

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

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

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

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

**MOTION RECORD
(Re: FOREIGN ORDERS)
(Returnable April 1, 2020)**

March 27, 2020

STIKEMAN ELLIOTT LLP
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Lawyers for the Applicant

TO: ATTACHED SERVICE LIST

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

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

**SERVICE LIST
(November 26, 2019)**

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

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

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

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

I N D E X

TAB	DOCUMENT
1.	Notice of Motion, returnable April 1, 2020
2.	Affidavit of Anthony Wilson, sworn March 27, 2020
	Exhibit A: Order Approving Stipulation and Agreement Permitting Imerys Talc Canada Inc. to Make Payments to Imerys Talc America, Inc. for Non-Debtor Professional Fees (entered by the US Court on March 26, 2020)
3.	Draft Order

TAB 1

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

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

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

**NOTICE OF MOTION
(Re: STIPULATION ORDER)
(Returnable April 1, 2020)**

The Applicant, Imerys Talc Canada Inc. ("ITC"), will make a motion to a judge presiding over the Commercial List on April 1, 2020 at 10:00 a.m., or as soon after that time as can be heard, via telephone conference call.

PROPOSED METHOD OF HEARING: The motion is to be heard orally (via telephone).

THE MOTION IS FOR:

- (a) an order recognizing and enforcing in Canada an order of the US Court dated March 26, 2020 approving the stipulation and agreement permitting ITC to make payments to Imerys Talc America, Inc ("ITA"). for non-debtor professional fees (the "**Stipulation Order**");

THE GROUNDS FOR THE APPLICATION ARE:

- (a) capitalized terms not otherwise defined herein have the meaning ascribed to them in the Affidavit of Anthony Wilson, sworn March 27, 2020;

Generally

- (b) the Debtors are market leaders with respect to talc production in North America, representing nearly 50% of the market;
- (c) on February 13, 2019, the Debtors commenced the US Proceedings by filing voluntary petitions under Chapter 11;
- (d) 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;

- (e) 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;

The Stipulation Order

- (f) on March 26, 2020, the US Court entered the Stipulation Order approving the stipulation and agreement (the “**Stipulation**”) entered into by and among ITA, ITC, and Richter Advisory Group Inc., in its capacity as the information officer appointed by this Court, whereby ITC agreed to make payments to ITA on account of the professional fees and expenses incurred by the Debtors and related to the administration of the Chapter 11 Cases;
- (g) the Stipulation is intended to be a fair and equitable solution that alleviates potential liquidity constraints;
- (h) ITC now seeks an order from this Court recognizing the Stipulation Order to ensure consistency between the US Proceedings and these Proceedings;
- (i) the Information Officer supports the recognition of the Stipulation Order;

Other Grounds

- (j) the provisions of the CCAA, including Part IV thereof;
- (k) Rules 2.03, 3.02, 16, 17 and 37 of the *Rules of Civil Procedure*, R.R.O. 1990. Reg. 194, as amended;
- (l) such further and other grounds as counsel may advise and this Honourable Court may permit.

THE FOLLOWING DOCUMENTARY EVIDENCE will be used at the hearing of the motion:

- (a) the Affidavit of Anthony Wilson sworn March 27, 2020 and the exhibit referred

to therein (the "**Wilson Affidavit**") (the Wilson Affidavit was sworn via video conference and signed using e-signatures due to the inability to have it commissioned in person on account of the Covid-19 pandemic);

- (b) the Stipulation Order entered by the US Court, a copy of which is attached to the Wilson Affidavit;
- (c) the Sixth Report of the Information Officer, to be filed; and
- (d) such further and other materials as counsel may advise and this Honourable Court may permit.

