

CITATION: Re: LTL Management LLC, 2021 ONSC 8357
COURT FILE NO.: CV-21-00673856-00CL
DATE: 20211217

**SUPERIOR COURT OF JUSTICE – ONTARIO
COMMERCIAL LIST**

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

AND IN THE MATTER OF LTL MANAGEMENT LLC

BEFORE: L. A. Pattillo J.

COUNSEL: See attached Appendix 'A'

HEARD by Videoconference: December 17, 2021

ENDORSEMENT

[1] This is an application by LTL Management LLC (the "Debtor") in its capacity as the foreign representative of the Debtor ("Foreign Representative") for an Initial Recognition Order and a Supplementary Recognition Order in relation to Chapter 11 proceedings commenced on October 14, 2021, in the United States Bankruptcy Court for the Western District of North Carolina and subsequently transferred to the United States Bankruptcy Court for the District of New Jersey (the "Chapter 11 Case").

[2] The Debtor is a North Carolina company and an indirect subsidiary of Johnson & Johnson (J&J), a global provider of health care products. The J&J group of companies includes approximately 250 subsidiaries with operations in 60 countries, including Johnson & Johnson Inc. in Canada ("J&J Canada").

[3] The Debtor was created in 2021 as part of a corporate re-structuring, to hold certain of Johnson & Johnson Consumer Inc.'s assets and all of the claims in respect of JOHNSON'S® Baby Powder (the "Talc-Related Claims"). Its only assets in Canada are funds held by its legal counsel.

[4] In addition to the Talc-Related Claims in the US, some of the J&J companies, including J&J Canada as well as Valeant Pharmaceuticals International Inc., now Bausch Health Companies Inc., are named co-defendants (collectively the "Canadian Co-Defendants") in some or all of the talc lawsuits in Canada (collectively the "Canadian Actions").

[5] On November 15, 2021, the North Carolina Bankruptcy Court issued a preliminary injunction (the "US Preliminary Injunction"), in effect for 60 days (January 14, 2022) staying and enjoining commencement or continuation of any action plaintiffs in the Talc-Related Actions including the plaintiffs in the Canadian Actions. A hearing is scheduled for January 11, 2022

before the New Jersey Bankruptcy Court to determine whether a more permanent injunction should be put in place.

[6] On February 15, 2022, the Official Committee of Talc Claimants is moving before the New Jersey Bankruptcy Court to have the entire Chapter 11 proceedings dismissed.

[7] On December 11, 2021, the Debtor sought and obtained authorization from the New Jersey Bankruptcy Court to act as the Foreign Representative on behalf of its estate in any judicial or other proceeding in Canada ("Foreign Representative Order").

[8] The Foreign Representative seeks an order recognizing the Chapter 11 Case as a "foreign main proceeding" pursuant to s. 46(1) of the *Companies Creditors Arrangement Act* (CCAA); granting a stay of proceedings in respect of claims against the Debtor; and dispensing with the requirement under s. 53(b) of the CCAA to publish notice of the Recognition Proceedings in one or more Canadian newspapers.

[9] In addition, the Foreign Representative seeks a Supplemental Order recognizing and enforcing the US Preliminary Injunction; appointment of Ernst & Young Inc. as Information Officer; confirming that matters related to this proceeding shall be brought before this court; and adopting the Guidelines for Communication and Cooperation between Courts in Cross-Border Insolvency Matters issued by the Judicial Insolvency Network ("JIN Guidelines").

[10] Section 47 of the CCAA provides that a Court shall make an order recognizing a foreign insolvency proceeding if the following two requirements are met:

- 1) The application for recognition of a foreign proceeding relates to a "foreign proceeding" within the meaning of the CCAA; and
- 2) The applicant is a "foreign representative" within the meaning of the CCAA in respect of that foreign proceeding.

[11] Section 45(1) of the CCAA defines a "foreign proceeding" as any judicial proceeding in a jurisdiction outside of Canada dealing with creditors' collective interests generally under any law relating to bankruptcy or insolvency in which a debtor company's business and financial affairs are subject to control or supervision by a foreign court for the purpose of reorganization.

[12] As the Chapter 11 Case is such a judicial proceeding, I am satisfied it is a "foreign proceeding" as defined by the CCAA.

[13] Further, the Debtor is a debtor company within the meaning of the CCAA. It is insolvent and the funds held by its counsel are sufficient to satisfy the requirement to "have assets in Canada".

[14] In addition, pursuant to the Representative Order, the Foreign Representative meets the definition of "foreign representative" in s. 45 of the CCAA.

[15] I am also satisfied from the evidence that the Chapter 11 Case is a “foreign main proceeding” as defined in s., 45(1) of the CCAA. The Debtor’s “centre of its main interests” is the United States. Its head office is in New Jersey, all members of its board of directors and management reside in the United States and all corporate and administrative services are provided in the United States.

[16] Based on the evidence, therefore, I am satisfied that an order should issue recognizing the Chapter 11 Case as a foreign proceeding and a stay should issue in respect of claims against the Debtor pursuant to s. 48(1) of the CCAA.

[17] The Foreign Representative also seeks an order exempting it from the requirements of s. 53(b) of the CCAA requiring it to publish, without delay, after the order recognizing the foreign proceeding is made once a week for two consecutive weeks in one or more newspapers in Canada a notice containing certain prescribed information.

