

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

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

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

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

**MOTION RECORD  
(Returnable April 3, 2019)**

April 3, 2019

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**TO: ATTACHED SERVICE LIST**

**ONTARIO  
SUPERIOR COURT OF JUSTICE  
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**IN THE MATTER OF THE COMPANIES' CREDITORS ARRANGEMENT ACT,  
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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**

**SERVICE LIST  
(March 28, 2019)**

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**IN THE MATTER OF THE *COMPANIES' CREDITORS ARRANGEMENT ACT*,  
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**TAB 1**

**ONTARIO  
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**NOTICE OF MOTION  
(Returnable April 3, 2019)**

1. The Applicants, Imerys Talc America, Inc. ("ITA"), Imerys Talc Vermont, Inc. ("ITV"), and Imerys Talc Canada Inc. ("ITC") make a motion for an Order substantially in the form filed herewith. The Order to be requested on April 3, 2019, the return date of this motion will be, *inter alia*:
  - (a) abridging the time for service of the Notice of Motion and the Motion Record and dispensing with further service thereof, if necessary;
  - (b) recognizing and enforcing in Canada certain orders of the U.S. Court made in the U.S. Proceedings on March 19, 22 and 26, 2019 (the "**Foreign Orders**"), including the following:
    - (1) an order extending the time for filing schedules and statements (the "**Schedules and Statements Order**");
    - (2) an order authorizing the employment and retention of KCIC LLC as insurance and valuation consultant (the "**KCIC LLC Retention Order**");
    - (3) an order authorizing the employment and retention of Prime Clerk LLC as administrative advisor (the "**Prime Clerk LLC Retention Order**");

- (4) an order authorizing the employment and retention of Richards, Layton & Finger, P.A. as US co-counsel (the “**Richards, Layton & Finger, P.A. Retention Order**”);
- (5) an order authorizing the employment and payment of professionals utilized in ordinary course of business (the “**Ordinary Course Professionals Order**”);
- (6) an order establishing procedures for interim compensation for professional services and reimbursement of professional expenses (the “**Interim Compensation and Reimbursement Order**”);
- (7) an order authorizing the employment and retention of Stikeman Elliott LLP as Canadian counsel (the “**Stikeman Retention Order**”);
- (8) an order (i) authorizing, but not directing, the Debtors to pay certain prepetition claims as described in the Second Picard Affidavit held by (a) Shippers in an amount not to exceed USD\$3.3 million on a final basis (b) Lien Claimants in an amount not to exceed USD\$1.4 million on a final basis and (c) Royalty Interest Owners in an amount not to exceed USD\$900,000 on a final basis, each absent further order of the Court, (ii) authorizing, but not directing, the Debtors to pay 503(b)(9) Claims in an amount not to exceed USD\$300,000 absent further order of the Court; (iii) and confirming the administrative expense priority status of orders for goods not delivered until after the filing date (the “**Outstanding Orders**”) and authorizing, but not directing, the Debtors to pay prepetition amounts related to the Outstanding Orders (the “**Final Lien Claimants Order**”);
- (9) an order (i) authorizing, but not directing, the Debtors to pay prepetition obligations owed to certain critical vendors, up to USD\$1.1 million on a final basis, absent further order of the Court; and (ii) authorizing financial institutions to honor and process related checks and transfers (the “**Final Critical Vendor Order**”);
- (10) an order (i) authorizing, but not directing, the Debtors to pay prepetition obligations owed to foreign vendors, up to USD\$1.4 million on a final

basis, absent further order of the Court; and (ii) authorizing financial institutions to honor and process related checks and transfers (the “**Final Foreign Vendor Order**”);

- (11) an order (i) authorizing, but not directing, the Debtors to pay Taxes and Fees (as defined in the First Day Declaration), whether accrued prior to, on or after the commencement of the US Proceedings, up to USD\$1.505 million on a final basis, absent further order of the Court; and (ii) authorizing financial institutions to honor and process related checks and transfers (the “**Final Taxes Order**”);
- (12) an order (i) authorizing the Debtors to (a) pay prepetition insurance and bonding obligations, up to USD\$700,000 for insurance obligations and bonding obligations, absent further order of the Court, (b) maintain their postpetition insurance coverage, and (c) maintain their bonding program, and (ii) authorizing financial institutions to honor and process related checks and transfers (the “**Final Insurance and Bonding Order**”);
- (13) an order (i) authorizing the Debtors to pay certain prepetition workforce obligations, including compensation, expense reimbursements, benefits, and related obligations, not exceeding the amount of USD\$2.587 million on a final basis, absent further order of the Court, and (ii) authorizing financial institutions to honor and process related checks and transfers (the “**Final Workforce Obligations Order**”);
- (14) an order with respect to utilities providers: (i) prohibiting utility service providers from altering or discontinuing service on account of prepetition invoices; (ii) approving an adequate assurance deposit as adequate assurance of postpetition payment to the utilities; and (iii) establishing procedures for resolving any subsequent requests by the utilities for additional adequate assurance of payment (the “**Final Utilities Order**”);
- (15) an order (i) authorizing the ability to honor prepetition obligations owed to customers and to otherwise continue customer programs, and (ii) authorizing financial institutions to honor and process related checks and transfers not exceeding the amount of USD\$1.9 million in the aggregate,

absent further order of the Court (the “**Final Customer Programs Order**”);

(16) an interim order authorizing, but not directing, maintenance of existing cash management system, including maintenance of existing bank accounts, checks and business forms, authorizing continuation of existing deposit practices, and approving the continuation of (and administrative expense priority status of) certain ordinary course intercompany transactions (the “**Second Interim Cash Management Order**”); and

(17) an order authorizing the filing of (i) a consolidated master list of creditors, a list of the thirty law firms with the most significant representations of Talc Claimants, based on the volume of filings, potential scope, and type of alleged liability of the Debtors, or related factors, in lieu of a list of the holders of the thirty largest unsecured claims, and (ii) approving certain notice procedures for talc claimants (the “**Final Limit Notice and Approve Notice Procedures Order**”);

(c) such further ancillary relief as set out in the draft order attached at Tab 3 of the Motion Record; and

(d) such further and other relief as counsel may request and this Honourable Court may permit.

2. **THE GROUNDS FOR THE APPLICATION ARE:**

(a) the Debtors are market leaders with respect to talc production in North America, representing nearly 50% of the market;

(b) on February 13, 2019, the Debtors commenced the U.S. Proceedings by filing voluntary petitions under Chapter 11;

(c) on February 14, 2019, the US Court made various orders in the US Proceedings (the “**First Day Orders**”), including an order authorizing ITC to act as foreign representative of the US Proceedings and an order placing the Debtors under joint administration in the US Proceedings;

(d) on February 20, 2019 this Honourable Court made an initial recognition order

declaring ITC the foreign representative as defined in section 45 of the Companies' Creditors Arrangement Act, R.S.C. 1985, c. C-36, as amended (the "CCAA") and a supplemental order recognizing the First Day Orders of the US Court;

- (e) on March 19, 22, and 26, 2019, the US Court granted the Foreign Orders in the US Proceedings;
- (f) ITC seeks an order from this Court, among other things, recognizing the Foreign Orders to ensure consistency between the US Proceedings and these Proceedings;
- (g) the provisions of the CCAA, including Part IV thereof;
- (h) rules 2.03, 3.02, 14.05, 16, 17 and 38 of the *Rules of Civil Procedure*, R.R.O. 1990. Reg. 194, as amended;
- (i) section 106 of the *Courts of Justice Act*; R.S.O. 1990, c. C-43; and
- (j) such further and other grounds as counsel may advise and this Honourable Court may permit.

3. **THE FOLLOWING DOCUMENTARY EVIDENCE** will be used at the hearing of the application:

- (a) the affidavit of Alexandra Picard, sworn March 28, 2019 and the exhibits referred to therein ("**Second Picard Affidavit**");
- (b) the First Report of Richter to be filed;
- (c) the Foreign Orders of the US Court made in the US Proceeding, copies of which are attached to the Second Picard Affidavit; and
- (d) such further and documentary evidence as counsel may advise and this Honourable Court may permit.

April 3, 2019

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

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

AND IN THE MATTER OF IMERY'S TALC AMERICA, INC., IMERY'S TALC VERMONT, INC., AND  
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APPLICATION OF IMERY'S TALC CANADA INC. UNDER SECTION 46 OF THE COMPANIES'  
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**ONTARIO  
SUPERIOR COURT OF JUSTICE  
(COMMERCIAL LIST)**

Proceeding commenced at Toronto

**NOTICE OF MOTION**

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Lawyers for the Debtors

**TAB 2**

**ONTARIO  
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**IN THE MATTER OF THE *COMPANIES' CREDITORS ARRANGEMENT ACT*,  
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**AFFIDAVIT OF ALEXANDRA PICARD  
(sworn March 28, 2019)**

I, Alexandra Picard, of the City of San Jose, in the State of California, United States of America (the "US"), MAKE OATH AND SAY:

1. I am the Chief Financial Officer 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 began working with the Imerys Group (as defined below) in 2005, and have served in various roles, including European Financial Controller for the filtration division level, Deputy Group Treasurer at the Corporate Treasury and then Finance Director for Talc North America before appointment to my current role. I have served as Chief Financial Officer for each of the Debtors since December 2018. I am authorized to submit this Affidavit on behalf of the Debtors.
2. In my role as Chief Financial Officer, I am responsible for overseeing the operations and financial activities of the Debtors, including but not limited to, monitoring cash flow, business relationships, and financial planning. As a result of my tenure with the Debtors, my review of public and non-public documents, and my discussions with other members of the Debtors' management team, I 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 the US Bankruptcy Code (the "**US Bankruptcy Code**").

#### **I. OVERVIEW**

4. The Debtors are the three debtors in possession in the Chapter 11 (as defined below) cases commenced before the United States Bankruptcy Court for the District of Delaware (the "**US Court**").
5. The Debtors' operations were acquired by Imerys S.A. in 2011. As a result, the Debtors are now part of a group of over 360 affiliated entities directly and indirectly owned by the parent organization, Imerys S.A (the "**Imerys Group**"). None of the other entities in the Imerys Group are seeking protection under chapter 11 or any other insolvency law.
6. The Debtors' operations are focused on the mining, processing, and/or distribution of talc for use in personal care, industrial, and other specialty products. The Debtors supply talc to third-party manufacturers for use in such parties' products; however, they do not manufacture the final products or sell such products directly to consumers.
7. One or more of the Debtors are named as defendants in lawsuits asserting approximately 14,674 litigation claims alleging liability for personal injuries allegedly caused by exposure to talc. The Debtors believe this litigation is without merit and their strategy has consistently been to mount a vigorous defense to all such claims. Nevertheless, given the increasing number of cosmetic talc lawsuits, the rise in settlement demands in cosmetic talc lawsuits, and the increasing unwillingness of the Debtors' insurers and third party contractual indemnitors to provide coverage for the Debtors' mounting defense costs and potential liability exposure, the Debtors have determined that coordinated and court-supervised Chapter 11 (as defined below) proceedings are required to protect their estates and preserve value for all stakeholders.

8. Accordingly, on February 13, 2019 (the "**Filing Date**"), the Debtors filed voluntary petitions (collectively, the "**Petitions**" and each a "**Petition**") for relief under chapter 11 of title 11 ("**Chapter 11**") of the US Bankruptcy Code with the US Court (the "**US Proceeding**").
9. In support of the Petitions, I caused to be filed with the US Court a declaration (the "**First Day Declaration**"). In addition, I caused to be filed with this Court a supporting affidavit for the Notice of Application returnable February 19, 2019 (the "**Picard Affidavit**"). The First Day Declaration and Picard Affidavit set out in great detail, among other things, the history of the Debtors and the present challenges which led to the initiation of the US Proceedings. Attached hereto and marked as Exhibit "A" and Exhibit "B" are true copies of the First Day Declaration and Picard Affidavit, respectively.
10. On February 14, 2019, the US Court entered various orders in the US Proceedings (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 Debtors under joint administration in the US Proceedings.
11. On February 20, 2019, this Court made an initial recognition order declaring ITC the foreign representative as defined in section 45 of the CCAA and a supplemental order recognizing the First Day Orders.
12. The US Court heard several motions on March 25, 2019 and granted orders, as well as entered certain uncontested orders on March 19, 22, and 26, 2019 (collectively, the "**Foreign Orders**") which include, *inter alia*:
  - a) an order extending the time for filing schedules and statements (the "**Schedules and Statements Order**");
  - b) an order authorizing the employment and retention of KCIC, LLC as insurance and valuation consultant (the "**KCIC, LLC Retention Order**");
  - c) an order authorizing the employment and retention of Prime Clerk LLC as administrative advisor (the "**Prime Clerk LLC Retention Order**");
  - d) an order authorizing the employment and retention of Richards, Layton & Finger, P.A. as US co-counsel (the "**Richards, Layton & Finger, P.A. Retention Order**");

- e) an order authorizing the employment and payment of professionals utilized in the ordinary course of business (the "**Ordinary Course Professionals Order**");
- f) an order establishing procedures for interim compensation for professional services and reimbursement of professional expenses (the "**Interim Compensation and Reimbursement Order**");
- g) an order authorizing the employment and retention of Stikeman Elliott LLP as Canadian counsel (the "**Stikeman Retention Order**");
- h) an order (i) authorizing, but not directing, the Debtors to pay prepetition claims held by (A) Shipper Claimants (as defined in the Final Lien Claimants Order) in an amount not to exceed US\$3.3 million on a final basis, (B) Lien Claimants (as defined in the Final Lien Claimants Order) in an amount not to exceed US\$1.4 million on a final basis, and (C) Royalty Interest Owners (as defined in the Final Lien Claimants Order) in an amount not to exceed US\$900,000 on a final basis, each absent further order of the Court; (ii) authorizing, but not directing, the Debtors to pay 503(b)(9) Claims in an amount not to exceed US\$300,000 absent further order of the Court; and (iii) confirming the administrative expense priority status of orders for goods not delivered until after the filing date (the "**Outstanding Orders**") and authorizing, but not directing, the Debtors to pay prepetition amounts related to the Outstanding Orders (the "**Final Lien Claimants Order**");
- i) an order (i) authorizing, but not directing, the Debtors to pay prepetition obligations owed to certain critical vendors, up to US\$1.1 million on a final basis; and (ii) authorizing financial institutions to honor and process related checks and transfers (the "**Final Critical Vendors Order**");
- j) an order (i) authorizing, but not directing, the Debtors to pay prepetition obligations owed to foreign vendors, up to US\$1.4 million on a final basis; and (ii) authorizing financial institutions to honor and process related checks and transfers (the "**Final Foreign Vendors Order**");
- k) an order (i) authorizing, but not directing, the Debtors to pay Taxes and Fees (as defined in the First Day Declaration), up to US\$1.505 million on a final basis; and

(ii) authorizing financial institutions to honor and process related checks and transfers (the "**Final Taxes Order**");

l) an order (i) authorizing the Debtors to (A) pay prepetition insurance and bonding obligations, up to USD\$700,000, (B) maintain their postpetition insurance coverage, and (C) maintain their bonding program; and (ii) authorizing financial institutions to honor and process related checks and transfers (the "**Final Insurance and Bonding Order**");

m) an order (i) authorizing the Debtors to pay certain prepetition workforce obligations, including compensation, expense reimbursements, benefits, and related obligations, not exceeding the amount of US\$2.587 million on a final basis; and (ii) authorizing financial institutions to honor and process related checks and transfers (the "**Final Workforce Obligations Order**");

n) an order with respect to utilities providers: (i) prohibiting utility service providers from altering or discontinuing service on account of prepetition invoices; (ii) approving an adequate assurance deposit as adequate assurance of postpetition payment to the utilities; and (iii) establishing procedures for resolving any subsequent requests by the utilities for additional adequate assurance of payment (the "**Final Utilities Order**");

o) an order (i) authorizing the Debtors to honor prepetition obligations owed to customers and to otherwise continue customer programs in an amount not exceeding US\$1.9 million in the aggregate; and (ii) authorizing financial institutions to honor and process related checks and transfers (the "**Final Customer Programs Order**");

p) an order authorizing, but not directing, maintenance of existing cash management system, including maintenance of existing bank accounts, checks and business forms, authorizing continuation of existing deposit practices, and approving the continuation of (and administrative expense priority status of) certain ordinary course intercompany transactions, provided that transfers from Debtors to non-Debtor affiliates shall not exceed US\$1.75 million on an interim basis (the "**Second Interim Cash Management Order**"); and

q) an order authorizing the filing of (i) a consolidated master list of creditors, a list of the twenty law firms with the most significant representations of Talc Claimants, based on the volume of filings, potential scope, and type of alleged liability of the Debtors, or

related factors, in lieu of a list of the holders of the twenty largest unsecured claims; and (ii) approving certain notice procedures for talc claimants (the "**Final Limit Notice and Approve Notice Procedures Order**").

## II. OVERVIEW OF THE FOREIGN ORDERS

### *The Final Schedules and Statements Order*

13. The US Court entered the Schedules and Statements Order which contemplated extending the deadline by which the Debtors must file required schedules and statements by 30 days for a new deadline of April 12, 2019. This order can be found at **Exhibit C** to this affidavit.
14. The deadline to file the schedules and statements was March 13, 2019, but the Debtors have thousands of creditors and other parties in interest. Given the size and complexity of their businesses, including the need to gather, review, and assemble information from books, records, and documents related to operations in numerous locations and business segments, and the thousands of pending talc-related lawsuits in numerous jurisdictions, the Debtors require additional time to submit this required documentation.
15. The US Court determined there was good and sufficient cause to grant the Schedules and Statements Order.
16. The recognition of the Schedules and Statements Order in Canada is appropriate for the same reasons set out above.

### *The KCIC, LLC Retention Order*

17. On March 19, 2019, the US Court entered the KCIC LLC Retention Order which contemplated, *inter alia*, authorizing the Debtors to employ and retain KCIC, LLC as an insurance and valuation consultant for the Debtors' Chapter 11 proceeding. This order can be found at **Exhibit D** to this affidavit.
18. The services provided by KCIC, LLC are necessary and in the best interests of the Debtors' estates.

19. The US Court determined that the granting of the KCIC, LLC Retention Order.
20. The recognition of the KCIC, LLC Retention Order in Canada is appropriate for the same reasons set out above.

*The Prime Clerk LLC Retention Order*

21. The US Court entered the Prime Clerk LLC Retention Order which contemplated, *inter alia*, authorizing the Debtors to employ and retain Prime Clerk LLC as administrative advisor for the Debtors' Chapter 11 proceeding. This order can be found at **Exhibit E** to this affidavit.
22. The US Court determined there was good and sufficient cause to grant the Prime Clerk LLC Retention Order.
23. The Prime Clerk LLC Retention Order is distinct from the Claims and Noticing Agent Order recognized in Canada on February 27, 2019, in that it provides Prime Clerk LLC the authority to provide services beyond those approved in the Claims and Noticing Agent Order. For instance, under the Prime Clerk LLC Retention Order, Prime Clerk LLC will provide services including:
  - a) the solicitation, balloting, and tabulation of votes, and the preparation of any related reports as required in support of the Chapter 11 proceeding; and
  - b) the preparation of an official ballot certification, and, if necessary, testifying in support of the ballot tabulation results.
24. As authorized by the Claims and Noticing Agent Order, Prime Clerk LLC, among other things:
  - a) serves as custodian of records and be designated as authorized repository for all proofs of claim filed in the Chapter 11 proceedings; and
  - b) maintains official claims registers for each of the Debtors and provide public access to every proof of claim unless as otherwise directed by the Court.
25. The recognition of the Prime Clerk LLC Retention Order in Canada is appropriate for the same reasons set out above.

*The Richards, Layton & Finger, P.A. Retention Order*

26. The US Court entered the Richards, Layton & Finger, P.A. Retention Order which contemplated, *inter alia*, authorizing the Debtors to employ and retain Richards, Layton & Finger, P.A. as the Debtors' bankruptcy co-counsel. This order can be found at **Exhibit F** to this affidavit.
27. The US Court determined there was good and sufficient cause to grant the Richards, Layton & Finger, P.A. Retention Order.
28. The recognition of the Richards, Layton & Finger, P.A. Retention Order in Canada is appropriate for the same reasons set out above.

*The Ordinary Course Professionals Order*

29. The US Court entered the Ordinary Course Professionals Order which contemplated, *inter alia*, authorizing but not directing, the Debtors to retain and pay the Ordinary Course Professionals (as defined in the Ordinary Course Professionals Order) as of the Filing Date or the applicable date of engagement in accordance with the procedures proposed therein. This order can be found at **Exhibit G** to this affidavit.
30. The Debtors customarily retain the services of professionals to assist them in matters arising in the ordinary course of their businesses, but unrelated to the Chapter 11 filing.
31. The Debtors desire to continue to employ and retain the services of the Ordinary Course Professionals while operating as debtors in possession under the Bankruptcy Code, which will enable them to continue normal business activities that are essential to the achievement of their chapter 11 objectives.
32. Importantly, the work of the Ordinary Course Professionals is directly related to the preservation of the value of the Debtors and their estates. It would severely hinder the administration of the Debtors' estate if the Debtors were required to (a) submit an application, affidavit, and proposed retention order for each Ordinary Course Professional, (b) wait until such order is approved before such Ordinary Course Professional is able to render post-petition services to the Debtors, and (c) withhold payment of the normal fees and expenses of the Ordinary Course Professionals until

they comply with the compensation and reimbursement procedures applicable to Ordinary Course Professionals under the US Bankruptcy Code.

33. The Debtors will employ the Ordinary Course Professionals to perform ongoing services during the pendency of the US Proceedings but only if (a) the Ordinary Course Professional has executed a declaration certifying that they do not represent or hold any interest adverse to the Debtors or the estates with respect to the matter(s) on which the professional is to be employed, (b) any objection deadline has passed, and (c) there is no timely objection. Furthermore, the Debtors proposes to pay 100% of the fees of each Ordinary Course Professional as long as the payment caps for each group of Ordinary Course Professionals at Exhibit 1 and Exhibit 2 of the Final Ordinary Course Professionals Order are not exceeded.
34. The US Court determined there was good and sufficient cause to grant the Ordinary Course Professionals Order.
35. The recognition of the Ordinary Course Professionals Order in Canada is appropriate given that ITC relies on certain Canadian "Ordinary Course Professionals," e.g., Fasken Martineau DuMoulin LLP provides ITC with legal advice related to labour relations, and Mathews, Dinsdale & Clark LLP provides ITC with legal advice related to employment and labour issues.

*The Interim Compensation and Reimbursement Order*

36. The US Court entered the Interim Compensation and Reimbursement Order which contemplated establishing procedures for interim compensation for professional services and reimbursement of professional expenses during the US Proceedings. This order can be found at **Exhibit H** to this affidavit.
37. The Debtors believe that establishing orderly procedures for payments of the professionals whose retentions are approved, other than the Ordinary Course Professionals, will streamline the administration of the bankruptcy proceedings and otherwise promote efficiency. The compensation procedure is set out at paragraph 3 of the order.

38. In particular, a streamlined process is in the best interest of the Debtors because it will facilitate efficient review of the Professionals' fees and expenses while saving the Debtors unnecessary copying and mailing expenses.
39. The US Court determined there was good and sufficient cause to grant the Interim Compensation and Reimbursement Order and it will help the Debtors maintain a more predictable cash flow and efficient cash management system.
40. The recognition of the Interim Compensation and Reimbursement Order in Canada is appropriate for the same reasons set out above.

*The Stikeman Retention Order*

41. The US Court entered the Stikeman Retention Order which contemplated, *inter alia*, authorizing the Debtors to employ and retain Stikeman Elliott LLP as the Debtors' Canadian counsel. This order can be found at **Exhibit I** to this affidavit.
42. The Debtors have certain assets and operations in Canada. On February 20, 2019, the US Proceedings were recognized as a foreign main proceeding under the applicable provisions of the CCAA in order to, among other things, protect the Debtors' assets and operations in Canada.
43. The US Court determined there was good and sufficient cause to grant the Stikeman Elliott LLP Retention Order.
44. The recognition of the Stikeman Retention Order in Canada is appropriate for the same reasons set out above.

*The Final Lien Claimants Order*

45. The US Court entered the Final Lien Claimants Order, which authorizes (but does not direct) the Debtors to pay certain Shipper Claimants Lien Claimants, Royalty Interest Owners, and claimants with claims arising under Section 503(b)(9) of the US Bankruptcy Code. The Debtors sought this order to ensure that their supply of essential materials and supplies would not be interrupted and that it would be able to continue to transport talc among the Debtors' mines and plants and deliver talc to the Debtors' customers. This order can be found at **Exhibit J** to this affidavit.

46. In entering the Final Lien Claimants Order, the US Court was satisfied that it is necessary for the Debtors to be allowed to pay certain shippers, lien claimants, royalty interest owners, and 503(b)(9) claimants for charges incurred in connection with the delivery and transport of goods and the provision of certain services, so that such claimants do not assert possessory, statutory, or other liens against any of the Debtors' property or otherwise refuse to release such property pending receipt of payment, which would disrupt the Debtors' operations and potentially cause substantial delays, great expense and irreparable harm to the Debtors' estates.
47. ITC seeks recognition of the Final Lien Claimants Order from this Court and submits that such recognition is necessary to ensure consistency in the treatment of these payments between these proceedings and the US Proceedings.

*The Final Critical Vendor Order*

48. The US Court entered the Final Critical Vendor Order, which authorized (but did not direct) the Debtors to pay prepetition obligations owed to certain critical vendors up to the Critical Vendor Claims Cap (as defined in the Critical Vendor Motion). The Debtors sought this order to ensure its critical vendors would continue to supply necessary goods and services to the Debtors. This order can be found at **Exhibit K** to this affidavit.
49. In entering the Final Critical Vendor Order, the US Court was satisfied that the Final Critical Vendor Order was necessary to ensure that certain critical vendors that provide essential goods and services to the Debtors do not refuse to provide such goods and services to the Debtors, which would cause significant disruption to the Debtors' operations. The Debtors are authorized, but not directed, to require a critical vendor to agree to provide goods and services to the Debtors on current or recent trade terms in exchange for payment of such vendor's prepetition claims pursuant to the Final Critical Vendor Order.
50. ITC seeks recognition of the Final Critical Vendor Order from this Court and submits that such recognition is necessary to ensure there is no disruption to the Debtors' operations.

*The Final Foreign Vendor Order*

51. The US Court entered the Final Foreign Vendor Order, which authorized (but did not direct) the Debtors to pay prepetition obligations owed to certain foreign vendors up to the Final Foreign Vendor Claims Cap (as defined in the Foreign Vendor Motion). The Debtors sought this order to ensure its foreign vendors would continue to supply goods and services to the Debtors. In particular, the Debtors were concerned that foreign vendors may not consider themselves bound by the US Proceedings without a specific order. This order can be found at **Exhibit L** to this affidavit.
52. In entering the Final Foreign Vendor Order, the US Court was satisfied that the Final Foreign Vendor Order was necessary to ensure that certain foreign vendors that provide goods and services to the Debtors do not refuse to provide such goods and services to the Debtors, which would cause significant disruption to the Debtors' operations.
53. ITC seeks recognition of the Final Foreign Vendor Order from this Court and submits that such recognition is necessary to ensure there is no disruption to the Debtors' operations.

*The Final Taxes Order*

54. The US Court entered the Final Taxes Order, which authorized (but did not direct) the Debtors to pay certain prepetition Taxes and Fees (as defined in the First Day Declaration). The Taxes and Fees include international taxes, state and federal income taxes, franchise taxes, property taxes, sales and use taxes, licenses and fees, and other types of taxes and fees, assessments, or similar charges. The Final Taxes Order applies to Canadian taxation authorities, including with respect to sales and use taxes and certain licenses and fees. ITC seeks authority to make payments directly to taxing authorities and make payments to, or set off amounts owed from, Imerys USA or the other Debtors, in each case on account of the Taxes and Fees. This order can be found at **Exhibit M** to this affidavit.
55. In entering the Final Taxes Order, the US Court determined that it was appropriate and necessary for the Debtors to have discretion to pay prepetition taxes and fees to facilitate its continued operations and avoid potential disruptions to the Debtors'

operations, including interruptions to necessary permits and distracting the efforts of critical employees.

56. ITC seeks recognition of the Final Taxes Order from this Court, and submits that such recognition is necessary to ensure the efficient and consistent administration of the Debtors' operations and stability throughout its efforts in the US Proceedings. ITC also seeks recognition of the Final Taxes Order from the Canadian Court to ensure that Canadian taxation authorities are treated consistently with those in the US.

*The Final Insurance and Bonding Order*

57. The US Court entered the Final Insurance and Bonding Order, which authorizes (but does not direct) the Debtors to pay prepetition insurance and bonding obligations and to continue, renew, and modify their postpetition insurance coverage and bonding program. This order can be found at **Exhibit N** to this affidavit.
58. In entering the Final Insurance and Bonding Order, the US Court was satisfied that all of the insurance and bonding programs covered by the Final Insurance and Bonding Order are essential to the ongoing operation of the Debtors' businesses and the preservation of the value of the Debtors' estates.
59. ITC seeks recognition of the Final Insurance and Bonding Order from this Court and submits that such recognition is necessary to ensure continued insurance coverage for the US Debtors and ITC.

*The Final Workforce Obligations Order*

60. The US Court entered the Final Workforce Obligations Order (i) authorizing (but not directing) the Debtors to (i) pay certain prepetition workforce obligations, including compensation, expense reimbursement, benefits, and related obligations, (ii) confirming the Debtor's right to continue workforce programs on a postpetition basis, (iii) authorizing payment of withholding and payroll-related taxes, (iv) confirming the Debtors' right to continue to deduct and transmit deductions from payroll checks as authorized by employees or required under any workforce-related plan, program or policy or as required by law, and (v) authorizing payment of prepetition claims owing to

administrators of, or third party providers under, workforce programs. The Final Workforce Obligations Order includes Canadian employees and all benefits relevant to Canadian employees. This order can be found at **Exhibit O** to this affidavit.

61. In granting the Final Workforce Obligations Order, the US Court was satisfied that the failure to make payments on account of these obligations to the Debtors' workforce (and for withholdings related to the workforce) would threaten the Debtors' ability to operate, to the detriment of all stakeholders, and hinder their efforts to negotiate and confirm a consensual plan of reorganization in the US Proceedings. The US Court was further satisfied that authorizing the payment of these amounts was a sound exercise of the Debtors' business judgment.
62. ITC seeks recognition of the Final Workforce Obligations Order from this Court to ensure that the Debtors' workforce is treated equally in these proceedings and the US Proceedings.

*The Final Utilities Order*

63. The US Court entered the Final Utilities Order which prohibited the Debtors' utility providers from terminating service solely on the basis of the commencement of the US Proceedings, approved adequate assurance of future payment for utility providers, and established procedures for resolving additional adequate assurance requests by utility providers. The utilities providers include those supplying gas, electricity, phone and internet services, among other things. The Final Utilities Order includes 13 Canadian utilities providers. This order can be found at **Exhibit P** to this affidavit.
64. In entering the Final Utilities Order, the US Court was satisfied that continued service was reasonable, appropriate and necessary to maintain the Debtors' operations.
65. ITC seeks the recognition of the Final Utilities Order from this Court and submits that such recognition is necessary to ensure consistency between these proceedings and the US Proceedings. ITC also seeks recognition of the Final Utilities Order from this Court to ensure Canadian utilities providers are treated consistently with the US utilities providers.

*The Final Customer Programs Order*

66. The US Court entered the Final Customer Programs Order, which authorized (but did not direct) the Debtors to pay prepetition obligations owed to certain customers on account of customer programs and to continue honoring customer programs postpetition. The customer programs offered by the Debtors include certain rebate, commission, and warranty programs. This order can be found at **Exhibit Q** to this affidavit.
67. In entering the Final Customer Programs Order, the US Court was satisfied that the Final Customer Programs Order was necessary to preserve the Debtors' critical business relationships and customer satisfaction.
68. ITC seeks recognition of the Final Customer Programs Order from this Court and submits that such recognition is necessary to ensure the Debtors are able to maintain their relationships with all customers, to the ultimate benefit of their business and estates.

*The Second Interim Cash Management Order*

69. The US Court entered the Second Interim Cash Management Order, which (i) authorizes, but does not direct, the Debtors to maintain and use their existing cash management system, including maintenance of the Debtors' existing bank accounts, checks, and business forms, (ii) grants the Debtors a waiver of certain bank account and related requirements of the United States Trustee to the extent that such requirements are inconsistent with the Debtors' practices under their existing cash management system or other actions described, (iii) authorizes, but does not direct, the Debtors to continue to maintain and use their existing deposit practices notwithstanding the provisions of section 345(b) of the Bankruptcy Code, (iv) approves the continuation of certain ordinary course intercompany transactions, (v) authorizes the Debtors to open and close bank accounts, (vi) accords superpriority status to postpetition intercompany claims arising from transactions between the Debtors, and (vii) requires the Debtors to provide the committee of tort claimants with a summary of postpetition payments made on account of intercompany transactions by the 20<sup>th</sup> of each month for the prior month.

The United States Trustee formed an official committee of talc-related personal injury claimants on March 5, 2019. At the request of the official committee of tort claimants, the Debtors agreed to provide a monthly summary of intercompany payments made pursuant to the cash management orders by and between the Debtors and other non-Debtor affiliates. This order can be found at **Exhibit R** to this affidavit.

70. The Second Interim Cash Management Order allows the Debtors to continue to operate existing cash management systems consistent with past practice. The Second Interim Cash Management Order was made on an interim basis and will be subject to a further hearing and final order.
71. ITC will continue to transfer funds to Imerys S.A. and other Imerys Group entities on account of (i) shared services expenses and (ii) fees and expenses arising from intercompany transactions for goods and/or services provided by Imerys S.A. or other Imerys Group entities which are necessary for or otherwise benefit ITC's ongoing operations (the "**Permitted ITC Intercompany Transactions**"). The cap on intercompany transactions is USD\$1.75 million on an interim basis, subject to entry of a final order on the Cash Management Motion. Other than the Permitted ITC Intercompany Transactions, ITC will not transfer funds to Imerys Group entities on account of any intercompany transactions unless otherwise ordered by the US Court.
72. In entering the Second Interim Cash Management Order, the US Court was satisfied that the existing system was essential to the Debtors' ongoing operations and that there would be no prejudice to the Debtors' continued use of pre-printed business forms without modification to identify the members of the Debtors as debtors in possession.
73. The US Court was also satisfied that the intercompany transactions should continue because the system enables the Debtors to efficiently monitor and control their cash position and maintain control over Permitted ITC Intercompany Transactions. The continued use of the cash management system in such manner during the pendency of the US Proceedings is essential to the Debtors' business operations and their goal of maximizing value for the benefit of all parties in interest. In entering the Second Interim Cash Management Order, the US Court was further satisfied that the Second Interim Cash Management Order was necessary to avoid immediate and irreparable harm and is in the best interests of the Debtors' estates and their creditors and all other parties in

interest. Examples of intercompany transactions the US Court approved for superpriority include shared services with the US Debtors, shared services with Imerys S.A, sale of goods which occur between ITC and the US Debtors or affiliates, intercompany sharing and commissions, research and development and testing, and hedging transactions.

74. ITC seeks recognition of the Second Interim Cash Management Order from this Court to ensure that the Debtors' finances, which are highly integrated, can continue in the ordinary course to the benefit of all stakeholders.

*Final Limit Notice and Approve Notice Procedures Order*

75. The US Court entered the Final Limit Notice and Approve Notice Procedures Order, which (i) authorized the Debtors to file (A) a consolidated master list of creditors, (B) a list of the thirty law firms with the most significant representations of talc claimants, and (C) a consolidated list of top 30 unsecured claims and (ii) approved the implementation of a set of notice procedures by which the Debtors shall (A) list the addresses of known counsel of record for the talc claimants, in lieu of the addresses of the talc claimants themselves (where addresses of the talc claimants are not reasonably ascertainable to the Debtors), on the Debtors' creditor matrix and (B) send required notices, mailings, and other communications related to the Chapter 11 proceedings to such known counsel of record for the talc claimants in lieu of sending such communications to the talc claimants themselves (where addresses of the talc claimants are not reasonably ascertainable to the Debtors). This order can be found at **Exhibit S** to this affidavit.
76. ITC seeks recognition of the Final Limit Notice and Approve Notice Procedures Order from this Court to ensure that the Debtors meet their notice obligations as required under the US Bankruptcy Code as well as provide claimants in the talc litigation a fair and appropriate process to be heard.

**III. UPCOMING MOTIONS IN US PROCEEDINGS**

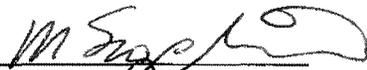
77. A final Cash Management Order is pending and the US Court will hear the motion pertaining to this order on April 26, 2019.

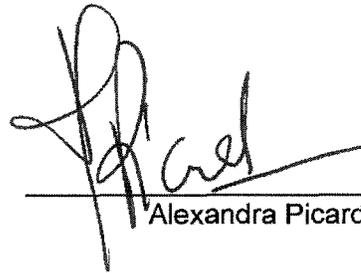
78. Another pending matter is a motion to appoint James L. Patton, Jr., as legal representative for future talc personal injury claimants ("FCR") as well as the appointment of certain legal professionals to represent the FCR in the US Proceedings. The US Court will hear these matters on April 26, 2019.

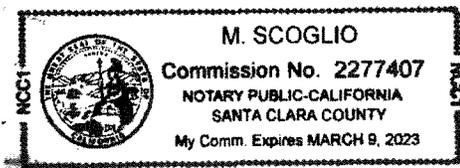
**IV. CONCLUSION**

79. I believe that the relief sought in this motion (a) is vital to enabling the Debtors to make the transition to, and operate in, chapter 11 with minimum interruptions and disruptions to their businesses or loss of productivity or value 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 chapter 11.

SWORN BEFORE ME in the State of California, on Thursday, March 28, 2019.

  
\_\_\_\_\_  
Commissioner for Taking Affidavits

  
\_\_\_\_\_  
Alexandra Picard



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

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

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

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

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

Proceeding commenced at Toronto

**AFFIDAVIT OF ALEXANDRA PICARD**

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Lawyers for the Debtors

**TAB A**

**THIS IS EXHIBIT "A"**

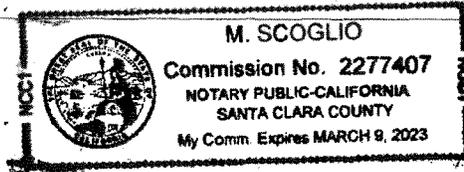
*referred to in the Affidavit of Alexandra Picard*

Sworn before me this 28<sup>TH</sup>

day of March, 2019



*A Commissioner for Taking Affidavits*



Court File No. \_\_\_\_\_

**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**

**AFFIDAVIT OF ALEXANDRA PICARD  
(sworn February 14, 2019)**

I, Alexandra Picard, of the City of San Jose, in the State of California, United States of America (the "US"), MAKE OATH AND SAY:

1. I am the Chief Financial Officer 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"). Since I began working with the Debtors and their affiliates in 2005, I have served in various roles, including European Financial Controller for the filtration division level, Deputy Group Treasurer at the Corporate Treasury and then Finance Director for Talc North America before appointment to my current role. I have served as Chief Financial Officer for each of the Debtors since December 2018. I am authorized to submit this Affidavit on behalf of the Debtors.
2. In my role as Chief Financial Officer, I am responsible for overseeing the operations and financial activities of the Debtors, including but not limited to, monitoring cash flow, business relationships, and financial planning. As a result of my tenure with the Debtors, my review of

public and non-public documents, and my discussions with other members of the Debtors' management team, I 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.

4. I swear this affidavit in support of ITC's application pursuant to the *Companies' Creditors Arrangement Act*, R.S.C. 1985 c. C-36, as amended (the "CCAA"), for orders granting certain relief, including, declaring that ITC is a "foreign representative" as defined in section 45 of the CCAA in respect of the jointly administered chapter 11 proceeding and recognizing the Debtors' US Proceedings under Chapter 11 of the US Bankruptcy Code (as these terms are defined below) and declaring the US Proceedings as a foreign main proceeding with respect to each member of the Debtors, including ITC.

#### I. OVERVIEW

5. The Debtors are the three debtors in possession in the chapter 11 cases commenced before the United States Bankruptcy Court for the District of Delaware (the "US Court").

6. The Debtors' operations were acquired by Imerys S.A. in 2011. As a result, the Debtors are now part of a group of over 360 affiliated entities directly and indirectly owned by the parent organization, Imerys S.A (the "Imerys Group"). None of the other entities in the Imerys Group are seeking protection under chapter 11 or any other insolvency law.

7. The Debtors' operations are focused on the mining, processing, and/or distribution of talc for use in personal care, industrial, and other specialty products. The Debtors supply talc to third-party manufacturers for use in such parties' products; however, they do not manufacture the final products or sell such products directly to consumers.

8. One or more of the Debtors are named as defendants in lawsuits asserting approximately 14,674 litigation claims alleging liability for personal injuries allegedly caused by exposure to talc. The Debtors believe this litigation is without merit and their strategy has consistently been to mount a vigorous defense to all such claims. Nevertheless, given the

increasing number of cosmetic talc lawsuits, the rise in settlement demands in cosmetic talc lawsuits, and the increasing unwillingness of the Debtors' insurers and third party contractual indemnitors to provide coverage for the Debtors' mounting defense costs and potential liability exposure, the Debtors have determined that coordinated and court-supervised chapter 11 proceedings are required to protect their estates and preserve value for all stakeholders. ITC has not been named as a defendant in any of the lawsuits to date. However, ITA, ITV, and ITC constitute the entirety of Imerys's North American talc operations. ITC's operations are not only significantly integrated with the other Debtors (as further described below), but ITC is particularly reliant upon ITA's personnel and other resources, as ITC utilizes ITA assets and personnel for critical cash, treasury and other necessary administrative services. In addition, the Debtors believe ITC faces potential future litigation as the vast majority of the talc produced by ITC is exported and sold in the US. As a result, the Debtors determined it was in ITC's best interests to initiate chapter 11 proceedings along with the other Debtors.

9. The Debtors' main operating offices, management and the vast majority of their assets and operations (taken in the aggregate) are located in the US. All of the current litigation against the Debtors has also been commenced in the US. The Debtors have determined that value for creditors will be maximized by commencing chapter 11 proceedings in the US.

10. Accordingly, on February 13, 2019 (the "Filing Date"), the Debtors filed voluntary petitions (collectively, the "Petitions" and each a "Petition") for relief under chapter 11 of title 11 ("Chapter 11") of the United States Code (the "US Bankruptcy Code") with the US Court.

11. The Debtors have requested that the Petitions be jointly administered for procedural purposes only. As of the date of this Affidavit, I am not aware of any other bankruptcy proceedings involving any of the Debtors other than the proceedings before the US Court commenced by the Petitions (the "US Proceedings") and these proceedings.

12. The Debtors' ultimate goal in the US Proceedings is to confirm a plan of reorganization providing for trust mechanisms and a channeling injunction that will address all current and future talc claims arising from historic operations of the Debtors so the Debtors can emerge from Chapter 11 protection free of such talc-related liabilities. In the near term, however, to minimize any loss of value of their businesses during the US Proceedings, the Debtors'

immediate objective is to maintain a business-as-usual atmosphere during the early stages of the US Proceedings, with as little interruption or disruption to the Debtors' operations as possible. I believe that if the Court grants the relief requested in the within application, the prospect for achieving these objectives and confirmation of a Chapter 11 plan will be substantially enhanced.

