

**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**

---

**FACTUM OF THE APPLICANT  
(Re: Recognition of the Sale Approval Order)  
(Returnable November 25, 2020)**

---

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

**Maria Konyukhova** LSO#: 52880V  
Tel: (416) 869-5230  
[mkonyukhova@stikeman.com](mailto:mkonyukhova@stikeman.com)

**Nicholas Avis** LSO#: 76781Q  
Tel: (416) 869-5504  
[navis@stikeman.com](mailto:navis@stikeman.com)  
Fax: (416) 947-0866

Lawyers for the Applicant

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

PART I - OVERVIEW

1. Imerys Talc Canada Inc. ("**ITC**"), Imerys Talc America, Inc. ("**ITA**") and Imerys Talc Vermont, Inc. ("**ITV**", and together with ITC and ITA, the "**Debtors**") are the North American market leaders in talc production, representing nearly 50% of the market, and are affiliated entities of Imerys S.A ("**Imerys**"), a French corporation that is the direct or indirect parent entity of over 360 affiliated entities (the "**Imerys Group**").
2. Capitalized terms used herein but not otherwise defined have the meanings ascribed to them in the Affidavit of Anthony Wilson, sworn November 20, 2020 (the "**Seventh Wilson Affidavit**").
3. On February 13, 2019, the Debtors commenced insolvency proceedings (the "**US Proceeding**") by filing the Petitions with the United States Bankruptcy Court for the District of Delaware (the "**US Court**").

Seventh Wilson Affidavit at para 8, Applicant's Motion Record dated November 20, 2020 (the "**Motion Record**"), Tab 2.

4. On February 20, 2019, this Court (i) made an initial recognition order under Part IV of the *Companies' Creditors Arrangement Act*, R.S.C. 1985, c. C-36 ("**CCAA**") and (ii) issued a supplemental order recognizing the First Day Orders and appointing Richter Advisory Group Inc. as the Information Officer.

Seventh Wilson Affidavit at para 11, Motion Record, Tab 2.

5. On November 17, 2020, the US Court entered the Sale Approval Order that, among other things, approved the sale of substantially all of the Debtors' assets to Magris Resources.

Seventh Wilson Affidavit at para 34, Motion Record, Tab 2.

6. This factum is filed in support of the motion brought by ITC, in its capacity as foreign representative of the Debtors, seeking an order (the "**Recognition Order**"), substantially in the form of the draft order at Tab 3 of the Motion Record, that recognizes and enforces the Sale Approval Order.

## **PART II - FACTS**

7. The relevant facts in connection with this motion are briefly set out below and more fully described in the Seventh Wilson Affidavit.

### **A. The Debtors' Sale**

#### ***Overview***

8. The Debtors' stated purpose of the Chapter 11 Cases is to confirm a plan of reorganization that will maximize the value of the Debtors' assets for the benefit of all stakeholders and include a trust mechanism to address Talc Personal Injury Claims in a fair and equitable manner. To this effect, the Debtors filed with the US Court Third Amended Plan and the Third Amended Disclosure Statement on October 16, 2020.

Seventh Wilson Affidavit at paras 14 and 15, Motion Record, Tab 2.

9. A key aspect of the Third Amended Plan is the sale (the "**Sale**") of substantially all of the Debtors' assets to one or more purchaser(s) pursuant to section 363 of the US Bankruptcy Code. The Sale is intended to make available additional funding for the benefit of the Debtors' estates, and, ultimately, the Talc Personal Injury Trust because, as anticipated under the Third Amended Plan, the net proceeds from the Sale (less any related expenses) will be contributed to the Talc Personal Injury Trust.

Seventh Wilson Affidavit at paras 17, Motion Record, Tab 2.