[18] The Foreign Representative submits that notice to plaintiffs’ counsel in the Canadian Actions was provided for this application and there are no other creditors, suppliers, customers, employees, and other stakeholders in Canada. While that may be, I am not prepared to dispense with the required notice which I direct be provided in newspapers with the largest circulation in Vancouver, British Columbia, Toronto, Ontario and Montreal, Quebec.

[19] The Foreign Representative also seeks an order recognizing and giving effect to the US Preliminary Injunction pursuant to s. 49 of the CCAA which gives the court the discretion to make any order necessary for the protection of the debtor company’s property or the interests of a creditor or creditors.

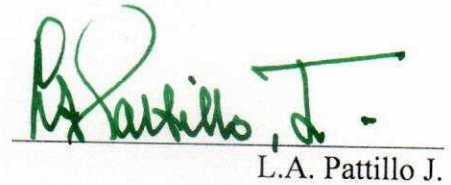
[20] As noted, the US Preliminary Injunction puts in place a preliminary injunction in effect until January 14, 2022, staying and enjoining the commencement or continuation of any Talc-Related Action, including the Canadian Actions.

[21] The Canadian Counsel for the Official Committee of Talc Claimants as well as counsel for the plaintiffs in the Class actions in Ontario, Quebec and British Columbia are not opposed to the recognition and giving effect to the US Preliminary on the condition that the terms, attached as Schedule “A” to this Endorsement, are incorporated in the Endorsement. Those provisions seek to ensure the order sought does not prejudice the Talc Claimants pending motion to dismiss the entire Chapter 11 Case. The Foreign Representative is in agreement with the proposed terms.

[22] Counsel for the plaintiffs in the Alberta Class Action opposed the order on the grounds of prejudice but filed no evidence to support his submissions. In any event, I consider that the terms in Schedule “A” resolve any prejudice issues.

[23] In my view, the recognition and enforcement of the US Preliminary Injunction in Canada is consistent with the principles of comity is fair and reasonable in the circumstances. I therefore consider recognition and giving effect to the US Preliminary Injunction to be appropriate in the circumstances. I also adopt and incorporate into this endorsement the terms set out in Schedule “A”.

- [24] I also agree that E&Y should be appointed as information Officer to assist the court and keep it apprised of the status of the foreign proceedings.
- [25] This court shall remain seized of any matters related to these recognition proceedings.
- [26] Finally, the JIN Guidelines are adopted for the purposes to the Debtor's recognition proceeding.
- [27] Accordingly, the Supplemental Recognition Order requested shall also issue.
- [28] Orders signed by me.

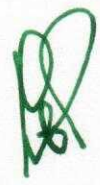


L.A. Pattillo J.

Date: December 17, 2021

Schedule "A"

1. This Initial Supplemental Order is made without prejudice to the Motion to Dismiss, filed by the Committee of Talc Claimants (the "**Official Committee**") in the US Bankruptcy Court for the District of New Jersey (the "**New Jersey Bankruptcy Court**") in the Debtor's bankruptcy proceedings commenced under Chapter 11 of Title 11 of the United States Code and scheduled to be heard on February 15, 2022 (the "**Motion to Dismiss**"). The granting of this Initial Supplemental Order should not be construed as a determination by this Court of any fact, matter or issue before the New Jersey Bankruptcy Court in the Motion to Dismiss.
2. In recognizing the US Preliminary Injunction pursuant to this Order, this Court has not made any findings or conclusions about (i) whether there are claims against any of the Protected Parties (as defined in the US Preliminary Injunction), other than the Debtor and Old JJCI (as defined in the US Preliminary Injunction), which should, or should not, be stayed or enjoined, and (ii) the right of any party to challenge on any basis the bankruptcy filing of the Debtor or the corporate transactions that created the Debtor.
3. In connection with the representations made by the Debtor at the hearing today about the interpretation of paragraph 6 of this Initial Supplemental Order, the Official Committee, or other interested party, may apply to this court for advice and direction on any matter in connection with this order, including whether any future order of the New Jersey Bankruptcy Court or the New Jersey District Court (in each case, the "**US Court**") modifying or extending the US Preliminary Injunction requires a further recognition order of this court to have force and effect in Canada. For greater certainty, any future request of the Debtor to seek recognition by this Court of an order of the US Court modifying or extending the US Preliminary Injunction shall be reviewed by this Court on a *de novo* basis.


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Participant Information

Please upload a completed participant information form in the CaseLines event folder/bundle. Where possible, the moving party for the event is asked to coordinate with other parties to complete one form for the hearing.¹ In criminal matters, each party may upload their own form. The participant information form must be saved using the court's document naming convention (e.g. Participant Information – All Parties – 01-JUN-2021 or Participant Information – Defendant Smith – 01-JUN-2021).

CASE INFORMATION

Court File Number	CV-21-00673856-00CL
Court Location (e.g. Hamilton)	Toronto
Case Name	LTL Management LLC
Date of Hearing	December 17, 2021

PARTICIPANT INFORMATION

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¹ The Participant Information Form replaces the Counsel Slip.

² Please provide a phone number where you can be reached during the hearing, if necessary.

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Dec 17/21

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