13. In support of the Petitions, I caused to be filed with the US Court a declaration (the "First Day Declaration"). The First Day Declaration sets out in greater detail, among other things, the history of the Debtors and the present challenges leading to the US Proceedings and this application. Attached hereto and marked as Exhibit "A" is a true copy of the First Day Declaration.

## II. DESCRIPTION OF ENTITIES

### a. Corporate Structure

14. Since their acquisition in 2011, the Debtors have been part of the Imerys Group. Imerys S.A.,<sup>1</sup> the parent of the Imerys Group, is a French multinational company which specializes in the production and processing of a wide range of industrial minerals. It is headquartered in Paris, France and has operations in 50 countries and approximately 18,000 employees.

15. Details of the incorporating jurisdictions and head office locations of the relevant affiliates are as follows:

- Imerys Talc America, Inc. (ITA), incorporated in Delaware with head office located in San Jose, California;
- Imerys Talc Vermont, Inc. (ITV), incorporated in Vermont with head office located in San Jose California; and

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<sup>1</sup> Imerys S.A is listed on Euronext Paris and is part of the CAC MD (mid 60) index within the SBF 120, which represents the 120 largest stocks listed on Euronext Paris, as well as the CAC Basic Materials index. Parent shares are also part of the Dow Jones Euro Stoxx, the benchmark index for the euro zone. The Debtors, however, are not listed on any stock exchange.

- Imerys Talc Canada Inc. (ITC), federally incorporated in Canada with a registered head office in Montreal, Quebec and principal place of business in Timmins, Ontario.

16. The Imerys Group acquired its talc operations, including the operations of the Debtors, in 2011. The Debtors' talc operations were previously owned by various entities, including Johnson & Johnson ("J&J"), Cyprus Mines Corporation ("Cyprus"), Cyprus Talc Corporation, and Rio Tinto America, Inc.

17. The management team of the division resides in San Jose, California (General Manager, Finance Director, and CFO) and provides management services to ITC. The Imerys USA headquarters is in Roswell, Georgia and hosts shared services between the Debtors.

18. A simplified overview of the corporate structure of the Imerys Group is set out in an organizational chart, which is attached hereto as **Exhibit "B"**.

**b. Group Business**

19. The Imerys Group is the world leader in mineral-based specialties for industry, delivering high value-added, functional solutions to a multitude of sectors, from processing industries to consumer goods and building products. It holds leading positions in the majority of its markets, including: minerals for breathable polymer films; alumino-silicate monolithic refractories; graphite for alkaline batteries; conductive additives for LI-ion batteries; fluxes for continuous casting processes; perlite for construction; and mineral solutions for filtration, paper, plastics, paints, ceramics, health products, and cosmetics.

20. The Imerys Group is organized around two segments: the Performance Minerals segment and the High Temperature Materials & Solutions segment. The Performance Minerals segment is comprised of three geographic business areas, including the Europe Middle East Africa (EMEA) area, the Americas area, and the Asia Pacific (APAC) area, which serve the plastics, paints and coatings, filtration, ceramics, renewable energy, and paper and board markets. The entities in the Performance Minerals segment mine, process, and distribute high quality talc, mica, wollastonite, perlite, diatomaceous earth, carbonate, bentonite, and kaolin.

21. The Debtors are part of the Performance Minerals Americas business area and mine, process, and/or distribute talc. Talc is a hydrated magnesium silicate that is used in the manufacturing of both cosmetic/personal care products and industrial products such as paints and coatings, rubber, paper, polymers, and other specialty products. Talc is mined from talc deposits, which result from the transformation of existing rocks under the effect of hydrothermal fluids carrying one or several of the components needed to form the mineral.

22. The Debtors' talc operations include talc mines, plants, and distribution facilities located in: Montana (Yellowstone, Sappington, and Three Forks); Vermont (Argonaut and Ludlow); Texas (Houston); and Ontario, Canada (Timmins, Penhorwood, and Foloyet).

23. The Debtors are the market leader with respect to talc production in North America, representing nearly 50% of the market.

24. The Debtors' top customers in the personal care sector are manufacturers of baby powder (50% of personal care sales), makeup (30% of personal care sales), and soap (20% of personal care sales). The Debtors are the main supplier of talc to J&J in the United States for use in its manufacturing of baby powder.

**c. The Debtors' Financial Status**

25. ITC does not independently report its financial performance. Its financial reporting is part of a consolidated report prepared for the Imerys Group.

26. The Debtors' total revenue in 2018 was approximately US\$174 million.

27. According to the Debtors' unaudited financial statements, as at December 31, 2018 ITC had total revenue of CDN\$60.521 million, net annual income of CDN\$8.13 million, total assets of CDN\$40.250 million and total liabilities, excluding shareholder equity, of CDN\$16.16 million.

28. As described in greater detail below, certain of the Debtors are also facing numerous product liability claims in respect of their production and distribution of talc.

**d. ITC**

29. ITC is incorporated under the *Canadian Business Corporations Act*, RSC 1985, c C-44 ("CBCA") and continued from Quebec's Business Corporations Act, CQLR c S-31.1 ("QBCA") on September 13, 2011.

30. ITC's registered head office is located at 1155 Rene-Levesque Blvd. West, Suite 4000, Montreal, Quebec which is the address of ITC's Canadian counsel, Stikeman Elliott LLP. However, the primary place of business is located at 100 Water Tower Road in Timmins, Ontario.

31. ITC has a total of four directors. One director is a Canadian resident and three are US residents. The Canadian director is also a company employee.

32. ITC employs 67 employees as described in greater detail below.

33. ITC mines talc in Ontario and exports approximately 95% of its talc into the United States. The vast majority of the talc is then sold directly to manufacturing customers, with only a small portion sold to distributors. In 2018, ITC distributed approximately 81,400 metric tons (MT) of talc into the United States. The talc is primarily for use in industrial products but a small portion, less than 0.5% of the revenue from talc, is used for agricultural and horticultural markets.

34. The ITC operations are located in Ontario, Canada and include a talc mine (Timmins) and plant (Penhorwood), a distribution center in Foleyet and a warehouse in Mississauga as described in greater detail below.

**e. ITC's Cash Management**

35. Cash generated by ITC's operations is held at two bank accounts at the Royal Bank of Canada ("RBC") held in ITC's name. These funds are used to pay ordinary course third party and intercompany business expenses as they arise.

36. There are two (2) active accounts and zero (0) inactive accounts. The following bank accounts are held in the name of ITC:

- Imerys Talc Canada, Inc., Royal Bank of Canada, Operating Account (USD), Account No: \*\*\*9146 (the "USD Account"); and
- Imerys Talc Canada, Inc., Royal Bank of Canada, Operating Account (CDN), Account No: \*\*\*7638 (the "CDN Account").

The USD Account is used for cash received and transactions conducted in US Dollars and the CDN Account is used for cash received and transactions conducted in Canadian Dollars.

37. ITC's cash and cash management system is managed by ITA personnel in the finance and accounting department based in Three Forks, Montana., who have day-to-day access and control over the ITC bank accounts. Like the other Debtors, ITC also relies upon, Imerys USA, Inc. ("Imerys USA") personnel to provide treasury and accounts payable services pursuant to the shared services arrangement (as further described below). The treasury department located in Georgia, USA is generally responsible for ITC's accounts payable and disseminates the cheques to creditors. The treasury department has initiated plans to transfer the cheque issuing process to ITC which is identical to the changes made to the operations of the US Debtors. This new procedure will allow each of the Debtors to have greater control over their cash and disbursements once filing is complete. There will be one ITC employee that handles the printing and issuance of cheques but Imerys USA and ITA employees will still have oversight and provide direction on the vendors selected for payment. Only one ITC employee has access to the ITC bank accounts, and the employee's access is limited to posting monthly income tax and HST/QST payments.

**f. Intercompany Transactions**

38. ITC is a party to various intercompany transactions with ITA and ITV in the ordinary course, including transactions for goods and services. In addition, ITC enters into intercompany transactions with other Imerys Group entities, including Imerys S.A. Historically, there was an arrangement in place where, periodically, excess cash from the

Canadian operating account was transferred by the treasury department in Georgia, USA, at the discretion of ITC to the accounts of the parent company, Imerys S.A., and then recorded as an intercompany loan due and payable to ITC. As a result, as of the filing date, ITC was owed a loan from Imerys S.A. in the amount of US\$3 million on account of these intercompany transfers.

39. Historically, if ITC had insufficient funds in its bank accounts, Imerys S.A. provided the funds required for ITC to meet its obligations and would deduct any such amounts from the outstanding loan amount owed by Imerys S.A. to ITC. All intercompany transfers are recorded in Imerys S.A. and ITC's books and records.

40. Prior to the initiation of the US Proceedings, ITC ceased the practice of sweeping excess cash from the Canadian operating account so that all such funds are available to ITC.

**g. Creditors**

41. ITC is not party to any secured financing arrangements or any third party credit facilities. ITC funds its operations through cash generated from its operations and could request additional funding from Imerys S.A. on an as-needed basis.

42. I am advised by Maria Konyukhova of Stikeman Elliott LLP, Canadian counsel to the Debtors, that searches of the personal property registries for ITC were conducted across Canada on January 24, 2019. As of that date, there were only three (4) registrations in respect of equipment and motor vehicles in Ontario and Quebec. Attached hereto and marked as Exhibit "C" is a copy of the personal property search results for Ontario and Quebec.

43. The trailing 12-month average for ITC's unsecured trade debt is approximately US\$2.40 million.

44. With regard to intercompany debt by and between ITC on the one hand and Imerys S.A. and/or the other Debtors on the other, ITC was owed, as at the filing date, US\$3 million from Imerys SA.

45. It is the Debtors' intention to pay all post-filing expenses in the ordinary course. The Debtors have also sought court approval to pay certain pre-filing trade debt of non-US vendors or vendors otherwise deemed critical and have received approval, on an interim basis, to pay such claims. The Debtors anticipate having minimal prepetition trade debt outstanding during the Chapter 11 proceedings.

**h. Employees**

46. ITC has a total of 67 employees that work out of either the Timmins, Ontario or Penhorwood, Ontario facilities.

47. At the Timmins facility, 23 of ITC's employees are covered by a labor agreement between ITC and the United Steel Workers of America, Local 7580-01, which expires on June 30, 2021. At the Penhorwood/Foley facilities, 26 of ITC's employees are covered by a labor agreement between ITC and United Steel Workers of America, Local 7580-02, which expires on June 30, 2020. ITC also has 18 non-unionized employees.

48. ITC maintains two defined benefit registered pension plans: the Pension Plan for Bargaining Unit Employees of Imerys Talc Canada Inc. (the "Union Plan") and the Pension Plan for Employees of Imerys Talc Canada Inc. (the "Salaried Plan"). As of December 31, 2017, the Union Plan had a total of 22 active and 11 inactive members, and the Salaried Plan had a total of 31 active and 26 inactive members. The membership of the Union Plan is comprised of employees and former employees of ITC represented by United Steel Workers of America, Local 7580 and the membership of the Salaried Plan is comprised of non-unionized employees and former employees of ITC. ITC is the administrator of the Union Plan and the Salaried Plan.

49. The most recently filed actuarial valuation for each plan was performed as of December 31, 2017. As of that date, the Union Plan had assets of CDN\$4,384,500 and liabilities on a wind-up basis of CDN\$5,046,700, and the Salaried Plan had assets of CDN \$9,770,300 and liabilities on a wind-up basis of CDN\$10,493,400. The valuation indicates that no special payments are currently required to be paid to either the Union Plan or the Salaried Plan.

50. The Debtors intend to continue to pay all of their obligations to their employees and retirees in the ordinary course.

51. ITC's employee administration (e.g. compensation, benefits, and human resource policies) is managed by personnel located in the Three Forks, Montana and Atlanta, Georgia offices. The Atlanta offices are leased by a non-filing US affiliate, and the Three Forks space is owned by ITA. The personnel in the Three Forks office are employees of ITA.

**i. Real Estate**

52. The primary office of ITC is located on ITC owned real property at 100 Water Tower Road Timmins, Ontario. The registered head office is located at 1155 Rene-Levesque Blvd. West, Suite 4000, Montreal, Quebec which is the Montreal office of ITC's Canadian counsel, Stikeman Elliott LLP.

53. ITC has three main active sites (Timmins, Penhorwood, and Foleyet) and one warehouse (Mississauga) all located in Ontario. At the Timmins location, ITC owns a small parcel of land where a micronizing mill and a central office building are located. The City of Timmins owns the majority of the surface rights to this land.

54. The Penhorwood location is an active mine and beneficiation plant. At this site, ITC actively mines and mills talc. ITC has a land lease, an aggregate permit and a patent mine holding for this location. At the Foleyet location, ITC transloads the talc product to railcars for distribution. The land is owned by CN Railway and leased to ITC.

55. ITC leases a fourth site in Mississauga, Ontario which is the warehouse for storing finished product.

56. ITC also maintains responsibility for a closed talc mine located in the Sherbrooke region of Quebec. Another inactive mine, Marcoux talc mine, is located in close proximity to Mansonville, Quebec. The Marcoux mine has been closed since 2010, but ITC continues to own surface rights to the land and buildings on the property. ITC retains the responsibility of reclamation and closure of the Broughton mines which is scheduled to commence in February 2019. Once rehabilitation work is completed and upon final inspection, the ITC will relinquish responsibility for the Broughton site.

j. **Environmental Claims**

57. As described above, ITC operates one active mine in Penhorwood and a plant in Timmins. The Timmins Micronizing Mill, based on the most recent Environmental Site Assessment, is a low environmental liability. Similarly, the Penhorwood mine operation is also low risk. It has inherited waste rock piles and un-vegetated, disturbed land on the property; however, progressive rehabilitation is already in process. Regular environmental monitoring is in place and the mine satisfies all conditions for permits and approvals in its operation.

58. ITC has also conducted reclamation of mines that are no longer active. The Marcoux mine was reclaimed and subsequently closed in 2010. ITC still owns the surface rights to this land and the buildings on the land are not inhabitable. Finally, the reclamation for the Broughton mine is set to begin in February 2019 for a period of 10 months.

59. As described in detail in the Debtors' Insurance and Bonding Motion,<sup>2</sup> the Debtors are obligated to post bonds to cover the costs of obligations related to the reclamation of the land on which their mines are located, as well as certain performance, license/permit, and customs and border protection obligations. To date, there are two bonds posted on behalf of ITC.

60. The premiums for the bonds are paid by ITC. The current total amount of bonds posted by Imerys USA on behalf of ITC is approximately CDN\$2,950,000.

61. The Debtors will continue to comply with all of their environmental obligations through the course of these proceedings.

**III. REASONS FOR REORGANIZATION PROCEEDINGS**

62. Certain of the Debtors are facing numerous claims by plaintiffs alleging liability for personal injuries caused by exposure to talc mined, processed, and/or distributed by one or more of the Debtors (the "Talc Claims"). The overwhelming majority of the Talc Claims stem from the plaintiffs' alleged use of cosmetic talc, including J&J products. Although there are other talc suppliers in the market, certain of the Debtors have historically been J&J's primary

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<sup>2</sup> The "Insurance and Bonding Motion" means the *Debtors' Motion for Order Authorizing Debtors to (I) Pay Their Prepetition Insurance Obligations, (II) Pay Their Prepetition Bonding Obligations, (III) Maintain Their Postpetition Insurance Coverage, and (IV) Maintain Their Bonding Program.*

supplier of cosmetic talc and, therefore, have been routinely named as a co-defendant of J&J in litigation related to the Talc Claims.

63. The Debtors believe that the Talc Claims are entirely without merit and that exposure to their talc products has not caused any personal injury. The safety of the Debtors' talc has been confirmed by dozens of peer-reviewed studies and multiple regulatory and scientific bodies, including the US Food & Drug Administration. Moreover, two of the largest real-world studies ever conducted on talc miners and nurses using talc over the course of 50 years have overwhelmingly confirmed that talc is not carcinogenic. The Debtors and the rest of the Imerys Group have been and continue to be committed to the quality and safety of their products above all else.

64. At the time of the Imerys Group's acquisition of the Debtors in 2011, there were only approximately eight Talc Claims pending against the Debtors, each of which was in the early stages of litigation. Although plaintiffs began filing additional cosmetic talc cases at an increasing pace in 2014, the Debtors mounted a vigorous defense against such suits and were successful in dismissing or settling for *de minimis* amounts the vast majority of these cases. Nevertheless, the number of cosmetic Talc Claims filed continued to accelerate rapidly over the next several years.

65. ITA and ITV are named defendants in lawsuits asserting approximately 14,674 alleged Talc Claims. The Debtors have access to certain insurance assets that they have relied on to fund their defense and appropriate settlement costs to date. Nevertheless, the Debtors cannot continue to litigate in perpetuity.

66. Although no claims have yet been filed in Canada or the US against ITC, the Debtors believe it is only a matter of time until that occurs as the vast majority of the talc produced by ITC is exported and sold in the US.

67. The Debtors' primary goal in filing for Chapter 11 and CCAA protection is to confirm a plan of reorganization pursuant to Sections 105(a), 524(g), and 1129 of the Bankruptcy Code. These sections allow for the channelling of all present and future Talc Claims to a funded trust that will liquidate and pay the Talc Claims pursuant to a set of court-approved "trust

distribution procedures". These sections also provide for a channeling injunction to prevent claimants from pursuing against any Debtor or non-Debtor affiliate any claims arising from talc mined, produced, or distributed by any of the Debtors prior to their emergence from the US Proceedings. While the Debtors dispute all liability as to the Talc Claims, they believe this approach will provide fair and equitable treatment of all stakeholders.

68. To facilitate negotiations regarding a potential plan of reorganization and the creation of a trust to address the Talc Claims, the Debtors retained Jim Patton of Young, Conaway, Stargatt & Taylor, LLP on September 25, 2018 to serve as a proposed future claims representative (the "Prepetition FCR") to represent the interests of individuals who may in the future assert talc-related demands against the Debtors. The Prepetition FCR retained Young Conaway, Stargatt & Taylor, LLP, as counsel, and Ankura Consulting, as claims analyst, to provide advice in connection with such representation. Together with his advisors, the Prepetition FCR initiated an extensive diligence process into the Debtors' businesses and the pending talc litigation. The Debtors have worked constructively with the Prepetition FCR and his advisors throughout this process by providing access to a fulsome data room and responses to numerous information requests, as well as by attending multiple in-person diligence meetings, among other things.

69. During the US Proceedings, the Debtors intend to negotiate an agreement with the Prepetition FCR and representatives of the holders of current alleged Talc Claims to resolve their historic talc-related liabilities and develop a go-forward strategy for the impacted talc businesses. The Debtors are confident that such negotiations will culminate in a court-approved plan of reorganization in the first half of 2020 and enable the Debtors to emerge free and clear of all their historic talc-related liabilities and insulate the rest of the Imerys Group from any exposure for such liabilities.

70. While the Debtors dispute all liability as to the Talc Claims, the Debtors believe this approach will provide fair and equitable treatment of all stakeholders. It is within the best interests of the Debtors and their creditors to deal with the Debtors' reorganization comprehensively rather than bearing the time and expense of conducting multiple cross-border proceedings.

71. Further details of the litigation claims, the status of the Debtors' insurance coverage and pre-filing negotiations are set out in the First Day Declaration.

#### **IV. CENTRE OF MAIN INTEREST (COMI)**

##### **i. The US Debtors**

72. ITA and ITV are incorporated in Delaware and conduct the majority of their operations within the US borders. ITA and ITV have no assets or operations in Canada, nor do they have any significant Canadian creditors or any Canadian employees.

##### **ii. ITC and Integration with ITA and ITV**

73. As stated above, ITC has its registered and records office in Montreal, Quebec and main operations in Timmins, Ontario. It is the only talc entity in the Imerys Group operating in Canada.

74. ITC derives its customer base almost exclusively from the US with 95% of its production purchased by US buyers. ITC shares many of its customers with ITV.

75. Three out of four of ITC's directors are not Canadian residents.

76. The highest level of employee located in Canada (Timmins, ON) is the operations manager for the active mines. This individual, a paid employee of ITC, is responsible for the daily operations of both the Vermont office and ITC's mines. However, various operational tasks and decisions are made by ITA personnel or otherwise require senior approval, which is relayed to, and received by, ITA personnel in the United States. ITA personnel making decisions on behalf of ITC also consult with, rely upon or seek approval of, personnel in the US office (primarily Imerys USA) with respect to material matters which are outside of the ordinary course.

77. ITC relies heavily upon ITA personnel and resources located in the United States for both its strategic business operations as well as day-to-day functionality. Decisions are made on behalf of all of the Debtors by a division manager of North American talc operations who is an employee of ITA and located in the United States. These decisions include considerations such

as which shared services each of the Debtors will participate in and the appropriate use of capital expenditures.

78. Material corporate decisions relating to ITC's general business strategy are made or approved by a combination of senior leadership assigned to offices located in San Jose, California, Atlanta, Georgia, and Three Forks, Montana, and Paris, France, including pursuant to Imerys Group and Division-level management authority rules. Decisions related specifically to pricing and business development are developed and approved by the San Jose, California and Paris, France offices.

79. ITA and Imerys USA personnel located in the San Jose, California and Three Forks, Montana offices are responsible for developing and approving all final financial decisions for ITC (except for certain strategically significant and material decisions, which may require higher-level approval). Marketing decisions for ITC are generally overseen by US personnel.

80. ITC, like ITA and ITV, heavily relies on certain shared services provided by the USA Shared Service Center (the "SSC"), a unit of Imerys Clays, Inc. (which is a wholly-owned subsidiary of Imerys USA) (the "Shared Services"). The Debtors, including ITC, incur various costs related to its receipt of the Shared Services. ITA pays all the Shared Services costs on behalf of the Debtors and then charges back these costs to ITC and ITV. These Shared Services allow ITC and the other Debtors to access certain corporate and administrative services, resulting in efficiencies and reduced costs. The division manager employed at ITA and based in the US determines the extent of ITC's participation in the Shared Services. Given how closely integrated their operations are, ITC, ITA and ITV could not obtain the degree of cost efficiencies and operational benefits afforded by the Shared Services arrangement by outsourcing these shared functions to third party providers.

81. ITC receives certain Shared Services relating to treasury management and accounts payable functionality (including vendor setup and maintenance, invoice processing, and related services) governed by a Master Service Level Agreement with the SSC. Specifically, personnel in the Atlanta, Georgia, and Three Forks, Montana offices manage all of ITC's accounts payable and accounts receivable. ITC is also party to separate service level agreements with units of the SSC relating to purchasing activities and services as well as logistics services related to rail

management, warehouse procurement, and vendor management. Separate from the Shared Services, Imerys S.A. also provides group-level executive management, legal, and other corporate overhead services to its subsidiaries (including ITC). Specifically, these services include, among other things: business administration, marketing and sales, legal, internal and external communications, technology, transport, and services and are governed by a Service Agreement by and between Imerys S.A. and ITC.

82. The Debtors were granted relief by the US Court to continue the provision of the Shared Services and other intercompany services described above.

83. These Shared Services and other arrangements described above reflect the thoroughly integrated operations between ITC and the US Debtors. ITC relies on these services for its daily business operations including the efficient sale and delivery of its talc products to its US based customers.

#### V. OVERVIEW OF THE CHAPTER 11 PROCEEDINGS

84. As part of the first day motions (the "First Day Motions") that were heard by the US Court on February 14, 2019, the US Court made several orders (collectively, the "First Day Orders"). The First Day Orders made by the US Court include, *inter alia*:

- a) an order permitting the joint administration of the US Proceedings of ITA, ITV and ITC in the US Proceedings, which is attached hereto and marked as Exhibit "D" (the "Joint Administration Order");
- b) an order recognizing ITC as the foreign representative of the Debtors, which is attached hereto and marked as Exhibit "E" (the "Foreign Representative Order");
- c) an order authorizing the appointment of Prime Clerk LLC ("Prime Clerk") as claims and noticing agent, which is attached hereto and marked as Exhibit "F" (the "Claims and Noticing Agent Order");
- d) an order confirming the enforceability and applicability of the protections

pursuant to Sections 362, 365, 525 and 541 of the US Bankruptcy Code, which is attached hereto and marked as **Exhibit "G"** (the "**Automatic Stay Order**");

- e) an interim order (i) authorizing, but not directing, the Debtors to pay prepetition claims held by (a) Shippers in an amount not to exceed US\$1.9 million on an interim basis, (b) Lien Claimants in an amount not to exceed US\$1.0 million on an interim basis and (c) Royalty Interest Owners in an amount not to exceed US\$200,000 on an interim basis, each absent further order of the Court, (ii) authorizing, but not directing, the Debtors to pay 503(b)(9) Claims in an amount not to exceed US\$300,000 absent further order of the Court; (iii) confirming the administrative expense priority status of orders for goods not delivered until after the filing date (the "Outstanding Orders") and authorizing, but not directing, the Debtors to pay prepetition amounts related to the Outstanding Orders; which is attached hereto and marked as **Exhibit "H"** (the "**Lien Claimants Order**");
- f) an interim order (i) authorizing, but not directing, the Debtors to pay prepetition obligations owed to certain critical vendors, up to US\$500,000 on an interim basis; and (ii) authorizing financial institutions to honor and process related checks and transfers, which is attached hereto and marked as **Exhibit "I"** (the "**Critical Vendors Order**");
- g) an interim order (i) authorizing, but not directing, the Debtors to pay prepetition obligations owed to foreign vendors, up to US\$900,000, on an interim basis; and (ii) authorizing financial institutions to honor and process related checks and transfers, which is attached hereto and marked as **Exhibit "J"** (the "**Foreign Vendors Order**");
- h) an interim order (i) authorizing, but not directing, the Debtors to pay Taxes and Fees (as defined in the First Day Declaration), whether accrued prior to, on or after the commencement of the US Proceedings, up to US\$715,000, on an interim basis; and (ii) authorizing financial institutions to honor and process related checks and transfers, which is attached hereto and marked as **Exhibit "K"** (the

"Taxes Order");

- i) an order (i) authorizing the Debtors to (a) pay prepetition insurance and bonding obligations, up to US\$700,000 in the aggregate, (b) maintain their postpetition insurance coverage, and (c) maintain their bonding program, and (ii) authorizing financial institutions to honor and process related checks and transfers, which is attached hereto and marked as Exhibit "L" (the "Insurance and Bonding Order");
- j) an interim order (i) authorizing the Debtors to pay certain prepetition workforce obligations, including compensation, expense reimbursements, benefits, and related obligations, not exceeding the amount of US\$1.914 million on an interim basis and (ii) authorizing financial institutions to honor and process related checks and transfers, which is attached hereto and marked as Exhibit "M" (the "Workforce Obligations Order");
- k) an interim order with respect to utilities providers: (i) prohibiting the Debtors' utility service providers from altering or discontinuing service on account of prepetition invoices; (ii) approving an adequate assurance deposit as adequate assurance of postpetition payment to the utilities; and (iii) establishing procedures for resolving any subsequent requests by the utilities for additional adequate assurance of payment, which is attached hereto and marked as Exhibit "N" (the "Utilities Order");
- l) an interim order (i) authorizing the Debtors to honor prepetition obligations owed to customers and to otherwise continue customer programs, and (ii) authorizing financial institutions to honor and process related checks and transfers no exceeding the amount of USD\$600,000 in the interim, which is attached hereto and marked as Exhibit "O" (the "Customer Programs Order");
- m) an interim order authorizing, but not directing, the Debtors to maintain their existing cash management system, including maintenance of existing bank accounts, checks and business forms, authorizing continuation of existing

deposit practices, and approving the continuation of certain intercompany transactions, not exceeding the amount of USD\$1.35 million in the interim, and granting superpriority status of certain transactions among the Debtors, which is attached hereto and marked as Exhibit "P" (the "Cash Management Order"); and

- n) an interim order authorizing the filing of (i) a consolidated master list of creditors, a list of the thirty law firms with the most significant representations of Talc Claimants, , a list of the top thirty unsecured claims (excluding talc claims), and (ii) approving certain notice procedures for talc claimants, which is attached hereto and marked as Exhibit "Q" (the "Limit Notice and Approve Notice Procedures Order").

*Joint Administration Order*

85. Pursuant to the Joint Administration Order, the US Court directed that the US Proceedings of each Debtor would be administered jointly, including having one court docket and one service list.

86. In granting the Joint Administration Order, the US Court was satisfied the order was necessary for the US Proceedings and the efficient administration of the US Proceedings. ITC seeks recognition of the Joint Administration Order, so that these proceedings can be managed efficiently and in a manner consistent with the US Proceedings.

*Foreign Representative Order*

87. The US Court made the Foreign Representative Order appointing ITC as the foreign representative of the Debtors to, among other things, seek recognition of the US Proceedings in Canada. Pursuant to the Foreign Representative Order, the US Court requested the assistance of this Court in aiding and supporting the US Proceedings.

88. In granting the Foreign Representative Order, the US Court was satisfied that each order was necessary for the US Proceedings and the efficient administration of the US Proceedings.

ITC seeks recognition of the Foreign Representative Order, so that these proceedings can be managed efficiently and in a manner consistent with the US Proceedings.

*Claims and Noticing Agent Order*

89. Pursuant to the Claims Agent Order, the US Court appointed Prime Clerk as claims and noticing agent for the Debtors in order to administer the claims of the Debtors' creditors and provide certain noticing services. Prime Clerk is a bankruptcy claims and noticing agent that specializes in administering chapter 11 proceedings.

90. In entering the Claims Agent Order, the US Court determined that the appointment of Prime Clerk as claims and noticing agent was reasonable and appropriate to ensure the efficient and effective administration and determination of claims against the Debtors.

91. ITC seeks recognition of the Claims Agent Order from this Honourable Court to ensure consistency in the administration of these proceedings and the US Proceedings. However, ITC does not propose that the role of Prime Clerk supplant or replace the proposed role of Richter Advisory Group Inc. ("Richter") as Information Officer in these proceedings.

*Automatic Stay Order*

92. Pursuant to the Automatic Stay Order, the US Court enforced and restated the automatic stay of the US Bankruptcy Code.

93. In entering the Automatic Stay Order, the US Court determined that enforcing and restating the stay provisions of the US Bankruptcy Code was appropriate and necessary to maintain the Debtors' operations, while it continues its efforts to negotiate and confirm a consensual plan of reorganization in the US Proceedings.

94. ITC seeks recognition of the Automatic Stay Order from this Honourable Court and submits that such recognition is necessary to ensure consistency between these proceedings and the US Proceedings.

*Lien Claimants Order*

95. The US Court entered the Lien Claimants Order, which authorizes (but does not direct) the Debtors to pay certain shippers, lien claimants, royalty interest owners, and claimants with claims arising under Section 503(b)(9) of the US Bankruptcy Code. The Debtors sought this order to ensure that its supply of essential materials and supplies would not be interrupted and that it would be able to continue to transport talc among the Debtors' mines and plants and deliver talc to the Debtors' customers. The Lien Claimants Order was made on an interim basis, and will be subject to a further hearing and final order.

96. In entering the Lien Claimants Order, the US Court was satisfied that it is necessary for the Debtors to be allowed to pay certain shippers, lien claimants, royalty interest owners, and 503(b)(9) claimants for charges incurred in connection with the delivery and transport of goods and the provision of certain services, so that such claimants do not assert possessory, statutory, or other liens against any of the Debtors' property or otherwise refuse to release such property pending receipt of payment, which would disrupt the Debtors' operations and potentially cause substantial delays, great expense and irreparable harm to the Debtors' estates.

97. ITC seeks recognition of the Lien Claimants Order from the Canadian Court and submits that such recognition is necessary to ensure consistency in the treatment of these payments between these proceedings and the US Proceedings.

*Critical Vendors Order*

98. Pursuant to the Critical Vendors Order, the US Court authorized (but did not direct) the Debtors to pay prepetition obligations owed to certain critical vendors up to the Critical Vendor Claims Cap (as defined in the Critical Vendor Order). The Debtors sought this order to ensure its critical vendors would continue to supply necessary goods and services to the Debtors. The Critical Vendors Order was made on an interim basis, and will be subject to a further hearing and final order.

99. In entering the Critical Vendors Order, the US Court was satisfied that the Critical Vendors Order was necessary to ensure that certain critical vendors that provide essential goods and services to the Debtors do not refuse to provide such goods and services to the

Debtors, which would cause significant disruption to the Debtors' operations. The Debtors are authorized, but not directed, to require a critical vendor to agree to provide goods and services to the Debtors on current or recent trade terms in exchange for payment of such vendor's prepetition claims pursuant to the Critical Vendors Order.

100. ITC seeks recognition of the Critical Vendors Order from the Canadian Court and submits that such recognition is necessary to ensure there is no disruption to the Debtors' operations.

*Foreign Vendors Order*

101. Pursuant to the Foreign Vendors Order, the US Court authorized (but did not direct) the Debtors to pay prepetition obligations owed to certain foreign vendors up to the Foreign Vendor Claims Cap (as defined in the Foreign Vendor Motion). The Debtors sought this order to ensure its foreign vendors would continue to supply goods and services to the Debtors. In particular, the Debtors were concerned that foreign vendors may not consider themselves bound by the US Proceedings without a specific order. The Foreign Vendors Order was made on an interim basis, and will be subject to a further hearing and final order.

102. In entering the Foreign Vendors Order, the US Court was satisfied that the Foreign Vendors Order was necessary to ensure that certain foreign vendors that provide goods and services to the Debtors do not refuse to provide such goods and services to the Debtors, which would cause significant disruption to the Debtors' operations.

103. ITC seeks recognition of the Foreign Vendors Order from the Canadian Court and submits that such recognition is necessary to ensure there is no disruption to the Debtors' operations.

*Taxes Order*

104. Pursuant to the Taxes Order, the US Court authorized (but did not direct) the Debtors to pay certain prepetition Taxes and Fees (as defined in the First Day Declaration). The Taxes and Fees include international taxes, state and federal income taxes, franchise taxes, property taxes, sales and use taxes, licenses and fees, and other types of taxes and fees, assessments, or similar

charges. The Taxes Order applies to Canadian taxation authorities, including with respect to sales and use taxes and certain licenses and fees. The Taxes Order was made on an interim basis, and will be subject to a further hearing and final order. ITC seeks authority to make payments directly to taxing authorities and make payments to, or set off amounts owed from, Imerys USA or the other Debtors, in each case on account of the Taxes and Fees.

105. In entering the Taxes Order, the US Court determined that it was appropriate and necessary for the Debtors to have discretion to pay prepetition taxes and fees to facilitate its continued operations and avoid potential disruptions to the Debtors' operations, including interruptions to necessary permits and distracting the efforts of critical employees.

106. ITC seeks recognition of the Taxes Order from the Canadian Court, and submits that such recognition is necessary to ensure the efficient and consistent administration of the Debtors' operations and stability throughout its efforts in the US Proceedings. ITC also seeks recognition of the Taxes Order from the Canadian Court to ensure that Canadian taxation authorities are treated consistently with those in the US.

#### *Insurance and Bonding Order*

107. The US Court entered the Insurance and Bonding Order, which authorizes (but does not direct) the Debtors to pay prepetition insurance and bonding obligations and to continue, renew, and modify their postpetition insurance coverage and bonding program.

108. In entering the Insurance and Bonding Order, the US Court was satisfied that all of the insurance and bonding programs covered by the Insurance and Bonding Order are essential to the ongoing operation of the Debtors' businesses and the preservation of the value of the Debtors' estates.

109. ITC seeks recognition of the Insurance and Bonding Order from the Canadian Court and submits that such recognition is necessary to ensure continued insurance coverage for the US Debtors and ITC.

*Workforce Obligations Order*

110. The US Court entered the Workforce Obligations Order (i) authorizing (but not directing) the Debtors to (i) pay certain prepetition workforce obligations, including compensation, expense reimbursement, benefits, and related obligations, (ii) confirming the Debtor's right to continue workforce programs on a postpetition basis, (iii) authorizing payment of withholding and payroll-related taxes, (iv) confirming the Debtors' right to continue to deduct and transmit deductions from payroll checks as authorized by employees or required under any workforce-related plan, program or policy or as required by law and (v) authorizing payment of prepetition claims owing to administrators of, or third party providers under, workforce programs. The Workforce Obligations Order was made on an interim basis and will be subject to a further hearing and final order. The Workforce Obligations Order includes Canadian employees and all benefits relevant to Canadian employees.

111. In granting the Workforce Obligations Order, the US Court was satisfied that the failure to make payments on account of these obligations to the Debtors' workforce (and for withholdings related to the workforce) would threaten the Debtors' ability to operate, to the detriment of all stakeholders, and hinder their efforts to negotiate and confirm a consensual plan of reorganization in the US Proceedings. The US Court was further satisfied that authorizing the payment of these amounts was a sound exercise of the Debtors' business judgment.

112. ITC seeks recognition of the Workforce Obligations Order from the Canadian Court to ensure that the Debtors' workforce is treated equally in these proceedings and the US Proceedings.

*Utilities Order*

113. Pursuant to the Utilities Order, the US Court prohibited the Debtors' utility providers from terminating service solely on the basis of the commencement of the US Proceedings, approved adequate assurance of future payment for utility providers, and established procedures for resolving additional adequate assurance requests by utility providers. The utilities providers include those supplying gas, electricity, phone and internet services, among

other things. The Utilities Order includes 14 Canadian utilities providers. The Utilities Order was made on an interim basis and will be subject to a further hearing and final order.

114. In entering the Utilities Order, the US Court was satisfied that continued service was reasonable, appropriate and necessary to maintain the Debtors' operations.

115. ITC seeks the recognition of the Utilities Order from this Honourable Court and submits that such recognition is necessary to ensure consistency between these proceedings and the US Proceedings. ITC also seeks recognition of the Utilities Order from this Honourable Court to ensure Canadian utilities providers are treated consistently with the US utilities providers.

*Customer Programs Order*

116. Pursuant to the Customer Programs Order, the US Court authorized (but did not direct) the Debtors to pay prepetition obligations owed to certain customers on account of customer programs and to continue honoring customer programs postpetition. The customer programs offered by the Debtors include certain rebate, commission, and warranty programs. The Customer Programs Order was entered on an interim basis, and will be subject to a further hearing and final order.

117. In entering the Customer Programs Order, the US Court was satisfied that the Customer Programs Order was necessary to preserve the Debtors' critical business relationships and customer satisfaction.

118. ITC seeks recognition of the Customer Programs Order from the Canadian Court and submits that such recognition is necessary to ensure the Debtors are able to maintain their relationships with all customers, to the ultimate benefit of their business and estates.

*Cash Management Order*

119. The US Court entered the Cash Management Order, which (i) authorizes, but does not direct, the Debtors to maintain and use their existing cash management system, including maintenance of the Debtors' existing bank accounts, checks, and business forms, (ii) grants the Debtors a waiver of certain bank account and related requirements of the United States Trustee

to the extent that such requirements are inconsistent with the Debtors' practices under their existing cash management system or other actions described, (iii) authorizes, but does not direct, the Debtors to continue to maintain and use their existing deposit practices notwithstanding the provisions of section 345(b) of the Bankruptcy Code, (iv) approves the continuation of certain ordinary course intercompany transactions, (v) authorizes the Debtors to open and close bank accounts, and (vi) accords superpriority status to postpetition intercompany claims arising from transactions between the Debtors.

120. In short, the Cash Management Order allows the Debtors to continue to operate existing cash management systems consistent with past practice. The Cash Management Order was made on an interim basis and will be subject to a further hearing and final order.

121. Intercompany transactions regularly occur between various Imerys Group entities and ITC in the ordinary course. Historically, funds were transferred between ITC and Imerys S.A. periodically when deemed necessary or prudent, including, but not limited to, transfers as a result of excess cash held at ITC. Following the Petition Date, ITC will not transfer excess funds to Imerys S.A. on a periodic basis. As described in the Cash Management Order, ITC will continue to transfer funds to Imerys S.A. and other Imerys Group entities on account of (i) shared services expenses described herein and in the motion seeking entry of the Cash Management Order (the "**Cash Management Motion**") and (ii) fees and expenses arising from intercompany transactions for goods and/or services provided by Imerys S.A. or other Imerys Group entities as described in the Cash Management Motion and which are necessary for or otherwise benefit ITC's ongoing operations (the "**Permitted ITC Intercompany Transactions**"). Other than the Permitted ITC Intercompany Transactions, following the Petition Date, ITC will not transfer funds to Imerys Group entities on account of any prepetition intercompany transactions, unless otherwise ordered by the US Court.

122. In entering the Cash Management Order, the US Court was satisfied that the existing system was essential to the Debtors' ongoing operations and that there would be no prejudice to the Debtors' continued use of pre-printed business forms without modification to identify the members of the Debtors as debtors in possession.

123. The US Court was also satisfied that the intercompany transactions should continue because the system enables the Debtors to efficiently monitor and control their cash position and maintain control over Intercompany Transactions (as defined in the Cash Management Order). The continued use of the cash management system in such manner during the pendency of the US Proceedings is essential to the Debtors' business operations and their goal of maximizing value for the benefit of all parties in interest. In entering the Cash Management Order, the US Court was further satisfied that the Cash Management Order was necessary to avoid immediate and irreparable harm and is in the best interests of the Debtors' estates and their creditors and all other parties in interest. Examples of intercompany transactions the US Court approved for superpriority include shared services with the US Debtors, shared services with Imerys S.A, sale of goods which occur between ITC and the US Debtors or affiliates, intercompany sharing and commissions, research and development and testing, and hedging transactions.

124. ITC seeks recognition of the Cash Management Order from the Canadian Court to ensure that the Debtors' finances, which are highly integrated, can continue in the ordinary course to the benefit of all stakeholders.

*Limit Notice and Approve Notice Procedures Order*

125. The US Court entered the Limit Notice and Approve Notice Procedures Order, which (i) authorized the Debtors to file (a) a consolidated master list of creditors, (b) a list of the thirty law firms with the most significant representations of Talc Claimants, and (c) a consolidated list of top 30 unsecured claims and (ii) on an interim basis only, approving the implementation of a set of notice procedures by which the Debtors shall (a) list the addresses of known counsel of record for the Talc Claimants, in lieu of the addresses of the Talc Claimants themselves (where addresses of the Talc Claimants are not reasonably ascertainable to the Debtors), on the Debtors' creditor matrix and (b) send required notices, mailings, and other communications related to these Chapter 11 Cases to such known counsel of record for the Talc Claimants in lieu of sending such communications to the Talc Claimants themselves (where addresses of the Talc Claimants are not reasonably ascertainable to the Debtors).

126. ITC seeks recognition of the Limit Notice and Approve Notice Procedures Order from the Canadian Court to ensure that the Debtors meet their notice obligations as required under the US Bankruptcy Code as well as provide claimants in the talc litigation a fair and appropriate process to be heard.

#### VI. INFORMATION OFFICER

127. ITC, as foreign representative of the Debtors, seeks the appointment of Richter as the Information Officer in these proceedings. Richter is a licensed trustee-in-bankruptcy.

128. ITC, as foreign representative, believes that the appointment of the Information Officer is appropriate in the circumstances to ensure that both the Canadian Court and ITC's creditors and stakeholders are kept informed of these proceedings and the US Proceedings. Attached hereto and marked as Exhibit "R" is a true copy of the executed Consent of Richter to act as Information Officer.

#### VII. ADMINISTRATION CHARGE

129. ITC, as foreign representative of the Debtors, seeks the granting of an administration charge over the assets of the Debtors in Canada with respect to the fees and disbursements of Richter, the Information Officer, and its counsel, Aird & Berlis LLP, to a maximum of CDN\$200,000 (the "Administration Charge").

130. I understand that Richter requires the Administration Charge as security for their fees in order to act in this matter and that the Administration Charge should rank as a first charge.

