

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

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

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

April 24, 2023

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ONTARIO
SUPERIOR COURT OF JUSTICE
(COMMERCIAL LIST)

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

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

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

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

April 24, 2023

I. INTRODUCTION

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

- person or entity to, among other things, discontinue or terminate any supply of products or services required by the Debtors in Canada; and (v) granting a superpriority charge over the Debtors' property in Canada in favour of the Information Officer and its counsel, as security for their professional fees and disbursements incurred in respect of these proceedings, up to a maximum amount of \$200,000 CAD.
7. On March 5, 2019, the Office of the United States Trustee for the District of Delaware (the "**Trustee**") filed a Notice of Appointment of the Official Committee of Tort Claimants (the "**TCC**"), which was formed to represent the tort claimants and ensure that their rights and interests are protected in these proceedings.
 8. On April 24, 2019, the U.S. Court entered an Order (I) Authorizing Continued Use of Existing Cash Management System, Including Maintenance of Existing Bank Accounts, Checks, and Business Forms, (II) Authorizing Continuation of Existing Deposit Practices, (III) Approving the Continuation of Intercompany Transactions, and (IV) Granting Superpriority Administrative Expense Status to Certain Postpetition Intercompany Claims (the "**Final Cash Management Order**").
 9. On May 24, 2019, the Canadian Court granted an order which recognized and gave full force and effect in Canada to, among other things, the Final Cash Management Order.
 10. On June 3, 2019, the US Court entered an order appointing James L. Patton, Jr. as legal representative for future talc personal injury claimants (the "**FCR**") *nunc pro tunc* to the Petition Date (the "**FCR Order**"). On October 28, 2019, the Canadian Court granted an order which recognized and gave full force and effect in Canada to the FCR Order.
 11. On October 29, 2020, the US Court entered an Order (I) Approving Debtors' Designation of Magris Performance Materials Inc., f/k/a Magris Resources Canada Inc. ("**Magris**") as Stalking Horse Bidder and Related Bid Protections and (II) Granting Related Relief (the "**Stalking Horse Order**"). On November 3, 2020, the Canadian Court granted an order which recognized and gave full force and effect in Canada to various orders, including the Stalking Horse Order.
 12. On November 17, 2020, the US Court entered an Order (I) Approving Sale of All or Substantially All of the Debtors' Assets Free and Clear of Liens, Claims, Encumbrances, and Other Interests (the "**Asset Sale**"), (II) Authorizing Assumption and Assignment of Certain Executory Contracts and Unexpired Leases, and (III) Granting Related Relief (the "**Sale Approval Order**"). On November

- 25, 2020, the Canadian Court granted an order which recognized and gave full force and effect in Canada to the Sale Approval Order.
13. On January 26, 2021, the Canadian Court granted various orders including discharging Richter as the information officer in these proceedings and appointing KPMG Inc. (“**KPMG**” or the “**Information Officer**”) as the Information Officer effective as of the time of Richter’s discharge.
 14. On February 17, 2021 (the “**Sale Date**”), the Debtors closed the Asset Sale to Magris pursuant to the Sale Approval Order.
 15. On March 12, 2021, the US Court entered an Order Authorizing The Debtors To (I)(A) Employ CohnReznick LLP to Provide Interim Management Services Pursuant to 11 U.S.C. § 363, and (B) Designate Eric Danner as Their Chief Restructuring Officer (the “**CRO**”), *nunc pro tunc* to January 28, 2021, and (II) Designate Eric Danner as Their President and Treasurer Effective Upon the Closing of the Sale (the “**CRO Retention Order**”).
 16. On April 19, 2021, the Canadian Court granted an order which recognized and gave full force and effect in Canada to various orders including the CRO Retention Order.
 17. On November 30, 2021, the US Court entered an Order (I) Appointing Mediators, (II) Referring Certain Matters to Mediation, and (III) Granting Related Relief (the “**Mediation Order**”).
 18. On December 22, 2021, the Canadian Court granted an order which recognized and gave full force and effect in Canada to the Mediation Order.
 19. On March 11, 2022, the US Court entered an Order extending the mediation period pursuant to the Mediation Order through to April 8, 2022 (the “**First Mediation Extension Order**”). On April 15, 2022, the US Court entered an Order extending the mediation period through to May 15, 2022 (the “**Second Mediation Extension Order**”).
 20. On May 3, 2022, the Canadian Court granted an order which recognized and gave full force and effect in Canada to various settlement and mediation orders, including the First Mediation Extension Order and the Second Mediation Extension Order.
 21. On May 23, 2022, the US Court entered an Order extending the mediation period pursuant to the Mediation Order through to June 30, 2022 (the “**Third Mediation Extension Order**”). On July

13, 2022, the US Court entered an order extending the mediation period through to September 30, 2022 (the “**Fourth Mediation Extension Order**”).

