

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

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

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

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

**FACTUM OF THE APPLICANT
(Re: Recognition of Foreign Orders)
(Returnable October 1, 2021)**

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TO: SERVICE LIST

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PART I - OVERVIEW

1. This factum is filed in support of the motion brought by Imerys Talc Canada Inc. ("**ITC**"), in its capacity as foreign representative of itself, Imerys Talc America, Inc. ("**ITA**") and Imerys Talc Vermont, Inc. ("**ITV**"), and together with ITC and ITA, the "**Debtors**"), seeking an order pursuant to s. 49 of the *Companies' Creditors Arrangement Act*, R.S.C. 1985, c. C-36, as amended (the "**CCAA**") recognizing the Foreign Orders in respect of the jointly administered proceeding of the Debtors under title 11 of the United States Code (the "**US Bankruptcy Code**"), substantially in the form of the draft order at Tab 3 of the Motion Record.

PART II - FACTS

2. The relevant facts in connection with this motion are briefly set out below and more fully described in the Affidavit of Eric Danner sworn September 27, 2021 (the "**First Danner Affidavit**"). Capitalized terms used herein but not otherwise defined have the meanings ascribed to them in the First Danner Affidavit.

A. Background

3. The Debtors were formerly the North American market leaders in talc production and represented nearly 50% of the market. The Debtors are affiliated entities of Imerys S.A, a French corporation that is the direct or indirect parent entity of over 360 affiliated entities.

First Danner Affidavit at paras 6 to 7, Applicant's Motion Record dated April 15, 2021 (the "**Motion Record**"), Tab 2.

4. 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**"). The Debtors initiated the Petitions in response to a proliferation of lawsuits claiming that one or more of the Debtors were responsible for personal injuries allegedly caused by exposure to talc.

First Danner Affidavit at para 8, Applicant's Motion Record dated April 15, 2021 (the "**Motion Record**"), Tab 2.

5. On February 20, 2019, this Court (a) made an initial recognition order under Part IV of the CCAA and (b) issued a supplemental order that, among other things, appointed Richter Advisory Group Inc. as the Information Officer. KPMG Inc. replaced Richter Advisory Group Inc. as Information Officer on January 26, 2021.

First Danner Affidavit at para 11, Motion Record, Tab 2.

6. ITC, in its capacity as foreign representative of the Debtors, has previously brought several motions before this Court seeking recognition of various orders entered by the US Court in the course of the US Proceeding. These motions and the orders granted by this Court are summarized in the Third Report of the Information Officer dated September 28, 2021 (the "**Third Report**").

B. The Tenth Amended Plan¹

7. The Debtors' stated purpose of the Chapter 11 Cases is to confirm a plan of reorganization that will maximize the value of the Debtors' assets for the benefit of all stakeholders. To this effect, the Debtors filed with the US Court on January 27, 2021, the Ninth Amended Plan and the Disclosure Statement. On February 5, 2021, the Debtors filed with the US Court the Plan Supplement, which amended, modified or supplemented the Plan with respect to 15 exhibits. On July 16, 2021, the Debtors filed an amendment to the Plan Supplement, which amended, modified or supplemented the list of Executory Contracts and Unexpired Leases to be assumed by the North American Debtors.

First Danner Affidavit at paras 16 and 17, Motion Record, Tab 2.

8. The US Court entered an order approving the Disclosure Statement on January 27, 2021, and this Court recognized that order on February 23, 2021.

First Danner Affidavit at para 18, Motion Record, Tab 2.

9. The Debtors filed the Tenth Amended Plan with the US Court on September 15, 2021, which contained certain updates and modifications to the Ninth Amended Plan as detailed in the First Danner Affidavit.

First Danner Affidavit at paras 16 and 21, Motion Record, Tab 2.

10. The Plan, in brief, resolves the Talc Personal Injury Claims against the Debtors and the other Protected Parties by channelling all Talc Personal Injury Claims by permanent injunction to the Talc Personal Injury Trust, which is to be established under sections 524(g) and 105(a) of the US Bankruptcy Code. The Talc Personal Injury Trust will take ownership of the Talc Personal Injury Trust Assets upon the Effective Date, which it will use to resolve the Talc Personal Injury Claims. Among other things, the Talc Personal Injury Trust Assets include certain settlement interests and the proceeds (less certain

¹ Capitalized terms used in this section that are not otherwise defined have the meaning ascribed to them in the Plan.

deductions) derived from the Sale of substantially all of the Debtors' assets to Magris, which closed on February 17, 2021 and resulted in a cash payment of \$223 million to the Debtors.

