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

ONTARIO
SUPERIOR COURT OF JUSTICE
(COMMERCIAL LIST)

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

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

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

MOTION RECORD
(Re: RECOGNITION OF FOREIGN ORDERS)
(Returnable October 1, 2021)

September 27, 2021

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TO: ATTACHED SERVICE LIST

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

ONTARIO
SUPERIOR COURT OF JUSTICE
(*COMMERCIAL* LIST)

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

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

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

SERVICE LIST
(September 27, 2021)

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

ONTARIO
SUPERIOR COURT OF JUSTICE
(COMMERCIAL LIST)

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

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I N D E X

TAB 1

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

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

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

NOTICE OF MOTION
(Re: Recognition of Foreign Orders)
(Returnable October 1, 2021)

The Applicant, Imerys Talc Canada Inc. ("**ITC**"), will make a motion to a judge presiding over the Commercial List on October 1, 2021 at 9:30 a.m. or as soon after that time as the motion can be heard by video conference due to the COVID-19 crisis. The video conference details can be found in Schedule "A" to this Notice of Motion. Please advise Nicholas Avis if you intend to join the hearing of this motion by emailing navis@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**"):

   (a) *Order Authorizing the Debtors to Reject Certain Executory Contracts and Unexpired Leases Effective as of the Rejection Date*, entered on May 24, 2021 [Docket No. 3579] (the "**Contract Rejection Order**");

(b) *Order Authorizing the Debtors to (a) Close the Adequate Assurance Account Established by the Utilities Order and (b) Utilize all Funds in the Adequate Assurance Account in the Ordinary Course*, entered on August 24, 2021 [Docket No. 3960] (the "**Utilities Close-out Order**");

(c) *Order Authorizing Debtors to Pursue and Effectuate Purchase of Property Located in Lyndonville, Vermont and Johnson, Vermont*, entered on August 24, 2021 [Docket No. 3961] (the "**Vermont Acquisition Order**");

(d) *Order Sustaining Debtors' Objection to Proof of Claim No. 442 Filed by Thomas Neil Fulton*, entered on August 30, 2021 [Docket No. 3978] (the "**Fulton Claim Objection Order**"); and

(e) *Order Authorizing (I) An Expanded scope of Services to be Provided by Ramboll US Consulting, Inc. as Environmental Advisor to the Debtors Nunc Pro Tunc to August 16, 2021 and (II) Waiving Certain Informational Requirements of Local Rule 2016-2*, entered on September 17, 2021 [Docket No. 4106] (the "**Supplemental Ramboll Retention Order**").

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

THE GROUNDS FOR THE MOTION ARE:

1. The facts summarized in this Notice of Motion are more full set out in the Affidavit of Eric Danner, to be sworn (the "**First Danner Affidavit**");

2. Capitalized terms that are not otherwise defined herein have the meaning ascribed to them in the First Danner Affidavit;

3. All dollar references in this Notice of Motion are to US dollars;

Generally

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

5. 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**");

6. 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;

7. 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;

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

9. On September 16, 2021, the Debtors filed with the US Court the Tenth Amended Plan (as defined in the First Danner Affidavit) with the US Court;

10. Broadly, the Plan resolves the Talc Personal Injury Claims against the Debtors and certain other parties by, among other things, channelling all Talc Personal Injury Claims by permanent injunction to a trust established under s. 524(g) and 105(a) of the US Bankruptcy Code (such trust, the "**Talc Personal Injury Trust**");

11. The Talc Personal Injury Trust will take ownership of certain assets upon the Plan's Effective Date, which assets will include 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;

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

The Acquisition Motion

13. The Debtors believe that using a portion of the Sale proceeds to purchase one or more operating businesses is the best path forward because they are likely to generate a reliable stream of revenue from such acquisitions in excess of what the Sale proceeds are currently generating in bank accounts;

14. The Debtors, together with their advisors, have been working to identify potential targets fitting their acquisition criteria;

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

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

17. No order has been entered with respect to the Acquisition Motion as of this date;

The Vermont Acquisition Order

18. The Debtors reviewed 84 business acquisition opportunities since the hearing on the Acquisition Motion and identified two promising opportunities: a property located in Lyndonville, Vermont and another in Johnson, Vermont (together, the "**Vermont Properties**");

19. On August 24, 2021, the US Court entered the Vermont Acquisition Order, which:

(a) authorizes ITV to pursue and effectuate the purchase of the Vermont Properties, in each case subject to an existing ground lease, together with the seller's rights

and interests as landlord pursuant to such lease (collectively, the "**Vermont Acquisitions**");

(b) authorizes the Debtors to make one or more refundable earnest deposits with respect to the Vermont Acquisitions on the terms and conditions set forth therein;

(c) authorizes the Debtors to take other actions as they may deem necessary to effectuate the Vermont Acquisitions; and

(d) grants related relief;

20. The Debtors entered into purchase agreements with respect to the Vermont Properties and are engaged in diligence efforts with respect to each property;

21. Provided that the Debtors determine, in the exercise of their business judgment, that it is in the best interest of their estates to proceed with the Vermont Acquisitions, then the Debtors intend to consummate the purchase of each property;

22. The Debtors expect to pay, in the aggregate, no more than $6,230,476 for the Vermont Properties;

23. The Vermont Properties are tenanted and will provide the Debtors with a rent revenue stream that is projected to have a 5.0% to 6.0% per annum capitalization rate—significantly more than the 0.1% per annum return that the Sale proceeds currently generate in bank accounts;

24. The recognition of the Vermont Acquisition Order is not expected to materially prejudice Canadian stakeholders;

The Utilities Close-out Order

25. On March 22, 2019, the US Court entered an order that, among other things, directed the Debtors to hold $500,000 in a non-interest bearing account (the "**Adequate Assurance**

Account") to provide the Debtors' utility providers (collectively, the "**Utility Companies**") with adequate assurance of payment;

26. The US Court order establishing the Adequate Assurance Account was recognized in Canada because 13 Utility Companies were located in Canada;

27. Following the Sale, the Utility Companies (with two exceptions) no longer provide services to the Debtors and no longer require the protection provided by the Adequate Assurance Account;

28. The two Utility Companies that continue to provide services to the Debtors agreed to directly hold modest deposits (approximately $2,000 in the aggregate) in lieu of relying on the Adequate Assurance Account;

29. On August 24, 2021, the US Court entered the Utilities Close-out Order, which:

(a) authorizes the Debtors to close the Adequate Assurance Account; and

(b) use all funds in the Adequate Assurance Account in the ordinary course and for general administrative purposes;

30. Canadian stakeholders are not expected to be materially impacted or prejudiced by the recognition of the Utilities Close-out Order because there are no longer any Canadian-based Utility Companies providing services to the Debtors;

The Contract Rejection Order

31. Certain executory contracts and unexpired leases were not assigned to Magris as part of the Sale;

32. These contracts and leases are now unnecessary and burdensome to the Debtors' estates, given the Debtors' limited operations following the Sale;

33. On May 24, 2021, the US Court entered the Contract Rejection Order that, among other things, authorizes the Debtors to reject certain executory contracts and unexpired leases, including any amendments or modifications thereto, each as set forth in an attachment to the Contract Rejection Order (collectively, the "**Rejected Contracts and Leases**") with the counterparties to the Rejected Contracts and Leases (collectively, the "**Counterparties**");

34. ITC is a party to six of the Rejected Contracts and Leases, and two of the Rejected Contracts and Leases involved Counterparties with Canadian addresses;

35. All Counterparties were given notice of the Contract Rejection Order and no objections were received by the objection deadline;

36. The recognition of the Contract Rejection Order is not anticipated to cause material prejudice to Canadian stakeholders;

The Fulton Claim Objection Order

37. ITC formerly employed Mr. Thomas Neil Fulton as the Canadian Operations Manager;

38. Mr. Fulton's employment was terminated for cause on February 15, 2017, without notice or pay in lieu of notice due to, among other things, serious violations of key safety policies and protocols;

39. Mr. Fulton claimed that his conduct did not justify the termination of his employment for cause and, in turn, commenced an action (the "**Action**") against ITC on or about April 20, 2017;

40. Mr. Fulton's Action was stayed as a result of the Chapter 11 Cases, and he later filed a claim (the "**Fulton Claim**") in the Chapter 11 Cases for $300,000, which amount is premised on the claims raised in the Action;

41. On July 13, 2021, the Debtors filed an objection to the Fulton Claim (the "**Fulton Claim Objection**") and requested that the US Court disallow the Fulton Claim in its entirety;

42. Mr. Fulton was given notice of the Fulton Claim Objection and did not object to the Fulton Claim Objection by the required deadline on July 27, 2021, at 4:00 p.m.;

43. Mr. Fulton was given further notice that the Debtors would file a certificate of no objection with respect to the relief requested in the Fulton Claim Objection, to which Mr. Fulton indicated that he did not intend to respond to the Fulton Claim Objection;

44. On August 30, 2021, the US Court entered the Fulton Claim Objection Order, which:

(a) sustains the Debtors' objection to the Fulton Claim;

(b) overrules on its merits any response to the Fulton Claim Objection; and

(c) disallows the Fulton Claim in its entirety and expunges the Fulton Claim from the claims register;

45. Mr. Fulton will be served with a copy of the motion record with respect to this motion for recognition of the Fulton Claim Objection Order;

46. The Debtors intend to seek the dismissal of the Action if this Court recognizes the Fulton Claim Objection Order;

Supplemental Ramboll Retention Order

47. The Debtors' previously retained Ramboll U.S. Consulting, Inc.'s ("**Ramboll**") as an environmental advisor to provide services to assist the Debtors and their other retained advisors with the sale of the Debtors' assets and related due diligence process;

48. The Debtors may require Ramboll's services to assist with new matters, including:

(a) a due diligence process, which includes environmental diligence, in connection with the Vermont Acquisitions; and

(b) the mitigation and resolution of certain historical environmental liabilities at formerly owned properties in Vermont and Quebec (the "**Former Sites**"), which properties were not acquired by Magris as part of the Sale;

49. The Debtors engaged Ramboll to provide services related to the Vermont Acquisitions and the Former Sites pursuant to a proposal dated August 16, 2021;

50. On May 24, 2021, the US Court entered the Supplemental Ramboll Retention Order that, among other things, expanded the scope of Ramboll's retention to include services related to the Vermont Acquisitions and the Former Sites and permitted the Debtors to enter into additional engagement letters with Ramboll subject to certain limitations;

51. The recognition of the Supplemental Ramboll Retention Order is not anticipated to cause material prejudice to Canadian stakeholders;

Other Grounds

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

53. 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

54. 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:

55. The First Danner Affidavit, to be filed;

56. The Vermont Acquisition Order, Utilities Close-out Order, the Contract Rejection Order, the Fulton Claim Objection Order, and the Supplemental Ramboll Retention Order, copies of which are attached to the First Danner Affidavit;

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

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

September 24, 2021

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Lawyers for the Applicant

Schedule "A"

Zoom Coordinates
October 1, 2021 at 9:30 noon Eastern Time (US and Canada)

Join Zoom Meeting
https://us06web.zoom.us/j/89434858998?pwd=dVF3OURvb1ZHbFpDVDNJNWtBQ3p5QT09

Meeting ID: 894 3485 8998
Passcode: 947347

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Meeting ID: 894 3485 8998
Passcode: 947347

Find your local number: https://us06web.zoom.us/u/kexqzOmVnU

IN THE MATTER OF THE *COMPANIES' CREDITORS ARRANGEMENT ACT*, R.S.C. 1985, c. C-36, AS AMENDED AND IN THE MATTER OF IMERYS TALC AMERICA, INC., IMERYS TALC VERMONT, INC., AND IMERYS TALC CANADA INC.
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Court File No: CV-19-614614-00CL

ONTARIO
SUPERIOR COURT OF JUSTICE
(COMMERCIAL LIST)

Proceeding commenced at Toronto

NOTICE OF MOTION
(Returnable October 1, 2021)

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TAB 2

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

ONTARIO
SUPERIOR COURT OF JUSTICE
(COMMERCIAL LIST)

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

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AFFIDAVIT OF ERIC DANNER
(Sworn September 27, 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.

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

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

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

I. BACKGROUND

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

6. The Debtors were in the business of mining, processing, selling, and/or distributing talc. The Debtors formerly operated talc mines, plants, and distribution facilities in Montana, Vermont, Texas and Ontario. ITA and ITV sold talc directly to their customers as well as to third party and affiliate distributors. ITC exported the vast majority of its talc into the United States almost entirely on a direct basis to its customers. The Debtors sold substantially all of their operations to a third party as part of a transaction that closed on February 17, 2021. Consequently, the Debtors are no longer engaged in the talc business.

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

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

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

10. On February 14, 2019, the US Court entered various orders in the US Proceeding (the "**First Day Orders**"), including an order authorizing ITC to act as foreign representative on behalf of the Debtors' estates in any judicial or other proceedings in Canada and an order placing the Chapter 11 Cases under joint administration in the US Proceeding.

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

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

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

13. Since the commencement of the US Proceeding, the US Court has entered many orders, some of which have been recognized by this Court. 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 at https://home.kpmg/ca/imerystalc. Copies of documents filed in the US Court in connection with the US Proceedings can be found on the webpage for Prime Clerk LLC ("**Prime Clerk**"), the Debtors' claims and noticing agent: https://cases.primeclerk.com/ImerysTalc/.

II. RECENT DEVELOPMENTS IN THE CHAPTER 11 CASES

(a) Overview

14. The Debtors have been actively pursuing their restructuring efforts in the United States. Since the Affidavit of Ryan Van Meter sworn April 15, 2021, the US Court has entered the following orders:

a) *Order Adjourning Confirmation Hearing and Related Dates*, entered on April 15, 2021 [Docket No. 3412], which modified certain dates and deadlines related to confirmation of the Plan;

b) *Seventh Omnibus Order Awarding Interim Allowance of Compensation for Services Rendered and for Reimbursement of Expenses*, entered on April 16, 2021 [Docket No. 3422], which authorized payment to the Debtors' retained professionals for the period from September 1, 2020 to November 30, 2020;

c) *Order Sustaining Debtors' Eighth Omnibus (Substantive) Objection to Certain No Liability Claims*, entered on May 14, 2021 [Docket No. 3553], which disallowed and expunged certain no liability claims from the Debtors' claims register;

d) *Order Sustaining Debtors' Ninth Omnibus (Substantive) Objection to Certain Partially Satisfied Claims*, entered on May 14, 2021 [Docket No. 3554], which reduced the amount of certain claims against the Debtors that have been partially satisfied;

e) *Seventh Order Under 28 U.S.C. Section 1452 and Fed. R. Bankr. P. 9006(b) and 9027, Further Extending the Deadline by Which the Debtors May Remove Civil Actions*, entered on May 14, 2021 [Docket No. 3556], which extended the deadline by which the Debtors may remove civil actions pursuant to Bankruptcy Rule 9027(a) through and including August 27, 2021;

f) *Order Authorizing the Debtors to Reject Certain Executory Contracts and Unexpired Leases Effective as of the Rejection Date*, entered on May 24, 2021 [Docket No. 3579] (the "**Contract Rejection Order**"), which is further described below;

g) *Order Approving Stipulation and Agreement Regarding Withdrawal of Claim Filed by Suntrust Equipment Finance & Leasing Corp.*, entered on May 24, 2021

[Docket No. 3580], which approved a stipulation between the Debtors and SunTrust Equipment Finance & Leasing Corp. ("**SunTrust**"), whereby SunTrust agreed to withdraw its claim against Debtor ITA;

h) *Order Authorizing Prime Clerk LLC to File Certain Portions of Their Declarations with Respect to the Tabulation of Ballots Cast Under Seal*, entered on June 1, 2021 [Docket No. 3599], which permitted certain confidential information contained in the (i) *Declaration of Christina Pullo of Prime Clerk LLC Regarding the Solicitation of Votes and Preliminary Tabulation of Ballots Cast on the Ninth Amended Joint Chapter 11 Plan of Reorganization of Imerys Talc America, Inc. and Its Debtor Affiliates Under Chapter 11 of the Bankruptcy Code* [Docket No. 3334] and the (ii) *Supplemental Declaration of Christina Pullo of Prime Clerk LLC Regarding the Solicitation of Votes and Tabulation of Ballots Cast on the Ninth Amended Joint Chapter 11 Plan of Reorganization of Imerys Talc America, Inc. and Its Debtor Affiliates Under Chapter 11 of the Bankruptcy Code* [Docket No. 3534] to be filed under seal;

i) *Order Granting Motion of Holders of Talc Personal Injury Claims Represented by Arnold & Itkin LLP to Extend Discovery Deadlines and Permit Discovery of the Plan Proponents, Prime Clerk and Certain Third Parties Relating to the Solicitation and Voting With Respect to 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 July 6, 2021 [Docket No. 3775] (the "**Discovery Order**"), which (i) required the Plan Proponents (as defined in the Plan) and Prime Clerk to provide document discovery in accordance with certain search and responsiveness parameters agreed upon

by Movants (as defined in the Discovery Order), as set forth in detail in the Discovery Order, (ii) extended the time of certain depositions, and (iii) permitted the Movants to seek discovery from certain voting parties and representatives of the TCC;

j) *Order Adjourning Confirmation Hearing and Related Dates*, entered July 20, 2021 [Docket No. 3845], which modified certain dates and deadlines related to confirmation of the Plan (as defined below). Among other things, this order (i) set October 15, 2021 at 4:00 p.m. (prevailing Eastern Time) as the deadline to object to the confirmation of the Plan; and (ii) ordered that the hearing to consider confirmation of the Plan (the "**Confirmation Hearing**") be held on November 15, 16, 17, 19 and 22, 2021 at 10:00 a.m. (prevailing Eastern Time);

k) *Order Authorizing the Debtors to (a) Close the Adequate Assurance Account Established by the Utilities Order and (b) Utilize all Funds in the Adequate Assurance Account in the Ordinary Course*, entered on August 24, 2021 [Docket No. 3960] (the "**Utilities Close-out Order**"), which is described below;

l) *Order Authorizing Debtors to Pursue and Effectuate Purchase of Property Located in Lyndonville, Vermont and Johnson, Vermont*, entered on August 24, 2021 [Docket No. 3961] (the "**Vermont Acquisition Order**"), which is described below;

m) *Order Sustaining Debtors' Objection to Proof of Claim No. 442 Filed by Thomas Neil Fulton*, entered on August 30, 2021 [Docket No. 3978] (the "**Fulton Claim Objection Order**"), which is described below;

n) *Eighth Order Under 28 U.S.C. Section 1452 and Fed. R. Bankr. P. 9006(b) and 9027, Further Extending the Deadline by Which the Debtors May Remove Civil Actions*, entered on September 14, 2021 [Docket No. 4066], which extended the deadline by which the Debtors may remove civil actions pursuant to Bankruptcy Rule 9027(a) through and including December 23, 2021; and

o) *Order Authorizing (I) An Expanded scope of Services to be Provided by Ramboll US Consulting, Inc. as Environmental Advisor to the Debtors Nunc Pro Tunc to August 16, 2021 and (II) Waiving Certain Informational Requirements of Local Rule 2016-2*, entered on September 17, 2021 [Docket No. 4106] (the "**Supplemental Ramboll Retention Order**"), which is described below.

15. At this time, the Debtors are seeking to recognize only the Vermont Acquisition Order, the Utilities Close-out Order, the Contract Rejection Order, the Fulton Claim Objection Order, and the Supplemental Ramboll Retention Order (collectively, the "**Foreign Orders**"), which are described in greater detail below. A copy of the Vermont Acquisition Order is attached hereto and marked as **Exhibit "A"**. A copy of the Utilities Close-out Order is attached hereto and marked as **Exhibit "B"**. A copy of the Contract Rejection Order is attached hereto and marked as **Exhibit "C"**. A copy of the Fulton Claim Objection Order is attached hereto and marked as **Exhibit "D"**. A copy of the Supplemental Ramboll Retention Order is attached hereto and marked as **Exhibit "E"**.

(b) The Plan and Disclosure Statement[1]

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

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

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 15, 2021, 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. On February 5, 2021, the Debtors filed with the US Court the Plan Supplement [Docket No. 2900] (the "**Plan Supplement**"), which amended, modified or supplemented the Plan with respect to 15 exhibits. On July 16, 2021, the Debtors filed an amendment to the Plan Supplement [Docket No. 3840], which amended, modified or supplemented the list of Executory Contracts and Unexpired Leases to be assumed by the North American Debtors.

18. 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.

19. The Plan is summarized in the Affidavit of Ryan Van Meter sworn February 18, 2021, which is attached hereto (without exhibits) and marked as **Exhibit "F"**.[2] In brief, the Plan resolves the Talc Personal Injury Claims against the Debtors and the other Protected Parties by channelling all Talc Personal Injury Claims by permanent injunction to a trust established

[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.

under sections 524(g) and 105(a) of the US Bankruptcy Code (such trust, the "**Talc Personal Injury Trust**"). The Talc Personal Injury Trust will take ownership of the Talc Personal Injury Trust Assets upon the Effective Date, which it will use to resolve the Talc Personal Injury Claims. Among other things, the Talc Personal Injury Trust Assets include 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.

20. The voting deadline for the Ninth Amended Plan was 4:00 p.m. (prevailing Eastern Time) on March 25, 2021. 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 79.83% of votes accepting the Plan and 20.17% of votes rejecting the Plan.[3]

21. The Tenth Amended Plan made certain amendments to the Ninth Amended Plan, including:

a) the removal of language related to a debtor-in-possession financing facility, which facility is no longer required;

b) changes to the treatment of the Equity Interests in the Debtors. The Plan previously provided that the stock of each of the Debtors would be cancelled and then re-issued to the Talc Personal Injury Trust. Now, the Plan provides that the equity interests of each of the Debtors will be reinstated, with the Equity Interests of ITA and ITC being transferred to the Talc Personal Injury Trust after

[3] See Docket No. 3534 on Prime Clerk's webpage.

the reinstatement. Further, the Tenth Amended Plan contemplates that ITA will sell approximately 15% of the ITV Stock to ITC;

c) the addition of language related to the Vermont Acquisitions (as defined below);

d) changes to the Debtors' cash reserves; and

e) changes to the composition of the Talc Trust Advisory Committee.

22. A blackline showing all of the amendments to the Plan was filed as Docket No. 4100 on Prime Clerk's webpage.

23. The US Court is expected to hear the Confirmation Hearing over the course of five days – November 15, 16, 17, 19 and 22, 2021. The Confirmation Hearing was originally anticipated to begin on June 22, 2021, but it has been adjourned multiple times on account of, among other things, the on-going deposition and discovery process in the Chapter 11 Cases. If the US Court enters an order confirming the Plan, then shortly thereafter the Debtors will seek recognition of that order by this Court.

(c) The Acquisition Motion

Overview

24. The Debtors are no longer engaged in their historical talc businesses and, as a result of the Sale, are holding a significant amount of cash in bank accounts that earn *de minimis* returns. The Debtors believe that using a portion of the Sale proceeds to purchase one or more operating businesses is the best path forward because they are likely to generate a reliable stream of revenue from such acquisitions in excess of what the Sale proceeds are currently generating.

25. Accordingly, the Debtors, together with their advisors, engaged in a nationwide search for potential acquisition targets with a specific focus on businesses meeting the following criteria:

a) conservative businesses with durable real property assets that are best-positioned to retain value through changing business cycles;

b) mature businesses that generate a reliable revenue stream and have historical financial results reflected in financial and tax returns that demonstrate consistent profitability; and

c) self-sufficient businesses with limited operating expenses.

26. CohnReznick conducted an extensive analysis of potential targets across several industries and identified a number of opportunities fitting the above criteria. Those opportunities included self-storage businesses, retail stores, logistics businesses, quick-serve dining restaurants, laundromats, car washes, and gas stations. CohnReznick's review of potential targets has been informed by discussions with business and commercial real-estate brokers regarding industries that best maintained value during the COVID-19 pandemic and those that are best positioned to retain value in the near-term and long-term. CohnReznick also reviewed online platforms for specific opportunities matching the Debtors' criteria, has assessed the diligence necessary for specific industries and has conducted diligence on specific targets. CohnReznick's diligence efforts have included customary financial diligence, including reviewing tax returns, historical financial statements, and future financial projections, as well as direct discussions with sellers and site visits to review the enterprise and the assets.

27. Pursuant to the Plan, the Talc Personal Injury Trust would become the indirect owner of any assets acquired as part of these efforts post-Effective Date.

Status of the Acquisition Motion

28. On May 14, 2021, the Debtors filed the *Motion for Entry of Order (I) Approving Notice Procedures, (II) Authorizing Acquisitions and (III) Granting Related Relief* [Docket No. 3561] (the "**Acquisition Motion**"), seeking, among other things, the (a) authority to purchase one or more businesses for an aggregate purchase price not to exceed $12 million, (b) authority to make one or more refundable deposits with respect to the potential acquisitions, and (c) approval of certain notice procedures related thereto. As part of the Acquisition Motion, the Debtors are not seeking authorization to consummate a specific transaction; rather, they are seeking prospective authority for potential acquisitions subject to certain notice, consent, and purchase price requirements.

29. On June 21, 2021, the Debtors filed the *Notice of Revised Order (I) Approving Notice Procedures, (II) Authorizing Acquisitions, and (III) Granting Related Relief* [Docket No. 3726], pursuant to which the Debtors amended certain of the notice procedures to address objections to the Acquisition Motion.

30. 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 submission. To date, no order has been entered with respect to the Acquisition Motion. Although the US Court has not approved the Acquisition Motion, the US Court has separately approved ITV's acquisition of the Vermont Properties, as defined and further discussed below.

III. OVERVIEW OF THE FOREIGN ORDERS

(a) The Vermont Acquisition Order

31. The Vermont Acquisition Order:

a) authorizes ITV to pursue and effectuate the purchase of certain properties located in Lyndonville, Vermont (the "**Lyndonville Property**") and Johnson, Vermont (the "**Johnson Property**" and, together with the Lyndonville Property, the "**Vermont Properties**"), in each case subject to an existing ground lease, together with the seller's rights and interests as landlord pursuant to such lease (collectively, the "**Vermont Acquisitions**");

b) authorizes the Debtors to make one or more refundable earnest deposits with respect to the Vermont Acquisitions on the terms and conditions set forth therein;

c) authorizes the Debtors to take other actions as they may deem necessary to effectuate the Vermont Acquisitions; and

d) grants related relief.

32. The motion with respect to the Vermont Acquisition Order was heard on August 24, 2021. The US Court entered the Vermont Acquisition Order that same day.

The Vermont Properties

33. Following the filing of the Acquisition Motion, the Debtors continued to explore potential opportunities and engaged with sellers and brokers regarding a number of properties, including opportunities with a triple-net lease (or similar) component, on account of their experiences in the market and the feedback they received in connection with the Acquisition Motion and the objections thereto.

34. Real property assets with a triple-net lease component are lower risk opportunities that have an established revenue stream and are more likely to retain or increase in value over

time. In a typical triple-net lease arrangement, the owner of the real property leases the property to a lessee, which then operates a business on the premises and pays the owner-landlord rent. In addition to the obligation to pay rent, the tenant is customarily responsible for all expenses associated with the property and the business, including real estate taxes, insurance, common charges, maintenance of the premises, and any other costs, charges, or expenses relating to the premises or operation of the business.

35. Since the hearing of the Acquisition Motion, the Debtors reviewed 84 business acquisition opportunities, including 51 net lease opportunities. Based on an initial review, the Debtors contacted sellers and/or brokers to express initial indications of interest with respect to 21 of these opportunities. While the Debtors diligently pursued attractive opportunities as they have become available, they had difficulties executing a purchase agreement due to, among other things, opportunities not remaining on the market for an extended period of time on account of active market conditions. Notwithstanding these challenges, the Debtors, together with their advisors, identified the Vermont Properties as two promising opportunities.

36. ITV submitted non-binding letters of intent to purchase the Vermont Properties on July 28, 2021. The key terms of the Vermont Acquisitions are summarized in the following chart:

	Lyndonville Property	Johnson Property
Purchased Property	Real property located at 164 Broad Street, Lyndonville, Vermont 05851, and certain fixtures and improvements located thereon. The subject property is a plus size store consisting of 17,725 square feet and is situated on approximately 1.90 acres.	Real property located at 793 VT 15, Johnson, Vermont 05656, and certain fixtures and improvements located thereon. The subject property is a store consisting of 7,489 square feet and is situated on approximately 0.98 acres.
Purchase Price	Not more than 5% in excess of the listing price of $4.2 million	Not more than 5% in excess of the listing price of $2,030,476.00
Earnest Deposit	$200,000	$100,000
Tenant	DG Retail, LLC, which operates a franchise of Dollar General Corporation on the premises.	DG Retail, LLC, which operates a franchise of Dollar General Corporation on the premises.
Key Lease Terms	Triple-net ground lease with 9+ years remaining on the initial lease term and two options for the tenant to extend for additional 5-year terms with rent escalations (i.e. a potential total remaining term of 19+ years). Tenant is responsible for all taxes, utilities, common area maintenance, and insurance, as well as certain repairs and maintenance costs. The landlord is responsible for certain other repair and maintenance costs, including costs associated with roof and exterior, parking lot maintenance and landscaping beyond the $495.00/month the tenant is obligated to pay for such items, and snow removal. Tenant pays rent monthly in the amount of $21,011.75 under the current lease term, which is subject to a 10% rental increase each option period. Tenant's obligations under the lease are guaranteed by Dollar General Corporation.	Absolute tripe-net ground lease with 12 years remaining on the initial lease term and four options for the tenant to extend for additional 5-year terms (i.e. potential total remaining term of 32 years). Tenant is responsible for all costs associated with the property and the business, including real estate taxes, insurance, maintenance of the premises and the improvements thereon, and any other costs, charges, or expenses relating to the premises or operation of the business. Tenant pays rent monthly in the amount of $9,306.00 under the current lease term, which is subject to a 10% rental increase each option period. Tenant's obligations under the lease are guaranteed by Dollar General Corporation.
Annual Net Operating Income	ITV, as landlord, would stand to generate annual net operating income of approximately $252,141.00 under the current lease term.	ITV, as landlord, would stand to generate annual net operating income of approximately $111,676.00 under the current lease term.

37. The Lyndonville Property is subject to an existing triple-net lease (as described in paragraph 34) and the Johnson Property is subject to an existing absolute triple-net lease,

which provides that the tenant is responsible for all the expenses covered by a typical triple-net lease plus any capital costs associated with the underlying property and the improvements thereon. In a typical triple-net lease, the landlord-owner would be responsible for certain capital costs associated with maintenance of the building itself including, for example, repairing or replacing the building's roof. In an absolute triple-net lease, however, the tenant-operator would also be obligated to pay the costs associated with maintenance of the structure or replacement of the building's roof, in addition to all of the obligations covered by a typical triple-net lease.

