

ONTARIO
SUPERIOR COURT OF JUSTICE
(COMMERCIAL LIST)

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

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

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

FACTUM OF THE APPLICANT
(Returnable February 19, 2019)

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PART I - OVERVIEW

1. The Applicant, Imerys Talc Canada Inc. ("ITC" or the "**Applicant**"), brings this application under Part IV of the *Companies' Creditors Arrangement Act*, R.S.C. 1985, c. C-36, as amended (the "**CCAA**"), seeking orders recognizing certain proceedings commenced in the United States in respect of the Applicant and several related companies. The Applicant also seeks other ancillary relief.
2. Imerys Talc America, Inc. ("**ITA**"), Imerys Talc Vermont, Inc ("**ITV**"). (collectively, the "**US Debtors**") and ITC (together with the US Debtors, the "**Debtors**") are the market leaders with respect to talc production in North America, representing nearly 50% of the market, and are affiliated entities of Imerys S.A, a world leader in mineral-based specialties for industry.
3. On February 13, 2019 (the "**Filing Date**"), the US Debtors and ITC filed voluntary petitions for relief pursuant to Chapter 11 of Title 11 ("**Chapter 11**") of the United States Code (the "**US Code**") (collectively, the "**Petitions**" and each a "**Petition**") with the United States Bankruptcy Court for the District of Delaware (the "**US Court**"). The Debtors have requested that the Petitions be jointly administered for procedural purposes only.
4. One or more of the Debtors are named as defendants in lawsuits asserting approximately 14,674 litigation claims alleging liability for personal injuries allegedly

caused by exposure to talc. The Debtors believe this litigation is without merit and their strategy has consistently been to mount a vigorous defense to all such claims.

Nevertheless, given the increasing number of cosmetic talc lawsuits, the rise in settlement demands in cosmetic talc lawsuits, and the increasing unwillingness of the Debtors' insurers and third party contractual indemnitors to provide coverage for the Debtors' mounting defense costs and potential liability exposure, the Debtors have determined that coordinated and court-supervised chapter 11 proceedings are required to protect their estates and preserve value for all stakeholders.

5. ITC has not been named as a defendant in any of the lawsuits to date. However, ITA, ITV, and ITC constitute the entirety of Imerys's North American talc operations. ITC's operations are not only significantly integrated with the other Debtors (as further described below), but ITC is particularly reliant upon ITA's personnel and other resources, as ITC utilizes ITA assets and personnel for critical cash, treasury and other necessary administrative services. In addition, the Debtors believe ITC faces potential future litigation as the vast majority of the talc produced by ITC is exported and sold in the US. As a result, the Debtors determined it was in ITC's best interests to initiate chapter 11 proceedings along with the other Debtors.
6. The Debtors' ultimate goal in the US Proceedings is to confirm a plan of reorganization providing for trust mechanisms and a channeling injunction that will address all current and future talc claims arising from historic operations of the Debtors so the Debtors can emerge from Chapter 11 protection free of such talc-related liabilities. In the near term, however, to minimize any loss of value of their businesses during the US Proceedings, the Debtors' immediate objective is to maintain a business-as-usual atmosphere during the early stages of the US Proceedings, with as little interruption or disruption to the Debtors' operations as possible.
7. In furtherance of the above, ITC has brought this application to seek the following relief:
 - (a) An order (the "**Initial Recognition Order**") that, *inter alia*:
 - (i) declares that ITC is a "foreign representative" as defined in section 45 of the CCAA in respect of the jointly administered insolvency proceedings;

