

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

IN RE:

CYPRUS MINES CORPORATION,<sup>1</sup>

Debtor.

Chapter 11

Case No. 21-10398

**DECLARATION OF D. J. (JAN) BAKER, INDEPENDENT DIRECTOR OF THE  
DEBTOR, IN SUPPORT OF CHAPTER 11 PETITION AND FIRST DAY PLEADINGS**

I, D. J. (Jan) Baker, hereby declare as follows:

1. I am the sole Independent Director of Cyprus Mines Corporation (the “Debtor”), having been elected on February 1, 2020. I am authorized to submit this declaration (this “Declaration”) on behalf of the Debtor.

2. I am a lawyer and a member of the bar of New York. I began my legal career in 1973, as an associate at Fulbright & Jaworski in Houston, Texas. I became a partner at that firm in 1980 and continued to practice as a partner there and at four other firms over the next 36 years. I joined Weil, Gotshal & Manges LLP in 1985; Gibson Dunn & Crutcher LLP in 1999; Skadden, Arps, Slate, Meagher & Flom LLP in 2001; and Latham & Watkins, LLP in 2008. I was a global co-chair of the restructuring practice groups at Gibson, Dunn & Crutcher and at Latham & Watkins. I retired from Latham & Watkins in 2016. At each of these firms, I specialized in restructuring and reorganization matters and thus am familiar with the Bankruptcy Code and the Bankruptcy Rules (each as defined herein). During my law practice, I represented approximately 150 companies in either in-court or out-of-court restructuring matters. Since my retirement from

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<sup>1</sup> The last four digits of the Debtor’s taxpayer identification number are 0890. The Debtor’s address is 333 N. Central Ave., Phoenix, AZ 85004.

Latham & Watkins, I have served as an independent, outside director for approximately 25 companies going through bankruptcy or restructuring processes, including the Debtor.

3. Since joining the Debtor's Board of Directors, through a review of external and internal documents and my discussions with knowledgeable persons, I have become familiar with the Debtor's history, assets, financial condition, policies and procedures, books and records, and litigation. Except as otherwise noted, I have personal knowledge of the matters set forth herein or have gained knowledge of such matters from persons directly involved in serving the Debtor or retained advisers who report to me in the ordinary course of my responsibilities. References to the Bankruptcy Code, the chapter 11 process, and related legal matters are based on my understanding of such matters from my own experience. If called upon to testify, I would testify competently to the facts set forth in this Declaration.

4. On the date hereof (the "Petition Date"), the Debtor filed a voluntary petition for relief under chapter 11 of title 11 of the United States Code, 11 U.S.C. § 101 *et seq.* (as amended, the "Bankruptcy Code"), in the United States Bankruptcy Court for the District of Delaware (the "Bankruptcy Court").

5. I submit this Declaration on behalf of the Debtor in support of the Debtor's chapter 11 petition for relief and various "first-day" and "second-day" motions (collectively, the "Motions").<sup>2</sup> The Debtor has relatively small business operations, including the ownership of various parcels of real property, certain royalty interests that have generated *de minimis* revenue (e.g., less than \$1,500 in each of the past two calendar years), and the ownership of a subsidiary that is not a debtor herein. Accordingly, the Debtor is not seeking extensive first-day relief. The

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

Debtor, however, is seeking approval of debtor-in-possession financing and a number of administrative motions relevant to the conduct of this chapter 11 case.

6. I have reviewed the Debtor's petition and the Motions, or have otherwise had their contents explained to me, and it is my belief that the relief sought therein is essential to enable the Debtor to administer its estate and affairs efficiently.

7. At the outset, it is important to emphasize that a critical goal of the Debtor's chapter 11 filing (this "Chapter 11 Case") is to enable the Debtor to manage in a fair and comprehensive manner existing and future tort claims against it alleging personal injury resulting from exposure to talc products that were manufactured and distributed by others using talc mined and sold by the Debtor or its former subsidiaries. Much of the balance of this Declaration is devoted to explaining how in my view the Chapter 11 Case can and should achieve that purpose.

8. In particular, as I describe in detail in the first section of this Declaration below, the Debtor is a predecessor in interest of Imerys Talc America, Inc. ("ITA"), a debtor in a chapter 11 case in this Bankruptcy Court at Case No. 19-10289 (LSS). Recently, after an extensive investigation and analysis by my advisors and me, the Debtor has agreed, together with certain of its non-debtor affiliates, to a fair and comprehensive settlement with ITA and certain other parties to the ITA chapter 11 case regarding the treatment of Talc Personal Injury Claims (as defined later in this Declaration). The further implementation of that settlement, which I discuss later in this Declaration, is the focal point of this Chapter 11 Case.

9. Accordingly, Part I of this Declaration provides an overview of the Debtor's corporate history and its relationship with ITA. Part II of this Declaration summarizes the Debtor's current status and its assets and liabilities, including talc-related claims against the Debtor. Part III addresses the circumstances leading to commencement of, and the objectives for, this Chapter 11

Case, including the development, structure and contemplated implementation of the settlement. Part IV discusses the relevant facts in support of the Motions.

## **I. THE DEBTOR'S CORPORATE HISTORY**

### **A. The Debtor's Corporate History**

10. Cyprus Mines Corporation ("CMCNY") was formed as a New York corporation in 1916. In 1964, CMCNY expanded into the talc business with the acquisition of 100% of the stock of Sierra Talc Company.

11. Talc is a hydrated magnesium silicate that is used in manufacturing dozens of products in a variety of sectors, including coatings, rubber, paper, polymers, cosmetics, food, and pharmaceuticals. Talc is mined from talc deposits, which are geologically formed through the transformation of rocks under the effect of hydrothermal fluids carrying components needed to form the mineral.

12. In 1965, CMCNY acquired Southwestern Talc Company and formed two wholly-owned subsidiaries. It used the first—CMC-Sierra Corporation—to hold title to a facility in Ghent, Belgium that processed crude talc shipped from the United States and Australia. The second was United Clay Mines Corporation, and CMCNY merged the assets of Sierra Talc Company with United Clay Mines Corporation to form United Sierra Corporation ("United Sierra"). For the entirety of its existence, United Sierra mined clays and talcs from various properties across the United States that were owned by its parent, CMCNY. It principally sold its products to the pulp and paper, paint, ceramic, plastic, rubber, cosmetic, and agricultural industries via sales that were handled by CMCNY's sales force and a network of qualified distributors.

13. In 1974, CMCNY changed the name of United Sierra to Cyprus Industrial Minerals *Company*, and changed the name of CMC-Sierra Corporation to Cyprus Industrial Minerals

*Corporation.* In that same year, CMCNY also created another wholly-owned subsidiary, Cyprus Georesearch Company.

14. In 1978, CMCNY dissolved Cyprus Industrial Minerals Company and operated its businesses as a division. Cyprus Industrial Minerals Corporation and Cyprus Georesearch Company remained wholly-owned subsidiaries of CMCNY at that time.

15. In 1979, CMCNY, through Cyprus Georesearch Company, acquired the assets, but not the liabilities, of Charles Mathieu, Inc., an importer and distributor of cosmetic talc.<sup>3</sup>

16. In April 1979, Standard Oil Company (Indiana) created Amoco CYM Corporation, a Delaware corporation and wholly-owned subsidiary, for the sole and express purpose of acquiring CMCNY. In September of that year, CMCNY merged with and into Amoco CYM Corporation. Amoco CYM Corporation, as the surviving entity, then changed its name to Cyprus Mines Corporation, which is the Debtor in this Chapter 11 Case.