***The Sale Process***

10. The Debtors formally commenced their sale process on May 15, 2020. The sale process consisted of two phases, which was intended to create a sufficiently competitive environment in order to attract the highest and/or best bid for the Debtors' assets:
  - (a) the first phase included an extensive marketing effort, with outreach to various potential bidders and an initial diligence process. Interested parties had until July 17, 2020 at 4:00 p.m. ET to evaluate the Debtors' businesses and submit indications of interest. Potential bidders were selected, with the consent of the Tort Claimants' Committee and the Future Claimants' Representative, by July 24, 2020 at 4:00 p.m. ET; and
  - (b) in the second phase, following the identification of potential bidders, participants had the opportunity to finalize outstanding diligence, secure acquisition financing as needed, and submit a binding offer by November 10, 2020 at 4:00 p.m. ET. In addition, the Debtors requested that potential bidders submit a non-binding, check-in bid on or before August 21, 2020.

Seventh Wilson Affidavit at para 23, Motion Record, Tab 2.

11. PJT, the Debtors' investment banker, contacted approximately 110 potentially interested parties on behalf of the Debtors during the first phase. Fifty parties executed confidentiality agreements and were granted access to the confidential information presentation.

Seventh Wilson Affidavit at para 24, Motion Record, Tab 2.

12. At the end of the first phase on July 17, 2020, the Debtors received 25 non-binding indications of interest. Certain of these indications of interest were for the entire Debtors' business, whereas others were for a segment of the Debtors' business. The Debtors, with the consent of the Tort Claimants' Committee and the Future Claimants' Representative, designated 17 of the interested parties as potential bidders.

Seventh Wilson Affidavit at para 26, Motion Record, Tab 2.

13. During the second phase, the Debtors, with PJT's assistance, continued to provide potential bidders with diligence information. On August 21, 2020, 13 potential bidders

submitted a check-in bid, which was either a re-submission of their initial indication of interest or a revision thereof.

Seventh Wilson Affidavit at para 27, Motion Record, Tab 2.

14. The Debtors and their advisors engaged in discussions and negotiations with certain potential bidders regarding the potential to serve as the Stalking Horse Bidder. The Debtors ultimately advanced negotiations with Magris Resources and, on October 13, 2020, in accordance with the Bidding Procedures Order, the Debtors selected Magris Resources as the proposed Stalking Horse Bidder, subject in all respects to the terms and conditions of the Stalking Horse Agreement dated October 13, 2020 and amended on October 27, 2020.

Seventh Wilson Affidavit at para 28, Motion Record, Tab 2.

15. The Purchase Price payable to the Debtor under the Stalking Horse Agreement is (i) \$223,000,000 in cash consideration, and (ii) the assumption of the Assumed Liabilities (as defined in the Stalking Horse Agreement).

Seventh Wilson Affidavit at para 29, Motion Record, Tab 2.

16. The US Court entered the Stalking Horse Approval Order on October 29, 2020. This Court recognized and gave full force and effect in Canada to the Stalking Horse Approval Order on November 3, 2020.

Seventh Wilson Affidavit at paras 30 to 32, Motion Record, Tab 2.

***Selection of the Successful Bid***

17. No Qualified Bids or Overbids (each as defined in the Bidding Procedures) other than the Stalking Horse Bid were received by the Debtors by the bid deadline on November 10, 2020 at 4:00 p.m. ET. Magris Resources was declared the successful bidder on November 11, 2020.

Seventh Wilson Affidavit at para 34, Motion Record, Tab 2.

18. The US Court heard the motion seeking the entry of the Sale Approval Order on November 16, 2020, and on November 17, 2020, the US Court entered the Sale Approval Order. The Sale Approval Order, among other things, authorized and approved of the sale of the Debtors' assets free and clear to Magris Resources.

Seventh Wilson Affidavit at para 34, Motion Record, Tab 2.