March 27, 2020

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Lawyers for the Applicant

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

**NOTICE OF MOTION
(returnable April 1, 2020)**

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TAB 2

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

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

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**AFFIDAVIT OF ANTHONY WILSON
(Sworn March 27, 2020)**

I, Anthony Wilson, 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 Treasurer and Director of Finance 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 2012, and have served in various roles, including as Vice President of the Debtors before appointment to my current role. I have served as Treasurer for each of the Debtors since July 1, 2019. I am authorized to submit this Affidavit on behalf of the Debtors.
2. In my role as Treasurer and Director of Finance, I am responsible for overseeing the day-to-day 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 role and tenure with the Debtors, my review of public and non-public documents, and my discussions with other members of the Debtors' management team, I either have personal knowledge or am generally familiar with the Debtors' businesses, financial condition, policies, and procedures, day-to-day operations, and books and records. Except as otherwise noted, I have personal knowledge of the matters set forth herein or have gained knowledge of such matters from the Debtors' employees or retained advisers that report to me in the ordinary course of my responsibilities.

3. I swear this affidavit in support of ITC's motion pursuant to the *Companies' Creditors Arrangement Act*, R.S.C. 1985 c. C-36, as amended (the "**CCAA**"), for an order granting certain relief, including recognizing the Stipulation Order (as such term is defined below) in respect of the jointly administered proceeding of the Debtors under title 11 of the United States Code (the "**US Bankruptcy Code**").¹

I. OVERVIEW

4. The Debtors are three debtors in possession in the Chapter 11 Cases (as defined below) commenced before the United States Bankruptcy Court for the District of Delaware (the "**US Court**").
5. The Debtors' operations were acquired by affiliates of 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 have sought protection under the US Bankruptcy Code 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. As of the Filing Date (defined below), one or more of the Debtors were named as defendants in approximately 14,674 lawsuits 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 determined that

¹ Capitalized terms used but not defined herein shall have the meanings attributable to such terms in the previous affidavits filed with the Court including the First Picard Affidavit sworn February 15, 2019, Second Picard Affidavit sworn March 28, 2019, Third Picard Affidavit sworn May 15, 2019, the First Wilson Affidavit sworn July 31, 2019, the Second Wilson Affidavit sworn October 22, 2019 and the Third Wilson Affidavit sworn November 26, 2019.

coordinated and court-supervised Chapter 11 Cases were 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 the US Bankruptcy Code (the “**Chapter 11 Cases**”) with the US Court (the “**US Proceeding**”).
9. On February 14, 2019, the US Court entered various orders in the US Proceeding (the “**First Day Orders**”), including an order authorizing ITC to act as foreign representative on behalf of the Debtors’ estates in any judicial or other proceedings in Canada and an order placing the Chapter 11 Cases under joint administration in the US Proceeding.
10. 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. Since then, the US Court has made a number of orders which are described in greater detail in prior affidavits filed by the Debtors in this proceeding.

II. UPDATE ON THE US AND CANADIAN PROCEEDINGS

Claims Process Update

11. On August 7, 2019, this Court recognized the Bar Date Order which established October 15, 2019 as the date by which all persons or entities that wish to assert a claim against the Debtors that arose prior to the Filing Date but excluding any “Talc Claims” (as defined in the Bar Date Order) (a “**General Claim**”) had to file a proof of claim in accordance with the procedures described therein. Pursuant to the Bar Date Order, persons or entities that appeared on the Debtors’ Schedules as having claims against ITC would only have to file a proof of claim if they disputed the (a) amount of the claim listed on the Schedules, (b) the classification of the claim on the Schedules or (c) the Debtor who is liable for such claim, and/or the claim was listed as being disputed, unliquidated or contingent.
12. On December 3, 2019, this Court recognized the Indirect Talc Claims Bar Date Order, which authorized the Debtors to establish January 9, 2020 as the date by which all persons or entities that wish to assert Indirect Talc Claims (as defined in the Talc Claims Bar Date Order) against the Debtors must file a proof of claim in accordance with the procedures described therein. The Indirect Claims Bar Date applies to all creditors holding Indirect

Talc Claims against the Debtors that arose, or are deemed to have arisen, prior to the Filing Date, except as provided in the Indirect Talc Claims Bar Date Order.