17. The Debtor received through the 1979 merger all rights to the historical insurance policies of CMCNY, which policies continue to provide coverage for, and relate to, various current and former businesses of the Debtor and its affiliates, including, but not limited to, the talc operations of the Debtor and certain of its former subsidiaries. As I discuss below, ITA disputes the Debtor's claim and asserts its own competing claim to the coverage rights under these historical insurance policies.

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<sup>3</sup> The California Superior Court has held at least four times that, because Cyprus Georesearch Company/CMCNY did not acquire Charles Mathieu, Inc.'s liabilities and Charles Mathieu, Inc. remained in business after Cyprus Georesearch Company bought its assets, Cyprus Georesearch Company and/or CMCNY are not Charles Mathieu, Inc.'s successor and did not assume liabilities arising out of its operations. *See* Statement of Decision at 7, *Alfaro v. Colgate-Palmolive Co.*, No. BC583520 (Cal. Super. Ct. May 27, 2016); Order at 2, *Colpitts v. Am. Int'l, Inc.*, No. BC600850 (Cal. Super. Ct. Sept. 8, 2016); Tr. at 110-13, *Herford v. AT&T Corp.*, No. BC646315 (Cal. Super. Ct. Sept. 28, 2017); Statement of Decision at 8, *Von Salzen v. Am. Int'l Indus.*, No. BC680576 (Cal. Super. Ct. Aug. 1, 2018).

18. In 1980, Standard Oil Company (Indiana) contributed the stock of the Debtor to Amoco Minerals Company, a wholly-owned subsidiary of Standard Oil Company (Indiana) incorporated under Delaware law. Amoco Minerals Company then merged Cyprus Georesearch Company into the Debtor.

19. In 1985, Standard Oil Company (Indiana) changed its name to Amoco Corporation, and Amoco Minerals Company changed its name to Cyprus Minerals Company. Amoco Corporation thereafter spun off Cyprus Minerals Company as an independent company, with the Debtor remaining as its subsidiary.

20. On January 6, 1989, the Debtor and Johnson & Johnson entered into a stock purchase agreement (the "1989 SPA"), pursuant to which the Debtor acquired all of the stock of Windsor Minerals, Inc. Windsor Minerals, Inc. operated talc mines in Vermont and historically supplied talc to Johnson & Johnson for use in baby powder. In connection with the acquisition, Windsor Minerals, Inc. entered into a supply agreement (the "1989 SA"), pursuant to which it continued to supply talc to Johnson & Johnson. The Debtor renamed Windsor Minerals, Inc. as Cyprus Windsor Minerals Corp. ("Windsor"). Windsor supplied Johnson & Johnson with talc between 1989 and 1992. The Debtor itself never supplied talc to Johnson & Johnson except for a limited period between December 1979 and March 1980. As discussed below, the 1989 SPA and 1989 SA contained indemnification obligations in favor of the Debtor and its affiliates by Johnson & Johnson for historical talc products as well as those sold by Windsor under the 1989 SA.

#### **B. The Debtor-Imerys Connection**

21. In June 1992, the Debtor sold its talc-related assets to RTZ America Inc. (later known as Rio Tinto America, Inc.) ("RTZ") through a two-step process. *First*, the Debtor transferred its talc-related assets and liabilities (subject to minor exceptions that are not relevant), including its stock in Windsor, to Cyprus Talc Corporation, a newly formed subsidiary of the

Debtor, pursuant to an Agreement of Transfer and Assumption, dated June 5, 1992 (as amended, the “1992 ATA”). *Second*, the Debtor sold the stock of Cyprus Talc Corporation to RTZ pursuant to a Stock Purchase Agreement, also dated June 5, 1992 (as amended, the “1992 SPA”).<sup>4</sup> The purchase price was approximately \$79.5 million.

22. In 1993, after the sale to RTZ, Cyprus Minerals Company (the Debtor’s parent) merged with AMAX Inc. to form Cyprus Amax Minerals Co. (“CAMC” and, together with the Debtor, “Cyprus”). The Debtor remains a subsidiary of CAMC. I understand that Amoco Minerals Company, Cyprus Minerals Company, and CAMC never mined, sold, or distributed talc.

23. Soon after the 1992 transactions, RTZ merged Cyprus Talc Corporation with RTZ’s existing subsidiary, Luzenac America, Inc. As the surviving corporation, Cyprus Talc Corporation then changed its name to Luzenac America, Inc. In 2011, RTZ sold the stock of Luzenac America, Inc. to Imerys Minerals UK, Ltd., which then changed the name of Luzenac America, Inc. to ITA. As part of these transactions, Windsor became Imerys Talc Vermont, Inc. (“ITV”).

24. By virtue of the 1992 ATA, the entity now named ITA (formerly Cyprus Talc Corporation) expressly and broadly assumed the talc liabilities of the Debtor and its former subsidiaries that were in the talc business. Specifically (but without limitation), paragraph 4 of the 1992 ATA provides that Cyprus Talc Corporation (*i.e.*, ITA):

shall assume and shall perform, pay, and discharge all of the liabilities or obligations, whether known or unknown, contingent or otherwise primarily relating to the Transferred Assets, including, without limitation, liabilities and obligations, whether known or unknown, contingent or otherwise arising out of the transactions or events occurring on or prior to the Closing and relating primarily to the Transferred Assets.

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<sup>4</sup> The Debtor also sold its French and German talc businesses to RTZ’s French subsidiary.

Therefore, as of and since the closing of the transactions under the 1992 SPA, talc liabilities relating to the pre-transfer talc business of the Debtor, and its former subsidiaries, now rest with ITA and its subsidiaries (including ITV, now a subsidiary of ITA). Under the 1992 ATA, moreover, the Debtor has claims against ITA to the extent the Debtor incurs or has incurred liabilities or obligations relating to the talc business it transferred to ITA in 1992. Following the 1992 transactions, the Debtor engaged in no talc-related business activity.

25. On February 13, 2019, ITA, ITV, and Imerys Talc Canada Inc. (“ITC” and, collectively with ITV and ITA, the “Imerys Debtors”) filed voluntary petitions for relief under chapter 11 of the Bankruptcy Code in the Bankruptcy Court. The Imerys Debtors’ chapter 11 cases are being jointly administered as *In re Imerys Talc America, Inc.*, No. 19-10289 (LSS) (Bankr. D. Del.).

## **II. THE DEBTOR’S OPERATIONAL STATUS, ASSETS, AND LIABILITIES**

### **A. Operational Status**

26. The Debtor is a Delaware corporation and a wholly-owned subsidiary of CAMC, which is an indirect subsidiary of Freeport-McMoRan Inc. (“Freeport”). As described above, the Debtor had significant operations. At the time of the 1992 transaction, as reflected by the \$79.5 million purchase price paid by RTZ for the Debtor’s talc business, the Debtor and its subsidiaries had substantial talc operations and revenues. At that time, the Debtor or subsidiaries had over 500 employees and operated approximately eight talc mines in the United States.

27. The Debtor currently has relatively limited business operations, which include the ownership of various parcels of real property, certain royalty interests that generate *de minimis* revenue (*e.g.*, less than \$1,500 in each of the past two calendar years), and the ownership of an operating subsidiary that conducts marketing activities, as described below. The Debtor has officers and directors, but it no longer has employees itself. Certain administrative support

services, including in-house legal, tax, and accounting, have been, and will continue to be, provided to the Debtor by affiliated companies, including its ultimate parent, Freeport. In recent years, the costs of these services have been recorded as capital contributions from CAMC to the Debtor. Similarly, the Debtor's accounts payable, including outside legal expenses and environmental remediation obligations, have been funded in recent years by Freeport or CAMC via capital contributions from CAMC to the Debtor.