38. The Debtors entered into purchase agreements with respect to the Vermont Properties and are engaged in diligence efforts with respect to each property. Provided that the Debtors determine, in the exercise of their business judgment, that it is in the best interest of their estates to proceed with the Vermont Acquisitions, then the Debtors intend to consummate the purchase of each property.

Purchasing the Vermont Properties is in the Debtors' Best Interest

39. The Debtors, together with their advisors, have considered various options to maximize the value generated from the Sale proceeds. Currently, the Sale proceeds are held in bank accounts earning a negligible 0.1% per annum return. By acquiring the Vermont Properties, the Debtors are acquiring a rental revenue stream that is projected to have a 5.0% to 6.0% per annum capitalization rate, which amounts to a return on the purchase price that is 50 to 60 times greater than the *status quo*. The expected return on investment from the Vermont Properties is in excess of what the funds are currently garnering and is firmly within the expected range for triple-net lease opportunities of this type.

40. In addition to acquiring a revenue stream, the Debtors are acquiring real property assets that could be sold in the future. The Debtors believe that the proposed purchase price

for each of the Vermont Properties is fair and reasonable, and they expect that the Vermont Properties will maintain (and potentially increase in) value over time.

41. Further, the Debtors believe that acquiring one or more operating businesses may help address certain anticipated objections to the Plan, specifically whether the Debtors can satisfy the "ongoing business" requirement of section 524(g) of the US Bankruptcy Code. That said, the Debtors maintain that the Plan as currently filed is confirmable and the US Court need not consider whether the Plan satisfies section 524(g) (or any other confirmation related provision) to determine whether the Debtors have a valid business justification for the Vermont Acquisitions.

42. The risks associated with the Vermont Acquisitions are relatively minor, and they are greatly outweighed by the benefits and do not negatively affect the value proposition for the Debtors. Because these opportunities are subject to existing long-term triple-net leases, where the Debtors' out-of-pocket expenses are low, and are backed by corporate guarantees from Dollar General Corporation (a publicly traded company with an investment-grade credit rating that operates thousands of retail locations across the United States), the downside risk associated with the proposed acquisitions is limited. Further, the Vermont Acquisitions use only a modest amount of the Sale proceeds.

Impact on Canadian Stakeholders

43. The Vermont Acquisitions are not expected to materially impact any Canadians holding Talc Personal Injury Claims because, on the Effective Date of the Plan, the Talc Personal Injury Trust will indirectly own the Vermont Properties as a result of their direct ownership of Reorganized ITA and Reorganized ITC. In this way, the value being transferred by the Debtors to the Talc Personal Injury Trust does not necessarily change with the Vermont Acquisition Order.

44. If, as is expected, the Vermont Properties generate a rate of return far in excess of what the Sale proceeds are currently garnering, then there may be more value to ultimately distribute to creditors, including Canadian creditors.

(b) The Utilities Close-out Order

45. The Utilities Close-out Order:

a) authorizes the Debtors to close the Adequate Assurance Account (as defined below) established by the *Final Order Under 11 U.S.C. §§ 105(a) and 366 (I) Prohibiting Utility Companies from Altering or Discontinuing Service on Account of Prepetition Invoices, (II) Approving Deposit as Adequate Assurance of Payment, and (III) Establishing Procedures for Resolving Requests by Utility Companies for Additional Assurance of Payment*, entered on March 22, 2019 [Docket No. 296] (the "**Final First Day Utilities Order**"); and

b) use all funds in the Adequate Assurance Account in the ordinary course and for general administrative purposes.

46. The motion with respect to the Utilities Close-out Order was heard on August 24, 2021. The US Court entered the Utilities Close-out Order that same day.

47. A copy of the Final First Day Utilities Order is attached hereto and marked as **Exhibit "G"**.

The Adequate Assurance Account

48. Pursuant to the Final First Day Utilities Order and for the purpose of providing certain of the Debtors' utility providers (collectively, the "**Utility Companies**") adequate assurance of payment under section 366 of the US Bankruptcy Code, the US Court ordered the Debtors to

maintain a sum equal to $500,000 (approximately half of the Debtors' estimated monthly cost of utility services provided by the Utility Companies), in a separate, non-interest-bearing account (the "**Adequate Assurance Account**"). As of August 6, 2021, the Adequate Assurance Account had a balance of $500,000.

49. The Adequate Assurance Account is no longer necessary. Following the closing of the Sale, the Debtors no longer operate their historic talc-related operations, and therefore no longer require the services of the Utility Companies, other than Green Mountain Power Corporation and Vermont Telephone Company (together, the "**Remaining Utility Companies**"). The utility agreements underlying the services provided by the Utility Companies other than the Remaining Utility Companies have either been assumed and assigned to Magris pursuant to the order approving the Sale, terminated in accordance with their own terms, or rejected by the Debtors.

50. The Remaining Utility Companies continue to provide electricity and phone services, respectively, for the Debtors at a closed mine in Vermont and support the Debtors' environmental monitoring requirements for that property (which obligations remained with the Debtors post-closing of the Sale). The average monthly value of the services provided by the Remaining Utility Companies to the Debtors is approximately $4,000. The Debtors reached an agreement with each of the Remaining Utility Companies to fund modest deposits (approximately $2,000 in the aggregate) held directly by the Remaining Utility Companies.

Impact on Canadian Stakeholders

51. The Final First Day Utilities Order captured 13 Utility Companies based in Canada that provided telecom, natural gas, water, electricity, diesel/gasoline, propane, and waste management services to ITC. A full list of the Utility Companies based in Canada can be found

at Exhibit A of the Final First Day Utilities Order (the Final First Day Utilities Order, as noted above, is attached hereto and marked as Exhibit "G").

52. This Court recognized the Final First Day Utilities Order on April 3, 2019, thus ensuring that Utility Companies based in Canada were treated consistently with the Utility Companies based in the US during the course of the Chapter 11 Cases.

53. The 13 Utility Companies providing services to ITC no longer provide these services. Further, the Remaining Utility Companies are not based in Canada, nor do they provide services to ITC. Accordingly, the Adequate Assurance Account is no longer necessary to protect Utility Companies based in Canada. No Canadian stakeholders are anticipated to be prejudiced as a result of recognizing the Utilities Close-out Order.

(c) The Contract Rejection Order

54. The Contract Rejection Order, among other things, authorizes the Debtors to reject, effective May 5, 2021, certain executory contracts and unexpired leases, including any amendments or modifications thereto, each as set forth in an attachment to the Contract Rejection Order (collectively, the "**Rejected Contracts and Leases**") with the counterparties to the Rejected Contracts and Leases (collectively, the "**Counterparties**").

55. The motion with respect to the Contract Reject Order was scheduled for June 7, 2021. On account of no objections being filed by the applicable objection deadline, the US Court entered the Contract Rejection Order on May 24, 2021.

The Rejected Contracts and Leases

56. As noted above, the Sale resulted in the sale of substantially all of the Debtors' assets. The Debtors now have limited operations and are no longer in the business of mining, processing, selling, or distributing talc.

57. The Rejected Contracts and Leases were not assigned to Magris as part of the Sale and, given the Debtors' limited operations following the Sale, these contracts and leases are unnecessary and burdensome to the Debtors' estates. The Debtors have determined, in the sound exercise of their business judgment, that (a) they no longer need any of the goods or services provided pursuant to the Rejected Contracts and Leases, and/or (b) the Rejected Contracts and Leases no longer provide any benefit or value to the Debtors. Absent rejection, the Debtors might continue to incur administrative expenses arising under the Rejected Contracts and Leases without any corresponding benefit to their estates. The rejection of the Rejected Contracts and Leases will relieve the Debtors of these unnecessary burdens and financial strains and, thus, is in the best interests of the Debtors' estates and their creditors.

Impact on Canadian Stakeholders

58. The Contract Rejection Order is not anticipated to cause material prejudice to Canadian stakeholders. There are approximately 30 Rejected Contracts and Leases captured by the Contract Rejection Order. ITC is a party to six of the Rejected Contracts and Leases. Two of the Rejected Contracts and Leases involved Counterparties with Canadian addresses.

59. All Counterparties, including ITC's Counterparties and the two Counterparties with Canadian addresses, were given notice of the motion with respect to the Contract Rejection Order. No objections were received from any Counterparties.

(d) The Fulton Claim Objection Order

60. The Fulton Claim Objection Order, among other things:

a) sustains the *Debtors' Objection to Proof of Claim No. 442 Filed by Thomas Neil Fulton* [Docket No. 3808] filed by the Debtors on July 13, 2021 (the "**Fulton Claim Objection**");

b) overrules on its merits any response to the Fulton Claim Objection; and

c) disallows the Proof of Claim No. 422 filed by Thomas Neil Fulton on October 21, 2019 (the "**Fulton Claim**") in its entirety and expunges the Fulton Claim from the claims register.

61. The motion with respect to the Fulton Claim Objection Order was scheduled for August 24, 2021. On account of no objections being filed by the applicable objection deadline, the US Court entered the Fulton Claim Objection Order on August 30, 2021.

The Fulton Claim and the Fulton Claim Objection

62. The facts underlying the Fulton Claim Objection Order are more fully described in the Fulton Claim Objection, which is attached hereto and marked as **Exhibit "H"**.

63. In brief, Mr. Thomas Neil Fulton held the position of the Canadian Operations Manager for ITC. On or about November 20, 2016, there was an incident (the "**LOTO Incident**") wherein two ITC employees violated a health and safety protocol. Mr. Fulton was aware of this LOTO Incident but failed to institute discipline against the employee at fault. Indeed, he ordered that records of the LOTO Incident be deleted in ITC's health, safety, environment and quality database, which effectively concealed the LOTO Incident from his supervisors and senior management.

64. Mr. Fulton's conduct was discovered by senior management, and further investigation revealed additional incidents in which Mr. Fulton exhibited a gross dereliction of his duties. Mr. Fulton's employment was terminated for cause, without notice or pay in lieu of notice, on February 15, 2017.

65. Despite facts to the contrary, Mr. Fulton has claimed that his conduct did not justify the termination of his employment for cause. On or about April 20, 2017, Mr. Fulton commenced an action against ITC in the Superior Court of Justice (Ontario) (Court File No. CV-17-573647) (the "**Action**"). ITC filed a statement of defence on May 26, 2017. Mr. Fulton filed a reply on June 6, 2017. Copies of Mr. Fulton's statement of claim, ITC's statement of defence, and Mr. Fulton's reply are attached to the Fulton Claim Objection (the Fulton Claim Objection, as noted above, is attached hereto and marked as Exhibit "H").

66. Mr. Fulton's Action was stayed as a result of the Chapter 11 Cases. On October 21, 2019, as part of the Chapter 11 Cases, Mr. Fulton filed the Fulton Claim for $300,000, which amount is premised on the claims raised in the Action.

67. The Debtors filed the Fulton Claim Objection on July 13, 2021, by which they requested that the US Court enter an order disallowing the Fulton Claim in its entirety. Notice of the Fulton Claim Objection was provided to Mr. Fulton (at the address listed on the Fulton Claim) and a copy of the Fulton Claim Objection was also made available on (a) the US Court's website: www.deb.uscourts.gov, and (b) Prime Clerk's webpage for the Chapter 11 Cases.

68. The deadline to object to the Fulton Claim Objection was July 27, 2021 at 4:00 p.m. ET. The Debtors did not receive an objection from Mr. Fulton by this deadline.

69. Counsel to the Debtors contacted Mr. Fulton on August 9, 2021 and informed him that, due to the lack of response to the Fulton Claim Objection, they intended to file a certificate of no objection with respect to the relief requested in the Fulton Claim Objection. Mr. Fulton responded and said that he does not agree with the Fulton Claim Objection or the Debtors' explanation of Canadian law, but he indicated that he does not intend respond to the Fulton Claim Objection. The Debtors received no other responses to the Fulton Claim Objection.

70. On August 20, 2021, the Debtors filed with the US Court the *Certification of Counsel Regarding Order Sustaining Debtors' Objection to Proof of Claim No. 442 Filed by Thomas Neil Fulton* [Docket No. 3940]. On August 30, 2021, the US Court entered the Fulton Claim Objection Order, which sustained the Fulton Claim Objection and disallowed the Fulton Claim.

71. If this Court recognizes the Fulton Claim Objection Order, then the Debtors intend to seek the dismissal of Mr. Fulton's Action.

(e) Supplemental Ramboll Retention Order

72. The Supplemental Ramboll Retention Order, among other things:

a) expands the scope of Ramboll U.S. Consulting, Inc.'s ("**Ramboll**") retention to include performance of the Supplemental Services (as defined below), effective *nunc pro tunc* to August 16, 2021, and authorizes the Debtors to pay fees and reimburse expenses to Ramboll for the Supplemental Services according to the terms of the Proposal, which is attached to the Supplemental Ramboll Retention Order as Exhibit 1; and

b) permits the Debtors to seek authorization to enter into additional engagement letters or proposals with Ramboll by notice to the extent such additional engagement letter or proposal is less than $50,000, subject to the following:

i. upon the parties executing a new engagement letter or proposal, the Debtors shall promptly file a notice of such additional work with the US Court, describing in the body of the notice the subject matter of the engagement, senior personnel Ramboll expects to staff on the engagement, and billing arrangements and hourly rates of professionals expected to work on the engagement (if applicable), the estimated total

fees anticipated for the additional work, attaching a copy of the engagement letter or proposal, and attaching a declaration from Ramboll with any additional disclosures required under Bankruptcy Rule 2014, and serving the same on the U.S. Trustee, counsel to the TCC, counsel to the FCR, and those parties that have requested notice in the Chapter 11 Cases pursuant to Bankruptcy Rule 2002.

ii. parties shall have ten calendar days from the date of service of the notice to object to such notice. Any such objections must be filed with the US Court and served on counsel for the Debtors within ten calendar days after service of the notice. If an objection cannot be resolved within five calendar days of service of such objection, the Debtors shall schedule the matter for a hearing before the US Court at the next regularly scheduled omnibus hearing or other date otherwise agreeable to the Debtors, Ramboll, and the objecting party.

iii. if no objections to such notice are received prior to the objection deadline, Ramboll shall be authorized to perform such additional services for the compensation set forth in the notice without further notice, hearing, or order of the US Court.

iv. all additional services performed pursuant to any such notice shall be subject to the provisions of the Retention Order (as defined below) and the Supplemental Ramboll Retention Order, notwithstanding any contrary provisions in the notice, the engagement letter or any other document relating to the additional services.

73. The motion with respect to the Supplemental Ramboll Retention Order was scheduled for September 20, 2021. On account of no objections being filed by the applicable objection deadline, the US Court entered the Supplemental Ramboll Retention Order on September 17, 2021.

Ramboll and the Supplemental Services

74. Ramboll was previously retained as the Debtors' environmental advisor to provide services to assist the Debtors and their other retained advisors with the sale of the Debtors' assets and related due diligence process. Specifically, Ramboll was retained as the Debtors' environmental advisor to (a) conduct an environmental site assessment at each of the Debtors' active and inactive sites; (b) conduct a desktop assessment of known and potential contamination concerns and closure costs associated with sites that the Debtors formerly owned or operated and have since divested; (c) prepare a range of cost estimates to address closure costs and any significant or potentially significant contamination and compliance matters; and (d) prepare a summary report of its complete environmental assessment (as requested by the Debtors), all as related to the Sale. Such services were necessary to enable the Debtors to maximize the value of their estates by providing potential purchasers with information regarding the nature and scope of the Debtors' assets. The US Court approved Ramboll's retention as environmental advisor on July 23, 2020 [Docket No. 2022] (the "**Retention Order**"). This Court recognized the Retention Order on November 3, 2020.

75. In order to properly effectuate the Vermont Acquisitions, the Debtors are conducting a due diligence process related to the Vermont Properties, which includes the performance of certain environmental diligence. In addition, the Debtors are currently in the process of mitigating and resolving certain historical environmental liabilities at formerly owned properties, located in Johnson, Vermont; Windham, Vermont; and Quebec (collectively, the "**Former**

Sites"), that were not acquired by Magris as part of the Sale. The resolution of these liabilities may require environmental services, such as assistance with environmental compliance requirements and other remedial obligations. The Debtors anticipate that they may require Ramboll's services to assist with these matters at a future date.

76. The Debtors have determined that Ramboll is best suited to provide the aforementioned services due to its familiarity with the Debtors and substantial experience in providing environmental management and advisory services.

77. Accordingly, Ramboll and the Debtors entered into a new proposal dated as of August 16, 2021, whereby the Debtors engaged Ramboll to provide services related to the Vermont Acquisitions and the Former Sites (the "**Supplemental Services**").[4]

78. The Supplemental Services are needed to enable the Debtors to appropriately diligence the Vermont Properties as part of the Vermont Acquisitions, as well as work to resolve historical environmental liabilities at the Former Sites, to the extent environmental advisory services are required.

Impact on Canadian Stakeholders

79. Per the Supplemental Ramboll Retention Order, Ramboll may provide the Debtors with services related to the resolution of certain environmental liabilities at the Former Sites. One of the Former Sites is located in Quebec, meaning that the Supplemental Services may directly benefit ITC in the future. No Canadian stakeholders are anticipated to be prejudiced as a result of recognizing the Supplemental Ramboll Retention Order.

[4] The Supplemental Services are more fully described in the Debtors' *Application for Entry of an Order (I) Expanding the Scope of Services to be Provided by Ramboll US Consulting, Inc. as Environmental Advisor to the Debtors Nunc Pro Tunc to August 16, 2021 and (II) Waiving Certain Informational Requirements of Local Rule 2016-2* [Docket No. 3980].

IV. NEXT STEPS

80. 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.

81. If 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 issuance of such an order by this Court is a condition precedent to the confirmation of the Plan. 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 scheduled to start on November 15, 2021).

V. CONCLUSION

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

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

Sworn before me remotely by video conference by Eric Danner, stated as being in the City of Boston, in the State of Massachusetts, United States of America, to the City of Toronto, Ontario, on September 27, 2021, in accordance with O. Reg 431/20 *Administering Oath or Declaration Remotely*.

DocuSigned by:
Nicholas Avis
2C12EFAB5242430...

Nicholas Avis
Commissioner for Taking Affidavits
LSO #76781Q

DocuSigned by:
Eric Danner
107EE4ADACCA4CC...

ERIC DANNER

Deponent's Initials

DS
ED

This is
EXHIBIT "A"
to the Affidavit of
ERIC DANNER
Sworn September 27, 2021

DocuSigned by:
Nicholas Avis
2C12EFAB5242430...

Nicholas Avis
Commissioner for Taking Affidavits
LSO #76781Q

IN THE UNITED STATES BANKRUPTCY COURT
FOR THE DISTRICT OF DELAWARE

In re:	:	Chapter 11
IMERYS TALC AMERICA, INC., *et al.*,[1]	:	Case No. 19-10289 (LSS)
Debtors.	:	(Jointly Administered)
	:	**Re: Docket No. 3881**

ORDER AUTHORIZING DEBTORS TO PURSUE AND EFFECTUATE PURCHASE OF PROPERTY LOCATED IN LYNDONVILLE, VERMONT AND JOHNSON, VERMONT

Upon the motion (the "**Motion**")[2] of the Debtors for entry of an order (this "**Order**") authorizing Debtor Imerys Talc Vermont, Inc. ("**ITV**") to pursue and effectuate the purchase (the "**Acquisitions**") of certain real property located in Lyndonville, Vermont (the "**Lyndonville Property**") and Johnson, Vermont (the "**Johnson Property**" and, together with the Lyndonville Property, the "**Properties**"), on the terms and conditions set forth in the Motion, subject in each case to an existing ground lease, together with the seller's rights and interests as landlord under such lease; and this Court having reviewed the Motion and the Danner Declaration; and this Court having determined that the relief requested in the Motion is in the best interests of the Debtors, and their estates; and this Court having 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

[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.

proceeding under 28 U.S.C. § 157(b)(2); and this Court having authority to enter a final order consistent with Article III of the United States Constitution; and venue being proper before this Court under 28 U.S.C. §§ 1408 and 1409; and it appearing that proper and adequate notice of the Motion has been given and that no other or further notice is necessary; and upon the record of all of the proceedings before this Court; and after due deliberation thereon; and good and sufficient cause appearing therefor, it is hereby

ORDERED, ADJUDGED AND DECREED THAT:

1. The Motion is GRANTED as set forth herein.

2. Pursuant to section 363 of the Bankruptcy Code and Bankruptcy Rules 6004 and 9014, ITV is authorized to pursue and effectuate the purchase of the Properties, pursuant to the Lyndonville Purchase Agreement and the Johnson Purchase Agreement, subject to the existing Lyndonville Lease Agreement and Johnson Lease Agreement, respectively, which shall include the seller's rights and interests as landlord under such lease, and any fixtures and improvements located thereon; *provided* that (x) the TCC and the FCR consent to the terms of each purchase, and (y) the final purchase price of the Lyndonville Property shall not exceed 5% of the offering price of $4,200,000.00 and the final purchase price of the Johnson Property shall not exceed 5% of the offering price of $2,030,476.00.

3. The Debtors are authorized and empowered to take other actions as they may determine to be necessary to effectuate the Acquisitions, including, subject to the consent of the TCC and the FCR in each case, performing under the Lyndonville Purchase Agreement and the Johnson Purchase Agreement, as applicable, and authorizing the Debtors to make one or more refundable deposits on customary terms and conditions with respect to the potential Acquisitions

in the aggregate amount not to exceed $200,000.00 for the Lyndonville Property and $100,000.00 for the Johnson Property.

4. No provision of this Order or record of the proceedings on the Motion shall operate as collateral estoppel against, or otherwise prejudice any rights of, any party in interest to make any arguments or objections in connection with confirmation of the Plan (or any later amended or new chapter 11 plan) with respect to (i) whether the Plan (or any later amended or new chapter 11 plan) satisfied the requirements of section 1129, 524(g), and 1141(d) of the Bankruptcy Code and (ii) whether the Motion or the Acquisitions constitute modifications to the Plan that require resolicitation. Nothing herein shall be deemed an admission or waiver by the Debtors with respect to any arguments or objections in connection with confirmation of the Plan (or any later amended or new chapter 11 plan) and all rights of the Debtors to oppose any such objection, are expressly reserved.

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

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

Dated: August 24th, 2021
Wilmington, Delaware

LAURIE SELBER SILVERSTEIN
UNITED STATES BANKRUPTCY JUDGE

This is
EXHIBIT "B"
to the Affidavit of
ERIC DANNER
Sworn September 27, 2021

DocuSigned by:
Nicholas Avis
2C12EFAB5242430...

Nicholas Avis
Commissioner for Taking Affidavits
LSO #76781Q

IN THE UNITED STATES BANKRUPTCY COURT
FOR THE DISTRICT OF DELAWARE

In re:	:	Chapter 11
IMERYS TALC AMERICA, INC., *et al.*,[1]	:	Case No. 19-10289 (LSS)
Debtors.	:	(Jointly Administered)
	:	**Re: Docket No. 3903 & 3954**

ORDER AUTHORIZING THE DEBTORS TO (A) CLOSE THE ADEQUATE ASSURANCE ACCOUNT ESTABLISHED BY THE UTILITIES ORDER AND (B) UTILIZE ALL FUNDS IN THE ADEQUATE ASSURANCE ACCOUNT IN THE ORDINARY COURSE

Upon consideration of the motion (the "**Motion**")[2] of the above-captioned debtors and debtors in possession (collectively, the "**Debtors**") for entry of an order pursuant to sections 105(a) and 366 of the Bankruptcy Code (i) authorizing the Debtors to (a) close the Adequate Assurance Account established by the *Final Order Under 11 U.S.C. §§ 105(a) and 366 (I) Prohibiting Utility Companies from Altering or Discontinuing Service on Account of Prepetition Invoices, (II) Approving Deposit as Adequate Assurance of Payment, and (III) Establishing Procedures for Resolving Requests by Utility Companies for Additional Assurance of Payment* [Docket No. 296] (the "**Utilities Order**") and (b) utilize all funds in the Adequate Assurance Account in the ordinary course and for general administrative purposes; all as more fully set forth in the Motion; and this Court having reviewed the Motion; and this Court having jurisdiction to consider the Motion and

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[2] All capitalized terms used but otherwise not defined herein shall have the meanings ascribed to such terms in the Motion or the Utilities Order, as applicable.

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 February 29, 2012; and this Court having found that this is a core proceeding pursuant to 28 U.S.C. § 157(b)(2), and that this Court may enter a final order consistent with Article III of the United States Constitution; and this Court having found that venue of this proceeding and the Motion in this district is proper pursuant to 28 U.S.C. §§ 1408 and 1409; and it appearing that proper and adequate notice of the Motion has been given and that no other or further notice is necessary; and upon the record herein, and after due deliberation thereon; and this Court having determined that there is good and sufficient cause for the relief granted in this Order, it is hereby

ORDERED, ADJUDGED, AND DECREED THAT:

1. The Motion is GRANTED, to the extent set forth herein.

2. The Debtors are authorized to close the Adequate Assurance Account and utilize all funds in the Adequate Assurance Account in the ordinary course and for general administrative purposes.

3. Any bank with which the Adequate Assurance Account is maintained shall take any and all steps necessary to terminate the Adequate Assurance Account and transfer the funds therein as directed by the Debtors.

4. The Debtors are authorized to make the adequate assurance deposits to the Remaining Utility Companies, as set forth in Schedule 1 attached hereto, in the manner contemplated by the Motion.

5. Any Utility Companies (excluding the Remaining Utility Companies) directly holding an adequate assurance deposit, not otherwise funded from the Adequate Assurance Account for post-petition utility charges, shall return such amounts to the Debtors.

6. Absent further order of this Court, and on account of adequate assurance deposits being held or to be held directly by the Remaining Utility Companies, the Remaining Utility Companies are hereby (i) prohibited from altering, refusing, or discontinuing service to, or discriminating against, the Debtors on account of unpaid prepetition invoices or due to the commencement of the Chapter 11 Cases, or (ii) requiring the Debtors to pay a deposit or other security in connection with the provision of postpetition Utility Services, other than as agreed to by the Debtors and each of the Remaining Utility Companies, respectively. The Remaining Utility Companies are also prohibited from drawing upon any existing security deposit, surety bond, or other form of security to secure future payment for Utility Services.

7. The Debtors are authorized to take all action necessary to effectuate the relief granted pursuant to this Order in accordance with the Motion.

8. Except as expressly provided herein, the Utilities Order shall remain in full force and effect.

9. The terms and conditions of this Order shall be immediately effective and enforceable upon its entry.

10. This Court retains jurisdiction with respect to all matters arising from or related to the implementation of this Order.

Dated: August 24th, 2021
Wilmington, Delaware

LAURIE SELBER SILVERSTEIN
UNITED STATES BANKRUPTCY JUDGE

SCHEDULE 1

REMAINING UTILITY COMPANIES

Utility Company	Type of Service Provided	Mailing Address	Monthly Average ($)	Adequate Assurance Deposit ($)
Imerys Talc America, Inc.				
Vermont Telephone Company, Inc.	Telecom	354 River Street Springfield, VT 05156	1,000	500
Imerys Talc America, Inc. and Imerys Talc Vermont, Inc.				
Green Mountain Power Corporation	Electricity	P.O. Box 1611 Brattleboro, VT 05302	3,000	1,500

This is
EXHIBIT "C"
to the Affidavit of
ERIC DANNER
Sworn September 27, 2021

DocuSigned by:
Nicholas Avis
2C12EFAB5242430...

Nicholas Avis
Commissioner for Taking Affidavits
LSO #76781Q

IN THE UNITED STATES BANKRUPTCY COURT
FOR THE DISTRICT OF DELAWARE

In re:	:	Chapter 11
IMERYS TALC AMERICA, INC., *et al.*,[1]	:	Case No. 19-10289 (LSS)
Debtors.	:	(Jointly Administered)
	:	**Re: Docket No. 3516**

ORDER AUTHORIZING THE DEBTORS TO REJECT CERTAIN EXECUTORY CONTRACTS AND UNEXPIRED LEASES EFFECTIVE AS OF THE REJECTION DATE

Upon the motion (the "**Motion**")[2] of the Debtors for entry of an Order authorizing the Debtors to reject, effective as of the Rejection Date, certain executory contracts and unexpired leases, including any amendments or modifications thereto, each as set forth on Exhibit 1 attached hereto (collectively, the "**Rejected Contracts and Leases**"), all as more fully described in the Motion; and the Court having reviewed the Motion; and the 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 February 29, 2012; and the Court having found that this is a core proceeding pursuant to 28 U.S.C. § 157(b)(2) and that this Court may enter a final order consistent with Article III of the United States Constitution; and the Court having found that venue of this proceeding and the Motion in this district is proper pursuant to 28 U.S.C. §§ 1408 and 1409; and it appearing that

[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 them in the Motion.

proper and adequate notice of the Motion has been given and that no other or further notice is necessary; and upon the record herein; and after due deliberation thereon; and the Court having determined that there is good and sufficient cause for the relief granted in this order;

IT IS HEREBY ORDERED, ADJUDGED AND DECREED THAT:

1. The Motion is GRANTED as set forth herein.

2. The Debtors are authorized to reject the Rejected Contracts and Leases, identified on Exhibit 1 attached hereto, including, to the extent applicable, any agreements, amendments, modifications, and subleases related thereto, effective as of the Rejection Date, to the extent such Rejected Contracts and Leases are not already terminated in accordance with their applicable terms or upon agreement of the parties thereto.

3. Consistent with the limitations of section 362 of the Bankruptcy Code, and any other applicable law, the Counterparties are prohibited from setting off or otherwise utilizing any amounts deposited by the Debtors with any of the Counterparties as a security deposit or pursuant to another similar arrangement, or owed to the Debtors by any of the Counterparties under the Rejected Contracts and Leases or other agreements between the same parties, without further order of this Court.

4. Third parties shall not impede or interfere in any manner with the removal by the Counterparties of their equipment or other property based on any claims, financial or otherwise, against the Debtors whether arising prepetition or post-petition.

5. Nothing in this Order shall prejudice the rights of the Counterparties with respect to any claim for damages arising from the rejection of the Rejected Contracts and Leases and with respect to any objection by the Debtors thereto.

6. Any claims based on the rejection of the Rejected Contracts and Leases shall be

filed in accordance with the *Order (I) Establishing Bar Dates and Related Procedures for Filing Proofs of Claim Other Than with Respect to Talc Personal Injury Claims and (II) Approving Form and Manner of Notice Thereof* [Docket No. 881]. Specifically, any claim arising from or relating to the Debtors' rejection of any of the Rejected Contracts and Leases shall be filed on or before 5:00 p.m., prevailing Eastern Time, on the date that is thirty (30) days after service of this Order.