First Danner Affidavit at para 19, Motion Record, Tab 2.

11. The voting deadline for the Ninth Amended Plan was 4:00 p.m. (prevailing Eastern Time) on March 25, 2021. The final tabulation, which was released on May 7, 2021, showed 79.83% of votes accepting the Plan and 20.17% of votes rejecting the Plan.

First Danner Affidavit at para 20, Motion Record, Tab 2.

12. The US Court is expected to hear the Confirmation Hearing over the course of five days – November 15, 16, 17, 19 and 22, 2021. If the US Court enters an order confirming the Plan, then the Debtors will seek recognition of that order by this Court shortly thereafter.

First Danner Affidavit at para 23, Motion Record, Tab 2.

C. The Vermont Acquisition Order

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

First Danner Affidavit at para 24, Motion Record, Tab 2.

14. The Debtors, together with their advisors, engaged in a nationwide search for potential acquisition targets. On May 14, 2021, the Debtors filed the Acquisition Motion seeking, among other things, prospective authority for potential acquisitions subject to certain notice, consent, and purchase price requirements.

First Danner Affidavit at paras 25 to 28, Motion Record, Tab 2.

15. On June 22, 2021, the US Court held a hearing with respect to the Acquisition Motion, at the conclusion of which the US Court took the matter under submission. To date, no order has been entered with respect to the Acquisition Motion. The Debtors, however, continued to explore potential opportunities following the filing of the Acquisition Motion. They reviewed 84 business acquisition opportunities and contacted sellers and/or brokers to express initial indications of interest with respect to 21 of these opportunities. The Debtors, together with their advisors, subsequently identified the Vermont Properties as two promising opportunities.

First Danner Affidavit at paras 30 and 33 to 35, Motion Record, Tab 2.

16. ITV submitted non-binding letters of intent to purchase the Vermont Properties on July 28, 2021. On August 24, 2021, the US Court entered the Vermont Acquisition Order, which, among other things, authorizes ITV to pursue and effectuate the purchase of the Vermont Properties, in each case subject to an existing ground lease, together with the seller's rights and interests as landlord pursuant to such lease.

First Danner Affidavit at paras 31, 32 and 36, Motion Record, Tab 2.

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

First Danner Affidavit at para 38, Motion Record, Tab 2.

18. The Vermont Acquisitions are not expected to materially impact any Canadians holding Talc Personal Injury Claims because, on the Effective Date of the Plan, the Talc Personal Injury Trust will indirectly own the Vermont Properties as a result of their direct ownership of Reorganized ITA and Reorganized ITC. If, as is expected, the Vermont

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

First Danner Affidavit at paras 43 and 44, Motion Record, Tab 2.

D. The Utilities Close-out Order

19. On March 22, 2019, the US Court entered the Final First Day Utilities Order that, among other things, directed the Debtors to hold \$500,000 in the Adequate Assurance Account to provide the Debtors' Utility Companies with adequate assurance of payment. This Court recognized the Final First Day Utilities Order on April 3, 2019, thus ensuring that the 13 Utility Companies that provided services to ITC were treated consistently with the Utility Companies based in the US during the course of the Chapter 11 Cases.

First Danner Affidavit at paras 48 and 52, Motion Record, Tab 2.

20. Following the Sale, the Utility Companies (with the exception of the two Remaining Utility Companies) no longer provide services to the Debtors and no longer require the protection provided by the Adequate Assurance Account. The utility agreements underlying the services provided by the Utility Companies other than the Remaining Utility Companies have either been assumed and assigned to Magris pursuant to the order approving the Sale, terminated in accordance with their own terms, or rejected by the Debtors. There are no longer any Utility Companies providing services to ITC.

First Danner Affidavit at paras 49 and 53, Motion Record, Tab 2.

21. The Remaining Utility Companies, neither of whom provide services to ITC nor have Canadian addresses, have agreed to hold modest deposits (approximately \$2,000 in the aggregate) in lieu of relying on the Adequate Assurance Account.