**B. Description of the Debtor's Assets**

28. The Debtor's assets fall into four primary categories: real property, insurance rights, indemnification rights, and other personal property. Each of these asset categories is described below.

29. Real Property. The Debtor's real property consists of: (i) a 5-acre vacant residential lot near Hartsel, Colorado; (ii) approximately 83-acres in Sault Ste. Marie, Michigan, which is a former leather tannery site that has been on the Environmental Protection Agency's National Priorities List since 1990; (iii) an approximately 50-acre former talc mining site located in the Town of Windham, Vermont, along with an adjoining 13.1 acres in which the Debtor holds only a mineral rights interest; and (iv) a 25% mineral rights interest in 1,200 acres in Sheridan County, Wyoming.

30. Insurance Rights. The Debtor and its affiliates assert rights to numerous insurance policies that provide coverage for product liabilities (the "Cyprus Historical Policies"). The Cyprus Historical Policies consist of numerous primary, excess, and umbrella comprehensive general liability insurance policies issued, or otherwise providing coverage, to the Debtor and/or its current or former affiliates between 1961 and 1986. The policies provide coverage for bodily injury that occurs during the respective policy periods. The Debtor is informed and believes that all of the primary liability policies that could provide coverage for asbestos-related liabilities

arising out of the talc business of the Debtor and/or its current or former affiliates have been exhausted, except for primary liability policies issued by The American Insurance Company from May 1961 to October 1964. The remaining coverage consists of umbrella and excess policies issued by various insurers from April 1962 to July 1986 with total aggregate limits in excess of \$100 million (plus certain additional policies issued to Standard Oil Company (Indiana) or affiliates between 1980 and 1985). The Debtor's ownership of insurance rights has been challenged by the Imerys Debtors, as discussed in more detail below.

31. Indemnification Rights. The Debtor and its affiliates, including CAMC, believe that they have indemnity rights against Johnson & Johnson or one of its affiliates for talc-related claims. Under the 1989 SPA, pursuant to which the Debtor purchased Windsor (the entity known today as ITV), Johnson & Johnson agreed to indemnify the Debtor and affiliates for any product liability-based claim arising out the sale of talc to J&J prior to the January 6, 1989, closing date. In addition, under the 1989 SA, Johnson & Johnson agreed to indemnify Windsor (and its affiliates, including the Debtor) from and against all liabilities arising out of any product liability-based claim for which Johnson & Johnson is directly or indirectly responsible as a result of Johnson & Johnson's manufacture, shipment, and sale of a talc-containing product derived from talc delivered under the 1989 SA. While the Debtor has additional protection from the talc-related claims through these indemnification agreements with Johnson & Johnson, the Debtor's ability to recover under the indemnification agreements in a timely fashion is uncertain. As of the date hereof, Johnson & Johnson has refused to acknowledge or honor its indemnification obligations. As discussed below, Cyprus has brought an adversary proceeding against Johnson & Johnson to establish and enforce Cyprus's indemnity rights.

32. Other Personal Property. The Debtor has certain other personal property, including: (i) equity in a subsidiary called Climax Molybdenum Asia Corporation (“Climax”), a Delaware corporation with principal operations in Tokyo, Japan; (ii) a 0.000625% overriding royalty interest in oil and gas production on real property located in Rio Arriba County, New Mexico; and (iii) certain potential claims and causes of action against its immediate parent, CAMC, which are being resolved pursuant to the Cyprus Settlement, discussed more fully below. Climax, the subsidiary of the Debtor, conducts sales and marketing of molybdenum and copper on behalf of other Freeport entities. It has several employees based in Japan.

**C. Description of Talc Personal Injury Claims**

33. The Debtor’s most significant alleged liabilities are the numerous Talc Personal Injury Claims asserted against it.

34. From 1992 until 2010, talc-related lawsuits against the Debtor were rare. In the last decade, however, the number of lawsuits against the Imerys Debtors, the Debtor, and CAMC have greatly increased. In these cases, two types of allegations have predominated: asbestos contamination in talc-based personal care products, and exposure to talc products that are not alleged to be contaminated with asbestos. The primary targets of these suits have been the producers of talc-containing products, but defendants in many of these cases also include talc miners and distributors. The Debtor and its immediate parent, CAMC, have been among those targeted. Many of the claims against CAMC have been dismissed on the ground that it did not mine or distribute talc; others against the Debtor and CAMC have settled.

35. Today, the Debtor is among the defendants in hundreds of actions brought before several U.S. federal and state courts by plaintiffs asserting personal injuries resulting from exposure to talc products which were manufactured and distributed by others using talc mined and sold by the Debtor or its former subsidiaries (the “Talc Personal Injury Claims”).

36. Plaintiffs generally have asserted two primary types of Talc Personal Injury Claims: (1) claims alleging ovarian cancer or other gynecological diseases arising as a result of talc exposure (“OC Claims”); and (2) claims alleging mesothelioma, respiratory cancers, or other asbestos-related diseases resulting from exposure to talc allegedly contaminated with asbestos (“Mesothelioma Claims”). As of January 29, 2021, there were approximately 427 suits pending alleging Talc Personal Injury Claims against the Debtor.

37. Plaintiffs asserting OC Claims generally allege that they have developed ovarian cancer or other related gynecological cancers as a result of their use of certain cosmetic products, primarily Johnson & Johnson body powders (which were historically comprised almost entirely of talc) for feminine hygiene purposes. Historically, plaintiffs have asserted that talc itself causes ovarian cancer and have not asserted that talc contained in the body powder was contaminated with trace amounts of asbestos. Beginning in 2017, however, some plaintiffs asserting OC Claims began to assert that their personal injuries also were caused by alleged trace asbestos contamination of the talc. The Debtor disputes that it has any liability in connection with OC claims.

38. Plaintiffs asserting Mesothelioma Claims generally allege they have developed non-ovarian cancer personal injuries based on some form of asbestos exposure. Some of these plaintiffs assert that they were only exposed to talc that was contaminated with trace amounts of asbestos, while others allege additional non-talc exposure to asbestos. Many plaintiffs allege exposure to talc in cosmetic products; others allege exposure in an industrial context, such as at a manufacturing facility. In many cases, plaintiffs have made insufficient allegations for the Debtor to determine whether the Mesothelioma Claims are based on cosmetic talc exposure, industrial talc exposure, or both. However, of the Mesothelioma Claims, the Debtor estimates that the vast majority of the claims against the Debtor or CAMC are based solely on exposure to cosmetic

products; the majority of the remainder of the claims allege exposure to cosmetic products as well as industrial exposure and a very small number of claims allege only industrial exposure.

39. The Debtor estimates that over 95% of those Talc Personal Injury Claims asserted against the Debtor or CAMC are Mesothelioma Claims rather than OC Claims. The Debtor disputes that it has any liability in connection with Mesothelioma Claims.

40. In its defense against the Talc Personal Injury Claims, the Debtor has at all times maintained that the talc it supplied (or its subsidiaries supplied) was safe, that the Talc Personal Injury Claims are entirely without merit, and that exposure to the Debtor's talc products has not caused any personal injuries. The safety of talc has been confirmed by dozens of peer-reviewed studies and multiple regulatory and scientific bodies, including the Food and Drug Administration.

41. CAMC also disputes that it has any liability for Talc Personal Injury Claims, both on the same grounds the Debtor has put forward and because it is a separate parent company that did not itself mine, produce, or distribute talc. As discussed below, the Debtor, while disputing that it has any liability to plaintiffs, believes that it has potential causes of action against CAMC for any liability that the Debtor may have.