7. Nothing herein shall prejudice the rights of the Debtors to argue (and the Counterparties to raise objection thereto) that any of the Rejected Contracts and Leases were terminated prior to the Rejection Date or that any claim for damages arising from the rejection of the Rejected Contracts and Leases is limited to the remedies available under any applicable termination provision of such contract or lease, as applicable, or that any such claim is an obligation of a third party and not that of the Debtors or their estates.

8. Nothing contained in the Motion or this Order is or should be construed as: (i) an admission as to the validity of any claim against any Debtor or the existence of any lien against the Debtors' properties; (ii) a waiver of the Debtors' rights to dispute any claim or lien on any grounds; (iii) a promise to pay any claim; or (iv) an implication or admission that any particular claim would constitute an allowed claim.

9. Adequate notice of, and an opportunity for a hearing on, the Motion has been provided, and such notice satisfies the requirements of Bankruptcy Rule 6004(a).

10. Notwithstanding any applicability of Bankruptcy Rules 6004(h), 7062, or 9014, the terms and conditions of this Order are immediately effective and enforceable upon its entry.

11. The Debtors are hereby authorized to take such actions and to execute such documents as may be necessary to implement the relief granted by this Order.

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

Dated: May 24th, 2021
Wilmington, Delaware

LAURIE SELBER SILVERSTEIN
UNITED STATES BANKRUPTCY JUDGE

Exhibit 1

No.	Debtor	Counterparty	Counterparty Address	Description/Title	Contract Date
1	Imerys Talc America, Inc.	Almatech Mineral International Limited	Room 1403, CRE Building, 303 Hennessy Road, Wanchai, Hong Kong	Corporate Service Agreement	April 1, 2017
2	Imerys Talc America, Inc.	American Drilling Corp., LLC	19208 E. Broadway Spokane Valley, WA 99016	Drilling Agreement	June 1, 2018
3	Imerys Talc America, Inc.	Carbon Cycle Energy LLC	1204 Waghorn Dr. Brampton, ON, L6T4X3, Canada	Assignment of Professional Services Agreement	February 25, 2014
4	Imerys Talc America, Inc.	Constellation NewEnergy, Inc.	1221 Lamar St., Suite 750 Houston, Texas 77010	Master Retail Electricity Supply Agreement	June 6, 2017
5	Imerys Talc America, Inc.	Direct Energy Business, LLC, Direct Energy Business Marketing, LLC, d/b/a Direct Energy Business	1001 Liberty Avenue, Pittsburg, PA 15222	Electricity Master Agreement	March 12, 2018
6	Imerys Talc America, Inc.	Direct Energy Business, LLC, Direct Energy Business Marketing, LLC, d/b/a Direct Energy Business	1001 Liberty Avenue, Pittsburg, PA 15222	Amendment to Electricity Master Agreement	March 12, 2018
7	Imerys Talc Canada, Inc.	EDF Trading North America, LLC	4700 W. Sam Houston Pkwy N Suite 250 Houston, TX 77041	Base Contract for Sale and Purchase of Natural Gas	June 26, 2017

No.	Debtor	Counterparty	Counterparty Address	Description/Title	Contract Date
8	Imerys Talc Canada, Inc.	EDF Trading North America, LLC	4700 W. Sam Houston Pkwy N Suite 250 Houston, TX 77041	Gas Transaction Confirmation	December 12, 2017
9	Imerys Talc Canada, Inc.	EDF Trading North America, LLC	4700 W. Sam Houston Pkwy N Suite 250 Houston, TX 77041	Gas Transaction Confirmation	December 29, 2017
10	Imerys Talc Canada, Inc.	EDF Trading North America, LLC	4700 W. Sam Houston Pkwy N Suite 250 Houston, TX 77041	Gas Transaction Confirmation	January 26, 2018
11	Imerys Talc Canada, Inc.	EDF Trading North America, LLC	4700 W. Sam Houston Pkwy N Suite 250 Houston, TX 77041	Special Provisions to the Base Contract for Sale and Purchase of Natural Gas	June 26, 2017
12	Imerys Talc America, Inc.	Exopack – Thomasville, LLC	2800 W. Higgins Rd. Suite 435 Hoffman Estates, IL 60169	Products and Services Supply Agreement	November 1, 2009
13	Imerys Talc Vermont, Inc.	Irving Energy	190 Commerce Way Portsmouth, NH 03801	Commercial Fixed Price Supply Agreement	October 1, 2020
14	Imerys Talc Vermont, Inc.	John Charron Drilling	3845 Main Road West Haven, Vermont 05743	Independent Contractor Agreement	January 1, 2013
15	Imerys Talc Vermont, Inc.	John Charron Drilling	3845 Main Road West Haven, Vermont 05743	First Amendment to Independent Contractor Agreement	February 1, 2014

No.	Debtor	Counterparty	Counterparty Address	Description/Title	Contract Date
16	Imerys Talc America, Inc.	Johnson Controls Security Solutions LLC	10010 E Knox Spokane, WA 99206-4156	Commercial Sales Agreement	August 17, 2018
17	Imerys Talc America, Inc.	NorthWestern Corporation	11 E. Park Butte, MT 59701	Service Agreement for Network Integration Transmission	November 8, 2017
18	Imerys Talc America, Inc.	NorthWestern Corporation	11 E. Park Butte, MT 59701	Service Agreement for Network Integration Transmission	March 9, 2020
19	Imerys Talc America, Inc.	Pitney Bowes	301 Summer St. Stamford, CT 06926	Lease Agreement	January 29, 2015
20	Imerys Talc America, Inc.	Pitney Bowes	1 Elmcroft Road Stamford, CT 06926-0700	Lease Renewal Confirmation	November 8, 2018

No.	Debtor	Counterparty	Counterparty Address	Description/Title	Contract Date
21	Imerys Talc America, Inc.	Reservoirs Environmental, Inc.	5801 Logan Street Suite 100 Denver, CO 80216	Equipment Lease	March 2016
22	Imerys Talc America, Inc.	Saga Forest Carriers Intl. AS. Inc.	7 East Congress Street Savannah, GA 31401	Saga Personnel Cargo Agreement	November 11, 2011
23	Imerys Talc America, Inc.	Shell Energy North America (US), L.P.	1000 Main St Level 12 Houston, TX 77002	Base Contract for Sale and Purchase of Natural Gas	January 5, 2007
24	Imerys Talc America, Inc.	Shell Energy North America (US), L.P.	1000 Main St Level 12 Houston, TX 77002	Revised Transaction Confirmation - Sappington	January 1, 2018
25	Imerys Talc America, Inc.	Shell Energy North America (US), L.P.	1000 Main St Level 12 Houston, TX 77002	Revised Transaction Confirmation – Three Forks	January 1, 2018
26	Imerys Talc America, Inc.	Shell Energy North America (US), L.P.	1000 Main St Level 12 Houston, TX 77002	Revised Transaction Confirmation - Sappington	December 21, 2019
27	Imerys Talc	Shell Energy North America (US), L.P.	1000 Main St Level 12 Houston, TX 77002	Revised Transaction Confirmation – Three Forks	December 21, 2019

No.	Debtor	Counterparty	Counterparty Address	Description/Title	Contract Date
28	Imerys Talc America, Inc.	Shell Energy North America (US), L.P.	1000 Main St Level 12 Houston, TX 77002	Revised Transaction Confirmation - Sappington	December 2, 2020
29	Imerys Talc America, Inc.	Shell Energy North America (US), L.P.	1000 Main St Level 12 Houston, TX 77002	Revised Transaction Confirmation – Three Forks	December 2, 2020
30	Imerys Talc Canada, Inc.	1232271 Ontario Inc.	10 Duhamel Rd Lively, Ontario P3Y1L4, Canada	Short Term Rental Agreement	June 1, 2016

This is
EXHIBIT "D"
to the Affidavit of
ERIC DANNER
Sworn September 27, 2021

DocuSigned by:
Nicholas Avis
2C12EFAB5242430...

Nicholas Avis
Commissioner for Taking Affidavits
LSO #76781Q

IN THE UNITED STATES BANKRUPTCY COURT
FOR THE DISTRICT OF DELAWARE

In re:	:	Chapter 11
IMERYS TALC AMERICA, INC., *et al.*,[1]	:	Case No. 19-10289 (LSS)
Debtors.	:	(Jointly Administered)
	:	**Re: Docket No. 3808**

ORDER SUSTAINING DEBTORS' OBJECTION TO
PROOF OF CLAIM NO. 442 FILED BY THOMAS NEIL FULTON

Upon the *Debtors' Objection to Proof of Claim No. 442 Filed by Thomas Neil Fulton* (the "**Objection**")[2] seeking entry of an order disallowing and expunging the Fulton Claim; and the Court having considered the Objection, the Fulton Claim, the Declaration, and any responses thereto; and the Court having jurisdiction to consider the Objection 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 February 29, 2012; and the Court having found that this is a core proceeding pursuant to 28 U.S.C. § 157(b)(2) and that this Court may enter a final order consistent with Article III of the United States Constitution; and the Court having found that venue of this proceeding and the Objection in this district is proper pursuant to 28 U.S.C. §§ 1408 and 1409; and it appearing that proper and adequate notice of the Objection has been given and that no other or further notice is necessary;

[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] Unless otherwise defined herein, capitalized terms used herein shall have the meanings ascribed to them in the Objection.

and upon the record herein; and after due deliberation thereon; and the Court having determined that there is good and sufficient cause for the relief granted in this order;

IT IS HEREBY ORDERED THAT:

1. The Objection is SUSTAINED, as set forth herein.

2. Any response to the Objection not otherwise withdrawn, resolved, or adjourned is hereby overruled on its merits.

3. The Fulton Claim is hereby disallowed in its entirety and shall be expunged from the claims register upon entry of this Order.

4. The Debtors shall retain and shall have the right to seek to amend, modify and/or supplement this Order as may be necessary.

5. The Debtors are authorized and empowered to take all steps necessary and appropriate to carry out and otherwise effectuate the terms, conditions, and provisions of this Order.

6. The Debtors and Prime Clerk LLC, the Debtors' claims and noticing agent, are authorized to take all actions necessary and appropriate to give effect to this Order. Prime Clerk LLC is authorized to modify the claims register to comport with the relief granted by this Order.

7. This Court shall retain jurisdiction over the Debtors and Mr. Fulton with respect to any matters related to or arising from the Objection or the implementation of this Order.

Dated: August 30th, 2021
Wilmington, Delaware

LAURIE SELBER SILVERSTEIN
UNITED STATES BANKRUPTCY JUDGE

This is
EXHIBIT "E"
to the Affidavit of
ERIC DANNER
Sworn September 27, 2021

DocuSigned by:
Nicholas Avis
2C12EFAB5242430...

Nicholas Avis
Commissioner for Taking Affidavits
LSO #76781Q

IN THE UNITED STATES BANKRUPTCY COURT
FOR THE DISTRICT OF DELAWARE

In re:	:	Chapter 11
IMERYS TALC AMERICA, INC., *et al.*,[1]	:	Case No. 19-10289 (LSS)
Debtors.	:	(Jointly Administered)
	:	**Ref. Docket No. 3980**

ORDER AUTHORIZING (I) AN EXPANDED SCOPE OF SERVICES TO BE PROVIDED BY RAMBOLL US CONSULTING, INC. AS ENVIRONMENTAL ADVISOR TO THE DEBTORS *NUNC PRO TUNC* TO AUGUST 16, 2021 AND (II) WAIVING CERTAIN INFORMATIONAL REQUIREMENTS OF LOCAL RULE 2016-2

Upon the supplemental application (the "**Supplemental Application**")[2] of the Debtors for entry of an order (this "**Order**"), pursuant to sections 327(a) and 328(a) of title 11 of the United States Code (the "**Bankruptcy Code**"), Rules 2014 and 2016 of the Federal Rule of Bankruptcy Procedure (the "**Bankruptcy Rules**"), and Rules 2014-1 and 2016-1 of the Local Rules of Bankruptcy Practice and Procedure of the United States Bankruptcy Court for the District of Delaware (the "**Local Rules**"), (I) expanding the scope of services Ramboll may provide the Debtors to include the Supplemental Services effective *nunc pro tunc* to August 16, 2021, (II) approving the proposed notice process for authorizing the Debtors to enter into future proposals with Ramboll, and (III) waiving certain informational requirements of Local Rule 2016-2 in connection therewith, all as more fully set forth in the Supplemental Application; and it

[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 Supplemental Application.

appearing that this Court has jurisdiction to consider the Supplemental Application 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 Supplemental Application and the requested relief being a core proceeding pursuant to 28 U.S.C. § 157(b); and venue being proper before this Court pursuant to 28 U.S.C. §§ 1408 and 1409; and this Court being satisfied, based on the representations made in the Original Application, the Supplemental Application, the Arslanian Declaration, the Supplemental Declaration, and the Second Supplemental Declaration that Ramboll is "disinterested" as such term is defined in section 101(14) of the Bankruptcy Code, as modified by section 1107(b) of the Bankruptcy Code, and as required under section 327(a) of the Bankruptcy Code, and that Ramboll neither represents nor holds any interest adverse to the Debtors' estates; and adequate notice of the Supplemental Application and opportunity for objection having been given; and it appearing that no other notice need be given; and after due deliberation and sufficient cause therefor, it is hereby

ORDERED, ADJUDGED, AND DECREED THAT:

1. The Supplemental Application is GRANTED as set forth herein. Any objections or reservations of rights filed in respect of the Supplemental Application are overruled, with prejudice.

2. Pursuant to sections 327(a) and 328(a) of the Bankruptcy Code, Bankruptcy Rule 2016, and Local Bankruptcy Rule 2016-2, the scope of Ramboll's retention is expanded to include performance of the Supplemental Services, effective *nunc pro tunc* to August 16, 2021, and the Debtors are authorized to pay fees and reimburse expenses to Ramboll for the

Supplemental Services according to the terms of the Proposal, which is attached hereto as Exhibit 1, as modified by the terms of this Order.

3. Notwithstanding anything to the contrary in this Order, the Supplemental Application, the Engagement Letter, the Proposal, or the Second Supplemental Declaration, (a) Ramboll shall file interim and final fee applications for the allowance of compensation for services rendered and reimbursement of expenses incurred in accordance with sections 330 and 331 of the Bankruptcy Code, the Bankruptcy Rules, the Local Rules, and any applicable orders of this Court; and (b) Ramboll's applications for compensation and reimbursement of expenses shall be subject to the standard of review set forth in section 330 of the Bankruptcy Code.

4. Notwithstanding anything to the contrary in this Order, the Supplemental Application, the Second Supplemental Declaration, or the Proposal, Ramboll shall comply with all requirements of Bankruptcy Rule 2016(a) and Local Rule 2016-2, including all information and time keeping requirements of subsection (d) of Local Rule 2016-2, except that Ramboll shall not be required to keep time records on a "project category" basis. Ramboll shall also comply with all information and other requirements of Local Rule 2016-2(e) with respect to any request for reimbursement of expenses.

5. To the extent the Debtors and Ramboll enter into any additional engagement letters or proposals under which the aggregate amount of anticipated fees with respect to each such additional engagement letter or proposal is less than $50,000, the Debtors may seek authorization of such additional work by notice, subject to the following:

i. Upon the parties executing a new engagement letter or proposal, the Debtors shall promptly file a notice of such additional work with the Court, describing in the body of the notice the subject matter of the engagement, senior personnel Ramboll expects to staff on the engagement, and billing arrangements and hourly rates of professionals expected to work on the engagement (if applicable), the estimated total fees anticipated for the

additional work, attaching a copy of the engagement letter or proposal, and attaching a declaration from Ramboll with any additional disclosures required under Bankruptcy Rule 2014, and serving the same on the U.S. Trustee, counsel to the TCC, counsel to the FCR, and those parties that have requested notice in the Chapter 11 Cases pursuant to Bankruptcy Rule 2002.

ii. Parties shall have ten (10) calendar days from the date of service of the notice to object to such notice. Any such objections must be filed with the Court and served on counsel for the Debtors within ten (10) calendar days after service of the notice. If an objection cannot be resolved within five (5) calendar days of service of such objection, the Debtors shall schedule the matter for a hearing before the Court at the next regularly scheduled omnibus hearing or other date otherwise agreeable to the Debtors, Ramboll, and the objecting party.

iii. If no objections to such notice are received prior to the objection deadline, Ramboll shall be authorized to perform such additional services for the compensation set forth in the notice without further notice, hearing, or order of the Court.

iv. All additional services performed pursuant to any such notice shall be subject to the provisions of the Retention Order and this Order, notwithstanding any contrary provisions in the notice, the engagement letter or any other document relating to the additional services.

6. During the pendency of these Chapter 11 Cases, the following language set forth in paragraph 5 of the Due Diligence General Terms and Conditions (included as part of the Proposal) (the "**Terms and Conditions**"), shall have no force or effect: "The use of company-owned equipment and protective clothing will be billed in accordance with our standard fee schedule."

7. The indemnification provisions included in the Proposal, including those relating to subcontractors, are approved, subject to the following during the pendency of these Chapter 11 Cases:

i. No indemnified party shall be entitled to indemnification, contribution, or reimbursement pursuant to the Proposal for services, unless such services and the indemnification, contribution, or reimbursement therefor are approved by this Court;

ii. The Debtors shall have no obligation to indemnify any indemnified party, or provide contribution or reimbursement to any indemnified party pursuant to the Proposal for any claim or expense that is either: (a) judicially

determined (the determination having become final) to have arisen from any indemnified party's gross negligence, willful misconduct, breach of fiduciary duty, if any, bad faith or self-dealing; (b) for a contractual dispute in which the Debtors allege the breach of Ramboll's or other indemnified party's contractual obligations unless the Court determines that indemnification, contribution, or reimbursement would be permissible pursuant to *In re United Artists Theatre Co.*, 315 F.3d 217 (3d Cir. 2003); or (c) settled prior to a judicial determination as to subclauses (a) or (b) above, but determined by this Court, after notice and a hearing to be a claim or expense for which that indemnified party should not receive indemnity, contribution, or reimbursement under the terms of the Proposal as modified by this Order; and

iii. If, before the earlier of (a) the entry of an order confirming a chapter 11 plan in the Chapter 11 Cases (that order having become a final order no longer subject to appeal), and (b) the entry of an order closing the Chapter 11 Cases, an indemnified party believes that it is entitled to the payment of any amounts by the Debtors on account of the Debtors' indemnification, contribution, and/or reimbursement obligations under the Proposal (as modified by this Order), including without limitation the advancement of defense costs, the indemnified party must file an application therefore in this Court, and the Debtors may not pay any such amounts before the entry of an order by this Court approving the payment. This subparagraph (iii) is intended only to specify the period of time under which the Court shall have jurisdiction over any request for fees and expenses by an indemnified party for indemnification, contribution, or reimbursement, and not a provision limiting the duration of the Debtors' obligation to indemnify or make reimbursements to the indemnified party. All parties in interest shall retain the right to object to any demand by any indemnified party for indemnification, contribution, or reimbursement.

8. For the avoidance of doubt, except as expressly set forth herein, nothing in this Order shall otherwise alter or modify the terms of the Retention Order, the Engagement Letter, or the Proposal.

9. To the extent that Ramboll uses the services of independent contractors or subcontractors (collectively, the "**Contractors**") during the pendency of the Chapter 11 Cases, Ramboll shall (i) pass through the cost of such Contractors to the Debtors at the same rate that Ramboll pays the Contractors; and (ii) seek reimbursement for actual costs only.

10. During the pendency of these Chapter 11 Cases, any provision in the Engagement Letter, the Supplemental Application, the Proposal, or any attachment thereto, requiring the payment of interest on fees or expenses if not paid within a certain time frame will have no force or effect.

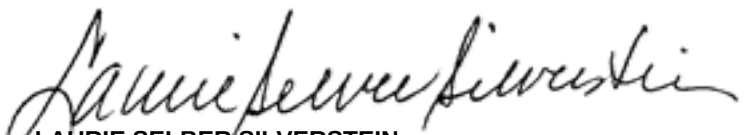
11. Notwithstanding Bankruptcy Rule 6004(h), this Order shall be effective and enforceable immediately upon entry hereof.

12. Notwithstanding anything to the contrary in the Supplemental Application, Engagement Letter, or the Proposal, Ramboll shall have whatever duties, fiduciary or otherwise, that are imposed upon it by applicable law.

13. In the event of any inconsistency between the Engagement Letter, the Supplemental Application, the Proposal, and this Order, this Order shall govern.

14. The Debtors are authorized and empowered to take all actions necessary to implement the relief granted in this Order.

15. This Court shall retain exclusive jurisdiction with respect to all matters arising from or related to the implementation, interpretation, or enforcement of this Order and of the Engagement Letter and the Proposal during the pendency of these Chapter 11 Cases.



Dated: September 17th, 2021
Wilmington, Delaware

LAURIE SELBER SILVERSTEIN
UNITED STATES BANKRUPTCY JUDGE

EXHIBIT 1

Proposal

RAMBOLL

ENVIRONMENT & HEALTH

Privileged and Confidential
Attorney Work Product

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

PROPOSAL FOR ENVIRONMENTAL DUE DILIGENCE REVIEW OF DOLLAR GENERAL - JOHNSON AND LYNDONVILLE, VT, AND ADDITIONAL CONSULTING SERVICES

Dear Aron:

August 16, 2021

Ramboll
350 South Grand Avenue
Los Angeles, CA 90071
USA

T +1 213 943 6300
F +2 213 943 6301

www.ramboll.com

Ramboll US Consulting, Inc. (Ramboll)[1] is pleased to submit this proposal to Latham & Watkins LLP (L&W) on behalf of L&W's clients Imerys Talc America, Inc., Imerys Talc Vermont, Inc., and Imerys Talc Canada Inc. (collectively, the "client", "Imerys" or the "Company") to conduct an environmental review of the Dollar General sites at 793 VT 15 Johnston, VT and 164 Broad Street, Lyndonville, VT (the "sites"). Imerys has also requested Ramboll to provide additional consulting services in the future related to sites that Imerys' formerly owned or operated and has since divested (i.e., former sites). This proposal contains a scope of work, a proposed schedule, a cost estimate, and proposed contract terms for this project.

SCOPE OF WORK

Ramboll proposes to complete the following tasks for the sites:

Task 1 - Phase I Environmental Assessment

In consideration of the requirements of the United States Environmental Protection Agency's (USEPA) Standards and Practices for All Appropriate Inquiries ("AAI standard") (40 CFR Part 312), Ramboll proposes to conduct the Phase I ESAs in accordance with the ASTM International Standard Practice for Environmental Site Assessments: Phase I Environmental Site Assessment Process E1527-13 (the "ASTM standard"). The assessment will include the following tasks, which will be performed under the supervision of an Environmental Professional as defined in the ASTM standard:

Task 1A – Document Review

- Review available documents that may relate to potential environmental activities or impairment at the subject sites, including, if available, a previous Phase I and Phase II report for the sites.

- Review information provided by the "user" of the assessments, as defined by the ASTM Standard. Attachment A of this proposal describes information required to be provided by the user of the Phase I ESA report. The Client will complete the user questionnaire, provided as Attachment A, for each site and return a copy to Ramboll.

[1] Formerly Ramboll US Corporation

Task 1B – Review of Readily Available Historical Sources

- Order and review readily available historical information sources from Environmental Data Resources, Inc. (EDR), which may include (depending on availability) aerial photographs, Sanborn fire insurance maps, historical topographic maps, and a city directory abstract, to evaluate historical property use and the potential for off-site impacts to the properties. This task does not include a search for environmental liens or activity and use limitations (AULs), which is expected to be provided by Imerys.

- Request and review information for the sites from the local tax assessor office, building department, or other local governmental offices. Other historical sources will be consulted if judged to be necessary by the Environmental Professional performing the review.

Task 1C – Review of Federal, State, Tribal, and Local Government Records

- Order and review regulatory database searches for the facilities and the surrounding properties from EDR. According to EDR, the report provided will meet the minimum requirements presented in the ASTM Standard. Ramboll will also search publicly available databases maintained by the United States Environmental Protection Agency.

- Request information from local fire and health departments for the sites and adjacent properties.

- In order to meet the file review requirements of the 2013 ASTM Standard, Ramboll will make a determination as to whether state or federal agency file reviews are warranted for the subject sites or for nearby/adjacent sites. Ramboll will advise you of any additional costs related to supplemental file review requests before such costs are incurred.

Task 1D – Site Reconnaissance

- Visually inspect the physical condition of the sites, including the interior of any buildings or other structures, to evaluate whether there are any current or past operations that involve the use, treatment, storage, disposal or generation of hazardous substances or petroleum products and to identify the presence of features referenced in Sections 9.4.1 through 9.4.4.7 of the ASTM Standard.

- Visually inspect, to the extent practicable from property boundaries and public thoroughfares, adjacent properties for current or past land use conditions that may adversely affect the subject properties.

- Interview current facility owners, occupants, and other knowledgeable parties who may have information concerning the history of the properties and the activities conducted by current and previous property occupants.

Task 2 – Additional Consulting Services

On an as needed basis, Ramboll will provide consulting services related to sites that Imerys' formerly owned or operated and has since divested (i.e., former sites). At the time that such work is requested by Imerys, Ramboll will provide Imerys with a scope of work and estimate of associated cost.

PROJECT SCHEDULE AND COST

Ramboll is available to proceed immediately upon receipt of authorization and proposes to complete this work in accordance with the schedule provided below. Ramboll proposes to undertake this assignment on a time and materials basis in accordance with the attached Terms and Conditions (Attachment B). Ramboll's estimated costs to complete this work are also summarized below.

Task	Description	Schedule	Est. Cost
Task 1	Phase I Environmental Assessments for Dollar General Store sites in Johnston and Lyndonville, VT sites (2 sites)	Draft reports to be completed within two weeks of the site visits	$13,000-$16,000
Task 2	Additional Consulting Services	To Be Determined	To Be Determined

In the event the costs provided above exceed the upper end of the cost range, Ramboll shall notify you and await prior authorization before proceeding or incurring any additional costs.

The services, fees and scheduling presented herein are subject to circumstances or conditions (e.g. COVID-19) which may pose a significant risk to the health or safety of Ramboll employees, restrict travel, or limit access to a site or certain third-party resources.

Conditions of Service and Reliance

Presented below are Ramboll's Conditions of Service for conducting Phase I ESAs:

1. Site Conditions
    a. The sites consist of the Dollar General properties at 793 VT 15 Johnston, VT and 164 Broad Street, Lyndonville, VT.
2. Client Furnished Services
    a. Ramboll will be provided with unrestricted access to the site. The interiors of the buildings will be accessible and lighted.
    b. The client will provide copies of or access to available drawings, maps, and all other documentation regarding the site, as described in Attachment A.
    c. The client will provide names and contact information of current and former property owners and/or occupants of the facility prior to the site visit.
    d. The client will perform a search for recorded land title records (i.e., title and deed search) for the site, and provide this information to Ramboll.
    e. Ramboll understands the site is not currently abandoned and that current or former site owners and/or occupants familiar with the site history and operations are available for interviews. Ramboll will not seek to interview owners/occupants of any surrounding property.

f. Included as Attachment B of this proposal is a copy of the ASTM standard User-Provided Information Request, which describes information required to be provided by the user of the ESA report, if available. The client will complete the questionnaire in Attachment B and return a copy to Ramboll.

3. Basis for Estimated Cost and Schedule

a. No scheduling, access, or other unforeseen difficulties in obtaining data will be encountered.

b. Changes in conditions may impact the Scope of Work and/or modify the budget and schedule.

c. One visit to the site will be conducted, which will take less than one day to perform. If Ramboll is unable to access pertinent areas at the site or conduct local agency reviews in the allotted time, additional costs may be incurred if additional visits are necessary.

d. No visits to review files at regulatory agencies beyond those described in Task B are required.

e. Costs assume that no more than one bankers box of files and documents total (including agency records) will be reviewed for this project and that no more than $200 in copy costs will be incurred. Ramboll will notify client if significant RWQCB records for the site exist and additional budget may be required to obtain/review those records.

f. The estimated cost assumes that no meetings will be held with the client, its agents, or representatives, and that two conference calls lasting no more than one hour each will be held to report verbal findings.

g. Ramboll will provide the reports in electronic format.

h. The estimated cost assumes that the site has the one address. If the site has or formerly had other addresses, additional costs may be incurred to order and review files for the additional addresses. Ramboll will notify you if this is discovered to be the case.

RAMBOLL

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Attorney Work Product

Ramboll understands that there may be other parties that may wish to rely upon the findings of ESA report. Recognizing that the conclusions in the desktop review/ESA report represent Ramboll's professional judgment based upon the information available and conditions existing as of the date of the ESA, the report Ramboll provides to you may be relied upon by other parties only if the User agrees that Ramboll's total exposure and liability in connection with the ESA to both the client and all other parties to whom reliance has been granted do not exceed the limitations of liability in the Terms and Conditions agreed to in the contract for this assignment (Attachment B).We look forward to working with you to complete this assignment. If you have any questions or need further information, please contact me. If the foregoing terms are acceptable, please provide a retention letter for execution by Ramboll and the Client.

Sincerely,

Eddie Arslanian
Managing Principal
+1 213-943-6326
EArslanian@ramboll.com

Kelly Guyton
Senior Managing Consultant
+1 703-798-6985
Kguyton@ramboll.com

PROPOSAL FOR ENVIRONMENTAL DUE DILIGENCE REVIEW OF DOLLAR GENERAL, JOHNSON AND LYNDONVILLE, VT, AND ADDITIONAL CONSULTING SERVICES

ACCEPTED AND APPROVED BY:

Signature: _____ Date: August 18, 2021

Name: Eric A.W. Danner Title: President

Attachment A
USER-PROVIDED INFORMATION

ATTACHMENT A
USER-PROVIDED INFORMATION

USER-PROVIDED INFORMATION REQUEST

Property Address: _____

City, State: _____

The Standards for All Appropriate Inquiries (AAI) (40 CFR Part 312) requires the "user" of the Phase I ESA (i.e., the party for whom the assessment is being prepared) to complete certain tasks (commonly referred to as "user responsibilities"). While the information obtained from completing these tasks is not required to be provided to the environmental professional completing the Phase I ESA, such information can assist the environmental professional identify environmental conditions associated with the property. As such, Ramboll requests your response, as the user of the Phase I ESA, to the following questions. We understand that, in some circumstances, you may have little or no information that is responsive. Still, we encourage you to complete and return the questionnaire, even if you know of no responsive information. This will allow us to reflect the fact that any information known to the user has been communicated to us.