***Impact on Canadian Stakeholders***

19. The Stalking Horse Agreement provides that Magris Resources will purchase and acquire substantially all of the Debtors' assets. This includes "all Non-Real Property Contracts...including...Assumed Plans and, to the extent required by Law, all Collective Bargaining Agreements", "all Owned Real Property, Leased Real Property under the Assumed Real Property Leases and all other rights-of-way, surface leases, surface use agreements, easements, real property interests, real rights, licenses, servitudes, Permits and privileges owned or held for use by the Selling Entities and constituting real property or a real property interest, together with the rights, tenements, appurtenant rights and privileges relating thereto", and "the Assumed Plans and any assets that are set aside, whether or not in trust, with respect to any Assumed Plan and all trust agreements, insurance contracts, administrative service agreements and investment management agreements related to the funding and administration of the Assumed Plans".

Seventh Wilson Affidavit at para 37, Motion Record, Tab 2.

Stalking Horse Agreement at s. 2.1, Motion Record, Tab 2 – Exhibit B (Exhibit A)

20. The assets being acquired by Magris Resources include assets located in Canada and held by ITC, such as a talc mine in Timmins, Ontario; a land lease, aggregate permit and a patent mine holding in Penhorwood, Ontario; a leased distribution centre in Foleyet, Ontario; and a warehouse in Mississauga, Ontario.

Seventh Wilson Affidavit at para 38, Motion Record, Tab 2.

21. The "Assumed Plans" being acquired by Magris Resources include all "ITC Benefit Plans and such other Company Benefit Plans as are set forth on Schedule 7.9(b)". This means that as part of the Stalking Horse Agreement, Magris Resources will assume ITC's two Pension Plans:

- (a) the Pension Plan for Employees of Imerys Talc Canada Inc. (Financial Services Regulatory Authority and Canada Revenue Agency No. 0998567); and
- (b) the Pension Plan for Bargaining Unit Employees of Imerys Talc Canada Inc. (Financial Services Regulatory Authority and Canada Revenue Agency No. 0992859).

Seventh Wilson Affidavit at para 39, Motion Record, Tab 2.

22. The Debtors do not anticipate that there will be any immediate changes to the Pension Plans as a result of the sale to Magris Resources.

Seventh Wilson Affidavit at para 40, Motion Record, Tab 2.

### **PART III - ISSUES**

23. The sole issue on this motion is whether the Court should grant the Recognition Order sought by ITC to recognize and enforce, pursuant to s. 49 of the CCAA, the Sale Approval Order.

### **PART IV - ARGUMENT**

**A. This Court has the jurisdiction to grant the Recognition Order under Part IV of the CCAA**

24. This Court has recognized the US Proceeding as a “foreign main proceeding” pursuant to Part IV of the CCAA. When a foreign main proceeding has been recognized under Part IV of the CCAA, s. 49 empowers this Court to make any order that it considers appropriate to protect the debtor’s property or the interests of one or more creditors. The Court’s discretion is broad: an order under Part IV “may be made on any terms and conditions that the court considers appropriate in the circumstances”.

CCAA, s. 49(1) and 50.

25. Section 50 of the CCAA further provides that an order made under Part IV of the CCAA, including pursuant to s. 49, may be made on any terms and conditions that the Court considers appropriate. Once an order recognizing a foreign proceeding is made, the Court is required to cooperate, to the maximum extent possible with the foreign representative and the foreign court, so long as the requested relief is not inconsistent with the CCAA or which would raise concerns regarding public policy.

CCAA, s. 50.

26. The central principle animating the exercise of the Court’s discretion under Part IV is comity, which is embodied in ss. 44(a) and 52(1) of the CCAA. Pursuant to the principle of comity, a Canadian court will accord respect to “the overall thrust of foreign bankruptcy and insolvency legislation in any analysis, unless in substance generally it is so different from the bankruptcy and insolvency law of Canada or perhaps because the

legal process that generates the foreign order diverges radically from the process here in Canada.”

*Babcock & Wilcox Canada Ltd (Re)*, 2000 CanLII 22482 (ONSC) [*Re Babcock*] at para 21 ([CanLII](#)).