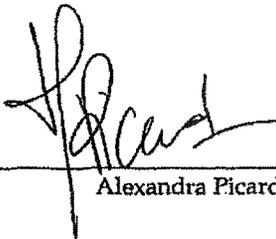
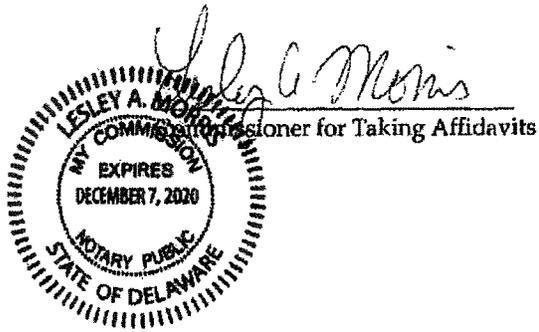
#### VIII. CONCLUSION

131. The Debtors' ultimate goal in the US Proceedings and the CCAA proceedings is to confirm a plan of reorganization providing for trust mechanisms that will address all current and future talc claims arising from the historic operations of the Debtors while simultaneously preserving value and allowing the Debtors to emerge from chapter 11 free of such talc-related liabilities. In the near term, however, to minimize any loss of value of their businesses during the US Proceedings, the Debtors' immediate objective is to maintain a business-as-usual

atmosphere during the early stages of the US Proceedings, with as little interruption or disruption to the Debtors' operations as possible.

132. I believe that the relief sought in this application (a) is vital to enabling the Debtors to make the transition to, and operate in, chapter 11 with minimum interruptions and disruptions to their businesses or loss of productivity or value and (b) constitutes a critical element in the Debtors' being able to successfully maximize value for the benefit of their estates.

SWORN BEFORE ME in the State of Delaware, on Thursday, February 14, 2019.



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Alexandra Picard

**TAB B**

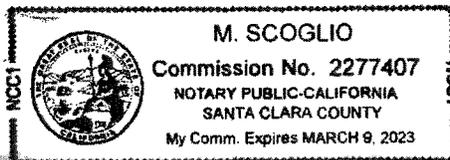
**THIS IS EXHIBIT "B"**

*referred to in the Affidavit of Alexandra Picard*

Sworn before me this 28<sup>TH</sup>  
day of March, 2019



*A Commissioner for Taking Affidavits*



IN THE UNITED STATES BANKRUPTCY COURT  
FOR THE DISTRICT OF DELAWARE

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In re:	: Chapter 11
	: :
IMERYYS TALC AMERICA, INC., et al.,	: Case No. 19-_____ (____)
	: :
Debtors. <sup>1</sup>	: Joint Administration Pending
	: :
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**DECLARATION OF ALEXANDRA PICARD, CHIEF  
FINANCIAL OFFICER OF THE DEBTORS IN SUPPORT  
OF CHAPTER 11 PETITIONS AND FIRST DAY PLEADINGS**

Under 28 U.S.C. § 1764, Alexandra Picard declares as follows under the penalty of perjury:

1. I am the Chief Financial Officer of Imerys Talc America, Inc., Imerys Talc Vermont, Inc., and Imerys Talc Canada Inc. Imerys Talc America, Inc. is incorporated in Delaware and is an affiliate of the other debtors and debtors in possession (collectively, the "**Debtors**") in the above-captioned chapter 11 cases (collectively, the "**Chapter 11 Cases**"). Since I began working with the Debtors and their affiliates, I have served in various roles, including the Deputy Group Treasurer, the Finance Director for the Talc North America Division, and the Vice President of Finance. I have served as Chief Financial Officer of the Debtors since December 2018. I am authorized to submit this declaration (the "**First Day Declaration**") on behalf of the Debtors.

2. I am responsible for overseeing the operations and financial activities of the Debtors, including but not limited to, monitoring cash flow, business relationships, and financial planning. As a result of my tenure with the Debtors, my review of public and non-public

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<sup>1</sup> The Debtors in these cases, along with the last four digits of each Debtor's federal tax identification number, are: Imerys Talc America, Inc. (8410), Imerys Talc Vermont, Inc. (8414), and Imerys Talc Canada Inc. (8416). The Debtors' address is 100 Mansell Court East, Suite 300, Roswell, Georgia 30076.

documents, and my discussions with other members of the Debtors' management team, I 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. I am authorized by each of the Debtors to submit this First Day Declaration. References to the Bankruptcy Code (as hereafter defined), the chapter 11 process, and related legal matters are based on my understanding of such matters in reliance on the explanation provided by, and the advice of, counsel. If called upon to testify, I would testify competently to the facts set forth in this First Day Declaration.

3. On February 13, 2019 (the "Petition Date"), the Debtors filed voluntary petitions for relief in the United States Bankruptcy Court for the District of Delaware (the "Court"). The Debtors will continue to operate their businesses and manage their properties as debtors in possession.

4. I submit this First Day Declaration on behalf of the Debtors in support of the Debtors' (a) voluntary petitions for relief that were filed under chapter 11 of title 11 of the United States Code, 11 U.S.C. §§ 101-1330, as amended (the "Bankruptcy Code") and (b) "first-day" pleadings, which are being filed concurrently herewith (collectively, the "First Day Pleadings").<sup>2</sup> The Debtors seek the relief set forth in the First Day Pleadings to minimize the adverse effects of the commencement of the Chapter 11 Cases on their businesses. I have reviewed the Debtors' petitions and the First Day Pleadings, or have otherwise had their contents explained to me, and it is my belief that the relief sought therein is essential to ensure the uninterrupted

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<sup>2</sup> Unless otherwise defined herein, all capitalized terms shall have the meanings ascribed to them in the applicable First Day Pleadings.

operation of the Debtors' businesses and to successfully maximize the value of the Debtors' estates.

5. Part 1 of this First Day Declaration provides an overview of the Debtors' businesses, organizational structure, and prepetition indebtedness, as well as a discussion of certain pending litigation and the events leading to the Debtors' chapter 11 filings. Part 2 sets forth the relevant facts in support of the First Day Pleadings.

## PART 1

### I. COMPANY AND BUSINESS OVERVIEW

#### A. Background

6. There are three Debtors in these Chapter 11 Cases: Imerys Talc America, Inc. ("ITA"), Imerys Talc Vermont, Inc. ("ITV"), and Imerys Talc Canada Inc. ("ITC"). As shown in the simplified corporate organization chart attached hereto as Exhibit A, ITA is the direct parent of ITV, and ITC is an affiliate of ITA and ITV.<sup>3</sup>

7. The Debtors' operations are exclusively focused on the mining, processing, and/or distribution of talc. The Debtors supply talc to third-party manufacturers for use in such parties' products. They do not, however, manufacture the final products or sell such products directly to consumers.

8. The Debtors are facing significant potential liabilities as a result of thousands of claims by plaintiffs alleging personal injuries caused by exposure to talc mined, processed, and/or distributed by one or more of the Debtors (the "Talc Claims").<sup>4</sup> The Debtors

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<sup>3</sup> ITA is incorporated in Delaware, ITV is incorporated in Delaware, and ITC is incorporated in Canada. Certain assets owned by ITC, including bulk product inventory and a professional retainer, are located in the United States.

<sup>4</sup> While Debtor ITC has not been named in any talc litigation to date, the Debtors constitute the entirety of the Imerys Group's North American talc operations. As a result, ITC's day-to-day operations rely upon and regularly interact with the day-to-day operations of Debtors ITA and ITV. In addition, ITC

believe that the Talc Claims are entirely without merit, as the safety of talc has been confirmed by dozens of peer-reviewed studies and multiple regulatory and scientific bodies.

9. As of the Petition Date, one or more of the Debtors has been sued by approximately 14,650 individual claimants. The overwhelming majority (approximately 98.6%) of the Talc Claims asserted against the Debtors are based on personal injury allegedly arising from the plaintiffs' exposure to cosmetic talc. As described in further detail in Section II below, while the Debtors have access to valuable insurance assets that they have relied on to fund their defense and appropriate settlement costs to date, the Debtors have been forced to fund certain litigation costs and settlements out of their free cash flow due to a lack of currently available coverage for certain Talc Claims, or insurers asserting defenses to coverage. The Debtors lack the financial wherewithal to litigate against the mounting Talc Claims being asserted against them in the tort system.

10. The Debtors' decision to commence the Chapter 11 Cases was prompted by certain recent developments arising from the growing number of Talc Claims in the United States. These developments include: (i) the significant increase in settlement demands with respect to cosmetic Talc Claims in the wake of recent verdicts, including a multi-billion dollar verdict rendered against Johnson & Johnson ("J&J"), and the ensuing media focus on talc for cosmetic applications; (ii) the increased unwillingness of the Debtors' insurers and third party contractual indemnitors to provide coverage for the Debtors' mounting defense costs and potential liability exposure; and (iii) recent constructive discussions with a proposed future claims representative that led the Debtors to conclude that the Chapter 11 Cases would be the optimal path for resolving

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may face potential future litigation as the majority of the talc produced by ITC is exported into the United States.

their historical talc-related liabilities in a manner that maximizes distributable value for all stakeholders.

11. The Debtors' primary goal in filing these Chapter 11 Cases is to confirm a consensual plan of reorganization pursuant to Sections 105(a), 524(g), and 1129 of the Bankruptcy Code that channels all of the present and future Talc Claims to a trust vested with substantial assets and provides for a channeling injunction prohibiting claimants from asserting against any Debtor or non-debtor affiliate any claims arising from talc mined, produced, sold, or distributed by any of the Debtors prior to their emergence from these Chapter 11 Cases. While the Debtors dispute all liability as to the Talc Claims, the Debtors believe this approach will provide fair and equitable treatment of all stakeholders.

**B. History of the Debtors**

12. The Debtors have been owned by various entities over their over 100-year history. In 1989, J&J sold the stock of Windsor Minerals, Inc. ("Windsor"), which is now known as ITV, to Cyprus Mines Corporation ("Cyprus"). In 1992, Cyprus and its affiliates transferred such stock and all of their other assets in the talc business to a newly formed subsidiary, Cyprus Talc Corporation. Contemporaneously with the 1992 transfer, RTZ America, Inc. (later known as Rio Tinto America, Inc.) purchased the outstanding shares of Cyprus Talc Corporation. Also in 1992, Cyprus Talc Corporation was renamed Luzenac America, Inc. ("Luzenac America"), which is now known as ITA.

13. The Debtors were acquired by the "Imerys Group"<sup>5</sup> in 2011 through an Imerys Group holding company, Mircal S.A. Mircal S.A. entered into an agreement with Rio

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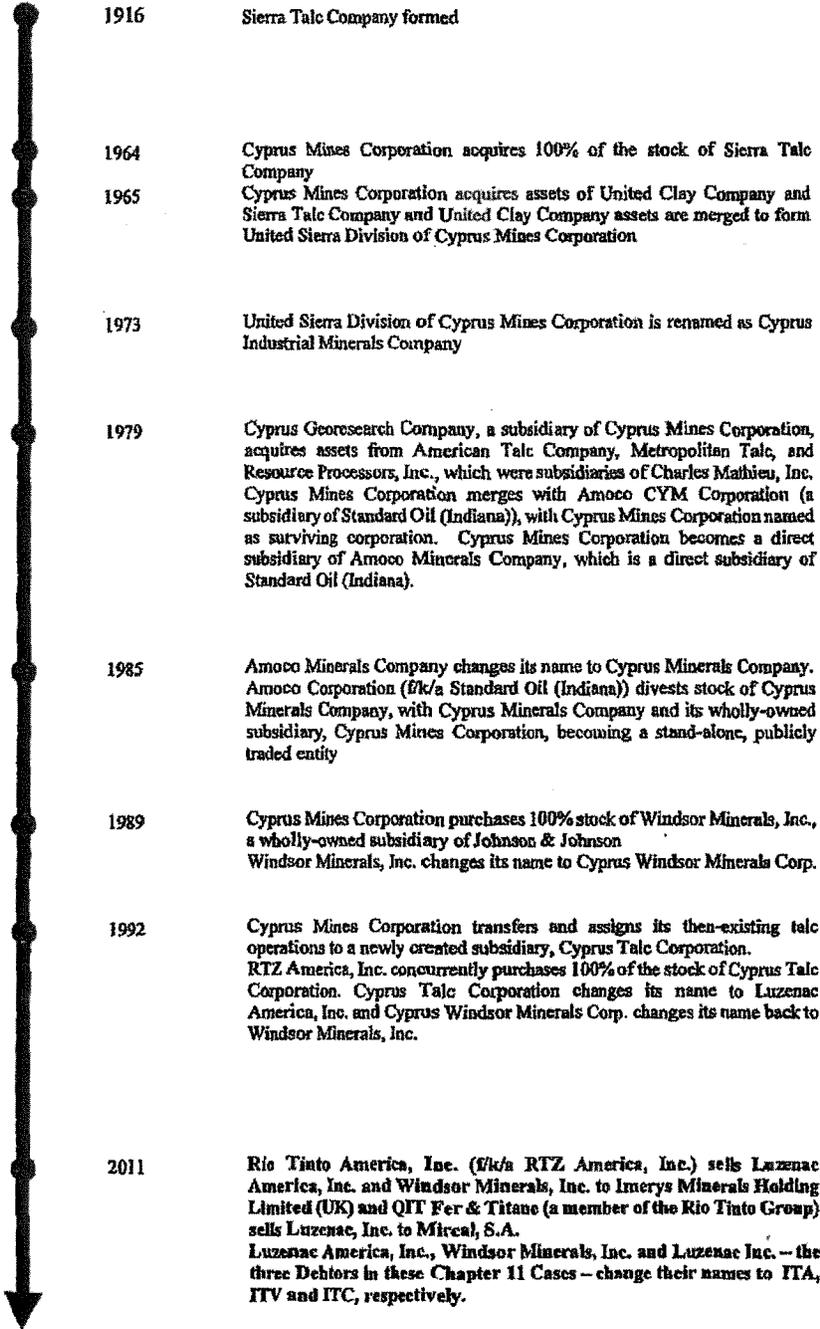
<sup>5</sup> The Imerys Group is a French multinational corporation comprised of over 360 affiliated entities directly and indirectly owned by non-debtor affiliate entity Imerys S.A. ("Parent"). Other than the three

Tinto America, Inc. to purchase the stock of the Rio Tinto Group's talc operations, including the stock of Luzenac America and Windsor. The stock purchase agreement entitled Mircal S.A. to substitute other members of the Imerys Group to acquire individual talc-related entities from the Rio Tinto Group, and Mircal S.A. exercised that right to cause Imerys Minerals Holding Limited (UK), an indirect, non-debtor subsidiary of Parent, to acquire the outstanding shares of Luzenac America. At the same time, Mircal S.A. also acquired the stock of Luzenac, Inc. ("Luzenac"), which is now known as ITC, from another member of the Rio Tinto Group, QIT Fer & Titane, Inc. Mircal S.A. remains the direct parent entity of ITC. Luzenac America, Windsor and Luzenac—the three Debtors in these Chapter 11 Cases—subsequently changed their names to ITA, ITV, and ITC, respectively. At the time of the Imerys Group's acquisition of the Debtors in 2011, there were only approximately eight Talc Claims pending against the Debtors, each of which was in the early stages of litigation. Most of the Talc Claims allege exposure to talc prior to the Imerys Group's acquisition of the Debtors in 2011.

14. A timeline of the ownership history of each of the Debtors is set forth below:

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Debtor entities, none of the other entities in the Imerys Group is seeking protection under chapter 11 or any other insolvency law.



**C. Overview of Debtors' Operations and Revenues**

15. The Debtors are in the business of mining, processing, selling, and/or distributing talc. Talc is a hydrated magnesium silicate that is used in the manufacturing of dozens of products in a variety of sectors, including coatings, rubber, paper, polymers, cosmetics, food, and pharmaceuticals. Talc is mined from talc deposits, which were geologically formed through the transformation of existing rocks under the effect of hydrothermal fluids carrying one or several of the components needed to form the mineral. There are many types of talc and each ore body has its own features and its own geology. Accordingly, the mining and processing of talc requires highly-technical and specialized knowledge.

16. The Debtors' talc operations include talc mines, plants, and distribution facilities located in: Montana (Yellowstone, Sappington, and Three Forks); Vermont (Argonaut and Ludlow); Texas (Houston); and Ontario, Canada (Timmins, Penhorwood, and Foleyet). The Debtors also utilize offices located in San Jose, California and Roswell, Georgia. In 2018, North American talc sales were comprised of the following products: polymers (31%); paper (18%); paints and coatings (16%); specialties (16%); rubber (7%); personal care/cosmetics (5%); building materials (4%); and others (3%). ITA and ITV sell talc directly to their customers as well as to third party and affiliate distributors. ITC exports the vast majority of its talc into the United States almost entirely on a direct basis to its customers.<sup>6</sup>

17. The Debtors' total revenue in 2018 was approximately \$174 million.

**D. Customers**

18. The Debtors' top customers in the personal care/cosmetic sector are manufacturers of baby powder (50% of personal care sales), makeup (30% of personal care sales),

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<sup>6</sup> A small portion of ITC's talc is sold to distributors in the United States.

and soap (20% of personal care sales). Although there are other talc suppliers in the market, the Debtors have historically been the sole supplier of cosmetic talc to J&J<sup>7</sup> and, therefore, have been routinely named as a co-defendant of J&J in litigation related to the Talc Claims. Although personal care/cosmetic sales make up only approximately 5% of the Debtors' revenue, approximately 98.6% of the pending Talc Claims allege injuries based on use of cosmetic products containing talc.

19. In the polymers sector, the Debtors' main customers include compounders, who generally sell products to original equipment manufacturers in the automotive industry. The Debtors' other customers include, among others, manufacturers in the industrial coatings, paper, and catalysts industries.

**E. Competitors**

20. The Debtors are the market leader with respect to talc production in North America, representing nearly 50% of the market. The Debtors' main competitors are the following companies: Mineral Technologies Inc., American Talc Company, Inc., IMI Fabi, and Cimbar.

**F. Shared Services**

21. The Debtors participate in certain shared services arrangements with other Imerys Group entities that are beneficial and/or necessary to their operations and permit the Debtors to access critical resources at reduced costs. In particular, the Debtors participate in certain shared services along with other North American Imerys Group entities that permit the Debtors to access certain corporate and administrative services (the "**NA Shared Services**"). The

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<sup>7</sup> Prior to the sale of Windsor to Cyprus, J&J's talc sales were vertically integrated, with Windsor's Vermont operations supplying talc to J&J cosmetic manufacturing operations.

NA Shared Services are generally governed by shared services agreements and are administered by the USA Shared Service Center (the "SSC"), which is a unit of non-debtor Imerys USA, Inc. ("Imerys USA"). As further described in the Cash Management Motion,<sup>8</sup> ITA and ITV receive NA Shared Services related to accounts payable, treasury, tax, facilities, cash application, information technology, purchasing, logistics, human resources, and certain telecommunications services. ITC receives NA Shared Services related accounts payable, treasury, purchasing and logistics services. The Debtors are invoiced monthly, on a *pro rata* basis, for NA Shared Services expenses based on an annual budget, which is adjusted based on actual costs. The Debtors also incur certain direct costs related to licensing fees, salary payments, and other charges. The expenses arising from the NA Shared Services are paid for by ITA on behalf of the Debtors, with ITV's and ITC's portion of the payment recorded as an intercompany receivable on ITA's books.

22. The Debtors also receive certain group-level executive management, legal, and other corporate overhead services from non-debtor Parent. Specifically, these services include, among other things: business administration, marketing and sales, legal, internal and external communications, technology, transport, and security services (the "SA Shared Services"). Provision of the SA Shared Services is governed by separate Services Agreements between the Debtors and non-debtor Parent. The Debtors incur SA Shared Services expenses totaling the *pro rata* share of the direct and indirect costs incurred by Imerys S.A. on behalf of the Debtor, plus 5%, a portion of the related overhead costs, and direct costs for any expenses incurred on the Debtors' behalf. Aside from these shared services the Debtors also receive goods

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<sup>8</sup> The "Cash Management Motion" means the *Debtors' Motion for Orders Under 11 U.S.C. §§ 105(a), 345, 363, 503(b), and 507(a), Fed. R. Bankr. P. 6003 and 6004, and Del. Bankr. L.R. 2015-2 (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.*

and services pursuant to certain other intercompany transactions with the Debtors and other non-debtor affiliates that are further described in the Cash Management Motion.

**G. Summary of Prepetition Debt**

23. Funding. The Debtors are not party to any secured financing arrangements or any third party credit facilities, and instead have relied on the positive cash flow generated by their operations to run their businesses. As described in detail in the Cash Management Motion, prior to the Petition Date, ITA and ITV participated in a zero balance accounting cash management system with their non-debtor, indirect parent, Imerys USA. Under such system, at the end of each business day, funds remaining in ITA's lockbox bank account were automatically swept to Imerys USA's bank account. Historically, Imerys USA paid the majority of ITA's and ITV's expenses directly, pursuant to certain intercompany arrangements, including payments to third parties such as vendors. The amount of such payments were deducted from the amount of funds swept into Imerys USA's accounts from ITA each day. The remaining amount was then recorded in ITA's and Imerys USA's books as an interest-bearing intercompany loan in favor of ITA pursuant to that certain Intercompany Loan and Investment Agreement, dated as of June 2018, by and between ITA and Imerys USA and that certain Intercompany Loan and Investment Agreement, dated as of June 2018, by and between ITV and Imerys USA (each as subsequently amended or revised). In addition to reimbursing Imerys USA for amounts paid on behalf of ITA and ITV, in certain instances, ITA also directly paid ITA's and ITV's other expenses, including payroll, certain bank fees, and other occasional third party payments.<sup>9</sup> To account for obligations paid by ITA on behalf of ITV, ITA recorded any such amounts on its books as an intercompany receivable from ITV and ITV recorded such amounts on its books as an intercompany payable to ITA.

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<sup>9</sup> ITV does not hold any bank accounts in its own name and utilizes ITA's bank accounts.

24. As ITA and ITV have been historically cash-flow positive, as of the Petition Date, ITA has an outstanding loan payable from non-debtor Imerys USA in the current amount of approximately \$14,400,000. ITV also has an outstanding loan payable from non-debtor Imerys USA in the current amount of approximately \$2,900,000.

25. Prior to the Petition Date, ITA and ITV modified certain aspects of their cash management system in anticipation of the Chapter 11 Cases. ITA and ITV implemented these modifications in order to (i) ensure transparency in the Chapter 11 Cases by avoiding having a system in which Debtor funds were swept to a non-debtor affiliate on a daily basis and comingled with funds belonging to other non-debtor affiliates, and (ii) simplify their cash management system for the purposes of postpetition reporting and seeking first day relief. Accordingly, prior to the Petition Date, ITA and ITV eliminated the practice of automatically sweeping funds to Imerys USA. ITA's and ITV's funds are now retained in ITA's bank accounts, and ITA pays most of ITA's and ITV's third party and intercompany obligations from such accounts. Due to the nature of ITA's and ITV's operations, however, non-debtor Imerys USA may continue to satisfy certain obligations (as discussed in Part 2 below) for the benefit of ITA and ITV, with ITA reimbursing non-debtor Imerys USA on account of such payments. As under the prior cash management system, ITA continues to make payments on behalf of ITV, which are recorded on each entity's books as a receivable held by ITA and a payable due from ITV.

26. ITC operates under a separate cash management system from the other Debtors. Cash generated from ITC's operations is deposited in ITC's accounts and ITC pays its third party and intercompany obligations directly out of its bank accounts. Historically, excess cash generated by ITC's operations was periodically swept to Parent at the discretion of ITC. All transfers of cash that were made to Parent (net of any cash transfers made from Parent to ITC or

on behalf of ITC) were recorded as an intercompany interest-bearing loan on the books of Parent and ITC pursuant to an intra-group treasury agreement and that certain Intercompany Loan and Investment Agreement by and between Imerys S.A. and ITC. As a result, as of the Petition Date, ITC holds an outstanding loan due and payable from non-debtor Parent in the amount of approximately \$3,000,000.

27. Prior to the Petition Date, ITC also modified its cash management system and eliminated the practice of periodically sweeping cash to Parent's account and instead now retains funds generated from operations in ITC's bank accounts.

28. Bonds. As described in detail in the Debtors' Insurance and Bonding Motion,<sup>10</sup> the Debtors are obligated under certain applicable statutes, rules, and regulations to post bonds to cover the costs of obligations related to the reclamation of the land on which their mines are located, as well as certain performance obligations, licenses/permits, customs and border protection obligations, and litigation appeals. As of the Petition Date, there were seven bonds posted on behalf of ITA, one bond posted on behalf of ITV, and two bonds posted on behalf of ITC. ITC paid the applicable surety directly on account of both of its bonding obligations. ITA paid the applicable surety directly on account of the appeal bond. The rest of the Debtors' bonding program is maintained on a consolidated basis by non-debtor Imerys USA. Premiums for each of these bonds were paid by non-debtor Imerys USA for the benefit of the Debtors and the Debtors reimbursed Imerys USA for all fees and costs associated with such bonds. As of the Petition Date, the total amount of bonds posted by or on behalf of the Debtors was approximately \$51,000,000.

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<sup>10</sup> The "Insurance and Bonding Motion" means the *Debtors' Motion for Order Under 11 U.S.C. §§ 105(a), 362(b), and 503(b) Authorizing Debtor to (I) Pay Their Prepetition Insurance Obligations, (II) Pay Their Prepetition Bonding Obligations, (III) Maintain Their Postpetition Insurance Coverage, and (IV) Maintain Their Bonding Program*.

29. Letter of Credit Facility. Non-debtor Imerys USA is the obligor under a \$50 million letter of credit facility with Credit Industriel et Commercial, dated as of March 1, 2017 (the "LC Facility"), for the benefit of ITV. Under the LC Facility, three standby letters of credit have been issued, and are currently outstanding, for the benefit of ITV in the aggregate amount of approximately \$410,000. Non-debtor Imerys USA pays all costs related to the LC Facility directly and these costs are then charged back to ITV.

30. Trade Debt. In the ordinary course of their businesses, the Debtors incur trade debt with numerous vendors in connection with their mining, processing, and distribution of talc. The Debtors are substantially current with respect to their unsecured trade debt, and do not believe they have material unsecured liabilities other than the Talc Claims, which are contingent and disputed. The Debtors' unsecured trade debt over the past twelve months was approximately \$11,700,000, on average, per month.

## II. LITIGATION AND EVENTS LEADING TO THE CHAPTER 11 FILINGS

31. As discussed in Part 1 above, one or more of the Debtors are among the defendants in thousands of actions brought before several U.S. federal and state courts by multiple plaintiffs asserting Talc Claims. The Debtors believe this litigation is without merit and their strategy has consistently been to mount a vigorous defense to all such claims. Given the increasing number of Talc Claims asserted, the rise in settlement demands in cosmetic talc lawsuits, and the increased unwillingness of the Debtors' insurers and third party contractual indemnitors to provide coverage for the Debtors' mounting defense costs and potential liability exposure, the Debtors determined that the commencement of these Chapter 11 Cases was their best option to protect their estates and preserve value for all stakeholders. The Debtors lack the financial wherewithal to remain in the tort system.

**A. Overview of Talc Litigation**

32. Plaintiffs generally have asserted two types of Talc Claims: (1) claims alleging ovarian cancer or other gynecological diseases arising as a result of talc exposure (the "OC Claims") and (2) claims alleging respiratory cancers or other asbestos-related diseases arising as a result of talc exposure ("Mesothelioma Claims"). As of the Petition Date, there are approximately 13,800 pending alleged OC Claims and approximately 850 pending alleged Mesothelioma Claims.

33. *OC Claims.* Plaintiffs asserting OC Claims generally allege that they have developed ovarian cancer or other gynecological diseases as a result of their use of J&J body powder (which is comprised almost entirely of talc) for feminine hygiene purposes. Historically, plaintiffs have asserted that talc itself causes ovarian cancer and have not asserted that talc contained in the body powder was contaminated with asbestos. In 2017, however, some plaintiffs asserting OC Claims began to assert that their personal injuries also were caused by alleged asbestos contamination of the talc. The Debtors dispute all of these allegations.

34. At the time of the Imerys Group's acquisition of the Debtors in 2011, there was only one OC Claim pending against ITA, which was in the early stages of litigation. ITA was dismissed from that case on summary judgment prior to trial in 2013, but co-defendant J&J was found liable for negligence (though no damages were awarded). In early 2014, as a result of the publicity surrounding the J&J judgment, there was an influx of additional cases filed against both J&J and ITA. Then, over the next several years, the number of OC Claims filed accelerated at an even more rapid pace. Approximately 16,500 OC Claims have been filed since 2014 and, as of the Petition Date, approximately 13,800 OC Claims are still pending.

35. *Mesothelioma Claims.* Plaintiffs asserting Mesothelioma Claims allege they have developed non-ovarian cancer personal injuries based on some form of asbestos exposure. Some of these plaintiffs assert that they were only exposed to talc that was contaminated with asbestos, while others allege additional non-talc exposure to asbestos. In many cases, plaintiffs have made insufficient allegations for the Debtors to determine whether the Mesothelioma Claims are based on cosmetic talc exposure, industrial talc exposure, or both. For those pending cases where the plaintiff's exposure to talc has been identified with specificity, approximately 63% percent of plaintiffs allege exposure to asbestos through the use of cosmetics, while approximately 24% of plaintiffs allege exposure in industrial occupational settings (the approximately remaining 13% of plaintiffs allege both cosmetic and industrial exposure).

36. At the time of the Imerys Group's acquisition of the Debtors in 2011, there were only approximately seven pending Mesothelioma Claims, which were all in the early stages of litigation. As with OC Claims, however, plaintiffs began filing Mesothelioma Claims at an increasing pace in 2014. Since 2014, approximately 1,200 claims have been filed, of which approximately 850 were still pending as of the Petition Date.

37. As they have consistently argued during all such litigation, the Debtors maintain that their talc is safe, that the OC Claims and the Mesothelioma Claims are entirely without medical or scientific merit, and that exposure to their talc products has not caused any personal injuries. The safety of the Debtors' talc has been confirmed by dozens of peer-reviewed studies and multiple regulatory and scientific bodies, including the FDA. Three of the largest real-world studies ever conducted—one on talc miners over the course of 50 years and two of the largest studies of women's health ever conducted in the United States—have overwhelmingly confirmed that talc is not carcinogenic. Moreover, the trial court supervising the coordinated talc

ovarian cancer litigation in New Jersey state court held that the scientific evidence of talc as an alleged cause of ovarian cancer was insufficient to allow selected bellwether cases in that court (approximately 286) to proceed to trial against ITA and J&J. In addition, the trial court supervising the coordinated talc ovarian cancer litigation in California state court granted summary judgment to ITA before trial and then subsequently dismissed a multimillion dollar verdict against J&J in an ovarian cancer case, in part because of the limited nature of the scientific evidence presented at trial. ITA has won outright three defense verdicts in its favor in jury trials in Missouri state court. No final, unappealable verdict has been issued against any Debtor in a lawsuit asserting a Talc Claim. The Debtors have been and continue to be committed to the quality and safety of their products above all else. Nevertheless, the substantial increase in alleged Talc Claims in the last few years, combined with the current state of the U.S. tort system, has led to overwhelming projected litigation costs (net of insurance) that the Debtors cannot sustain in the long term.

38. Insurance/Indemnities. One or more of the Debtors have rights to the proceeds of insurance policies for both the OC Claims and the Mesothelioma Claims, and the Debtors continue to litigate and negotiate the scope of the potentially available insurance coverage. The Debtors are informed and believe that the total amount of insurance available for the OC Claims is at least \$529 million and believe the total amount of insurance coverage for the Mesothelioma Claims is at least \$180 million.<sup>11</sup> The Debtors also believe that the Talc Claims related to the Debtors' sale of talc to J&J are subject to uncapped indemnity rights against J&J under various stock purchase and supply agreements. One or more of the Debtors also have rights to the proceeds of insurance policies issued to J&J and its subsidiaries, and policies issued to

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<sup>11</sup> ITA currently is involved in coverage litigation in California state court regarding the scope and amount of available coverage for Mesothelioma Claims.

Standard Oil and its subsidiaries, which the Debtors believe to have total limits of approximately slightly more than \$3 billion.

39. *Ovarian Cancer Insurance.* One or more of the Debtors have rights to seek insurance coverage under 14 primary liability policies issued by Zurich American Insurance Company ("Zurich") to Luzenac America or a Rio Tinto entity (both of which were prior owners of the Debtors as summarized in paragraph 13 above). Zurich issued four primary liability policies to Luzenac America from May 1997 to May 2001 with total aggregate limits of liability of \$20 million (the "Luzenac Policies"). Zurich issued ten primary liability policies to a Rio Tinto entity (and its subsidiaries) from May 2001 to May 2011 with total aggregate limits of \$480 million (the "Rio Tinto Policies," and together with the Luzenac Policies, the "Zurich Policies"). As of the Petition Date, the Debtors are informed and believe that the Zurich Policies have total remaining limits of approximately \$492 million. Pursuant to various agreements with Zurich and Rio Tinto, the Debtors owe no further deductibles on the Zurich Policies. The Debtors are unaware of any excess policies issued to Rio Tinto or to the Debtors when owned by Rio Tinto. Each of the Zurich Policies contains an endorsement that purports to exclude coverage for injuries caused by exposure to asbestos.

40. One or more of the Debtors also have rights to insurance coverage under four primary general liability policies and four umbrella policies issued by XL Insurance America, Inc. ("XL") to Imerys USA and its subsidiaries. XL issued primary general liability policies for the period of January 2011 to January 2015 with total aggregate limits of \$4 million (the "XL Primary Policies"). XL also issued umbrella liability policies for the period of January 2011 to January 2015 with total aggregate limits of \$34 million (the "XL Umbrella Policies," and together with the XL Primary Policies, the "XL Policies"). As of the Petition Date, the Debtors are

informed and believe that the XL Policies have total remaining limits of approximately \$37 million. Each of the XL Policies contains an endorsement that purports to exclude coverage for injuries caused by exposure to asbestos.

41. ***Mesothelioma Insurance.*** As a result of the various transactions involving the talc business of Cyprus as noted above in paragraph 13, ITA has the right to seek proceeds from insurance policies that provide coverage for liabilities arising out of the talc business of Cyprus. As of the Petition Date, the Debtors are informed and believe that all of the primary liability policies that could provide coverage for asbestos-related liabilities arising out of the talc business of Cyprus have been exhausted, except four primary liability policies issued by The American Insurance Company from May 1961 to October 1964. The remaining coverage consists of umbrella and excess policies issued by various insurers from April 1962 to July 1986 with total aggregate limits of approximately \$180 million. The Debtors are informed and believe that ITA also has rights to seek the proceeds from insurance policies issued to Standard Oil (Indiana) (which was an indirect prior owner of the Debtors as summarized in paragraph 14 above) from 1980 to 1985 with total aggregate limits of approximately \$1.2 billion. As of the Petition Date, the Debtors lack knowledge as to the remaining and available limits of the policies issued to Standard Oil (Indiana).

42. ***J&J Insurance.*** One or more of the Debtors have the right to seek proceeds from various insurance policies issued to J&J and its subsidiaries with total aggregate limits of approximately \$2 billion. As of the Petition Date, the Debtors lack knowledge as to the total remaining and available limits of the insurance policies issued to J&J and its subsidiaries.

43. Despite this seemingly robust insurance coverage, the Debtors have determined that it is no longer feasible for them to continue to litigate the Talc Claims. While the

Debtors have access to numerous insurance policies, coverage is not available for all claims. For example, where a claimant's alleged date of first exposure to talc occurs after a certain date, the claim may not be covered under some of the insurance policies.<sup>12</sup> In addition, some policies only provide coverage for non-asbestos related injuries, and punitive damages often are not covered by insurance. The Debtors, in consultation with their insurance coverage counsel, have thoroughly analyzed their various insurance policies and determined that currently available insurance coverage for certain cosmetic talc-related litigation may be exhausted in the first half of 2019.

44. *J&J Indemnity.* One or more of the Debtors also have certain indemnity rights against J&J or one of its affiliates for OC Claims and Mesothelioma Claims. For example, under a 1989 stock purchase agreement pursuant to which the Debtors purchased the entity known today as ITV, J&J agreed to indemnify one or more of the Debtors for all liabilities arising out of use or exposure to talc-containing products supplied to J&J prior to the January 6, 1989 closing date. In addition, under various talc supply agreements, J&J agreed to indemnify one or more of the Debtors for all liabilities arising out of the supply of talc to J&J during the term of the supply agreements.

45. While the Debtors have additional protection from the Talc Claims through these indemnification agreements with J&J and its affiliates, the Debtors' ability to recover under these indemnification agreements in a timely fashion is uncertain. As of the Petition Date, J&J has refused to acknowledge or accept its indemnification obligations and has disputed the scope of coverage available to the Debtors under these agreements (or denied indemnification

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<sup>12</sup> Under the standard asbestos exclusion in the United States, insurance policies do not cover asbestos liability where a claimant's first exposure occurred after 1986. In addition, certain of the Debtors' insurance policies do not cover OC Claims where a claimant's first exposure is alleged to have occurred after 2015.

altogether). As such, the Debtors' recovery under these indemnification agreements has been significantly delayed.

**B. Prepetition Negotiations**

46. As a result of the increasing talc litigation and the unwillingness of the Debtors' insurers and indemnitors to provide coverage for the Debtors' mounting defense costs, the Debtors retained Latham & Watkins LLP ("**Latham**") in June 2018 to assist the Debtors in evaluating a number of strategic options. The Debtors and Latham worked with the Debtors' litigation defense counsel, Alston & Bird LLP and Gordon, Rees, Scully, Mansukhani, LLP, and insurance coverage counsel, Neal, Gerber & Eisenberg LLP, to identify and assess alternatives to resolve the Talc Claims, including the costs and benefits associated with continued litigation of the Talc Claims in the tort system

47. At the same time, the Debtors explored the viability of using Chapter 11 to address these Talc Claims by channeling them to a trust created under Sections 105 and 524(g) of the Bankruptcy Code that would be structured to ensure fair and equitable treatment of present and future claimants. As part of this exploratory effort and to facilitate the implementation of this potential Chapter 11 strategy if and when authorized by their boards of directors, the Debtors entered into an engagement letter with James L. Patton, Jr. of Young, Conaway, Stargatt & Taylor, LLP ("**Young Conaway**") on September 25, 2018 to serve as a proposed future claims representative (the "**Proposed FCR**") to represent the interests of individuals who may in the future assert talc-related demands against the Debtors. The Proposed FCR retained Young Conaway as counsel and Ankura Consulting Group, LLC as claims analyst to provide advice in connection with such representation. Together with his advisors, the Proposed FCR initiated an extensive diligence process into the Debtors' businesses and the pending talc litigation, subject

to a confidentiality agreement. The Debtors have worked constructively with the Proposed FCR and his advisors throughout this process by providing access to a fulsome data room and responses to numerous information requests, as well as by attending multiple in-person diligence meetings, among other things. The Debtors had hoped to engage with plaintiffs firms prior to the commencement of these Chapter 11 Cases to determine if a pre-arranged chapter 11 plan could be achieved. The Debtors did not have sufficient time, however, to conduct the diligence process that would be necessary for the parties to engage in meaningful discussions given the pending trial calendar (and risk of incurring a judgment for which the Debtors could not post an appeal bond) and the ever-increasing costs of settlement and defense. Nevertheless, the constructive discussions with the Proposed FCR confirmed, from the Debtors' perspective, the viability of using Chapter 11 to resolve the Talc Claims in a manner that will maximize the distributable value for all stakeholders and will provide fair and equitable treatment of the Talc Claims.

48. After extensive discussions with their advisors, the Debtors ultimately determined that, due to the increasing number of Talc Claims asserted and the prospect of diminishing, readily accessible insurance/third party indemnitor coverage, continued litigation in the tort system was not a viable option and that the commencement of these Chapter 11 Cases was in the best interests of the Debtors, their estates and their stakeholders. Accordingly, on February 13, 2019, the Debtors' boards of directors authorized the filing of these Chapter 11 Cases.

49. The Debtors intend to seek the appointment of Mr. Patton as the future claimants' representative. Given the knowledge of the Debtors' businesses and claims that Mr. Patton gained during the prepetition diligence process, the Debtors believe his appointment will result in efficiencies that benefit creditors and the estates.

50. During the Chapter 11 Cases, the Debtors intend to negotiate the terms of a consensual plan of reorganization with the future claimants' representative appointed by the Court, representatives of the holders of current alleged Talc Claims and the non-debtor Parent on behalf of the rest of the Imerys Group in order to resolve the Talc Claims and develop a go-forward strategy for the affected talc businesses. The Debtors are confident that such negotiations will culminate in a court-approved consensual plan of reorganization in the first half of 2020 and enable the Debtors to emerge free and clear of all their U.S. historic talc-related liabilities.

PART 2

51. In furtherance of the objective of preserving value for all stakeholders, the Debtors have sought approval of the First Day Pleadings and related orders (the "Proposed Orders"), and respectfully request that the Court consider entering the Proposed Orders granting such First Day Pleadings. For the avoidance of doubt, the Debtors seek authority, but not direction, to pay amounts or satisfy obligations with respect to the relief requested in any of the First Day Pleadings.

52. I have reviewed each of the First Day Pleadings, Proposed Orders, and exhibits thereto (or have otherwise had their contents explained to me), and the facts set forth therein are true and correct to the best of my knowledge, information, and belief. Moreover, I believe that the relief sought in each of the First Day Pleadings (a) is vital to enabling the Debtors to make the transition to, and operate in, chapter 11 with minimum interruptions and disruptions to their businesses or loss of productivity or value and (b) constitutes a critical element in the Debtors' being able to successfully maximize value for the benefit of their estates.

**I. ADMINISTRATIVE AND PROCEDURAL PLEADINGS**

**A. Joint Administration Motion<sup>13</sup>**

53. By the Joint Administration Motion, the Debtors seek entry of an order directing the joint administration of their three Chapter 11 Cases for procedural purposes only. Many of the motions, hearings, and other matters involved in the Chapter 11 Cases will affect the Debtors. Thus, I believe that the joint administration of these cases will avoid the unnecessary time and expense of duplicative motions, applications, orders, and other pleadings, thereby saving considerable time and expense for the Debtors and resulting in substantial savings for their estates.

**B. Motion to Limit Notice and Approve Notice Procedures<sup>14</sup>**

54. In the Motion to Limit Notice and Approve Notice Procedures, the Debtors request entry of an order (i) authorizing the Debtors to file (a) a consolidated master list of creditors, (b) a consolidated list of the top thirty law firms with the most significant Talc Claimant (as defined in the Motion to Limit Notice and Approve Notice Procedures) representations, and (c) a consolidated list of creditors holding the thirty largest unsecured claims (excluding Talc Claims), and (ii) approving the implementation of certain notice procedures for the Talc Claimants.

**i. Consolidated Master List**

55. In the Motion to Limit Notice and Approve Notice Procedures, the Debtors seek authorization to file a consolidated master list of creditors in lieu of requiring each Debtor to submit a Debtor-specific creditor matrix as provided the Local Rules of the Bankruptcy Practice

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<sup>13</sup> “**Joint Administration Motion**” means *Debtors’ Motion for Order Under Fed. R. Bankr. P. 1015 and Del. Bankr. L.R. 1015-1 Authorizing Joint Administration of Chapter 11 Cases*.