13. On February 28, 2020, the Debtors filed their first omnibus (non-substantive) objection to certain amended claims and duplicative claim (the “**Claim Objection**”). The Claim Objection sought authority to disallow, expunge, and/or modify the amended claims and duplicative claims identified in the Claim Objection. The amended claims were claims that have been amended and superseded by subsequently-filed proofs of claim. The duplicative claims were claims believed to have been erroneously filed twice in the same amount against the same Debtor. Failure to disallow such claims would entitle claimants to receive a double recovery against the Debtors to the detriment of other unsecured creditors.
14. As of March 27, 2020, the Debtors are still undertaking a claims reconciliation process to identify outstanding claims, including trade claims, against each of the Debtors, including ITC. The Debtors believe that, following the completion of the reconciliation process, the outstanding prepetition trade claims against ITC will be relatively minimal.
15. The Debtors will have an opportunity to challenge additional claims against them in accordance with court-approved procedures. The timing of such a claims objection process is still being determined.

US Court Orders

16. The Debtors have been actively pursuing their restructuring efforts in the US. Since the last motion before this Court on December 3, 2019, the US Court has entered the following orders:
 - a) *Order Pursuant to Section 105 of the Bankruptcy Code and Rules 2002, 6004, and 9019 of the Federal Rules of Bankruptcy Procedure Authorizing and Approving the Debtors Entering into the Settlement Agreement with the Resolute-Managed Insurers*, filed on December 13, 2019 [Docket No. 1326], this order approved a settlement agreement (the “**RMI Settlement**”) between the Debtors, National Union Fire Insurance Company of Pittsburgh, Pa., Columbia Casualty Company, Continental Casualty Company, The Continental Insurance Company, Lamorak Insurance Company, Lexington Insurance Company, and Berkshire Hathaway

Specialty Insurance Company (collectively, “**RMI**”), ITA, Cyprus Amax Minerals Company and Cyprus Mines Corporation (together “Cyprus”), Rawle & Henderson LLP, Dentons US LLP, and Alston & Bird LLP (“**Alston**”), whereby RMI agreed to pay certain of the Debtors’ defense counsel, vendors, and experts an amount of \$7,203,714 to satisfy certain prepetition and post-petition defense costs for legal work and other professional services provided in connection with the defense of ITA and/or Cyprus in talc-related litigation;²

- b) *Order Pursuant to Section 105 of the Bankruptcy Code and Rules 2002, 6004, and 9019 of the Federal Rules of Bankruptcy Procedure Authorizing and Approving the Debtors Entering Into the Settlement Agreement with Alston & Bird LLP*, filed on December 17, 2019 [Docket No. 1339], this order approved a settlement agreement between the Debtors and Alston, whereby the Debtors permitted Alston to draw down a portion of a retainer from the Debtors in satisfaction of monies owed to Alston but not fully paid under the RMI Settlement, and Alston agreed to release any claim to the remaining portion of the retainer and refund the remainder of the retainer, totaling \$844,745.60, to ITA;
- c) *Order Appointing Mediator*, filed on December 26, 2019 [Docket No. 1370], as amended by the *First Amended Order Appointing Mediator*, filed on February 26, 2020 [Docket No. 1502], appointing Lawrence W. Pollack to serve as mediator and conduct non-binding mediation regarding disputes over certain indemnity and insurance obligations allegedly owed to the Debtors;
- d) *Order Further Extending Debtors Current Exclusive Periods Within Which To File A Chapter 11 Plan And To Solicit Acceptances Thereof*, filed on December 26, 2019 [Docket No. 1371], this order extended the Debtors’ exclusive period within which to file a plan of reorganization to March 9, 2020 and to solicit votes on such plan to May 11, 2020;
- e) *Order Approving Stipulation and Agreement by and Between the Debtors and Riverstone Insurers Regarding Indirect Talc Claim Bar Date*, filed on January 14, 2020 [Docket No. 1418], this order approved a stipulation between the Debtors and the RiverStone Insurers (the “**RiverStone Stipulation**”) providing that the

² In conjunction with the RMI Settlement, the parties agreed to mutual releases related to prepetition defence costs.