First Danner Affidavit at para 49, Motion Record, Tab 2.

22. Given these circumstances, the US Court entered the Utilities Close-out Order on August 24, 2021, which, among other things, authorizes the Debtors to close the Adequate Assurance Account and use all funds in the Adequate Assurance Account in the ordinary course and for general administrative purposes.

First Danner Affidavit at para 45, Motion Record, Tab 2.

E. The Contract Rejection Order

23. Certain executory contracts and unexpired leases, including any amendments or modifications thereto, were not assigned to Magris as part of the Sale. Given the Debtors' limited operations following the Sale, the Debtors determined, in the sound exercise of their business judgment, that (a) they no longer needed any of the goods or services provided pursuant to the Rejected Contracts and Leases, and/or (b) the Rejected Contracts and Leases no longer provided any benefit or value to the Debtors. Absent rejection, the Debtors will continue to incur administrative expenses arising under the Rejected Contracts and Leases without any corresponding benefit to their estates.

First Danner Affidavit at para 57, Motion Record, Tab 2.

24. The Debtors identified approximately 30 Rejected Contracts and Leases. ITC is a party to six of the Rejected Contracts and Leases. Two of the Rejected Contracts and Leases involved Counterparties with Canadian addresses.

First Danner Affidavit at para 58, Motion Record, Tab 2.

25. The US Court entered the Contract Rejection Order on May 24, 2021, which, among other things, authorizes the Debtors to reject the Rejected Contracts and Leases with the Counterparties. All Counterparties, including ITC's Counterparties and the two Counterparties with Canadian addresses, were given notice of the motion with respect to the Contract Rejection Order. No objections were received from any Counterparties.

First Danner Affidavit at paras 55 and 59, Motion Record, Tab 2.

F. Fulton Claim Objection Order

26. ITC formerly employed Mr. Thomas Neil Fulton as the Canadian Operations Manager. Mr. Fulton's employment was terminated for cause on February 15, 2017, without notice or pay in lieu of notice due to, among other things, serious violations of key safety policies and protocols.

First Danner Affidavit at paras 63 and 64, Motion Record, Tab 2.

27. Despite facts to the contrary, Mr. Fulton has claimed that his conduct did not justify the termination of his employment for cause. On or about April 20, 2017, Mr. Fulton commenced the Action against ITC.

First Danner Affidavit at para 65, Motion Record, Tab 2.

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

First Danner Affidavit at para 66, Motion Record, Tab 2.

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

First Danner Affidavit at para 67, Motion Record, Tab 2.

30. Mr. Fulton did not respond to the Fulton Claim Objection by the required deadline on July 27, 2021 at 4:00 p.m. Mr. Fulton was given notice on August 9, 2021, that the Debtors would file a certificate of no objection with respect to the relief requested in the Fulton Claim Objection, to which Mr. Fulton indicated that he did not intend to respond to the Fulton Claim Objection. The certificate of no objection was filed on August 20, 2021.

First Danner Affidavit at paras 68 to 70, Motion Record, Tab 2.

31. On August 30, 2021, the US Court entered the Fulton Claim Objection Order, which, among other things, sustains the Debtors' objection to the Fulton Claim and disallows the Fulton Claim in its entirety and expunges the Fulton Claim from the claims register.

First Danner Affidavit at para 70, Motion Record, Tab 2.

32. Mr. Fulton was served by email and courier with a copy of the motion record for the within motion.

G. Supplemental Ramboll Retention Order

33. The Debtors previously retained Ramboll as an environmental advisor to provide services to assist the Debtors and their other retained advisors with the sale of the Debtors' assets and related due diligence process. The US Court approved Ramboll's retention as environmental advisor on July 23, 2020, and this Court recognized that retention order on November 3, 2020.

First Danner Affidavit at para 74, Motion Record, Tab 2.

34. The Debtors may now require Ramboll's assistance with new matters. To properly effectuate the Vermont Acquisitions, the Debtors are conducting a due diligence process related to the Vermont Properties, which includes the performance of certain environmental diligence. The Debtors are also in the process of mitigating and resolving certain historic environmental liabilities at the Former Sites, which include a property in Quebec. The resolution of these liabilities may require environmental services, such as assistance with environmental compliance requirements and other remedial obligations.