22. On August 10, 2022, the US Court entered an Order (I) Approving the Broughton Reclamation Agreement and the Escrow Agreement and (II) Authorizing ITC to Perform all Obligations Thereunder (the “**Broughton Reclamation Order**”).
23. On September 15, 2022, the Canadian Court granted an order which recognized and gave full force and effect in Canada to various orders including the Broughton Reclamation Order, the Third Mediation Extension Order and the Fourth Mediation Extension Order.
24. The primary purpose of the Chapter 11 Proceedings is to confirm a plan of reorganization pursuant to the Bankruptcy Code that channels all present and future talc personal injury claims against the Debtors to a trust so that the Debtors can emerge from these restructuring proceedings free of historical talc-related liabilities.
25. KPMG, in its capacities as proposed Information Officer and Information Officer, has previously provided the Canadian Court with seven reports in respect of these proceedings. Copies of all materials and reports filed, and orders granted by the Canadian Court in these Recognition Proceedings, are available on a website (the “**Information Officer’s Website**”) established by the Information Officer for the purposes of these proceedings at <https://home.kpmg/ca/imerystalc>. Additionally, there is a link on the Information Officer’s Website to the Debtors’ restructuring website maintained by Kroll Restructuring Administration LLC f/k/a Prime Clerk LLC, (<https://cases.ra.kroll.com/imerystalc/>) which includes copies of the US Court materials and orders, notices and additional information in respect of the Chapter 11 Proceedings.

II. PURPOSE OF REPORT

26. The purpose of this seventh report (the “**Seventh Report**”) of KPMG, in its capacity as the Information Officer, is to provide the Canadian Court with information concerning:
 - (a) the motion of the Foreign Representative returnable April 26, 2023 for recognition in Canada of the Stipulation Order and the Mediation Extension Orders (each as defined herein); and
 - (b) the activities of the Information Officer since the sixth report (the “**Sixth Report**”) dated September 13, 2022.

III. TERMS OF REFERENCE

27. In preparing this Seventh Report, KPMG has relied solely on information and documents provided by the Debtors and their advisors, including unaudited financial information, declarations and affidavits of the Debtors' executives and other information provided in the Chapter 11 Proceedings (collectively, the "**Information**"). In accordance with industry practice, except as otherwise described in the Seventh Report, KPMG has reviewed the Information for reasonableness, internal consistency, and use in the context in which it was provided. However, KPMG has not audited or otherwise attempted to verify the accuracy or completeness of the Information in a manner that would comply with Generally Accepted Auditing Standards ("**GAAS**") pursuant to the *Chartered Professional Accountant of Canada Handbook* and, as such, KPMG expresses no opinion or other form of assurance contemplated under GAAS in respect of the Information.
28. Unless otherwise stated, all monetary amounts contained herein are expressed in United States dollars.
29. Capitalized terms not otherwise defined herein are as defined in the affidavit of Eric Danner, the CRO, President and Treasurer of the Debtors, sworn on April 21, 2023 (the "**April 21 Danner Affidavit**") and filed in support of the Foreign Representative's motion. This Seventh Report should be read in conjunction with the April 21 Danner Affidavit, as certain information contained in the April 21 Danner Affidavit has not been included herein in order to avoid unnecessary duplication.

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

Stipulation Order

30. As noted in the April 21 Danner Affidavit, the Debtors have incurred, and continue to incur, professional fees and expenses related to the administration of the Chapter 11 Proceedings, including those of the TCC and FCR (collectively, the "**Professional Fees**").
31. Since the Petition Date, ITA paid, on behalf of the Debtors, substantially all of the Professional Fees incurred as they came due, with ITC providing periodic reimbursement to ITA for 33.33% of

the fees and expenses of the professionals retained by the Debtor in the Chapter 11 Proceedings (the “**Debtor Professional Fees**”).