CCAA, ss. 44(a) and 52(1).

27. In cross-border insolvencies, Canadian and US courts routinely seek to complement, coordinate and, where appropriate, accommodate the proceedings of the other court to enable cross-border enterprises to successfully restructure. Comity and cooperation are increasingly important in the restructuring context because as businesses become more internationalized those businesses will have a significant number of assets and also carry on businesses in several jurisdictions. Without coordination by the courts of cross-border restructuring proceedings, the result would be multiple proceedings with the likely consequence of inconsistent court orders and decisions and general uncertainty as to the direction and effect on creditors and stakeholders in various jurisdictions of the restructuring proceedings.

*Re Babcock* at paras 9-10 ([CanLII](#)), citing *Taylor v Dow Corning Australia Pty Ltd.* (December 18, 1997), Doc 8438/95 (Australia Vic Sup Ct).

**B. Canadian courts have recognized US sale orders in other Part IV proceedings**

28. Canadian courts often recognize sale approval orders granted by US Courts in Chapter 11 cases that are foreign main proceedings.

*Re Rockport Blocker LLC et al.* (20 July 2018), Toronto CV-18-597987-00CL (Ont Sup Ct [Comm List]) Order at para 3(c) ([Information Officer's website](#)).

*Jack Cooper Ventures Inc (Re)* (18 October 2019), Toronto CV-19-625200-00CL (Ont Sup Ct [Comm List]) Sale Recognition and Vesting Order at para 3(a) ([Information Officer's website](#)).

*Digital Domain Media Group, Inc (Re)*, 2012 BCSC 1567 at paras 15 and 20 ([CanLII](#)).

29. Canadian courts do not lightly second-guess the decisions made by a US court in a foreign main proceeding. In a foreign non-main proceeding under Part IV, Canada has an “ancillary role”. As long as the US Court’s orders are not contrary to public policy or the purposes of the CCAA, Canadian courts will give deference to the judgment of a US Court charged with overseeing a restructuring.

*Re Babcock* at para 21 ([CanLII](#)).

*Hartford Computer Hardware Inc (Re)*, 2012 ONSC 964 at paras 16 to 18 ([CanLII](#)).

*Massachusetts Elephant & Castle Group Inc (Re)*, 2011 ONSC 4201 at para 39 ([CanLII](#)).

30. ITC submits that the Sale Approval Order does not breach any applicable Canadian law and is not inconsistent with any orders that may be granted under the CCAA.

**C. The Recognition Order meets the standards for sale approval under s. 36 of the CCAA**

31. When considering whether to recognize a sale approval order granted by a foreign court in a Part IV proceeding, Canadian courts must determine whether the order is “necessary for the protection of the debtor company’s property or the interests of a creditor or creditors”, pursuant to section 49(1) of the CCAA. In making this determination, courts may consider the factors governing sale approval under section 36(3) of the CCAA:

**Factors to be considered**

(3) In deciding whether to grant the authorization, the court is to consider, among other things,

(a) whether the process leading to the proposed sale or disposition was reasonable in the circumstances;

(b) whether the monitor approved the process leading to the proposed sale or disposition;

(c) whether the monitor filed with the court a report stating that in their opinion the sale or disposition would be more beneficial to the creditors than a sale or disposition under a bankruptcy;

(d) the extent to which the creditors were consulted;

(e) the effects of the proposed sale or disposition on the creditors and other interested parties; and

(f) whether the consideration to be received for the assets is reasonable and fair, taking into account their market value.

CCAA, s. 36(3).

*Digital Domain Media Group, Inc (Re)*, 2012 BCSC 1567 at para 15 ([CanLII](#)).

32. These factors overlap to a certain degree with the *Soundair* factors that governed sale transactions under pre-amendment CCAA case law. The *Soundair* factors were

considered in *Re Digital Domain Media Group Inc*, a case that recognized a sale order granted in a US foreign main proceeding. The *Soundair* test considered: (a) whether sufficient efforts were made to obtain the best price and that the debtor had not acted improvidently; (b) whether the interests of all parties were considered; (c) the integrity and efficacy of the process; and (d) whether there was any unfairness in working out the process.