RiverStone Insurers (i) are not obligated to file for any Indirect Talc Claim and (ii) are not bound or barred by the Indirect Claims Bar Date;

- f) *Order Approving Stipulation and Agreement by and Between the Debtors and Employers Mutual Casualty Company Regarding Indirect Talc Claim Bar Date*, filed on January 14, 2020 [Docket No. 1419], this order approved a stipulation between the Debtors and Employers Mutual Casualty Company providing that Employers Mutual Casualty Company (i) is not obligated to file for any Indirect Talc Claim and (ii) is not bound or barred by the Indirect Claims Bar Date.
17. At this time, the Debtors are not seeking to recognize any of the orders listed above.

Plan Negotiation

18. The Debtors continue to engage with other stakeholders in good faith, arms'-length negotiations with respect to a potential plan of reorganization (the "**Plan**") as contemplated by section 1125 of the US Bankruptcy Code.
19. The Debtors have, to date, invested considerable time negotiating the framework for the Plan with their key creditors. These efforts have entailed various meetings and correspondence regarding the formulation of a consensual chapter 11 plan and the implementation of a global settlement to resolve the Debtors' talc liabilities. The parties continue to advance plan negotiations and the Debtors intend to work with key parties to formalize an ultimate settlement into a consensual plan of reorganization.

Change of Canadian Resident Director

20. In February 2020, the sole Canadian resident director on the board of directors for ITC resigned. In connection with Canadian law requirements, ITC identified a replacement director to serve on the board, Matthias Reisinger, who is a Canadian resident. Mr. Reisinger is an existing ITC employee. As a director, Mr. Reisinger is no longer eligible to participate in the Debtors' Key Employee Retention Plan. Mr. Reisinger is entitled to receive a director fee as compensation.

III. OVERVIEW OF THE FOREIGN ORDER SOUGHT TO BE RECOGNIZED

Stipulation Order

21. On March 26, 2020, the US Court entered an order (the “**Stipulation Order**”) approving the stipulation and agreement (the “**Stipulation**”) entered into by and among ITA, ITC, and Richter Advisory Group Inc., in its capacity as the information officer appointed by this Court, whereby ITC agreed to make payments to ITA on account of the professional fees and expenses incurred by the Debtors and related to the administration of the Chapter 11 Cases, including the fees and expenses of professionals retained by the official committee of tort claimants and professionals retained by the legal representative for future talc personal injury claimants (together, the “**Non-Debtor Professional Fees**”). The official committee of tort claimants was appointed by the US Trustee to represent present claimants and the Debtors sought appointment of the representative for future talc personal injury claimants so that the Debtors could engage in consensual plan-related negotiations with representatives for all talc claimants in an effort to attempt to reach a consensual plan that is in the best interests of all stakeholders and the Debtors.
22. A copy of the Stipulation Order is attached as **Exhibit “A”** to this affidavit (the Stipulation itself is included as an exhibit to the Stipulation Order).
23. Over the course of the Chapter 11 Cases, the Debtors have incurred, and continue to incur, professional fees and expenses related to the administration of the Chapter 11 Cases (the “**Professional Fees**”), including the Non-Debtor Professional Fees. The Debtors are required to pay the Non-Debtor Professional Fees in connection with the chapter 11 proceeding. For purposes of administrative convenience only, ITA, on behalf of itself and the other Debtors, has paid, and continues to pay, such professional fees and expenses as they become due. ITC has reimbursed, and intends to continue to reimburse, ITA for one-third of the fees and expenses of professionals retained by the Debtors related to the administration of the Chapter 11 Cases. To date, the Debtors and the Information Officer have not come to an agreement on what payments, if any, ITC should make to ITA in respect of ITA’s payment of the Non-Debtor Professional Fees on behalf of the Debtors.
24. The Stipulation is intended to alleviate potential liquidity constraints arising from ITA’s payment of all Non-Debtor Professional Fees during the Chapter 11 Cases.