**D. Description of Non-Talc Related Liabilities**

42. The Debtor has no secured debt. Other than its talc-related liabilities (including the fees and expenses of the Debtor's professionals that have been defending the Debtor against Talc Personal Injury Claims in the tort system), the Debtor's only other material business-related unsecured obligations are certain ongoing environmental remediation obligations related to three sites that are currently, or were formerly, owned by the Debtor. The environmental remediation work is being handled by contractors under executory contracts. The Debtor also has an unsecured intercompany note obligation to CAMC in the aggregate principal amount of \$1,650,000.00, which is described further below.

### **III. EVENTS LEADING TO COMMENCEMENT OF CHAPTER 11 CASE**

#### **A. Imerys Debtors' Chapter 11 Cases**

43. Prior to the Petition Date, ITA, the entity that had assumed talc liabilities of the Debtor and its former subsidiaries, was defending and indemnifying Cyprus in the pending talc lawsuits—and had committed to defend Cyprus in future lawsuits—relating to alleged liabilities arising from or relating to the former talc operations of the Debtor and its subsidiaries (such lawsuits, whether currently pending or to-be filed in the future and whether filed before or after the Petition Date, collectively, the “Talc Lawsuits”).

44. ITA’s acceptance of tender and the defense and indemnity of Cyprus in the Talc Lawsuits is embodied in certain letter agreements and tender procedures agreed to between Cyprus and ITA (the “Letter Agreements”) and was further illustrated by the course of dealing of the parties since the execution of the Letter Agreements in 2016.

45. As of January 29, 2021, the Debtor was a defendant in approximately 427 Talc Lawsuits, the vast majority of which are pending in state courts, instituted by plaintiffs asserting alleged liabilities relating to the Debtor or its former subsidiaries (including Windsor/ITV) that were transferred to ITA in 1992, for which ITA is now liable due to its express assumption of such liabilities in the 1992 ATA and the 1992 SPA.

46. Upon commencement of the Imerys Debtors’ chapter 11 cases, ITA breached the Letter Agreements and its obligations under the 1992 ATA and the 1992 SPA when it expressly rescinded its acceptance of tender of all of the Talc Lawsuits, leaving Cyprus to defend the suits in the tort system despite ITA’s express assumption in the 1992 transactions of the liabilities asserted against Cyprus in the Talc Lawsuits.

**B. Adversary Proceeding Regarding Cyprus Historical Policies**

47. At the time of the 1992 transactions and since that date, the Debtor was and is an insured under the Cyprus Historical Policies. The Cyprus Historical Policies broadly cover the liabilities of a wide spectrum of Cyprus-affiliated historical businesses, including, but not limited to, the former talc operations of the Debtor and certain of its former subsidiaries acquired by ITA. The Cyprus Historical Policies, at all times, have remained property of the Debtor and its affiliates.

48. Shortly after commencement of the Imerys Debtors' chapter 11 cases, the Imerys Debtors claimed that they held the exclusive rights to proceeds of the Cyprus Historical Policies for Talc Lawsuits that involved assumed liabilities, and advised Cyprus that Cyprus should take all actions necessary to assume and pay for its own defense in those actions. Cyprus strongly disputes the Imerys Debtors' position regarding the Cyprus Historical Policies.

49. On March 7, 2019, the Imerys Debtors commenced an adversary proceeding, No. 19-50115 (LSS) (Bankr. D. Del.) (the "Insurance Adversary Proceeding"), to determine the parties' rights in the proceeds of the Cyprus Historical Policies. Specifically, the Imerys Debtors seek declarations that (i) ITA owns all rights to the proceeds of the Cyprus Historical Policies resulting from accrued claims or causes of action against the insurers related to pre-transfer talc liabilities and (ii) section 362(a)(3) of the Bankruptcy Code applies to prohibit any effort by Cyprus to access such proceeds, whether for defense costs or for any judgments or other liabilities related to pre-transfer talc liabilities.

50. In March 2019, the parties agreed that, during the pendency of the Insurance Adversary Proceeding, Cyprus could access the Cyprus Historical Policies for Talc Lawsuits, but the Imerys Debtors reserved their rights to pursue Cyprus for reductions in policy limits during the Adversary Proceeding, if the Imerys Debtors prevail. The Insurance Adversary Proceeding currently is stayed.

51. During the stay of the Insurance Adversary Proceeding, Cyprus, the Imerys Debtors, the Imerys Debtors' tort claimants committee (the "Imerys Tort Claimants' Committee"), and James L. Patton, Jr., as the future claims representative (the "Imerys FCR") in the Imerys Debtors' chapter 11 cases, participated in a mediation of their disputes before mediator Lawrence W. Pollack. As described below, the mediation resulted in an agreement on the terms and conditions of a global compromise and settlement of the parties' disputes, including the disputes raised in the Insurance Adversary Proceeding.

**C. Adversary Proceeding Regarding Indemnification Rights**

52. The Debtor and its affiliates, including CAMC, believe that they have broad indemnity rights against Johnson & Johnson covering any liabilities and obligations arising out of the Debtor's or Windsor's supply of talc to Johnson & Johnson prior to the 1992 transactions.

53. On June 15, 2020, after Johnson & Johnson had repeatedly denied that it has obligations to Cyprus—and asserted that the Debtor had transferred its indemnity rights to ITA in 1992—Cyprus commenced an adversary proceeding in the Bankruptcy Court, No. 20-50626 (LSS) (Bankr. D. Del.) (the "Indemnification Adversary Proceeding"), against the Imerys Debtors and Johnson & Johnson in the Imerys Debtors' chapter 11 cases. A core issue to be decided in the Indemnification Adversary Proceeding is whether Cyprus has indemnity rights against Johnson & Johnson under the 1989 SPA and the 1989 SA.

54. On July 29, 2020, the Imerys Debtors filed an answer to the complaint in the Indemnification Adversary Proceeding asserting various affirmative defenses and counterclaims (i) seeking a declaration that the Debtor lacks the right and standing to pursue causes of action asserted in the complaint, and (ii) asserting that the Debtor breached its representations and warranties under certain agreements. On July 29, 2020, Johnson & Johnson filed a motion to dismiss the complaint for lack of subject matter jurisdiction, or, in the alternative, to abstain or to

sever and transfer the claims against Johnson & Johnson to the United States District Court for the District of Vermont (the “J&J Motion to Dismiss”). On September 1, 2020, Cyprus responded to the Imerys Debtors’ counterclaims and the J&J Motion to Dismiss, and on September 3, 2020, Cyprus filed a request for oral argument in connection with the J&J Motion to Dismiss. On September 16, 2020, Johnson & Johnson filed a reply in support of the J&J Motion to Dismiss. On October 6, 2020, Cyprus sought leave to file a sur-reply in opposition to the J&J Motion to Dismiss, and on October 16, 2020, Johnson & Johnson filed an opposition to the sur-reply. As of the Petition Date, the J&J Motion to Dismiss is pending before the Bankruptcy Court.

**D. My Appointment As Independent Director And Decision to Explore a Chapter 11 Filing**

55. In August 2019, the Debtor retained me as a consultant for the purpose of evaluating strategic alternatives for managing and resolving Talc Personal Injury Claims against the Debtor. Effective as of February 1, 2020, I was elected as a director of the Debtor. At that time and continuing through the present, I was and am the Debtor’s sole independent director. Effective as of January 8, 2021, the Debtor’s Board of Directors appointed me as the sole member of a special committee of the Board of Directors (the “Special Committee”) to represent the interests of the Debtor in connection with any transaction, agreement, action, or proceeding concerning (i) the commencement, administration, and resolution of any case of the Debtor under chapter 11 of the Bankruptcy Code, (ii) obtaining financing from any affiliate of the Debtor, (iii) the prosecution or settlement of any claims and causes of action of the Debtor against any affiliate of the Debtor, and (iv) any other matter in which there is any conflict or divergence between the interests of the Debtor and the interests of any affiliate of the Debtor.

