

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

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

**AND IN THE MATTER OF IMERYS TALC AMERICA, INC., IMERYS TALC VERMONT,
INC., AND IMERYS TALC CANADA INC. (THE "DEBTORS")**

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

**MOTION RECORD
(Re: RECOGNITION OF FOREIGN ORDERS)
(Returnable May 3, 2022)**

April 27, 2022

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TO: ATTACHED SERVICE LIST

**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
(April 27, 2022)**

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CANADA REVENUE AGENCY	Kay Singh kay.singh@cra-arc.gc.ca
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INDEX

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

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

**AND IN THE MATTER OF IMERYYS TALC AMERICA, INC., IMERYYS TALC VERMONT,
INC., AND IMERYYS TALC CANADA INC. (THE "DEBTORS")**

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

I N D E X

TAB DOCUMENT

1. Notice of Motion, returnable May 3, 2022
2. Affidavit of Eric Danner, sworn April 26, 2022
 - A. *Exhibit A*: Magris Settlement Order, April 18, 2022
 - B. *Exhibit B*: Allianz Mediation Order, February 9, 2022
 - C. *Exhibit C*: First Mediation Extension Order, March 11, 2022
 - D. *Exhibit D*: Second Mediation Extension Order, April 15, 2022
 - E. *Exhibit E*: Affidavit of Ryan Van Meter sworn February 18, 2021 (without exhibits)
 - F. *Exhibit F*: Affidavit of Eric Danner sworn December 14, 2021 (without exhibits)
 - G. *Exhibit G*: Settlement Agreement, March 29, 2022
3. Draft Order

TAB 1

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

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

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

**NOTICE OF MOTION¹
(Re: Recognition of Foreign Orders)
(Returnable May 3, 2022)**

The Applicant, Imerys Talc Canada Inc. ("**ITC**"), will make a motion to a judge presiding over the Commercial List on May 3, 2022 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 orders of the United States Bankruptcy Court for the District of Delaware (the "**US Court**") made in the insolvency proceedings of the Debtors under chapter 11 of title 11 of the United States Bankruptcy Code (the "**US Bankruptcy Code**"):

¹ All capitalized terms not otherwise defined herein shall have the meaning ascribed to them in the affidavit of Eric Danner sworn April 26, 2022 (the "**Third Danner Affidavit**").

- (a) *Order Approving Settlement with Magris Performance Materials Inc.*, entered on April 18, 2022 [Docket No. 4755] (the “**Magris Settlement Order**”);
- (b) *Order Granting Motion by Allianz-Affiliated Insurers to be Included as a “Mediation Party” in Mediation of Insurance Issues*, entered on February 9, 2022 [Docket No. 4605] (the “**Allianz Mediation Order**”);
- (c) *Order Approving Stipulation and Agreement by and Among the Mediation Parties Regarding the Term of Mediation*, entered on March 11, 2022 [Docket No. 4652] (the “**First Mediation Extension Order**”); and
- (d) *Order Approving Stipulation and Agreement by and Among the Mediation Parties Regarding the Term of Mediation*, entered on April 15, 2022 [Docket No. 4753] (the “**Second Mediation Extension Order**”).

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

THE GROUNDS FOR THE MOTION ARE:

Background

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

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

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

6. The Debtors’ stated purpose of the Chapter 11 Cases is to confirm a plan of reorganization that will maximize the value of the Debtors’ assets for the benefit of all

stakeholders and include a trust mechanism to address Talc Personal Injury Claims in a fair and equitable manner;

The Plan of Reorganization

(i) *Overview*

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

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

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

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

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

(ii) *The Mediation Order*

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

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

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

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

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

17. The US Court has entered two orders which, together, extend the current term of the Mediation to May 15, 2022;

The Magris Settlement Order

18. Following the sale of substantially all of the Debtors' assets to Magris, which closed on February 17, 2021 (the "**Sale**"), certain issues arose with respect to the interpretation of the purchase agreement to effect the Sale (the "**Purchase Agreement**") and the proper allocation of certain costs in connection with the Sale (together, the "**Settlement Issues**");

19. After several months of negotiations, the Debtors and Magris entered into a settlement agreement (the "**Settlement Agreement**") which fully and completely resolves the Settlement Issues;

20. On April 18, 2022, the US Court entered the Magris Settlement Order which approves the settlement between the Debtors and Magris;

21. The Settlement Agreement provides, among other things: (1) that Magris shall remit to the Debtors \$144,514.82 in cash (the "**Settlement Payment**"); (2) a comprehensive full and final release; and (3) a revision to Section 2.6(b) of the Purchase Agreement;

22. If the Debtors litigated the Settlement Issues, their maximum recovery would be \$549,029.63, not taking into account the costs of litigating these issues;

23. Given the uncertainty in litigation, the costs of litigation the Debtors could expect to incur if the Settlement Issues were litigated, and the Debtors' attention that would be diverted from other pressing matters, the Settlement Agreement is in the Debtors' best interest and falls within the range of reasonable litigation outcomes;

24. The recognition of the Magris Settlement Order is not anticipated to cause material prejudice to Canadian stakeholders;

The Allianz Mediation Order

25. The Mediation Order provides that additional parties who wish to participate in the Mediation shall be included in the Mediation if the US Court orders the inclusion of such parties;

26. On February 9, 2022, the US Court entered the Allianz Mediation Order which designated American Insurance Company, Fireman's Fund Insurance Company, and Allianz Underwriters Insurance Company f/k/a Allianz Underwriters (collectively, "**Allianz**") as "Mediation Parties" in the Mediation;

27. Allianz' inclusion as "Mediation Parties" will assist in efficiently resolving insurance coverage disputes and the Chapter 11 Cases;

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

The First Mediation Extension Order and the Second Mediation Extension Order

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

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

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

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

33. The recognition of the First Mediation Extension Order and the Second Mediation Extension Order is not anticipated to cause material prejudice to Canadian stakeholders;

Other Grounds

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

35. 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

36. 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:

37. The Third Danner Affidavit;

38. The Magris Settlement Order, Allianz Mediation Order, First Mediation Extension Order, and Second Mediation Extension Order, copies of which are attached to the Third Danner Affidavit;

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

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

April 27, 2022

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Schedule "A"

Zoom Coordinates

May 3, 2022 at 9:30 a.m. Eastern Time (US and Canada)

Join Zoom Meeting

<https://us02web.zoom.us/j/88685891982>

Meeting ID: 886 8589 1982

One tap mobile

+17789072071,,88685891982# Canada

+17806660144,,88685891982# Canada

Dial by your location

+1 778 907 2071 Canada

+1 780 666 0144 Canada

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+1 587 328 1099 Canada

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+1 647 558 0588 Canada

Meeting ID: 886 8589 1982

Find your local number: <https://us02web.zoom.us/u/kjsIO7YE4>

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

**NOTICE OF MOTION
(Returnable May 3, 2022)**

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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*,
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**AFFIDAVIT OF ERIC DANNER
(Sworn April 26, 2022)**

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

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

2. As a result of my role and tenure with CohnReznick and the Debtors, my review of public and non-public documents, and my discussions with the Debtors' employees and advisers, I either have personal knowledge or am generally familiar with the Debtors' businesses, financial condition, policies, and procedures, day-to-day operations, and books and records. Except as otherwise noted, I have personal knowledge of the matters set forth herein or have gained knowledge of such matters from the Debtors' employees or retained advisers that report to me in the ordinary course of my responsibilities.

3. I swear this affidavit in support of ITC's motion pursuant to the Companies' Creditors Arrangement Act, R.S.C. 1985 c. C-36, as amended (the "**CCAA**"), for an order granting certain relief, including recognizing the Foreign Orders (as defined below) in respect of the jointly administered proceeding of the Debtors under title 11 of the United States Code (the "**US Bankruptcy Code**").