*Royal Bank of Canada v Soundair Corp*, 1991 CanLII 2727 (ON CA) ([CanLII](#)).

*Digital Domain Media Group, Inc (Re)*, 2012 BCSC 1567 at para 15 ([CanLII](#)).

33. ITC submits that, taking into account the *Soundair* test, the factors in s. 36(3) of the CCAA and the requirement to protect the interests of creditors pursuant to section 49(1), the Sale Approval Order satisfies the standard for sale approval under the CCAA.

***The process leading to the proposed sale was reasonable in the circumstances***

34. The Debtors and their professionals, agents, and other representatives have marketed the Debtors' assets and conducted all aspects of the sale process at arm's length, in good faith, and in compliance with the Bidding Procedures Order. The marketing process undertaken by the Debtors and their professionals, agents and other representatives with respect to the Debtors' assets has been adequate and appropriate and reasonably calculated to maximize value for the benefit of all stakeholders.

Sale Approval Order at s M, Motion Record, Tab 2 – Exhibit B.

Ninth Report at paras 51(e) and 64.

Seventh Wilson Affidavit at para 22, Motion Record, Tab 2.

35. During the first phase of the sale process, the Debtors, with the assistance of their advisors, undertook a comprehensive marketing process to engage with interested parties. PJT contacted approximately 110 potentially interested parties on behalf of the Debtors. Fifty parties executed confidentiality agreements to gain access to confidential information. Twenty-five parties submitted non-binding indications of interest, and 17 parties were designated as potential bidders and granted additional access to diligence materials.

Seventh Wilson Affidavit at paras 24 to 26, Motion Record, Tab 2.

36. During the second phase of the sale process, the Debtors, with PJT's assistance, continued to provide potential bidders with diligence information. The Debtors and their advisors also engaged in discussions and negotiations with certain potential bidders regarding the potential to serve as the stalking horse bidder, which ultimately resulted in Magris Resources being selected as the Stalking Horse Bidder. These negotiations with Magris Resources were extensive and conducted at arm's length and in good faith.

Seventh Wilson Affidavit at paras 27 and 28, Motion Record, Tab 2.

Sale Approval Order at s J, Motion Record, Tab 2 – Exhibit B.

37. The Debtors continued to engage with potential bidders following designation of the Stalking Horse Bid. By the bid deadline on November 10, 2020, no Qualified Bids or Overbids (each as defined in the Bidding Procedures), other than the Stalking Horse Bid, were received by the Debtors. The Debtors were prepared to conduct an auction if two or more bids were received by the bid deadline.

Seventh Wilson Affidavit at para 33, Motion Record, Tab 2.

38. The sale process resulted in Magris Resources being declared the Successful Bidder. The time period for marketing the Debtors' assets, nearly six months, was adequate, and the outcome from the sale process yielded the highest and best market value for the assets available at this time for the benefit of all stakeholders.

Seventh Wilson Affidavit at para 35, Motion Record, Tab 2.

39. The Sale is in the best interest of the Debtors, their estates and all parties in interest. The Debtors believe that it is in their collective best interests to perform under the Stalking Horse Agreement and consummate the Sale. It is also their belief that, given the substantial time already committed to the sale and marketing process, any further marketing process would not benefit the Debtors' estates and would instead create delay and additional expense with no commensurate benefit, given that no other transaction counterparty would likely come forward with better terms than the successful bidder. To this point, the US Court has stated that it is "essential that the Sale of the Purchased Assets be approved and consummated promptly."

Seventh Wilson Affidavit at para 36, Motion Record, Tab 2.

Sale Approval Order at s DD, Motion Record, Tab 2 – Exhibit B.