25. The Stipulation represents a simpler and more efficient solution than likely could be obtained through further negotiation or litigation regarding the correct allocation of ITC's liability for the Non-Debtor Professional Fees. The Stipulation is fair and equitable, represents a reasonable compromise; and obviates the expense, delay, inconvenience and uncertainty that would attend any such litigation.
26. The Information Officer is a party to the Stipulation. At all important times during the negotiation of the Stipulation, the Information Officer was closely involved to ensure that it is fair and appropriate to ITC's stakeholders.

IV. CONCLUSION

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

SWORN BEFORE ME via video conference on March 27, 2020.

DocuSigned by:
Nicholas Avis
2C12EFAB5242430...

Nicholas Avis
(in the Province of Ontario)
Commissioner for Taking Affidavits
LSO #76781Q

DocuSigned by:
Anthony Wilson
DD1DA9D1340C4AF...

Anthony Wilson
(in the State of California)

This is
EXHIBIT "A"
to the Affidavit of
ANTHONY WILSON
Sworn March 27, 2020

DocuSigned by:

Nicholas Avis

2C12FEAB5242430

Nicholas Avis
Commissioner for Taking Affidavits
LSO #76781Q

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

	X	
In re:	:	Chapter 11
	:	
IMERYS TALC AMERICA, INC., <i>et al.</i> , ¹	:	Case No. 19-10289 (LSS)
	:	
Debtors.	:	(Jointly Administered)
	:	
	X	Re: Docket No. 1537

**ORDER APPROVING STIPULATION AND AGREEMENT
PERMITTING IMERYS TALC CANADA INC. TO MAKE PAYMENTS
TO IMERYS TALC AMERICA, INC. FOR NON-DEBTOR PROFESSIONAL FEES**

Upon the motion (the “**Motion**”)² of the debtors and debtors in possession in the above-captioned cases (collectively, the “**Debtors**”) for entry of an order (this “**Order**”) approving the *Stipulation and Agreement Permitting Imerys Talc Canada Inc. to Make Payments to Imerys Talc America, Inc. for Non-Debtor Professional Fees*, a copy of which is attached hereto as Exhibit 1 (the “**Stipulation**”), all as more fully set forth in the Motion; and due and sufficient notice of the Motion having been provided under the particular circumstances, and it appearing that no other or further notice need be provided; 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 consideration of the Motion and the relief requested therein being a core proceeding under 28 U.S.C. § 157(b); and that this Court may enter a final order consistent with Article III of the United States Constitution; and venue being proper before this Court under 28 U.S.C. §§ 1408 and 1409; and the Court having found and determined that the relief requested in the Motion is in the best interests of the Debtors, their estates and creditors, and any parties in interest; and that

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

² Capitalized terms used but not defined in this Order have the meanings used in the Motion.

the legal and factual bases set forth in the Motion establish just cause for the relief granted herein; and after due deliberation thereon and sufficient cause appearing therefor,

IT IS HEREBY ORDERED THAT:

1. The Motion is GRANTED to the extent set forth herein.
2. The Stipulation, attached hereto as Exhibit 1, is approved.
4. The Parties and their officers and agents are authorized and directed to execute, deliver, implement and fully perform any and all obligations, instruments, documents and papers and to take any and all actions reasonably necessary or appropriate to consummate and fully execute the Stipulation and effectuate its terms.
6. This Court shall retain jurisdiction over any and all issues arising from or related to the implementation and interpretation of the Stipulation or this Order.