4. All dollar references in this Affidavit are in US dollars, unless otherwise specified.

I. BACKGROUND

5. The Debtors are three debtors-in-possession in the Chapter 11 Cases (as defined below) commenced before the US Court.

6. The Debtors were in the business of mining, processing, selling, and/or distributing talc. The Debtors formerly operated talc mines, plants, and distribution facilities in Montana, Vermont, Texas and Ontario. ITA and ITV sold talc directly to their customers as well as to third party and affiliate distributors. ITC exported the vast majority of its talc into the United States almost entirely on a direct basis to its customers. The Debtors sold substantially all of

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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.

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11. On February 20, 2019, this Court made an initial recognition order declaring ITC the foreign representative as defined in s. 45 of the CCAA and a supplemental order recognizing the First Day Orders and appointing Richter Advisory Group Inc. as the Information Officer. Richter Advisory Group Inc. was replaced by KPMG Inc. as the Information Officer on January 26, 2021.

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

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

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 December 14, 2021, the US Court has entered the following orders:

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Eric Dahner
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- a) *Order Granting Motion of Cyprus Mines Corporation and Cyprus Amax Minerals Company for an Order Further Extending the Deadline by Which to Remove Civil Actions*, entered on January 10, 2022 [Docket No. 4501], which extended by 120 days the deadline by which Cyprus Mines Corporation, Cyprus Amax Minerals Company, and their affiliates may file notices of removal under Bankruptcy Rule 9027(a), through to and including April 22, 2022;

- b) *Order Granting Motion of Rio Tinto for an Order Further Extending the Deadline by Which to Remove Civil Actions*, entered on January 10, 2022 [Docket No. 4503], which extended by 120 days the deadline by which Rio Tinto America Holdings Inc., Rio Tinto America Inc., Rio Tinto Services Inc., and their affiliates may file notices of removal under Bankruptcy Rule 9027(a), through to and including April 22, 2022;

- c) *Ninth Order Under 28 U.S.C. § 1452 And Fed. R. Bankr. P. 9006(b) And 9027, Further Extending the Deadline By Which the Debtors May Remove Civil Actions*, entered on January 10, 2022 [Docket No. 4502], which extended by 120 days the deadline by which the Debtors may file notices of removal under Bankruptcy Rule 9027(a), through to and including April 22, 2022;

- d) *Order Granting Motion by Allianz-Affiliated Insurers to be Included as a “Mediation Party” in Mediation of Insurance Issues*, entered on February 9, 2022 [Docket No. 4605] (the “**Allianz Mediation Order**”), which designated American Insurance Company, Fireman’s Fund Insurance Company, and Allianz Underwriters Insurance Company f/k/a Allianz Underwriters as “Mediation Parties” in the Mediation (as defined below);

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Eric Danner
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- e) *Order Approving Stipulation and Agreement by and Among the Mediation Parties Regarding the Term of Mediation*, entered on March 11, 2022 [Docket No. 4652] (the “**First Mediation Extension Order**”), which approved the stipulation and agreement to extend the term of the Mediation from February 28, 2022 through to and including April 8, 2022;
- f) *Order Approving Stipulation and Agreement by and Among the Mediation Parties Regarding the Term of Mediation*, entered on April 15, 2022 [Docket No. 4753] (the “**Second Mediation Extension Order**”), which approved the stipulation and agreement to extend the term of the Mediation from April 8, 2022 through to and including May 15, 2022; and
- g) *Order Approving Settlement with Magris Performance Materials Inc.*, entered on April 18, 2022 [Docket No. 4755] (the “**Magris Settlement Order**”).

15. At this time, the Debtors are seeking to recognize only the Magris Settlement Order, the Allianz Mediation Order, the First Mediation Extension Order, and the Second Mediation Extension Order (collectively, the “**Foreign Orders**”), which are described in greater detail below. A copy of the Magris Settlement Order is attached hereto and marked as **Exhibit “A”**. A copy of the Allianz Mediation Order is attached hereto and marked as **Exhibit “B”**. A copy of the First Mediation Extension Order is attached hereto and marked as **Exhibit “C”**. A copy of the Second Mediation Extension Order is attached hereto and marked as **Exhibit “D”**.

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(b) The Plan of Reorganization¹**(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.

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

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

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

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.

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

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

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

(c) **The Mediation Order**

21. On November 30, 2021, the US Court entered the Order (I) Appointing Mediators, (II) Referring Certain Matters to Mediation, and (III) Granting Related Relief [Docket No. 4385] (the **“Mediation Order”**). The Mediation Order was summarized in my previous Affidavit sworn December 14, 2021. On December 22, 2021, this Court recognized the Mediation Order.

22. The Mediation Order, among other things, (i) authorizes Kenneth R. Feinberg, Esq. to serve as a mediator to mediate any and all issues related to: (a) the Cyprus Settlement (the **“Global Settlement Issues”**); and (b) the resolution of disputes over the obligations of certain insurers that issued insurance policies to the Cyprus Debtor and its past and present affiliates (the **“Insurance Issues”** and together with the Global Settlement Issues, the

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

23. The term of the Mediation was originally set to expire on February 28, 2022. The US Court has entered two orders extending the term of the Mediation. Currently, the term of the Mediation is set to expire on May 15, 2022, subject to further order of the US Court.

24. The Debtors, the TCC, the FCR, the Cyprus Debtor, the Cyprus TCC and the Cyprus FCR (the “**Mediation Parties**”) have participated in mediation sessions with each of (i) Employers Mutual Casualty Company; (ii) TIG Insurance Company, as successor by merger to International Insurance Company, International Surplus Lines Insurance Company, Mt. McKinley Insurance Company (formerly known as Transamerica Premier Insurance Company), Everest Reinsurance Company (formerly known as Prudential Reinsurance Company), and The North River Insurance Company; (iii) Hartford Accident and Indemnity Company and First State Insurance Company; (iv) American Insurance Company, Fireman’s Fund Insurance Company, and Allianz Underwriters Insurance Company f/k/a Allianz Underwriters, Inc.; (v) Travelers Casualty and Surety Company (f/k/a The Aetna Casualty and Surety Company) and the Travelers Indemnity Company; (vi) the Chubb Insurers (as defined in the Mediation Order); and (vii) the Cyprus Historical Excess Insurers (as defined in the Mediation Order, and, together with the above listed insurers, the “**Insurers**”).

25. Since the Mediation Order was entered by the US Court, the Mediation Parties have conducted an extensive information exchange in coordination with Mr. Feinberg. In

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connection with and following that information exchange, the parties have been engaged in regular sessions to develop a common understanding of the Mediation Issues and goals. In addition, mediation sessions with each of the Insurers took place in February, March and April, and the Mediators are working to schedule mediation sessions with the remaining insurers. Significant mediation activity took place in March and April and the Imerys Debtors and Cyprus Debtors continue to work toward completing the mediation process and proceeding to plan confirmation as soon as practicable.

III. OVERVIEW OF THE FOREIGN ORDERS

(a) Overview of the Magris Settlement Order

26. The motion requesting entry of the Magris Settlement Order was filed by the Debtors on March 30, 2022 [Docket No. 4691]. I submitted a declaration in support of this motion [Docket No. 4697]. The deadline to submit an objection or response to the entry of the Magris Settlement Order was April 13, 2022 at 4:00 p.m. (the “**Objection Deadline**”). No objection or response was filed or received by the Debtors in connection with Magris Settlement Order by the Objection Deadline. The US Court entered the Magris Settlement Order on April 18, 2022.

27. The Magris Settlement Order approves the settlement (the “**Settlement**”) between the Debtors and Magris, which principally resolves the disputes that have arisen between the Debtors and Magris regarding the interpretation of the Purchase Agreement (as defined below) and the proper allocation of certain costs in connection with the Sale.³

³ On November 17, 2020, the US Court entered the *Order (I) Approving Sale of 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 in Connection Therewith and (III) Granting Related Relief* [Docket No. 2539], which authorized the Sale of substantially all of the Debtors' assets to Magris (the “**Sale Approval Order**”). On November 25, 2020, this Court recognized the Sale Approval Order.

