

UNITED STATES BANKRUPTCY COURT
FOR THE DISTRICT OF DELAWARE

In re:

IMERYYS TALC AMERICA, INC., *et al.*,¹

Debtors.

Chapter 11

Case No. 19-10289 (LSS)

(Joint Administration Requested)

Objection Deadline: TDB

Hearing Date: TBD

EMERGENCY MOTION FOR (I) INTERIM AND FINAL ORDERS GRANTING RELIEF FROM THE AUTOMATIC STAY UNDER BANKRUPTCY CODE § 362(d) TO USE INSURANCE COVERAGE UNDER CYPRUS HISTORICAL POLICIES OR, IN THE ALTERNATIVE, (II) ADEQUATE PROTECTION UNDER BANKRUPTCY CODE §§ 361 AND 363(e)

Cyprus Mines Corporation, a Delaware corporation, ("Cyprus Mines") and Cyprus Amax Minerals Company, a Delaware corporation, ("CAMC")² file this *Emergency Motion for (I) Interim and Final Orders Granting Relief from the Automatic Stay Under Bankruptcy Code § 362(d) to Use Insurance Coverage Under Cyprus Historical Policies or, in the Alternative, (II) Adequate Protection Under Bankruptcy Code §§ 361 and 363(e)* (the "Motion")³ to, *inter alia*, ensure that Cyprus can take all necessary steps to continue to utilize *Cyprus's own* historical general liability insurance policies (collectively, the "Cyprus Historical Policies")⁴ and the

¹ The Debtors in these cases, along with the last four digits of each Debtor's federal tax identification number, are: Imerys Talc America, Inc. ("ITA") (6358), Imerys Talc Vermont, Inc. (9050), and Imerys Talc Canada Inc. (6748). The Debtors' address is 100 Mansell Court East, Suite 300, Roswell, Georgia 30076.

² Cyprus Mines, along with its historical predecessors and affiliates (excluding Cyprus Talc Corporation), and CAMC are collectively referenced herein as "Cyprus."

³ In support of this Motion, Cyprus has filed contemporaneously herewith the *Declaration of Matthew O. Talmo in Support of Emergency Motion for (I) Interim and Final Orders Granting Relief from the Automatic Stay Under Bankruptcy Code § 362(d) to Use Insurance Coverage Under Cyprus Historical Policies or, in the Alternative, (II) Adequate Protection Under Bankruptcy Code §§ 361 and 363(e)* (the "Talmo Declaration"), attached to which as exhibits are certain documents providing evidentiary support for this Motion.

⁴ A list of the relevant solvent and available Cyprus Historical Policies is attached to the Talmo Declaration as

proceeds thereof in order to maintain the status quo with respect to the insurers' obligations and payments for the ongoing defense and indemnity of the approximately 700 pending (and future) asbestos-related lawsuits (the "Asbestos Lawsuits")⁵ that relate to the Debtors' talc business and for which the Debtors hold all liability.⁶

More specifically, the Debtors' surprise bankruptcy filing—coupled with the Debtors' unjustified assertion that the Cyprus Historical Policies and proceeds thereof are covered by the automatic stay and the Debtors' present refusal to seek or support temporary injunctive relief for Cyprus in the pending Asbestos Lawsuits in furtherance of exploring a coordinated, global chapter 11 resolution—has put Cyprus in an untenable and unreasonably prejudiced position that establishes cause for the requested stay relief for numerous reasons, including the following:

(1) Prior to the Petition Date,⁷ ITA was defending and indemnifying Cyprus in *all* of the Asbestos Lawsuits because (as discussed below) ITA, not Cyprus, long ago assumed all historical talc-related liabilities.⁸ Accordingly, any liability imposed on Cyprus in the Asbestos Lawsuits ultimately rests on ITA's shoulders (and thus would constitute claims against the Debtors' bankruptcy estates);

Exhibit A. Because of the voluminous nature of the Cyprus Historical Policies, those policies have not been attached to the Talmo Declaration. Cyprus believes ITA has copies of each of these policies, but to the extent necessary, if requested, Cyprus will provide the Cyprus Historical Policies to the Debtors and/or third parties, subject to appropriate confidentiality protections for Cyprus.

⁵ As set forth in the *Declaration of Alexandra Picard, Chief Financial Officer of the Debtors in Support of Chapter 11 Petitions and First Day Pleadings* [D.I. 10] (the "Picard Declaration"), at ¶ 41 entitled "Mesothelioma Insurance," the Debtors explain that they believe "potentially available coverage" relating to the "Mesothelioma Claims" to be \$180 million. *See also id.* at ¶ 38. The Debtors further note that "ITA is currently involved in coverage litigation in California state court regarding the scope and amount of available coverage for Mesothelioma Claims" (*id.* at n. 11), which, on information and belief, refers to the coverage litigation instituted by insurers that issued certain of the Cyprus Historical Policies, styled and numbered *Columbia Casualty Co., et al. v. Cyrus Mines Corp., et al.*, Case No. CGC-17-560919, pending in the Superior Court of California, San Francisco County.

⁶ There are certain limited exclusions of ITA's liability not germane to this Motion.

⁷ The "Petition Date" as used herein means the day the Debtors filed the above-captioned chapter 11 cases: February 13, 2019.

⁸ *See supra* note 6.

(2) ITA dropped its defense of Cyprus on the Petition Date⁹ with no advance notice, leaving Cyprus to take over immediately the defense of the Asbestos Lawsuits that ITA had been defending, one of which is in the middle of trial and expected to be submitted to the jury on or about March 7, 2019, others that will soon be going to trial, and still others that are being filed every week;¹⁰

(3) Cyprus was and remains the owner of all of the relevant Cyprus Historical Policies: these general liability policies broadly cover the liabilities of a wide spectrum of Cyprus-affiliated historical businesses—most unrelated to the talc business and liabilities that ITA acquired—and the policies were neither transferred nor assigned to ITA when it acquired Cyprus Mines’ talc assets and liabilities (or at any time thereafter);

(4) Prior to the Petition Date, ITA had never contested Cyprus’s ownership of the Cyprus

⁹ Because ITA placed Cyprus in a precarious position with respect to the Cyprus Historical Policies as of the Petition Date, and immediate harm to Cyprus began on that date, Cyprus requests that the relief in this Motion be granted *nunc pro tunc* to the Petition Date.

¹⁰ The following pending cases that are either in trial or going to trial very soon emphasize the urgency behind the request for emergency relief in this Motion. Trial began in January 2019 in *Teresa Leavitt, et al. v. Johnson & Johnson, et al.*, Case No. RG17882401, Superior Court of Alameda County, California, and trial remains ongoing at this moment. ITA and related entities were defendants in *Leavitt* but their involvement ceased as of the Petition Date due to the automatic stay. Cyprus Mines is also a defendant in *Leavitt*, and it was being defended by ITA pursuant to its assumption of liability under the ATA. Cyprus Mines has been forced to take over the defense of *Leavitt* midtrial in a case where a verdict is anticipated sometime in the first part of March. The immediate trial risk to Cyprus does not end with *Leavitt*. One or more Cyprus entities are named as defendants in the following five (5) additional talc cases that are currently believed to be set for trial in the next two months alone: (1) *Joanna Ruman, et al. v. BASF Catalysts LLC, et al.*, Case No. MID-L-02919-17 AS, Superior Court of Middlesex County, New Jersey, which is currently awaiting trial immediately following the disposition of another case in front of it on the docket called *Rimondi*; (2) *Pui Fong, et al. v. Johnson & Johnson, et al.*, Case No. JCCP4674/BC675449, Superior Court of Los Angeles County, California, with a current trial date of March 18, 2019; (3) *James Patterson, et al. v. Kelly-Moore Paint Co., et al.*, Case No. RG18918267, Superior Court of Alameda County, California, with a current trial date of April 8, 2019; (4) *Patricia Schmitz v. Johnson & Johnson, et al.*, Case No. RG18923615, Superior Court of Alameda County, California, with a current trial date of April 8, 2019; (5) *Bertha Peinado, et al. v. Ace Hardware Corp., et al.*, Case No. BCV-16-10169-LHB, Superior Court of Kern County, California, with a current trial date of April 29, 2019. ITA, pursuant to the ATA, had acknowledged its liability for and was preparing to defend all these cases. Following the Petition Date and ITA’s sudden purported revocation of its tender acceptance of these cases, Cyprus, at the eleventh hour, is now forced to address these trial-listed cases on its own. Indeed, the Insurance Counsel Letter (defined below), sent to Cyprus on the Petition Date, in which ITA renounced its tenders of the Asbestos Lawsuits in which Cyprus is named as a defendant has attached to it a list of 785 Asbestos Lawsuits in which Cyprus is named, *thirty-two of which the Debtors anticipate as “likely to have significant activity in the next 60 to 90 days.”* See Insurance Counsel Letter, attached to the Talmo Declaration as **Exhibit B**, at 1 (emphasis added) and the exhibit thereto.

Historical Policies; ITA had never asserted that Cyprus lost the right to seek and recover proceeds of its own insurance for liabilities faced by Cyprus (including for the Asbestos Lawsuits); and Cyprus had, indeed, used the Cyprus Historical Policies and proceeds thereunder for defense and indemnity between 1992 and 2016 without objection by ITA.

(5) As of the Petition Date, certain of the Cyprus Historical Policies were defending and indemnifying Cyprus in the Asbestos Lawsuits, and (since 2016) were also defending and indemnifying ITA, but only because, and to the extent that, ITA was protecting Cyprus from liability in those lawsuits;

(6) In contrast to Cyprus's initial and continuing ownership of the Cyprus Historical Policies, ITA, at best, has only a limited and non-exclusive contractual right to have Cyprus cooperate in submitting claims on ITA's behalf under the Cyprus Historical Policies to the extent that ITA protects Cyprus against talc liabilities arising from talc sales prior to ITA's acquisition of the talc business and liabilities of Cyprus Mines; and

(7) Notwithstanding the foregoing, ITA has threatened Cyprus with a stay violation if Cyprus takes any steps toward using its own historical insurance policies to help Cyprus handle the Asbestos Lawsuits that ITA dumped in Cyprus's lap when ITA stopped defending and indemnifying Cyprus.¹¹ Thus, ITA's strategy, absent relief from the Court, puts Cyprus in the untenable and unfair position of having to defend against liabilities that rest with ITA (and ultimately with the ITA bankruptcy estate) while cutting Cyprus off from its own insurers and insurance policies that cover those liabilities.

While a number of legal and factual issues concerning rights in the policies or proceeds may at some point require court resolution, for now, assuming *arguendo* for purposes of this

¹¹ As discussed below, the Debtors have also taken the position that insurers would also be in violation of the automatic stay if they were to make payments to or on behalf of Cyprus under the Cyprus Historical Policies.