56. First, in my role as consultant, and later as independent director and the sole member of the Special Committee, various factors led me to the conclusion that it was necessary

and appropriate to consider a chapter 11 filing for the Debtor. After commencement of the Imerys Chapter 11 Case, the Debtor faced an increasing number of Talc Personal Injury Claims in the tort system. At the same time, the Debtor faced increasing uncertainty regarding the assets available to manage and address the Talc Personal Injury Claims. Specifically, the uncertainty regarding access to the Cyprus Historical Policies, Johnson & Johnson's denial of indemnification owing to the Debtor, and the Debtor's limited sources of revenue and funds, put the Debtor in a position where it was unlikely to be able to defend and resolve its existing Talc Personal Injury Claims and those that may be filed in the future. In that context, I determined that it was necessary to consider a possible filing under chapter 11 of the Bankruptcy Code to manage and seek to resolve the Talc Personal Injury Claims. To aid me in that consideration, in January 2020, the Debtor engaged Reed Smith LLP, a firm experienced in asbestos-related chapter 11 cases.

57. Over several months, I, together with counsel, worked to identify and assess alternative means to resolve the Talc Personal Injury Claims and considered possible claims against the Debtor's corporate parents and their predecessors under various state law theories, including veil-piercing and successor liability. At the same time, the Debtor explored the viability of using a chapter 11 bankruptcy filing to address the Talc Personal Injury Claims by channeling them to a trust created under sections 105 and 524(g) of the Bankruptcy Code that would be structured to ensure the fair and equitable treatment of present and future claimants. As part of this process, the Debtor worked constructively with CAMC to gain access to large volumes of relevant documents in response to numerous information requests.

58. After extensive discussions with my advisors, I, as the sole independent Director, ultimately determined that, due to the increasing number of Talc Personal Injury Claims asserted and to be asserted and the prospect of diminishing, readily accessible insurance/third party

indemnitor coverage, continued litigation of Talc Personal Injury Claims in the tort system was not a viable option and that the Debtor should explore further the commencement of this Chapter 11 Case. I also concluded that a chapter 11 case filed in conjunction with a global settlement among the Debtor, CAMC, and the Imerys Debtors would, if achievable, be in the best interests of the Debtor, its estate, and its stakeholders.

59. At the same time that the Debtor was exploring the possibility of a chapter 11 filing, the discussions among CAMC, the Imerys Debtors, the Imerys Tort Claimants' Committee, and the Imerys FCR to resolve the Insurance Adversary Proceeding and related issues were ongoing in the context of the mediation process described above. I was consulted as those discussions occurred and, along with my advisors, I communicated regularly with CAMC and its advisors to seek to ensure that any negotiated resolution would be acceptable to the Debtor and achieve the Debtor's goals. As discussed more fully below, the mediation culminated in a global settlement agreement, which I support, and this Chapter 11 Case was filed to help implement that global settlement.

60. To further aid in the implementation of the global settlement, on behalf of the Debtor, I engaged the services of James L. Patton, Jr., Esq., as the Debtor's future claimants' representative. Mr. Patton also is serving as the Imerys FCR, and I believe that Mr. Patton is well qualified to serve as the Debtor's future claims representative. In addition, given the overlap between the Debtor's creditors and the creditors of the Imerys Debtors, and given Mr. Patton's knowledge derived from the Imerys Debtors' chapter 11 cases, I believe it would be beneficial and efficient for the Debtor and its creditors for Mr. Patton to serve as future claimants' representative in the Debtor's Chapter 11 Case.

61. At my request, my advisors have had discussions and negotiations with a pre-petition ad hoc tort claimants committee made up of eight (8) firms that each represent holders of one or more Talc Personal Injury Claims against the Debtor, who also are members of the Imerys Tort Claimants' Committee. Specifically, the prepetition ad hoc committee consists of holders of Talc Personal Injury Claims against the Debtor represented by the following law firms: (i) Lanier Law Firm; (ii) Levy Konigsberg LLP; (iii) The Gori Law Firm; (iv) OnderLaw, LLC; (v) Beasley, Allen, Crow, Methvin, Portis & Miles, P.C.; (vi) Simon Greenstone Panatier, P.C.; (vii) Cohen, Placitella & Roth, P.C.; and (viii) Barnes Law Group. The prepetition ad hoc committee engaged Robinson & Cole LLP, as counsel, Willkie Farr & Gallagher LLP, as special litigation and corporate counsel, and co-retained Gilbert LLP with the prepetition future claimants' representative as special insurance counsel. The extensive discussions with the Imerys Tort Claimants' Committee and the Imerys FCR, as well as the discussions with the pre-petition committee and future claimants' representative for the Debtor, provide me with confidence that the global settlement on which the Debtor's chapter 11 filing is based can be achieved.

**E. Cyprus Settlement**

62. The Debtor has for more than 40 years been a wholly-owned subsidiary of CAMC or predecessor companies. Accordingly, in order to help develop and evaluate any resolution of Talc Personal Injury Claims, the Debtor conducted due diligence to determine the extent to which CAMC or its predecessors or affiliated companies may have liability for Talc Personal Injury Claims relating to the production, supply, or distribution of talc by the Debtor or its former subsidiaries.

63. Prior to the Petition Date, the Debtor requested, and CAMC provided, approximately 87,000 documents relating to the Debtor's or its affiliates' historical operations and the Debtor's parent companies' relationships with the Debtor. All of such documents were

exhaustively reviewed and analyzed by Reed Smith. Through this due diligence process, and in reliance upon *Emoral, Inc. v. Diacetyl (In re Emoral)*, 740 F.3d 875 (3d Cir. 2014), *cert. denied sub nom. Diacetyl Plaintiffs v. Aaroma Holdings, LLC*, 574 U.S. 974 (2014), the Debtor asserted that CAMC or its predecessors historically controlled the Debtor in such a manner as to subject themselves to potential liability to the Debtor's bankruptcy estate for Talc Personal Injury Claims based on principles of corporate veil-piercing and successor liability.

64. While CAMC denied these allegations, the Debtor's assertions led to good faith, arm's-length negotiations between the Debtor and CAMC, through each entity's outside legal counsel, regarding a settlement of the claims asserted by the Debtor. As the sole independent director, I oversaw and directed the negotiations on behalf of the Debtor.

65. At first, the Debtor's and CAMC's discussions proceeded side by side with the mediation being conducted with the Imerys Debtors, the Imerys Tort Claimants' Committee, and the Imerys FCR. In or around September 2020, however, the separate work-streams merged into a global settlement discussion regarding a framework for a full and comprehensive resolution and release of (i) any and all current and future potential liabilities, at law or equity, arising out of or related to talc-related litigation claims against the Debtor, CAMC, Freeport, and any of their current or former affiliated persons or entities, including all parent companies and subsidiaries (hereinafter collectively the "Cyprus Protected Parties" and singly a "Cyprus Protected Party") that will be channeled, released, or enjoined under the Bankruptcy Code, and (ii) any and all estate claims (including claims based on theories of veil-piercing, successor liability, or conspiracy) that any of the Debtor or the Imerys Debtors could assert against the Debtor (in the case of the Imerys Debtors), CAMC, or the other Cyprus Protected Parties.