**Dated: March 26th, 2020
Wilmington, Delaware**


**LAURIE SELBER SILVERSTEIN
UNITED STATES BANKRUPTCY JUDGE**

EXHIBIT 1

Stipulation

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

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

**STIPULATION AND AGREEMENT PERMITTING
IMERYS TALC CANADA INC. TO MAKE PAYMENTS TO
IMERYS TALC AMERICA, INC. FOR NON-DEBTOR PROFESSIONAL FEES**

This stipulation and agreement (the “**Stipulation**”) is entered into by and among Imerys Talc America, Inc. (“**ITA**”) and Imerys Talc Canada Inc. (“**ITC**”), each a debtor and debtor in possession in the above-captioned cases, and Richter Advisory Group Inc., in its capacity as the information officer appointed by the Canadian Court (as defined below) (the “**Information Officer**” and, together with ITA and ITC, the “**Parties**”). The Parties have agreed that ITC will make payments to ITA on account of the Non-Debtor Professional Fees (as defined below), subject to the terms and conditions set forth below:

RECITALS

A. On February 13, 2019 (the “**Petition Date**”), ITA, ITC and Imerys Talc Vermont, Inc. (collectively, the “**Debtors**”) filed voluntary petitions in the United States Bankruptcy Court for the District of Delaware (the “**Bankruptcy Court**”) commencing cases (the “**Chapter 11 Cases**”) for relief under title 11 of the United States Code (the “**Bankruptcy Code**”). The

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

Chapter 11 Cases are jointly administered for procedural purposes only pursuant to Rule 1015(b) of the Federal Rules of Bankruptcy Procedure (the “**Bankruptcy Rules**”).

B. On February 20, 2019, ITC, as the “foreign representative” acting on behalf of the Debtors’ estates, commenced an ancillary proceeding (the “**Canadian Proceeding**”) under the Companies’ Creditors Arrangement Act (Canada), R.S.C. 1985, c. C-36 as amended, in the Ontario Superior Court of Justice (Commercial List) (the “**Canadian Court**”) in Ontario, Canada. The Canadian Court appointed the Information Officer to report to the Canadian Court regarding the Chapter 11 Cases and matters relevant to the Canadian Proceeding.

C. On April 24, 2019, the Bankruptcy Court entered the *Final 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* [Docket No. 428] (the “**Final Cash Management Order**”). Pursuant to the Final Cash Management Order, intercompany claims arising after the Petition Date between ITA and ITC are accorded superpriority administrative expense status.

D. Over the course of the Chapter 11 Cases, the Debtors have incurred, and continue to incur, professional fees and expenses related to the administration of the Chapter 11 Cases (the “**Professional Fees**”), including the fees and expenses of professionals retained by the official committee of tort claimants (the “**TCC Professional Fees**”) and professionals retained by the legal representative for future talc personal injury claimants (the “**FCR Professional Fees**”) and, together with the TCC Professional Fees, the “**Non-Debtor Professional Fees**”).

E. For purposes of administrative convenience only, ITA, on behalf of itself and the other Debtors, has paid, and continues to pay, the Professional Fees as they become due. ITC has reimbursed, and intends to continue to reimburse, ITA for one-third of the fees and expenses of professionals retained by the Debtors related to the administration of the Chapter 11 Cases. To date, the Parties have not come to an agreement on what payments, if any, ITC should make to ITA in respect of ITA's payment of the Non-Debtor Professional Fees on behalf of the Debtors.

F. In order to alleviate potential liquidity constraints arising from ITA's payment of all Non-Debtor Professional Fees during the Chapter 11 Cases, the Parties desire to reach an agreement regarding payment by ITC to ITA in connection with such Non-Debtor Professional Fee payments.

AGREEMENT

1. ITC is authorized and directed to pay funds totaling \$3,450,000 (USD) to ITA, reflecting approximately (i) 33.33% of FCR Professional Fees and (ii) 26.5% of TCC Professional Fees paid by ITA through February 28, 2020 (the "**Initial ITC Payment**").

2. Upon request from ITA, to the extent ITC holds sufficient funds and with the consent of the Information Officer at least four calendar days in advance of the payment, ITC shall also be authorized and directed to pay ITA on a periodic basis for (i) 33.33% of FCR Professional Fees and (ii) 26.5% of TCC Professional Fees paid by ITA after February 28, 2020.