<sup>14</sup> “**Motion to Limit Notice and Approve Notice Procedures**” means the *Debtors’ Motion for Order (I) Authorizing the Filing of (A) A Consolidated Master List of Creditors, (B) A Consolidated List of the Top Thirty Law Firms Representing Talc Claimants, and (C) A Consolidated List of Creditors Holding the Thirty Largest Unsecured Claims, and (II) Approving Certain Notice Procedures for Talc Claimants*.

and Procedure of the United States Bankruptcy Court for the District of Delaware (the "Local Rules"). The Debtors have identified thousands of entities to which notice of certain proceedings in the Chapter 11 Cases must be provided. Except for the contact information of the Talc Claimants (as described below), the Debtors (or their agents) presently maintain records containing the names and addresses of their respective creditors that are entitled to receive notices and other documents in the Chapter 11 Cases. I believe that this information may be consolidated and utilized efficiently to provide interested parties with notices and other similar documents as contemplated by the Local Rules on a consolidated basis. I believe that requiring each Debtor to submit a Debtor-specific matrix would be an unnecessarily burdensome and costly task and would likely result in duplicate mailings.

ii. **Consolidated List of Thirty Law Firms With the Most Significant Talc Claimant Representations**

56. By the Motion to Limit Notice and Approve Notice Procedures, the Debtors also seek authorization to file a consolidated list of the top thirty law firms representing the most significant Talc Claimants as determined by the volume, scope and magnitude of Talc Claims asserted against the Debtors, and certain other related factors. As described herein, one or more of the Debtors is currently named as a defendant in pending Talc Claim litigation. Taken in the aggregate, the vast majority of the Debtors' known creditors are Talc Claimants (though, as noted above, the Debtors vigorously dispute all liability as to the Talc Claims). The Debtors' primary goal in filing the Chapter 11 Cases is to confirm a consensual plan of reorganization pursuant to sections 105(a), 524(g), and 1129 of the Bankruptcy Code that channels all of the present and future Talc Claims to a trust vested with substantial assets and provides for a channeling injunction prohibiting claimants from asserting against any Debtor or non-Debtor affiliate any claims arising from talc mined, produced, sold, or distributed by any of the Debtors prior to their emergence from

the Chapter 11 Cases. While the Debtors dispute all liability as to the Talc Claims, I believe this approach will provide fair and equitable treatment of all stakeholders. As a result, the Debtors anticipate that the Office of the United States Trustee (the "U.S. Trustee") will appoint an official committee of tort claimants comprised of the predominant plaintiffs' firms representing the Talc Claimants to represent the interests of the Talc Claimants in the Chapter 11 Cases.

57. I do not believe that listing the individual Talc Claimants with the largest unsecured claims against the Debtors would facilitate the U.S. Trustee's appointment of a tort claimants creditors' committee. Tort claimants' committees are typically comprised of the primary plaintiffs' firms that represent plaintiffs in pending litigation and not the individual tort claimants. In addition, I believe that attempting to designate certain individual Talc Claimants as holding the "largest" unsecured claims would be arbitrary, where the pending Talc Claims are disputed, contingent and/or unliquidated. I believe that providing the U.S. Trustee with a list of the top thirty law firms with the most significant Talc Claimant representations as determined by the volume of pending Talc Claims, the scope and magnitude of Talc Claims asserted against the Debtors, and related factors, would better assist the U.S. Trustee in forming such a committee.

**iii. Consolidated List of Creditors Holding the Thirty Largest Unsecured Claims**

58. By the Motion to Limit Notice and Approve Notice Procedures, the Debtors also seek to file a consolidated list of creditors holding the thirty largest unsecured claims (excluding Talc Claimants). I have been informed that pursuant to the Federal Rules of Bankruptcy Procedure (the "Bankruptcy Rules"), a chapter 11 debtor must file with its voluntary petition a list setting forth the names, addresses, and claim amounts of the creditors, excluding insiders, that hold the twenty largest unsecured claims in the debtor's case (a "Top Twenty List").

59. I believe that a consolidated list of the Debtors' top thirty unsecured creditors will be more useful to the U.S. Trustee than separate Top Twenty Lists for each Debtor. First, I believe that the individual Top Twenty Lists for each Debtor would likely overlap. Second, I understand that the Debtors have very few unsecured creditors that are not Talc Claimants and claims held by the Debtors' trade creditors are minimal in comparison to the Talc Claims. Finally, and as discussed above, the Debtors are also proposing to file a list of the top thirty law firms with the most significant Talc Claimant representations as determined by the volume of pending Talc Claims, the scope and magnitude of Talc Claims asserted against the Debtors, and related factors.

iv. **The Talc Claimant Notice Procedures**

60. In the Motion to Limit Notice and Approve Notice Procedures, the Debtors also seek to implement the certain notice procedures (the "Notice Procedures") by which the Debtors will (a) list the addresses of known counsel of record for the Talc Claimants, in lieu of the addresses of the Talc Claimants themselves, on the Debtors' creditor matrix and (b) send required notices, mailings, and other communications related to the Chapter 11 Cases to such known counsel of record for the Talc Claimants in lieu of sending such communications to the Talc Claimants themselves in the manner required pursuant to otherwise applicable noticing procedures in effect in the Chapter 11 Cases.

61. In addition, I understand that throughout the course of the Chapter 11 Cases, various notices, mailings, and other communications will need to be sent to the Talc Claimants. In order to ensure that these claimants receive proper and timely notice of filings and critical events in the Chapter 11 Cases, the Debtors request authority to direct the Claims Agent to send required notices, mailings, and other communications to the counsel of record for the Talc Claimants, in the manner required pursuant to otherwise applicable noticing procedures in effect in the Chapter 11 Cases, *provided* that the Debtors will (or direct the Claims Agent to) send required notices,

mailing and other communications directly to any Talc Claimants who so request such direct notice from the Debtors in writing.<sup>15</sup>

62. I believe that by implementing the Notice Procedures, the actual notice that Talc Claimants will receive via their counsel will be superior to the notice that the Talc Claimants would receive if the Debtors were to attempt to deliver notices and other communications directly to such claimants. In addition, I understand that the address for counsel to the Talc Claimants is more likely to remain unchanged over time, and hence providing notice to the counsel of record will allow for more accurate notice to Talc Claimants. Moreover, I believe that the Notice Procedures will also significantly ease the Debtors' administrative burden of sending notices to thousands of Talc Claimants, resulting in a more cost-effective notice procedure that benefits the Debtors' estates and creditors.

**C. Motion to Enforce and Confirm Automatic Stay<sup>16</sup>**

63. By the Motion to Enforce and Confirm Automatic Stay, the Debtors seek entry of an order enforcing the protections of sections 362, 365, 525, and 541(c) of the Bankruptcy Code to aid in the administration of the Chapter 11 Cases and to help ensure that the global operations of the Debtors and their non-Debtor affiliates are not disrupted.

64. I believe that notwithstanding the self-executing and global nature of sections 362, 365, 525, and 541 of the Bankruptcy Code, not all parties affected, or potentially affected, by the commencement of the Chapter 11 Cases are aware of these statutory provisions

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<sup>15</sup> Additionally, for those law firms representing multiple Talc Claimants, by the Motion to Limit Notice and Approve Notice Procedures, the Debtors seek authorization to serve each document only a single time on such law firms (at each relevant address) on behalf of all such counsel's clients, *provided that any notice or other document relating specifically to one or more particular Talc Claimants (rather than all Talc Claimants represented by such law firm) shall clearly identify such parties.*

<sup>16</sup> "**Motion to Enforce and Confirm Automatic Stay**" means the *Debtors' Motion for Order Under 11 U.S.C. § 105 Enforcing the Protections of 11 U.S.C. §§ 362, 363, 365, 525, and 541(c).*

or their significance and impact. Therefore, I believe it is prudent to obtain an order confirming and reinforcing the relevant provisions of the aforementioned sections of the Bankruptcy Code.

65. I believe that the requested relief is particularly appropriate because the Debtors and their non-Debtor affiliates and subsidiaries operate, purchase materials, and record sales in numerous countries with different legal systems, including without limitation, Canada, Italy, France, China, India, Belgium, the United Kingdom, Korea, and Austria. The Debtors engage with numerous foreign customers, suppliers, and other vendors, as well as foreign regulators and other governmental units. Moreover, many of the Debtors' key contracts are governed by the laws of foreign jurisdictions. I also believe that, absent an order from this Court, parties might attempt to take improper actions against the Debtors or property of their estates. Accordingly, I believe, that granting the relief requested in the Motion and Order to Enforce and Confirm Automatic Stay is in the best interests of the Debtors, their estates, and their creditors.

**D. Motion Appointing a Foreign Representative<sup>17</sup>**

66. By the Motion Appointing a Foreign Representative, the Debtors seek entry of an order authorizing ITC to act as the foreign representative on behalf of the Debtors' estates in any judicial or other proceedings in Canada.

67. As further described herein, in addition to their operations in the United States, the Debtors have certain assets and operations in Canada. ITC is incorporated in Canada and is an affiliate of the other Debtors in the Chapter 11 Cases. ITC, as the proposed Foreign Representative (as defined below), will shortly seek ancillary relief in Canada on behalf of the

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<sup>17</sup> **"Motion Appointing A Foreign Representative"** means the *Debtors' Motion for Order Pursuant to 11 U.S.C. § 1505 Authorizing Imerys Talc Canada Inc. to Act as Foreign Representative*.

Debtors, pursuant to the Companies' Creditors Arrangement Act (Canada) R.S.C. 1985, c. C-36 as amended (the "CCAA") in the Ontario Superior Court of Justice (Commercial List) (the "Canadian Court") in Ontario, Canada. The purpose of the ancillary proceedings (the "Canadian Proceedings") is to request that the Canadian Court recognize the Chapter 11 Cases as a "foreign main proceeding" under the applicable provisions of the CCAA in order to, among other things, protect the Debtors' assets and operations in Canada.

68. To commence the Canadian Proceedings, the Debtors or another third party needs authority to act as the "foreign representative" on behalf of the Debtors' estates (the "Foreign Representative") and, therefore, the Debtors seek to appoint ITC as such Foreign Representative. I understand that for ITC to be recognized as the Foreign Representative of the Debtors in the Canadian Proceedings, and thereby apply to have the Chapter 11 Cases recognized by the Canadian Court, this Court must enter the Order authorizing ITC to act as the Foreign Representative in the Canadian Proceedings. I understand that if the Order is granted, ITC will be able to file the Order with the Canadian Court as the instrument authorizing ITC to act as the Foreign Representative pursuant to section 46 of the CCAA.

**E. Retention Applications**

69. I believe that the retention of chapter 11 professionals is essential to the Chapter 11 Cases. Accordingly, during the Chapter 11 Cases, the Debtors anticipate that they will request permission to retain, among others, the following professionals: (a) Latham, as co-counsel; (b) Richards, Layton & Finger, P.A., as co-counsel; (c) Prime Clerk LLC, as claims and noticing agent and administrative advisor; (d) A&M, as financial advisor; (e) Neal, Gerber & Eisenberg LLP, as special insurance and indemnification litigation counsel; (f) KCIC, LLC, as insurance and valuation consultant; and (g) Stikeman Elliot LLP, as Canadian counsel. I believe that the above

professionals are well-qualified to perform the services contemplated by their various retention applications, the services are necessary for the success of the Chapter 11 Cases, and the professionals will coordinate their services to avoid duplication of efforts. I understand that the Debtors may find it necessary to seek retention of additional professionals as the Chapter 11 Cases progress.

## II. BUSINESS OPERATION MOTIONS

### A. Cash Management Motion<sup>18</sup>

70. By the Cash Management Motion, the Debtors seek entry of interim and final orders (i) authorizing, but not directing, the Debtors to continue to maintain and use their existing cash management system, including maintenance of their existing bank accounts, checks, and business forms; (ii) granting the Debtors a waiver of certain bank account and related requirements of the U.S. Trustee to the extent that such requirements are inconsistent with the Debtors' practices under their existing cash management system or other actions described herein; (iii) authorizing, but not directing, the Debtors to continue to maintain and use their existing deposit practices notwithstanding the provisions of section 345(b) of the Bankruptcy Code; (iv) approving the continuation of the Intercompany Transactions (as defined below); (v) authorizing the Debtors to open and close bank accounts; and (vi) according superpriority administrative expense status to postpetition intercompany claims arising from transactions among the Debtors.

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<sup>18</sup> **"Cash Management Motion"** means Debtors' Motion for Orders Under 11 U.S.C. §§105(a), 345, 363, 503(b), and 507(a), Fed. R. Bankr. P. 6003 and 6004, and Del. Bankr. L.R. 2015-2 (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.

**i. The Debtors' Cash Management System and the Bank Accounts**

71. The Debtors oversee the collection, disbursement, and movement of cash generated from their operations through a cash management system (the "Cash Management System") that manages the Debtors' cash inflows and outflows through a number of bank accounts. I believe that the Cash Management System is critical to the Debtors' operations as it enables the Debtors to, among other things, (i) monitor cash receipts and ensure payment of necessary disbursements, (ii) track various intercompany transfers and transactions with other Debtors and Non-Debtor Affiliates, and (iii) ensure accurate cash forecasting and reporting. I understand that the Cash Management System has been in place since the Debtors' operations were acquired by the Imerys Group in 2011.

72. The Cash Management System consists of segments relating to (i) ITA and ITV (the "USA Cash Management System") and (ii) ITC (the "TTC Cash Management System"). A diagram depicting the Cash Management System as of the Petition Date, including ordinary course transfers between the Bank Accounts (as further described and defined below), is attached as Attachment 1 to the Cash Management Motion. A schedule of the Debtor Bank Accounts and the Imerys USA Bank Accounts (each as further described and defined below) is attached to the Cash Management Motion as Attachment 2.

73. As of the Petition Date, the Debtors maintain four bank accounts (the "Debtor Bank Accounts"):

**1. ITA Bank Accounts**

74. ITA maintains two bank accounts in its name in the United States at SunTrust Bank (the "ITA Bank Accounts"). The ITA Bank Accounts are used by both ITA and

ITV to manage cash related to their day-to-day operations.<sup>19</sup> One of the ITA Bank Accounts is a lockbox account that receives ITA and ITV funds via incoming checks, wires, ACH transfers, and electronic funds transfers from third parties, including customers, as well as incoming payments on account of Intercompany Transactions (the “ITA Lockbox Account”). As of the Petition Date, the ITA Lockbox Account held cash totaling approximately \$7,600,000. The other ITA Bank Account is used to fund disbursements incurred by ITA and ITV via checks, wires, ACH transfers, or electronic funds transfers (the “ITA Disbursement Account”), including, among others, vendor, utility, and lease payments, employee payroll, expense reimbursements, and intercompany expenses incurred on account of Intercompany Transactions.

## 2. ITC Bank Accounts

75. ITC maintains two bank accounts in its name in Canada (the “ITC Bank Accounts”) at Royal Bank of Canada (“RBC”) and, together with SunTrust Bank, the “Banks”). The ITC Bank Accounts are both operating accounts that are used for receiving funds earned from ITC’s operations and disbursing funds to pay third party and intercompany obligations via checks, wires, ACH transfers, and electronic funds transfers. ITC regularly transacts business in both U.S. Dollars and Canadian Dollars. Accordingly, one of the ITC Bank Accounts is used solely for transactions conducted in U.S. Dollars (the “ITC USD Account”), and the other ITC Bank Account is used solely for transactions conducted in Canadian Dollars (the “ITC CAD Account”). As of the Petition Date, the ITC Bank Accounts held cash totaling approximately \$3,400,000 USD.

76. In the ordinary course of business, the Banks charge, and the Debtors pay, honor, or allow to be deducted from the appropriate Debtor Bank Accounts, certain service charges and other fees, costs, and expenses charged by the Banks (collectively, the “Bank Fees and

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<sup>19</sup> ITV does not hold any bank accounts in its own name and utilizes the ITA Bank Accounts.

Expenses”). The Bank Fees and Expenses currently average approximately \$6,000 per month in the aggregate. The Debtors estimate that approximately \$9,250 of accrued but unpaid Bank Fees and Expenses are outstanding as of the Petition Date.

### 3. Non-Debtor Affiliate Bank Accounts

77. There are four bank accounts held by certain Non-Debtor Affiliates that are particularly relevant to the Debtors’ Cash Management System and are therefore described herein (the “Non-Debtor Affiliate Bank Accounts” and together with the Debtor Bank Accounts, the “Bank Accounts”).<sup>20</sup>

78. Non-Debtor Imerys USA maintains two Non-Debtor Affiliate Bank Accounts in its name in the United States (the “Imerys USA Bank Accounts”). The first Imerys USA Bank Account is a concentration account that pools incoming funds from Imerys USA’s subsidiaries (including, historically, although not presently, Debtors ITA and ITV) pursuant to a zero-balance account system (the “USA ZBA Account”). The second Imerys USA Bank Account is a controlled disbursement account that is used to fund certain intercompany and third party payments on behalf of ITA, ITV, and other Non-Debtor Affiliates that are subsidiaries of Imerys USA (the “USA Disbursement Account”). The Imerys USA Bank Accounts are both denominated in U.S. Dollars.

79. Non-Debtor Imerys S.A. holds two Non-Debtor Affiliate Bank Accounts in its name in France that were previously related to the ITC Cash Management System (the “Imerys S.A. Bank Accounts”). One is an account for funds in U.S. Dollars (the “Imerys S.A. USD Account”) and the other is an account for funds in Canadian Dollars (the “Imerys S.A. CAD”).

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<sup>20</sup> Additional bank accounts held by Non-Debtor Affiliates are not described in the Cash Management Motion.

Account). Historically, ITC periodically swept up funds from the ITC Bank Accounts to the applicable Imerys S.A. Bank Account, as further described below.

ii. **The USA Cash Management System**

80. Previously, ITA and ITV utilized an alternative cash management system (the "Previous USA Cash Management System"). Under the Previous USA Cash Management System, the ITA Bank Accounts were part of a zero-balance accounting, or ZBA, system with the Imerys USA Bank Accounts. Under this ZBA system, at the end of each business day, all funds in the ITA Lockbox Account were swept up to the USA ZBA Account. Funds in an amount necessary to meet the daily funding needs of ITA and ITV were then automatically transferred at the end of each business day from the USA ZBA Account to either the USA Disbursement Account or to the ITA Disbursement Account. Historically, non-Debtor Imerys USA used funds in the USA Disbursement Account to pay the majority of ITA and ITV's expenses, including payments to third parties such as vendors. ITA and ITV reimbursed Imerys USA by setting off amounts paid on behalf of ITA's and ITV's expenses against the outstanding loan owed by Imerys USA to ITA (described below). These transactions were recorded in ITA's and Imerys USA's books. In certain instances, ITA used the ITA Disbursement Account to directly pay ITA's and ITV's other expenses, including payroll, certain bank fees, and other occasional third party payments. To account for obligations paid by ITA on behalf of ITV, ITA recorded any such amounts on its books as an intercompany receivable from ITV, and ITV recorded such amounts on its books as an intercompany payable to ITA.

81. Funds held in the Imerys USA Bank Accounts on account of ITA and ITV, after deducting disbursements made on behalf of ITA and ITV, were recorded as an interest-bearing intercompany loan in favor of ITA. As of the Petition Date, ITA has an outstanding loan

payable from Imerys USA in the current amount of approximately \$14,400,000, pursuant to that certain Intercompany Loan and Investment Agreement dated as of June 2018 by and between ITA and Imerys USA and that certain Intercompany Loan and Investment Agreement dated as of June 2018 by and between ITV and Imerys USA. ITV also has an outstanding payable from Imerys USA in the current amount of approximately \$2,900,000.

82. Prior to the Petition Date, ITA and ITV modified certain aspects of the Previous USA Cash Management system in anticipation of the Chapter 11 Cases. ITA and ITV implemented these modifications in order to (i) ensure transparency in the Chapter 11 Cases by avoiding having a system in which Debtor funds were swept to a Non-Debtor Affiliate Bank Account on a daily basis and commingled with funds belonging to other Non-Debtor Affiliates, and (ii) simplify the USA Cash Management System for the purposes of postpetition reporting and seeking first day relief.

83. Accordingly, prior to the Petition Date, ITA and ITV eliminated the practice of automatically sweeping funds in the ITA Lockbox Account to the USA ZBA Account. Now, ITA's and ITV's funds are retained in the ITA Lockbox Account. ITA transfers funds from the ITA Lockbox Account to the ITA Disbursements Account on an as-needed basis to satisfy most of ITA's and ITV's expenses, including intercompany obligations. Due to the nature of ITA's and ITV's operations, after the Petition Date, non-Debtor Imerys USA may continue to satisfy certain obligations for the benefit of ITA and ITV. Following the Petition Date, ITA intends to pay reimbursements owed to Imerys USA on account of such payments directly in cash.

84. Historically, most of the intercompany obligations by and between the Imerys Group entities (including ITA and ITV) were not immediately paid in cash and were

instead “netted out” at the end of each month.<sup>21</sup> As of the Petition Date, ITA and ITV no longer intend to net out obligations with the Non-Debtor Affiliates. Instead, ITA and ITV will satisfy intercompany obligations as they come due in cash and Non-Debtor Affiliates will similarly satisfy obligations to ITA and ITV as they come due in cash. Payables and receivables may continue to accumulate among the Debtors, however, with such obligations to be settled on a cash basis at the Debtors’ discretion.

**iii. The ITC Cash Management System**

85. ITC’s operations are managed through the ITC Cash Management System. Cash generated from operations is deposited in the ITC CAD Account or the ITC USD Account depending on the currency (ITC may also transfer funds between the ITC CAD Account and the ITC USD Account to cover disbursement needs). Historically, excess cash generated by ITC’s operations was periodically swept from the ITC Bank Accounts to the Imerys S.A. Bank Accounts at the discretion or consent of ITC. As of the Petition Date, excess funds are no longer swept from the ITC Bank Accounts to Imerys S.A. Bank Accounts. Instead, all funds generated from ITC’s operations are retained in the ITC Bank Accounts.

86. Cash amounts swept from the ITC Bank Accounts to the Imerys S.A. Bank Accounts prior to the Petition Date (net of any cash transfers made from Imerys S.A. to ITC or on behalf of ITC) were recorded as an intercompany interest-bearing loan on the books of Imerys S.A. and ITC. As a result, as of the Petition Date, ITC holds an outstanding loan due and payable

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<sup>21</sup> For example, if in one month ITA bought goods for \$70,000 from an Imerys Group entity, and the same Imerys Group entity incurred expenses totaling \$60,000 for services provided to it by ITA in that same month, the net \$10,000 balance owed by ITA would be reflected on ITA’s books as a payable from ITA to the Imerys Group entity. Periodically, Imerys USA, on ITA’s and ITV’s behalf, would settle outstanding intercompany payables or receivables held by ITA or ITV by either increasing or reducing ITA’s outstanding intercompany loan.

from non-Debtor Imerys S.A. in the amount of approximately \$3,000,000 pursuant to that certain Intra-Group Treasury Agreement by and between Imerys S.A. and certain of its affiliates.

87. ITC disburses funds to satisfy outstanding third party and intercompany obligations from the applicable ITC Bank Account as they come due. However, similar to ITA and ITV under the Previous USA Cash Management System, intercompany obligations by and between ITC and other Imerys Group entities were historically netted out and recorded on the relevant entity's books as a payable or receivable, as applicable, instead of being paid immediately in cash. On a periodic basis, Imerys S.A. would settle, on ITC's behalf, outstanding intercompany payables or receivables held by ITC by either increasing or reducing ITC's outstanding loan receivable due from Imerys S.A. As of the Petition Date, ITC no longer intends net out obligations with the Non-Debtor Affiliates. Instead, ITC will satisfy intercompany obligations with the Non-Debtor Affiliates as they come due in cash and the Non-Debtor Affiliates will similarly satisfy obligations to ITC as they come due in cash. However, payables and receivables may continue to accumulate among the Debtors, with such obligations to be settled on a cash basis at the Debtors' discretion.

**iv. Continued Ordinary-Course Intercompany Transactions and Postpetition Intercompany Claims and Granting of Superpriority Status**

88. In the ordinary course of business, the Debtors engage in various business relationships with one another and with certain Non-Debtor Affiliates under certain shared services agreements. I believe that these intercompany relationships, as further described in the Cash Management Motion, are necessary and beneficial to the Debtors' business operations and generally provide the Debtors with material savings in respect of general administrative and corporate overhead costs (collectively, the "Intercompany Transactions"). As a result of the

Intercompany Transactions, cash, goods, and services flow between the Debtors and the Non-Debtor Affiliates on a regular basis.

89. I believe the Intercompany Transactions are critical to the Debtors' operations. The Debtors rely upon the Intercompany Transactions described above for basic functions, like treasury and cash management, that are necessary to keep the Debtors' businesses operational and to ensure that the Debtors are able to pay their vendors and supply their products to their customers in a timely manner. In addition, because certain the Intercompany Transactions, including the shared services provided by the SSC and non-Debtor Imerys S.A., are provided by entities with institutional knowledge of the Debtors' operations, I believe the Debtors benefit from cost savings that they would otherwise be unable to achieve with third parties.

90. In addition, to ensure that each individual Debtor will not fund the operations of another entity at the expense of such Debtor's creditors, in the Cash Management Motion, the Debtors request that all postpetition claims, including those arising from any transfer of cash between the Debtors, against a Debtor by another Debtor arising from transactions among them (the "Intercompany Claims"), be accorded superpriority administrative expense status.<sup>22</sup> It is my understanding that if postpetition Intercompany Claims are accorded superpriority administrative expense status, then each individual Debtor on whose behalf another Debtor has utilized funds or incurred expenses will continue to bear ultimate repayment responsibility, thereby protecting the interests of each individual Debtor's creditors.

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<sup>22</sup> For the avoidance of doubt, the Debtors reserve the right, in the Cash Management Motion, to transfer cash by and amongst themselves during the pendency of the Chapter 11 Cases.

**v. Continued Use of the Debtors' Existing Cash Management System and the Debtor Bank Accounts**

91. I believe that the Cash Management System is an ordinary course, customary, and essential business practice, the continued use of which is essential to the Debtors' business operations during the Chapter 11 Cases and the Debtors' goal of maximizing value for the benefit of all parties in interest. I believe that to require the Debtors to adopt a new cash management system at this early and critical stage would be expensive, impose needless administrative burdens, and cause undue disruption. Any disruption in the collection and disbursement of funds as currently implemented would adversely (and perhaps irreparably) affect the Debtors' ability to maximize estate value and repay their creditors. Moreover, I believe that such a disruption would be wholly unnecessary because the Cash Management System provides a valuable and efficient means for the Debtors to address their cash management requirements and, to the best of the Debtors' knowledge, the Debtor Bank Accounts are held at financially stable institutions insured by the FDIC or, in the case of the non-U.S. bank, at a highly-rated, global financial institution that is widely recognized as well-capitalized and financially stable, and that is insured by the CDIC. For the aforementioned reasons, I believe that maintaining the existing Cash Management System without disruption is in the best interests of the Debtors, their estates, and their stakeholders.

92. If the relief requested in the Cash Management Motion is granted, the Debtors will implement appropriate mechanisms to ensure that no payments will be made on any debts incurred by the Debtors prior to the Petition Date, other than those authorized by this Court. To prevent the possible inadvertent payment of prepetition claims against the Debtors, except those otherwise authorized by the Court, the Debtors will work closely with the Banks to ensure appropriate procedures are in place to prevent checks issued by the Debtors prepetition from being

honored absent this Court's approval and to ensure that no third party with automatic debit capabilities is able to debit amounts attributable to the Debtors' prepetition obligations. In light of the scope and complexity of the Cash Management System, I believe it would be onerous for the Debtors to meet the U.S. Trustee Guidelines requiring them to close all existing bank accounts and open new debtor in possession accounts. I also believe that doing so would also risk material operational problems, as the Debtors' business partners and own personnel transition to a wholly-new system

**vi. Continued Use of the Debtors' Existing Checks and Business Forms**

93. To minimize expenses to their estates, the Debtors seek authorization to continue using all checks substantially in the forms existing immediately prior to the Petition Date, without reference to the Debtors' status as debtors-in-possession; provided, however, that in the event the Debtors generate new checks during the pendency of the Chapter 11 Cases other than from their existing stock of checks, such checks will include a legend referring to the Debtor as "Debtor-in-Possession." I believe that changing the Debtors' existing checks, correspondence, and other business forms would be expensive, unnecessary, and burdensome to the Debtors' estates. Further, such changes would disrupt the Debtors' business operations and would not confer any benefit upon parties that deal with the Debtors.

**vii. Waiver of Certain Requirements of the U.S. Trustee**

94. I have been generally informed of the applicable requirements of the U.S. Trustee Guidelines. As set forth above, I believe that (a) the Debtors are able to work with their current Banks to ensure that this goal of separation between the prepetition and postpetition periods is observed and (b) enforcing certain of the U.S. Trustee Guidelines would disrupt the Debtors' operations and impose a financial burden on the Debtors' estates.

95. In light of the complexity of the Cash Management System, it would be onerous, unnecessarily inconvenient, and fail to produce any realizable benefits to the Debtors' estates to require the Debtors to close all of the Debtor Bank Accounts and open new debtor-in-possession accounts.

96. Further, it would be unnecessary and inefficient to require the Debtors to abide by the UST Requirement to establish specific debtor-in-possession accounts for tax payments (including payroll taxes) and to deposit in such accounts sufficient funds to pay any tax liability (when incurred) associated with the Debtors' payroll and other tax obligations. I believe that the Debtors can pay their tax obligations most efficiently in accordance with their existing practices, and any diversion from the Debtors' existing practices will complicate payment of the Debtors' tax obligations since certain of these fees are paid by non-Debtor Imerys USA. Further, I believe that the U.S. Trustee will have wide latitude to monitor the flow of funds into and out of such accounts. I also believe that the creation of new debtor-in-possession accounts designated solely for tax obligations would be unnecessarily burdensome.

**viii. Continued Deposit Practices**

97. As part of the Cash Management System, the Debtors routinely deposit funds into the Debtor Bank Accounts (the "Deposit Practices"). The Debtors request (i) authorization to continue to deposit funds in accordance with existing practices under the Cash Management System, subject to any reasonable changes the Debtors may implement to the Cash Management System, and (ii) a waiver of the deposit requirements of section 345(b) of the Bankruptcy Code, on an interim basis, to the extent that such requirements are inconsistent with the Deposit Practices. For the avoidance of doubt, to the extent the Debtor Bank Accounts may be classified as an investment account, or to the extent any of the Debtors' routine deposits into the Debtor Bank Accounts may be regarded as investment activity, the Debtors seek authorization

to continue to deposit funds into such Debtor Bank Accounts in accordance with existing practices, notwithstanding the requirements of section 345(b) of the Bankruptcy Code.

**B. Workforce Obligations Motion<sup>23</sup>**

98. By the Workforce Obligations Motion, the Debtors seek entry of interim and final orders authorizing them, in their discretion, to pay, continue, or otherwise honor various prepetition workforce-related obligations (collectively, the "Prepetition Workforce Obligations") to or for the benefit of their employees (the "Employees"), temporary workers (the "Temporary Workers"), and independent contractors (the "Independent Contractors" and, together with the Employees and Temporary Workers, the "Workforce") for compensation, expense reimbursements, and benefits under all plans, programs, policies, and agreements maintained by or for the benefit of, or contributed to or entered into by, the Debtors prior to the Petition Date (collectively and as further described in the Workforce Obligations Motion, the "Workforce Programs") in an aggregate amount not to exceed \$1,914,000 on an interim basis and \$2,587,000 on a final basis. In addition, the Debtors request that the Court confirm their right to continue each of the Workforce Programs in the ordinary course of business during the pendency of the Chapter 11 Cases in the manner and to the extent that such Workforce Programs were in effect immediately prior to the filing of such cases and to make payments in connection with expenses incurred in the postpetition administration of any Workforce Program.

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<sup>23</sup> "Workforce Obligations Motion" means the Debtors' Motion for Entry of Orders Under 11 U.S.C. §§ 105(a), 362(d), 363(b), 363(c), 506(a), 507(a), 541, 553, 1107(a), and 1108 and Fed. R. Bankr. 6003 (I) Authorizing the Debtors to Pay Certain Prepetition Workforce Obligations, Including Compensation, Expense Reimbursements, Benefits and Related Obligations, (II) Confirming Right to Continue Workforce Programs on Postpetition Basis, (III) Authorizing Payment of Prepetition Claims Owing to Administrators of Third Party Providers Under Workforce Programs, and (V) Authorizing Banks to Honor Prepetition Checks and Fund Transfers for Authorized Payments.

99. As described more fully in the Workforce Obligations Motion, the Prepetition Workforce Obligations arise in connection with, without limitation, plans, programs, policies, and agreements providing for: (a) wages, salaries, holiday pay, paid time off, incentive plans, and other accrued compensation; (b) reimbursement of business, travel, and other reimbursable expenses; and (c) benefits in the form of (i) medical and dental coverage, basic term life insurance, accidental death and dismemberment insurance, short-term disability coverage, long-term disability coverage, workers' compensation, and miscellaneous other benefits provided to the Workforce in the ordinary course of business, and (ii) prepetition contributions to, and benefits under 401(k) plans and pension plans.

100. As of the Petition Date, the Debtors' Workforce consists of approximately 281 Employees, of whom 184 are employed by Debtor ITA (such Employees, the "ITA Employees"), 30 are employed by Debtor ITV (together with ITA, the "US Debtors"; and such Employees, the "ITV Employees" and together with the ITA Employees, the "US Employees"), and 67 are employed by Debtor ITC (such Employees, the "Canadian Employees"). The Debtors' Employees are located at the Debtors' offices in San Jose, California, and the Debtors' talc mines, plants, and distribution facilities located in: Montana (Yellowstone, Sappington, and Three Forks); Vermont (Argonaut and Ludlow); Texas (Houston); and Ontario, Canada (Timmins, Penhorwood, and Foleyet). Approximately 97 of the Employees are salaried employees (the "Salaried Employees") and approximately 184 of the Employees are hourly employees (the "Hourly Employees"). In addition to the Employees, the Debtors' Workforce also includes approximately 23 part-time, Temporary Workers, and approximately 30 Independent Contractors.

101. Included in the Hourly Employee headcount are approximately 108 Employees (the "Union Employees") who are covered by various collective bargaining agreements as further described in the Workforce Obligations Motion. The Union Employees are all Hourly Employees, whereas the Employees not covered by collective bargaining agreements (the "Non-Union Employees") include both Salaried Employees and Hourly Employees.

102. I believe that the Debtors' ability to preserve their businesses and successfully reorganize is dependent on the expertise and continued enthusiasm and service of their Workforce. Due to the disruption and uncertainty that typically accompanies a chapter 11 filing, I believe that the morale and, thus, the performance of the Workforce may be adversely affected. I also believe that if the Debtors fail to pay the Prepetition Workforce Obligations in the ordinary course, their Workforce will suffer extreme personal hardship and, in some cases, may be unable to pay their basic living expenses. Such a result would have a highly negative impact on Workforce morale and likely would result in unmanageable performance issues or turnover, thereby resulting in immediate and irreparable harm to the Debtors and their estates. I believe that continuation of the Workforce Programs is vital to preserving and rebuilding Workforce morale during the pendency of the Chapter 11 Cases and to reducing the level of attrition that might otherwise occur.

**i. Prepetition Workforce Compensation**

103. *Employee Payroll and Payroll Deductions.* The Debtors' Employees are typically paid bi-weekly on Thursdays or Fridays (or on the preceding business day if these dates fall on a holiday). Employees are paid one week in arrears, so that they receive their bi-weekly earnings one week after the last day of a pay period.

104. In the ordinary course of their businesses, the Debtors make deductions from Employees' paychecks for payments to third parties on behalf of Employees for various

federal, state, local, and foreign, income, FICA, employment insurance and other taxes, as well as for court ordered garnishments, union dues, savings programs, repayments for loans taken against the savings programs, benefit plans, insurance and other similar programs (collectively, the "**Deductions**"). The Debtors' average bi-weekly Deductions for Employees aggregate approximately \$286,000.

105. The Debtors estimate that, as of the Petition Date, accrued but unpaid wages and Deductions total approximately \$714,000 (comprised of \$522,000 owed to the Employees on account of unpaid wages and \$192,000 attributable to the Deductions).

106. *Temporary Workers.* In addition to the Employees, the Debtors currently retain approximately 23 Temporary Workers to perform a variety of tasks related to the Debtors' mining operations in the ordinary course of business. The Temporary Workers generally earn hourly rates and the employment agencies provide the Debtors with invoices for the Temporary Workers' services (and generally are paid) on a bi-weekly basis. As of the Petition Date, the Debtors have approximately \$135,000 of accrued but unpaid liability with respect to the Temporary Workers.

107. *Independent Contractors.* In addition to the Employees and Temporary Workers, the Debtors currently retain approximately 30 Independent Contractors to perform a variety of tasks related to the Debtors' mining operations in the ordinary course of business. The Independent Contractors generally earn hourly rates and the Independent Contractors or their contracting agency, if applicable, provide the Debtors with invoices for the Independent Contractors' services (and generally are paid) on either a monthly or bi-weekly basis. As of the Petition Date, the Debtors have approximately \$62,000 of accrued but unpaid liability with respect to the Independent Contractors.

108. *PTO, vacation days, and sick leave.* The Debtors offer their Employees paid time off ("PTO"), for among other things vacation, holidays and sick leave. The specifics of the Debtors' PTO policies vary based upon whether the Employee is a Salaried Employee, Non-Union Hourly Employee, or a Union Employee. I believe these programs are typical and customary, and continuing to offer them is necessary for the Debtors to retain Employees during the reorganization process.

109. *Employee Incentive Programs.* In the ordinary course of business, in order to encourage and reward outstanding performance, the Debtors offer eligible Employees the opportunity to earn bonuses under various bonus and incentive programs (collectively, the "Employee Incentive Programs"), under which the Employees are eligible to earn awards based on individual and business targets. The Debtors paid approximately \$4,757,000 on account of the Employee Incentive Programs during the twelve month period prior to the Petition Date, of which approximately \$3,200,000 was earned during the 2017 calendar year and approximately \$1,557,000 was earned during the 2018 calendar year. As of the Petition Date, the Debtors estimate that accrued and unpaid amounts under the Employee Incentive Programs total approximately \$94,000. Given the large percentage of the Employees covered by the Employee Incentive Programs, I believe that any interruption in payments pursuant to the Employee Incentive Programs could upset Employee morale or cause attrition, which could lead to severe disruptions to the Debtors' operations.

**ii. Prepetition Employee Reimbursements**

110. *Business Expenses.* The Debtors, in the ordinary course of their business, reimburse Employees for a variety of ordinary, necessary, and reasonable business-related expenses that Employees incur within the scope of their job duties. In certain instances, Employees may be issued corporate credit cards through American Express to pay for

reimbursable expenses. The average monthly amount of business expenses reimbursed, directly or indirectly, by the Debtors is approximately \$242,000, inclusive of amounts that are owed on the Credit Cards. The Debtors estimate that there are accrued but unpaid amounts owing on account of Employees' business expenses totaling approximately \$438,000 as of the Petition Date.

111. *Vehicle Programs.* The Debtors also maintain Vehicle Programs (as defined in the Workforce Obligations Motion) through which eligible Employees who use vehicles in the ordinary course of their work, and maintain a vehicle meeting certain standards and conditions, are provided a monthly vehicle allowance. As of the Petition Date, approximately 39 Employees participate in the Vehicle Programs. The Debtors estimate that there are accrued but unpaid amounts under the Vehicle Programs of approximately \$4,000 as of the Petition Date.

112. *Relocation Expenses.* In the ordinary course of business, the Debtors cover relocation expenses if an Employee relocates at the request of the Debtors (the "Relocation Expenses"). As of the Petition Date, the Debtors have no accrued but unpaid liability with respect to Relocation Expenses, but the Debtors seek to continue to pay Relocation Expenses as they arise in the ordinary course of business.

113. *Miscellaneous Expenses.* The Debtors also reimburse their Employees for certain other miscellaneous programs and benefits (the "Miscellaneous Reimbursement Programs"). For example, the Debtors, at the discretion of an Employee's applicable business unit, may reimburse (or pay directly for) certain professional expenses, such as required continuing education expenses, professional license fees or dues, and subscriptions. The total amount of reimbursements paid by the Debtors under these Miscellaneous Reimbursement Programs average approximately \$6,000 per month. As of the Petition Date, the Debtors estimate

that accrued and unpaid amounts under the Miscellaneous Reimbursement Programs total approximately \$9,000.

**iii. Employee Benefits**

114. Prior to the Petition Date, the Debtors offered Employees and their eligible spouses and dependents various standard employee benefits, including, without limitation, (a) medical insurance (b) dental insurance, (c) basic term life and accidental death and dismemberment insurance, (d) long-term and short-term disability insurance, (e) savings and related types of benefits, (f) workers' compensation, (g) severance benefits, and (h) miscellaneous other benefits provided to the Employees in the ordinary course of business (collectively, the "Employee Benefits").

115. As further provided in the Workforce Obligations Motion, certain of the Employee Benefits remained unpaid or unprovided as of the Petition Date because certain obligations of the Debtors under the applicable plan, program, or policy accrued either in whole or in part prior to the commencement of the Chapter 11 Cases, but will not be required to be paid or provided in the ordinary course of the Debtors' business until a later date. The Debtors request authority to pay or provide as they become due all prepetition Employee Benefits that have already accrued. The Debtors estimate that the aggregate accrued amount of such prepetition Employee Benefits described in the Workforce Obligations Motion is approximately \$1,064,000.

**iv. Payments to Independent Directors**

116. Each of the Debtors' board of directors includes a non-Employee independent director, Kevin Collins (the "Independent Director"). The Independent Director is paid quarterly fees within thirty (30) days after the end of each fiscal quarter, in the amount of \$16,666.67 from ITV, \$16,666.67 from ITA, and \$16,666.67 from ITC. Beginning with the quarter starting on April 2, 2019, the Independent Director will receive quarterly fees of \$6,666.67

from ITV, \$6,666.67 from ITA, and \$6,666.67 from ITC. I believe that the Independent Director's service is necessary for the continued management of the Debtors and, accordingly, it is essential that the Debtors be authorized to pay all prepetition amounts accrued as of the Petition Date to the Independent Director. As of the Petition Date, there are no accrued but unpaid monthly fees owed to the Independent Director, but the Debtors seek the authority to reimburse any unpaid expenses incurred by the Independent Director prior to the Petition Date not to exceed \$5,000 without further order of the Court.

**v. Payments to Administrators**

117. With respect to the Employee compensation and benefits described in the Workforce Obligations Motion, the Debtors, directly or indirectly, contract with several vendors to administer and deliver payments or other benefits to their Employees (the "Administrators"). For example, the Debtors, in the ordinary course of business, pay average monthly fees of approximately \$9,000 in arrears directly to ADP (as defined in the Workforce Obligations Motion) in connection with payroll administration. As of the Petition Date, the Debtors estimate that they owe approximately \$13,000 to ADP. The Debtors pay additional Administrators' fees and expenses indirectly through non-debtor affiliates or their employee benefits consultants.

118. I believe that the Administrators may fail to adequately and timely perform or may terminate their services to the Debtors unless the Debtors pay the Administrators' prepetition claims for administrative services rendered and expenses incurred. If the Debtors were required to replace the Administrators postpetition, it likely would cause significant disruption to the payment of benefits and other obligations to the Workforce. Accordingly, I believe that the payment of claims owed to the Administrators is in the best interest of the Debtors' estates.

vi. **Payments to Employee Benefits Consultants**

119. With respect to the Employee Benefits described in the Workforce Obligations Motion, the Debtors contract with several consultants (the "Employee Benefits Consultants") to provide strategic advice and to act as liaisons and administrative agents between the Debtors and the third party insurers, administrators and providers of the Employee Benefits. The Debtors estimate that the aggregate accrued amount of such prepetition payments owed in connection with the Employee Benefits Consultants is approximately \$49,000. Unless the prepetition claims owed to the Employee Benefits Consultants are paid, I believe that the Employee Benefits Consultants may fail to perform adequately and timely or may terminate their services to the Debtors, which would likely cause significant disruption to the payment of benefits and other obligations to or for the benefit of the Workforce.