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28. These disputes principally concern:

- a) **Indemnification Claim:** fees related to the transfer of surety bonds, including the Debtors' rights to assert certain indemnification claims under the asset purchase agreement executed on October 13, 2020 to effect the Sale (as amended or modified, the "**Purchase Agreement**");
 - b) **Affiliate Payables:** the parties' rights and obligations with respect to certain intercompany trade payables; and
 - c) **2021 Annual Incentive Plan:** the parties' respective obligations arising out of a 2021 annual incentive plan,
- (together, the "**Post-Closing Issues**").

29. The Debtors and Magris also had certain disputes regarding compliance with Section 2.6(b) of the Purchase Agreement (the "**Interpretation Issue**" and together with the Post-Closing Issues, the "**Settlement Issues**").

30. The following chart provides a summary of the Post-Closing Issues:

<u>Summary of the Post-Closing Issues</u>	
Post-Closing Issue:	Summary:
a) Indemnification Claim	<p>The Debtors asserted an indemnification claim in the amount of \$263,169.86 pursuant to Section 7.14(a) of the Purchase Agreement for reimbursement of post-closing costs related to their assertion that Magris was delayed in replacing financial assurance instruments.</p> <p>The Debtors' indemnification claim included (a) \$19,573.73 for financial assurance renewal fees; (b) \$38,847.73 for surety bond</p>

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	<p>guarantee fees; and (c) \$204,748.40 for legal fees incurred by Latham & Watkins, the Debtors' lead bankruptcy counsel, and an allocation of costs incurred by CohnReznick as advisor to the Debtors' Chief Restructuring Officer.</p> <p>Magris asserts that certain of the costs resulted from the Debtors' noncompliance with the Purchase Agreement, and that the Purchase Agreement did not impose liability on the buyer for such costs.</p>
b) Affiliate Payables	<p>The Debtors asserted a claim of \$285,859.77 for intercompany trade payables that they assert were to be assumed by Magris at the Sale Closing in connection with the Purchase Agreement.</p> <p>Magris asserts that these intercompany liabilities were excluded pursuant to, among things, Section 2.4(e) of the Purchase Agreement.⁴</p>
c) 2021 Annual Incentive Plan	<p>Magris asserted a claim for reimbursement of \$260,000.00 in Annual Incentive Plan costs for 2021 for certain employees based on the Sale Closing under Section 7.9(g) of Purchase Agreement.⁵</p> <p>The Debtors have asserted no responsibility for the 2021 Annual Incentive Plan as no such plan had been approved by the</p>

⁴ Section 2.4(e) of the Purchase Agreement provides that the Excluded Liabilities not to be assumed or performed by Magris include "all Liabilities of the Selling Entities to any Affiliate of the Selling Entities, including for any intercompany debt".

⁵ Section 7.9(g) of the Purchase Agreement provides:

"Except for any Assumed Liabilities or Liabilities that result from any breach by the Buyer of this Section 7.9, the Selling Entities and their Affiliates shall retain responsibility for all employment and employee-benefit-related Liabilities that relate to the Transferred Employees (or any dependent or beneficiary of any Transferred Employee) that arise as a result of an event or events that occurred prior to 11:59 p.m. Eastern U.S. time on the day prior to the Closing Date. Although, for the avoidance of doubt, Imerys USA, the Selling Entities and their Affiliates shall retain responsibility for all Liabilities under the Retained Benefit Plans, including the participation of Transferred Employees through 11:59 p.m. Eastern U.S. time on the Closing Date. Subject to the occurrence of the Closing and other than under the Retained Benefit Plans, the Buyer shall assume and be solely responsible for all employment and employee-benefits related Liabilities that relate to the Transferred Employees (or any dependent or beneficiary of any Transferred Employee) that arise as a result of an event or events that occurred on or after 12:00 a.m. Eastern U.S. time on the Closing Date."

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	Bankruptcy Court and no employees were eligible as of the Sale Closing.
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31. After several months of negotiations, the Debtors and Magris were able to reach a full and complete resolution of the Settlement Issues pursuant to the Settlement Agreement, which is attached hereto and marked as **Exhibit “G”**.

32. Pursuant to the Settlement Agreement, Magris shall remit to the Debtors \$144,514.82 in cash (the **“Settlement Payment”**) within five business days after the US Court approves the Settlement Agreement and such order becomes final and no longer subject to appeal. The Settlement Agreement also provides a comprehensive full and final release with respect to the Post-Closing Issues that takes effect upon the US Court’s approval of the Settlement Agreement.

33. The Interpretation Issue was resolved by replacing Section 2.6(b) of the Purchase Agreement with new language. The following chart outlines the revised version of Section 2.6(b) of the Purchase Agreement:

Resolution of Interpretation Issue	
Original Section 2.6(b):	Changes to Section 2.6(b):
<p>“The Buyer shall within ninety (90) days following the Closing Date, deliver to the Selling Entities an allocation of the Cash Purchase Price (and the Assumed Liabilities, to the extent properly taken into account under the Code) among the Purchased Assets (the “Allocation”) in accordance with the Closing Allocation and Section 1060 of the Code and the Treasury regulations promulgated thereunder (and any similar provision of state, local or foreign Law, as appropriate). Within thirty (30) days following the Selling Entities’ receipt of the Allocation,</p>	<p>“The Buyer shall within ninety (90) days following the Closing Date, deliver to the Selling Entities an allocation of the Cash Purchase Price (and the Assumed Liabilities, to the extent properly taken into account under the Code) among the Purchased Assets (the “Allocation”) in accordance with the Closing Allocation and Section 1060 of the Code and the Treasury regulations promulgated thereunder (and any similar provision of state, local or foreign Law, as appropriate). Within thirty (30) days following the Selling Entities’ receipt of the Allocation,</p>

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the Selling Entities may provide the Buyer with any comments to the Allocation. The Buyer shall include any reasonable comments to the Allocation so provided by the Selling Entities. The parties hereto agree to file all Tax Returns (including IRS Form 8594) consistent with the Allocation unless otherwise required by applicable Law; provided that nothing contained herein shall prevent the Buyer or the Selling Entities from settling any proposed deficiency or adjustment by any Governmental Body based upon or arising out of the Allocation, and neither the Buyer nor the Selling Entities shall be required to litigate before any court any proposed deficiency or adjustment by any Governmental Body challenging the Allocation. In administering the Chapter 11 Cases and the Canadian Proceeding, neither the Selling Entities nor the Bankruptcy Court shall be required to apply the Allocation in determining the manner in which the Purchase Price should be allocated as between the Selling Entities, their respective estates, or creditors thereof"

the Selling Entities may provide the Buyer with any comments to the Allocation. The Buyer shall include any reasonable comments to the Allocation so provided by the Selling Entities. ~~The Unless otherwise required by applicable Law, (i) the parties hereto agree to file all Tax Returns (including IRS Form 8594) consistent with the Closing Allocation unless otherwise required by applicable Law in Section 2.6(a) and (ii) Magris, ITA and ITV further agree to file all Tax Returns (including IRS Form 8594) consistent with the Allocation;~~ provided that nothing contained herein shall prevent the Buyer or the Selling Entities from settling any proposed deficiency or adjustment by any Governmental Body based upon or arising out of the Allocation, and neither the Buyer nor the Selling Entities shall be required to litigate before any court any proposed deficiency or adjustment by any Governmental Body challenging the Allocation. In administering the Chapter 11 Cases and the Canadian Proceeding, neither the Selling Entities nor the Bankruptcy Court shall be required to apply the Allocation in determining the manner in which the Purchase Price should be allocated as between the Selling Entities, their respective estates, or creditors thereof"

Settlement is in the Debtors' Best Interest

34. The Settlement Agreement was the culmination of several months of arms-length negotiations between sophisticated commercial parties. The Settlement Agreement finally puts an end to issues that have been diverting the Debtors' attention and consuming estate resources through expenditure of professional fees. An expedient resolution of the Settlement Issues will avoid additional risks, costs and delay otherwise arising from litigation and will preserve resources needed for the successful reorganization of the Debtors.