32. On March 26, 2020, the U.S. Court entered an Order Approving Stipulation and Agreement Permitting ITC to Make Payments to ITA for Non-Debtor Professional Fees (the “**Initial Stipulation**”). The key terms of the Initial Stipulation included:
 - (a) ITC would make an initial payment to ITA in the amount of \$3,450,000;
 - (b) in addition to the reimbursement for the Debtor Professional Fees, ITC would pay ITA for (i) 33.33% of the FCR’s professional fees, and (ii) 26.5% of the TCC’s professional fees; and
 - (c) payments from ITC to ITA (including the \$3.45 million initial payment) would be granted super-priority administrative expense status in accordance with the Final Cash Management Order.
33. ITC has provided reimbursement to ITA in accordance with the Initial Stipulation through to September 30, 2022. The Information Officer understands that ITV has not provided reimbursement to ITA on account of any of the Professional Fees since the commencement of the Chapter 11 Proceedings.
34. In January 2023, the CRO advised the Information Officer that based on the current cost-sharing arrangements of the Chapter 11 Costs (as defined below), ITA could potentially experience liquidity constraints by Q3 of 2023, while ITC and ITV would still have sufficient funds to pay the Chapter 11 Costs in the ordinary course. The Debtors proposed amendments to the Initial Stipulation that would revise the cost sharing terms and also include ITV as a party.
35. The CRO subsequently engaged with the Information Officer to review various cost sharing methodologies considered by the Debtors. The Debtors ultimately proposed that the Chapter 11 Costs be reallocated among the Debtors based on each Debtor’s relative share of the proceeds received from the Asset Sale. Further, the Debtors proposed the reallocations be applied

retroactively to the Sale Date as this provided the best outcome for all Debtors by maximizing the liquidity for all three entities.

36. The Asset Sale generated proceeds of \$223 million, of which ITA received 36.5% of the proceeds, ITV received 13.5% of the proceeds, and ITC received 50.0% of the proceeds (the “**Asset Sale Allocation**”).
37. On February 22, 2023, the Debtors filed a motion (the “**Motion**”) for an order to approve the stipulation and agreement entered into by and among the Debtors and the Information Officer.
38. On March 8, 2023, the Trustee contacted the Debtors with informal comments and questions on the Motion. On March 31, 2023, the Debtors filed a supplement to the Motion and a proposed order (the “**Stipulation Order**”) to approve a revised stipulation and agreement (the “**Stipulation**”) entered into by and among the Debtors and the Information Officer. The Stipulation accounted for certain comments received by the Trustee. The key terms of the Stipulation are as follows:
 - (a) ITC would make an initial payment to ITA in the amount of \$14,585,856 (the “**Initial ITC Payment**”), which payment reflects the reimbursement to ITA for Professional Fees and certain other expenses further described in the Stipulation including, for example, mediation fees and director and officer insurance policy fees (together with the Professional Fees, the “**Chapter 11 Costs**”) incurred during the period from the Sale Date to September 30, 2022 based on the Asset Sale Allocation, less any amounts previously paid by ITC to ITA pursuant to the Initial Stipulation;
 - (b) ITV would make an initial payment to ITA in the amount of \$10,214,003, which payment reflects the reimbursement to ITA for the Chapter 11 Costs incurred during the period from the Sale Date to September 30, 2022 based on the Asset Sale Allocation;
 - (c) thereafter, upon request from ITA, to the extent ITC or ITV, as applicable, hold sufficient funds (and in the case of ITC, with the consent of the Information Officer), ITC or ITV, as applicable, shall be authorized to pay ITA on a periodic basis for (i) 50% of the Chapter 11 Costs, in the case of ITC, and (ii) 13.5% of the Chapter 11 Costs, in the case of ITV;
 - (d) in the event that at any time in the future, ITC or ITV files a claim related to any payments made pursuant to the Stipulation (collectively, the “**Affiliate Debtor Payments**”), then such claim shall be accorded super-priority administrative expense status (an “**Affiliate Debtor Super-priority Claim**”) in accordance with the Final Cash Management Order,

provided that such Affiliate Debtor Super-priority Claims are limited to Affiliate Debtor Payments (or portions thereof) made to ITA that ITC and/or ITV dispute as improper or invalid;