- (ii) recognizes the US Proceedings under Chapter 11 of the US Code and declares the US Proceedings as a foreign main proceeding with respect to each of the Debtors, including ITC;
 - (iii) stays all proceedings that might be taken against the Debtors under the *Bankruptcy and Insolvency Act* R.S.C. 1985, c. B-3, as amended, or the *Winding-Up and Restructuring Act*, R.S.C. 1985, c. W-11, as amended;
 - (iv) restrains further proceedings and any action, suit or proceeding against the Debtors;
 - (v) prohibits the commencement of any action, suit or proceeding against the Debtors.
- (b) An order (the "**Supplemental Order**") that, *inter alia*:
- (i) recognizes in Canada and enforces certain of the First Day Orders as set out in the Picard Affidavit;
 - (ii) appoints Richter Advisory Group Inc. ("**Richter**") as information officer (in such capacity, the "**Information Officer**") in respect of this proceeding; and
 - (iii) grants the Court-ordered Administration Charge (as defined in the Supplemental Order).
8. There are no other insolvency proceedings involving the Debtors other than the US Proceedings and these proceedings.
9. Any capitalized terms not otherwise defined herein shall have the meanings given to such terms in the Affidavit of Alexandra Picard sworn February 14, 2019 (the "**Picard Affidavit**").

PART II - FACTS

10. The relevant facts in connection with this Application are more fully set out in the Picard Affidavit.

PART III - ISSUES

11. The issues on this Application are:
- (a) Does the Court have jurisdiction to hear this Application?

- (b) Should the Court recognize the US Proceeding as a foreign main proceeding pursuant to sections 46 through 48 of the CCAA and grant the Initial Recognition Order sought by the Applicant?
- (c) Should the Court grant the Supplemental Order sought by the Applicant under section 49 of the CCAA?

PART IV - ARGUMENT

(A) Jurisdiction

12. Pursuant to section 9 of the CCAA, the Court has jurisdiction to hear an application in the “province within which the head office or chief place of business of the company in Canada is situated, or, if the company has no place of business in Canada, in any province within which any of the assets of the company are situated”.

CCAA, s. 9.

13. The head office of each of the US Debtors is San Jose, California. ITC is registered under the *Canadian Business Corporations Act*, R.S.C., 1985, c. C-44 (the “CBCA”) with a registered office in Montreal, Quebec. The majority of ITC’s operations are at its mines in Timmins and Penhorwood in Ontario including its warehouses and distribution facilities. Accordingly, the Court has jurisdiction to hear this Application.

Picard Affidavit, 15, 22, 73.

(B) Initial Recognition Order

(i) *The US Proceeding is a “Foreign Proceeding”*

14. Part IV of the CCAA establishes a process and system for addressing cross-border and multi-national insolvencies. Section 44 of the CCAA states that the purpose of the CCAA's cross-border regime is 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.

CCAA, s. 44.

15. Part IV of the CCAA is consistent with the principle that a cross-border or multi-national business enterprise should “be permitted to implement a plan so as to reorganize as a global unit, especially where there is an established interdependence on a transnational basis of the enterprise”. In such cases, one jurisdiction should take charge of the principal administration of the enterprise's reorganization.

Babcock & Wilcox Canada Ltd. (Re), 2000 Carswell Ont 704, 21, (Ont. S.C.J. [Commercial List] [*Re Babcock*], Brief of Authorities (“BOA”), Tab 2.

16. The underlying basis of Part IV of the CCAA is the principle of comity and cooperation between courts of various jurisdictions, whereby 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.”

Re Babcock, 21, BOA, Tab 2.

17. Section 47 of the CCAA provides that if the Court is satisfied that:
- (a) an application for the recognition of a foreign proceeding relates to a “foreign proceeding” within the meaning of the CCAA; and

(b) the applicant is a “foreign representative” within the meaning of the CCAA in respect of that foreign proceeding,

then it *shall* make an order recognizing the foreign proceeding.

CCAA, s. 47.

18. Canadian courts have consistently recognized proceedings commenced under Chapter 11 of the US Code to be “foreign proceedings” for the purposes of the CCAA.

Caesars Entertainment Operating Co., (Re), 2015 ONSC 712 [*Re Caesars*], BOA, Tab 3.