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35. If the Debtors litigated these issues and were entirely successful, the most the Debtors could hope to recover with respect to the Post-Closing Issues from Magris would be \$549,029.63, while at the same time having no liability to Magris in connection with Magris claim regarding the 2021 Annual Incentive Plan. However, the Debtors' net recovery would be significantly less due to the costs of litigating these issues, including attorneys' fees, which could be significant. Although the Debtors believe they have meritorious claims, success is not guaranteed, and Magris has asserted its own claims against the Debtors in the amount of \$260,000, which would need to be resolved in any attendant litigation (and there is no guarantee the Debtors would be successful in defending against such claim). Accordingly, the \$144,514.82 cash payment is appropriate in light of the uncertainty in litigation, the costs of litigation the Debtors expect to incur if a settlement was not reached, and the unquantifiable cost of diverting the Debtors' time and energy while they are focused on pending mediation in the hopes of moving towards a resolution to their Chapter 11 Cases. Therefore, I believe the Settlement Agreement is an appropriate resolution and falls within the range of reasonable litigation outcomes.

36. The Settlement Agreement will provide a beneficial cash settlement to the Debtors' estates immediately, without the need for further cost or litigation. It will also allow the Debtors to remain focused on pursuing a plan of reorganization that will address talc-related claims, which are held by the Debtors' primary creditor constituency, rather than be distracted by costly, time-consuming litigation.

37. Accordingly, the Settlement Agreement, which allows the Debtors to focus on advancing a plan of reorganization, provides certainty and finality, and preserves the finite

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estate resources, is in the best interest of the Debtors' estates and within the spectrum of reasonableness.

Impact on Canadian Stakeholders

38. ITC is one of the Debtors that is a party to the Purchase Agreement and whose assets were substantially all sold to Magris. ITC is also one of the Debtors that is a party to the Settlement Agreement. As the Settlement Agreement is in the best interest of the Debtors' estates, no Canadian stakeholders are anticipated to be prejudiced as a result of recognizing the Magris Settlement Order (and indeed such stakeholders will benefit due to Debtors', including ITC's, receipt of funds from the Settlement).

(b) Overview of the Allianz Mediation Order

39. The motion requesting entry of the Allianz Mediation Order was filed on January 13, 2021 [Docket No. 4518]. The deadline to submit an objection or response to the entry of the Allianz Settlement Order was January 27, 2021 at 4:00 p.m. (the "**Allianz Objection Deadline**"). No objection or response was filed or received by the Debtors in connection with Allianz Mediation Order by the Allianz Objection Deadline. The US Court entered the Allianz Mediation Order on February 9, 2022.

40. Pursuant to the Allianz Mediation Order, American Insurance Company, Fireman's Fund Insurance Company, and Allianz Underwriters Insurance Company f/k/a Allianz Underwriters (collectively, "**Allianz**") were designated as "Mediation Parties" in the Mediation. Allianz' inclusion as part of the Mediation Parties will assist in resolving insurance coverage disputes as efficiently as possible as the Debtors continue to work toward completing the mediation process and proceeding to plan confirmation.

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Impact on Canadian Stakeholders

41. ITC is one of the Debtors that is a party to the Mediation. No Canadian stakeholders are anticipated to be prejudiced as a result of recognizing the Allianz Mediation Order.

(c) Overview of the First Mediation Extension Order and the Second Mediation Extension Order

42. The US Court entered the First Mediation Extension Order on March 11, 2022, and the Second Mediation Extension Order on April 15, 2022 (collectively, the "**Mediation Extension Orders**"). Under the Mediation Order, the term of the Mediation was set to expire on February 28, 2022, but the date may be extended by further order of the US Court. The First Mediation Extension Order extended the Mediation through April 8, 2022, and the Second Mediation Extension Order extended the Mediation through May 15, 2022.

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

Impact on Canadian Stakeholders

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

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IV. CONCLUSION

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

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

Sworn before me remotely by video conference by Eric Danner, stated as being in the City of Boston, in the State of Massachusetts, United States of America, to the City of Toronto, Ontario, on April 26, 2022, in accordance with O. Reg 431/20 *Administering Oath or Declaration Remotely*.

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Ben Muller

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Ben Muller

Commissioner for Taking Affidavits
LSO #80842N

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Eric Danner

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ERIC DANNER

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Exhibit “A”

This is
EXHIBIT "A"
to the Affidavit of
ERIC DANNER
Sworn April 26, 2022

DocuSigned by:

Ben Muller

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Ben Muller

Commissioner for Taking Affidavits
LSO #80842N

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

	X	
In re:	:	Chapter 11
	:	
IMERYYS TALC AMERICA, INC., <i>et al.</i> , ¹	:	Case No. 19-10289 (LSS)
	:	
Debtors.	:	(Jointly Administered)
	:	
	:	Re: Docket No. 4691
	:	
	X	

**ORDER APPROVING SETTLEMENT
WITH MAGRIS PERFORMANCE MATERIALS INC.**

Upon the motion (the “**Motion**”)² of the Debtors for entry of an order (this “**Order**”) approving the Settlement between (i) the Debtors and (ii) Magris Performance Materials Inc., f/k/a Magris Resources Canada Inc; and this Court having reviewed the Motion, and the Settlement Terms; and this Court having determined that the relief requested in the Motion is in the best interests of the Debtors, their estates, their creditors, and other parties in interest; and this Court having jurisdiction to consider the Motion and the relief requested therein in accordance with 28 U.S.C. §§ 157 and 1334 and the *Amended Standing Order of Reference from the United States District Court for the District of Delaware* dated as of February 29, 2012; and consideration of the Motion and the relief requested therein being a core proceeding under 28 U.S.C. § 157(b)(2); and this Court having authority to enter a final order consistent with Article III of the United States Constitution; and venue being proper before this Court under 28 U.S.C. §§ 1408 and 1409; and it appearing that proper and adequate notice of the Motion has been given and that no other or further

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

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

notice is necessary; and upon the record of all of the proceedings before this Court; and after due deliberation thereon; and good and sufficient cause appearing therefor, it is hereby

ORDERED, ADJUDGED AND DECREED THAT:

1. The Motion is GRANTED as set forth herein.
2. Pursuant to section 105(a) of the Bankruptcy Code and Bankruptcy Rule 9019, the Settlement and Settlement Terms are approved as fair, reasonable, and adequate, and the terms and conditions of the Settlement and Settlement Terms are incorporated into this Order as if fully set forth herein.
3. The Debtors and Magris are authorized and empowered to take such actions and to execute such documents as may be necessary to implement the relief granted by this Order.
4. This Court shall retain jurisdiction with respect to all matters arising from or related to the implementation and/or interpretation of this Order.