- (e) any Affiliate Debtor Super-priority Claim shall be considered satisfied in full and extinguished upon confirmation of a plan of reorganization that provides for payment in full of allowed general unsecured claims against ITC or ITV, as applicable; and
 - (f) ITC shall no longer have an obligation to pay ITA for reimbursement of Professional Fees if it is determined by the Information Officer, subject to reasonable consent of the Debtors or by order of the court, that such payment to ITA will prevent ITC from having sufficient funds to satisfy in full allowed general unsecured claims against ITC.
39. The Information Officer reviewed and reconciled the supporting documentation for the Initial ITC Payment.
40. As noted in the April 21 Danner Affidavit, the Stipulation does not relate to Professional Fees incurred prior to the Sale Date.
41. Prior to the filing of the Motion, the Debtors provided the Information Officer with copies of the current claims register for ITC as well as the Debtors' cash flow projections by entity under the various reallocation scenarios. The Debtors' cash flow projections indicate ITC has sufficient funds to make the Initial ITC Payment, and based on the forecast assumptions, continued reimbursements to ITA pursuant to the Stipulation through at least the end of 2024. On that basis, the Information Officer was satisfied the Stipulation would not adversely impact ITC and/or the interests of its creditors.
42. On April 7, 2023, the US Court entered the Stipulation Order without hearing.
43. The recognition of the Stipulation Order in Canada is appropriate in order to coordinate these proceedings in the U.S. and Canada. In the view of the Information Officer, the Stipulation balances the need to alleviate potential liquidity constraints at ITA with protecting the interests of ITC and its creditors.

Mediation Extension Orders

44. As noted above, the US Court entered the Mediation Order on November 30, 2021, which order was recognized by the Canadian Court on December 22, 2021. Pursuant to the Mediation Order, the term of the mediation was to expire on February 28, 2022, which date could be extended by further order of the US Court.
45. As noted in the Sixth Report, the US Court previously entered orders extending the mediation period to September 30, 2022.
46. On October 31, 2022, the US Court entered an order extending the mediation period through to December 31, 2022 (the “**Fifth Mediation Extension Order**”) and on January 23, 2023, the US Court entered an order extending the mediation period through to January 31, 2023 (which was then extended through to and including February 28, 2023 through a certification of counsel filed on February 3, 2023 (the “**Sixth Mediation Extension Order**”).
47. On March 29, 2023, the US Court entered an order extending the mediation period through to March 31, 2023 (which was then extended through to and including April 30, 2023 through a certification of counsel filed on April 3, 2023) (together with the Fifth Mediation Extension Order and Sixth Mediation Extension Order, the “**Mediation Extension Orders**”).
48. The Information Officer understands that while progress has been made in the mediation, the mediation activity remains ongoing and extending the term of the mediation will provide the parties additional time to continue the mediation with the aim of progressing towards a resolution of the mediation issues in order to ultimately avoid a highly contested plan confirmation process.

V. ACTIVITIES OF THE INFORMATION OFFICER

49. The activities of the Information Officer since the date of the Sixth Report include:
 - (a) communicating with the Debtors’ advisors, including the CRO, and the Information Officer’s counsel regarding the status of matters related to the Chapter 11 Proceedings and the Recognition Proceedings;
 - (b) reviewing materials filed by various parties in the Chapter 11 Proceedings in connection with the Stipulation Order and the Mediation Extension Orders;

- (c) reviewing the Debtors' cash flow reporting and professional fee reimbursement requests, and corresponding with the CRO and CohnReznick on same;
- (d) reviewing the Debtors' materials on the various reallocation methodologies considered and corresponding with the CRO and CohnReznick on same;
- (e) reviewing and reconciling the support for the Initial ITC Payment and corresponding with the CRO and CohnReznick on same;
- (f) attending before the Canadian Court in respect of the Foreign Representative's motion for recognition of, among other things, the Broughton Reclamation Order, the Third Mediation Extension Order and the Fourth Mediation Extension Order;
- (g) maintaining and updating, as necessary, the Information Officer's Website; and
- (h) preparing this Seventh Report.

VI. INFORMATION OFFICER'S RECOMMENDATION

50. Based on the Information received and reviewed, the Information Officer is of the view that it is reasonable to recognize the Stipulation Order and the Mediation Extension Orders, and respectfully recommends that the Canadian Court grant the recognition order being sought by the Foreign Representative in its motion returnable April 26, 2023.

All of which is respectfully submitted this 24th day of April, 2023.

KPMG Inc.

**In its capacity as the Information Officer of
Imerys Talc America, Inc., Imerys Talc Vermont, Inc. and Imerys Talc Canada Inc.
And not in its personal or corporate capacity**

Per:

A handwritten signature in black ink, appearing to read 'P. Patel', with a long horizontal flourish extending to the right.

Pritesh Patel, CIRP, LIT
Senior Vice-President

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SEVENTH REPORT OF THE INFORMATION OFFICER
April 24, 2022

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