CHC Group Ltd. (Re), 2016 BCSC 2623 [*Re CHC*], BOA, Tab 4.

Digital Domain Media Group Inc. (Re), 2012 BCSC 1565 [*Re Digital Domain*], BOA, Tab 5.

Horsehead Holding Corp., (Re), 2016 ONSC 958 [*Re Horsehead*], BOA, Tab 6.

19. This Application is supported by a certified copy of the Foreign Representative Order authorizing the Applicant to act as the foreign representative in these proceedings, as required by Section 46(2) of the CCAA.

CCAA, s. 46(2); Picard Affidavit, Exhibit “E”.

20. It is accordingly submitted that the US Proceedings ought to be recognized by the Court as a “foreign proceeding” as defined in Section 45(1) of the CCAA.

CCAA, s. 45(1).

(ii) *ITC is a “Foreign Representative”*

21. The term “foreign representative” is defined under section 45(1) of the CCAA as a person or body who is authorized in a foreign proceeding in respect of a debtor company to act as a representative in respect of the foreign proceeding.

CCAA, s. 45(1).

22. ITC has been duly authorized by the US Court to make this application and to act as a foreign representative in these CCAA proceedings. It is accordingly submitted that ITC

ought to be recognized by the Court as a “foreign representative” as defined in section 45(1) of the CCAA.

Picard Affidavit, Exhibit “E”.

(iii) The US Proceedings are a “Foreign Main Proceeding”

23. If the Court grants an order under subsection 47(1) of the CCAA, subsection 47(2) of the CCAA requires that the Court specify whether the foreign proceeding is a “foreign main proceeding” or a “foreign non-main proceeding.” If a foreign proceeding is recognized as a “foreign main proceeding” then there is an automatic stay against any proceedings concerning the debtor’s property, debts, liabilities and obligations in Canada by operation of s. 48(1) of the CCAA.

CCAA, ss. 47(1), 47(2) and 48(1).

24. Subsection 45(1) of the CCAA provides that a “foreign main proceeding” is a foreign proceeding in a jurisdiction where the debtor company has the “centre of its main interests” (“COMI”).

CCAA, s. 45(1).

25. While the CCAA does not define what constitutes a debtor company's COMI, pursuant to subsection 45(2), a debtor company's COMI is presumed to be the location of its registered office, in the absence of proof to the contrary.

CCAA, s. 45(2).

26. However, a debtor's COMI is a substantive, not technical, determination and the statutory presumption may be rebutted by evidence of the operational realities of a debtor. A determination of a debtor's COMI will necessarily depend upon the particular facts and circumstances of each case.

Re Digital Domain, 24, BOA, Tab 5.

27. Justice Morawetz (as he then was) commented on the COMI analysis as follows in *Re Lightsquared*:

In most cases, these factors will all point to a single jurisdiction as the centre of main interests. In some cases, there may be conflicts among the factors, requiring a more careful review of the facts. The court may need to give greater or less weight to a given factor, depending on the circumstances of the particular case. In all cases, however, the review is designed to determine that the location of the proceeding, in fact, corresponds to where the debtor's true seat or principal place of business actually is, consistent with the expectations of those who dealt with the enterprise prior to commencement of the proceedings.

Lightsquared LP (Re), 2012 ONSC 2994 (Ont. S.C.J. [Commercial List]) [*Re Lightsquared*], 26, BOA, Tab 7.

28. Canadian courts have accepted the following test in determining whether the statutory presumption of a debtor company's COMI has been rebutted:

In circumstances where it is necessary to go beyond the s. 45(2) registered office presumption [...] the following principal factors, considered as a whole, will tend to indicate whether the location in which the proceeding has been filed is the debtor's centre of main interest. The factors are:

- (i) the location is readily ascertainable by creditors;
- (ii) the location is one in which the debtor's principal assets or operations are found; and
- (iii) the location is where the management of the debtor takes place.