1. **Environmental cleanup liens and Activity and Use Limitations (AULs) that are filed or recorded against the site**

   Are you aware of any environmental cleanup liens against the property or AULs that are filed or recorded under federal, tribal, state or local law?

2. **Common knowledge, specialized knowledge, or experience relating to the site**

   Are you aware of any conditions on the property indicative of a release or threatened release of chemicals or petroleum products?

3. **Relationship of the purchase price to the fair market value of the property**

   Do you have any reason to believe that the purchase price of the property is/will be lower than the fair market value, due to the presence of contamination?

Questionnaire Completed by:

Name: _____

Title: _____

Company: _____

Date: _____

Attachment B
BUSINESS TERMS AND CONDITIONS

RAMBOLL

DUE DILIGENCE TERMS AND CONDITIONS

Ramboll US Consulting, Inc., a Virginia corporation, ("Ramboll") agrees to provide professional services under the following General Terms and Conditions, provided that, in the event of any inconsistency between the retention agreement under which this proposal was issued and these terms and conditions, the retention agreement shall govern:

1. Fees: Ramboll bills for its services on a time and materials basis using standard hourly rates. If requested, we will provide an estimate of the fees for a particular task, and we will not exceed that estimate without prior Client approval. For deposition and testimony we charge premium hourly rates. In certain circumstances we will undertake an assignment on a fixed fee basis if the requirements can be clearly defined.

2. Invoicing: Ramboll bills its clients on a monthly basis using a standard invoice format. This format provides for a description of work performed and a summary of professional fees, expenses, and communication and reproduction charges. For more detailed invoicing requests, Ramboll reserves the right to charge for invoice preparation time by staff members.

3. Payment: Ramboll invoices are payable UPON RECEIPT. Ramboll reserves the right to assess a late charge of 1.5 percent per month for any amounts not paid within 30 days of the receipt date. Ramboll also reserves the right to stop work or withhold work product if invoices remain unpaid for more than 60 days past the receipt date. If Ramboll's work relates to a business transaction, Ramboll shall be paid in a timely fashion, without regard to whether or when the transaction closes. If Ramboll legal counsel determines that Ramboll is required to take legal action to obtain payment for unpaid invoices and Ramboll prevails in court, Client agrees to pay all of Ramboll's costs associated with the legal action, including reasonable legal fees.

4. Subcontractors: Ramboll has a policy that its Clients should directly retain other contractors whose services are required in connection with field services for a project (e.g., drillers, analytical laboratories, transporters). As a service to you, we will advise you with respect to selecting other such contractors and will assist you in coordinating and monitoring their performance. In no event will we assume any liability or responsibility for the work performed by other contractors you may hire. When Ramboll engages a subcontractor on behalf of the Client, the expenses incurred, including rental of special equipment necessary for the work, will be billed as they are incurred, at cost. By engaging us to perform these services, you agree to indemnify, defend and hold Ramboll, its directors, officers, employees, and other agents harmless from and against any claims, demands, judgment, obligations, liabilities and costs (including reasonable attorneys' and expert fees) relating in any way to the performance or non-performance of work by another contractor, except claims for personal injury or property damage to the extent caused by the negligence or willful misconduct of Ramboll's employees.

5. Reimbursable Expenses: Project-related expenses including travel, priority mail, overnight delivery, outside reproduction and courier services will be billed at cost. The use of company-owned cars, trucks, and vans will be charged at $125 per day. The use of company-owned equipment and protective clothing will be billed in accordance with our standard fee schedule.

6. Access and Site Information: Client agrees to grant or obtain for Ramboll reasonable access to any sites to be investigated as part of Ramboll's scope of work. Client also agrees to indicate to Ramboll the boundary lines of the site and the location of any underground structures, including tanks, piping, water, telephone, electric, gas, sewer, and other utility lines. Client agrees to notify Ramboll of any hazardous site conditions or hazardous materials, about which Client has knowledge and to which Ramboll's employees or contractors may be exposed while performing services on behalf of Client, including providing copies of relevant Material Safety Data Sheets. Client also shall make available to Ramboll all information within its control necessary to allow Ramboll to perform its services and agrees to comply with reasonable requests by Ramboll for clarification or additional information. Client shall be responsible for the accuracy of this information. Ramboll shall not be responsible for any damage to underground structures or utilities to the extent such damage was caused by incomplete or inaccurate information provided to us by the client or other party. Client agrees to make Ramboll aware of any unsafe conditions at any project site about which Client

has knowledge.

7. Reporting Requirements: Client may be required under federal, state or local statutes or regulations to report the results of Ramboll's services to appropriate regulatory agencies. Ramboll is not responsible for advising Client about its reporting obligations and Client agrees that it shall be responsible for all reporting, unless Ramboll has an independent duty to report under applicable law. In those situations, Ramboll will provide Client with advance notice that Ramboll believes that it has an obligation to report as well as the substance of the report it intends to make.

8. RCRA Compliance: Client shall be responsible for complying with the Resource Conservation and Recovery Act, 42 U.S.C. Section 6901 et. seq. ("RCRA") and its implementing regulations in connection with Ramboll's work under this Agreement. Client may request Ramboll's assistance in meeting its RCRA and other similar waste management obligations, including analytical testing to assist Client in proper characterization of waste, identifying potential transporters and disposal facilities for waste (provided that Client shall make the final selection of both the transporter and disposal facility), entering into subcontracts or purchase order arrangements with the transporters and/or disposal facilities selected by Client, and preparing manifests for the Client's approval and execution. Client agrees that, by virtue of providing these services, Ramboll shall not be deemed a "generator" or a party who "arranges" for the "transportation," "treatment" or "disposal" of any "hazardous waste" or "hazardous substance" (as those terms are defined in the Comprehensive Environmental Response Compensation and Liability Act or "CERCLA", 42 U.S.C. Section 9601). Client agrees to indemnify, defend and hold Ramboll, its directors, officers, employees and agents, harmless from and against any and all claims, demands, judgments, obligations, liabilities, any costs (including reasonable attorneys' and expert fees) relating to: (1) Ramboll's work in assisting Client with its RCRA obligations; and (2) the transportation, treatment, and disposal of hazardous substances or hazardous waste generated by the field activities conducted for Client.

9. Information

a) Confidentiality: We treat all information obtained from Clients as confidential, unless such information is previously known to us, comes into the public domain through no fault of ours, or is furnished to us by a third party who is under no obligation to keep the information confidential. If we are subpoenaed to disclose confidential information obtained from you or about our work for you, we will give you reasonable notice and the opportunity to object before releasing any confidential information.

Ramboll values its relationships with our clients and we will make every effort to provide assistance to our clients as needed. In an effort to serve our clients' global due diligence needs, Client recognizes that we may assist more than one client in evaluating the same acquisition opportunity. In those situations, Ramboll will take appropriate efforts to maintain the confidentiality of each engagement, including establishing separate teams for each client, separated by a strict ethical screen. No information will be shared by team members working for different clients, nor will there be communications between the teams with respect to the transaction. Ramboll has in place the procedures necessary to protect the confidentiality of our work product and our advice to our clients in these matters.

b) Data Privacy: Each Party will as part of their contractual relationship and to perform their respective obligations under the Agreement obtain and use, for administrative purposes only, the following personal data about certain employees of the other Party or third parties engaged by the other Party ("Third Parties") who are working to fulfil the Agreement:

a. Name;
b. Name of employer (i.e. one of the Parties or a Third Party);
c. Title; and
d. Contact information, such as e-mail or phone number.

Each Party will collect and process such personal data as Data Controllers in compliance with applicable data protection laws.

Each Party further acknowledges and agrees that it will provide all of its employees and/or Third Parties, as applicable, who are working to fulfil the Agreement, with a general notice about the other Party's collection and processing of their personal data. Such notice must comply with applicable data protection laws (including, to the extent applicable, Article 13 and 14 of the Regulation (EU) 2016/679, the General Data Protection Regulation). Furthermore, each Party agrees to process such personal data in accordance with applicable data protection laws.

c) **Intellectual Property.** If Ramboll delivers a written product to the Client, Ramboll hereby grants to Client a perpetual, nonexclusive, royalty-free license to copy, modify and otherwise utilize the product in connection with the Client project for which the Services were provided. Ramboll retains all intellectual property rights.

10. Independent Contractor: Client agrees that Ramboll is acting as an independent contractor and shall retain responsibility for and control over the means for performing its services. Nothing in these Terms and Conditions shall be construed to make Ramboll or any of its officers, employees or agents, an employee or agent of Client.

11. Standard of Care: In performing services, we agree to exercise professional judgment, made on the basis of the information available to us, and to use the same degree of care and skill ordinarily exercised in similar circumstances by reputable consultants performing comparable services in the same geographic area. This standard of care shall be judged as of the time the services are rendered, and not according to later standards. Ramboll makes no other warranty or representation, either express or implied, with respect to its services. Estimates of cost, recommendations and opinions are made on the basis of our experience and professional judgment; they are not guarantees. Reasonable people may disagree on matters involving professional judgment and, accordingly, a difference of opinion on a question of professional judgment shall not excuse a Client from paying for services rendered.

Client recognizes that there may be hazardous conditions at sites to be investigated as part of Ramboll's work. Client acknowledges that Ramboll has neither created nor contributed to the existence of any hazardous, toxic or otherwise dangerous substance or condition at the site(s) which are covered by Ramboll's work. Client also recognizes that some investigative procedures may carry the risk of release or dispersal of pre-existing contamination, even when exercising due care. Client releases Ramboll from any claim (including claims under CERCLA or state law) that it is an "operator" of any site where it performs work for Client or a "generator" or a party who "arranges" for the "transportation," "treatment" or "disposal" of any "hazardous substance" (as those terms are defined in CERCLA), by virtue of its work for Client at any site.

12. Insurance: Ramboll shall maintain the following insurance coverage while it performs the work described herein: (1) statutory Workers Compensation and Employer's Liability Coverage; (2) General Liability for bodily injury and property damage of $1,000,000 aggregate; (3) Automobile Liability with $1,000,000 combined single limit; and (4) Professional Liability and Contractor's Pollution Liability with a combined single limit of $1,000,000 per claim and in the aggregate. If Client desires additional insurance or special endorsements, premiums associated with that coverage would be considered a reimbursable expense. Upon request, we will provide you with a certificate of insurance.

13. Third Parties: Ramboll's services are solely for Client's benefit and may not be relied upon by any third party without Ramboll's express written consent. Any use or dissemination of Ramboll work products (including Ramboll reports), without the written consent of Ramboll, shall be at Client's risk and Client shall indemnify and defend Ramboll from any and all claims, demands, judgments, liabilities and costs (including reasonable attorneys' and expert fees), related to the unauthorized use or dissemination of Ramboll's work. Client also agrees to be solely responsible for and to defend, indemnify, and hold Ramboll harmless from and against any and all claims, demands, judgments, liabilities and costs (including reasonable attorneys' and expert fees), asserted by third parties arising out of or in any way related to our performance or non-performance of services, except for claims of personal injury or property damage to the extent caused by the negligence or willful misconduct of Ramboll's employees.

14. Limitation of Liability: Ramboll shall be liable only for direct damages that result from Ramboll's negligence or willful misconduct in the performance of its services. UNDER NO CIRCUMSTANCES SHALL RAMBOLL BE LIABLE FOR INDIRECT, CONSEQUENTIAL, SPECIAL, OR PUNITIVE DAMAGES, OR FOR DAMAGES

CAUSED BY THE CLIENT'S FAILURE TO PERFORM ITS OBLIGATIONS UNDER LAW OR CONTRACT. Ramboll shall not be liable for and Client shall indemnify Ramboll from and against all claims, demands, liabilities and costs (including attorneys' and expert fees) arising out of or in any way related to our performance or non-performance of services, including all on-site activities except to the extent caused by Ramboll's negligence or willful misconduct. In no event shall our liability exceed $1,000,000 and Client specifically releases Ramboll for any damages, claims, liabilities and costs in excess of that amount.

15. Termination: This Agreement may be terminated by either party upon ten (10) days written notice to the other. If Client terminates the Agreement, Client agrees to pay Ramboll for all services performed until the effective date of the termination. Client's obligations under Paragraphs 3, 4, 8, 9, 11, 13, and 14 shall survive termination of this Agreement and/or completion of the services hereunder.

16. Disputes: All disputes under this Agreement shall be resolved by binding arbitration under the rules of the American Arbitration Association. If our personnel or documents are subpoenaed for depositions or court appearance in any dispute related to the project (except disputes between Ramboll and Client related to our services), Client agrees to reimburse us at our then current billing rates for responding to those subpoenas, including out-of-pocket reimbursable expenses.

17. Scope of Agreement: Once Client has signed Ramboll's proposal, that proposal and these Terms and Conditions shall constitute the complete and exclusive Agreement between the parties and will supersede all prior or contemporaneous agreements, whether written or oral. No provision of these Terms and Conditions may be waived, altered or modified except in writing and signed by Ramboll. Client may use standard business forms, such as purchase orders, for convenience only; any provision on those forms that conflict with these Terms and Conditions shall not apply.

18. Nonsolicitation: Both Ramboll and Client agree during the term of this Agreement and for 12 months following its termination for any reason, neither party will solicit for employment, or hire as an employee or contractor, any personnel of the other party involved in the performance of services under this Agreement.

19. Force Majeure: Ramboll shall not be liable in any way because of any delay or failure in performance due to circumstances or causes beyond its control, including without limitation strike, lockout, embargo, epidemic, riot, war, act of terrorism, flood, fire, act of God, accident, failure or breakdown of components necessary to order completion, Client, subcontractor or supplier delay or non-performance, inability to obtain labor, materials or manufacturing facilities, or compliance with any law, regulation or order, or circumstances or conditions which may pose a material risk to the health or safety of its employees. In such event, Ramboll is entitled to equitable compensation from Client for time expended and expenses incurred with respect to the project as a result of the event of Force Majeure.

REVISION – March 2020

This is
EXHIBIT "F"
to the Affidavit of
ERIC DANNER
Sworn September 27, 2021

DocuSigned by:
Nicholas Avis
2C12EFAB5242430...

Nicholas Avis
Commissioner for Taking Affidavits
LSO #76781Q

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

ONTARIO
SUPERIOR COURT OF JUSTICE
(COMMERCIAL LIST)

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

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

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

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

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

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

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

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

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

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

I. OVERVIEW

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

III. THE NINTH AMENDED PLAN AND NINTH AMENDED DISCLOSURE STATEMENT[1]

Background

14. The Debtors' stated purpose of the Chapter 11 Cases is to confirm a plan of reorganization that will maximize the value of the Debtors' assets for the benefit of all stakeholders and, include a trust mechanism to address Talc Personal Injury Claims in a fair and equitable manner.

15. The Debtors entered into extensive discussions regarding a potential plan of reorganization with the official committee of tort claimants in the Debtors' Chapter 11 Cases appointed by the United States Trustee ("**Tort Claimants' Committee**") and James L. Patton in his capacity as the legal representative for any and all persons who may assert a Talc Personal Injury Demand (the "**FCR**") following the Petition Date. As discussions matured, they focused on the development of a comprehensive settlement (the "**Imerys Settlement**") by and among the Tort Claimants' Committee, the FCR, the Debtors, Imerys, Imerys Talc Italy S.p.A. ("**ITI**") and the other Imerys Plan Proponents (the "**Plan Proponents**").

16. The Ninth Amended Plan also implements (i) a comprehensive settlement among the Debtors, on the one hand, and Rio Tinto America Inc. ("**Rio Tinto**"), on behalf of itself and the Rio Tinto Captive Insurers, and for the benefit of the Rio Tinto Protected Parties, and Zurich American Insurance Company, in its own capacity and as successor-in-interest to Zurich

[1] Capitalized terms used in this section that are not otherwise defined are as defined in the Ninth Amended Plan, the Ninth Amended Disclosure Statement, or the Trust Distribution Procedures (each as defined below), as applicable.

Insurance Company, U.S. Branch ("**Zurich**"), on behalf of itself and for the benefit of the Zurich Protected Parties, on the other hand, and consented to by the Tort Claimants' Committee and the FCR (the "**Rio Tinto/Zurich Settlement**") and (ii) a global settlement (the "**Cyprus Settlement**") among (i) the Debtors, (ii) Cyprus Mines Corporation ("**Cyprus Mines**"), Cyprus Amax Minerals Company ("**CAMC**," and together with Cyprus Mines, "**Cyprus**"), and Freeport-McMoRan Inc., (iii) the Tort Claimants' Committee, and (iv) the FCR. The Rio Tinto/Zurich Settlement finally resolves disputes over (i) alleged liabilities relating to the Rio Tinto Corporate Parties' prior ownership of the Debtors, (ii) alleged indemnification obligations of the Rio Tinto Corporate Parties, and (iii) the amount of coverage to which the Debtors claim to be entitled under the Talc Insurance Policies issued by the Zurich Corporate Parties and the Rio Tinto Captive Insurers. The Cyprus Settlement resolves (i) the treatment of Talc Personal Injury Claims relating to Cyprus, (ii) disputes between Cyprus and the Debtors regarding entitlement to certain insurance proceeds between Cyprus and the Debtors, and (iii) disputes between Cyprus and the Debtors regarding ownership of certain indemnification rights.

17. The Imerys Settlement, the Rio Tinto/Zurich Settlement, and the Cyprus Settlement pave the way for a consensual resolution of the Chapter 11 Cases and these CCAA proceedings. The Imerys Settlement secures a recovery for the benefit of the Debtors' creditors, additional valuable assets that will be provided to the Talc Personal Injury Trust, and additional cash recovery by virtue of the sale of the Debtors' assets. The Rio Tinto/Zurich Settlement and the Cyprus Settlement will also generate substantial recoveries for the holders of Talc Personal Injury Claims.

Overview of the Ninth Amended Plan

18. On May 15, 2020, the Debtors filed the *Joint Chapter 11 Plan of Reorganization of Imerys Talc America, Inc. and Its Debtor Affiliates Under Chapter 11 of the Bankruptcy Code Filed by Imerys Talc America, Inc.* [Docket No. 1714] (the "**Plan**") and the *Disclosure Statement for Joint Chapter 11 Plan of Reorganization of Imerys Talc America, Inc. and Its Debtor Affiliates Under Chapter 11 of the Bankruptcy Code* [Docket No. 1715] (the "**Disclosure Statement**") with the US Court. The Plan and the Disclosure Statement were described in the Fifth Wilson Affidavit.

19. The Plan and the Disclosure Statement have each been amended nine times. The first through seventh amendments were described in the Fifth Wilson Affidavit, the Sixth Wilson Affidavit, Seventh Wilson Affidavit, and the Eighth Wilson Affidavit.

20. On January 23, 2021, the Debtors filed with the US Court the *Eighth Amended Joint Chapter 11 Plan of Reorganization of Imerys Talc America, Inc. and its Debtor Affiliates Under Chapter 11 of the Bankruptcy Code* [Docket No. 2833] (the "**Eighth Amended Plan**") and the *Disclosure Statement for Eighth Amended Joint Chapter 11 Plan of Reorganization of Imerys Talc America, Inc. and its Debtor Affiliates Under Chapter 11 of the Bankruptcy Code* [Docket No. 2834] (the "**Eighth Amended Disclosure Statement**"). The Eighth Amended Plan and the Eighth Amended Disclosure Statement, among other things, provided additional details on the Cyprus Settlement, and additional disclosures pertaining to the treatment of Talc Personal Injury Claims under the Trust Distribution Procedures.

21. On January 27, 2021, the Debtors filed with the US Court the *Ninth Amended Joint Chapter 11 Plan of Reorganization of Imerys Talc America, Inc. and its Debtor Affiliates Under Chapter 11 of the Bankruptcy Code* [Docket No. 2853] (the "**Ninth Amended Plan**") and the *Disclosure Statement for Ninth Amended Joint Chapter 11 Plan of Reorganization of Imerys Talc America, Inc. and its Debtor Affiliates Under Chapter 11 of the Bankruptcy Code* [Docket No. 2853] (the "**Ninth Amended Disclosure Statement**"). The Ninth Amended Plan and the Ninth Amended Disclosure Statement made certain minor revisions and additions, including clarifications related to the allocation of funds generated by the Cyprus Settlement and certain other revisions to account for additional disclosures requested by objecting parties at the hearing to approve the Solicitation Procedures Order.

22. A copy of the Ninth Amended Plan and the Ninth Amended Disclosure Statement are attached hereto and marked as **Exhibit "F"** and **Exhibit "G**", respectively. The general structure of the Ninth Amended Plan is similar to the structure of the original Plan.

23. The Ninth Amended Plan is the result of extensive negotiations with a number of interested parties, including, but not limited to, the Tort Claimants' Committee, the FCR, the Imerys Non-Debtors, Cyprus, Rio Tinto and Zurich.[2] In addition, the Debtors committed significant resources to mediating outstanding disagreements with each of Cyprus, Rio Tinto,

[2] All terms used in this paragraph that are not otherwise defined are as defined in the Ninth Amended Disclosure Statement.

J&J, and several insurers, including Zurich, Truck, the Chubb Insurers, XL, and RMI. The Debtors have expended substantial time and effort to understand and address the concerns of the various stakeholders involved in the Chapter 11 Cases.

The Talc Personal Injury Trust

24. The primary purpose of the Ninth Amended Plan is to provide a mechanism to resolve the Talc Personal Injury Claims against the Debtors and the other Protected Parties pursuant to sections 524(g) and 105(a) of the US Bankruptcy Code. Specifically, under the terms of the Ninth Amended Plan, all Talc Personal Injury Claims will be channelled by permanent injunction to a trust (the "**Talc Personal Injury Trust**") established under sections 524(g) and 105(a) of the US Bankruptcy Code.

25. The Ninth Amended Plan contemplates that ITI (currently a non-debtor) may file a petition in the US Proceeding. Such proceeding, if commenced, would be jointly administered for procedural purposes (subject to US Court approval) with the Chapter 11 Cases prior to the Confirmation Hearing. ITI intends to file a petition in the US Proceeding if the Ninth Amended Plan is accepted by the requisite number of holders of Talc Personal Injury Claims. Accordingly, if approved, the Ninth Amended Plan will provide for the permanent settlement of Talc Personal Injury Claims against ITI with the Talc Personal Injury Claims against the North American Debtors. Holders of Equity Interests in and Claims against ITI (other than holders of Talc Personal Injury Claims and Non-Debtor Intercompany Claims) will be unimpaired.

26. The Ninth Amended Plan, in keeping with the Imerys Settlement, also contemplates, among other things, the following:

a) the North American Debtors' sale of substantially all of their assets to a purchaser;

b) the Equity Interests in the North American Debtors will be cancelled, and on the Effective Date, Equity Interests in the Reorganized North American Debtors will be authorized and issued to the Talc Personal Injury Trust; and

c) the Equity Interests in ITI will be reinstated following the Effective Date, with approximately 99.66% of such Equity Interests to be retained by Mircal Italia S.p.A., a Non-Debtor Affiliate, while 51% of the Equity Interests in Reorganized

ITI will serve as security for the Talc PI Note (in the amount of US$500,000) pursuant to the Talc PI Pledge Agreement.

27. Additionally, pursuant to the Imerys Settlement, Imerys has agreed to make, or cause to be made, a contribution of cash and other assets to the Talc Personal Injury Trust to obtain the benefit of certain releases and a permanent channelling injunction that bars the pursuit of Talc Personal Injury Claims against the Protected Parties. Imerys' contribution will include, among other things, a cash contribution of at least $75 million, and a contingent purchase price enhancement of up to $102.5 million, subject to a reduction mechanism based on the amount of money generated from the Sale, as further described in the Ninth Amended Disclosure Statement.[3]

28. Moreover, pursuant to the Rio Tinto/Zurich Settlement Rio Tinto (on behalf of itself and the Rio Tinto Captive Insurers and for the benefit of the Rio Tinto Protected Parties) and Zurich (on behalf of itself and for the benefit of the Zurich Protected Parties) will contribute $340 million in Cash, along with certain rights of indemnification, contribution, and/or subrogation against third parties, to the Talc Personal Injury Trust, all as further described in the Ninth Amended Plan. Similarly, pursuant to the Cyprus Settlement, and upon the occurrence of the Cyprus Trigger Date, the Talc Personal Injury Trust will receive $130 million in cash in seven installments from CAMC, and the Cyprus Protected Parties (as applicable) will assign to the Talc Personal Injury Trust (i) the rights to and in connection with the Cyprus Talc Insurance Policies, and (ii) all rights to or claims for indemnification, contribution, or subrogation against (a) any Person relating to the payment or defense of any Talc Personal Injury Claim or other past talc-related claim channeled to the Talc Personal Injury Trust prior to the Cyprus Trigger Date, and (b) any Person relating to any other Talc Personal Injury Claim or other claims channeled to the Talc Personal Injury Trust.

29. On the Effective Date, the Talc Personal Injury Trust will receive the Talc Personal Injury Trust Assets (such assets include but are not limited to the Imerys Settlement Funds, the right to receive the Rio Tinto/Zurich Contribution, the right to receive the Cyprus Contribution (conditioned upon the occurrence of the Cyprus Trigger Date), insurance proceeds from specified insurance policies, and certain causes of action). The Talc Personal

[3] The Ninth Amended Plan provides that the contingent purchase price enhancement is not payable in the event the Sale closes.

Injury Trust Assets will be used to resolve Talc Personal Injury Claims in accordance with the Talc Personal Injury Trust Documents, including the Trust Distribution Procedures.

The Sale

30. A key aspect of the Ninth Amended Plan is the sale of substantially all of the Debtors' assets pursuant to section 363 of the US Bankruptcy Code. The Ninth Amended Plan contemplates that the proceeds from the sale, less certain deductions, are to be contributed to the Talc Personal Injury Trust.

31. The sale process formally commenced on May 15, 2020. Magris Resources Canada Inc. ("**Magris Resources**") was declared the successful bidder on November 11, 2020. On November 17, 2020, the US Court entered the Sale Approval Order that, among other things, authorized and approved of the Sale of the Debtors' assets free and clear to Magris Resources. This Court recognized the Sale Approval Order on November 25, 2020. The Debtors consummated the sale to Magris on February 17, 2021.

32. The Debtors worked diligently and efficiently to close the Magris sale. During the approximately three months that it took to close the transaction, the Debtors were in regular communications with their US and Canadian counsel, their financial advisors, Magris, and US and Canadian counsel to Magris.

33. The sale closed on February 17, 2021. Given the scale and complexity of the transaction, it understandably took approximately three months to close the transaction. As a result of the sale closing, the North American Debtors are no longer engaged in talc operations.

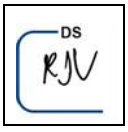
Creditor Classes & Distributions

34. There are seven Classes of Claims and Equity Interests under the Ninth Amended Plan. Each of these Classes and their proposed treatment under the Ninth Amended Plan are summarized in the following table. Where a Class is Unimpaired, it is presumed to accept the Ninth Amended Plan and is therefore not eligible to vote. Unimpaired Claims will be paid in full.

Class	Class Description[4]	Treatment	Estimated Recovery
Class 1 Priority Non-Tax Claims	Certain Claims entitled to priority pursuant to section 507(a) of the US Bankruptcy Code (other than an Administrative Claim, a Priority Tax Claim, a Fee Claim, or a DIP Facility Claim)	Unimpaired, not entitled to vote	100%
Class 2 Secured Claims	Includes claims secured by a Lien on property in which a particular Estate has an interest, claims subject to setoff pursuant to section 553 of the US Bankruptcy Code, and claims allowed as secured pursuant to the Ninth Amended Plan or any Final Order as a secured Claim	Unimpaired, not entitled to vote	100%
Class 3a Unsecured Claims against the North American Debtors	Includes certain Claims against the North American Debtors that are not an Administrative Claim, a Priority Non-Tax Claim, a Priority Tax Claim, a Secured Claim, a Talc Personal Injury Claim, or an Intercompany Claim	Unimpaired, not entitled to vote	100%
Class 3b Unsecured Claims against ITI	Includes certain Claims against ITI that are not an Administrative Claim, a Priority Non-Tax Claim, a Priority Tax Claim, a Secured Claim, a Talc Personal Injury Claim, or an Intercompany Claim	Unimpaired, not entitled to vote	100%
Class 4 Talc Personal Injury Claims	Includes all Talc Personal Injury Claims	Impaired (eligible to vote to accept or reject the Ninth Amended Plan)	Payment ranges are discussed below
Class 5a Non-Debtor Intercompany Claims	Includes any claim held against a Debtor by Imerys S.A. or a Non-Debtor Affiliate, subject to certain exceptions (each holder of an Allowed Claim in Class 5a is a Plan Proponent and therefore presumed to accept the Ninth Amended Plan)	Impaired, not entitled to vote	0%
Class 5b Debtor Intercompany Claims	Any claim held by a Debtor against another Debtor	Unimpaired, not entitled to vote	100%
Class 6 Equity Interests in the North American Debtors	Outstanding shares of the Debtors (each holder of an Allowed Claim in Class 6 is a Plan Proponent and therefore presumed to accept the Ninth Amended Plan)	Impaired, not entitled to vote	Cancelled

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

Deponent's Initials



Class	Class Description[4]	Treatment	Estimated Recovery
Class 7 Equity Interests in ITI	Outstanding shares of ITI	Unimpaired, not entitled to vote	Reinstated

35. The Debtors believe that the proposed creditor classification is appropriate in the circumstances.

36. Class 4 consists of all Talc Personal Injury Claims. On the Effective Date, liability for all Talc Personal Injury Claims shall be channelled to and assumed by the Talc Personal Injury Trust without further act or deed and shall be resolved in accordance with the Trust Distribution Procedures.

(f) Trust Distribution Procedures

37. The Trust Distribution Procedures provide the means for resolving all Talc Personal Injury Claims under the Ninth Amended Plan. The purposes of the Talc Personal Injury Trust is to: (i) assume all Talc Personal Injury Claims; (ii) to preserve, hold, manage, and maximize the assets of the Talc Personal Injury Trust; and (iii) to direct the processing, liquidation, and payment of all compensable Talc Personal Injury Claims in accordance with the Talc Personal Injury Trust Documents.

38. Specifically, the Trust Distribution Procedures establish a methodology for resolving Talc Personal Injury Claims, establish the process by which Talc Personal Injury Claims will be reviewed by the Talc Personal Injury Trust, and specify liquidated values for compensable claims based on the disease underlying the claim. The Trust Distribution Procedures divide Class 4 Talc Personal Injury Claims into three categories:

a) Ovarian Cancer A Claims (Fund A);

b) Mesothelioma Claims (Fund B); and

c) Ovarian Cancer B - D Claims (Fund C).