C. **Tax Motion**<sup>24</sup>

120. By the Tax Motion, the Debtors seek entry of interim and final orders authorizing the Debtors, in their sole discretion, to pay and set off any prepetition tax and fee obligations including, without limitation, international taxes, state and federal income taxes, franchise taxes, property taxes, sales and use taxes, licenses and fees, and any other types of taxes, fees, assessments or similar charges and any penalty, interest or similar charges in respect of such taxes (collectively, the "Taxes and Fees") owing to (i) certain international, federal, state and local governmental and quasi-governmental entities (the "Taxing Authorities"),<sup>25</sup> (ii) Imerys USA, as reimbursement for amounts paid by Imerys USA on behalf of the Debtors on account of

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<sup>24</sup> "Tax Motion" means the Debtors' Motion for Orders Under 11 U.S.C. §§ 105(a), 363(b), 506(a), 507(a)(8), and 541 and Fed. R. Bankr. P. 6003 Authoring Payment of Prepetition Taxes and Fees.

<sup>25</sup> A list of all international, federal, state, and local governmental and quasi-governmental entities to which the Debtors or the Debtors' officers and directors may be liable is attached as Exhibit C to the Tax Motion.

the Taxes and Fees, and (iii) as between Debtors ITA and ITV for amounts reimbursed to Imerys USA by ITA on behalf of ITV on account of the Taxes and Fees. The Debtors propose to limit the aggregate amount of payments to be made on account of prepetition Taxes and Fees under the Tax Motion to (i) \$715,000 on interim basis and (ii) \$1,505,000 on final basis.

121. The manner in which the Debtors pay the Taxes and Fees varies. With respect to certain of the Taxes and Fees, the Debtors pay the applicable Taxing Authority directly. With respect to other Taxes and Fees, Imerys USA makes payments to the applicable Taxing Authority on account of the collective Taxes and Fees of Debtors ITA and ITV and certain of their non-debtor affiliates. ITA historically reimbursed Imerys USA for payments made on account of ITA and ITV by setting off these amounts against intercompany loan amounts owed by Imerys USA to ITA pursuant to an intercompany loan agreement. Following the Petition Date, I understand that ITA intends to pay amounts owed to Imerys USA on account of Taxes and Fees directly via check rather than by setting off such amounts against intercompany loans.<sup>26</sup>

122. Although, as of the Petition Date, the Debtors were substantially current in the payment of assessed and undisputed Taxes and Fees, certain Taxes and Fees attributable to the prepetition period may not yet have become due. Certain prepetition Taxes and Fees will not be due until the applicable monthly, quarterly, or annual payment dates – in some cases immediately and in others not until next year. I have been informed that, as of the Petition Date, the Debtors estimate that they have accrued liabilities, which are not yet due, in the approximate amount of \$1,505,000 on account of Taxes and Fees.

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<sup>26</sup> Additional information regarding the Debtors' prepetition system of intercompany loan set offs and postpetition payment procedures with respect to the Taxes and Fees is included in the Cash Management Motion and the Tax Motion.

123. If the Taxes and Fees are not timely paid, I believe that the Debtors will be required to expend time and incur attorneys' fees and other costs to resolve a multitude of issues related to such obligations, each turning on the particular terms of each Taxing Authority's applicable laws. Moreover, I understand that nonpayment or delayed payment of the Taxes and Fees may also subject the Debtors to efforts by certain governmental entities, whether or not permissible under the Bankruptcy Code, to revoke the Debtors' licenses and other privileges either on a postpetition or post-confirmation basis. I also understand that certain of the Taxes and Fees may be considered to be obligations as to which the Debtors' officers and directors may be held directly or personally liable in the event of nonpayment. In such events, I believe that collection efforts by the Taxing Authorities would create obvious distractions for the Debtors and their officers and directors in their efforts to bring the Chapter 11 Cases to an expeditious conclusion. Accordingly, I believe that the continued payment of the Taxes and Fees on their normal due dates will ultimately preserve the resources of the Debtors' estates, thereby promoting their prospects for a successful chapter 11 process.

**D. Insurance and Bonding Motion<sup>27</sup>**

124. By the Insurance and Bonding Motion, the Debtors request entry of of interim and final orders authorizing them to pay and set off prepetition amounts owed under their ordinary course insurance policies and bonding program, and to maintain their insurance policies and bonding program in the ordinary course postpetition. The Debtors propose to limit the aggregate amount of prepetition payments on account of their Insurance Policies (as defined

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<sup>27</sup> **"Insurance and Bonding Motion"** means Debtors' Motion for Orders Under 11 U.S.C. §§105(a), 362(d), 363(b), and 503(b) Authorizing Debtors' to (I) Pay Their Prepetition Insurance Obligations, (II) Pay Their Prepetition Bonding Obligations, (III) Maintain Their Postpetition Insurance Coverage, and (IV) Maintain Their Bonding Program.

below) to \$600,000. The Debtors propose to limit the aggregate amount of prepetition payments on account of their Bonding Obligations (as defined below) to \$100,000.

**i. The Debtors' Insurance Obligations**

125. In the ordinary course of business, the Debtors maintain certain insurance policies that are administered by multiple third-party insurance carriers (the "Insurance Carriers"), including commercial and general liability, umbrella liability, automobile, ERISA bond, fiduciary liability, property, employment practices liability, crime, directors' and officers' liability, and cargo (collectively, the "Insurance Policies").<sup>28</sup> I believe that the Insurance Policies are essential to the preservation of the Debtors' businesses, property, and assets, and, in some cases, I understand that such coverage is required by various federal and state laws and regulations, as well as the terms of the Debtors' various commercial contracts. It is also my understanding that the Insurance Policies provide coverage that is typical in scope and amount for businesses within the Debtors' industry.

126. The manner in which the Debtors pay premiums, Brokers' Fees (as defined in the Insurance and Bonding Motion), and other costs associated with the Insurance Policies (such amounts, the "Insurance Obligations") depends on the Insurance Policy. With respect to some Insurance Policies, the Debtors pay the applicable Insurance Carrier or Broker (as defined in the Insurance and Bonding Motion), who in turn pays the applicable Insurance Carrier, on account of the Debtors' Insurance Obligations. With respect to other Insurance Policies, ITA pays the applicable Insurance Carrier or Broker, who in turn pays the applicable Insurance Carrier, on account of the collective Insurance Obligations of itself, ITV, and, with respect to certain

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<sup>28</sup> A detailed list of the Debtors' Insurance Policies is attached to the Insurance and Bonding Motion as Exhibit C.

Insurance Policies, ITC. With respect to yet other Insurance Policies, Imerys USA pays the applicable Insurance Carrier or Broker, who in turn pays the applicable Insurance Carrier, on account of the collective Insurance Obligations of Debtors ITA and ITV and certain of their non-debtor affiliates. ITA historically reimbursed Imerys USA (either directly or indirectly through an affiliate intermediary, as described in the Insurance and Bonding Motion) for payments made on account of ITA and ITV by setting off those amounts against intercompany loan amounts owed by Imerys USA to ITA. Following the Petition Date, I understand that ITA intends to pay amounts owed to Imerys USA on account of Insurance Obligations directly via check rather than by setting off such amounts against intercompany loans.<sup>29</sup>

127. In addition to the Insurance Policies listed in the Insurance and Bonding Motion, and as further described herein, the Debtors have access to, and rights under, various historical liability policies and indemnification agreements (collectively, the “Historical Policies”) with insurers, indemnitors, and other third parties (collectively, the “Historical Policy Counterparties”) that cover, among other things, certain talc-related personal injury liabilities and related litigation costs (including defense costs). I understand that the payment of defense costs by certain of the Historical Policy Counterparties (specifically, The American Insurance Company, Truck Insurance Exchange, National Union Fire Insurance Company of Pittsburgh, PA, Zurich American Insurance Company, Zurich Insurance Company, and XL Insurance America, Inc.) does not erode the underlying coverage available to the Debtors under the Historical Policies. I do not believe Court approval is required to maintain such Historical Policies, as no current or future payments are expected to be made by the Debtors with respect

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<sup>29</sup> Additional information regarding the Debtors’ prepetition system of intercompany loan set offs and postpetition payment procedures with respect to the Insurance Obligations is included in the Cash Management Motion and the Insurance and Bonding Motion.

thereto. Nevertheless, out of an abundance of caution and in the interest of disclosure, in the Insurance and Bonding Motion the Debtors submit that they will continue to maintain such Historical Policies and exercise their rights thereunder in the ordinary course of business.<sup>30</sup>

128. The Debtors' Insurance Policies renew at various times throughout each year. The Debtors pay all of the annual premiums due for each of the policies at the beginning of each particular policy period. The total amount paid in annual premiums and payments associated with all of the Insurance Policies is approximately \$515,000, approximately \$320,000 of which is paid by the Debtors directly to the Insurance Carriers or Brokers and approximately \$195,000 of which is paid by Imerys USA to the Insurance Carriers or Brokers on behalf of the Debtors. I understand that as of the Petition Date, approximately \$600,000 may be currently due on account of Prepetition Insurance Obligations, of which approximately \$25,000 may be due in connection with Broker's Fees.

129. I believe that maintenance of insurance coverage under the various Insurance Policies is essential to the continued operation and preservation of value of the Debtors' assets and, indeed, it is my understanding that it is required under the U.S. Trustee Guidelines, the federal laws and regulations applicable to the Debtors' business, the laws of the various states in which the Debtors operate and the Debtors' various contractual commitments. Moreover, I believe the Debtors' maintenance of their relationships with the Insurance Carriers is critical to ensuring the continued availability of insurance coverage and reasonable pricing of such coverage for future policy periods. Thus, I believe the Debtors should be authorized, but not directed, to continue to pay and set off premiums, taxes, claims, deductibles, charges, fees, indemnity

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<sup>30</sup> In the Insurance and Bonding Motion, the Debtors reserve the right to seek additional relief from the Court with respect to these historical policies and any rights or obligations thereunder.

obligations and other obligations, including Broker's fees, owed under or with respect to the Insurance Policies as such obligations come due in the ordinary course of the Debtors' business.

**ii. The Debtors' Bonding Program**

130. In the ordinary course of business, the Debtors are required by certain applicable statutes, rules, and regulations to purchase new, supplemental, or replacement surety bonds (such bonds, together with the surety bonds outstanding as of the Petition Date, the "**Bonding Program**"). Under the Bonding Program, Imerys USA issues surety bonds to certain Sureties (as defined in the Insurance and Bonding Motion) to secure the Debtors' payment or performance of certain obligations, often to governmental units or other public agencies. The Bonding Program generally covers reclamation, performance, license/permit, customs and border protection and appeal obligations (collectively, the "**Covered Obligations**").<sup>31</sup> I believe that the Bonding Program provides coverage that is typical in scope and amount for businesses within the Debtors' industry.

131. The manner in which the Debtors pay amounts owed to the Sureties (such amounts the "**Bonding Obligations**") varies. ITC pays the applicable Surety directly on account of all of its Bonding Obligations. ITA pays the applicable Surety directly on account of the appeal bond. With respect to the other bonds, Imerys USA pays the Bonding Obligations on behalf of Debtors ITA and ITV and certain of their non-debtor affiliates. ITA historically reimbursed Imerys USA (either directly or indirectly through an affiliate intermediary entity, as described in the Insurance and Bonding Motion) for payments made on account of ITA and ITV by setting off those amounts against intercompany loan amounts owed by Imerys USA to ITA. Following the

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<sup>31</sup> A detailed list of the surety bonds that are currently maintained for the benefit of the Debtors is attached to the Insurance and Bonding Motion as Exhibit D.

Petition Date, I understand that ITA intends to pay amounts owed to Imerys USA on account of Bonding Obligations directly via check rather than by setting off such amounts against intercompany loans.<sup>32</sup>

132. The premiums for the surety bonds are generally determined on an annual basis and are paid when the bonds are issued and annually upon renewal. The total amount paid in annual premiums and payments associated with all of the surety bonds is approximately \$500,000. I understand that as of the Petition Date, the Debtors estimate that all premium payments due and owing under the Bonding Program have been paid in full and the Debtors are not aware of any pending requests for payment by the Sureties.

133. I believe that the success of the Debtors' efforts to operate effectively and efficiently will depend on the maintenance of the Bonding Program on an uninterrupted basis. To continue their business operations, the Debtors must be able to provide financial assurances to federal and state governments, regulatory agencies, and other third parties. This, in turn, requires the Debtors to maintain access to the existing Bonding Program maintained by Imerys USA, including by paying the Bonding Obligations as they come due, as well as renewing or potentially acquiring additional bonding capacity as needed in the ordinary course of their businesses, requesting releases from obsolete bonding obligations, and executing other agreements in connection with the Bonding Program. Accordingly, I believe it is important that the Debtors be authorized to participate in the Bonding Program in the same manner as they did prepetition and to pay or set off any prepetition or postpetition Bonding Obligations, and revise, extend,

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<sup>32</sup> Additional information regarding the Debtors' prepetition system of intercompany loan set offs and postpetition payment procedures with respect to the Bonding Obligations is included in the Cash Management Motion and the Insurance and Bonding Motion.

supplement, or change the Bonding Program as needed, including through the issuance of new surety bonds.

**E. Utilities Motion<sup>33</sup>**

134. In the Utilities Motion, the Debtors request entry of interim and final orders, approving procedures that would provide adequate assurance of payment to their utility service providers (the "Utility Companies") under section 366 of the Bankruptcy Code, while allowing the Debtors to avoid the threat of imminent termination of electricity, water, natural gas, diesel and gasoline, compressed natural gas, waste management, propane, telecommunications, and similar utility products and services (collectively, the "Utility Services") from the Utility Companies.

135. As of the Petition Date, approximately thirty-five Utility Companies provide Utility Services to the Debtors at various locations.<sup>34</sup> The Utility Companies service the Debtors' operations and facilities related to the Debtors' mining, processing, and global distribution of talc. The success and smooth operation of the Debtors' businesses depend on the reliable delivery of electricity, fuel, and the other Utility Services. The Debtors require the Utility Services to operate their businesses, manage their mines and plants, and maintain and service the equipment the Debtors use to service their customers. I am not currently aware of any past due amounts owed to any of the Utility Companies. Based on the timing of the filings in relation to the Utility Companies' billing cycles, however, there may be utility costs that have been invoiced

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<sup>33</sup> "Utilities Motion" Means the Debtors' Motion for Orders 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 Payments, and (III) Establishing Procedures for Resolving Requests by Utility Companies for Additional Assurance of Payment.

<sup>34</sup> A non-exclusive list of the Utility Companies and the Utility Services they provide is attached to the Utilities Motion as Exhibit A.

to the Debtors for which payment is not yet due and utility costs for services provided since the end of the last billing cycle that have not yet been invoiced to the Debtors.

136. I understand that the Debtors intend to pay all postpetition obligations owed to the Utility Companies in a timely manner. Nevertheless, to provide additional assurance of payment for future services to the Utility Companies, the Debtors will deposit \$500,000, which is an amount equal to approximately fifty percent of the estimated monthly cost of the Utility Services, into a newly created, segregated, interest-bearing account, within twenty days of the Petition Date (the "Adequate Assurance Deposit"). The Adequate Assurance Deposit will be maintained during the Chapter 11 Cases, subject to adjustment by the Debtors to account for the termination or beginning of new Utility Services by the Debtors or entry into other arrangements with respect to adequate assurance of payment reached with individual Utility Companies.

**F. Customer Programs Motion<sup>35</sup>**

137. By the Customer Programs Motion, the Debtors seek entry of interim and final orders authorizing the Debtors to satisfy, in their discretion, various obligations owed to customers and distributors, including Rebates, Commissions, and Warranties (each as defined below, and together the "Customer Obligations") that the Debtors deem beneficial and cost-effective to their businesses, and to otherwise continue their customer practices. The Debtors propose to limit the aggregate amount of payments to be made on account of prepetition Customer Obligations under the Customer Programs Motion to (i) \$600,000 on interim basis and (ii) \$1,900,000 on final basis.

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<sup>35</sup> "Customer Programs Motion" means *Debtors' Motion for Orders Under 11 U.S.C. §§ 105(a), 363(b), 363(c), 506(a) and 533 and Fed. R. Bankr. P. 6003 and 6004 Authorizing (I) the Debtors to Honor Prepetition Obligations to Customers and to Otherwise Continue Customer Programs and (II) Financial Institutions to Honor and Process Related Checks and Transfers.*

138. As discussed herein, the Debtors mine, process, and distribute talc for use in personal care, industrial, and other specialty products. In some instances, the Debtors supply talc directly to their customers, which include third-party manufacturers of such products. In other instances, the Debtors supply talc to third-party distributors, who serve as a conduit between the Debtors and the product manufacturers. I believe that the Debtors' goodwill and ongoing business relationships may erode if their customers or distributors perceive that the Debtors are unable or unwilling to fulfill the prepetition commitments they have made through the Customer Obligations. I also believe that if the Debtors are unable to preserve the loyalty of their customers and distributors, the Debtors' businesses would likely suffer material harm. Accordingly, I believe that granting the relief requested in the Customer Programs Motion is in the best interests of the Debtors, their estates, and their creditors.

139. The following are general descriptions and examples of the programs through which the Debtors incur the Customer Obligations.

i. Rebates

140. Under the Debtors' rebate program, if a customer purchases a certain amount of talc within a designated one-year period, the Debtors issue a credit (a "Rebate") to such customer. The value of the Rebate increases as the total volume of talc purchased increases.<sup>36</sup> Thus, both the rate at which the Rebate is earned and the Rebate's aggregate value increase as the volume of talc purchased increases. The Debtors settle their two largest customer

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<sup>36</sup> As an example, the first 1-100 pounds of talc a customer purchases from the Debtors may result in a Rebate amounting to \$0.01 per pound, while the next 101-200 pounds of talc a customer purchases from the Debtors may result in a Rebate amounting to \$0.02 per pound. These numbers are hypothetical and do not reflect actual Rebate amounts.

Rebates via check on an annual basis. The Debtors settle their other customer Rebates via check on a periodic basis.

141. The manner in which the Debtors pay the Rebates varies. For Rebates owed by ITC, Rebate checks are issued directly by ITC to the customer. Historically, for Rebates owed by ITA or ITV, the Rebate check was issued to the customer by Imerys USA. ITA then reimbursed Imerys USA for Rebate payments made on account of ITA and ITV by setting off such amounts against intercompany loan amounts owed by Imerys USA to ITA. Following the Petition Date, I understand that ITA intends to issue checks on account of Rebates owed by ITA and ITV directly to the customer.<sup>37</sup>

142. Given that the Rebates are based on ongoing sales volumes, I understand that it is difficult to calculate the exact amount of Rebates accrued prior to the Petition Date. I understand that the Debtors estimate that the value of the Rebates accrued prior to the Petition Date is approximately \$1,000,000.

ii. **Commissions**

143. The Debtors issue commissions to (i) certain third party distributors (the "Third Party Distributors") who supply the Debtors' talc to customers that are located in geographic areas not easily accessible by the Debtors (the "Third Party Distributor Commissions") and (ii) certain of their non-debtor affiliates (the "Affiliate Distributors"),<sup>38</sup> who sell talc produced by the Debtors to third parties (the "Affiliate Distributor Commissions" and, together with the Third Party Distributor Commissions, the "Commissions").

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<sup>37</sup> Additional information regarding the Debtors' prepetition system of intercompany loan set offs and postpetition payment procedures with respect to the Rebates is included in the Cash Management Motion and the Customer Programs Motion.

<sup>38</sup> Such non-debtor affiliate distributors include Kentucky-Tennessee Co. and Celite Korea Ltd., among others.

144. The amount of the Third Party Distributor Commissions earned by Third Party Distributors is either based on the volume of the talc distributed or a pre-negotiated flat fee amount. Once earned, a Third Party Distributor Commission is paid either through a credit issued by the applicable Debtor against the Third Party Distributor's outstanding accounts receivable, or through a check or ACH issued to the Third Party Distributor. The Debtors generally pay the Third Party Distributor Commissions on a quarterly or monthly basis depending on the terms.

145. The manner in which the Debtors pay the Commissions varies. With respect to Commissions owed by ITC, where a Third Party Distributor is paid via check or ACH, ITC issues such check or ACH directly to the Third Party Distributor. With respect to Commissions owed by ITA or ITV, historically, where the Third Party Distributor was paid via check or ACH, such checks or ACHs were issued by Imerys USA and then ITA reimbursed Imerys USA in the manner described above. Following the Petition Date, I understand that ITA intends to issue checks on account of Third Party Distributor Commissions owed by ITA and ITV directly to the Third Party Distributor.<sup>39</sup>

146. I understand that the Debtors estimate that approximately \$200,000 is owed to Third Party Distributors and Imerys USA as of the Petition Date on account of prepetition Third Party Distributor Commissions.

147. As with the Third Party Distributor Commissions, the amount of Affiliate Distributor Commissions earned by Affiliate Distributors is either based on the volume of the talc distributed or a pre-negotiated flat fee amount. Once earned, the Debtors have historically settled Affiliate Distributor Commissions by setting off those amounts against intercompany loan

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<sup>39</sup> Additional information regarding the Debtors' prepetition system of intercompany loan set offs and postpetition payment procedures with respect to the Commissions is included in the Cash Management Motion and the Customer Programs Motion.

amounts owed by the Affiliate Distributor to the applicable Debtor. Such intercompany transactions were then recorded in such Debtor's and the Affiliate Distributor's books and records. Following the Petition Date, I understand that, the Debtors intend to settle Affiliate Distributor Commissions by issuing checks directly to the Affiliate Distributor rather than by setting off such amounts against intercompany loans.<sup>40</sup>

148. I understand that the Debtors estimate that approximately \$200,000 is owed to Affiliate Distributors as of the Petition Date on account of prepetition Affiliate Distributor Commissions.

iii. Warranties

149. Under certain customer contracts, the Debtors guarantee that the talc products they supply will comply with certain customer specifications (such arrangement, the "Spec Warranty"). Pursuant to the Spec Warranty, if the Debtors fail to comply with such specifications, customers must file a complaint with the Debtors, and, upon satisfactory review of the complaint, the Debtors will generally reimburse the customer the amount paid for the non-conforming product. The Spec Warranty is paid either through a credit issued by the applicable Debtor against the customer's outstanding accounts receivable, or through a check issued to the customer.

150. The manner in which the Debtors pay Spec Warranty amounts varies. With respect to amounts owed by ITC on account of Spec Warranties, where a customer is paid via check, ITC issues such check directly to the customer. With respect to amounts owed by ITA or ITV on account of Spec Warranties, historically, where the customer was paid via check, such

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<sup>40</sup> Additional information regarding the Debtors' prepetition system of intercompany loan set offs and postpetition payment procedures with respect to the Warranties is included in the Cash Management Motion and the Customer Programs Motion.

check was issued by Imerys USA and then ITA reimbursed Imerys USA in the manner described above. Following the Petition Date, I understand that ITA intends to issue checks for Spec Warranty amounts owed by ITA and ITV directly to the customer.<sup>41</sup>

151. Additionally, the Debtors guarantee their supply of certain talc products (such arrangement the "Supply Warranty" and together with the Spec Warranty, the "Warranties"). Pursuant to the Supply Warranty, in the event that one of the Debtors' plants does not have a customer's specified product, one of the other Debtors will provide such customer with the specified product from its own inventory. The customer is not charged any additional cost for this substitution.

### III. CONTINUING VENDOR MOTIONS

#### A. Critical Vendor Motion<sup>42</sup>

152. By the Critical Vendor Motion, the Debtors seek entry of interim and final orders authorizing the Debtors to pay the prepetition fixed, liquidated, and undisputed claims (the "Critical Vendor Claims") owing to certain suppliers of goods and services, with whom the Debtors continue to do business and whose goods and services are critical and essential to the Debtors' operations (the "Critical Vendors") in an amount not to exceed \$700,000 on an interim basis and \$1,100,000 on a final basis.

153. As described herein, the Debtors operate global businesses that are primarily engaged in the mining and processing of talc in North America, and the distribution of

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<sup>41</sup> Additional information regarding the Debtors' prepetition system of intercompany loan set offs and postpetition payment procedures with respect to the Customer Programs is included in the Cash Management Motion and the Customer Programs Motion.

<sup>42</sup> "Critical Vendor Motion" means the Debtors' Motion for Orders Under 11 U.S.C. §§ 105(a), 363(b), 503(b)(9), 1107(a), and 1108 and Fed. R. Bankr. P. 6003 (I) Authorizing Payment of Prepetition Claims of Critical Vendors; (II) Authorizing Financial Institutions to Honor and Process Related Checks and Transfers; and (III) Granting Related Relief.

their talc products to countries in North America, South America, Europe, and Asia. The Debtors' ordinary course operations generally involve the extraction of talc from their mines in North America, the processing and treatment of talc at their plants, and the packaging and distribution of finished talc products to customers around the world. In order to ensure the success of the Debtors' businesses, the Debtors necessarily rely on certain Critical Vendors that provide the Debtors with the materials, supplies, and/or services necessary to conduct their operations. I believe that without the goods and services provided by the Critical Vendors, the Debtors would be unable to efficiently mine and process their talc or supply talc products to their customers.

154. I believe payment of the Critical Vendor Claims is necessary due to the critical nature of the goods and services provided by the Critical Vendors. These goods and services are critical for several reasons. First, certain of the Debtors' mines and other operations are in remote locations, and therefore there are often a limited number of vendors and suppliers in close proximity to the Debtors. Accordingly, certain Critical Vendors represent one of a few vendors or the only vendor within a particular area that can provide the goods and services that the Debtors require to operate their businesses. In addition, the Debtors require certain specialized supplies, materials, and equipment that only a handful of vendors have the means or skillset to provide. Therefore, if these existing Critical Vendors were to stop doing business with the Debtors, I believe it would be difficult (if not impossible) and cost-prohibitive for the Debtors to locate alternative vendors and suppliers. The Debtors further rely on certain vendors, like transportation providers and administrative service providers, that are necessary to maintain the Debtors' supply chain, and any inability to continue receiving services from these specific vendors would greatly disrupt the Debtors' businesses. Accordingly, I believe it is essential that the Debtors receive authorization to pay the Critical Vendor Claims of such vendors and service

providers, subject to the criteria specified in the Critical Vendors Motion, because payment of such claims is necessary to achieve their chapter 11 objectives, provide initial supply chain stability, and to preserve the value of their businesses for the benefit of their constituents.

155. I have been informed that to ensure that the Debtors correctly identify their Critical Vendors, certain of the Debtors' employees and professionals who are responsible for maintaining, and have intimate knowledge of, the Debtors' vendor and service provider relationships, have conducted, and will continue to conduct, an extensive analysis and review of the Debtors' immediate needs for goods and services.

156. I understand that as part of such analysis and review, the Debtors have used, and will continue to use, the following criteria to determine which of the Debtors' vendors and service providers should be designated as Critical Vendors: (a) whether the vendor or service provider is a sole-source or limited source provider; (b) whether the Debtors receive advantageous pricing or other terms from a vendor or service provider such that a postpetition replacement would result in significantly higher costs; (c) whether quality requirements, geographic constraints, customizations, or other specifications prevent the Debtors from obtaining the necessary goods or services from alternative sources within a reasonable timeframe; (d) whether, if the vendor is not a sole source provider, the Debtors have insufficient inventory of goods or in-house capabilities to continue operations while a replacement is found and put into place; (e) whether a vendor or service provider is contractually obligated to continue to provide goods and services but the Debtors cannot afford the time and expense of an enforcement action if the vendor or service provider wrongfully refuses to perform; (f) whether a vendors' prepetition claim is entitled to administrative expense status under section 503(b)(9) of the Bankruptcy Code; and (g) whether a vendor or service provider meeting any of the aforementioned standards in

(a) through (f) refuses to, demands pricing or trade terms that constitute an effective refusal to, or is likely financially unable to, provide goods or services to the Debtors on a postpetition basis if the prepetition balances are not paid. I am confident that this process will result in designating only those vendors and service providers that are truly critical to the Debtors' estates as Critical Vendors.

157. Among the Critical Vendors identified by the Debtors are certain providers of essential goods and services that the Debtors rely upon in the operation of their businesses and include (i) specialty packaging suppliers, (ii) mine and plant related equipment suppliers and service providers, (iii) administrative and logistic service providers, and (iv) chemical suppliers and manufacturers. I believe that many of these vendors are critical to the Debtors' businesses because they possess unique technical knowledge regarding, and have familiarity with, the Debtors' talc operations and/or are located near the Debtors' operations. I believe that even in those instances where the Debtors could potentially locate a suitable replacement vendor, the Debtors have determined that replacing any of the Critical Vendors would be cost-prohibitive and disruptive to the Debtors' operations. Furthermore, I believe that the requisite time to qualify and replace incumbent Critical Vendors could impair scheduling and delivery commitments. Therefore, I believe that any such disruptions could result in delays in the mining, processing, or delivery of the Debtors' talc products, which could, in turn, cause irreparable harm to the Debtors' businesses.

158. Vendors and service providers of the nature described above, and others that satisfy the criteria described above, fall under the rubric of Critical Vendors. I believe that there is a high likelihood that such Critical Vendors would no longer do business with the Debtors if they are not paid on account of any outstanding prepetition claims. Any refusal by the Critical

Vendors to provide essential goods or perform key services would have immediate and severe adverse repercussions, including jeopardizing or impairing the value of the Debtors' businesses. Under these circumstances, I believe that paying the Critical Vendor Claims is both necessary and essential to the Debtors' ability to achieve their chapter 11 objectives and preserve value for their various constituencies.

159. I understand that the Debtors will attempt to condition the payment of Critical Vendor Claims on the agreement of individual Critical Vendors to continue supplying goods or services to the Debtors on trade terms that are the same or better than the trade terms that existed immediately prior to the Petition Date or, if more favorable, within the sixty day period prior to the Petition Date (the "Customary Trade Terms"). The Debtors reserve the right to negotiate new trade terms (the "Minimum Credit Terms") with any Critical Vendor as a condition to payment of any Critical Vendor Claim, in the Debtors' sole discretion.

160. I understand that to ensure that the Critical Vendors deal with the Debtors on either Customary Trade Terms or Minimum Credit Terms, the Debtors propose that a letter agreement (a "Trade Agreement") be sent to the Critical Vendors for execution, together with a copy of the Order granting the Critical Vendors Motion.

161. In the Critical Vendors Motion, the Debtors request only the authorization to enter into Trade Agreements when the Debtors determine, in their sole discretion, that payment of such Critical Vendor Claims is necessary to enable the Debtors to realize their chapter 11 objectives and that such Trade Agreements are advisable. The Debtors also request authorization to make payments on account of Critical Vendor Claims in the absence of a Trade Agreement if the Debtors determine, in their business judgment, that the failure to pay such Critical Vendor Claims will result in harm to the Debtors' business

162. I understand that in the event that a Critical Vendor, whether under a Trade Agreement or otherwise, refuses to supply goods and/or services to the Debtors on Customary Trade Terms or Minimum Credit Terms (or such other terms as are agreed by the parties) following receipt of payment on its Critical Vendor Claim or otherwise fails to comply with any Trade Agreement entered into between such Critical Vendor and the Debtors, then the Debtors reserve their rights to take any and all actions necessary to return the parties to the positions they held immediately prior to entry of this Final Order with respect to all prepetition claims, including but not limited to: (a) declaring that any Trade Agreement between the Debtors and such Critical Vendor is terminated; (b) declaring that payments made to such Critical Vendor on account of its Critical Vendor Claims shall be deemed to have been made in payment of then-outstanding (or subsequently accruing) postpetition claims of such Critical Vendor without further order of the Court or action by any person or entity; and (c) recovering or seeking disgorgement of any payment made to such Critical Vendor on account of its Critical Vendor Claims to the extent that such payments exceed the value of the postpetition claims of such Critical Vendor, without giving effect to any rights of setoff, claims, provision for payment of reclamation or trust fund claims, or other defense. In addition, the Debtors reserve the right to seek damages or other appropriate remedies against any breaching Critical Vendor.

163. In the Critical Vendors Motion, the Debtors further propose that any Trade Agreement terminated as a result of a Critical Vendor's refusal to comply with the terms thereof may be reinstated if the underlying default under the Trade Agreement is fully cured by the Critical Vendor not later than five business days following the Debtors' notification to the Critical Vendor of such a default, or the Debtors, in their sole discretion, reach a favorable alternative agreement with the Critical Vendor.

164. I believe that the relief requested in the Critical Vendor Motion is necessary to permit the Debtors to obtain the timely delivery of goods and uninterrupted provision of services from the Critical Vendors.

**B. Foreign Vendor Motion<sup>43</sup>**

165. By the Foreign Vendor Motion, the Debtors seek entry of interim and final orders authorizing the Debtors to pay the prepetition fixed, liquidated, and undisputed claims (the "Foreign Vendor Claims") owing to certain foreign suppliers of goods and services, with whom the Debtors continue to do business (the "Foreign Vendors") in an amount not to exceed \$900,000 on an interim basis and \$1,400,000 on a final basis.

166. As described herein, the Debtors operate multi-national businesses that are primarily engaged in the mining and processing of talc in the United States and Canada, as well as the distribution of their talc products in North America, South America, Europe, and Asia. Due to the international nature of their supply chain, the Debtors rely on a number of foreign vendors and suppliers to mine and distribute their products. The foreign vendors and suppliers include businesses based in countries such as China, India, and Canada, among others, and are not believed to have meaningful contacts with the United States.

167. In the Foreign Vendor Motion, the Debtors propose to pay the Foreign Vendor Claims only for those Foreign Vendors that agree, to the Debtors' satisfaction, to continue to supply goods or services to the Debtors according to (a) the most favorable trade terms and practices (including, without limitation, credit limits, pricing, timing of payments, allowances,

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<sup>43</sup> "Foreign Vendor Motion" means the Debtors' Motion for Orders Under 11 U.S.C. §§ 105(a), 363(b), and 1107(a), and Fed. R. Bankr. P. 6003 (I) Authorizing Payment of Prepetition Claims of Foreign Vendors; (II) Authorizing Financial Institutions to Honor and Process Related Checks and Transfers; and (III) Granting Related Relief.

rebates, discounts, and other applicable terms and programs) in effect between the Foreign Vendor and the Debtors within the sixty day period preceding the Petition Date or (b) such other trade terms and practices as agreed to by the Debtors and the Foreign Vendor (the "Customary Trade Terms"). However, if the Debtors are unable to negotiate continued supply upon Customary Trade Terms, the Debtors seek authority, based on their business judgment, to pay Foreign Vendors all or a portion of their Foreign Vendor Claims in return for the continued supply of critical goods and services (even if such payment is not according to the Customary Trade Terms).

168. In the event that a Foreign Vendor refuses to supply goods and/or services to the Debtors on Customary Trade Terms (or such other terms as are agreed by the parties) following receipt of payment on its Foreign Vendor Claim, the Debtors reserve their rights to return the parties to the positions they held immediately prior to entry of any interim order or final order approving the Foreign Vendor Motion with respect to all prepetition claims. Further, the Debtors reserve their rights to and may seek approval of the Court to: (a) declare that payments made to such Foreign Vendor on account of its Foreign Vendor Claim be deemed to have been in payment of then-outstanding (or subsequently accruing) postpetition claims of such Foreign Vendor without further order of the Court or action by any person or entity; and (b) recover or seek disgorgement of any payment made to such Foreign Vendor on account of its Foreign Vendor Claim to the extent that such payments exceed the value of the postpetition claims of such Foreign Vendor, without giving effect to any rights of setoff, claims, provision for payment of reclamation or trust fund claims, or other defense.

169. I believe that the services, supplies, and equipment provided by the Foreign Vendors are crucial to the Debtors' operations. I understand that Debtors do not typically engage

with the Foreign Vendors pursuant to long-term contracts. Rather, purchases are typically undertaken on a purchase order by purchase order basis. Thus, I believe that the Debtors do not have the ability to compel contractual performance across the broad base of their vendors. Even if such rights generally existed, I believe they may be of limited utility in this regard. In particular, I believe that many of the Foreign Vendors may be unfamiliar with the chapter 11 process, particularly those in countries with liquidation-oriented insolvency regimes. I understand that the “debtor-in-possession” concept at the heart of chapter 11 does not exist in other countries where “bankruptcy” is equivalent to “liquidation.” Absent prompt and full payment of the Foreign Vendor Claims, I believe that the Foreign Vendors may therefore refuse to provide the equipment, supplies, and services that are required by the Debtors and their affiliates during the pendency of the Chapter 11 Cases. Even if they do not take such drastic action, it is likely that the Foreign Vendors will, absent payment, delay providing such equipment, supplies, and services and thereby expose the Debtors’ estates to significant economic harm.

170. In addition, I understand that many of the Foreign Vendors may not be (or may assert that they are not) subject to the jurisdiction of this Court. Although the scope of the automatic stay set forth in section 362 of the Bankruptcy Code is universal, I believe that there is a serious risk that certain of the Foreign Vendors holding prepetition claims against the Debtors may consider themselves to be beyond the jurisdiction of the Court, disregard the automatic stay provisions of the Bankruptcy Code, and engage in conduct that would disrupt the Debtors’ operations. Thus, I believe that efforts by the Debtors to enforce this Court’s orders and the applicable provisions of the Bankruptcy Code against them could be cost-prohibitive, time-consuming, and, possibly, of little practical value as these Foreign Vendors are located primarily or exclusively in jurisdictions outside of the United States.

171. Even if such Foreign Vendors do not resort to “self-help” remedies, I believe their failure to pay the Foreign Vendor Claims will have an immediate effect on the Chapter 11 Cases. For example, the Debtors currently benefit from favorable trade terms from many such Foreign Vendors, and the Debtors’ failure to make timely payments could result in the acceleration or elimination of such terms—thereby imposing a corresponding liquidity drain on these estates. Additionally, I do not believe that the Debtors can readily or easily replace these Foreign Vendors on similar economic terms without impairing their current operations and their ability to mine, process and distribute talc to customers. For the foregoing reasons, I believe that a failure to pay the Foreign Vendor Claims in a timely manner would jeopardize the Chapter 11 Cases.

C. Lien Claimant Motion<sup>44</sup>

172. By the Lien Claimant Motion, the Debtors request entry of interim and final orders (i) authorizing, but not directing, the Debtors to pay prepetition claims held by (a) shippers, (b) lien claimants and (c) royalty interest owners, (ii) authorizing, but not directing, the Debtors to pay 503(b)(9) claims, (iii) confirming the administrative expense priority status of outstanding orders for goods that will not be delivered until on or after the Petition Date and authorizing, but not directing, the Debtors to pay prepetition amounts related to such outstanding orders, and (iv) granting related relief.

173. A summary of the specific relief requested herein is set forth below:

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<sup>44</sup> “**Lien Claimant Motion**” means *Debtors’ Motion for Orders Under 11 U.S.C. §§ 105(a), 363(b), 503(b), 1107(a), and 1108 and Fed. R. Bankr. P. 6003 (I) Authorizing Debtors to Pay Certain Prepetition Claims of Shippers, Lien Claimants, and 503(b)(9) Claimants, (II) Confirming Administrative Expense Priority of Undisputed and Outstanding Prepetition Orders, and (III) Granting Related Relief.*

	Interim Relief	Final Relief
Shipping Claims	\$1,900,000	\$3,300,000
Lien Claims	\$1,000,000	\$1,400,000
Royalty Payments	\$200,000	\$900,000
503(b)(9) Claims	\$300,000	\$300,000

174. As described herein, the Debtors are primarily engaged in the mining, processing, and/or distribution of talc. I believe that the Debtors' ability to operate their business without interruptions is dependent upon the Debtors' vendors, suppliers, shippers and warehousemen, each of which either provides the Debtors with the materials and supplies necessary to ensure safe mining conditions, extract and process talc, transport talc among the Debtors' mines and plants, or deliver talc to the Debtors' customers. As more fully described in the Lien Claimant Motion, the Debtors utilize the services of a number of service providers who, by the nature of their business and the work that they perform for the Debtors, may be able to assert that prepetition amounts owed to them are secured by statutory liens on property of the Debtors that is either in the possession of the service provider or that has been improved upon by the provider. The Debtors are also obligated to make royalty payments to certain royalty interest owners who may assert that prepetition royalty payments owed to them are secured by liens on the Debtors' property. Moreover, amounts held by the Debtors on account of the royalty interests may not be property of the Debtors' bankruptcy estates. In addition, the claims of certain providers of goods to the Debtors may be entitled to priority under section 503 of the Bankruptcy Code because such goods were delivered to the Debtors within twenty days prior to the Petition Date. In order to continue the operation of their business uninterrupted postpetition, the Debtors seek to pay the prepetition claims of these claimants, each of which may be entitled to priority over general unsecured creditors.

CONCLUSION

175. The Debtors' ultimate goal in these Chapter 11 Cases is to confirm a plan of reorganization providing for trust mechanisms that will address all current and future Talc Claims against the Debtors while simultaneously preserving value and allowing the Debtors to emerge from chapter 11 free of historic talc-related liabilities. In the near term, however, to minimize any loss of value of their businesses during these Chapter 11 Cases, the Debtors' immediate objective is to maintain a business-as-usual atmosphere during the early stages of these Chapter 11 Cases, with as little interruption or disruption to the Debtors' operations as possible. I believe that if the Court grants the relief requested in each of the First Day Pleadings, the prospect for achieving these objectives and confirmation of a chapter 11 plan will be substantially enhanced.

176. I hereby certify that the foregoing statements are true and correct to the best of my knowledge, information and belief, and respectfully request that all of the relief requested in the First Day Pleadings be granted, together with such other and further relief as is just.