66. In December 2020, these negotiations resulted in a global settlement (the “Cyprus Settlement”) — the main terms of which were reflected in a Term Sheet dated December 12, 2020 — that will be incorporated into and implemented by two separate chapter 11 plans, which will be coordinated to the maximum extent possible, specifically, the Imerys Debtors’ chapter 11 plan (the “Imerys Chapter 11 Plan”) and a chapter 11 plan for the Debtor (the “Cyprus Plan”). The terms of the Cyprus Settlement include, among others<sup>5</sup>:

- a. On behalf of each of the Cyprus Protected Parties (including the Debtor), and pursuant to a promissory note, CAMC will pay a total of \$130 million to a talc trust (the “Talc Personal Injury Trust”) to be established under the Imerys Chapter 11 Plan in seven annual installments;
- b. Freeport will provide a guarantee of all of CAMC’s obligations to the Talc Personal Injury Trust;
- c. The Cyprus Protected Parties will assign to the Talc Personal Injury Trust any and all rights to and in connection with Cyprus Historical Policies through 1992 as to which there has not been a complete release of coverage for Talc Personal Injury Claims, and the Talc Personal Injury Trust will assume obligations, and accept certain restrictions, associated with recovering proceeds under the Cyprus Historical Policies;
- d. The appropriate Cyprus Protected Parties will each execute and deliver to the Talc Personal Injury Trust an assignment to the Talc Personal Injury Trust of all of their rights to or claims for indemnification, contribution, or subrogation against any person relating to the payment or defense of any Talc Personal Injury Claims;
- e. In consideration for the contributions described above, the Imerys Chapter 11 Plan and the Cyprus Plan will include the broadest releases and channeling injunctions permitted by law so as to prevent the assertion of any further talc-related claims of any kind against any Cyprus Protected Party, with the intent to provide the Cyprus Protected Parties with “global peace” from any further talc-related litigation of any kind;
- f. The channeling injunctions contained in the Imerys Chapter 11 Plan and the Cyprus Plan will channel all Talc Personal Injury Claims against any Cyprus Protected Party to the Talc Personal Injury Trust;

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<sup>5</sup> This is a summary only. The terms of the definitive settlement agreement, the Imerys Chapter 11 Plan, and the Cyprus Plan will supersede this summary in all instances.

- g. The effectiveness of the parties' agreement is conditioned upon confirmation and the occurrence of the effective date of the Imerys Chapter 11 Plan and the Cyprus Plan, as well as entry of orders by the District Court affirming the Imerys Chapter 11 Plan and Cyprus Plan, including approval of the terms of the parties' global settlement; and
- h. CAMC will provide the Debtor with unsecured, superpriority debtor-in-possession financing to fund the reasonable administrative expenses of this Chapter 11 Case, subject to certain conditions, as described more fully below.

67. In addition to providing a framework for full and comprehensive resolution of all Talc Personal Injury Claims against the Debtor and the Cyprus Protected Parties, the Cyprus Settlement resolves the Debtor's claims against CAMC concerning principles of corporate veil-piercing and successor liability and the parties' disputes in the Insurance Adversary Proceeding and alleviates the need for CAMC and the Debtor to pursue the Indemnification Adversary Proceeding against the Imerys Debtors.

**F. Funding Pre-Petition Negotiations And This Chapter 11 Case**

68. The Debtor has relatively small ongoing business operations and limited cash-on-hand. In the recent past, the Debtor has been dependent upon capital contributions made by its immediate parent, CAMC, to fund its general, administrative, and legal expenses. Before the Petition Date, CAMC communicated to the Debtor that it was no longer willing to fund the Debtor in that manner. Under these circumstances, the Debtor and its advisors determined that the Debtor would require significant pre- and post-petition financing to support the pre-filing activities and the post-petition administration of this Chapter 11 Case. The Debtor's access to sufficient sources of liquidity through the incurrence of new indebtedness for borrowed money and other financial accommodations is vital to executing its restructuring plan, including so that the Debtor can pay the fees and expenses of well-qualified advisors to represent an official committee of tort claimants and a future claimants' representative to be appointed in this Chapter 11 Case. Given the Debtor's need for financing, the Debtor and its advisors (as well as the Imerys Tort Claimants' Committee

and the Imerys FCR) negotiated with CAMC to obtain credit for the Debtor on the most favorable terms possible.

69. To fund certain prepetition retainers required by the prepetition future claimants' representative, the prepetition ad hoc committee of tort claimants, and the Debtor's professionals, as well as other pre-filing expenses, CAMC loaned the Debtor the principal sum of \$1,650,000.00 on an unsecured basis. The terms of the prepetition intercompany loan were memorialized in a promissory note dated January 11, 2021.

70. In addition, consistent with the Cyprus Settlement, CAMC, as lender, and the Debtor, as borrower, entered into the Superpriority Debtor-in-Possession Credit Agreement (the "DIP Credit Agreement"), dated as of February 11, 2021, pursuant to which CAMC agreed, subject to Bankruptcy Court approval, to loan the Debtor up to the maximum aggregate principal amount of \$14,450,000, for the purpose of paying the reasonable administrative expenses incurred by the Debtor during the Chapter 11 Case. Loans under the DIP Credit Agreement are unsecured, but entitled to super-priority administrative expense status pursuant to section 364(c) of the Bankruptcy Code.

71. Importantly, CAMC has agreed that all unpaid principal amounts of each loan and all other unpaid obligations under the DIP Credit Agreement, including accrued and unpaid interest, will be deemed to be fully, finally, and forever released, relinquished, and discharged on the effective date of a chapter 11 plan acceptable to CAMC that implements the parties' global settlement.

72. Under my direction as the sole independent director and member of the Special Committee, the Debtor negotiated the DIP Credit Agreement with CAMC in good faith, at arm's length, with the assistance of its advisors, and in the context of the Cyprus Settlement. I believe

that the terms of the DIP Credit Agreement are fair and allow the Debtor to maximize the value of its estate for the benefit of holders of Talc Personal Injury Claims.

### **III. GOALS OF THIS CHAPTER 11 CASE**

73. The Imerys Debtors have filed the Imerys Chapter 11 Plan in the Imerys Debtors' chapter 11 cases. Consistent with the terms of the Cyprus Settlement, the Imerys Chapter 11 Plan will establish the Talc Personal Injury Trust and channel all existing and future Talc Personal Injury Claims against the Imerys Debtors to the Talc Personal Injury Trust pursuant to sections 105(a) and 524(g) of the Bankruptcy Code. In consideration of CAMC's contributions to the Talc Personal Injury Trust on behalf of itself, the Debtor, and the other Cyprus Protected Parties, the Imerys Chapter 11 Plan contemplates that the Debtor and the Cyprus Protected Parties also will be considered protected parties and receive the benefit of the channeling injunction under the Imerys Chapter 11 Plan.

74. The Debtor filed this Chapter 11 Case consistent with the terms of the Cyprus Settlement to provide the Debtor and the Cyprus Protected Parties maximum protection under sections 524(g), 105(a), and 1141(d)(1) of the Bankruptcy Code. The Debtor intends to seek confirmation of a chapter 11 plan that will channel all existing and future Talc Personal Injury Claims against it and certain other protected parties, including the Cyprus Protected Parties, to the Talc Personal Injury Trust pursuant to section 524(g) of the Bankruptcy Code. The proposed channeling injunction will enjoin any entity that holds or asserts, or that may in the future hold or assert, a Talc Personal Injury Claim from taking any action for the purpose of directly or indirectly recovering on such Talc Personal Injury Claim from the Debtor and other protected parties. Accordingly, the sole recourse of any current or future holder of a Talc Personal Injury Claim

against any protected party on account of such Talc Personal Injury Claim will be against the Talc Personal Injury Trust.