Re Lightsquared, 25, BOA, Tab 7.

Re Horsehead, 22, BOA, Tab 6.

29. In addition to the above "principal" factors, Canadian courts have made reference to the following factors in conducting the COMI analysis:

- (a) the location where corporate decisions are made;
- (b) the location of employee administrations, including human resource functions;
- (c) the location of the company's marketing and communication functions;
- (d) whether the enterprise is managed on a consolidated basis;

- (e) the extent of integration of an enterprise's international operations;
- (f) the centre of an enterprise's corporate, banking, strategic and management functions;
- (g) the existence of shared management within entities and in an organization;
- (h) the location where cash management and accounting functions are overseen;
- (i) the location where pricing decisions and new business development initiatives are created; and
- (j) the seat of an enterprise's treasury management functions, including management of accounts receivable and accounts payable.

Massachusetts Elephant & Castle Group Inc. (Re), 2011 ONSC 4201 [*Elephant & Castle*], 26-31, BOA, Tab 8.

Re Digital Domain, 21, BOA, Tab 5, citing *Angiotech Pharmaceuticals Inc., Re*, 2011 BCSC 115 (B.C. S.C. [In Chambers]) 7, BOA, Tab 1.

Re CHC, 11, BOA, Tab 4, citing *Angiotech Pharmaceuticals Inc., Re*, 2011 BCSC 115 (B.C. S.C. [In Chambers]) 7, BOA, Tab 1.

30. In *Re Horsehead*, the Canadian entity's main operations and registered office were located in Brampton, Ontario. However, the court recognized that it was nonetheless able to rebut the presumption. In particular, the court emphasized that three of the four directors of the Canadian entity were US residents (as is the case for ITC) and that the only Canadian resident was a plant manager. Furthermore, major decision making related to communications, pricing and business development were made in the US. The court found that the debtors in that case were all deeply integrated from a "corporate, strategic, financial, and management perspective."

Re Horsehead, 3-4, 9-10 BOA, Tab 6.

31. In *Re Caesars*, the applicant, an Ontario corporation, rebutted the COMI presumption as an indirect subsidiary of a chapter 11 debtor. Similar to ITC, the applicant in *Re Caesars* was the only one of the debtors not incorporated in the US. The central corporate

decision making relevant to strategic and directional matters, strategic marketing, communications and loyalty programs were made in the US.

Re Caesars, 20 BOA, Tab 3.

32. The court was further persuaded by the critical services, centralized in the US, shared between the Canadian and US entities as a reflection of integration such as the administration of brand and intellectual property, online booking, website maintenance, and a customer loyalty program.

Re Caesars, 35 BOA, Tab 3.

33. In *Re CHC*, in deciding that the COMI presumption was rebutted in the case of a Canadian entity registered in British Columbia, the court emphasized that “integration of a specific debtor with a larger corporation is, on my reading of the cases, a significant factor.” The facts persuasive to the court in accepting the rebuttal were that the Canadian debtors in that case were fully integrated into CHC’s global operations and their management was consolidated. Central decision making related to communications, sales, strategic and new business development, and certain finance decisions were made in the US.

Re CHC, 9, 14 BOA, Tab 4.

34. The Applicant submits that the COMI for each of the Debtors is the United States.
35. With respect to the US Debtors, each has its registered office in the United States and there is no evidence to rebut the presumption (and in fact, the evidence shows that the US Debtors have no presence or connection to Canada, other than their relationship with ITC). Accordingly, it is submitted that the COMI for the US Debtors is the United States.

Picard Affidavit, 15, 72.