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

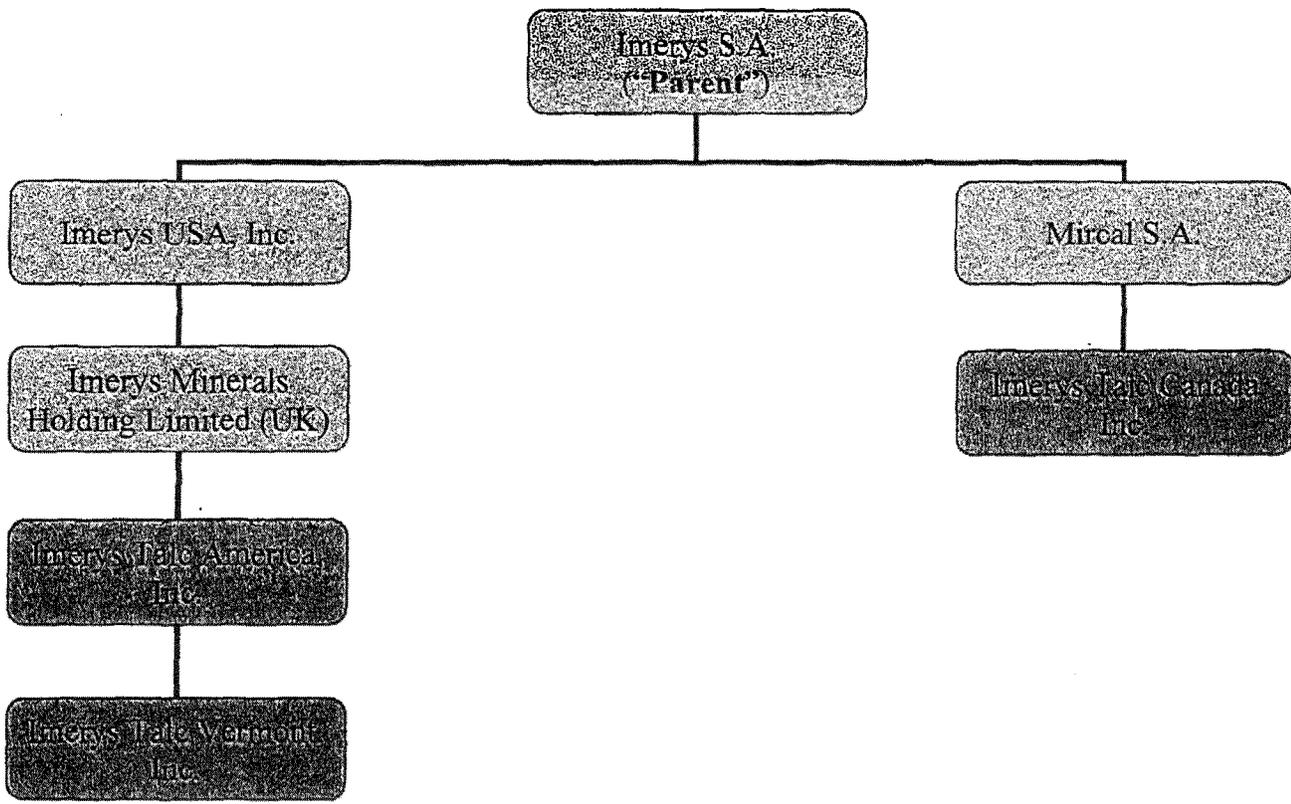
Executed this 13 day of February 2019.

/s/ Alexandra Picard  
Alexandra Picard  
Chief Financial Officer of Imerys Talc  
America, Inc., Imerys Talc Vermont, Inc. and  
Imerys Talc Canada Inc.

**Exhibit A**

**Simplified Imerys Group Organizational Chart**

SIMPLIFIED ORGANIZATIONAL CHART



Debtors - 

**TAB C**

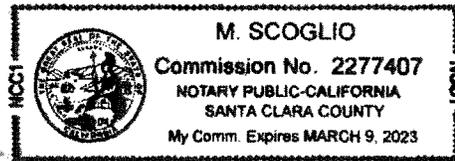
**THIS IS EXHIBIT "C"**

*referred to in the Affidavit of Alexandra Picard*

Sworn before me this 28<sup>TH</sup>  
day of March, 2019



*A Commissioner for Taking Affidavits*



IN THE UNITED STATES BANKRUPTCY COURT  
FOR THE DISTRICT OF DELAWARE

----- X  
In re: : Chapter 11  
: :  
IMERYYS TALC AMERICA, INC., *et al.*,<sup>1</sup> : Case No. 19-10289 (LSS)  
: :  
Debtors. : (Jointly Administered)  
: :  
----- X Re: Docket No. 92

**ORDER EXTENDING TIME FOR FILING SCHEDULES AND STATEMENTS**

Upon the motion (the "**Motion**")<sup>2</sup> of the Debtors for an order extending the deadline by which the Debtors must file their Schedules and Statements for 30 days, through and including April 12, 2019; 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 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

<sup>1</sup> 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.

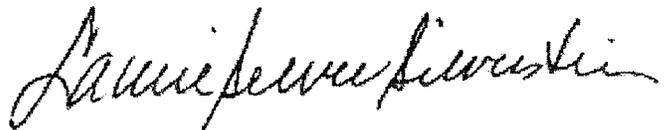
<sup>2</sup> Capitalized terms used but not otherwise defined herein shall have the meanings ascribed to such terms in the Motion.

**ORDERED, ADJUDGED AND DECREED THAT:**

1. The Motion is GRANTED as set forth herein.
2. All objections to entry of this Order, to the extent not withdrawn or settled, are overruled.
3. The time by which the Debtors must file their Schedules and Statements shall be and hereby is extended for 30 days, through and including April 12, 2019, without prejudice to the Debtors' right to seek additional extensions.
4. This Court retains exclusive jurisdiction with respect to all matters arising from or related to the implementation, interpretation, and enforcement of this Order.

**Dated: March 19th, 2019**  
**Wilmington, Delaware**

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2 **LAURIE SELBER SILVERSTEIN**  
**UNITED STATES BANKRUPTCY JUDGE**

**TAB D**

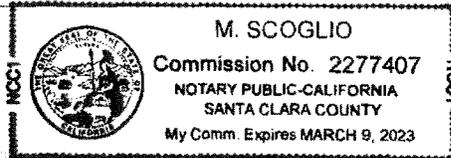
**THIS IS EXHIBIT "D"**

*referred to in the Affidavit of Alexandra Picard*

Sworn before me this 28<sup>TH</sup>  
day of March, 2019



*A Commissioner for Taking Affidavits*



IN THE UNITED STATES BANKRUPTCY COURT  
FOR THE DISTRICT OF DELAWARE

----- X  
In re: : Chapter 11  
: :  
IMERYS TALC AMERICA, INC., *et al.*,<sup>1</sup> : Case No. 19-10289 (LSS)  
: :  
Debtors. : (Jointly Administered)  
: :  
: Re: Docket Nos. 98 & 193  
----- X

**ORDER UNDER 11 U.S.C. §§ 327(a) AND 328(a), FED. R. BANKR. P. 2014, AND DEL. BANKR. L.R. 2014-1, 2016-1, AND 2016-2 AUTHORIZING THE EMPLOYMENT AND RETENTION OF KCIC, LLC AS AN INSURANCE AND VALUATION CONSULTANT NUNC PRO TUNC TO THE PETITION DATE**

Upon the application (the "**Application**")<sup>2</sup> of the Debtors for an order under sections 327(a) and 328(a) of the Bankruptcy Code, Bankruptcy Rule 2014, and Local Rules 2014-1, 2016-1, and 2016-2, authorizing the employment and retention of KCIC, LLC ("**KCIC**") as the Debtors' insurance and valuation consultant *nunc pro tunc* to the Petition Date; and the Court having reviewed the Application, the Hanke Declaration, and the *Supplemental Declaration of Elizabeth Hanke in Support of Debtors' Application for Order Under 11 U.S.C. §§ 327(a) and 328(a), Fed. R. Bankr. P. 2014, and Del. Bankr. L.R. 2014-1, 2016-1, and 2016-2 Authorizing the Employment and Retention of KCIC, LLC as an Insurance and Valuation Consultant Nunc Pro Tunc to the Petition Date* [Docket No. 193] (the "**Supplemental Hanke Declaration**"); and it appearing that the relief requested is in the best interest of the Debtors' estates, their creditors, and other parties in interest; and the Court having jurisdiction over this matter under 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

<sup>1</sup> 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.

<sup>2</sup> Capitalized terms used but not otherwise defined herein shall have the meanings ascribed to such terms in the Application.

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 Application in this district is proper pursuant to 28 U.S.C. §§ 1408 and 1409; and the Court being satisfied, based on the representations made in the Hanke Declaration and the Supplemental Hanke Declaration that KCIC 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 KCIC neither represents nor holds any interest adverse to the Debtors or the Debtors’ estates; and it appearing that proper and adequate notice of the Application and opportunity for objection having been given; and it appearing 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 appearing for the relief set forth in this Order, it is hereby

**ORDERED, ADJUDGED, AND DECREED THAT:**

1. The Application is GRANTED, as set forth herein.
2. All objections to entry of this Order, to the extent not withdrawn or settled, are overruled.
3. The Debtors are authorized to employ and retain KCIC as an insurance and valuation consultant in accordance with the terms and conditions set forth in the Application, the Hanke Declaration, the Supplemental Hanke Declaration, and the Engagement Letter (as defined in the Supplemental Hanke Declaration), a copy of which is attached as Appendix 1 to the Supplemental Hanke Declaration, effective *nunc pro tunc* to the Petition Date.
4. KCIC shall apply to the Court for allowance of compensation and reimbursement of expenses incurred after the Petition Date in compliance with sections 330 and 331 of the Bankruptcy Code and the applicable provisions of the Bankruptcy Rules, the Local Rules, and any orders entered in the Chapter 11 Cases regarding professional compensation and reimbursement of expenses. For the avoidance of doubt, KCIC shall be eligible for

compensation and reimbursement of expenses, in accordance with the terms of this Order, for work done on behalf of the Debtors from the Petition Date to March 12, 2019, under that certain engagement letter between KCIC and NGE dated as of July 23, 2018, attached as Exhibit C to the Application.

5. KCIC is permitted to apply its remaining retainer to satisfy any invoices for prepetition fees and expenses that had not been applied against the retainer prior to the Petition Date. After such application, KCIC's remaining retainer shall be treated as an evergreen retainer, and KCIC shall apply any retainer remaining at the time of its final fee application in satisfaction of compensation and reimbursement awarded with respect to such application, and promptly pay to the Debtors' estates any retainer remaining after such application.

6. KCIC shall use its reasonable efforts to avoid any duplication of services provided by any of the Debtors' other retained professionals in the Chapter 11 Cases.

7. The Debtors and KCIC are authorized to take all actions necessary to effectuate the relief granted pursuant to this Order in accordance with the Application.

8. Notwithstanding anything in the Application or the Engagement Letter to the contrary, during the pendency of the Chapter 11 Cases, the Court retains exclusive jurisdiction over all matters arising out of and/or pertaining to KCIC's engagement and any matters, claims, rights, or disputes arising from or related to the implementation, interpretation, and enforcement of this Order until such jurisdiction is relinquished.

9. Notwithstanding any Bankruptcy Rule to the contrary, this Order shall be immediately effective and enforceable upon its entry.

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

Dated: March 19th, 2019  
Wilmington, Delaware



3 LAURIE SELBER SILVERSTEIN  
UNITED STATES BANKRUPTCY JUDGE

# TAB E

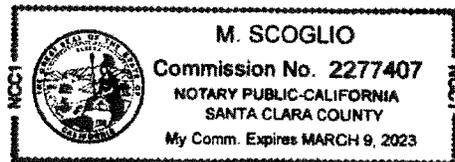
**THIS IS EXHIBIT "E"**

*referred to in the Affidavit of Alexandra Picard*

Sworn before me this 28<sup>TH</sup>  
day of March, 2019



*A Commissioner for Taking Affidavits*



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

----- x  
In re: : Chapter 11  
: :  
IMERYYS TALC AMERICA, INC., *et al.*,<sup>1</sup> : Case No. 19-10289 (LSS)  
: :  
Debtors. : Jointly Administered  
: :  
----- x **Re: Docket No. 96**

**ORDER AUTHORIZING EMPLOYMENT AND RETENTION OF  
PRIME CLERK LLC AS ADMINISTRATIVE ADVISOR  
NUNC PRO TUNC TO THE PETITION DATE**

Upon the Debtors' application (the "Application")<sup>2</sup> for employment and retention of Prime Clerk as Administrative Advisor *nunc pro tunc* to the Petition Date pursuant to section 327(a) of the Bankruptcy Code, Bankruptcy Rules 2014 and 2016, and Local Rules 2014-1 and 2016-1, all as more fully described in the Application; and the Court having reviewed the Application and the Steele Declaration; and the Court having jurisdiction to consider the 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 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 Application in this district is proper pursuant to 28 U.S.C. §§ 1408 and 1409; and the Court being satisfied that Prime Clerk has the capability and experience to provide the

<sup>1</sup> 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.

<sup>2</sup> Capitalized terms used but not otherwise defined herein shall have the meanings ascribed to such terms in the Application.

services described in the Application and that Prime Clerk does not represent or hold an interest adverse to the Debtors or their estates respecting the matters upon which it is to be engaged; and it appearing that proper and adequate notice of the Application 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 set forth in this Order, it is hereby

**ORDERED ADJUDGED, AND DECREED THAT:**

1. The Application is approved as set forth in this Order.
2. The Debtors are authorized to retain Prime Clerk as Administrative Advisor effective *nunc pro tunc* to the Petition Date under the terms of the Engagement Agreement. Prime Clerk is authorized to perform the bankruptcy administration services described in the Application and set forth in the Engagement Agreement and to take such other actions as are necessary to comply with its duties set forth in the Application.
3. Prime Clerk shall apply to the Court for allowance of compensation and reimbursement of expenses incurred after the Petition Date in accordance with the applicable provisions of the Bankruptcy Code, the Bankruptcy Rules, the Local Rules, and any orders entered in these Chapter 11 Cases regarding professional compensation and reimbursement of expenses.
4. During the pendency of these Chapter 11 Cases, the late charge set forth in paragraph 2(c) of the Engagement Agreement shall be of no force and effect.
5. Notwithstanding anything to the contrary in the Engagement Agreement, including paragraph 6, by this Order, the Court is not authorizing Prime Clerk to establish accounts with financial institutions on behalf of the Debtors.
6. The Debtors shall indemnify Prime Clerk under the terms of the Engagement

Agreement, as modified pursuant to this Order.

7. Prime Clerk shall not be entitled to indemnification, contribution, or reimbursement pursuant to the Engagement Agreement for services other than the services provided under the Engagement Agreement, unless such services and the indemnification, contribution, or reimbursement therefor are approved by this Court.

8. Notwithstanding anything to the contrary in the Engagement Agreement, the Debtors shall have no obligation to indemnify Prime Clerk, or provide contribution or reimbursement to Prime Clerk, for any claim or expense that is either: (i) judicially determined (that determination having become final) to have arisen from Prime Clerk's gross negligence, willful misconduct, or fraud; (ii) for a contractual dispute in which the Debtors allege the breach of Prime Clerk's contractual obligations if the Court determines that indemnification, contribution, or reimbursement would not be permissible pursuant to *In re United Artists Theatre Co.*, 315 F.3d 217 (3d Cir. 2003); or (iii) settled prior to a judicial determination under (i) or (ii), but determined by this Court, after notice and a hearing, to be a claim or expense for which Prime Clerk should not receive indemnity, contribution, or reimbursement under the terms of the Engagement Agreement as modified by this Order.

9. If, before the earlier of (i) the entry of an order confirming a chapter 11 plan in these Chapter 11 Cases (that order having become a final order no longer subject to appeal), and (ii) the entry of an order closing these Chapter 11 Cases, Prime Clerk 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 Engagement Agreement (as modified by this Order), including the advancement of defense costs, Prime Clerk must file an application therefor in this Court, and the Debtors may not pay any such amounts to Prime Clerk before the

entry of an order by this Court approving the payment. This paragraph is intended only to specify the period of time under which the Court shall have jurisdiction over any request for fees and expenses by Prime Clerk for indemnification, contribution, or reimbursement, and not a provision limiting the duration of the Debtors' obligation to indemnify Prime Clerk. All parties in interest shall retain the right to object to any demand by Prime Clerk for indemnification, contribution, or reimbursement.

10. The limitation of liability section in paragraph 10 of the Engagement Agreement is deemed to be of no force or effect with respect to the services to be provided pursuant to this Order.

11. The Debtors and Prime Clerk are authorized to take all actions necessary to effectuate the relief granted pursuant to this Order in accordance with the Application.

12. Notwithstanding any term in the Engagement Agreement to the contrary, the Court retains exclusive jurisdiction with respect to all matters arising from or related to the implementation, interpretation, and enforcement of this Order.

13. Notwithstanding any provision in the Bankruptcy Rules to the contrary, this Order shall be immediately effective and enforceable upon its entry.

14. In the event of any inconsistency between the Engagement Agreement, the Application, and this Order, this Order shall govern.

Dated: March 19th, 2019  
Wilmington, Delaware



LAURIE SELBER SILVERSTEIN  
UNITED STATES BANKRUPTCY JUDGE

**TAB F**

**THIS IS EXHIBIT "F"**

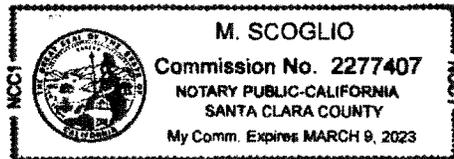
*referred to in the Affidavit of Alexandra Picard*

Sworn before me this 28<sup>TH</sup>

day of March, 2019



*A Commissioner for Taking Affidavits*



UNITED STATES BANKRUPTCY COURT  
DISTRICT OF DELAWARE

----- X  
 In re: : Chapter 11  
 :  
 IMERYYS TALC AMERICA, INC., *et al.*,<sup>1</sup> : Case No. 19-10289 (LSS)  
 :  
 Debtors. : (Jointly Administered)  
 :  
 : Re: Docket Nos. 90, 199 & 200  
 :  
 ----- X

**ORDER AUTHORIZING THE DEBTORS TO EMPLOY AND  
RETAIN RICHARDS, LAYTON & FINGER, P.A. AS CO-COUNSEL TO THE  
DEBTORS, *NUNC PRO TUNC* TO THE PETITION DATE**

Upon the application (the "Application")<sup>2</sup> of the debtors and debtors in possession in the above-captioned cases (collectively, the "Debtors"), for an order, pursuant to section 327(a) of title 11 of the United States Code, 11 U.S.C. §§ 101-1532, *et. seq* (the "Bankruptcy Code"), Rules 2014(a) and 2016 of the Federal Rules of Bankruptcy Procedure (the "Bankruptcy Rules") and Rule 2014-1 of the Local Rules of Bankruptcy Practice and Procedure for the United States Bankruptcy Court for the District of Delaware (the "Local Rules"), authorizing the Debtors to retain Richards, Layton & Finger, P.A. ("RL&F") as bankruptcy co-counsel, *nunc pro tunc* to the Petition Date, all as more fully set forth in the Application; and the Court having jurisdiction to consider the 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 February 29, 2012; and consideration of the Application and the relief

<sup>1</sup> 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.

<sup>2</sup> Capitalized terms used but not defined herein shall have the meanings ascribed to them in the Application.

requested therein 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 due and proper notice of the Application having been provided to the parties listed therein, and it appearing that no other or further notice need be provided; and the Court having reviewed the Application; and a hearing, if any, having been held to consider the relief requested in the Application (the "**Hearing**"); and upon the record of the Hearing, if any, and all of the proceedings had before the Court; and upon the Collins Affidavit and the Picard Declaration; and upon the Supplemental Declaration of Mark D. Collins in support of the Application [Docket No. 200] and the Supplemental Declaration of Alexandra Picard in support of the Application [Docket No. 199]; and the Court having found that RL&F is a "disinterested person" as such term is defined under section 101(14) of the Bankruptcy Code; and the Court having found that RL&F does not hold or represent an interest adverse to the Debtors' estates; and the Court having found and determined that the legal and factual bases set forth in the Application establish just cause for the relief granted herein; and after due deliberation and sufficient cause appearing therefor, it is hereby

**ORDERED, ADJUDGED AND DECREED THAT:**

1. The Application is granted as set forth herein.
2. Pursuant to sections 327(a) of the Bankruptcy Code, the Debtors are authorized to retain and employ RL&F as co-counsel to the Debtors under an evergreen retainer, pursuant to sections 328 and 330 of the Bankruptcy Code, in accordance with the terms and conditions set forth in the Application, as modified by this Order, effective *nunc pro tunc* to the Petition Date.
3. RL&F shall apply for compensation for professional services rendered and reimbursement of expenses incurred in connection with the Debtors' chapter 11 cases in compliance with the applicable provisions of the Bankruptcy Code, including sections 330 and

331 thereof, Bankruptcy Rules, Local Bankruptcy Rules, and any other applicable procedures and orders of the Court. RL&F will make reasonable efforts to comply with the U.S. Trustee's requests for information and additional disclosures as set forth in the *Guidelines for Reviewing Applications for Compensation and Reimbursement of Expenses Filed under 11 U.S.C. § 330 by Attorneys in Larger Chapter 11 Cases Effective as of November 1, 2013*, both in connection with the Application and any interim and/or final fee application(s) to be filed by RL&F in these chapter 11 cases.

4. The Retainer, in the amount of \$176,228.45, shall be treated as an evergreen retainer and shall be held by RL&F as security throughout the Debtors' chapter 11 cases until RL&F's fees and expenses are awarded and payable to RL&F on a final basis. RL&F shall apply any retainer remaining at the time of its final fee application in satisfaction of compensation and reimbursement awarded with respect to such application, and promptly pay to the Debtors' estates any retainer remaining after such application.

5. RL&F shall file a notice of any increase of the hourly rates listed in the Application prior to such increase taking effect, and serve the same on the Debtors, the U.S. Trustee and all official committee appointed in these cases.

6. To the extent that the Application, the Collins Affidavit, or the Picard Declaration are inconsistent with this Order, the terms of this Order shall govern.

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

8. The Debtors are authorized to take all actions necessary to effectuate the relief granted pursuant to this Order in accordance with the Application.

9. The Court shall retain jurisdiction to hear and determine all matters arising from or related to the implementation, interpretation and/or enforcement of this Order.

Dated: March 19th, 2019  
Wilmington, Delaware

RLF1 20938124.2



LAURIE SELBER SILVERSTEIN  
UNITED STATES BANKRUPTCY JUDGE

**TAB G**

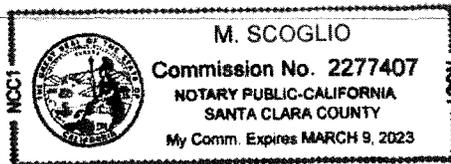
**THIS IS EXHIBIT "G"**

*referred to in the Affidavit of Alexandra Picard*

Sworn before me this 28<sup>TH</sup>  
day of March, 2019



*A Commissioner for Taking Affidavits*



IN THE UNITED STATES BANKRUPTCY COURT  
FOR THE DISTRICT OF DELAWARE

-----	X
In re:	: Chapter 11
	: :
IMERYYS TALC AMERICA, INC., <i>et al.</i> , <sup>1</sup>	: Case No. 19-10289 (LSS)
	: :
Debtors.	: (Jointly Administered)
	: :
	: Re: Docket No. 95
-----	X

**ORDER UNDER 11 U.S.C. §§ 105(a), 327, 330, AND 331  
AUTHORIZING EMPLOYMENT AND PAYMENT OF  
PROFESSIONALS UTILIZED IN ORDINARY COURSE OF BUSINESS**

Upon the motion (the "**Motion**")<sup>2</sup> of the Debtors for an order under sections 105(a), 327, 330, and 331 of the Bankruptcy Code, authorizing, but not directing, the Debtors to (a) retain professionals utilized in the ordinary course of business, including, but not limited to those set forth on Exhibit 1 and Exhibit 2 attached hereto, and (b) pay each such Ordinary Course Professional (as defined below) for postpetition services rendered and expenses incurred, subject to certain limits set forth below, without the necessity of additional court approval; 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 an order consistent with Article III of the United States

<sup>1</sup> 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.

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

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, as set forth herein.
2. All objections to entry of this Order, to the extent not withdrawn or settled, are overruled.
3. The Debtors are authorized, but not directed, to employ and retain the Ordinary Course Professionals listed on Exhibit 1 and Exhibit 2 attached hereto (each an “Initial Ordinary Course Professional” and, collectively, the “Initial Ordinary Course Professionals”) without the need to file individual retention applications and obtain retention orders for each such Initial Ordinary Course Professional. Such authorization is effective as of the latter of the Petition Date or the applicable date of engagement.
4. Within five (5) business days after the date of entry of this Order, the Debtors shall serve this Order upon each Initial Ordinary Course Professional. Thereafter, within thirty (30) calendar days of the later of (a) the date of entry of this Order and (b) the date on which each retained Initial Ordinary Course Professional commences postpetition services for the Debtors, each such Initial Ordinary Course Professional shall provide to the Debtors and their counsel, for filing with the Court and service upon: (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 prepetition representative for future talc claimants, Young Conaway Stargatt & Taylor, LLP (Attn: Robert Brady, Esq. and Edwin Harron, Esq. (emails: rbrady@ycst.com and eharron@ycst.com)); (e) 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 (f) the United States Trustee for the District of Delaware, 844 King Street, Suite 2207, Wilmington, DE 19801 (Attn: Juliet M. Sarkessian, Esq. and Linda Richenderfer, Esq. (emails: juliet.m.sarkessian@usdoj.gov and linda.richenderfer@usdoj.gov)) (collectively, the "**Notice Parties**"), a declaration, substantially in the form attached hereto as Exhibit 3, certifying, *inter alia*, that the professional does not represent or hold any interest adverse to the Debtors or the estates with respect to the matter(s) on which the professional is to be employed (the "**Declaration**").

5. The Debtors are authorized, without need for further hearing or order from the Court, to employ and retain Ordinary Course Professionals not currently listed on Exhibit 1 or Exhibit 2 hereto (each, an "**Additional Ordinary Course Professional**" and, collectively, the "**Additional Ordinary Course Professionals**" and, collectively with the Initial Ordinary Course Professionals, the "**Ordinary Course Professionals**") by filing with the Court, and serving on the Notice Parties, a supplement to Exhibit 1 or Exhibit 2, as applicable (a "**Supplement**"), listing the name of the Additional Ordinary Course Professional, together with a brief description of the services to be rendered and the applicable payment caps, and by otherwise complying with the

terms of this Order. Such authorization is effective *nunc pro tunc* to the date of filing of the Supplement or the applicable date of engagement, provided that the latter is no more than thirty (30) calendar days prior to the filing of the Supplement. For purposes of complying with the Declaration requirement above, for each Additional Ordinary Course Professional, the thirty (30) calendar day deadline for the filing of the Declaration by such Additional Ordinary Course Professional shall run from the date of the filing of the Supplement with the Court, but all other requirements and deadlines shall remain the same.

6. The Notice Parties shall have fourteen (14) calendar days after service of each Ordinary Course Professional's Declaration (the "**Objection Deadline**") to object to the retention of such professional. Any such objections shall be filed with the Court and served upon the Notice Parties and the applicable Ordinary Course Professional by the Objection Deadline. If any such objection cannot be resolved within fourteen (14) calendar days after service, the matter may be scheduled for hearing before the Court on the next regularly-scheduled hearing date or such other date otherwise agreeable to the Ordinary Course Professional, the Debtors, and the objecting party. If no objection is received on or before the Objection Deadline or if any objection submitted is timely withdrawn or resolved, the Debtors shall be authorized to retain the Ordinary Course Professional as a final matter without further order of the Court, *nunc pro tunc* to the Petition Date or, if later, the date of engagement.

7. The Debtors shall not pay any fees and expenses to any Ordinary Course Professional unless (a) such Ordinary Course Professional has executed its Declaration and such Declaration was filed with the Court and served on the Notice Parties, (b) the applicable Objection Deadline has expired, and (c) no timely objection is pending. If a timely objection is received, no

payment shall be made until such objection is either resolved or withdrawn or otherwise overruled by the Court.

8. Without the need for a further hearing or order from the Court, the Debtors are authorized, but not directed, to make monthly payments for postpetition fees and expenses to each of the Ordinary Course Professionals, in the full amount billed by any such Ordinary Course Professional, subject to the provisions of Paragraph 7 above, upon receipt therefrom by the Debtors of invoices setting forth in reasonable detail the nature of the professional services rendered and expenses incurred and calculated in accordance with such professional's standard billing practices (without prejudice to the Debtors' rights to dispute any such invoices); *provided, however,* that, except as set forth in Paragraph 9 below, without further order of the Court, the Debtors shall not pay any individual Ordinary Course Professional listed on (a) Exhibit 1 and any Supplement to Exhibit 1 amounts in excess of \$30,000 per month on average over a rolling two (2) month period during the pendency of the Chapter 11 Cases, and (b) Exhibit 2 and any Supplement to Exhibit 2 amounts in excess of \$55,000 per month on average over a rolling two (2) month period during the pendency of the Chapter 11 Cases.

9. Notwithstanding the foregoing, the Debtors are authorized, but not directed, to seek the agreement of the Notice Parties to a higher cap for any Ordinary Course Professional who exceeds its cap, but who should not otherwise be required to follow the payment procedures applicable to the Chapter 11 Professionals. If the Debtors are able to obtain the agreement of all of the Notice Parties to a higher cap for any Ordinary Course Professional, the agreement shall be evidenced by the filing of a notice of increased cap amount, and the increased cap amount shall be deemed approved upon the filing of such notice, without further action by the Court. Absent such an agreement, the caps set forth above will be enforced, subject to the right of the Debtors to file

a motion, on notice to the Notice Parties, seeking an order increasing the cap applicable to an Ordinary Course Professional.

10. In the event that a particular Ordinary Course Professional exceeds the applicable caps as set forth in Paragraph 8 above or any other applicable incremental amount agreed to by the Notice Parties or ordered by the Court as set forth in Paragraph 9 above, such Ordinary Course Professional shall file an application for allowance of the full amount of its fees and expenses for the applicable period under sections 330 and 331 of the Bankruptcy Code, the applicable Bankruptcy Rules, and Local Rules of this Court, except that if an Ordinary Course Professional does not in the ordinary course of business maintain time records in tenths of an hour increments, and indicates that to be the case in its Declaration, the requirements of Local Rule 2016-2 shall be waived solely to the extent to allow such Ordinary Course Professional to submit time records in whatever time increments such professional ordinarily maintains its time. The Debtors need not file an application to retain such Ordinary Course Professional under section 327 of the Bankruptcy Code, except as set forth in Paragraph 11 below.

11. If any Ordinary Course Professional exceeds the applicable caps set forth in Paragraph 8 above, or any other applicable incremental amount agreed to by the Notice Parties or ordered by the Court as set forth in Paragraph 9 above by more than \$5,000 during any two (2) month period more than twice, then such Ordinary Course Professional must be retained by the Debtors pursuant to a separate retention application and will subsequently file fee applications 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, as to any Ordinary Course Professional that is a law firm, such Ordinary Course Professional shall make a reasonable effort to comply with the U.S. Trustee's requests for information and additional disclosures as set forth in the Guidelines for

Reviewing Applications for Compensation and Reimbursement of Expenses Filed under 11 U.S.C. § 330 by Attorneys in Larger Chapter 11 Cases Effective as of November 1, 2013, both in connection with its retention application and its interim and final fee applications to be filed in the Chapter 11 Cases.

12. Within thirty (30) calendar days after the end of, and with respect to, each full three (3) month period after the Petition Date (including any initial partial month in the first period), the Debtors shall file with this Court, and serve upon the Notice Parties, a statement that includes the following information for each Ordinary Course Professional: (a) the name of the Ordinary Course Professional, (b) the amounts paid as compensation for services rendered and reimbursement of expenses incurred by such Ordinary Course Professional during each month of the statement period and the month preceding the statement period, (c) the aggregate amount paid as compensation for services rendered and reimbursements of expenses incurred by such Ordinary Course Professional during the pendency of these cases, and (d) a general description of the services rendered by such Ordinary Course Professional (the "**Quarterly Statement**"). The first Quarterly Statement covering the period from the Petition Date through April 30, 2019 shall be filed by May 30, 2019. The obligation to file summary statements shall terminate upon confirmation of a chapter 11 plan in the Chapter 11 Cases, provided that a summary statement shall be filed with respect to the final period (or partial period) ending on such confirmation date.

13. The Notice Parties shall be permitted to file objections with the Court to the payments to the Ordinary Course Professionals identified in the Quarterly Statement within fourteen (14) days following service of the Quarterly Statement (the "**Quarterly Statement Objection Deadline**"). If an objection to the fees and expenses of an Ordinary Course Professional is filed with the Court on or before the Quarterly Statement Objection Deadline, such fees and

expenses will be subject to review and approval by the Court pursuant to section 330 of the Bankruptcy Code to the extent that such objection is not consensually resolved.

14. All payments to Ordinary Course Professionals shall be subject to sections 328(c) and 330 of the Bankruptcy Code.

15. Except for law firms that represented the Debtors prior to the Petition Date and that have been employed pursuant to this Order, all Ordinary Course Professionals shall, once their employment is effective pursuant to this Order, be deemed to have waived any and all pre-petition claims they may have against the Debtors and their estates, and must include a statement of disinterestedness in their Declaration.

16. Any fees and expenses incurred by an Ordinary Course Professional and paid by the Debtors' insurance providers shall not be applied toward the applicable Ordinary Course Professional's payment cap.

17. This Order shall not apply to any professional retained by the Debtors under a separate order of this Court.

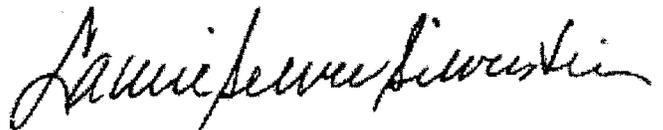
18. Nothing in the Motion or this Order, or the Debtors' payment of any claims pursuant to this Order, shall be construed as: (a) an admission as to the validity of any claim against any Debtor or the existence of any lien against the Debtors' properties; (b) a waiver of the Debtors' rights to dispute 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 Order. Nothing

contained in this Order shall be deemed to increase, reclassify, elevate to an administrative expense, or otherwise affect any claim to the extent it is not paid.

19. 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.

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

Dated: March 22nd, 2019  
Wilmington, Delaware



LAURIE SELBER SILVERSTEIN  
UNITED STATES BANKRUPTCY JUDGE

**Exhibit 1****List of Ordinary Course Professionals Expected to Incur Less than \$30,000 of Fees and Expenses per Month**

<b>Ordinary Course Professional</b>	<b>Mailing Address</b>	<b>Phone / Fax / Email (if available)</b>	<b>Type of Service</b>
Fasken Martineau DuMoulin LLP	Bay Adelaide Centre 333 Bay Street, Suite 2400 P.O. Box 20 Toronto, ON M5H 2T6	Phone: 416-366-8381 Fax: 416-364-7813 mdenyes@fasken.com	Legal Counsel – Labor Relations
Finnegan, Henderson Farabow, Garrett & Dunner, LLP	901 New York Avenue, NW Washington, DC 20001-4413	Phone: 202-408-4000 mark.sweet@finnegan.com	Legal Counsel – Intellectual Property
Ford & Harrison, LLP	271 17th Street NW Suite 1900 Atlanta, GA 30363	Phone: 404-888-3800 Fax: 404-888-3863 jmonroe@fordharrison.com	Legal Counsel – Visa Permits & Advisory
Haynsworth Sinkler Boyd, P.A.	1 North Main Street 2 <sup>nd</sup> Floor Greenville, SC 29601-2772	Phone: 864-240-3200 jsuddeth@hsblawfirm.com	Legal Counsel – Litigation Local Counsel
Kazmarek Mowrey Cloud Laseter, LLP	1230 Peachtree Street NE Suite 900 Atlanta, GA 30309	Phone: 404-812-0839 Fax: 404-812-0845 dcloud@kmcclaw.com	Legal Counsel – Environmental
Lamb and McNaughton, PC	6 Main Street Springfield, VT 05156	Phone: 802-885-2240 Fax: 802-885-4536 emcnaughton@gwlpc.com	Legal Counsel – Environmental and Land Use
Mathews, Dinsdale & Clark, LLP	RBC Centre 155 Wellington Street West, Suite 3600 Toronto, ON M5V 3H1	Phone: 416-862-8280 Fax: 416-862-8247 mcontini@mathewsdinsdale.com	Legal Counsel – Visa Permits & Advisory
McGuire Woods, LLP	Promenade 1230 Peachtree Street, NE Suite 2100 Atlanta, GA 30309-3534	Phone: 404-443-5500 Fax: 404-443-5599 cgreene@mcguirewoods.com	Legal Counsel – Employment and Labor

Ordinary Course Professional	Mailing Address	Phone / Fax / Email (if available)	Type of Service
Ogletree, Deakins, Nash, Smoak & Stewart, P.C.	The Ogletree Building 300 North Main Street Greenville, SC 29601	Phone: 864-271-1300 austin.smith@ogletree.com	Legal Counsel – Mine Safety and Health Administration Advisory
Ryan, LLC	131 55 Noel Road, Suite 100 Dallas, TX 75240-5090	Phone: 972-934-0022 Fax: 972-960-0613 damon.chronis@ryan.com	Property Tax Services
Taylor & Anderson, LLP	1670 Broadway, Suite 900 Denver, CO 80202	Phone: 303-551-6660 Fax: 303-551-6655	Legal Counsel – Litigation Counsel

**Exhibit 2**

**List of Ordinary Course Professionals Expected to Incur Greater than \$30,000 but Less than \$55,000 of Fees and Expenses per Month**

<b>Ordinary Course Professional</b>	<b>Mailing Address</b>	<b>Phone / Fax / Email (if available)</b>	<b>Type of Service</b>
Alston & Bird, LLP	One Atlantic Center, 1201 West Peachtree Street Suite 4900 Atlanta, GA 30309- 3424	Phone: 404-881-7000 Fax: 404-881-7777 janine.brown@alston.c om	Legal Counsel – Litigation Counsel
Bowles & Verna LLP	2121 N California Blvd Suite 875 Walnut Creek, CA 94596	Phone: 925-935-3300 rbowles@bowlesverna. com	Legal Counsel – Litigation Local Counsel
Denton's US, LLP	233 South Wacker Drive Suite 5900 Chicago, IL 60606- 6361	Phone: 312-876-8000 Fax: 312-876-7934 leah.bruno@dentons.co m	Legal Counsel – Litigation Counsel
Gordon & Rees LLP	275 Battery Street Suite 2000 San Francisco, CA 94111	Phone: 415-986-5900 Fax: 415-986-8054 asugarman@grsm.com	Legal Counsel – Litigation Counsel
Rawle & Henderson, LLP	The Widener Building 1339 Chestnut Street 16th Floor Philadelphia, PA 19107	Phone: 215-575-4200 Fax: 215-563-2583 tabeel@rawle.com	Legal Counsel – Litigation Counsel
The Levinson Group	655 15 <sup>th</sup> Street, NW Suite 501 Washington, DC 20005	Phone: 202-244-1785	Public Relations

**Exhibit 3**

**Form of Declaration**

IN THE UNITED STATES BANKRUPTCY COURT  
FOR THE DISTRICT OF DELAWARE

-----	x
In re:	: Chapter 11
	: :
IMERYS TALC AMERICA, INC., <i>et al.</i> , <sup>1</sup>	: Case No. 19-10289 (LSS)
	: :
Debtors.	: (Jointly Administered)
	: :
-----	x

**DECLARATION IN SUPPORT OF EMPLOYMENT OF [ ] AS  
PROFESSIONAL UTILIZED IN ORDINARY COURSE OF BUSINESS**

I, \_\_\_\_\_, declare that the following is true to the best of my knowledge, information and belief:

1. I am a [position] of [Firm], located at [Street, City, State ZIP Code] (the "**Firm**"), which has been employed by the debtors and debtors-in-possession (collectively, the "**Debtors**") in the above-captioned cases (the "**Chapter 11 Cases**") in the ordinary course of the Debtors' business. The Debtors wish to retain the Firm to continue providing ordinary course services during the Chapter 11 Cases, and the Firm has consented to provide such services. This Declaration is submitted in compliance with the *Order Under 11 U.S.C. §§ 105(a), 327, 330 and 331 Authorizing Employment and Payment of Professionals Utilized in Ordinary Course of Business* (the "**Ordinary Course Professionals Order**").

2. The Firm [IS/IS NOT] a legal services firm. [If the firm is a legal services firm, please state the area of law.]

3. The Firm [HAS/HAS NOT] provided services to the Debtors prior to the Petition

<sup>1</sup> 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.

Date of February 13, 2019.

4. The Firm may have performed services in the past, may currently perform services, and may perform services in the future in matters unrelated to the Debtors or to the Chapter 11 Cases for persons that are parties in interest in the Chapter 11 Cases. The Firm does not perform services for any such person in connection with the Debtors or to the Chapter 11 Cases, or have any relationship with any such person, their attorneys, or their accountants that would be adverse to the Debtors or their estates.

5. As part of its customary practice, the Firm is retained in cases, proceedings and transactions involving many different parties, some of whom may represent or be employed by the Debtors, claimants, and parties in interest in the Chapter 11 Cases.

6. Neither I nor any principal, partner, director, or officer of, or professional employed by, the Firm has agreed to share or will share any portion of the compensation to be received from the Debtors with any other person other than the principal and regular employees of the Firm.

7. Neither I nor any principal, partner, director or officer of, or professional employed by, the Firm, insofar as I have been able to ascertain, holds or represents any interest adverse to the Debtors or their estates with respect to the matter(s) upon which this Firm is to be employed.

8. [For all firms other than Legal Services Firms that represented the Debtors pre-petition] The Firm is a “disinterested person” as that term is defined in section 101(14) of the Bankruptcy Code.

9. The Firm intends to bill the Debtors for professional services rendered in connection with the Chapter 11 Cases, in accordance with the Ordinary Course Professionals Order, with such bill to include compensation for services based on the hourly rates set forth below, plus reimbursement of actual and necessary expenses and other charges incurred by the Firm. The

principal [attorneys and paralegals/other professionals]/[employees] designated to represent the Debtors and their current standard rates are:

[PLACEHOLDER FOR LIST OF PROFESSIONALS AND HOURLY RATES]

10. The rates set forth above are subject to periodic adjustments to reflect economic and other conditions. Such rates are the Firm's standard rates for work of this nature. The rates are set at a level designed to fairly compensate the Firm for the work of its [attorneys and paralegals/other professionals]/[employees] and to cover fixed and routine overhead expenses.

11. It is the Firm's policy to charge its clients in all areas of practice for all other expenses incurred in connection with a client's case. The expenses charged to clients include, among other things, [PLACEHOLDER FOR DESCRIPTION OF EXPENSES] and, in general, all identifiable expenses that would not have been incurred except for representation of a particular client. The Firm will charge the Debtors for these expenses in a manner and at rates consistent with charges made generally to the Firm's other clients.

12. No representations or promises have been received by the Firm, nor by any principal, partner, director, officer, or professional thereof, as to compensation in connection with the Chapter 11 Cases other than in accordance with the provisions of the Bankruptcy Code.

13. The Debtors owe the Firm \$[ ] for fees and expenses incurred prior to and unpaid as of the date the Chapter 11 Cases were commenced (the "**Petition Date**"), the payment of which is subject to the limitations contained in the United States Bankruptcy Code, 11 U.S.C. §§ 101-1532. [FOR NON-LEGAL SERVICES FIRMS ONLY] The firm has agreed to waive all unpaid amounts for services rendered prior to the Petition Date. [FOR LEGAL SERVICES FIRMS ONLY] The Firm understands that it must file a proof of claim for such fees and expenses

unless the amount thereof is properly listed in the Debtors' schedules of liabilities and is not designated therein as contingent, unliquidated or disputed.

14. The Firm [does / does not] keep time records in one-tenth of an hour increments in the ordinary course of business. [IF THE FIRM DOES NOT KEEP TIME IN ONE-TENTH OF AN HOUR INCREMENTS, PLEASE EXPLAIN HOW TIME RECORDS ARE KEPT]

15. As of the Petition Date, the Firm [was/was not] party to an agreement for indemnification with the Debtors. [A copy of such agreement is attached as Exhibit A to this Declaration.]

16. The Firm is conducting further inquiries regarding its retention by any creditors of the Debtors or other parties in interest in these cases, and upon conclusion of such inquiries, or at any time during the period of its employment, if the Firm should discover any facts bearing on the matters described herein, the Firm will supplement the information contained in this Declaration.

I declare under penalty of perjury under the laws of the United States of America that the foregoing is true and correct.