**Dated: April 18th, 2022
Wilmington, Delaware**


**LAURIE SELBER SILVERSTEIN
UNITED STATES BANKRUPTCY JUDGE**

EXHIBIT 1

SETTLEMENT TERMS

Settlement Term Sheet¹

Date	March 29, 2022
Parties	<p>Imerys Talc America, Inc. (“ITA”), Imerys Talc Vermont, Inc. (“ITV”), and Imerys Talc Canada Inc. (“ITC” and, together with ITA and ITV, the “Debtors”) and Magris Performance Materials Inc., f/k/a Magris Resources Canada Inc. (“Magris” and, together with the Debtors, the “Parties”)</p> <p>The Debtors are currently debtors and debtors-in-possession in ongoing chapter 11 proceedings before the Bankruptcy Court for the District of Delaware (the “Bankruptcy Court”), Case No. 19-10289.</p>
Sale to Magris	<p>On October 13, 2020, the Parties entered into an asset purchase agreement, with the Debtors as the sellers on the one hand and Magris as the buyer on the other hand (as subsequently amended, the “Purchase Agreement”).</p> <p>On November 17, 2020, the Bankruptcy Court entered an order authorizing the Debtors to sell substantially all of their assets to Magris [Docket No. 2539] (the “Sale Order”). The Sale closed on February 17, 2021.</p>
Settlement Payment	<p>Magris shall remit to the Debtors \$144,514.82 in cash (the “Settlement Payment”) within five (5) business days after the Bankruptcy Court approves the settlement outlined herein (the “Settlement”) in an order substantially in the form attached hereto as Exhibit A (the “Order”) and such Order becomes final and no longer subject to appeal.</p>
Post-Closing Issues	<p>The Settlement Payment shall be in full and final resolution of issues described below (the “Post-Closing Issues”):</p> <ul style="list-style-type: none"> The Debtors asserted an indemnification claim in the amount of \$263,169.86 pursuant to Section 7.14(a) of the Purchase Agreement for reimbursement of post-closing costs related to their assertion that Magris was delayed in replacing financial assurance instruments. The Debtors’ indemnification claim included (a): \$19,573.73 for financial assurance renewal fees; (b) \$38,847.73 for surety bond guarantee fees; and (c) \$204,748.40 for legal fees incurred by Latham &

¹ Capitalized terms not defined herein shall have the meaning ascribed to them in the Purchase Agreement and the Settlement Motion filed contemporaneously herewith.

	<p>Watkins, the Debtors' lead bankruptcy counsel, and an allocation of costs incurred by CohnReznick as advisor to the Debtors' Chief Restructuring Officer. Magris asserts that certain of the costs resulted from the Debtors' noncompliance with the Purchase Agreement, and that the Purchase Agreement did not impose liability on the buyer for such costs.</p> <ul style="list-style-type: none"> • The Debtors asserted a claim of \$285,859.77 for intercompany trade payables that they assert were to be assumed by Magris at the Sale Closing in connection with the Purchase Agreement. Magris asserts that these intercompany liabilities were excluded pursuant to, among things, Section 2.4(e) of the Purchase Agreement. • Magris asserted a claim for reimbursement of \$260,000.00 in Annual Incentive Plan costs for 2021 for certain employees based on the Sale Closing under section 7.9(g) of Purchase Agreement. The Debtors asserted no responsibility for the 2021 Annual Incentive Plan as no such plan had been approved by the Bankruptcy Court and no employees were eligible as of the Sale Closing.
Release	<p>The Parties agree that the entry of the Order approving the Settlement and payment of the Settlement Payment shall fully and finally resolve any and all claims, counterclaims, disputes, obligations, suits, judgments, damages, demands, debts, rights, causes of action, liens, remedies, losses, contributions, indemnities, costs, liabilities, attorneys' fees and expenses whatsoever, whether liquidated or unliquidated, fixed or contingent, known or unknown, asserted or unasserted, accrued or unaccrued, existing or hereinafter arising, (the "<u>Claims</u>") held by any of the Parties to the extent arising solely out of the Post-Closing Issues (collectively, the "<u>Released Claims</u>"), which shall be binding on the Parties' respective successors, assigns, executors, administrators, representatives, attorneys, and agents, in their capacities as such, <i>provided, however</i> that the Settlement shall not impact or otherwise prejudice any other Claims that either the Debtors and/or Magris may have now or in the future or are otherwise entitled to, whether under the Purchase Agreement, the Sale Order or otherwise to the extent such future claims are not Released Claims.</p>

Section 2.6(b)	<p>The Parties further agree to replace Section 2.6(b) of the Purchase Agreement in its entirety with the following:</p> <p>“2.6(b): The Buyer shall within ninety (90) days following the Closing Date, deliver to the Selling Entities an allocation of the Cash Purchase Price (and the Assumed Liabilities, to the extent properly taken into account under the Code) among the Purchased Assets (the “<u>Allocation</u>”) in accordance with the Closing Allocation and Section 1060 of the Code and the Treasury regulations promulgated thereunder (and any similar provision of state, local or foreign Law, as appropriate). Within thirty (30) days following the Selling Entities’ receipt of the Allocation, the Selling Entities may provide the Buyer with any comments to the Allocation. The Buyer shall include any reasonable comments to the Allocation so provided by the Selling Entities. Unless otherwise required by applicable Law, (i) the parties hereto agree to file all Tax Returns (including IRS Form 8594) consistent with the Closing Allocation in Section 2.6(a) and (ii) Magris, ITA, and ITV further agree to file all Tax Returns (including IRS Form 8594) consistent with the Allocation; <u>provided</u> that nothing contained herein shall prevent the Buyer or the Selling Entities from settling any proposed deficiency or adjustment by any Governmental Body based upon or arising out of the Allocation, and neither the Buyer nor the Selling Entities shall be required to litigate before any court any proposed deficiency or adjustment by any Governmental Body challenging the Allocation. In administering the Chapter 11 Cases and the Canadian Proceeding, neither the Selling Entities nor the Bankruptcy Court shall be required to apply the Allocation in determining the manner in which the Purchase Price should be allocated as between the Selling Entities, their respective estates, or creditors thereof.”</p>
Jurisdiction	The Bankruptcy Court in the Debtors’ ongoing chapter 11 proceeding shall retain jurisdiction to hear any disputes arising out of the Settlement and entry of the Order.
Effective Date	The Settlement is subject to approval by the Bankruptcy Court and shall not be effective until entry of the Order and such Order becomes final and no longer subject to appeal.

IN WITNESS WHEREOF, the parties hereto have caused this Settlement to be executed as of the date first written above.

IMERYYS TALC AMERICA, INC.

By: 

Name: Eric Danner

Title: Chief Restructuring Officer

IMERYYS TALC VERMONT, INC.

By: 

Name: Eric Danner

Title: Chief Restructuring Officer

IMERYYS TALC CANADA INC.

By: 

Name: Eric Danner

Title: Chief Restructuring Officer

IN WITNESS WHEREOF, the parties hereto have caused this Settlement to be executed as of the date first written above.

MAGRIS PERFORMANCE MATERIALS INC.


By: 
Name: Matthew Fenton
Title: President and CFO

Exhibit "B"

This is
EXHIBIT "B"
to the Affidavit of
ERIC DANNER
Sworn April 26, 2022

DocuSigned by:

Ben Muller

77FFB2B0DE444CE...

Ben Muller

Commissioner for Taking Affidavits
LSO #80842N

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

In re:

IMERYYS TALC AMERICA, INC., et al.,¹

Debtors.

Chapter 11

Case No. 19-10289 (LSS)

(Jointly Administered)

**Ref. Docket Nos. 4290, 4291, 4292, 4295,
4313, 4315, 4332, 4333, 4385, and 4518**

and

In re:

CYPRUS MINES CORPORATION,²

Debtor.

Chapter 11

Case No. 21-10398 (LSS)

**Ref. Docket Nos. 593, 603, 605, 609, 673,
and 793**

**ORDER GRANTING MOTION BY ALLIANZ-AFFILIATED INSURERS TO BE
INCLUDED AS A “MEDIATION PARTY” IN MEDIATION OF INSURANCE ISSUES**

Upon the *Motion by Allianz-Affiliated Insurers to Be Included as a “Mediation Party” in Mediation of Insurance Issues* (the “Motion”); and the Court having jurisdiction over this matter pursuant to 28 U.S.C. §§ 157 and 1334 and the *Amended Standing Order of Reference* from the United States District Court for the District of Delaware dated as of February 29, 2012; and it appearing that sufficient notice of the Motion has been given and that no other or further notice is necessary; and the Court having reviewed and considered the Motion and after due

¹ Imerys Debtors, along with the last four digits of each Debtor’s federal tax identification number, are: Imerys Talc America, Inc. (6358), Imerys Talc Vermont, Inc. (9050), and Imerys Talc Canada Inc. (6748). The 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.

deliberation thereon; and the Court having determined that there is good and sufficient cause for the relief set forth in this Order;

IT IS HEREBY ORDERED that:

1. The Motion is GRANTED as set forth herein.
2. The Allianz Insurers (as defined in the Motion) are hereby designated as additional “Mediation Parties” in the Mediation as defined and set forth in the Order (I) Appointing Mediators, (II) Referring Certain Matters to Mediation, and (III) Granting Related Relief (*Imerys D.I. 4385, Cyprus D.I. 673*).