39. The Trust Distribution Procedures allocate a fixed percentage of the Trust Fund and the Cyprus Contribution to each of these three Funds. Specifically, Fund A will receive a fixed allocation of 40% of the Trust Fund and 30.15% of the Cyprus Contribution; Fund B will receive

a fixed allocation of 40% of the Trust Fund and 55% of the Cyprus Contribution; and Fund C will receive a fixed allocation of 20% of the Trust Fund and 14.85% of the Cyprus Contribution.

40. The division of cash derived from the Talc Personal Injury Trust Assets into three separate pools was the result of extensive internal deliberations among members of the Tort Claimants' Committee designed to achieve the support of the tort claimants.

41. The Trust Distribution Procedures are structured to provide an Expedited Review process using bright-line medical and exposure criteria to reduce the administrative expenses of the Talc Personal Injury Trust and ensure that funds are utilized to the maximum extent to compensate users of the Debtors' talc. Talc Personal Injury Claims that satisfy the criteria for Expedited Review are eligible to receive an offer at the Scheduled Value set forth in the Trust Distribution Procedures (the Scheduled Value is the specific value assigned to claims). Talc Personal Injury Claims which do not meet the criteria for Expedited Review are eligible for evaluation and compensation under the Individual Review Process.

42. All amounts to be paid under the Trust Distribution Procedures are subject to the payment percentages established by the Talc Personal Injury Trust. For example, under the Expedited Review process, the recovery of a holder of a Talc Personal Injury Claim that is resolved in favour of payment may be determined by multiplying the applicable Payment Percentage by the applicable Scheduled Vale. The Initial Payment Percentage attributed to each of the Funds will be within the following ranges listed below:

a) Fund A (Ovarian Cancer A Claimants): 0.40% to 2.34%;

b) Fund B (Mesothelioma Claimants): 3.70% to 6.24%; and

c) Fund C (Ovarian Cancer B – D Claimants): 0.30% to 1.48%.

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

The Ninth Amended Plan and its Impact on Canadian Stakeholders

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

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

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

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

IV. RECOGNITION OF THE SOLICITATION PROCEDURES ORDER[5]

47. The Solicitation Procedures Order:

a) approves the Ninth Amended Disclosure Statement for the Ninth Amended Plan;

b) approves the form and manner of the Disclosure Statement Hearing Notice in respect of the Disclosure Statement Hearing;

c) establishes Solicitation Procedures;

d) approves the form and manner of the Direct Talc Personal Injury Claim Solicitation Notice and Certified Plan Solicitation Directive;

e) approves the forms of Ballots;

f) approves the form, manner, and scope of the Confirmation Notices in respect of the Confirmation Hearing;

[5] All capitalized terms used in this section that are not otherwise defined are as defined in the Solicitation Procedures Order.

g) establishes certain deadlines in connection with the foregoing; and

h) grants related relief.

48. The US Court entered the Solicitation Procedures Order on January 27, 2021.

49. The Solicitation Procedures Order was developed in consultation with, among others, the Tort Claimants' Committee and the FCR. The Information Officer was kept appraised of the progress of the Solicitation Procedures Order.

The Disclosure Statement

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

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

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

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

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

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

Notice of the Disclosure Statement Hearing

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

a) parties who have filed proofs of claims in the Chapter 11 Cases that have not been previously withdrawn or disallowed by a Final Order;

b) certain parties holding liquidated, noncontingent, and undisputed Claims;

c) all holders of Equity Interests in the Debtors;

d) all known attorneys representing any holders of Talc Personal Injury Claims;

e) any other known holders of Claims against, or Equity Interests in, the Debtors; and

f) Imerys Talc Italy S.p.A.

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

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

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

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

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

The Solicitation Procedures

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

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

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

a) a cover letter in paper form describing the contents of the Solicitation Package and a USB flash drive, and instructions for obtaining (free of charge) printed copies of the materials provided in electronic format;

b) the Confirmation Hearing Notice in paper form;

c) a USB flash drive containing a copy of the Ninth Amended Disclosure Statement with all exhibits, including the Ninth Amended Plan with its exhibits;

d) the Solicitation Procedures Order (without exhibits);

e) the Solicitation Procedures;

f) solely to counsel for holders of Direct Talc Personal Injury Claims, the Direct Talc Personal Injury Claim Solicitation Notice and the Certified Plan Solicitation Directive;

g) solely for holders of Talc Personal Injury Claims and their counsel, an appropriate Ballot and voting instructions for the same in paper form;

h) solely for holders of Talc Personal Injury Claims and their counsel, a preaddressed, return envelope for completed Ballots; and

i) solely for holders of Talc Personal Injury Claims and their counsel, a letter from the Tort Claimants' Committee.

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

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

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

Ninth Amended Plan Confirmation Schedule

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

Event	Date
Voting Record Date	January 27, 2021
Deadline to Mail Solicitation Packages and Related Notices	February 1, 2021
Newspaper Publication Notice	February 1, 2021 – February 14, 2021
Deadline to File Plan Supplement	February 5, 2021
Deadline for Cure Objections	The later of (a) 14 days after receipt of a Sale Cure Notice (for North American Debtor counterparties only) or February 15, 2021 (for (i) ITI counterparties and (ii) North American Debtor counterparties not previously included on a Sale Cure Notice) and (b) 14 days after (for all counterparties) (i) the Debtors serve a counterparty with notice of any amendment or modification to such counterparty's proposed cure cost or (ii) the Debtors serve a counterparty with notice of a supplement to the list of contracts to be assumed pursuant to the Ninth Amended Plan
Deadline for Assumption Objections	The later of (a) February 15, 2021 and (b) 14 days after the Debtors serve a counterparty with notice of a supplement to the list of contracts to be assumed
Deadline to Serve Written Discovery in Connection with Confirmation	February 15, 2021
Deadline for Attorneys for Holders of Direct Talc Personal Injury Claims to Return Certified Plan Solicitation Directives and Client Lists	February 17, 2021
Deadline to File Rule 3018 Motions	February 19, 2021
Deadline for Plan Proponents to Identify Topics of Anticipated Expert Discovery	February 19, 2021
Deadline to Reply to Rule 3018 Motions	March 5, 2021
Deadline for All Parties Other than Plan Proponents to Identify Topics for Anticipated Affirmative Expert Discovery	March 5, 2021
Hearing on Rule 3018 Motions	March 15, 2021
Deadline for Substantial Completion of Document Productions	March 24, 2021
Voting Deadline	March 25, 2021, at 4:00 p.m. (Prevailing Eastern Time); provided that the Debtors are authorized to extend the Voting Deadline for any party entitled to vote on the Ninth Amended Plan
Fact Depositions	March 29, 2021 – April 14, 2021

Event	Date
Deadline to File Voting Certification	April 8, 2021, at 4:00 p.m. (Prevailing Eastern Time)
End of Fact Discovery	April 14, 2021
Affirmative Export Reports Due	April 19, 2021
Responsive Expert Reports Due	May 10, 2021
Expert Depositions	May 13, 2021 – May 21, 2021
End of Expert Discovery	May 21, 2021
Confirmation Objection Deadline	May 28, 2021, at 4:00 p.m. (Prevailing Eastern Time)
Confirmation Reply Deadline and Deadline to File Form of Confirmation Order	June 14, 2021, at 4:00 p.m. (Prevailing Eastern Time)
Confirmation Hearing	June 21, 22, and 23, 2021, at 10:00 a.m. (Prevailing Eastern Time)

V. CONCLUSION

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

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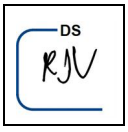
Deponent's Initials



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

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

DocuSigned by:
Nicholas Avis
2C12EFAB5242430...

Nicholas Avis
Commissioner for Taking Affidavits
LSO #76781Q

DocuSigned by:
Ryan Van Meter
FEF366B664B9476...

RYAN VAN METER

Deponent's Initials

DS
RJV

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

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

ONTARIO
SUPERIOR COURT OF JUSTICE
(COMMERCIAL LIST)

Proceeding commenced at Toronto

AFFIDAVIT OF RYAN VAN METER
SWORN FEBRUARY 18, 2021

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Fax: (416) 947-0866

Lawyers for the Applicant

This is
EXHIBIT "G"
to the Affidavit of
ERIC DANNER
Sworn September 27, 2021

DocuSigned by:
Nicholas Avis
2C12EFAB5242430...

Nicholas Avis
Commissioner for Taking Affidavits
LSO #76781Q

IN THE UNITED STATES BANKRUPTCY COURT
FOR THE DISTRICT OF DELAWARE

In re:	:	Chapter 11
IMERYS TALC AMERICA, INC., *et al.*,[1]	:	Case No. 19-10289 (LSS)
Debtors.	:	(Jointly Administered)
	:	**Re: Docket No. 13 & 57**

FINAL ORDER UNDER 11 U.S.C. §§ 105(a) AND 366 (I) PROHIBITING UTILITY COMPANIES FROM ALTERING OR DISCONTINUING SERVICE ON ACCOUNT OF PREPETITION INVOICES, (II) APPROVING DEPOSIT AS ADEQUATE ASSURANCE OF PAYMENT, AND (III) ESTABLISHING PROCEDURES FOR RESOLVING REQUESTS BY UTILITY COMPANIES FOR ADDITIONAL ASSURANCE OF PAYMENT

Upon the motion (the "**Motion**")[2] of the Debtors for entry of a Final Order under sections 105(a) and 366 of the Bankruptcy Code, (i) prohibiting the Debtors' Utility Companies from altering, refusing, or discontinuing service to, or discriminating against, the Debtors, (ii) approving an adequate assurance deposit as adequate assurance of postpetition payment to the Utility Companies, and (iii) establishing procedures for resolving any subsequent requests by the Utility Companies for additional adequate assurance of payment; and the Court having reviewed the Motion, the Picard Declaration, and the Interim Order entered on February 14, 2019; and the 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*

[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.

States District Court for the District of Delaware, dated February 29, 2012; and the Court having found that this is a core proceeding pursuant to 28 U.S.C. § 157(b)(2) and that this Court may enter a final order consistent with Article III of the United States Constitution; and the Court having found that venue of this proceeding and the Motion in this district is proper pursuant to 28 U.S.C. §§ 1408 and 1409; and it appearing that proper and adequate notice of the Motion has been given and that no other or further notice is necessary; and upon the record herein; and after due deliberation thereon; and the Court having determined that there is good and sufficient cause for the relief granted in this order, it is hereby

ORDERED, ADJUDGED, AND DECREED THAT:

1. The Motion is GRANTED on a final basis, as set forth herein.

2. All objections to the entry of this Final Order, to the extent not withdrawn or settled, are overruled.

3. Absent further order of this Court, the Utility Companies, including any subsequently added Utility Companies, are hereby prohibited from altering, refusing, or discontinuing service to, or discriminating against, the Debtors on account of unpaid prepetition invoices or due to the commencement of the Chapter 11 Cases, or requiring the Debtors to pay a deposit or other security in connection with the provision of postpetition Utility Services, other than in accordance with the Additional Adequate Assurance Procedures contained herein. The Utility Companies are also prohibited from drawing upon any existing security deposit, surety bond, or other form of security to secure future payment for Utility Services.

4. To the extent not already deposited pursuant to the Interim Order, the Debtors shall cause an amount equal to $500,000 to be deposited into a separate, non-interest-bearing account (the "**Adequate Assurance Deposit**") upon entry of this Final Order. The account will be held at

a bank that has executed the approved Uniform Depository Agreement with the United States Trustee for the District of Delaware. The Adequate Assurance Deposit shall serve as a cash security deposit to provide adequate assurance of payment for Utility Services provided to the Debtors after the Petition Date and through the pendency of the Chapter 11 Cases. The amount of the Adequate Assurance Deposit will remain $500,000 throughout these Chapter 11 Cases (*i.e.*, the amount will not be recalculated), unless otherwise adjusted as provided for herein. The amount of the deposit attributable to each Utility Company is set forth on the Utility Company List attached hereto as Exhibit A.

5. The balance of the Adequate Assurance Deposit may be adjusted and/or reduced by the Debtors, without further order, to account for any of the following: (i) to the extent that the Adequate Assurance Deposit includes any amount on account of a company that the Debtors subsequently determine is not a "utility" within the meaning of section 366 of the Bankruptcy Code, (ii) an adjustment or payment made in accordance with the Delinquency Notice Procedures described in Paragraphs 7 and 8 below, (iii) the termination of a Utility Service by a Debtor regardless of any Additional Adequate Assurance Request (as defined below), (iv) the closure of a utility account with a Utility Company for which funds have been contributed for the Adequate Assurance Deposit, or (v) any other arrangements with respect to adequate assurance of payment reached by a Debtor with individual Utility Companies; *provided*, that, with respect to a company falling under subsections (i), (iii), or (iv) above, or as to which the Debtors otherwise remove from the Utility Company List, the Debtors may adjust and/or amend the balance of the Adequate Assurance Deposit for such Utility Company upon fourteen days' advance notice to such company, *provided, however*, that the Debtors shall not reduce from the Adequate Assurance Deposit any portion of the amount attributable to a particular Utility Company unless and until the fourteen day

notice period has passed and the Debtors have not received any objection to such reduction, or until any such objection has been resolved consensually or by order of the Court.

6. The Debtors shall maintain the Adequate Assurance Deposit until the earlier of the Court's entry of an order authorizing the return of the Adequate Assurance Deposit to the Debtors and the effective date of a plan of reorganization for the Debtors (at which time the funds comprising the Adequate Assurance Deposit shall automatically, without further order of the Court, be returned to the Debtors or reorganized Debtors, as applicable).

7. To the extent the Debtors become delinquent with respect to a Utility Company's account, such Utility Company shall be permitted to file a written notice of such delinquency (the "**Delinquency Notice**") with the Court and serve such Delinquency Notice on: (a) Imerys Talc America, Inc., 100 Mansell Court East, Suite 300, Roswell, Georgia 30076 (Attn: Ryan J. Van Meter, Esq. (email: ryan.vanmeter@imerys.com)); (b) Latham & Watkins LLP, 355 South Grand Avenue, Suite 100, Los Angeles, California 90071-1560 (Attn: Jeffrey E. Bjork, Esq. and Helena G. Tseregounis, Esq. (emails: jeff.bjork@lw.com and helena.tseregounis@lw.com)); (c) Richards, Layton & Finger, P.A., One Rodney Square, 920 North King Street, Wilmington, Delaware 19801 (Attn: Mark D. Collins, Esq. (email: collins@rlf.com)); (d) counsel to the Official Committee of Tort Claimants, Robinson & Cole LLP, 1000 N. West Street, Suite 1200, Wilmington, Delaware 19801 (Attn: Natalie D. Ramsey, Esq. and Mark A. Fink, Esq. (emails: nramsey@rc.com and mfink@rc.com)); and (e) counsel to any other statutory committee appointed in these cases, if any (each, a "**Delinquency Notice Party**"). Such Delinquency Notice must (x) set forth the amount of the delinquency, (y) set forth the location for which Utility Services are provided, and (z) provide each of the Debtors' account numbers with the Utility Company that have become delinquent.

8. If a Delinquency Notice is properly provided as described above and such delinquency is not cured and no Delinquency Notice Party has objected to the Delinquency Notice within ten days of the receipt thereof, the Debtors shall (a) remit to such Utility Company from the Adequate Assurance Deposit the amount of postpetition charges claimed as delinquent in the Delinquency Notice and (b) cause the Adequate Assurance Deposit to be replenished for the amount remitted to such Utility Company. If a Delinquency Notice Party objects to the Delinquency Notice, the Court shall hold a hearing to resolve the dispute and determine whether a payment should be remitted from the Adequate Assurance Deposit and, if such payment is warranted, how much shall be remitted.

9. The following procedures (the "**Additional Adequate Assurance Procedures**") are hereby approved with respect to all Utility Companies, including all subsequently added Utility Companies:

(a) Except as provided by the Additional Adequate Assurance Procedures, the Utility Companies are forbidden to (i) alter, refuse, or discontinue services to, or discriminate against, the Debtors on account of unpaid prepetition invoices or any objections to the Debtors' Adequate Assurance Deposit, or due to the commencement of the Chapter 11 Cases or (ii) require the Debtors to pay a deposit or other security in connection with the provision of postpetition Utility Services, other than the funding of the Adequate Assurance Deposit.

(b) The Debtors will serve on the Utility Companies copies of the Motion and this Final Order within forty-eight hours after the entry of this Final Order.

(c) In the event that a Utility Company asserts that the Adequate Assurance Deposit is not satisfactory adequate assurance of payment as contemplated by section 366(c)(2) of the Bankruptcy Code, that Utility Company must serve a written request (an "**Additional Adequate Assurance Request**") for adequate assurance in addition to or in lieu of its rights in the Adequate Assurance Deposit. All Additional Adequate Assurance Requests shall be delivered by mail and email to the Delinquency Notice Parties.

(d) Any Additional Adequate Assurance Request must (i) set forth the location(s) for which Utility Services are provided and the type of Utility Services provided, (ii) set forth the account number(s) for which Utility

Services are provided, (iii) include a summary of the Debtors' payment history relevant to the affected account(s), including any security deposit(s) or other security currently held by the requesting Utility Company, (iv) set forth why the Utility Company believes the proposed adequate assurance is not sufficient adequate assurance of future payment, (v) set forth the amount and nature of the adequate assurance of payment that would be satisfactory to the Utility Company, and (vi) provide an email address to which the Debtors may respond to the Additional Adequate Assurance Request.

(e) Upon the Debtors' receipt of an Additional Adequate Assurance Request, the Debtors will promptly negotiate with the Utility Company to resolve the Additional Adequate Assurance Request.

(f) Without further order of the Court, the Debtors may resolve an Additional Adequate Assurance Request by entering into agreements granting additional adequate assurance to the requesting Utility Company if the Debtors, in their sole discretion, determine that the Additional Adequate Assurance Request is reasonable or if the parties negotiate alternative consensual provisions.

(g) If the Debtors determine that the Additional Adequate Assurance Request is not reasonable and are not able to promptly reach an alternative resolution with the Utility Company, the Debtors will request a hearing before this Court (the "**Determination Hearing**").

(h) The Determination Hearing will be an evidentiary hearing at which the Court will determine whether the Adequate Assurance Deposit and any additional adequate assurance of payment requested by the Utility Company should be modified pursuant to section 366(c)(3) of the Bankruptcy Code. Pending resolution of any Additional Adequate Assurance Request, the Utility Company making such request shall be prohibited from altering, refusing, or discontinuing service to the Debtors, or from discriminating against the Debtors with respect to the provision of Utility Services, on account of unpaid charges for prepetition services, the filing of the Chapter 11 Cases, or any objection to the adequacy of the Additional Adequate Assurance Procedures.

(i) Unless and until a Utility Company serves an Additional Adequate Assurance Request, it will be deemed to have received adequate assurance of payment that is satisfactory to such Utility Company within the meaning of section 366(c)(2) of the Bankruptcy Code.

(j) All Utility Companies, including Utility Companies subsequently added to the Utility Company List, will be prohibited from altering, refusing or discontinuing Utility Services to the Debtors, or from discriminating against the Debtors with respect to the provision of Utility Services, absent further order of this Court.

10. The Debtors are authorized, in their sole discretion, to amend Exhibit A attached hereto to add or delete any Utility Company, and this Final Order shall apply in all respects to any such Utility Company that is subsequently added to Exhibit A. For those Utility Companies that are subsequently added to Exhibit A, the Debtors shall, within two business days of filing a supplement to Exhibit A identifying any such additional Utility Company, serve a copy of the Motion and this Final Order on such Utility Company, along with an amended Exhibit A that includes such Utility Company, and provide such Utility Companies that are subsequently added to Exhibit A two weeks' notice to object to the inclusion of such Utility Company to the Utility Company List. The Debtors shall increase the amount of the Adequate Assurance Deposit in the event an additional Utility Company is added to Exhibit A by an amount equal to fifty percent of the estimated monthly cost of such Utility Services based on historical averages over the preceding twelve months.

11. The Debtors are authorized, but not directed, to pay, or direct payment of, on a timely basis in accordance with their prepetition practices, all undisputed invoices in respect of postpetition Utility Services rendered by the Utility Companies to the Debtors. The Utility Companies are hereby prohibited from unilaterally applying any such postpetition payments to any amounts due on account of prepetition Utility Services, including, without limitation, any penalties or interest.

12. Subject to the Additional Adequate Assurance Procedures, the Adequate Assurance Deposit, and the Debtors' ability to pay for future Utility Services in the ordinary course of business constitute adequate assurance of future payment to the Utility Companies to satisfy the requirements of section 366 of the Bankruptcy Code.

13. Notwithstanding Bankruptcy Rule 6004(h), to the extent applicable, this Final Order shall be effective and enforceable immediately upon entry hereof.

14. Neither the provisions contained herein, nor any actions or payments made by the Debtors pursuant to this Final Order, shall be deemed an admission as to the validity of any underlying obligation or a waiver of any rights the Debtors may have to dispute such obligation on any ground that applicable law permits.

15. The Debtors shall administer the Adequate Assurance Deposit account in accordance with the terms of this Final Order.

16. The Debtors are authorized to take all actions necessary to effectuate the relief granted in this Final Order in accordance with the Motion.

17. Nothing contained herein constitutes a finding that any entity is or is not a Utility Company hereunder or a "utility" under section 366 of the Bankruptcy Code, whether or not such entity is listed on Exhibit A attached hereto.

18. Nothing in the Motion or this Final Order, or the Debtors' payment of any claims pursuant to this Final Order, shall be deemed or construed as: (a) an admission as to the validity of any claim against any Debtor or the existence of any lien against the Debtors' properties; (b) a waiver of the Debtors' rights to dispute any claim or lien on any grounds; (c) a promise to pay any claim; (d) an implication or admission that any particular claim would constitute an allowed claim; (e) an assumption or rejection of any executory contract or unexpired lease pursuant to section 365 of the Bankruptcy Code; or (f) a limitation on the Debtors' rights under section 365 of the Bankruptcy Code to assume or reject any executory contract with any party subject to this Final Order. Nothing contained in this Final Order shall be deemed to increase, decrease, reclassify,

elevate to an administrative expense status, change the priority, or otherwise affect any claim to the extent it is not paid.

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

Dated: March 22nd, 2019
Wilmington, Delaware

LAURIE SELBER SILVERSTEIN
UNITED STATES BANKRUPTCY JUDGE

EXHIBIT A

Utility Company List

Utility Companies

The Utility Companies known and identified by the Debtors to date are listed below.

While the Debtors have used their best efforts to list all of their Utility Companies below, it is possible that certain Utility Companies may have been inadvertently omitted from this list. Accordingly, the Debtors reserve the right, under the terms and conditions of the Final Order and without further order of the Court, to amend this Exhibit A to add any Utility Companies that were omitted therefrom and to apply the relief requested to all such entities.

In addition, the Debtors reserve the right to argue that any entity now or hereafter listed on this Exhibit A is not a "utility" within the meaning of section 366(a) of the Bankruptcy Code.[1]

Utility Company	Type of Service Provided	Mailing Address	Monthly Average ($)	Adequate Assurance Deposit ($)
Imerys Talc America, Inc.				
AmeriGas	Propane	11150 Chicago Drive Zeeland, MI 49464-9183	2,000	1,000[2]
AmeriGas - Houston	Propane	Dep't 0140 Palatine, IL 60055-0140	4,000	2,000
CenterPoint Energy Services, Inc.	Natural Gas	1111 Louisiana Street Houston, TX 77002	3,000	1,500
Cokinos Energy Corporation	Natural Gas	5718 Westheimer Ste 900 Houston, TX 77057	4,000	2,000
McLeod Mercantile	Diesel / Gasoline	P.O. Box 2808 Norris, MT 59745	5,000	2,500
Northern Energy Inc - Ennis	Propane	P.O. Box 371473 Pittsburgh, PA 15250-7473	2,000	1,000
Northwestern Corporation	Electricity	3010 W. 69th Street Sioux Falls, SD 57108	53,000	26,500
Rocky Mountain Supply, Inc.	Diesel / Gasoline	210 Gallatin Farmers Avenue Belgrade, MT 59714	62,000	31,000
Sheldon Road Municipal District	Water	9419 Lamkin Houston, TX 77049	9,000	4,500

[1] The Debtors began contracting with certain of the Utility Companies in 2019. For these Utility Companies the Debtors have estimated the anticipated monthly average and adequate assurance deposits based on amounts paid to similar service providers.

[2] Adequate assurance reflects 50% of average monthly spend per vendor in 2018, unless otherwise provided herein.

Utility Company	Type of Service Provided	Mailing Address	Monthly Average ($)	Adequate Assurance Deposit ($)
Sun Coast Resources, Inc.	Diesel / Gasoline	6405 Cavalcade Building One Houston, TX 77026	3,000	1,500
TEA Solutions, Inc.	Electricity	110 Main Street, Ste 304 Polson, MT 59860	42,000	21,000
Three Forks City - Water Dep't	Water	P.O. Box 187 Three Forks, MT 59752	7,000	3,500
Timberline Gas, LLC	Propane	5092 Highway 287 Ennis, MT 59729	3,000	1,500
Vistra Energy Corp.	Electricity	P.O. Box 650638, Dallas, TX 75265-0638	44,000	45,000[3]
Imerys Talc Vermont, Inc.				
Highlands Fuel Delivery, LLC	Diesel / Gasoline	85 Mechanic Street, Ste 120 Lebanon, NH 03766	30,000	15,000
Ludlow Electric Dept.	Electricity	9 Pond Street Ludlow, VT 05149	123,000	61,500
Pacific Gas and Electric Company, Inc.	Electricity for Closed Property	P.O. Box 997300 Sacramento, CA 95899-7300	1,000	500
Vermont Community Solar, LLC	Electricity	139 Main Street 606C Brattleboro, VT 05301	4,000	2,000
Vermont Telephone Company, Inc.	Telecom	354 River Street Springfield, VT 05156	1,000	500
Imerys Talc America, Inc. and Imerys Talc Vermont, Inc.[4]				
Green Mountain Power Corporation	Electricity	P.O. Box 1611 Brattleboro, VT 05302	3,000	1,500
Waste Management, Inc.	Waste Management	P.O. Box 13648 Philadelphia, PA 19101-3648	3,000	1,500
Imerys Talc Canada Inc.				
Bell Canada	Telecom	Case Postale 8712 Succursale A Montreal, QC, H3C 3P6 Canada	1,000	500

[3] Adequate assurance for Vistra Energy Corp. reflects more than 50% of the average monthly spend attributable to Vistra Energy Corp.

[4] The Utility Companies in this section provide both ITA and ITV with Utility Services. The monthly average and adequate assurance deposit are based on ITA and ITV's aggregate expenses for each Utility Company.

Utility Company	Type of Service Provided	Mailing Address	Monthly Average ($)	Adequate Assurance Deposit ($)
Bell Mobility, Inc.	Telecom	P.O. Box 5102 Burlington, ON L74 4R7 Canada	2,000	1,000
Certarus Ltd.	Natural Gas	Suite 1250, 555 4th Ave SW Calgary, AB T2P 3E7 Canada	93,000	47,000
City of Timmins	Water	220 Algonquin Boulevard East Timmins, ON P4N 1B3 Canada	27,000	13,500
EDF Trading North America, LLC	Natural Gas	620 407 2nd Street Calgary, AB Y2P 2Y3 Canada	62,000	31,000
Hydro One Networks, Inc.	Electricity	P.O. Box 4102, Station A Toronto, ON M5W 3L3 Canada	155,000	77,500
Martin Fuels	Diesel / Gasoline	1635 Riverside Drive Timmins, ON P4R 1N1 Canada	1,000	500
McDougall Energy, Inc.	Diesel / Gasoline	421 Bay Street, Suite 301 Sault Ste. Marie, ON P6A 1X3 Canada	27,000	13,500
Nasco Propane	Propane	P.O. Box 90, 290 Railway Street Timmins, ON P4N 7E3 Canada	139,000	69,500
Northern Environmental Services, Inc.	Waste Management	740 Pine Street South, P.O. Box 903 Timmins, ON P4N 7H1 Canada	1,000	500
Northern Telephone	Telecom	P.O. Box 40000 New Liskeard, ON P0J 1P0 Canada	1,000	500
Transcanada Pipelines Limited	Natural Gas	20th Floor, 450 - 1st Street SW Calgary, AB T2P 5H1 Canada	9,000	4,500
Union Gas, Ltd.	Natural Gas	P.O. Box 2001 Chatham, ON N7M 5M1 Canada	17,000	8,500

This is
EXHIBIT "H"
to the Affidavit of
ERIC DANNER
Sworn September 27, 2021

DocuSigned by:
Nicholas Avis
2C12EFAB5242430...

Nicholas Avis
Commissioner for Taking Affidavits
LSO #76781Q

IN THE UNITED STATES BANKRUPTCY COURT
FOR THE DISTRICT OF DELAWARE

In re:	:	Chapter 11
IMERYS TALC AMERICA, INC., *et al.*,[1]	:	Case No. 19-10289 (LSS)
Debtors.	:	(Jointly Administered)
	:	**Objection Deadline: July 27, 2021 at 4:00 p.m. ET** **Hearing Date: August 24, 2021 at 10:00 a.m. ET**

DEBTORS' OBJECTION TO PROOF OF
CLAIM NO. 442 FILED BY THOMAS NEIL FULTON

The above-captioned debtors and debtors-in-possession (collectively, the "**Debtors**") hereby file this objection (the "**Objection**") to Proof of Claim No. 442 (the "**Fulton Claim**") filed by Thomas Neil Fulton ("**Mr. Fulton**") on October 21, 2019, pursuant to section 502 of title 11 of the United States Code (the "**Bankruptcy Code**") and Rule 3007 of the Federal Rules of Bankruptcy Procedure (the "**Bankruptcy Rules**"), and respectfully request entry of an order, substantially in the form attached hereto as Exhibit A (the "**Order**"), disallowing the Fulton Claim. The factual background and evidentiary support for the Objection is provided in the *Declaration of Eric Gardner in Support of Debtors' Objection to Proof of Claim No. 442 Filed by Thomas Neil Fulton* (the "**Declaration**"), which is attached hereto as Exhibit B. In support of the Objection, the Debtors, by and through their undersigned counsel, respectfully represent:

JURISDICTION

1. This Court has jurisdiction to consider the Objection under 28 U.S.C. §§ 157 and 1334 and the *Amended Standing Order of Reference from the United States District Court for the*

[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.