40. Deference should be given to the US Court, which concluded that the “Bidding Procedures and the Auction (including the cancellation of the Auction) were duly noticed, were substantively and procedurally fair to all parties, and were conducted in a diligent, non-collusive, fair and good-faith manner”, and that the “Debtors have demonstrated good, sufficient, and sound business purposes and justifications for, and compelling circumstances to promptly consummate, the Sale and the other transactions contemplated by the Asset Purchase Agreement”.

Sale Approval Order at ss L and M, Motion Record, Tab 2 – Exhibit B.

***The Information Officer supports the proposed sale***

41. The Information Officer has filed a report stating that it is of the view that the marketing process undertaken by PJT, on behalf of the Debtors, was designed to solicit interest from a number of *bona fide* parties and was similar to those typically undertaken in Canadian proceedings. The Information Officer supports the recognition of the Sale Approval Order in Canada.

Ninth Report at paras 64 and 65.

***Creditors were involved in the sale process***

42. The Bidding Procedures, which governed the sale process, were developed in consultation with the Tort Claimants’ Committee and the Future Claimants’ Representative.

Seventh Wilson Affidavit at para 19, Motion Record, Tab 2.

43. The Tort Claimants’ Committee and the Future Claimants’ Representative were required to give their consent for the Debtor to (a) select and designate a stalking horse bidder; (b) negotiate the terms of, and enter into, a stalking horse agreement; and (c) agree to certain bid protections for such stalking horse bidder. The Tort Claimants’ Committee and the Future Claimants’ Representative were also required to consent to the cancellation of the Debtors’ auction and the designation of Magris Resources as the Successful Bidder.

Sale Approval Order at ss I and Q, Motion Record, Tab 2 – Exhibit B.

44. The Information Officer was named as a consultation party in the Bidding Procedures and, as such, was consulted by the Debtors on milestone decisions such as identifying

the stalking horse bidder and seeking approval of the Sale to Magris Resources. The Information Officer received regular updates from the Debtors' professionals with respect to the status of the sale process.

Affidavit of Anthony Wilson sworn October 29, 2020 at para 57, Motion Record, Tab 2 – Exhibit A.

Ninth Report of the Monitor at para 64.

45. More generally, parties in interest were given “proper, timely, adequate, and sufficient notice” of, among other things, the motion in the US Court seeking the entry of the Sale Approval Order, the Bidding Procedures Order, and the transactions described in the Stalking Horse Agreement and “[s]uch notice was, and is, good, sufficient, and appropriate under the circumstances [...], provided a fair and reasonable opportunity for parties in interest to object, and to be heard, with respect thereto, and was provided in accordance with sections 363 and 365 of the Bankruptcy Code, [...] and in compliance with the Bidding Procedures Order.” Among other forms of notice, the Debtors filed and served on October 22, 2020, a notice of the Sale, Bidding Procedures, auction and sale hearing in the US Court on all parties required to receive such notice under the Bidding Procedures Order and applicable rules governing the US Proceeding. A substantially similar form of such notice was also placed in national editions of *The Wall Street Journal* and *The Globe and Mail* and the website maintained by the Debtors' claims and noticing agent, Prime Clerk LLC.

Sale Approval Order at ss D, F and H, Motion Record, Tab 2 – Exhibit B.

46. Notice of the within motion was given to parties on the CCAA Service List as well as a more extensive list of ITC's identifiable counterparties.
47. Finally, during the week of November 9, 2020, notices were sent to members and/or beneficiaries of ITC's Pension Plans to notify them of (a) the Debtors' motion seeking the entry of the Sale Approval Order, and (b) the within motion to recognize the Sale Approval Order. The Debtors have not received any objections from members and/or beneficiaries of ITC's Pension Plans. Magris Resources is assuming the Pension Plans.

Seventh Wilson Affidavit at paras 39 and 41, Motion Record, Tab 2.