Motion that ITA has some sort of rights, it is clear (as noted above and shown below) that Cyprus retains ownership of and substantial property rights in its own insurance policies and is entitled to call upon its own insurers under those policies to assist and protect Cyprus from liability. Accordingly, Cyprus requests that this Court, (1) on an interim basis, at the conclusion of a preliminary hearing and pending a final hearing, and then on a final basis after such final hearing, grant relief from the automatic stay, *nunc pro tunc* to the Petition Date, for cause to (a) allow Cyprus to use the Cyprus Historical Policies—including, but not limited to, the policy issued to Cyprus Mines by National Union Fire Insurance Company of Pittsburgh, PA, Policy No. 1326219 (the “National Union Policy”), which is a “defense outside of limits” policy such that available coverage limits are not depleted by payment of defense costs—to defend and indemnify Cyprus in the Asbestos Lawsuits in which Cyprus is a defendant, and (b) to tender any new Asbestos Lawsuits to insurers under the Cyprus Historical Policies, or, alternatively, (2) grant, if stay relief is denied, Cyprus adequate protection in the form of temporary injunctive relief regarding the Asbestos Lawsuits as described herein below, or other adequate protection.

I.
JURISDICTION AND VENUE

1. The Court has jurisdiction over this Motion pursuant to 28 U.S.C. §§ 157 and 1334 and the *Amended Standing Order of Reference from the United States District Court for the District of Delaware* dated February 29, 2012. This is a core proceeding pursuant to 28 U.S.C. § 157(b)(2). Venue is proper in this Court pursuant to 28 U.S.C. § 1409.

2. Pursuant to Rule 9013-1(f) of the Local Rules of Bankruptcy Practice and Procedure of the United States Bankruptcy Court for the District of Delaware (the “Local Rules”), Cyprus consents to the entry of a final order by the Court in connection with the contested matter that is the subject of this Motion to the extent that it is later determined that the

Court absent consent of the parties cannot enter final orders or judgments consistent with Article III of the United States Constitution.

II. PRELIMINARY STATEMENT

3. This Motion concerns the Cyprus Historical Policies that Cyprus Mines (or its predecessors in interest) purchased and paid for in order to provide for defense costs, settlements, and judgments entered in lawsuits, including, but not limited to, the Asbestos Lawsuits, filed against Cyprus. The relevant Historical Cyprus Policies include solvent and available primary and excess layer insurance policies issued during the period from 1961 to 1980. A few of the early policies were issued to Sierra Talc Company (which merged into Cyprus Mines), as the named insured; the later policies were issued to Cyprus Mines Corporation of New York (“Cyprus Mines NY”) (the predecessor of Cyprus Mines) as the named insured. The policies also include as insureds a host of historical Cyprus-related entities.

4. *None of the Cyprus Historical Policies were issued to any of the Debtors; none of the policies name any of the Debtors as an insured or additional insured; and none of the policies were ever assigned or transferred to any of the Debtors. Simply stated, there is no contractual privity between the Debtors or any of the insurers under the Cyprus Historical Policies.*¹²

¹² The Debtors statements thus far in these chapter 11 cases are telling, as they use vague descriptions as to their purported interest relating to the Cyprus Historical Policies. *See, e.g.*, Picard Declaration, at ¶ 38 (referring to the “**potentially available** insurance coverage”) (emphasis added); *id.*, at ¶ 127 ([T]he Debtors have **access to, and rights under**, various historical liability policies and indemnification agreements (collectively the ‘Historical Policies’) with insurers, indemnitors, and other third parties (collectively, the ‘Historical Policies Counterparties’) that cover, among other things, certain talc-related personal injury liabilities and related litigation costs (including defense costs).”) (emphasis added); *id.* at ¶ 41 (declaring that ITA has a “**right to seek** proceeds from insurance policies that provide coverage for liabilities arising out of the talc business of Cyprus”) (emphasis added); Transcript of Hearing February 14, 2019 at 2:10 p.m., at p. 69, ll. 6-9, 14-18 (“in addition to the **normal** insurance policies that are covered on our typical insurance motion, the debtors also have what we’re calling the ‘historical policies’. . . . So, this is not insurance policies that they’re currently paying for; this is policies that they have **rights under**, you know, due to the sales in the past and for other reasons. So, we’re not actually requesting any authority to make any payments or do anything like that in this motion.”) (emphasis added).

5. Cyprus has been informed by its insurers that all but one of its primary insurers (American Insurance Company) has exhausted the limits of their policies and thus will no longer defend or indemnify *anyone* for the Asbestos Lawsuits. There are, however, solvent excess policies that remain unexhausted and available. Cyprus is informed and believes that some but not all of these excess policies above the primary layer have now stepped in to pay for defense and/or indemnity (at least before the Petition Date), and that one of those excess policies, the National Union Policy, has been paying for the defense of nearly all of the Asbestos Lawsuits because that policy has a duty to defend “outside of limits,” under which defense payments do not erode the limit of liability. For purposes of this Motion, Cyprus is seeking immediate stay relief with respect to those Cyprus Historical Policies that, as of the Petition Date, were providing defense and indemnity of the historical talc liabilities at issue in the Asbestos Lawsuits, to ensure Cyprus’s uninterrupted defense and ability to pay any potential judgments or settlements, now, after the Petition Date.

6. Prior to the Petition Date, the Debtors did not contest that, notwithstanding ITA’s long ago assumption of the historical Cyprus talc liabilities, Cyprus has the right to make claims against the Cyprus Historical Policies and receive payments from its insurers under these policies, as needed to defend and protect itself from liability.

7. However, while the Debtors are protected by the automatic stay, they are whipsawing Cyprus by renouncing their tender and no longer defending the Asbestos Lawsuits as of the Petition Date and yet simultaneously asserting that Cyprus may not use its own insurance even though Cyprus is left to now defend the Asbestos Lawsuits in which that very insurance was previously providing Cyprus coverage. The Debtors refuse, at least at this time, to take the logical step of moving to seek temporary injunctive relief to protect Cyprus, which

would temporarily alleviate Cyprus's need to use the policies in the Asbestos Lawsuits and would simultaneously also protect the Debtors' estates because any talc-related determinations found against Cyprus are ultimately claims against the Debtors. Instead, the Debtors declare that (1) Cyprus cannot take any steps to seek any assistance from *Cyprus's own insurers* to defend or indemnify for the ongoing litigation against Cyprus, and (2) *Cyprus's own insurers* cannot pay Cyprus under its own policies without violating the automatic stay. See Letter from Angela Elbert to Christine Haskett (Feb. 13, 2019) (the "Insurance Counsel Letter")¹³ (claiming "[a]ny post-petition effort by CAMC to access the proceeds of the [Cyprus Historical] Policies, whether for defense or indemnity, on account of any of the Transferred Liabilities, and any payment by an insurer to, or on behalf of, CAMC for post-petition defense or indemnity costs on account of any of the Transferred Liabilities, will violate the automatic stay").

8. Notwithstanding Cyprus's ownership of the Cyprus Historical Policies, and without citing any legal authorities or evidence as to the Debtors' claimed rights, the Debtors sought quickly and surreptitiously to obtain a ruling from the Court that the Cyprus Historical Policy proceeds belong only to ITA, and that Cyprus could not use any of its own historical policies or any proceeds thereof, by including language to that effect in a proposed interim order on the Debtors' first day motion dealing with insurance issues.¹⁴ While the Debtors agreed to

¹³ The Insurance Counsel Letter is attached to the Talmo Declaration as **Exhibit B**. Note that the Insurance Counsel Letter expressly acknowledges that the Cyprus Historical Policies were "issued to, or otherwise provid[e] coverage to, Cyprus Mines Corporation." Insurance Counsel Letter, at 2.

¹⁴ See *Debtors' Motion for Orders Under 11 U.S.C. §§ 105(a), 362(d), 363(b), and 503(b) Authorizing Debtors to (I) Pay Their Prepetition Insurance Obligations, (II) Pay Their Prepetition Bonding Obligations, (III) Maintain Their Postpetition Insurance Coverage, and (IV) Maintain Their Bonding Program* [D.I. 3], at ¶¶ 5-10 (specifying relief requested in the motion regarding only the Debtors' own insurance policies and bonding programs with *no mention* of Cyprus, the Historical Policies, or any injunctive relief of any kind), ¶ 18 (broadly describing the Historical Policies and stating that "the Debtors do not believe Court approval is required to maintain such Historical Policies, as no current or future payments are expected to be made by the Debtors with respect thereto" but "in the interest of disclosure" explaining that the Debtors "will continue to maintain such Historical Policies and exercise their rights thereunder in the ordinary course of business" and footnoting that the Debtors "*reserve the right to seek additional relief from the Court with respect to these historical policies and any rights or obligations thereunder*")

strike the offensive language in their proposed interim order, the question of whether the automatic stay precludes Cyprus and its insurers from using the Cyprus Historical Policies to protect Cyprus, including with respect to the Asbestos Lawsuits, is clearly in dispute.

9. To prevent further prejudice to Cyprus, the Court should grant the interim (and ultimately final) relief Cyprus seeks here: modification of the automatic stay so that Cyprus is not prevented from using its own Cyprus Historical Policies, and so that the insurers issuing those policies that were defending and indemnifying the Asbestos Lawsuits prior to the Petition Date can continue to protect Cyprus by honoring claims presented by Cyprus under such policies without the threat that the Debtors will accuse them of violating the automatic stay, or making unauthorized postpetition transfers of property of the Debtors' estate or, in the Debtors' own words, being "deemed to have made a voluntary payment" outside the scope of the insurance policies. *See* Insurance Counsel Letter.¹⁵

10. In the event that the automatic stay is not modified as requested herein, Cyprus alternatively requests adequate protection pursuant to Bankruptcy Code §§ 361 and 363(e). Such adequate protection should take the form of temporary injunctive relief, as described below, to

(emphasis added)); *but see [Proposed] Interim Order Under 11 U.S.C. §§ 105(a), 362(d), 363(b), and 503(b), Authorizing Debtors to (I) Pay Their Prepetition Insurance Obligations, (II) Pay Their Prepetition Bonding Obligations, (III) Maintain Their Postpetition Insurance Coverage and (IV) Maintain Their Bonding Program* (the "Insurance Motion") [D.I. 3, at ¶ 10] (the "Proposed Interim Order") (providing that "the Historical Policy Counterparties shall not pay or reimburse any postpetition, separate, non-Debtor defense or indemnification costs to, or on behalf of Cyprus Mines Corporation or its affiliates, except as provided by further order of the Court."). This language from the Proposed Interim Order was struck and not included in the interim order as entered by the Court after counsel for Cyprus reached out to the Debtors on an expedited basis in advance of the first day hearings (without *any* contact from the Debtors in advance of the bankruptcy filing). *See Interim Order Under 11 U.S.C. §§ 105(a), 362(d), 363(b), and 503(b), Authorizing Debtors to (I) Pay Their Prepetition Insurance Obligations, (II) Pay Their Prepetition Bonding Obligations, (III) Maintain Their Postpetition Insurance Coverage and (IV) Maintain Their Bonding Program* [D.I. 49] (not including the stricken language). A final hearing on the Insurance Motion is presently scheduled on March 20, 2019 [D.I. 68].