Dated: \_\_\_\_\_

\_\_\_\_\_  
[Name]  
[Title]

[FIRM NAME]  
Address:  
Telephone:  
Facsimile:  
Email:

TAB H

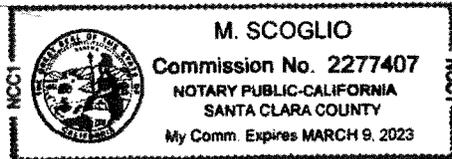
**THIS IS EXHIBIT "H"**

*referred to in the Affidavit of Alexandra Picard*

Sworn before me this 28<sup>TH</sup>  
day of March, 2019



*A Commissioner for Taking Affidavits*



IN THE UNITED STATES BANKRUPTCY COURT  
FOR THE DISTRICT OF DELAWARE

----- X  
In re: : Chapter 11  
: :  
IMERYYS TALC AMERICA, INC., *et al.*,<sup>1</sup> : Case No. 19-10289 (LSS)  
: :  
Debtors. : (Jointly Administered)  
: :  
: Re. Docket No: 94  
----- X

**ORDER UNDER 11 U.S.C. §§ 105(a) AND 331, FED. R. BANKR. P. 2016(a), AND DEL.  
BANKR. L.R. 2016-2 ESTABLISHING PROCEDURES FOR  
INTERIM COMPENSATION AND REIMBURSEMENT OF PROFESSIONALS**

Upon the motion (the "Motion")<sup>2</sup> of the Debtors for entry of an order, under sections 105(a) and 331 of the Bankruptcy Code, Bankruptcy Rule 2016(a), and Local Rule 2016-2, establishing procedures for the interim compensation and reimbursement of expenses of Professionals, all as further 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 proper and adequate notice of the Motion has been given and that no other or further notice is necessary; and upon the record

<sup>1</sup> 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.

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

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. All objections to entry of this Order, to the extent not withdrawn or settled are overruled.
3. Except as otherwise ordered by this Court, each Professional may seek interim compensation for services and reimbursement of expenses in accordance with the following procedures (the "**Compensation Procedures**"):

(a) On or after the twentieth (20th) day of each month, each Professional seeking interim allowance of its fees and expenses may file an application (including the relevant time entry and description and expense detail) with this Court pursuant to section 331 of the Bankruptcy Code for interim allowance of compensation for services rendered and reimbursement of expenses incurred during the preceding month (a "**Monthly Fee Application**"), and serve a copy of such Monthly Fee Application by email and first-class mail on the following parties (collectively, the "**Notice Parties**"):

- i. Imerys Talc America, Inc., 100 Mansell Court East, Suite 300, Roswell, Georgia 30076 (Attn: Ryan J. Van Meter, Esq. and Alexandra Picard (emails: ryan.vanmeter@imerys.com and alexandra.picard@imerys.com));
- ii. 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));
- iii. Richards, Layton & Finger, P.A., One Rodney Square, 920 North King Street, Wilmington, Delaware 19801 (Attn: Mark D. Collins, Esq. (email: collins@rlf.com));
- iv. Young Conaway Stargatt & Taylor, LLP, Rodney Square, 1000 North King Street, Wilmington, Delaware 19801 (Attn: Edwin Harron, Esq. and Robert Brady, Esq. (emails: eharron@ycst.com and rbrady@ycst.com));

- v. the Office of the U.S. Trustee, 844 King Street, Suite 2207, Lockbox 35, Wilmington, Delaware 19801 (Attn: Juliet M. Sarkessian, Esq. and Linda Richenderfer, Esq. (emails: juliet.m.sarkessian@usdoj.gov and linda.richenderfer@usdoj.gov));
  - vi. counsel to any fee examiner appointed in these Chapter 11 Cases;
  - vii. 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
  - viii. counsel to any other Committee that is appointed in these Chapter 11 Cases.
- (b) The first Monthly Fee Application submitted by each Professional serving as of the Petition Date may include the period from the Petition Date through and including February 28, 2019.
- (c) Any Professional that fails to file a Monthly Fee Application for a particular month or months may subsequently submit a consolidated Monthly Fee Application that includes a request for compensation earned or expenses incurred during previous months. All Monthly Fee Applications shall comply with the applicable provisions of the Bankruptcy Code, the Bankruptcy Rules, the Local Rules, and orders of this Court.
- (d) Each Notice Party shall have twenty (20) calendar days, or the next business day if such day is not a business day, after service of a Monthly Fee Application (the "**Objection Deadline**") to object to the requested fees and expenses in accordance with the procedures described in subparagraph (e) below. In accordance with the Local Rules, upon the expiration of the Objection Deadline, each Professional may file with the Court a certificate of no objection (a "**CNO**") with respect to the unopposed portion of the fees and expenses requested in its Monthly Fee Application. After a CNO is filed, the Debtors are authorized to pay the applicable Professional an amount (the "**Actual Monthly Payment**") equal to the lesser of (i) 80% of the fees and 100% of the expenses requested in the Monthly Fee Application (the "**Maximum Monthly Payment**") or (ii) 80% of the fees and 100% of the expenses not subject to an objection pursuant to subparagraph (e) below.
- (e) If any Notice Party objects to a Professional's Monthly Fee Application, it must, on or before the expiration of the Objection Deadline, file with this Court and serve on such Professional and each other Notice Party a written objection (an "**Objection**"), so as to be received on or before the Objection Deadline. Any such Objection shall identify with specificity the objectionable fees and/or expenses, including the amount of such objected to fees and/or expenses, and the basis for such Objection. Thereafter, the objecting party and the affected

Professional may attempt to resolve the Objection on a consensual basis. If the parties are able to resolve their dispute, the affected Professional shall serve on the Notice Parties a statement indicating that the Objection has been withdrawn or settled, and the Debtors shall promptly pay, in accordance with subparagraph (d) that portion of the Monthly Fee Application which is no longer subject to an Objection up to the Maximum Monthly Payment. If the parties are unable to reach a resolution within fifteen (15) days after service of the Objection, the affected Professional may either: (i) file a response to the Objection with this Court, together with a request for payment of the difference, if any, between the Maximum Monthly Payment and the Actual Monthly Payment made to such Professional (the "**Incremental Amount**"); or (ii) forego payment of the Incremental Amount until the next interim or final fee application hearing, at which time this Court shall consider and rule on the Objection if requested by the parties.

- (f) With respect to the first three-month period after the Petition Date (February 13, 2019 through May 31, 2019), and each subsequent three-month period, each Professional shall file with this Court and serve by email and first-class mail on the Notice Parties an application (an "**Interim Fee Application**") for interim approval and allowance of compensation and reimbursement of expenses sought in the Monthly Fee Applications filed during each such full three-month period (the "**Interim Fee Period**") pursuant to section 331 of the Bankruptcy Code. The Interim Fee Application must identify the covered Monthly Fee Applications and include any other information requested by this Court or required by the applicable Local Rules. Interim Fee Applications shall be filed with this Court and served on the Notice Parties within forty-five (45) days after the end of the applicable Interim Fee Period. Each Professional shall file its first Interim Fee Application on or before July 15, 2019, and the first Interim Fee Application will cover the Interim Fee Period from the Petition Date through and including May 31, 2019. Objections, if any, to the Interim Fee Applications shall be filed and served upon the affected Professional and the Notice Parties, so as to be received on or before the twentieth (20th) day (or the next business day if such day is not a business day) following service of the Interim Fee Application.
- (g) The Debtors shall request that this Court schedule a hearing on Interim Fee Applications at least once every six (6) months or at such other intervals as this Court deems appropriate. The Court, in its discretion, may approve an uncontested Interim Fee Application without the need for a hearing, upon the Professional's filing of a CNO. Upon allowance by the Court of a Professional's Interim Fee Application, the Debtors shall be authorized to promptly pay such Professional all requested fees (including the 20% holdback) and expenses not previously paid.
- (h) The pendency of an Objection to payment of compensation or reimbursement of expenses shall not disqualify a Professional from the future payment of compensation or reimbursement of expenses pursuant to the Compensation Procedures.

- (i) Neither (i) the payment of or the failure to pay, in whole or in part, compensation for services and reimbursement of expenses under the Compensation Procedures, nor (ii) the filing of or the failure to file an Objection to any Monthly Fee Application or Interim Fee Application shall bind any party in interest or this Court with respect to the allowance of interim or final applications for compensation for services and reimbursement of expenses of Professionals. All fees and expenses paid to Professionals in accordance with the Compensation Procedures are subject to disgorgement until final allowance by this Court.
- (j) Any Professional that fails to file a Monthly Fee Application or an Interim Fee Application when due shall be ineligible to receive further monthly or interim payments of fees or expenses with respect to any subsequent period until such time as a Monthly Fee Application or an Interim Fee Application is filed and served by the Professional. There shall be no other penalties for failing to file a Monthly Fee Application or an Interim Fee Application in a timely manner.
- (k) Professionals shall file final applications for compensation and reimbursement (the "**Final Fee Applications**") by such deadline as may be established in a confirmed chapter 11 plan or in an order of this Court. All Final Fee Applications shall comply with the applicable provisions of the Bankruptcy Code, the Bankruptcy Rules, the Local Rules and orders of this Court. Each Professional shall make a reasonable effort to comply with the U.S. Trustee's requests for information and additional disclosures as set forth in the *Guidelines for Reviewing Applications for Compensation and Reimbursement of Expenses Filed under 11 U.S.C. § 330 by Attorneys in Larger Chapter 11 Cases Effective as of November 1, 2013*, in connection with each Interim Fee Application and Final Fee Application.
- (l) Copies of all Monthly Fee Applications, Interim Fee Applications, Final Fee Applications, and notices of any hearings thereon (each a "**Hearing Notice**") must be served by email and first-class mail upon only the Notice Parties. All other parties who file a request for service of notices pursuant to Bankruptcy Rule 2002 shall be entitled to receive only a copy of a Hearing Notice in connection with each Monthly Fee Application, each Interim Fee Application, and each Final Fee Application. Notice given in accordance with this Order is deemed sufficient and adequate and in full compliance with the applicable provisions of the Bankruptcy Code, the Bankruptcy Rules and the Local Rules.

4. Each member of any Committee (if appointed) shall be permitted to submit statements of out-of-pocket expenses and supporting documents to counsel to such Committee, which shall collect such statements and documents and submit a request for reimbursement of the documented expenses in accordance with the foregoing procedure for monthly and interim compensation and reimbursement of Professionals; *provided, however*, that no member of any

Committee shall be reimbursed for any attorneys' fees and expenses incurred by such member except by order of the Court upon a separate application filed by such member and following a hearing upon proper notice.

5. All time periods referenced in this Order shall be calculated in accordance with Bankruptcy Rule 9006(a).

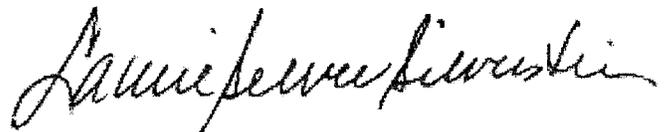
6. Notwithstanding Bankruptcy Rules 6004(h), 7062, or 9014, or otherwise, this Order shall be immediately effective and enforceable upon entry.

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

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

Dated: March 25th, 2019  
Wilmington, Delaware

RLF1 20962587v.1



LAURIE SELBER SILVERSTEIN  
UNITED STATES BANKRUPTCY JUDGE

**TAB I**

**THIS IS EXHIBIT "I"**

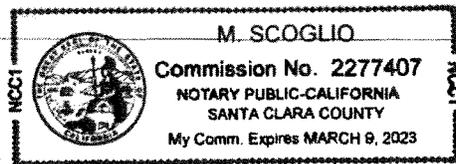
*referred to in the Affidavit of Alexandra Picard*

*Sworn before me this*

*day of March, 2019*



*A Commissioner for Taking Affidavits*



IN THE UNITED STATES BANKRUPTCY COURT  
FOR THE DISTRICT OF DELAWARE

----- X  
In re: : Chapter 11  
: :  
IMERYS TALC AMERICA, INC., *et al.*,<sup>1</sup> : Case No. 19-10289 (LSS)  
: :  
Debtors. : (Jointly Administered)  
: :  
----- X Re: Docket Nos. 97 & 204

**ORDER UNDER 11 U.S.C. §§ 327(a) AND 329, FED. R. BANKR. P. 2014  
AND 2016, AND DEL. BANKR. L.R. 2014-1 AND 2016-1 AUTHORIZING  
EMPLOYMENT AND RETENTION OF STIKEMAN ELLIOTT LLP  
AS CANADIAN COUNSEL *NUNC PRO TUNC* TO THE PETITION DATE**

Upon the application (the "Application")<sup>2</sup> of the Debtors for an order under sections 327(a) and 329 of the Bankruptcy Code, Bankruptcy Rules 2014 and 2016, and Local Rules 2014-1 and 2016-1, authorizing the Debtors to employ and retain Stikeman Elliott LLP ("Stikeman"), *nunc pro tunc* to the Petition Date, as the Debtors' Canadian counsel; and the Court having reviewed the Application, the Konyukhova Declaration, the *Supplemental Declaration of Maria Konyukhova in Support of Debtors' Application for Order Under 11 U.S.C. §§ 327(a) and 329, Fed. R. Bankr. P. 2014 and 2016, and Del. Bankr. L.R. 2014-1 and 2016-1 Authorizing Employment and Retention of Stikeman Elliott LLP as Canadian Counsel Nunc Pro Tunc to the Petition Date* [Docket No. 204] (the "Supplemental Konyukhova Declaration"), and the Picard Declaration; and the Court having jurisdiction to consider the 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 February 29,

<sup>1</sup> 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.

<sup>2</sup> Capitalized terms used but not otherwise defined herein shall have the meanings ascribed to them in the Application.

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 Application in this district is proper pursuant to 28 U.S.C. §§ 1408 and 1409; and the Court being satisfied, based on the representations made in the Konyukhova Declaration and the Supplemental Konyukhova Declaration, that Stikeman 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 Stikeman neither represents nor holds any interest adverse to the Debtors’ estates; and it appearing that proper and adequate notice of the Application and opportunity for objection having 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 appearing for the relief set forth in this Order, it is hereby

**ORDERED, ADJUDGED, AND DECREED THAT:**

1. The Application is GRANTED, as set forth herein.
2. All objections to the entry of this Order, to the extent not withdrawn or settled, are overruled.
3. Pursuant to section 327(a) of the Bankruptcy Code and Bankruptcy Rule 2014(a), the Debtors, as debtors-in-possession, are authorized to employ and retain Stikeman as their Canadian counsel, *nunc pro tunc* to the Petition Date.
4. Stikeman shall be compensated in accordance with the applicable procedures set forth in sections 330 and 331 of the Bankruptcy Code, the Bankruptcy Rules, the Local Rules, and further orders of this Court for all services performed and expenses incurred on or after the Petition Date. Stikeman also intends to make a reasonable effort to comply with requests from the Office

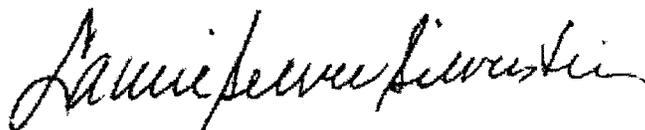
of the United States Trustee for the District of Delaware (the "U.S. Trustee") for information and additional disclosures as set forth in the *Guidelines for Reviewing Applications for Compensation and Reimbursement of Expenses Filed under 11 U.S.C. § 330 by Attorneys in Larger Chapter 11 Cases Effective as of November 1, 2013*, both in connection with the Application and the interim and final fee applications to be filed by Stikeman in the Chapter 11 Cases.

5. The remaining retainer referred to in Paragraph 9 of the Supplemental Konyukhova Declaration shall be treated as an evergreen retainer and be held by Stikeman as security throughout the Chapter 11 Cases until Stikeman's fees and expenses are awarded and payable to Stikeman on a final basis. Stikeman shall apply any retainer remaining at the time of its final fee application in satisfaction of compensation and reimbursement awarded with respect to such application, and promptly pay to the Debtors' estates any retainer remaining after such application.

6. 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.

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

Dated: March 19th, 2019  
Wilmington, Delaware



LAURIE SELBER SILVERSTEIN  
UNITED STATES BANKRUPTCY JUDGE

**TAB J**

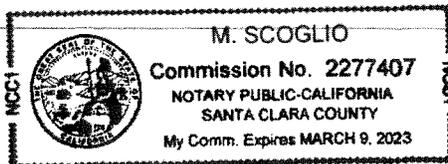
**THIS IS EXHIBIT "J"**

*referred to in the Affidavit of Alexandra Picard*

Sworn before me this 28<sup>TH</sup>  
day of March, 2019



*A Commissioner for Taking Affidavits*



IN THE UNITED STATES BANKRUPTCY COURT  
FOR THE DISTRICT OF DELAWARE

-----	X
In re:	: Chapter 11
	: :
IMERYS TALC AMERICA, INC., <i>et al.</i> , <sup>1</sup>	: Case No. 19-10289 (LSS)
	: :
Debtors.	: (Jointly Administered)
	: :
	: Re: Docket No. 4 & 48
-----	X

**FINAL ORDER UNDER 11 U.S.C. §§ 105(a), 363(b), 503(b), 541,  
1107(a), AND 1108 AND FED. R. BANKR. P. 6003 (I) AUTHORIZING  
DEBTORS TO PAY CERTAIN PREPETITION CLAIMS OF SHIPPERS, LIEN  
CLAIMANTS, ROYALTY INTEREST OWNERS, AND 503(B)(9) CLAIMANTS,  
(II) CONFIRMING ADMINISTRATIVE EXPENSE PRIORITY OF UNDISPUTED AND  
OUTSTANDING PREPETITION ORDERS, AND (III) GRANTING RELATED RELIEF**

Upon the motion (the "Motion")<sup>2</sup> of the Debtors for a Final Order (i) authorizing the Debtors to pay the Shipping Claims, Lien Claims, Royalty Payments, and 503(b)(9) Claims as provided herein; (ii) confirming the administrative expense priority status of Outstanding Orders and authorizing the Debtors to pay prepetition amounts related to the Outstanding Orders; and (iii) granting related relief, all as more fully set forth in the Motion; and the Court having reviewed the Motion and 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 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

<sup>1</sup> 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.

<sup>2</sup> Capitalized terms used but not otherwise defined herein shall have the respective meanings ascribed to such terms in the Motion.

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. The Debtors are authorized, but not directed, to pay the prepetition Shipping Claims in an amount not to exceed \$3,300,000 in the aggregate (the "**Final Shipping Claims Cap**") absent further order of the Court.
4. The Debtors are authorized, but not directed, to pay the prepetition Lien Claims in an amount not to exceed \$1,400,000 in the aggregate (the "**Final Lien Claims Cap**") absent further order of the Court; *provided that* with respect to each Lien Claim, the Debtors shall not pay such Lien Claim unless the claimant has perfected, or is capable of perfecting in the future, in the Debtors' business judgment, one or more liens in respect of such Lien Claim.
5. The Debtors are authorized, but not directed, to pay the prepetition Royalty Payments in an amount not to exceed \$900,000 in the aggregate (the "**Final Royalty Payments Cap**") absent further order of the Court.
6. The Debtors are authorized, but not directed, in the reasonable exercise of their business judgment, to pay all or part of, and discharge, on a case-by-case basis, the 503(b)(9)

Claims in an amount not to exceed \$300,000 in the aggregate (the "503(b)(9) Claims Cap"). absent further order of the Court.

7. All undisputed obligations related to the Outstanding Orders are granted administrative expense priority status in accordance with section 503(b)(1)(A) of the Bankruptcy Code.

8. Each of the Banks at which the Debtors maintain their accounts relating to the payment of the Shipping Claims, Lien Claims, Royalty Payments, and 503(b)(9) Claims are authorized to (i) receive, process, honor, and pay all checks presented for payment and to honor all fund transfer requests made by the Debtors related thereto, to the extent that sufficient funds are on deposit in those accounts and (ii) accept and rely on all representations made by the Debtors with respect to which checks, drafts, wires, or automated clearing house transfers should be honored or dishonored in accordance with this or any other order of the Court, whether such checks, drafts, wires, or transfers are dated prior to, on, or subsequent to the Petition Date, without any duty to inquire otherwise.

9. The Debtors are authorized, but not directed, to issue new postpetition checks, or effect new electronic funds transfers, on account of Shipping Claims, Lien Claims, Royalty Payments, and 503(b)(9) Claims as set forth herein and to replace any prepetition checks or electronic fund transfer requests that may be lost or dishonored or rejected as a result of the commencement of the Debtors' Chapter 11 Cases.

10. Nothing in the Motion or this Final Order, or the Debtors' payment of any claims pursuant to this Final Order, shall be 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, reclassify, elevate to an administrative expense status, or otherwise affect any claim to the extent it is not paid.

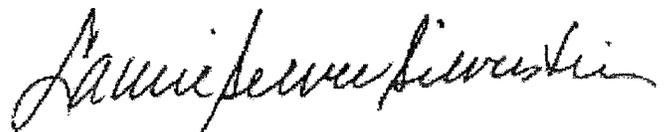
11. Notwithstanding Bankruptcy Rule 6004(h), this Final Order shall be immediately effective and enforceable upon its entry.

12. The Debtors are authorized to take all action necessary to effectuate the relief granted in this Final Order.

13. 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 19th, 2019  
Wilmington, Delaware

US-DOCS\105945127\IRLF1 20950721.v.1



LAURIE SELBER SILVERSTEIN  
UNITED STATES BANKRUPTCY JUDGE

**TAB K**

**THIS IS EXHIBIT "K"**

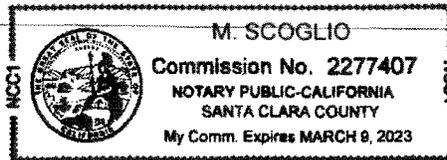
*referred to in the Affidavit of Alexandra Picard*

Sworn before me this 28<sup>TH</sup>

day of March, 2019



*A Commissioner for Taking Affidavits*



IN THE UNITED STATES BANKRUPTCY COURT  
FOR THE DISTRICT OF DELAWARE

----- X  
In re: : Chapter 11  
: :  
IMERYYS TALC AMERICA, INC., *et al.*,<sup>1</sup> : Case No. 19-10289 (LSS)  
: :  
Debtors. : (Jointly Administered)  
: :  
: Re: Docket No. 7 & 51  
----- X

**FINAL ORDER UNDER 11 U.S.C. §§ 105(a), 363(b), 503(b)(9), 1107(a), AND 1108 AND  
FED. R. BANKR. P. 6003 (I) AUTHORIZING PAYMENT OF PREPETITION CLAIMS  
OF CRITICAL VENDORS; (II) AUTHORIZING FINANCIAL INSTITUTIONS TO  
HONOR AND PROCESS RELATED CHECKS AND TRANSFERS; AND  
(III) GRANTING RELATED RELIEF**

Upon the motion (the "Motion")<sup>2</sup> of the Debtors for entry of a Final Order under sections 105(a), 363(b), 503(b)(9), 1107(a), and 1108 of the Bankruptcy Code and Bankruptcy Rule 6003 (i) authorizing, but not directing, the Debtors to pay, in the ordinary course of business, the prepetition fixed, liquidated, and undisputed claims of critical vendors and service providers, subject to the conditions described herein, (ii) authorizing financial institutions to honor and process related checks and transfers, and (iii) granting certain related relief; 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 States District Court for the District of Delaware*, dated February 29, 2012; and the

<sup>1</sup> 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.

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

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. The Debtors are authorized, but not directed, in their sole discretion, to pay, or cause to be paid, the Critical Vendor Claims of their Critical Vendors, subject to the terms and conditions of this Final Order; *provided* that payments on account of Critical Vendor Claims shall not exceed \$1,100,000 in the aggregate without further order of this Court; *provided, however*, that, pending further order of this Court, the Debtors are not authorized to pay any Critical Vendor Claims held by vendors that are bound by an executory contract to continue to supply goods to the Debtors, unless such Critical Vendor Claims fall under section 503(b)(9) of the Bankruptcy Code.
4. The Debtors are authorized, but not directed, to undertake appropriate efforts to cause Critical Vendors to enter into a Trade Agreement with the Debtors substantially similar to the form attached as Exhibit C to the Motion, as a condition of payment of each Critical Vendor Claim.

5. If a Critical Vendor, whether under a Trade Agreement or otherwise, refuses to supply goods and/or services to the Debtors on Customary Trade Terms or Minimum Credit Terms (or such other terms as are agreed by the parties) following receipt of payment on its Critical Vendor Claim or otherwise fails to comply with any Trade Agreement entered into between such Critical Vendor and the Debtors, then the Debtors reserve their rights to take any and all actions necessary to return the parties to the positions they held immediately prior to entry of this Final Order with respect to all prepetition claims, including but not limited to: (a) declaring that any Trade Agreement between the Debtors and such Critical Vendor is terminated; (b) declaring that payments made to such Critical Vendor on account of its Critical Vendor Claims shall be deemed to have been made in payment of then-outstanding (or subsequently accruing) postpetition claims of such Critical Vendor without further order of the Court or action by any person or entity; and (c) recovering or seeking disgorgement of any payment made to such Critical Vendor on account of its Critical Vendor Claims to the extent that such payments exceed the value of the postpetition claims of such Critical Vendor, without giving effect to any rights of setoff, claims, provision for payment of reclamation or trust fund claims, or other defense. Nothing herein shall constitute a waiver of the Debtors' rights to seek damages or other appropriate remedies against any breaching Critical Vendor.

6. Notwithstanding the foregoing, the Debtors may, in their sole discretion, reinstate a Trade Agreement if the underlying default under the Trade Agreement is fully cured by the Critical Vendor not later than five business days following the Debtors' notification to the Critical Vendor that such default has occurred or the Debtors, in their sole discretion, reach a favorable alternative agreement with the Critical Vendor.

7. The amount of each Critical Vendor's Critical Vendor Claim set forth in connection with a Trade Agreement shall be used only for purposes of determining such Critical Vendor's claim for purposes of this Final Order and shall not be deemed a claim allowed by the Court, and the rights of all interested persons to object to the allowance of such claim shall be fully preserved until further order of the Court. Further, signing a Trade Agreement containing a claim amount for purposes of this Final Order shall not excuse such Critical Vendor from filing a proof of claim in these cases.

8. No claimant who receives payment in full on account of a Critical Vendor Claim is permitted to, with respect to such Critical Vendor Claim, file or perfect a Lien on account of such claim, assert a Reclamation Claim, and/or assert a 503(b)(9) Claim, and any such claimant shall take all necessary action, at its expense, to remove any existing Lien relating to such claim, and to withdraw any Reclamation Claim or 503(b)(9) Claim, on account of such claim.

9. 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 a Critical Vendor 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 the Critical Vendor Claims to the extent they are not paid.

10. Nothing in the Motion or this Final Order, nor the Debtors' implementation of the relief granted in this Final Order, shall be deemed to modify or waive any of the Debtors' rights with respect to goods and services requested or received from the Critical Vendors, including the Debtors' rights to (a) cancel a purchase order, (b) decline the acceptance of goods and/or services, (c) return any defective, nonconforming or unacceptable good, or (d) contest the amount of any invoice or claims on any grounds.

11. At the direction of the Debtors, the Debtors' banks and financial institutions shall be and hereby are authorized to receive, process, honor, pay, and, if necessary, reissue all prepetition and postpetition checks and fund transfers, including prepetition checks and electronic payment and transfer requests that the Debtors reissue or re-request postpetition, on account of obligations owed to any Critical Vendor, provided that sufficient funds are on deposit in the applicable accounts to cover such payments. The Debtors' banks and other financial institutions are authorized to rely on the representations of the Debtors as to which checks and fund transfers should be honored and paid pursuant to this Final Order.

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

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

14. 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

**TAB L**

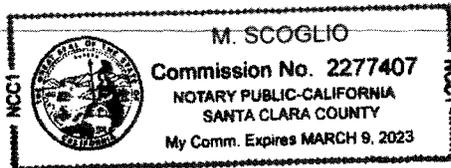
**THIS IS EXHIBIT "L"**

*referred to in the Affidavit of Alexandra Picard*

Sworn before me this 28<sup>TH</sup>  
day of March, 2019



*A Commissioner for Taking Affidavits*



IN THE UNITED STATES BANKRUPTCY COURT  
FOR THE DISTRICT OF DELAWARE

----- X  
 In re: : Chapter 11  
 :  
 IMERYYS TALC AMERICA, INC., *et al.*,<sup>1</sup> : Case No. 19-10289 (LSS)  
 :  
 Debtors. : (Jointly Administered)  
 :  
 : Re: Docket No. 15 & 59  
 ----- X

**FINAL ORDER UNDER 11 U.S.C. §§ 105(a), 363(b), AND 1107(a), AND FED. R. BANKR. P. 6003 (I) AUTHORIZING PAYMENT OF PREPETITION CLAIMS OF FOREIGN VENDORS; (II) AUTHORIZING FINANCIAL INSTITUTIONS TO HONOR AND PROCESS RELATED CHECKS AND TRANSFERS; AND (III) GRANTING RELATED RELIEF**

Upon the motion (the "Motion")<sup>2</sup> of the Debtors for entry of a Final Order under sections 105(a), 363(b), and 1107(a) of the Bankruptcy Code and Bankruptcy Rule 6003 (i) authorizing, but not directing, the Debtors to pay, in the ordinary course of business, the prepetition fixed, liquidated, and undisputed claims of foreign vendors and service providers, subject to the conditions described herein, (ii) authorizing financial institutions to honor and process related checks and transfers, and (iii) granting certain related relief; 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 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

<sup>1</sup> 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.

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

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. The Debtors are authorized, but not directed, in their sole discretion, to pay, or cause to be paid, the Foreign Vendor Claims, subject to the terms and conditions of this Final Order; *provided* that payments on account of Foreign Vendor Claims shall not exceed \$1,400,000 in the aggregate without further order of this Court.
4. The Debtors are authorized, in their sole discretion, to pay the Foreign Vendor Claims upon such terms and in the manner provided in the Motion and this Final Order, in the ordinary course of business, when due, *provided, however*, that the Debtors are authorized, but not directed, to undertake appropriate efforts to cause Foreign Vendors to supply goods and services to the Debtors postpetition on (a) the most favorable trade terms and practices (including, without limitation, credit limits, pricing, timing payments, allowances, rebates, discounts, and other applicable terms and programs) in effect between the Foreign Vendor and the Debtors within the sixty day period preceding the Petition Date or (b) such other trade terms and practices as agreed to by the Debtors and the Foreign Vendor (the “Customary Trade Terms”); *provided further, however*, that the Debtors have the right to adjust normal trade terms with any Foreign Vendor according to the facts and circumstances.

5. If a Foreign Vendor refuses to supply goods and/or services to the Debtors on Customary Trade Terms (or such other terms as are agreed by the parties) following receipt of payment on its Foreign Vendor Claim, then the Debtors reserve their rights to take any and all actions necessary to return the parties to the positions they held immediately prior to entry of this Final Order with respect to all prepetition claims, including but not limited to: (a) declaring that payments made to such Foreign Vendor on account of its Foreign Vendor Claims shall be deemed to have been made in payment of then-outstanding (or subsequently accruing) postpetition claims of such Foreign Vendor without further order of the Court or action by any person or entity; and (b) recovering or seeking disgorgement of any payment made to such Foreign Vendor on account of its Foreign Vendor Claims to the extent that such payments exceed the value of the postpetition claims of such Foreign Vendor, without giving effect to any rights of setoff, claims, provision for payment of reclamation or trust fund claims, or other defense.

6. No claimant who receives payment in full on account of a Foreign Vendor Claim is permitted to, with respect to such Foreign Vendor Claim, file or perfect a lien on account of such claim, assert a claim for reclamation, and/or assert a claim under section 503(b)(9) of the Bankruptcy Code, and any such claimant shall take all necessary action, at its expense, to remove any existing lien relating to such claim, and to withdraw any claim for reclamation or claim under section 503(b)(9) of the Bankruptcy Code, on account of such claim.

7. 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 a Foreign Vendor 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 the Foreign Vendor Claims to the extent they are not paid.

8. Nothing in the Motion or this Final Order, nor the Debtors' implementation of the relief granted in this Final Order, shall be deemed to modify or waive any of the Debtors' rights with respect to goods and services requested or received from the Foreign Vendors, including the Debtors' rights to (a) cancel a purchase order, (b) decline the acceptance of goods and/or services, (c) return any defective, nonconforming or unacceptable good, or (d) contest the amount of any invoice or claims on any grounds.

9. At the direction of the Debtors, the Debtors' banks and financial institutions shall be and hereby are authorized to receive, process, honor, pay, and, if necessary, reissue all prepetition and postpetition checks and fund transfers, including prepetition checks and electronic payment and transfer requests that the Debtors reissue or re-request postpetition, on account of obligations owed to any Foreign Vendor, provided that sufficient funds are on deposit in the applicable accounts to cover such payments. The Debtors' banks and other financial institutions are authorized to rely on the representations of the Debtors as to which checks and fund transfers should be honored and paid pursuant to this Final Order.

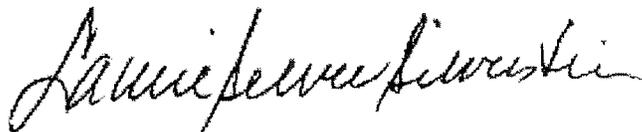
10. Notwithstanding Bankruptcy Rule 6004(h), to the extent applicable, this Final Order shall be effective and enforceable immediately upon entry hereof.

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

12. 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 19th, 2019  
Wilmington, Delaware

US-DOCS\105941827.1



5 LAURIE SELBER SILVERSTEIN  
UNITED STATES BANKRUPTCY JUDGE

**TAB M**

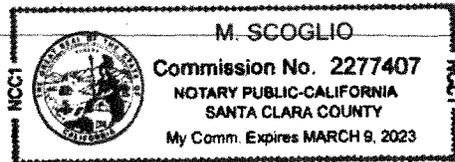
**THIS IS EXHIBIT "M"**

*referred to in the Affidavit of Alexandra Picard*

Sworn before me this 28<sup>TH</sup>  
day of March, 2019



*A Commissioner for Taking Affidavits*



IN THE UNITED STATES BANKRUPTCY COURT  
FOR THE DISTRICT OF DELAWARE

----- X  
In re: : Chapter 11  
: :  
IMERYYS TALC AMERICA, INC., *et al.*,<sup>1</sup> : Case No. 19-10289 (LSS)  
: :  
Debtors. : (Jointly Administered)  
: :  
: Re: Docket No. 8 & 53  
----- X

**FINAL ORDER UNDER 11 U.S.C. §§ 105(a), 363 (b), 506(a), 507(a)(8), AND 541  
AND FED. R. BANKR. P. 6003 AUTHORIZING PAYMENT OF  
PREPETITION TAXES AND FEES**

Upon the motion (the "Motion")<sup>2</sup> of the Debtors for a Final Order authorizing the Debtors, in their sole discretion, to pay or set off any prepetition Taxes and Fees owing to the Taxing Authorities, Imerys USA and the other Debtors; 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 States District Court for the District of Delaware dated as of 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

<sup>1</sup> 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.

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

due deliberation thereon; and the Court having determined that there is good and sufficient cause for the relief granted in the Final 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. The Debtors are authorized, but not directed, in their sole discretion, to (i) pay to the Taxing Authorities and (ii) pay to, or set off against amounts owed by, Imerys USA or the other Debtors, all Taxes and Fees relating to the period prior to the commencement of their Chapter 11 Cases (the "Petition Date"), *provided that* payments and setoffs on account of prepetition Taxes and Fees shall not exceed \$1,505,000 in the aggregate, without further order of this Court.
4. The Debtors may seek additional relief from this Court in the future in the event that the Debtors subsequently determine that additional prepetition Taxes and Fees are owed by the Debtors.
5. Nothing in the Motion or this Final Order shall be construed as impairing the Debtors' right to contest the validity, amount, or priority of any Taxes and Fees allegedly due or owing to any Taxing Authorities, Imerys USA, or the other Debtors, or any claim or lien against the Debtors and all Debtors' rights with respect thereto are hereby reserved.
6. The Debtors' banks and financial institutions shall be, and are hereby authorized, when requested by the Debtors in their sole discretion, to process, honor, pay and, if necessary, reissue any and all checks or electronic fund transfers, including prepetition checks and electronic payment and transfer requests that the Debtors reissue or re-request postpetition,

drawn on the Debtors' bank accounts relating to the prepetition Taxes and Fees, whether those checks were presented prior to or after the Petition Date, provided that sufficient funds are available in the applicable accounts to make the payments.

7. The Debtors' banks and financial institutions may rely on the representations of the Debtors with respect to whether any check or other transfer drawn or issued by the Debtors prior to the Petition Date should be honored pursuant to this Final Order, and any such bank or financial institution shall not have any liability to any party for relying on such representations by the Debtors as provided for in this Final Order.

8. Nothing in the Motion or this Final Order, or the Debtors' payment of any claims pursuant to this Final Order, shall be 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, reclassify, elevate to an administrative expense status, or otherwise affect any claim to the extent it is not paid.

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

10. 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 Final Order.

11. 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 19th, 2019  
Wilmington, Delaware



LAURIE SELBER SILVERSTEIN  
UNITED STATES BANKRUPTCY JUDGE

**TAB N**

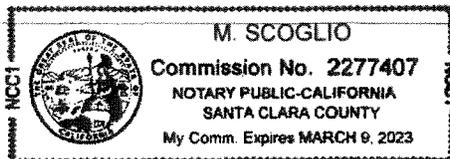
**THIS IS EXHIBIT "N"**

*referred to in the Affidavit of Alexandra Picard*

Sworn before me this 28<sup>th</sup>  
day of March, 2019



*A Commissioner for Taking Affidavits*



IN THE UNITED STATES BANKRUPTCY COURT  
FOR THE DISTRICT OF DELAWARE

----- X  
 In re: : Chapter 11  
 :  
 IMERYYS TALC AMERICA, INC., *et al.*,<sup>1</sup> : Case No. 19-10289 (LSS)  
 :  
 Debtors. : (Jointly Administered)  
 :  
 : Re: Docket No. 3 & 49  
 ----- X

**FINAL ORDER UNDER 11 U.S.C. §§ 105(a), 362(d), 363(b), AND 503(b),  
AUTHORIZING DEBTORS TO (I) PAY THEIR PREPETITION INSURANCE  
OBLIGATIONS, (II) PAY THEIR PREPETITION BONDING OBLIGATIONS, (III)  
MAINTAIN THEIR POSTPETITION INSURANCE COVERAGE, AND  
(IV) MAINTAIN THEIR BONDING PROGRAM**

Upon the motion (the "Motion")<sup>2</sup> of the Debtors for a Final Order, authorizing the Debtors to (a) continue to (i) administer the Insurance Policies and pay and set off the Prepetition Insurance Obligations and (ii) pay and set off the Prepetition Bonding Obligations, to the extent the Debtors determine in their discretion that such payments are necessary or appropriate; (b) in the ordinary course of business, pay all postpetition premiums, administrative fees, deductibles, and other obligations relating to the (i) Postpetition Insurance Obligations or (ii) the Postpetition Bonding Obligations, as such payments become due; and (c) revise, extend, supplement, change, terminate, and/or replace the Debtors' insurance coverage or the Bonding Program as needed in the ordinary course of business; and the Court having reviewed the Motion and the Picard

<sup>1</sup> 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.

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

Declaration; 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 as of 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 Final Order, it is hereby

**ORDERED, ADJUDGED AND DECREED THAT:**

1. The Motion is GRANTED as set forth herein.
2. The Debtors are authorized, but not directed, to continue their Insurance Policies and Bonding Program.
3. All objections to entry of this Final Order, to the extent not withdrawn or settled, are overruled.
4. The Debtors are authorized, but not directed, to (i) pay to the Insurance Carriers, Brokers, and the Sureties and (ii) pay to, or set off against amounts owed by, Imerys USA, Imerys Clays, or the other Debtors, any amounts owed on account of the Insurance Obligations and Bonding Obligations, whether incurred prepetition or postpetition.
5. All payments and setoffs on account of Prepetition Insurance Obligations and Prepetition Bonding Obligations, collectively, shall not exceed \$700,000 in the aggregate without further order of this Court.

6. The rights of Imerys USA, Imerys Clays and the other Debtors to set off any amounts owed by the Debtors are hereby preserved.

7. The Debtors are authorized, but not directed, to revise, extend, supplement, change, terminate, and/or replace insurance coverage (other than the Cyprus Historical Policies (as defined below)) and their Bonding Program as needed and to enter into new insurance policies and surety bonds through renewal or purchase of new insurance policies and surety bonds, in each case without further notice to, hearing before, or order from this Court.

8. The Debtors are authorized to pay any prepetition or postpetition fees, costs, and commissions of the Brokers in connection with the Insurance Policies in the ordinary course of business.

9. The Debtors' banks and financial institutions shall be, and hereby are, authorized, when requested by the Debtors in their sole discretion, to process, honor, pay, and, if necessary, reissue any and all checks, including prepetition checks that the Debtors reissue postpetition, and electronic fund transfers drawn on the Debtors' bank accounts relating to the Insurance Obligations and the Bonding Obligations, whether such checks were presented or funds transfer requests were submitted prior to or subsequent to the Petition Date, provided that sufficient funds are available in the applicable accounts to make the payments.

10. The Debtors' banks and financial institutions may rely on the representations of the Debtors with respect to whether any check or other transfer drawn or issued by the Debtors prior to the Petition Date should be honored pursuant to this Final Order, and any such Bank shall not have any liability to any party for relying on such representations by the Debtors as provided for in this Final Order.

11. The Debtors are hereby authorized, but not directed, to issue postpetition checks or to effect postpetition fund transfer requests in replacement of any checks or fund transfer requests with respect to Prepetition Insurance Obligations and Prepetition Bonding Obligations dishonored or denied as a consequence of the commencement of the Chapter 11 Cases, and to reimburse any expenses that holders of claims in connection with the Prepetition Insurance Obligations and Prepetition Bonding Obligations may incur as a result of any bank's failure to honor a prepetition check.

12. Notwithstanding the relief granted herein or any actions taken hereunder, nothing contained in this Final Order shall create any rights in favor of, or enhance the status of any claim held by, any person to whom any of the Insurance Obligations with respect to the Insurance Policies or Bonding Obligations may be owed.

13. The obligation of Zurich American Insurance Company, Zurich Insurance Company, and XL Insurance America, Inc. under their insurance policies to pay the Debtors' defense costs to the Debtors, their defense counsel, experts, their affiliates, and/or any third parties (including the Debtors' and their affiliates' other professionals), shall continue in full force and effect (in each case except as may be otherwise provided by further order of the Court) and nothing in this Final Order shall be construed as a waiver of any of the rights of the Debtors, their affiliates, and/or any third parties (including the Debtors' and their affiliates' professionals) under or in connection with such policies.

14. Zurich American Insurance Company, Zurich Insurance Company, and XL Insurance America, Inc., shall be, and hereby are, authorized to promptly pay and otherwise honor their obligation to pay defense costs for the Debtors as set forth in their insurance policies.

15. The American Insurance Company and Truck Insurance Exchange shall be, and hereby are, authorized to pay and otherwise honor their obligation to pay pre-petition defense fees and costs only to defense counsel and their experts and vendors that were incurred by or on behalf of the Debtors and Cyprus Mines Corporation or its affiliates in the defense of talc/asbestos lawsuits as set forth in their insurance policies. Nothing in this Final Order shall prejudice, impair or adjudicate any of the rights and/or defenses of the Debtors, Cyprus Mines Corporation and its affiliates or the insurers that issued the Cyprus Historical Policies.<sup>3</sup>

16. This Final Order is not intended to be and shall not be construed as an admission by the Debtors or Cyprus Mines Corporation or its affiliates, or a ruling by this Court, relating, directly or indirectly, to any question of fact or law in connection with any dispute as to the respective rights or obligations, if any, of Cyprus Mines Corporation or its affiliates, the Debtors, and/or the Debtors' bankruptcy estates in or under the Cyprus Historical Policies, including, but not limited to, any rights to proceeds thereof or causes of action with respect thereto.