***The consideration offered by Magris Resources is reasonable and fair***

48. The Stalking Horse Agreement provides that the Debtors will receive \$223,000,000 in cash for their business, and the Stalking Horse Bidder will also assume the Assumed Liabilities.

Seventh Wilson Affidavit at paras 29, Motion Record, Tab 2.

49. The consideration received by the Debtors is fair and reasonable. Interested parties had a full, fair and reasonable opportunity to make a higher or otherwise better offer to purchase the Debtors' assets. No party has offered to purchase the Debtors' assets for an economic value greater than Magris Resources' Purchase Price.

Seventh Wilson Affidavit at paras 29 and 36, Motion Record, Tab 2.

Sale Approval Order at ss M, P and Q, Motion Record, Tab 2 – Exhibit B.

50. Deference should be given to the Debtors' business judgment and their conclusion that the consideration received was fair and reasonable. Deference should similarly be given to the US Court, which concluded that the Stalking Horse Agreement "constitutes the highest or otherwise best offer for the Purchased Assets and represents fair and reasonable consideration to the Debtors for the Purchased Assets under the circumstances of these Chapter 11 Cases."

Sale Approval Order at s Q, Motion Record, Tab 2 – Exhibit B.

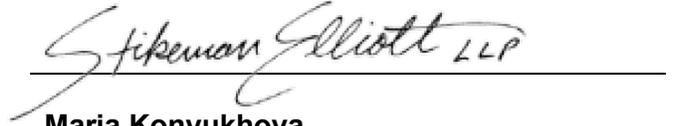
***This Court Should Grant the Recognition Order***

51. For the foregoing reasons, and those set out in the Seventh Wilson Affidavit and the Ninth Report, the Sale Approval Order is appropriate and reasonable in the circumstances and should be recognized and enforced in Canada.

**PART V - RELIEF REQUESTED**

52. ITC requests that the Court grant the Recognition Order in the form included at Tab 3 of the Motion Record.

**ALL OF WHICH IS RESPECTFULLY SUBMITTED** this 23<sup>rd</sup> day of November 2020.

A handwritten signature in cursive script that reads "Stikeman Elliott LLP". The signature is written in black ink and is positioned above a solid horizontal line.

**Maria Konyukhova**  
**Nicholas Avis**  
Stikeman Elliott LLP  
Lawyers for the Applicant

**SCHEDULE "A"**  
**LIST OF AUTHORITIES**

1. *Babcock & Wilcox Canada Ltd (Re)*, 2000 CanLII 22482 (ONSC)
2. *Digital Domain Media Group, Inc (Re)*, 2012 BCSC 1567
3. *Hartford Computer Hardware Inc (Re)*, 2012 ONSC 964
4. *Jack Cooper Ventures Inc (Re)* (18 October 2019), Toronto CV-19-625200-00CL (Ont Sup Ct [Comm List]) Sale Recognition and Vesting Order
5. *Massachusetts Elephant & Castle Group Inc (Re)*, 2011 ONSC 4201
6. *Re Rockport Blocker LLC et al.* (20 July 2018), Toronto CV-18-597987-00CL (Ont Sup Ct [Comm List]) Sale/Final DIP/Retention/Intercompany Transfer Order
7. *Royal Bank of Canada v Soundair Corp*, 1991 CanLII 2727 (ON CA)

**SCHEDULE “B”  
RELEVANT STATUTES**

***Companies' Creditors Arrangement Act, R.S.C. 1985, c. C-36, as amended***—————

**Restriction on disposition of business assets**

**36** (1) A debtor company in respect of which an order has been made under this Act may not sell or otherwise dispose of assets outside the ordinary course of business unless authorized to do so by a court. Despite any requirement for shareholder approval, including one under federal or provincial law, the court may authorize the sale or disposition even if shareholder approval was not obtained.

Notice to creditors

(2) A company that applies to the court for an authorization is to give notice of the application to the secured creditors who are likely to be affected by the proposed sale or disposition.

