UNITED STATES BANKRUPTCY COURT
DISTRICT OF DELAWARE

Laurie Selber Silverstein
Judge

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May 5, 2025

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ALL COUNSEL OF RECORD

Re: Imerys Talc America, Inc., et al. (Case No. 19-10289)
Cyprus Mines Corporation (Case No. 21-10398)

Dear Counsel:

As the parties know, I have several open matters in front of me in the Imerys and Cyrus bankruptcy cases. Below please find my rulings/comments on certain of those matters.

The confirmation hearing

On Monday, April 28, Imerys and Cyprus asked me to adjourn their respective confirmation hearings to a later date so that work could continue on a resolution of the "foreign claims" issue. They also asked me to hold the record open during the adjournment. That request is supported by the Official Committees for each of the Debtors as well as the FCR for the North American Debtors and the FCR for the Cyprus Debtor. It is also supported by certain entities that have settlements with one or more of the Debtors. Counsel suggested that revised plans could be filed by May 23 with the confirmation hearings continuing in June.

That request is opposed in whole or in part by certain of the insurers who ask that either the cases be dismissed outright or that the record be closed with the ability to subsequently visit whether portions of the record could be used in any new confirmation hearings.

Given the staggering size of professional fees, particularly in the Imerys case, I will keep the confirmation hearings and record open for a period of time to see if parties can coalesce around a resolution of the foreign claim issue. We will have a status conference in mid May. Chambers will reach out to schedule.

The Imerys Talc Italy FCR

Notwithstanding my concern about the fees in the Imerys case, after hearing the testimony, I cannot grant ITI's request to have Mr. Patton serve as the FCR in its case. My reasons are multi-fold.

- ITI is substantially different from the North American Debtors.
- ITI is—and is contemplated to be post-bankruptcy—an on-going business.
- ITI is located in Europe, with its mines and employees in Italy. Thus, exposure to talc (especially for employees) occurred in Italy.
- While the evidence could have been clearer, ITI sold talc it mined and processed in Italy to entities in the United States and outside the United States. Exposure to ITI talc is as likely to occur outside of North America as it is inside of North America.
- While the evidence could have been clearer (e.g. it could have addressed the impetus behind the Supplemental Publication Plan in Australia and the Global Notice Plan in twelve other countries), the global notice placed in newspapers had a combined circulation of more than 38.8 million and the social media campaign in eight of the non-North American countries resulted in more than 1.7 billion social media impressions globally. This also suggests that exposure to ITI Talc is as likely to occur outside of North America as it is inside of North America.[1]
- Mr. Patton does not believe he represents any person located outside of the United States who might make a future demand on ITI—or for that matter—any of the Imerys Debtors. He believes this is so because the court may not have personal

[1] As I previously stated on the record, the FCR issue merely highlights what may be a broader concern.

jurisdiction over non-US citizens. From this, he reasons that the court cannot appoint an FCR to represent persons that the court does not have personal jurisdiction over.

While I have not had briefing on this issue as it was just raised during Mr. Patton's testimony, it is not clear to me that this is correct. The Third Circuit's decision in *Imerys*[2] provides the standard to be used to determine if a candidate can be appointed as an FCR. As the Third Circuit states, the FCR is not serving as a *guardian ad litem* and does not bind future demand holders. Rather, the FCR acts as a legal representative to protect the interests of future demand holders. There is no suggestion that the FCR is to protect only the interests of those future demand holders who are located in the United States. Further, a bankruptcy proceeding is an *in rem* proceeding and there is caselaw holding that the discharge granted by the court has extraterritorial effect. Thus, it may well be that the supplemental § 524(g) injunction has that same extraterritorial effect (again, this has not been briefed). While, admittedly, there may be enforcement issues against non-US citizens, enforcement is a separate and distinct issue. Even further, no one has suggested that non-U.S. citizens cannot avail themselves of courts in the United States in appropriate circumstances.

- Mr. Patton, as the FCR, has already approved the plan before this court (at least as initially drafted). Therefore, just as Cyprus required a separate FCR to advocate for its future demand holders in the face of a settlement already reached, ITI needs a separate FCR because it has a distinct claimant pool. Indeed, it is more imperative here because a committee has not been appointed in the ITI case and thus there is no separate fiduciary advocating for ITI's current tort claimants.

Under these circumstances, a separate FCR whose only duty is to ITI future demand holders is necessary to independently analyze the settlement embodied in the plan (or as it may be amended) and to negotiate appropriate changes, if any. This carries out the mandate of the Third Circuit, which held that an FCR must "be able to act in accordance with a duty of independence from the debtor and other parties in interest in the bankruptcy, a duty of undivided loyalty to the future claimants and an ability to be an effective advocate for the best interests of

[2] *In re Imerys Talc America, Inc.*, 38 F.4th 361 (3rd Cir. 2022).

the future claimants."[3] It may be that the current plan is best for future demand holders against ITI, but, in the first instance, due process requires an assessment by an independent FCR.

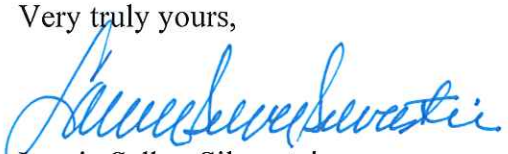
The Imerys Debtors are to submit an order consistent with this ruling.

The motion to dismiss the ITI bankruptcy case

As I previously stated, this motion is best informed in the context of confirmation as the real dispute is whether ITI's participation in the joint plan (not the actual filing of the ITI bankruptcy case) harms the objecting insurers. The standing argument, thus, became—and is—central to the analysis, which is more nuanced when each party appears to take conflicting views on the importance of corporate separateness when convenient.

I was correct that evidence adduced at confirmation could inform the outcome of the motion to dismiss as it raises confirmation-adjacent issues. By way of only one example, I observe that the evidence adduced at confirmation causes me to question not only whether the ITI filing was premature (as discussed in *SGL Carbon* and *LTL*), but whether I will be able to make the determination required by § 524(g) that ITI is likely to be subject to substantial future demands for payment arising from talc claims.[4] I make these observations to, hopefully, inform your negotiations going forward. This motion remains under advisement.

Very truly yours,



Laurie Selber Silverstein

LSS/cmb

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[3] *Imerys*, 38 F.4th at 374. I also note that the determination of who to appoint as an FCR among those who meet the standard is within the discretion of the court. As I stated when appointing Mr. Patton to be FCR in the Imerys case, the debtor's choice of FCR carries no deference. Indeed, in another mass tort case—Paddock—I had to choose among two equally qualified candidates and did so there based on potential conflicts of interest. While Mr. Patton is imminently qualified to serve as an FCR, generally, for all the above reasons, the ITI future demand holders are best served by the selection of another to serve in that capacity.

[4] Section 524(g) variously uses the terms: a debtor, the debtor, each such debtor, 1 or more debtors and such debtor or debtors. Section 524(g)(2)(B)(ii)(I)'s use of the term "the debtor" suggests that this requirement applies separately to each debtor in a single plan.