¹⁵ This result also will effectively help the Debtors' bankruptcy estates as well by providing defense of claims that are liabilities of ITA.

stay the Asbestos Lawsuits as to Cyprus while a negotiated plan under Bankruptcy Code §§ 105(a), 524(g), and 1129 can be formulated in these chapter 11 cases.

11. The relief requested in this Motion is necessary to ensure that Cyprus is not improperly and irreparably harmed by the Debtors' restructuring strategy. However, the fact that the Debtors' actions have made it necessary for Cyprus to request this relief at this early stage of the Debtors' chapter 11 cases should not be construed as indicating that Cyprus is unwilling to work with the Debtors to formulate a mutually acceptable strategy to resolve all parties' potential exposure from the Asbestos Lawsuits.¹⁶ Cyprus remains hopeful that its concerns can be addressed without the need for Court intervention, but Cyprus files this Motion seeking the critical relief requested herein given that the Debtors are presently unwilling to take constructive and prompt action in collaboration with Cyprus, notwithstanding the pendency of a daunting, active trial docket of Asbestos Lawsuits, one of which is *currently in trial* and others in which trials will commence in the coming weeks and months.¹⁷

III. FACTUAL BACKGROUND

A. The Corporate History and the 1992 Transaction Establish Cyprus's Continued Ownership of the Cyprus Historical Policies.

12. This Motion concerns the Cyprus Historical Policies—insurance policies issued between 1961 and 1980, consisting of primary and excess insurance policies providing comprehensive general liability coverage. The policies (over time) were issued to, and the first named insureds were, certain Cyprus-affiliated entities or predecessors: first, Sierra Talc Company and, later, Cyprus Mines NY.

¹⁶ Indeed, as stated above, any exposure of Cyprus in the Asbestos Lawsuits ultimately exposes the Debtors and their estates since ITA is the ultimate holder of the historical talc liabilities.

¹⁷ See *supra* note 10 (describing Asbestos Lawsuits in trial or soon to be in trial).

13. The policies also cover as insureds myriad subsidiaries and affiliates of Cyprus Mines NY and thereby cover a multitude of entities that were *not* engaged in the talc business and liabilities unrelated to the talc business. For instance, the 1968-1971 Employers' Surplus Lines Insurance Co. Policy (No. ES 13910), owned by Cyprus Mines, lists nineteen affiliated companies as named insureds, many of which were engaged in businesses not involving talc, such as: copper mining and processing, copper products, gold mining, lead mining and processing, zinc mining and processing, coal mining, and industrial minerals other than talc (including, for example, clay, kaolin, calcium carbonate, and diatomaceous earth). Thus, the Cyprus Historical Policies were not primarily related to the talc business of Cyprus Mines, but rather were purchased to cover the potential liabilities of Cyprus's many various business activities.¹⁸

14. In 1979, Cyprus Mines NY merged into Amoco CYM Corp., a Delaware corporation that was a subsidiary of Amoco Minerals Company. Amoco CYM Corp., the surviving entity of the merger, then changed its name and became Cyprus Mines. Cyprus Mines legally inherited by merger all rights to the insurance policies of Cyprus Mines NY (*see* Del. Code tit. 8, § 259), which, as described above, continued to provide coverage for, and relate to, far more than the talc operations of Cyprus Mines.

15. In 1985, Amoco Minerals Company, the then-parent of Cyprus Mines, was spun off from Amoco and changed its name to Cyprus Minerals Company. Cyprus Mines remained a subsidiary of Cyprus Minerals Company.

16. In June 1992, Cyprus Minerals Company and Cyprus Mines sold Cyprus Mines's talc operations (but none of its many other operations) to RTZ America Inc. ("RTZ") through a

¹⁸ See Declaration of John Fenn, attached to the Talmo Declaration as **Exhibit C**.

two-step process: (1) the transfer and assumption of only those assets and liabilities that were “primarily” related to the talc business to and by a new wholly owned subsidiary of Cyprus Mines called Cyprus Talc Corporation, through an Agreement of Transfer and Assumption (the “ATA”) dated June 5, 1992; followed immediately by (2) the sale of all of Cyprus Talc Corporation’s stock to RTZ via a Stock Purchase Agreement also dated June 5, 1992 (the “SPA”). Cyprus Talc Corporation is the same entity as present-day ITA.¹⁹

17. Consistent with the fact that Cyprus Mines was selling only its talc business, and transferring only its talc liabilities, but had owned many other types of businesses and retained historical liabilities that its insurance policies covered, the ATA expressly limited the transfer of assets to Cyprus Talc Corporation to only those relating “primarily” to the talc business. Specifically, the ATA defined the “Transferred Assets” as “all of Cyprus’ right, title and interest in and to the assets, properties, rights and businesses of every type and description used *primarily* in or relating *primarily* to Cyprus’ talc business” ATA, at 3 (emphasis added).²⁰ Given that the talc business of Cyprus Mines was but a relatively small part of what the Cyprus Historical Policies were purchased for—and were intended to and do—cover, the policies were not “primarily” related to the talc business, and thus were not transferred or assigned to Cyprus Talc Corporation (and thus ultimately ITA). Should ITA argue that the Cyprus Historical Policies were assigned or otherwise transferred to ITA as part of the 1992 transaction, it would utterly fail in proving its position *as there was no assignment of any such policies*. Indeed, it is nonsensical to propose that Cyprus Mines would have transferred only a small part of its historical business operations and liabilities while handing the buyer a valuable insurance asset

¹⁹ See Picard Declaration, at ¶ 12 (after being acquired in 1992 by RTZ, “Cyprus Talc Corporation was renamed Luzenac America, Inc. (“Luzenac America”), which is now known as ITA”).

²⁰ The ATA is attached to the Talmo Declaration as **Exhibit D**.

that was purchased to cover—and continued to cover—Cyprus Mines’ vast remaining and/or historical operations and liabilities, thereby leaving itself “bare” as to liabilities arising from such business operations.

18. As noted above, under the ATA, Cyprus Talc Corporation (and, thus, ultimately, ITA) broadly assumed the pre-transfer talc liabilities of Cyprus Mines and its subsidiaries. More specifically, the ATA (at ¶ 4) provides that Cyprus Talc Corporation:

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 limitations, 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.

19. Therefore, as of the June 5, 1992 transaction date, talc liabilities relating to the pre-transfer talc business of Cyprus Mines now rest with Cyprus Talc Corporation (and thus ultimately ITA) and not with Cyprus Mines. But because the Historical Policies were not primarily related to the transferred talc business, they remained the property, and an asset, of Cyprus Mines and its affiliates, not Cyprus Talc Corporation or ITA.

20. The agreement that formed the second part of the 1992 transaction, the SPA, pursuant to which RTZ acquired Cyprus Talc Corporation, also did not transfer any ownership interest in the Cyprus Historical Policies from Cyprus Mines to either Cyprus Talc Corporation or RTZ. On the contrary, the SPA contemplates that the insurance policies remained the property of the “Seller” (Cyprus Mines), and not the “Buyer” (RTZ, Cyprus Talc Corporation, or ITA). Thus, the parties included in the SPA the clause referred to earlier in this Motion, under which Cyprus agreed “to cooperate with” RTZ and the Companies²¹ “in submitting Claims on

²¹ “Companies” is defined in the SPA to include Cyprus Talc Corporation. The Companies were not parties to the SPA. Accordingly, RTZ may be the only true beneficiary of the cooperation clause under § 7.6 of the SPA. Cyprus reserves all rights with respect to this issue.

behalf of Buyer [RTZ] under Seller's [Cyprus Mines's] Insurance Policies" when claims are brought regarding historical talc liabilities. The full operative language of the SPA is:

7.6 Insurance. To the extent that (i) there are third-party insurance policies maintained by Seller and its Affiliates (other than the Companies) ("Seller's Insurance Policies") insuring against any loss, liability, damage or expense relating to the assets, businesses, operations, conduct, products and employees (including former employees) of the business of any Company (all such losses, liabilities, claims, damages or expenses, regardless of the availability of insurance coverage, are herein referred to collectively as the "Business Liabilities") and relating to or arising out of occurrences prior to the Closing, and (ii) Seller's Insurance Policies continue after the Closing to Permit claims ("Claims") to be made with respect to such Business Liabilities relating to or arising out of occurrences prior to the Closing, Seller agrees to cooperate and cause such Affiliates to cooperate with Buyer and the Companies in submitting Claims on behalf of Buyer or such companies under Seller's Insurance Policies with respect to such Business Liabilities relating to occurrences prior to the Closing.²²

21. ITA has not pointed to any language in the ATA, the SPA, nor any other document—because there is none—that stripped Cyprus of its rights in its own policies or otherwise precludes Cyprus from using or making claims under its policies as needed to protect itself from lawsuits such as the Asbestos Lawsuits. At best, the only right ITA has in relation to the Cyprus Historical Policies stems from the cooperation rights with Cyprus (but not the insurers) in § 7.6 of the SPA.

22. Soon after the 1992 SPA, RTZ merged Cyprus Talc Corporation with RTZ America's existing subsidiary, Luzenac America, Inc. Cyprus Talc, the surviving 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 changed the name of the company to Imerys Talc America, Inc.

²² The SPA (without its voluminous schedules) is attached to the Talmo Declaration as **Exhibit E**.

23. Cyprus Mines (which no longer retained those assets or liabilities relating “primarily” to its former talc business) remained part of Cyprus Minerals Company. Cyprus Minerals later merged in 1993 with Amax Inc. to form CAMC.

B. Cyprus’s Tender of Talc Claims To ITA

24. As detailed in the “Mesothelioma Insurance” section of the Picard Declaration, in recent years, a number of Asbestos Lawsuits have been filed against the Debtors alleging personal injury or death as a result of exposure to talc allegedly containing asbestos, many of which also improperly name Cyprus Mines and/or CAMC as defendants. These lawsuits include allegations of exposure stemming from the historical talc operations of Cyprus Mines, as to which ITA holds the liability. There are currently approximately 700 such cases pending in 26 states (and this number is growing).

25. At various times after the 1992 transaction, Cyprus Mines and/or CAMC was named as a defendant in Asbestos Lawsuits and relied on its own insurance policies with respect to those cases. At no time, until now, has ITA contested Cyprus’s right to use its own historical policies for that purpose.