36. Although ITC’s registered office is in Montreal, Quebec, the Applicant submits that the presumptive COMI is rebutted. The evidence shows that ITC’s operations are intertwined with the US Debtors. In particular, the Applicant submits that the following demonstrates that ITC’s COMI is the United States:

- (a) ITC is fully integrated with the US Debtors and is operated on a consolidated basis, with all corporate and other major decision making occurring in office located in San Jose, California, Atlanta, Georgia and Three Forks, Montana;
- Picard Affidavit, 78.
- (b) Three of the four ITC directors are not Canadian residents;
- Picard Affidavit, 75.
- (c) ITC derives its customer base almost exclusively from the US with 95% of its product purchased by US buyers;
- Picard Affidavit, 74.
- (d) The highest level of employee located in Canada is the operations manager for the active mines. However, various operational tasks and decisions are made by ITA personnel or otherwise require senior approval, which is relayed to, and received by, ITA personnel in the United States. ITA personnel making decisions on behalf of ITC also consult with, rely upon or seek approval of, personnel in the US office (primarily Imerys USA) with respect to material matters which are outside of the ordinary course;
- Picard Affidavit, 76.
- (e) ITC relies heavily upon ITA personnel and resources located in the United States for both its strategic business operations as well as day-to-day functionality. Decisions are made on behalf of all of the Debtors by a division manager of North American talc operations who is an employee of ITA and located in the United States. These decisions include considerations such as which shared services each of the Debtors will participate in and the appropriate use of capital expenditures;
- Picard Affidavit, 77.

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

Picard Affidavit, 78.

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

Picard Affidavit, 79.

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

Picard Affidavit, 80.

- (i) ITC receives certain Shared Services relating to treasury management and accounts payable functionality (including vendor setup and maintenance, invoice processing, and related services) governed by a Master Service Level

Agreement with the SSC. Specifically, personnel in the Atlanta, Georgia, and Three Forks, Montana offices manage all of ITC's accounts payable and accounts receivable;

Picard Affidavit, 81.

- (j) ITC is also party to separate service level agreements with units of the SSC relating to purchasing activities and services as well as logistics services related to rail management, warehouse procurement, and vendor management. Separate from the Shared Services, Imerys S.A. also provides group-level executive management, legal, and other corporate overhead services to its subsidiaries (including ITC). Specifically, these services include, among other things: business administration, marketing and sales, legal, internal and external communications, technology, transport, and services.

Picard Affidavit, *ibid*.

- 37. Accordingly, the Applicant submits that the COMI of the Debtors, including ITC, is the United States and that the US Proceedings should be recognized by the Court as a "foreign main proceeding".

(iv) The Additional Relief Sought in the Initial Recognition Order Should be Granted

- 38. Section 48(1) of the CCAA provides that on the making of an order recognizing a foreign proceeding that is specified by the Court to be a "foreign main proceeding", the Court shall make an order (subject to any terms and conditions it considers appropriate):
 - (a) staying, until otherwise ordered by the Court, for any period that the Court considers necessary, all proceedings taken or that might be taken against the debtor company under the *Bankruptcy and Insolvency Act* or the *Winding-up and Restructuring Act*;
 - (b) restraining, until otherwise ordered by the Court, further proceedings in any action, suit or proceeding against the debtor company;

- (c) prohibiting, until otherwise ordered by the Court, the commencement of any action, suit or proceeding against the debtor company; and
- (d) prohibiting the debtor company from selling or otherwise disposing of, outside the ordinary course of its business, any of the debtor company's property in Canada that relates to the business and prohibiting the debtor company from selling or otherwise disposing of any of its other property in Canada.

CCAA, s. 48(1).

39. The Initial Recognition Order sought by the Applicant is based on the Court's Model CCAA Initial Recognition Order (Foreign Main Proceeding) and provides for all of the relief required by section 48 of the CCAA.

CCAA, s. 48.

40. The Initial Recognition Order is not inconsistent with any order that may be made under the CCAA.

CCAA, s. 48(2).

(C) The Supplemental Order

(i) Recognition of the First Day Orders

41. In addition to the automatic relief provided in section 48, section 49 of the CCAA provides that the Court may make any order that it considers appropriate if it is satisfied that it is necessary for the protection of a debtor company's property or the interests of a creditor or creditors. Section 50 of the CCAA further provides that an order made under Part IV of the CCAA, including pursuant to section 49, may be made on any terms and conditions that the Court considers appropriate.