Dated: February 9th, 2022
Wilmington, Delaware

2 
LAURIE SELBER SILVERSTEIN
UNITED STATES BANKRUPTCY JUDGE

Exhibit “C”

This is
EXHIBIT "C"
to the Affidavit of
ERIC DANNER
Sworn April 26, 2022

DocuSigned by:

Ben Muller

77FFB2B8DE444CE...
Ben Muller

Commissioner for Taking Affidavits
LSO #80842N

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

-----	X	
In re:	:	Chapter 11
	:	
IMERYS TALC AMERICA, Inc., <i>et al.</i> , ¹	:	Case No. 19-10289 (LSS)
	:	
Debtors.	:	(Jointly Administered)
	:	
	:	Re: Docket No. 4385 & 4605
-----	X	

and

-----	X	
In re:	:	Chapter 11
	:	
CYPRUS MINES CORPORATION, ²	:	Case No. 21-10398 (LSS)
	:	
Debtor.	:	Re: Docket No. 673 & 851
	:	
-----	X	

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

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

1. The Stipulation is approved.

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

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

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

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

Dated: March 11th, 2022
Wilmington, Delaware


I AMIRIF SEI BFR SII VERSTEIN

EXHIBIT A

Stipulation

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

-----	X
In re:	: Chapter 11
	:
IMERYS TALC AMERICA, Inc., <i>et al.</i> , ⁴	: Case No. 19-10289 (LSS)
	:
Debtors.	: (Jointly Administered)
	:
	: Re: Docket No. 4385 & 4605
-----	X

and

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

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

This stipulation and agreement (this “**Stipulation**”) is entered into by and among the Mediation Parties (as defined below). The Mediation Parties have agreed to extend the term of the Mediation⁶ as set forth below:

Recitals

A. On February 13, 2019, the debtors and debtors-in-possession (collectively, the “**Imerys Debtors**”) in Case No. 10289 (LSS) and jointly administrated cases (the “**Imerys**”

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

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

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

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

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

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

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

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

CAMC; (vi) the Cyprus TCC; (vii) the Cyprus FCR; (viii) the Chubb Insurers; and (ix) Hartford Accident and Indemnity Company and First State Insurance Company (together, the “**Hartford Insurers**”) ⁷ (collectively, the “**Mediation Parties**”).

F. Paragraph 6 of the Mediation Orders provides: “The term of the Mediation shall expire on February 28, 2022, which may be extended by further order of the Court.”

G. Since the Mediation Order was entered, the Imerys Debtors, the Imerys TCC, the Imerys FCR, the Cyprus Debtor, the Cyprus TCC and the Cyprus FCR have conducted an extensive information exchange in coordination with Mr. Feinberg. In connection with and following that information exchange, the Imerys parties and the Cyprus parties have been engaged in regular sessions to develop a common understanding of the mediation goals. In addition, mediation with the Chubb Insurers is ongoing, mediation sessions with four of the other insurers have been scheduled to take place in February and March and the Mediators are working to schedule mediation sessions with the remaining insurers. Significant mediation activity is anticipated to take place in March and the Imerys Debtors and Cyprus Debtors look forward to completing the mediation process and proceeding to plan confirmation as soon as practicable. In the event all or certain of the Mediation Parties determine that additional time to mediate is necessary and appropriate, such parties will request a further extension from the Court.

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

⁷ The Mediation Orders provide that “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.” *See Mediation Orders*, ¶ 7. Both Employers Mutual Casualty Company and the Hartford Insurers informally requested to be included in the Mediation.

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

Agreement

1. The term of the Mediation shall expire on April 8, 2022, which may be extended by further order of the Court.

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

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

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

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

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

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

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

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

SO STIPULATED:

By: /s/ Amanda R. Steele

RICHARDS, LAYTON & FINGER, P.A.

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Counsel to the Chubb Insurers

By: /s/ James P. Ruggeri

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- and -

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JMayer@ruggirilaw.com

Counsel for Hartford Accident and Indemnity Company and First State Insurance Company

Exhibit “D”

This is
EXHIBIT "D"
to the Affidavit of
ERIC DANNER
Sworn April 26, 2022

DocuSigned by:

Ben Muller

77FFD2B0DE444CE...

Ben Muller

Commissioner for Taking Affidavits
LSO #80842N

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

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

and

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

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

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

1. The Stipulation is approved.

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

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

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

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

Dated: April 15th, 2022
Wilmington, Delaware


I AMIRIF SEI BFR SII VERSTEIN

EXHIBIT A

Stipulation

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

-----	X	
In re:	:	Chapter 11
	:	
IMERYS TALC AMERICA, Inc., <i>et al.</i> , ⁴	:	Case No. 19-10289 (LSS)
	:	
Debtors.	:	(Jointly Administered)
	:	
	:	Re: Docket No. 4385, 4605, 4652
-----	X	

and

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

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

This stipulation and agreement (this “**Stipulation**”) is entered into by and among the Mediation Parties (as defined below). The Mediation Parties have agreed to extend the term of the Mediation⁶ as set forth below:

Recitals

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

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

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

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

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

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

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

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

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

F. Paragraph 6 of the Mediation Orders provides: “The term of the Mediation shall expire on February 28, 2022, which may be extended by further order of the Court.” On March 11, 2022, the Court entered an Order extending the mediation period through April 8, 2022 [Imerys Docket No. 4652; Cyprus Docket No. 912] (the “**Extension Order**”).

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

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

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

Agreement

1. The term of the Mediation shall expire on May 15, 2022, which may be extended by further order of the Court.

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

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

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

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

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

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

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

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

SO STIPULATED:

By: /s/ Amanda R. Steele

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Counsel to the Cyprus FCR

Exhibit “E”

This is
EXHIBIT "E"
to the Affidavit of
ERIC DANNER
Sworn April 26, 2022

DocuSigned by:

Ben Muller

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Ben Muller
Commissioner for Taking Affidavits
LSO #80842N

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

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

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

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

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

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

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

1. I am the Vice President and General Counsel – North America for the Imerys Group and Secretary of Imerys Talc America, Inc. ("**ITA**"), Imerys Talc Vermont, Inc. ("**ITV**"), and Imerys Talc Canada Inc. ("**ITC**", and together with ITA and ITV, the "**Debtors**"). I am authorized to submit this affidavit on behalf of the Debtors.

2. In my role as Vice President and General Counsel – North America for the Imerys Group and Secretary of the Debtors, I am responsible for overseeing the general legal activities of the Debtors. As a result of my role and tenure with the Debtors, my review of public and non-public documents, and my discussions with other members of the Debtors' management team, I either have personal knowledge or am generally familiar with the Debtors' businesses, financial condition, policies, and procedures, day-to-day operations, and books and records. Except as otherwise noted, I have personal knowledge of the matters set forth herein or have gained knowledge of such matters from the Debtors' employees or retained advisers that report to me in the ordinary course of my responsibilities.