First Danner Affidavit at para 75, Motion Record, Tab 2.

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

environmental management and advisory services. Accordingly, the Debtors entered into a new proposal with Ramboll on August 16, 2021.

First Danner Affidavit at paras 76 and 77, Motion Record, Tab 2.

36. On September 17, 2021, the US Court entered the Supplemental Ramboll Retention Order, which, among other things, (a) expands the scope of Ramboll's retention to include services related to the Vermont Acquisitions and the Former Sites; and (b) permits the Debtors to seek authorization to enter into additional engagement letters or proposals with Ramboll, subject to certain limitations.

First Danner Affidavit at paras 72 and 73, Motion Record, Tab 2.

PART III - ISSUES

37. The sole issue on this motion is whether this Court should recognize and enforce the Foreign Orders in Canada pursuant to s. 49 of the CCAA.

PART IV - ARGUMENT

A. This Court has the Jurisdiction to Recognize the Foreign Orders

38. This Court has recognized the Chapter 11 Cases as "foreign main proceedings" pursuant to Part IV of the CCAA. When a foreign main proceeding has been recognized under Part IV of the CCAA, s. 49 of the CCAA 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.

CCAA, s. 49(1).

39. The Court's discretion is broad. Section 50 of the CCAA 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 in the circumstances". 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, 61(1) and (2).

40. 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."

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

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

See also *Re Hollander Sleep Products, LLC*, 2019 ONSC 3238, at para. 41 ([CanLII](#)).

41. Canadian courts do not lightly second-guess the decisions made by a US court in a foreign main proceeding. In a recognition proceeding under Part IV, Canada has an "ancillary role". A Canadian court typically only refuses to recognize an order of another court in situations where s. 61(2) of the CCAA is triggered, which provides that nothing in the CCAA "prevents the court from refusing to do something that would be contrary to public policy." Canadian courts have held that this exception to recognition should be interpreted narrowly and it is not a justification to deny recognition of the foreign law or relief granted thereunder solely because the law of a foreign jurisdiction is different than Canadian law.

CCAA, s. 61(2).

See e.g. *Babcock & Wilcox* 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](#)).

42. In cross-border insolvencies, Canadian and U.S. 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: as businesses become more internationalized, those businesses will have a significant number of assets and also carry on business 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.

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

43. ITC submits that the Foreign Orders do not breach any applicable Canadian law and are not inconsistent with any orders that may be granted under the CCAA.

B. The Foreign Orders Should Be Recognized by this Court

44. Each of the Foreign Orders is appropriate and reasonable in the circumstances:
- (a) the Vermont Acquisition Order maximizes the value generated from the Sale proceeds. Currently, the Sale proceeds earn a negligible 0.1% per annum return. By acquiring the Vermont Properties, the Debtors are acquiring a rental revenue stream that is projected to have a 5.0% to 6.0% per annum capitalization rate, which amounts to a return on the purchase price that is 50 to 60 times greater than the *status quo*. The expected return on investment from the Vermont

Properties is in excess of what the funds are currently garnering and is firmly within the expected range for triple-net lease opportunities of this type. Additionally, the Debtors are acquiring real property assets that can be sold in the future and which are expected to maintain (and potentially increase in) value over time. The Debtors believe that the proposed maximum purchase price for each of the Vermont Properties is fair and reasonable. The risks associated with the Vermont Acquisitions are relatively minor, and they are greatly outweighed by the benefits and do not negatively affect the value proposition for the Debtors;

First Danner Affidavit at paras 39 to 42, Motion Record, Tab 2.

- (b) the Utilities Close-out Order reflects the reality that the Debtors no longer have a need for the Adequate Assurance Account. The utility agreements underlying the services provided by the Utility Companies, other than the Remaining Utility Companies, have either been assumed and assigned to Magris pursuant to the order approving the Sale, terminated in accordance with their own terms, or rejected by the Debtors. The two Remaining Utility Companies servicing the Debtors have each agreed to directly hold modest deposits totalling approximately \$2,000 in lieu of relying on the Adequate Assurance Account. Neither of the Remaining Utility Companies have Canadian addresses nor do they service ITC;

First Danner Affidavit at paras 49, 50 and 53, Motion Record, Tab 2.