75. The Plan is intended to channel to the Talc Personal Injury Trust any and all pending or future claims against the Debtor and any Cyprus Protected Party in any way relating to the Debtor's or any current or former subsidiary of the Debtor's manufacture, distribution, or other conduct relating in any way to talc or talc-containing products. Under the Debtor's chapter 11 plan, the Talc Personal Injury Trust will assume liability for all Talc Personal Injury Claims against the Debtor and the Cyprus Protected Parties and use its assets, including the contributions made by CAMC, to review and resolve the Talc Personal Injury Claims and, if eligible, compensate the holders of the Talc Personal Injury Claims. By establishing procedures to govern trust distributions, the Talc Personal Injury Trust will be able to resolve Talc Personal Injury Claims in a fair and efficient manner, as required by section 524(g) of the Bankruptcy Code.

#### **IV. MOTIONS**

76. To ensure the efficient administration of the estate, the Debtor seeks approval of the following Motions (which are customary in mass tort bankruptcy cases) and related orders (the "Proposed Orders"), and respectfully requests that the Bankruptcy Court enter the Proposed Orders granting such Motions:

- a. First day motions for which relief is sought on an emergency basis:
  - i. Debtor's Motion for Interim and Final Orders (I) Authorizing the Listing of Addresses of Counsel for Talc Claimants in the Creditor Matrix in Lieu of Talc Claimants' Addresses; (II) Approving Certain Notice Procedures for Talc Claimants; and (III) Authorizing the Filing of a List of the Law Firms Representing the Largest Numbers of Talc Claimants (the "Talc Claimants Notice Procedures Motion");
  - ii. Debtor's Motion for an Order (I) Approving the Master Service List and (II) Approving the Form and Manner of the Notice of Commencement of the Debtor's Chapter 11 Case (the "Case Procedures Motion"); and

- iii. Debtor's Application Pursuant to 28 U.S.C. § 156(C) for Entry of an Order Authorizing the Employment and Retention of Prime Clerk LLC as the Claims and Noticing Agent, *Nunc Pro Tunc* as of the Petition Date (the "Claims and Noticing Agent Motion"); and
- b. Second day motions for which relief is sought on regular notice:
  - i. Debtor's Motion for Entry of an Order Under 11 U.S.C. §§ 105, 361, 362, 364, and 507 (I) Authorizing the Debtor to Obtain Postpetition Financing, (II) Providing Super-Priority Administrative Expense Status, and (III) Granting Related Relief (the "DIP Financing Motion");
  - ii. Debtor's Motion for an Order Appointing James L. Patton, Jr., as Legal Representative for Future Talc Claimants, *Nunc Pro Tunc* to the Petition Date (the "FCR Motion");
  - iii. Debtor's Motion for Entry of an Order (I) Establishing Bar Dates for Submitting Proof of Claim for Non-Talc Claims and Indirect Talc Personal Injury Claims, (II) Approving Procedures for Submitting Proofs of Claim, and (III) Approving Notice Thereof (the "Bar Date Motion"); and
  - iv. applications to retain the following professionals: (i) Reed Smith LLP, as general bankruptcy counsel; (ii) Kasowitz Benson Torres LLP, as special conflicts counsel; and (iii) Prime Clerk LLC, as administrative advisor (collectively with the Claims and Noticing Agent Motion, the "Retention Applications").

77. I have reviewed each of the Motions, Proposed Orders, and exhibits thereto (or have otherwise had their contents explained to me), and the facts set forth therein are true and correct to the best of my knowledge, information, and belief. Moreover, I believe that the relief sought in each of the Motions is vital to enabling the Debtor to make the transition to, and efficiently and effectively administer, its Chapter 11 Case.

**A. The Talc Claimants Notice Procedures Motion**

78. Through the Talc Claimants Notice Procedures Motion, the Debtor seeks (i) authorization to list the addresses of counsel for Talc Claimants in the creditor matrix in lieu of the Talc Claimants' addresses, (ii) approval of certain notice procedures for Talc Claimants, and

(iii) authorization to file a list of the top ten law firms representing the largest number of Talc Claimants.

79. The Debtor's defense counsel maintains a database that identifies the names, but not the addresses, of the Talc Claimants. Instead, the Debtor's defense counsel typically tracks the address information of counsel of record for the Talc Claimants and conducts all communications regarding the related litigation through such counsel of record.

80. The Debtor has the home addresses of some plaintiffs but not others. Talc Claimants rarely include their addresses in the complaint. As cases progress, the Debtor sometimes obtains the home or mailing address of plaintiffs, including through discovery or court filings. But, in other cases, the Debtor does not have addresses for personal service. Therefore, at this time, various of the Talc Claimants' addresses are unknown and not readily available to the Debtor.

81. Throughout the course of this Chapter 11 Case, I understand that various notices, mailings, and other communications must be sent to parties-in-interest, including the Talc Claimants. To provide the best and most efficient notice to Talc Claimants, the Debtor seeks to implement certain notice procedures (the "Notice Procedures") by which the Debtor will (a) list the addresses of known counsel of record for the Talc Claimants, in lieu of the addresses of the Talc Claimants themselves, on the Debtor's creditor matrix and (b) send required notices, mailings, and other communications related to the Chapter 11 Case to such known counsel of record for the Talc Claimants in lieu of sending such communications to the Talc Claimants themselves in the manner required pursuant to otherwise applicable noticing procedures in effect in the Chapter 11 Case, *provided* that the Debtor will (or direct the Claims Agent to) send required notices, mailing

and other communications directly to any Talc Claimants who so request such direct notice from the Debtor in writing.<sup>6</sup>

82. I believe that implementing the Notice Procedures will provide superior, actual notice to Talc Claimants than if the Debtor were to attempt to deliver notices and other communications directly to such claimants. In addition, I understand that the address for counsel to the Talc Claimants is more likely to remain unchanged over time, and hence providing notice to the counsel of record will allow for more accurate notice to Talc Claimants. Moreover, I believe that the Notice Procedures will significantly ease the Debtor's administrative burden of sending notices to hundreds of Talc Claimants, resulting in a more cost-effective notice procedure that benefits the Debtor's estate and creditors. I understand this notice procedure has been used in most asbestos-related chapter 11 cases.

83. By the Talc Claimants Notice Procedures Motion, the Debtor also seeks authorization to file a consolidated list of the top ten law firms representing the largest number of Talc Claimants. As described above, the Debtor is currently named as a defendant in pending Talc Lawsuits. Taken in the aggregate, the vast majority of the Debtor's known creditors are Talc Claimants (though, as noted above, the Debtor vigorously disputes all liability as to the Talc Personal Injury Claims). The Debtor's primary goal in filing this Chapter 11 Case is to confirm a plan of reorganization pursuant to sections 105(a), 524(g), and 1129 of the Bankruptcy Code that channels all of the present and future Talc Personal Injury Claims to a trust vested with substantial assets and provides for a channeling injunction prohibiting claimants from asserting against the

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<sup>6</sup> Additionally, by the Talc Claimants Notice Procedures Motion, the Debtor seeks authorization to serve only one copy of each document on law firms (at each relevant address) representing multiple Talc Claimants, which shall be notice to all such counsel's clients, provided that any notice or other document relating specifically to one or more particular Talc Claimants (rather than all Talc Claimants represented by such law firm) shall clearly identify such parties.