District of Delaware, dated February 29, 2012. This is a core proceeding pursuant to 28 U.S.C. § 157(b). Venue of this proceeding and the Objection in this district is proper under 28 U.S.C. §§ 1408 and 1409. The statutory predicates for the relief sought herein are section 502 of the Bankruptcy Code and Bankruptcy Rule 3007.

BACKGROUND

A. General Background

2. On February 13, 2019 (the "**Petition Date**"), the Debtors filed voluntary petitions in this Court commencing cases (the "**Chapter 11 Cases**") for relief under chapter 11 of the Bankruptcy Code. The factual background regarding the Debtors, including their business operations and the events leading to the filing of the Chapter 11 Cases, is set forth in detail in the *Declaration of Alexandra Picard, Chief Financial Officer of the Debtors in Support of Chapter 11 Petitions and First Day Pleadings* [Docket No. 10].

3. The Debtors continue to manage and operate their businesses as debtors-in-possession pursuant to sections 1107 and 1108 of the Bankruptcy Code. On March 5, 2019, the Office of the United States Trustee for the District of Delaware (the "**U.S. Trustee**") appointed an official committee of tort claimants (the "**TCC**") in the Chapter 11 Cases. On June 3, 2019, the Court entered an order [Docket No. 647] appointing James L. Patton Jr. as the representative for future talc personal injury claimants pursuant to sections 105(a), 524(g)(4)(B)(i) and 1109(b) of the Bankruptcy Code (the "**FCR**"). As of this date, no trustee or examiner has been requested or appointed in the Chapter 11 Cases.

4. The Chapter 11 Cases are being jointly administered for procedural purposes only pursuant to Bankruptcy Rule 1015(b).

B. **Applicable Bar Dates**

5. On July 10, 2019, the Debtors filed the *Motion of the Debtors for Order (I) Establishing Bar Dates and Related Procedures for Filing Proofs of Claim Other Than with Respect to Talc Personal Injury Claims and (II) Approving Form and Manner of Notice Thereof* [Docket No. 790]. On July 25, 2019, the Court entered the *Order (I) Establishing Bar Dates and Related Procedures for Filing Proofs of Claim Other Than with Respect to Talc Personal Injury Claims and (II) Approving Form and Manner of Notice Thereof* [Docket. No. 881] (the "**General Bar Date Order**") designating October 15, 2019 as the date by which all entities, except for entities asserting Talc Claims (as defined in the General Bar Date Order), must file proofs of claim in the Chapter 11 Cases.

C. **The Action and the Fulton Claim**

1. ***Overview of the Action and the Fulton Claim***

6. On or about April 20, 2017, Mr. Fulton commenced an action against Imerys Talc Canada Inc. ("**ITC**") in Ontario's Superior Court of Justice (Court File No.: CV-17-573647) (the "**Action**") by filing a statement of claim (the "**Statement of Claim**") where he alleged claims against ITC in the amount of $300,000 for wrongful dismissal, plus out-of-pocket expenses incurred as a result of his attempts to secure alternative employment, interest on all amounts found due and owing, and costs of the Action on a substantial indemnity basis together with applicable taxes. On May 26, 2017, ITC filed a statement of defence, disputing the allegations set forth in the Statement of Claim (the "**Statement of Defence**"). On June 6, 2017, Mr. Fulton filed a reply to address newly-raised matters in the Statement of Defence (the "**Reply**").[2]

[2] The Statement of Claim, the Statement of Defence, and the Reply are attached to the Declaration as Exhibit 1, Exhibit 2, and Exhibit 3, respectively.

7. Mr. Fulton and ITC then attempted to resolve the action via mediation, however this was unsuccessful. On February 20, 2019, Mr. Fulton served his Trial Record on ITC to set the Action down for trial. As a result of the filing of the Chapter 11 Cases on February 13, 2019, the Action has been stayed.

8. On October 21, 2019, Mr. Fulton filed the Fulton Claim for $300,000, which is premised on the claims raised in the Action. Attachments to the Fulton Claim, include, among other things, the Statement of Claim, the Statement of Defence, and the Reply.

2. ***Mr. Fulton's Employment at ITC***

9. Mr. Fulton commenced employment with the corporate predecessor of ITC on or about June 9, 2008, as senior engineer pursuant to the terms and conditions of an employment agreement dated June 1, 2008. Declaration, ¶ 9. Prior to the termination of his employment for cause on February 15, 2017 (the "**Termination Date**"), Mr. Fulton held the position of the Canadian Operations Manager for ITC. *Id*. In this role, Mr. Fulton was the highest-ranking ITC employee in Canada and his primary responsibilities included:

i. protecting and maintaining the health and safety of all employees, contractors, vendors and visitors at ITC's Canadian sites;

ii. maintaining acceptable performance levels of employees and contractors;

iii. continuously improving processes and the quality of products and services; and

iv. ensuring compliance with all applicable laws, regulations, policies and procedures as well as, if necessary, disciplining employees for failed compliance with same.

Id.

10. At the time of his termination, Mr. Fulton's compensation included an annual base salary of $138,320.00, participation in an Annual Incentive Plan (the "**AIP**"), participation in a defined benefit pension plan, and participation in a comprehensive health and welfare benefits

plan. *Id.* at ¶ 10. Mr. Fulton had no contractual right to a bonus pursuant to the AIP. *Id.* The terms of the AIP expressly provided that an employee would not be entitled to a bonus if the employee: (i) received a disciplinary notice during the applicable plan year; or (ii) was not an employee of ITC on the date the payments were made. *Id.* Notably, a portion of any bonus payable under the AIP would be based on ITC's health and safety performance. *Id.* As a result, Mr. Fulton had a financial incentive to ensure that ITC had, or appeared to have, a positive health and safety record.

3. ***Events Leading to Mr. Fulton's Termination***

a. LOTO Incident, Investigation, and Termination of Mr. Fulton

11. Given the dangers inherent in its mining and industrial sites, ITC created a number of employee policies and protocols designed to reduce or eliminate health and safety risks to its employees. One key protocol was called Lockout/Tagout ("**LOTO**"), which requires that, when performing maintenance or servicing of certain machinery (which includes cleaning, repairing, or realigning), the machinery be turned off, "locked" so there can be no intentional or unintentional human intervention on, or contact with, any moving parts of the equipment, then conspicuously "tagged" so that it is clear to any subsequent employee that the machinery may not be unlocked without the authorization of the person who originally locked and tagged it out of service. *Id.* at ¶ 11.

12. As an employee of ITC and as the Canadian Operations Manager, Mr. Fulton was not only subject to such safety policies and protocols, but was also expected to be a model of adherence and compliance with all such policies and protocols. *Id.* at ¶ 12. Mr. Fulton, as the Canadian Operations Manager, was also responsible for ensuring that all employees strictly adhered to ITC's safety policies and protocols. *Id.* Since violations of ITC's safety policies or protocols could result in serious injury or death, all ITC employees at the Timmins and

Penhorwood sites received regular training and re-training regarding these safety policies and protocols, and were advised that violations of the safety policies and protocols would lead to disciplinary action, including the potential termination of employment. *Id.* In fact, due to the potential for serious injury or death, ITC's policy was that a willful violation of the LOTO protocol should result in immediate termination of employment. *Id.*

13. On or about November 20, 2016, there was an incident where two employees of ITC violated the LOTO protocol while attempting to repair a leak in a feed pipe to the mill at the Penhorwood facility (the "**LOTO Incident**"). *Id.* at ¶ 13. The incident occurred when Bobby Woodhouse ("**Mr. Woodhouse**") directed a more junior employee, Max Joseph ("**Mr. Joseph**") to repair the leak. Mr. Joseph refused, noting that a licensed electrician was required for that repair and that the leak was in a restricted area requiring compliance with the LOTO protocol prior to entry. *Id.* Mr. Woodhouse persisted and Mr. Joseph continued to refuse. Eventually, Mr. Woodhouse entered the restricted area, taking Mr. Joseph with him, without locking out or tagging out the machinery or being accompanied by a licensed electrician. *Id.* The LOTO Incident seriously jeopardized the health and safety of both employees. *Id*.

14. On November 21, 2016, ITC's Production Supervisor, Roger Millette, Sr. ("**Mr. Millette**") and ITC's Maintenance Supervisor, Gerry Rondeau, upon reviewing a report regarding the fix of the leak, discovered the LOTO Incident. They informed the Penhorwood Mill & Concentrator Manager, Ross Byron ("**Mr. Byron**") of the incident and he, in turn, requested that the LOTO Incident be reported directly to Mr. Fulton. After the LOTO Incident, an investigation was conducted (as set out in further detail below) and Mr. Woodhouse was determined to be at fault for the incident. *Id.* at ¶ 14.

15. In subsequent conversations between Mr. Fulton and Mr. Byron, Mr. Fulton forbade Mr. Byron from disciplining Mr. Woodhouse for the LOTO Incident. Instead, Mr. Fulton stated that he would handle the matter personally. *Id.* at ¶ 15. Similarly, shortly after the LOTO Incident Mr. Fulton (i) informed Mr. Millette that he had spoken with Mr. Woodhouse and that the matter "was handled" and (ii) notified ITC's Timmins Operations Manager, Mike Kerr, about the LOTO Incident and told him that it "was being handled." *Id* at ¶ 16. Mr. Fulton also discussed the LOTO Incident at several morning safety meetings. *Id.*

16. In addition, Mr. Fulton ordered certain employees to delete the LOTO Incident entry in ITC's health, safety, environment and quality database (the "**HSEQ Database**"). *Id.* at ¶ 18. By deleting the HSEQ Database entry, the LOTO Incident was effectively concealed from Mr. Fulton's supervisors and senior management, and there was no formal discipline instituted against Mr. Woodhouse. *Id.*

17. However, despite Mr. Fulton's representations and assurances, Mr. Woodhouse received no discipline (in contrast to other employees whose LOTO violations resulted in termination of employment). *Id.* at ¶¶ 17, 22.

18. On or about February 8, 2017, it was brought to the attention of Mr. Fulton's supervisor that there had been an unrelated violation of certain of ITC's safety policies and protocols. *Id*. at ¶ 19. As a result of the serious nature of the violation, in-house counsel undertook a comprehensive investigation that commenced on February 10, 2017. *Id*. On February 13, 2017, the investigation was transitioned to John McFarlain ("**Mr. McFarlain**"), Operations Director, and Julie Bittick ("**Ms. Bittick**"), Human Resources Manager, who continued to conduct the investigation until February 15, 2017. The investigation involved conducting interviews with

several key employees, reviewing emails and other relevant documentation, and reviewing the applicable ITC safety policies and protocols. *Id.*

19. When Mr. Fulton was questioned directly about the LOTO Incident in the course of the investigations, he dishonestly stated that (i) he heard about the incident more than a month after the fact, (ii) conducted an investigation, and (iii) provided a written warning to Mr. Woodhouse. *Id.* at ¶ 20. However, as indicated herein, Mr. Fulton was aware of the incident immediately after it occurred, did not conduct an investigation, and did not formally discipline Mr. Woodhouse. *Id*.

20. The detailed investigation commenced by ITC's in-house counsel and continued by Mr. McFarlain and Ms. Bittick, revealed the facts set forth in paragraphs 11-19 of the Objection. The investigation also revealed additional incidents in which Mr. Fulton exhibited a gross dereliction of his duties, including that Mr. Fulton had failed to discipline the same individuals responsible for the LOTO Incident with respect to a prior violation of safety rules. *Id.* at ¶ 22. Moreover, the investigation uncovered that employees at the Penhorwood location felt that safety practices and safety training had deteriorated in recent years under Mr. Fulton's management and employees reported being hesitant to report any health and safety violations for fear of retaliation from Mr. Fulton. *Id.*

21. As a result of the foregoing, ITC terminated Mr. Fulton's employment for cause, without notice or pay in lieu of notice, on February 15, 2017.

b. Mr. Fulton's Account of the LOTO Incident and Termination

22. Despite facts to the contrary, Mr. Fulton claims that his conduct in handling the LOTO Incident did not justify the termination of his employment for cause and maintains that he was never previously disciplined by ITC for shortcomings associated with his handling of safety issues. Reply, ¶ 9.

23. As a preliminary matter, Mr. Fulton questions the safety procedures established by ITC, alleging, among other things, that ITC did not have a formal policy or procedure for how to investigate alleged workplace safety infractions, specific requirements about what level of discipline is appropriate in the event of different kinds of safety infractions or how such discipline had to be communicated to workers, or requirements about which database to record which types of events.[3] *Id.* at ¶ 11. Mr. Fulton further attempts to shift the blame for his faults by alleging that ITC was understaffed and ill-equipped to address safety concerns as they arose. *Id.* at ¶ 13.

24. As to the LOTO Incident specifically, Mr. Fulton alleges that he immediately began to investigate the incident, and determined that a violation of ITC's safety protocols had occurred. *Id.* at ¶¶ 17-18. Mr. Fulton also claims that he delivered a verbal warning to Mr. Woodhouse, and intended to prepare and deliver a written warning, but failed to do so. *Id.* at ¶¶ 17-21. Mr. Fulton also claims that he did not allow Mr. Byron to discipline Mr. Woodhouse as he was concerned about Mr. Byron's ability to be fair and objective regarding the LOTO Incident as a result of negative past dealings between Mr. Byron and Mr. Woodhouse. *Id.* at ¶¶ 22-24. Mr. Fulton further alleges that he did not attempt to conceal the LOTO Incident, and went as far as to discuss the LOTO Incident at management meetings thereafter. *Id.* at ¶ 29.

25. Moreover, Mr. Fulton claims that the investigation conducted by ITC was unreasonable and improper as he was given no advance warning of the February 10, 2017 meeting or its subject matter, and was not permitted to rely on his notes to assist him with his recollection, notwithstanding his repeated requests. *Id.* at ¶¶ 30-31. Despite telling ITC that he was told about

[3] Mr. Fulton claims that he did not want to include the incident in the HSEQ Database as the information underlying the incident would be available to ITC employees. *Id.* at ¶¶ 25-29. Instead Mr. Fulton claims that he wanted the LOTO Incident to be recorded in a separate, more confidential database. *Id.*

the LOTO Incident at some time around January 2017 and that he had given Mr. Woodhouse a written warning – which were incorrect statements – Mr. Fulton claims that after reviewing his notes of the incident he properly advised ITC that he was actually informed of the LOTO Incident in November 2016 and gave Mr. Woodhouse only a verbal warning. *Id.* at ¶ 30-32. Accordingly, Mr. Fulton maintains that he did not, among other things, act dishonestly, intentionally mislead or deceive ITC, fail to discipline Mr. Woodhouse, or ignore health and safety issues. *Id.* at ¶ 34.

4. ***The Fulton Claim***

26. Mr. Fulton's claim against ITC consists of $300,000 in damages for wrongful dismissal.[4] Mr. Fulton alleges that on February 15, 2017, shortly before payment of the 2016 AIP bonus, ITC advised him that his employment was being terminated with immediate effect for cause. Statement of Claim, ¶ 12. Mr. Fulton claims that there was no merit to the assertion that his termination was for cause. *Id.* at ¶ 13. Mr. Fulton further alleges that, as a matter of common law, ITC could only terminate his employment in the absence of just cause upon providing reasonable notice. *Id.* at ¶ 5.

27. As a result, Mr. Fulton claims he is entitled to damages in lieu of being given reasonable notice of his termination. Specifically, he claims that damages for failure to provide notice are equivalent to fourteen months of his total compensation – *e.g.*, his entire remuneration package, a bonus that he claims was earned during ITC's fiscal year 2016 but for which he was not paid, and other benefits of economic value. *See id.* at ¶¶ 16-17. Mr. Fulton claims fourteen months is appropriate due to: (i) his approximately nine year employment at the company; (ii) his

[4] The Fulton Claim lists $300,000.00 as the amount of the claim. The Statement of Claim attached to the Fulton Claim includes additional claims for out-of-pocket expenses incurred as a result of Mr. Fulton's attempts to secure alternative employment, interest on all amounts found due and owing, and costs of the Action on a substantial indemnity basis together with applicable taxes.

55 years of age at the time of termination; (iii) his senior managerial role; (iv) the lack of comparable alternative positions for Mr. Fulton at the time of his termination; and (v) other factors that would be particularized prior to trial. *Id.* at ¶ 16.

28. Additionally, Mr. Fulton claims that, at a minimum, ITC is required to provide him with eight weeks' of pay and benefits, or notice in lieu thereof, and approximately nine weeks of severance pay pursuant to the *Employment Standards Act, 2000* ("***ESA***"). *Id.* at. ¶ 19. Finally, Mr. Fulton alleges that he fully attempted to mitigate any damages by being willing to seek comparable employment. *Id.* at ¶ 18.

RELIEF REQUESTED

29. By the Objection, the Debtors seek entry of an Order, substantially in the form attached hereto as Exhibit A, disallowing the Fulton Claim in its entirety.

BASIS FOR RELIEF

A. **Legal Standard**

30. Section 502(a) of the Bankruptcy Code provides, in pertinent part, that "[a] claim or interest, proof of which is filed under section 501 of this title, is deemed allowed, unless a party in interest . . . objects." 11 U.S.C. § 502(a). Once an objection to a claim is filed, the Court, after notice and a hearing, shall determine the allowed amount of the claim, if any. *See* 11 U.S.C. § 502(b).

31. In addition, section 502(b)(1) of the Bankruptcy Code provides that a claim may not be allowed to the extent that it "is unenforceable against the debtor and property of the debtor, under any agreement or applicable law." 11 U.S.C. § 502(b)(1). While a properly filed proof of claim is prima facie evidence of the claim's allowed amount, when an objecting party rebuts a claim's prima facie validity, the claimant bears the burden of proving the claim's validity by a

preponderance of evidence. *See In re Allegheny Int'l, Inc.*, 954 F.2d 167, 173-74 (3d Cir. 1992). The burden of persuasion with respect to the claim is always on the claimant. *See id*. at 174.

32. Further, Bankruptcy Rule 3003(c)(3) provides: "The court shall fix and for cause shown may extend the time within which proofs of claim or interest may be filed." Fed. R. Bankr. P. 3003(c)(3). In turn, section 502(b)(9) of the Bankruptcy Code provides that "if [an] objection to a claim is made, the court, after notice and a hearing, shall determine the amount of such claim . . . and shall allow such claim in such amount, except to the extent that . . . proof of such claim is not timely filed," with certain limited exceptions that are not applicable here. 11 U.S.C. § 502(b)(9).

B. **The Fulton Claim Should Be Disregarded as a Late Filed Claim**

33. The Bar Date Order established deadlines for filing proofs of claim against the Debtors in the Chapter 11 Cases. Specifically, the Bar Date Order established 5:00 p.m., prevailing Eastern Time, on October 15, 2019, as the deadline by which claimants were to submit proofs of claim such that they were actually received by Prime Clerk LLC (the "**Bar Date**"). *See* Bar Date Order, ¶ 5. To the extent a party failed to submit a proof of claim by the Bar Date, he or she would "not be treated as a creditor with respect to such claim for purposes of voting upon any plan in the Chapter 11 Cases and distribution from property of the Debtors' estates." *See id.* at ¶ 16. Moreover, the Bar Date Notice (as defined in the Bar Date Order) further provides that:

> unless the Court orders otherwise, any Entity that is required to file a proof of claim with respect to a particular claim against the Debtors but that fails to do so by the applicable Bar Date described in this Notice or the Bar Date Order shall not be treated as a creditor with respect to such claim for purposes of voting upon any plan in the chapter 11 cases and distribution from property of the Debtors' estates.

See Bar Date Order at Ex. A.

34. Although Mr. Fulton's counsel was properly served with notice of the Bar Date, the Fulton Claim was not filed until after the Bar Date. Moreover, Mr. Fulton did not file a motion with the Court or contact the Debtors to request to file a late proof of claim or provide an excuse for his late filed claim.

35. If the Fulton Claim is not disallowed and expunged as a late filed claim, Mr. Fulton would receive distributions to the detriment of other creditors in the Chapter 11 Cases that he is not entitled to, because his claim was untimely.

C. ITC is Not Obligated to Pay Mr. Fulton's Claim Because His Employment Was Properly Terminated for Cause

36. Mr. Fulton's irresponsibility, dereliction of duty, and potential endangerment of the health and safety of numerous employees constituted fair and reasonable grounds to terminate his employment for just cause.

1. *Canadian Standard for Just Cause*

37. Canadian law recognizes the right of an employer to dismiss an employee summarily where the employer has "just cause" for terminating the employment relationship.[5] A frequently cited test for "just cause" is that set out by Schroeder J.A. in *Regina v. Arthurs (1967)*, 1967 CanLII 30 (ON CA), 62 D.L.R. (2d) 342 (Ont. C.A.) at ¶ 11:

> If an employee has been guilty of serious misconduct, habitual neglect of duty, incompetence, or conduct incompatible with his duties, or prejudicial to the employer's business, or if he has been guilty of wilful disobedience to the employer's orders in a matter of substance, the law recognizes the employer's right summarily to dismiss the delinquent employee.

38. As stated by the Supreme Court of Canada in *McKinley v. BC Tel* ("**McKinley**"), the test for assessing whether an employee's misconduct provides just cause for dismissal is

[5] The Canadian statutes and judicial opinions cited herein are included in a separate appendix to be filed contemporaneously with the Objection.

contextual. *See* 2001 SCC 38. Within this analysis, a finding of misconduct does not, by itself, give rise to just cause. Rather, the question to be addressed is whether, in the circumstances, the behavior was such that the employment relationship could no longer viably subsist. The approach requires an examination of the nature and circumstances of misconduct to strike an effective balance between the severity of an employee's misconduct and the sanction imposed. *See id.* at ¶ 53.

39. Further, as the Ontario Court of Appeal clarified in *Dowling v Ontario (Workplace Safety & Insurance Board)* ("**Dowling**"), the core question for a court to consider is whether an employee has engaged in misconduct incompatible with the fundamental terms of the employment relationship. *See* 2004 CanLII 43692 (ON CA). Accordingly, applying the standard consists of:

i. determining the nature and extent of the misconduct;

ii. considering the surrounding circumstances; and

iii. deciding whether dismissal is warranted (*i.e.*, whether dismissal is a proportional response).

Id. at ¶ 50.

40. In reference to the test set out above, Gillese J.A. provided the following further explanation:

> The first step is largely self-explanatory but it bears noting that an employer is entitled to rely on after discovered wrongdoing, so long as the later discovered acts occurred pre-termination. *See Lake Ontario Portland Cement Co. v. Groner*, 1961 CanLII 1 (SCC), [1961] S.C.R. 553.
>
> The second step, in my view, is intended to be a consideration of the employee within the employment relationship. Thus, the particular circumstances of both the employee and the employer must be considered. In relation to the employee, one would consider factors such as age, employment history, seniority, role and responsibilities. In relation to the employer, one would consider such things as the type of business or activity in which the employer is engaged, any relevant employer policies or practices, the employee's position

> within the organization, and the degree of trust reposed in the employee.
>
> The third step is an assessment of whether the misconduct is reconcilable with sustaining the employment relationship. This requires a consideration of the proved dishonest acts, within the employment context, to determine whether the misconduct is sufficiently serious that it would give rise to a breakdown in the employment relationship.

See id. at ¶¶ 51-53.

2. ***Exemptions from Minimum Statutory Termination and Severance Entitlements***

41. Even if an employer meets the standard of just cause at common law, an employee may still be entitled to his or her minimum statutory termination and severance entitlements under the *ESA*, unless the employee is otherwise exempt from receiving these entitlements by the *ESA* or its regulations.

42. Under Section 2(1) of Ontario Regulation 288/01 (Termination and Severance of Employment) (the "**Regulation**") made under the *ESA*, an employee is exempt from receiving his or her minimum statutory termination entitlements under the *ESA* if the employee is guilty of "wilful misconduct, disobedience, or wilful neglect of duty that is not trivial and has not been condoned by the employer."

43. Similarly, under Section 9(1) of the Regulation, an employee is exempt from receiving his or her minimum statutory severance pay entitlements under the *ESA* if the employee is guilty of "wilful misconduct, disobedience, or wilful neglect of duty that is not trivial and has not been condoned by the employer."

44. When legislation provides "wilful misconduct" or "wilful neglect of duty" the employee must consciously and deliberately engage in some positive act of misconduct or deliberately refrain from performing duties or responsibilities that he or she was required to

perform. *See, e.g.*, *Cummings v. Quantum Automotive Group Inc*., 2017 ONSC 1785, 2017 CarswellOnt 5122, [2017] O.J. No. 1726, 31 D.E.L.D. 63, 278 A.C.W.S. (3d) 80 (Ont. S.C.J.), ¶ 78.

3. ***Application to Mr. Fulton's Employment***

45. As set out in further detail above, the facts establish satisfaction of the first step of the test set out in *Dowling*. It is clear that, prior to the termination of his employment without notice or pay in lieu of notice, Mr. Fulton engaged in a substantial amount of egregious and wilful misconduct, including that Mr. Fulton:

i. wilfully engaged in a dereliction and habitual neglect of his duties;

ii. wilfully breached his fiduciary duty and duty of fidelity to ITC;

iii. wilfully engaged in conduct that was prejudicial and detrimental to the interests of ITC, including by ignoring health and safety issues for his own personal financial benefit;

iv. breached numerous ITC policies, including ITC's policy in relation to data integrity and ethics;

v. attempted to conceal his misconduct during the investigation process; and

vi. refused to acknowledge that any wrongdoing on his part had occurred or show remorse for his actions.

46. It is ITC's position that consideration of the surrounding circumstances, including factors related to Mr. Fulton and to ITC's business, justify a termination of Mr. Fulton's employment without notice or pay in lieu of notice.

47. Canadian courts have consistently held that, in a contract of employment, there is an implied duty of faithfulness and honesty owed by the employee to the employer. *See, e.g., Prim8 Group Inc. v. Tisi, 2016 ONSC 5662,* ¶ 15; *RBC Dominion Securities Inc. v. Merrill Lynch Canada Inc.,* 2008 SCC 54, ¶ 37. This duty goes to the heart of the employment relationship, particularly if the employee is in a more senior position. Employees in senior positions of authority

and trust will be held to a particularly high standard of honesty because, in such cases, honesty must not only be inherent, it must be patent. *See, e.g.*, *Marks v Addison On Bay Ltd.*, 1991 CarswellOnt 967. As the Canadian Operations Manager and the most senior employee of ITC in Canada, Mr. Fulton occupied a position that required the utmost trust and integrity.

48. In addition to the implied duty of faithfulness and honesty, Canadian law has established that high echelon managers of an organization may owe their employer a fiduciary obligation that transcends their implied duty of fidelity as a regular employee. *See, e.g.*, *Canadian Aero Service Ltd. v. O'Malley*, 1973 CarswellOnt 236 ("***Canaero***").

49. In *Canaero*, the Supreme Court of Canada held that two senior employees were fiduciaries who had broken their obligations to the company. In overturning the decision by the Ontario Court of Appeal, Laskin J. drew attention to the distinction between a "servant" and an "agent" of a corporation, stating:

> The distinction taken between agents and servants of an employer is apt here, and I am unable to appreciate the basis upon which the Ontario Court of Appeal concluded that O'Malley and Zarzycki were mere employees, that is servants of Canaero rather than agents. **Although they were subject to supervision of the officers of the controlling company, their positions as senior officers of a subsidiary, which was a working organization, charged them with initiatives and with responsibilities far removed from the obedient role of servants.**

See id. at ¶ 23 (emphasis added).

50. An employee who stands in a fiduciary relationship to his or her employer has an equitable obligation of loyalty, good faith, honesty, and avoidance of conflict of duty and self-interest. *See, e.g., Felker v Cunningham*, 2000 CarswellOnt 2974 (ONCA), ¶ 14.

51. Mr. Fulton, as the most senior ITC employee in Canada, had a high degree of control over ITC's operations. As such, in addition to a duty to act honestly and in good faith, Mr. Fulton, stood in a fiduciary relationship with ITC. Therefore, Mr. Fulton owed an obligation to

ITC to devote his full time, ability and energy to furthering the best interests of ITC and to avoid conflicts of interest.

52. Further, in Ontario, safety in the workplace is both a stringent statutory obligation and an important industrial relations concern that involves employers and employees. Given the potential consequences, safety infractions are among the most serious of workplace offenses. The operation of talc mines is an inherently dangerous undertaking, and, in this safety-sensitive environment, ITC operated on the principle that health and safety is the paramount consideration. ITC operated its business in a manner that, in all respects, met or exceeded the requirements of Ontario's *Occupational Health and Safety Act*, R.S.O. 1990, c. O.1. (the "***OHSA***").

53. The *OHSA* imposes heightened statutory duties on "supervisors" to protect the health and safety of workers. Under the *OHSA*, a "supervisor" is defined as a "person who has charge of a workplace or authority over a worker." *See OHSA*, section 1(1). Without limiting the additional duties of supervisors imposed by the *OHSA*, Section 27(2)(c) of the *OHSA* imposes a broad obligation on supervisors to take every precaution reasonable in the circumstances for the protection of workers.

54. Mr. Fulton, as the employee in charge of the workplace, meets the definition of a "supervisor" under the *OHSA*. As such, a critical facet of Mr. Fulton's role was meeting or exceeding the requirements of a supervisor under the *OHSA*, including by ensuring that all reasonable precautions were taken to protect the health and safety of each of the ITC's employees, contractors, vendors, and visitors at the workplace. Mr. Fulton's failure to take such reasonable precautions would expose ITC to liability under the *OHSA*. ITC, as an "employer" under the *OHSA* has a corresponding duty to take every precaution reasonable in the circumstances for the protection of a worker. *See OHSA*, section 25(2)(h)

55. Despite the clear and present risks to the health and safety of ITC's employees, Mr. Fulton violated the trust that was given to him. Mr. Fulton was willfully negligent in his duties and took a casual and relaxed attitude towards safety. Worse, Mr. Fulton overtly permitted the health and safety practices at the Penhorwood location to deteriorate. In fact, certain employees reported being hesitant to report any health and safety violations in fear of retaliation from Mr. Fulton.

56. Equally concerning is the fact that Mr. Fulton cultivated an atmosphere of permitted disregard for health and safety policies and protocols. Mr. Fulton allowed employees, including the same individuals responsible for the LOTO Incident, to violate safety rules without imposing appropriate discipline or corrective action.

57. Within this context, Mr. Fulton became knowledgeable of the LOTO Incident and failed to take the appropriate steps to ensure that such behavior did not reoccur. In doing so, Mr. Fulton effectively validated Mr. Woodhouse's erroneous approach towards safety, authorized the occurrence of the LOTO Incident, and set the stage for future (and potentially more serious) incidents.