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

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

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

I. OVERVIEW

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

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

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

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

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

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

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

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

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

- a) *Order Scheduling Omnibus Hearings*, entered on January 21, 2021 [Docket No. 2814];
- b) *Order Scheduling Omnibus Hearings*, entered on January 27, 2021 [Docket No. 2861];
- c) *Order (I) Approving Disclosure Statement and Form and Manner of Notice of Hearing Thereon, (II) Establishing Solicitation Procedures, (III) Approving Form and Manner of Notice to Attorneys and Certified Plan Solicitation Directive, (IV) Approving Form of Ballots, (V) Approving Form, Manner, and Scope of Confirmation Notices, (VI) Establishing Certain Deadlines in Connection with Approval of Disclosure Statement and Confirmation of Plan, and (VII) Granting*

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

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

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

III. THE NINTH AMENDED PLAN AND NINTH AMENDED DISCLOSURE STATEMENT¹

■ 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 Description⁴	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.

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 Value. The Initial Payment Percentage attributed to each of the Funds will be within the following ranges listed below:

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

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

■ The Ninth Amended Plan and its Impact on Canadian Stakeholders

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

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

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

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

IV. RECOGNITION OF THE SOLICITATION PROCEDURES ORDER⁵

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 apprised of the progress of the Solicitation Procedures Order.

■ The Disclosure Statement

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

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

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

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

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

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

■ **Notice of the Disclosure Statement Hearing**

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

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

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

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

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

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

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

■ The Solicitation Procedures

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

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

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

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

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

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

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

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

■ Ninth Amended Plan Confirmation Schedule

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

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

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

V. CONCLUSION

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

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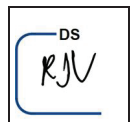
I confirm that while connected via video technology, Ryan Van Meter showed me his government-issued photo identity document and that I am reasonably satisfied it is the same person and the document is current and valid.

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

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

DocuSigned by:
Ryan Van Meter
FEF366B664B9476...
RYAN VAN METER



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

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

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

Proceeding commenced at Toronto

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

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

Maria Konyukhova LSO#: 52880V
Tel: (416) 869-5230
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Tel: (416) 869-5504
navis@stikeman.com
Fax: (416) 947-0866

Lawyers for the Applicant

Exhibit “F”

This is
EXHIBIT "F"
to the Affidavit of
ERIC DANNER
Sworn April 26, 2022

DocuSigned by:

Ben Muller

77FFB2B9DE444CE...

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

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

**AFFIDAVIT OF 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

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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.

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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.

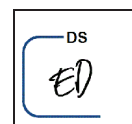
13. The events leading up to the within motion, including the factual background regarding the Debtors’ business operations and the progress of the Chapter 11 Cases, are set out in greater detail in the Debtors’ previous motion materials, which are available on the Information Officer’s webpage: <https://home.kpmg/ca/imerystalc>. 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/lmerysTalc/>.

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:

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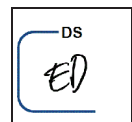
- a) *Order Granting Motion to Extend Time to Respond to Claims Objections*, entered on September 17, 2021 [Docket No. 4111];

- 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];

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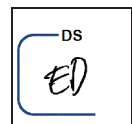
- e) *Order Authorizing the Debtors to File Certain Portions of the Declarations Filed in Support of the Debtors Objection to the J&J Motion and the Joinder and Reply Under Seal*, entered on September 24, 2021 [Docket No. 4160];

- 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*

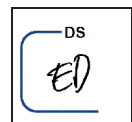
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Plan of Reorganization of Imerys Talc America, Inc. and its Debtor Affiliates Under Chapter 11 of the Bankruptcy Code, entered on October 14, 2021 [Docket No. 4246], which, as discussed below, granted Williams Hart Boundas Easterby LLP's motion seeking 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 &

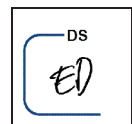
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Associates LPA Inc. will not be counted as a vote in favour or against the Ninth Amended Plan;

- 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];

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- 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”**.

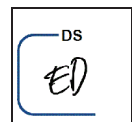
(b) The Plan of Reorganization¹

(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.

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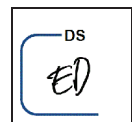
17. The US Court entered an order approving the Disclosure Statement on January 27, 2021, and this Court recognized that order on February 23, 2021. Copies of the Plan, Disclosure Statement, and the Plan Supplement can be found on Prime Clerk's website.

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.

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

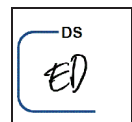
20. Underlying the Foreign Order is the fact that the Plan incorporates a global settlement (the “**Cyprus Settlement**”) among (a) the Debtors, (b) Cyprus Mines Corporation (the “**Cyprus Debtor**”), Cyprus Amax Mineral Company (“**CAMC**”), (c) the TCC, and (d) the FCR.

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’

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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

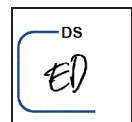
24. The voting deadline for the Ninth Amended Plan was 4:00 p.m. (prevailing Eastern Time) on March 25, 2021 and was subject to extension by the Debtors. Votes in respect of Direct Talc Personal Injury Claims were solicited in accordance with the directive of their respective counsel. A law firm that 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

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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

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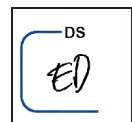
the voting deadline if the Debtors consent. Thus, the Solicitation Procedures Order obviated the need to file a Bankruptcy Rule 3018 motion.

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

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- 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.

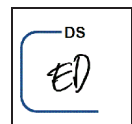
(c) The Acquisition Motion and Vermont Acquisition Order

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

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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 Lyndonville, 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 Lyndonville, 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:

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- 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;

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- 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),

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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:

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- 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

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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*.

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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

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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

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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.

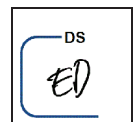
61. To achieve Plan confirmation at this stage, the Debtors will need to file a new disclosure statement and solicitation procedures. As and when the Debtors achieve these steps, the Foreign Representative intends to bring a motion before this Court for recognition, as appropriate. For greater certainty,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

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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
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Ben Muller

Commissioner for Taking Affidavits
LSO #80842N

DocuSigned by:
Eric Danner
107EF4ADACCA4CC...

ERIC DANNER

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Exhibit “G”

This is
EXHIBIT "G"
to the Affidavit of
ERIC DANNER
Sworn April 26, 2022

DocuSigned by:

Ben Muller

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Ben Muller

Commissioner for Taking Affidavits
LSO #80842N

Settlement Term Sheet¹

Date	March 29, 2022
Parties	<p>Imerys Talc America, Inc. (“ITA”), Imerys Talc Vermont, Inc. (“ITV”), and Imerys Talc Canada Inc. (“ITC” and, together with ITA and ITV, the “Debtors”) and Magris Performance Materials Inc., f/k/a Magris Resources Canada Inc. (“Magris” and, together with the Debtors, the “Parties”)</p> <p>The Debtors are currently debtors and debtors-in-possession in ongoing chapter 11 proceedings before the Bankruptcy Court for the District of Delaware (the “Bankruptcy Court”), Case No. 19-10289.</p>
Sale to Magris	<p>On October 13, 2020, the Parties entered into an asset purchase agreement, with the Debtors as the sellers on the one hand and Magris as the buyer on the other hand (as subsequently amended, the “Purchase Agreement”).</p> <p>On November 17, 2020, the Bankruptcy Court entered an order authorizing the Debtors to sell substantially all of their assets to Magris [Docket No. 2539] (the “Sale Order”). The Sale closed on February 17, 2021.</p>
Settlement Payment	<p>Magris shall remit to the Debtors \$144,514.82 in cash (the “Settlement Payment”) within five (5) business days after the Bankruptcy Court approves the settlement outlined herein (the “Settlement”) in an order substantially in the form attached hereto as Exhibit A (the “Order”) and such Order becomes final and no longer subject to appeal.</p>
Post-Closing Issues	<p>The Settlement Payment shall be in full and final resolution of issues described below (the “Post-Closing Issues”):</p> <ul style="list-style-type: none"> • The Debtors asserted an indemnification claim in the amount of \$263,169.86 pursuant to Section 7.14(a) of the Purchase Agreement for reimbursement of post-closing costs related to their assertion that Magris was delayed in replacing financial assurance instruments. The Debtors’ indemnification claim included (a): \$19,573.73 for financial assurance renewal fees; (b) \$38,847.73 for surety bond guarantee fees; and (c) \$204,748.40 for legal fees incurred by Latham &

¹ Capitalized terms not defined herein shall have the meaning ascribed to them in the Purchase Agreement and the Settlement Motion filed contemporaneously herewith.