26. Since 2016, Cyprus has been tendering to ITA all Asbestos Lawsuits in which Cyprus Mines and/or CAMC (or a Cyprus affiliate) is named as a defendant, and ITA has accepted the tenders and assumed responsibility for the defense and disposition of those matters, to include responsibility for defense costs, settlements, and judgments. The tender of Asbestos Lawsuits by Cyprus, the acceptance thereof by ITA, and the procedures under which ITA is to protect Cyprus in such cases, are grounded in (1) ¶ 4 of the ATA (under which ITA assumed Cyprus Mines’ pre-transfer talc liabilities), (2) § 7.6 of the SPA (in which Cyprus agreed to cooperate in submitting claims under the Cyprus Historical Policies), and (3) certain agreements and correspondence between Cyprus and ITA pursuant to which ITA agreed to accept tender of

the Asbestos Lawsuits from Cyprus beginning in July 2016.²³ These expenses were largely paid for (or reimbursed) by Cyprus's insurance policies because, and to the extent that, the expenses were incurred to defend against historical talc liabilities now held by ITA based on pre-1992 Cyprus talc. That is, pursuant to the 1992 SPA, Cyprus has cooperated with ITA in submitting claims on behalf of ITA to Cyprus's insurers for coverage of defense costs, settlements, and judgments when Cyprus or ITA is sued in Asbestos Lawsuits based on pre-1992 Cyprus talc.

27. On the Petition Date, ITA announced in the Insurance Counsel Letter that it was immediately withdrawing its acceptance of Cyprus's tender of these approximately 700 cases, and that it would likewise decline to accept any new tenders of Asbestos Lawsuits by Cyprus. Accordingly, Cyprus now is saddled with the sole responsibility for defending the Asbestos Lawsuits brought against Cyprus (including paying legal fees, costs of litigation, settlements, and possible judgments), even though the liabilities rest with ITA. Moreover, because the Debtors have taken the position that Cyprus cannot use Cyprus's own policies or receive any proceeds thereunder, Cyprus has been forced to bear those costs without submitting claims for reimbursement to its own insurers. Based on the costs that ITA incurred in defending against the Asbestos Lawsuits prior to the Petition Date, Cyprus expects that its costs to defend and possibly resolve these lawsuits will quickly reach millions of dollars.

IV. **RELIEF REQUESTED**

28. Cyprus owns the Cyprus Historical Policies and has the right to receive insurance proceeds from them. Therefore, the Debtors' assertion that Cyprus is prohibited from receiving

²³ See Insurance Counsel Letter (acknowledging ITA's prior acceptance of tender of the Asbestos Lawsuits and attaching a list thereto of "open cases that name a Cyprus entity as a defendant" that Debtors believe "are likely to have significant activity in the next 60 to 90 days").

any payment from its insurers is overbroad, unwarranted, and prejudicial to Cyprus given the approximately 700 ongoing Asbestos Lawsuits proceeding against Cyprus.

29. Cyprus requests that the Court grant relief from the automatic stay for cause under Bankruptcy Code § 362(d) to allow Cyprus use the Cyprus Historical Policies and the proceeds thereof in the face of now having to defend the active and growing number of Asbestos Lawsuits, which ITA was handling until the Petition Date. Specifically, Cyprus Mines and CAMC request interim relief on an emergency basis to permit it to use the Cyprus Historical Policies for defense and indemnity in the Asbestos Lawsuits in which a covered Cyprus affiliate is named given the currently pending trial in one Asbestos Lawsuit and imminent trials in several others, as described above. This relief is absolutely necessary so that Cyprus will not suffer unfair prejudice and immediate and irreparable harm with respect to its ability to consider and execute options afforded to it by the Cyprus Historical Policies. Cyprus Mines and CAMC further request the same relief on a final basis in order to allow Cyprus to use the Cyprus Historical Policies on a going forward basis with respect to its large docket of Asbestos Lawsuits. In the alternative, Cyprus Mines and CAMC request that the Court grant adequate protection of Cyprus' interest in the Cyprus Historical Policies under Bankruptcy Code §§ 361 and 363(e), to the extent the Debtors have any property interest in the Cyprus Historical Policies and the proceeds thereof (if any).

30. Equity necessitates that immediate relief be granted to Cyprus. Without the relief requested in this Motion, Cyprus would be materially prejudiced and deprived of its own property, which would unfairly hinder and irreparably harm Cyprus and its affiliates in ongoing defense of the Asbestos Lawsuits, from which ITA has now obtained reprieve as a result of the automatic stay. Stay relief or adequate protection in the form of temporary injunctive protection

is necessary because Cyprus has insurance to protect it, but the Debtors assert that Cyprus cannot use it.

V.
ARGUMENT & AUTHORITIES

A. Cyprus Owns the Relevant Insurance Policies and Has Rights to Coverage Under Its Own Policies

31. Prior to Cyprus’s receipt of the Insurance Counsel Letter on the Petition Date, the Debtors conceded, or at least never contested, that Cyprus owns the relevant insurance policies and that Cyprus has the right to use the coverage under those policies, including for the Asbestos Lawsuits.²⁴ For the purposes of this Motion seeking emergency interim (and ultimately final) relief, it is not necessary for this Court to finally determine the precise scope of any rights ITA may have with respect to the coverage under the Cyprus Historical Policies. *At best*, ITA has a non-exclusive right to seek proceeds from the Cyprus Historical Policies—stemming from a contract provision providing for Cyprus’s cooperation in submitting claims—that certainly does nothing to displace Cyprus’s independent right to seek coverage under its own policies. Regardless of any contractual right ITA has as against Cyprus, as demonstrated above, Cyprus has rights in its own coverage sufficient to justify lifting the automatic stay for cause or granting temporary injunctive relief to protect Cyprus.

32. Even if Cyprus’s rights were not clear from the Debtors’ filings and correspondence, it is apparent, as detailed at length above, from the 1992 transaction documents that Cyprus continues to own the Cyprus Historical Policies, has the rights to make claims under those policies, and can receive payments from its insurers thereunder. As described above, in the 1992 ATA, Cyprus Mines transferred to Cyprus Talc Corporation only those assets “used

²⁴ *But see* Insurance Counsel Letter (“[I]t is the Debtors’ position that CAMC has no rights to the proceeds of policies issued to, or otherwise providing coverage to, Cyprus Mines Corporation (the ‘Policies’) . . .”).

primarily in or relating primarily to Cyprus' talc business." Those assets do not include Cyprus's insurance policies, which do not relate primarily to the talc business. Indeed, at the time the policies were issued and as of the creation of Cyprus Talc Corporation (n/k/a ITA), the policies covered the full panoply of historical businesses in which the Cyprus entities were engaged, most of which were unrelated to talc, such as clay, lead, zinc, sawmills, and cables. Liability policies, like the ones at issue here, provide broad coverage for the liabilities of the named insureds and any other insureds, subsidiaries, and affiliates that are covered; and, unless expressly excluded, are intended to cover the full range of the insureds' business activities. Thus, the Cyprus Historical Policies covered many of the historical businesses of Cyprus and its subsidiaries and affiliates. The non-talc business activities for which the policies provided coverage exceeded those of the talc business, and for that reason, among others, the policies were not "primarily" related to the talc business;²⁵ as a result, they were not among the assets transferred from Cyprus Mines to Cyprus Talc in the ATA. Ownership of the Cyprus Historical Policies has always remained with Cyprus.

33. As set forth in detail above, that Cyprus did not transfer its insurance policies pursuant to the ATA is further confirmed by the language of the 1992 SPA, which continues to refer to the Cyprus Historical Policies as the "*Seller's Insurance Policies*" (italics added), which means Cyprus Mines. To be sure, under the SPA, Cyprus agreed with RTZ to "cooperate" in "submitting claims" to Cyprus's insurers. *Id.* However, whatever contractual rights via Cyprus's cooperation that ITA may hold under the SPA to access the Cyprus Historical Policies are specifically tied to ITA's defense of Asbestos Lawsuits and protection of Cyprus from the wrongful assertion of claims against Cyprus based on liabilities ITA acknowledges it assumed

²⁵ See Declaration of John Fenn attached to Telmo Declaration as Exhibit C.

under the 1992 ATA. The SPA specifically limits ITA's right to receive cooperation from Cyprus to situations involving "Business Liabilities relating to occurrences prior to the Closing." And "Business Liabilities" are defined to mean the assumed Cyprus liabilities.

34. In sum, the Cyprus Historical Policies are owned by Cyprus, and Cyprus has always had, and continues to have, the right to make claims under its policies and receive the insurance proceeds thereunder for the costs of defending and indemnifying Cyprus.

B. Cyprus Is Entitled to Limited Relief from the Automatic Stay for Cause Under Bankruptcy Code § 362(d)

35. In light of its ownership of and rights to proceeds of the Cyprus Historical Policies, Cyprus is entitled to emergency relief from the automatic stay for cause so that it can tender claims to those of its insurers that are presently "at the plate" for defense and indemnity, and those insurers can make payments of defense on indemnity on Cyprus's behalf without fear of violating the automatic stay.

36. Bankruptcy Code § 362(d) pertinently provides:

On request of a party in interest and after notice and a hearing, the court shall grant relief from the stay provided under subsection (a) of this section, such as by terminating, annulling, modifying, or conditioning such stay—(1) for cause, including the lack of adequate protection of an interest in property of such party in interest.

11 U.S.C. § 362(d). "Although § 362(d)(1) does not define 'cause,' the Third Circuit has held that courts should consider 'the totality of the circumstances in each particular case' to determine whether 'cause' for relief from stay exists." *In re Aleris Int'l, Inc.*, 456 B.R. 35, 47 (Bankr. D. Del. Jan. 31, 2011) (quoting *Baldino v. Wilson (In re Wilson)*, 116 F.3d 87, 90 (3d Cir. 1997)); *see also F-Squared Inv. Mgmt., LLC*, 546 B.R. 538, 548 (Bankr. D. Del. 2016) (Silverstein, J.) ("'Cause' is not defined in the Bankruptcy Code; it is a flexible concept determined on a case-by-case basis.").

