50. As noted in the September 12 Danner Affidavit, the Debtors, together with their advisors, considered various options to minimize the expenses incurred by ITC to reclaim the Broughton Property, including contacting over twenty contractors to evaluate whether a more cost-effective resolution of the reclamation obligations was possible. Furthermore, the Debtors have considered seeking to enforce Forages' prior agreement to assume responsibility for all environmental liability related to the Broughton Property pursuant to Broughton Sale, but recognize that success of

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<sup>1</sup> Excluding the Additional Escrow Fees or amounts associated with the Escrow Indemnity, if any.

pursuing such a course of action is uncertain, litigation expenses incurred would likely be substantial and any liability transfer would still require affirmative consent from MERN.

51. As such, the Debtors concluded that the Broughton Reclamation Agreement appears to be the best and most efficient path forward as it will enable ITC to resolve its current reclamation obligations in a cost-effective manner, which, in turn, will maximize estate assets available to creditors.
52. On July 25, 2022, the Debtors filed a motion for entry of an Order (I) Approving the Broughton Reclamation Agreement and the Escrow Agreement and (II) Authorizing ITC to Perform all Obligations Thereunder (the “**Broughton Reclamation Order**”).
53. On August 15, 2022, the US Court entered the Broughton Reclamation Order without a hearing as no formal or informal objection or response to the Debtors’ motion for the Broughton Reclamation Order was received prior to the objection deadline.

#### **Appeals of the FCR Order**

54. Prior to the Petition Date, the Debtors retained Patton of Young, Conaway, Stargatt & Taylor, LLP (“**YCST**”) to serve as the FCR to represent the interests of individuals who may in the future assert Talc Claims against the Debtors.
55. On February 27, 2019, the Debtors filed a motion (the “**FCR Motion**”) for entry of an order appointing Patton, as legal representative for future talc personal injury claimants *nunc pro tunc* to the Petition Date.
56. Certain of the Debtors’ insurers, including Columbia Casualty Company, Continental Casualty Company, the Continental Insurance Company, Lamorak Insurance Company (formerly known as OneBeacon America Insurance Company and as successor to Employers’ Surplus Lines Insurance Company), Stonewall Insurance Company (now known as Berkshire Hathaway Specialty Insurance Company in respect of policies issued prior to 1981) and National Union Fire Insurance Company of Pittsburgh, PA (collectively, the “**Excess Insurers**”) opposed the appointment of Patton as the FCR on the basis that, among other things, the Debtors’ pre-petition employment of Patton raised questions about his independence from the Debtors. The US Court believed that a proper consideration of this argument necessitated more disclosure than was made by the Debtors in the FCR Motion.

57. After a hearing to consider the FCR Motion, and the subsequent filing of supplemental materials by the Debtors, Patton and the Excess Insurers, the US Court entered the FCR Order on June 3, 2019, which order was recognized by the Canadian Court on October 28, 2019.
58. On June 14, 2019, the Excess Insurers appealed, among other things, the FCR Order (the “**District Court Appeal**”) to the United States District Court for the District of Delaware (the “**District Court**”). In the District Court Appeal, the Excess Insurers argued that, among other things, Patton had an actual, concurrent conflict in acting as FCR, because YCST represented certain of the Excess Insurers as defendants in a separate asbestos-related coverage dispute, *Warren Pumps v. Century Indemnity Co.*, No. N10C-06-141 (Del. Super. Ct.) (“**Warren Pumps**”), and the prospective waiver obtained by YCST was not effective in allowing the firm to represent the future talc claimants in these proceedings. On November 24, 2020, the District Court issued its decision in rejecting the District Court Appeal and entered an Order affirming the ruling of the US Court (the “**District Court Order**”).
59. On December 11, 2020, the Excess Insurers appealed the District Court Order to the United States Court of Appeals for the Third Circuit (the “**Third Circuit Court**”), which appeal was heard by the Circuit Judges on October 5, 2021. On June 30, 2022, the Third Circuit Court rendered its decision and issued an order affirming the District Court Order (the “**Third Circuit Order**”).
60. The Third Circuit Court considered the Excess Insurers’ argument that there was a direct conflict of interest, and affirmed the US Court’s finding that the prospective waiver signed by the two insurers party to Warren Pumps disposed of the issue. It also dismissed the argument that the Excess Insurers could not give informed consent as to potential future conflicts. Finally, the Third Circuit Court dismissed the Excess Insurers’ arguments that the FCR would be unable to serve the future claimants’ interests because his firm had advanced arguments adverse to what the FCR would be expected to make about the insurers’ policies in the present case. The Third Circuit Court noted that the US Court had carefully considered this issue and that, on the basis of the additional disclosures made by Patton and his responses to the objections raised by the Excess Insurers, it was not an abuse of discretion for the US Court to conclude that the alleged conflict would not impair the FCR’s performance and that he would serve the future claimants’ interests with the required degree of independence and loyalty.