CCAA, ss. 48, 49 and 50.

42. The Supplemental Order sought by the Applicant is based upon the Court's Model CCAA Supplemental Order (Foreign Main Proceeding).

43. Paragraph 4 of the Supplemental Order seeks to recognize certain First Day Orders (in certain circumstances granted initially on an interim basis and thereafter on a final basis) that were obtained by the Debtors from the US Court, set out in greater detail in the Picard Affidavit.
44. The First Day Orders were obtained by the Debtors to facilitate their restructuring efforts in the US Proceedings by, among other things, minimizing the adverse effects of the US Proceedings on their business, and preserving and maximizing the potential value of the Debtors' assets for the benefit of their creditors and other stakeholders.
45. The First Day Orders are not inconsistent with any order that may be granted under the CCAA. Canadian courts have regularly exercised their jurisdiction under sections 49 and 50 of the CCAA to recognize Chapter 11 bankruptcy orders with similar effect to the First Day Orders to maintain the status quo and protect the assets of the Debtors while permitting them to continue operating their business as usual in Canada.

See, for example, *Re Horseshoe*, 14, 42, BOA, Tab 6; *Elephant & Castle*, 36, 40, BOA, Tab 8.

46. The Applicant requests that the Court recognize the First Day Orders set out in the Picard Affidavit.

(ii) The Information Officer

47. Section 53(b) of the CCAA requires the foreign representative to publish a notice of the recognition of the US Proceedings by the Court in one or more Canadian newspapers. To the extent that additional Canadian creditors of the Canadian Debtor are identified through the statutory notice process set out in the Initial Recognition Order, they will be reported on to the Court and addressed on an as needed basis.

CCAA, s. 53(b).

48. The Applicant submits that the appointment of Richter as Information Officer will help facilitate these proceedings and the dissemination of information concerning developments in the US Proceedings to affected creditors, stakeholders and the Court.

Picard Affidavit, 127-128.

49. The proposed role of Richter as Information Officer is consistent with the terms of appointment of information officers in other recent recognition proceedings under the CCAA in Ontario.

Supplemental Order in the Application of Rockport Blocker, LLC dated May 16, 2018 (Ont. S.C.J. [Commercial List]) (without schedules), BOA, Tab 9.

Supplemental Order in the Application of Massachusetts Elephant & Castle Group Inc. dated July 4, 2011 (Ont. S.C.J. [Commercial List]) (without schedules), BOA, Tab 10.

Supplemental Order in the Application of Modular Space Corporation dated December 27, 2016 (Ont. S.C.J. [Commercial List]), BOA, Tab 11.

PART V - RELIEF REQUESTED

50. The Applicant requests that the Court grant the Initial Recognition Order and the Supplemental Order in the form included at Tabs 3 and 4 of the Application Record.

ALL OF WHICH IS RESPECTFULLY SUBMITTED this 15th day of February, 2019.



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TAB A

SCHEDULE "A"

LIST OF AUTHORITIES

1. *Angiotech Pharmaceuticals Inc., Re*, 2011 BCSC 115 (B.C. S.C. [In Chambers])
2. *Babcock & Wilcox Canada Ltd. (Re)*, 2000 Carswell Ont 704 (Ont. S.C.J. [Commercial List])
3. *Caesars Entertainment Operating Co., (Re)*, 2015 ONSC 712
4. *CHC Group Ltd. (Re)*, 2016 BCSC 2623
5. *Digital Domain Media Group Inc. (Re)*, 2012 BCSC 1565 (B.C. S.C.)
6. *Horseshoe Holdings Corp. (Re)*, 2016 ONSC 958 (Ont. S.C.J. [Commercial List])
7. *Lightsquared LP (Re)*, 2012 ONSC 2994 (Ont. S.C.J. [Commercial List])
8. *Massachusetts Elephant & Castle Group Inc. (Re)*, 2011 ONSC 4201 (Ont. S.C.J. [Commercial List])
9. Supplemental Order in the Application of Rockport Blocker, LLC dated May 16, 2018 (Ont. S.C.J. [Commercial List]) (without schedules)
10. Supplemental Order in the Application of Massachusetts Elephant & Castle Group Inc. dated July 4, 2011 (Ont. S.C.J. [Commercial List]) (without schedules)
11. Supplemental Order in the Application of Modular Space Corporation dated December 27, 2016 (Ont. S.C.J. [Commercial List])