37. “The bankruptcy courts in this District apply a hardship balancing test to assess the existence of ‘cause.’” *In re Aleris Int’l, Inc.*, 456 B.R. at 47 (citing *In re The SCO Group, Inc.*, 395 B.R. 852, 856 (Bankr. D. Del. 2007); *In re Cont’l Airlines, Inc.*, 152 B.R. 420, 424 (D. Del. 1993)). “The three prongs of the balancing test are (1) whether any great prejudice to either the bankrupt estate or the debtor will result from lifting the stay; (2) whether the hardship to the non-bankrupt party by the maintenance of the stay considerably outweighs the hardship to the debtor if the stay is lifted; and (3) whether it is probable that the creditor will prevail on the merits of its case against the debtor.” *Id.* at 47-48 (citing *In re Downey Fin. Corp.*, 428 B.R. 595, 609 (Bankr. D. Del. 2010); *In re Cont’l Airlines*, 152 B.R. at 424; *In re Rexene Prod. Co.*, 141 B.R. 574, 576 (Bankr. D. Del. 1992)); *F-Squared Inv. Mgmt.*, 546 B.R. at 548.²⁶

i. No Great Prejudice to the Debtors

38. Relief from the automatic stay is warranted here for cause shown. Under the first prong of the balancing test, the Debtors and their estates will suffer no great prejudice as a result of the stay being lifted because the Cyprus Historical Policies *belong to Cyprus*, which has every right to use them. Moreover, the use of one policy in particular—the National Union Policy—will provide critical protection to Cyprus if the stay is lifted by covering defense costs in most if not all of the Asbestos Lawsuits while, as shown below, amounts spent by the insurer under this policy to defend lawsuits are paid (without any limit of liability) in addition to, and without reducing, the limit of liability available for settlements and judgments. Accordingly, the limits of

²⁶ In determining whether to grant relief from the automatic stay, “this Court also considers the general policies underlying the automatic stay.” *In re Scarborough-St. James Corp.*, 535 B.R. 60, 68 (Bankr. D. Del. 2015) (Silverstein, J.) (citing *SCO Group, Inc.*, 395 B.R. at 857). Specifically, this Court has taken into account whether the automatic stay is being invoked in a manner consistent with its purpose as “‘a shield, not a sword that should help the debtor deal with [its] bankruptcy for the benefit of [it]self and [its] creditors.’” *Id.* at 67 (quoting *In re Res. Cap., LLC*, 2012 WL 3249647, at *2 (Bankr. S.D.N.Y. Aug. 7, 2012) (internal quotations omitted)).

liability available for claims under the Cyprus Historical Policies would not be unduly diminished if the stay relief requested in this Motion is granted.

39. More specifically, the National Union policy covering the period from July 1, 1979 to July 1, 1980, requires the insurer to “pay on behalf of the Insured that portion of the ultimate net loss in excess of the retained limit as hereinafter defined which the Insured shall become legally obligated to pay as damages for liability imposed upon the Insured by law or liability assumed by the Insured under contract because of (i) personal injury, (ii) property damage, or (iii) advertising liability, as defined herein, caused by an occurrence.” “Occurrence” is defined as an “event, including continuous or repeated exposure to conditions, which result in Personal Injury or Property Damage during the policy period” That means that this policy, the latest in time that is subject to this Motion, must respond to every Asbestos Lawsuit where there is an allegation of exposure to a Cyprus talc product that occurred at any time prior to July 1, 1980. With respect to the defense obligation, the policy’s “DEFENSE, SETTLEMENT, SUPPLEMENTARY PAYMENTS” provision states (emphasis added):

The Company shall:

(a) defend any suit against the Insured alleging liability insured under the provisions of this policy and seeking recovery for damages on account thereof even if such suit is groundless false or fraudulent but the Company shall have the right to make such investigation and negotiation and settlement of any claim or suit as may be deemed expedient by the Company;

(b) pay all premiums on bonds to release attachments for an amount not in excess of the applicable limit of liability of this policy all premiums on appeal bonds required in any such defended suit but without any obligation to apply for or furnish such bonds all costs taxed against the Insured in any such suit all expenses incurred by the Company and all interest accruing after entry of judgment until the Company has paid tendered or deposited in court that part of the judgment as does not exceed the limit of the Company’s liability thereon;

(c) reimburse the Insured for all reasonable expenses incurred at the

Company's request including actual loss of wages or salary but not loss of other income not to exceed \$75 per day because of his attendance at hearings or trials at such request.

The Company agrees to pay the amounts incurred under this Insurance Agreement II except in settlement of claims and suits in addition to the limit of liability stated in the Declarations and such defense and supplementary payments shall not be included as part of the ultimate net loss as defined in the policy.

40. Not only would the defense of Cyprus under this particular policy not burn up the policy's limit of liability, any successful defense by Cyprus in the Asbestos Lawsuits reduces claims that will be asserted by Cyprus against the Debtors in these cases, thereby reducing the claims pool and preserving estate resources for the payment of claims under an ultimate plan. On the other hand, settlements and potential judgments against Cyprus in the Asbestos Lawsuits would become claims against the Debtors' estates in light of the undeniable fact that ITA assumed and now holds the talc liabilities.

ii. Hardship to Cyprus Greatly Outweighs Hardship to the Debtors

41. Second, relief from the automatic stay will prevent significant prejudice and irreparable harm to Cyprus if it is forced to bear the cost to defend the many hundreds of ongoing Asbestos Lawsuits without the benefit of the insurance that it purchased to protect its businesses. *See, e.g., In re CyberMedica*, 280 B.R. at 18 (non-debtor insureds "may suffer substantial and irreparable harm if prevented from exercising their rights to defense payments"). As mentioned above, based on the costs that ITA incurred in defending against the Asbestos Lawsuits prior to the Petition Date, Cyprus expects that its costs to defend and possibly resolve these lawsuits will quickly reach millions of dollars.

42. Even in cases where a debtor and a non-debtor are co-insureds under a policy—and here, as discussed at length above, any rights that ITA may have are *not* as a co-insured under the Cyprus Historical Policies—courts have lifted the automatic stay to protect non-debtor

insureds from the substantial and irreparable harm that would result from being unable to use their own insurance policies to defend themselves in ongoing litigation. *See In re Allied Digital Techs.*, 306 B.R. 505, 513-14 (Bankr. D. Del. 2004) (finding proceeds of D&O policy to not be property of the estate, and to the extent they are, cause was shown to lift the stay to protect D&Os where they would otherwise “be prevented from conducting a meaningful defense” and “may suffer substantial and irreparable harm” by not receiving the “bargained for” coverage, and payment of claims by insurance would “remove any indemnification claim” the insured D&Os had against the debtor). *See also, e.g., In re CyberMedica, Inc.*, 280 B.R. 12, 17-19 (Bankr. D. Mass. 2002) (lifting the automatic stay to prevent substantial and irreparable harm to co-insured D&Os that would be suffered if they were prevented from exercising their rights to defense payments); *Exec. Risk Indem., Inc. v. Boston Regional Med. Ctr., Inc. (In re Boston Regional Med. Ctr., Inc.)*, 285 B.R. 87, 94-97 (Bankr. D. Mass. 2002) (granting limited relief from the automatic stay and plan injunction to allow defense costs to be paid under D&O’s coverage for their insurable interests where debtor and non-debtor D&Os both had interests in coverage).

43. The Debtors’ extreme position regarding the automatic stay with respect to the Cyprus Historical Policies tramples on Cyprus’s property rights and is also contrary to the principle that a debtor cannot use the bankruptcy proceeding to expand its rights with respect to insurance beyond those it had before a chapter 11 filing. *See, e.g., In re Downey Fin. Corp.*, 428 B.R. 595, 607 (Bankr. D. Del. 2010) (“Section 541(a) is not intended to expand the debtor’s rights against others beyond what rights existed at the commencement of the case. Courts generally closely examine the debtor’s rights under the terms of the liability insurance policy at issue in order to determine whether holding that the policy proceeds are property of the estate would improperly expand the debtor’s rights against others beyond what rights existed at the

commencement of the case.”) (internal quotations omitted); *Fed. Ins. Co. v. DBSI, Inc. (In re DBSI, Inc.)*, 2012 WL 2501090, at *11 (Bankr. D. Del. Jun. 27, 2012) (refusing to permit trustee to “run up legal fees” to fight over insurance proceeds to which the estates “are not entitled” where insurer “would be under no obligation to pay anything to the estate”).

44. When both a debtor and a non-debtor have “rights under and interests in [insurance] policies,” a court cannot “enjoin a named insured” from “asserting claims under an insurance policy that it contracted and paid for,” particularly when the non-debtor is not subject to the automatic stay and therefore needs the insurance proceeds to defend itself in ongoing litigation. *In re Forty-Eight Insulations, Inc.*, 133 B.R. 973, 977 (Bankr. N.D. Ill. 1991); *see also In re SoyNut Butter Co.*, 2018 WL 3689549, at *4 (Bankr. N.D. Ill. Aug. 1, 2018) (non-debtor insureds were “entitled to exercise their right to seek indemnification and defense under the Sentinel policy until the policy limits are exhausted”).

45. Here, too, permitting the Debtors to use their bankruptcy proceeding to potentially stay and preclude Cyprus from seeking coverage under its own policies would unjustifiably transform ITA’s limited, non-exclusive contract right to *cooperation* from Cyprus (a non-insurer) in order to submit certain claims under the Cyprus Historical Policies relating to historical pre-1992 Cyprus talc liabilities into an exclusive right for ITA to receive payments from insurers *under* those policies, though ITA is *not* an insured under those policies. Nothing in the Bankruptcy Code permits this proposed expansion of ITA’s rights, particularly at the expense of Cyprus’s rights as the insured under the Cyprus Historical Policies.

46. The Debtors contend that, as of the Petition Date, ITA, and ITA alone, is now entitled to proceeds of the Cyprus Historical Policies and that any actions taken by Cyprus to use Cyprus’s own insurance would subject Cyprus to sanctions for violating the automatic stay. But

prohibiting Cyprus from taking the normal steps required by an insured under its insurance policies would create the further risk that Cyprus's insurers will raise various potential arguments for denying coverage.

47. By way of example, the language quoted above from the National Union policy provides that National Union not only has the obligation but also the right to defend the lawsuits, so there is a risk that National Union will argue that Cyprus breaches the policy by defending itself. And that same provision states that National Union "shall have the right to make such investigation and negotiation and settlement of any claim or suit as may be deemed expedient by the Company." While there are constraints on that right, not allowing Cyprus to utilize its insurance creates the risk that National Union will argue that Cyprus has not complied with this provision of the policy.

48. In a similar vein, the insurance policies contain conditions concerning the insured's obligation to provide timely notice of any claims that may be covered under the policy. For example, the National Union policy provides: "Whenever the Insured has information from which the Insured may reasonably conclude that an Occurrence covered hereunder involved injuries or damages which, in the event that the Insured should be held liable is likely to involve this policy immediate notice shall be sent to the Company." As another example, the Central National Insurance Company of Omaha (Policy No. 122783) to Cyprus Mines Corporation for the policy period from April 2, 1975 to April 2, 1976, provides: "Whenever the Insured has information from which the Insured may reasonably conclude that an occurrence covered hereunder involves injuries or damages which, in the event that the Insured should be held liable, is likely to involve this policy, notice shall be sent to the Company as soon as practicable"

49. If Cyprus does not comply with these conditions, there is a risk that the insurance companies may seek to avoid providing coverage to Cyprus by arguing that Cyprus breached these conditions. *See, e.g., Safeco Ins. Co. of Am. v. Parks*, 170 Cal. App. 4th 992, 1003-04 (2009); *Shell Oil Co. v. Winterthur Swiss Ins. Co.*, 12 Cal. App. 4th 715, 759-60 (1993).²⁷ While Cyprus would have defenses to such arguments, simply creating the risk that the insurers would make these arguments is unreasonably prejudicial.