58. In Canada, there does not have to be a physical injury or actual harm to establish the seriousness of a health and safety incident. For example, in *Hodgkin v Aylmer (Town)*, after several instances where the actual safety risks were made apparent, the employee was directed to shave off his beard within 24 hours, in order to meet safety standards. The employee refused to comply with the employer's directive. As such, Leitch J held that, considering the safety issues in question, the employer's order was reasonable and important. Accordingly, despite the fact that no actual incident occurred, the employee's refusal was incompatible with his duties and went to

the root of his employment contract, justifying his dismissal for just cause. *See generally*, 1996 CarswellOnt 4343.

59. While the LOTO Incident did not actually result in a critical injury or death, it had the real and present potential to do so. Permitting Mr. Fulton to continue in his misguided and self-interested approach to health and safety would have jeopardized the safety and well-being of ITC's employees, contractors, vendors, and visitors.

60. The contextual approach outlined in *McKinley* and *Dowling* does not require employers to tolerate an employee's flagrant, repeated and wilful misconduct. In fact, allowing Mr. Fulton to continue to work at ITC with knowledge that he was deliberately and repeatedly engaged in conduct that created significant health and safety risks would amount to a violation of ITC's obligations under the *OHSA*.

61. Further, an employee's behaviour during the employer's inquiry or investigation into the misconduct is also a factor in determining whether there is just cause for dismissal. The implied duty of fidelity includes an employee not concealing from "his employer facts which ought to be revealed." *See, e.g.*, *Atlas Janitorial Services Co. v. Germanis* (1994), 53 C.P.R. (3d) 1, [1994] O.J. No. 316 (Ont. Ct. (Gen. Div.)), supp. reasons 53 C.P.R. (3d) 1, 46 A.C.W.S. (3d) 1032 (Ont. Ct. (Gen. Div.)), ¶ 43. If the employee is dishonest, unresponsive, or provides an unsatisfactory explanation to the employer's enquiries, the balance may tip in favour of just cause (even in the case of a long service employee). For example, in *Computer Sciences Corp.*, the Ontario Court of Appeal ruled that the dismissal for cause of a managerial employee with 22 years of satisfactory service was justified because he had persisted in lying to the employer about a sexual relationship with a subordinate during an investigation despite conclusive evidence to the contrary. *See generally* 2007 ONCA 466 (CanLII). Similarly, in *Paterson v. Daimler Chrysler*

Canada Inc. a senior executive with thirty-two (32) years of service was found to have had their employment properly terminated without notice or pay in lieu of notice after engaging in misconduct and then lying about the matters in issue to thwart investigations by the employer. *See generally*, 2005 CanLII 32576 (ON SC). Also, in *Agosta v. Longo Brothers Fruit Markets Inc.*, the fact that the employee obfuscated and hindered the employer's investigation assisted the court in finding cause. *See* 2006, 50 C.C.E.L. (3d) 77, 148 A.C.W.S. (3d) 588 (Ont. S.C.J.).

62. Mr. Fulton, in this case, initially attempted to conceal the matter from his superiors by instructing his subordinates to refrain from dealing with the LOTO Incident and by deleting the reference to the matter from the HSEQ Database. Further, when his superiors were made aware of the misconduct, Mr. Fulton chose not to be forthright during ITC's investigation of the LOTO Incident. In doing so, Mr. Fulton confirmed to ITC that, notwithstanding his length of service, the trust required to continue the employment relationship had been irreparably destroyed.

63. Ultimately, Mr. Fulton's actions were an irreconcilable breach of trust and gave rise to a complete breakdown of the employment relationship. Accordingly, ITC had fair and reasonable grounds upon which to terminate Mr. Fulton's employment without notice or pay in lieu of notice, both at common law and under the relevant provisions of the *ESA*. In fact, in light of the surrounding circumstances and the nature of the misconduct, ITC had no choice but to do so.

D. **Mr. Fulton Mitigated His Damages**

64. As in all Canadian breach of contract cases, a former employee, as an innocent party, must take reasonable steps to mitigate his or her damages in a wrongful dismissal case (to the extent such damages exceed the minimum requirements of the ESA).

65. The leading Canadian decision on the duty to mitigate in the context of a wrongful dismissal is the Supreme Court of Canada's decision in *Red Deer College v. Michaels*, in which Laskin C.J.C. approved the following principle:

> The rule of avoidable consequences here finds frequent application. The consequences of this injury is the failure of the employee to receive the pay which he was promised but, on the other hand, his time is left at his own disposal. If the employee unavoidably remains idle, the loss of his pay is actually suffered without deduction. If, however, the employee can obtain other employment, he can avoid part at least of these damages. Therefore, in an action by the employee against the employer for a wrongful discharge, a deduction of the net amount of what the employee earned, or what he might reasonably have earned in other employment of like nature, from what he would have received had there been no breach, furnishes the ordinary measure of damages.

57 DLR (3d) 386, [1976] 2 SCR 324 (SCC).

66. The burden of proof is on the employer to show that the employee either found or, by the exercise of proper industry in the search, could have procured similar employment reasonably adapted to his or her abilities. In other words, the onus is on the defendant to show that the plaintiff could have found other suitable employment.

67. Any benefit derived from complying with the duty to mitigate must be deducted from damages awarded in lieu of reasonable notice (subject to the minimum requirements of the ESA).

68. According to his LinkedIn account, Mr. Fulton commenced employment or an engagement as a Senior Consultant with Porcupine Engineering Services Inc. ("**Porcupine**") in or around March of 2017 – *i.e.*, the month following the Termination Date. Mr. Fulton's engagement or employment with Porcupine continued until in or around February 2018. *See* Declaration, at ¶ 24.

69. Further, according to his LinkedIn account, following the conclusion of his engagement or employment with Porcupine, Mr. Fulton commenced employment or engagement

as a Superintendent of Mill Operations at Taseko: Gibraltar Mine ("**Taseko**") in or around February of 2018. According to his LinkedIn account, Mr. Fulton's employment or engagement with Taseko continues as of today's date. *Id.* at ¶ 25.

70. As such, it is ITC's position that Mr. Fulton fully mitigated his damages in excess of the minimum requirements of the *ESA* by securing an alternate consulting engagement or employment with Porcupine and then an alternate consulting engagement or employment with Taseko.

RESERVATION OF RIGHTS

71. The Debtors expressly reserve the right to amend, modify, or supplement the Objection, and to file additional objections to any other claims (filed or not) that may be asserted against the Debtors and their estates. Should one or more of the grounds of objection stated in the Objection be dismissed or overruled, the Debtors reserve the right to object to the Fulton Claim on any other grounds that the Debtors discover or elect to pursue.

72. Notwithstanding anything contained in the Objection, or the exhibits and schedules attached hereto, nothing herein will be construed as a waiver of any rights that the Debtors, or any successor to the Debtors, may have to enforce rights of setoff against Mr. Fulton.

CONSENT TO JURISDICTION

73. Pursuant to Rule 9013-1(f) of the Local Rules of Bankruptcy Practice and Procedure of the United States Bankruptcy Court for the District of Delaware, the Debtors consent to the entry of a final judgment or order with respect to the Objection if it is determined that the Court would lack Article III jurisdiction to enter such final order or judgment absent consent of the parties.

NOTICE

74. Notice of the Objection will be given to: (a) the U.S. Trustee; (b) the United States Attorney for the District of Delaware; (c) the Internal Revenue Service; (d) counsel to the TCC; (e) counsel to the FCR; (f) counsel to Mr. Fulton; and (g) those parties that have requested notice pursuant to Bankruptcy Rule 2002. The Debtors submit that, under the circumstances, no other or further notice is required.

75. A copy of the Objection is available on (a) the Court's website: www.deb.uscourts.gov, and (b) the website maintained by Prime Clerk LLC, the Debtors' claims and noticing agent, at https://cases.primeclerk.com/imerystalc.

NO PRIOR REQUEST

76. No previous request for the relief sought herein has been made to this Court or any other court.

[*Remainder of the page left intentionally blank*]

WHEREFORE, the Debtors respectfully request that the Court enter an order, substantially in the form attached hereto as Exhibit A, granting the relief requested in the Objection and such other and further relief as may be just and proper.

Dated: July 13, 2021
Wilmington, Delaware

/s/ Sarah E. Silveira

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Counsel for Debtors and Debtors-in-Possession

IN THE UNITED STATES BANKRUPTCY COURT
FOR THE DISTRICT OF DELAWARE

In re:	:	Chapter 11
IMERYS TALC AMERICA, INC., *et al.*,[1]	:	Case No. 19-10289 (LSS)
Debtors.	:	(Jointly Administered)
	:	**Objection Deadline: July 27, 2021 at 4:00 p.m. ET**
	:	**Hearing Date: August 24, 2021 at 10:00 a.m. ET**

NOTICE OF OBJECTION AND HEARING

PLEASE TAKE NOTICE that, on July 13, 2021, the above-captioned debtors and debtors in possession (collectively, the "**Debtors**") filed the *Debtors' Objection to Proof of Claim No. 442 Filed by Thomas Neil Fulton* (the "**Objection**") with the United States Bankruptcy Court for the District of Delaware (the "**Court**").

PLEASE TAKE FURTHER NOTICE that, any responses to the Objection must be in writing and filed with the Clerk of the Court, 824 North Market Street, 3rd Floor, Wilmington, Delaware 19801 on or before **July 27, 2021 at 4:00 p.m. (prevailing Eastern Time).**

PLEASE TAKE FURTHER NOTICE that, if any responses to the Objection are received, the Objection and such responses shall be considered at a hearing before The Honorable Laurie Selber Silverstein, United States Bankruptcy Judge for the District of Delaware, at the Court, 824 North Market Street, 6th Floor, Courtroom No. 2, Wilmington, Delaware 19801 on **August 24, 2021 at 10:00 a.m. (prevailing Eastern Time).**

[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.

PLEASE TAKE FURTHER NOTICE THAT, IF NO RESPONSES TO THE OBJECTION ARE TIMELY FILED, SERVED AND RECEIVED IN ACCORDANCE WITH THIS NOTICE, THE COURT MAY GRANT THE RELIEF REQUESTED IN THE OBJECTION WITHOUT FURTHER NOTICE OR HEARING.

Dated: July 13, 2021
Wilmington, Delaware

/s/ Sarah E. Silveira

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Counsel for Debtors and Debtors-in-Possession

Exhibit A

Order

IN THE UNITED STATES BANKRUPTCY COURT
FOR THE DISTRICT OF DELAWARE

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

ORDER SUSTAINING DEBTORS' OBJECTION TO
PROOF OF CLAIM NO. 442 FILED BY THOMAS NEIL FULTON

Upon the *Debtors' Objection to Proof of Claim No. 442 Filed by Thomas Neil Fulton* (the "**Objection**")[2] seeking entry of an order disallowing and expunging the Fulton Claim; and the Court having considered the Objection, the Fulton Claim, the Declaration, and any responses thereto; and the Court having jurisdiction to consider the Objection 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 February 29, 2012; and the Court having found that this is a core proceeding pursuant to 28 U.S.C. § 157(b)(2) and that this Court may enter a final order consistent with Article III of the United States Constitution; and the Court having found that venue of this proceeding and the Objection in this district is proper pursuant to 28 U.S.C. §§ 1408 and 1409; and it appearing that proper and adequate notice of the Objection has been given and that no other or further notice is necessary; and upon the record

[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] Unless otherwise defined herein, capitalized terms used herein shall have the meanings ascribed to them in the Objection.

herein; and after due deliberation thereon; and the Court having determined that there is good and sufficient cause for the relief granted in this order;

IT IS HEREBY ORDERED THAT:

1. The Objection is SUSTAINED, as set forth herein.

2. Any response to the Objection not otherwise withdrawn, resolved, or adjourned is hereby overruled on its merits.

3. The Fulton Claim is hereby disallowed in its entirety and shall be expunged from the claims register upon entry of this Order.

4. The Debtors shall retain and shall have the right to seek to amend, modify and/or supplement this Order as may be necessary.

5. The Debtors are authorized and empowered to take all steps necessary and appropriate to carry out and otherwise effectuate the terms, conditions, and provisions of this Order.

6. The Debtors and Prime Clerk LLC, the Debtors' claims and noticing agent, are authorized to take all actions necessary and appropriate to give effect to this Order. Prime Clerk LLC is authorized to modify the claims register to comport with the relief granted by this Order.

7. This Court shall retain jurisdiction over the Debtors and Mr. Fulton with respect to any matters related to or arising from the Objection or the implementation of this Order.

Exhibit B

Declaration

IN THE UNITED STATES BANKRUPTCY COURT
FOR THE DISTRICT OF DELAWARE

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

DECLARATION OF ERIC GARDNER
IN SUPPORT OF DEBTORS' OBJECTION TO
CLAIM NO. 442 FILED BY THOMAS NEIL FULTON

I, Eric Gardner, hereby declare under penalty of perjury, pursuant to Section 1746 of title 28 of the United States Code, as follows:

1. I am a Managing Counsel for the Imerys Group. I am authorized to submit this declaration (the "**Declaration**") on behalf of the above-captioned debtors and debtors-in-possession (collectively, the "**Debtors**").[2]

2. I submit this declaration in support of the *Debtors' Objection to Proof of Claim No. 442 Filed by Thomas Neil Fulton* (the "**Objection**"). I have reviewed the Objection, the Fulton Claim (as defined below), and the various documents related to the Objection and the Fulton Claim, and it is my belief that the relief sought in the objection is reasonable and in the best interests of the Debtors and their estates.

3. Except as otherwise indicated herein, all facts set forth in this Declaration are based upon my personal knowledge of the matters set forth herein or I have gained knowledge of such

[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 in this Declaration and not otherwise defined shall have the meanings ascribed to them in the Objection.

matters from the Debtors' advisers. If called upon to testify, I could and would competently testify to the facts set forth herein from my own personal knowledge, except as otherwise stated.

BACKGROUND

4. On February 13, 2019, the Debtors filed voluntary petitions in this Court commencing cases (the "**Chapter 11 Cases**") for relief under chapter 11 of title 11 of the United States Code (the "**Bankruptcy Code**"). The Debtors continue to manage and operate their business as debtors-in-possession pursuant to sections 1107 and 1108 of the Bankruptcy Code.

5. On July 10, 2019, the Debtors filed the *Motion of the Debtors for Order (I) Establishing Bar Dates and Related Procedures for Filing Proofs of Claim Other Than with Respect to Talc Personal Injury Claims and (II) Approving Form and Manner of Notice Thereof* [Docket No. 790]. On July 25, 2019, the Court entered the *Order (I) Establishing Bar Dates and Related Procedures for Filing Proofs of Claim Other Than with Respect to Talc Personal Injury Claims and (II) Approving Form and Manner of Notice Thereof* [Docket. No. 881] (the "**General Bar Date Order**") designating October 15, 2019 as the date by which all entities, except for entities asserting Talc Claims (as defined in the General Bar Date Order), must file proofs of claim in the Chapter 11 Cases.

6. On October 21, 2019, Thomas Neil Fulton filed Proof of Claim No. 442 (the "**Fulton Claim**") for $300,000. The Fulton Claim is premised on the Action (as defined below), which is discussed in detail below. The Debtors filed the Objection requesting entry of an order disallowing the Fulton Claim.

THE ACTION AND THE FULTON CLAIM

A. Overview of the Action

7. I understand that on or about April 20, 2017, Mr. Fulton commenced an action against Imerys Talc Canada Inc. ("**ITC**") in Ontario's Superior Court of Justice (Court File No.:

CV-17-573647) (the "**Action**") by filing a statement of claim (the "**Statement of Claim**") where he alleged claims against ITC in the amount of $300,000 for wrongful dismissal, plus out-of-pocket expenses incurred as a result of his attempts to secure alternative employment, interest on all amounts found due and owing and costs of the Action on a substantial indemnity basis together with applicable taxes. On May 26, 2017, ITC filed a statement of defence, disputing the allegations set forth in the Statement of Claim (the "**Statement of Defence**"). On June 6, 2017, Mr. Fulton filed a reply to address newly-raised matters in the Statement of Defence (the "**Reply**").

8. I further understand that Mr. Fulton and ITC unsuccessfully attempted to mediate the situation,[3] and that following these mediation attempts, on February 20, 2019, Mr. Fulton served his Trial Record on ITC to set the Action down for trial. However, as a result of the filing of the Chapter 11 Cases, the Action was stayed.

B. Mr. Fulton's Employment at ITC

9. It is my understanding that Mr. Fulton commenced employment with the corporate predecessor of ITC on or about June 9, 2008, as senior engineer pursuant to the terms and conditions of an employment agreement dated June 1, 2008. Prior to the termination of his employment, Mr. Fulton held the position of the Canadian Operations Manager for ITC, which made him the highest-ranking ITC employee in Canada. As Canadian Operations Manager, his primary responsibilities included:

i. protecting and maintaining the health and safety of all employees, contractors, vendors and visitors at ITC's Canadian sites;

ii. maintaining acceptable performance levels of employees and contractors;

iii. continuously improving processes and the quality of products and services; and

[3] True and correct copies of the Statement of Claim, the Statement of Defence, and the Reply are attached hereto as Exhibit 1, Exhibit 2, and Exhibit 3, respectively.

iv. ensuring compliance with all applicable laws, regulations, policies and procedures as well as, if necessary, disciplining employees for failed compliance with same.

10. I have been made aware that at the time of his termination, Mr. Fulton's compensation included an annual base salary of $138,320.00, participation in an Annual Incentive Plan (the "**AIP**"), participation in a defined benefit pension plan, and participation in a comprehensive health and welfare benefits plan. It is my understanding that a portion of any bonus payable under the AIP was based on ITC's health and safety performance. Moreover Mr. Fulton had no contractual right to a bonus pursuant to the AIP, and the terms of the AIP expressly provided that an employee would not be entitled to a bonus if the employee: (i) received a disciplinary notice during the applicable plan year; or (ii) was not an employee of ITC on the date the payments were made.

C. Events Leading to Mr. Fulton's Termination

11. Given the dangers inherent in its mining and industrial sites, ITC created a number of employee policies and protocols designed to reduce or eliminate health and safety risks to its employees. One key protocol was called Lockout/Tagout ("**LOTO**"), which requires that, when performing maintenance or servicing of certain machinery (which includes cleaning, repairing, or realigning), the machinery be turned off, "locked" so there can be no intentional or unintentional human intervention on, or contact with, any moving parts of the equipment, then conspicuously "tagged" so that it is clear to any subsequent employee that the machinery may not be unlocked without the authorization of the person who originally locked and tagged it out of service.

12. Mr. Fulton, as an employee of ITC and as the Canadian Operations Manager, was subject to these safety policies. Importantly, as Canadian Operations Manager, he was also expected to be a model of adherence and compliance with all such policies and responsible for ensuring that all employees strictly adhered to ITC's safety policies and protocols. All ITC

employees at the Timmins and Penhorwood sites received regular training and re-training regarding these safety policies and protocols since violations of ITC's safety policies and protocols could result in serious injury or death. Employees were also advised that violations of the safety policies and protocols would lead to disciplinary action, including the potential termination of employment. Due to the potential for serious injury or death, it is my understanding that ITC's policy was that willful violation of the LOTO protocol should result in immediate termination of employment.

13. On or about November 20, 2016, there was an incident where two employees of ITC violated the LOTO protocol while attempting to repair a leak in a feed pipe to the mill at the Penhorwood facility. Specifically, I understand that Bobby Woodhouse directed a more junior employee, Max Joseph, to repair the leak. Mr. Joseph refused, and he noted that a licensed electrician was required for that repair and that the leak was in a restricted area requiring compliance with the LOTO protocol prior to entry. Mr. Woodhouse persisted and Mr. Joseph continued to refuse. Eventually, however, Mr. Woodhouse entered the restricted area, taking Mr. Joseph with him. Mr. Woodhouse and Mr. Joseph did not lock out or tag out the machinery, and were not accompanied by a licensed electrician (the "**LOTO Incident**"). As described below, it was the view of ITC management that the LOTO Incident seriously jeopardized the health and safety of both employees.

14. I understand that on November 21, 2016, Roger Millette, Sr., ITC's Production Supervisor, and Gerry Rondeau, ITC's Maintenance Supervisor, discovered the LOTO Incident after viewing a report regarding the fix of the leak. They informed the Penhorwood Mill & Concentrator Manager, Ross Byron, of the incident and he, in turn, requested that the LOTO

Incident be reported directly to Mr. Fulton. After an investigation was conducted after the LOTO Incident (described below), it was determined that Mr. Woodhouse was at fault for the incident.

15. It is my understanding that in subsequent conversations between Mr. Fulton and Mr. Byron, Mr. Fulton forbade Mr. Byron from disciplining Mr. Woodhouse for the LOTO Incident. Instead, Mr. Fulton stated that he would handle the matter personally.

16. I also understand that (i) on November 24, 2016, Mr. Fulton informed Mr. Millette that he had spoken with Mr. Woodhouse and that the matter "was handled" and (ii) that shortly thereafter, Mr. Fulton informed ITC's Timmins Operations Manager, Mike Kerr, about the LOTO Incident and told him that it "was being handled." Mr. Fulton also discussed the LOTO Incident at several morning safety meetings.

17. Ultimately, there was no formal discipline, aside from a verbal warning, instituted against Mr. Woodhouse.

18. In addition, I understand that Mr. Fulton ordered certain employees to delete the LOTO Incident entry in ITC's health, safety, environmental and quality database (the "**HSEQ Database**"), which effectively concealed the LOTO Incident from Mr. Fulton's supervisors and senior management.

19. I understand that on or about February 8, 2017, it was brought to the attention of Mr. Fulton's supervisor that there had been an unrelated violation of certain of ITC's safety policies and protocols. Given the serious nature of the violation, in-house counsel undertook a comprehensive investigation. The investigation commenced on or around February 10, 2017, and uncovered the facts discussed in this Declaration. On February 13, 2017, the investigation was transitioned to John McFarlain, Operations Director, and Julie Bittick, Human Resources Manager, who continued to conduct the investigation into the matter until February 15, 2017. The

investigation involved conducting interviews with several key employees, reviewing emails and other relevant documentation, and reviewing the applicable ITC safety policies and protocols.

20. I understand that when Mr. Fulton was questioned directly about the LOTO Incident in the course of the investigations, he falsely stated that he had heard about the incident more than a month after it had occurred, conducted an investigation, and disciplined Mr. Woodhouse via a written warning. Notwithstanding, the facts showed that Mr. Fulton was aware of the LOTO Incident immediately after its occurrence and did not impose a formal written warning on Mr. Woodhouse.

21. After the detailed investigation commenced by ITC's in-house counsel and continued by Mr. McFarlain and Ms. Bittick, which included interviews with thirteen key employees, the following findings (certain of which are discussed or introduced earlier in this Declaration) were made:

- On or about November 20, 2016, the LOTO Incident occurred after Mr. Woodhouse directed a more junior employee (Mr. Joseph) to repair a leak at the Penhorwood facility. The LOTO Incident seriously jeopardized the health and safety of Mr. Woodhouse and Mr. Joseph.

- On November 21, 2016, Mr. Millette and Mr. Rondeau discovered the LOTO Incident and informed Mr. Byron. Mr. Byron requested that Mr. Millette inform Mr. Fulton of the incident.

- In a later conversation with Mr. Byron, Mr. Fulton forbade Mr. Byron from disciplining Mr. Woodhouse. Mr. Fulton also ordered Mr. Byron to delete the entry that Mr. Byron had prepared concerning the LOTO Incident from the HSEQ Database. By deleting the entry, the LOTO Incident was effectively concealed from Mr. Fulton's supervisors and ITC's senior management.

- On November 24, 2016, Mr. Fulton informed Mr. Millette that he had spoken with Mr. Woodhouse and that the matter "was handled." Shortly thereafter, Mr. Fulton informed Mr. Kerr about the LOTO Incident and informed him that it "was being handled."

- The LOTO Incident was discussed at several morning safety meetings. However, despite the Mr. Fulton's representations and assurances,

Mr. Woodhouse received no discipline (in contrast to other employees whose LOTO violations resulted in termination of employment).

22. Finally, the investigation (i) revealed additional incidents in which Mr. Fulton had failed to discipline the same individuals responsible for the LOTO Incident with respect to a prior violation of safety rules, and (ii) uncovered that employees at the Penhorwood location felt that safety practices and safety training had deteriorated in recent years under Mr. Fulton's management and employees reported being hesitant to report any health and safety violations for fear of retaliation from Mr. Fulton.

23. As a result of the foregoing, Mr. Fulton was terminated for cause on February 15, 2017.

D. Subsequent Employment

24. According to Mr. Fulton's LinkedIn account, Mr. Fulton commenced employment or an engagement as a Senior Consultant with Porcupine Engineering Services Inc. ("**Porcupine**") in or around March of 2017, which was the month following his termination. Mr. Fulton's engagement or employment with Porcupine continued until in or around February 2018.[4]

25. Further, according to his LinkedIn account, following the conclusion of his engagement or employment with Porcupine, Mr. Fulton commenced employment or engagement as a Superintendent of Mill Operations at Taseko: Gibraltar Mine ("**Taseko**") in or around February of 2018. According to his LinkedIn account, Mr. Fulton's employment or engagement with Taseko continues as of today's date.

[4] A true and correct copy of Mr. Fulton's LinkedIn page is attached hereto as Exhibit 4.

I declare under penalty of perjury that the foregoing is true and correct.

Executed this 13th day of July 2021.

/s/ Eric D. Gardner
Eric D. Gardner
Managing Counsel
The Imerys Group

EXHIBIT 1

Court File No.: CV-17-573647

ONTARIO
SUPERIOR COURT OF JUSTICE

B E T W E E N:

TOM FULTON

Plaintiff

- and -

IMERYS TALC CANADA INC.

Defendant

STATEMENT OF CLAIM

TO THE DEFENDANT

A LEGAL PROCEEDING HAS BEEN COMMENCED AGAINST YOU by the plaintiff(s). The claim made against you is set out in the following pages.

IF YOU WISH TO DEFEND THIS PROCEEDING, you or an Ontario lawyer acting for you must prepare a statement of defence in Form 18A prescribed by the Rules of Civil Procedure, serve it on the plaintiff(s) lawyer(s) or, where the plaintiff(s) does not have a lawyer, serve it on the plaintiff(s), and file it, with proof of service, in this court, WITHIN TWENTY DAYS after this statement of claim is served on you, if you are served in Ontario.

If you are served in another province or territory of Canada, or in the United States of America, the period for serving and filing your statement of defence is forty days. If you are served outside Canada and the United States of America, the period is sixty days.

Instead of serving and filing a statement of defence, you may serve and file a notice of intent to defend in Form 18B prescribed by the Rules of Civil Procedure. This will entitle you to ten more days within which to serve and file your statement of defence.

IF YOU FAIL TO DEFEND THIS PROCEEDING, JUDGMENT MAY BE GIVEN AGAINST YOU IN YOUR ABSENCE AND WITHOUT FURTHER NOTICE TO YOU. IF YOU WISH TO DEFEND THIS PROCEEDING BUT ARE UNABLE TO PAY LEGAL FEES, LEGAL AID MAY BE AVAILABLE TO YOU BY CONTACTING A LOCAL LEGAL AID OFFICE.

IF YOU PAY THE PLAINTIFF'S CLAIM, and $5,000.00 for costs, within the time for serving and filing your Statement of Defence, you may move to have this proceeding dismissed by the court. If you believe the amount claimed for costs is excessive, you may pay the plaintiff's claim and $1,000.00 for costs and have the costs assessed by the court.

TAKE NOTICE: THIS ACTION WILL AUTOMATICALLY BE DISMISSED if it has not been set down for trial or terminated by any means within five years after the action was commenced unless otherwise ordered by the court.

Date: April 20, 2017

Issued by: _____
Local Registrar

Address of: 393 University Avenue
Court Office 10th Floor
Toronto, Ontario
M5G 1E6

TO: IMERYS TALC CANADA INC.
Water Tower Road
P.O. Box 1245
Timmins, ON
P4N 7J5

Defendant

CLAIM

1. THE PLAINTIFF CLAIMS AGAINST THE DEFENDANT:

   a. Damages in the amount of $300,000 for wrongful dismissal based on lost salary and the value of employment related benefits over the period of reasonable notice, as well as unpaid bonus;

   b. Special damages for out-of-pocket expenses incurred by the Plaintiff as a result of his attempts to secure alternative employment, full particulars of which will be provided before trial;

   c. Pre-judgment and post-judgment interest on all amounts found due and owing to the Plaintiff pursuant to the *Courts of Justice Act*, R.S.O. 1990, c. C-43, as amended;

   d. His costs of this action on a substantial indemnity basis together with applicable taxes; and

   e. Such further and other relief as counsel may advise and this Honourable Court may deem just.

The Parties

2. The Plaintiff, Tom Fulton ("**Mr. Fulton**"), is an individual and former long-term employee of the Defendant. Mr. Fulton had worked for the Defendant for almost 9 years at the time he was given notice of his dismissal.

3. The Defendant, Imerys Talc Canada Inc. ("**Imerys**"), is a corporation that operates a talc mine. It is a subsidiary of one of the world's largest producers of talc. The Defendant's payroll in Ontario exceeds 2.5 million dollars annually.

The Plaintiff's Employment

4. Mr. Fulton was continuously employed with Imerys since commencing employment in June 2008. He was employed pursuant to an employment agreement of indefinite duration.

5. It was always a material term of Mr. Fulton's employment agreement, implied by the common law, that Imerys could only terminate his employment without cause upon providing reasonable notice of termination or a payment in lieu thereof.

6. It was also a term of Mr. Fulton's unwritten employment agreement, implied by the common law, that Imerys would treat Mr. Fulton in good faith, at all times.

7. Since October 2015, Mr. Fulton was employed as Canadian Operations Manager for Imerys.

8. In this senior position, Mr. Fulton had significant managerial responsibilities, which included overseeing three of Imerys' sites – including its only mine and two support sites – while supervising a total of 67 employees between them.

9. As consideration for the performance of his duties, Mr. Fulton received the following annual remuneration:

a. A base salary of $135,000.00;

b. Eligibility for bonuses of approximately $36,000.00;

c. Participation in Imerys' comprehensive group benefits program, which included life, medical and dental insurance coverage, and which were substantially paid for by Imerys;

d. Participation in Imerys' defined benefit pension plan;

e. Personal use of a company truck;

f. Personal use of a company phone;

g. 4 vacation weeks per annum; and

h. Any other right or benefit generally made available to the Imerys' employees.

10. Mr. Fulton's total annual compensation in effect at the time of his termination, as detailed above, shall be used in the assessment of his damages over the period of reasonable notice.

11. Mr. Fulton performed at a high level in 2016 and was eligible for a substantial bonus, likely in the range of approximately $35,000 - $40,000.