TAB B

SCHEDULE "B"

STATUTES

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

Jurisdiction of courts

Jurisdiction of court to receive applications

9 (1) Any application under this Act may be made to the court that has jurisdiction in the province within which the head office or chief place of business of the company in Canada is situated, or, if the company has no place of business in Canada, in any province within which any assets of the company are situated.

Single judge may exercise powers, subject to appeal

(2) The powers conferred by this Act on a court may, subject to appeal as provided for in this Act, be exercised by a single judge thereof, and those powers may be exercised in chambers during term or in vacation.

Interim financing

11.2 (1) On application by a debtor company and on notice to the secured creditors who are likely to be affected by the security or charge, a court may make an order declaring that all or part of the company's property is subject to a security or charge - in an amount that the court considers appropriate - in favour of a person specified in the order who agrees to lend to the company an amount approved by the court as being required by the company, having regard to its cash-flow statement. The security or charge may not secure an obligation that exists before the order is made.

Priority - secured creditors

(2) The court may order that the security or charge rank in priority over the claim of any secured creditor of the company.

Priority - other orders

(3) The court may order that the security or charge rank in priority over any security or charge arising from a previous order made under subsection (1) only with the consent of the person in whose favour the previous order was made.

Factors to be considered

- (4) In deciding whether to make an order, the court is to consider, among other things,
- (a) the period during which the company is expected to be subject to proceedings under this Act;

- (b) how the company's business and financial affairs are to be managed during the proceedings;
- (c) whether the company's management has the confidence of its major creditors;
- (d) whether the loan would enhance the prospects of a viable compromise or arrangement being made in respect of the company;
- (e) the nature and value of the company's property;
- (f) whether any creditor would be materially prejudiced as a result of the security or charge; and
- (g) the monitor's report referred to in paragraph 23(1)(b), if any.

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.

Interpretation

Definitions

45. (1) The following definitions apply in this Part.

“foreign court” means a judicial or other authority competent to control or supervise a foreign proceeding.

“foreign main proceeding” means a foreign proceeding in a jurisdiction where the debtor company has the centre of its main interests.

“foreign non-main proceeding” means a foreign proceeding, other than a foreign main proceeding. “foreign proceeding” means a judicial or an administrative proceeding, including

an interim proceeding, in a jurisdiction outside Canada dealing with creditors' collective interests generally under any law relating to bankruptcy or insolvency in which a debtor company's business and financial affairs are subject to control or supervision by a foreign court for the purpose of reorganization.

“foreign representative” means a person or body, including one appointed on an interim basis, who is authorized, in a foreign proceeding respect of a debtor company, to

- (a) monitor the debtor company's business and financial affairs for the purpose of reorganization; or
- (b) act as a representative in respect of the foreign proceeding.

Centre of debtor company's main interests

(2) For the purposes of this Part, in the absence of proof to the contrary, a debtor company's registered office is deemed to be the centre of its main interests.

Recognition of Foreign Proceeding

Application for recognition of a foreign proceeding

46. (1) A foreign representative may apply to the court for recognition of the foreign proceeding in respect of which he or she is a foreign representative.