50. Moreover, courts applying relevant California law have held that an insured may forfeit coverage for those costs that it incurs to defend a claim or lawsuit before it notifies the insurer of the claim, subject to specific circumstances surrounding such pre-tender expenses and policy language. *See, e.g., Insua v. Scottsdale Ins. Co.*, 104 Cal. App. 4th 737, 743-44 (2002); *Truck Ins. Exch. v. Unigard Ins. Co.*, 79 Cal. App. 4th 966, 976 (2000). Once again, while Cyprus would have defenses to any such arguments by its insurers, the Debtors' strategy here is unduly prejudicial to Cyprus simply by creating the risk that the insurers will raise these arguments.

51. Some policies contain what is commonly referred to as a "No Action" provision or a "Loss Payable" provision that purports to require, before the insurance company must pay for a claim, that there is either a final adjudication of the insured's liability or a settlement that has the consent of the insurance company. The Harbor policy, for example, contains the following language: "No action shall lie against the company unless, as a condition precedent thereto, there shall have been full compliance with all of the terms of this policy, nor until the amount of the insured's obligation to pay shall have been finally determined either by judgment

²⁷ The Cyprus Historical Policies are governed by California law.

against the insured after actual trial or by written agreement of the insured, the claimant, and the company.”

52. Other policies, such as the Central National policy discussed above, include language requiring the insured to allow the insurer to associate in the defense of a lawsuit: “the Company shall have the right and shall be given the opportunity to associate with the Insured or the Insured's underlying insurers, or both, in the defense and control of any claim, suit or proceeding”

53. Again, the Debtors’ unreasonable position that any actions by Cyprus to access its own insurance policies would violate the automatic stay unduly prejudices Cyprus by not only forcing Cyprus to defend itself without its insurance carriers’ assistance, but by also creating the risk that the insurers will argue that Cyprus has failed to comply with these provisions of the Cyprus Historical Policies.

54. The hardship to Cyprus, as exemplified above, “greatly outweighs” any prejudice to the Debtors. As mentioned, the National Union Policy, a key policy Cyprus is entitled to and intends to use with the Court’s approval, would pay defense costs in all or nearly all of the Asbestos Lawsuits in addition to the limits of liability.

iii. It is Probable that Cyprus Will Prevail on the Merits

55. Finally, because the relevant policies are owned by Cyprus and that ITA has, *at most*, a contractual right as against Cyprus (but not the insurers) to seek cooperation from Cyprus as to access to the Cyprus Historical Policies, Cyprus is likely to prevail on the merits of its insurance claim. Therefore, all three factors weigh heavily in favor of lifting the automatic stay to permit Cyprus to use the Cyprus Historical Policies.

C. Adequate Protection Required Under Bankruptcy Code §§ 361 and 363(e)

56. In the event the Court determines to deny the request for stay relief, Cyprus seeks, in the alternative, adequate protection under Bankruptcy Code §§ 361 and 363(e) granting Cyprus derivative standing to pursue temporary injunctive relief with respect to the Asbestos Lawsuits in which Cyprus is a defendant or otherwise as provided herein.

57. Bankruptcy Code § 363(e) pertinently provides:

Notwithstanding any other provision of this section, at any time, on request of an entity that has an interest in property used, sold, or leased, or proposed to be used, sold, or leased by the trustee, the court, with or without a hearing, shall prohibit or condition such use, sale, or lease as is necessary to provide adequate protection of such interest.

11 U.S.C. § 363(e).

58. Bankruptcy Code §361 sets forth, in a non-exhaustive list, potential forms that adequate protection—to protect against diminution in value as a result of the imposition of the automatic stay or the Debtors’ use, sale, or lease of estate property—may take: (a) requiring cash payments or periodic cash payments; (b) provision of additional or replacement liens; or (c) such “other relief . . . as will result in the realization by such entity of the indubitable equivalent of such entity’s interest in such property.” 11 U.S.C. § 361.

59. What constitutes an appropriate form of adequate protection is necessarily a flexible concept, which “must be decided on a case-by-case basis.” *In re Satcon Tech. Corp.*, 2012 Bankr. LEXIS 5812, *17 (Bankr. D. Del. Dec. 7, 2012) (citing *In re O’Connor*, 808 F.2d 1393, 1396 (10th Cir. 1987); *In re Martin*, 761 F.2d 472 (8th Cir. 1985); *In re Shaw Indus., Inc.*, 300 B.R. 861, 865 (Bankr. W.D. Pa. 2003)). Moreover, “[t]he whole purpose of adequate protection for a creditor is to insure that the creditor receives the value for which he bargained prebankruptcy.” *In re Swedeland Dev. Group, Inc.*, 16 F.3d 552, 564 (3d Cir. 1994). *See also Delaware Trust Co. v. Wilmington Trust, N.A. (In re Energy Future Holdings Corp.)*, 546 B.R.

566, 581 (Bankr. D. Del. Mar. 11, 2016) (the purpose of adequate protection is to protect a creditor from diminution in the value of its interest in property during the period of use by the debtor).

60. As stated above, Cyprus takes the position, based on the Debtors' assertions, *arguendo* that, for purposes of this Motion, the Cyprus Historical Policies are property in which the both the Debtors and Cyprus have an interest, such that adequate protection is an appropriate remedy to protect the diminution of Cyprus's property interest. Here, as described in detail above, Cyprus will suffer a "quantitative decline in value of [its] property" without adequate protection.²⁸

61. Accordingly, Cyprus requests adequate protection in the form of temporary injunctive relief under Bankruptcy Code §§ 105(a) and 362(a). While injunctive relief in favor of co-defendants in asbestos litigation is ordinarily sought by a *debtor* in furtherance of its ultimate goal of reaching a comprehensive solution under Bankruptcy Code §§ 105(a), 524(g), and 1129 and working cooperatively with parties who are intended to receive the benefit of a channeling injunction (and here, Cyprus is envisioned as being such a party by the Debtors, at least as set forth in the Insurance Counsel Letter²⁹), the Debtor is not yet willing to seek this fairly typical form of temporary relief.

62. Cyprus also acknowledges that this form of relief is to be sought in an adversary proceeding. *See* FED. R. BANKR. P. 7001(7). Cyprus simply raises the fact that this form of

²⁸ *In re Garcia*, 584 B.R. 483, 488 (Bankr. S.D.N.Y. 2018) (A movant makes a prima facie case that it lacks adequate protection under section 362(d)(1) by showing "a quantitative decline in value of a property"); *see also Matter of Continental Airlines, Inc.*, 146 B.R. 536, 539 (Bankr. D. Del. 1992) (courts require a movant seeking adequate protection "to show a decline in value" of its property interest).

²⁹ *See* Insurance Counsel Letter, at 1 ("Of course, the plan will include the establishment of a trust pursuant to which all current and future talc claims will be channeled in accordance with the Bankruptcy Code. This plan structure will also provide a mechanism whereby insurers, indemnitors, and third parties (**such as your client**) who meaningfully contribute to the trust can obtain protection from all current and future talc liabilities by virtue of a channeling injunction and third party releases.") (emphasis added).

relief is available now as an alternative pathway for the Debtors to address the lack of adequate protection of Cyprus's interest in the Cyprus Historical Policies and the proceeds thereto, in light of the Debtors' inequitable and aggressive assertions regarding the Cyprus Historical Policies as of the Petition Date. Such temporary injunctive relief is an ideal form of adequate protection that would both protect Cyprus's undisputable property interest while doing *no harm whatsoever* to the Debtors and their estates. If anything, this form of adequate protection would help facilitate the process the Debtors purport to seek—a global resolution of the talc claims that drove them to file these chapter 11 cases—and prevent needless tension with—and prejudice to—Cyprus.

63. There are numerous examples of asbestos mass tort bankruptcy cases in which debtors have sought temporary, pre-plan injunctive protection for certain non-debtor parties in order to facilitate a confirmable resolution under Bankruptcy Code §§ 105(a), 524(g), and 1129 for all relevant parties, and such requests are frequently approved by bankruptcy courts.³⁰

³⁰ See, e.g., *Bestwall LLC v. Those Parties Listed on Appendix A to Complaint and John and Jane Does 1-1000 (In re Bestwall)*, Adv. Pro. No. 17-3105 (Bankr. W.D.N.C. Nov. 2, 2017) (Debtor's Motion for an Order (I) Preliminarily Enjoining Certain Actions Against Non-Debtors, or (II) in the Alternative, Declaring that the Automatic Stay Applies to Such Actions and (III) Granting a Temporary Restraining Order Pending a Full Hearing on the Motion) [D.I. 2] (the "Bestwall Motion"); see also Third Agreed Order Regarding Debtors' Request for Extension or Application of the Automatic Stay to Certain Actions Against Non-Debtors [D.I. 33]; *Garlock Sealing Techs., LLC v. Those Parties Listed on Exhibit B to Complaint (In re Garlock Sealing Techs. LLC)*, Adv. Pro. No. 10-03145 (Bankr. W.D.N.C. Jun. 7, 2010) (Plaintiffs' Motion for Temporary Restraining Order and Preliminary Injunction Staying all Asbestos-Related Claims Against Affiliated Entities ("Garlock Motion") [D.I. 2]; see also Order Granting Temporary Restraining Order [D.I. 9]; *Kaiser Gypsum Co., Inc. v. Those Parties Listed on Appendix A to Complaint and John and Jane Does 1-1000 (In re Kaiser Gypsum Co., Inc.)*, Adv. Pro. No. 16-03313 (Debtors' Motion for an Order Extending and Applying the Automatic Stay to Certain Non-Debtors (the "Kaiser Motion") [D.I. 2]; see also Order Granting Debtor Kaiser Gypsum Company, Inc.'s and Hanson Permanente Cement, Inc.'s Request for Preliminary Injunctive and Declaratory Relief [D.I. 18]; *N. Am. Refractories Co. v. Parties Listed on Exhibit A (In re N. Am. Refractories Co.)*, Adv. Pro. No. 02-2004 (Bankr. W.D. Pa.) (Complaint for Declaratory and Injunctive Relief and Motion for Temporary Restraining Order and for Preliminary Injunction) (the "NARCO Complaint"); *Quigley Co., Inc. v. A.C. Coleman (In re Quigley Co., Inc.)*, Adv. Pro. No. 04-4262 (Bankr S.D.N.Y. Sept. 3, 2004) (Motion of Quigley Co. Inc. for an Order Pursuant to Sections 105(a) and 362(a) of the Bankruptcy Code and Bankruptcy Rule 7065 Confirming Application of the Automatic Stay and Granting a Preliminary Injunction and Temporary Restraining Order) (the "Quigley Motion") [D.I. 2]; see also Injunction Pursuant to 11 U.S.C. §§ 105(a) and 362(a) and Federal Rule of Bankruptcy Procedure 7065 [D.I. 122]; *Specialty Prods. Holding Corp. v. Those Parties Listed on Appendix A to Complaint and John and Jane Does 1-1000 (In re Specialty Prods. Holding Corp.)*, Adv. Pro No. 10-51085, (Bankr. D. Del. May 31, 2010) (Complaint of the Debtors Specialty Products Holding Corp. and Bondex International, Inc. for Injunctive and Declaratory Relief Extending and Applying the Automatic Stay to Certain Non-Debtor Affiliates (the "Specialty Products Complaint"); see also Order Granting the Debtors Specialty Products Holding Corp. and Bondex International Inc.'s Request for a Temporary

Bankruptcy Code §§ 105(a) and 362(a) are frequently asserted as the authority supporting such requested equitable injunctive relief or extension of the automatic stay in order to protect certain non-debtor parties in the asbestos context where, for instance, shared insurance is at issue (*see, e.g.,* Garlock Motion, at 3; Quigley Motion, at 2) and/or where a debtor is the ultimately responsible party such that a judgment of liability against a non-debtor is functionally one against a debtor (*see, e.g.,* Bestwall Motion, at 3; Kaiser Motion, at 12; NARCO Complaint, at 9; Specialty Products Complaint, at 8).