- (c) The Contract Rejection Order has the effect of relieving the Debtors from the unnecessary and burdensome Rejected Contracts and Leases and, thus, is in the best interests of the Debtors' estates and their creditors. The Debtors have determined, in the sound exercise of their business judgment, that (a) they no longer need any of the goods or services provided pursuant to the Rejected

Contracts and Leases, and/or (b) the Rejected Contracts and Leases no longer provide any benefit or value to the Debtors. Absent rejection, the Debtors will continue to incur administrative expenses arising under the Rejected Contracts and Leases without any corresponding benefit to their estates;

First Danner Affidavit at para 57, Motion Record, Tab 2.

- (d) the Fulton Claim Objection Order was entered by the US Court in accordance with the applicable law and procedure governing the Chapter 11 Cases. The US Court entered the Fulton Claim Objection Order only after Mr. Fulton was given ample notice and opportunity to formally respond the Fulton Claim Objection. Mr. Fulton failed to respond by the applicable deadline on July 27, 2021, and he similarly failed to pursue a response after being notified of the Debtors' intention to file a certificate of no objection on August 9, 2021; and

First Danner Affidavit at paras 67 to 70, Motion Record, Tab 2.

- (e) the Supplemental Ramboll Retention Order enables Ramboll to provide the Debtors with the Supplemental Services, which are needed to appropriate diligence the Vermont Properties as part of the Vermont Acquisitions, as well as to resolve historic environmental liabilities at the Former Sites, to the extent environmental advisory services are required. Ramboll is best suited to provide these services due to its familiarity with the Debtors and its substantial experience in providing environmental management and advisory services.

First Danner Affidavit at paras 76 to 78, Motion Record, Tab 2.

- 45. The recognition of the Vermont Acquisition Order, Utilities Close-out Order, Contract Rejection Order and Supplemental Ramboll Retention Order is not anticipated to cause any material prejudice to Canadian stakeholders.

First Danner Affidavit at paras 43, 53, 58, and 79, Motion Record, Tab 2.

46. Notice of the within motion has been provided to, among others, (a) Utilities Companies that supplied ITC and who benefited from the Adequate Assurance Account; (b) Counterparties to ITC's Rejected Contracts and Leases; and (c) Mr. Fulton.
47. The Information Officer supports the recognition of the Foreign Orders.

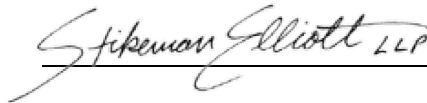
Third Report at para 80.

48. For these reasons, the Foreign Representative submits that it is appropriate for this Court to recognize and enforce in Canada the Foreign Orders.

PART V - RELIEF REQUESTED

49. ITC respectfully requests that this Court issue an order substantially in the form included at Tab 3 of the Motion Record that recognizes and enforces the Foreign Orders in Canada.

ALL OF WHICH IS RESPECTFULLY SUBMITTED this 29th day of September 2021.



Maria Konyukhova
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SCHEDULE "A"
LIST OF AUTHORITIES

1. *Babcock & Wilcox Canada Ltd (Re)*, 2000 CanLII 22482 (ONSC)
2. *Re Hollander Sleep Products, LLC*, 2019 ONSC 3238 ([CanLII](#))
3. *Hartford Computer Hardware Inc (Re)*, 2012 ONSC 964
4. *Massachusetts Elephant & Castle Group Inc (Re)*, 2011 ONSC 4201

**SCHEDULE “B”
RELEVANT STATUTES**

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

Purpose

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

- (a) If the foreign proceeding is a foreign non-main proceeding, referred to in subsection 48(1);
- (b) 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
- (c) authorizing the foreign representative to monitor the debtor company's business and financial affairs in Canada for the purpose of reorganization.

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 — 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.

[...]

Court not prevented from applying certain rules

61 (1) Nothing in this Part prevents the court, on the application of a foreign representative or any other interested person, from applying any legal or equitable rules governing the recognition of foreign insolvency orders and assistance to foreign representatives that are not inconsistent with the provisions of this Act.

Public policy exception

61 (2) Nothing in this Part prevents the court from refusing to do something that would be contrary to public policy.

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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 October 1, 2021)**

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