## **Mediation Extension Orders**

61. As noted above, the US Court entered the Mediation Order on November 30, 2021, which order was recognized by the Canadian Court on December 22, 2021. Pursuant to the Mediation Order, the term of the mediation was to expire on February 28, 2022, which date could be extended by further order of the US Court.
62. As noted in the Fifth Report, the US Court previously entered orders extending the mediation period to April 8, 2022 and then to May 15, 2022. On May 23, 2022, the US Court entered an order extending the mediation period through to June 30, 2022 (the “**Third Mediation Extension Order**”) and on July 13, 2022, the US Court entered an order extending the mediation period through to September 30, 2022 (the “**Fourth Mediation Extension Order**” and together with the Third Mediation Extension Order, the “**Mediation Extension Orders**”).
63. The Information Officer understands that while progress has been made in the mediation, the mediation activity remains ongoing and extending the term of the mediation will provide the parties additional time to continue the mediation to hopefully progress towards a resolution of the mediation issues.

## **V. ACTIVITIES OF THE INFORMATION OFFICER**

64. The activities of the Information Officer since the date of the Fifth Report include:
  - (a) communicating with the Debtors’ advisors, including the CRO, and the Information Officer’s counsel regarding the status of matters related to the Chapter 11 Proceedings and the Recognition Proceedings;
  - (b) reviewing materials filed by various parties in the Chapter 11 Proceedings in connection with the Broughton Reclamation Order, the District Court Order, the Third Circuit Order and the Mediation Extension Orders;
  - (c) reviewing the Debtors’ cash flow reporting and professional fee reimbursement requests, and corresponding with the CRO and CohnReznick on same;
  - (d) attending before the Canadian Court in respect of the Foreign Representative’s motion for recognition of the Magris Settlement Order, the Allianz Mediation Order, the First Mediation Extension Order and the Second Mediation Extension Order;

- (e) maintaining and updating, as necessary, the Information Officer's Website; and
- (f) preparing this Sixth Report.

## **VI. INFORMATION OFFICER'S RECOMMENDATION**

65. Based on the Information received and reviewed, the Information Officer is of the view that it is reasonable to recognize the Broughton Reclamation Order, the District Court Order, the Third Circuit Order and the Mediation Extension Orders, and respectfully recommends that the Canadian Court grant the recognition order being sought by the Foreign Representative in its motion returnable September 15, 2022.

All of which is respectfully submitted this 13<sup>th</sup> day of September, 2022.

**KPMG Inc.**

**In its capacity as the Information Officer of**

**Imerys Talc America, Inc., Imerys Talc Vermont, Inc. and Imerys Talc Canada Inc.**

**And not in its personal or corporate capacity**

Per:



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**Pritesh Patel, CIRP, LIT**

Senior Vice-President



IN THE MATTER OF THE *COMPANIES' CREDITORS ARRANGEMENT ACT*, R.S.C.  
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Court File No. CV-19-614614-00CL

**ONTARIO**  
**SUPERIOR COURT OF JUSTICE**  
**(COMMERCIAL LIST)**  
PROCEEDING COMMENCED AT TORONTO

**SIXTH REPORT OF THE INFORMATION OFFICER**  
**September 13, 2022**

**OSLER, HOSKIN & HARCOURT LLP**

100 King Street West  
1 First Canadian Place  
Suite 6200, P.O. Box 50  
Toronto ON M5X 1B8

Kathryn Esaw (LSO# 58264F)  
Tel: 416.862.4905  
Email: [kesaw@osler.com](mailto:kesaw@osler.com)

*Lawyers for the Information Officer, KPMG Inc.*