64. Similar to the myriad asbestos bankruptcy cases in which Debtors have sought temporary relief to protect non-debtor parties where shared insurance and/or liability issues were implicated and where a comprehensive plan incorporating an asbestos claims channeling injunction and trust mechanism was the ultimate goal, as well as other cases in the mass tort context,³¹ Cyprus suggests that equitable relief under Bankruptcy Code §§ 105(a) and/or 362(a) to temporarily enjoin asbestos suits against Cyprus and its affiliates relating to talc-asbestos liability would be an appropriate resolution of the issue at hand, which would help facilitate the pursuit of a global resolution of the asbestos liabilities against the Debtors in these chapter 11 cases.

Restraining Order [June 4, 2010]).

³¹ *See, e.g., A.H. Robins Co., Inc. v. Piccinin*, 788 F.2d 994 999-1002 (4th Cir.), *cert. denied*, 788 F.2d 994 (1986) (explaining that the automatic stay is ordinarily only available to the debtor but that where there are suits against non-bankrupt co-defendants under circumstances in which there is “such an identity between the debtor and the third-party defendant that the debtor may be said to be the real party defendant and that a judgment against the third-party defendant will in effect be a judgment or finding against the debtor,” extension of the stay is appropriate and any action against a non-debtor in which the judgment may diminish the debtor’s insurance asset is subject to a stay). *Compare In re Johns-Manville Corp.*, 26 B.R. 420, 431 (Bankr. S.D.N.Y. 1983), *rev’d on other grounds*, 41 B.R. 926 (S.D.N.Y. 1984) (declining to stay litigation against insurers and sureties where “the interests of these insurers and sureties are not sufficiently interwoven with those of the debtor to comport with the narrow scope of Section 362 of the Code. The suits against Manville’s insurers and sureties have not been shown to be ‘end run’ tactics to obfuscate the purported real target of these third party suits, Manville” where Manville “maintains no obligation to indemnify or pay for the defense costs of its insurers or sureties” and “[t]hus, the liability of these insurers and sureties in no way inures to the detriment of the Manville estate”).

65. To the extent ITA were to seek such relief, Cyprus would cooperatively work with the Debtors to facilitate that request. However, should ITA continue to sit on its hands, to the extent this Court sees fit to do so, Cyprus would take on the commencement of an adversary proceeding seeking injunctive relief if the Court would be willing to grant Cyprus derivative standing to do so. *See, e.g., Official Committee of Unsecured Creditors of Cybergenics Corp. v. Chinery*, 330 F.3d 548 (3d Cir. 2003) (authorizing bankruptcy courts to bestow creditors with derivative standing to assert claims on behalf of or for the benefit of the estate); *see also Infinity Investors, Ltd. v. Kingsborough (in re Yes! Entm't Corp.)*, 316 B.R. 141, 145 (D. Del. 2004); *La. World Expo. v. Fed. Ins. Co.*, 858 F. 2d. 233, 247 (5th Cir. 1988). A grant of derivative standing to Cyprus to pursue temporary injunctive relief would benefit the estate given that it would help facilitate the Debtors' consensual restructuring under Bankruptcy Code §§ 105(a), 524(g), and 1129 particularly where there is a live dispute over the Debtors' purported ability to access the Cyprus Historical Policies—which Cyprus will fight if necessary—and where any judgment rendered against Cyprus is effectively a judgment against ITA. An unsuccessful determination for Debtors regarding the dispute over whether ITA has rights to the Cyprus Historical Policies, independently and/or to the exclusion of Cyprus, would mean fewer insurance proceeds for the purposes of funding its asbestos claims trust. Cyprus respectfully submits that, assuming the stay is not lifted, temporary injunctive relief to protect Cyprus with respect to the Asbestos Lawsuits asserted against it is more than appropriate and would not only rightly protect Cyprus in the short term, but would also benefit the Debtors and their estates and their global restructuring efforts in the long term. Adequate protection in the form of injunctive relief is warranted.

VI.
WAIVER OF RULES OTHERWISE STAYING EFFECTIVENESS OF ORDER

66. Due to the urgency of the relief requested in this Motion, and the fact that Cyprus Mines and CAMC are requesting relief on an emergency basis for the reasons described above, Cyprus and CAMC request that the Court waive the fourteen (14) day stay otherwise applicable to orders granting relief from the automatic stay in Bankruptcy Rule 4001(a)(3), or any other potentially applicable Bankruptcy Rules, including Bankruptcy Rules 6004(h), 7062, 9014, or otherwise, such that the order approving this Motion is enforceable immediately upon its entry.

VII.
NOTICE

67. Notice of this Motion has been provided by overnight courier or hand delivery, as applicable, to (a) counsel for the Debtors, (b) the U.S. Trustee for the District of Delaware, (c) the entities listed on the Debtors' consolidated list of the top thirty (30) law firms with the most significant representations of talc claimants, and (d) counsel for the insurers for the Cyprus Historical Policies, to the extent known and for which service information was available at the time of filing, and (e) all parties requesting notice pursuant to Bankruptcy Rule 2002.

VIII.
PRAYER

WHEREFORE, Cyprus Mines and CAMC respectfully request that the Court grant: (a) on an interim and final basis—in the form of the proposed orders attached hereto as **Exhibit A** and **Exhibit B**, respectively—relief from the automatic stay, *nunc pro tunc* to the Petition Date, for cause under Bankruptcy Code § 362(d) to permit Cyprus to use the Cyprus Historical Policies and their proceeds with respect to pending and future Asbestos Lawsuits to which they and/or their affiliates are a party; or (b) adequate protection under Bankruptcy Code §§ 361 and 363(e) in the form of temporary injunctive relief to stay pending and future Asbestos

Lawsuits against Cyprus and its affiliates regarding the liability ITA holds by virtue of the 1992 transaction. Cyprus Mines and CAMC also requests such other and further relief, including additional forms of adequate protection, to which they may be justly and equitably entitled.

Dated: February 28, 2019
Wilmington, Delaware

Respectfully submitted,

By: /s/ Robert J. Dehney

Robert J. Dehney (No. 3578)

Gregory Werkheiser (No. 3553)

Matthew O. Talmo (No. 6333)

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*Counsel to Cyprus Mines Corporation and Cyprus
Amax Minerals Company*

UNITED STATES BANKRUPTCY COURT
FOR THE DISTRICT OF DELAWARE

In re:

IMERYS TALC AMERICA, INC., *et al.*,¹

Debtors.

Chapter 11

Case No. 19-10289 (LSS)

(Jointly Administered)

Hearing Date: TBD

Objection Deadline: TBD

**NOTICE OF EMERGENCY MOTION FOR (I) INTERIM AND FINAL ORDERS
GRANTING RELIEF FROM THE AUTOMATIC STAY UNDER BANKRUPTCY CODE
§ 362(d) TO USE INSURANCE COVERAGE UNDER CYPRUS HISTORICAL
POLICIES OR, IN THE ALTERNATIVE, (II) ADEQUATE PROTECTION
UNDER BANKRUPTCY CODE §§ 361 AND 363(e)**

PLEASE TAKE NOTICE that on February 28, 2019, Cyprus Mines Corporation and Cyprus Amax Minerals Company (“Cyprus”) filed the **Emergency Motion for (I) Interim and Final Orders Granting Relief from the Automatic Stay Under Bankruptcy Code § 362(d) to Use Insurance Coverage Under Cyprus Historical Policies or, in the Alternative, (II) Adequate Protection Under Bankruptcy Code §§ 361 and 363(e)** (the “Motion”).

PLEASE TAKE FURTHER NOTICE that any party wishing to oppose the entry of an order granting the relief requested in the Motion must file a response or objection (“Objection”) if any, to the Motion with the Clerk of the United States Bankruptcy Court for the District of Delaware, 824 N. Market Street, 3rd Floor, Wilmington, Delaware 19801 on or before **a date and time to be determined (the “Objection Deadline”)**. At the same time, you must serve such Objection upon the undersigned counsel for the Debtors so as to be received on or before the Objection Deadline.

PLEASE TAKE FURTHER NOTICE that only objections made in writing and timely filed and received, in accordance with the procedures above, will be considered by the Bankruptcy Court at such hearing.

PLEASE TAKE FURTHER NOTICE THAT A HEARING ON THE MOTION WILL BE HELD ON **A DATE AND TIME TO BE DETERMINED** BEFORE THE HONORABLE LAURIE SELBER SILVERSTEIN AT THE UNITED STATES BANKRUPTCY COURT FOR THE DISTRICT OF DELAWARE, 824 N. MARKET STREET, 6TH FLOOR, COURTROOM #2, WILMINGTON, DELAWARE 19801.

¹ The Debtors in these cases, along with the last four digits of each Debtor’s federal tax identification number, are: Imerys Talc America, Inc. (“ITA”) (6358), Imerys Talc Vermont, Inc. (9050), and Imerys Talc Canada Inc. (6748). The Debtors’ address is 100 Mansell Court East, Suite 300, Roswell, Georgia 30076.

IF YOU FAIL TO RESPOND IN ACCORDANCE WITH THIS NOTICE, THE COURT MAY GRANT THE RELIEF REQUESTED IN THE MOTION WITHOUT FURTHER NOTICE OR HEARING.