Documents that must accompany application

- (2) Subject to subsection (3), the application must be accompanied by
 - (a) a certified copy of the instrument, however designated, that commenced the foreign proceeding or a certificate from the foreign court affirming the existence of the foreign proceeding;
 - (b) a certified copy of the instrument, however designated, authorizing the foreign representative to act in that capacity or a certificate from the foreign court affirming the foreign representative's authority to act in that capacity; and
 - (c) a statement identifying all foreign proceedings in respect of the debtor company that are known to the foreign representative.

Documents may be considered as proof

(3) The court may, without further proof, accept the documents referred to in paragraphs (2)(a) and (b) as evidence that the proceeding to which they relate is a foreign proceeding and that the applicant is a foreign representative in respect of the foreign proceeding.

Other evidence

(4) In the absence of the documents referred to in paragraphs (2)(a) and (b), the Court may accept any other evidence of the existence of the foreign proceeding and of the foreign representative's authority that it considers appropriate.

Translation

(5) The Court may require a translation of any document accompanying the application.

Order recognizing foreign proceeding

47. (1) If the Court is satisfied that the application for the recognition of a foreign proceeding relates to a foreign proceeding and that the applicant is a foreign representative in respect of that foreign proceeding, the Court shall make an order recognizing the foreign proceeding.

Nature of foreign proceeding to be specified

(2) The court shall specify in the order whether the foreign proceeding is a foreign main proceeding or a foreign non-main proceeding.

Order relating to recognition of a foreign main proceeding

48. (1) Subject to subsections (2) to (4), on the making of an order recognizing a foreign proceeding that is specified to be a foreign main proceeding, the court shall make an order, subject to any terms and conditions it considers appropriate,

- (a) staying, until otherwise ordered by the Court, for any period that the Court considers necessary, all proceedings taken or that might be taken against the debtor company under the Bankruptcy and Insolvency Act or the Winding-up and Restructuring Act;
- (b) restraining, until otherwise ordered by the court, further proceedings in any action, suit or proceeding against the debtor company;
- (c) prohibiting, until otherwise ordered by the court, the commencement of any action, suit or proceeding against the debtor company; and
- (d) prohibiting the debtor company from selling or otherwise disposing of, outside the ordinary course of its business, any of the debtor company's property in Canada that relates to the business and prohibiting the debtor company from selling or otherwise disposing of any of its other property in Canada.

Scope of order

(2) The order made under subsection (1) must be consistent with any order that may be made under this Act.

When subsection (1) does not apply

(3) Subsection (1) does not apply if any proceedings under this Act have been commenced in respect of the debtor company at the time the order recognizing the foreign proceeding is made.

Application of this and other Acts

(4) Nothing in subsection (1) precludes the debtor company from commencing or continuing proceedings under this Act, the Bankruptcy and Insolvency Act or the Winding-up and Restructuring Act in respect of the debtor company.

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

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

Restriction

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

Application of this and other Acts

(3) The making of an order under paragraph (1)(a) does not preclude the commencement or the continuation of proceedings under this Act, the Bankruptcy and Insolvency Act or the Winding-up and Restructuring Act in respect of the debtor company.

Terms and conditions of orders

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

Obligations of foreign representative

53. If an order recognizing a foreign proceeding is made, the foreign representative who applied for the order shall

- (a) without delay, inform the court of
 - (i) any substantial change in the status of the recognized foreign proceeding,
 - (ii) any substantial change in the status of the foreign representative's authority to act in that capacity, and
 - (iii) any other foreign proceeding in respect of the same debtor company that becomes known to the foreign representative; and
- (b) publish, without delay after the order is made, once a week for two consecutive weeks, or as otherwise directed by the court, in one or more newspapers in Canada specified by the court, a notice containing the prescribed information.

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

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

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

Court File No: CV-●

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

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

ONTARIO
SUPERIOR COURT OF JUSTICE
(COMMERCIAL LIST)
Proceeding commenced at Toronto

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(returnable February 19, 2019)

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