

# **EXHIBIT A**



December 10, 2020

Jason A. Frye  
Attorney at Law

Tel 312.827.1066  
Fax 312.980.0738  
jfrye@ngelaw.com

**VIA E-MAIL**

Daniel J. Wityk  
[daniel.wityk@mendes.com](mailto:daniel.wityk@mendes.com)  
Mendes & Mount, LLP  
750 Seventh Ave.  
New York, NY 10019

**Re: *Atlanta International Insurance Company, et al v. Johnson & Johnson, et al.*  
Case No. MID-L-003563-19**

Dear Daniel:

We are special insurance coverage and indemnification counsel for Imerys Talc America, Inc., Imerys Talc Vermont, Inc., and Imerys Talc Canada Inc. (collectively, the “**Debtors**”) in connection with the bankruptcy cases currently pending in the U.S. Bankruptcy Court for the District of Delaware styled as *In re Imerys Talc America, Inc.*, Case No. 19-10289 (LSS), (the “**Chapter 11 Cases**”). We write because the Debtors have become aware of the coverage lawsuit referenced above (the “**Coverage Lawsuit**”) that your clients filed against Johnson & Johnson (“**J&J**”) and others. Be advised that the protections afforded to the Debtors in the Chapter 11 Cases require that you immediately stay the Coverage Lawsuit in its entirety.

One of the Debtors, Imerys Talc Vermont, Inc. (“**ITV**”), is an insured under the policies issued to J&J prior to January 6, 1989. Prior to this date, ITV (f/k/a Windsor Minerals, Inc.) was a wholly-owned subsidiary of J&J. Through a series of subsequent transactions, Debtor ITV became, and continues to be, a wholly-owned subsidiary of Debtor Imerys Talc America, Inc.<sup>1</sup>

As a result of the commencement of the Chapter 11 Cases, and by operation of law pursuant to section 362 of title 11 of the United States Code (the “**Bankruptcy Code**”), the automatic stay generally enjoins all entities from, among other things, any act to obtain possession of property of the estate or of property from the estate or to otherwise exercise control over property of the Debtors’ estates. 11 U.S.C. § 362(a)(3). The protections of the automatic stay apply to a debtor’s property wherever located and by whomever held. *See* 11 U.S.C. § 541(a); *In re Allen*, 768 F.3d 274, 276, 279 (3d Cir. 2014) (stating that “[b]ankruptcy jurisdiction, at its core, is *in rem*” and holding that actual possession by the debtor is not required for property to be part of the debtor’s estate) (internal citation and quotation marks omitted) (alteration and emphasis in original).

---

<sup>1</sup> A copy of the applicable Articles of Amendment is attached hereto for your convenience.



Daniel J. Wityk  
December 10, 2020  
Page 2

The policies at issue in the Coverage Lawsuit are property of the Debtors' estates. Section 541(a)(1) of the Bankruptcy Code expressly provides that property of the estate includes "all legal or equitable interests of the debtor in property as of the commencement of the case." Courts have long held that insurance policies are property of a bankruptcy estate. *See, e.g., ACandS, Inc. v. Travelers Cas. & Sur. Co.*, 435 F.3d 252, 260 (3rd Cir. 2006) ("It has long been the rule in this Circuit that insurance policies are considered part of the property of a bankruptcy estate."); *In re Johns Manville Corp.*, 26 B.R. 420, 436 (S.D.N.Y. 1983) (holding that debtor's "rights under its insurance policies and all causes of action arising thereunder constitute property of the [debtor's] estates within the purview of Section 541(a) of the Code"); *A.H. Robins Co. v. Piccinin*, 788 F.2d 994, 1001 (4th Cir. 1986) (holding that a debtor's insurance policy may well be the most important asset of the estate, and "any action in which the judgment may diminish this 'important asset' is unquestionably subject to a stay under [11 U.S.C. 362(a)(3)]") (quotations omitted).