Dated: February 28, 2019
Wilmington, Delaware

Respectfully submitted,

By: /s/ Robert J. Dehney

Robert J. Dehney (No. 3578)
Gregory Werkheiser (No. 3553)
Matthew O. Talmo (No. 6333)

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*Counsel to Cyprus Mines Corporation and Cyprus
Amax Minerals Company*

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

In re:

IMERYYS TALC AMERICA, INC., *et al.*,¹

Debtors.

Chapter 11

Case No. 19-10289 (LSS)

(Joint Administration Requested)

Re: D.I. ____

**INTERIM ORDER GRANTING CYPRUS MINES CORPORATION AND CYPRUS
AMAX MINERALS COMPANY (I) RELIEF FROM THE AUTOMATIC STAY UNDER
BANKRUPTCY CODE § 362(d) TO USE INSURANCE COVERAGE UNDER CYPRUS
HISTORICAL POLICIES AND (II) RELATED RELIEF**

Upon the *Emergency Motion for (I) Interim and Final Orders Granting Relief from the Automatic Stay Under Bankruptcy Code § 362(d) to Use Insurance Coverage Under Cyprus Historical Policies or, in the Alternative, (II) Adequate Protection Under Bankruptcy Code §§ 361 and 363(e)* (the “Motion”)² of Cyprus Mines Corporation (“Cyprus Mines”) and Cyprus Amax Minerals Company (“CAMC”)³ for entry of an order (a) granting Cyprus relief from the automatic stay under 11 U.S.C. § 362(d)(1), to the extent that it may be applicable, to allow it to use the Cyprus Historical Policies for defense costs and other losses any Cyprus entity has incurred and continues to incur in connection with the Asbestos Lawsuits; or (b) to the extent the automatic stay applies, providing Cyprus with adequate protection under 11 U.S.C. §§ 361 and 363(e) in the form of temporary injunctive relief regarding the Asbestos Lawsuits, as described in the Motion; and it appearing that this Court has jurisdiction to consider the Motion pursuant to

¹ The Debtors in these cases, along with the last four digits of each Debtor’s federal tax identification number, are: Imerys Talc America, Inc. (“ITA”) (6358), Imerys Talc Vermont, Inc. (9050), and Imerys Talc Canada Inc. (6748). The Debtors’ address is 100 Mansell Court East, Suite 300, Roswell, Georgia 30076.

² Undefined terms used herein shall have the meanings ascribed to them in the Motion.

³ Cyprus Mines, along with his historical predecessors and affiliates (excluding Cyprus Talc Corporation), and CAMC are collectively referenced herein as “Cyprus.”

28 U.S.C. §§ 157 and 1334; and it appearing that venue of these cases and the Motion in this district is proper pursuant to 28 U.S.C. §§ 1408 and 1409; and it appearing that this matter is a core proceeding pursuant to 28 U.S.C. § 157(b); and the Court having considered the Motion and any objections or responses thereto; and after due deliberation and sufficient cause appearing therefore, it is hereby ORDERED that:

1. The Motion is GRANTED as set forth herein.
2. The relief granted herein is granted on an interim basis, through and including the date of entry of a final order of this Court approving or denying the Motion on a final basis.
3. To the extent, if any, it may apply, the automatic stay of Bankruptcy Code § 362(a) is lifted and modified retroactive to the Petition Date to allow any Cyprus entity to (a) use the Cyprus Historical Policies—including, but not limited to, the policy issued to Cyprus Mines by National Union Fire Insurance Company of Pittsburgh, PA, Policy No. 1326219 (the “National Union Policy”)—to defend and indemnify Cyprus in the Asbestos Lawsuits in which any Cyprus entity is a defendant, and (b) tender any new Asbestos Lawsuits to insurers under the Cyprus Historical Policies.
4. To the extent it may apply, the automatic stay of Bankruptcy Code § 362(a) is lifted and modified retroactive to the Petition Date to allow any and all insurers under any Cyprus Historical Policies to abide by and perform under the terms of such policies, including but not limited to, authority to accept, process, and make payments to or on behalf of any Cyprus entity under such Cyprus Historical Policies, including, but not limited to, payment by an insurer to or on behalf of any Cyprus entity for pre-petition or post-petition defense or indemnity costs. For the avoidance of doubt, no payment made by an insurer under a Cyprus Historical Policy to or for the benefit of any Cyprus entity shall be deemed void or be deemed to be a voluntary

payment outside the scope of such insurer's policy or policies, by reason of the actual or potential applicability of the automatic stay to such payment.

5. Nothing in this Order affects or modifies the terms and conditions of the Cyprus Historical Policies. Except as provided herein, all parties reserve their rights with respect to the Cyprus Historical Policies.

6. This Court shall retain jurisdiction to construe and enforce the terms of this Order.

7. Notwithstanding the possible application of Bankruptcy Rules 4001(a)(3), 6004(h), 7062, 9014, or otherwise, this order shall be effective and enforceable immediately upon entry hereof.

Dated: _____, 2019
Wilmington, Delaware

THE HONORABLE LAURIE SELBER SILVERSTEIN
UNITED STATES BANKRUPTCY JUDGE

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

In re:

IMERYYS TALC AMERICA, INC., *et al.*,¹

Debtors.

Chapter 11

Case No. 19-10289 (LSS)

(Joint Administration Requested)

Re: D.I. ____

**FINAL ORDER GRANTING CYPRUS MINES CORPORATION AND CYPRUS AMAX
MINERALS COMPANY (I) RELIEF FROM THE AUTOMATIC STAY UNDER
BANKRUPTCY CODE § 362(d) TO USE INSURANCE COVERAGE UNDER CYPRUS
HISTORICAL POLICIES AND (II) RELATED RELIEF**

Upon the *Emergency Motion for (I) Interim and Final Orders Granting Relief from the Automatic Stay Under Bankruptcy Code § 362(d) to Use Insurance Coverage Under Cyprus Historical Policies or, in the Alternative, (II) Adequate Protection Under Bankruptcy Code §§ 361 and 363(e)* (the “Motion”)² of Cyprus Mines Corporation (“Cyprus Mines”) and Cyprus Amax Minerals Company (“CAMC”)³ for entry of an order (a) granting Cyprus relief from the automatic stay under 11 U.S.C. § 362(d)(1), to the extent that it may be applicable, to allow it to use the Cyprus Historical Policies for defense costs and other losses Cyprus has incurred and continues to incur in connection with the Asbestos Lawsuits; or (b) to the extent the automatic stay applies, providing Cyprus with adequate protection under 11 U.S.C. §§ 361 and 363(e) in the form of temporary injunctive relief regarding the Asbestos Lawsuits, as described in the Motion; and it appearing that this Court has jurisdiction to consider the Motion pursuant to 28

¹ The Debtors in these cases, along with the last four digits of each Debtor’s federal tax identification number, are: Imerys Talc America, Inc. (“ITA”) (6358), Imerys Talc Vermont, Inc. (9050), and Imerys Talc Canada Inc. (6748). The Debtors’ address is 100 Mansell Court East, Suite 300, Roswell, Georgia 30076.

² Undefined terms used herein shall have the meanings ascribed to them in the Motion.

³ Cyprus Mines, along with his historical predecessors and affiliates (excluding Cyprus Talc Corporation), and CAMC are collectively referenced herein as “Cyprus.”

U.S.C. §§ 157 and 1334; and it appearing that venue of these cases and the Motion in this district is proper pursuant to 28 U.S.C. §§ 1408 and 1409; and it appearing that this matter is a core proceeding pursuant to 28 U.S.C. § 157(b); and the Court having considered the Motion and any objections or responses thereto; and after due deliberation and sufficient cause appearing therefore, it is hereby ORDERED that:

1. The Motion is GRANTED on a final basis as set forth herein.
2. To the extent, if any, it may apply, the automatic stay of Bankruptcy Code § 362(a) is lifted and modified retroactive to the Petition Date to allow any Cyprus entity to (a) use the Cyprus Historical Policies—including, but not limited to, the policy issued to Cyprus Mines by National Union Fire Insurance Company of Pittsburgh, PA, Policy No. 1326219 (the “National Union Policy”)—to defend and indemnify Cyprus in the Asbestos Lawsuits in which any Cyprus entity is a defendant, and (b) tender any new Asbestos Lawsuits to insurers under the Cyprus Historical Policies.
3. To the extent it may apply, the automatic stay of Bankruptcy Code § 362(a) is lifted and modified retroactive to the Petition Date to allow any and all insurers under any Cyprus Historical Policies to abide by and perform under the terms of such policies, including but not limited to, authority to accept, process, and make payments to or on behalf of any Cyprus entity under such Cyprus Historical Policies, including, but not limited to, payment by an insurer to or on behalf of any Cyprus entity for pre-petition or post-petition defense or indemnity costs. For the avoidance of doubt, no payment made by an insurer under a Cyprus Historical Policy to or for the benefit of any Cyprus entity shall be deemed void or be deemed to be a voluntary payment outside the scope of such insurer’s policy or policies, by reason of the actual or potential applicability of the automatic stay to such payment.

4. Nothing in this Order affects or modifies the terms and conditions of the Cyprus Historical Policies. Except as provided herein, all parties reserve their rights with respect to the Cyprus Historical Policies.

5. This Court shall retain jurisdiction to construe and enforce the terms of this Order.

6. Notwithstanding the possible application of Bankruptcy Rules 4001(a)(3), 6004(h), 7062, 9014, or otherwise, this order shall be effective and enforceable immediately upon entry hereof.

Dated: _____, 2019
Wilmington, Delaware

THE HONORABLE LAURIE SELBER SILVERSTEIN
UNITED STATES BANKRUPTCY JUDGE

CERTIFICATE OF SERVICE

I, Matthew O. Talmo, certify that I am not less than 18 years of age, and that service of the foregoing **Emergency Motion for (I) Interim and Final Orders Granting Relief from the Automatic Stay Under Bankruptcy Code § 362(d) to Use Insurance Coverage Under Cyprus Historical Policies or, in the Alternative, (II) Adequate Protection Under Bankruptcy Code §§ 361 and 363(e)** was caused to be made on February 28, 2019, in the manner indicated upon the entities identified on the attached service list.

Date: February 28, 2019

/s/ Matthew O. Talmo
Matthew O. Talmo (No. 6333)

IMERYS TALC 2002 SERVICE LIST

BY HAND

Attn: Scott D. Cousins Erin R. Fay
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Ellen Slights
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BY FEDEX INT'L PRIORITY

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Attn: Stephen W. Baker
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BY USPS PRIORITY/EXPRESS OVERNIGHT

Corporations Franchise Tax
Delaware Secretary of State
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Dover, DE 19903

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Missoula, MT 59806-5328

Centralized Insolvency Operation
Internal Revenue Service
PO Box 7346
Philadelphia, PA 19101-7346

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