17. Nothing in this Final Order shall prejudice or impair the Debtors' or any other entity's (including, without limitation, Cyprus Mines Corporation and its affiliates) assertion of ownership of or rights in the Historical Policies (or any insurance policies including, without limitation, Cyprus Historical Policies), with the rights to object and contest the same reserved for the Debtors and such entities.

18. Neither the provisions contained herein, nor any actions or payments made by the Debtors pursuant to this Final Order, shall be deemed an assumption of any executory

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<sup>3</sup> Cyprus Historical Policies means the insurance policies issued to Cyprus Mines Corporation or its affiliates prior to 1992.

contract, or otherwise shall constitute a waiver of the Debtors' rights under section 365 of the Bankruptcy Code or an admission by the Debtors that any of the Insurance Policies or the Bonding Program, or any related agreements or contracts constitutes an executory contract within the meaning of section 365 of the Bankruptcy Code.

19. 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.

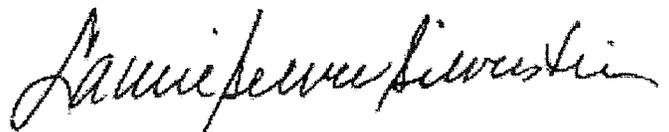
20. Notwithstanding Bankruptcy Rule 6004(h), to the extent applicable, this Final Order shall be effective and enforceable immediately upon entry hereof.

21. 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 Final Order.

22. This 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 26th, 2019  
Wilmington, Delaware

US-DOCS\105945243.1\RLF1 20811226v.4



LAURIE SELBER SILVERSTEIN  
UNITED STATES BANKRUPTCY JUDGE

TAB O

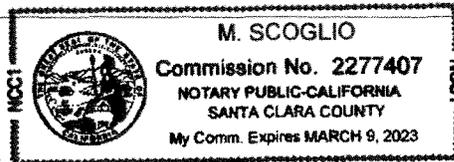
**THIS IS EXHIBIT "O"**

*referred to in the Affidavit of Alexandra Picard*

Sworn before me this 28<sup>TH</sup>  
day of March, 2019



*A Commissioner for Taking Affidavits*



IN THE UNITED STATES BANKRUPTCY COURT  
FOR THE DISTRICT OF DELAWARE

----- X  
 In re: : Chapter 11  
 :  
 IMERYS TALC AMERICA, INC., *et al.*,<sup>1</sup> : Case No. 19-10289 (LSS)  
 :  
 Debtors. : (Jointly Administered)  
 :  
 : Re: Docket No. 9 & 54  
 ----- X

**FINAL ORDER (I) AUTHORIZING PAYMENT OF CERTAIN PREPETITION  
 WORKFORCE OBLIGATIONS, INCLUDING COMPENSATION, EXPENSE  
 REIMBURSEMENTS, BENEFITS, AND RELATED OBLIGATIONS, (II)  
 CONFIRMING RIGHT TO CONTINUE WORKFORCE PROGRAMS ON  
 POSTPETITION BASIS, (III) AUTHORIZING PAYMENT OF WITHHOLDING AND  
 PAYROLL-RELATED TAXES, (IV) AUTHORIZING PAYMENT OF PREPETITION  
 CLAIMS OWING TO ADMINISTRATORS OF, OR THIRD PARTY PROVIDERS  
 UNDER, WORKFORCE PROGRAMS, AND (V) AUTHORIZING BANKS TO HONOR  
 PREPETITION CHECKS AND FUND TRANSFERS FOR AUTHORIZED PAYMENTS**

Upon the motion (the "Motion")<sup>2</sup> of the Debtors for entry of a Final Order under sections 105(a), 362(d), 363(b), 363(c), 506(a), 507(a), 541, 553, 1107(a), and 1108 of the Bankruptcy Code, and Bankruptcy Rule 6003 (i) authorizing the Debtors to pay certain prepetition amounts owing to or for the benefit of the Workforce for compensation, reimbursable expenses, and benefits; (ii) confirming the Debtors' right to continue postpetition, in the ordinary course of business, the workforce-related plans, programs, and policies in effect immediately prior to the filing of these cases; (iii) authorizing the Debtors to pay any and all local, state, federal, and foreign withholding and payroll-related or similar taxes relating to prepetition periods; (iv) confirming the Debtors' right to continue to deduct and to transmit deductions from payroll checks as authorized

<sup>1</sup> 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.

<sup>2</sup> Capitalized terms used but not otherwise defined herein shall have the meanings ascribed to them in the Motion.

by employees or required under any workforce-related plan, program, or policy or as required by law; (v) authorizing the Debtors to pay any prepetition claims owing to the administrators of, or third party providers under, such plans, programs, and policies as necessary to ensure the delivery of compensation, benefits, and expense reimbursements to their Workforce; and (vi) authorizing all banks to receive, process, honor, pay and, if necessary, reissue all prepetition and postpetition checks and fund transfers, including prepetition checks and electronic payment and transfer requests that the Debtors reissue or re-request postpetition, on account of any obligations authorized to be paid hereunder; and the Court having reviewed the Motion and 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 States District Court for the District of Delaware dated as of 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 as set forth herein on a final basis.
2. All objections to the entry of this Final Order, to the extent not withdrawn or settled, are overruled.

3. The Debtors are authorized to pay, set off against amounts owed by Imerys USA, Imerys Clays or the other Debtors, or otherwise honor the Prepetition Workforce Obligations described in the Motion, to, or for the benefit of, the Workforce, under the Workforce Programs. Notwithstanding any other provision of this Final Order, such payments and setoffs on account of each category of prepetition claims corresponding to claims discussed in the section of the Motion noted in brackets shall not exceed the amounts specified in the chart below or \$2,587,000 in the aggregate without further order of the Court:

<b>Relief Sought</b>	<b>Final Amount Requested</b>
Prepetition Workforce Compensation [Section A]	\$1,005,000
Employee Reimbursement Obligations [Section B]	\$451,000
Employee Benefits Obligations [Section C]	\$1,064,000
Payments to Independent Director [Section E]	\$5,000
Payments to Administrators [Section F]	\$13,000
Payments to Employee Benefits Consultants [Section G]	\$49,000

4. Except as provided otherwise in this Final Order, the Debtors are authorized to (a) continue each of the Workforce Programs, including but not limited to maintaining the Employee Benefits described in the Motion, in the ordinary course of business during the pendency of these cases in the manner and to the extent that such Workforce Programs were in effect immediately prior to the filing of these cases, and (b) continue to fund and to make payments or set offs in connection with the costs of and the expenses incurred in the administration of any Workforce Program.

5. Nothing herein shall be deemed to authorize the Debtors to cash out or set off unpaid prepetition PTO except upon termination of an employee to the extent required by applicable non-bankruptcy law.

6. Subject to the following proviso, the Debtors are authorized to continue the Employee Incentive Programs specified in the Motion, the Severance Pay Plan, and the Timmins Union Severance Program on a postpetition basis in the ordinary course of business, and in each case to pay any accrued amounts thereunder as they become due; provided that (i) continuation of the Employee Incentive Programs specified in the Motion, the Severance Pay Plan, and the Timmins Union Severance Program, and payment of amounts accrued thereunder as they become due, shall be subject to further order of the Court with respect to any individual Employee who is an "insider" as defined in the Bankruptcy Code, which, for the purpose of this Final Order, shall include any person holding the title of an officer, including that of Vice-President, and (ii) nothing in this Final Order shall be deemed to authorize the payment of any amounts in satisfaction of bonus or severance obligations that are subject to section 503(c) of the Bankruptcy Code.

7. Subject to the cap set forth in paragraph 3 of this Final Order, the Debtors are authorized to reimburse the Employees for all Employee Reimbursement Obligations incurred prior to the Petition Date and are authorized to make direct payments to third parties, or set offs, on account of amounts owed in connection with the Employee Reimbursement Obligations.

8. The Debtors shall continue to participate in the Deferred Compensation Plan. The Debtors shall continue making payments on account of the Deferred Compensation Plan as they become due in the ordinary course of business.

9. The Debtors are authorized to continue their workers' compensation programs and to pay or set off any outstanding prepetition claims, taxes, charges, assessments,

premiums, and third party administrator fees arising under the workers' compensation policies and or programs in which they participate. In addition, the automatic stay of section 362 of the Bankruptcy Code is hereby lifted to allow US Workers' Compensation Claims and claims, if any, under the Canadian Workers' Compensation Program to proceed under the applicable US Workers' Compensation Policy or under the Canadian Workers' Compensation Program, respectively, and to allow the Debtors' insurance providers, the WSIB, and/or third party administrators to negotiate, settle, and/or litigate US Workers' Compensation Claims or claims under the Canadian Workers' Compensation Program, if any, and pay resulting amounts, to the extent required by applicable law, whether such claims arose before or after the Petition Date.

10. The Debtors are authorized to pay or set off any and all local, state, federal, and foreign withholding and payroll-related or similar taxes related to the Prepetition Workforce Obligations including, but not limited to, all withholding taxes, social security taxes, Medicare taxes, and employment insurance taxes and premiums, whether such taxes relate to the period before or after the Petition Date.

11. The Debtors are authorized to pay, or set off amounts owed in connection with, claims of the Administrators and Employee Benefits Consultants, in connection with administering and delivering payments or providing other services and benefits to the Workforce, for prepetition services rendered and claims for reimbursement based on prepetition disbursements made by the Administrators or Employee Benefits Consultants.

12. The Debtors are authorized to pay or set off prepetition expenses incurred by the Independent Director not to exceed \$5,000. The Debtors are authorized to continue to pay or set off the Independent Director's monthly fees and expense reimbursements on a postpetition basis in the ordinary course of business.

13. The Debtors' banks and financial institutions shall be, and hereby are, authorized, when requested by the Debtors in their sole discretion, to process, honor, and pay any and all checks or electronic fund transfers drawn on the Debtors' bank accounts to pay all prepetition amounts owed to any party in connection with the Prepetition Workforce Obligations, whether those checks were presented prior to or after the Petition Date, provided that sufficient funds are available in the applicable accounts to make the payments. Further, the Debtors are authorized to issue new postpetition checks and initiate new postpetition electronic fund transfers to replace any checks or electronic fund transfers that may be dishonored and to reimburse any related expenses that may be incurred as a result of any bank's failure to honor a prepetition check or electronic fund transfer.

14. The Debtors' banks and financial institutions may rely on the representations of the Debtors with respect to whether any check or other transfer drawn or issued by the Debtors prior to the Petition Date should be honored pursuant to this Final Order, and any such Bank shall not have any liability to any party for relying on such representations by the Debtors as provided for in this Final Order.

15. Authorization to pay, and the payment or set off of, any amounts on account of Prepetition Workforce Obligations shall not affect the Debtors' right to contest the amount or validity of any Prepetition Workforce Obligation, including without limitation, any amounts that may be due to any taxing authority.

16. Neither the provisions of this Final Order, nor any payments or set offs made or not made by the Debtors pursuant to this Final Order, shall be deemed an assumption or rejection of any Workforce Program, agreement or contract, or otherwise affect the Debtors' rights

under section 365 of the Bankruptcy Code to assume or reject any executory contract between the Debtors and any member of the Workforce, or other person.

17. Notwithstanding anything to the contrary in this Final Order, the Debtors retain their right to modify or terminate any Workforce Program as may be required by applicable law, or to modify or terminate any Workforce Program in the ordinary course of business without further order of the Court, to the extent that such right exists under the terms of the applicable Workforce Program; provided, however, that the Debtors shall seek Court approval, on notice, of any modification that would implicate any portion of section 503(c) of the Bankruptcy Code.

18. Notwithstanding the relief granted herein or any actions taken hereunder, nothing contained in this Final Order shall create any rights in favor of, or enhance the status of any claim held by, any member of the Workforce, or other person.

19. No payments to any individual Employee or other member of the Workforce on account of pre-petition obligations shall exceed, in the aggregate, the amounts set forth in 11 U.S.C. §§ 507(a)(4) and 507(a)(5).

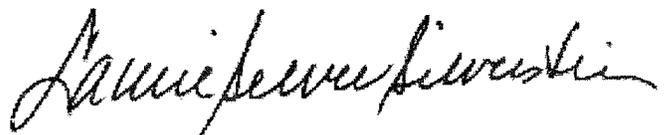
20. Neither the provisions contained herein, nor any actions or payments made by the Debtors pursuant to this Final Order, shall be deemed an admission as to the validity of any underlying obligation or a waiver of any rights the Debtors may have to dispute such obligation on any ground that applicable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

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

22. 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 Final Order.

23. 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 19th, 2019  
Wilmington, Delaware  
RLF1 20811116v.2  
US-DOC\S\106034502.6 RLF1 20955677v.1



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LAURIE SELBER SILVERSTEIN  
UNITED STATES BANKRUPTCY JUDGE

TAB P

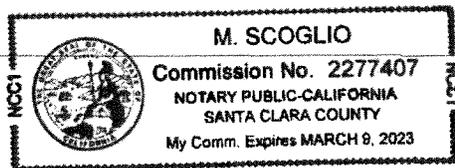
**THIS IS EXHIBIT "P"**

*referred to in the Affidavit of Alexandra Picard*

Sworn before me this 22<sup>TH</sup>  
day of March, 2019



*A Commissioner for Taking Affidavits*



IN THE UNITED STATES BANKRUPTCY COURT  
FOR THE DISTRICT OF DELAWARE

----- X  
 In re: : Chapter 11  
 :  
 IMERYYS TALC AMERICA, INC., *et al.*,<sup>1</sup> : Case No. 19-10289 (LSS)  
 :  
 Debtors. : (Jointly Administered)  
 :  
 : Re: Docket No. 13 & 57  
 ----- X

**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")<sup>2</sup> 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*

<sup>1</sup> 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.

<sup>2</sup> 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.

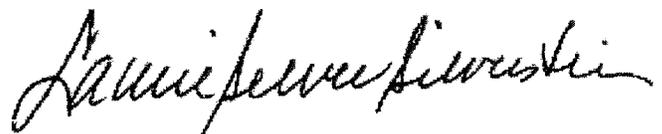
17. Nothing contained herein constitutes a finding that any entity is or is not a Utility Company hereunder or a “utility” under section 366 of the Bankruptcy Code, whether or not such entity is listed on Exhibit A attached hereto.

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.<sup>1</sup>

Utility Company	Type of Service Provided	Mailing Address	Monthly Average (\$)	Adequate Assurance Deposit (\$)
<b>Imerys Talc America, Inc.</b>				
AmeriGas	Propane	11150 Chicago Drive Zeeland, MI 49464-9183	2,000	1,000 <sup>2</sup>
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

<sup>1</sup> 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.

<sup>2</sup> 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 <sup>3</sup>
<b>Imerys Talc Vermont, Inc.</b>				
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
<b>Imerys Talc America, Inc. and Imerys Talc Vermont, Inc.<sup>4</sup></b>				
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
<b>Imerys Talc Canada Inc.</b>				
Bell Canada	Telecom	Case Postale 8712 Succursale A Montreal, QC, H3C 3P6 Canada	1,000	500

<sup>3</sup> Adequate assurance for Vistra Energy Corp. reflects more than 50% of the average monthly spend attributable to Vistra Energy Corp.

<sup>4</sup> 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

TAB Q

*THIS IS EXHIBIT "Q"*

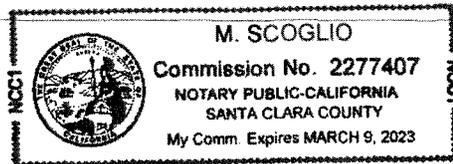
*referred to in the Affidavit of Alexandra Picard*

*Sworn before me this 28<sup>TH</sup>*

*day of March, 2019*



*A Commissioner for Taking Affidavits*



IN THE UNITED STATES BANKRUPTCY COURT  
FOR THE DISTRICT OF DELAWARE

----- X  
In re: : Chapter 11  
: :  
IMERY'S TALC AMERICA, INC., *et al.*,<sup>1</sup> : Case No. 19-10289 (LSS)  
: :  
Debtors. : (Jointly Administered)  
: :  
: Re: Docket No. 12 & 56  
----- X

**FINAL ORDER UNDER 11 U.S.C. §§ 105(a), 363(b), 363(c), 506(a), AND 553 AND FED.  
R. BANKR. P. 6003 AND 6004 AUTHORIZING (I) THE DEBTORS TO HONOR  
PREPETITION OBLIGATIONS TO CUSTOMERS AND TO OTHERWISE  
CONTINUE CUSTOMER PROGRAMS AND (II) FINANCIAL INSTITUTIONS  
TO HONOR AND PROCESS RELATED CHECKS AND TRANSFERS**

Upon the motion (the "Motion")<sup>2</sup> of the Debtors for entry of a Final Order authorizing the Debtors to honor (through payment, credit, setoff, or otherwise) their prepetition Customer Obligations and continue their Customer Programs and authorizing financial institutions to honor and process related checks and transfers; and the Court having reviewed the Motion and 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 States District Court for the District of Delaware dated as of 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

<sup>1</sup> 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.

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

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 the Court having determined that there is good and sufficient cause for the relief granted in this Final 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. The Debtors are authorized, but not directed, to pay, provide credits to, or set off against amounts owed by, their customers, the Third Party Distributors, Imerys USA, Inc., the other Debtors, and/or their Affiliate Distributors, any amounts owed on account of the Customer Obligations, whether incurred prepetition or postpetition; *provided that* payments, credits, and setoffs on account of prepetition Customer Obligations shall not exceed \$1,900,000 in the aggregate (the "**Final Cap**") pursuant to this Final Order without further order of this Court.
4. The Debtors are authorized, but not directed, to (a) fulfill and honor all Customer Obligations as they deem appropriate and (b) continue, renew, replace, implement new and/or terminate the Customer Programs and any other customer practices as they deem appropriate, without further application to the Court, including making all payments, honoring all discounts and credits, satisfying all obligations, and permitting and effecting all setoffs in connection therewith, in each case whether related to the prepetition period (subject to the Final Cap) or the postpetition period.

5. The Debtors' banks and financial institutions shall be, and hereby are, authorized, when requested by the Debtors in their sole discretion, to process, honor, pay, and, if necessary, reissue any and all checks, including prepetition checks that the Debtors reissue postpetition, and electronic fund transfers drawn on the Debtors' bank accounts relating to the Customer Obligations, whether such checks were presented or funds transfer requests were submitted prior to or subsequent to the Petition Date, provided that sufficient funds are available in the applicable accounts to make the payments.

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

7. Nothing in this Final Order or the Motion shall be construed as prejudicing any rights the Debtors may have to dispute or contest the amount of or basis for any claims asserted against the Debtors in connection with any Customer Obligation.

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

9. 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 Final Order.

10. 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 19th, 2019  
Wilmington, Delaware

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4 LAURIE SELBER SILVERSTEIN  
UNITED STATES BANKRUPTCY JUDGE

TAB R

**THIS IS EXHIBIT "R"**

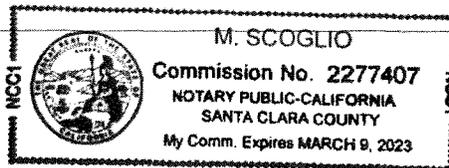
*referred to in the Affidavit of Alexandra Picard*

Sworn before me this 28<sup>TH</sup>

*day of March, 2019*



*A Commissioner for Taking Affidavits*



IN THE UNITED STATES BANKRUPTCY COURT  
FOR THE DISTRICT OF DELAWARE

----- X  
In re: : Chapter 11  
: :  
IMERYYS TALC AMERICA, INC., *et al.*,<sup>1</sup> : Case No. 19-10289 (LSS)  
: :  
Debtors. : (Jointly Administered)  
: :  
: Re: Docket No. 11 & 55  
----- X

**SECOND INTERIM ORDER UNDER 11 U.S.C. §§ 105(a),  
345, 363, 503(b), AND 507(a), FED. R. BANKR. P. 6003 AND 6004, AND DEL. BANKR.  
L.R. 2015-2 (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**

Upon the motion (the "Motion")<sup>2</sup> of the Debtors for entry of an Interim Order under sections 105(a), 345, 363, 503(b), and 507(a) of the Bankruptcy Code, Bankruptcy Rules 6003 and 6004, and Local Rule 2015-2, (i) authorizing, but not directing, the Debtors to continue to maintain and use their existing cash management system, including maintenance of their existing bank accounts, checks, and business forms; (ii) granting the Debtors a waiver of certain bank account and related requirements of the Office of the United States Trustee for the District of Delaware (the "U.S. Trustee") to the extent that such requirements are inconsistent with the Debtors' practices under their existing cash management system or other actions described in the Motion or

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<sup>1</sup> 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.

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

herein; (iii) authorizing, but not directing, the Debtors to continue to maintain and use their existing deposit practices notwithstanding the provisions of section 345(b) of the Bankruptcy Code; (iv) approving the continuation of the Intercompany Transactions; (v) authorizing the Debtors to open and close bank accounts; and (vi) according superpriority administrative expense status to postpetition intercompany claims arising from transactions among the Debtors; 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 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, except as set forth in the Motion with respect to entry of this order (the “**Second Interim Order**”) and notice of the final hearing; 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 Second Interim Order, it is hereby

**ORDERED, ADJUDGED, AND DECREED THAT:**

1. The Motion is GRANTED on a further interim basis, as set forth herein.
2. The Debtors are authorized, but not directed, to continue to use their current existing Cash Management System, as described in the Motion, and shall maintain through the use thereof detailed records reflecting all transfers of funds, all under the terms and conditions provided for by, and in accordance with, the existing cash management agreements, except as

modified by this Second Interim Order. In connection with the ongoing utilization of the Cash Management System, the Debtors shall maintain accurate and detailed records with respect to all transfers, including but not limited to transfers with Non-Debtor Affiliates arising from Intercompany Transactions and the payment of postpetition Intercompany Expenses, so that all transactions can be readily ascertained, traced, properly recorded, and distinguished between prepetition and postpetition transactions.

3. The Debtors are authorized, but not directed, to continue to engage in Intercompany Transactions on a postpetition basis and to make payments to, or set off amounts owed from, the applicable Imerys Group entity on account of postpetition Intercompany Expenses, in a manner consistent with their practices in effect as of the Petition Date, as set forth in the Motion, in the ordinary course of business or as necessary to execute the Cash Management System; *provided, however* that there shall be no additional intercompany loans made from the Debtors to any Non-Debtor Affiliates, absent further order of the Court; and *provided* further that prior to the entry of a final order on the Motion, transfers from the Debtors to the Non-Debtor Affiliates shall not exceed \$1,750,000. The Debtors shall provide counsel to the official committee of tort claimants with a summary of postpetition payments made on account of Intercompany Transactions by the 20<sup>th</sup> day of each month for the prior month.

4. The Debtors are authorized to (i) continue to use the Debtor Bank Accounts at the Banks in existence as of the Petition Date in the same manner and with the same account number, styles, and document forms as are currently employed and subject to the existing cash management agreements with the Banks; (ii) deposit funds in and withdraw funds from the Debtor Bank Accounts in the ordinary course (including, without limitation, sending funds to and receiving funds from the Non-Debtor Affiliate Bank Accounts subject to paragraph 3 of this Second Interim

Order) by all usual means, including checks, wire transfers, drafts, and electronic funds transfers or other items presented, issued, or drawn on the Debtor Bank Accounts; (iii) pay ordinary course Bank Fees and Expenses in connection with the Debtor Bank Accounts (in accordance with the existing cash management agreements), including any Bank Fees and Expenses arising prior to the Petition Date (as well as the prepetition LC Facility Expenses); (iv) perform their obligations under the documents and agreements governing the Debtor Bank Accounts; and (v) for all purposes, treat the Debtor Bank Accounts as accounts of the Debtors in their capacities as debtors-in-possession.

5. The Banks and the Debtors' financial institutions shall be, and hereby are, authorized, when requested by the Debtors in their sole discretion, (i) to process, honor, pay, and, if necessary, reissue any and all checks, including prepetition checks that the Debtors reissue postpetition, and electronic funds transfers drawn on the Debtor Bank Accounts relating to payments permitted by an order of this Court, whether such checks were presented or funds transfer requests were submitted prior to or subsequent to the Petition Date, provided that sufficient funds are available in the applicable accounts to make the payments, and (ii) to debit the Debtors' Bank Accounts in the ordinary course of business for all undisputed prepetition Bank Fees and Expenses outstanding as of the date hereof, if any.

6. In each instance in which the Debtors hold Debtor Bank Accounts at banks that are not party to a Uniform Depository Agreement with the U.S. Trustee, the Debtors shall use their good faith efforts to cause the banks to execute a Uniform Depository Agreement in a form prescribed by the U.S. Trustee within thirty days of the date of the Interim Order, to the extent such Bank is a domestic bank. The U.S. Trustee's rights to seek further relief from this Court in the event that the aforementioned banks are unwilling to execute a Uniform Depository Agreement in a form prescribed by the U.S. Trustee are fully reserved.

7. Pursuant to Local Rule 2015-2(a), the Debtors are authorized to continue to use their existing checks, correspondence, and other business forms without alteration or change and without the designation “Debtor-in-Possession” or a bankruptcy case number imprinted upon them. Notwithstanding the foregoing, once the Debtors’ existing checks have been used, the Debtors shall, when reordering checks, require the designation “Debtor-in-Possession” and the corresponding bankruptcy case number on all checks; *provided* that, with respect to checks that the Debtors or their agents print themselves, the Debtors shall begin printing the “Debtor-in-Possession” legend and the main case number on such items within ten days of the date of entry of this Second Interim Order.

8. The Debtors are authorized to continue to utilize all third-party providers necessary for the administration of their Cash Management System, including their third party payroll processor and benefits administrator. In addition, the Debtors are authorized, but not directed, to pay all postpetition amounts due to such third party providers.

9. *Nunc pro tunc* to the Petition Date, and subject to the terms of this Second Interim Order, all Banks at which the Debtor Bank Accounts are maintained are authorized to continue to administer, service, and maintain the Debtor Bank Accounts as such accounts were administered, serviced, and maintained prepetition, without interruption and in the ordinary course (including making deductions and setoffs for Bank Fees and Expenses) and consistent with and subject to the cash management agreements, and, when requested by the Debtors in their sole discretion, to honor any and all checks, drafts, wires, electronic funds transfers, or other items presented, issued, or drawn on the Debtor Bank Accounts on account of a claim against the Debtors arising on or after the Petition Date; *provided, however*, that unless otherwise ordered by the Court and directed by the Debtors, no checks, drafts, electronic funds transfers (excluding any electronic funds transfer

that the Banks are obligated to settle), or other items presented, issued, or drawn on the Debtor Bank Accounts on account of a claim against the Debtors arising prior to the Petition Date shall be honored. In no event shall the Banks be required to honor overdrafts or to pay any check, wire, electronic funds transfers, or other debit against the Debtor Bank Accounts that is drawn against uncollected funds or, subject to the below, that was issued prior to the Petition Date. Notwithstanding the foregoing, the Banks are authorized to rely on the Debtors' designation of any particular check or electronic payment request, funds transfer, or other transaction (including foreign currency exchanges, transactions or trades) as being approved by order of the Court and have no duty to inquire as to whether such payments are authorized by an order of this Court.

10. If any Bank honors a prepetition check or item drawn on any account that is the subject of this Second Interim Order (x) at the direction of the Debtors to honor such prepetition check or item, (y) in the good faith belief that the Court has authorized such prepetition check or item to be honored, or (z) as a result of a good faith error, such Bank shall not be deemed liable to the Debtors or their estates on account of such prepetition check or item being honored postpetition or otherwise in violation of this Second Interim Order.

11. The Debtors shall continue to pay, and the Banks may continue to charge and collect, all customary and usual fees arising from or related to the Debtor Bank Accounts (in accordance with the existing cash management agreements), including Bank Fees and Expenses and other fees, costs, charges, and expenses to which the Banks may be entitled under the terms of and in accordance with their contractual arrangements with the Debtors whether arising prior to, on or after the Petition Date. The Debtors shall reimburse the Banks for any claim arising before, on or after the Petition Date in connection with any returned items to the Debtor Bank Accounts in the normal course of business in accordance with the cash management agreements.

Further, the Banks are authorized to “charge back,” offset, expense or deduct from any of the Debtors’ accounts any amounts incurred by the Banks resulting from the Banks’ cash management expenses, Bank Fees and Expenses, returned checks or other returned items, including, but not limited to, dishonored checks, wire transfers, drafts, ACH Payments (credits or debits) or other electronic funds transfers or debits and any and all obligations, chargebacks, returns, liabilities, costs, charges, fees or expenses (including, without limitation, reasonable attorneys’ fees) incurred by the Banks that result from ordinary course transactions under the Cash Management System; *provided, however,* notwithstanding anything to the contrary in this Order, nothing herein shall authorize the Banks to “charge back,” offset, expense or deduct from any of the Debtors’ accounts any amounts incurred by the Banks on account of its legal fees that are unrelated to cash management administration and related issues or to otherwise charge and collect from the Debtors, any fees arising from or related to legal fees that are unrelated to cash management administration and related issues.

12. The Debtors are authorized to implement such reasonable, non-material changes consistent with this Second Interim Order to the Cash Management System as the Debtors may deem necessary or appropriate.

13. The Debtors may close any of the Debtor Bank Accounts (subject to the terms of the existing cash management agreement) or open any additional bank accounts following the Petition Date (the “New Accounts”) wherever the Debtors deem that such accounts are needed or appropriate. Notwithstanding the foregoing, the Debtors shall open such New Account(s) at one of the Debtors’ current Banks or at banks that have executed a Uniform Depository Agreement with the U.S. Trustee for the District of Delaware, or at such banks that are willing to immediately execute such an agreement, and any New Account that the Debtors open in the United States shall

be (x) with a bank that is organized under the laws of the United States of America or any state therein, and that is insured by the FDIC and (y) designated a “Debtor-in-Possession” account by the relevant bank. The New Accounts are deemed to be Debtor Bank Accounts and are similarly subject to the rights, obligations, and relief granted in this Second Interim Order. The Banks are authorized (but not required, except as set forth in the cash management agreements between the Bank and the Debtors) to honor the Debtors’ requests to open or close (as the case may be) such Debtor Bank Account(s) or New Account(s). In the event that the Debtors open or close any Debtor Bank Account(s) or New Account(s), such opening or closing shall be timely indicated on the Debtors’ monthly operating reports and notice of such opening or closing shall be provided to the U.S. Trustee and counsel to any statutory committee appointed in the Chapter 11 Cases within fifteen business days. Nothing in this paragraph relieves the Debtors from complying with paragraph 14 of this Second Interim Order with respect to section 345(b) of the Bankruptcy Code.

14. The Debtors are authorized to deposit funds in accordance with existing practices under the Cash Management System as in effect as of the Petition Date, as described in the Motion, subject to any reasonable, non-material changes, consistent with this Second Interim Order, to the Cash Management System that the Debtors may implement, and, to the extent such practices are inconsistent with the requirements of section 345(b) of the Bankruptcy Code, the Debtors are hereby granted an extension of time for a period of thirty days (or such additional time as the U.S. Trustee may agree to) from the date of entry of this Second Interim Order (the “Extension Period”) within which to either come into compliance with section 345(b) of the Bankruptcy Code or to make such other arrangements as agreed with the U.S. Trustee. Such extension is without prejudice to the Debtors’ right to request from this Court a further extension of the Extension Period or a final waiver of the requirements under section 345(b).

15. Despite the Debtors' use of a consolidated Cash Management System, the Debtors shall calculate any quarterly fees due under 28 U.S.C. § 1930(a)(6) based on the disbursements of each Debtor, regardless of which Debtor, or other entity, pays those disbursements.

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

17. The UST Requirement to establish separate accounts for cash collateral and/or tax payments is hereby waived except as otherwise required by any applicable agreements between the Debtors and the Banks.

18. All Intercompany Claims arising after the Petition Date owed by a Debtor to another Debtor under any postpetition Intercompany Transactions authorized hereunder are hereby accorded superpriority administrative expense status under sections 503(b) and 507(a) of the Bankruptcy Code.

19. Nothing contained in the Motion or this Second Interim Order shall be construed to (a) create, alter, or perfect, in favor of any person or entity, any interest in cash of a Debtor that did not exist as of the Petition Date, or (b) alter or impair any security interest or perfection thereof, in favor of any person or entity, that existed as of the Petition Date.

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

21. 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 Second Interim Order.

22. The final hearing (the "**Final Hearing**") on the Motion shall be held on April 26, 2019, at 10:00 a.m., prevailing Eastern Time.

23. Nothing in the Motion or this Second Interim Order, or the Debtors' payment of any claims pursuant to this Second Interim Order, shall be 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 Second Interim Order. Nothing contained in this Second Interim Order shall be deemed to increase, reclassify, elevate to an administrative expense status, or otherwise affect any claim to the extent it is not paid.

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

Dated: March 22nd, 2019  
Wilmington, Delaware

RLF1 20966839v.1



LAURIE SELBER SILVERSTEIN  
UNITED STATES BANKRUPTCY JUDGE

**TAB S**

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**THIS IS EXHIBIT "S"**

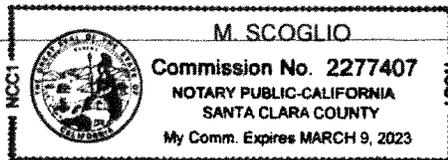
*referred to in the Affidavit of Alexandra Picard*

Sworn before me this 28<sup>TH</sup>

*day of March, 2019*



*A Commissioner for Taking Affidavits*



IN THE UNITED STATES BANKRUPTCY COURT  
FOR THE DISTRICT OF DELAWARE

----- X  
In re: : Chapter 11  
: :  
IMERYYS TALC AMERICA, INC., *et al.*,<sup>1</sup> : Case No. 19-10289 (LSS)  
: :  
Debtors. : (Jointly Administered)  
: :  
: Re: Docket No. 5 & 61  
----- X

**FINAL ORDER (I) AUTHORIZING THE FILING OF (A) A CONSOLIDATED MASTER LIST OF CREDITORS, (B) A CONSOLIDATED LIST OF THE TOP THIRTY LAW FIRMS REPRESENTING TALC CLAIMANTS, AND (C) A CONSOLIDATED LIST OF CREDITORS HOLDING THE THIRTY LARGEST UNSECURED CLAIMS, AND (II) APPROVING CERTAIN NOTICE PROCEDURES FOR TALC CLAIMANTS**

Upon the motion (the "Motion")<sup>2</sup> of the Debtors for an order (i) authorizing the Debtors to file (a) a consolidated master list of creditors, (b) a consolidated list of the top thirty law firms with the most significant Talc Claimant representations as determined by the volume and the type of Talc Claims (whether OC Claims or Mesothelioma Claims) asserted against the Debtors and related factors, and (c) a consolidated list of creditors holding the thirty largest unsecured claims (excluding Talc Claims), and (ii) approving the implementation of a set of notice procedures by which the Debtors shall (a) list the addresses of known counsel of record for the Talc Claimants, in lieu of the addresses of the Talc Claimants themselves, on the Debtors' creditor matrix and (b) send required notices, mailings, and other communications related to the Chapter 11 Cases to such known counsel of record for the Talc Claimants in lieu of sending such communications to the Talc Claimants themselves; and the Court having reviewed the Motion

<sup>1</sup> 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.

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

and the Picard Declaration; 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 proper and adequate notice of the Motion has been given and that no other or further notice is necessary; and the Court having found that the Notice Procedures (i) provide for adequate notice to the Talc Claimants, (ii) are reasonable and appropriate under the circumstances, and (iii) are reasonably calculated, under all the circumstances, to apprise the Talc Claimants of the noticed matters and afford them an opportunity to be heard thereon; 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, to the extent set forth herein.
2. All objections to the entry of this Order, to the extent not withdrawn or settled, are overruled.
3. The Debtors are authorized to file a consolidated Creditor List; provided, however, that if any of these chapter 11 cases converts to a case under chapter 7 of the Bankruptcy Code, the applicable Debtor shall file its creditor mailing matrix.
4. The Debtors are authorized to file a consolidated list of the top thirty law firms with the most significant Talc Claimant representations as determined by the volume and the

type of Talc Claims (whether OC Claims or Mesothelioma Claims) asserted against the Debtors and related factors.

5. The Debtors are authorized to file a consolidated list of creditors holding the thirty largest unsecured claims (excluding Talc Claims).

6. The Debtors are authorized to implement the Notice Procedures, such that the Debtors will (or direct the Claims Agent to) (a) list on the Creditor List the name and address of each Talc Claimant whose personal address is known to the Debtors, and separately list the name and address of such Talc Claimant's known counsel and (b) with respect to those Talc Claimants whose personal addresses are not known to the Debtors, list on the Creditor List, the names of each such Talc Claimant, followed by the name and address of known counsel of record for such Talc Claimant, in lieu of the address of the Talc Claimant. As to those Talc Claimants whose personal addresses are known to the Debtors, the Debtors shall send required notices, mailings, and other communications related to the Chapter 11 Cases to such Talc Claimants at their personal addresses, as well as to their known counsel. As to those Talc Claimants whose personal addresses are not known to the Debtors, the Debtors shall send required notices, mailings, and other communications related to the Chapter 11 Cases to such known counsel of record for the Talc Claimants in lieu of sending such communications to the Talc Claimants themselves, *provided* that the Debtors will (or direct the Claims Agent to) send required notices, mailing, and other communications directly to any Talc Claimants who so request such direct notice from the Debtors in writing and provide the Debtors with their address, or who file a request for notice under Bankruptcy Rule 2002.

7. For a law firm representing multiple Talc Claimants, the Debtors may serve each document only a single time on such law firm (at each relevant address) on behalf of all of such

counsel's clients; *provided that* any notice or other document relating specifically to one or more particular Talc Claimant (rather than all Talc Claimants represented by a law firm) shall clearly identify such parties.

8. Except as provided by any other subsequent order of this Court (including but not limited to any order establishing the form and manner of noticing of any claims bar dates or plan solicitation and voting procedures in these cases), the Debtors are not required to provide further notice to Talc Claimants beyond the notice set forth in the Notice Procedures.

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



4 LAURIE SELBER SILVERSTEIN  
UNITED STATES BANKRUPTCY JUDGE

Dated: March 19th, 2019  
Wilmington, Delaware

**TAB 3**



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 give to such terms in the Second Picard Affidavit.

3. **THIS COURT ORDERS** that 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 are hereby recognized and given full force and effect in all provinces and territories of Canada pursuant to Section 49 of the CCAA:

- (a) an order extending the time for filing schedules and statements (the "**Schedules and Statements Order**");
- (b) an order authorizing the employment and retention of KCIC LLC as insurance and valuation consultant (the "**KCIC LLC Retention Order**");
- (c) an order authorizing the employment and retention of Prime Clerk LLC as administrative advisor (the "**Prime Clerk LLC Retention Order**");
- (d) an order authorizing the employment and retention of Richards, Layton & Finger, P.A. as US co-counsel (the "**Richards, Layton & Finger, P.A. Retention Order**");
- (e) an order authorizing the employment and payment of professionals utilized in ordinary course of business (the "**Ordinary Course Professionals Order**");
- (f) an order establishing procedures for interim compensation for professional services and reimbursement of professional expenses (the "**Interim Compensation and Reimbursement Order**");
- (g) an order authorizing the employment and retention of Stikeman Elliott LLP as Canadian counsel (the "**Stikeman Retention Order**");

- (h) an order (i) authorizing, but not directing, the Debtors to pay certain prepetition claims as described in the Second Picard Affidavit held by (a) Shippers in an amount not to exceed USD\$3.3 million on a final basis (b) Lien Claimants in an amount not to exceed USD\$1.4 million on a final basis and (c) Royalty Interest Owners in an amount not to exceed USD\$900,000 on a final basis, each absent further order of the Court, (ii) authorizing, but not directing, the Debtors to pay 503(b)(9) Claims in an amount not to exceed USD\$300,000 absent further order of the Court; (iii) and confirming the administrative expense priority status of orders for goods not delivered until after the filing date (the “**Outstanding Orders**”) and authorizing, but not directing, the Debtors to pay prepetition amounts related to the Outstanding Orders (the “**Final Lien Claimants Order**”);
- (i) an order (i) authorizing, but not directing, the Debtors to pay prepetition obligations owed to certain critical vendors, up to USD\$1.1 million on a final basis, absent further order of the Court; and (ii) authorizing financial institutions to honor and process related checks and transfers (the “**Final Critical Vendor Order**”);
- (j) an order (i) authorizing, but not directing, the Debtors to pay prepetition obligations owed to foreign vendors, up to USD\$1.4 million on a final basis, absent further order of the Court; and (ii) authorizing financial institutions to honor and process related checks and transfers (the “**Final Foreign Vendor Order**”);
- (k) an order (i) authorizing, but not directing, the Debtors to pay Taxes and Fees (as defined in the First Day Declaration), whether accrued prior to, on or after the commencement of the US Proceedings, up to USD\$1.505 million on a final basis, absent further order of the Court; and (ii) authorizing financial institutions to honor and process related checks and transfers (the “**Final Taxes Order**”);
- (l) an order (i) authorizing the Debtors to (a) pay prepetition insurance and bonding obligations, up to USD\$700,000 for insurance obligations and bonding obligations, absent further order of the Court, (b) maintain their postpetition insurance coverage, and (c) maintain their bonding program, and (ii) authorizing financial institutions to honor and process related checks and transfers (the “**Final Insurance and Bonding Order**”);

- (m) an order (i) authorizing the Debtors to pay certain prepetition workforce obligations, including compensation, expense reimbursements, benefits, and related obligations, not exceeding the amount of USD\$2.587 million on a final basis, absent further order of the Court, and (ii) authorizing financial institutions to honor and process related checks and transfers (the “**Final Workforce Obligations Order**”);
- (n) an order with respect to utilities providers: (i) prohibiting utility service providers from altering or discontinuing service on account of prepetition invoices; (ii) approving an adequate assurance deposit as adequate assurance of postpetition payment to the utilities; and (iii) establishing procedures for resolving any subsequent requests by the utilities for additional adequate assurance of payment (the “**Final Utilities Order**”);
- (o) an order (i) authorizing the ability to honor prepetition obligations owed to customers and to otherwise continue customer programs, and (ii) authorizing financial institutions to honor and process related checks and transfers not exceeding the amount of USD\$1.9 million in the aggregate, absent further order of the Court (the “**Final Customer Programs Order**”);
- (p) an interim order authorizing, but not directing, maintenance of existing cash management system, including maintenance of existing bank accounts, checks and business forms, authorizing continuation of existing deposit practices, and approving the continuation of (and administrative expense priority status of) certain ordinary course intercompany transactions (the “**Second Interim Cash Management Order**”); and
- (q) an order authorizing the filing of (i) a consolidated master list of creditors, a list of the thirty law firms with the most significant representations of Talc Claimants, based on the volume of filings, potential scope, and type of alleged liability of the Debtors, or related factors, in lieu of a list of the holders of the thirty largest unsecured claims, and (ii) approving certain notice procedures for talc claimants (the “**Final Limit Notice and Approve Notice Procedures 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 shall be effective as of 12:01 am on the date of this Order.

6. **THIS COURT ORDERS** that any interested party may apply to this Court to vary or amend this Order or seek other relief on not less than seven (7) days' notice to the Debtors and the Foreign Representative and their respective counsel, and to any other party or parties likely to be affected by the order sought, or upon such other notice, if any, as this Court may order.

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

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

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

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

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

Proceeding commenced at Toronto

**ORDER**

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Lawyers for the Debtors

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

Proceeding commenced at Toronto

**MOTION RECORD  
(Returnable April 3, 2019)**

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