The automatic stay applies here because the Coverage Lawsuit may adversely affect the Debtors' interest in the J&J insurance policies. The Bankruptcy Code provides that "any act to obtain possession of property of the estate or of property from the estate or to exercise control over property of the estate" is automatically enjoined. 11 U.S.C. § 362(a)(3). To this end, courts have recognized that application of the automatic stay is not limited to suits or actions where the debtor is actually a named party. Rather, the automatic stay must be enforced with respect to any action or proceeding "against an interest of the debtor." *Kaiser Group Int'l, Inc. v. Kaiser Aluminum & Chem. Corp.*, 315 B.R. 655, 658 (D. Del. 2004); *see also Cf. Harbison-Walker Refractories Co. v. ACE Prop. & Cas. Ins. Co. (In re Global Indus. Techs.)*, 303 B.R. 753, 760 (Bank. W.D. Pa. 2004) ("A declaratory judgment action against a debtor is an 'act to . . . exercise control over property of the estate,' 11 U.S.C. §362(a)(3), insofar as it seeks to affect the insurance policies which are estate property. The fact that the action does not name Debtor is not dispositive. We find that Debtor's interests with respect to insurance policies will be adversely affected and perhaps irreparably harmed if the New York Action is permitted to go forward"); *ACandS, Inc.*, 435 F.3d at 261 ("[B]ecause the grant of affirmative relief to Travelers had the effect of terminating ACandS's coverage, we hold that it violated the automatic stay.").

Accordingly, the Debtors demand that you immediately advise the court in the Coverage Lawsuit of the Chapter 11 Cases and stay the Coverage Lawsuit, and any related proceedings, in their entirety. Please confirm to us in writing by December 24, 2020, that the court has been so advised. If necessary, the Debtors are prepared to file a motion to enforce the automatic stay in the Chapter 11 Cases.<sup>2</sup>

---

<sup>2</sup> "[A]n individual injured by any willful violation of a stay provided by this section shall recover actual damages, including costs and attorneys' fees, and, in appropriate circumstances, may recover punitive damages." 11 U.S.C. § 362(k)(1).



NEAL GERBER EISENBERG

Daniel J. Wityk  
December 10, 2020  
Page 3

The Debtors look forward to receiving your confirmation. The Debtors reserve all rights under applicable law.

Sincerely,

/s/ Jason A. Frye

JAF

cc: Angela Elbert  
Kim Posin  
Amy Quartarolo  
Eileen McCabe  
Stephen Roberts  
Thomas Ladd



VERMONT SECRETARY OF STATE

Corporations Division

MAILING ADDRESS: Vermont Secretary of State, 128 State Street, Montpelier, VT 05633-1104

DELIVERY ADDRESS: Vermont Secretary of State, 128 State Street, Montpelier, VT 05633-1104

PHONE: 802-828-2386

WEBSITE: www.sec.state.vt.us

V125660

ARTICLES OF AMENDMENT
(Vermont profit corporation T.11A, §10.06)

Vermont Secretary of State, 128 State Street Montpelier, VT 05633-1104 (802-828-2386)

{A VT domestic for-profit corporation may amend its articles of incorporation at any time to add or change a provision that is required or permitted in the articles of incorporation or to delete a provision not required. If a corporation has not yet issued shares, its incorporator or board of directors may adopt one or more amendments}

Current NAME of corporation:

Windsor Minerals, Inc.

The text and date of each amendment adopted:

The name of the corporation is hereby changed to Imerys Talc Vermont, Inc. ✓

{ } This corporation amends to become a BENEFIT corporation under T.11 Chapter 21

The name of the BENEFIT DIRECTOR is:

The name of the BENEFIT OFFICER is:

State the specific purpose of the benefit corporation:

Does this amendment provide for an exchange, reclassification, or cancellation of issued shares? If so, state those provisions:

No

If the amendment was adopted by the incorporators or board of directors, without shareholder action, make a statement to that effect and that shareholder action was not required.

If the amendment was approved by shareholders. (A) the designation, number of outstanding shares, number of votes entitled to be cast by each voting group entitled to vote separately on the amendment, and number of votes of each voting group represented at the meeting.

There were 50,000 common shares entitled to be cast on the amendment.

(B) either the total number of votes cast for and against the amendment by each voting group entitled to vote separately on the amendment or the total number of undisputed votes cast for the amendment by each voting group and a statement that the number cast for the amendment by each voting group was sufficient for approval by that voting group.

There were 50,000 undisputed votes cast for the amendment which was sufficient for approval.

Signature: [Handwritten Signature] Title: Secretary Date: 9/12/11

\$25.00 fee: If a delayed effective date is not specified (no later than 90 days after filing), it is effective the date it is approved.

File in duplicate with a self-addressed envelope.

2011 SEP 13 PM 1:51
VERMONT SECRETARY OF STATE CORPORATIONS