Factors to be considered

(3) In deciding whether to grant the authorization, the court is to consider, among other things,

(a) whether the process leading to the proposed sale or disposition was reasonable in the circumstances;

(b) whether the monitor approved the process leading to the proposed sale or disposition;

(c) whether the monitor filed with the court a report stating that in their opinion the sale or disposition would be more beneficial to the creditors than a sale or disposition under a bankruptcy;

(d) the extent to which the creditors were consulted;

(e) the effects of the proposed sale or disposition on the creditors and other interested parties; and

(f) whether the consideration to be received for the assets is reasonable and fair, taking into account their market value.

[...]

**44.** The purpose of this Part is to provide mechanisms for dealing with cases of cross-border insolvencies and to promote

(a) cooperation between the courts and other competent authorities in Canada with those of foreign jurisdictions in cases of cross-border insolvencies;

(b) greater legal certainty for trade and investment;

- (c) the fair and efficient administration of cross-border insolvencies that protects the interests of creditors and other interested persons, and those of debtor companies;
- (d) the protection and the maximization of the value of debtor company's property; and
- (e) the rescue of financially troubled businesses to protect investment and preserve employment.

[...]

### **Other orders**

**49.** (1) If an order recognizing a foreign proceeding is made, the court may, on application by the foreign representative who applied for the order, if the court is satisfied that it is necessary for the protection of the debtor company's property or the interests of a creditor or creditors, make any order that it considers appropriate, including an order

- (f) if the foreign proceeding is a foreign non-main proceeding, referred to in subsection 48(1);
- (g) respecting the examination of witnesses, the taking of evidence or the delivery of information concerning the debtor company's property, business and financial affairs, debts, liabilities and obligations; and
- (h) authorizing the foreign representative to monitor the debtor company's business and financial affairs in Canada for the purpose of reorganization.

### Restriction

(2) If any proceedings under this Act have been commenced in respect of the debtor company at the time an order recognizing the foreign proceeding is made, an order made under subsection (1) must be consistent with any order that may be made in any proceedings under this Act.

### Application of this and other Acts

(3) The making of an order under paragraph (l)(a) does not preclude the commencement or the continuation of proceedings under this Act, the Bankruptcy and Insolvency Act or the Winding-up and Restructuring Act in respect of the debtor company.

### **Terms and conditions of orders**

**50.** An order under this Part may be made on any terms and conditions that the court considers appropriate in the circumstances.

[...]

## **Cooperation — court**

**52.** (1) If an order recognizing a foreign proceeding is made, the court shall cooperate, to the maximum extent possible, with the foreign representative and the foreign court involved in the foreign proceeding.

## Cooperation — other authorities in Canada

(2) If any proceedings under this Act have been commenced in respect of a debtor company and an order recognizing a foreign proceeding is made in respect of the debtor company, every person who exercises powers or performs duties and functions under the proceedings under this Act shall cooperate, to the maximum extent possible, with the foreign representative and the foreign court involved in the foreign proceeding.

## Forms of cooperation

(3) For the purpose of this section, cooperation may be provided by any appropriate means, including

- (a) the appointment of a person to act at the direction of the court;
- (b) the communication of information by any means considered appropriate by the court;
- (c) the coordination of the administration and supervision of the debtor company's assets and affairs;
- (d) the approval or implementation by courts of agreements concerning the coordination of proceedings; and
- (e) the coordination of concurrent proceedings regarding the same debtor company.

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")

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

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

**FACTUM OF THE APPLICANT  
(Returnable November 25, 2020)**

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

**Maria Konyukhova** LSO#: 52880V  
Tel: (416) 869-5230  
[mkonyukhova@stikeman.com](mailto:mkonyukhova@stikeman.com)

**Nicholas Avis** LSO#: 76781Q  
Tel: (416) 869-5504  
[navis@stikeman.com](mailto:navis@stikeman.com)  
Fax: (416) 947-0866

Lawyers for the Applicant