Debtor or other protected party any claims arising from talc mined, produced, sold, or distributed by the Debtor. While the Debtor disputes all liability as to the Talc Personal Injury Claims, I believe this approach will provide fair and equitable treatment of all stakeholders. As a result, the Debtor believes it likely that the Office of the United States Trustee (the “U.S. Trustee”) will appoint an official committee of tort claimants consisting of individuals represented by the predominant plaintiffs’ firms representing the Talc Claimants in the tort system.

84. I do not believe that listing the individual Talc Claimants with the largest unsecured claims against the Debtor would facilitate the U.S. Trustee’s appointment of a tort claimants’ committee. Tort claimants’ committees typically consist of individuals, or their estates, that are represented by the predominant plaintiffs’ firms representing the relevant claimants in the tort system, and those firms are able to identify individual clients that are willing to serve on the committee. In addition, I believe that attempting to designate certain individual Talc Claimants as holding the “largest” unsecured claims would be arbitrary, where the pending Talc Personal Injury Claims are disputed, contingent, and/or unliquidated. I believe that providing the U.S. Trustee with a list of the top ten law firms with the most significant Talc Claimant representations as determined by the volume of pending Talc Personal Injury Claims would better assist the U.S. Trustee in forming such a committee.

**B. The Case Procedures Motion**

85. Through the Case Procedures Motion, the Debtor seeks (i) authorization to establish a master service list and (ii) approval of the form and manner of service of a notice regarding commencement of this Chapter 11 Case.

86. Currently, there are over 500 creditors (including the Talc Claimants) and parties-in-interest that may be entitled to receive notice in this Chapter 11 Case. In the event that the Court authorizes the Debtor to serve law firms in lieu of Talc Claimants, there still will be over

200 creditors and parties-in-interest that may be entitled to receive notice. To require the Debtor to provide notice of all pleadings and other papers filed in this Chapter 11 Case to these parties-in-interest would be overly burdensome and costly to its estate. To alleviate this burden, the Debtor is requesting that the Bankruptcy Court allow it to establish a master service list and a Bankruptcy Rule 2002 list, all as further described in the Case Procedures Motion.

87. I believe this motion will reduce costs and increase the effective administration of the estate.

**C. The DIP Financing Motion**

88. Prior to the Petition Date, the Debtor, as borrower, and its parent, CAMC, as lender, negotiated a debtor-in-possession credit agreement ("DIP Credit Agreement"), subject to Bankruptcy Court approval, that I believe will provide the Debtor with sufficient cash to complete this Chapter 11 Case and maintain the Debtor's administrative solvency. The DIP Credit Agreement permits the Debtor to borrow from CAMC an amount up to \$14,450,000 for the purposes of funding the reasonable administrative expenses of this Chapter 11 Case, including the payment of estate professionals. As an entity with limited business functions and no employees, the Debtor expects that there will be minimal administrative expenses in this Chapter 11 Case beyond the professionals' fees and expenses incurred by the Debtor, the official committee of tort claimants, and the future claimants' representative. As a result of the anticipated limited uses of the loans, the parties agreed that a budget was unnecessary within the context of this Chapter 11 Case.

89. Amounts extended under the DIP Credit Agreement are entitled to super-priority administrative claim priority under sections 363(c), 503(b), and 507(a)(2) of the Bankruptcy Code. Amounts borrowed under the DIP Credit Agreement are to be forgiven upon the effective date of

a confirmed plan of reorganization that is acceptable to CAMC and that includes CAMC as a released party and a protected party as contemplated by the Cyprus Settlement.

90. The DIP Credit Agreement was negotiated in good faith and at arms' length between outside counsel for the Debtor and CAMC. As the Debtor's sole independent director, I oversaw and directed the negotiations on behalf of the Debtor, and I believe the DIP Credit Agreement reflects the best terms that the Debtor could have obtained under the circumstances.

91. Indeed, I do not believe that the Debtor would be able to obtain any financing on better terms than those offered by CAMC. The Debtor does not have business operations that generate significant revenue and would not be able to pay the expenses of this Chapter 11 Case absent the financing that has been negotiated. Based on my 43 years of bankruptcy practice, I do not believe that any other lender would provide post-petition financing to the Debtor on an unsecured basis and then forgive that loan upon successful confirmation of a plan of reorganization that includes the lender as a released party.

**D. The FCR Motion**

92. Through the FCR Motion, the Debtor seeks the entry of an order authorizing the appointment of Mr. Patton as the future claimants' representative, *nunc pro tunc* to the Petition Date.

93. I understand that the appointment of a future claimants' representative to represent the interests of future claimants is necessary for the Debtor to successfully pursue and achieve confirmation of a plan under sections 105 and 524(g) of the Bankruptcy Code.

94. Based upon my review of Mr. Patton's curriculum vitae and my awareness of decisions by various bankruptcy courts discussing Mr. Patton's qualifications, I believe that Mr. Patton is highly qualified to serve as the future claimants' representative and that his extensive experience, particularly relating to his service as future claimants' representative in the Imerys

Chapter 11 Case, will promote efficiency in this Chapter 11 Case. I believe that appointing an experienced future claimants' representative, such as Mr. Patton, minimizes the potential for missteps that could prolong the reorganization process, delay payments to claimants, and result in substantially increased professional fees and other bankruptcy-related expenses.

**E. The Bar Date Motion**

95. Through the Bar Date Motion, the Debtor seeks the entry of an order: (i) establishing bar dates by which entities asserting claims against the Debtor must file proofs of claim; (ii) approving procedures for submitting proofs of claim; and (iii) approving the form and manner of service of the bar date notice. I believe that the procedures described in the Bar Date Motion will provide creditors with notice and opportunity and a clear process for filing proofs of claim and achieve administrative and judicial efficiency.

96. The procedures described in the Bar Date Motion also provide notice of who should **not** file a proof of claim in response to the Bar Dates, including holders of Direct Talc Personal Injury Claims (as defined in the Bar Date Motion). Review and liquidation of the Direct Talc Personal Injury Claims will be accomplished by the Talc Personal Injury Trust following the effective date of the Debtor's chapter 11 plan. Consequently, as the Court will never have occasion to adjudicate the Direct Talc Personal Injury Claims, there is no practical reason for holders of Direct Talc Personal Injury Claims to file proof of their Direct Talc Personal Injury Claims as part of the claims process in this Chapter 11 Case.

97. For the avoidance of doubt, the Debtor is requesting through the Bar Date Motion that the Court establish a bar date for entities to file **Indirect** Talc Personal Injury Claims. I believe that a bar date for entities to file Indirect Talc Personal Injury Claims is necessary for, among other things, the Debtor to solicit the appropriate parties for purposes of voting on any plan of reorganization in this Chapter 11 Case.

**F. Retention Applications**

98. I believe that the retention of chapter 11 professionals is essential to this Chapter 11 Case. Accordingly, during this Chapter 11 Case, the Debtor anticipates that it will request permission to retain, among others, the following professionals: (i) Reed Smith LLP, as general bankruptcy counsel; (ii) Kasowitz Benson Torres LLP, as special conflicts counsel; and (iii) Prime Clerk LLC, as claims and noticing agent and administrative advisor. I believe the above professionals are well-qualified to perform the services contemplated by the various retention applications, the services are necessary for the success of this Chapter 11 Case, and the professionals will coordinate their services to avoid duplication of efforts. I understand that the Debtor may find it necessary to seek retention of additional professionals as this Chapter 11 Case progresses.

**CONCLUSION**

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

*[The remainder of this page was intentionally left blank.]*

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

Executed this 11<sup>th</sup> day of February 2021.

*/s/ D. J. (Jan) Baker*

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D. J. (Jan) Baker

Independent Director

Cyprus Mines Corporation