3. Upon agreement of the Parties, ITC may pay ITA for Non-Debtor Professional Fees paid by ITA in excess of the percentages specified in Paragraphs 1 and 2.

4. The Initial ITC Payment and any subsequent payments made pursuant to Paragraph 2 and/or Paragraph 3 above (together with the Initial ITC Payment, the "**ITC**

Payments”) shall be accorded superpriority administrative expense status (an **ITC Superpriority Claim**”) in accordance with the Final Cash Management Order; *provided, however* that any ITC Superpriority Claim arising in connection with this Stipulation shall be considered satisfied in full and extinguished, and ITA shall have no obligation to return or otherwise refund any ITC Payments, upon confirmation of a plan of reorganization that provides for payment in full of allowed general unsecured claims of ITC (collectively, **ITC General Unsecured Claims**”). For the avoidance of doubt, ITC General Unsecured Claims do not include claims that are: (i) entitled to priority under section 507(a) of the Bankruptcy Code, (ii) talc-related personal injury claims (including, without limitation, indirect talc personal injury claims), or (iii) any claim against a Debtor held by another Debtor or non-Debtor affiliate.

5. For the avoidance of doubt, nothing contained herein, including the Parties’ agreement with respect to any ITC Superpriority Claim, shall be considered (i) a determination, admission, waiver or settlement of any obligation of ITC to reimburse ITA for Non-Debtor Professional Fees paid by ITA for the benefit of all Debtors or (ii) an acknowledgement or finding as to the correct percentage allocation of ITC’s liability for any Professional Fees, including Non-Debtor Professional Fees, incurred by the Debtors in connection with the Chapter 11 Cases. Nothing contained herein shall prohibit ITA from seeking reimbursement from ITC on account of any Professional Fees paid on ITC’s behalf.

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

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

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

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

10. This Stipulation shall be effective immediately upon approval by the Bankruptcy Court and recognition by the Canadian Court.

11. This Stipulation is expressly subject to and contingent upon its approval by the Bankruptcy Court and recognition by the Canadian Court. If the Bankruptcy Court does not approve, or the Canadian Court does not recognize, this Stipulation, this Stipulation shall be null and void.

12. The Bankruptcy Court shall retain jurisdiction to hear any matters or disputes arising from or relating to this Stipulation.

SO STIPULATED:

/s/ Amanda R. Steele

/s/ Kathryn Esaw

RICHARDS, LAYTON & FINGER, P.A.

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Counsel for Debtors and Debtors-in-Possession

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 ANTHONY WILSON
SWORN MARCH 27, 2020**

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Lawyers for the Applicant

TAB 3

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

THE HONOURABLE

)

WEDNESDAY, THE 1st

)

JUSTICE MCEWEN

)

DAY OF APRIL, 2020

**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**

**ORDER
(STIPULATION ORDER)**

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

ON READING the affidavit of Anthony Wilson sworn March 27, 2020 (the "**Wilson Affidavit**"), the Sixth Report of Richter Advisory Group Inc., in its capacity as information officer (the "**Information Officer**") dated March ●, 2020, each filed, and upon being provided with copies of the documents required by section 49 of the CCAA,

AND UPON HEARING the submissions of counsel for the Foreign Representative, counsel for the Information Officer, no one else appearing for any other parties although duly served as appears from the Affidavit of Service of Nicholas Avis sworn March ●, 2020,

SERVICE

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

RECOGNITION OF FOREIGN ORDERS

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

3. **THIS COURT ORDERS** that the following order 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 is 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 dated March 26, 2020 approving stipulation and agreement permitting Imerys Talc Canada Inc. to make payments to Imerys Talc America, Inc. for non-debtor professional fees (the “**Stipulation 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.

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
(BONUS AND FEE PAYMENT ORDERS)**

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

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

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

Proceeding commenced at Toronto

**MOTION RECORD
(FOREIGN ORDERS)
(returnable April 1, 2020)**

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