Termination of the Plaintiff's Employment and Reasonable Notice of Termination

12. On February 15, 2017, and shortly prior to paying out his bonus for 2016, Imerys advised Mr. Fulton that his employment was being terminated with immediate effect, purportedly for just cause.

13. There is no merit to the allegation of just cause.

14. Therefore, upon the termination of his employment, Mr. Fulton was entitled to a payment in lieu of reasonable notice.

15. Further, Mr. Fulton was not paid his bonus for the prior year, despite having taken all necessary and appropriate steps to earn it. Mr. Fulton is therefore entitled to damages in lieu of that bonus.

16. In lieu of reasonable notice of termination, Mr. Fulton is entitled to damages equivalent to 14-months of his total compensation, based on the following factors and circumstances:

    a. His approximately 9 years' continuous tenure;

    b. His 55 years of age;

    c. His senior managerial role;

    d. The lack of a comparable alternative position having particular regard to Mr. Fulton's position, experience, key responsibilities, and annual compensation at the time of termination; and

e. Other factors which will be particularized prior to trial.

17. Mr. Fulton states that he is entitled to damages for his economic losses as a consequence of Imerys' failure to provide reasonable notice of termination, having regard to what he would have been entitled to receive during the 14-month period of time following his termination. Specifically, Mr. Fulton is entitled to:

a. His entire remuneration package, as particularized above;

b. The bonus that he earned during Imerys' fiscal year for 2016 but for which he was not paid; and

c. Other benefits of economic value, a complete list of which will be particularized prior to trial.

Mitigation

18. Mr. Fulton has been and will be unable to secure comparable employment where he can fully utilize his expertise and earn an income equivalent to that which he earned with Imerys during the 14-month notice period claimed herein.

Statutory Payments

19. Mr. Fulton states that Imerys is unconditionally required to provide him with 8 weeks' of pay and 8 weeks' of benefits, or notice in lieu thereof, and approximately 9 weeks of severance pay pursuant to the *Employment Standards Act, 2000*.

20. However, despite being fully aware of its obligation, Imerys has not provided Mr. Fulton with any such payments or benefits.

Costs

21. For the above reasons, Mr. Fulton pleads that this action be granted with costs payable on a substantial indemnity basis.

Date of Issue: April 20, 2017

WHITTEN & LUBLIN
Employment Lawyers
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Toronto, ON M5H 3L5

David Whitten
LSUC# 47306F

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Lawyers for the Plaintiff

TOM FULTON
Plaintiff

and

IMERYS TALC CANADA INC.
Defendant

Court File No. CV-17-573647

ONTARIO
SUPERIOR COURT OF JUSTICE

Proceeding commenced at Toronto

STATEMENT OF CLAIM

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Lawyers for the Plaintiff

EXHIBIT 2

Court File No. CV-17-573647

ONTARIO

SUPERIOR COURT OF JUSTICE

B E T W E E N :

TOM FULTON

Plaintiff

- and -

IMERYS TALC CANADA INC.

Defendant

STATEMENT OF DEFENCE

1. The Defendant admits the allegations contained in paragraph 3 of the Statement of Claim.

2. Except as expressly admitted to herein, the Defendant denies the balance of the allegations in the Statement of Claim. The Defendant specifically denies that the Plaintiff is entitled to the relief claimed in paragraph 1 of the Statement of Claim and puts the Plaintiff to the strict proof thereof.

The Parties

3. The Defendant ("**Imerys**") is a corporation, duly incorporated in accordance with the laws of Ontario, with its head offices in Canada located in Timmins, Ontario. Imerys is the Canadian subsidiary of one of the world's largest producers of talc. Imerys operates a mine and two support sites (in Timmins and Penhorwood) in Ontario.

4. To the best of Imerys' knowledge, the Plaintiff is an individual who resides in Timmins, Ontario.

The Plaintiff's Employment

5. The Plaintiff commenced employment with the corporate predecessor of Imerys on or about June 9, 2008 as a Senior Engineer pursuant to the terms and conditions of an employment agreement dated June 1, 2008 (the "**Employment Agreement**").

6. Most recently, the Plaintiff occupied the position of Canadian Operations Manager. The Plaintiff occupied this role until his employment was terminated for cause on February 15, 2017. At the time his employment was terminated, the Plaintiff was fifty-five (55) years old.

7. As the Canadian Operations Manager, the Plaintiff's key responsibilities included:

   (a) protecting and maintaining the health and safety of all employees, contractors, vendors and visitors at Imerys' Canadian sites;

   (b) maintaining acceptable performance levels of employees and contractors;

   (c) continuously improving processes and the quality of products and services; and

   (d) ensuring compliance with all applicable laws, regulations, policies and procedures as well as, if necessary, disciplining employees for failed compliance with same.

8. At the time of his termination, the Plaintiff's remuneration consisted of:

   (a) an annual base salary of $138,320.00;

   (b) participation in Imerys's discretionary Annual Incentive Plan ("**AIP**"), subject to the terms and conditions of the AIP;

   (c) participation in Imerys' defined benefit pension plan; and

   (d) participation in Imerys's comprehensive health and welfare benefits plan.

9. Contrary to the Plaintiff's allegations at paragraph 9(b) of the Statement of Claim, it was not a term of the Plaintiff's employment that he was eligible for bonuses of

approximately $36,000.00. Rather, the Plaintiff had no contractual right to a bonus. The terms of the AIP expressly provided that an employee would not be entitled to a bonus if the employee: (i) received a disciplinary notice during the applicable plan year; or (ii) was not an employee of Imerys on the date the payments were made.

Safety and the Serious Six Protocols

10. By their nature, mining and mineral processing activities demand a strong safety culture. The processing of minerals involves the use of equipment that could cause serious debilitating injury or death if improperly operated or maintained. In pursuit of its commitment to take all reasonable steps to protect and promote the health and safety of all of its workers, Imerys has created a number of employee policies designed to reduce or eliminate health and safety risks.

11. As an employee of Imerys and the Manager of its Canadian operations, the Plaintiff was not only subject to such safety policies, but was also expected to model adherence and compliance with all Imerys policies.

12. A significant part of the health and safety matrix at Imerys is the "Serious Six" protocols. The Serious Six protocols cover the activities that are associated with the greatest risk of serious injuries and fatalities in the mining industry. The Serious Six protocols consist of:

    (a) Lockout/Tagout ("**LOTO**");

    (b) Electrical/Safety;

    (c) Machine Guarding;

    (d) Mobile Equipment;

    (e) Working at Heights; and

    (f) Ground Control.

13. The primary directive of the LOTO protocol requires that, when performing maintenance or servicing certain machinery (which includes cleaning, repairing, or realigning), there is to be no human intervention on any moving parts of the equipment.

14. Compliance with the LOTO protocol ensures that machinery is properly shut off and not started up again prior to the completion of maintenance or services. A "Lockout Device" secures the power source in such a position that it cannot be turned on and a tag identifying the owner of the lock is affixed to the Lockout Device indicating that the power should not be turned back on.

15. Given that a violation of the Serious Six protocols could result in a life threatening injury or death, all Imerys employees at the Timmins and Penhorwood sites receive regular health and safety re-training regarding the Serious Six protocols and are advised that a violation of the Serious Six protocols will lead to disciplinary action, up to and including termination of employment.

Investigation into the November 20, 2016 LOTO Incident

16. On or about February 8, 2017, it was brought to the attention of Imerys that there had been a violation of the LOTO protocol on or about November 20, 2016.

17. Given the seriousness of the assertions, Greg Harris and Jesse Bacon, Imerys' in-house counsel, immediately travelled to Timmins and undertook a comprehensive investigation that commenced on February 10, 2017. On February 13, 2017, the investigation was transitioned to John McFarlain ("**Mr. McFarlain**"), Imerys' Operations Director, and Julie Bittick ("**Ms. Bittick**"), Imerys' Human Resources Manager, who continued to conduct the investigation into the matter until February 15, 2017. Among other things, the investigation involved:

    (a) conducting interviews with thirteen (13) key employees on February 10, 2017, including:

        (i) Ross Byron ("**Mr. Byron**"), Imerys' Penhorwood Mill & Concentrator Manager;

(ii) Max Joseph ("**Mr. Joseph**"), Imerys' Apprentice Electrician;

(iii) Bobby Woodhouse ("**Mr. Woodhouse**"), Imerys' Lead Operator;

(iv) Gerry Rondeau ("**Mr. Rondeau**"), Imerys' Maintenance Supervisor;

(v) Roger Millette, Sr. ("**Mr. Millette**"), Imerys' Production Supervisor;

(vi) Mike Kerr ("**Mr. Kerr**"), Imerys' Timmins Operations Manager; and

(vii) the Plaintiff;

(b) reviewing emails and other relevant documentation; and

(c) reviewing the applicable Imerys policies.

18. The investigation resulted in Imerys making the following findings:

(a) On or about November 20, 2016, Mr. Woodhouse discovered that there was a talc leak in the feed pipe to the ball mill at the Penhorwood facility. Access to the ball mill is controlled via an area guard. The area guard requires disengagement via lockout implemented by a licensed electrician due to the power supply being 4160V. There is a posting on the area guard indicating the requirement to perform LOTO prior to entry. LOTO requirements in relation to the ball mill are reviewed in annual safety certification training and on a regular basis.

(b) Mr. Woodhouse directed a more junior employee, Mr. Joseph, to repair the leak. Mr. Joseph refused, noting that a licensed electrician was required for that particular repair and that the ball mill is in a restricted area requiring compliance with the LOTO protocol prior to entry.

(c) Mr. Woodhouse persisted and Mr. Joseph continued to refuse. As a result, Mr. Woodhouse entered the restricted area, taking Mr. Joseph with him, without locking out or tagging out the machinery or being accompanied by a licensed electrician (the "**LOTO Incident**"). The LOTO Incident seriously jeopardized the health and safety of both Mr. Woodhouse and Mr. Joseph.

(d) On November 21, 2016, Mr. Millette and Mr. Rondeau, upon reviewing a report regarding the fix of the ball mill leak, discovered the LOTO Incident. Mr. Millette and Mr. Rondeau immediately informed Mr. Byron. In turn, Mr. Byron requested that Mr. Millette report the LOTO Incident directly to the Plaintiff.

(e) In a subsequent conversation with Mr. Byron, the Plaintiff forbade Mr. Byron from disciplining Mr. Woodhouse. The Plaintiff assured Mr. Byron that he would handle the matter personally. Further, the Plaintiff later ordered Mr. Byron to delete the entry in Imerys' health, safety, environment and quality database that Mr. Byron had prepared concerning the LOTO Incident. By deleting the database entry, the LOTO Incident was effectively concealed from the Plaintiff's supervisors and Imerys' senior management.

(f) On November 24, 2016, the Plaintiff informed Mr. Millette that he had spoken with Mr. Woodhouse and that the matter "was handled". Shortly thereafter, the Plaintiff informed Mr. Kerr about the LOTO Incident and informed him that it "was being handled".

(g) The LOTO Incident was discussed at several morning safety meetings. However, despite the Plaintiff's representations and assurances, Mr. Woodhouse received no discipline (in contrast to other employees whose LOTO violations resulted in termination of employment).

19. When the Plaintiff was questioned directly about the LOTO Incident in the course of the investigation, he dishonestly stated that he heard about the incident more than a month after the fact, that he had conducted an investigation, and had imposed "stage 2" discipline on Mr. Woodhouse (a written warning). However, as indicated above, the Plaintiff was made aware of the LOTO Incident immediately after its occurrence, did not conduct an investigation, and never imposed any discipline on Mr. Woodhouse.

20. Further, the Plaintiff intentionally misled applicable parties in order to stop any further inquiries into the matter.

21. In addition to the above, the investigation also revealed that:

(a) employees at the Penhorwood location felt that safety practices and safety training had deteriorated in recent years under the Plaintiff's management;

(b) Mr. Woodhouse had previously violated safety rules without discipline from the Plaintiff; and

(c) employees were fearful to report Mr. Woodhouse's policy violations to the Plaintiff because they thought they might be subject to retaliation from the Plaintiff, or that such reports would not be considered by the Plaintiff.

Termination of the Plaintiff's Employment

22. As is evident from the facts outlined above, the Plaintiff's misconduct was wilful and grossly negligent. Moreover, when Imerys inquired into his misconduct, the Plaintiff chose to respond with deceit and lies.

23. On or about February 15, 2017, Mr. McFarlain and Ms. Bittick met with the Plaintiff and communicated to him that his employment was being terminated for cause effective immediately. During the meeting the Plaintiff admitted that he had "screwed up" and mishandled the situation. The Plaintiff was provided a letter dated February 15, 2017, confirming the conversation.

24. Notwithstanding the Plaintiff's years of service at the time of his termination, Imerys pleads that his egregious and willful misconduct caused an irreparable breakdown in his relationship with Imerys and violated the faith, confidence and trust inherent to his role, justifying his immediate termination for just cause.

25. In particular, the Plaintiff:

(a) willfully engaged in a dereliction of his duties;

(b) breached his duty of fidelity to Imerys;

(c) willfully engaged in conduct that was prejudicial and detrimental to the interests of Imerys by ignoring health and safety issues;

(d) breached numerous Imerys policies, including Imerys' policy in relation to data integrity & ethics; and

(e) attempted to conceal his misconduct during the investigation process.

Claimed Damages

26. For the reasons above, Imerys pleads that the Plaintiff's complete dereliction of duty and potential endangerment of the health and safety of numerous employees constituted fair and reasonable grounds to terminate his employment for just cause. In fact, particularly when coupled with his dishonesty, Imerys pleads that this is precisely the type of disentitling conduct that the legislature intended to capture under the *Employment Standards Act, 2000.* Imerys therefore pleads that it is not in breach of its obligations to the Plaintiff and that the Plaintiff is not entitled to any damages whatsoever.

27. Contrary to the Plaintiff's allegation at paragraph 11 of the Statement of Claim, the Plaintiff did not perform at "a high level in 2016". In fact, during 2016, the Plaintiff engaged in egregious misconduct that disentitled him to any bonus award in respect of 2016. Further, the termination of the Plaintiff's employment disentitles him to any future bonus payment pursuant to the terms of the AIP.

28. In the alternative, if the Plaintiff is found to have been wrongfully dismissed (which is not admitted but expressly denied), Imerys pleads that:

(a) given the Plaintiff's age, length of service and character of employment, his claim for a common law notice period of fourteen (14) months is wholly inordinate, excessive and remote;

(b) the Plaintiff ought not be entitled to any damages in respect of those portions of the compensation which were wholly discretionary or which the Plaintiff contractually agreed could be revoked without compensation in lieu; and

(c) the Plaintiff has failed to properly mitigate his damages. To the extent the Plaintiff fails to prove he has diligently pursued alternative employment since his termination, any damages awarded should be reduced accordingly.

29. For all of the above reasons, Imerys requests that this action be dismissed with costs provided to it on a substantial indemnity basis.

Date: May 26, 2017

STIKEMAN ELLIOTT LLP
Barristers and Solicitors
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Lawyers for the Plaintiff

TOM FULTON		**IMERYS TALC CANADA INC.**	Court File No: CV-17-573647
	and	**N**	
Plaintiff		**Defendant**	

ONTARIO
SUPERIOR COURT OF JUSTICE

Proceeding commenced at TORONTO

STATEMENT OF DEFENCE

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Lawyers for the Defendant

EXHIBIT 3

Court File No. CV-17-573647

ONTARIO
SUPERIOR COURT OF JUSTICE

B E T W E E N:

TOM FULTON

Plaintiff

- and -

IMERYS TALC CANADA INC.

Defendant

REPLY

1. The Plaintiff, Tom Fulton ("**Mr. Fulton**"), admits the allegations in the following paragraphs of the Statement of Defence: 3, 5, 7, 12, and 13-15.

2. Mr. Fulton denies the allegations in the following paragraphs of the Statement of Defence: 6, 8-11 and 18-29.

3. Mr. Fulton has no knowledge of the allegations in the following paragraphs of the Statement of Defence: 4, 16, and 17.

Overview

4. The Defendant's allegations of just cause are completely without merit. They are based entirely on Mr. Fulton (a) having orally disciplined an employee when he intended to discipline them in writing (but forgot to do so) and (b) having forgotten

the date of the Incident (defined below). He promptly acknowledged and corrected these errors when he was permitted to check his notes.

5. This conduct – which does not amount to misconduct, much less serious misconduct – does not and cannot justify the termination for cause of a long-tenured, senior employee with an excellent safety record and no history of misconduct.

Mr. Fulton's Safety Track Record

6. Mr. Fulton admits that he is aware of the importance of health and safety at Imerys.

7. Throughout his lengthy tenure, Mr. Fulton was required to and did successfully discipline employees for safety infractions on numerous occasions.

8. Further, Mr. Fulton took many steps to advance Imerys' health and safety record. Indeed, he proactively championed numerous safety initiatives at Imerys.

9. Prior to the incident allegedly giving rise to cause for his termination (the "**Incident**"), Mr. Fulton was never advised that his handling of safety issues was problematic or required improvement. Further, he was never disciplined for any such problems.

10. Indeed, prior to the Incident, Mr. Fulton has never been disciplined by Imerys for any reason whatsoever.

Imerys' Safety Protocols

11. While Imerys did value protecting workers' health and safety, it did not have:

a. A formal policy or procedure for how to investigate alleged workplace safety infractions;

b. Specific requirements about what level of discipline is appropriate in the event of different kinds of safety infractions or how such discipline had to be communicated to workers; or

c. Specific requirements about which database to record which types of events in, as discussed below.

12. In the alternative, Imerys never brought any such policies, procedures or requirements to Mr. Fulton's attention.

13. Further, in the approximate one-year period leading up to the Incident, several key Imerys personnel resigned or took leaves of absence, while other key positions were eliminated. As a result, Imerys was understaffed and ill-equipped to address safety concerns as they arose. In particular:

a. Mr. Fulton's prior position – Penhorwood Operations Manager – was eliminated when he was promoted to Canadian Operations Manager, leaving Mr. Fulton to handle all his prior full-time obligations while also having to take on responsibility for the other support site and the mine site;

b. Imerys' Mine Manager was given significant additional duties, leaving Mr. Fulton to handle daily operating issues that had been the Mine Manager's responsibility;

c. Imerys' Operations Manager for the Timmins site took a leave of absence and was not replaced, resulting in the assignment of a Human Resources Manager to full-time production duties;

d. Imerys unilaterally switched the position of a Human Resources Manager position for the mine site from full-time to half-time and no one was hired to cover the balance; and

e. Imerys eliminated its Safety Coordinator position and terminated the employment of the employee who previously held that role.

14. While Imerys did not ask Mr. Fulton to take over these individuals' additional responsibilities, and he was not actually responsible for them, Mr. Fulton did his best to cover until support could be provided.

15. In the circumstances, it was unreasonable and inappropriate to expect Mr. Fulton to manage all of these responsibilities without any errors.

Mr. Fulton's Handling of the Incident

16. On or about November 20, 2016, the Incident occurred.

17. On a date between November 20, 2016 and November 24, 2016, Mr. Fulton learned of the Incident. He immediately began to investigate.

18. In the course of his investigation, Mr. Fulton determined that Bobby Woodhouse ("**Mr. Woodhouse**") had violated Imerys' safety protocols.

19. Mr. Fulton further determined that in light of Mr. Woodhouse's prior unblemished safety record, among other factors, it would be appropriate to give Mr. Woodhouse a written warning.

20. On November 24, 2016, Mr. Fulton met with Mr. Woodhouse, explained his findings, and gave Mr. Woodhouse a verbal warning.

21. He intended to prepare and deliver the written warning shortly after that meeting, but forgot to do so.

Mr. Byron's Role

22. Mr. Fulton admits that he told Ross Byron ("**Mr. Byron**") that he, and not Mr. Byron, would address any discipline for Mr. Woodhouse. He did so because:

    a. Mr. Fulton had no personal relationship with Mr. Woodhouse and believed that he would be in a position to address any disciplinary measures in a fair and balanced way; and

    b. In contrast, Mr. Fulton was concerned about Mr. Byron's ability to be fair and objective as, among other things:

        i. Approximately 3 months before the Incident, Mr. Woodhouse reported Mr. Byron's son, who is also an employee of Imerys, for a safety infraction;

ii. Mr. Woodhouse and Mr. Byron had had recent run-ins at work, resulting in Mr. Fulton giving Mr. Byron a verbal warning about his behaviour towards Mr. Woodhouse; and

iii. Mr. Byron's cousin, who is also an employee of Imerys, was in a position to replace Mr. Woodhouse and be promoted to his position if Mr. Woodhouse were to lose his position or any shifts.

23. There was nothing unreasonable or inappropriate about Mr. Fulton handling the discipline of Mr. Woodhouse. Indeed, given Mr. Byron's conflict of interest and the lack of other staff who could do so, it was entirely appropriate.

24. Further, Mr. Fulton had no reason to, and did not, favour Mr. Woodhouse over other employees who received written warnings and/or more serious discipline.

Imerys' Incident Databases and the False Allegation of Concealment

25. Imerys maintains various databases for tracking its information, including:

a. A Health, Safety, Environment and Quality Database (the "**HSEQ Database**"), the purpose of which was to track any health, safety and other incidents; and

b. A Human Resources Database (the "**HR Database**"), the purpose of which was to track various human resources matters, including disciplinary measures taken against employees.

26. The HSEQ Database was accessible to all Imerys employees, while the HR Database was treated confidentially and accessible to fewer employees.

27. Generally, an incident related to an equipment breakdown or a procedural issue would be reported in the HSEQ Database, whereas incidents related to employee safety infractions and related discipline would only be recorded in the HR Database. This information was kept in the HR Database to protect employees' right to privacy.

28. Given that the Incident related to a safety infraction by and discipline of Mr. Woodhouse, Mr. Fulton wanted the Incident to be recorded in the HR Database, rather than the HSEQ Database.

29. At no time did he try to, or in fact, conceal the Incident. On the contrary, and as pleaded by Imerys, Mr. Fulton regularly raised and discussed the Incident at management meetings thereafter.

Imerys' Unreasonable and Improper Interrogation

30. On or about February 10, 2017, Imerys began to investigate the Incident, including interrogating Mr. Fulton (the "**Meeting**").

31. Mr. Fulton was given no advance warning of the Meeting or its subject matter and was not permitted to rely on his notes to assist him with his recollection, despite his repeated requests.

32. Mr. Fulton admits that:

    a. During the Meeting, he told Imerys that he was told about the Incident some time around January 2017;

b. The next day, and upon reviewing his notes after the Meeting, he advised Imerys that he had first heard about the Incident in November 2016, and that his prior comment was inaccurate;

c. During the Meeting, he told Imerys that he had given Mr. Woodhouse a written warning;

d. Upon reviewing his notes after the Meeting, he advised Imerys that he had not actually delivered a written warning to Mr. Woodhouse and that his prior comment was inaccurate; and

e. It was an error for him to only deliver a verbal warning to Mr. Woodhouse without following through with the written warning as he had intended.

33. It was unfair to expect Mr. Fulton to accurately recall the details of the Incident without any warning or any means to refresh his memory.

34. At no time did Mr. Fulton:

a. Act dishonestly;

b. Intentionally mislead or deceive Imerys in any way;

c. Fail to discipline Mr. Woodhouse;

d. Breach his duty of fidelity;

e. Wilfully engage in dereliction of duties;

f. Ignore health and safety issues; or

g. Breach Imerys' policies.

Conclusion

35. Given that Mr. Fulton investigated the Incident, disciplined Mr. Woodhouse, never concealed or attempted to conceal any aspect of the Incident, and promptly came forward and admitted his failure to deliver a written warning to Mr. Woodhouse, Imerys had no cause to terminate Mr. Fulton's employment.

36. In the circumstances, Mr. Fulton denies that he was guilty of misconduct.

37. Further, and in the alternative, Mr. Fulton denies that the misconduct was sufficiently serious to justify termination for cause.

38. Further, and in the alternative, Mr. Fulton denies that any misconduct, taken in appropriate context, justifies Imerys' decision to terminate Mr. Fulton's employment for cause.

39. On the contrary, Mr. Fulton was unfairly made a scapegoat in the face of global health and safety issues being experienced by Imerys, its parent and its affiliated companies around the world. Indeed, those entities:

a. Experienced numerous lost-time injuries in the approximate three-month period prior to Mr. Fulton's termination;

b. Were facing criticism from shareholders and the press regarding their safety record; and

c. Chose to use Mr. Fulton, a senior and high-profile employee, as evidence that such incidents would no longer be tolerated.

Date: June 7, 2017

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Lawyers for the Plaintiff

TOM FULTON
Plaintiff

and

IMERYS TALC CANADA INC.
Defendant

Court File No.: CV-17-573647

ONTARIO
SUPERIOR COURT OF JUSTICE

Proceeding commenced at Toronto

REPLY

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Lawyers for the Plaintiff

EXHIBIT 4

Contact

www.linkedin.com/in/tom-fulton-7a038512 (LinkedIn)

Top Skills

Mineral Processing
Metallurgy
Mining

Certifications

PI System Manager
Six Sigma Green Belt

Honors-Awards

Morgan Chapness Memorial Award
Most Innovative Idea of the Year Award

Publications

IMPROVED DEINKED PULP FOR NEWSPRINT

Tom Fulton

Seasoned Operations Leader
Williams Lake

Summary

Team centered Operations Manager with the skills to get traction on important issues. Leading edge experiences in Safety, Continuous Improvement, Process Optimization and Teamwork. Outstanding grasp of how to leverage new technologies to create profits, and how to break down the complexities to generate utilization on the shop floor.

Experience

Taseko: Gibraltar Mine
Superintendent of Mill Operations
February 2018 - Present (3 years 6 months)
Williams Lake

Porcupine Engineering Services Inc
Senior Consultant
March 2017 - February 2018 (1 year)
Timmins, ON

Process engineering, start up support, project engineering

Provided technical start up support to a new talc flotation operation in Slovakia

Imerys Performance Additives
2 years 11 months

Canadian Operations Manager
September 2015 - February 2017 (1 year 6 months)
Timmins, ON

General manager for the 3 sites comprising the Timmins talc operation.

Coached the operation to 13 years with no LTA.

Managed all business systems safety/quality/accounting/HR etc.

Direct interface for all major customers.

Gross Margin rose 34.5% in 1 year, EBITDA quadrupled over 5 years.

Negotiated a successful RDA with the Flying Post First Nation.

Penhorwood Operations Manager

April 2014 - September 2015 (1 year 6 months)
Timmins, ON

Managed the Penhorwood open pit mine and flotation concentrator.
Cornerstone of the Visible Commitment from Management safety program.
Continuous Improvement initiatives increase output by 42%.
Directed the open pit mine campaign.

Rio Tinto
Canadian Engineering Manager
June 2008 - April 2014 (5 years 11 months)
Timmins, ON

Quarterback for the division's strategic "Polaris Project", a complex project with many international stakeholders and multiple large contracts covering a 3 year schedule.
Defined a new strategic plan for the operation.
Deployed capital planning and implementation to meet the strategic plan.
Created a new high margin grade of talc and brought it to market.

BoiseCascade-Abitibi Consolidated-Norske Canada-Tembec
Various
June 1988 - May 2008 (20 years)
20 years in the papermaking industry

Extensive project engineering experience.
Extensive operations management experience.
Operations leader for the startup of a $100MM flotation recycling facility.
Coach for the startup of a self directed work team.
Coach for the Continuous High Performance Team.

Moore Business Forms & Systems
Project Engineer
June 1986 - May 1988 (2 years)
Toronto, Canada Area

Project engineering for various printing systems.
Designed an ATM card printing press.
Relocated a printing line from Alabama to Ontario.

Education

University of Waterloo

BASc, Mechanical Engineering · (1981 - 1986)

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

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

ONTARIO
SUPERIOR COURT OF JUSTICE
(COMMERCIAL LIST)

Proceeding commenced at Toronto

AFFIDAVIT OF ERIC DANNER
SWORN SEPTEMBER 27, 2021

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Lawyers for the Applicant

TAB 3

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

ONTARIO
SUPERIOR COURT OF JUSTICE
(COMMERCIAL LIST)

THE HONOURABLE	)	FRIDAY, THE 1ST
	)	
	)	
MR. JUSTICE KOEHNEN	)	DAY OF OCTOBER, 2021
	)	

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

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

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

ORDER
(RECOGNITION OF FOREIGN ORDERS)

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

ON READING the affidavit of Eric Danner sworn September 27, 2021 (the "**First Danner Affidavit**"), the Third Report of KPMG Inc., in its capacity as information officer (the "**Information Officer**") dated September ●, 2021, each filed, and upon being provided with copies of the documents required by section 49 of the CCAA,

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

SERVICE

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

hereby dispenses with further service thereof.

RECOGNITION OF FOREIGN ORDERS

2. **THIS COURT ORDERS** that any capitalized terms not otherwise defined herein shall have the meanings given to such terms in the First 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 Authorizing the Debtors to Reject Certain Executory Contracts and Unexpired Leases Effective as of the Rejection Date*, entered on May 24, 2021 [Docket No. 3579] (the "**Contract Rejection Order**");

(b) *Order Authorizing Debtors to Pursue and Effectuate Purchase of Property Located in Lyndonville, Vermont and Johnson, Vermont*, entered on August 24, 2021 [Docket No. 3961] (the "**Vermont Acquisition Order**");

(c) *Order Authorizing the Debtors to (a) Close the Adequate Assurance Account Established by the Utilities Order and (b) Utilize all Funds in the Adequate Assurance Account in the Ordinary Course*, entered on August 24, 2021 [Docket No. 3960] (the "**Utilities Close-out Order**");

(d) *Order Sustaining Debtors' Objection to Proof of Claim No. 442 Filed by Thomas Neil Fulton*, entered on August 30, 2021 [Docket No. 3978] (the "**Fulton Claim Objection Order**"); and

(e) *Order Authorizing (I) An Expanded scope of Services to be Provided by Ramboll US Consulting, Inc. as Environmental Advisor to the Debtors Nunc Pro Tunc to August 16, 2021 and (II) Waiving Certain Informational Requirements of Local Rule 2016-2*, entered on September 17, 2021 [Docket No. 4106] (the "**Supplemental Ramboll Retention Order**").

GENERAL

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

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

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

ORDER
(RECOGNITION OF FOREIGN ORDERS)

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Lawyers for the Foreign Representative

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

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

ONTARIO
SUPERIOR COURT OF JUSTICE
(COMMERCIAL LIST)

Proceeding commenced at Toronto

MOTION RECORD
(RECOGNITION OF FOREIGN ORDERS)
(Returnable October 1, 2021

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Lawyers for the Applicant