	<p>Watkins, the Debtors' lead bankruptcy counsel, and an allocation of costs incurred by CohnReznick as advisor to the Debtors' Chief Restructuring Officer. Magris asserts that certain of the costs resulted from the Debtors' noncompliance with the Purchase Agreement, and that the Purchase Agreement did not impose liability on the buyer for such costs.</p> <ul style="list-style-type: none"> • The Debtors asserted a claim of \$285,859.77 for intercompany trade payables that they assert were to be assumed by Magris at the Sale Closing in connection with the Purchase Agreement. Magris asserts that these intercompany liabilities were excluded pursuant to, among things, Section 2.4(e) of the Purchase Agreement. • Magris asserted a claim for reimbursement of \$260,000.00 in Annual Incentive Plan costs for 2021 for certain employees based on the Sale Closing under section 7.9(g) of Purchase Agreement. The Debtors asserted no responsibility for the 2021 Annual Incentive Plan as no such plan had been approved by the Bankruptcy Court and no employees were eligible as of the Sale Closing.
Release	<p>The Parties agree that the entry of the Order approving the Settlement and payment of the Settlement Payment shall fully and finally resolve any and all claims, counterclaims, disputes, obligations, suits, judgments, damages, demands, debts, rights, causes of action, liens, remedies, losses, contributions, indemnities, costs, liabilities, attorneys' fees and expenses whatsoever, whether liquidated or unliquidated, fixed or contingent, known or unknown, asserted or unasserted, accrued or unaccrued, existing or hereinafter arising, (the "<u>Claims</u>") held by any of the Parties to the extent arising solely out of the Post-Closing Issues (collectively, the "<u>Released Claims</u>"), which shall be binding on the Parties' respective successors, assigns, executors, administrators, representatives, attorneys, and agents, in their capacities as such, <i>provided, however</i> that the Settlement shall not impact or otherwise prejudice any other Claims that either the Debtors and/or Magris may have now or in the future or are otherwise entitled to, whether under the Purchase Agreement, the Sale Order or otherwise to the extent such future claims are not Released Claims.</p>

Section 2.6(b)	<p>The Parties further agree to replace Section 2.6(b) of the Purchase Agreement in its entirety with the following:</p> <p>“2.6(b): The Buyer shall within ninety (90) days following the Closing Date, deliver to the Selling Entities an allocation of the Cash Purchase Price (and the Assumed Liabilities, to the extent properly taken into account under the Code) among the Purchased Assets (the “<u>Allocation</u>”) in accordance with the Closing Allocation and Section 1060 of the Code and the Treasury regulations promulgated thereunder (and any similar provision of state, local or foreign Law, as appropriate). Within thirty (30) days following the Selling Entities’ receipt of the Allocation, the Selling Entities may provide the Buyer with any comments to the Allocation. The Buyer shall include any reasonable comments to the Allocation so provided by the Selling Entities. Unless otherwise required by applicable Law, (i) the parties hereto agree to file all Tax Returns (including IRS Form 8594) consistent with the Closing Allocation in Section 2.6(a) and (ii) Magris, ITA, and ITV further agree to file all Tax Returns (including IRS Form 8594) consistent with the Allocation; <u>provided</u> that nothing contained herein shall prevent the Buyer or the Selling Entities from settling any proposed deficiency or adjustment by any Governmental Body based upon or arising out of the Allocation, and neither the Buyer nor the Selling Entities shall be required to litigate before any court any proposed deficiency or adjustment by any Governmental Body challenging the Allocation. In administering the Chapter 11 Cases and the Canadian Proceeding, neither the Selling Entities nor the Bankruptcy Court shall be required to apply the Allocation in determining the manner in which the Purchase Price should be allocated as between the Selling Entities, their respective estates, or creditors thereof.”</p>
Jurisdiction	<p>The Bankruptcy Court in the Debtors’ ongoing chapter 11 proceeding shall retain jurisdiction to hear any disputes arising out of the Settlement and entry of the Order.</p>
Effective Date	<p>The Settlement is subject to approval by the Bankruptcy Court and shall not be effective until entry of the Order and such Order becomes final and no longer subject to appeal.</p>

IN WITNESS WHEREOF, the parties hereto have caused this Settlement to be executed as of the date first written above.

IMERYYS TALC AMERICA, INC.

By: 

Name: Eric Danner

Title: Chief Restructuring Officer

IMERYYS TALC VERMONT, INC.

By: 

Name: Eric Danner

Title: Chief Restructuring Officer

IMERYYS TALC CANADA INC.


By: 

Name: Eric Danner

Title: Chief Restructuring Officer

IN WITNESS WHEREOF, the parties hereto have caused this Settlement to be executed as of the date first written above.

MAGRIS PERFORMANCE MATERIALS INC.

By: 
Name: Matthew Fenton
Title: President and CFO

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

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

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

Proceeding commenced at Toronto

**AFFIDAVIT OF ERIC DANNER
SWORN APRIL 26, 2022**

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Lawyers for the Applicant

TAB 3

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

THE HONOURABLE

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)

TUESDAY, THE 3rd

MR. JUSTICE MCEWEN

DAY OF MAY, 2022

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

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

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

**ORDER
(RECOGNITION OF FOREIGN ORDERS)**

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

ON READING the affidavit of Eric Danner sworn April 26, 2022 (the "**Third Danner Affidavit**"), the Fifth Report of KPMG Inc., in its capacity as information officer (the "**Information Officer**") dated April [●], 2022, each filed, and upon being provided with copies of the documents required by section 49 of the CCAA,

AND UPON HEARING the submissions of counsel for the Foreign Representative, counsel for the Information Officer, and those other parties listed on the counsel slip, no one else appearing although served as evidenced by the Affidavit of Ben Muller sworn April [●], 2022, filed;

SERVICE

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

hereby dispenses with further service thereof.

RECOGNITION OF FOREIGN ORDER

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

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

- (a) *Order Approving Settlement with Magris Performance Materials Inc.*, entered on April 18, 2022 [Docket No. 4755] (the “**Magris Settlement Order**”);
- (b) *Order Granting Motion by Allianz-Affiliated Insurers to be Included as a “Mediation Party” in Mediation of Insurance Issues*, entered on February 9, 2022 [Docket No. 4605] (the “**Allianz Mediation Order**”);
- (c) *Order Approving Stipulation and Agreement by and Among the Mediation Parties Regarding the Term of Mediation*, entered on March 11, 2022 [Docket No. 4652] (the “**First Mediation Extension Order**”); and
- (d) *Order Approving Stipulation and Agreement by and Among the Mediation Parties Regarding the Term of Mediation*, entered on April 15, 2022 [Docket No. 4753] (the “**Second Mediation Extension 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 IMERYYS TALC AMERICA, INC., IMERYYS TALC VERMONT, INC., AND IMERYYS TALC CANADA INC.
APPLICATION OF IMERYYS TALC CANADA INC. UNDER SECTION 46 OF THE *COMPANIES' CREDITORS ARRANGEMENT ACT*, R.S.C. 1985, c. C-36, AS AMENDED

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

**ONTARIO
SUPERIOR COURT OF JUSTICE
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Proceeding commenced at Toronto

**ORDER
(RECOGNITION OF FOREIGN ORDERS)**

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Lawyers for the Foreign Representative

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

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

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

Proceeding commenced at Toronto

**MOTION RECORD
(RECOGNITION OF FOREIGN ORDERS)
(Returnable May 3, 2022)**

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